DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 685

RIN 1845–AA00

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

AGENCY: Department of Education.
ACTION: Final regulations.

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

DATES: *Effective Date:* These regulations are effective July 1, 2000.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA (20 U.S.C. 1089(c)(2)(A)), that FFEL and Direct Loan program participants may, at their discretion, choose to implement certain provisions of §§ 682.102, 682.200, 682.202, 682.206, 682.401, 682.402, 682.406, 682.409, 682.414, 682.604, 682.610, 685.102, 685.201, 685.304, and 685.402 on or after November 1, 1999. For further information see ''Implementation Date of These Regulations'' under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For the FFEL Program, Ms. Patsy Beavan, or for the Direct Loan Program, Ms. Nicki Meoli, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202–5346. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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SUPPLEMENTARY INFORMATION: These regulations implement certain changes made to the HEA by the 1998 Amendments (Pub. L. 105–244) that affect the FFEL and Direct Loan programs.

On August 10, 1999, the Secretary published a notice of proposed rulemaking (NPRM) for the FFEL and Direct Loan programs in the **Federal Register** (64 FR 43428). In the preamble to the NPRM, the Secretary discussed on pages 43429 to 43438 the following proposed changes:

FFEL Program Changes

- Amending § 682.102(a) to require the use of the Free Application for Federal Student Aid (FAFSA) as the application for FFEL subsidized and unsubsidized Stafford loans beginning in academic year 1999–2000 and to reflect the use of a Master Promissory Note (MPN) that would allow borrowers to receive, in addition to an initial loan, additional loans for the same or subsequent periods.
- Amending § 682.200(b) to revise the definition of ''Lender'' to permit lenders to provide assistance to schools that is comparable to the kinds of assistance provided by the Secretary under, or in furtherance of, the Direct Loan Program.
- Amending § 682.201(c)(1)(i)(D) and (E) to prohibit a borrower from receiving an FFEL Consolidation loan to repay a loan made under the HEA on which the borrower is subject to a judgment secured through litigation or to an administrative wage garnishment order.
- Amending § 682.201(c)(1)(iv)(B) to permit a borrower who has multiple FFEL Program holders to apply to any eligible FFEL lender for an FFEL Consolidation loan.
- Amending § 682.201(d)(2) to expand the universe of loans that may be included in an FFEL Consolidation loan.
- Amending § 682.202(a) to include the interest rate formulas that apply to subsidized Stafford, unsubsidized Stafford, and PLUS loans that are first disbursed on or after October 1, 1998 and before July 1, 2003 and interest rate formulas for Consolidation loans.
- Amending § 682.202(b) to reflect that a lender may add accrued interest to the principal (capitalization) of an unsubsidized Stafford loan only when the loan enters repayment, at the expiration of a period of authorized deferment, at the expiration of a period of authorized forbearance, and when the borrower defaults. This section also provides that, for loans first disbursed on or after July 1, 2000, periods of forbearance on both subsidized and unsubsidized Stafford loans would be covered by the new capitalization rules.
- Amending § 682.202(c) to permit a lender to assess a lower origination fee to a borrower demonstrating ''greater financial need,'' as determined by the borrower's adjusted gross income and to allow a lender to consider a borrower as demonstrating greater financial need if—
- The borrower's expected family contribution (EFC) used to determine eligibility for the loan is equal to or less than the maximum qualifying EFC for a Federal Pell Grant at the time the loan is certified;
- The borrower qualifies for a subsidized Stafford loan; or
- The borrower qualifies according to a comparable alternative standard approved by the Secretary.
- Amending § 682.206 to conform to changes made in § 682.603 related to loan certification of borrower eligibility by the school and § 682.401 related to the use of the MPN.
- Amending § 682.207 to require lenders to disburse loans in a single installment (rather than in multiple installments as generally required) if so directed by a school that meets the criteria specified in § 682.604.
- Amending § 682.209(a)(7)(ix) to require a lender to offer new FFEL borrowers, including FFEL Consolidation loan borrowers, whose total outstanding FFEL loans exceed $30,000, an extended repayment plan with fixed or graduated repayment amounts to be paid over a period not to exceed 25 years.
- Amending § 682.301(a)(3) to include the authority for payment of interest subsidy during a period of authorized deferment on the portion of an FFEL Consolidation loan that repaid a subsidized FFEL or Direct Loan program loan.
- Amending § 682.402(h)(1)(iv) to provide that a lack of evidence of a borrower's confirmation for subsequent loans made under an MPN will not lead to a denial of claim payment to the lender unless the loan is found to be unenforceable.
- Amending § 682.402(i)(1)(i) to reflect amendments to the Bankruptcy Code that eliminated the seven-year repayment standard for discharge of FFEL Program loans for bankruptcy petitions filed on or after October 8, 1998 and establish undue hardship as the only criteria for a bankruptcy discharge.
- Amending § 682.402(i)(1)(iv) to revise lender and guaranty agency claim filing procedures related to loans for which bankruptcy petitions are filed.

• Amending § 682.414(a)(4) and (5) to require lenders to maintain documentation of the confirmation processes the lender and the school used for subsequent loans under an MPN and specify that a lender or guaranty agency may, to accommodate the MPN process, retain a true and exact copy of the promissory note rather than the original note.

• Amending § 682.603(b) to require a school to certify only the loan amount for which the borrower is eligible and to provide a disbursement schedule to the lender.

FFEL and Direct Loan Program Changes

• Amending §§ 682.200(b) and 685.102(b) to—

• Reflect that the length of time a borrower is delinquent before a default occurs on an FFEL or Direct Loan program loan is 270 days for a loan repayable in monthly installments and 330 days for FFEL Program loans repayable less frequently than monthly;

• Reflect that schools now are required to include veterans' educational benefits paid under Chapter 30 of Title 38 of the United States Code and national service education awards or post-service benefits under Title I of the National and Community Service Act of 1990 (Americorps) as estimated financial assistance for the purpose of determining a borrower's eligibility for unsubsidized FFEL and Direct Loan program loans; and

• Define the term ''master promissory note'' (MPN) as a promissory note under which a borrower may receive loans for a single academic year or multiple academic years.

• Amending §§ 682.204 and 685.203 to modify the method for calculating the reduced annual loan limits that apply to FFEL and Direct Loan borrowers enrolled in programs of study or remaining balances of programs of study that are less than an academic year in length and to specify annual loan limits for non-degree preparatory and teaching credential coursework.

• Amending §§ 682.207(e), 682.603(g), 682.604(c), 685.301(b) and 685.303(b) to reflect that an FFEL or Direct loan program school is exempt from the multiple disbursement requirement for single-term loans and the delayed delivery requirement if—

• The school's FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate is less than 10 percent for each of the three most recent fiscal years for which data are available; or

• The school is certifying or originating a loan to cover the cost of attendance in a study abroad program and has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than five percent for the single most recent fiscal year for which data are available.

• Amending §§ 682.209(a)(6) and 685.207(b) and (c) to exclude certain periods of service by a borrower in the Armed Forces from the six-month grace period for FFEL and Direct Loan program borrowers.

• Amending §§ 682.210(c) and 685.204(b) to reflect that FFEL lenders and the Secretary may determine a borrower's eligibility for an in-school deferment when—

• The borrower submits a request for deferment along with documentation verifying the borrower's eligibility for the deferment to the borrower's FFEL lender, or the Secretary for a Direct Loan;

• The borrower's FFEL lender, or the Secretary for a Direct Loan, receives either a newly completed loan certification or, as part of the MPN process, information from the borrower's school indicating that the borrower is eligible to receive a new loan; or

• The borrower's FFEL lender, or the Secretary for a Direct Loan, receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis.

• Amending § 682.210(h) to permit borrowers who are eligible for unemployment insurance benefits to submit evidence of their eligibility for the benefits to their FFEL lender, or to the Secretary for a Direct Loan (see § 685.204(b)(2)), to qualify for initial and subsequent periods of an unemployment deferment.

• Amending §§ 682.211(f)(9) and 685.205(b)(9) to permit an FFEL lender, and the Secretary for a Direct Loan, to grant a forbearance to a borrower for a period not to exceed 60 days after the borrower requests a deferment, a forbearance, a change in repayment plan, or a consolidation loan.

• Amending §§ 682.401(d) and 685.402 to state the requirements that a school must meet to be authorized to use a single MPN as the basis for multiple loans obtained by a borrower.

• Amending §§ 682.402, 685.212, and 685.215 to provide for discharge of the amount of a borrower's FFEL or Direct Loan program loan disbursed on or after January 1, 1986 that should have been refunded by the borrower's school.

• Amending §§ 682.604(f) and (g) and 685.304(a) and (b) to permit schools to use electronic means to provide initial counseling and exit counseling to borrowers and to require two additional counseling elements based on new statutory initiatives.

• Amending § 685.300 to provide schools the option to participate in one or more of the loan programs (subsidized, unsubsidized, and PLUS) under the FFEL and Direct Loan programs.

These final regulations contain several changes from the NPRM. We fully explain these changes in the Analysis of Comments and Changes elsewhere in this preamble.

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 (which begins July 1) in 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. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. Under this authority, the Secretary has designated the following regulations for early implementation:

§§ 682.102, 682.200, 682.206, 682.401, 682.402, 682.406, 682.409, 682.414, 682.604, 682.610, 685.102(b), 685.201(a), and 685.402(f)—Upon publication, the provisions in these regulations related to the Master Promissory Note (MPN) may be implemented by borrowers, schools, lenders, and guaranty agencies in the FFEL Program and borrowers and schools in the Direct Loan Program at their discretion. This means that participants in both the FFEL and Direct Loan programs may begin using a single MPN as the basis for multiple loans obtained by a borrower as long as they do so consistent with all regulatory provisions and accompanying discussion related to use of the MPN that are included in this final rule.

Section 682.200(b) Definition of Lender—Upon publication, these regulations may be implemented by FFEL lenders at their discretion. This means that FFEL lenders may provide assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of, the Direct Loan Program.

Section 682.202(c)—Upon publication, these regulations may be implemented by FFEL lenders at their discretion. This means that FFEL lenders may assess a lower origination fee to a borrower demonstrating ''greater

financial need'' as provided in these regulations.

Section 682.604(f)(2)(i), 682.604(g)(2)(vii), 685.304(a)(3)(i), and 685.304(b)(4)(vii)—Upon publication, these regulations may be implemented by FFEL and Direct Loan program schools at their discretion. This means that schools may explain the use of an MPN during initial counseling and review information on the availability of the Department's Student Loan Ombudsman's office during exit counseling.

Analysis of Comments and Changes

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 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 August 10, 1999 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 September 15, 1999 and several comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

These final regulations address changes that are specific to the FFEL Program and changes that are common to both the FFEL and Direct Loan programs. The following analysis begins with comments and changes that affect only the FFEL Program, followed by comments and changes that affect both the FFEL and Direct Loan programs.

Federal Family Education Loan Program

Section 682.102—Consolidation Loan Application

Comment: Several commenters representing guaranty agencies, lenders, and servicers recommended that we clarify § 682.102(d) to explain which holder(s) must be contacted for a Consolidation loan when a married couple wants to jointly consolidate their loans. The commenters suggested that the proposed language appears to require a married couple seeking a joint Consolidation loan to contact all the holders for one of the applicant's loans before being able to consolidate if either or both applicants have multiple holders.

Discussion: We agree that this language needs to be revised to be consistent with § 682.201(c)(2)(ii). If each of the applicants has only one holder, then only the holder for one of the applicants must be contacted. If either or both applicants have multiple loan holders, the applicants are permitted to submit the application to any lender participating in the Consolidation Loan Program.

Change: We have revised § 682.102(d) to clarify the application requirements for married borrowers who want a joint Consolidation loan.

Section 682.200—Definitions

Lender-Prohibited Inducements

Comment: A commenter representing a guaranty agency suggested that we clarify that the inducement provision applies only to originating lenders.

Discussion: We do not believe that the inducement prohibition applies only to originating lenders. The HEA clearly states that the term ''eligible lender'' does not include any lender that offers, directly or indirectly, points, premiums, payments or other inducements, to any educational institution or individual in order to secure applicants. The statute does not distinguish between originating lenders and other loan holders.

Change: None.

Repayment Period

Comment: Some commenters recommended that we clarify that the 25-year extended repayment schedule is available to PLUS loan borrowers.

Discussion: We agree with the commenters.

Change: We have revised the definition of ''Repayment period'' in § 682.200(b) to specifically reference PLUS loan borrowers.

Section 682.201—Eligible Borrowers

Consolidation Loans

Comment: Some commenters suggested that § 682.201(c)(1) should be restructured to clarify that loans subject to litigation or administrative wage garnishment are eligible for inclusion in a Consolidation loan (including during the 180-day period for adding loans to a Consolidation loan) once the judgment or wage garnishment order is vacated, even if the judgment or order is in place at the time the borrower applies for the Consolidation loan. The commenters pointed out that the restriction in section 428C(a)(3)(A)(ii) of the HEA need not be read to apply to the prohibition against consolidating loans which are subject to a judgment or wage garnishment order contained in section 428C(a)(3)(A)(i) of the HEA. Instead, the restriction applies only to defining an eligible borrower's status on the loans to be consolidated. The commenters believe this clarification will ensure that a borrower is not prevented from consolidating a loan which was subject to a judgment or wage garnishment order at the time of application, provided the order is vacated prior to consolidating the loan and will also protect the federal fiscal interest by allowing the guarantor to ensure that the borrower has completed the application process before the guarantor cancels the judgment or garnishment order.

Discussion: We agree with the commenters that this change will preserve a borrower's eligibility to consolidate while protecting the federal fiscal interest. We agree with the commenters that it is prudent for the holder to delay vacating a judgment or canceling a wage garnishment order until after the borrower has completed the consolidation process. We understand the commenters' concern that if a borrower applies for a Consolidation loan and the holder vacates the loan prior to the consolidation, the borrower may not follow through.

Change: We have revised § 682.201(c)(1) to permit lenders to consolidate loans based on the status of the loans at the time of consolidation, not the time of application.

Comment: Some commenters stated that they believed that proposed § 682.201(d), that specifies when a borrower's eligibility to receive a Consolidation loan terminates, conflicts with § 682.201(e) that specifies when a Consolidation loan borrower may consolidate an existing Consolidation loan. The commenters believe it is unclear whether the permission to consolidate a Consolidation loan in

paragraph (e) overrides paragraph (d)(1), which states that a borrower's eligibility to obtain a new Consolidation loan is terminated upon receipt of a Consolidation loan except where the borrower receives a new loan after the date of the original consolidation. The commenters also suggested that we clarify that a married couple may consolidate their individual Consolidation loans into a single joint Consolidation loan.

Discussion: As reflected in § 682.201(e), a Consolidation loan borrower may obtain a new Consolidation loan if the borrower consolidates the outstanding Consolidation loan with at least one other eligible loan. A borrower is not required to obtain a new loan in order to consolidate. Also, as the commenters noted, a married couple may consolidate their respective Consolidation loans into a single joint Consolidation loan without either borrower being required to obtain a new loan.

Change: We have restructured § 682.201(d) and (e) to clarify the circumstances under which borrowers may consolidate an outstanding Consolidation loan to address the commenters' concerns.

Section 682.202—Permissible Charges by Lenders to Borrowers Interest Rates

Comment: Several commenters recommended that § 682.202(a)(1)(vii) be revised to specify that the interest rate formula included in this paragraph applies to a Stafford loan for which the first disbursement was made on or after July 1, 1995 and prior to July 1, 1998 without reference to the period of enrollment for which the loan was made. The commenters pointed out that although Dear Colleague Letter 93–L–161 (dated November 1993), which summarized the interest rate change for the period July 1, 1995 and prior to July 1, 1998, included a reference to the period of enrollment for Stafford loans made on or after July 1, 1995 (as well as for loans made on or after July 1, 1998), subsequent guidance issued by the Department (e.g., annual memoranda regarding applicable interest rates) did not include this reference for the 1995–1998 period.

Discussion: We agree with the commenters.

Change: We have revised § 682.202(a)(1)(vii) to delete reference to a period of enrollment that includes or begins on or after July 1, 1995.

Comment: Several commenters suggested that § 682.202(a)(3)(iii) be revised to delete the reference in the SLS interest rate formula to ''the period of enrollment that began prior to July 1, 1994'' because this paragraph applied to SLS loans made on or after October 1, 1992 through the cessation of the SLS Program on July 1, 1994. The commenters pointed out that Dear Colleague Letter 93–L–161 (dated November 1993), summarizing Public Law 103–66, specified that the termination of the SLS program was effective for periods of enrollment that began on or after July 1, 1994, without regard to the loan disbursement date.

Discussion: We agree with the commenters.

Change: We have removed the technical change proposed in § 682.202(a)(3)(iii) in the NPRM referencing loans disbursed prior to July 1, 1994.

Comment: In response to the Secretary's request for comments on how to make these proposed regulations easier to understand, a major association representing credit unions suggested that for clarity, we provide an example to clarify the regulatory requirement to use weighted average interest rates for Consolidation loans.

Discussion: The weighted average interest rate used for Consolidation loans in both the FFEL and Direct Loan programs should be calculated based on the interest rates that apply to the loans being consolidated at the time the loan holders complete the verification certificates. In making the calculation, it is important to note that an interest rate that is lower than the repayment period rate applies to most subsidized and unsubsidized Stafford loans in the FFEL and Direct Loan programs during the in-school, grace, and deferment periods. This affects the calculation of the weighted average interest rate. If, for example, a loan is in a grace period at the time the loan holder completes the verification certificate, the lower grace period interest rate would be used in the calculation of the weighted average interest rate on the Consolidation loan. Conversely, if the borrower applies for a Consolidation loan after entering repayment on a loan, the higher repayment interest rate of the loan being consolidated would be used in calculating the weighted average interest rate on the Consolidation loan.

The weighted average interest rate is a single interest rate that is calculated by using the borrower's loan balances and the current annual interest rate for each of the borrower's loans.

For example: A borrower has two subsidized Federal Stafford Loans, one for $10,000 and the other for $5,000, both with an interest rate of 8.25 percent. The borrower also has a $3,500 unsubsidized Federal Stafford Loan with an interest rate of 7.46 percent and a $3,000 Federal Perkins Loan with a 5.0 percent interest rate. The borrower consolidates these loans.

The following steps outline one way to calculate the weighted average interest rate:

1. Multiply the balance of each loan being consolidated by the interest rate that applies to that loan at the time the verification certificate is completed.
2. Add the calculated interest amounts for all loans being consolidated ($1,648.60).
3. Add the loan balances for all loans being consolidated ($21,500).
4. Divide the sum of the calculated interest amounts by the sum of the loan balance amounts (7.66%).
5. Round the quotient (the answer to Step 4) to the nearest higher one-eighth of one percent (7.75%).
6. Compare the result in Step 5 to the 8.25% maximum interest rate and determine which is lower. The lower of the two rates is the borrower's fixed interest rate for the Consolidation loan.

The weighted average interest rate for the borrower in this example is 7.75%.

Change: None.

Origination Fee

Comment: Several commenters pointed out that in § 682.202(c)(2)(i) the term ''minimum'' was incorrectly used rather than ''maximum'' when referencing the criteria for charging a lower origination fee to some borrowers.

Discussion: We agree with the commenters that the term ''minimum'' was inadvertently used and is not consistent with the language in the preamble to the NPRM. To be eligible for a lower origination fee under this provision, the borrower's EFC used to determine the eligibility for the loan must be equal to or less than the maximum qualifying EFC for a Federal Pell Grant at the time the loan is certified.

Change: We have revised § 682.202(c)(2)(i) to replace ''minimum'' with ''maximum.''

Comment: Two commenters representing national lenders objected to proposed § 682.202(c)(4) that would provide that, for purposes of determining whether a lender is charging all similarly situated borrowers the same origination fee, all lenders under common ownership, including ownership by a common holding company, constitute a single lender. The commenters argued that this provision violates the plain language of the HEA and conflicts with Congressional intent and settled administrative policy underlying the Federal banking laws. They further stated that this provision is

not needed to prevent manipulation of bank subsidiaries of bank holding companies to circumvent the nondiscrimination provision. They stated that it unfairly places subsidiaries of large bank holding companies at a competitive disadvantage in specific geographic areas in which they provide loans. The commenters also argued that the proposed regulations will eliminate competition in the FFEL program, providing some state secondary markets or primary lenders a stranglehold in certain states. They contended that subsidiaries that previously have maintained separate origination fee discount policies to compete in state or regional markets would be required to apply one fee policy across the country, leaving them no choice but to withdraw from certain markets. One of the commenters noted that they had maintained a system-wide policy for their subsidiaries which was geographically based, allowing the particular subsidiary to establish its policy in its geographical area and they recommended that the Secretary not disregard such systems, particularly those that predate the enactment of the nondiscrimination provision.

Discussion: In light of the commenters' concerns, we have reconsidered the manner in which the proposed regulation would have applied the origination fee non-discrimination provisions. We do not believe that implementing this provision of the law to ensure greater equality in the origination fees assessed to similarly situated FFEL borrowers should have the unintended negative consequence of reducing competition in the FFEL Program and limiting a borrower's choice of a lender. We believe that another approach to applying the provision could be used to prevent manipulation with intent to circumvent the law while preserving lender choice, access, and competition. Therefore, we have decided that a state-based rather than a nationwide approach to applying the origination fee non-discrimination provision should be used. We believe that a state-based approach to applying the provision will prevent manipulation by lenders with the intent to circumvent the law while preserving lender choice, access, and competition in the FFEL Program. Moreover, we believe that a state-based application of the requirements addresses the commenters' concerns that national and multi-state lenders will be prevented from competing effectively and may be forced to leave certain markets.

Change: Section 682.202(c) has been revised to clarify the definition of lender to provide that any lending entity, including any multi-state lending entity, that makes loans in a particular state, must apply any policy of lower origination fees consistently to all borrowers residing in that state or who attend school in that state.

Comment: One commenter recommended that we clarify the documentation a lender should use to demonstrate the borrower's ''greater financial need'' for origination fee discount purposes.

Discussion: We believe that it is important to provide lenders with flexibility in this area and therefore decline to regulate documentation standards that a lender must use to determine greater financial need.

Change: None

Section 682.206—Due Diligence in Making a Loan

Comment: Some commenters recommended that § 682.206(a)(1) be revised to clarify that the lender's responsibilities and obligations in the loan making process with respect to having a borrower complete and sign the promissory note applies only to a borrower with subsequent loans (rather than ''multiple'' loans) made under a ''valid'' MPN.

Discussion: We agree with the commenters that the use of the term ''subsequent'' loans is more appropriate than using the term ''multiple'' loans. However, we believe it is unnecessary to specify that the MPN is ''valid'' because a lender has no basis for relying on an invalid or expired MPN for any reason.

Change: We have revised § 682.206(a) by substituting ''subsequent'' for ''multiple.''

Section 682.209—Repayment of a Loan

Comment: Several commenters recommended that § 682.209(a)(7)(ix) be restructured to clarify that only those borrowers who first obtained an FFEL Program loan on or after October 7, 1998 and with outstanding debt totaling more than $30,000 qualify for the extended repayment plan. The commenters suggested that, as proposed, the regulations do not fully define the eligibility criteria for an extended repayment plan.

Discussion: We agree with the commenters.

Change: We have revised § 682.209(a)(7)(ix) to clearly provide that, under an extended repayment schedule, a new borrower whose total outstanding principal and interest in FFEL loans exceeds $30,000 may repay the loan on a fixed annual or graduated repayment plan for a period that may not exceed 25 years.

Comment: Several commenters suggested that § 682.209(a)(8)(i) and (ii), governing the period of time to repay a loan, be revised to include reference to the 25-year extended repayment plan.

Discussion: We agree with the commenters.

Change: We have revised both paragraphs to provide for repayment of 25 years under an extended repayment plan.

Comment: Several commenters suggested that § 682.209(h)(3)(ii) be revised to clarify that defaulted Title IV loans on which satisfactory repayment arrangements have not been made may not be taken into consideration when determining the maximum repayment period on a Consolidation loan.

Discussion: We believe that the regulations clearly state that only a defaulted Title IV loan on which satisfactory repayment arrangements have been made may be included for purposes of establishing the maximum repayment period for a Consolidation loan. Otherwise, the regulations specify that all defaulted loans, including non-Title IV loans, may not be included in the determination of the maximum repayment period. However, to clarify this point, we will specify in the regulations that the balance used in making this determination may not include ''any defaulted loans.''

Change: We have inserted the word ''any'' before ''defaulted loans'' in § 682.209(h)(3)(ii).

Section 682.210—Deferment

Comment: Several commenters noted that proposed § 682.210(a)(3) indicates that interest may be paid by the Secretary for all or a portion of a qualifying Consolidation loan that meets the requirements under § 682.301 when the loan is made. These commenters recommended that the reference to ''when the loan is made'' be deleted. The commenters stated their belief that this phrase was carried over from the existing provision which addresses Stafford loans only and could be misunderstood as an indication that loans added within the 180-day period following the date a Consolidation loan is made may not be eligible for interest benefits.

Discussion: We agree with the commenters that the phrase ''when the loan is made'' could be misunderstood to exclude from interest subsidy loans added to a Consolidation loan within the 180-day period following the date the Consolidation loan is made.

Change: We have revised § 682.210(a)(3) by deleting the phrase ''when the loan is made.''

Comment: Some commenters stated that the parenthetical phrase ''(unless based on the dependent's status)'' following reference to the PLUS program in § 682.210(c)(5) is irrelevant and should be removed. The commenters suggested this deletion is appropriate because borrowers serving in a medical internship or residency program are prohibited by law from receiving an in-school deferment, regardless of whether the deferment is on the borrower's loan based on his or her own service, or on a parent borrower's loan based on his or her dependent's service in the internship or residency program.

Discussion: We disagree with the commenters. The parenthetical exception relates to the eligibility of a parent PLUS borrower to defer a PLUS loan based on their dependent son or daughter's attendance in school. We have never interpreted the prohibition to apply to an intern's or resident's eligibility to defer a parent PLUS loan based on the intern's or resident's dependent's in-school status.

Change: None.

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

Comment: Several commenters suggested that § 682.301(a)(3)(ii) should be revised to clarify that to qualify for interest benefits, a Consolidation loan made on or after August 10, 1993, but prior to November 13, 1997, must have been comprised solely of subsidized loans. The commenters believe that this provision might be misinterpreted to include Consolidation loans that include but are not solely comprised of subsidized Stafford loans.

Discussion: We do not agree that the term ''solely'' needs to be added to provide clarity. However, we have determined that moving the word ''only'' would clarify the regulations.

Change: We have revised § 682.301(a)(3)(ii) to clarify that a Consolidation loan borrower qualifies for interest benefits if the loan application was received on or after August 10, 1993, but prior to November 13, 1997 and if the loan consolidates only subsidized Stafford loans.

Comment: Numerous commenters representing lenders, guaranty agencies, servicers, and secondary markets recommended that § 682.301(a)(iii) be restructured to separately reflect the statutory provision governing the eligibility of Consolidation loans made on or after November 13, 1997 and on or after July 1, 2000 for interest subsidies. The commenters indicated that conflicting guidance has been disseminated since November 13, 1997 regarding the loan types that may comprise the subsidized portion of a Consolidation loan for interest subsidy purposes, specifically whether it includes all subsidized FFEL loans or only subsidized Stafford loans. These commenters suggest that the final regulations should clarify that lenders are permitted to follow either of these two approaches for loans made on or after November 13, 1997 and prior to July 1, 2000. The commenters further recommended that the final regulations should clarify that any regulatory provision authorizing use of either approach may be implemented earlier than July 1, 2000.

Discussion: We understand that lenders may have received differing guidance on the scope of the interest subsidy available to FFEL Consolidation loan borrowers after the enactment of the Emergency Student Loan Consolidation Act of 1997 (Pub. L. 105–78). However, we have identified only a small subset of borrowers, specifically subsidized Consolidation loan borrowers who include their Consolidation loans in a subsequent Consolidation loan, as potentially affected by the difference in guidance. The commenters did not present any evidence that the differing guidance for this very small group of borrowers represents a problem. We do not believe that this speculative small problem necessitates making a change in the regulations. However, we remind lenders that we are available to provide technical assistance on a case-by-case basis should it be necessary.

Change: None.

Section 682.401—Basic Program Agreement

Comment: Several commenters recommended that § 682.401(b)(5)(i) be revised to remove reference to an ''application'' as it regards the borrower's right to indicate a preferred lender and instead include a reference to other information submitted during the loan origination process. The commenters pointed out that there is not, under the MPN process, a specific document entitled ''application.''

Discussion: We agree with the commenters. The item allowing the borrower to indicate a preferred lender is now contained on the MPN.

Change: We have revised § 682.401(b)(5)(i) to delete the word ''application'' and replace it with ''in other written or electronic documentation submitted during the loan origination process.''

Comment: Several commenters recommended that § 682.401(b)(5)(ii)(D) be removed to eliminate the requirement that the borrower provide information from the school demonstrating the borrower's eligibility for the loan and providing the maximum loan amount that the student may borrow. The commenters noted that this data flow is inconsistent with changes made to the HEA by the 1998 Amendments.

Discussion: Although the HEA no longer requires the student to provide, through the school, information on the student's eligibility for the loan, the school must still provide the loan amount. We will revise the regulations to reflect this change.

Change: We have revised § 682.401(b)(5)(C) (formerly § 682.401(b)(5)(D)) to indicate that the borrower must provide to the lender information from the school on the maximum amount that may be borrowed by or on behalf of the student.

Section 682.406—Conditions of Reinsurance Coverage

Comment: One commenter representing a guaranty agency pointed out that this section does not reference the reduced rebate fee on Consolidation loans that was effective for Consolidation loans based on applications received on or after October 1, 1998 through January 31, 1999. The commenter noted that the current regulations indicate that the interest payment rebate fee of 1.05 percent applies to all Consolidation loans disbursed on or after October 1, 1993. The 1998 Amendments reduced the fee to 0.62 percent for loans made on applications received from October 1, 1998 through January 31, 1999.

Discussion: We agree with the commenter that the regulations should reflect the reduced rebate fee that applied to Consolidation loans based on applications received from October 1, 1998 through January 31, 1999.

Change: We have revised § 682.406 to incorporate the reduced fee of 0.62 percent on Consolidation loans for this period.

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

Comment: Many commenters representing lenders, guaranty agencies, servicers, and secondary markets recommended that the regulations be changed to clearly state that returning a true and exact copy of the original promissory note to the borrower has the same standing as the original promissory note. The commenters suggested that the regulations should be revised to indicate that the true and

exact copy shall be admissible as evidence in all state and federal courts notwithstanding any provision of state law to the contrary. The commenters further suggested that the regulations reflect that the lender may send a notice to the borrower in place of the original MPN when a loan made under an MPN is paid in full by or on behalf of the borrower. The commenters stated that they believe that sending the notice effectively preempts any state law requiring the lender to send the borrower the original or a copy of the promissory note and recommended that the Secretary provide an explanation of this position in the final regulations to ensure that this preemption is fully understood.

Discussion: Section 432(m)(1)(D) of the HEA, as added by the 1998 Amendments, specifically states that notwithstanding any other provision of law, each loan made under an MPN shall be separately enforceable in all Federal and State courts on the basis of an original or copy of the MPN. Therefore, the statute itself has the effect of preempting state law and it is not necessary for the Secretary to regulate further in this area. The regulations also allow the lender to send a notice to a borrower that informs the borrower that the loan is paid in full. Indeed, this approach must be used with the MPN process, which provides for the making of multiple loans with different repayment dates and which may be held by different loan holders using a single note.

Change: None.

FFEL and Direct Loan Programs

Sections 682.200 and 685.102—Definition of Estimated Financial Assistance

Comment: One commenter representing a school stated that the different treatment of veterans' educational benefits paid under Chapter 30 of Title 38 of the United States Code and national service education awards or post-service benefits under Title I of the National and Community Service Act of 1990 (Americorps) in determining a student's eligibility for subsidized FFEL and Direct Loan program loans and in determining a student's eligibility for unsubsidized loans is administratively burdensome to schools. To reduce the administrative burden on schools, the commenter recommended that we treat all resources the same way for all Title IV programs. Another commenter representing FFEL guaranty agencies noted the discrepant treatment between subsidized and unsubsidized loans as it applies to Americorps benefits and encouraged the Secretary to pursue a legislative change that would allow schools to exclude Americorps benefits when determining a borrower's eligibility for unsubsidized, as well as subsidized, FFEL and Direct Loan program loans.

Discussion: We realize that the different treatment of veterans' educational benefits paid under Chapter 30 of Title 38 of the United States Code and Americorps benefits in determining a student's eligibility for subsidized FFEL and Direct Loan program loans and in determining a student's eligibility for unsubsidized loans complicates award packaging and may be administratively burdensome to schools. However, this different treatment is required by Section 480(j) of the HEA.

Change: None.

Comment: A commenter pointed out that there are two versions of the Montgomery GI Bill—active duty and reserve—and suggested that it would be helpful to clarify that Chapter 30 of Title 38 of the United States Code is the active duty version.

Discussion: We agree with this suggestion.

Change: We have revised the definition of estimated financial assistance in §§ 682.200(b) and 685.102(b) to clarify that Chapter 30 of Title 38 of the United States Code is the active duty version of the Montgomery GI Bill.

Sections 682.204 and 685.203—Loan Limits

Comment: One commenter representing a school suggested an alternative method for determining prorated loan amounts instead of the method proposed in the NPRM. The alternative method recommended by the commenter included looking at the maximum annual loan limit, dividing by the number of terms in the year, and then multiplying by the number of terms during which the borrower was enrolled half time or more.

Another school commenter believed that the rationale for prorating the loan amounts of graduating seniors in a program of undergraduate education is unclear. This commenter noted that the statute indicates that ''if such student is enrolled in a program of undergraduate education which is less than one academic year,'' proration is required. The commenter did not believe that a student who is in the final term of a program of undergraduate education that is greater than one academic year meets this criteria. This commenter also pointed out that borrowers other than graduating seniors may be eligible to receive up to the full applicable annual loan limit depending upon costs and other financial assistance regardless of whether or not the borrower is enrolled less than full-time or for one term only. The commenter believes that the Department should be concerned about overborrowing before the borrower reaches the final term if the rationale for prorating the loan amounts of graduating seniors is to ensure that loan amounts do not unnecessarily inflate debt levels.

Another commenter representing a school observed that the proposed regulations do not provide for consistent treatment of loan proration for programs or remainder of programs of less than an academic year. The commenter believes the regulations contradict the language in the 1998 Amendments that specifically requires the use of semester, trimester, quarter, or clock hours when prorating the loan limits for programs or portions of programs that are less than a full academic year. This commenter stated that the regulations should reflect the HEA by prorating the total amount the student may borrow for a program of study that is less than a full academic year in length or a portion of a program that is less than a full academic year in length by using the relationship of the program credit to that of a full academic year. The commenter believes that this simplified proration should be used for all years of undergraduate students applied to the appropriate full academic year limits.

Discussion: Although we appreciate the suggestion of an alternative method for loan proration, the loan proration requirements, including the method of calculating prorated loan amounts, is statutory. As a result, the regulations mirror the statute as closely as possible, and alternative methods of calculation cannot be considered without statutory change. The application of loan proration to borrowers in their final term of their undergraduate programs is also statutory and was retained by the 1998 Amendments. The approach to loan proration for programs or portions of programs of less than an academic year recommended by the final commenter would result in some students receiving a full annual loan limit for a program that is less than an academic year as that term is defined in statute. The 1998 Amendments clarified that annual loan limits are authorized for an academic year as that term is defined in section 481(a)(2) of the HEA. The definition contains a minimum standard of instructional time and academic coursework. A program that does not meet both of these statutory standards for an academic year is clearly

less than an academic year, and students enrolled in such a program are not eligible to receive a full annual loan amount. The strictly proportional calculation recommended by the commenter would result in a full annual loan amount for students in programs that meet the academic coursework standard of the definition in section 481(a)(2) of the HEA, but do not meet the standard for instructional time. We do not believe that this result would be consistent with Congressional intent. A proportional loan amount calculated as a ratio of the academic credit to the academic year is used for remaining portions of programs of less than an academic year. Under these circumstances, the borrower is completing a program that is longer than an academic year and therefore examining the remaining portion of the program against both standards of the academic year is not applicable.

Change: None

Comment: Several commenters pointed out that § 682.204 (a)(2) of the proposed regulations addressed students enrolled in one-year programs with less than a full academic year remaining, but did not cover remaining balances of less than an academic year for other programs.

Discussion: The commenters are correct that this section does not address students enrolled in programs of study with less than a full academic year remaining. Rather, it addressed only students in one-year programs of study with less than an academic year remaining. We believe that revising the regulations to include a provision for students in remaining balances of programs, as the commenters suggest, will satisfactorily address both groups of students.

Change: We have revised §§ 682.204(d)(2) and 685.203(c)(2) to provide for an additional unsubsidized annual Stafford loan amount for students enrolled in programs of study with less than a full academic year remaining to complete the program. We have deleted reference to a one-year program with less than a full academic year remaining in §§ 682.204(d)(2) and 685.203(c)(2).

Sections 682.209 and 685.207—Grace Period for Military Service

Comment: Several commenters representing FFEL lenders, servicers, and guaranty agencies pointed out that the preamble discussion in the NPRM indicated that borrowers who qualified for the exclusion of certain periods of service in the Armed Forces from the six-month grace period would be required to re-enroll within 12 months of their return from active duty service. While the commenters agreed that 12 months may be a reasonable amount of time to re-enroll, they noted that the requirement was not included in the proposed regulations and requested that we not limit the period to 12 months in the final regulations. A commenter representing a school supported our acknowledgement that some borrowers may need more time than others to re-enroll in the next available regular enrollment period and the proposal to restore the full six-month grace period to borrowers whose loans were in the grace period when the borrowers were called to active duty.

Discussion: The commenters are correct that the proposed regulations did not include the requirement that the period necessary for a borrower to resume enrollment at the next available regular enrollment period when the borrower returns from active duty service be limited to 12 months. As discussed in the preamble to the NPRM, the time period in which a borrower needs to re-enroll in the ''next available regular enrollment period'' after returning from active duty service may need to be longer for some borrowers than others, especially if the borrower is pursuing a non-traditional academic program, and given the fact that the borrower may not re-enroll in the same program when returning from active duty. The Secretary generally believes that twelve months allows more than ample time for the majority of borrowers to re-enroll and provides a reasonable limit (within the three-year total exclusion limitation) on the amount of time that may be excluded from a borrower's six-month grace period. However, in keeping with the agreement reached during negotiated rulemaking, the Secretary has not included this limitation in the regulations.

Change: None.

Sections 682.210 and 685.204—Deferment

In-School Deferment

Comment: Commenters representing FFEL lenders and guaranty agencies suggested that the rules regarding the end date for an in-school deferment be removed from § 682.210(a) because paragraph (a) provides general information applicable to all deferments and should not contain information specific to a particular deferment. The commenters believed that information related to the in-school deferment end date should be contained within the in-school deferment section in § 682.210(c)(3). The commenters also requested that we revise § 682.210(c)(3) to reflect that valid enrollment information may be received by lenders using an electronic format rather than a form as the proposed regulatory language suggests.

Discussion: We do not agree with the commenters that information about the end date for an in-school deferment should be removed from § 682.210(a). We believe this information is correctly placed because it is contained in a provision that outlines when authorized deferment periods end. However, we agree that the process information included in the proposed regulatory language would be better placed in § 682.210(c)(3). We also agree with the commenters that the proposed regulatory language in § 682.210(c)(3) should be revised to reflect that valid enrollment information may be received by lenders electronically.

Change: We have moved the in-school deferment process information from § 682.210(a)(6)(iv) to § 682.210(c)(3). We also believe that the revisions to § 682.210(c)(3) accommodate the use of electronics to provide valid enrollment information.

Comment: A commenter representing a guaranty agency requested clarification that both FFEL lenders, and the Secretary for Direct Loans, may process an in-school deferment based on student status information that does not come directly from the borrower's school. The commenter pointed out that the proposed regulatory language did not make it clear that the student status information may be received directly or indirectly from the school.

Discussion: As stated in the preamble to the NPRM, a borrower's FFEL lender, or the Secretary for Direct Loans, may determine that a borrower is eligible for an in-school deferment based upon student status information received from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis. The lender or the Secretary could receive school-provided information directly, through the SSCR process of the National Student Loan Data System (NSLDS), or from a third-party servicer. Regardless of whether the lender or the Secretary receives the student status information directly or indirectly, the information must originate with the school. We agree with the commenter that the regulations should reflect the fact that student status information may be received directly or indirectly from the school.

Change: We have revised §§ 682.210(c)(1)(iii) and 685.204(b)(1)(iii)(A)(*3*) to reflect that student status information received directly or indirectly from a school may

be used to determine a borrower's in-school deferment eligibility.

Comment: A commenter representing a school supported the proposal to require notice to borrowers of their option while they are in school to pay the interest that accrues on an unsubsidized loan during an in-school deferment period or cancel the deferment entirely and pay on the loan. The commenter requested that we also require that the notice include information about the consequences of selecting those options—in particular that paying accruing interest during the deferment or paying on the loan rather than taking the deferment may result in lower total payments over the life of the loan. Another commenter representing a guaranty agency stated that the proposed regulatory language did not provide sufficient guidance to lenders about how to deal with what may appear to be due diligence gaps that may result from a borrower electing to cancel an in-school deferment that was automatically applied by the lender and then not making the required payments on the loan. The commenter noted that during the negotiated rulemaking sessions we stated that lenders were not allowed to apply an administrative forbearance in these situations and requested that we make this point more explicit in the regulations.

Discussion: We agree with the commenter that it would be helpful to borrowers if information about the consequences of the options was included in the notice sent to borrowers when an in-school deferment is applied automatically. For example, the notice should explain to borrowers that unpaid interest that accrues on their unsubsidized loans will be capitalized at the end of the deferment period and inform them that by paying the interest during the deferment period they may reduce the total amount they pay over the life of the loan.

In response to the commenter who requested that we state more explicitly how lenders should deal with possible due diligence gaps that may result from a borrower electing to cancel an in-school deferment that was automatically applied by the lender and then not making the required payments on the loan, we defer to the agreement reached by the negotiated rulemaking committee that we not regulate the action lenders must take in this situation. As discussed during negotiations, this decision seems appropriate given the infrequent nature of these situations. We expect lenders to take actions appropriate to the unique circumstances of each borrower's situation and remind lenders that we are available to provide technical assistance on a case-by-case basis should it be necessary.

Change: We have revised § 682.210(c)(2) to reflect that the notice a lender sends to a borrower when an in-school deferment is applied automatically must include an explanation of the consequences of the options presented to the borrower in the notice.

Unemployment Deferment

Comment: Several commenters responded to the Secretary's request for comment as to whether the minimum documentation items for determining a borrower's eligibility for an unemployment deferment based on the borrower's eligibility for unemployment insurance benefits should be included in the final regulations. Generally, commenters representing FFEL lenders, servicers, and guaranty agencies did not believe that minimum documentation requirements should be prescribed in regulations and supported no change to the proposed regulations. One of the commenters representing servicers stated that unless there is evidence showing that all states include certain data elements on check stubs or other types of documentation related to eligibility for unemployment insurance benefits, the final regulations should not include minimum documentation requirements. A commenter representing a guaranty agency did, however, support prescribing minimum documentation requirements in regulations provided that the requirements were developed with community involvement. Another commenter representing credit unions stated that the minimum documentation items discussed by the negotiated rulemaking committee and presented in the preamble to the NPRM appeared reasonable, but did not comment on whether the items should be prescribed in regulations.

Discussion: In response to the overwhelming support for not prescribing minimum documentation requirements in the regulations, we have decided not to make changes in the final regulations. We are basing this decision on the fact that a borrower must provide evidence of his or her eligibility for unemployment insurance benefits to his or her lender, or the Secretary for Direct Loans, in order to qualify for an unemployment deferment based on eligibility for unemployment insurance benefits. As agreed during negotiations, the evidence of a borrower's eligibility for unemployment insurance benefits must prove that the borrower is eligible to receive unemployment insurance benefits for the period for which he or she is requesting an unemployment deferment. We acknowledge that there are no uniform documentation requirements for unemployment insurance benefits. However, to fulfill the documentation requirement for the unemployment deferment, we believe that, at a minimum, the documentation should include the borrower's name, address, and social security number and the effective dates of the borrower's eligibility to receive unemployment insurance benefits.

Change: None.

Comment: Commenters representing FFEL lenders, servicers, and guaranty agencies expressed their belief that the regulatory requirement that the unemployment deferment end date be within six months of the certification date should apply regardless of whether the deferment is being granted as a result of the borrower submitting evidence of his or her eligibility for unemployment insurance benefits or as a result of the borrower submitting a written certification of eligibility (i.e., a completed unemployment deferment request form).

Discussion: We agree with the commenters. However, we note that the reference to ''certification date'' is not applicable if a deferment is granted based on a borrower's submission of evidence of his or her eligibility for unemployment insurance benefits. In this case, the unemployment deferment end date would be within six months of the date the borrower submits evidence of his or her eligibility for unemployment insurance benefits.

Change: We have revised § 682.210(h) to reflect that the unemployment deferment end date provision applies to both methods by which a borrower may qualify for an unemployment deferment.

Sections 682.211 and 685.205—Forbearance

Comment: Commenters representing FFEL lenders, servicers, and guaranty agencies expressed their belief that the final regulations should accurately and consistently reflect the elimination of the requirement that forbearance terms be agreed to in writing. The commenters pointed out that the requirement had been removed from § 682.211(b) but had not been removed from § 682.211(c) of the proposed regulations.

Discussion: The 1998 Amendments eliminated the requirement that the borrower's request for forbearance be in writing; however, the 1998 Amendments did not eliminate the requirement that forbearance terms be agreed to in writing. Section 428(c)(3)(A)(i) of the HEA continues to

require that forbearance terms be agreed to in writing. A forbearance changes the repayment terms on the borrower's loan and therefore needs to be agreed to in writing. The change we proposed to § 682.211(b) to remove the requirement that forbearance terms be agreed to in writing is incorrect. Both § 682.211(b) and § 682.211(c) need to accurately reflect that forbearance terms must be agreed to in writing. The only reference in the regulations to a borrower's written request for a forbearance, contained in § 682.211(h), is being deleted from the regulations.

Change: We have revised §§ 682.211(b) and (c) to accurately and consistently reflect that forbearance terms must be agreed to in writing.

Sections 682.401 and 685.402—Master Promissory Note

Comment: A commenter representing a guaranty agency requested that we change the proposed regulatory language in § 682.401(b)(5) to ensure that if a student or parent borrower does not indicate a choice of lender on the promissory note or application a lender will not be assigned automatically to the borrower. The commenter was concerned that borrowers would not be entitled to choose their lenders.

Discussion: The FFEL promissory notes and applications have always given the borrower the option to choose a lender. That option will not be impacted by the implementation of the Master Promissory Note (MPN). If a borrower does not provide a choice of lender on the promissory note, a lender will not be assigned. The borrower must work with the school to choose a lender. Section 432(m)(1)(B) of the HEA requires that the borrower be permitted to choose his or her lender.

Change: None.

Comment: A commenter representing servicers in the FFEL Program requested that we make a conforming change in § 682.401(d)(3) to reflect that under the MPN process guaranty agencies are no longer bound to the use of a common application form.

Discussion: While it is true that an application form is no longer required for Stafford loans in the FFEL Program, section 432(m)(1)(A) of the HEA retains a reference to common application forms, as well as including references to promissory notes and the MPN. We believe that the regulations should retain reference to common application forms because a common PLUS loan application remains in use until an approved MPN for PLUS loans can be developed and a common Consolidation loan application will be used indefinitely. By mirroring the statutory language in the final regulations, we believe that all possible options are covered.

Change: We have revised § 682.401(d)(3) to more closely reflect the statutory language that governs the forms guaranty agencies must use.

Comment: A commenter representing a consumer organization expressed the view that the proposed regulations related to the criteria a school must meet to be authorized to use the multi-year feature of the MPN were too broadly stated and suggested changes that included requiring the Secretary's written authorization for multi-year use of the MPN by a school. A commenter representing a two-year public institution wanted to know what other criteria the Secretary would use to approve the use of the MPN by schools other than four-year and graduate/professional schools. Another commenter representing a credit union suggested that this criteria should be the same as that used for four-year and graduate/professional schools.

Discussion: We have carefully considered the suggested language recommended by the commenter who believed that the proposed regulations governing the criteria a school must meet to be authorized to use the multi-year feature of the MPN are too broad and agree with a couple of the commenter's proposed changes. Specifically, we agree with more explicitly linking approval to use the multi-year feature of the MPN to the required criteria listed in the regulations and reinforcing the fact that the criteria are not all inclusive and will be applied, as appropriate, for the type of institution. However, we do not agree with the proposal to require the Secretary's written authorization for multi-year use of the MPN by every school.

In response to the request for information about the criteria we will use to approve the use of the MPN by schools other than four-year and graduate/professional schools, we repeat our statement in the preamble to the NPRM stating our intention to establish and announce criteria and a process that we will use after publication of these final regulations.

Change: We have revised §§ 682.401(d)(4)(ii) to more specifically link approval to use the multi-year feature of the MPN to the required criteria and reinforce the fact that the listed criteria are not all inclusive. The Direct Loan regulations already reflect these policies and do not need to be changed.

Comment: A commenter representing a consumer organization requested that we confirm that borrowers are entitled to assert a defense against repayment of any one of the loans made under an MPN. This commenter also expressed concern that the 10-year limit on the use of a single MPN established in the proposed regulations is too long a period from a consumer standpoint and requested that we change the maximum period to five years. The commenter expressed the belief that the 10-year period may serve the financial community well but does not serve young student borrowers well because they are subject to making unwise decisions, uneducated about how to cancel promissory notes, and potential targets for fraud and abuse. The commenter believed that the minimal bother of signing a new MPN after five years was far outweighed by the benefit of ensuring better borrower control of the loan process and education about the loan obligation.

Discussion: As the regulations specify, each loan made under an MPN is enforceable in accordance with the terms of the MPN. Therefore, a borrower would be entitled to assert a defense against repayment on each loan made under the MPN, based on any act or omission of a school attended by the student that would give rise to a cause of action against the school under applicable state law.

In response to the commenter's concern about the fact that an MPN may be valid for a period of up to 10 years, we agree with the commenter that ensuring borrower control of the loan process and understanding of the loan obligation are of utmost importance and that lengthy gaps in time between obtaining loans under an MPN may not always support these objectives. The Secretary is committed to monitoring use of the MPN with regard to these concerns and to evaluating options for changes to the 10-year MPN standard that is in these final regulations.

Change: None.

Comment: A commenter representing servicers in the FFEL Program requested that we change the proposed regulations to allow the 10-year MPN period to be based on either the date the borrower signs the MPN or the date the lender receives the MPN for processing if the borrower fails to date the MPN.

Discussion: We do not agree with the commenter's proposed change because we do not believe it is desirable for lenders or the Secretary to accept a signed MPN that has not been dated by the borrower. Acceptance of an MPN that has not been dated by the borrower may negatively affect the borrower and possibly threaten the legal enforceability of the MPN.

Change: None.

Comment: A commenter representing a guaranty agency noted that the proposed MPN regulatory language indicated that we have begun development of an MPN for PLUS loans and encouraged us to work with FFEL Program participants to clarify provisions and maximize benefits for borrowers. The commenter also asked if it is our intention to allow a PLUS MPN to cover all loans that a parent borrower obtains on behalf of all of that parent's dependent children or require a separate MPN for loans made on behalf of each dependent child. Another commenter representing a different guaranty agency requested that references to parent borrowers in the provisions related to the MPN in the Direct Loan Program regulations be removed until an MPN for PLUS loans is approved.

Discussion: Development of an MPN for PLUS loans has begun. To date, work groups have been involved in the initial tasks associated with developing a PLUS MPN; however, as the development expands beyond this stage, we intend that FFEL and Direct Loan program participants and other interested parties will have input into the process. We acknowledge that there are special operational considerations that need to be taken into account with an MPN for PLUS loans. As we work with program participants and others to develop the PLUS MPN, we will address issues such as the applicability of the PLUS MPN to loans made for one or more dependent children of a parent borrower. We believe that it is appropriate to include reference to parent borrowers in the regulations related to the MPN since approval of an MPN for PLUS loans will occur in the near future.

Change: None.

Comment: Commenters representing two different guaranty agencies requested changes in the proposed regulations that prescribe when an FFEL or Direct Loan program school that is not authorized by the Secretary for multi-year use of the MPN must obtain a new MPN from the borrower. One commenter suggested that the FFEL provision indicates that a borrower must complete a new promissory note for each academic year. The other commenter wanted the Direct Loan provision to indicate that a borrower must complete a new promissory note for each period of enrollment.

Discussion: In the FFEL program, loans are made in accordance with the period of enrollment certified by the school, and an MPN is defined as a promissory note under which a borrower may receive loans for a single period of enrollment or multiple periods of enrollment. Therefore, at an FFEL Program school that is not authorized by the Secretary for multi-year use of the MPN, a borrower must complete a new promissory note for each period of enrollment. In the Direct Loan Program, however, loan origination can be tracked to an academic year, and an MPN is defined as a promissory note under which a borrower may receive loans for a single academic year or multiple academic years. Therefore, at a Direct Loan Program school that is not authorized by the Secretary for multi-year use of the MPN, a borrower must complete a new promissory note for each academic year. We believe that the operational differences in the FFEL and Direct Loan programs necessitate differences in the regulations in this area.

Change: None.

Comment: We received several comments related to the confirmation process or processes that schools which are authorized to use a single MPN as the basis for multiple loans obtained by a particular borrower must develop and document along with the FFEL lender or the Secretary to ensure that a borrower wants subsequent loans made under the MPN.

Commenters representing the legal services negotiators on the negotiated rulemaking committee, a consumer organization, and a school association expressed their strong opposition to authorizing the implementation of confirmation processes that allow passive notification with a negative option (i.e., the borrower must take the initiative to reject a new loan under an MPN based on a notice) and requested that we reconsider our approval of passive confirmation processes. The commenters requested that we require confirmation processes that mandate a positive act by the borrower that, at a minimum, identifies the borrower as the initiator of the loan and confirms the type and amount of the new loan, as well as the total amount borrowed. The commenters suggested that properly implemented electronic signatures and written signatures would be acceptable confirmation methods. These commenters expressed their belief that failure to affirmatively solicit a borrower's authorization before originating new loans is an open invitation for abuse and counters the collective goal of encouraging responsible borrowing by informed students. The commenters stated that the technology necessary to develop active confirmation processes that impose a minimal burden on borrowers, schools, lenders, and the Secretary exists, and in some cases (i.e.; PIN numbers), has been in use for 20 years. The commenters also suggested that the legal enforceability of loans made using the multi-year feature of the MPN without active confirmation processes may be questioned in the future when courts will be faced with whether to permit enforcing collection of loans that were neither actively requested nor clearly and affirmatively confirmed by the borrower.

A commenter representing servicers in the FFEL Program requested that we clarify that schools and lenders may utilize passive confirmation (i.e., notification) until such time as the proper processes and systems enhancements can be made by schools and lenders to implement active confirmation processes. Another commenter representing a school suggested that we practice restraint in the area of confirmation. This commenter stated that requiring confirmation once a year should be sufficient since borrowers always have the option of canceling or returning all or a portion of a loan.

Discussion: We are aware that there are strong differing views related to the implementation of the confirmation process required by statute that schools and lenders or the Secretary must develop and document to ensure that a borrower wants subsequent loans under an MPN. We also acknowledge the concerns of the commenters representing consumers regarding confirmation processes that do not require a positive action by a borrower to obtain subsequent loans under the MPN. While we do not agree necessarily that the legal enforceability of loans made in connection with a confirmation process that does not require a positive action by the borrower could be open to challenge, it is the Secretary's goal to maintain and enhance a borrower's control over the lending process in the MPN environment. To achieve this goal, we would like to reiterate our intention to work with students, schools, lenders, guaranty agencies, and other interested parties to develop and implement confirmation processes that make use of the best available technology in order to maintain and enhance borrower control over the lending process, at the same time minimizing burden to schools and lenders. While it is true that much of the technology needed to develop enhanced borrower-control mechanisms exists today; lenders, schools, servicers, and the Department need time to evaluate and determine how best to integrate available technologies into the current student loan delivery systems and procedures. Shortly after these final

regulations are published, we will begin discussions with the affected parties to meet these goals.

At this time, lenders and schools may follow the guidance in the Department's Dear Colleague Letters—GEN–98–25, November 1998 and GEN–99–08, February 1999—in developing and documenting confirmation processes. As technologies that enhance borrower control over the lending process are developed or adapted for implementation, and different methods of confirmation are tested, we will continue to issue guidance regarding confirmation processes. Any guidelines will be issued in accordance with applicable requirements of the Administrative Procedure Act. As stated in the preamble to the NPRM, after evaluating various confirmation processes, it is our ultimate plan to develop regulations governing confirmation processes.

Change: None.

Sections 682.402 and 685.215—Unpaid Refund Discharge

Comment: One commenter representing a guaranty agency suggested that the use of the term ''initial determination'' in the provision that describes the additional documentation a borrower must provide when requesting a review of a guaranty agency's determination on an unpaid refund discharge request could be problematic if the borrower appeals the guaranty agency's decision more than once. The commenter believed that the wording of the proposed regulation could leave a guaranty agency vulnerable to repeatedly having to examine the same documentation submitted on second and subsequent appeals. The commenter requested that we change the term ''initial determination'' to ''any prior determination'' to clarify that in all cases a borrower may only appeal a determination when the borrower has new documentation that was not previously reviewed by the guaranty agency.

Discussion: We agree with the commenter.

Change: We have revised § 682.402(l)(5)(vii)(A) to reflect that a borrower may request a review of a guaranty agency's prior determination on an unpaid refund discharge request only if the borrower has additional documentation supporting the borrower's eligibility that was not considered in any prior determination.

Comment: None.

Discussion: We have identified an inadvertent omission in the provisions governing how a guaranty agency or the Secretary would determine the amount eligible for discharge in cases in which information showing the exact refund amount that was not made by the school or the refund formula that should have been used by the school to calculate a refund is not available. The guaranty agency or the Secretary would use one of two surrogate formulas to calculate the amount eligible for discharge depending on when the student failed to attend, withdrew, or was terminated. In the proposed regulations, both surrogate formulas neglected to take into account that, according to refund policy, borrowers who completed 60 percent or more of the loan period would not have been entitled to a refund and in turn would not be eligible for an unpaid refund discharge.

Change: We have revised §§ 682.402(o)(2) and 685.215(d)(2) to correctly reflect in the surrogate formulas used to determine discharge amounts that borrowers who completed 60 percent or more of the loan period would not be eligible for an unpaid refund discharge.

Sections 682.603, 682.604, 685.301, and 685.303—Disbursement Exemptions

Comment: Commenters representing FFEL guaranty agencies suggested that we change the proposed regulations to reflect that a school must cease to certify or originate loans based on authorized cohort default rate related disbursement exemptions no later than 30 days after the date the school receives notification that the school does not meet the qualifications for the exemptions rather than 30 days after the date the school is notified that it does not meet the qualifications for the exemptions. The commenters believe that the phrase ''receives notification'' is preferable to the phrase ''is notified'' because it eliminates issues of timing.

Discussion: In either case, schools would have more than ample time within which to comply with the provision. However, making the change the commenters requested would be consistent with the regulations in § 668.17 governing cohort default rates and which use the date the school receives the notification.

Change: We have revised §§ 682.603(g), 685.301(b)(8)(ii), and 685.303(b)(4)(ii) to reflect that a school must cease to certify or originate loans based on authorized cohort default rate related disbursement exemptions no later than 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate that causes the school to longer meet the qualifications for the exemptions.

Comment: One commenter representing a guaranty agency requested that we clarify what we mean by the term ''study abroad program'' in the provisions describing the disbursement exemptions that apply to schools certifying or originating loans to cover a student's cost of attendance in a study abroad program. Another commenter representing FFEL servicers suggested that we change the term ''postsecondary home school'' to ''home institution.'' The commenter stated that the term ''home school,'' even in conjunction with the term ''postsecondary,'' is misleading and suggested that we use the term ''home institution'' because it has a long established meaning for purposes of student financial assistance in connection with approved study abroad programs in § 682.207(b)(1)(v)(C). A third commenter representing a higher education association that promotes study abroad programs stated that there is confusion over the applicability of the disbursement exemptions for schools certifying or originating loans to cover the cost of attendance in study abroad programs. Specifically, the commenter requested that we clarify that schools certifying or originating loans to cover the cost of attendance in study abroad programs may qualify for disbursement exemptions under either of the two cohort default rate criteria included in the proposed regulations.

Discussion: The disbursement exemption provisions govern all participating schools that meet specific criteria. Included under these provisions are schools certifying or originating loans to cover the cost of attendance for students participating in study abroad programs. As pointed out by one of the commenters, these schools have been consistently referred to in regulations as ''home institutions.'' Students in study abroad programs complete a portion or portions of their study in a country other than the United States.

The commenter representing a higher education association that promotes study abroad programs is correct that a school that is a home institution certifying or originating a loan to cover the cost of attendance in a study abroad program may qualify for the multiple disbursement and delayed disbursement or delivery exemptions based on either of the two cohort default rate criteria included in the proposed regulations. Under the multiple disbursement exemption, the school would be eligible to disburse loan proceeds in one installment if—

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

Additionally, the school would be eligible to disburse loan proceeds in one installment to cover the cost of attendance in a study abroad program for a loan period of any length if the school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available. Under the exemption for delayed delivery or for disbursement for first-year, first-time borrowers, a school certifying or originating a loan to cover the cost of attendance in a study abroad program may deliver or disburse loan proceeds to first-year, first-time borrowers without a 30-day delay if—

- The school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available; or
- The school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available.

Change: We have revised §§ 682.604(c)(5), 682.604(c)(10), 685.301(b)(8)(i)(B), and 685.303(b)(4)(i)(B) to reflect consistent use of the term ''home institution'' when referring to a school certifying or originating a loan to cover a student's cost of attendance in a study abroad program.

Comment: To be consistent with statutory language, commenters representing guaranty agencies recommended that we replace the term ''loan period'' with the term ''enrollment period'' in the regulation that specifies the conditions for an exemption to the multiple disbursement requirement for schools with an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available. Another commenter representing a guaranty agency suggested that we clarify in the same provision that the reference to a loan period that is four months in length applies only to non term-based schools.

Discussion: While the commenters are correct that statute uses the term ''enrollment period,'' we have used the term ''loan period'' to be consistent with the wording in the other provisions of the FFEL and Direct Loan program regulations into which this provision has been added and therefore, decline to make the commenters' suggested change. We also note that the terms ''enrollment period'' and ''loan period'' are interchangeable.

We agree with the suggestion that we clarify that loan periods that are four months or less in length apply in the case of non term-based schools. We also note that this provision would apply to schools that use non-standard terms.

Change: We have revised §§ 682.604(c)(10)(i)(A) and 685.301(b)(8)(i)(A)(*1*) to reflect that loan periods that are four months or less in length apply in the case of non term-based schools and schools that use non-standard terms.

Sections 682.604 and 685.304—Counseling Borrowers

Comment: A commenter representing a guaranty agency requested that the proposed regulations be changed to reflect that schools are not required to conduct exit counseling with all student borrowers. The commenter maintained that only student borrowers who have a loan or loans entering repayment when the borrower ceases at least half-time enrollment are required to complete exit counseling and that borrowers who return to school but do not receive a new loan or loans are not subject to required exit counseling. This same commenter also suggested that the final regulations should allow a school to conduct exit counseling by mail at the request of a student borrower. The commenter believed that such a provision would accommodate student borrowers who know in advance that they will not be able to fulfill the exit counseling requirement.

Discussion: The commenter is correct in pointing out that there may be student borrowers in a school's population who reenroll in school after they have entered repayment on their subsidized and unsubsidized loans, and who do not obtain new subsidized and unsubsidized loans. While it's true that these student borrowers already have entered repayment on their subsidized and unsubsidized loans, we believe that it would be beneficial for most student borrowers in this position to complete exit counseling again because they would receive up-to-date repayment information and refresh their knowledge about options such as forbearance, deferment, and consolidation. However, we acknowledge that it may not be possible for schools to identify these student borrowers. We believe that the regulations offer the flexibility to permit schools that can identify these student borrowers and choose to require exit counseling for these borrowers to do so.

We do not agree with the commenter's suggestion that schools should be allowed to mail counseling materials to student borrowers at their request. While we appreciate that attending an in-person exit counseling session may be difficult for some student borrowers, we believe that allowing them the option to forgo participating in exit counseling conducted by their schools in person, by audiovisual presentation, or by interactive electronic means conflicts with the statute. The variety of authorized exit counseling methods provides schools with the necessary flexibility to accommodate the specific needs of their student population and meet the statutory requirements. Further, an alternative to conducting exit counseling in person, by audiovisual presentation, or by interactive electronic means is allowed for two categories of student borrowers who generally may not be able to complete exit counseling through one of the authorized methods. Schools may mail written counseling materials to student borrowers who are enrolled in a correspondence program or a study-abroad program approved for credit at the home institution. Schools also may provide exit counseling either through interactive electronic means or by mailing written counseling materials to student borrowers who withdraw without a school's knowledge or who fail to complete the exit counseling.

Change: None.

Comment: We received several comments related to schools providing exit counseling through interactive electronic means. One commenter representing a school requested that we reexamine the requirement that counseling through electronic means be interactive. The commenter believed that this was a very high standard and expressed uncertainty as to how electronically the school could ensure that the student borrower did anything more than open the message. This same commenter also requested that we explain what we mean by ''electronic receipt'' and questioned its necessity when a receipt is not required if a school sends counseling materials via U.S. mail. Another commenter representing a school recommended that student borrowers should have some allowance for errors in the final evaluation of whether or not they have successfully completed exit counseling

through interactive electronic means. A third commenter representing another school suggested that we should provide web-based exit counseling for FFEL and Direct Loan program borrowers that would be linked to the NSLDS. In the commenter's proposal, student borrowers would benefit by being presented with a more complete and accurate picture of their total loan indebtedness and borrowers and schools would benefit by being relieved of the burdens of completing, collecting, and submitting the required personal data.

Discussion: As we discussed in the preamble to the NPRM, we purposely did not prescribe specific electronic means by which schools can provide initial and exit counseling to FFEL and Direct Loan program borrowers. During negotiated rulemaking, committee members representing schools pointed out that there were many different electronic means that schools could use to provide counseling and that new and improved electronic means are continually becoming available. At the same time, the committee agreed that it was important to ensure that the quality of the counseling that schools provide to student borrowers is enhanced rather than diminished by advancing technology. For these reasons, the proposed regulations specified that the electronic means a school uses to provide initial and exit counseling must be interactive, which at a minimum, requires a school to take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes the counseling.

We believe that electronic counseling is equivalent to counseling that a school conducts in person—it is not equivalent to mailing written counseling materials, which is authorized as an alternative only in specific situations. Therefore, we do not consider it sufficient simply to ensure that the student borrower received and ''opened'' an electronic message that contained loan counseling materials. At the same time, we do not want to dictate to schools how they must design their electronic counseling so as to fulfill the regulatory requirement that the counseling be interactive other than to say that, by definition, the term ''interactive'' implies that feedback is provided by the student borrower at some point or points during the course of the counseling.

In response to the questions about electronic receipts, we would like to clarify that any time a school conducts initial and exit counseling by interactive electronic means, the school's documentation that it fulfilled the initial and exit counseling requirements for each student borrower must include proof that the borrower received the materials. As stated in the preamble to the NPRM, this does not mean that the school must receive a personal response from the student borrower. Instead, the school can accept an automatic electronic response acknowledging that the materials were received by the person to whom they were addressed. These automatic electronic responses, often called ''receipts,'' are a feature of most electronic mail systems and are returned automatically to the sender when the recipient receives the message. As discussed during negotiated rulemaking, it is necessary to require proof that the student borrower received the materials sent electronically because, unlike materials sent via U.S. mail, there is no basic legal assumption that materials sent via electronic mail are delivered to the person to whom the materials were addressed.

We appreciate the interesting proposal for improving electronic exit counseling submitted by one of the school commenters. As we work to improve and integrate our systems, as well as service to our customers, we will consider the commenter's proposal that we provide web-based exit counseling for FFEL and Direct Loan program borrowers that would be linked to NSLDS.

Change: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of this order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

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

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations on pages 43438 and 43439 in the preamble to the NPRM.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

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 Numbers: 84.032, Federal Family Education Loan Program, and 84.268, William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 682 and 685

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

Richard W. Riley,

Secretary of Education.

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

PART—682 FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

§ 682.100 [Amended]

2. Section 682.100 paragraph (a)(2) is amended by removing ''encourages'', and by adding, in its place, ''encouraged''; in paragraph (a)(4) by removing ''other loans, including loans:,'', and by adding, in its place, ''loans''; by removing ''and'' before ''Nursing''; and by adding ''including Loans for Disadvantaged Students (LDS)'', after ''(HPSL)''.

3. Section 682.100 paragraph (b)(2)(C) is amended by removing the semi-colon before ''as''.

4. Section 682.102 paragraph (a) is revised; paragraph (b) is removed and reserved; paragraph (d) is revised; and the Office of Management and Budget control number is revised to read as follows:

§ 682.102 Obtaining and repaying a loan.

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

(b) [Reserved]

* * * * *

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

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

§ 682.103 [Amended]

5. Section 682.103 paragraph (a) is amended by removing the first use of the term ''programs''.

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

A. By amending the definitions of *Default* by revising paragraphs (1) and (2); *Estimated financial assistance* by revising paragraphs (1)(i), (2)(i)(B) and (C), and (2)(ii) and by adding (2)(iii).

B. By revising the definition of *Holder.*

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

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

E. In the definition of ''Repayment period,'' in paragraph (1), by adding '',or 25 years under an extended repayment schedule,'', after ''10 years''; in paragraph (2), by adding ''or 25 years under an extended repayment schedule,'', after ''10 years''; in paragraph (4), by adding '', or 25 years under an extended repayment schedule'', after ''10 years''.

F. By adding the Office of Management and Budget control number.

§ 682.200 Definitions.

* * * * *

(b) * * *

Default.

* * * * *

(1) 270 days for a loan repayable in monthly installments; or

(2) 330 days for a loan repayable in less frequent installments.

* * * * *

Estimated financial assistance.

(1) * * *

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

* * * * *

(2) * * *

(i) * * *

(A) * * *

(B) PLUS loan amounts; and

(C) Private and state-sponsored loan programs;

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

(iii) For the purpose of determining eligibility for a subsidized Stafford loan, veterans' educational benefits paid under chapter 30 of title 38 of the United States Code (Montgomery GI Bill—Active Duty) and national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

* * * * *

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

* * * * *

Lender.

* * * * *

(5) * * *

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

* * * * *

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

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

7. Section 682.201 is amended as follows:

A. By revising paragraph (a)(2).

B. By revising paragraph (c)(1); in paragraph (c)(2)(iii) by removing ''(c)(1)(vi)'', and by adding in its place, ''(c)(1)(iv)''; and by removing paragraphs (c)(3) and (c)(4).

C. By adding a new paragraph (d).

D. By adding a new paragraph (e).

§ 682.201 Eligible borrowers.

(a) * * *

(2) In the case of any student who seeks an unsubsidized Stafford loan for

the cost of attendance at a school that participates in the Stafford Loan Program, the student must—

(i) Receive a determination of need for a subsidized Stafford loan; and

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

* * * * *

(c) *Consolidation program borrower.* (1) An individual is eligible to receive a Consolidation loan if the individual—

(i) On the loans being consolidated—

(A) Is, at the time of application for a Consolidation loan—

(*1*) In a grace period preceding repayment;

(*2*) In repayment status;

(*3*) In a default status and has either made satisfactory repayment arrangements as defined in applicable program regulations or has agreed to repay the consolidation loan under the income-sensitive repayment plan described in § 682.209(a)(7)(viii);

(B) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(C) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted;

(ii) Certifies that no other application for a Consolidation loan is pending;

(iii) Agrees to notify the holder of any changes in address; and

(iv)(A) Certifies that the lender holds at least one outstanding loan that is being consolidated; or

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

(*1*) Has multiple holders of FFEL loans; or

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

* * * * *

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

(1) Eligible loans received prior to the date a Consolidation loan was made and loans received during the 180-day period following the date a Consolidation loan was made, may be added to the Consolidation loan based on the borrower's request received by the lender during the 180-day period after the date the Consolidation loan was made;

(2) A borrower who receives an eligible loan after the date a Consolidation loan is made may receive a subsequent Consolidation loan; and

(3) A Consolidation loan borrower may consolidate an existing Consolidation loan only if the borrower has at least one other eligible loan made before or after the existing Consolidation loan that will be consolidated.

(e) In the case of a married couple, the loans of a spouse that are to be included in a Consolidation loan are considered eligible loans for the other spouse.

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

8. Section 682.202 is amended as follows:

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

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

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

D. In paragraph (a)(1)(iv) by adding ''but before December 20, 1993,'' after ''October 1, 1992''.

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

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

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

H. In paragraph (a)(4) by adding ''(i)'' at the beginning of the sentence before ''A Consolidation'', by adding ''made before July 1, 1994'' after ''loan'', by designating paragraph ''(i)'' as ''(A)'', by designating paragraph ''(ii)'' as ''(B)'', by adding new paragraphs (a)(4)(ii) through (a)(4)(v).

I. In paragraph (b)(1), by removing ''paragraph (b)(2) of''; and by revising paragraph (b)(2).

J. In paragraph (b)(3) by removing '', except that capitalization'', and by adding in its place, ''. Capitalization''.

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

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

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

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

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

P. In redesignated paragraph (c)(5), by removing, ''an SLS or''.

§ 682.202 Permissible charges by lenders to borrowers.

(a) * * *

(1) * * *

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

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

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

(B) 8.25 percent.

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

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

(B) 8.25 percent.

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

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

(B) 8.25 percent.

* * * * *

(2) * * *

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

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

(B) 9 percent.

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

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

(B) 9 percent.

* * * * *

(4) * * *

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

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

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

(B) 8.25 percent.

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

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

(B) 8.25 percent.

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

* * * * *

(b) * * *

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

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

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

(iii) For a period of authorized deferment;

(iv) For a period of authorized forbearance; or

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

* * * * *

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

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

(A) When the loan enters repayment;

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

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

(D) When the borrower defaults.

(5) For any borrower in an in-school or grace period or the period needed to align repayment, deferment, or forbearance status, during which the Secretary does not pay interest benefits and for which the borrower has agreed to make payments of interest, the lender may capitalize past due interest provided that the lender has notified the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

(c) *Fees for FFEL Program loans.*

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

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

(ii) With the approval of the Secretary, a lender may use a standard comparable to that defined in paragraph (c)(2)(i) of this section.

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

(4)(i) For purposes of this paragraph (c), a lender is defined as:

(A) All entities under common ownership, including ownership by a common holding company, that make loans to borrowers in a particular state; and

(B) Any beneficial owner of loans that provides funds to an eligible lender trustee to make loans on the beneficial owner's behalf in a particular state.

(ii) If a lender as defined in paragraph(c)(4)(i) charges a lower origination fee to any borrower in a particular state under paragraphs (c)(1) or (c)(2) of this section, the lender must charge all such borrowers who reside in that state or attend school in that state the same origination fee.

* * * * *

9. Section 682.204 is amended as follows:

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

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

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

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

E. In paragraph (j), by removing the first ''or'' before ''HEAL''.

§ 682.204 Maximum loan amounts.

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

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

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

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

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

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

or

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

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

(i) $3,500 for a program whose length is at least a full academic year in length.

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

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

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) $5,500 for a program whose length is at least an academic year in length.

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

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

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

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

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or certificate, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

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

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

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed $5,500.

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

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

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

(c) *Unsubsidized Stafford Loan Program.* (1) In the case of a dependent undergraduate student, the total amount the student may borrow for any period of study under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program.

(2) In the case of an independent undergraduate student, a graduate or

professional student, or certain dependent undergraduate students, the total amount the student may borrow for any period of enrollment under the Unsubsidized Stafford Loan and Federal Direct Unsubsidized Stafford/Ford Loan programs may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Federal Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program, in combination with the amounts determined under paragraph (d) of this section.

(d) *Additional eligibility under the Unsubsidized Stafford Loan Program.* In addition to any amount borrowed under paragraphs (a) and (c) of this section, an independent undergraduate student, graduate or professional student, and certain dependent undergraduate students may borrow additional amounts under the Unsubsidized Stafford Loan Program. The additional amount that such a student may borrow under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program, in addition to the amounts allowed under paragraphs (b) and (c) of this section for any academic year of study—

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

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

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

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

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

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

or

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

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

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

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

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

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

(i) $5,000 for a program of study of at least a full academic year.

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

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

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

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

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate may not exceed the following:

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

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

(iii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in a program necessary for a professional credential or a certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, $5,000.

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

excluding the amount of capitalized interest, may not exceed the following:

(1) $46,000 for an undergraduate student.

(2) $138,500 for a graduate or professional student.

* * * * *

10. Section 682.206 is amended as follows:

A. By revising paragraph (a)(1).

B. By removing ''on the application form or data electronically transmitted to the lender'' in paragraph (c)(1).

C. By revising paragraph (c)(2).

D. By removing paragraph (c)(3).

E. By revising paragraph (d)(1).

F. By revising the Office of Management and Budget control number.

§ 682.206 Due diligence in making a loan.

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

* * * * *

(c) * * *

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

* * * * *

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

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

11. Section 682.207 is amended as follows:

A. In paragraph (b)(1)(v)(B)(*3*), by removing ''eligible institution'', and by adding, in its place, ''institution of higher education''.

B. By revising the introductory sentence in paragraph (c).

C. By removing paragraph (c)(5).

D. By redesignating paragraph (c)(4) as paragraph (d).

E. By redesignating paragraph (d) as paragraph (f).

F. By adding a new paragraph (e).

G. By revising the newly redesignated paragraph (f).

H. By revising the Office of Management and Budget control number.

§ 682.207 Due diligence in disbursing a loan.

* * * * *

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

* * * * *

(e) A lender must disburse the loan in one installment if the school submits a schedule for disbursement of loan proceeds in one installment as authorized by § 682.604(c)(10).

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

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

(ii) The student completed the first 30 days of his or her program of study if the student was a first-year, first-time borrower as described in § 682.604(c)(5); and (iii) In the case of a second or subsequent disbursement, the student graduated or successfully completed the period of enrollment for which the loan was intended.

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

(Approved by the Office of Management and Budget under control number 1845–0020)

12. Section 682.209 is amended as follows:

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

B. By redesignating paragraphs (a)(6), (a)(7), and (a)(8) as paragraphs (a)(7), (a)(8), and (a)(9), respectively.

C. By adding a new paragraph (a)(6).

D. In the newly redesignated paragraph (a)(7)(i)(B), by removing ''Sec. 682.211(j)(5)'', and adding, in its place, ''§ 682.211(i)(5)''.

E. By revising the newly redesignated paragraph (a)(7)(iii).

F. In the newly redesignated paragraph (a)(7)(v), by removing ''(a)(6)(vi)'' and adding, in its place, ''(a)(7)(vi)''.

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

H. In the newly redesignated paragraph (a)(7)(v)(B), by removing ''(a)(6)(viii)(C)'', and adding, in its place, ''(a)(7)(viii)(C)''.

I. In the newly redesignated paragraph (a)(7)(vii)(A)(*2*), by removing, ''(a)(6)(i)'', and by adding, in its place, ''(a)(7)(i)''.

J. In newly redesignated paragraph (a)(7)(viii)(A)(*2*), and by removing ''(a)(6)(i)'', and by adding, in its place, ''(a)(7)(i)''.

K. In newly redesignated paragraph (a)(7)(viii)(D), by removing ''Sec. § 682.211(j)(5)'', and by adding, in its place, ''§ 682.211(i)(5)''.

L. In newly redesignated paragraph (a)(7)(viii)(E), by removing ''(a)(7)'', and by adding, in its place, ''(a)(8)''.

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

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

O. In the newly redesignated paragraph (a)(8)(i), by removing ''(a)(7)(ii)'', and by adding, in its place ''(a)(8)(ii)''; by adding, ''and except as provided in paragraph (a)(7)(ix)'', after ''section,''; by adding, ''or 25 years under an extended repayment plan'' after ''10 years,''.

P. In newly redesignated paragraph ''(a)(8)(ii)'', by removing ''and 15-year'', and by adding, in its place, ''15- and 25-year''.

Q. In the newly redesignated paragraph ''(a)(8)(iv)'', by removing ''(a)(7)(iii)'', and by adding, in its place, ''(a)(8)(iii)''.

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

S. In paragraph (e)(2)(i), by adding, ''as appropriate'' after ''(3)(ii)''.

T. In paragraph (e)(2)(ii), by removing ''(a)(7)(i)'', and adding, in its place, ''(a)(8)(i)''.

U. In paragraph (f)(2)(ii), by removing ''(a)(7)(i)'', and adding, in its place, ''(a)(8)(i)''.

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

W. By revising the Office of Management and Budget control number.

§ 682.209 Repayment of a loan.

(a) * * *

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

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

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

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

* * * * *

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

(7) * * *

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

* * * * *

(ix) Under an extended repayment schedule, a new borrower whose total outstanding principal and interest in FFEL loans exceed $30,000 may repay the loan on a fixed annual repayment amount or a graduated repayment amount for a period that may not exceed 25 years. For purposes of this section, a ''new borrower'' is an individual who has no outstanding principal or interest balance on an FFEL Program loan as of October 7, 1998, or on the date he or she obtains an FFEL Program loan after October 7, 1998.

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

* * * * *

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

* * * * *

(h) * * *

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

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

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

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

13. Section 682.210 is amended as follows:

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

B. In paragraph (b)(1)(i), by removing ''(c)(4)'' and adding, in its place, ''(c)(5)''.

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

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

E. By revising redesignated paragraph (c)(3).

F. In redesignated paragraph (c)(4) by removing, ''Stafford, SLS or PLUS'' both times it appears and adding, in its place, ''FFEL'', by removing ''the'', before ''certified'', and by adding, in its place, ''a'', and by removing ''a student'', and by adding, in its place, ''an in-school''.

G. In redesignated paragraph (c)(5), by adding ''or a PLUS (unless based on the dependent's status)'' after ''Stafford,''.

H. By revising paragraph (h).

I. In paragraph (s)(2), by removing the heading, ''Student deferment'', and by adding, in its place, ''In-school deferment''.

J. By revising the Office of Management and Budget control number.

§ 682.210 Deferment.

(a) * * *

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

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

* * * * *

(6) * * *

(iv) In the case of an in-school deferment, the student's anticipated graduation date as certified by an authorized official of the school; or

* * * * *

(b) * * *

(4) For a ''new borrower,'' as defined in paragraph (b)(7) of this section, deferment is authorized during periods when the borrower is engaged in at least half-time study at a school, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

* * * * *

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

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

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

(iii) The lender receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower's enrollment status supports eligibility for a deferment.

(2) The lender must notify the borrower that a deferment has been granted based on paragraph (c)(1)(ii) or (iii) of this section and that the borrower has the option to pay interest that accrues on an unsubsidized FFEL Program loan or to cancel the deferment and continue paying on the loan. The lender must include in the notice an explanation of the consequences of these options.

(3) The lender must consider a deferment granted on the basis of a certified loan application or other information certified by the school to cover the period lasting until the anticipated graduation date appearing on the application, and as updated by notice or SSCR update to the lender from the school or guaranty agency, unless and until it receives notice that the borrower has ceased the level of study (*i.e.*, full-time or half-time) required for the deferment.

* * * * *

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

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

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

(A) The name of the employer contacted;

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

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

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

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

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

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

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

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

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

(4) A lender may not grant a deferment based on a single certification under paragraph (h)(1) or (h)(2) of this section beyond the date that is six months after the date the borrower provides evidence of the borrower's eligibility for unemployment insurance benefits under paragraph (h)(1) of this section or the date the borrower provides the written certification under paragraph (h)(2) of this section.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

14. Section 682.211 is amended as follows:

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

B. In paragraph (c) by adding, ''the terms of'' after ''writing to''.

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

D. In paragraphs (h)(l) and (h)(2), by removing the word ''written''.

E. By removing paragraph (h)(2)(ii)(B) and designating paragraph (h)(2)(ii)(C) as paragraph (h)(2)(ii)(B).

F. By removing paragraph (h)(3)(ii); by redesignating paragraph (h)(3)(iii) as paragraph (h)(3)(ii); and in redesignated paragraph (h)(3)(ii), by removing ''(h)(2)(ii)(C)'', and by adding, in its place ''(h)(2)(ii)(B)''.

G. By revising the Office of Management and Budget control number.

§ 682.211 Forbearance.

(a) * * *

(4) Except as provided in paragraph (f)(9) of this section, if payments of interest are forborne, they may be capitalized as provided in § 682.202(b).

* * * * *

(f) * * *

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

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

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

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

(a) *General.* The Secretary pays a lender, on behalf of a borrower, a portion of the interest on a subsidized Stafford loan and on all or a portion of a qualifying Consolidation loan that meets the requirements under § 682.301. This payment is known as interest benefits.

* * * * *

16. Section 682.301 is amended as follows:

A. By revising paragraph (a)(3).

B. By removing paragraph (a)(4).

C. By revising paragraphs (b) and (c).

D. By revising the Office of Management and Budget control number.

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

(a) * * *

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

(i) On or after January 1, 1993 but prior to August 10, 1993;

(ii) On or after August 10, 1993, but prior to November 13, 1997 if the loan consolidates only subsidized Stafford loans; and

(iii) On or after November 13, 1997, for the portion of the loan that repaid subsidized FFEL loans and Direct Subsidized Loans.

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

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

(Approved by the Office of Management and Budget under control number 1845–0020)

* * * * *

17. Section 682.401 is amended as follows:

A. By revising paragraphs (b)(5)(i) and (ii).

B. In the heading in paragraph (b)(15), by removing ''Guarantee'', and by adding, in its place, ''Guaranty''.

C. In paragraph (b)(24), by adding a comma after ''shall''.

D. By revising paragraph (d)(3).

E. By designating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively.

F. By adding a new paragraph (d)(4).

G. By revising the Office of Management and Budget control number.

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(5) *Borrower responsibilities.* (i) The borrower must indicate his or her

preferred lender on the promissory note or other written or electronic documentation submitted during the loan origination process if he or she has such a preference.

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

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

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

(C) Information from the school providing the maximum amount that may be borrowed by or on behalf of the student.

* * * * *

(d) * * *

(3) The guaranty agency must use common application forms, promissory notes, Master Promissory Notes (MPN), and other common forms approved by the Secretary.

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

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

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

(ii) The Secretary may prohibit use of the multi-year feature of the MPN at specific schools described under paragraph (4)(i) of this section under circumstances including, but not limited to, the school being subject to an emergency action or a limitation, suspension, or termination action, or not meeting other performance criteria determined by the Secretary.

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

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

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

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

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

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

(vi) The lender and school must develop and document a confirmation process in accordance with guidelines established by the Secretary for loans made under the multi-year feature of the MPN.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

18. Section 682.402 is amended as follows:

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

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

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

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

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

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

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

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

I. By revising the Office of Management and Budget control number.

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

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

* * * * *

(f) * * *

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

* * * * *

(g) * * *

(1) * * *

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

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

* * * * *

(h) * * *

(1) * * *

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

* * * * *

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

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

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

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

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

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

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

* * * * *

(j) * * *

(1) * * *

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

* * * * *

(k) * * *

(1) * * *

(i) * * *

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

* * * * *

(l) *Unpaid refund discharge.*

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

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

(i) The borrower (or the student on whose behalf a parent borrowed) has ceased to attend the school that owes the refund; and

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

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

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

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

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

(A) Received the proceeds of a loan on or after January 1, 1986 to attend a school;

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

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

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

(iii) State that the borrower—

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

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

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

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

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

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

(v) If the holder of the loan or the guaranty agency determines that the information contained in its files

conflicts with the information provided by the borrower, the guaranty agency must use the most reliable information available to it to determine eligibility for and the appropriate payment of the refund amount.

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

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

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

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

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

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

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

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

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

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

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

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000 and who completes less than 60 percent of the loan period, the guaranty agency discharges the lesser of the institutional charges unearned or the loan amount. The guaranty agency determines the amount of the institutional charges unearned by—

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

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

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October 7, 2000 and who completes less than 60 percent of the loan period, the guaranty agency discharges the loan amount unearned. The guaranty agency determines the loan amount unearned by—

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

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

(iii) In the case of a student who completes 60 percent or more of the loan period, the guaranty agency does not discharge any amount because a student who completes 60 percent or more of the loan period is not entitled to a refund.

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

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

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

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

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

19. Section 682.406 is amended by revising paragraph (a)(12); by adding a

new paragraph (c); and by revising the Office of Management and Budget control number to read as follows:

§ 682.406 Conditions of reinsurance coverage.

(a) * * *

(12) The agency and lender, if applicable, complied with all other Federal requirements with respect to the loan including—

(i) Payment of origination fees;

(ii) For Consolidation loans disbursed on or after October 1, 1993, and prior to October 1, 1998, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 1.05 percent of the unpaid principal and accrued interest on the loan;

(iii) For Consolidation loans for which the application was received by the lender on or after October 1, 1998 and prior to February 1, 1999, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 0.62 percent of the unpaid principal and accrued interest on the loan;

(iv) For Consolidation loans disbursed on or after February 1, 1999, payment of an interest payment rebate fee in accordance with paragraph (a)(12)(ii) of this section; and

(v) Compliance with all preclaims assistance requirements in § 682.404(a)(2)(ii).

* * * * *

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

(Approved by the Office of Management and Budget under control number 1845–0020)

* * * * *

20. Section 682.409 is amended as follows:

A. By revising paragraph (c)(2).

B. In paragraph (c)(4)(i) by adding ''original or a true and exact copy of the'' after ''The''.

C. In paragraph (c)(4)(iv) by adding '', if a separate application was provided to the lender'', after ''application''.

D. In paragraph (c)(5) by removing ''certified'', and by removing ''if no originals exist''.

E. By revising the Office of Management and Budget control number.

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

* * * * *

(c) * * *

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

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

21. Section 682.414 is amended as follows:

A. In paragraph (a)(4)(ii)(A) by adding ''if a separate application was provided to the lender'' after ''application''.

B. In paragraph (a)(4)(ii)(B) by removing '', including the repayment instrument'' after ''note''.

C. In paragraph (a)(4)(ii)(J) by removing ''and'' at the end of sentence.

D. By redesignating paragraph (a)(4)(ii)(K) as paragraph (a)(4)(ii)(L).

E. By adding a new paragraph (a)(4)(ii)(K).

F. In paragraph (a)(5)(i) by removing ''(K)'', and adding, in its place, ''(L)''.

G. By revising paragraph (a)(5)(ii).

H. By removing paragraph (a)(5)(iii).

I. By revising the Office of Management and Budget control number.

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

(a) * * *

(4) * * *

(ii) * * *

(K) Documentation of any MPN confirmation process or processes; and

* * * * *

(5) * * *

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

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

22. Section 682.603 is amended as follows:

A. By revising paragraph (b).

B. By adding a new paragraph (c).

C. By redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively.

D. By adding a new paragraph (g).

E. By revising the Office of Management and Budget control number.

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

* * * * *

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

(1) The borrower's eligibility for a loan, as determined in accordance with § 682.201 and § 682.204;

(2) For a subsidized Stafford loan, the student's eligibility for interest benefits as determined in accordance with § 682.301; and

(3) The schedule for disbursement of the loan proceeds, which must reflect the delivery of the loan proceeds as set forth in § 682.604(c).

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

* * * * *

(g) A school must cease certifying loans based on the exceptions in § 682.604(c)(5)(i) and (c)(5)(ii) and § 682.604(c)(10)(i) and (ii) that allow for the disbursement of loans in one installment and exempt the school from delayed release of loan proceeds no later than 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate that causes the school to no longer meet the qualifications outlined in those paragraphs.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

23. Section 682.604 is amended as follows:

A. In paragraph (a)(3), by removing, '', as provided in § 668.167'' at the end of the sentence.

B. In paragraph (c)(3), by adding, or ''MPN'', after ''loan application''.

C. By revising paragraph (c)(5).

D. By revising the introductory text of paragraph (c)(6).

E. By adding a new paragraph (c)(10).

F. By revising paragraphs (f) and (g).

G. By revising the Office of Management and Budget control number.

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

* * * * *

(c) * * *

(5) A school may not release the first installment of a Stafford loan for endorsement to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford, SLS, Direct Subsidized, or Direct Unsubsidized loan until 30 days after the first day of the student's program of study unless—

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

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

(iii) The school is not in a State.

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

* * * * *

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

(i)(A) The student's loan period is not more than one semester, one trimester, one quarter, or, for non term-based schools or schools with non-standard terms, 4 months; and

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

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

(iii) The school is not in a State.

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The school must maintain documentation substantiating the

school's compliance with this section for each student borrower.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

24. Section 682.610 is amended by revising paragraph (b) and the Office of Management and Budget control number to read as follows:

§ 682.610 Administrative and fiscal requirements for participating schools.

* * * * *

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

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

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

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

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

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

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

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

25. Sections 682.205, 682.208, 682.214, 682.405, 682.410, 682.411, 682.507, 682.508, 682.511, 682.515, 682.601, 682.605, 682.711, 682.712, 682.713, 682.802, and 682.803 are amended by revising the Office of Management and Budget control number to read ''1845–0020''.

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

27. Section 685.102 is amended in paragraph (b) as follows:

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

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

§ 685.102 Definitions.

* * * * *

(b) * * *

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

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

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

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

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

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

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

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

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

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

(2) Estimated financial assistance does not include—

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

(A) Direct PLUS Loan amounts;

(B) Direct Unsubsidized Loan amounts; and (C) Non-Federal loan amounts;

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

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

* * * * *

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

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

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

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

* * * * *

28. Section 685.201 is revised to read as follows:

§ 685.201 Obtaining a loan.

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

(2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the Secretary or the school in which the student is enrolled must perform specific functions. Unless a school's agreement with the Secretary specifies otherwise, the school must perform the following functions:

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

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

(iii) If the student is attending a school participating under standard

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

(b) *Application for a Direct PLUS Loan.* To obtain a Direct PLUS Loan, the parent must complete the application and promissory note and submit it to the school at which the student is enrolled. The school must complete its portion of the application and promissory note and submit it to the Servicer, which makes a determination as to whether the parent has an adverse credit history. Unless a school's agreement with the Secretary specifies otherwise, the school must perform the following functions: A school participating under school origination option 2 must draw down funds and disburse the funds. For a school participating under school origination option 1 or standard origination, the Servicer initiates the drawdown of funds, and the school disburses the funds.

(c) *Application for a Direct Consolidation Loan*

(1) To obtain a Direct Consolidation Loan, the applicant must complete the application and promissory note and submit it to the Servicer. The application and promissory note sets forth the terms and conditions of the Direct Consolidation Loan and informs the applicant how to contact the Servicer. The Servicer answers questions regarding the process of applying for a Direct Consolidation Loan and provides information about the terms and conditions of both Direct Consolidation Loans and the types of loans that may be consolidated.

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

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

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

§ 685.203 Loan limits.

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

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

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

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

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

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

or

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

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

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

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

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

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

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

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

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

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

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

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

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

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

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed $5,500.

* * * * *

(c) * * *

(2) The additional amount that a student described in paragraph (c)(1)(i) of this section may borrow under the Federal Direct Unsubsidized Stafford/Ford Loan Program and the Federal Unsubsidized Stafford Loan Program for any academic year of study may not exceed the following:

(i) In the case of a student who has not successfully completed the first year of a program of undergraduate education—

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

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

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

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

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

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

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

or

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

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

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

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

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

(iii) In the case of a student who has successfully completed the second year of a program of undergraduate education but has not completed the remainder of the program of study—

(A) $5,000 for a program of study of at least a full academic year in length.

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

Number of semester, trimester, quarter, or clock hours enrolled

Number of semester, trimester, quarter, or clock hours in academic year.

(iv) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (c)(2)(iii) of this section.

(v) In the case of a graduate or professional student, $10,000.

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

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

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

(vii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, $5,000.

(d) *Federal Direct Stafford/Ford Loan Program and Federal Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Direct Subsidized Loans and Federal Stafford Loans made to a student but excluding the amount of capitalized interest may not exceed the following:

* * * * *

(e) *Aggregate limits for unsubsidized loans.* The total amount of Direct Unsubsidized Loans, Federal Unsubsidized Stafford Loans, and Federal SLS Loans but excluding the amount of capitalized interest may not exceed the following:

* * * * *

30. Section 685.204 is amended by adding a new paragraph (b)(1)(iii) and revising the Office of Management and Budget control number to read as follows:

§ 685.204 Deferment.

* * * * *

(b) * * *

(1) * * *

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

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

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

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

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

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

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0021)

31. Section 685.205 is amended as follows:

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

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

§ 685.205 Forbearance.

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

* * * * *

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

* * * * *

(b) * * *

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

(i) Under § 685.213;

(ii) Under § 685.214;

(iii) Under § 685.215; or

(iv) Due to the borrower's or endorser's (if applicable) bankruptcy;

* * * * *

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

* * * * *

32. Section 685.207 is amended as follows:

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

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

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

D. By redesignating paragraph (c)(2)(ii) as paragraph (c)(2)(iii).

E. By adding a new paragraph (c)(2)(ii).

§ 685.207 Obligation to repay.

* * * * *

(b) * * *

(2) * * *

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

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

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

* * * * *

(c) * * *
(2) * * *
(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the six-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

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

* * * * *

33. Section 685.212 is amended by revising paragraphs (d), (e), (f), and (g); and by revising the Office of Management and Budget control number to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

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

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

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

(g) *Payments received after eligibility for discharge.* (1) *For the discharge conditions in paragraphs (a)–(e) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender, or, for a discharge based on death, the borrower's estate, those payments received after the date that the eligibility requirements for discharge were met but prior to the date the discharge was approved. The Secretary also returns any payments received after the date the discharge was approved.

(2) *For the discharge condition in paragraph (f) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender payments received in excess of the amount owed on the loan after applying the unpaid refund.

(Approved by the Office of Management and Budget under control number 1845–0021)

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

34. Section 685.215 is redesignated as § 685.216, a new § 685.215 is added to read as follows:

§ 685.215 Unpaid refund discharge.

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

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

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

(A) The borrower (or the student on whose behalf a parent borrowed) has ceased to attend the school that owes the refund;

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

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

(ii) For the purpose of paragraph (a)(2)(i)(C) of this section, within 60 days of the date notified by the Secretary, the school must submit to the Secretary documentation demonstrating that the refund was made by the school or that the refund was not required to be made by the school.

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

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

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

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

(A) Received the proceeds of a loan on or after January 1, 1986 to attend a school;

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

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

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

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

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

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

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

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

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

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

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000 and who completes less than 60 percent of the loan period, the Secretary discharges the lesser of the institutional charges unearned or the loan amount. The Secretary determines the amount of the institutional charges unearned by—

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

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

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October 7, 2000 and who completes less than 60 percent of the loan period, the Secretary discharges the loan amount unearned. The Secretary determines the loan amount unearned by—

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

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

(iii) In the case of a student who completes 60 percent or more of the loan period, the Secretary does not discharge any amount because a student who completes 60 percent or more of the loan period is not entitled to a refund.

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

(2) If a borrower who is sent a discharge application fails to submit the application within 60 days of the Secretary's sending the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

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

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

(Approved by the Office of Management and Budget under control number 1845–0021)

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

35. The newly redesignated § 685.216 is amended by revising paragraphs (d), (g), (l)(1), (l)(2), and (l)(3); and by revising the Office of Management and Budget control number to read as follows:

§ 685.216 Consolidation.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(E) In default but has made satisfactory repayment arrangements, as defined in applicable program regulations, on the defaulted loan; or

* * * * *

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

* * * * *

(l) * * *

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

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

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

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

(Approved by the Office of Management and Budget under control number 1845–0021)

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

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

(a) * * *

(1) * * *

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

* * * * *

37. Section 685.301 is amended by revising paragraphs (b)(2), (b)(3), (b)(8), and (c)(2); and by revising the Office of Management and Budget control number to read as follows:

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

* * * * *

(b) * * *

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

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

* * * * *

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

(A)(*1*) The loan period is not more than one semester, one trimester, one quarter, or, for non term-based schools or schools with non-standard terms, 4 months; and

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

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

(C) The school is not in a State.

(ii) Paragraphs (b)(8)(i)(A) and (B) of this section, which allow the disbursement of loans in one installment, do not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate that causes the school to no longer meet the qualifications outlined in those paragraphs.

* * * * *

(c) * * *

(2) A school that originates a loan must ensure that the loan is supported by a completed promissory note as proof of the borrower's indebtedness.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0021)

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

§ 685.303 Processing loan proceeds.

* * * * *

(b) * * *

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

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

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

(C) The school is not in a State.

(ii) Paragraphs (b)(4)(i)(A) and (B) of this section do not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate that causes the school to no longer meet the qualifications outlined in those paragraphs.

* * * * *

39. Section 685.304 is amended as follows:

A. By revising paragraphs (a)(1), (a)(2), and (a)(3) introductory text; by redesignating paragraphs (a)(3)(i)-(iv) as paragraphs (a)(3)(ii)-(v), respectively; by adding a new paragraph (a)(3)(i); by revising newly redesignated paragraphs (a)(3)(ii), (iv), and (v); by revising paragraphs (a)(5)(i) and (ii); and by adding new paragraphs (a)(6) and (a)(7).

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

C. By adding the Office of Management and Budget control number.

§ 685.304 Counseling borrowers.

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

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

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

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

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

* * * * *

(iv) Provide the student borrower with general information with respect to the average indebtedness of student borrowers who have obtained Direct Subsidized or Direct Unsubsidized Loans for attendance at that school or in the student borrower's program of study;

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

(5) * * *

(i) Ensure that each student borrower subject to initial counseling under paragraph (a)(1) of this section is provided written counseling materials that contain the information described in paragraph (a)(3) of this section;

(ii) Be designed to target those student borrowers who are most likely to default on their repayment obligations and provide them more intensive counseling and support services; and

* * * * *

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

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

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

(2) The counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with knowledge of the title

IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the school may provide the student borrower with written counseling materials within 30 days after the student borrower completes the program.

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

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

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Direct Subsidized or Direct Unsubsidized Loans for attendance at that school or in the student borrower's program of study;

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

(iii) Provide options to the student borrower concerning those debt-management strategies that the school determines would facilitate repayment by the student borrower;

(iv) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

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

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

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

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

* * * * *

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

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

(Approved by the Office of Management and Budget under control number 1845–0021)

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

§ 685.402 Criteria for schools to originate loans.

* * * * *

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

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

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

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

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

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

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

§§ 685.206, 685.209, 685.213, 685.214 and 685.302 [Amended]

41. Sections 685.206, 685.209, 685.213, 685.214, and 685.302 are amended by revising the Office of Management and Budget control number to read ''1845–0021''.

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