[The official version of this document is the document published in the Federal Register. This document has been sent to the Office of the Federal Register but has not yet been scheduled for publication.]

4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682, and 685

RIN 1840-AD05

Docket ID ED-2012-OPE-0010

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

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Perkins Loan (Perkins Loan) program, Federal Family Education Loan (FFEL) program, and William D. Ford Federal Direct Loan (Direct Loan) program regulations. The proposed regulations would implement a new Income Contingent Repayment (ICR) plan in the Direct Loan program based on the President's "Pay As You Earn" repayment initiative, incorporate recent statutory changes to the Income Based Repayment (IBR) plan in the Direct Loan and FFEL programs, and streamline and add clarity to the total and permanent disability discharge process for borrowers in the title IV, HEA loan programs. The proposed regulations

Unofficial

implementing a new ICR Plan and the statutory changes to the IBR plan would assist borrowers in repaying their loans while the proposed changes to the to the total and permanent disability discharge process would reduce burden for borrowers who are disabled and seeking a discharge of their title IV debt.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use This Site."

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about these proposed regulations, address them to Jessica Finkel , U.S. Department

Unofficial

of Education, 1990 K Street, NW., room 8031, Washington, DC 20006-8502.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jessica Finkel, U.S. Department of Education, 1990 K Street, NW., room 8031, Washington, DC 20006-8502. Telephone: (202) 502-7647 or by e-mail at: Jessica.Finkel@ed.gov. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: The combination of increased enrollment and rising tuition has contributed to a significant increase in student loan debt among

Unofficial

Americans. The ability of recent college graduates to find immediate employment with wages adequate enough to repay this debt has been challenged.

For Federal student loan borrowers who suffer from a total and permanent disability (TPD), the Department's current disability discharge process has led to inconsistencies in determining their eligibility for discharge and created undue hardship.

Based on the results of the negotiated rulemaking process and the advice and recommendations submitted by individuals and organizations in public hearing testimony and in written comments submitted to the Department, the proposed regulations would create a new Income Contingent Repayment (ICR) plan in the Direct Loan program based on the President's "Pay As You Earn" repayment initiative, incorporate recent statutory changes to the Income Based Repayment (IBR) plan in the Direct Loan and FFEL programs, and streamline and add clarity to the total and permanent disability discharge process for borrowers in the title IV, HEA loan programs.

Summary of the Major Provisions of This Regulation:

Action: The NPRM proposes regulations that would--

- Create a new ICR plan (proposed ICR-A) in the Direct Loan program based on the President's Pay As You Earn

Unofficial

repayment initiative. The proposed regulations support the administration's goal of making the statutory improvements made by the SAFRA Act included in the Health Care and Reconciliation Act of 2010 (Pub. L. 111-152) to the IBR plan available to some borrowers earlier than July 1, 2014, and make technical corrections and minor changes to the current ICR plan regulations, including the addition of provisions related to notification of income documentation requirements and the ICR loan forgiveness process.

- Incorporate statutory changes to the IBR plan that were made by the SAFRA Act and add new provisions related to notification of income documentation requirements, repayment options after leaving the IBR plan, and the IBR loan forgiveness process.
- Revise Perkins Loan and FFEL program regulations to permit borrowers to apply directly to the Department for a total and permanent disability discharge. In the Direct Loan program, borrowers would continue to apply directly to the Department for total and permanent disability discharges, as they do under the current Direct Loan regulations.

Unofficial

- Modify regulations in the Perkins Loan, FFEL, and Direct Loan programs to provide more detailed information to borrowers in letters explaining why a disability discharge has been denied.
- Define the term "borrower's representative" for purposes of the disability discharge application process and state that references to a borrower or a veteran in the total and permanent disability discharge regulations include a borrower's representative or a veteran's representative.
- Specify that the Department denies a disability discharge request and collection resumes on the borrower's loans if the borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's disability discharge application and before the date the Department makes a decision on the borrower's application for a total and permanent disability discharge.
- Specify that, if a borrower's Perkins Loan, FFEL, or Direct Loan program loan is reinstated, it returns to the status that would have existed if the total and permanent disability discharge application had not been received.

Unofficial

- Make corresponding changes to the total and permanent disability application process based on a certification from the Department of Veterans Affairs.

Please refer to the Significant Proposed Regulations section of this preamble for a fuller discussion of the major provisions contained in this NPRM.

Chart 1 summarizes the proposed regulations and related benefits, costs, and transfers that are discussed in more detail in the Regulatory Impact Analysis of this preamble. The Department estimates that approximately 1.6 million borrowers could take advantage of the proposed ICR-A repayment plan with another million borrowers being affected by the statutory changes to the IBR plan reflected in the proposed regulations. Significant benefits of these proposed regulations include a streamlined process for total and permanent disability discharges, enhanced notifications related to TPD, IBR, and ICR application and servicing processes, and reduced monthly payments for borrowers in partial financial hardship (PFH) status as a result of using a lower PFH threshold of 10 percent. The net budget impact of the proposed regulations is $2.1 billion over the 2012 to 2021 loan cohorts.

Chart 1 – Summary of the Proposed Regulations

Unofficial

Issue and Key Features	Benefits	Cost/Transfers
Income Contingent Repayment (34 CFR part 685)		
Establishes ICR-A repayment plan with features of IBR as revised by SAFRA for new borrowers on or after 10/1/2007 with a loan disbursement made on or after 10/1/2011. ICR-A retains a cap on interest capitalization from current ICR.	Enhanced cash management option for borrowers	Estimated net budget impact of $2.1 billion over the 2012-2021 loan cohorts
Establishes threshold for PFH at 10% for ICR-A borrowers	Reduced payments and shorter forgiveness period may encourage acknowledgement and payment of debt	
Loan forgiveness after 20 years of qualifying payments compared to 25 years under current regulations	Reduced monthly payments may allow greater participation in the economy	
Retains current ICR program as ICR-B	ICR-B leaves an income driven repayment option available to all borrowers	
Establishes process for borrower notification and processing of loan forgiveness by loan holders		
Income Based Repayment (34 CFR part 685)		
Incorporates statutory changes from SAFRA	Benefits mirror those associated with proposed ICR changes	
Threshold for PFH reduced from 15% to 10% for new borrowers after 7/1/2014		
Loan forgiveness after 20 years of qualifying payments compared to 25 years under current regulations		

ffical

Income Based Repayment (34 CFR part 685, 34 CFR part 682)		
A smaller payment amount made under a forbearance can qualify as the single payment made in standard repayment plan for borrower leaving IBR to select another repayment plan	Improved notifications around annual recertification of income may reduce number of borrowers removed from PFH for paperwork reasons	No net budget impact from proposed regulations
Modified notification and income documentation requirements for borrowers in IBR		Estimated paperwork compliance costs of approximately $570,000 annually
Establishes process for borrower notification and processing of loan forgiveness by loan holders		
Total and Permanent Disability (34 CFR 674.61; 34 CFR 682.402; 34 CFR 685.213)		
Creates single discharge application process through the Department for all of a borrower's FFEL, Direct Loans, and Perkins loans	Simplifies process for borrowers	Estimated paperwork compliance burden of approximately $725,000
Specifies that borrower's representative will receive all notifications and can be involved in all aspects of the process	Departmental processing should increase consistency of TPD determinations	
Enhanced notifications, including more detailed reasons for denials and information about options for reapplying	Process changes could reduce reinstatements for paperwork reasons	
Revised treatment of payments made following a TPD discharge		
Creation of standard form for reporting income during 3-year post-discharge monitoring period		

Invitation To Comment: As outlined in the Negotiated Rulemaking section of this notice, significant public

participation, through three public hearings and three negotiated rulemaking sessions, has occurred in developing this notice of proposed rulemaking (NPRM). We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person, in room 8031, 1990 K Street, NW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under FOR FURTHER INFO CONTACT.

Unofficial

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Negotiated Rulemaking

Section 492 of the Higher Education Act of 1965, as amended, requires the Secretary, before publishing any proposed regulations for programs authorized by title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must establish a negotiated rulemaking committee and subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants

Unofficial

stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: www2.ed.gov/policy/highered/reg/hearulemaking/2011/loans.html.

On May 5, 2011, the Department published a notice in the Federal Register (76 FR 25650) announcing our intent to establish up to two negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to streamlining institutional reporting requirements and proposed regulations regarding better State identification of low-performing teacher preparation programs pursuant to sections 205 and 207 of the HEA through focusing reporting on improved measures of program quality. A second committee (the "Loans Committee") would address Federal student loan issues. The regulations considered by the second committee would: implement changes made by the SAFRA Act (Pub. L. 111-152), which ended the making of new loans in the Federal Family Educational Loan (FFEL) program as of July 1, 2010; make improvements to the income-contingent and income-based repayment plans; and improve the process for consideration of applications for total and permanent disability discharges. The notice requested nominations of individuals for membership on the committees who could

Unofficial

represent the interests of key stakeholder constituencies on each committee.

The Department developed a list of proposed regulatory provisions from advice and recommendations submitted by individuals and organizations in testimony submitted to the Department in a series of three public hearings and a roundtable discussion held on:

- May 12, 2011, at Tennessee State University, Nashville, Tennessee.
- May 16, 2011, at Pacific Lutheran University, Tacoma, Washington.
- May 19, 2011, at Loyola University-Lakeshore Campus, Chicago, Illinois.
- May 26, 2011, at College of Charleston, Charleston, South Carolina.

In addition, the Department accepted written comments on possible regulatory provisions submitted directly to the Department by interested parties and organizations. Transcripts of the regional meetings can be accessed at www2.ed.gov/policy/highered/reg/hearulemaking/2011/loans.html and is also accessible in the rulemaking docket on www.regulations.gov.

Staff within the Department also identified issues for discussion and negotiation.

Unofficial

The Loans Committee included the following members:

- Mr. Getachew Kassa, Legislative Director, United States Student Association and Mr. Abou Amara, Jr. (alternate), President, Graduate and Professional Student Association, University of Minnesota, Twin Cities.
- Ms. Deanne Loonin, National Consumer Law Center, and Ms. Radhika Miller (alternate), Program Manager, Educational Debt Relief and Outreach, Equal Justice Works.
- Ms. Jennifer Mishory, Deputy Director, Young Invincibles, and Ms. Maureen Thompson (alternate), The Hastings Group, LLC.
- Ms. Margaret Rodriguez, Senior Associate Director of Financial Aid, University of Michigan and Chair, National Direct Student Loan Coalition, and Ms. Elizabeth Hicks(alternate), Executive Director Student Financial Services, Massachusetts Institute of Technology.
- Mr. David Glezerman, Assistant Vice President and University Bursar, Temple University, and Ms. Maria Livolsi (alternate), Student Loan Service Center, State University of New York.
- Mr. Robert Perrin, President, Williams & Fudge, Inc.
- Mr. Todd Leatherman, Executive Director, Office of Consumer Protection, Office of the Kentucky Attorney

Unofficial

General, and Ms. Michele Casey (alternate), Assistant Attorney General, Consumer Fraud Bureau Office of the Illinois Attorney General.

- Ms. Cristi Millard, Director of Financial Aid, Salt Lake Community College, and Mr. Chris Christensen, (alternate) Director of Financial Aid, Johnson County Community College, Kansas.
- Ms. Kris Wright, Director, Office of Student Finance, University of Minnesota and Executive Council Member and Secretary, National Direct Student Loan Coalition, and Ms. Elaine Papas-Varas (alternate), University Director of Student Financial Aid and Director of the Primary Care Practitioner Loan Redemption Program of New Jersey University of Medicine and Dentistry of New Jersey.
- Ms. Yvonne Gutierrez-Sandoval, Senior Associate Director of Financial Aid, Pitzer College, and Mr. Jeffrey A. Gall (alternate), Associate Dean, Office of Student Financial Services, Georgetown University.
- Mr. Tom Sakos, Director of Student Lending and Regulatory Quality Assurance, DeVry Inc., and Mr. Anthony Fragomeni (alternate), Director of Governmental Affairs, Empire Education Group and

Unofficial

Chairman, American Association of Cosmetology Schools' Government Relations Team.

- Ms. Betsy Mayotte, Director, Regulatory Compliance and Privacy, American Student Assistance, and Mr. Scott Giles (alternate), Vice President for Operations, Social Marketing and Strategy, Vermont Student Assistance Corporation.
- Mr. Robert Sandlin, Director of Policy and Compliance, Higher Education Servicing Corporation, and Ms. Vicki Shipley (alternate), Senior Advisor, National Council of Higher Education Loan Programs.
- Mr. Albert Gray, Executive Director and CEO, Accrediting Council for Independent Colleges and Schools, and Ms. Sharon Tanner (alternate), CEO, National League for Nursing Accreditation.
- Ms. Pamela Moran and Ms. Gail McLarnon, U.S. Department of Education.

The Loans Committee met to develop proposed regulations during the months of January, February, and March of 2012. These proposed regulations reflect the work of this second committee and proposes regulations relating to the administration of the Federal student loan programs, specifically changes governing the ICR and IBR plans, and the

Unofficial

process for making TPD discharge determinations. These proposed regulations also include certain technical changes to the regulations that are needed to reflect recent amendments to the HEA and to correct certain technical errors. These types of changes are not normally subject to the statutory requirements for negotiated rulemaking and public notice and comment. However, since those changes affected the regulations that would be considered by the negotiated rulemaking committee, the Secretary chose to include those changes in the proposed regulations to be considered by the committee to ensure that the committee could evaluate the full scope of changes to those regulations.

At its first meeting, the Loans Committee reached agreement on its protocols and proposed agenda. The Committee's protocols provided that, unless agreed to otherwise, for the committee to be considered to have reached consensus on the regulations, consensus must be reached on all of the proposed regulations. Consensus means that there must be no dissent by any member in order for the Committee to be considered to have reached agreement.

During its first meeting, the Loans Committee agreed to negotiate an agenda of 25 student loan related issues. The most significant issues: developing regulations necessary to implement the President's "Pay As You Earn"

Unofficial

repayment initiative; developing regulations to incorporate statutory changes in the Income-Based Repayment Plan (IBR) and to address certain problems in the administration of the IBR and Income-Contingent Repayment plans; to overhaul the total and permanent disability discharge process; to update the FFEL program regulations to eliminate obsolete and unnecessary provisions governing loan origination and disbursement; to revise the Direct Loan program regulations to eliminate cross reference to the FFEL program regulations; to revise regulations governing the determination of a defaulted borrower's reasonable and affordable payment amount for purposes of rehabilitation of the borrower's defaulted loan; to revise the regulations governing administrative wage garnishment (AWG) for defaulted borrowers in the FFEL program; and to provide for consistent treatment of borrowers requesting forbearance on or after the 270th day of delinquency. The Department stated its commitment to publishing the regulations to implement the Pay As You Earn repayment initiative and to overhaul and improve the total and permanent disability discharge process for borrowers as soon as possible.

During the development of proposed regulatory language and prior to the second meeting of the Committee, the

Unofficial

Department concluded that the scope and volume of the likely resulting proposed regulations resulting from the agenda approved by the Committee would require extensive and significant changes to regulations. In particular, updating the FFEL program regulations and major changes to the Direct Loan regulations involved making changes to the entirety of those program regulations. The Department determined that it was unlikely that one NPRM reflecting all of the issues could be published by the deadline established by section 482(c) of the HEA. To ensure the earliest possible implementation of the Pay As You Earn repayment initiative and the revised total and permanent disability discharge regulations, which will provide significant benefits to student loan borrowers, the Department determined that two NPRMs would result from the Committee's work.

During the second meeting of the Committee, the Department explained to the Committee members that one NPRM would contain proposed regulations to implement the Pay As You Earn repayment initiative, to incorporate statutory changes in the IBR plan, to make other changes to improve the administration of the IBR and ICR plans, and to overhaul the total and permanent disability discharge process. The second NPRM would contain all the remaining

Unofficial

proposed regulations that were on the Committee's agenda, including proposed regulations involving rehabilitation of defaulted loans and AWG in the FFEL program. The Department also explained that any final regulations published as a result of the second NPRM would not be published by November 1, 2012, and therefore would not become effective until July 1, 2014, under the master calendar provisions of section 482(c)(1) the HEA. The Department committed, however, to authorize, to the extent possible, early implementation of the final regulations published as a result of the second NPRM under the Secretary's authority to designate regulatory provisions for early implementation by program participants under section 482(c)(2) of the HEA.

At the final meeting in March 2012, the Loans Committee reached consensus on the full agenda of loans issues. This document represents the first of two NPRMs resulting from the Committee's negotiations. It contains proposed regulations to: implement the Pay As You Earn repayment initiative; incorporate statutory changes in the IBR plan; make certain improvements in the administration of the IBR and ICR plans; and overhauling the total and permanent disability discharge process.

Unofficial

More information on the work of the Loans Committee can be found at:

www.ed.gov/policy/highered/reg/hearulemaking/2008/loans.html

Summary of Proposed Changes

Income Contingent Repayment

The proposed regulations create a new ICR plan (proposed ICR-A) based on the President's Pay As You Earn repayment initiative and proposes to make technical corrections and other minor changes to the current ICR plan (proposed ICR-B). The proposed changes to ICR-B include the addition of provisions related to notification of income documentation requirements and the ICR loan forgiveness process.

Under the proposed regulations, ICR-A would be available to a new borrower who: (1) did not have an outstanding student loan as of October 1, 2007, or as of the date he or she received a new loan after October 1, 2007; and (2) received a disbursement of a Direct Subsidized Loan, a Direct Unsubsidized Loan or a student Direct PLUS Loan on or after October 1, 2011, or receives a Direct Consolidation Loan based on an application received on or after October 1, 2011, except if the Direct Consolidation Loan repays a Direct or FFEL loan made before

Unofficial

October 1, 2007. The proposed regulations for the ICR-A program would incorporate the following provisions from the statutory amendments to IBR that become effective on July 1, 2014:

- A borrower's maximum annual payment amount under the ICR-A plan would be capped at 10 percent of the difference between the borrower's AGI and 150 percent of the annual poverty guideline amount for the borrower's State and family size.
- Borrowers who repay under the ICR-A plan would qualify for forgiveness of any remaining loan balance after 20 years of qualifying payments and periods of economic hardship deferment.
- To qualify for the ICR-A plan and to continue to make income-contingent payments under that plan, a borrower would be required to have a partial financial hardship. A borrower would be considered to have a partial financial hardship if the annual amount due on all of the borrower's eligible Direct Loan and FFEL Program loans, as calculated based on a standard repayment plan with a 10-year repayment period, exceeds 10 percent of the difference between the borrower's AGI and 150 percent of the annual poverty

Unofficial

guideline amount for the borrower's State and family size.

- For married borrowers who file a joint Federal tax return, the determination of a borrower's partial financial hardship status would be based on the combined income of both spouses and, if the spouse also has eligible loans, the combined eligible loan debt of both individuals. For a married borrower who files an individual Federal tax return, only the borrower's income and loan debt would be considered.
- The ICR-A plan will be available to any borrower who is repaying a non-defaulted Direct Loan, except for a parent Direct PLUS loan or a Direct Consolidation loan that repaid a parent Direct or FFEL PLUS loan. As with IBR, parent Direct PLUS Loans and Direct Consolidation Loans that repaid parent Direct PLUS Loans or parent Federal PLUS Loans would not be eligible for repayment under the ICR-A plan.
- Unpaid accrued interest would be capitalized only if a borrower repaying under the ICR-A plan is determined to no longer have a partial financial hardship, or if the borrower chooses to leave the ICR-A plan.
- For a borrower whose scheduled payment under the ICR-A plan is less than the amount of interest that accrues

Unofficial

each month, the Secretary would pay the remaining interest for a period of three consecutive years from the date the borrower begins repayment under the ICR-A plan, excluding periods of economic hardship deferment.

A Direct Loan borrower who is not a parent Direct PLUS borrower will continue to be able to select the ICR-B plan as one of the available repayment plans. These proposed regulations also incorporate the proposed IBR regulations regarding the treatment of married borrowers and borrowers who fail to provide required documentation of income into the current ICR/ICR-B regulations.

Income Based Repayment

The proposed regulations incorporate statutory changes to the IBR plan that were included in the SAFRA Act and add new provisions related to notification of income documentation requirements, repayment options after leaving the IBR plan, and the IBR loan forgiveness process.

SAFRA changes:

Proposed §685.221(a)(4) would reflect the statutory definition of "new borrower" for purposes of the changes to the IBR program as an individual who has no outstanding balance on a Direct Loan or a FFEL program loan on July 1,

Unofficial

2014, or who has no outstanding balance on such a loan on the date he or she obtains a loan after July 1, 2014.

The proposed regulations would revise the definition of "partial financial hardship" in §685.221(a)(5) to reflect the statutory provision and state that for new borrowers after July 1, 2014, a borrower is considered to have a partial financial hardship if the annual amount due on all of the borrower's eligible Direct Loan and FFEL Program loans, as calculated based on a standard repayment plan with a 10-year repayment period, exceeds 10 percent of the difference between the borrower's AGI and 150 percent of the annual poverty guideline amount for the borrower's family size. The proposed regulations would revise §685.221(b)(1) to provide that for a new borrower after July 1, 2014, the maximum IBR monthly payment amount during periods of partial financial hardship may not exceed 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline amount for the borrower's family size, divided by 12.

Finally, the proposed regulations would revise §685.221(f) to provide that a new borrower who has participated in the IBR plan qualifies for loan forgiveness after 20 years of qualifying payments and periods of economic hardship deferment.

Unofficial

Provisions that affect all IBR participants:

The proposed IBR regulations would also:

- Revise the partial financial hardship (PFH) determination process and modify notification, income documentation requirements, rights and responsibilities of borrowers who have been found qualified for IBR.
- Improve notifications requirements for borrowers who are eligible or approaching eligibility for loan forgiveness.
- Revise payment requirements for borrowers who leave IBR. A borrower who leaves the IBR plan and is placed on the standard repayment plan may change to a different repayment plan after making one monthly payment under the standard repayment plan. Under the proposed regulations, the single payment made under the standard repayment plan could include a smaller payment amount paid under a reduced payment forbearance agreement with the loan holder or the Secretary.

Total and Permanent Disability Discharge

The proposed regulations will revise Perkins and FFEL regulations to provide for direct application to the Department for total and permanent disability discharges.

Unofficial

They will modify regulations in the Perkins, FFEL, and Direct Loan program to provide more detailed information to borrowers in the letters explaining decisions to deny discharge applications and the proposed regulations would modify the Perkins, FFEL, and Direct Loan regulations to specify that the Department will collect income documentation from borrowers during the post-discharge monitoring period on an OMB-approved form.

The proposed total and permanent disability regulations would:

- Revise certain provisions to specify that a borrower's representative may be involved in any part of the total and permanent disability total and permanent disability process and must receive all notifications sent to the borrower.
- Extend the loan suspension window to 120 days from 60 days after a borrower has notified the loan holder(s) of his or her intent to apply for a discharge.
- Extend the deadline to submit an application for total and permanent disability to 90 days after the date of the physician's certification that a borrower has a total and permanent disability.
- Revise the total and permanent disability discharge application process so that a borrower applies for

Unofficial

total and permanent disability directly to the Department and that the Department directly notifies the borrower's Perkins and FFEL lenders upon approval of the application for total and permanent disability discharge.

- Revise provisions related to a borrower's responsibilities to report income annually after a discharge has been granted and specify that the Department will create an OMB approved form for reporting earnings during the monitoring period.
- Revise provisions to require that payments made by the borrower after a disability discharge has been granted are returned to the borrower.
- Revise the application process by streamlining the approval process where the borrower's documentation is for applications from the Department of Veterans Affairs to ensure consistency.
- Update the regulations governing the actions of FFEL lender and guaranty agencies in the disability discharge process to reflect the new single application process.
- Propose regulations to specify that if the borrower receives a disbursement of a new title IV loan or

Unofficial

receives a new TEACH Grant made on or after the date the physician certified the borrower's discharge application and before the date the Secretary grants a total and permanent disability discharge, the Secretary will deny the borrower disability discharge application and resume collection on the borrower's loans.

- Revise provisions to require that the loans of a borrower who is denied a total and permanent disability discharge are reinstated as if the total and permanent disability application was never submitted.

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Total and Permanent Disability Discharge (34 CFR 674.61, 682.402, and 685.213)

Background: After receiving significant public criticism in February 2011 that the Department's total and permanent

Unofficial

disability discharge process lacked transparency and was unduly burdensome and costly for borrowers, the Department undertook a comprehensive review of the process. Before initiating this review, the Department had already begun making improvements such as: streamlining the review process to ensure that the physician's certification received primary consideration in discharge decisions, performing outreach to borrowers to ensure that supplemental information from physicians is received timely, and improving information flow to help borrowers understand the process. We made other improvements when the Department designated a single contractor to manage the total and permanent disability discharge process in 2012, including the creation of a new Web site through which borrowers can track the status of their applications, clearer correspondence with borrowers, and borrower notifications at regular milestones as the application process progresses.

As a result of the comprehensive review and ongoing efforts to identify procedural deficiencies, the Department also committed to considering changes to the regulations governing the total and permanent disability discharge process. In the Federal Register notice published on October 28, 2011 (76 FR 66880), announcing our intent to

Unofficial

establish a negotiated rulemaking committee on the Federal student loan programs, we included three topics for discussion related to loan discharges based on total and permanent disability:

- Establishing a single total and permanent disability application process;
- Improvements to borrower notification of denial; and
- Improvements in post-discharge monitoring of employment earnings.

These proposed regulations would revise §§674.61, 682.402(c), and 685.213 to require Perkins Loan and FFEL borrowers to apply directly to the Department for a total and permanent disability discharge and to provide increased transparency in the notifications a Perkins Loan, FFEL, and Direct Loan borrower receives when an application for discharge is denied. Finally, after discussions with the non-Federal negotiators, the Department committed to the development of a new Federal form that would assist borrowers in providing the Department with documentation of the borrower's annual earnings from employment during the three-year post-discharge monitoring period. The sections that follow describe in more detail these changes and other

Unofficial

clarifying changes made by the Loans Committee to improve the total and permanent disability process.

Use of Terms (34 CFR 674.61(b)(1), 682.402(c)(1), and 685.213(a)(4))

Statute: Section 437(a)(1) of the HEA, which is applicable to the Direct Loan Program under section 455(a)(1) of the HEA, and section 464(c)(1)(F) of the HEA provide for a discharge of a borrower's FFEL, Perkins Loan, or Direct Loan program loan if the borrower becomes totally and permanently disabled as determined in accordance with the Secretary's regulations, or if the borrower is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or has lasted, or can be expected to last, for a continuous period of not less than 60 months.

Current Regulations: Section 682.402(c)(2) of the FFEL program regulations authorize a borrower's representative to submit a total and permanent disability discharge application on behalf of a borrower. Sections 674.61(b)(6), 682.402(c)(6), and 685.213(b)(5) of the Perkins Loan, FFEL, and Direct Loan program regulations, respectively, provide that the borrower's representative may assume the borrower's responsibilities to provide

Unofficial

notifications to the Secretary about address changes and annual earnings after the borrower has received a discharge based on total and permanent disability. However, current regulations do not define the term "borrower's representative."

Section 682.402(c) of the FFEL program regulations use the terms "lender" and "guaranty agency," as those terms are defined in 682.200(b).

Proposed Regulations: The proposed regulations would add new §§674.61(b)(1)(ii), 682.402(c)(1)(iv)(A), and 685.213(a)(4) to the Perkins Loan, FFEL, and Direct Loan program regulations and specify that a "borrower's representative" or a "veteran's representative" is any individual, including a member of the borrower's or veteran's family or an attorney, authorized to act on behalf of the borrower or the veteran with respect to the borrower's or veteran's application for a total and permanent disability discharge. Under the proposed regulations, references to a "borrower" or a "veteran" in the total and permanent disability discharge regulations would include a borrower's representative or a veteran's representative. The proposed regulations would clarify that a representative may act on behalf of the borrower to apply for a discharge, provide notifications or information

Unofficial

to the Secretary in connection with a discharge application, and to receive notifications from the Secretary.

The proposed regulations would add a new §682.402(c)(1)(iv)(B) to the FFEL regulations to clarify that for purposes of the FFEL total and permanent disability discharge regulations, the term "lender" would include a guaranty agency that holds a borrower's FFEL loan at the time the borrower applies for a total and permanent disability discharge. This proposed change would reflect current practice. Currently, if the guaranty agency is the loan holder at the time the borrower requests a total and permanent disability discharge, the guaranty agency carries out the responsibilities of a FFEL lender with regard to the borrower's discharge request (except for claim filing requirements).

The proposed regulations would add a new §682.402(c)(1)(iv)(C) to the FFEL regulations to clarify that references in the total and permanent disability discharge regulations to "the applicable guaranty agency" refer to the guaranty agency that guaranteed the loan.

Reasons: The current regulations specifically allow a borrower's representative to submit a total and permanent disability discharge application on behalf of the borrower

Unofficial

only in the FFEL program. While discussing the role of the borrower's representative in helping a borrower apply for discharge of a FFEL loan based on a total and permanent disability, a non-Federal negotiator requested that the regulations be amended to clarify that a borrower's representative may represent the borrower throughout the process, not just during the initial application stage. Currently, as a matter of practice, the Department allows representatives to represent borrowers throughout the total and permanent disability discharge process in all of the title IV loan programs. However, a non-Federal negotiator argued that the practice is not consistently followed by loan servicers and others participating in the title IV loan programs and should be formalized by including it in the regulations. The non-Federal negotiator was particularly concerned that borrowers' representatives do not always receive the notifications that the borrower receives. The non-Federal negotiator requested that the regulations be amended to specify that both the borrower and the borrower's representative (if any) receive notices.

The Department agreed and, for consistency, added a paragraph to the proposed regulations for all of the title IV student loan programs stating that the term "borrower" includes a borrower's representative, if applicable. Under

Unofficial

the proposed regulations any notice sent to a borrower must also be sent to the borrower's representative if the borrower has one. In addition, both the borrower and the borrower's representative may provide notifications and information in connection with the borrower's total and permanent disability discharge.

The Department also agreed to develop a new release form that the borrower can use to designate a representative to act on behalf of the borrower with respect to the borrower's request for a disability discharge.

The non-Federal negotiator also requested that the Department add language to the proposed regulations specifying that a borrower's representative could be an attorney. The Department agreed and added language to the Perkins Loan, FFEL, and Direct Loan program proposed regulations providing that an attorney could be a borrower's representative.

Other non-Federal negotiators requested that the proposed regulations clarify the role of a guaranty agency that holds a borrower's FFEL loan at the time the borrower applies for a total and permanent disability discharge. Under current practice, the guaranty agency carries out the functions of a FFEL lender with regard to the borrower's

Unofficial

discharge request. The Department proposes to reflect this practice by adding a provision to the regulations specifying that the term "lender," as used in the FFEL program disability discharge regulations, means a guaranty agency if the guaranty agency holds the loan at the time the borrower applies for a total and permanent disability discharge.

The current total and permanent disability discharge regulations do not specifically address borrowers with FFEL program loans held by more than one lender and possibly guaranteed by more than one guaranty agency. The proposed regulations, as discussed in the next section, would specifically address how discharge applications from these borrowers will be handled. Therefore, the proposed regulations use the term "the applicable guaranty agency." Some non-Federal negotiators recommended that the proposed regulations specify that the term "applicable guaranty agency" means the guaranty agency that guaranteed the FFEL loan for which the borrower has requested a discharge. The Department agreed that this change would improve the clarity of the proposed regulations.

Total and Permanent Disability Discharge Application Process (34 CFR 674.61(b)(2), 682.402(c)(2), and 685.213(b))

Unofficial

Statute: The HEA does not specify the application process for a borrower applying for a total and permanent disability discharge.

Current Regulations: Currently, a borrower who has title IV loans held by two or more lenders must apply separately to each lender for a total and permanent disability discharge. The borrower must provide a total and permanent disability discharge application certified by a physician to each lender that holds title IV loans owed by the borrower. After the application is received, the title IV lender suspends collection activity on the borrower's Perkins Loan, FFEL, or Direct Loan program loans, in accordance with §§674.61(b)(2)(iv), 682.402(c)(7)(i), or 685.213(b)(1). Each loan holder processes the disability discharge application separately.

Under §674.61(b)(2)(iv)(A) of the Perkins Loan program regulations, the institution that awarded the Perkins Loan reviews the borrower's disability discharge application. If the institution determines that the application supports the conclusion that the borrower is totally and permanently disabled, the institution assigns the loan to the Secretary.

Under §682.402(c)(7)(ii) of the FFEL regulations, the FFEL program lender reviews the borrower's disability

Unofficial

discharge application. If the lender determines that the application supports the conclusion that the borrower is totally and permanently disabled, the lender files a disability discharge claim with the guaranty agency. The guaranty agency reviews the application and, if it concurs with the lender's determination, approves the discharge claim in accordance with §682.402(c)(7)(iv). After approving the claim, the guaranty agency assigns the loan to the Secretary in accordance with §682.402(c)(7)(vi)(A).

Under §685.213(b)(1) of the Direct Loan regulations, the borrower applies directly to the Secretary for a total and permanent disability discharge.

Under §§674.61(b)(3), 682.402(c)(3), and 685.213(b)(2), the Secretary makes the final determination of eligibility for a total and permanent disability discharge in the Perkins Loan, FFEL, and Direct Loan Programs.

Proposed Regulations: The proposed regulations would revise §§674.61(b)(2) and 682.402(c)(2) of the Perkins Loan and FFEL program regulations to have borrowers submit applications for total and permanent disability discharges directly to the Secretary. In the Direct Loan Program,

Unofficial

borrowers would continue to submit applications directly to the Secretary.

Under the proposed single application process for total and permanent disability discharges, if a borrower notifies a Perkins loan school or a FFEL program lender that holds his or her loan and claims to be totally and permanently disabled, the school or lender would direct the borrower to notify the Secretary of the borrower's intent to apply for a discharge and would provide the borrower with the information necessary to do so.

Under proposed §§674.61(b)(2)(ii) and 682.402(c)(2)(ii), after a Perkins Loan or FFEL borrower notifies the Secretary of his or her intent to apply for a total and permanent disability discharge, the Secretary would--

- Provide the borrower with information needed to apply for the discharge;
- Identify all title IV loans owed by the borrower and notify the lenders of those loans of the borrower's intent to apply for the discharge;
- Direct the lenders to suspend collection efforts on those loans for up to 120 days; and
- Inform the borrower that collection will resume on the borrower's title IV loans if the borrower

Unofficial

does not submit a total and permanent disability discharge application within 120 days.

The Secretary would carry out the same actions for Direct Loan borrowers who notify the Secretary that the borrower claims to be totally and permanently disabled under proposed §685.213(b)(1).

Under proposed §§674.61(b)(2)(iii) and 682.402(c)(2)(iii) of the Perkins Loan program and FFEL program regulations, Perkins schools and FFEL lenders will resume collection on the borrower's loans if the borrower does not submit the total and permanent disability discharge application within 120 days. The Perkins loan school or FFEL lender would be deemed to have exercised forbearance during the suspension period. In the FFEL program, the lender could capitalize interest that accrued during the suspension period. Under proposed §682.402(c)(2)(iii), a guaranty agency, even if it is acting as a lender for purposes of a total and permanent disability discharge request, would not be permitted to capitalize accrued interest.

Under proposed §§674.61(b)(2)(v) through (b)(2)(viii), 682.402(c)(2)(iv) through (c)(2)(viii), and 685.213(b)(3), a Perkins Loan, FFEL, or Direct Loan borrower must submit the total and permanent disability discharge application to

Unofficial

the Secretary. The application must include a certification by a physician who is a doctor of medicine or osteopathy legally authorized to practice in a State, affirming that the borrower is totally and permanently disabled as described in the regulations. The borrower must submit the disability discharge application to the Secretary within 90 days of the date the physician certified the application.

Generally, the 90-day period for submitting the total and permanent disability discharge application would overlap with the 120-day suspension period referenced earlier in this section. The 120-day suspension period would begin on the date the Secretary notifies the borrower's title IV lenders of the borrower's intent to apply for a total and permanent disability discharge. The 90-day period would begin on the date the physician certifies the total and permanent disability application.

After receiving the total and permanent disability discharge application, the Secretary notifies the borrower's title IV loan holders that the Secretary has received the application. This notification would direct the borrower's loan holders either to suspend collection activity or to maintain the suspension of collection activity on the borrower's title IV loans.

Unofficial

If the application is incomplete, the Secretary requests the missing information from the borrower or the physician who certified the application. An application is incomplete if information requested on the application--such as a borrower's signature, a physician's signature, or a physician's license number--is not provided.

Under proposed §§674.61(b)(2)(ix) and 682.402(c)(2)(ix) after receiving the discharge application, the Secretary would send a notification to the borrower that would--

- State that the application will be reviewed by the Secretary;
- Inform the borrower of the suspension of collection activity on the borrower's title IV loans while the Secretary reviews the application; and
- Explain the process for the Secretary's review.

The Secretary would send the same notification to Direct Loan borrowers after receipt of the discharge application.

Reasons: Under the Department's proposed regulations, a borrower would submit one total and permanent disability discharge application directly to the Secretary and this would eliminate the need for borrowers to submit separate discharge applications to each of their loan holders.

Unofficial

The Department's proposal eliminates the requirement that each of a borrower's loan holders (and guaranty agencies, in the FFEL program) review the borrower's total and permanent disability discharge application. The proposal eliminates redundant reviews of total and permanent disability discharge applications and reduces administrative burden on lenders and guaranty agencies in the title IV programs.

The Department believes that the streamlined total and permanent disability discharge process would provide many benefits to borrowers. The proposed regulations would--

- Simplify the process for the borrower;
- Establish a single point of contact provided to the borrower in the instructions for submitting his or her application;
- Reduce the length of time needed to process applications;
- Provide more consistency in determinations;
- Provide more uniformity in the communications sent to borrowers throughout the discharge process; and
- Ensure that all of a borrower's title IV loans that are eligible for a total and permanent disability discharge are discharged at the same time, reducing

Unofficial

instances of "straggler" loans that the borrower may forget to include when applying for a discharge.

The non-Federal negotiators supported the Department's goal to simplify the application process for a total and permanent disability discharge. However, the non-Federal negotiators raised some concerns about the proposed single application process. The negotiated language in these proposed regulations addresses the majority of these concerns.

Under the Department's initial proposal, the first title IV lender that the borrower contacted would suspend collection activity on the borrower's loans for up to 90 days. The Secretary would notify the borrower's other title IV loan holders to suspend collection after the borrower notified the Secretary of his or her intent to apply for a total and permanent disability discharge. Non-Federal negotiators were concerned that beginning the suspension of collection activity on different dates would be confusing for borrowers. They were also concerned that the 90-day suspension period would not be sufficient time for a borrower to obtain the physician certification needed to apply for the discharge. The negotiators stated that it would be preferable for the suspension of collection activity to last for up to 120 days and for it to begin on

Unofficial

the same date for all of the borrower's title IV loans. The non-Federal negotiators recommended that the suspension of collection activity not begin on any of the borrower's title IV loans until after the borrower contacted the Secretary. The Department agreed and modified the proposed regulations accordingly.

Some non-Federal negotiators recommended that the suspension of collection activity also include a suspension of payments collected from borrowers through administrative wage garnishment (AWG) and the Treasury Offset Program (TOP). The Department did not agree. Borrowers applying for total and permanent disability discharges are, by definition, unable to engage in substantial gainful activity. Therefore, AWG should not be an issue for these borrowers. With regard to TOP, the Department reiterated its current policy on stopping TOP offsets. The submission of a total and permanent disability discharge application does not, in and of itself, demonstrate that a borrower is eligible for the discharge. Given the administrative effort and timing issues associated with stopping TOP, it may not be in the best interests of the taxpayers or the borrower to suspend TOP based solely on the filing of the discharge application. If a borrower's loan account has been certified for TOP, the Secretary or a guaranty agency

Unofficial

is not required to stop TOP offsets while the borrower is preparing to submit the total and permanent disability discharge application or during its review. The Secretary or guaranty agency may, however, stop or reduce TOP offsets during this period if it believes such action is warranted in the borrower's particular circumstances.

If a determination is made that the borrower is eligible for a total and permanent disability discharge, the Secretary or guaranty agency must promptly inactivate TOP offsets on the account. After the borrower's loan is discharged, all payments on the loan received after the date of the physician's certification, including payments obtained through a TOP offset, are refunded to the borrower.

The proposed single application process would be consistent with the Department's current TOP practices. If the borrower's account is not certified in TOP at the time the borrower contacts the Secretary to request a total and permanent disability discharge, the Secretary or guaranty agency would not take steps to initiate TOP during the suspension of collection activity under proposed §§674.61(b)(2)(ii)(C), 682.402(c)(2)(ii)(C), and 685.213(b)(1). However, if the account is already certified in TOP at the time the borrower contacts the

Unofficial

Department, neither the Department nor the guaranty agency would be required to stop TOP until the Department determines that the borrower is eligible for a total and permanent disability discharge.

Non-Federal negotiators representing guaranty agencies expressed concerns that the proposed changes would limit the role of guaranty agencies in the total and permanent disability discharge process. Under the new process, the guaranty agencies would be notified of a borrower's eligibility for a total and permanent disability discharge but would not receive copies of the borrower's applications or of any accompanying medical documentation. These non-Federal negotiators stated that this lack of information would hinder the agencies' ability to assist borrowers through the discharge process.

The Department declined to modify the proposed regulations to require that guaranty agencies receive copies of the total and permanent disability discharge applications. Under the proposed regulations, guaranty agencies and lenders would not conduct medical reviews of disability discharge applications. Therefore, there is no need for lenders or agencies to receive the applications. The Department believes that a requirement that disability discharge applications be provided to guaranty agencies

Unofficial

would be contrary to the goal of streamlining the disability discharge application process. In addition, the Department notes that nothing prevents a borrower from voluntarily providing this documentation to a guaranty agency.

Secretary's Review of Total and Permanent Disability Discharge Applications (34 CFR 674.61(b)(3), 682.402(c)(3), and 685.213(b)(2))

Statute: The HEA does not specify the procedures for the Secretary's review of total and permanent disability discharge applications.

Current Regulations: If the Secretary determines that a title IV borrower qualifies for a total and permanent disability discharge, the Secretary discharges the loan and, in accordance with §§674.61(b)(3)(i), 682.402(c)(3)(ii), and 685.213(b)(2)(ii), the Secretary notifies the borrower that the Secretary has approved the total and permanent disability discharge request. The notification explains to the borrower the terms and conditions under which the Secretary will reinstate the discharged loan.

If the Secretary does not approve the total and permanent disability discharge request, the Secretary notifies the borrower that it has denied the disability

Unofficial

discharge application and that collection will resume on the borrower's loan, in accordance with §§674.61(b)(3)(ii), 682.402(c)(3)(iii), and 685.213(b)(2)(iii).

Proposed Regulations: Under proposed §§674.61(b)(3)(iii) and 682.402(c)(3)(iii), if the Secretary determines that the borrower qualifies for a total and permanent disability discharge, the Secretary would notify the borrower's Perkins and FFEL lenders that the Secretary approved the application and would provide the date that the physician certified the total and permanent disability discharge application.

For Perkins Loan borrowers, the Secretary would direct the institution to assign the borrower's Perkins Loans to the Department. Proposed §674.61(b)(3)(iv) would require the institution to assign the Perkins Loan to the Secretary within 45 days of receiving the notification.

For FFEL borrowers, the Secretary would direct the FFEL lender to submit a disability claim to the applicable guaranty agency.

If the Secretary determines that the borrower does not qualify for a total and permanent disability discharge, the Secretary notifies the borrower and the lender that the Secretary denied the total and permanent disability

Unofficial

discharge application under proposed §§674.61(b)(3)(vi), 682.402(c)(3)(v), and 685.213(b)(4)(iv). The notification would include--

- The reason or reasons for the denial;
- A statement that the loan is due and payable to the lender under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;
- A statement that the lender will notify the borrower of the date the borrower must resume making payments on the loan or, in the case of a Direct Loan, the date that the borrower must resume making payments on the Direct Loan;
- An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

Unofficial

- An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility.

Under proposed §§674.61(b)(3)(vii), 682.402(c)(3)(vi), and 685.213(b)(4)(v), if the borrower requests re-evaluation of his or her application or submits a new disability discharge application, the request must include new information regarding the borrower's disabling condition that was not available at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

Reasons: The Department is proposing to change the regulations to reflect its current practice of providing detailed information in the notifications that are sent to borrowers about their disability discharge applications. The proposed regulations are based on letters that are currently available for use for total and permanent disability discharges but that are not used consistently. The Department believes that describing the content of

Unofficial

these letters would ensure that the information provided in the notifications is consistent, and would provide more transparency to borrowers regarding the reasons for the denial of their application, as well as information on the options the borrower has to request that the disability discharge request be re-evaluated.

Treatment of Disbursements of Title IV Loans and Receipt of Title IV Loans After the Physician Certification Date (34 CFR 674.61(b)(4), 674.61(b)(5), 682.402(c)(4), 682.402(c)(5), 685.213(b)(3), and 685.213(b)(4))

Statute: Sections 437(a)(1), which is applicable to the Direct Loan program under section 455(a)(1) of the HEA, and section 464(k) of the HEA authorize the Secretary to develop safeguards to prevent fraud and abuse in the discharge of title IV loans due to total and permanent disability.

Current Regulations: Under §674.61(b)(4), 682.402(c)(4), or 685.213(b)(3) of the Perkins Loan, FEEL, and Direct Loan program regulations, respectively, if a borrower received a title IV loan or a TEACH Grant prior to the date of the physician's certification of the borrower's total and permanent disability discharge application and a disbursement of that loan or grant occurs while the borrower's discharge request is being processed, the

Unofficial

processing of the discharge request is suspended, until the borrower returns the full amount of the disbursement.

Proposed Regulations: The proposed regulations do not change the current requirements for disbursements of loans made prior to the date of the physician's certification. The proposed regulations would add new §§674.61(b)(5), 682.402(c)(5), and 685.213(b)(6) to specify that if the borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's discharge application and before the date the Secretary grants a total and permanent disability discharge, the Secretary will deny the borrower's disability discharge application and collection will resume on the borrower's loans.

Reasons: The current total and permanent disability discharge regulations address late disbursements of loans received prior to a physician's certification of the borrower's disability discharge application and after a discharge has been granted. However, the current regulations do not address a situation in which a borrower receives a disbursement of a new title IV loan or a new TEACH Grant made on or after the date the physician certified the application, but before the date the Secretary discharges the loan. The Department is proposing

Unofficial

to provide in the regulations that a borrower is not eligible for a discharge if the borrower receives a new title IV loan or TEACH Grant while the Department is reviewing his or her total and permanent disability discharge application. When a borrower takes out a title IV loan or receives a TEACH Grant, the borrower makes a commitment either to repay the loan or to teach for four years. If a borrower actively seeks a new title IV loan or TEACH Grant shortly after the borrower is certified as totally and permanently disabled by a physician, it raises the question of whether the borrower actually intends to repay the loan or to teach. The proposed regulations would preclude a borrower from receiving a title IV loan or TEACH Grant, only to have the loan or teaching obligation discharged a short time later.

The non-Federal negotiators agreed with this proposed change. However, there was some discussion on how to track receipt of a new title IV loan or TEACH Grant by a borrower. The Department proposed using the disbursement date of a new title IV loan or TEACH Grant to determine receipt and the non-Federal negotiators agreed.

Reinstatement of Loans and Borrower Responsibilities After Discharge (34 CFR 674.61(b)(6), 674.61(b)(7),

Unofficial

682.402(c)(6), 682.402(c)(7), 685.213(b)(7), and 685.213(b)(8))

Statute: Sections 437(a)(1) of the HEA, which is applicable to the Direct Loan program under section 455(a)(1) of the HEA, and section 464(k) of the HEA authorize the Secretary to promulgate regulations to reinstate a borrower's obligation to repay a FFEL, Perkins Loan, or Direct Loan program loan that was discharged due to a disability if, after the discharge, the borrower receives another title IV loan or has earned income in excess of the poverty line, or under other circumstances that the Secretary determines to be necessary.

Current Regulations: Sections 674.61(b)(5), 682.402(c)(5), and 685.213(b)(4) of the current regulations specify that a Perkins Loan, FFEL, or Direct Loan program loan that has been discharged due to a total and permanent disability will be reinstated if, within three years of the date of the discharge, the borrower--

- Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two;
- Receives a new TEACH Grant or a new title IV loan, except for a Consolidation Loan; or

Unofficial

- Fails to return any disbursement the borrower receives after the discharge date of a title IV loan or TEACH Grant received prior to the discharge date.

Under §§674.61(b)(6), 682.402(c)(6), and 685.213(b)(5), during the three-year period after the discharge date, a Perkins Loan, FFEL, or Direct Loan borrower must--

- Notify the Secretary of any changes to the borrower's address or phone number;
- Notify the Secretary if the borrower's annual earnings exceed 100 percent of the poverty line for a family of two; and
- Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

Current regulations do not specify a format or process for providing documentation of annual earnings to the Secretary.

Proposed Regulations: The proposed regulations would not change the conditions for reinstating a loan that has been discharged due to a total and permanent disability. However, we are proposing to modify §§674.61(b)(6)(ii)(B), 682.402(c)(6)(ii)(B), and 685.213(b)(7)(ii)(B) to provide

Unofficial

that, if a borrower's Perkins Loan, FFEL, or Direct Loan program loan is reinstated, it returns to the status it would have had if the total and permanent disability discharge application had not been received. Current regulations do not address the status of a loan that has been reinstated.

The proposed regulations would make one change to the regulations describing the borrower's responsibilities after the borrower has received a total and permanent disability discharge. Under proposed §§674.61(b)(7)(iii), 682.402(c)(7)(iii), and 685.213(b)(8)(iii), a Perkins Loan, FFEL, or Direct Loan borrower would be required to provide the Secretary, on request, with documentation of annual earnings from employment on a form provided by the Secretary.

Reasons: Borrowers whose loans have been discharged based on a disability must provide documentation of their income to the Secretary for three years after the date of the discharge. It is the Department's experience that borrowers who are totally and permanently disabled and who have little or no income are often unsure how to document their income.

During the negotiations, the Department initially proposed shifting the three-year period during which the

Unofficial

borrower would have to provide income information to three calendar years (January 1 to December 31) after the discharge was granted. The Department proposed this approach because it would allow borrowers to meet the income documentation requirement by submitting tax returns for each calendar year after the discharge.

Non-Federal negotiators objected to this proposal. They noted that it would stretch out the post-discharge review period for borrowers--in some cases to almost four years instead of three. The non-Federal negotiators also pointed out that low-income individuals may not be required to file tax returns, so the proposed solution would not resolve the problem for the many borrowers who qualify for a discharge but are not required to file tax returns.

The Department responded by proposing to revise the regulations to require that a borrower submit income information on a form provided by the Secretary. The Department intends to develop a form that will be available by the time these regulations become effective. Borrowers will be required to submit the form to the Secretary to document their annual earnings. The form will require the borrower to certify the borrower's annual earnings from employment and will require the borrower to submit documentation to support the earnings information, if the

Unofficial

borrower has such documentation. The documentation may include income tax returns, documentation of eligibility for Social Security disability benefits, or other documentation that supports the amount certified by the borrower.

The proposed regulations do not specify the content of the form, but the form will be made available for public comment before it is approved for use.

Return of Payments after a Total and Permanent Disability Assignment (34 CFR 674.61(b)(8), 682.402(c)(8), 682.402(r)(2), 682.402(r)(3), and 685.213(b)(4)(iii))

Statute: The HEA does not specify the treatment of payments received on a title IV loan after the borrower has received a total and permanent disability discharge on the loan.

Current Regulations: Sections 674.61(b)(7)(i) and 674.61(b)(7)(iii) of the Perkins Loan program regulations require an institution that receives a payment on a Perkins loan after it has assigned the loan to the Secretary during the disability discharge process to forward the payment to the Secretary. If the Secretary discharges the loan, the Secretary returns to the sender any payments made after the date of the physician's certification of the borrower's discharge application.

Unofficial

Section 682.402(c)(7)(vii) of the FFEL regulations requires a lender to forward to the guaranty agency any payment received on a FFEL loan after the lender receives a claim payment from the guaranty agency.

Section 682.402(r)(2) of the FFEL regulations requires a guaranty agency that receives a payment on a loan after it has assigned the loan to the Secretary during the disability discharge process to forward the payment to the Secretary. At the time the guaranty agency forwards the payment to the Secretary, it must notify the borrower that there is no need to continue to make payments on the loan. Under current §682.402(r)(3), the Secretary returns the payments to the borrower after the Secretary makes a final determination to discharge the loan due to a total and permanent disability.

Section 685.213(b)(2)(ii) of the Direct Loan program regulations requires the Secretary, after discharging a Direct Loan, to return to the sender any payments received after the date of the physician's certification of the borrower's discharge application.

Proposed Regulations: Under proposed §674.61(b)(8), if an institution receives a payment on a Perkins loan that has been assigned to the Secretary based on the Secretary's determination of the borrower's eligibility for a total and

Unofficial

permanent disability discharge, the institution returns the payment to the sender.

Under proposed §682.402(c)(8)(i)(C), after receiving a disability discharge claim payment from the guaranty agency, the FFEL lender must return to the sender any payments it receives after the date the physician certified the borrower's loan discharge application and any payments received after claim payment.

Under proposed §682.402(r)(2), a guaranty agency must return to the sender any payments it receives on a FFEL loan that has been assigned to the Secretary based on the Secretary's determination of the borrower's eligibility for a total and permanent disability discharge.

Under proposed §682.402(r)(3), after the Secretary discharges a FFEL loan, the Secretary returns to the sender any payments it receives on the loan after the date the borrower became totally and permanently disabled.

Under proposed §685.213(b)(4)(iii) of the Direct Loan program regulations, after the Secretary discharges a Direct Loan, the Secretary returns to the sender any payments received after the date of the physician's certification of the borrower's discharge application.

Reasons: Under the proposed regulations, the assignment of a Perkins loan or the filing of a disability claim on a

Unofficial

FFEL loan would not occur until after the Secretary has determined that the borrower qualifies for a total and permanent disability discharge. Therefore, there is no reason for payments received after those dates to be forwarded to the guaranty agency or to the Secretary. The Department is proposing to have the payments returned to the sender.

Total and Permanent Disability Discharge Application Process For Applications Based on Documentation from the Department of Veterans Affairs (34 CFR 674.61(c), 682.402(c)(9), and 685.213(c))

Statute: Sections 437(a)(2), which is applicable to the Direct Loan program under section 455(a)(1) of the HEA, and section 464(c)(1)(F)(iv) of the HEA provide that a FFEL, Perkins Loan, or Direct Loan borrower who has been determined by the Department of Veterans Affairs (VA) to be unemployable due to a service-connected disability and who provides documentation of that determination to the Secretary is considered totally and permanently disabled for the purpose of discharging the borrower's title IV loans. Section 437(a)(2) further specifies that a borrower who provides such documentation shall not be required to present additional documentation for the purpose of

Unofficial

determining eligibility for a total and permanent disability discharge.

Current Regulations: Sections 674.61(c), 682.402(c)(8), and 685.213(c) of the Perkins Loan, FFEL, and Direct Loan program regulations describe the process for a veteran who is applying for a total and permanent disability discharge based on a determination by the VA that the veteran is unemployable due to a service-connected disability. The total and permanent disability discharge process based on VA documentation is similar to the total and permanent disability discharge process for non-veterans in the three loan programs, with a few major exceptions.

Sections 674.61(c)(2)(ii), 682.402(c)(8)(i), and 685.213(c)(1) of the current regulations require the veteran to submit to the Secretary documentation from the VA demonstrating that the veteran is unemployable due to a service-connected disability. This documentation takes the place of the physician's certification of total and permanent disability required of other borrowers.

The Perkins Loan and FFEL program regulations do not currently require the institution or guaranty agency to assign the loan to the Secretary if the institution or guaranty agency determines that the VA documentation supports the veteran's eligibility for a discharge.

Unofficial

Sections 674.61(c)(2)(iii)(A) and 682.402(c)(8)(ii)(D) specify that the institution or guaranty agency is only required to submit the total and permanent disability discharge application and the VA documentation to the Secretary.

The three-year post-discharge monitoring period that generally applies to borrowers after the Secretary grants a total and permanent disability discharge does not apply to loans discharged based on documentation from the VA. The Secretary does not reinstate a loan that has been discharged based on documentation from the VA.

Proposed Regulations: The total and permanent disability discharge application process for veterans who rely on documentation from the VA in proposed §§674.61(c), 682.402(c)(9), and 685.213(c) matches the proposed regulations for total and permanent disability discharge applications for non-veterans. The exceptions in the current regulations discussed above are retained in the proposed regulations. Title IV loans discharged based on documentation from the VA are not assigned to the Secretary, are not subject to the three-year post discharge monitoring period, and are not reinstated.

In addition, under proposed §§674.61(c)(3)(iv)(E), 682.402(c)(9)(xi)(E), and 685.213(c)(2)(ii)(E), the

Unofficial

notification to a veteran whose disability discharge request based on documentation from the VA has been denied would include information on how the veteran may apply for a total and permanent disability discharge under the regular process for non-veterans, if the documentation from the VA indicates that the veteran might qualify for a total and permanent disability discharge under that standard.

Reasons: The Department believes that the disability application process for veterans relying on a certification from the VA should be similar to the regular disability discharge process. Maintaining similar processes for both types of disability discharges will create less administrative burden for participants in the title IV loan programs and less confusion for borrowers. In addition, the Department believes that veterans will benefit by applying the changes proposed for the disability discharge process for non-veterans to the process for disability discharges based on VA documentation. Therefore, the Department is proposing to streamline the disability discharge process for veterans in the same manner that we are proposing to streamline the regular process.

FFEL Lender and Guaranty Agency Roles (34 CFR 682.402(c)(8), 682.402(g)(1), 682.402(g)(2), 682.402(h)(1), and 682.402(h)(3))

Unofficial

Statute: The HEA does not specify any particular roles for lenders or guaranty agencies in the processing of total and permanent disability discharges.

Current Regulations: Under §682.402(c)(7)(i) of the FFEL regulations, if a borrower contacts a FFEL lender requesting a total and permanent disability discharge of a loan, the lender continues collection activity on the loan until it receives a disability discharge application certified by a physician or a letter from a physician asking for additional time to determine if the borrower is totally and permanently disabled. In the former situation, the lender suspends collection activity once it receives the application. In the latter, if the lender does not receive the total and permanent disability discharge application within 60 days of the physician's letter, the lender resumes collection activity. The lender also resumes collection activity on the loan if it receives the total and permanent disability discharge application and determines that the borrower does not qualify for a disability discharge. The lender may capitalize interest that accrued during the suspension of collection activity in accordance with §682.402(c)(7)(iii).

If the lender receives the disability discharge application and determines that the application supports

Unofficial

the conclusion that the borrower is totally and permanently disabled, the lender submits a disability claim to the guaranty agency, as specified in §682.402(c)(7)(ii). Sections 682.402(g)(2)(i) and 682.402(g)(1)(iv) require the lender to submit the disability claim within 60 days of the date the lender determines that the borrower is totally and permanently disabled and to include a copy of the physician's certification of total and permanent disability with the claim.

Section 682.402(h)(1)(i)(B) requires a guaranty agency to pay the lender's claim within 90 days of the date it was filed, if the guaranty agency agrees with the determination of the lender. Under §682.402(h)(3)(ii)(B), the amount payable on an approved disability discharge claim includes unpaid interest that accrued on the loan during the period the guaranty agency needed to review and approve the claim, not to exceed 90 days.

Under §682.402(c)(7)(viii), the Secretary reimburses the guaranty agency for the disability claim after the agency pays the claim to the lender. Section 682.402(c)(7)(ix) requires the guaranty agency to assign the loan to the Secretary after the guaranty agency pays the disability claim.

Unofficial

Section 682.402(c)(7)(v) requires a guaranty agency to return the disability claim to the lender if the guaranty agency does not agree with the lender's determination that the borrower is totally and permanently disabled. If the disability claim is returned by the guaranty agency, the lender notifies the borrower that the application has been denied.

Proposed Regulations: Proposed §682.402(c)(2)(ii)(C) eliminates the option for a physician to submit a letter requesting additional time to submit the total and permanent disability discharge application. Under the proposed regulations, the Secretary would direct all of the borrower's title IV lenders to suspend collection efforts for up to 120 days after the borrower informs the Secretary that he or she intends to apply for a total and permanent disability discharge.

Under proposed §682.402(g)(1)(iv), a FFEL lender would not submit a copy of the total and permanent disability discharge application with the disability discharge claim it files with the guaranty agency. Instead, the FFEL lender would provide the guaranty agency with the notification the lender received from the Secretary directing the lender to submit the disability claim.

Unofficial

Under proposed §682.402(g)(2), a FFEL lender must file a disability claim within 60 days of receiving the notice from the Secretary directing the lender to file the claim. Under proposed §682.402(h)(3)(iii)(A), the amount of the claim payment by the guaranty agency includes interest that accrued on the loan for up to 45 days during which the guaranty agency processed the disability claim. Under proposed §682.402(c)(8)(i)(D), the Secretary reimburses the guaranty agency for the disability claim after the guaranty agency pays the claim to the lender. Under proposed §682.402(c)(8)(i)(E), the guaranty agency assigns the loan to the Secretary within 45 days of the date the guaranty agency paid the disability claim and receives the reimbursement payment from the Secretary.

Reasons: The Department is eliminating the option for a physician to submit a letter requesting more time for the borrower to submit a total and permanent disability discharge application because we believe that requiring such a letter would be cumbersome under the new process. The proposed regulations would provide a uniform period of suspension of collection activity for all borrowers.

The regulations specify that a FFEL lender may capitalize interest that accrues during the suspension period if the borrower does not submit a total and

Unofficial

permanent disability discharge request, or if the request is denied. This provision is the same in the current regulations.

The proposed reductions in FFEL claim filing periods are intended to improve the timeliness with which a disability claim is processed in the FFEL program. Since neither the FFEL lender nor the guaranty agency would conduct medical reviews of the total and permanent disability discharge applications under the proposed new process, the Department believes that the timeframes for processing total and permanent disability discharge requests can be shortened.

The proposed regulations would specify a timeframe for a guaranty agency or Perkins school to assign a loan to the Secretary. The Department believes that specifying a timeframe for assignments will help to ensure that loans that qualify for a disability discharge are assigned to the Secretary promptly so the Secretary may complete the discharge.

Initially the Department proposed that guaranty agencies would be required to assign a FFEL loan to the Secretary within 30 days of a claim payment. Non-Federal negotiators representing guaranty agencies indicated that their current practice is to assign loans after receipt of

Unofficial

the Federal reimbursement payment, not within a set number of days after a claim payment. In response to their concerns, the Department revised the proposed regulations to provide that a loan must be assigned within 45 days after receipt of the Federal reimbursement payment.

Income-Contingent Repayment Plans

Pay As You Earn Initiative (ICR-A Plan)

Statute: Section 455(d)(1)(D) of the HEA authorizes the Secretary to offer an income-contingent repayment (ICR) plan with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years. Section 455(e) of the HEA authorizes the Secretary to establish ICR plan repayment schedules through regulations.

Current Regulations: Under current 34 CFR 685.209, the annual amount payable by a borrower under the ICR plan may not exceed 20 percent of the borrower's discretionary income, and the maximum ICR repayment period is 25 years. If a loan has not been repaid at the end of the 25-year period, the unpaid portion of the loan is forgiven.

Proposed Regulations: In October 2011, President Obama announced the Pay As You Earn repayment initiative to help student loan borrowers reduce their monthly payments. The Pay As You Earn initiative reflected in these proposed

Unofficial

regulations would be available to borrowers who: (1) did not have an outstanding loan under the Direct Loan or FFEL programs as of October 1, 2007, or as of the date they received a new loan after October 1, 2007; and (2) receive a disbursement of a Direct Subsidized Loan, a Direct Unsubsidized Loan or a student Direct PLUS Loan on or after October 1, 2011, or receive a Direct Consolidation Loan based on an application received on or after October 1, 2011, unless the Direct Consolidation Loan repays a Direct or FFEL loan that was outstanding as of October 1, 2007. The Pay As You Earn initiative reflected in these proposed regulations will cap a borrower's annual payment amount at 10 percent of the borrower's discretionary income and provide for forgiveness of any remaining loan balance after 20 years of repayment. These terms reflect changes to the separate income-based repayment (IBR) plan that will go into effect for new borrowers on or after July 1, 2014. To offer this repayment relief to borrowers earlier, the Secretary is using his authority to establish an ICR plan by regulation. The proposed regulations also make other changes to the ICR repayment plan to implement the Pay As You Earn initiative. The Secretary is proposing to implement the Pay As You Earn initiative as a new "ICR-A" plan in §685.209(a). However, the Secretary realizes that

Unofficial

for a small number of borrowers who would otherwise qualify for the IBR plan or the proposed ICR-A plan, the current ICR repayment plan may be more beneficial. Accordingly, the Secretary is proposing to retain the current ICR repayment plan as the "ICR-B plan," with certain changes as discussed below, in new §685.209(b).

The proposed ICR-A plan would generally have the same terms and conditions as the IBR plan that will be available to new borrowers on or after July 1, 2014. The terms and conditions of the proposed ICR-A plan include the following:

- A borrower's maximum annual payment amount would be capped at 10 percent of the difference between the borrower's AGI and 150 percent of the annual poverty guideline amount for the borrower's State and family size.
- Borrowers who repay under the ICR-A plan would qualify for forgiveness of any remaining loan balance after 20 years of qualifying payments and periods of economic hardship deferment.
- To initially qualify and to continue to make income-contingent payments under the plan, a borrower would be required to have a partial financial hardship. A borrower would be

Unofficial

considered to have a partial financial hardship if the annual amount due on all of the borrower's eligible Direct Loan and FFEL program loans, as calculated based on a standard repayment plan with a 10-year repayment period, exceeds 10 percent of the difference between the borrower's AGI and 150 percent of the annual poverty guideline amount for the borrower's State and family size.

- For married borrowers who file a joint Federal tax return, the determination of a borrower's partial financial hardship status would be based on the combined income of both spouses and, if the spouse also has eligible loans, the combined eligible loan debt of both individuals. For a married borrower who files an individual Federal tax return, only the borrower's income and loan debt would be considered.
- The ICR-A plan will be available to any borrower who is repaying a non-defaulted Direct Loan, except for a parent Direct PLUS loan or a Direct Consolidation loan that repaid a parent Direct or FFEL PLUS loan. As with IBR, parent Direct PLUS Loans and Direct Consolidation Loans that repaid

Unofficial

parent Direct PLUS Loans or parent Federal PLUS Loans would not be eligible for repayment under the ICR-A plan.

- The term "eligible loan" would be defined as including any outstanding non-defaulted Direct Loan or FFEL program loan, except for a parent Direct PLUS loan, a parent Federal PLUS Loan, or a Direct Consolidation Loan or Federal Consolidation Loan that repaid a parent Direct PLUS Loan or parent Federal PLUS loan. The term "eligible loan" is used in connection with determining whether a borrower has, or continues to have, a partial financial hardship and, for a borrower who has eligible loans with more than one loan holder, to determine the borrower's prorated monthly payment amount under the ICR-A plan.
- Unpaid accrued interest would be capitalized only if a borrower repaying under the ICR-A plan is determined to no longer have a partial financial hardship, or if the borrower chooses to leave the ICR-A plan.
- For a borrower whose scheduled payment is less than the amount of interest that accrues each

Unofficial

month on a subsidized loan or on the subsidized portion of a consolidation loan, the Secretary would not charge the borrower the remaining interest for a period of three consecutive years from the date the borrower begins repayment under the ICR-A plan, excluding periods of economic hardship deferment.

The ICR-A plan would also include certain changes that we are proposing to make to the IBR plan as discussed below under "Income-Based Repayment Plan." Other terms and conditions of the proposed ICR-A plan are explained below.

Reasons: To support the Administration's goal of making it easier for borrowers to repay their Federal student loans, the Secretary is using his authority under section 455(d)(1)(D) of the HEA to implement the Pay As You Earn initiative as a second type of ICR plan in the Direct Loan Program.

Access to the ICR-A Plan

Statute: Under section 455(d)(1)(D) of the HEA, the ICR plan is available to repay any Direct Loans except for Direct PLUS Loans made to parent borrowers.

Current Regulations: Current regulations in §685.208(a) provide that all Direct Loan borrowers except parent Direct

Unofficial

PLUS Loan borrowers may repay their loans under the ICR plan.

Proposed Regulations: The proposed regulations would amend the provisions in §685.208(a) related to borrower eligibility for the various Direct Loan repayment plans by adding a reference to the ICR-A plan and by providing that any type of Direct Loan could be repaid under the ICR-A plan except for a parent Direct PLUS Loan or a Direct Consolidation Loan that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan. In the regulations governing the ICR plan, proposed §685.209(a) would provide that the ICR-A plan is available to borrowers who meet both of the following criteria:

(1) Did not have an outstanding loan under the Direct Loan or FFEL programs as of October 1, 2007, or as of the date they received a new loan after October 1, 2007; and

(2) Receive a disbursement of a Direct Subsidized Loan, a Direct Unsubsidized Loan or a student Direct PLUS Loan on or after October 1, 2011, or receive a Direct Consolidation Loan based on an application received on or after October 1, 2011, unless that Direct Consolidation Loan repays a Direct or FFEL loan that was outstanding as of October 1, 2007.

Unofficial

Reasons: The Department is proposing to make the ICR-A plan available to new borrowers in fiscal year 2008 who receive a new loan in fiscal year 2012 or later. Fiscal years 2008 and 2012 began on October 1, 2007, and October 1, 2011, respectively. The proposed definition of "eligible new borrower" in §685.209(a)(1)(iii) as an individual who had no outstanding balance on a Direct Loan or FFEL program loan as of October 1, 2007, or who had no outstanding balance on such a loan on the date the borrower obtained a loan after October 1, 2007, is consistent with the manner in which eligibility for the Direct Loan and FFEL teacher loan forgiveness programs is specified under §§685.217(a)(1) and 682.216(a)(1), respectively. To ensure that new borrowers in fiscal year 2008 who are enrolled during the 2011-2012 academic year can qualify for the ICR-A plan, the proposed regulations would specify that receipt of a new loan in fiscal year 2012 or later means receipt of any disbursement of a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a student Direct PLUS Loan on or after October 1, 2011. This means, for example, that a new borrower in 2008 who received the first disbursement of a 2011-2012 academic year loan in August or September 2011 (i.e., in fiscal year 2011) and who will graduate in the spring of 2012 would nonetheless be eligible for the ICR-A

Unofficial

plan if a subsequent disbursement of that loan is made on or after October 1, 2011, in fiscal year 2012. The Department believes that offering the ICR-A plan to this population will provide a significant benefit to a group of student loan borrowers who are among those most likely to face difficulty repaying their loans under other repayment plans, while at the same time limiting additional costs to taxpayers.

The proposed regulations would also allow a borrower to choose the ICR-A plan if the borrower takes out a Direct Consolidation Loan on or after October 1, 2011. The Department originally proposed that a borrower could meet the requirement to receive a new loan in fiscal year 2012 or later by receiving a Direct Consolidation Loan based on an application received on or after October 1, 2011. In response to a request for clarification from a non-federal negotiator, the Department expanded the original proposal to clarify that an individual who receives a Direct Consolidation Loan based on an application received on or after October 1, 2011, is not eligible for the ICR-A plan if the Direct Consolidation Loan repays a loan that would otherwise make the borrower ineligible based on the requirement to be a new borrower as of October 1, 2007. For example, a borrower could not qualify for the ICR-A

Unofficial

plan by obtaining a Direct Consolidation Loan (based on an application received on or after October 1, 2011) that repays earlier loans made to the borrower that were owed as of October 1, 2007. However, a borrower who had no outstanding balance on a Direct Loan or a FFEL program loan at the time the borrower obtained new loans after October 1, 2007, could qualify for ICR-A if he or she receives a Direct Consolidation Loan based on an application received on or after October 1, 2011, that repays the earlier loans made after October 1, 2007.

Interest Capitalization Under the ICR-A Plan

Statute: Section 455(e)(5) of the HEA authorizes the Secretary to promulgate regulations limiting the amount of interest that may be capitalized on loans repaid under the ICR plan and specifying the timing of capitalization under the plan.

Current Regulations: Under §685.202(b)(4), generally the Secretary capitalizes unpaid interest annually for borrowers repaying under the ICR plan. Current §685.209(c)(5) further provides that if a borrower's monthly payment under the ICR plan is less than the accrued interest, the unpaid interest is capitalized until the outstanding principal amount is 10 percent greater than the original principal amount. After the outstanding principal

Unofficial

amount is 10 percent greater than the original amount, interest continues to accrue but is not capitalized.

Proposed Regulations: Under proposed §685.209(a)(2)(iv)(A), for borrowers repaying a Direct Loan under the ICR-A plan, unpaid accrued interest would be capitalized, as under the IBR plan, when a borrower is determined to no longer have a partial financial hardship or when a borrower chooses to leave the ICR-A plan. However, proposed §685.209(a)(2)(iv)(B) would limit the amount of interest that is capitalized while a borrower is repaying under the ICR-A plan to 10 percent of the loan principal balance at the time the borrower entered the ICR-A plan. For borrowers who remain on the ICR-A plan after the 10 percent limit has been reached, interest would continue to accrue but would not be capitalized.

Reasons: Some of the non-Federal negotiators asked the Department to consider a proposal to cap the amount of interest and fees that may be charged to borrowers under both the ICR plan (including the proposed ICR-A plan) and the IBR plan at 150 percent of the loan principal amount. The negotiators suggested that this approach could be implemented at no additional cost to the taxpayer because it would not reduce the total amount paid by a borrower under the ICR or IBR plan but would lower the total loan

Unofficial

amount forgiven at the end of the ICR or IBR repayment period. This would benefit borrowers by reducing the loan amount that could potentially be treated as taxable income if a borrower ultimately receives ICR or IBR loan forgiveness.

The Department considered this proposal but determined that Secretary does not have the authority under the HEA to stop charging interest to borrowers under the ICR or IBR plans after the amount of accrued interest has reached a certain percentage of the loan principal.

Under the FFEL Program, lenders would have a contractual right to payment of the interest that would otherwise accrue on a loan but which would be capped prior to loan forgiveness under the proposal from the non-Federal negotiators. This would involve making significant Federal outlays to FFEL lenders that the Secretary does not have the legal authority to make.

As an alternative, the Department proposed to include in the ICR-A regulations a provision comparable to the current ICR provision that limits the amount of interest that may be capitalized to 10 percent of the original principal amount. Under the proposed regulations for the ICR-A plan, unpaid accrued interest would be capitalized (as under the IBR plan) when a borrower is determined to no

Unofficial

longer have a partial financial hardship or chooses to leave the ICR-A plan. However, the amount of accrued interest that may be capitalized when a borrower is determined to no longer have a partial financial hardship would be limited to 10 percent of the original loan principal balance when the borrower entered repayment under ICR-A. For borrowers who remain on the ICR-A plan, interest would continue to accrue after the 10 percent limit on capitalization has been reached, but there would be no further capitalization. If a borrower chooses to leave the ICR-A plan, the 10 percent limit on capitalization of interest would not apply.

Borrower Options After Leaving the ICR-A Plan

Statute: Section 455(d)(3) of the HEA provides that a Direct Loan borrower may change repayment plans under such terms and conditions as may be established by the Secretary.

Current Regulations: Direct Loan borrowers, including borrowers repaying their loans under the ICR plan, are subject to the requirements of §685.210(b) that govern changing repayment plans in the Direct Loan program. The regulations provide that a borrower may change his or her repayment plan at any time after the loan enters repayment by notifying the Secretary but may not change to a

Unofficial

repayment plan that has a maximum repayment period of less than the number of years the loan has already been in repayment. For example, a borrower who has paid for 13 years under the extended repayment plan or the ICR plan cannot then change to the 10-year standard repayment plan. Borrowers may, however, change to the ICR or IBR plans at any time. A borrower who is repaying a defaulted loan under the ICR plan may not change to another repayment plan unless the borrower was required to and made an ICR payment on the loan in each of the three prior months, or the borrower was not required to make an ICR payment but made three reasonable and affordable payments on the loan in each of the three prior months, and the Secretary approves the borrower's request to change repayment plans. Current regulations provide that if a borrow changes to a different repayment plan, the repayment period under the new plan is calculated from the date the loan initially entered repayment, except that if a borrower changes to the ICR plan or the IBR plan, the repayment period is determined in accordance with the regulations for those repayment plans.

Proposed Regulations: The proposed regulations for the ICR-A plan in §685.209(a)(4)(ii), consistent with current ICR regulations, would provide that a borrower who wishes

Unofficial

to leave the ICR-A repayment plan may change to a different repayment plan in accordance with the provisions in §685.210(b) that are described earlier under "Current Regulations."

Reasons: As previously explained, the proposed ICR-A plan shares many of the features of the IBR plan. As a result, the Department initially proposed requiring borrowers who choose to leave the ICR-A plan to repay under the standard repayment plan, as IBR borrowers are required to do under section 493C(b)(8) of the HEA. However, several non-Federal negotiators pointed out that the ICR plan is not governed by a statutory requirement comparable to the statutory requirement for borrowers repaying under the IBR plan. Those negotiators argued that imposing such a regulatory requirement on ICR-A borrowers would pose a hardship on borrowers and be an unnecessary impediment to a borrower being able to leave the ICR-A plan and begin immediate repayment under another plan that may be better suited to the borrower's individual circumstances. After further consideration, the Department modified the proposed ICR-A regulations to reflect the same regulatory approach to changing repayment plans that applies to borrowers repaying under the existing ICR plan (the proposed ICR-B plan).

Unofficial

Current ICR Plan (ICR-B Plan)

Borrower Access to the ICR-B Plan

Statute: Section 455(d)(1) of the HEA requires the Secretary to offer Direct Loan borrowers a variety of repayment plans. The repayment plans offered include a standard repayment plan, a graduated repayment plan, an extended repayment plan for certain borrowers, an ICR plan (except for parent Direct PLUS loan borrowers), and beginning July 1, 2009, an IBR plan (except for parent Direct PLUS Loan borrowers and borrowers of Direct Consolidation Loans that repaid parent Direct PLUS Loans or parent Federal PLUS Loans). The ICR plan must provide for the payment of varying annual repayment amounts based on the income of the borrower paid over an extended period of time prescribed by the Secretary, not to exceed 25 years. Section 455(d)(2) of the HEA authorizes the Secretary to designate the standard, graduated, or extended repayment plan for a borrower who fails to choose a repayment plan, and section 455(d)(4) of the HEA authorizes the Secretary to provide, on a case-by-case basis, an alternative repayment plan if none of the available repayment plans are adequate to address a borrower's exceptional circumstances.

Current regulations: Under §685.208(a), the existing ICR plan (referred to in these proposed regulations as the ICR-

Unofficial

B plan) is available to all Direct Loan borrowers except for parent borrowers of Direct PLUS loans. The Department's regulations do not include any other limitations on borrower access to the ICR plan. Section 685.209(c)(7)(iv) provides that if a borrower fails to provide consent for the Secretary to obtain tax return information necessary for the Secretary to determine the borrower's ICR monthly payment amount, the Secretary designates the standard repayment plan for the borrower.

Proposed Regulations: Proposed §§685.208(a) would allow a Direct Loan borrower (other than a parent Direct PLUS borrower) to continue to be able to select the ICR-B plan as one of the available repayment plans.

Reasons: The Department initially proposed to limit borrower access to the ICR-B plan, after implementation of the ICR-A plan, to those borrowers who would not otherwise have access to any other "income-driven" repayment plan (i.e., the current IBR plan, the IBR plan for new borrowers on or after July 1, 2014, or the proposed ICR-A plan). The Department believed that having too many income-driven repayment plans would be confusing to borrowers and would make it more difficult for them to determine which plan would best meet their needs. The Department also believed that offering multiple income-driven plans with similar

Unofficial

terms and conditions would make it more difficult for the Department to promote these plans and to inform borrowers of the benefits available under each plan. However, several non-Federal negotiators stated that maintaining the fullest possible menu of repayment plan options would be in the best interests of borrowers. These negotiators felt that some borrowers, even those who qualify for the IBR or ICR-A plans, may view the ICR-B repayment plan as simpler and a better fit for them, and therefore full access to the current ICR plan should be retained. After further consideration of this issue, the Department decided to retain full borrower access to the ICR-B repayment plan.

Table 1 summarizes the borrower eligibility requirements for the current IBR plan, the proposed IBR plan revisions for new borrowers on or after July 1, 2014, the proposed ICR-A plan, and the current ICR plan (proposed ICR-B plan):

Unofficial

Table 1: Eligibility for Income-Driven Repayment Plans				
	CURRENT IBR	**PROPOSED REVISED IBR (WITH 07/01/2014 STATUTORY CHANGES)**	**PROPOSED ICR-A**	**CURRENT ICR (PROPOSED ICR-B)**
Loan Program and Eligible Borrowers	• Direct Loan Program • FFEL Program	• Direct Loan Program only • Only new borrowers as of July 1, 2014: ○ Must have no outstanding Direct Loan or FFEL balance as of July 1, 2014 or on the date a new Direct Loan is received after July 1, 2014	• Direct Loan Program only • Only new borrowers in 2008 who receive a Direct Loan disbursement in 2012 or later: ○ Must have no outstanding Direct Loan or FFEL balance as of October 1, 2007 or on the date a new Direct Loan or FFEL Program loan is received after October 1, 2007; <u>and</u> ○ Must receive a disbursement of a Direct Loan on/after October 1, 2011, or receive a Direct Consolidation Loan based on an application received on/after October 1, 2011 • FFEL new borrowers in 2008 may qualify through consolidation into the Direct Loan Program	• Direct Loan Program only • FFEL borrowers may qualify through consolidation into the Direct Loan Program

Unofficial

The Department will make information available to borrowers to assist them in understanding their repayment plan options and determining their eligibility for the various income-driven plans.

Treatment of Married Borrowers under the ICR-B Plan

Statute: Section 455(e)(2) of the HEA provides for an income-contingent repayment plan with a repayment amount based on the borrower's AGI or, if the borrower is married and files a joint Federal income tax return, based on the adjusted gross income (AGI) of the borrower and the spouse. In accordance with section 455(e)(3) of the HEA, if the AGI of a borrower repaying under the income-contingent repayment plan is unavailable or does not reasonably reflect the borrower's current income, the borrower is required to provide other documentation of income acceptable to the Secretary, and the Secretary uses that documentation to determine the repayment amount.

For the IBR plan, section 493C(d) of the HEA provides that if a married borrower repaying under the IBR plan files a separate Federal income tax return from his or her spouse, only the borrower's AGI is used to determine the borrower's IBR payment amount.

Current Regulations: Under current §685.209(b)(1), if a married borrower chooses to repay under the income-

Unofficial

contingent repayment plan, the AGI for both spouses is used to calculate the borrower's monthly payment amount, regardless of whether the borrower and spouse file a joint Federal income tax return or separate Federal tax returns. If a married borrower files a separate Federal income tax return from his or her spouse, the borrower's spouse must provide consent for the disclosure of the spouse's income.

Proposed Regulations: Proposed §685.209(b)(2)(i) would provide that if a married borrower repaying under the ICR-B plan files a Federal income tax return separately from his or her spouse, only the borrower's AGI would be used to determine the borrower's monthly ICR-B payment amount. The joint income of both spouses would be used only if the borrower files a joint Federal income tax return.

Reasons: The treatment of married borrowers under the current ICR plan regulations is based on section 455(e)(3) of the HEA, which allows the Secretary to use other documentation of income provided by the borrower to determine the ICR payment amount if the borrower's AGI does not reasonably reflect the borrower's current income. At the time the current ICR regulations were developed, the Department believed that if a married borrower filed a separate tax return from his or her spouse, using only the borrower's AGI would not provide for an accurate

Unofficial

determination of the monthly amount the borrower could afford to repay.

Accordingly, the current ICR regulations provide for consideration of the combined incomes of both spouses, even when married borrowers file separate Federal income tax returns. In contrast, the HEA provides that for a married borrower who chooses to repay under the IBR plan, the combined income of the borrower and the borrower's spouse is used to determine the monthly IBR payment amount only if the borrower and spouse file a joint Federal income tax return. To provide for consistent treatment of married borrowers in all of the repayment plans under which the monthly payment amount is based on the borrower's income, the Department believes it is appropriate to amend the regulations for the current ICR plan so that if a married borrower repaying under the ICR-B plan files a Federal income tax return separately from his or her spouse, only the borrower's AGI would be used to determine the borrower's monthly ICR-B payment amount. The joint income of both spouses would be used only if the borrower files a joint Federal income tax return.

Borrowers Repaying under the ICR-B Plan Who Fail to Provide Required Documentation of Income

Unofficial

Statute: The HEA does not address the treatment of borrowers repaying under the ICR plan who fail to provide the annual income information required by the Secretary to determine the monthly ICR payment amount.

Current Regulations: Current §685.209(c)(7)(iv) provides that if a borrower selects the ICR plan but fails to provide the required consent to the disclosure of income information, fails to renew a previously provided written consent after it has expired, or withdraws consent and does not select another repayment plan, the Secretary designates the standard repayment plan for the borrower. For the IBR plan, current §685.221(e)(2) provides that, under these same circumstances , the Secretary recalculates the borrower's monthly payment and the maximum recalculated amount the borrower is required to repay is the amount that would be required under a standard repayment plan with a 10-year repayment period, based on the amount of the borrower's loans that were outstanding at the time the borrower selected the IBR plan. In such cases, the repayment period based on the recalculated payment amount may exceed 10 years.

Proposed Regulations: Under proposed §685.209(b)(3)(vi)(D), a borrower currently repaying under the ICR-B plan who fails to provide the annual income

information needed to determine the borrower's monthly payment amount would be treated the same as a borrower repaying under the IBR plan who does not provide the required information needed to determine the IBR payment amount, as described in the prior discussion of the current regulations and explained in the following discussion of changes to the IBR plan.

Reasons: Under the current regulations, a borrower repaying under ICR who does not provide the require consent to disclosure of income information is required to repay under the standard repayment plan. However, in some cases, a borrower may have been in repayment under the ICR plan longer than the maximum repayment period under the standard repayment plan. Placing the borrower on the standard repayment plan would thus conflict with the provision in §685.210(b) that prohibits a borrower from changing to a repayment plan with a maximum repayment period of less than the number of years the borrower's loan has already been in repayment. The proposed regulations address this issue by conforming the ICR-B regulations with the current IBR regulations governing the treatment of borrowers who fail to provide required income documentation and provide greater consistency in the treatment of borrowers under the various income-driven repayment plans.

Unofficial

Other Changes to the Current ICR Plan (ICR-B Plan)

Statute: The HEA does not address the changes discussed in this section.

Current Regulations: Final regulations published on October 23, 2008 (73 FR 63232), inadvertently deleted §685.209(c)(4)(iii), (iv), and (v) from the ICR plan regulations. Paragraph (c)(4)(iii) provided that if a borrower repays more than one loan under the ICR plan, a separate repayment period for each loan begins when that loan enters repayment. Paragraph (c)(4)(iv) stated that if a borrower has not repaid a loan in full at the end of the 25-year repayment period, the Secretary cancels the unpaid portion of the loan. Paragraph (c)(4)(v) provided that at the beginning of the repayment period under the ICR plan, a borrower is required to make monthly payments of the amount of interest that accrues until the Secretary calculates the monthly payment amount based on the borrower's income.

Current §685.209(c)(2) specifies that the Secretary requires alternative documentation of income from borrowers in their first and second years of repayment, when the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income.

Current §685.209(c)(7) requires a borrower who repays under the ICR plan to provide written consent to the

Unofficial

disclosure of certain tax return information by the Internal Revenue Service (IRS) to the Secretary for purposes of determining the borrower's ICR payment amount. A borrower is required to provide consent for a period of five years.

Proposed Regulations: The proposed regulations restore the provisions inadvertently deleted from §685.209(c)(4)(iii) through (v) in 2008 and place them in new §§685.209(b)(1)(x), (b)(3)(iii)(C), and (b)(3)(iii)(D). The proposed regulation would remove the current provision in §685.209(c)(2) related to alternative documentation of income for borrowers in their first and second year of repayment. In addition, the proposed regulations would replace the IRS consent requirement in current §685.209(c)(7) with a more general requirement in new §685.209(b)(3)(vi) for the borrower to provide acceptable documentation, as determined by the Secretary, of the borrower's AGI.

Reasons: Restoring the three deleted provisions corrects a technical error resulting from the October 23, 2008 final regulations. The Department believes that the current provision in §685.209(c)(2) is unnecessary, since current §685.209(c)(1) (to be retained as proposed §685.209(b)(3)) already permits the Secretary to require alternative

Unofficial

documentation of income if a borrower's AGI does not reasonably reflect current income.

The Department is proposing to replace the current IRS consent requirement with a requirement for the borrower to provide acceptable documentation of AGI because the existing consent regulations no longer reflect current operational procedures in the Direct Loan Program. The consent process described in current §685.209(c)(7) was developed in consultation with the IRS at the beginning of the Direct Loan Program. However, there have been increasing delays in obtaining information from the IRS. The Secretary now obtains the necessary income information for most borrowers repaying under ICR through other means, such as by having borrowers submit copies of their most recently filed Federal income tax returns. The proposed rules are consistent with that practice. Further, the proposed regulation is consistent with efforts the Department is currently undertaking to streamline the application and income verification process, by working with the IRS, so that borrowers can more easily enroll and participate in the ICR and IBR repayment plans.

Income-Based Repayment Plan

Unofficial

Partial Financial Hardship (34 CFR 685.221(a)(5)), Income-Based Payment Amount (§685.221(b)(1)), and Loan Forgiveness Period (§685.221(f))

Statute: Section 493C of the HEA authorized the IBR plan for Direct Loan and FFEL program borrowers. To initially qualify for the IBR plan and to continue to make income-based payments under that plan, a borrower must have a partial financial hardship. Section 493C(a)(3) of the HEA provides that a borrower has a partial financial hardship if the annual amount due on all of the borrower's eligible Direct Loan and FFEL program loans, as calculated based on a standard repayment plan with a 10-year repayment period, exceeds 15 percent of the difference between the borrower's adjusted gross income (AGI) and 150 percent of the annual poverty guideline amount for the borrower's family size and State. During any period when a borrower who is repaying under the IBR plan has a partial financial hardship, the borrower's monthly loan payment may not exceed 15 percent of the difference between the borrower's AGI and 150 percent of the applicable annual poverty guideline amount, divided by 12.

Section 493C(b)(7) of the HEA provides that a borrower who has participated in the IBR plan qualifies for forgiveness of any remaining loan balance after making

qualifying payments (including periods of economic hardship deferment) over a period of time prescribed by the Secretary, not to exceed 25 years.

The SAFRA Act included in the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) made two changes to the terms and conditions of the IBR plan. First, section 2213 of the SAFRA Act amended section 493C(a)(3) of the HEA by changing the percentage used in the formula for determining whether a borrower has a partial financial hardship and for calculating the maximum IBR payment amount during periods of partial financial hardship from 15 percent to 10 percent. Second, the maximum repayment period after which a borrower repaying under the IBR plan qualifies for forgiveness of any remaining loan balance was changed from 25 years to 20 years. These amendments apply only to new Direct Loan borrowers on or after July 1, 2014. For all other borrowers repaying under IBR, the current 15 percent and 25-year provisions would continue to apply.

Current Regulations: The current IBR plan regulations in §685.221 reflect the 15 percent standard for determining whether a borrower has a partial financial hardship and for calculating the maximum IBR payment amount during periods of financial hardship. In this preamble, this income-based

Unofficial

monthly payment amount that applies during a period of partial financial hardship is referred to as the "monthly PFH payment amount." The current regulations also provide that a borrower qualifies for loan forgiveness after making the equivalent of 25 years of payments through a combination of qualifying payments and periods of economic hardship deferment.

Proposed regulations: Proposed §685.221(a)(4) would define "new borrower" for purposes of the changes to the IBR plan as an individual who has no outstanding balance on a Direct Loan or FFEL program loan on July 1, 2014, or who has no outstanding balance on such a loan on the date he or she obtains a loan after July 1, 2014. This is consistent with the definition of "new borrower" as used for purposes of teacher loan forgiveness under §685.217(a)(1).

The proposed regulations would revise the definition of "partial financial hardship" in §685.221(a)(5) to reflect the statutory provision and state that for new borrowers after July 1, 2014, a borrower is considered to have a partial financial hardship if the annual amount due on all of the borrower's eligible Direct Loan and FFEL Program loans, as calculated based on a standard repayment plan with a 10-year repayment period, exceeds 10 percent of the difference between the borrower's AGI and 150 percent

Unofficial

of the annual poverty guideline amount for the borrower's family size. The proposed regulations would revise §685.221(b)(1) to provide that for a new borrower after July 1, 2014, the maximum IBR monthly payment amount during periods of partial financial hardship may not exceed 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline amount for the borrower's family size, divided by 12.

Finally, the proposed regulations would revise §685.221(f) to reflect the statutory changes made by the SAFRA Act and provide that a new borrower who has participated in the IBR plan qualifies for loan forgiveness after 20 years of qualifying payments and periods of economic hardship deferment.

Reasons: The proposed regulations implement statutory provisions that were added to the HEA by the SAFRA Act. Because the changes to the IBR plan made by the SAFRA Act apply only to new borrowers on or after July 1, 2014, and because the SAFRA Act ended the authority of lenders to make new loans under the FFEL Program effective July 1, 2010, the proposed changes apply only in the Direct Loan Program regulations.

In response to a request for clarification from one of the non-Federal negotiators, the Department clarified that

Unofficial

qualifying payments made during the 25-year or 20-year (as applicable) IBR repayment period do not have to be consecutive payments. Unless the regulations specifically state that payments must be consecutive to meet the requirements of a particular provision, it is intended that the payments need not be consecutive.

Repayment of Loans Under the IBR Plan

Statute: The HEA does not address the changes discussed in this section.

Current Regulations: For the Direct Loan Program, current §685.208(a)(4) requires that all of a borrower's Direct Loans be repaid under the same repayment plan unless a loan is not eligible for repayment under that plan. For the FFEL Program, current §682.215(b)(3) provides that if a borrower selects the IBR plan, the loan holder must require that all of the borrower's eligible loans owed to that holder be repaid under the IBR plan, unless the borrower requests otherwise.

Proposed Regulations: Proposed §682.215(b)(3) would require a borrower who chooses the IBR plan to repay all of his or her loans under the IBR plan, unless some of the borrower's loans are not eligible for repayment under IBR. As a result of this change, a borrower who chooses the IBR

Unofficial

plan would no longer be able to request that one or more IBR-eligible loans be excluded from that plan.

Reasons: The Department is proposing this change to provide consistency with the Direct Loan Program regulations.

Annual IBR Partial Financial Hardship Assessment

Statute: Section 493C(c) of the HEA provides for the Secretary to establish procedures for annually determining a borrower's eligibility to make income-based payments (i.e., to determine each year whether a borrower who initially qualified for the IBR plan continues to have a partial financial hardship). These procedures include verifying the borrower's annual income, verifying the annual amount due on the borrower's eligible loans, and any other procedures necessary to implement the IBR plan.

Under section 493C(b)(6) of the HEA, if a borrower repaying under the IBR plan is determined to no longer have a partial financial hardship or chooses to no longer make income-based payments, the borrower's monthly payment amount is recalculated and is no longer based on the borrower's income. In this situation, proposed §682.215(e)(8)(ii) provides the maximum recalculated monthly payment amount the borrower would pay on the borrower's eligible loans under a standard repayment plan

Unofficial

with a 10-year payment period, based on the loan amount owed at the time the borrower selected the IBR plan. The repayment period based on the recalculated payment amount may exceed 10 years. In accordance with section 493C(b)(3)(B) of the HEA, unpaid interest is capitalized if a borrower is determined to no longer have a partial financial hardship or chooses to stop making income-based payments.

Current Regulations: Under current §685.221(e)(1) and §682.215(e)(1), the Secretary or the FFEL loan holder determines whether a borrower has a partial financial hardship for the year the borrower selects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the Secretary or the loan holder requires the borrower to provide documentation of his or her income and to annually certify the borrower's family size.

Under current §685.221(e)(1)(i) and §682.215(e)(1)(i), the Secretary or the FFEL loan holder determines whether a borrower has a partial financial hardship by requiring the borrower to provide written consent to the disclosure of AGI by the IRS. If the borrower's AGI is unavailable or the Secretary or loan holder believes that the borrower's reported AGI does not reasonably reflect current income,

Unofficial

the Secretary or the loan holder may use other documentation provided by the borrower to verify income ("alternative documentation of income"). In subregulatory guidance issued in a June 12, 2009, electronic announcement posted on the Department's Information for Financial Aid Professionals website, the Department authorized FFEL loan holders to accept a signed copy of the borrower's most recently filed Federal income tax return as an alternative to requiring the borrower to provide written consent to the disclosure of AGI by the IRS. The Department adopted this same practice in the Direct Loan Program.

In accordance with current §685.221(e)(2) and §682.215(e)(2), if a borrower who is repaying under the IBR plan fails to renew the required consent to disclosure of AGI by the IRS, or withdraws consent and does not select another payment plan, the borrower's monthly payment amount is recalculated in accordance with §685.221(d)(1) or §682.215(d)(1). In addition, unpaid interest is capitalized in accordance with §685.221(b)(4) and §682.215(b)(5). The same treatment applies if a borrower fails to provide a copy of his or her most recently filed Federal tax return (if used as an alternative to written consent to disclosure of AGI) or fails to provide

Unofficial

alternative documentation of income if required to do so by the Secretary or the loan holder.

Sections 685.221(d)(1) and 682.215(d)(1) reflect the statutory requirement in section 493C(b)(6) of the HEA for the recalculation of a borrower's monthly payment amount if a borrower repaying under the IBR plan is determined to no longer have a partial financial hardship or chooses to stop making income-based payments. If a borrower fails to provide the required income documentation needed by the Secretary or the loan holder to determine whether the borrower continues to have a partial financial hardship, the borrower is considered to no longer have a partial financial hardship. The maximum recalculated monthly payment amount for a borrower who is determined to no longer have a partial financial hardship is the amount the borrower would be required to pay under a standard repayment plan with a 10-year payment period, based on the amount owed on the borrower's loans at the time the borrower selected the IBR plan. In this preamble, this recalculated payment amount is referred to as the "permanent standard amount."

Proposed Regulations: The proposed regulations would add several new written notifications to borrowers and other provisions related to the initial and annual determination

Unofficial

of partial financial hardship status and the consequences if a borrower fails to provide documentation of income or other information required for the annual partial financial hardship assessment. The proposed regulations would also modify the income documentation requirements and, for the FFEL Program, add a requirement for some married borrowers to provide the loan holder with information related to the eligible loan debt of the borrower's spouse. Finally, the proposed regulations would clarify the treatment of borrowers who request a change from another repayment plan to the IBR plan but who do not provide the information required to determine eligibility for the IBR plan.

Under proposed §685.221(e)(2) and §682.215(e)(2), the Secretary or the FFEL loan holder, after making a determination that a borrower has a partial financial hardship to qualify for the IBR plan for the year the borrower initially selects the plan and for any subsequent year that the borrower has a partial financial hardship, would send the borrower a written notification that would include the following information:

- The borrower's scheduled monthly PFH payment amount and the time period during which that monthly PFH payment amount will would apply ("annual payment period");

Unofficial

- Information about the requirement for the borrower to annually provide income information; in some cases for married FFEL Program borrowers, to provide information about the eligible loans of the borrower's spouse; and to certify family size, if the borrower chooses to remain on the IBR plan after the borrower's first year on the plan;
- An explanation that the borrower would be notified in advance of the date by which the Secretary or loan holder must receive this information;
- An explanation of the consequences if the borrower does not provide the required information each year;
- An explanation of the consequences if the borrower no longer wishes to repay under IBR; and
- Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary or the loan holder recalculate the borrower's monthly PFH payment amount if the borrower's financial circumstances have changed and the

Unofficial

income amount that was used to calculate the borrower's current monthly PFH payment amount no longer reflects the borrower's current income. If the monthly PFH payment amount is recalculated based on the borrower's request, the Secretary or the loan holder would send the borrower a written notification that includes the borrower's new calculated monthly PFH payment amount, new annual payment period, and the other information just described.

Under proposed new §685.221(e)(3) and §682.215(e)(3), for each subsequent year that a borrower repaying under the IBR plan has a partial financial hardship, the Secretary or the loan holder would establish the date by which the income information and other documentation required for the annual partial financial hardship assessment must be received ("annual deadline"), and would send the borrower a written notification in advance of the annual deadline informing the borrower of the annual documentation requirement. The proposed regulations would provide for the Secretary or the loan holder to send advance notification of the annual documentation requirement to the borrower no later than 60 days and no earlier than 90 days before the annual deadline. The annual deadline

Unofficial

established by the Secretary or the loan holder for receipt of the required documentation could not be earlier than 35 days before the end of the borrower's current annual payment period. The notification of the annual documentation requirement would have to include the following information:

- The annual deadline by which the Secretary or the loan holder must receive the required information; and
- The consequences if the Secretary or the loan holder does not receive the required information within 10 days following the annual deadline, including the borrower's recalculated permanent standard monthly payment amount, the effective date for the recalculated monthly payment, and an explanation that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period.

Proposed §685.221(e)(4) and §682.215(e)(4) would provide that each time the Secretary or the loan holder makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower remains on the IBR plan, the Secretary or the loan

Unofficial

holder would send the borrower a written notification that includes the following information:

- The borrower's recalculated permanent standard payment amount;
- An explanation that unpaid interest will be capitalized; and
- Information about the borrower's option to request, at any time, that the Secretary or the loan holder make a new determination of whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option.

If the Secretary or the loan holder determines that the borrower again has a partial financial hardship based on a borrower's request for redetermination, the Secretary or the loan holder would determine the borrower's new monthly PFH payment amount and send the borrower a written notification including the same information that is provided to a borrower when he or she is determined to have

Unofficial

a partial financial hardship to initially qualify for the IBR plan and again for any subsequent year that a borrower who has a partial financial hardship remains on the plan.

Under proposed §685.221(e)(5) and §682.215(e)(5), for each subsequent year that a borrower who does not have a partial financial hardship remains on the IBR plan, the Secretary or the loan holder would send a written notification to the borrower that includes information on the borrower's option to request, at any time, that the Secretary or the loan holder make a new determination of whether the borrower has a partial financial hardship, as described in the discussion of §685.221(e)(4) and §682.215(e)(4).

Proposed §685.221(e)(6) and §682.215(e)(6) would clarify that if a borrower who is currently repaying under another repayment plan selects the IBR plan but does not provide the information required by the Secretary or the loan holder to determine the borrower's eligibility for the IBR plan, the borrower would remain on his or her current repayment plan.

Under proposed §685.221(e)(7) and §682.215(e)(7), the Secretary or the loan holder would require a borrower to pay the permanent standard amount if a borrower currently repaying a monthly PFH payment amount remains on the plan

Unofficial

for a subsequent year, but the Secretary or the loan holder does not receive the information required for the annual partial financial hardship assessment within 10 days of the annual deadline previously provided to the borrower, unless the Secretary or the loan holder is able to determine the borrower's new monthly PFH payment amount before the end of the annual payment period.

Proposed §682.215(e)(8)(i) would require a loan holder to promptly determine a borrower's new monthly payment amount if the loan holder receives the information required for the annual partial financial hardship assessment within 10 days of the annual deadline provided to the borrower. If the information is received within 10 days of the annual deadline, but the loan holder does not determine the borrower's new monthly payment amount by the end of the borrower's current annual payment period, the proposed regulations would prohibit the loan holder from converting the borrower's monthly payment to the permanent standard amount and would require the loan holder to maintain the borrower's current scheduled monthly PFH payment amount until the new monthly payment amount is calculated.

Under proposed §682.215(e)(8)(ii), if the loan holder calculates a new monthly PFH payment that is less than the borrower's previously calculated monthly PFH payment

Unofficial

amount, the loan holder would be required to make the appropriate adjustment to the borrower's account to reflect the additional amounts resulting from any payments at the previously calculated monthly PFH payment amount that the borrower made after the end of the most recent annual payment period. Unless the borrower requests otherwise, the loan holder would not apply the additional amounts to future monthly payments.

The proposed regulations would require the loan holder to apply any excess payment amounts made after the end of the most recent annual payment period in accordance with the IBR payment application rules in §682.215(c)(1). The excess payment amounts would be applied in the following order: accrued interest; collection costs; late charges; loan principal. Appropriate adjustments would also include, but are not limited to, adjustments to the lender's interest subsidy and special allowance billings based upon the new monthly PFH payment amount, and establishing a new annual payment period beginning on the day after the prior annual payment period ended to ensure that the annual date for determining whether a borrower continues to have a partial financial hardship remains the same.

Unofficial

Under proposed §682.215(e)(8)(iii), if the new monthly payment amount is equal to or greater than the borrower's previously calculated monthly PFH payment amount, the loan holder would not make any adjustments to the borrower's account to make up the difference between a prior lower monthly PFH payment amount that the borrower continued to make after the end of the previous annual payment period and the borrower's new higher monthly payment. Proposed §685.221(e)(8) would establish requirements in the Direct Loan Program comparable to the FFEL Program requirements in proposed §682.215(e)(8)(i) through (iii).

Proposed §682.215(e)(9) would provide that if a loan holder receives the information required for the annual partial financial hardship assessment more than 10 days after the specified annual deadline provided to the borrower and the borrower's monthly payment amount is converted to the permanent standard amount, the loan holder may grant forbearance with respect to any payments that are overdue or that would be due at the time the new calculated monthly PFH payment amount is determined, but only if the new calculated monthly PFH payment amount is zero or is less than the borrower's previously calculated monthly PFH payment amount.

Unofficial

If forbearance is granted, capitalization of interest at the end of the forbearance period would be limited to the interest accrued during the portion of the forbearance covering past-due payments before the end of the prior annual payment period that was capitalized at the time of conversion of the borrower's payment to the permanent standard amount. Interest that accrues during the portion of the forbearance period that covers payments that are overdue after the end of the prior annual repayment period would not be capitalized.

Proposed §685.221(e)(9)(i) would establish the same requirements in the Direct Loan Program. In addition, proposed §685.221(e)(9)(ii) would specify that any payments a borrower continued to make at the previously calculated monthly PFH payment amount after the end of the prior annual payment period and before the new monthly PFH payment amount is calculated are considered to be qualifying payments for purposes of the public service loan forgiveness program under §685.219, provided that the payments otherwise meet the eligibility requirements of that program. These payments would also count for purposes of IBR loan forgiveness.

With regard to documentation of income, proposed §685.221(e)(1)(i) and §682.215(e)(1)(i) would amend current

Unofficial

regulations by replacing the requirement that a borrower provide consent to the disclosure of AGI by the IRS with a general requirement for the borrower to provide documentation, acceptable to the Secretary or to the loan holder, of the borrower's AGI. Proposed §685.221(e)(1)(ii) and §682.215(e)(1)(ii) would retain the current provision requiring a borrower to provide other documentation of income if the borrower's AGI is not available or if the borrower's AGI does not reasonably reflect the borrower's current income.

Proposed §682.215(e)(1)(iii) would specify that if the spouse of a married borrower who files a joint Federal income tax return has eligible loans and the loan holder does not hold at least one of the spouse's eligible loans, either the borrower's spouse must provide consent for the loan holder to access information about the spouse's eligible loans in the National Student Loan Data System (NSLDS), or the borrower must provide other documentation, acceptable to the loan holder, of the spouse's eligible loan information.

The proposed changes described in this section would also be incorporated, where applicable, in the proposed regulations for the ICR-A plan and the ICR-B plan.

Unofficial

Reasons: The Department's current regulations do not require that borrowers be notified each year in advance of the annual requirement to provide income information and certify family size, nor do current regulations specify a deadline by which the borrower must provide this information before the borrower's current monthly PFH payment amount is converted to the permanent standard amount. During the public comment period prior to the beginning of the formal negotiated rulemaking sessions, the Department received numerous comments suggesting that not all loan holders currently notify borrowers in advance of the annual documentation requirement, and that there are inconsistencies among loan holders in the amount of time that borrowers are given to provide the required income information. As a result, some borrowers who continue to have a partial financial hardship have their payments converted to the permanent standard amount because they were not aware that it was time for their annual partial financial hardship assessment, or because they were not given sufficient time to provide the required income information.

During the negotiated rulemaking sessions, some non-Federal negotiators recommended that the proposed regulations include an explicit requirement for loan

Unofficial

holders to promptly determine whether a borrower continues to have a partial financial hardship upon receipt of the required income documentation from the borrower. The borrower notification requirements included in these proposed regulations are intended to address these concerns. They ensure that a borrower would be notified of the annual documentation requirement, and of the consequences if the borrower does not comply, at the time he or she is initially determined eligible for the IBR plan. A borrower who remains on the IBR plan and currently has a partial financial hardship would be notified of the annual documentation requirement in advance of the annual deadline for providing the required information needed to determine whether he or she continues to have a partial financial hardship. The proposed regulations for the FFEL Program would also require loan holders to promptly determine a borrower's new monthly payment amount after receiving the required income information from the borrower. The Secretary would apply the same requirement in the Direct Loan program.

The proposed regulations would also provide for more consistent treatment of borrowers by specifying the earliest date that may be established as the annual deadline for a borrower to provide the annual documentation

Unofficial

and by specifying the latest and earliest dates prior to the annual deadline that a borrower may be notified of the requirement to provide the documentation.

The Department initially proposed that the annual notification reminding borrowers of the upcoming deadline for submitting income documentation could be sent no later than 60 days before the annual deadline established by the Secretary or the loan holder. Some of the non-Federal negotiators, while supportive of this notification requirement, expressed concerns that this would allow for the notification to be sent too far in advance of the annual deadline for it to be effective. The Department agreed that it would be appropriate to place a limit on how early the notification may be sent and modified the proposed regulatory language to specify that the notification may be sent no later than 60 days and no earlier than 90 days before the annual deadline.

During the first negotiated rulemaking session, some of the non-Federal negotiators recommended that the proposed regulations provide a borrower with a three-month "grace period" following the end of the borrower's current annual repayment period during which the borrower could provide the required income documentation without being subject to conversion to the permanent standard payment

Unofficial

amount and capitalization of unpaid interest. A borrower who submitted the required documentation during the grace period would continue making his or her existing monthly PFH payment amount until the loan holder calculated the new payment amount. Once the loan holder calculated the new payment amount, the borrower's account would be adjusted if the borrower was determined to continue to have a partial financial hardship. Specifically, the recommendation from the non-Federal negotiators provided for reimbursement to the borrower if, during the grace period, the borrower had continued to make payments at the previously scheduled amount that were greater than the new payment amount. The recommendation also provided that any underpayment during the grace period (if the borrower continued to make payments at the previously scheduled monthly PFH payment amount that were less than the new monthly PFH payment amount) would be distributed evenly across the borrower's payments for the current annual payment period.

At the second negotiated rulemaking session, the Department presented proposed regulatory language that provided borrowers with a 60-day grace period following the end of the borrower's current annual payment period to submit the required income documentation to the Secretary or the loan holder. Under this proposal, a borrower's

Unofficial

previously scheduled monthly PFH payment amount would have been continued during the grace period, with no conversion to the permanent standard amount unless the borrower did not provide the required documentation until after the end of the 60-day grace period. The Department's proposal did not provide for any adjustments to the borrower's account once the borrower's new monthly payment had been calculated.

Some non-Federal negotiators representing loan holders and servicers indicated that the proposed regulations providing for a grace period could be difficult to implement, since most loan holders' systems are set up to automatically convert a borrower's scheduled monthly PFH payment amount to the permanent standard payment amount at the end of the borrower's current 12-month annual payment period, if the borrower's new scheduled monthly PFH payment amount has not been calculated prior to that date. In addition, the same non-Federal negotiators noted that the proposed grace period approach would cause the ending date of the borrower's current annual payment period to shift every year if the previously scheduled monthly PFH payment amount had to be maintained for up to an additional 60 days after the end of original annual payment period,

Unofficial

potentially causing confusion for borrowers and requiring loan holders to make significant systems changes.

These non-Federal negotiators presented an alternative proposal that provided for loan holders to notify borrowers of the deadline by which the loan holder must receive the required information for the annual partial financial hardship assessment. If the loan holder received the required information by the deadline and the borrower was determined to continue to have a partial financial hardship, the loan holder would be required either to prevent the conversion of the borrower's monthly payment to the permanent standard amount or remediate the consequences of such a conversion for the borrower. The proposal did not specify what would constitute remediation of a conversion to the permanent standard payment amount.

This proposal from the loan holders and servicers further provided that a loan holder could grant forbearance with respect to any payments that were overdue or would be due upon the loan holder's determination that a borrower continued to have a partial financial hardship, if the determination resulted in a new monthly PFH payment amount of zero. In addition, the proposal allowed for loan holders to grant forbearance to borrowers who were not more than 120 days delinquent, if the loan holder received the

Unofficial

required income documentation after a borrower's monthly payment had been converted to the permanent standard amount and the loan holder determined that the borrower qualified for a new period of partial financial hardship with a monthly PFH payment amount greater than zero.

The Department agreed with the proposal from the negotiators representing loan holders and servicers to require that borrowers be notified of the deadline by which the loan holder must receive the documentation required for the annual partial financial hardship assessment to avoid conversion to the permanent standard payment amount. We included a provision for such a deadline in revised regulatory language presented at the third negotiated rulemaking session. The language proposed by the Department at the beginning of the third session allowed for the annual deadline to be established by the Secretary or the loan holder, without any limitation on how far in advance of the end of the borrower's current annual repayment period the deadline could be set. However, some non-Federal negotiators representing borrowers expressed concerns that having the deadline date determined at the discretion of the loan holder would continue to allow for inconsistent treatment of borrowers, since the date might differ significantly among loan holders.

Unofficial

The same negotiators were also concerned that leaving the determination of the deadline date to the discretion of individual loan holders would allow for the date to be different each year and result in confusion for borrowers. In response to these concerns, the Department modified the proposed regulatory language to specify that the annual deadline may be no earlier than 35 days before the end of the borrower's current annual payment period. The 35-day period was discussed and agreed to by all of the non-Federal negotiators.

Some non-Federal negotiators representing borrowers, noting the potentially serious consequences for borrowers who do not provide the required information by the deadline, urged the Department to provide some flexibility in the regulations so that borrowers would not be subject to conversion to permanent standard and interest capitalization for being as little as one day late. These negotiators also objected to the proposed requirement for the loan holder to receive the documentation by the specified deadline and stated that the regulations should simply require the borrower to submit the documentation by the deadline. They noted that the proposed regulations did not require loan holders to notify borrowers that their documentation had been received, with the result that

Unofficial

borrowers would have no way of proving that the information they sent was received by the deadline.

These negotiators also argued that requiring borrowers to submit the information by the deadline would allow for proof that the borrower was in compliance with the submission deadline by means of the postmark on documentation submitted by mail. Other non-Federal negotiators, however, noted that the United States Postal Service no longer routinely adds postmarks to mail and said that the only way for a borrower to prove that a document had been mailed and received would be for the borrower to request confirmation of receipt. The negotiators further noted that requiring loan holders to track postmark dates would be unduly burdensome. The negotiators for loan holders and servicers suggested that the Department retain the requirement for the income information to be "received" by the annual deadline provided to the borrower, but add a five-day "grace period" to the deadline. After further discussion, the Department and the non-Federal negotiators agreed that information submitted by a borrower should be considered to have been received by the deadline if it is received by the loan holder or the Secretary within 10 days after the deadline date.

Unofficial

Some non-Federal negotiators for borrowers asked the Department to consider limiting the amount of interest that is capitalized if a borrower repaying under the IBR plan fails to provide required income information within 10 days after the annual deadline. The Department declined to consider this recommendation, noting that it may result in significant costs to the Federal government. However, the Department is continuing to examine these likely costs and invites further comments on this proposal.

Some non-Federal negotiators representing borrowers also noted that under the statute and current regulations, if a borrower who is repaying under the IBR plan is determined to no longer have a partial financial hardship or chooses to stop making income-based payments, the "maximum" monthly amount the borrower is required to pay is the monthly amount that would be required under a standard repayment plan with a 10-year payment period, calculated based on the amount of the borrower's eligible loans that were outstanding at the time the borrower selected the IBR plan ("permanent standard amount"). Because the law and regulations provide that the permanent standard amount is the maximum amount a borrower is required to pay, the non-Federal negotiators asked the Department to consider amending the regulations to allow for a smaller permanent

Unofficial

standard payment amount, as the conversion to a 10-year standard plan monthly payment amount may present a hardship for some borrowers.

The Department declined to consider this proposal, noting that the Department interprets the statutory reference to the "maximum" required payment amount, which is also reflected in current regulations, as a protection to ensure that a borrower's monthly payment amount under the IBR plan never exceeds the amount that would be required under a standard repayment plan with a 10-year repayment period. Accordingly, the permanent standard payment amount is the monthly payment amount that would be required under a 10-year standard repayment plan, calculated based on the amount of the borrower's eligible loan debt at the time the borrower selected the IBR plan. Without this provision, the formula used to calculate the required monthly payment during periods of partial financial hardship could result in a monthly payment that exceeds the amount that would be required under a 10-year standard repayment plan.

The Department further noted that since a borrower loses partial financial hardship status at the point the partial financial hardship payment formula results in a monthly payment that equals or exceeds the payment amount

Unofficial

that would be required under a standard repayment plan with a 10-year repayment period, providing a permanent standard payment amount lower than that amount would mean that some borrowers who no longer have a partial financial hardship could have a lower monthly payment amount than some borrowers in a partial financial hardship status. This result would be contrary to the intent of the IBR plan.

The Department disagreed with the proposal from some non-Federal negotiators representing loan holders and servicers that would have required loan holders either to prevent the conversion of borrower's payment amount to the permanent standard amount or remediate the consequences of such a conversion if the loan holder received the required information by the deadline provided to the borrower and the borrower was determined to continue to have a partial financial hardship. Some of the other non-Federal negotiators also expressed concerns about this approach, noting in particular that the proposal did not explain what would constitute "remediation."

The Department believes that if the information a borrower is required to provide is received within 10 days after the annual deadline, the loan holder must ensure that the borrower's monthly payment amount is not converted to the permanent standard amount and that unpaid interest is

Unofficial

not capitalized. The proposed regulations reflect this approach. The proposed regulations also provide that if the new calculated monthly PFH payment amount is less than the borrower's previously calculated monthly PFH payment amount, the loan holder must apply any excess payment amount resulting from payments that the borrower continued to make at the higher monthly PFH payment amount in accordance with the normal IBR payment application rules, unless the borrower requests that the excess amount be applied to future payments. This requirement would ensure that any excess payment is not applied as a pre-payment to advance the next monthly payment due date (unless that is what the borrower requests), as that would lengthen the period before the borrower becomes eligible for public service loan forgiveness under §685.219.

The Department believes that the proposal from the non-Federal negotiators to allow loan holders to grant forbearance to cover a borrower's past due payments under certain circumstances was more complex than necessary and overly broad. The proposal would have allowed for forbearance to be granted to any borrower who was delinquent in making payments at the time the loan holder made a determination that resulted in a monthly PFH payment

Unofficial

amount of zero, regardless of whether the borrower's income information was received by the annual deadline.

However, the Department believes it is appropriate to allow forbearance under limited circumstances for borrowers whose income information is not received until more than 10 days after the annual deadline and who are delinquent at the time the new monthly PFH payment amount is determined, if the new monthly PFH payment amount is zero or is less than the borrower's previously scheduled monthly PFH payment amount. This may indicate that the borrower's financial circumstances have worsened, which may have contributed to the borrower's delinquency and may have caused the borrower's failure to provide the required information in a timely manner.

The Department also believes it is appropriate under these circumstances to limit capitalization of interest accrued during forbearance to the interest that had been previously capitalized at the end of the prior annual payment period. For example, if a forbearance is granted to cover a five-month period of delinquency that began three months before the end of the borrower's prior annual payment period and continued for two months after the end of that annual payment period, the interest that accrued during the first three months of the forbearance period

Unofficial

(i.e., prior to the conversion of the borrower's payment to the permanent standard amount) would remain capitalized.

The proposed regulations for the Direct Loan Program also clarify that if a borrower continues to make payments at the previously scheduled monthly PFH payment amount after the borrower's payment has been converted to the permanent standard amount as a result of the borrower's income information being received more than 10 days after the annual deadline date, those payments would continue to count as qualifying payments for purposes of the public service loan forgiveness program under §685.219, provided that the payments otherwise meet the public service loan forgiveness program eligibility requirements. Without this provision, payments that the borrower continued to make at the previously calculated monthly PFH payment amount might not qualify for public service loan forgiveness purposes because they were for less than the scheduled permanent standard payment amount.

Some of the non-Federal negotiators suggested that many issues related to current processes for submission of income documentation could be addressed by allowing borrowers to submit documentation electronically, or by establishing an electronic process for loan holders to obtain the necessary income information directly from the

Unofficial

IRS. The Department agreed to explore such options in the future but noted that privacy issues associated with the electronic submission of documents and restrictions on the release of information by the IRS to FFEL Program loan holders would have to be addressed.

Some of the non-Federal negotiators requested that the Department modify the current IBR requirement for borrowers to provide written consent for the IRS to disclose the borrower's AGI to the loan holder by listing other options for providing income information and emphasizing those other options as preferable. The negotiators noted that although the Department previously provided guidance allowing loan holders to accept a signed copy of the borrower's most recently filed tax return as an alternative to the borrower's written consent, current regulations continue to require borrowers to submit written consent, and there are often lengthy delays in getting the borrower's income information from the IRS.

The non-Federal negotiators also asked the Department to reconsider its policy guidance that a copy of the borrower's most recently filed Federal income tax return submitted to support the borrower's PHF determination must include the borrower' signature. The non-Federal negotiators noted that many borrowers file electronic tax

Unofficial

returns that do not include a signature, and they said that failure to include a signature on the copy of the tax return that a borrower sends to his or her loan holder is a frequent reason for delays in processing a borrower's income information.

Finally, the non-Federal negotiators recommended that the regulations related to documentation of income be revised to allow loan holders to require borrowers to provide alternative documentation of income (that is, documentation other than the borrower's AGI) at any time, rather than only in circumstances when the borrower's AGI is unavailable or does not reasonably reflect the borrower's current income.

The Department agreed that the income documentation requirements could be simplified by amending the regulations to require borrowers to provide documentation, acceptable to the Secretary or the loan holder, of the borrower's AGI. Moreover, the Department noted that the IRS consent process is no longer used for Direct Loan borrowers repaying under the IBR or ICR plans, as discussed under the section "Other Changes to the ICR-B Plan." Acceptable documentation of a borrower's AGI could include a copy of the borrower's most recently filed Federal income

Unofficial

tax return or a tax transcript obtained from the IRS by the borrower.

In addition, the Department agreed that a copy of the borrower's most recently filed tax return need not include the borrower's signature. The Department announced this change in an electronic announcement posted on the Department's Information for Financial Aid Professionals website on April 13, 2012.

The Department disagreed with the recommendation that the regulations be amended to allow loan holders to disregard AGI and require borrowers to provide alternative documentation of income under any circumstances. Section 493C(a)(3) of the HEA specifically provides that the determination of a borrower's partial financial hardship status is based, in part, on the borrower's AGI. The Department believes that the greater flexibility in the proposed regulations related to income documentation would eliminate some of the issues loan holders are currently experiencing with documenting a borrower's AGI.

Some non-Federal negotiators representing loan holders and servicers asked the Department to add a requirement for a married borrower, under certain circumstances, either to provide the FFEL Program loan holder with the spouse's authorization for the loan holder to access information in

Unofficial

NSLDS concerning the eligible loans of the borrower's spouse or to provide other acceptable documentation of the spouse's eligible loans. Under the terms and conditions of the IBR plan, if a borrower is married and files a joint Federal income tax return, and if the borrower's spouse has loans that are eligible for repayment under the IBR plan, the combined eligible loan debt of the borrower and spouse is used to determine whether a borrower has a partial financial hardship. However, this additional information would be required only from married borrowers who both have eligible loans and who file joint tax returns, and only if the loan holder does not hold at least one of the spouse's eligible loans. If a loan holder does not hold at least one of the spouse's eligible loans, the loan holder may not access NSLDS to obtain information about the spouse's loans without the spouse's authorization. The loan holders noted that this spousal authorization is included on the IBR request form that borrowers must complete to request the IBR plan but stated that the requirement for spousal loan information should be included in the regulations to make it clear that for certain married borrowers, eligibility for the IBR plan cannot be determined without information about the spouse's eligible loans. The Department agreed with the non-Federal negotiators' recommendation and

Unofficial

modified the proposed FFEL Program IBR regulations accordingly.

Proposed regulations in §682.215 require written notification to a borrower regarding information for subsequent periods of a borrower's partial financial hardship and forgiveness eligibility. A non-Federal negotiator representing loan servicers requested that the language be revised to reflect that the notification may be provided either electronically or in writing to enable servicers to use electronic practices to communicate the notification requirements to borrowers. Some negotiators asked the Department to clarify the extent of the loan holder's flexibility to electronically provide notifications to borrowers to ensure that servicers were not limited solely to using electronic communication for borrowers that provide affirmative consent in accordance with the E-Sign Act, but may also use electronic communication for borrowers who have agreed to the use of e-mail communication. The Federal negotiators responded that a revision of the proposed regulations was unnecessary because the Department has previously interpreted (including in previous regulatory preambles) the term "in writing" to include through electronic means. The Department acknowledged that servicers may use electronic

Unofficial

methods to provide the notifications under §682.215. The Department follows the same practice in the Direct Loan Program.

IBR Loan Forgiveness Notifications

Statute: Section 493C(b)(7) provides that the Secretary will cancel the outstanding remaining balance on a borrower's loan if the borrower has participated in the IBR plan and met other requirements during a repayment period not to exceed 25 years.

Current Regulations: Current regulations in §685.221(f) and §682.215(f) reflect the IBR loan forgiveness provision in section 493C(b)(7) of the HEA. Under current §682.215(g)(4), after a FFEL Program loan holder is notified by the guaranty agency that a borrower qualifies for IBR loan forgiveness, the loan holder must inform the borrower of that determination and provide the borrower with information on the required handling of the forgiveness amount. The current Direct Loan Program regulations do not include a provision in §685.221 comparable to the FFEL Program provision in §682.215(g)(4).

Proposed Regulations: The proposed regulations would make the following changes in §685.221(f) and §682.215(g):

- In both the Direct Loan and FFEL programs, the regulations would clarify that the Secretary or

Unofficial

the loan holder determines when a borrower has met the requirements for loan forgiveness and that the borrower is not required to submit a request for loan forgiveness.

- The proposed regulations would provide for the Secretary or the loan holder to send the borrower a written notice no later than six months prior to the anticipated date that the borrower will meet the loan forgiveness requirements. This notice would explain that the borrower is approaching the date he or she is expected to qualify for loan forgiveness, would remind the borrower that he or she must continue to make scheduled monthly payments, and would provide general information on the current treatment of the forgiveness amount for tax purposes, including instructions to contact the IRS for more information.
- Current §682.215(g)(4) would be redesignated as (g)(5) and would be revised to clarify that when a loan holder notifies a borrower that the borrower has been determined eligible for loan forgiveness, the borrower must be provided with information on the current treatment of the

Unofficial

forgiveness amount for tax purposes and directed to the IRS for more information.

- A provision comparable to the current FFEL provision in §682.215(g)(4), with the changes just described, would be added to the Direct Loan Program regulations in §685.221(f). A provision comparable to the current FFEL provision in §682.215(g)(7) would also be added. Proposed §685.221(f)(5)(iii)(C) would state that the Secretary returns to the sender any payment received on a loan after loan forgiveness has been granted.

The changes just described would also be incorporated in the proposed regulations for the ICR-A and ICR-B repayment plans.

Reasons: Some of the non-Federal negotiators asked the Department to clarify in the regulations that the loan holder or the Secretary determines when a borrower qualifies for loan forgiveness and that the borrower is not required to track his or her own progress toward meeting the loan forgiveness requirement or submit an application for forgiveness. The non-Federal negotiators also stated it would be helpful to borrowers to give them advance notice that they are approaching the date when they will

Unofficial

qualify for loan forgiveness and that borrowers should be made aware in advance of the current treatment of the loan forgiveness amount for tax purposes. The Department agreed with the non-Federal negotiators and modified the proposed regulations accordingly.

Borrowers Who Leave the IBR Plan

Statute: Section 493C(b)(8) of the HEA provides that a borrower who is repaying a Direct Loan or an FFEL program loan under the IBR plan may elect at any time to terminate repayment under the plan and repay the loan under the standard repayment plan.

Current Regulations: Section 685.221(d)(2) of the Direct Loan program regulations and §682.215(d)(2) of the FFEL program regulations provide that if a borrower repaying under the IBR plan elects to leave the plan, the borrower must pay under the standard repayment plan. The regulations specify that the borrower's monthly repayment amount will be recalculated based on the time remaining under the maximum 10-year repayment period using the outstanding amount of the borrower's loans when the borrower discontinues paying under the IBR plan or, for Direct Consolidation and Federal Consolidation Loan borrowers, based on the time remaining under the applicable repayment period for the amount of the consolidation loan

Unofficial

and the balance of other student loans that is outstanding at the time the borrower stops paying under the IBR plan.

Proposed Regulations: Proposed §685.221(d)(2)(i)(A) would clarify that the time remaining under the maximum ten-year repayment plan applies to Direct Subsidized, Direct Unsubsidized, and Direct PLUS loans. Proposed §685.221(d)(2)(i)(B) and §682.215(d)(2)(ii) would also clarify that a Consolidation Loan borrower's recalculated payment when the borrower elects to leave the IBR plan is based on the time remaining under the applicable repayment period that was initially determined when the Consolidation Loan was made.

Sections 685.221(d)(2)(ii) and 682.215(d)(3) of the proposed regulations would provide that a borrower who leaves the IBR plan and is placed on the standard repayment plan may change to a different repayment plan after making one monthly payment under the standard repayment plan. Under the proposed regulations, the single payment made under the standard repayment plan could include a smaller payment amount paid under a reduced payment forbearance agreement with the loan holder or the Secretary.

Reasons: The statutory maximum 10-year repayment period applies only to Direct Subsidized, Direct Unsubsidized and Direct PLUS Loans. The initial applicable repayment period

Unofficial

for a Consolidation Loan is based on the total amount of the loans consolidated plus other student loans that were not consolidated but which the borrower asked be considered in establishing the consolidation loan repayment period. As a result, the reference in current regulations to "the balance of other student loans" being a factor in establishing the recalculated payment of an existing Consolidation Loan is incorrect and has been deleted. During the negotiated rulemaking sessions, the Department explained that this change is a technical correction that was submitted to the Department prior to the negotiated rulemaking process.

With regard to borrower options for changing to a different repayment plan after leaving the IBR plan and being placed on the standard repayment plan, the Department initially proposed to incorporate into regulations its current policy that a borrower leaving the IBR plan must make one full monthly payment under the 10-year standard repayment plan or the standard consolidation repayment plan, as applicable, before the borrower would be permitted to select another repayment plan. Some non-Federal negotiators argued that the requirement for one full standard repayment amount could represent a hardship to a borrower that could precipitate a delinquency or impede the

Unofficial

borrower's ability to enter another, more flexible repayment plan, such as the extended repayment plan. In response to these concerns, the Department has proposed regulations that would require the borrower to make one monthly payment while under a standard repayment plan, but allow for that payment to be for a lesser amount than the full scheduled monthly payment amount under a reduced payment forbearance agreement with the Secretary or the loan holder.

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

Unofficial

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action would have an annual effect on the economy of more than $100 million because the availability of the ICR-A repayment plan is estimated to cost approximately $2.1 billion over 10 years. Therefore, this proposed action is economically significant and subject to review by OMB under section 3(f) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits--both quantitative and qualitative--of this regulatory action. The agency believes that the benefits justify the costs.

We have also reviewed these regulations pursuant to Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order

Unofficial

12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor their regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

Unofficial

We emphasize as well that Executive Order 13563 requires agencies "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." In its February 2, 2011, memorandum (M-11-10) on Executive Order 13563, the Office of Information and Regulatory Affairs within the Office of Management and Budget emphasized that such techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed regulations only upon a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis below, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

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

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data

Unofficial

sources, as well as regulatory alternatives we considered. Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

The Need for Regulatory Action:

The Department is responsible for administration of the Federal student loan programs authorized by title IV of the HEA. Federal student loans are a crucial element in providing important opportunities for Americans seeking to expand their skills and earn postsecondary degrees and certificates. One of the Department's goals is to ensure that its regulations promote a transparent and consistent administration of title IV programs. Borrowers should be able to easily understand their rights, responsibilities, and options. Sometimes statutory revisions or Administration priorities require the Department to revise its policies and regulations. With these proposed regulations, the Department seeks to enhance the income-driven repayment options available to borrowers so student loan debt would be manageable and students would continue to pursue postsecondary education that makes sense for them. In addition, the Department hopes to improve the total and permanent disability process to increase efficiency and consistency in the treatment of borrowers.

Unofficial

The passage of the SAFRA Act (Pub. L. 111-152) ended the origination of new FFEL program loans and amended the statutory provisions governing the IBR plan so that the discretionary income caps and loan forgiveness eligibility periods would be reduced effective July 1, 2014, for new borrowers who choose the IBR repayment plan.

Student loan indebtedness and unrelenting increases in tuition costs have become major issues not only in the media but at the kitchen table in millions of American households. In light of recent economic conditions, many Americans remain worried that postsecondary education is becoming, or has become, unaffordable for themselves and their children. Recognizing that fear of unmanageable student loan indebtedness may discourage potential students from seeking postsecondary education, Congress enacted, as part of SAFRA, President Obama's proposal to lower IBR student loan payment caps and offer forgiveness after 20 years of qualifying payments for new borrowers in 2014.

Concerned about those students now graduating and entering the workforce, President Obama proposed the Pay As You Earn initiative. This proposal would revise the ICR repayment plan in the Direct Loan program to reflect the statutory changes made to IBR by SAFRA. Eligible borrowers (new borrowers on or after October 1, 2007, with new loans

Unofficial

in 2012) would be able to take advantage of the 10 percent income caps in the fall of 2012 instead of waiting until 2014 for the statutory changes to IBR.

In order to achieve the goals of the President's Pay As You Earn initiative and provide maximum benefit to borrowers, the Secretary is proposing to make improvements to the ICR repayment plan while implementing the statutory IBR changes. The proposed revisions would offer eligible borrowers lower payments and loan forgiveness after 20 years of qualifying payments. As discussed earlier in this section, income-based repayment options may encourage higher borrowing and potentially introduce an unintended moral hazard, especially for borrowers enrolled at schools with high tuitions and with low expected income streams, but the proposed changes should not substantially increase the potential moral hazard when compared to existing IBR or ICR plans. Table 2 summarizes the differences in eligibility between the existing and proposed IBR and ICR programs.

Table 2: Summary of Existing and Proposed IBR and ICR Plans

	CURRENT IBR	PROPOSED REVISED IBR (WITH 07/01/2014 STATUTORY CHANGES)	PROPOSED ICR-A	CURRENT ICR (PROPOSED ICR-B)
Loan Program and Eligible Borrowers	• Direct Loan Program	• Direct Loan Program only	• Direct Loan Program only	• Direct Loan Program only

Unofficial

	CURRENT IBR	PROPOSED REVISED IBR (WITH 07/01/2014 STATUTORY CHANGES)	PROPOSED ICR-A	CURRENT ICR (PROPOSED ICR-B)
	• FFEL Program	• Only new borrowers as of July 1, 2014: ○ Must have no outstanding Direct Loan or FFEL balance as of July 1, 2014 or on the date a new Direct Loan is received after July 1, 2014	• Only new borrowers in 2008 who receive a Direct Loan disbursement in 2012 or later: ○ Must have no outstanding Direct Loan or FFEL balance as of October 1, 2007 or on the date a new Direct Loan or FFEL Program loan is received after October 1, 2007; <u>and</u> ○ Must receive a disbursement of a Direct Loan on/after October 1, 2011, or receive a Direct Consolidation Loan based on an application received on/after October 1, 2011 • FFEL new borrowers in 2008 may qualify through consolidation into the Direct Loan Program	• FFEL borrowers may qualify through consolidation into the Direct Loan Program

Unofficial

	CURRENT IBR	PROPOSED REVISED IBR (WITH 07/01/2014 STATUTORY CHANGES)	PROPOSED ICR-A	CURRENT ICR (PROPOSED ICR-B)
Graduate/Professional PLUS Loans eligible?	Yes	Yes	Yes	Yes
Parent PLUS Loans eligible?	No	No	No	No
Consolidation Loans that repaid Parent PLUS Loans eligible?	No	No	No	Yes
Partial Financial Hardship Required?	Yes	Yes	Yes	No
Partial Financial Hardship Definition	10-year standard payment amount on eligible loans (annual amount owed) exceeds 15% of difference between AGI and 150% of poverty line amount	10-year standard payment amount on eligible loans (annual amount owed) exceeds 10% of difference between AGI and 150% of poverty line amount	10-year standard payment amount on eligible loans (annual amount owed) exceeds 10% of difference between AGI and 150% of poverty line amount	N/A
Forgiveness Period	25 years of qualifying payments/months of economic hardship deferment	20 years of qualifying payments/months of economic hardship deferment	20 years of qualifying payments/months of economic hardship deferment	25 years of qualifying payments/months of economic hardship deferment
Estimated Borrowers Eligible for Participation (2012-2021 cohorts in millions)*	1.53	1.03	1.67	0.39

*Note: While the figures represent the 2012-2021 cohorts, the numbers only apply to those cohorts eligible for the particular program. For example, the 1.03 million for the Proposed Revised IBR only includes eligible new borrowers after July 1, 2014.

The Department's current process for considering applications for total and permanent disability discharges

Unofficial

on student loans has also been reviewed for efficiencies and improved consistency in response to concerns raised by the Department and external parties. Borrowers and advocates particularly have cited the application process and monitoring period requirements as problematic. The proposed revisions would address these problems by requiring borrowers to submit applications for disability discharges to the Secretary, ensuring rejected applicants receive a thorough explanation of the reasons for their rejection and adequate information about their options, and simplifying the income verification process during the three-year monitoring period. The proposed regulations would also eliminate the necessity for FFEL lenders and guaranty agencies to evaluate disability discharge applications and ensure that the disability discharge application process is expedited for veterans as well.

Beyond those details, Executive Order 12866 emphasizes that "Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people." In this case, there is indeed a compelling public need for

Unofficial

regulation. The Secretary recognizes the growth in the number of students enrolled in college, the ongoing rise in tuition, the resulting increased need for student loans, and the increased difficulty in repaying them. The Secretary's goal in regulating is to provide borrowers with maximum repayment options to support debt management and improve the process for considering applications for disability discharges on Federal student loans.

The steep increase in the cost of tuition in America has been well documented. According to data collected by the Department's National Center for Education Statistics (NCES), the cost of tuition, room and board for full-time students at America's 4-year public and private non-profit institutions rose by over 500 percent between 1980 and 2010. Even if controlled for inflation, there was still a 140 percent increase.[1] As chart 1A shows, this is a steep increase in a short amount of time. The average published tuition and fees at 4-year public universities increased by 8.3 percent between the 2010-2011 and 2011-2012 academic years, according to College Board.[2] The tuition pinch is

[1] This percentage was calculated by the Department using data collected from Thomas D. Snyder and Sally A. Dillow, Digest of Education Statistics 2010, (pgs 493-495) Education (U.S. Department of Education, April 2011), http://nces.ed.gov/pubs2011/2011015.pdf.

[2] Trends in College Pricing 2011, Table 4A: Average Tuition and Fees in Current Dollars, 1981-82 to 2011-12 (College Board Advocacy and Policy Center, nd.),

Unofficial

not limited to undergraduate studies. Chart 1B shows that the average price of tuition and required fees at graduate and professional schools has doubled since 1988, even when adjusted for inflation.[3] (Note: Disaggregated data for private, for-profit institutions was not available for any year prior to 2006 so it was not included in the charts).

Despite the increasing cost of tuition, enrollment at universities has continued to climb. A large and growing percentage of jobs in the U.S. economy now require a college degree. As a result, more students are enrolling in college each year with hopes of building a career, and there has been a large influx of non-traditional students as older workers return to school to learn new skills or change careers.

Unofficial

http://trends.collegeboard.org/college_pricing/report_findings/indicator/Tuition_Fees_Over_Time.

[3] Snyder and Dillow, Digest of Education Statistics 2010, page 498.

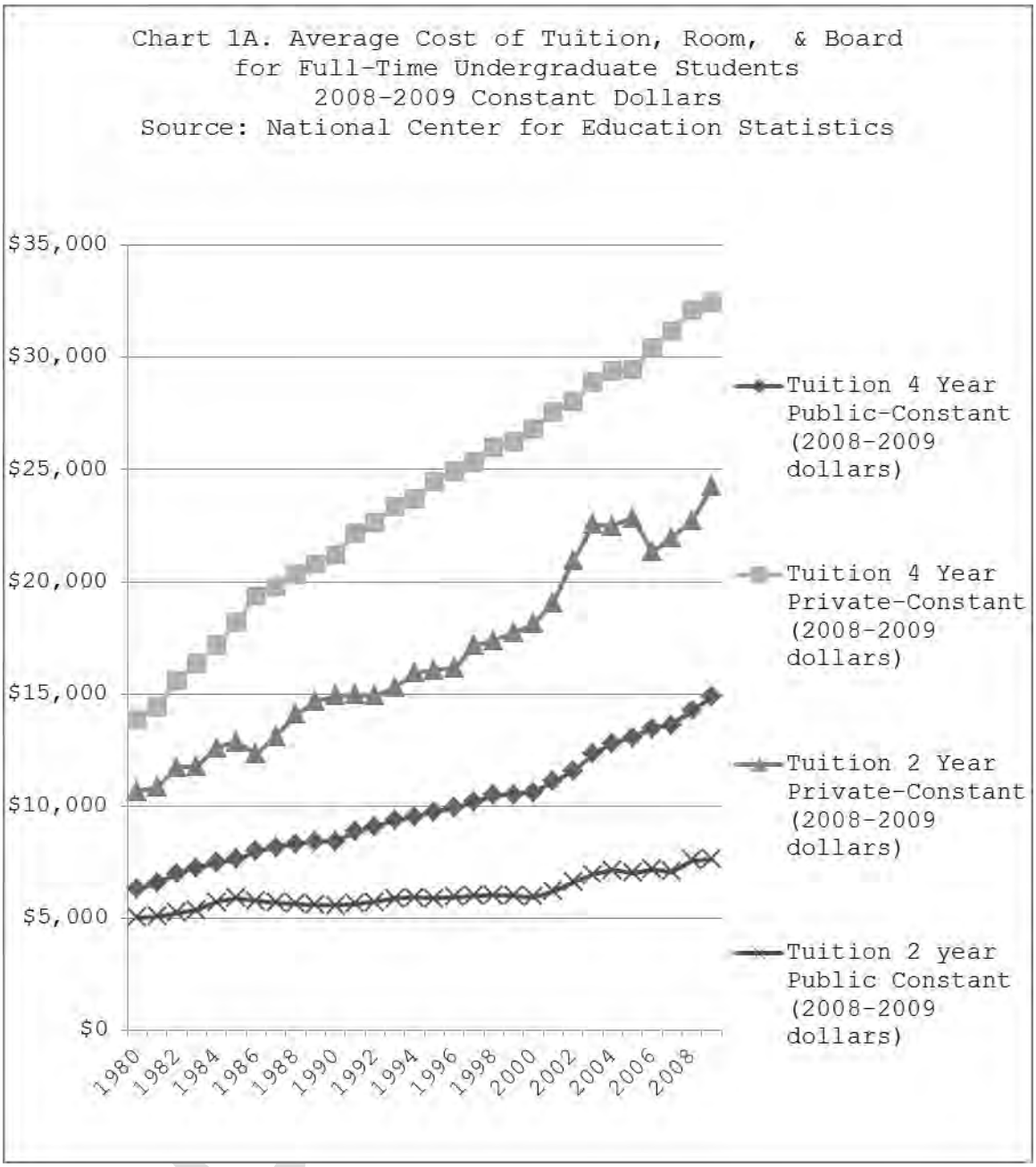
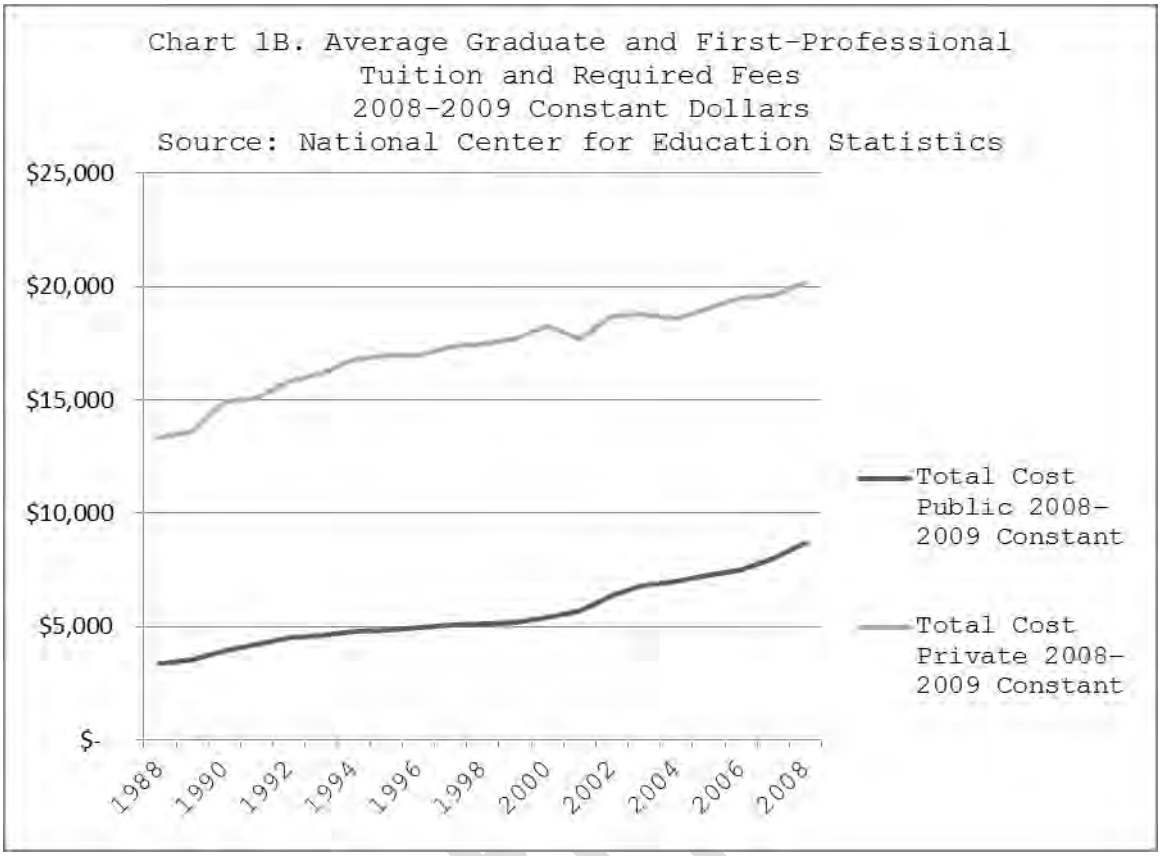


Chart 1A. Average Cost of Tuition, Room, & Board
for Full-Time Undergraduate Students
2008-2009 Constant Dollars
Source: National Center for Education Statistics
$35,000
$30,000
$25,000
$20,000
$15,000
$10,000
$5,000
$0
1980
1982
1984
1986
1988
1990
1992
1994
1996
1998
2000
2002
2004
2006
2008
Tuition 4 Year Public-Constant (2008-2009 dollars)
Tuition 4 Year Private-Constant (2008-2009 dollars)
Tuition 2 Year Private-Constant (2008-2009 dollars)
Tuition 2 year Public Constant (2008-2009 dollars)



The combination of increased enrollment and rising tuition has contributed to a significant increase of student loan debt in America. This outstanding debt has grown as more and more students seek the benefits of postsecondary education and as students increasingly rely on Federal student loans. According to data collected by NCES, 34.9 percent of all undergraduates took out a Federal student loan in the 2007-2008 academic year[4] compared to 19.9 percent in the 1992-1993 academic year.[5]

[4] Thomas D. Snyder and Sally A. Dillow, Digest of Education Statistics: 2010,(United States Department of Education, National Center for

While higher levels of student loan debt are indicative of troubling trends with respect to the cost of college, these higher levels simultaneously reflect increased levels of investment in the nation's human capital. These investments yield significant and demonstrable benefits not only for individuals but for the nation as well. For example, bachelor degree holders earn over 80 percent more than do high school graduates over the course of a lifetime. This difference can amount to about $1 million for an individual worker[6]. Moreover, college graduates also experience lower levels of unemployment, and shorter durations of unemployment, than those without a college degree. Additionally, students who complete college have substantially lower unemployment rates than high school graduates. According to May 2012 data from the Bureau of Labor Statistics, adult high school graduates have an unemployment rate of 8.1 percent compared to 3.9 percent for adults with a bachelor's degree. For the Nation, higher levels of educational attainment increase

---

Education Statistics, April, 2011), http://nces.ed.gov/programs/digest/d10/tables/xls/tabn354.xls.

[5] Thomas D. Snyder, Digest of Education Statistics, 1995 (United States Department of Education, National Center for Education Statistics, October, 1995), http://nces.ed.gov/programs/digest/d95/dtab309.asp.

[6] Anthony P Carnevale, Anthony P. Carnevale, Stephen J. Rose and Ban Cheah, The College Payoff: Education, Occupations, Lifetime Earnings,pg.3 (Georgetown University, The Georgetown University Center on Education and the Workforce), http://www9.georgetown.edu/grad/gppi/hpi/cew/pdfs/collegepayoff-complete.pdf

Unofficial

economic productivity and raise gross domestic product, among many other benefits.

For recent graduates with college degrees, their hard-earned diplomas will undoubtedly yield long-term benefits. However, even though the economy has begun to strengthen, many recent graduates are finding it challenging to obtain employment and garner wages at or near average levels. A March 2011 letter published by the Federal Reserve Bank of San Francisco, for example, highlighted that the unemployment rate of recent graduates has doubled over the past few years.[7] Even for recent graduates who obtain employment, prior research has shown that it can take several years for those entering the workforce during a recession to reach normal wage levels.[8] For these graduates and for borrowers who do not complete a degree, the need to begin repayment on their student loans can be especially daunting.

The proposed ICR and IBR plans would provide borrowers with improved income related payment management options. They would also encourage borrowers to honor their debt

---

[7] Bart Hobijn, Colin Gardiner, and Theodor Wiles, Recent College Graduates and the Labor Market, March 21, 2011, http://www.frbsf.org/publications/economics/letter/2011/el2011-09.html.

[8] Philip Oreopoulos, Till von Wachter, and Andrew Heisz, The Short- and Long-Term Career Effects of Graduating in a Recession: Hysteresis and Heterogeneity in the Market for College Graduates, Economic (The National Bureau of Economic Research, April 2006), http://www.nber.org/papers/w12159.

Unofficial

commitments by offering loan forgiveness after 20 years of qualifying payments in an income-related payment plan.

In addition to implementing statutory changes in the IBR plan and revising the ICR plan, the proposed regulations would also seek to solve well-documented problems with the process for evaluating discharge applications. The current process by which borrowers apply for a discharge has led to inconsistencies in determining eligibility and created hardships for eligible borrowers who are unable to fulfill their monitoring period requirements. Currently, borrowers who have suffered a total and permanent disability that leaves them unable to fulfill their loan obligation contact the holders of their loans and apply for a discharge. Lenders have different processes and this has led to discrepancies in the way loan holders are processing and assessing borrowers' eligibility for total and permanent disability. Also, the current reporting requirements during the monitoring period have proved to be strenuous on borrowers with disabilities and many who may meet all other eligibility requirements are having their loans reinstated due to failure to meet the current reporting requirements.

The Secretary is proposing to revise the regulations governing disability discharges in the different title IV

Unofficial

student loan programs to standardize the process. Under the proposed regulations, all discharge applications would be submitted directly to the Secretary. The Department's proposal eliminates the requirement that each of a borrower's loan holders (and guaranty agencies, in the FFEL program) review the borrower's disability discharge application. Through this process, the Secretary would ensure consistency in the administration of the disability discharge process. A more detailed analysis of these changes is provided in the Significant Proposed Regulations section of this preamble.

Executive Order 13563, Section 4, notes that "Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible." Consistent with this section of the Executive order, the Department is enhancing the information available to prospective and enrolled students, providing better guidance, and offering more

Unofficial

feasible loan repayment options through these proposed regulations.

Discussion of Costs, Benefits, and Transfers

Consistent with the principles of Executive Orders 12866 and 13563, the Department has analyzed the impact of these regulations on students, businesses, the Federal government, and State and local governments. The analysis rests on the projected impact of the regulations. The benefits and costs are discussed below.

Income Contingent Repayment

The proposed revisions to the Income Contingent Repayment plan would cap payments for eligible borrowers at 10 percent of discretionary income divided by 12. This is a reduction from the current 15 percent cap and would be consistent with the statutory changes to IBR that become effective in 2014. Proposed ICR (ICR-A) would be available to eligible borrowers in the fall of 2012. A detailed breakdown of the proposed qualifications needed for participation in either plan is provided earlier in Table 2.

Accurately predicting or forecasting transfers or costs from the proposed ICR changes is difficult because they will depend heavily on borrower trends and participation. Traditionally, there has been low

Unofficial

participation in ICR, and many participants were forced into ICR in order to consolidate defaulted loans. ICR-A may see an enrollment push, however, as a result of the publicity it could receive as part of the President's Pay As You Earn repayment initiative. Economic recovery will also play a large role. If the economy shows significant improvement and wage levels begin to rise, then borrowers whose salaries have increased significantly may opt to leave ICR for another repayment plan, particularly if they no longer qualify for partial financial hardship. The following examples and discussion will analyze the difference in payments for borrowers under ICR-B and ICR-A. ICR-B payments are calculated using the lesser amount of the amount borrowers would pay if you they repaid their loan in 12 years multiplied by an income percentage factor that varies with their adjusted gross income (AGI), or the difference between AGI and the applicable HHS poverty guideline amount, divided by 12. Borrowers can calculate what their payments would be under ICR-B on the Federal Student Aid Web site at (http://studentaid.ed.gov/PORTALSWebApp/students/english/OtherFormsOfRepay.jsp). ICR-A payments are calculated using 10 percent of the difference between the subject's AGI and 150 percent of the applicable HHS poverty guidelines

Unofficial

amount, divided by 12 (ICR-A would require PFH for initial qualification so first year calculations will assume PFH).

Example 1: Susan is a single borrower living in Ohio with no dependents. She has an (AGI) of $28,000 and $25,000 in student loan debt. Susan currently has an interest rate of 6.8 percent. Under proposed ICR-B (the current ICR) calculations, Susan's monthly payment (first year) would be more than $190 a month. Under ICR-A, Susan's payments would be roughly $94 a month, almost $97 less. In total in the first year, Susan would pay $1,162 less, as illustrated in Chart 2A. Example 1 illustrates the change in monthly payments possible for a borrower with Susan's income and family size. If we assume that her discretionary income and family size remains the same over the life of the loan and she stays in ICR-A and makes twenty years of qualifying payments, she would pay $22,560 and would have a balance of $39,493 forgiven. This simplified example demonstrates one possible outcome for a hypothetical borrower and actual outcomes would depend on the borrower's income growth, family size, and repayment plan decisions. Across the pool of ICR-A borrowers, some would receive forgiveness and others would pay in full, and the combined effect of these outcomes leads to the

Unofficial

estimated $2.1 billion cost of the proposal as described in the Net Budget Impacts section of this RIA.

Example 2: Jim also lives in Ohio but is married, the head of household and has two dependents. Jim has an AGI of $48,000, $25,000 in student loan debt and a 6.8 percent interest rate. Under ICR-A, Jim's first year payments would be almost $112 less per month than under proposed ICR-B (the current ICR), as displayed in Chart 2B below.

Chart 2A. Susan's first year payments under ICR-A and ICR-B (All figures rounded to nearest dollar)			Chart 2B. Jim's first year payments under ICR-A and ICR-B (All figures rounded to nearest dollar)	
Plan	Monthly	First year total	Monthly	First year total
Current ICR (ICR-B)	$191	$2,287	$251	$3,009
ICR-A	$94	$1,125	$112	$1,343
Difference	$97	$1,162	$139	$1,666

Example 3: In 2011, the average student finished undergraduate studies with around $23,000 in student loan debt. Chart 2C looks at how that borrower's first-year

payments would measure under ICR-A and ICR-B if they started at different salary levels.

Chart 2C. First year payments under ICR-A & ICR-B ($23,000 debt, 6.8 percent interest rate, single)						
AGI	$20,000	$25,000	$30,000	$35,000	$40,000	$45,000
Standard Repayment	$265	$265	$265	$265	$265	$265
ICR-B	$147	$164	$183	$197	$210	$223
ICR-A	$27	$69	$110	$152	$194	$235
Difference (ICR-B vs. ICR-A)	$120	$95	$73	$45	$16	($12)

Chart 2C shows that the difference between ICR-B and ICR-A payments in the first year is more drastic at lower salary levels. A borrower entering into repayment with $23,000 worth of loans and a 6.8 percent interest rate would have lower monthly payments under ICR-A up to the $45,000 salary level. A borrower who leaves school with $23,000 in student loans and takes a job making $25,000 would have monthly payments that are $95 cheaper under ICR-A than ICR-B.

ICR-A would also offer loan forgiveness after 20 years of payments; the current ICR plan (proposed ICR-B) offers

Unofficial

forgiveness after 25 years. Consequently, eligible borrowers may have five fewer years of payments under proposed ICR-A. The effects of this change would also depend on borrower trends, enrollment, and possibly the economy.

As mentioned earlier, the ability of recent graduates to find suitable employment may play a large role in determining the participation rate of ICR. The job struggles of new graduates have been well documented. However, 2011 graduates who were able to find employment saw an average starting salary of $51,171 according to the National Association of Colleges and Employers' fall 2011 Salary Survey.[9] The average single borrower entering repayment with a $50,000 salary and 6.8 percent interest rate would not qualify for ICR-A unless the borrower had around $24,500 or more in eligible debt. However, those borrowers who enter into lower paying jobs or struggle to find employment may benefit from participating in ICR-A.

Leaving ICR-B open to direct and eligible consolidation loan borrowers ensures that the majority of borrowers would have an income-driven payment option. This may be particularly important for borrowers employed in

[9] National Association of Colleges and Employers, Fall 2011 Salary Survey, http://www.naceweb.org/Press/Releases/Average_Salary_Offer_Rises_6_Percent_for_the_Class_of_2011.aspx.

Unofficial

jobs eligible for public sector loan forgiveness after 10 years but who do not qualify for IBR or ICR-A. This would allow borrowers to choose which repayment plan is the best option for them. The formulas and calculators for the standard and fixed payment plans can be found at (http://studentaid.ed.gov/PORTALSWebApp/students/english/OtherFormsOfRepay.jsp)

Chart 2D. First year monthly payments under ICR-B, Standard and Extended Fixed Repayment Plans ($35,000 debt, 6.8 percent interest rate, single)							
AGI	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000
Standard	$403	$403	$403	$403	$403	$403	$403
Extended fixed (25 years)	$243	$243	$243	$243	$243	$243	$243
ICR-B	$300	$319	$339	$356	$356	$359	$377

For a single borrower with $35,000 in debt, a 6.8 percent interest rate, and an annual salary under $65,000, Chart 2D shows that ICR-B would provide for lower monthly payments during the first year of repayment than would the standard repayment plan but higher payments than the extended fixed repayment amounts. The annual recalculation

of payments under current ICR (proposed ICR-B) takes current debt amounts into consideration and the payments would more than likely adjust.

All of the examples used above are only estimates. While these examples are able to paint a relatively clear picture of how the proposed regulations would affect individual borrowers' payments in a given year, they lack the scalability required to show an exact link to the overall budget impact because of the uniqueness of any borrower's circumstances. Initial payments and payments over time would vary based on borrower behavior. ICR Borrowers may see their payments fluctuate because of marriage, pay raises, or children. As in IBR, under ICR-A borrowers are re-evaluated annually and payments may rise based on family size and AGI to the point they trigger a 10-year standard payment amount that, depending on the amount of the debt, may result in the borrower either repaying the debt in full before 20 years and receiving no forgiveness or leaving the plan entirely and receiving no forgiveness. Those borrowers who end up with lower payments would have more disposable income and possibly have a net positive impact on the economy. However, some borrowers would pay more money overall in order to have smaller payments up front.

Unofficial

There would also be other small costs and transfers associated with ICR-A. For those borrowers under partial financial hardship (PFH) with calculated payments less than $5 would not have to pay at all, while there is a $5 minimum payment under current ICR (proposed ICR-B).

Borrowers qualified for PFH would have $10 monthly payments if their calculated payments are greater than $5 but less than $10. There is no PFH determination under current ICR (proposed ICR-B).

Interest would be capped at 10 percent of the original principal balance at the time borrower enters proposed ICR-A compared to current ICR (proposed ICR-B) in which interest is capped at 10 percent of the original principal amount at the time the borrower entered repayment. This may or may not mean lower total loan debts. For married borrowers, joint AGI and eligible loan debt would be used only if the couple files a joint tax return under proposed ICR-A. Current ICR (proposed ICR-B) uses joint AGI and eligible loan debt regardless of filing status.

Income Based Repayment

The statutory changes to the Income Based Repayment Plan reduce the discretionary income payment cap to 10 percent and loan forgiveness period to 20 years for eligible borrowers, effective July 1, 2014. IBR

Unofficial

participants may have lower payments as a result and may be able to take advantage of loan forgiveness. The PFH definition changes from when the 10-year standard payment amount on eligible loans (annual amount owed) exceeds 15 percent of the difference between AGI and 150 percent of the poverty line amount to 10 percent.

Accurately predicting or forecasting the transfers from these changes is particularly difficult because most of them would heavily depend on borrower trends. Economic recovery would also play a large role. If the economy shows significant improvement and wage levels begin to rise, then borrowers whose salaries have increased significantly may opt to leave IBR for another one of the repayment plans, particularly if they no longer qualify for partial financial hardship.

The following examples and discussion will analyze possible transfers for new borrowers under the 2014 implementation of the IBR revisions. Currently IBR payments are calculated by using 15 percent of the difference between 150 percent of the applicable HHS poverty guidelines and the borrower's AGI, divided by 12.[10] The proposed IBR repayment plan would use 10 percent of the

[10] Repayment Plans and Calculators, Government, n.d., http://studentaid.ed.gov/PORTALSWebApp/students/english/OtherFormsOfRepay.jsp.

Unofficial

difference between 150 percent of the applicable HHS poverty guidelines and the borrower's AGI, divided by 12.

Example 1: Susan is a single borrower living in Ohio with no dependents. She has an Adjusted Gross Income (AGI) of $28,000 and $25,000 in student loan debt. Susan currently has an interest rate of 6.8 percent. Under the current IBR calculations, Susan's monthly payment would be $141 a month in her first year. Under the proposed IBR calculations, Susan's first-year payments would be $94 a month, $47 less. Over the course of the year, Susan would pay $562 less, as displayed in Chart 3A.

Example 2: Jim also lives in Ohio but is married, the head of a household, and he has two dependents. Jim has an AGI of $48,000, and $25,000 in student loan debt with a 6.8 percent interest rate. Under the proposed IBR, Jim's first year payments would be almost $56 less per month, as displayed in Chart 3B below.

Chart 3A. Susan's Payments under Current and Revised IBR (All figures rounded to nearest dollar)			Chart 3B. Jim's Payments under Current and Revised IBR (All figures rounded to nearest dollar)	
Plan	Monthly	First Year Total	Monthly	First Year Total

Unofficial

IBR (current)	$141	$1,687	$168	$2,014
IBR (Revised)	$94	$1,125	$112	$1,343
Difference	$47	$562	$56	$671

Proposed IBR would also offer loan forgiveness after 20 years of repayment. Currently, forgiveness is given after 25 years. Eligible borrowers may have five fewer years of payments. The effects of this change would also depend on borrower trends, enrollment, and possibly the economy. The following discussion will look at how this change may affect a borrower.

Example 3: Jesse finishes college with $40,000 in student loan debt and a 6.8 percent interest rate. Jesse's loan would be repaid under an IBR plan based on partial financial hardship. Five years after entering repayment, Jesse gets married and has a daughter. He adds a second child after the seventh year in repayment. The charts and graph below demonstrates Jesse's payments under current and proposed IBR.

Chart 3C. Jesse's payments under Current and Revised IBR						
Year(s) of Repayment	1	2	3	4	5	6

Unofficial

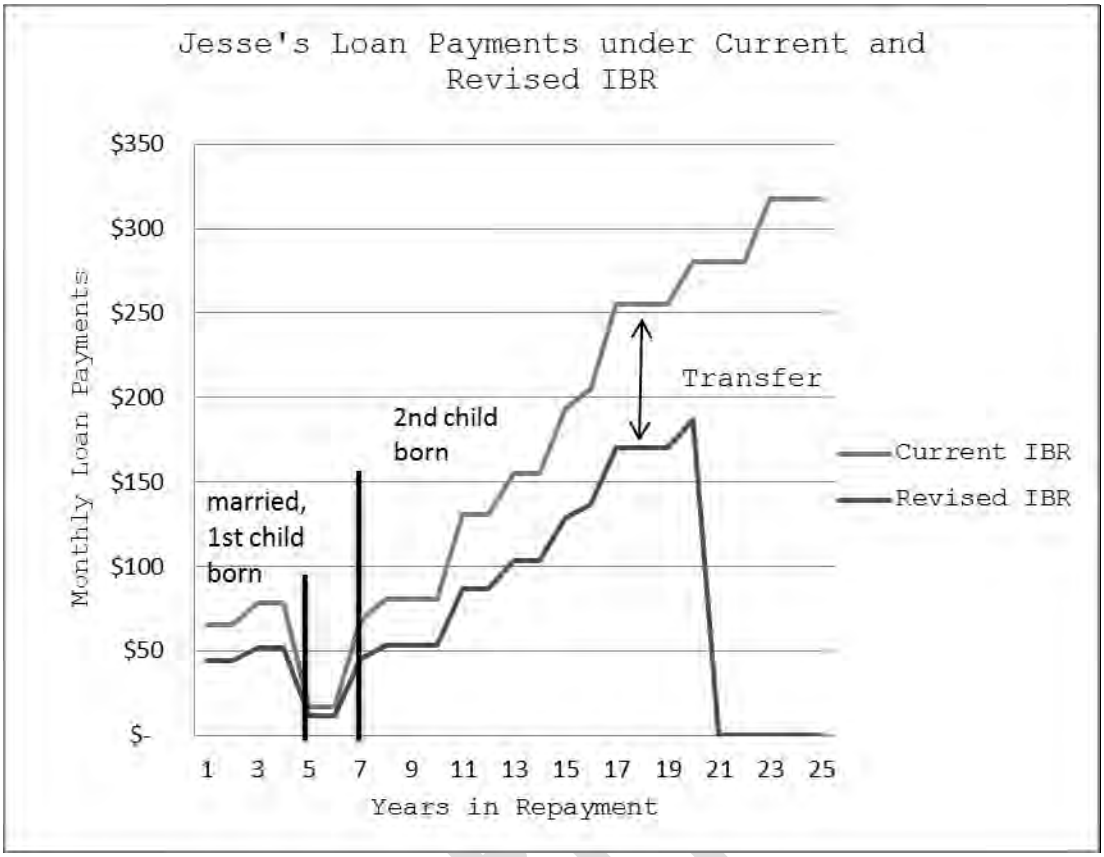
Salary	$22,000	$22,000	$23,000	$23,000	$30,000	$30,000
Current IBR	$66	$66	$78	$78	$17	$17
Revised IBR	$44	$44	$52	$52	$11	$11
Monthly Payment Reduction	$22	$22	$26	$26	$6	$6
Annual Payment Reduction	$262	$262	$312	$312	$68	$68
Family Size	1	1	1	1	3	3
Married/HOH	No	No	No	No	Yes	Yes

Year(s) of Repayment	7	8	9	10	11	12	13
Salary	$40,000	$41,000	$41,000	$41,000	$45,000	$45,000	$47,000
Current IBR	$68	$80	$80	$80	$130	$130	$155
Revised IBR	$45	$54	$54	$54	$87	$87	$104
Monthly Payment Reduction	$23	$26	$27	$27	$43	$43	$52
Annual Payment Reduction	$271	$321	$321	$321	$521	$521	$621
Family Size	4	4	4	4	4	4	4
Married/HOH	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Year(s) of Repayment	14	15	16	17	18	19
Salary	$47,000	$50,000	$51,000	$55,000	$55,000	$55,000

Current IBR	$155	$193	$205	$255	$255	$255
Revised IBR	$104	$129	$137	$170	$170	$170
Monthly Payment Reduction	$52	$64	$68	$85	$85	$85
Annual Payment Reduction	$621	$771	$821	$1,021	$1,021	$1,021
Family Size	4	4	4	4	4	4
Married/HOH	Yes	Yes	Yes	Yes	Yes	Yes

Year(s) of Repayment	20	21	22	23	24	25
Salary	$57,000	$57,000	$57,000	$60,000	$60,000	$60,000
Current IBR	$280	$280	$280	$318	$318	$318
Revised IBR	$187	$ -	$ -	$ -	$ -	$ -
Monthly Payment Reduction	$93	$280	$280	$318	$318	$318
Annual Payment Reduction	$1,121	$3,364	$3,364	$3,814	$3,814	$3,814
Family Size	4	4	4	4	4	4
Married/HOH	Yes	Yes	Yes	Yes	Yes	Yes



As demonstrated, Jesse would have substantially smaller payments under the proposed IBR plan, particularly as his income rises. The five-year difference in the forgiveness period alone would mean $18,000 less in payments. Overall, Jesse would pay back $28,000 less under the proposed IBR plan than the current one. This example assumes that Jesse remains qualified for PFH. Jesse's example is based on assumptions about a particular borrower and cannot be used to make large scale projections. Monthly payments would vary over the life of a loan based

on many factors. If Jesse did not get married or have children, his payments would have been different.

Overall, the proposed IBR revisions would offer many benefits. Reduced income caps, PFH payment qualifications, and loan forgiveness periods may encourage more borrowers to acknowledge their loan debt and could possibly decrease the default rate. The savings that eligible borrowers could acquire via reduced payment amounts and loan forgiveness periods would allow borrowers to have more disposable income and would have a net positive impact on the economy. Some borrowers may initially pay more money overall however, in order to have lower payments up front.

The examples used above are all based on certain assumptions about particular borrowers and cannot accurately be expanded to project market level transfers or costs. As mentioned earlier, borrowers who no longer qualify for PFH may very well opt to leave IBR for another payment plan. The proposed regulations would allow a borrower to use forbearance and pay less than the standard payment when leaving IBR.

Total and Permanent Disability Discharge

The Department believes that the proposed streamlined total and permanent disability discharge process would

Unofficial

provide many benefits to borrowers. The proposed regulations would--

- Simplify the process for the borrower;
- Establish a single point of contact for the borrower throughout the disability discharge process;
- Reduce the time needed to process applications;
- Provide more consistency in eligibility determinations;
- Provide more uniformity in the communications sent to borrowers throughout the process; and
- Ensure that all of a borrower's title IV loans that are eligible for a total and permanent disability discharge are discharged at the same time, reducing instances of "straggler" loans that the borrower may forget to include when applying for discharge of the borrower's other title IV loans.

By ensuring that denied applicants have adequate information about the reasons for their denial and their future options, borrowers would be able to make better informed decisions and possibly correct their applications if denial is a result of applicant error. This may reduce the number of technically eligible borrowers who fail to have their loans discharged. Increasing the number of

Unofficial

discharged loans could lead to an increased transfer of funds to borrowers as they would not be required to make loan payments.

By developing an OMB approved form for income reporting purposes, the Secretary will simplify the post-discharge monitoring process and possibly reduce the number of otherwise eligible borrowers with disabilities who have their loans reinstated. Currently, a large proportion of discharged borrowers end up with their loans reinstated because of failure to submit adequate information during the post-discharge monitoring period. By reducing the number of borrowers with disabilities who have their loans reinstated for failure to provide income information, but who may be otherwise eligible, the Secretary would provide economic relief for many of the country's most vulnerable citizens.

In 2011, approximately 78,000 borrowers applied for a total and permanent disability discharge of 179,454 loans across the Direct, FFEL, and Perkins loan programs. The proposed total and permanent disability process will offer many benefits to borrowers with disabilities and possibly reduce the number of reinstatements. The surplus in applications and discharges that could occur as an incentive of the simplified process, would lead to a

Unofficial

transfer of funds from the Federal government to borrowers by the way of debt elimination. Also, by allowing direct application to the Secretary, all applications would be held to the same standard. The chances for inconsistency in the review process would be drastically reduced. The elimination of multiple medical evaluations would relieve administrative burden on title IV providers and reduce the application review time.

Also, the Department believes that veterans would benefit if the changes proposed to the non-veterans total and permanent disability discharge also applied to the process for disability discharges based on VA documentation.

Borrowers with disabilities would benefit from the elimination of the requirement that a physician provide a letter requesting more time for the borrower to submit a total and permanent disability discharge application.

As noted, while the Department does believe that the proposed revisions would ultimately benefit truly eligible borrowers, it cannot accurately predict applicant behavior as a result.

Net Budget Impacts

Unofficial

The proposed regulations are estimated to have a net budget impact of $2.1 billion in subsidy cost over the 2012 to 2021 loan cohorts. Consistent with the requirements of the Credit Reform Act of 1990 (CRA), budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. A cohort reflects all loans originated in a given fiscal year.

These estimates were developed using the Office of Management and Budget's (OMB) Credit Subsidy Calculator. The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a "basket of zeros" methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used Government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these regulations. That said, in developing the following

Unofficial

Accounting Statement, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence of the impact of these regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under Assumptions, Limitations, and Data Sources. Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: for-profit institutions (less than 2-year), 2-year institutions, freshmen/sophomores at 4-year institutions, juniors/seniors at 4-year institutions, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior of borrowers in each category -- for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits.

Income Contingent Repayment

The budget impact in this package of regulations is related to the changes in the ICR plan. These proposed regulations, based on the President's Pay As You Earn

Unofficial

initiative, create ICR-A, a new income-contingent option that mirrors the changes made to the IBR repayment plan by SAFRA. ICR-A allows new borrowers in FY 2008 or later with a new loan in FY 2012 or later who demonstrate a partial financial hardship to use an income contingent repayment plan based on 10 percent of their discretionary income and a 20-year forgiveness period. The terms and conditions of ICR-A are based on IBR, including the treatment of married borrowers and the timing of interest capitalization, except ICR-A maintains the cap on interest capitalization from existing ICR. The existing ICR plan which has a threshold based on the lesser of the 12-year amortization of the loan multiplied by an income percentage factor or 20 percent of discretionary income and a 25-year forgiveness period would remain available for those borrowers who do not qualify or choose ICR-A or IBR option because of timing, not qualifying for partial financial hardship, or individual preference. The availability of ICR-A, with its reduced income percentage and shorter forgiveness period, is estimated to cost $2.1 billion over the 2012 to 2021 loan cohorts.

To establish the baseline and to evaluate proposals related to the ICR and IBR plans, the Department uses a micro-simulation model consisting of borrower level data

Unofficial

based on an extract of Direct Loan borrowers in ICR. Income and family size is projected for each borrower for 25 years using imputations developed by analyzing yearly changes in income and family size from the Current Population Survey. Interest and principal payments are calculated according to the regulations governing the ICR and IBR programs, and the payments are adjusted for the likelihood of deferment or forbearance; default and subsequent collection; prepayment through consolidation; death, disability, or bankruptcy; or Public Service Loan Forgiveness. The adjusted payment flows are aggregated by population and cohort and loaded into the Student Loan Model (SLM). The SLM combines the adjusted payment flows with the expected volume of loans in income-contingent repayment to generate estimates of Federal costs.

In evaluating the proposed changes to the ICR and IBR programs, the Department assumes that, if possible, income-contingent borrowers would elect the ICR-A plan given its more generous income and forgiveness provisions. Based on this, the Department estimates that between 2012 and 2021 approximately 1.67 million borrowers not already eligible for SAFRA IBR would be estimated to choose ICR-A. The availability of the ICR-A repayment plan results in an estimated average savings of $4,250 per borrower. Assuming

Unofficial

all those in ICR-A remained in the plan, the Department estimates that approximately 13 percent would receive public sector loan forgiveness, 39 percent would receive forgiveness after twenty years of qualifying payments, and 48 percent would pay-off their balances. (Note: the budget estimate of $2.1 billion takes into account prepayment through consolidation, defaults, and death/disability/bankruptcy discharges that lead to borrowers exiting the ICR program early). The actual number of borrowers receiving forgiveness will be significantly less than would be obtained by multiplying the 1.7 million borrowers estimate to take ICR by the above percentages since not all borrowers will remain in ICR. Currently, the Department estimates that approximately 400,000 borrowers from cohorts 2012 through 2021 would ultimately receive forgiveness. In general, those borrowers receiving forgiveness have higher balances as payments based on income are more likely to cover lower balances. Those receiving forgiveness have an average original balance of approximately $39,500 and receive forgiveness of approximately $41,000 as their payments tend to cover interest owed so they end up with balances forgiven close to the original debt.

Unofficial

As discussed above, when the assumption for loan forgiveness is increased as a result of a policy the cash flow impact is a reduction in principal and interest payments. The subsidy cost is derived from comparing the baseline payments to the policy payments (on a Net Present Value basis) and comparing the two resulting subsidy rates. The outlays are calculated by subtracting the new subsidy rate with the policy cash flows from the baseline subsidy rate and multiplying by the volume for the cohort. As stated above, compared to the baseline, the availability of the ICR-A repayment plan is estimated to cost approximately $2.1 billion for the cohorts from 2012 to 2021 as shown in Table 3.

Table 3: Estimated Outlays for Cohorts 2012-2021

Cohorts	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
Budget Authority	134	199	208	255	235	253	239	249	224	177	2,173
Outlays	114	191	208	253	235	246	234	254	218	178	2,132

Income Based Repayment

The proposed changes to the IBR program that implement the statutory changes in SAFRA are not expected to have a budgetary impact because they were incorporated into the budget baseline by SAFRA. The Department estimates that approximately one million new borrowers from the 2014 to 2021 cohorts would benefit from the changes to IBR made by

Unofficial

SAFRA. The proposed regulations also include process clarifications related to the ultimate loan forgiveness and the timing of notices and annual certification. These changes are expected to improve the servicing for IBR borrowers and provide guidance before the first set of eligible borrowers reach the forgiveness point, but are not expected to have a budgetary impact.

Total and Permanent Disability

The proposed regulations would establish a single application process through the Department for borrowers seeking a total and permanent disability discharge of their Federal loans, specify requirements for more detailed information in total and permanent disability discharge denial letters, and modify the process and documentation requirements for the post-discharge monitoring period. This should simplify the point of contact for borrowers or the borrower's representative, eliminate straggler loans that do not receive a discharge along with the borrower's other loans because they are in a different program or with a different loan holder and the borrower does not apply for or receive a discharge, and improve consistency in eligibility determinations. Because the proposed regulations do not change the standard for determining disability or expand the pool of borrowers potentially

Unofficial

eligible for discharge, there is no expected effect on the Federal student loan budget. The Department would continue to closely monitor the total and permanent disability discharge process and any significant changes in the frequency or magnitude of disability discharges would be reflected in future budget estimates.

Accounting Statement

As required by OMB Circular A-4 (available at www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the costs, benefits, and changes in annual monetized transfers as a result of the revisions to the ICR repayment plan as reflected in these proposed regulations. As discussed in the Net Budget Impacts section of this preamble, costs for policies affecting Federal student loans are calculated under credit reform scoring and reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. Under this approach, costs for a cohort are discounted at OMB provided rates to the cohort year of disbursement with the resulting outlays shown in Table 3.

Unofficial

To generate the required single annualized cost, the Department then discounted those costs from the cohort years to 2012 at 7 percent and 3 percent, resulting in the $214 million and $216 million annualized figures presented in the following accounting statement. Expenditures are classified as transfers from the Federal Government to borrowers in the revised ICR repayment plan.

Accounting Statement Classification of Estimated Expenditures at 3 percent and 7 percent discount rates [in millions]

Category	Costs
Costs of compliance with paperwork requirements	$1.40 (7%) 1.41 (3%)
Category	**Transfers**
Annualized reduced payments to Federal Government from borrowers in ICR-A repayment plan	$214 (7%) $216 (3%)

Unofficial

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, §682.209 Repayment of a loan.)
- Could the description of the proposed regulations in the "Supplementary Information" section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand,

Unofficial

see the instructions in the ADDRESSES section of this preamble.

Alternatives Considered

In the spirit of good governance, the Department carefully considers any regulatory action or revision to ensure that the final decision represents what the Department believes is the best feasible option. First and foremost, the Department considered whether or not negotiated rulemaking was necessary in this instance and concluded that the magnitude of the statutory and regulatory revisions to ICR, IBR, and the TPD process would require stakeholder input. Many of the regulatory alternatives proposed by non-federal negotiators and considered by the Department but ultimately rejected, were done so because of budgetary constraints. For example, non-Federal negotiators requested that the Department open ICR-A to all borrowers eligible for current ICR, but the Department declined because of the proposal's significant cost but did agree to retain full borrower access to the ICR-B plan so that all borrowers would have access to a "income-driven" repayment plan. Nonetheless, the Department carefully worked with the non-federal negotiators on every issue to address all concerns possible and was able to gain consensus from the non-federal

Unofficial

negotiators the proposed regulations. A more in-depth analysis of these discussions and decisions are documented preamble and a brief summary of the major discussions is listed below.

- The Department originally proposed requiring borrowers who choose to leave the ICR-A plan to make at least one payment under the standard repayment plan before selecting a different repayment plan, as IBR borrowers are required to do under §section 493C(b)(8) of the HEA but after further discussion and deliberation, the Department modified the proposed ICR-A regulations to reflect the same regulatory approach to changing repayment plans that applies to borrowers repaying under the existing ICR plan (the proposed ICR-B).
- The Department considered a proposal to cap the amount of interest and fees that may be charged to borrowers under both the ICR plans (including the proposed ICR-A plan) and IBR at 150 percent of the loan principal amount but determined that the Secretary does not have the authority under the HEA to stop charging interest to borrowers under the ICR or IBR plans after the amount of

Unofficial

accrued interest has reached a certain percentage of the loan principal.

- Some of the non-Federal negotiators suggested that many issues related to the current processes for submission of income documentation could be addressed by allowing borrowers to submit documentation electronically, or by establishing an electronic process for loan holders to obtain the necessary income information directly from the IRS. The Department agreed to explore such options in the future but noted that privacy issues associated with electronic submission of documents and restrictions on the release of information by the IRS to FFEL Program loan holders would have to be addressed.
- After a lengthy discussion about AGI verification in regards to IBR, the Department agreed that the income documentation requirements could be simplified by amending the regulations to require borrowers to provide documentation, acceptable to the Secretary or the loan holder, of the borrower's AGI. Acceptable documentation of a borrower's AGI could include a copy of the borrower's most recently filed Federal income tax

Unofficial

return or a tax transcript obtained from the IRS by the borrower. In addition, the Department agreed that a copy of the borrower's most recently filed tax return need not include the borrower's signature. The Department disagreed with the recommendation that the regulations be amended to allow loan holders to disregard AGI and require borrowers to provide alternative documentation of income under any circumstances. Section 493C(a)(3) of the HEA specifically provides that the determination of a borrower's partial financial hardship status is based, in part, on the borrower's AGI.

- The Department initially proposed to incorporate into regulations its current policy that a borrower leaving the IBR plan must make one full monthly payment under the 10-year standard repayment plan or the standard consolidation repayment plan, as applicable, before the borrower would be permitted to select another repayment plan. After a lengthy discussion with non-Federal negotiators and internal debate, the Department proposed regulations that require the borrower to make one monthly payment while under

Unofficial

a standard repayment plan but allow for that payment to be for a lesser amount than the full scheduled monthly payment amount under a reduced payment forbearance agreement with the Secretary or the loan holder. The non-Federal negotiators agreed with this proposal.

- After non-Federal negotiators voiced their concerns about borrower's representatives not being included in the full TPD process, the Department added a paragraph to the proposed regulations for all of the Title IV student loan programs stating that the term "borrower" includes a borrower's representative, if applicable. Under the proposed regulations, any notice sent to a borrower must also be sent to the borrower's representative if the borrower has one. In addition, both the borrower and the borrower's representative may provide notifications and information in connection with the borrower's total and permanent disability discharge. The Department also added language to the Perkins Loan, FFEL, and Direct Loan program regulations providing that an attorney could be a borrower's representative.

Unofficial

- Some non-Federal negotiators recommended that the suspension of collection activity also include a suspension of payments collected from borrowers through administrative wage garnishment (AWG) and the Treasury Offset Program (TOP). The Department did not agree. Borrowers applying for total and permanent disability discharges are, by definition, unable to work and earn money. Therefore, AWG would not be an issue for these borrowers. With regard to TOP, the Department reiterated its current policy on stopping TOP offsets. The submission of a total and permanent disability discharge application does not, in and of itself, demonstrate that a borrower is eligible for a total and permanent disability discharge. The Department or guaranty agency may, however, stop or reduce TOP offsets during this period if it believes such action is warranted in the borrower's particular circumstances.
- The Department declined a proposal from non-Federal negotiators representing guaranty agencies that would require that guaranty agencies receive copies of the total and

Unofficial

permanent disability discharge applications. Under the proposed regulations, guaranty agencies and lenders would not conduct medical reviews of disability discharge applications. Therefore, there is no need for lenders or agencies to receive the applications.

- Initially, the Department proposed shifting the three-year period during which the borrower would have to provide income information to three calendar years (January 1st to December 31st) after the discharge was granted. The Department proposed this approach because it would allow borrowers to meet the income documentation requirement by submitting tax returns for each calendar year after the discharge but after non-federal negotiators objected to this proposal on the grounds that it would lengthen the post-discharge monitoring period, the Department abandoned this proposal.
- Non-Federal negotiators proposed that the Department tie the definition of "permanent and total disability" to the Social Security standard and accept a statement of Social Security disability or SSI payments as proof that

Unofficial

borrowers meet the reinstatement period requirements. The Department rejected the request to tie the Department's total and permanent disability definition to the Social Security standard but amended the language to allow for the submission of documentation of eligibility for Social Security disability benefits as supporting documentation for the OMB approved form that the Department will be developing for earnings verification during the three year monitoring period.

Regulatory Flexibility Act Certification

Initial Regulatory Flexibility Analysis

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations are concerned with the relationship between certain Federal student loan borrowers and the Federal government, with some of the provisions modifying the servicing and collections activities of guaranty agencies and other parties. The Department believes that the entities affected by these proposed regulations do not fall within the definition of a small entity. The U.S. Small Business Administration Size Standards define "for-profit

Unofficial

institutions" as "small businesses" if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000, and defines "non-profit institutions" as small organizations if they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000. The Secretary invites comments from small entities as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly

Unofficial

understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 674.61, 682.215, 682.402, and 685.213 contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Discussion:

Proposed §§674.61, 682.215, 682.402, and 685.213 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these

Unofficial

sections to the Office of Management and Budget (OMB) for its review.

Total and Permanent Disability Discharge Application Process Based on a Physician's Certification (§§674.61(b)(2), 682.402(c)(2) and 685.213(b))

The proposed regulations would revise §§674.61(b)(2) and 682.402(c)(2) of the Perkins Loan and FFEL program regulations to require Perkins Loan and FFEL borrowers to apply directly to the Department for total and permanent disability discharges. In the Direct Loan program, borrowers would continue to apply directly to the Department for total and permanent disability discharges, as they do under the current Direct Loan program regulations.

Under the proposed total and permanent disability discharge process, if a Perkins Loan program school or FFEL lender is contacted by a borrower intending to apply for a total and permanent disability discharge, the school or lender would provide the borrower with the information needed to apply to the Department for the discharge. Under the current regulations, when a borrower has loans held by two or more loan holders, the borrower must complete and submit a separate total and permanent disability application for each holder. Under the proposed

Unofficial

streamlined process, a borrower would submit one total and permanent disability discharge application to the Department, eliminating the need for borrowers to submit separate discharge applications to each of their loan holders. We determined that in 2011 the number of total and permanent disability applications was as follows:

Year	Program	# Borrowers	# of Loans
2011	Direct Loans	29,777	65,823
2011	FFEL Loans	48,518	114,040
2011	Perkins Loans	95	95
		78,390	179,958

Under currently approved OMB 1845-0065 - Discharge Application: Total and Permanent Disability, the average amount of time for the borrower to complete and submit an application is estimated to be 30 minutes (0.5 hours) per application. The proposed regulations provide that a borrower with a single loan holder must still provide the Secretary with a single total and permanent disability discharge application for all the affected title IV, HEA program loans held by that holder. However, under the proposed regulations, borrowers with multiple loan holders would no longer have to complete and submit multiple total and permanent disability discharge applications to each separate loan holder, but instead will submit a single

Unofficial

application to the Secretary. Under currently approved OMB 1845-0065, there are 30,000 respondents annually with 30,000 responses (applications) annually times 0.5 hours to yield a total burden of 15,000 hours to borrowers. Information from the 2011 award year indicates that the number of borrowers applying for total and permanent disability discharges has increased to 78,390 borrowers on 179,958 title IV, HEA loans. Using the 2011 number of loan applications, the burden would have expanded to 89,979 hours (179,958 times 0.5 hours equal 89,979 hours).

The burden analysis for these proposed regulations estimates the incremental increase from the previous annual rate of 30,000 borrowers and 30,000 affected loans to the 2011 basis of 78,390 borrowers and 179,958 affected loans, or an incremental increase of 48,390 borrowers (78,390 borrowers in 2011 less 30,000 borrowers already accounted for in the annual estimate) and 149,958 loans (179,958 loans in 2011 less 30,000 loans already accounted for in the annual estimate).

We estimate that half or 24,195 of the borrowers (48,390 divided by 2) have all of their 24,195 title IV, HEA loans held by single holders. Therefore, the burden associated with the group of borrowers with single holders is an increase of 12,098 burden hours (24,195 times 0.5

Unofficial

hours per application). We estimate that the other half of the borrowers or 24,195 (48,390 divided by 2) have multiple holders for their 125,763 title IV, HEA loans (179,958 affected loans in 2011 less the 30,000 already accounted for in the annual estimate, less 24,195 held by single holders). The proposed regulations require borrowers requesting a total and permanent disability discharge to submit a single TPD application to the Department even when the borrower has multiple loans from multiple loan holders. Therefore, the total remaining number of loans with multiple holders would be 24,195 (78,390 borrowers less 30,000 borrowers (respondents) in the currently approved information collection (OMB 1845-0065.v.4, less 24,195 borrowers with single holders) times 0.5 hours per application equal 12,097 hours of burden associated with the loans held by multiple holders. As a result, the overall annual burden would increase from 15,000 hours to 39,195 hours, a net increase of 24,195 burden hours, that is due primarily to the fact that over time the population of borrowers seeking total and permanent disability discharges has grown from 15,000 to 78,390 per year. This significant increase in application volume increases the total burden. The effect of the single application portion of the proposal kept the burden from increasing from 15,000

Unofficial

burden hours (currently approved amount) to 89,979 hours of burden, preventing an additional 50,784 hours of burden to individuals (179,958 applications times 0.5 hours equals 89,979 less 39,195 hours, the revised new amount of burden).

Under the proposed regulations, lenders and guaranty agencies would no longer perform a number of functions in the total and permanent disability discharge process. Lenders and guaranty agencies would no longer: distribute the Discharge Application: Total and Permanent Disability application, receive the completed and submitted total and permanent disability applications, review the completed and submitted total and permanent disability application forms, evaluate the application forms, request additional information necessary to complete or resolve open issues regarding the applications, review and evaluate supplemental information provided by the applicants, as well as make a determination whether the application supports the conclusion that the borrower is totally and permanently disabled.

Proposed §§674.61(b)(2) and 682.402(c)(2) would require institutions that participate in the Perkins Loan program and FFEL program loan holders to provide borrowers seeking a total and permanent disability discharge with

Unofficial

information needed for the borrower to notify the Secretary. Since this is likely to be a highly automated process, we estimate that the average amount of time to provide a borrower with the required referral information to take 0.03 hours (2 minutes) per request. Under the currently approved burden analysis in OMB 1845-0019 for the Perkins Loan program, there are 31 hours of burden attributed to this regulation (62 respondents with 62 responses times 0.5 hours per response). Information from the 2011 award year indicates that the current annual number of Perkins Loan borrowers applying for total and permanent disability discharge has increased from an average of 62 to 95 borrowers. Under the proposed regulations, we estimate that the required information to notify the Secretary would take 0.03 hours (2 minutes) per borrower request. At the current burden rate that would have been 48 hours of burden, however, at the estimated notification rate of 0.03 hours per borrower the total burden is 3 hours (95 borrowers times 0.03 hours). While the number of affected Perkins Loan borrowers increased, this is a reduction in burden of 28 hours under OMB Control Number 1845-0019.

Section 682.402 does not contain any burden attributed to the regulation for the total and permanent disability

Unofficial

discharge collection of information, nor is there burden attributable to the application process other than that which impacts the borrower completing the application. In the 2011 award year, our data indicate that there were 48,518 FFEL borrowers who applied for total and permanent disability discharges on 114,040 loans. Of the total 48,518 borrowers, 18,078 borrowers applied for discharge of 38,742 FFEL loans that were held by the Department, and 30,440 borrowers applied for discharge of 75,298 FFEL loans that were not held by the Department.

Under the current regulations, we estimate that providing the total permanent disability discharge application and all the other related review and determination processes would take 0.5 hours per application, thus creating 15,220 hours of burden.

Under proposed §682.402(c)(2), the holder only provides information to the borrower telling the borrower how to notify the Secretary. Under the proposed regulations, we estimate that the required information to notify the Secretary would take 0.03 hours (2 minutes) per borrower request. At the current burden rate that would have been 15,220 hours of burden, however, at the estimated notification rate of 0.03 hours per borrower the total

Unofficial

burden is 913 hours (30,440 borrowers times 0.03 hours). While the burden on non-Federal holders was not previously estimated, we have established that the estimate would have been 15,220 hours (30,440 times 0.5 hours per total and permanent disability discharge application). Under the proposed process the burden is reduced to 913 burden hours, an abatement of 14,307 burden hours; however, this is not a burden reduction since the current burden had not been previously established. Instead, an increase of 913 hours would be added to OMB Control Number 1845-0020.

As noted earlier, the proposed regulations would revise §§674.61(b)(2) and 682.402(c)(2) of the Perkins Loan and FFEL regulations to require Perkins and FFEL borrowers to apply directly to the Department for total and permanent disability discharges. In the Direct Loan Program, borrowers would continue to apply directly to the Department for total and permanent disability discharges, as they do under the current Direct Loan regulations.

Under proposed §§674.61(b)(2)(v)-(viii), 682.402(c)(2)(iv)-(viii), and 685.213(b)(3), a Perkins Loan, FFEL, or Direct Loan borrower must submit the total and permanent disability discharge application certified by a physician to the Department within 90 days of the date of the physician's certification. After receiving the total

Unofficial

and permanent disability discharge application, the Department notifies the borrower's title IV loan holders that the Department has received the application. This notification directs the borrower's loan holders to either suspend collection activity or to maintain the suspension of collection activity on the borrower's title IV loans. If the application is incomplete, the Department requests the missing information from the borrower or the physician who certified the application.

The proposed changes would not constitute a change in burden for the borrowers because the application process remains virtually the same. However, since the borrower is directed to obtain the application form approved by the Secretary from the Department rather than from the institution in the case of a Perkins loan, or the lender in the case of a FFEL loan, the burden associated with the streamlined total and permanent disability discharge application process is transferred to the Department.

Changes to the Total and Permanent Disability Discharge Application form would need to be made. The Total and Permanent Disability Discharge Application form currently in use would expire on February 28, 2015. Final regulations implementing these provisions would be effective July 1, 2013. A revised Total and Permanent

Unofficial

Disability Discharge Application form associated with OMB Control Number 1845-0065 will be submitted for OMB review by November 1, 2012, thereby ensuring that the public has an opportunity to provide comment upon the newly revised form that will be available for use on or about the effective date of the final regulations.

Under proposed §§674.61(b)(7)(iii), 682.402(c)(7)(iii), and 685.213(b)(8)(iii), during the three-year period following a discharge of a title IV loan based on total and permanent disability, the borrower must provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on an OMB approved form that would be available by the time that these regulations become effective. The form would require a certification from the borrower, and would require the borrower to submit documentation to support the certification available to the borrower. The documentation may include income tax returns, documentation of eligibility for Social Security disability benefits, or other documentation that supports the borrower certification.

The proposed regulations do not specify the content of the form but, as with all OMB-approved forms, the form

Unofficial

would be made available for public comment as part of the OMB forms clearance process.

Collectively, the proposed regulatory changes reflected in §§674.61 and 682.402 would increase burden by 40,080 hours. The burden in OMB Control Number 1845-0065 would increase from 15,000 to 39,195. The burden in OMB Control Number 1845-0019 would decrease by 28 hours from 31 hours to 3 hours. The burden in OMB Control Number 1845-0020 would increase by 913 hours.

Income-based repayment plan.

Proposed §§682.215(e)(2) and 685.221(e)(2) – Eligibility documentation, verification, and notifications.

Under proposed §682.215(e)(2), a FFEL loan holder, after making a determination that a borrower has a partial financial hardship to qualify for the IBR plan for the year the borrower initially selects the plan and for any subsequent year that the borrower has a partial financial hardship, would send the borrower a written notification that would include the following information: the borrower's scheduled monthly payment amount, and the time period during which that monthly payment amount will apply (annual payment period); information about the requirement for the borrower to annually provide income information (and, in some cases for married FFEL program borrowers,

Unofficial

information about the eligible loans of the borrower's spouse) and certify family size, if the borrower chooses to remain on the IBR plan after the initial year on the plan, an explanation that the borrower will be notified in advance of the date by which the loan holder must receive this information; an explanation of the consequences if the borrower does not annually provide the required information; and information about the borrower's option to request, at any time during the borrower's current annual payment period, that the loan holder recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the monthly payment amount is recalculated based on the borrower's request, the loan holder would send the borrower a written notification that includes the borrower's new calculated monthly payment amount and the other information described above.

Using the most recent monthly reports on IBR applications, we examined the number of loans being repaid under IBR that are serviced by the Title IV Additional Servicers (TIVAS). We determined that 71 percent of all of the non-defaulted FFEL loans are held by the Department

Unofficial

(and serviced by the TIVAS), with the remaining 29 percent being held by commercial for-profit and not-for-profit holders. Applying these same percentages to the IBR participation data we obtained from the Department's TIVAS, we estimated that the annualized estimated number of commercially held loans being repaid under IBR as 290,268 for the basis of this burden assessment. However, our data does not allow us to further disaggregate this number into the affected entities grouped under Public entities, Private-Not for Profit entities, and Proprietary entities. We estimate that the required notifications above would be highly automated and thus projected an average of 0.08 hours (5 minutes) of burden per IBR applicant, thus 23,221 hours of burden (290,268 times 0.08 hours) of increased burden are added as a new information collection under OMB Control Number 1845-NEWA.

Additional proposals under §682.215(e) place further notification requirements on loan holders for subsequent years which are outside the scope of this burden analysis and would require future burden analysis.

Loan forgiveness processing and payment.

Proposed §682.215(g) under the FFEL program, would clarify that the loan holder determines when a borrower has met the requirements for loan forgiveness and that the

Unofficial

borrower is not required to submit a request for loan forgiveness.

The proposed regulations provide for the loan holder to send the borrower a written notice no later than six months prior to the anticipated date that the borrower would meet the loan forgiveness requirements. This notice would explain that the borrower is approaching the date he or she is expected to qualify for loan forgiveness, would remind the borrower that he or she must continue to make scheduled monthly payments, and would provide general information on the current treatment of the forgiveness amount for tax purposes, including instructions to contact the IRS for more information.

Current §682.215(g)(4) (redesignated as §682.215(g)(5)) would be revised to clarify that when a loan holder notifies a borrower that the borrower has been determined eligible for loan forgiveness, the borrower must be provided with information on the current treatment of the forgiveness amount for tax purposes and directed to the IRS for more information.

The loan holder determines when a borrower qualifies for loan forgiveness and does not require the borrower to track his or her own progress toward meeting the loan forgiveness requirement and then submit an application for

Unofficial

forgiveness. In this section, we are required to analyze and publish the estimated amount of burden that proposed regulations place on affected entities (other than the Federal government) as of the effective date of the implementation of the proposed regulation, (assuming that it would occur in the initial year that the final regulations are effective). However, since these additional proposed notification requirements occur 24.5 years after the first income-based repayment loans were placed into repayment (on or around 2031), they are outside the scope of this burden analysis.

Consistent with the discussions above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, the collections the Department will submit to the OMB for approval and public comment under the Paperwork Reduction Act, and the estimated costs associated with the information collections. The monetized cost of the additional burden on loan holders, using wage data developed using BLS data, available at www.bls.gov/ncs/ect/sp/ecsuphst.pdf, is $593,249, as shown in Chart 4. This cost was based on an hourly rate of $24.61. The monetized cost of the additional burden on students is $700,807 based on an hourly rate of $17.88.

Unofficial

Chart 4: Summary of Estimated Paperwork Burden

Regulatory Section	Information Collection	OMB Control Number and estimated change in the burden	Estimated Cost
674.61	This proposed regulatory section would require Perkins borrowers to apply directly to the Department for total and permanent disability discharges. Under the proposed regulations institutions would no longer	OMB 1845-0019. The burden would decrease by 28 hours to 3 hours.	-$689

Unofficial

	distribute the Total and Permanent Disability Discharge Application, receive the completed form, review and evaluate the request, request supplemental information where indicated, evaluate the supplemental application, and make a determination whether the application supports the conclusion that		

Unofficial

	the borrower is totally and permanently disabled.		
674.61, 682.102, and 685.213	These proposed regulations would require borrowers who request an application for a total and permanent disability discharge of their title IV, HEA loans to request the application from the Department. Borrowers with multiple loans at multiple loan holders would	OMB 1845-0065. A separate 60-day Federal Register notice will be published to solicit public comment. The burden would increase by 39,195 hours.	$700,407

Unofficial

	only complete and submit a single TPD application to the Department.		
682.215	This proposed regulation would require FFEL loan holders, after making a determination that a borrower has a partial financial hardship to qualify for the IBR plan, to send the borrower for the initial year or any subsequent year, written information to	OMB 1845-NEWA. This would be a new collection. A separate 60-day Federal Register notice will be published to solicit public comment. The burden would increase by 23,221 hours.	$571,469

Unofficial

	include the scheduled monthly payment amount, the time period during which the monthly payment will apply, and other information.		
682.402	This proposed section would require FFEL loan holders to provide information to the borrower to notify the Secretary about their interest in applying for a total and permanent	OMB 1845-0020. The burden would increase by 913 hours.	$22,469

Unofficial

	disability discharge.		

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to OIRA_DOCKET@omb.eop.gov or by fax to (202) 395-6974. You may also send a copy of these comments to the Department contact named in the ADDRESSES section of this preamble.

We have prepared an Information Collection Request (ICR) for OMB 1845-0019, OMB 1845-0020. In preparing your comments you may want to review the ICR, which we maintain in the Education Department Information Collection System (EDICS) at http://edicsweb.ed.gov. Click on "Browse Pending Collections." We will prepare separate 60 day Federal Register notices for the proposed collection OMB 1845-0065 and a new information collection under OMB 1845-NEWA.

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

Unofficial

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

Under 5 CFR 1320.13 we have requested OMB to conduct its review of these collections of information on an emergency basis. We have asked OMB to approve the collections of information within 30 days after publication of these proposed regulations in the Federal Register. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by [INSERT DATE 20 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

Unofficial

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of

Unofficial

the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the Federal Register by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins

Unofficial

Loan Program; 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects

34 CFR Parts 674, 682, and 685

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

Dated:

_____
Arne Duncan,
Secretary of Education.

Unofficial

For the reasons discussed in the preamble, the Secretary proposes to amend 34 of the Code of Federal Regulations chapter VI as follows:

PART 674--FEDERAL PERKINS LOAN PROGRAM

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

AUTHORITY: 20 U.S.C. 1070g, 1087aa-1087hh, unless otherwise noted.

2. Section 674.61 is amended by:

A. Revising paragraph (b).

B. Revising paragraph (c).

C. Revising paragraph (d).

The revisions read as follows:

§674.61 Discharge for death or disability.

* * * * *

(b) Total and permanent disability as defined in §674.51(aa)(1). (1) General. (i) A borrower's Defense, NDSL, or Perkins loan is discharged if the borrower becomes totally and permanently disabled, as defined in §674.51(aa)(1), and satisfies the additional eligibility requirements in this section.

(ii) For purposes of §674.61(b), a borrower's representative or a veteran's representative is a member of

Unofficial

the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a "borrower" or a "veteran" include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary.

(2) Discharge application process for borrowers who have a total and permanent disability as defined in §674.51(aa)(1). (i) If the borrower notifies the institution that the borrower claims to be totally and permanently disabled as defined in §674.51(aa)(1), the institution must direct the borrower to notify the Secretary of the borrower's intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify Secretary.

(ii) If the borrower notifies the Secretary of the borrower's intent to apply for a total and permanent disability discharge, the Secretary--

Unofficial

(A) Provides the borrower with the information needed for the borrower to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the borrower and notifies the lenders of the borrower's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the borrower that the suspension of collection activity described in paragraph (b)(2)(ii)(C) of this section will end after 120 days and the collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the borrower fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the borrower's title IV loans.

(iv) The borrower must submit to the Secretary an application for total and permanent disability discharge on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a

Unofficial

State, that the borrower is totally and permanently disabled as defined in §674.51(aa)(1).

(v) The borrower must submit the application described in paragraph (b)(2)(iv) of this section to the Secretary within 90 days of the date the physician certifies the application.

(vi) After the Secretary receives the application described in paragraph (b)(2)(iv) of this section, the Secretary notifies the holders of the borrower's title IV loans that the Secretary has received a total and permanent disability discharge application from the borrower.

(vii) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower, the borrower's representative, or the physician who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (b)(2)(vi) of this section directs the borrower's loan holders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

Unofficial

(ix) After the Secretary receives a disability discharge application, the Secretary sends a notice to the borrower that--

(A) States that the application will be reviewed by the Secretary;

(B) Informs the borrower that the borrower's lenders will suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans while the Secretary reviews the borrower's application for discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) Secretary's review of the total and permanent disability discharge application. (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician's certification supports the conclusion that the borrower is totally and permanently disabled as defined in §674.51(aa)(1), the borrower is considered totally and permanently disabled as of the date the physician certified the borrower's application.

(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as

Unofficial

defined in §674.51(aa)(1). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled as defined in §674.51(aa)(1), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the date the physician certified the borrower's loan discharge application and directs each institution holding a Defense, NDSL, or Perkins Loan made to the borrower to assign the loan to the Secretary.

(iv) The institution must assign the loan to the Secretary within 45 days of the date of the notice described in paragraph (b)(3)(iii) of this section.

(v) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the institution that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph

Unofficial

(b)(6) of this section. Any payments received after the date the physician certified the borrower's loan discharge application are returned to the person who made the payments on the loan in accordance with paragraph (b)(8) of this section.

(vi) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as defined in §674.51(aa)(1), the Secretary notifies the borrower and the institution that the application for a disability discharge has been denied. The notification includes--

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the institution under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) A statement that the institution will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-

Unofficial

evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(vii) If the borrower requests re-evaluation in accordance with paragraph (b)(3)(vi)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(3)(vi)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not available at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(4) Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge. If a borrower received a title IV loan

Unofficial

or TEACH Grant before the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge application will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) Receipt of new title IV loans or TEACH Grants after the date of the physician's certification. If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's discharge application and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and collection resumes on the borrower's loans.

(6) Conditions for reinstatement of a loan after a total and permanent disability discharge. (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(3)(v) of this section if, within three years after the date the Secretary granted the discharge, the borrower--

Unofficial

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary--

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed had the total and permanent disability discharge application not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

Unofficial

(iii) The Secretary's notification under paragraph (b)(6)(ii)(A) of this section will include--

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(7) Borrower's responsibilities after a total and permanent disability discharge. During the three-year period described in paragraph (b)(6)(i) of this section, the borrower must--

(i) Promptly notify the Secretary of any changes in the borrower’s address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(6)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on a form approved by the Secretary.

Unofficial

(8) Payments received after the physician's certification of total and permanent disability. (i) If the institution receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary based on the Secretary's determination of eligibility for a total and permanent disability discharge, the institution must return the payments to the sender.

(ii) At the same time that the institution returns the payments, it must notify the borrower that there is no obligation to make payments on the loan after it has been discharged due to a total and permanent disability unless the loan is reinstated in accordance with §674.61(b)(6), or the Secretary directs the borrower otherwise.

(iii) When the Secretary discharges the loan, the Secretary returns to the sender any payments received on the loan after the date the borrower became totally and permanently disabled.

(c) Total and permanent disability discharges for veterans. (1) General. A veteran's Defense, NDSL, or Perkins loan will be discharged if the veteran is totally and permanently disabled, as defined in §674.51(aa)(2).

(2) Discharge application process for veterans who have a total and permanent disability as defined in

Unofficial

§674.51(aa)(2). (i) If a veteran notifies the institution that the veteran claims to be totally and permanently disabled as defined in §674.51(aa)(2), the institution must direct the veteran to notify the Secretary of the veteran's intent to submit an application for a total and permanent disability discharge to the Secretary; and provide the veteran with the information needed for the veteran to apply for a total and permanent disability discharge to the Secretary.

(ii) If the veteran notifies the Secretary of the veteran's intent to apply for a total and permanent disability discharge, the Secretary--

(A) Provides the veteran with the information needed for the veteran to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the veteran and notifies the lenders of the veteran's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the veteran that the suspension of collection activity described in paragraph (c)(2)(ii)(C) of this section will end after 120 days and collection will resume on the veteran's title IV loans if the veteran does

Unofficial

not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the veteran fails to submit an application for a total and permanent discharge to the Secretary within 120 days, collection resumes on the veteran's title IV loans.

(iv) The veteran must submit to the Secretary an application for total and permanent disability discharge on a form approved by the Secretary.

(v) The application must be accompanied by documentation from the Department of Veteran Affairs showing that the Department of Veteran Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(vi) After the Secretary receives the application and supporting documentation described in paragraphs (c)(2)(iv) and (c)(2)(v) of this section, the Secretary notifies the holders of the veteran's title IV loans that the Secretary has received a total and permanent disability discharge application from the veteran.

(vii) If the application is incomplete, the Secretary notifies the veteran of the missing information and

Unofficial

requests the missing information from the veteran or the veteran's representative. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (c)(2)(vi) of this section directs the lenders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives the disability discharge application, the Secretary sends a notice to the veteran that--

(A) States that the application will be reviewed by the Secretary;

(B) Informs the veteran that the veteran's lenders will suspend collection activity on the veteran's title IV loans while the Secretary reviews the borrower's application for a discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) Secretary's review of the total and permanent disability discharge application. (i) If, after reviewing the veteran's completed application, the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally

Unofficial

and permanently disabled as defined in §674.51(aa)(2), the Secretary notifies the veteran and the veteran's lenders that the application for disability discharge has been approved. With this notification, the Secretary provides the effective date of the determination and directs each institution holding a Direct, NDSL, or Perkins Loan made to the veteran to discharge the loan.

(ii) The institution returns any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability to the person who made the payments.

(iii) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as defined in §674.51(aa)(2), the Secretary notifies the veteran or the veteran's representative, and the institution that the application for a disability discharge has been denied. The notification includes--

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the institution under the terms of the promissory note and that the loan will return to the status that would have

Unofficial

existed had the total and permanent disability discharge application not been received;

(C) An explanation that the institution will notify the veteran of the date the veteran must resume making payments on the loan;

(D) An explanation that the veteran is not required to submit a new total and permanent disability discharge application if the veteran requests that the Secretary re-evaluate the veteran's application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

(E) Information on how the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraphs (b)(1) through (b)(8) of this section, if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in §674.51(aa)(2), but indicates that the veteran may be totally and permanently disabled as defined in §674.51(aa)(1).

Unofficial

(d) No Federal reimbursement. No Federal reimbursement is made to an institution for discharge of loans due to death or disability.

* * * * *

PART 682--FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

AUTHORITY: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

§682.209 [Amended]

4. Section 682.209 is amended in paragraph (a)(6)(v)(C), by adding the words "through 682.215(e)(1)(iii)" between the citation "682.215(e)(1)(i)" and the word "within".

5. Section 682.215 is amended by:

A.1. In paragraph (b)(1)(i), adding the words "the borrower's" immediately after the words "outstanding principal amount of".

A.2. In paragraph (b)(1)(ii)(C), adding the words "the borrower's" immediately after the words "outstanding principal amount of".

A.3. In the first sentence of paragraph (b)(2), removing the words "an income-based repayment plan" and

Unofficial

adding, in their place, the words “the income-based repayment plan”.

A.4. Revising paragraph (b)(3).

A.5. In paragraph (b)(7), removing the words “an income-based repayment plan” and adding, in their place, the words “the income-based repayment plan”.

A.6. In paragraph (b)(8), removing the words “an income-based repayment plan” and adding, in their place, the words “the income-based repayment plan”.

B. In the introductory text of paragraph (c)(1), removing the words “an income-based repayment plan” and adding, in their place, the words “the income-based repayment plan”.

C. Revising paragraph (d).

D. Revising paragraph (e).

E.1. Revising paragraph (f)(1)(i).

E.2. In paragraph (f)(1)(iii), adding the words “for the amount of the borrower’s loans that were outstanding at the time the loans initially entered repayment” at the end of the paragraph, immediately before the punctuation “;”.

E.3. In paragraph (f)(1)(iv), removing the words “for the amount of the borrower’s loans that were outstanding at the time the borrower first selected the income-based

Unofficial

repayment plan" immediately before the punctuation and word "; or".

E.4. In the first sentence of paragraph (f)(3)(i), removing the words "a FFEL Consolidation Loan," and adding, in their place, the words "an eligible FFEL Consolidation Loan,".

E.5. In paragraph (f)(3)(iv), removing the words "(f)(1) after qualifying for the income-based repayment plan" immediately before the punctuation "." and adding, in their place, the words "paragraph (f)(1) of this section".

E.6. Revising paragraph (f)(5).

F. Revising paragraph (g).

G. Adding an OMB control number parenthetical following the section.

The revisions and addition read as follows:

<u>§682.215 Income-based repayment plan.</u>

* * * * *

(b) * * *

(3) If a borrower elects the income-based repayment plan, the loan holder must, unless the borrower has some loans that are eligible for repayment under the income-based repayment plan and other loans that are not eligible for repayment under that plan, require that all eligible

Unofficial

loans owed by the borrower to that holder be repaid under the income-based repayment plan.

* * * * *

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

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

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

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

Unofficial

(i) Except as provided in paragraph (d)(2)(ii) of this section, the time remaining under the maximum 10-year repayment period and the amount of the borrower's loans that was outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(ii) For a Consolidation Loan, the time remaining under the applicable repayment period as initially determined under §682.209(h)(2) and the total amount of that loan that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(3) A borrower who no longer wishes to repay under the income-based repayment plan and who is required to repay under the FFEL standard repayment plan in accordance with paragraph (d)(2) of this section may request a change to a different repayment plan after making one monthly payment under the FFEL standard repayment plan. For this purpose, a monthly payment may include one payment made under a forbearance that provides for temporarily accepting smaller payments than previously scheduled, in accordance with §682.211(a)(1).

(e) Eligibility documentation, verification, and notifications. (1) The loan holder determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower

Unofficial

elects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the loan holder requires the borrower to --

(i) Provide documentation, acceptable to the loan holder, of the borrower’s AGI;

(ii) If the borrower's AGI is not available, or the loan holder believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, provide other documentation to verify income;

(iii) If the spouse of a married borrower who files a joint Federal tax return has eligible loans and the loan holder does not hold at least one of the spouse’s eligible loans --

(A) Provide consent for the loan holder to access the National Student Loan Data System to obtain information about the spouse’s eligible loans; or

(B) Provide other documentation, acceptable to the loan holder, of the spouse’s eligible loan information; and

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

(2) After making a determination that a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower initially

Unofficial

elects the plan and for any subsequent year that the borrower has a partial financial hardship, the loan holder must send the borrower a written notification that provides the borrower with--

(i) The borrower's scheduled monthly payment amount, as calculated under paragraph (b)(1) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(ii) Information about the requirement for the borrower to annually provide the information described in paragraph (e)(1) of this section, if the borrower chooses to remain on the income-based repayment plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the loan holder must receive this information;

(iii) An explanation of the consequences, as described in paragraphs (e)(1)(iv) and (e)(7) of this section, if the borrower does not provide the required information;

(iv) An explanation of the consequences if the borrower no longer wishes to repay under the income-based repayment plan; and

(v) Information about the borrower's option to request, at any time during the borrower's current annual

Unofficial

payment period, that the loan holder recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the loan holder recalculates the borrower's monthly payment amount based on the borrower's request, the loan holder must send the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(3) For each subsequent year that a borrower who currently has a partial financial hardship remains on the income-based repayment plan, the loan holder must notify the borrower in writing of the requirements in paragraph (e)(1) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (e)(3)(i) of this section. The notification must provide the borrower with --

(i) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the loan holder must receive all of the information described in paragraph (e)(1) of this section (annual deadline); and

Unofficial

(ii) The consequences if the loan holder does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (d)(1) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period in accordance with paragraph (b)(5) of this section.

(4) Each time a loan holder makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the loan holder must send the borrower a written notification that provides the borrower with--

(i) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (d)(1) of this section;

(ii) An explanation that unpaid accrued interest will be capitalized in accordance with paragraph (b)(5) of this section; and

(iii) Information about the borrower's option to request, at any time, that the loan holder redetermine whether the borrower has a partial financial hardship, if

Unofficial

the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the loan holder determines that the borrower again has a partial financial hardship, the loan holder must recalculate the borrower's monthly payment in accordance with paragraph (b)(1) of this section and send the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(5) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the income-based repayment plan, the loan holder must send the borrower a written notification that includes the information described in paragraph (e)(4)(iii) of this section.

(6) If a borrower who is currently repaying under another repayment plan selects the income-based repayment plan but does not provide the documentation described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section, or if the loan holder determines that the borrower does not

Unofficial

have a partial financial hardship, the borrower remains on his or her current repayment plan.

(7) The loan holder designates the repayment option described in paragraph (d)(1) of this section if a borrower who is currently repaying under the income-based repayment plan remains on the plan for a subsequent year but the loan holder does not receive the information described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section within 10 days of the specified annual deadline.

(8)(i) If the loan holder receives the information described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section within 10 days of the specified annual deadline, the loan holder must promptly determine the borrower's new monthly payment amount. If the loan holder does not determine the new monthly payment amount by the end of the borrower's current annual payment period, the loan holder must prevent the borrower's monthly payment amount from being recalculated in accordance with paragraph (d)(1) of this section and maintain the borrower's current scheduled monthly payment amount until the loan holder determines the new monthly payment amount.

(ii) If the new monthly payment amount is less than the borrower's previously calculated income-based monthly payment amount, the loan holder must make the appropriate

Unofficial

adjustment to the borrower's account to reflect any payments at the previously calculated amount that the borrower made after the end of the most recent annual payment period. Notwithstanding the requirements of §682.209(b)(2)(ii), unless the borrower requests otherwise the loan holder applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of §682.215(c)(1).

(iii) If the new monthly payment amount is equal to or greater than the borrower's previously calculated income-based monthly payment amount, the loan holder does not make any adjustments to the borrower's account.

(9) If the loan holder receives the documentation described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (d)(1) of this section, the loan holder may grant forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments

Unofficial

that are overdue after the end of the prior annual payment period is not capitalized.

(f) * * *

(1) * * *

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

* * * * *

(5) Any payments made on a defaulted loan are not made under a qualifying repayment plan and are not counted toward the 25-year forgiveness period.

(g) Loan forgiveness processing and payment. (1) The loan holder determines when a borrower has met the loan forgiveness requirements under paragraph (f) of this section and does not require the borrower to submit a request for loan forgiveness. No later than 6 months prior to the anticipated date that the borrower will meet the loan forgiveness requirements, the loan holder must send the borrower a written notice that includes --

(i) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;

Unofficial

(ii) A reminder that the borrower must continue to make the borrower’s scheduled monthly payments; and

(iii) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(2) No later than 60 days after the loan holder determines that a borrower qualifies for loan forgiveness, the loan holder must request payment from the guaranty agency.

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

(4)(i) Within 45 days of receiving the holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan

Unofficial

forgiveness under this section and must notify the holder of its determination.

(ii) If the guaranty agency approves the loan forgiveness, it must, within the same 45-day period required under paragraph (g)(4)(i) of this section, pay the holder the amount of the forgiveness.

(5) After being notified by the guaranty agency of its determination of the eligibility of the borrower for loan forgiveness, the holder must, within 30 days --

(i) Inform the borrower of the determination and, if appropriate, that the borrower's repayment obligation on the loans is satisfied; and

(ii) Provide the borrower with the information described in paragraph (g)(1)(iii) of this section.

(6)(i) The holder must apply the payment from the guaranty agency under paragraph (g)(4)(ii) of this section to satisfy the outstanding balance on those loans subject to income-based forgiveness; or

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

(7) If the guaranty agency does not pay the forgiveness claim, the lender will continue the borrower in

Unofficial

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

(8) The loan holder must promptly return to the sender any payment received on a loan after the guaranty agency pays the loan holder the amount of loan forgiveness. (Approved by the Office of Management and Budget under control number 1845-NEWA.)

* * * * *

6. Section 682.402 is amended by:

A. Revising paragraph (c).

B.1. In paragraph (g)(1)(iv), removing the words "certification of disability described in paragraph (c)(2) of this section" and adding, in their place, the words "notification described in paragraph (c)(3)(iii) or (c)(9)(ix) of this section in which the Secretary notifies the lender that the borrower is totally and permanently disabled".

Unofficial

B.2. In paragraph (g)(2)(i), removing the punctuation and words “, or the lender determines that the borrower is totally and permanently disabled”.

B.3. Redesignating paragraphs (g)(2)(ii), (g)(2)(iii), and (g)(2)(iv) as paragraphs (g)(2)(iii), (g)(2)(iv), and (g)(2)(v), respectively.

B.4. Adding a new paragraph (g)(2)(ii).

C.1. In paragraph (h)(1)(i)(A), adding the punctuation and word “, disability,” after the word “death”.

C.2. In paragraph (h)(1)(i)(B), removing the words and punctuation “disability, closed school,” and adding, in their place, the words “closed school”.

C.3. Revising paragraph (h)(1)(v).

C.4. In paragraph (h)(3)(iii)(A), adding the punctuation and word “, disability,” after the word “death”.

C.5. In paragraph (h)(3)(iii)(B), removing the words and punctuation “disability, closed school,” and adding, in their place, the words “closed school”.

D.1. Revising paragraph (k)(2)(i).

D.2. Revising paragraph (k)(2)(ii).

D.3. In paragraph (k)(2)(iii), adding the words “by the Secretary” after the words “is determined”

Unofficial

D.4. In paragraph (k)(5)(ii), removing the words "the guaranty agency makes a preliminary determination" and adding, in their place, the words "the Secretary makes a determination".

E.1. Revising paragraph (r)(2).

E.2. Revising paragraph (r)(3).

The revisions and additions read as follows:

<u>§682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments</u>.

* * * * *

(c)(1) <u>Total and permanent disability</u>. (i) A borrower's loan is discharged if the borrower becomes totally and permanently disabled, as defined in §682.200(b), and satisfies the eligibility requirements in this section.

(ii) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the borrower's loan discharge application is processed in accordance with paragraphs (c)(2) through (8) of this section.

(iii) For a veteran who is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the veteran's loan discharge

Unofficial

application is processed in accordance with paragraph (c)(9) of this section.

(iv) For purposes of §682.402(c)--

(A) A borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a "borrower" or a "veteran" include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary;

(B) References to "the lender" mean the guaranty agency if the guaranty agency is the holder of the loan at the time the borrower applies for a total and permanent disability discharge, except that the total and permanent disability discharge claim filing requirements applicable to a lender do not apply to the guaranty agency; and

(C) References to "the applicable guaranty agency" mean the guaranty agency that guaranteed the loan.

(2) <u>Discharge application process for a borrower who is totally and permanently disabled as described in</u>

Unofficial

paragraph (1) of the definition of that term in §682.200(b). (i) If the borrower notifies the lender that the borrower claims to be totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the lender must direct the borrower to notify the Secretary of the borrower's intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify the Secretary.

(ii) If the borrower notifies the Secretary of the borrower's intent to apply for a total and permanent disability discharge, the Secretary--

(A) Provides the borrower with the information needed for the borrower to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the borrower and notifies the lenders of the borrower's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the borrower that the suspension of collection activity described in paragraph (c)(2)(ii)(C) of this section will end after 120 days and collection will resume on the loans if the borrower does not submit a total

Unofficial

and permanent disability discharge application to the Secretary within that time;

(iii) If the borrower fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the borrower's title IV loans, and the lender shall be deemed to have exercised forbearance of principal and interest from the date it suspended collection activity. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period, except that if the lender is a guaranty agency it may not capitalize accrued interest.

(iv) The borrower must submit to the Secretary an application for a total and permanent disability discharge on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b).

(v) The borrower must submit the application described in paragraph (c)(2)(iv) of this section to the Secretary within 90 days of the date the physician certifies the application.

Unofficial

(vi) After the Secretary receives the application described in paragraph (c)(2)(iv) of this section, the Secretary notifies the holders of the borrower's title IV loans, that the Secretary has received a total and permanent disability discharge application from the borrower. The holders of the loans must notify the applicable guaranty agencies that the total and permanent disability discharge application has been received.

(vii) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower or the physician who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (c)(2)(vi) of this section directs the borrower's loan holders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives the disability discharge application, the Secretary sends a notice to the borrower that--

(A) States that the application will be reviewed by the Secretary;

Unofficial

(B) Informs the borrower that the borrower’s lenders will suspend collection activity or maintain the suspension of collection activity on the borrower’s title IV loans while the Secretary reviews the borrower’s application for a discharge; and

(C) Explains the process for the Secretary’s review of total and permanent disability discharge applications.

(3) Secretary's review of total and permanent disability discharge application. (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician’s certification supports the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in §682.200(b), the borrower is considered totally and permanently disabled as of the date the physician certified the borrower's application.

(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's

Unofficial

condition by an independent physician at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the Secretary notifies the borrower and the borrower’s lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the date the physician certified the borrower’s loan discharge application and directs each lender to submit a disability claim to the guaranty agency so the loan can be assigned to the Secretary. The Secretary returns any payment received by the Secretary after the date the physician certified the borrower’s loan discharge application to the person who made the payments.

(iv) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the lender that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (c)(6)(i) of this section.

Unofficial

(v) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the Secretary notifies the borrower and the lender that the application for a disability discharge has been denied. The notification includes--

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the lender under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) A statement that the lender will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

Unofficial

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(vi) If the borrower requests re-evaluation in accordance with paragraph (c)(3)(v)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (c)(3)(v)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not available at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(4) Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge. If a borrower received a title IV loan or TEACH Grant before the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary

Unofficial

grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) Receipt of new title IV loans or TEACH Grants after the date of the physician's certification. If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's discharge application and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and collection resumes on the borrower's loans.

(6) Conditions for reinstatement of a loan after a total and permanent disability discharge. (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (c)(3)(iii) of this section if, within three years after the date the Secretary granted the discharge, the borrower--

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

Unofficial

(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary--

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (c)(6)(ii)(A) of this section will include--

(A) The reason or reasons for the reinstatement;

Unofficial

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(7) Borrower's responsibilities after a total and permanent disability discharge. During the three-year period described in paragraph (c)(6)(i) of this section, the borrower must--

(i) Promptly notify the Secretary of any changes in the borrower’s address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(6)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment, on a form approved by the Secretary.

(8) Lender and guaranty agency actions. (i) If the Secretary approves the borrower’s total and permanent disability discharge application--

Unofficial

(A) The lender must submit a disability claim to the guaranty agency, in accordance with paragraph (g)(1) of this section;

(B) If the claim satisfies the requirements of §682.402(g)(1), the guaranty agency must pay the claim submitted by the lender;

(C) After receiving a claim payment from the guaranty agency, the lender must return to the sender any payments received by the lender after the date the physician certified the borrower's loan discharge application as well as any payments received after claim payment from or on behalf of the borrower;

(D) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender; and

(E) The guaranty agency must assign the loan to the Secretary within 45 days of the date the guaranty agency pays the disability claim and receives the reimbursement payment, or within 45 days of the date the guaranty agency receives the notice described in paragraph (c)(3)(iii) of this section if a guaranty agency is the lender.

(ii) If the Secretary does not approve the borrower's total and permanent disability discharge request, the lender must resume collection of the loan and is deemed to

Unofficial

have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period, except if the lender is a guaranty agency it may not capitalize accrued interest.

(9) Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b). (i) General. If a veteran notifies the lender that the veteran claims to be totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the lender must direct the veteran to notify the Secretary of the veteran's intent to submit an application for a total and permanent disability discharge and provide the veteran with the information needed for the veteran to apply for a total and permanent disability discharge to the Secretary.

(ii) If the veteran notifies the Secretary of the veteran's intent to apply for a total and permanent disability discharge, the Secretary--

(A) Provides the veteran with the information needed for the veteran to apply for a total and permanent disability discharge;

Unofficial

(B) Identifies all title IV loans owed by the veteran and notifies the lenders of the veteran's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the veteran for a period not to exceed 120 days; and

(D) Informs the veteran that the suspension of collection activity described in paragraph (c)(9)(ii)(C) of this section will end after 120 days and the lender will resume collection on the loans if the veteran does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the veteran fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the veteran's title IV loans and the lender is deemed to have exercised forbearance of principal and interest from the date it suspended collection activity. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period, except that if the lender is a guaranty agency it may not capitalize accrued interest.

(iv) The veteran must submit to the Secretary an application for a total and permanent disability discharge on a form approved by the Secretary.

Unofficial

(v) The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(vi) After the Secretary receives the application and supporting documentation described in paragraphs (c)(9)(iv) and (c)(9)(v) of this section, the Secretary notifies the holders of the veteran’s title IV loans, that Secretary has received a total and permanent disability discharge application from the veteran. The holders of the loans must notify the applicable guaranty agencies that the total and permanent disability discharge application has been received.

(vii) If the application is incomplete, the Secretary notifies the veteran of the missing information and requests the missing information from the veteran or the veteran’s representative. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (c)(9)(vi) of this section directs the lenders to suspend

Unofficial

collection activity or maintain the suspension of collection activity on the veteran's title IV loans.

(ix) After the Secretary receives the disability discharge application, the Secretary sends a notice to the veteran that--

(A) States that the application will be reviewed by the Secretary;

(B) Informs the veteran that the veteran's lenders will suspend collection activity on the veteran's title IV loans while the Secretary reviews the veteran's application for a discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(x) After making a determination that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the Secretary notifies the veteran and the veteran's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the effective date of the determination and directs each lender to submit a disability claim to the guaranty agency.

(xi) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently

Unofficial

disabled as described in paragraph (2) of the definition of that term in §682.200(b), the Secretary notifies the veteran and the lender that the application for a disability discharge has been denied. The notification includes--

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the lender under the terms of the promissory note and that the loan will return to the status it was in at the time the veteran applied for a total and permanent disability discharge;

(C) An explanation that the lender will notify the veteran of the date the veteran must resume making payments on the loan;

(D) An explanation that the veteran is not required to submit a new total and permanent disability discharge application if the veteran requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

(E) Information on how the veteran may reapply for a total and permanent disability discharge in accordance with procedures described in paragraphs (c)(2) through (c)(8) of

Unofficial

this section, if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

(xii)(A) If the Secretary approves the veteran's total and permanent disability discharge application based on documentation from the Department of Veterans Affairs the lender must submit a disability claim to the guaranty agency, in accordance with paragraph (g)(1) of this section.

(B) If the claim meets the requirements of paragraph (g)(1) of this section, the guaranty agency must pay the claim and discharge the loan.

(C) The Secretary reimburses the guaranty agency for a disability claim after the agency pays the claim to the lender.

(D) Upon receipt of the claim payment from the guaranty agency, the lender returns any payments received by the lender on or after the effective date of the determination by the Department of Veterans Affairs to the person who made the payments.

Unofficial

(E) If the Secretary does not approve the veteran's total and permanent disability discharge based on documentation from the Department of Veterans Affairs, the lender must resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period, except that if the lender is a guaranty agency it may not capitalize accrued interest.

* * * * *

(g) * * *

(2) * * *

(ii) Within 60 days of the date the lender received notification from the Secretary that the borrower is totally and permanently disabled, in accordance with §682.402(c)(3)(iii) or 682.402(c)(9)(ix).

* * * * *

(h) * * *

(1) * * *

(v) In the case of a disability claim based on a veteran's discharge request processed in accordance with §682.402(c)(9), the guaranty agency must review the claim promptly and not later than 45 days after the claim was

Unofficial

filed by the lender pay the claim or return the claim to the lender in accordance with §682.402(c)(9)(xi)(B).

* * * * *

(k) * * *

(2) * * *

(i) The Secretary determines that the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, or the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan or each of the co-makers of a PLUS loan) has died, or has filed for relief in bankruptcy, in accordance with the procedures in paragraph (b), (c), or (f) of this section, or the student was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school. For purposes of this paragraph, references to the "lender" and "guaranty agency" in paragraphs (b) through (f) of this section mean the guaranty agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the Secretary determines that the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, the

Unofficial

guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, or has filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period, or the borrower (or the student for whom a parent received a PLUS loan) was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school;

* * * * *

(r) * * *

(2) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary based on the determination that the borrower is eligible for a total and permanent disability discharge, the guaranty agency must promptly return these payments to the sender. At the same time that the agency returns the payments, it must notify the borrower that there is no obligation to make payments on the loan after it has been discharged due to a total and permanent disability, unless the loan is reinstated in

Unofficial

accordance with §682.402(c), or the Secretary directs the borrower otherwise.

(3) When the Secretary discharges the loan, the Secretary returns to the sender any payments received by the Secretary on the loan after the date the borrower became totally and permanently disabled.

* * * * *

PART 685--WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

AUTHORITY: 20 U.S.C. 1070g, 1087a, et seq., unless otherwise noted.

8. Section 685.200 is amended by:

A. Revising paragraph (a)(1)(iv)(A)(3).

The revision reads as follows:

§685.200 Borrower eligibility.

(a) * * *

(1) * * *

(iv) * * *

(A) * * *

(3) If the borrower receives a new Direct Loan, other than a Direct Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent

Unofficial

disability in accordance with §685.213(b)(4)(iii), 34 CFR 674.61(b)(3)(v), 34 CFR 682.402(c)(3)(iv), or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, the borrower resumes repayment on the previously discharged loan in accordance with §685.213(b)(7), 34 CFR 674.61(b)(6), or 34 CFR 682.402(c)(6), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

* * * * *

9. Section 685.202 is amended by:

A. In paragraph (b)(3), removing the citation "§685.209(d)(3)" and adding, in its place, the citation "§685.209(b)(3)(iv)".

B. Revising paragraph (b)(4).

The revision reads as follows:

<u>§685.202 Charges for which Direct Loan borrowers are responsible</u>.

* * * * *

(b) * * *

(4) Except as provided in paragraph (b)(3) of this section and in §§685.208(l)(5) and 685.209(b)(3)(iv), the Secretary annually capitalizes unpaid interest when the borrower is paying under the alternative repayment plan or

Unofficial

the income-contingent repayment plan described in §685.209(b) and the borrower's scheduled payments do not cover the interest that has accrued on the loan.

* * * * *

10. Section 685.208 is amended by:

A. Revising paragraph (a)(1).

B. Revising paragraph (a)(2)

C. Revising paragraph (k).

The revisions read as follows:

§685.208 Repayment plans.

(a) * * *

(1) Borrowers who entered repayment before July 1, 2006. (i) A Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan may be repaid under --

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (d) of this section;

(C) The graduated repayment plan in accordance with paragraph (f) of this section;

(D) The income-contingent repayment plan in accordance with paragraph (k)(2) of this section; or

Unofficial

(E) The income-based repayment plan in accordance with paragraph (m) of this section.

(ii) A Direct PLUS Loan or a Direct PLUS Consolidation Loan may be repaid under --

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (d) of this section; or

(C) The graduated repayment plan in accordance with paragraph (f) of this section.

(2) Borrowers entering repayment on or after July 1, 2006. (i) A Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan that was made to a graduate or professional student borrower may be repaid under --

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section;

(C) The graduated repayment plan in accordance with paragraph (g) of this section;

(D) The income-contingent repayment plans in accordance with paragraph (k) of this section; or

(E) The income-based repayment plan, in accordance with paragraph (m) of this section.

Unofficial

(ii) A Direct PLUS Loan that was made to a parent borrower may be repaid under --

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section; or

(C) The graduated repayment plan in accordance with paragraph (g) of this section.

(iii) A Direct Consolidation Loan that did not repay a parent Direct PLUS Loan or a parent Federal PLUS Loan may be repaid under --

(A) The standard repayment plan in accordance with paragraph (c) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section;

(C) The graduated repayment plan in accordance with paragraph (h) of this section;

(D) The income-contingent repayment plans in accordance with paragraph (k) of this section; or

(E) The income-based repayment plan in accordance with paragraph (m) of this section.

(iv) A Direct Consolidation Loan that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan may be repaid under --

Unofficial

(A) The standard repayment plan in accordance with paragraph (c) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section;

(C) The graduated repayment plan in accordance with paragraph (h) of this section; or

(D) The income-contingent plan in accordance with paragraph (k)(2) of this section.

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

* * * * *

(k) Income-contingent repayment plans. (1) Under the income-contingent repayment plan described in §685.209(a), the required monthly payment for a borrower who has a partial financial hardship is limited to no more than 10 percent of the amount by which the borrower's Adjusted Gross Income (AGI) exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12. The Secretary determines annually whether the borrower continues to qualify for this reduced monthly

Unofficial

payment based on the amount of the borrower's eligible loans, AGI, and poverty guideline.

(2) Under the income-contingent repayment plan described in §685.209(b), a borrower's monthly repayment amount is generally based on the total amount of the borrower's Direct Loans, family size, and AGI reported by the borrower for the most recent year for which the Secretary has obtained income information.

(3) For the income-contingent repayment plan described in §685.209(b), the regulations in effect at the time a borrower enters repayment and selects the income-contingent repayment plan or changes into the income-contingent repayment plan from another plan govern the method for determining the borrower's monthly repayment amount for all of the borrower's Direct Loans, unless --

(i) The Secretary amends the regulations relating to a borrower's monthly repayment amount under the income-contingent repayment plan; and

(ii) The borrower submits a written request that the amended regulations apply to the repayment of the borrower's Direct Loans.

(4) Provisions governing the income-contingent repayment plans are in §685.209.

* * * * *

Unofficial

11. Section 685.209 is revised to read as follows:

§685.209 Income-contingent repayment plans.

(a) ICR-A plan: The ICR-A plan is an income-contingent repayment plan for eligible new borrowers.

(1) Definitions. As used in this section--

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

(ii) Eligible loan means any outstanding loan made to a borrower under the Direct Loan Program or the FFEL Program except for a defaulted loan, a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower, or a Direct Consolidation Loan or Federal Consolidation Loan that repaid a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower;

(iii) Eligible new borrower means an individual who--

(A) Has no outstanding balance on a Direct Loan Program Loan or a FFEL Program loan as of October 1, 2007, or who has no outstanding balance on such a loan on the date he or she receives a new loan after October 1, 2007; and

Unofficial

(B)(1) Receives a disbursement of a Direct Subsidized Loan, Direct Unsubsidized Loan, or student Direct PLUS Loan on or after October 1, 2011; or

(2) Receives a Direct Consolidation Loan based on an application received on or after October 1, 2011, except that a borrower is not considered an eligible new borrower if the Direct Consolidation Loan repays a loan that would otherwise make the borrower ineligible under paragraph (a)(1)(iii)(A) of this section;

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

(A) Live with the borrower; and

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

Unofficial

(v) Partial financial hardship means a circumstance in which --

(A) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the ICR-A plan, exceeds 10 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(B) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the ICR-A plan, exceeds 10 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size; and

Unofficial

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

(2) Terms of the ICR-A repayment plan. (i) A borrower may select the ICR-A plan only if the borrower has a partial financial hardship. The borrower's aggregate monthly loan payments are limited to no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12.

(ii) The Secretary adjusts the calculated monthly payment if--

(A) Except for borrowers provided for in paragraph (a)(2)(ii)(B) of this section, the total amount of the borrower's eligible loans are not Direct Loans, in which case the Secretary determines the borrower's adjusted monthly payment by multiplying the calculated payment by

Unofficial

the percentage of the total outstanding principal amount of the borrower’s eligible loans that are Direct Loans;

(B) Both the borrower and borrower's spouse have eligible loans and filed a joint Federal tax return, in which case the Secretary determines--

(1) Each borrower's percentage of the couple's total eligible loan debt;

(2) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (a)(2)(ii)(B)(1) of this section; and

(3) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly Direct Loan payment by multiplying the payment determined in paragraph (a)(2)(ii)(B)(2) of this section by the percentage of the total outstanding principal amount of the borrower’s eligible loans that are Direct Loans;

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

(D) The calculated amount under paragraph (a)(2)(i), (a)(2)(ii)(A), or (a)(2)(ii)(B) of this section is equal to

Unofficial

or greater than $5.00 but less than $10.00, in which case the borrower's monthly payment is $10.00.

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

(iv)(A) Except as provided in paragraph (a)(2)(iii) of this section, accrued interest is capitalized--

(1) When a borrower is determined to no longer have a partial financial hardship; or

(2) At the time a borrower chooses to leave the ICR-A plan.

(B)(1) The amount of accrued interest capitalized under paragraph (a)(2)(iv)(A)(1) of this section is limited

Unofficial

to 10 percent of the original principal balance at the time the borrower entered repayment under the ICR-A plan.

(2) After the amount of accrued interest reaches the limit described in paragraph (a)(2)(iv)(B)(1) of this section, interest continues to accrue, but is not capitalized while the borrower remains on the ICR-A plan.

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

(vi) The repayment period for a borrower under the ICR-A plan may be greater than 10 years.

(3) Payment application and prepayment. (i) The Secretary applies any payment made under the ICR-A plan in the following order:

(A) Accrued interest.

(B) Collection costs.

(C) Late charges.

(D) Loan principal.

(ii) The borrower may prepay all or part of a loan at any time without penalty, as provided under §685.211(a)(2).

(iii) If the prepayment amount equals or exceeds a monthly payment amount of $10.00 or more under the

Unofficial

repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of §685.211(a)(3).

(iv) If the prepayment amount exceeds a monthly payment amount of $0.00 under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of paragraph (a)(3)(i) of this section.

(4) Changes in the payment amount. (i) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the ICR-A plan, but the Secretary recalculates the borrower's monthly payment. The Secretary also recalculates the monthly payment for a borrower who chooses to stop making income contingent payments. In either case, as a result of the recalculation--

(A) The maximum monthly amount that the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower's eligible loans that was outstanding at the time the borrower began repayment on the loans under the ICR-A plan; and

Unofficial

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

(ii) A borrower who no longer wishes to repay under the ICR-A plan may change to a different repayment plan in accordance with §685.210(b).

(5) Eligibility documentation, verification, and notifications. (i)(A) The Secretary determines whether a borrower has a partial financial hardship to qualify for the ICR-A plan for the year the borrower selects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the Secretary requires the borrower to provide documentation, acceptable to the Secretary, of the borrower's AGI.

(B) If the borrower's AGI is not available, or if the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the borrower must provide other documentation to verify income.

(C) The borrower must annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.

(ii) After making a determination that a borrower has a partial financial hardship to qualify for the ICR-A plan for the year the borrower initially elects the plan and for each subsequent year that the borrower has a partial

Unofficial

financial hardship, the Secretary sends the borrower a written notification that provides the borrower with --

(A) The borrower's scheduled monthly payment amount, as calculated under paragraph (a)(2) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (a)(5)(i) of this section, if the borrower chooses to remain on the ICR-A plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(C) An explanation of the consequences, as described in paragraphs (a)(5)(i)(C) and (a)(5)(v) of this section, if the borrower does not provide the required information; and

(D) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income.

Unofficial

If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described in paragraphs (a)(5)(ii)(A) through (D) of this section.

(iii) For each subsequent year that a borrower who currently has a partial financial hardship remains on the ICR-A plan, the Secretary notifies the borrower in writing of the requirements in paragraph (a)(5)(i) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (a)(5)(iii)(A) of this section. The notification provides the borrower with --

(A) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the documentation described in paragraph (a)(5)(i) of this section (annual deadline); and

(B) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (a)(4)(i) of this section, the effective date for the recalculated monthly payment amount, and the fact that

Unofficial

unpaid accrued interest will be capitalized in accordance with paragraph (a)(2)(iv) of this section.

(iv) Each time the Secretary makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the Secretary sends the borrower a written notification that provides the borrower with--

(A) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (a)(4)(i) of this section;

(B) An explanation that unpaid interest will be capitalized in accordance with paragraph (a)(2)(iv) of this section; and

(C) Information about the borrower's option to request, at any time, that the Secretary redetermine whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the Secretary determines that the borrower again has a partial financial hardship, the Secretary recalculates the borrower's monthly payment in accordance with paragraph

Unofficial

(a)(2)(i) of this section and sends the borrower a written notification that includes the information described in paragraphs (a)(5)(ii)(A) through (D) of this section.

(v) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the ICR-A plan, the Secretary sends the borrower a written notification that includes the information described in paragraph (a)(5)(iv)(C) of this section.

(vi) If a borrower who is currently repaying under another repayment plan selects the ICR-A plan but does not provide the documentation described in paragraphs (a)(5)(i)(A) or (B) of this section, or if the Secretary determines that the borrower does not have a partial financial hardship, the borrower remains on his or her current repayment plan.

(vii) The Secretary designates the repayment option described in paragraph (a)(4)(i) of this section if a borrower who is currently repaying under the ICR-A repayment plan remains on the plan for a subsequent year but the Secretary does not receive the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section within 10 days of the specified annual deadline.

Unofficial

(viii) If the Secretary receives the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section within 10 days of the specified annual deadline, the Secretary maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined. If the new monthly payment amount is less than the borrower's previously calculated ICR-A monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of §685.211(b)(3), unless the borrower requests otherwise, the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of §685.209(a)(3)(i).

(ix)(A) If the Secretary receives the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (a)(4)(i) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated ICR-A monthly payment amount is determined,

Unofficial

if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

(B) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of §685.219, provided that the payments otherwise meet the requirements described in §685.219(c)(1).

(6) Loan forgiveness. (i) To qualify for loan forgiveness after 20 years, a borrower must have participated in the ICR-A plan and satisfied at least one of the following conditions during that period:

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

(B) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped

Unofficial

making income-contingent payments as provided in paragraph (a)(4)(i) of this section.

(C) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in §685.208(b) for the amount of the borrower's loans that were outstanding at the time the loans initially entered repayment.

(D) Made monthly payments under the Direct Loan standard repayment plan described in §685.208(b).

(E) Made monthly payments under the ICR-B plan described in paragraph (b) of this section or the income-based repayment plan described in §685.221, including a calculated monthly payment amount of $0.00.

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

(ii) As provided under paragraph (a)(6)(v) of this section, the Secretary cancels any outstanding balance of principal and accrued interest on Direct loans for which the borrower qualifies for forgiveness if the Secretary determines that--

(A) The borrower made monthly payments under one or more of the repayment plans described in paragraph (a)(6)(i) of this section, including a monthly payment

Unofficial

amount of $0.00, as provided under paragraph (a)(2)(ii)(C) of this section; and

(B)(1) The borrower made those monthly payments each year for a 20-year period; or

(2) Through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 20 years of payments.

(iii) For a borrower who qualifies for the ICR-A plan, the beginning date for the 20-year period is--

(A) If the borrower made payments under the ICR-B plan described in paragraph (b) of this section or the income-based repayment plan described in §685.221, the earliest date the borrower made a payment on the loan under one of those plans at any time after October 1, 2007; or

(B) If the borrower did not make payments under the ICR-B plan described in paragraph (b) of this section or the income-based repayment plan described in §685.221--

(1) For a borrower who has an eligible Direct Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for the ICR-A plan. The beginning date is the date the borrower made the payment or received the deferment after October 1, 2007;

Unofficial

(2) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan after October 1, 2007;

(3) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (a)(6)(iii)(B)(1) or (a)(6)(iii)(B)(2) of this section, the date the borrower made a payment on the loan under the ICR-A plan;

(4) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the Direct Consolidation Loan that met the requirements of paragraph (a)(6)(i) of this section; or

(5) If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (a)(6)(iii)(A) or (a)(6)(iii)(B) of this section, the date the borrower made a payment on the loan under the ICR-A plan.

(iv) Any payments made on a defaulted loan are not made under a qualifying repayment plan and are not counted toward the 20-year forgiveness period.

Unofficial

(v)(A) When the Secretary determines that a borrower has satisfied the loan forgiveness requirements under paragraph (a)(6) of this section on an eligible loan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than 6 months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notice that includes--

(1) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;

(2) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

(3) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(B) The Secretary determines when a borrower has met the loan forgiveness requirements in paragraph (a)(6) of this section and does not require the borrower to submit a request for loan forgiveness.

(C) After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary--

Unofficial

(1) Notifies the borrower that the borrower's obligation on the loans is satisfied;

(2) Provides the borrower with the information described in paragraph (a)(6)(v)(A)(3) of this section; and

(3) Returns to the sender any payment received on a loan after loan forgiveness has been granted.

(b) ICR-B plan: The ICR-B plan is an income-contingent repayment plan under which a borrower's monthly payment amount is generally based on the total amount of the borrower's Direct Loans, family size, and AGI.

(1) Repayment amount calculation. (i) The amount the borrower would repay is based upon the borrower's Direct Loan debt when the borrower's first loan enters repayment, and this basis for calculation does not change unless the borrower obtains another Direct Loan or the borrower and the borrower's spouse obtain approval to repay their loans jointly under paragraph (b)(2)(ii) of this section. If the borrower obtains another Direct Loan, the amount the borrower would repay is based on the combined amounts of the loans when the last loan enters repayment. If the borrower and the borrower's spouse repay the loans jointly, the amount the borrowers would repay is based on both borrowers' Direct Loan debts at the time they enter joint repayment.

Unofficial

(ii) The annual amount payable by a borrower under the ICR-B plan is the lesser of--

(A) The amount the borrower would repay annually over 12 years using standard amortization multiplied by an income percentage factor that corresponds to the borrower's AGI as shown in the income percentage factor table in a notice published annually by the Secretary in the Federal Register; or

(B) 20 percent of discretionary income.

(iii)(A) For purposes of paragraph (b) of this section, discretionary income is defined as a borrower's AGI minus the amount of the poverty guideline as defined in paragraph (b)(1)(iii)(B) of this section. If a borrower provides documentation acceptable to the Secretary that the borrower has more than one person in the borrower's family, the Secretary applies the HHS Poverty Guidelines for the borrower's family size.

(B) For purposes of paragraph (b) of this section, the term "poverty guideline" refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty line to

Unofficial

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

(iv) For exact incomes not shown in the income percentage factor table in the annual notice published by the Secretary, an income percentage factor is calculated, based upon the intervals between the incomes and income percentage factors shown on the table.

(v) Each year, the Secretary recalculates the borrower's annual payment amount based on changes in the borrower's AGI, the variable interest rate, the income percentage factors in the table in the annual notice published by the Secretary, and updated HHS Poverty Guidelines (if applicable).

(vi) If a borrower's monthly payment is calculated to be greater than $0 but less than or equal to $5.00, the amount payable by the borrower is $5.00.

(vii) For purposes of the annual recalculation described in paragraph (b)(1)(v) of this section, after periods in which a borrower makes payments that are less than interest accrued on the loan, the payment amount is recalculated based upon unpaid accrued interest and the highest outstanding principal loan amount (including amount capitalized) calculated for that borrower while paying under the ICR-B plan.

Unofficial

(viii) For each calendar year, the Secretary publishes in the Federal Register a revised income percentage factor table reflecting changes based on inflation. This revised table is developed by changing each of the dollar amounts contained in the table by a percentage equal to the estimated percentage changes in the Consumer Price Index (as determined by the Secretary) between December 1995 and the December next preceding the beginning of such calendar year.

(ix) Examples of the calculation of monthly repayment amounts and tables that show monthly repayment amounts for borrowers at various income and debt levels are included in the annual notice published by the Secretary.

(x) At the beginning of the repayment period under the ICR-B plan, the borrower must make monthly payments of the amount of interest that accrues on the borrower's Direct Loan until the Secretary calculates the borrower's monthly payment amount on the basis of the borrower's income.

(2) Treatment of married borrowers. (i)(A) For a married borrower who files a joint Federal tax return with his or her spouse, the AGI for both spouses is used to calculate the monthly payment amount under the ICR-B plan.

Unofficial

(B) For a married borrower who files a Federal income tax return separately from his or her spouse, only the borrower’s AGI is used to determine the monthly payment amount under the ICR-B plan.

(ii) Married borrowers may repay their loans jointly. The outstanding balances on the loans of each borrower are added together to determine the borrowers' payback rate under paragraph (b)(1) of this section.

(iii) The amount of the payment applied to each borrower's debt is the proportion of the payments that equals the same proportion as that borrower's debt to the total outstanding balance, except that the payment is credited toward outstanding interest on any loan before any payment is credited toward principal.

(3) Other features of the ICR-B plan. (i) Alternative documentation of income. If a borrower's AGI is not available or if, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income, the Secretary may use other documentation of income provided by the borrower to calculate the borrower's monthly repayment amount.

(ii) Adjustments to repayment obligations. The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower's

Unofficial

spouse, warrant an adjustment to the borrower's repayment obligations.

(iii) Repayment period. (A) The maximum repayment period under the ICR-B plan is 25 years.

(B) The repayment period includes--

(1) Periods in which the borrower makes payments under the ICR-B plan on loans that are not in default;

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

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

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

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

Unofficial

(6) Periods after October 1, 2007, in which the borrower makes monthly payments under any other repayment plan that are not less than the amount required under the standard repayment plan described in §685.208(b); or

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

(C) If a borrower repays more than one loan under the ICR-B plan, a separate repayment period for each loan begins when that loan enters repayment.

(D) If a borrower has not repaid a loan in full at the end of the 25-year repayment period under the ICR-B plan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than 6 months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notification that includes--

(1) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;

(2) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

(3) General information on the current treatment of the forgiveness amount, and instructions for the borrower

Unofficial

to contact the Internal Revenue Service for more information.

(E) The Secretary determines when a borrower has met the loan forgiveness requirements under paragraph (b)(3)(iii)(D) of this section and does not require the borrower to submit a request for loan forgiveness. After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary--

(1) Notifies the borrower that the borrower's obligation on the loans is satisfied;

(2) Provides the information described in paragraph (b)(3)(iii)(D)(3) of this section; and

(3) Returns to the sender any payment received on a loan after loan forgiveness has been granted.

(iv) Limitation on capitalization of interest. If the amount of a borrower's monthly payment is less than the accrued interest, the unpaid interest is capitalized until the outstanding principal amount is 10 percent greater than the original principal amount. After the outstanding principal amount is 10 percent greater than the original amount, interest continues to accrue but is not capitalized. For purposes of this paragraph, the original amount is the amount owed by the borrower when the borrower enters repayment.

Unofficial

(v) Notification of terms and conditions. When a borrower elects or is required by the Secretary to repay a loan under the ICR-B plan, and for each subsequent year that the borrower remains on the plan, the Secretary sends the borrower a written notification that provides the terms and conditions of the plan, including --

(A) The borrower's scheduled monthly payment amount as calculated under paragraph (b)(1) or (b)(3)(vi)(D) of this section, as applicable, and the time period during which this scheduled monthly payment will apply ("annual payment period");

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (b)(3)(vi)(A) of this section, if the borrower chooses to remain on the ICR-B plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive the information;

(C) That if the borrower believes that special circumstances warrant an adjustment to the borrower's repayment obligations, as described in paragraph (b)(3)(iii) of this section, the borrower may contact the Secretary and obtain the Secretary's determination as to whether an adjustment is appropriate; and

Unofficial

(D) An explanation of the consequences, as described in paragraph (b)(3)(vi)(D) of this section, if the borrower does not provide the required information.

(vi) Documentation of income. (A) For the initial year that a borrower selects the ICR-B plan and for each subsequent year that the borrower remains on the plan, the borrower must provide acceptable documentation, as determined by the Secretary, of the borrower's AGI to the Secretary for purposes of calculating a monthly repayment amount and servicing and collecting a loan under the plan.

(B) For each subsequent year that a borrower remains on the ICR-B plan, the Secretary notifies the borrower in writing of the requirement described in paragraph (b)(3)(vi)(A) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (b)(3)(vi)(B)(1) of this section. The notification provides the borrower with--

(1) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive the documentation described in paragraph (b)(3)(vi)(A) of this section (annual deadline); and

(2) The consequences if the Secretary does not receive the information within 10 days following the annual

Unofficial

deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (b)(3)(vi)(D) of this section, and the effective date for the recalculated monthly payment amount.

(C) The Secretary designates the standard repayment plan for a borrower who initially selects the ICR-B plan but does not comply with the requirement in paragraph (b)(3)(vi)(A) of this section.

(D) If, during a subsequent year that a borrower remains on the ICR-B plan, the Secretary does not receive the documentation described in paragraph (b)(3)(vi)(A) of this section within 10 days of the specified annual deadline, the Secretary recalculates the borrower's required monthly payment amount. The maximum recalculated monthly amount the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower's loans that was outstanding at the time the borrower began repayment under the ICR-B plan. The repayment period based on the recalculated payment may exceed 10 years.

(E) If the Secretary receives the documentation described in paragraph (b)(3)(vi)(A) of this section within 10 days of the specified annual deadline, the Secretary

Unofficial

maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined. If the new calculated monthly payment amount is less than the borrower's previously calculated monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. The Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of §685.211(a)(1), unless the borrower requests otherwise.

(F)(1) If the Secretary receives the documentation described in paragraph (b)(3)(vi)(A) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (b)(3)(vi)(D) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue

Unofficial

after the end of the prior annual payment period is not capitalized.

(2) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of §685.219, provided that the payments otherwise meet the requirements described in §685.219(c)(1).

(G) If a borrower defaults and the Secretary designates the ICR-B plan for the borrower but the borrower fails to comply with the requirement in paragraph (b)(3)(vi)(A) of this section, the Secretary mails a notice to the borrower establishing a repayment schedule for the borrower.

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

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

12. Section 685.210 is amended by revising paragraph (b)(2)(ii).

The revision reads as follows:

§685.210 Choice of repayment plan.

* * * * *

(b) * * *

Unofficial

(2) * * *

(ii) If a borrower changes plans, the repayment period is the period provided under the borrower's new repayment plan, calculated from the date the loan initially entered repayment. However, if a borrower changes to the income-contingent repayment plan under §685.209(a), the income-contingent repayment plan under §685.209(b), or the income-based repayment plan under §685.221, the repayment period is calculated as described in §685.209(a)(6)(iii), §685.209(b)(3)(iii), or §685.221(f)(3), respectively.

* * * * *

§685.211 [Amended]

13. Section 685.211(a)(1) is amended by adding the words "income-contingent repayment plan under §685.209(a)(3) or the" immediately before the words "income-based repayment".

§685.212 [Amended]

14. Section 685.212(g)(2) is amended by removing the words "the borrower became totally and permanently disabled, as certified under §685.213(b)" and adding, in their place, the words "specified in §685.213(b)(4)(iii) or 685.213(c)(2)(i), as applicable".

15. Section 685.213 is revised to read as follows:

§685.213 Total and permanent disability discharge.

Unofficial

(a) General. (1) A borrower's Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in §685.102(b), and satisfies the eligibility requirements in this section.

(2) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b), the borrower's loan discharge application is processed in accordance with paragraph (b) of this section.

(3) For veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in §685.102(b), the veteran's loan discharge application is processed in accordance with paragraph (c) of this section.

(4) For purposes of §685.213, a borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a "borrower" or a "veteran" include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or

Unofficial

information to the Secretary, and receiving notifications from the Secretary.

(b) Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b). (1) Borrower application for discharge. To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit a discharge application to the Secretary on a form approved by the Secretary. If the borrower notifies the Secretary that the borrower claims to be totally and permanent disabled prior to submitting a total and permanent disability discharge application, the Secretary suspends collection activity on any of the borrower's title IV loans held by the Secretary, and notifies the borrower's other title IV loan holders to suspend collection activity on the borrower's title IV loans for a period not to exceed 120 days.

(2) Physician Certification. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b).

Unofficial

(3) Deadline for Application Submission. The borrower must submit the application described in paragraph (b)(1) of this section to the Secretary within 90 days of the date the physician certifies the application. Upon receipt of the borrower's application, the Secretary --

(i) Identifies all title IV loans owed by the borrower, notifies the lenders that the Secretary has received a total and permanent disability discharge application from the borrower and directs the lenders to suspend collection activity or maintain the suspension of collection activity on the borrower’s title IV loans;

(ii) If the application is incomplete, notifies the borrower of the missing information and requests the missing information from the borrower or the physician who certified the application, as appropriate, and does not make a determination of eligibility for discharge until the application is complete;

(iii) Notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge; and

(iv) Explains the process for the Secretary’s review of total and permanent disability discharge applications.

(4) Determination of eligibility. (i) If, after reviewing the borrower's completed application, the

Unofficial

Secretary determines that the physician’s certification supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term in §685.102(b), the borrower is considered totally and permanently disabled as of the date the physician certified the borrower's application.

(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in §685.102(b), the Secretary discharges the borrower's obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date

Unofficial

the physician certified the borrower's loan discharge application. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(7)(i) of this section.

(iv) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in §685.102(b), the Secretary notifies the borrower that the application for a disability discharge has been denied. The notification to the borrower includes--

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the Secretary under the terms of the promissory note and that the loan will return to the status that would have existed if the total and permanent disability discharge application had not been received;

(C) The date that the borrower must resume making payments;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-

Unofficial

evaluate the borrower's application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(v) If the borrower requests re-evaluation in accordance with paragraph (b)(4)(iv)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(4)(iv)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not available at the time the Secretary reviewed the borrower's initial application for total and permanent disability discharge.

(5) Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge. If a borrower received a title IV loan

Unofficial

or TEACH Grant before the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(6) Receipt of new title IV loans or TEACH Grants after the date of the physician's certification. If a borrower receives a disbursement of a new title IV loan or receives a new Teach Grant made on or after the date the physician certified the borrower's discharge application and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and resumes collection on the borrower's loan.

(7) Conditions for reinstatement of a loan after a total and permanent disability discharge. (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(4)(iii) of this section if, within three years after the date the Secretary granted the discharge, the borrower--

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If the borrower's obligation to repay the loan is reinstated, the Secretary--

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

Unofficial

(iii) The Secretary's notification under paragraph (b)(7)(ii)(A) of this section will include--

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(8) Borrower's responsibilities after a total and permanent disability discharge. During the three-year period described in paragraph (b)(7)(i) of this section, the borrower must--

(i) Promptly notify the Secretary of any changes in the borrower’s address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(7)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on a form provided by the Secretary.

Unofficial

(c) Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in §685.102(b). (1) Veteran's application for discharge. To qualify for a discharge of a Direct Loan based on a total and permanent disability as described in paragraph (2) of the definition of that term in §685.102(b), a veteran must submit a discharge application to the Secretary on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The Secretary does not require the veteran to provide any additional documentation related to the veteran's disability. Upon receipt of the veteran's application, the Secretary--

(i) Identifies all title IV loans owed by the veteran and notifies the lenders that Secretary has received a total and permanent disability discharge application from the borrower;

(ii) If the application is incomplete, requests the missing information from the veteran and does not make a determination of eligibility for discharge until the application is complete;

Unofficial

(iii) Notifies the veteran that no payments are due on the loan while the Secretary determines the veteran's eligibility for discharge; and

(iv) Explains the Secretary’s process for reviewing total and permanent disability discharge applications.

(2) Determination of eligibility. (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §685.102(b), the Secretary discharges the veteran's obligation to make any further payments on the loan and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(ii) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in §685.102(b), the Secretary notifies the veteran that the application for a disability discharge has been denied. The notification to the veteran includes --

Unofficial

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the Secretary under the terms of the promissory note and that the loan will return to the status it was in at the time the veteran applied for a total and permanent disability discharge;

(C) The date that the veteran must resume making payments;

(D) An explanation that the veteran is not required to submit a new total and permanent disability discharge application if the veteran requests that the Secretary re-evaluate the veteran's application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

(E) Information on how the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraph (b) of this section if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §685.102(b), but indicates that

Unofficial

the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term. (Approved by the Office of Management and Budget under control number 1845-0065.) (Authority: 20 U.S.C.1087a et seq.)

16. Section 685.220 is amended by revising paragraph (d)(1)(ii)(D) to read as follows:

§685.220 Consolidation.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) In default but agrees to repay the consolidation loan under one of the income-contingent repayment plans described in §685.208(k) or the income-based repayment plan described in §685.208(m).

* * * * *

17. Section 685.221 is amended by:

A.1. Redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(5) and (a)(6), respectively.

A.2. Adding a new paragraph (a)(4).

A.3. In redesignated paragraph (a)(5)(i), removing the words "exceeds 15 percent" and adding, in their place,

Unofficial

the words “exceeds 15 percent or, for a new borrower, 10 percent”.

A.4. In redesignated paragraph (a)(5)(ii), removing the words “exceeds 15 percent” and adding, in their place, the words “exceeds 15 percent or, for a new borrower, 10 percent”.

B.1. In paragraph (b)(1), removing the words “no more than 15 percent” and adding, in their place, the words “no more than 15 percent or, for a new borrower, 10 percent”.

B.2. In paragraph (b)(2)(i), removing the words “the total amount of eligible loans” and adding, in their place, the words “the total outstanding principal amount of the borrower’s eligible loans”.

B.3. In paragraph (b)(2)(ii)(C), removing the words “the outstanding principal amount of eligible loans” and adding, in their place, the words “the total outstanding principal amount of the borrower’s eligible loans”.

C. Revising paragraph (c).

D. Revising paragraph (d).

E. Revising paragraph (e).

F. Revising paragraph (f).

The addition and revisions read as follows:

<u>§685.221 Income-based repayment plan</u>.

(a) * * *

Unofficial

(4) New borrower means an individual who has no outstanding balance on a Direct Loan Program or FFEL Program loan on July 1, 2014, or who has no outstanding balance on such a loan on the date he or she obtains a loan after July 1, 2014.

* * * * *

(c) Payment application and prepayment. (1) The Secretary applies any payment made under the income-based repayment plan in the following order:

(i) Accrued interest.

(ii) Collection costs.

(iii) Late charges.

(iv) Loan principal.

(2) The borrower may prepay all or part of a loan at any time without penalty, as provided under §685.211(a)(2).

(3) If the prepayment amount equals or exceeds a monthly payment amount of $10.00 or more under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of §685.211(a)(3).

(4) If the prepayment amount exceeds a monthly payment amount of $0.00 under the repayment schedule established for the loan, the Secretary applies the

Unofficial

prepayment consistent with the requirements of paragraph (c)(1) of this section.

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

(i) The maximum monthly amount that the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower's eligible loans that was outstanding at the time the borrower began repayment on the loans under the income-based repayment plan; and

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

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

Unofficial

(A) For a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan, the time remaining under the maximum ten-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(B) For a Direct Consolidation Loan, the time remaining under the applicable repayment period as initially determined under §685.208(j) and the amount of that loan that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(ii) A borrower who no longer wishes to repay under the income-based repayment plan and who is required to repay under the Direct Loan standard repayment plan in accordance with paragraph (d)(2)(i) of this section may request a change to a different repayment plan after making one monthly payment under the Direct Loan standard repayment plan. For this purpose, a monthly payment may include one payment made under a forbearance that provides for accepting smaller payments than previously scheduled, in accordance with §685.205(a).

(e) Eligibility documentation, verification, and notifications. (1) The Secretary determines whether a borrower has a partial financial hardship to qualify for

Unofficial

the income-based repayment plan for the year the borrower selects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the Secretary requires the borrower to--

(i) Provide documentation, acceptable to the Secretary, of the borrower’s AGI;

(ii) If the borrower's AGI is not available, or the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, provide other documentation to verify income; and

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

(2) After making a determination that a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower initially elects the plan and for any subsequent year that the borrower has a partial financial hardship, the Secretary sends the borrower a written notification that provides the borrower with--

(i) The borrower’s scheduled monthly payment amount, as calculated under paragraph (b)(1) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

Unofficial

(ii) Information about the requirement for the borrower to annually provide the information described in paragraph (e)(1) of this section, if the borrower chooses to remain on the income-based repayment plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(iii) An explanation of the consequences, as described in paragraphs (e)(1)(iii) and (e)(5) of this section, if the borrower does not provide the required information;

(iv) An explanation of the consequences if the borrower no longer wishes to repay under the income-based repayment plan; and

(v) Information about the borrower's option to request, at any time during the borrower's current annual repayment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that

Unofficial

includes the information described in paragraphs (e)(2)(i) through (v) of this section.

(3) For each subsequent year that a borrower who currently has a partial financial hardship remains on the income-based repayment plan, the Secretary notifies the borrower in writing of the requirements in paragraph (e)(1) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (e)(3)(i) of this section. The notification provides the borrower with--

(i) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the information described in paragraph (e)(1) of this section ("annual deadline"); and

(ii) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (d)(1) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period in accordance with paragraph (b)(4) of this section.

Unofficial

(4) Each time the Secretary makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the Secretary sends the borrower a written notification that provides the borrower with--

(i) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (d)(1) of this section;

(ii) An explanation that unpaid interest will be capitalized in accordance with paragraph (b)(4) of this section; and

(iii) Information about the borrower's option to request, at any time, that the Secretary redetermine whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the Secretary determines that the borrower again has a partial financial hardship, the Secretary recalculates the borrower's monthly payment in accordance with paragraph (b)(1) of this section and sends the borrower a written

Unofficial

notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(5) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the income-based repayment plan, the Secretary sends the borrower a written notification that includes the information described in paragraph (e)(4)(iii) of this section.

(6) If a borrower who is currently repaying under another repayment plan selects the income-based repayment plan but does not provide the information described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section, or if the Secretary determines that the borrower does not have a partial financial hardship, the borrower remains on his or her current repayment plan.

(7) The Secretary designates the repayment option described in paragraph (d)(1) of this section if a borrower who is currently repaying under the income-based repayment plan remains on the plan for a subsequent year but the Secretary does not receive the information described in paragraphs (e)(1)(i) through (e)(1)(ii) of this section within 10 days of the specified annual deadline.

(8) If the Secretary receives the information described in paragraphs (e)(1)(i) and (e)(1)(ii) of this

Unofficial

section within 10 days of the specified annual deadline, the Secretary maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined. If the new monthly payment amount is less than the borrower's previously calculated income-based monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of §685.211(b)(3), unless the borrower requests otherwise, the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of §685.221(c)(1).

(9)(i) If the Secretary receives the documentation described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (d)(1) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated income-

Unofficial

based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

(ii) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of §685.219, provided that the payments were made within 15 days of the scheduled due date for the full previously calculated payment amount.

(f) Loan forgiveness. (1) To qualify for loan forgiveness after 25 years or, for a new borrower, after 20 years, a borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during the applicable loan forgiveness period:

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

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped

Unofficial

making income-based payments as provided in paragraph (d) of this section.

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in §685.208(b) for the amount of the borrower's loans that were outstanding at the time the loans initially entered repayment.

(iv) Made monthly payments under the Direct Loan standard repayment plan described in §685.208(b).

(v) Made monthly payments under a Direct Loan income-contingent repayment plan, including a calculated monthly payment amount of $0.00.

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

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

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1) of this section, including a monthly payment amount of

Unofficial

$0.00, as provided under paragraph (b)(2)(iii) of this section; and

(ii)(A) The borrower made those monthly payments each year for the applicable loan forgiveness period, or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 25 years of payments or, for a new borrower, the equivalent of 20 years of payments.

(3) For a borrower who qualifies for the income-based repayment plan, the beginning date for the applicable loan forgiveness period is--

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

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

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

Unofficial

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

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

(D) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the Direct Consolidation Loan that met the requirements in paragraph (f)(1) of this section; or

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

(4) Any payments made on a defaulted loan are not made under a qualifying repayment plan and are not counted toward the applicable loan forgiveness period.

Unofficial

(5)(i) When the Secretary determines that a borrower has satisfied the loan forgiveness requirements under paragraph (f) of this section on an eligible loan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than 6 months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notice that includes--

(A) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;

(B) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

(C) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(ii) The Secretary determines when a borrower has met the loan forgiveness requirements under paragraph (f) of this section and does not require the borrower to submit a request for loan forgiveness.

(iii) After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary--

Unofficial

(A) Notifies the borrower that the borrower's obligation on the loans is satisfied;

(B) Provides the borrower with the information described in paragraph (f)(5)(i)(C) of this section; and

(C) Returns to the sender any payment received on a loan after loan forgiveness has been granted in accordance with paragraph (f)(5)(i) of this section.

* * * * *

Unofficial