

Authority: 31 U.S.C. 9701.

■ **Par. 2.** Section 300.0 is amended by revising paragraph (c) to read as follows:

§ 300.0 User fees; in general.

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(c) *Effective date.* This part 300 is applicable March 16, 1995, except that the user fee for processing offers in compromise is applicable November 1, 2003; the user fee for the special enrollment examination, enrollment, and renewal of enrollment for enrolled agents is applicable November 6, 2006; the user fee for entering into installment agreements on or after January 1, 2007, is applicable January 1, 2007; and the user fee for restructuring or reinstatement of an installment agreement on or after January 1, 2007, is applicable January 1, 2007.

■ **Par. 3.** Section 300.1 is amended by revising paragraph (b) to read as follows:

§ 300.1 Installment agreement fee.

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(b) *Fee.* The fee for entering into an installment agreement before January 1, 2007, is \$43. The fee for entering into an installment agreement on or after January 1, 2007, is \$105, except that:

(1) The fee is \$52 when the taxpayer pays by way of a direct debit from the taxpayer's bank account; and

(2) Notwithstanding the method of payment, the fee is \$43 if the taxpayer is a low-income taxpayer, that is, an individual who falls at or below 250% of the dollar criteria established by the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357, 511), or such other measure that is adopted by the Secretary.

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■ **Par. 4.** Section 300.2 is amended by revising paragraph (b) to read as follows:

§ 300.2 Restructuring or reinstatement of installment agreement fee.

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(b) *Fee.* The fee for restructuring or reinstating an installment agreement before January 1, 2007, is \$24. The fee for restructuring or reinstating an

installment agreement on or after January 1, 2007, is \$45.

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Kevin M. Brown,

Acting Deputy Commissioner for Services and Enforcement.

Approved: December 21, 2006.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E6-22257 Filed 12-27-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682 and 685

RIN 1840-AC88

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: Interim final regulations, request for comments.

SUMMARY: The Secretary is amending the Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations to implement the changes to the Higher Education Act of 1965, as amended (HEA), resulting from the enactment of the Third Higher Education Extension Act of 2006 (THEEA), Public Law 109-292. These interim final regulations reflect the provisions of the THEEA that authorize the discharge of the outstanding balance of certain Perkins, FFEL, and Direct Loan Program loans for survivors of eligible public servants and other eligible victims of the September 11, 2001, terrorist attacks.

DATES: *Effective Date:* These interim final regulations are effective January 29, 2007.

Comment date: The Department must receive any comments on or before January 29, 2007.

Information collection compliance date: Affected parties do not have to comply with the information collection requirements in §§ 674.64, 682.407, and 685.218 until the Department publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

ADDRESSES: Address all comments about these interim final regulations to Mr. Brian Smith, U.S. Department of Education, 1990 K Street, NW., 8th Floor, Washington, DC 20006. Telephone: (202) 502-7551 or via the Internet at: *Brian.Smith@ed.gov*.

If you prefer to deliver your comments by hand or by using a courier service or commercial carrier, address your comments to: Mr. Brian Smith, 1990 K Street, NW., room 8082, Washington, DC 20006-8542.

If you prefer to send your comments through the Internet, you may address them to us at:

DischargeComments@ed.gov. Or you may send them to us at the U.S. Government Web site: *http://www.regulations.gov*. You must include the term "Discharge Interim Final Comments" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: For provisions related to the FFEL and Federal Perkins Loan Programs: Mr. Brian Smith, U.S. Department of Education, 1990 K Street, NW., 8th Floor, Washington, DC 20006. Telephone: (202) 502-7551 or via the Internet at: *Brian.Smith@ed.gov*.

For provisions related to the Federal Direct Loan Program: Mr. Jon Utz, U.S. Department of Education, Union Center Plaza, 830 First Street, NE., Washington, DC 20202-5345. Telephone: (202) 377-4008 or via the Internet at: *Jon.Utz@ed.gov*.

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

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

SUPPLEMENTARY INFORMATION: On September 30, 2006, Congress enacted the THEEA, Public Law 109-292. The changes made by the THEEA include:

- Restrictions on the use of eligible lender trustees by higher education institutions that make FFEL Loans. Under the THEEA, as of January 1, 2007, the FFEL lending activities of institutions of higher education and organizations affiliated with institutions of higher education through eligible lender trustee arrangements will be subject to certain restrictions that apply to institutions of higher education acting as lenders directly in the FFEL Program;
- New discharge provisions for Title IV, HEA student loans for the survivors

of eligible public servants and certain other eligible victims of the terrorist attacks on the United States on September 11, 2001;

- A technical modification to the HEA provision governing account maintenance fees that are paid to guaranty agencies in the FFEL Program; and
- Modifications to the requirements for an institution to receive a grant under the Hispanic Serving Institutions Program authorized by Title V of the HEA.

These interim final regulations implement only the statutory changes in section 6 of the THEEA that establish new discharges in the Title IV, HEA student loan programs for the survivors of victims of the terrorist attacks on September 11, 2001.

Significant Regulations

Discharge of Student Loan Indebtedness for Survivors of Victims of the September 11, 2001, Attacks (§§ 674.64, 682.407, and 685.218)

Statute: Section 6 of the THEEA amended the HEA by authorizing the discharge of the obligation of a borrower to make further payments on an eligible Perkins, FFEL or Direct Loan if the borrower is a survivor of an eligible public servant or other eligible victim of the September 11, 2001, terrorist attacks. The discharge is authorized only for a Perkins, FFEL or Direct Loan on which amounts were owed on September 11, 2001, or Consolidation Loans incurred to pay off loan amounts that were owed on September 11, 2001. Amounts must still be owed on the loan on the day the discharge is requested. The THEEA does not authorize a refund of payments made by a borrower prior to the date the loan is discharged.

Current Regulations: The current Perkins, FFEL, and Direct Loan Program regulations do not reflect the new loan discharge provisions for survivors of eligible public servants and other eligible victims of the September 11, 2001, terrorist attacks.

New Regulations: New §§ 674.64, 682.407, and 685.218 have been added to the Perkins, FFEL, and Direct Loan Program regulations, respectively, to reflect the THEEA provisions authorizing a loan discharge for survivors of eligible public servants and other eligible victims of the September 11, 2001, terrorist attacks.

For the purpose of this new loan discharge, an *eligible public servant* is defined in the program regulations as an individual who served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed

Forces who died or became permanently and totally disabled due to injuries suffered in terrorist attacks on September 11, 2001. The term *eligible victim* is defined as an individual who died or became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

The interim final regulations specify, consistent with section 6(b) of the THEEA, that the survivor of an eligible public servant can qualify for loan discharge, including the discharge of any portion of a joint Consolidation Loan that was used to repay the spouse's Title IV, student loan, only if the survivor is the spouse of the eligible public servant.

The interim final regulations, consistent with section 6(b)(1)(B), (C), and (D) of the THEEA, also authorize loan discharge for spouses and eligible parents of eligible victims (other than public servants). An *eligible parent* is defined as the parent of an eligible victim if the parent owes a parent PLUS Loan incurred on behalf of that eligible victim, or owes a Consolidation Loan that repaid a parent PLUS Loan incurred on behalf of that eligible victim.

For spouses of eligible victims other than eligible public servants, the interim final regulations provide, consistent with section 6(b)(1)(B) of the THEEA, for the discharge of the portion of a joint Consolidation Loan that was incurred on behalf of the eligible victim. To qualify for a discharge, in the case of a discharge based on the permanent and total disability of the eligible public servant or the eligible victim, the borrower and the public servant or victim must still be married. In the case of a discharge based on the death of the eligible public servant or eligible victim, the borrower must have been married to the public servant or the victim until the death of the public servant or the victim. For purposes of Federal law, the term "spouse" is defined in 1 U.S.C. 7 and does not include an ex-spouse. Thus, the THEEA does not give the Secretary the authority to provide for a loan discharge for an ex-spouse.

The interim final regulations also provide for the discharge of a parent borrower's PLUS Loan (or the portion of a Consolidation Loan that repaid a PLUS Loan) in the event of the death of the eligible victim on whose behalf the PLUS Loan was obtained. Finally, the interim final regulations provide for a discharge of a PLUS Loan (or the portion of a Consolidation Loan that repaid a PLUS Loan) obtained on behalf of an eligible victim who became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

As required by the THEEA, the interim final regulations establish procedures for filing applications for discharges by eligible borrowers. The interim final regulations provide that a borrower's eligibility for a loan discharge will be determined by the holder of the loan: The lender or guarantor for an FFEL Loan; the institution that made the loan for a Perkins Loan; and the Secretary for a Direct Loan. The borrower must use an application approved by the Secretary and provide the documentation required by the interim final regulations.

The regulations require three types of documentation to support a claim that an individual is an eligible public servant or an eligible victim:

- Documentation of the individual's presence at one of the sites of the terrorist attacks on September 11, 2001;
- In the case of an eligible public servant, documentation of the individual's status as a public servant at the time of the attacks; and
- Documentation that the individual's death or permanent and total disability was a direct result of the attacks.

Documentation of an individual's status as a public servant is provided by a certification from an authorized official that the borrower was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel at one of the sites of the terrorist attacks on September 11. This certification is also used to document that the individual was present at one of the sites. For an eligible victim, a certification that the individual was present at one of the sites must be provided.

Under the interim final regulations, documentation of the permanent and total disability of an eligible victim or an eligible public servant must include copies of contemporaneous medical records demonstrating that the victim was treated within 24 hours of the borrower sustaining the injury, or 24 hours of the borrower being rescued. The injury must have been sustained at the time or in the immediate aftermath of the attacks. In addition, the borrower must provide a certification from a physician that the borrower is permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

Documentation of the death of an eligible victim or an eligible public servant is provided by the inclusion of the individual on an official list of individuals who died in the terrorist attacks on September 11, 2001. If the individual didn't die in the attacks, but died later as result of the attacks, documentation requirements include an

original or certified copy of the individual's death certificate, and a certification from a physician or medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

In some cases, substitutions for the documentation discussed above may be used. For example, documentation that an individual's Title IV loans were discharged due to death may be used in lieu of an original or certified copy of a death certificate.

The documentation required by the interim final regulations is necessary to limit the discharge to individuals who meet the statutory eligibility criteria for the discharge. Contemporaneous medical records are necessary to ensure that the individual was injured in the terrorist attacks on September 11, 2001. A certification from a physician that the borrower is permanently and totally disabled as a result of that injury is necessary to ensure that the disability is a result of the terrorist attacks.

Although the documentation requirements for the September 11 survivor's discharge require eligibility of the public servant or the victim, the September 11 survivor's discharge under the THEEA is available only to the spouse or parent of the eligible public servant or the eligible victim. An eligible public servant or an eligible victim is not eligible for a loan discharge under these interim final regulations. A determination by a loan holder that an eligible public servant or an eligible victim is permanently and totally disabled for the purpose of discharging a spouse's or parent's loans does not qualify the eligible public servant or the eligible victim for a total and permanent disability discharge on his or her loans. To obtain a total and permanent disability discharge, an eligible public servant or an eligible victim must apply for a total and permanent disability discharge under the current procedures in §§ 674.61, 682.402, 685.212, and 685.213.

Under those regulations, a borrower who qualifies for a discharge based on a total and permanent disability may be entitled to receive a refund of payments made after the date of disability. Consistent with section 6(e) of the THEEA, a discharge under the interim final regulations provides a discharge only of the outstanding balance of the loan and no refunds are authorized.

In developing these interim final regulations, we relied on the definitions of *immediate aftermath* and *present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site* contained in the

regulations promulgated to administer the September 11th Victim Compensation Fund of 2001 (the Fund). See 24 CFR Part 104; 66 FR 66273 (Dec. 21, 2001); 67 FR 11233 (March 13, 2002). The documentation required to show that an eligible victim or public servant died or became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 closely parallels the documentation required under the Fund regulations. The Fund was created under Title IV of the Air Transportation Safety and System Stabilization Act, Public Law 107-42, which authorized compensation to any individual (or the personal representative of a deceased individual) who was physically injured or killed as a result of the September 11, 2001 terrorist-related aircraft crashes. We determined that the Fund's regulations provided an appropriate basis for several of the new regulatory provisions resulting from the THEEA.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to issuing a final rule. In addition, under section 492 of the HEA, all Department regulations for programs authorized under title IV of the HEA are subject to negotiated rulemaking requirements and under section 482 of the HEA, any title IV regulations that have not been published in final form by November 1 prior to the start of an award year cannot become effective until the beginning of the second award year following the November 1 date.

Section 6(f) of the THEEA provides that sections 482(c) and 492 of the HEA shall not apply to any regulations required to implement provisions of the THEEA that authorize the discharge of a title IV, HEA loan for survivors of victims of the September 11, 2001, attacks. The THEEA also requires that procedures for filing an application for loan discharge for survivors of the September 11, 2001, terrorist attacks be prescribed and published by regulation 90 days after the date of enactment or December 29, 2006, without regard to the rulemaking requirements of the APA. Therefore, the requirements for a proposed rule and negotiated rulemaking do not apply to these regulations.

These regulations are final and in effect as published, thirty days after publication in the **Federal Register**. Although the Department is adopting these regulations on an interim final

basis, the Department requests public comment on these regulations. After full consideration of public comments, the Secretary will publish final regulations with any necessary changes.

Executive Order 12866

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

Pursuant to the terms of the Executive Order, it has been determined this regulatory action will not have an annual effect on the economy of more than \$100 million. We believe that approximately 1,000 borrowers are eligible for a discharge on their loan under these provisions and that the costs incurred by the Department, lenders, and GAs to make the necessary systems changes to implement the discharge will approximate \$1,350,000. Therefore, this action is not "economically significant" and is not subject to OMB review under section 3(f)(1) of Executive Order 12866. However, this action is subject to OMB review under section 3(f)(4) of the Executive Order.

Need for Federal Regulatory Action

These interim final regulations are needed to implement the provisions of the THEEA, which affects borrowers and other program participants in the Federal Perkins, FFEL and Federal Direct Loan Programs authorized under Title IV of the HEA.

The Secretary has limited discretion in implementing these provisions. The changes included in these interim final regulations implement loan discharges

for the outstanding balance of certain Perkins, FFEL, and Direct Loan Program loans for survivors of eligible public servants and other eligible victims of the September 11, 2001 terrorist attacks.

Regulatory Flexibility Act Certification

The Secretary certifies that these interim final regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

Sections 674.64, 682.407 and 685.218 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education is required to submit a copy of these sections to the OMB for its review. The burden associated with the above provisions is associated with forms and applications currently under development and will be approved for use under new OMB control numbers. The Department will develop new information collection packages for the following sections: §§ 674.64, 682.407, and 685.218.

The Department will develop the application necessary to implement these provisions under an emergency clearance authorized by OMB. Information required by §§ 674.64(c), 674.64(d), 682.407(d), 682.407(e), 685.218(d), and 685.218(e) to determine eligibility for the discharge will be collected on this OMB-approved application. The information provided on the OMB-approved application will be collected and maintained by the holder of the borrower's loan. In the case of a FFEL loan, if the loan holder approves the discharge request the loan holder will provide the information collected to the guaranty agency that guaranteed the loan.

The Department has submitted a full information collection package for OMB review to account for the burden associated with §§ 674.64, 682.407, and 685.218 concurrently with the publication of these interim final regulations. Accordingly, we invite comments on the burden hours associated with the information collection package for §§ 674.64, 682.407, and 685.218 at this time.

Collection of Information: Federal Perkins Loan Program; Federal Family Education Loan Program; and William D. Ford Federal Direct Loan Program.

Sections 674.64, 682.407 and 685.218—Discharge of a Federal Perkins, FFEL or Federal Direct Loan for Survivors of Eligible Public Servants and Other Eligible Victims of the September 11, 2001 Terrorist Attacks

Under these interim final regulations, the Title IV, HEA loan program regulations are amended to authorize the discharge of the outstanding balance of certain Federal Perkins, FFEL, or Direct Loan Program loans for survivors of eligible public servants and other eligible victims of the September 11, 2001, terrorist attacks. The burden associated with the new requirements will be accounted for under a new OMB Control Number for a FFEL, Direct Loan, and Perkins Loan Discharge Application for September 11, 2001 Survivors. This form has been submitted for OMB review and approval by emergency clearance.

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

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

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

OMB is required to make a decision concerning the collection of information contained in these interim final regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication.

Assessment of Educational Impact

Based on our own review, we have determined that these interim final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; 84.268 William D. Ford Federal Direct Loan Program.)

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

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

Dated: December 22, 2006.

Margaret Spellings,
Secretary of Education.

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

PART 674—FEDERAL PERKINS LOAN PROGRAM

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

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

■ 2. New § 674.64 is added to read as follows:

§ 674.64 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

(a) *Definition of terms.* As used in this section—

(1) *Eligible public servant* means an individual who—

(i) Served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces; and

(ii)(A) Died due to injuries suffered in the terrorist attacks on September 11, 2001; or

(B) Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) *Died due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual—

(i) Was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual died as a direct result of these crashes; or

(ii) Died on board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

(3) *Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual became permanently and totally disabled as a direct result of these crashes.

(i) An individual is considered permanently and totally disabled if—

(A) The disability is the result of a physical injury to the individual that was treated by a medical professional within 24 hours of the injury having been sustained or within 24 hours of the rescue;

(B) The physical injury that caused the disability is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care; and

(C) The individual is unable to work and earn money due to the disability and the disability is expected to continue indefinitely or result in death.

(ii) If the injuries suffered due to the terrorist-related aircraft crashes did not make the individual permanently and totally disabled at the time of or in the immediate aftermath of the attacks, the individual may be considered to be permanently and totally disabled for purposes of this section if the individual's medical condition has deteriorated to the extent that the individual is permanently and totally disabled.

(4) *Immediate aftermath* means, for an eligible public servant, the period of time from the aircraft crashes until 96 hours after the crashes.

(5) *Present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site* means physically present at the time of the terrorist-related aircraft crashes or in the immediate aftermath—

(i) In the buildings or portions of the buildings that were destroyed as a result of the terrorist-related aircraft crashes; or

(ii) In any area contiguous to the crash site that was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses. Generally, this includes the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured persons.

(b) *September 11 survivors discharge.*

(1) The obligation of a borrower to make any further payments on an eligible Defense, NDSL, or Perkins Loan is discharged if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible public servant, unless the eligible public servant has died. If the eligible public servant has died, the borrower must have been the spouse of the eligible public servant at the time of the terrorist attacks on September 11, 2001 and until the date the eligible public servant died.

(2) A Defense, NDSL, or Perkins Loan owed by the spouse of an eligible public servant may be discharged under the procedures for a discharge in paragraphs (b)(3) through (b)(6) of this section.

(3) After being notified by the borrower that the borrower claims to qualify for a discharge under this section, an institution shall suspend collection activity on the borrower's eligible Defense, NDSL, and Perkins Loans and promptly request that the borrower submit a request for discharge on a form approved by the Secretary.

(4) If the institution determines that the borrower does not qualify for a discharge under this section, or the institution does not receive the completed discharge request form from the borrower within 60 days of the borrower notifying the institution that the borrower claims to qualify for a discharge, the institution shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the institution was notified by the borrower. The institution must notify the borrower that the application for the

discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan.

(5) If the institution determines that the borrower qualifies for a discharge under this section, the institution shall notify the borrower that the loan has been discharged and that there is no further obligation to repay the loan. The institution shall return to the sender any payments received by the institution after the date the loan was discharged.

(6) A Defense, NDSL, or Perkins Loan owed by an eligible public servant may be discharged under the procedures in § 674.61 for a discharge based on the death or total and permanent disability of the eligible public servant.

(c) *Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes; and

(ii) The inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(2) If the individual is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The certification described in paragraph (c)(1)(i) of this section;

(ii) An original or certified copy of the individual's death certificate; and

(iii) A certification from a physician or a medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) If the individual owed a FFEL Program Loan, a Direct Loan, or a Perkins Loan at the time of the terrorist attacks on September 11, 2001, documentation that the individual's loans were discharged by the lender, the Secretary, or the institution due to death may be substituted for the original or certified copy of a death certificate.

(4) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a FFEL Program

Loan, a Direct Loan, or a Perkins Loan held by another institution, because the eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation required in paragraphs (c)(1) through (c)(3) of this section.

(5) Under exceptional circumstances and on a case-by-case basis, the determination that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 may be based on other reliable documentation approved by the chief financial officer of the institution.

(d) *Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.*

(1) Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces or was employed as a police officer, firefighter or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes;

(ii) Copies of contemporaneous medical records created by or at the direction of a medical professional who provided medical care to the individual within 24 hours of the injury having been sustained or within 24 hours of the rescue; and

(iii) A certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a state, that the individual became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a FFEL Loan, a Direct Loan, or a Perkins Loan held by another institution, because the eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation required in paragraph (d)(1) of this section.

(e) *Additional information.* (1) An institution may require the borrower to submit additional information that the institution deems necessary to

determine the borrower's eligibility for a discharge under this section.

(2) To establish that the eligible public servant was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site, such additional information may include but is not limited to—

(i) Records of employment;

(ii) Contemporaneous records of a federal, state, city, or local government agency;

(iii) An affidavit or declaration of the eligible public servant's employer; or

(iv) A sworn statement (or an unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the eligible public servant at the site.

(3) To establish that the disability of the eligible public servant is due to injuries suffered in the terrorist attacks on September 11, 2001, such additional information may include but is not limited to—

(i) Contemporaneous medical records of hospitals, clinics, physicians, or other licensed medical personnel;

(ii) Registries maintained by federal, state, or local governments; or

(iii) Records of all continuing medical treatment.

(4) To establish the borrower's relationship to the eligible public servant, such additional information may include but is not limited to—

(i) Copies of relevant legal records including court orders, letters of testamentary or similar documentation;

(ii) Copies of wills, trusts, or other testamentary documents; or

(iii) Copies of approved joint FFEL or Federal Direct Consolidation loan applications.

(f) *Limitations on discharge.* (1) Only Defense, NDSL, and Perkins Loans for which amounts were owed on September 11, 2001, are eligible for discharge under this section.

(2) Eligibility for a discharge under this section does not qualify a borrower for a refund of any payments made on the borrower's Defense, NDSL, or Perkins Loans prior to the date the loan was discharged.

terrorist-related aircraft crashes on September 11, 2001.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

■ 4. New § 682.407 is added to read as follows:

§ 682.407 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

(a) *Definition of terms.* As used in this section—

(1) *Eligible public servant* means an individual who—

(i) Served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces; and

(ii)(A) Died due to injuries suffered in the terrorist attacks on September 11, 2001; or

(B) Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) *Eligible victim* means an individual who died due to injuries suffered in the terrorist attacks on September 11, 2001 or became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) *Eligible parent* means the parent of an eligible victim if—

(i) The parent owes a FFEL PLUS Loan incurred on behalf of an eligible victim; or

(ii) The parent owes a FFEL Consolidation Loan that was used to repay a FFEL or Direct Loan PLUS Loan incurred on behalf of an eligible victim.

(4) *Died due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual—

(i) Was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual died as a direct result of these crashes; or

(ii) Died on board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

(5) *Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate

aftermath of the terrorist-related aircraft crashes on September 11, 2001 and the individual became permanently and totally disabled as a direct result of these crashes.

(i) An individual is considered permanently and totally disabled if—

(A) The disability is the result of a physical injury to the individual that was treated by a medical professional within 24 hours of the injury having been sustained or within 24 hours of the rescue;

(B) The physical injury that caused the disability is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care; and

(C) The individual is unable to work and earn money due to the disability and the disability is expected to continue indefinitely or result in death.

(ii) If the injuries suffered due to the terrorist-related aircraft crashes did not make the individual permanently and totally disabled at the time of or in the immediate aftermath of the attacks, the individual may be considered to be permanently and totally disabled for purposes of this section if the individual's medical condition has deteriorated to the extent that the individual is permanently and totally disabled.

(6) *Immediate aftermath* means, except in the case of an eligible public servant, the period of time from the aircraft crashes until 12 hours after the crashes. With respect to eligible public servants, the immediate aftermath includes the period of time from the aircraft crashes until 96 hours after the crashes.

(7) *Present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site* means physically present at the time of the terrorist-related aircraft crashes or in the immediate aftermath—

(i) In the buildings or portions of the buildings that were destroyed as a result of the terrorist-related aircraft crashes; or

(ii) In any area contiguous to the crash site that was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses. Generally, this includes the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured persons.

(b) *September 11 survivors discharge*. (1) The obligation of a borrower and any endorser to make any further payments on an eligible FFEL Program Loan is

discharged if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible public servant, unless the eligible public servant has died. If the eligible public servant has died, the borrower must have been the spouse of the eligible public servant at the time of the terrorist attacks on September 11, 2001 and until the date the eligible public servant died.

(2) The obligation of a borrower to make any further payments towards the portion of a joint FFEL Consolidation Loan incurred on behalf of an eligible victim is discharged if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible victim, unless the eligible victim has died. If the eligible victim has died, the borrower must have been the spouse of the eligible victim at the time of the terrorist attacks on September 11, 2001 and until the date the eligible victim died.

(3) If the borrower is an eligible parent—

(i) The obligation of a borrower and any endorser to make any further payments on a FFEL PLUS Loan incurred on behalf of an eligible victim is discharged.

(ii) The obligation of the borrower to make any further payments towards the portion of a FFEL Consolidation Loan that repaid a FFEL or Direct Loan PLUS Loan incurred on behalf of an eligible victim is discharged.

(c) *Applying for discharge*. (1) A FFEL Program Loan owed by the spouse of an eligible public servant or the spouse or parent of an eligible victim may be discharged under the procedures for a discharge in paragraphs (c)(2) through (c)(12) of this section.

(2) After being notified by the borrower that the borrower claims to qualify for a discharge under this section, the lender shall suspend collection activity on the borrower's eligible FFEL Program Loan and promptly request that the borrower submit a request for discharge on a form approved by the Secretary.

(3) If the lender determines that the borrower does not qualify for a discharge under this section, or the lender does not receive the completed discharge request form from the borrower within 60 days of the borrower notifying the lender that the borrower claims to qualify for a discharge, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender was notified by the borrower. The lender must notify the borrower that the application for the discharge

has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during this period.

(4) If the lender determines that the borrower qualifies for a discharge under this section, the lender shall provide the guaranty agency with the following documentation—

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

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

(iii) The completed discharge form, and all accompanying documentation supporting the discharge request that formed the basis for the determination that the borrower qualifies for a discharge.

(5) The lender must file a discharge claim within 60 days of the date on which the lender determines that the borrower qualifies for a discharge.

(6) The guaranty agency must review a discharge claim under this section promptly.

(7) If the guaranty agency determines that the borrower does not qualify for a discharge under this section, the guaranty agency must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the borrower that the application for the discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during this period.

(8) If the guaranty agency determines that the borrower qualifies for a discharge, the guaranty agency pays the lender on an approved claim the amount of loss required under paragraph (c)(9) of this section. The guaranty agency shall pay the claim within the timeframe established for payment of disability claims in § 682.402(h)(1)(i)(B).

(9) The amount of loss payable on a discharge claim is—

(i) An amount equal to the sum of the remaining principal balance and interest accrued on the loan, unpaid collection costs incurred by the lender and applied to the borrower's account within 30 days of the date those costs were

actually incurred, and unpaid interest up to the date the lender should have filed the claim; or

(ii) In the case of a partial discharge of a Consolidation Loan, the amount specified in paragraph (c)(9)(i) of this section for the portion of the Consolidation Loan incurred on behalf of the eligible victim.

(10) After being notified that the guaranty agency has paid a discharge claim, the lender shall notify the borrower that the loan has been discharged or, in the case of a partial discharge of a Consolidation Loan, partially discharged. Except in the case of a partial discharge of a Consolidation Loan, the lender shall return to the sender any payments received by the lender after the date the guaranty agency paid the discharge claim.

(11) The Secretary reimburses the guaranty agency for a discharge claim paid to the lender under this section after the agency pays the lender. Any failure by the lender to satisfy due diligence requirements prior to the filing of the claim that would have resulted in the loss of reinsurance on the loan in the event of default are waived by the Secretary, provided the loan was held by an eligible loan holder at all times.

(12) Except in the case of a partial discharge of a Consolidation Loan, the guaranty agency shall promptly return to the sender any payment on a discharged loan made by the sender and received after the Secretary pays a discharge claim. At the same time that the agency returns the payment it shall notify the borrower that the loan has been discharged and that there is no further obligation to repay the loan.

(13) A FFEL Program Loan owed by an eligible public servant or an eligible victim may be discharged under the procedures in § 682.402 for a discharge based on the death or total and permanent disability of the eligible public servant or eligible victim.

(d) *Documentation that an eligible public servant or eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft

crashes or in the immediate aftermath of these crashes; and

(ii) The inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(2) If the individual is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The certification described in paragraph (d)(1)(i) of this section;

(ii) An original or certified copy of the individual's death certificate; and

(iii) A certification from a physician or a medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) If the individual owed a FFEL Program Loan, a Direct Loan, or a Perkins Loan at the time of the terrorist attacks, documentation that the individual's loans were discharged by the lender, the Secretary, or the institution due to death may be substituted for the original or certified copy of a death certificate.

(4) Documentation that an eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001 is the inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(5) If the eligible victim is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The documentation described in paragraphs (d)(2)(ii), (d)(2)(iii), and (d)(3) of this section; and

(ii) A certification signed by the borrower that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(6) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a Direct Loan, or a FFEL Program Loan held by another FFEL lender because the eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(1) through (d)(3) of this section.

(7) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a Direct Loan or on a FFEL Program Loan held

by another FFEL lender because the eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(4) and (d)(5) of this section.

(8) Under exceptional circumstances and on a case-by-case basis, the determination that an eligible public servant or an eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001 may be based on other reliable documentation approved by the chief executive officer of the guaranty agency.

(e) *Documentation that an eligible public servant or eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.* (1)

Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces or was employed as a police officer, firefighter or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes;

(ii) Copies of contemporaneous medical records created by or at the direction of a medical professional who provided medical care to the individual within 24 hours of the injury having been sustained or within 24 hours of the rescue; and

(iii) A certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a state, that the individual became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) Documentation that an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) The documentation described in paragraphs (e)(1)(ii) and (e)(1)(iii) of this section; and

(ii) A certification that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(3) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a Direct Loan, or a FFEL Program Loan held by another FFEL lender because the eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(1) of this section.

(4) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a Direct Loan or on a FFEL Program Loan held by another FFEL lender because the eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(2) of this section.

(f) *Additional information.* (1) A lender or guaranty agency may require the borrower to submit additional information that the lender or guaranty agency deems necessary to determine the borrower's eligibility for a discharge under this section.

(2) To establish that the eligible public servant or eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site, such additional information may include but is not limited to—

- (i) Records of employment;
- (ii) Contemporaneous records of a federal, state, city, or local government agency;
- (iii) An affidavit or declaration of the eligible public servant's or eligible victim's employer; and
- (iv) A sworn statement (or an unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the eligible public servant or eligible victim at the site.

(3) To establish that the disability of the eligible public servant or eligible victim is due to injuries suffered in the terrorist attacks on September 11, 2001, such additional information may include but is not limited to—

- (i) Contemporaneous medical records of hospitals, clinics, physicians, or other licensed medical personnel;
- (ii) Registries maintained by federal, state, or local governments; or
- (iii) Records of all continuing medical treatment.

(4) To establish the borrower's relationship to the eligible public servant or eligible victim, such additional information may include but is not limited to—

(i) Copies of relevant legal records including court orders, letters of testamentary or similar documentation;

(ii) Copies of wills, trusts, or other testamentary documents; or

(iii) Copies of approved joint Consolidation Loan applications or approved FFEL or Direct Loan PLUS loan applications.

(g) *Limitations on discharge.* (1) Only Federal SLS Loans, Federal Stafford Loans, Federal PLUS Loans, and Federal Consolidation Loans for which amounts were owed on September 11, 2001, or Federal Consolidation Loans incurred to pay off loan amounts that were owed on September 11, 2001, are eligible for discharge under this section.

(2) Eligibility for a discharge under this section does not qualify a borrower for a refund of any payments made on the borrower's loan prior to the date the loan was discharged.

(3) A determination by a lender or a guaranty agency that an eligible public servant or an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 for purposes of this section does not qualify the eligible public servant or the eligible victim for a discharge based on a total and permanent disability under § 682.402.

(4) The spouse of an eligible public servant or eligible victim may not receive a discharge under this section if the eligible public servant or eligible victim has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001. An eligible parent may not receive a discharge on a FFEL PLUS Loan or on a Consolidation Loan that was used to repay a FFEL or Direct Loan PLUS Loan incurred on behalf of an individual who has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001.

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

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

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

■ 6. Section 685.212 is amended by adding a new paragraph (i) to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(i) *September 11 survivors discharge.* If a borrower meets the requirements in § 685.218, the Secretary discharges the obligation of the borrower and any endorser to make any further payments—

(1) On an eligible Direct Loan if the borrower qualifies as the spouse of an eligible public servant;

(2) On the portion of a joint Direct Consolidation Loan incurred on behalf of an eligible victim, if the borrower qualifies as the spouse of an eligible victim;

(3) On a Direct PLUS Loan incurred on behalf of an eligible victim if the borrower qualifies as an eligible parent; and

(4) On the portion of a Direct Consolidation Loan that repaid a PLUS loan incurred on behalf of an eligible victim, if the borrower qualifies as an eligible parent.

■ 7. New § 685.218 is added to read as follows:

§ 685.218 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

(a) *Definition of terms.* As used in this section—

(1) *Eligible public servant* means an individual who—

(i) Served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces; and

(ii)(A) Died due to injuries suffered in the terrorist attacks on September 11, 2001; or

(B) Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) *Eligible victim* means an individual who died due to injuries suffered in the terrorist attacks on September 11, 2001 or became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) *Eligible parent* means the parent of an eligible victim if—

(i) The parent owes a Direct PLUS Loan incurred on behalf of an eligible victim; or

(ii) The parent owes a Direct Consolidation Loan that was used to repay a Direct PLUS Loan or a FFEL PLUS Loan incurred on behalf of an eligible victim.

(4) *Died due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual—

(i) Was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001 and the individual died as a direct result of these crashes; or

(ii) Died on board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

(5) *Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001 and the individual became permanently and totally disabled as a direct result of these crashes.

(i) An individual is considered permanently and totally disabled if—

(A) The disability is the result of a physical injury to the individual that was treated by a medical professional within 24 hours of the injury having been sustained or within 24 hours of the rescue;

(B) The physical injury that caused the disability is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care; and

(C) The individual is unable to work and earn money due to the disability and the disability is expected to continue indefinitely or result in death.

(ii) If the injuries suffered due to the terrorist-related aircraft crashes did not make the individual permanently and totally disabled at the time of or in the immediate aftermath of the attacks, the individual may be considered to be permanently and totally disabled for purposes of this section if the individual's medical condition has deteriorated to the extent that the individual is permanently and totally disabled.

(6) *Immediate aftermath* means, except in the case of an eligible public servant, the period of time from the aircraft crashes until 12 hours after the crashes. With respect to eligible public servants, the immediate aftermath includes the period of time from the aircraft crashes until 96 hours after the crashes.

(7) *Present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site* means physically present at the time of the terrorist-related aircraft crashes or in the immediate aftermath—

(i) In the buildings or portions of the buildings that were destroyed as a result of the terrorist-related aircraft crashes; or

(ii) In any area contiguous to the crash site that was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses.

Generally, this includes the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured persons.

(b) *September 11 survivors discharge.*

(1) The Secretary discharges the obligation of a borrower and any endorser to make any further payments on an eligible Direct Loan if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible public servant, unless the eligible public servant has died. If the eligible public servant has died, the borrower must have been the spouse of the eligible public servant at the time of the terrorist attacks on September 11, 2001 and until the date the eligible public servant died.

(2) The Secretary discharges the obligation of a borrower and any endorser to make any further payments towards the portion of a joint Direct Consolidation Loan incurred on behalf of an eligible victim if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible victim, unless the eligible victim has died. If the eligible victim has died, the borrower must have been the spouse of the eligible victim at the time of the terrorist attacks on September 11, 2001 and until the date the eligible victim died.

(3) If the borrower is an eligible parent—

(i) The Secretary discharges the obligation of a borrower and any endorser to make any further payments on a Direct PLUS Loan incurred on behalf of an eligible victim.

(ii) The Secretary discharges the obligation of the borrower and any endorser to make any further payments towards the portion of a Direct Consolidation Loan that repaid a PLUS Loan incurred on behalf of an eligible victim.

(c) *Applying for discharge.* (1) The Secretary discharges a Direct Loan owed by the spouse of an eligible public servant or the spouse or parent of an eligible victim under the procedures for a discharge in paragraphs (c)(2) through (c)(4) of this section.

(2) After being notified by the borrower that the borrower claims to qualify for a discharge under this section, the Secretary suspends collection activity on the borrower's eligible Direct Loans and requests that the borrower submit a request for discharge on a form approved by the Secretary.

(3) If the Secretary determines that the borrower does not qualify for a discharge under this section, or the Secretary does not receive the completed discharge request form from

the borrower within 60 days of the borrower notifying the Secretary that the borrower claims to qualify for a discharge, the Secretary resumes collection and grants forbearance of payment of both principal and interest for the period in which collection activity was suspended. The Secretary notifies the borrower that the application for the discharge has been denied, provides the basis for the denial, and informs the borrower that the Secretary will resume collection on the loan. The Secretary may capitalize any interest accrued and not paid during this period.

(4) If the Secretary determines that the borrower qualifies for a discharge under this section, the Secretary notifies the borrower that the loan has been discharged or, in the case of a partial discharge of a Direct Consolidation Loan, partially discharged. Except in the case of a partial discharge of a Direct Consolidation Loan, the Secretary returns to the sender any payments received by the Secretary after the date the loan was discharged.

(5) The Secretary discharges a Direct Loan owed by an eligible victim or an eligible public servant under the procedures in § 685.212 for a discharge based on death or under the procedures in § 685.213 for a discharge based on a total and permanent disability.

(d) *Documentation that an eligible public servant or eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes; and

(ii) The inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(2) If the individual is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The certification described in paragraph (d)(1)(i) of this section;

(ii) An original or certified copy of the individual's death certificate; and

(iii) A certification from a physician or a medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) If the individual owed a FFEL Program Loan, a Direct Loan, or a Perkins Loan at the time of the terrorist attacks on September 11, 2001, documentation that the individual's loans were discharged by the lender, the Secretary, or the institution due to death may be substituted for the original or certified copy of a death certificate.

(4) Documentation that an eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001 is the inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(5) If the eligible victim is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The documentation described in paragraphs (d)(2)(ii), (d)(2)(iii), and (d)(3) of this section; and

(ii) A certification signed by the borrower that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(6) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a FFEL Program loan or another Direct Loan because the eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(1) through (d)(3) of this section.

(7) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a FFEL Program Loan or another Direct Loan because the eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(4) and (d)(5) of this section.

(8) The Secretary may discharge the loan based on other reliable documentation that establishes, to the Secretary's satisfaction, that the eligible public servant or the eligible victim died due to injuries suffered in the September 11, 2001 attacks. The Secretary discharges a loan based on documentation other than the

documentation specified in paragraphs (d)(1) through (d)(5) of this section only under exceptional circumstances and on a case-by-case basis.

(e) *Documentation that an eligible public servant or eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.* (1)

Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces or was employed as a police officer, firefighter or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes;

(ii) Copies of contemporaneous medical records created by or at the direction of a medical professional who provided medical care to the individual within 24 hours of the injury having been sustained or within 24 hours of the rescue; and

(iii) A certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a state, that the individual became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) Documentation that an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) The documentation described in paragraphs (e)(1)(ii) and (e)(1)(iii) of this section; and

(ii) A certification that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(3) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a FFEL Program loan, or another Direct Loan because the eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(1) of this section.

(4) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a FFEL Program Loan, or another Direct Loan because the eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(2) of this section.

(f) *Additional information.* (1) The Secretary may require the borrower to submit additional information that the Secretary deems necessary to determine the borrower's eligibility for a discharge under this section.

(2) To establish that the eligible public servant or eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site, such additional information may include but is not limited to—

(i) Records of employment;

(ii) Contemporaneous records of a federal, state, city, or local government agency;

(iii) An affidavit or declaration of the eligible public servant's or eligible victim's employer; or

(iv) A sworn statement (or an unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the eligible public servant or eligible victim at the site.

(3) To establish that the disability of the eligible public servant or eligible victim is due to injuries suffered in the terrorist attacks on September 11, 2001, such additional information may include but is not limited to—

(i) Contemporaneous medical records of hospitals, clinics, physicians, or other licensed medical personnel;

(ii) Registries maintained by federal, state, or local governments; or

(iii) Records of all continuing medical treatment.

(4) To establish the borrower's relationship to the eligible public servant or eligible victim, such additional information may include but is not limited to—

(i) Copies of relevant legal records including court orders, letters of testamentary or similar documentation;

(ii) Copies of wills, trusts, or other testamentary documents; or

(iii) Copies of approved joint FFEL or Direct Loan Consolidation Loan applications or an approved Direct PLUS Loan application.

(g) *Limitations on discharge.* (1) Only Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans and Direct Consolidation Loans for which amounts were owed on

September 11, 2001, or Direct Consolidation Loans incurred to pay off loan amounts that were owed on September 11, 2001, are eligible for discharge under this section.

(2) Eligibility for a discharge under this section does not qualify a borrower for a refund of any payments made on the borrower's Direct Loans prior to the date the loan was discharged.

(3) A determination that an eligible public servant or an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 for purposes of this section does not qualify the eligible public servant or the eligible victim for a discharge based on a total and permanent disability under § 685.213.

(4) The spouse of an eligible public servant or eligible victim may not receive a discharge under this section if the eligible public servant or eligible victim has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001. An eligible parent may not receive a discharge on a Direct PLUS Loan or on a Direct Consolidation Loan that was used to repay a Direct Loan or FFEL Program PLUS Loan incurred on behalf of an individual who has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001.

[FR Doc. E6-22245 Filed 12-27-06; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[EPA-HQ-OAR-2006-0363; FRL-8263-4]

RIN 2060-AN66

Amendment to Tier 2 Vehicle Emission Standards and Gasoline Sulfur Requirements: Partial Exemption for U.S. Pacific Island Territories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to exempt the three U.S. Pacific Island Territories—American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (C.N.M.I.)—from the gasoline sulfur requirements that EPA promulgated in the Tier 2 motor vehicle rule. The Governor of American Samoa petitioned us for an exemption from the Tier 2 gasoline sulfur requirement because of the potential for gasoline shortages, the

added cost, and the minimal air quality benefits the Tier 2 gasoline sulfur requirement would provide to American Samoa. Representatives of the Governors of Guam and C.N.M.I. have also requested an exemption referencing the petition submitted by American Samoa. Generally, the Far East market, primarily Singapore, supplies gasoline to the U.S. Pacific Island Territories. The Tier 2 sulfur standard effectively requires special gasoline shipments, which would increase the cost and could jeopardize the security of the gasoline supply to the Pacific Island Territories. The air quality in American Samoa, Guam, and C.N.M.I. is generally pristine, due to the wet climate, strong prevailing winds, and considerable distance from any pollution sources. We recognize that exempting the U.S. Pacific Island Territories from the gasoline sulfur standard will result in smaller emission reductions. However, Tier 2 vehicles using higher sulfur gasoline still emit 30% less hydrocarbons and 60% less NOX than Tier 1 vehicles and negative effects on the catalytic converter due to the higher sulfur levels are, in many cases, reversible. Additionally, these reduced benefits are acceptable due to the pristine air quality, the fact that gasoline quality will not change, and the cost and difficulty of consistently acquiring Tier 2 compliant gasoline. The Tier 2 motor vehicle rule also sets standards for vehicle emissions. Vehicles in use on the U.S. Pacific Island Territories will not be exempt from the Tier 2 vehicle emission standards. However, additional flexibility will be afforded due to the lack of low sulfur gasoline.

DATES: This direct final rule is effective on March 28, 2007 without further notice, unless EPA receives adverse comments by January 29, 2007. If we receive adverse comments, we will publish a timely withdrawal in the *Federal Register* informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0363, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2006-0363. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget

(OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0363. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

Note: The EPA Docket Center suffered damage due to flooding during the last week