Friday
November 28, 1997

Part III

Department of Education

34 CFR Parts 682 and 685

Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 685

RIN 1840–AC45

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

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Family Education Loan (FFEL) Program regulations, 34 CFR Part 682, and the William D. Ford Federal Direct Loan (Direct Loan) Program regulations, 34 CFR Part 685, to modify requirements in these programs. These modifications eliminate certain differences in the requirements of the FFEL and Direct Loan programs and reduce burden.

DATES: Effective date: These regulations take effect July 1, 1998. However, affected parties do not have to comply with the information collection requirement in § 685.212 until the Department of Education publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to this information collection requirement. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Smith, U.S. Department of Education, 600 Independence Avenue, SW, ROB–3, room 3045, Washington, DC 20202–5346. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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SUPPLEMENTARY INFORMATION: On September 25, 1997, the Secretary published a notice of proposed rulemaking (NPRM) for the FFEL Program and the Direct Loan Program in the **Federal Register** (62 FR 50462).

The NPRM included a discussion of the major issues surrounding the proposed changes that will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those changes can be found:

Sections 682.201 and 685.301 Students with Need of $200 or Less

The Secretary proposed to establish a provision that would allow, but not require, a school to choose not to originate a Direct Subsidized Loan for a student with a calculated need of $200 or less. (page 50462)

Sections 682.202(c)(5), 682.401(b)(10), and 685.202(c)(4) Refund of FFEL Program Origination Fees and Insurance Premiums and of Direct Loan Program Loan Fees

The Secretary proposed a new provision that would provide for the refund of the applicable portion of the origination fee, insurance premium, or loan fee that is attributable to that portion of loan funds that are returned by the school in order to comply with the Higher Education Act of 1965, as amended (HEA) or with applicable regulations. (page 50463)

Sections 682.402 and 685.212 Discharge of a Loan

The Secretary proposed to provide for the discharge of a borrower's or endorser's obligation to repay a Direct Consolidation Loan for a borrower who became totally and permanently disabled (or whose condition substantially deteriorated, so as to render the borrower totally and permanently disabled) after applying for all of the Consolidation Loan's underlying loans. The Secretary also proposed to clarify FFEL Program regulations that relate to this type of loan discharge. (page 50463)

Sections 682.604(g)(2) and 685.304(b)(2) Exit Counseling

The Secretary proposed to revise the FFEL and Direct Loan program regulations that govern exit counseling to allow a school to base the calculation of a student's ''average anticipated monthly repayments'' upon either the student's individual indebtedness or upon the average indebtedness of students who have obtained loans for attendance at that school or in the borrower's program of study. (page 50463)

These final regulations contain changes from the NPRM. These changes are fully explained in the Analysis of Comments and Changes elsewhere in this preamble.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, a number of parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—generally are not addressed.

General

Comments: The vast majority of commenters strongly supported the Secretary's efforts to eliminate the differences in the requirements of the FFEL and Direct Loan programs and to reduce burden. However, three commenters stated that the changes proposed in the NPRM provide a benefit to Direct Loan Program participants, but do not provide a significant benefit to FFEL Program participants. The commenters urged the Department to review other differences between the Direct Loan and FFEL Programs and to provide benefits for participants in both programs. One commenter proposed additional areas for the Secretary to consider changing to achieve better parity between the requirements in the two programs.

Discussion: The Secretary believes that FFEL Program participants will benefit from the changes made in these regulations. For example, the change to the exit counseling requirements will allow FFEL schools to use student-specific information to inform students of their anticipated average monthly repayments. This change will permit schools to use the most specific information they have in counseling borrowers. This change will also ensure that borrowers receive the best information available in planning for their repayment obligations. The other three revisions will clarify the FFEL Program regulations and ensure that a student borrowing in the FFEL Program receives the same terms, conditions, and benefits as a student borrowing in the Direct Loan Program.

In addition, a school that participates in both the FFEL and Direct Loan Programs will derive a significant benefit concerning its participation in both programs as a result of any change that reduces the differences between the programs. Elimination of these differences will make it easier for schools to administer the two programs and reduces the likelihood of confusion.

This final rule does not reduce benefits in the FFEL Program. Instead, the regulations help to implement § 455(a) of the HEA, which generally requires that the FFEL and Direct Loan Programs have the same terms,

conditions, and benefits unless otherwise specified.

Changes: None.

Students With Need of $200 or Less (§§ 682.201 and 685.301)

Comments: Many commenters asked that a paragraph similar to the proposed § 685.301(a)(6) be included in FFEL Program regulations, to more clearly state a school's authority to choose not to certify a Stafford Loan of $200 or less and to include that amount in an unsubsidized Stafford Loan. One commenter also asked that the regulations for both programs specify that the authority to include the amount in an unsubsidized loan is subject to applicable annual and aggregate loan limits.

Discussion: The result of the changes made to §§ 682.201(a)(2) and 685.301 by these regulations will be essentially the same for schools participating in the FFEL Program as for schools participating in the Direct Loan Program. Schools in each program will be able to choose whether or not to certify or originate a subsidized loan for a student with need of $200 or less. However, fundamental differences between the two programs preclude making the regulatory text identical.

In the FFEL Program, the ability of a borrower to receive a subsidized loan of $200 or less rests, ultimately, with the lender, not with the school. For example, a school may certify a Stafford Loan for $100 but cannot compel a lender to actually make a loan of this amount to a borrower. However, in the Direct Loan Program, the school may act for the Department in determining whether or not a borrower may receive a subsidized amount of $200 or less.

As for the commenter's request to clarify that the amount of $200 or less that is provided to the student as an unsubsidized loan amount is subject to the applicable annual and aggregate loan limits, no change is needed. The FFEL and Direct Loan annual and aggregate unsubsidized loan limits include both subsidized and unsubsidized loan amounts. Therefore the unsubsidized amount has already been incorporated into the determination of the borrower's annual and aggregate amount. If a borrower is eligible to receive the $200 or less amount, and the school chooses not to certify or originate a subsidized loan for the amount, in all cases, the borrower remains eligible to receive those funds in an unsubsidized loan.

Changes: None.

Comments: Two commenters asked that paragraphs § 682.201(a)(2) (ii) and (iii) be removed, noting that the requirements in those paragraphs were specific to loans made under the Supplemental Loans for Students (SLS) Program, which has been repealed. The commenters contended that the provisions in the NPRM had made them unnecessary.

Another commenter expressed concern that, in many cases, the proposed revisions to § 682.201 would remove a dependent student's eligibility for a ''base'' unsubsidized Stafford Loan amount, as described at § 682.204(c). For example, the commenter noted that simply changing ''SLS'' to ''unsubsidized Stafford'' in § 682.201(a)(3) as proposed in the NPRM would provide that a dependent undergraduate student would be ineligible for the ''base,'' as well as the ''additional'' unsubsidized amount unless the student's parents were precluded by exceptional circumstances from borrowing a PLUS loan.

Discussion: The Secretary agrees with the commenters. Paragraphs § 682.201(a)(2) (ii) and (iii) are no longer needed. Also, as noted by the commenter, § 682.201(a)(3) would appear to place a restriction upon a dependent undergraduate student's eligibility to receive unsubsidized Stafford loan funds. The Secretary did not intend to propose such a change, but intended only to clarify a school's authority to choose not to certify a subsidized Stafford loan for a student with need of $200 or less.

Changes: Section 682.201(a)(2) has been rewritten to reflect the elimination of paragraphs (ii) and (iii), and § 682.201(a)(3) is revised to more accurately describe a dependent undergraduate student's ability to receive a ''base'' unsubsidized Stafford loan amount.

Refund of FFEL Program Origination Fees and Insurance Premiums and of Direct Loan Program Loan Fees (§§ 682.202(c)(5), 682.209(i)(1), 682.401(b)(10), and 685.202(c)(4))

Comments: One commenter asked that the Secretary note in this Preamble that the purpose of the proposed changes to § 682.202(c)(5)(i) is to clarify that a refund of the origination fees must be credited to a student's loan balance by the lender even after 120 days, if there is an institutional delay in processing the refund.

Discussion: The commenter notes a valid example in which the refund of the origination fee would be credited against a borrower's loan balance. However, the revision to § 682.202(c)(5)(i) is intended to clarify the conditions under which the fee must be refunded, rather than the timeframe in which the refund must be made. The revision clarifies that the fee must be refunded by a credit against the borrower's loan balance in all cases in which the school is returning the funds to comply with its responsibilities under the HEA or applicable regulations.

This means that for a fee to be refunded by a credit under this provision, the return of funds by the school must be in keeping with the school's normal responsibilities under the HEA and applicable regulations, such as when a school is returning or repaying a title IV refund or overaward amount. The origination fee would *not* be refunded, however, if a school returned funds as a prepayment for the borrower later than 120 days after the date of the loan disbursement.

Changes: None.

Comments: Many commenters noted that language proposed in the NPRM for § 682.202 and § 682.401 would require a lender to refund to the borrower's account a portion of the origination fee and insurance premium any time that a payment was made by a borrower within 120 days of disbursement. The commenters noted that, under the proposed rules, if a borrower made a prepayment, an interest payment, or a scheduled payment on a loan within 120 days of disbursement, a lender would be required to return the applicable portion of the origination fee and insurance premium. These commenters stated that they believed that the corresponding Direct Loan Program regulations at § 685.202(c)(4) do not include this requirement.

The commenters requested that the same rule apply to the FFEL and Direct Loan Programs. The commenters also suggested that the return of a portion of the origination fee or insurance premium for a disbursement only be made when the funds are returned by a school to comply with the HEA or applicable regulations, and that a borrower returning funds within 120 days would only receive a refund of an origination fee or insurance premium when the borrower pays an amount equal to the full amount of the disbursement.

Discussion: As stated in the footnote in the preamble to the NPRM (62 FR at 50463), the changes to the FFEL regulations at § 682.202(c)(5) are a technical correction. The corresponding changes to §§ 682.401(b)(10)(vi)(B) and 682.209(i)(1) in this final rule are made as conforming changes to this technical correction.

The commenters are correct in noting that FFEL regulations require the return of a portion of the origination fee or

insurance premium when a borrower repays or returns funds within 120 days of disbursement. The commenters are not correct in claiming that a Direct Loan borrower must return the full amount of a disbursement in order to receive a refund of the loan fee. Though the language in the two regulations is slightly different, the substance of this requirement is the same in the FFEL and Direct Loan Programs. A borrower may repay or return a portion of a FFEL or Direct Loan Program disbursement to receive a partial refund of the fees.

However, the Secretary did not intend that a portion of an origination fee, insurance premium, or loan fee would be automatically refunded to a borrower within 120 days of disbursement if the borrower has a loan that is in repayment unless the borrower specifically instructs the Secretary or the lender, in writing, to use the payment to cancel all or a portion of the loan. If a borrower is in repayment and does not supply written instructions to the contrary, the payment made by the borrower is applied to the borrower's loan balance as provided at § 682.209(b) or § 685.211(a).

The regulatory language has been revised to reflect this clarification. Specifically, it has been revised to provide that, unless a borrower in repayment status instructs otherwise, any payment by that borrower is applied in accordance with regular payment application rules without any effect on the origination fee, insurance premium, or loan fee. The regulatory language has also been revised to provide that, unless a borrower who is *not* in a repayment status instructs otherwise, any payment by that borrower is applied to cancel all or a portion of the most recent disbursement, and correspondingly, all or a portion of the fees are returned.

For example, if a borrower who is in repayment status makes a regularly scheduled payment on a PLUS loan, within 120 days of the last disbursement, the fees are not refunded unless the borrower requests, in writing, that the funds be applied to cancel all or a portion of a recent disbursement. If the same borrower includes an amount greater than the scheduled payment amount with the regularly scheduled payment, the additional amount is applied to the borrower's loan balance under applicable regulations at § 682.209(b) or § 685.211(a). If the same borrower mails a check to the lender without including any instructions at all, the amount is applied to the borrower's loan balance under regulations at § 682.209(b) or § 685.211(a). In all cases, a borrower who is in repayment will not receive a proportional refund of fees unless the borrower requests in writing that the payment, or a portion of the payment, is intended to be applied to cancel all or a portion of a recent loan disbursement.

As another example, a borrower who has not yet entered repayment status on any loans is scheduled to make a payment of accruing interest on an unsubsidized loan within 120 days of disbursement. If the borrower *does not* provide written instructions concerning the application of the payment (whether on a payment coupon, in a written note, or in other written form), then a payment made within 120 days of disbursement is applied as a cancellation of part of the loan, and the appropriate portion of the fees is refunded to the borrower. If the borrower *does* provide written instruction that the payment is to be applied to the accruing interest (by including the return of a payment coupon, a written note, etc.), then the payment is applied to the interest, and no fees are refunded. However, if a borrower who is not in repayment status is making a payment to be applied to the accruing interest that includes an amount greater than the amount of the accrued interest, the excess amount is used to cancel a portion of the loan and the corresponding portion of the fees is refunded to the borrower.

Changes: The regulations have been revised to clarify that a borrower in repayment status on any loan must provide written instructions to prevent a payment made within 120 days of disbursement from being applied to the debt under the regular application of payment rules in § 682.209 or § 685.211. A borrower who is not in repayment status on any loan must provide written instructions to prevent a payment made within 120 days of a disbursement from being applied as a cancellation of all or part of the loan.

Also, a change is made in § 682.209(i)(1) to be consistent with corresponding changes at §§ 682.202(c)(5) and 682.401(b)(10)(vi)(B). Additional minor revisions have also been made to clarify this rule.

Comments: Several commenters suggested that the preamble for the final rule clarify that a lender in the FFEL Program may assume that any amount returned by a school was being returned pursuant to § 682.202(c)(5)(i) or § 682.401(b)(10)(vi)(B)(*1*) unless the school specifically advised otherwise. The commenters stated that this approach would provide for a more streamlined exchange of data between a school and a lender.

Discussion: The Secretary agrees with the commenters. Unless a school specifically states otherwise, a lender may assume that the amount being returned by the school is pursuant to § 682.202(c)(5)(i) or § 682.401(b)(10)(vi)(B)(*1*).

Changes: None.

Comments: One commenter asked that proposed § 682.202(c)(5)(iii) be expanded to provide more specific regulations regarding the standards for the non-delivery of loan funds that will require the return of an origination fee, similar to requirements provided in corresponding regulations for an insurance premium, at §§ 682.401(b)(10)(vi)(B)(*3*) and (*4*). The regulations for insurance premiums provide for different treatment of these fees depending on the disbursement method. Another commenter noted the same disparity, but recommended the opposite action, that §§ 682.401(b)(10)(vi)(B)(*3*) and (*4*) be revised to conform to the less specific language at § 682.202(c)(5)(iii).

Discussion: The Secretary agrees that § 682.202(c)(5)(iii) should be expanded to provide more details concerning when a loan will be considered to have not been delivered, thus requiring the return of the origination fee. This language was inadvertently omitted from previous regulations.

Changes: Section 682.202(c)(5) is revised to more closely correspond to provisions in paragraphs §§ 682.401(b)(10)(vi)(B)(*3*) and (*4*).

Discharge of a Loan (§§ 682.402 and 685.212)

Comments: Many commenters found the text of §§ 682.402 and 685.212 to be difficult to understand, and asked that it be revised to state the requirements more directly. Specifically, commenters proposed language to state more directly that a borrower is eligible for a total and permanent disability discharge if he or she meets the eligibility criteria for each of the underlying loans included in the consolidation loan. Another commenter supported the numbering and lettering format used, but believed that language currently in § 682.402(c) was clearer and suggested that this language be retained.

Discussion: The regulations must address the timing of the disability to the underlying loans, for the purpose of determining eligibility for the discharge of the consolidation loan, because the underlying loans no longer exist. Further, §§ 682.402(c)(1)(iii)(B) and 685.212(b)(3)(ii) provide criteria for the discharge of an underlying loan that was made under a federal education loan program other than the FFEL or Direct Loan Program. For example, the

proposed requirements at §§ 682.402(c)(1)(iii)(B) and 685.212(b)(3)(ii) provide for the discharge of a consolidation loan that includes a Health Professions Student Loan (HPSL). Otherwise, to discharge a borrower's obligation to repay this consolidation loan, a separate determination would need to be made under regulations specific to the HPSL.

In light of the complexity of the issues, the Secretary believes that the regulations provide the best statement of the rules, but the Secretary will continue to review the language to determine if simpler wording can be developed.

Changes: Minor revisions are made to §§ 682.402(c)(1)(iii) and 685.212(b)(3) to simplify guidance and improve clarity.

Comments: Many commenters noted that changes proposed for §§ 682.402(c)(1)(iii)(A) and 685.212(b)(3)(i) require that *all* of a consolidation loan's underlying loans be individually dischargeable in order for a borrower to have an obligation to repay a consolidation loan discharged due to a total and permanent disability. These commenters strongly opposed this provision.

The commenters presented two options. The first, and the preferred option of most commenters, was to provide that a borrower's obligation to repay a consolidation loan be completely discharged if any one of the underlying loans meets the criteria for this type of discharge. Most commenters reasoned that this option would not result in a significant loss of funds to the government, given the limited number of borrowers who would meet these discharge criteria. One commenter reasoned that to do otherwise would punish a borrower for consolidating loans, would provide a disincentive for consolidating loans, would create significant servicing problems, and would be neither cost-efficient nor sensitive to the circumstances of a borrower.

The second option presented by commenters was to discharge a portion of a borrower's obligation to repay a consolidation loan that is consistent with the amount of the eligible underlying loan(s). The commenters noted that discharging a portion of a consolidation loan in this case would be consistent with rules providing a partial discharge of a consolidation loan based on a school's closure or a false certification. One commenter reasoned that the HEA does not preclude a partial discharge of a loan due to a total and permanent disability.

The commenters also noted that a borrower normally consolidates a loan as the result of financial difficulties, and in this case, consolidation would worsen rather than help a borrower's financial situation. Rather than becoming less likely to default, a borrower would become more likely to default.

Discussion: Under the proposed rule, (1) a borrower who receives a consolidation loan and then becomes totally and permanently disabled is eligible for a discharge of the obligation to repay the consolidation loan; and (2) a borrower who receives a number of loans and then becomes totally and permanently disabled, but consolidates those loans rather than applying for their discharge, is eligible for a discharge of the obligation to repay the consolidation loan.

In both cases noted above, a borrower is also considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan if the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled. In order to determine whether each loan included in a borrower's consolidation loan is eligible for a discharge, the borrower's circumstances related to each loan must be examined individually.

Conversely, a borrower *would not* be eligible for the discharge of the consolidation loan obligation if the borrower is not considered totally and permanently disabled for one or more of the underlying loans or if the borrower's condition did not substantially deteriorate after each underlying loan was made or after the consolidation loan itself was made. For example, a borrower who receives a number of loans, becomes totally and permanently disabled, but then becomes able to go back to school and receives another loan, and finally consolidates all of these loans is not eligible to receive a discharge of the obligation to repay the consolidation loan unless, for each underlying loan, (1) a condition existing at the time the borrower applied for the underlying loan substantially deteriorated so as to render the borrower totally and permanently disabled, or (2) the borrower had become disabled based on a condition that did not exist at the time the borrower applied for the underlying loan or the consolidation loan itself.

This proposed rule is not a change to current FFEL Program requirements. The requirements proposed in the NPRM, which specify that all of a borrower's underlying loans must qualify for a discharge in order for the consolidation loan to be discharged, are consistent with current § 682.402(c)(1), which provides that ''the borrower must certify that the condition did not exist prior to the time the borrower applied for each of the underlying loans.''

The commenters' proposal, that a borrower's obligation to repay a consolidation loan be completely discharged if one or more of its underlying loans meet the criteria, would enable a borrower to use the consolidation process to discharge an obligation to repay a loan that was not dischargeable prior to consolidation. For example, a borrower having one loan that is dischargeable and two subsequent loans that are not dischargeable, would be able to circumvent regulations and discharge all three loans by consolidating. The Secretary does not believe that borrowers who take out loans and do not qualify for a discharge of those loans should get a discharge merely by consolidating.

As to the commenters' second proposal for a partial discharge of a consolidation loan, the Secretary notes that partial discharge of a consolidation loan obligation is authorized due to a school closure or false certification because, in these cases, either the loan should not have been made or the borrower did not receive the benefit of the education or training for which the loan was intended. Thus, the basis for these types of discharge is the result of the school's action and beyond the control of the borrower, rather than related to the borrower's individual condition or actions.

Also, the Secretary notes that the school closure and false certification discharges were specifically designed to address past problems in the loan programs. They were enacted in 1992, but applied to loans made on or after January 1, 1986. The regulations provided for partial discharges of loans in these cases in recognition of the fact that borrowers whose loans were now subject to discharge may have taken out consolidation loans that also repaid other nondischargeable loans prior to 1992. The same type of situation does not exist in connection with the disability discharge. Thus, the Secretary declines to change the longstanding policy against partial discharges in these circumstances.

The commenter is correct that the proposed revision might provide a slight disincentive for consolidating loans. However, this disincentive would only affect borrowers who have loans which are eligible for discharge. It is in the borrower's best interest to have these loans discharged, rather than take out a new loan. Given the availability of

discharge information to borrowers, the Secretary estimates that the number of borrowers who will be affected by the proposed provision should be extremely small. That is, most borrowers will be aware of and will exercise their right to have the loan discharged due to a disability rather than consolidate the loan. However, the Secretary will continue to work to ensure that all borrowers are knowledgeable about their rights to both discharges and deferments. The Secretary intends to modify the language in the consolidation application materials to encourage applicants to review their discharge and deferment options prior to consolidating.

Changes: None.

Comments: Two commenters recommend removing the proposed requirements at §§ 682.402(c)(1)(iii)(C) and 685.212(b)(3)(iii), stating that they are unnecessarily burdensome. These provisions would require a borrower to supply the disbursement dates of the underlying loans at the request of the lender or the Secretary in order to receive a discharge of his or her obligation to repay the consolidation loan. One commenter notes that in some cases, this requirement may impose a record retention period upon a borrower that is greater than the retention period required for a school, a lender, or a guaranty agency, and asks that, if the information is necessary, it be stored in the borrower's loan record at the time the consolidation loan is disbursed. The other commenter proposes that a borrower be allowed to certify that eligibility requirements have been met rather than requiring the borrower to document that each underlying loan in the consolidation loan is eligible for discharge.

Discussion: In order for the Secretary or a lender to determine whether a borrower's obligation to repay a loan may be discharged due to a total and permanent disability under § 682.402(c)(1)(ii) or § 685.212(b)(2), the Secretary or lender must consider the relationship between the date that the loan was disbursed and the date that the borrower became totally and permanently disabled. Without that information, no determination may be made, and the borrower's obligation may not be discharged.

The Secretary believes that the required information will likely be available through the National Student Loan Data System (NSLDS), and that the borrower will not need to supply information about the underlying loans unless the borrower disputes the NSLDS record. However, if the Secretary or lender cannot make a determination, it is in the borrower's best interest to have the opportunity to supply the information, to assure that his or her request for a discharge may be processed as quickly as possible. Moreover, it is unclear how a borrower's burden for providing the disbursement dates differs significantly from a borrower's burden in certifying that he or she qualifies for this type of discharge: the borrower must be aware of the disbursement dates in order to sign the certification.

Changes: None.

Comments: Many commenters noted that language in FFEL regulations requiring a borrower to provide information about underlying loans ''if the lender does not possess that information'' is not included in regulations for Direct Loans. Most commenters proposed that the language be added to Direct Loan regulations, for consistency. However, one commenter proposed that the language be removed from FFEL regulations, for both consistency and to ensure that lenders may make determinations based on the most accurate information.

Discussion: The proposed § 682.402(c)(1)(iii)(C) prevents a lender from requesting information that it already possesses and also clarifies that it is the responsibility of the borrower to provide the necessary documentation if the lender does not have the information needed to determine eligibility for the discharge. This is not a change from current FFEL requirements.

A similar provision is not included at § 685.212(b)(3)(iii) because it is not necessary for the Secretary to regulate internal agency processes. However, the Secretary does not intend to request this documentation from the borrower unless the information is not contained in the Secretary's records.

Changes: None.

Exit Counseling (§§ 682.604(g)(2) and 685.304(b)(2))

Comments: Fourteen commenters supported the flexibility that would be provided by the revisions proposed to the exit counseling requirements. Most noted that supplying individualized information to a borrower would allow the borrower to make a more informed choice of a repayment plan, but felt that the flexibility and simplification of the exit counseling rules better served the needs of schools and borrowers. These commenters noted that adequate individualized information was available to a borrower from the Direct Loan Servicer or from the FFEL Program lender.

Three commenters argued that allowing a Direct Loan school to base information that a school provides to a borrower during exit counseling upon an average indebtedness would not provide timely or adequate information for a Direct Loan borrower to select a repayment plan or to request a deferment or forbearance. One of these commenters noted that the average indebtedness for students at a school or in a program may bear little relation to an individual borrower's loan balance. Two of these commenters recommended that the current requirement for individualized information be maintained in the Direct Loan Program and that the FFEL Program regulations be amended to require the use of individualized information for exit counseling.

One of these two commenters also recommended that this individualized information be provided to a borrower on an on-going basis. For example, the commenter reasoned that individualized information about a borrower's debt should be available each time a borrower considers applying for a loan, so that the borrower could make an informed decision. The third commenter recommended that the Secretary work to provide easy access to the individualized information to schools, and when that has been accomplished, to require a school to provide counseling based on this individualized information.

Discussion: The Secretary agrees with the commenters that it is important for borrowers to receive individualized information regarding their debt. However, the Secretary notes that the HEA only requires the dissemination of average information during exit counseling, and that individualized information is readily available to borrowers from a number of sources. Therefore, the exit counseling session may not be the most efficient method of providing this information.

In the Direct Loan Program, the Direct Loan Servicing Center provides specific repayment information to borrowers during the grace period. This information is mailed to borrowers along with documents they need to select a repayment plan. A borrower may also call the Direct Loan Servicer's toll-free telephone number and request information regarding the repayment amounts for that borrower under each of the Direct Loan repayment plans. If a borrower later decides that a different repayment plan better suits the borrower's needs, the borrower can generally change to another plan at any time.

Also, § 685.304(b)(2) (ii) and (iii) require schools to review available repayment options with a borrower and to provide the borrower with options concerning debt-management strategies. As was noted in the NPRM, to comply with § 685.304(b)(2) (ii) and (iii), a school that chooses not to provide the individualized repayment information to a student is expected to advise the student of the availability of the individualized repayment information at the student's Direct Loan servicer and of its usefulness in selecting the most appropriate repayment plan.

Further, the Department expects to begin to allow Direct Loan borrowers electronic access to their individual account information (last payment, account balance, etc.) via the Direct Loan Web site very soon. Initially, individual repayment option calculations will not be available, but borrowers may use their specific account information at the Department's new Direct Loan repayment calculator Web site. The repayment calculator enables borrowers to estimate repayment amounts under each repayment plan for any loan amount. Borrowers may use this information to decide whether to switch plans or even to estimate the amount they would repay based on how much they may plan to borrow during the course of their postsecondary education.

In the FFEL Program, most borrowers may receive this same type of individualized information from their lenders. Most lenders or loan servicers have developed processes like those in Direct Lending to provide FFEL borrowers with individualized loan repayment information by telephone, electronically, and by other means.

Given the current availability of borrower-specific repayment information through a number of resources, it would be unnecessarily burdensome to require a school participating in the Direct Loan Program or in the FFEL Program to provide individualized information during exit counseling. Rather, the Secretary believes that it is appropriate to allow a school the flexibility to choose the repayment counseling option that best meets its capabilities and the needs of its students.

Changes: None.

Comments: Several commenters noted that they assumed that a school would disclose to a student whether the repayment information provided was based on the student's actual indebtedness or upon an average.

Discussion: To ''inform'' a student, and thus to comply with the regulations, a school must provide the information to a student in a format that is understandable. If a school does not disclose whether the repayment information that it provides is based on the student's actual indebtedness or upon an average, then a student cannot understand or use the information properly, and the school has not complied with the provision.

Changes: None.

Executive Order 12866

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

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering these programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, were identified and explained in the preamble to the NPRM.

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

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

The potential costs and benefits of these final regulations were discussed in the preamble to the NPRM (62 FR 50462).

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the NPRM and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Parts 682 and 685

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

Dated: November 21, 1997.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Programs; 84.033 and 84.268 Federal Direct Student Loan Program)

The Secretary amends Parts 682 and 685 of Title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

2. Section 682.201 is amended by removing the words ''receive an SLS loan'' in the introductory language of paragraph (a) and adding, in their place, ''receive an unsubsidized Stafford loan''; by removing the acronym ''SLS'' in paragraph (a)(1) and adding, in its place, ''unsubsidized Stafford''; by revising paragraph (a)(2); and by removing the words ''SLS loan'' in paragraph (a)(3) and adding, in their place, ''additional unsubsidized Stafford loan amount, as described at § 682.204(d)'' to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(a) * * *

(2) In the case of any student who seeks an unsubsidized Stafford loan for the cost of attendance at a school that

participates in the Stafford Loan Program, the student must have received a determination of need for a subsidized Stafford loan, and if determined to have need in excess of $200, have filed an application with a lender for a subsidized Stafford loan;

* * * * *

3. Section 682.202 is amended by revising paragraph (c)(5) to read as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(c) * * *

(5) Shall refund by a credit against the borrower's loan balance the portion of the origination fee previously deducted from the loan that is attributable to any portion of the loan—

(i) That is returned by a school to a lender in order to comply with the Act or with applicable regulations;

(ii) That is repaid or returned within 120 days of disbursement, unless—

(A) The borrower has no FFEL Program loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(B) The borrower has a FFEL Program loan in repayment status, in which case the payment is applied in accordance with § 682.209(b) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan;

(iii) For which a loan check has not been negotiated within 120 days of disbursement; or

(iv) For which loan proceeds disbursed by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school within 120 days of disbursement.

* * * * *

4. Section 682.209 is amended by revising paragraph (i)(1) to read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(i) * * *

(1) A lender shall treat a payment of a borrower's refund of tuition or other institutional charges received by the lender from a school as a credit against the borrower's loan balance consistent with the requirements of §§ 682.202 and 682.401.

* * * * *

5. Section 682.401 is amended by removing the word ''account'' in the introductory language of paragraph (b)(10)(vi)(B) and adding, in its place, ''loan balance'', and by revising paragraphs (b)(10)(vi)(B)(*1*) and (b)(10)(vi)(B)(*2*) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(10) * * *

(vi) * * *

(B) * * *

(*1*) The loan or a portion of the loan is returned by the school to the lender in order to comply with the Act or with applicable regulations;

(*2*) Within 120 days of disbursement, the loan or a portion of the loan is repaid or returned, unless—

(*i*) the borrower has no FFEL Program loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(*ii*) the borrower has a FFEL Program loan in repayment status, in which case the payment is applied in accordance with § 682.209(b) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan;

* * * * *

6. Section 682.402 is amended by revising paragraph (c)(1) and by removing the words ''become totally and permanently disabled since applying for the Consolidation loan'' in paragraph (k)(2)(iii) and adding, in their place, ''is determined to be totally and permanently disabled under Sec. 682.402(c)'', to read as follows:

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

* * * * *

(c) *Total and permanent disability.* (1) (i) If a lender determines that an individual borrower has become totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is discharged.

(ii) Except as provided in paragraph (c)(1)(iii)(A) of this section, a borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(iii)(A) For a Consolidation Loan, a borrower is considered totally and permanently disabled if he or she would be considered totally and permanently disabled under paragraphs (c)(1) (i) and (ii) of this section for all of the loans that were included in the Consolidation Loan if those loans had not been consolidated.

(B) For the purposes of discharging a loan under paragraph (c)(1)(iii)(A) of this section, provisions in paragraphs (c)(1) (i) and (ii) of this section apply to each loan included in the Consolidation Loan, even if the loan is not a FFEL Program loan.

(C) If requested, a borrower seeking to discharge a loan obligation under paragraph (c)(1)(iii)(A) of this section must provide the lender with the disbursement dates of the underlying loans if the lender does not possess that information.

* * * * *

7. Section 682.604 is amended by revising paragraph (g)(2)(i) to read as follows:

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

* * * * *

(g) * * *

(2) * * *

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

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

8. The authority citation for Part 685 continues to read as follows:

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

9. Section 685.202 is amended by revising paragraph (c)(4) to read as follows:

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

* * * * *

(c) * * *

(4) Applies to a borrower's loan balance the portion of the loan fee previously deducted from the loan that is attributable to any portion of the loan that is—

(i) Repaid or returned within 120 days of disbursement, unless—

(A) The borrower has no Direct Loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(B) The borrower has a Direct Loan in repayment status, in which case the payment is applied in accordance with § 685.211(a) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan; or

(ii) Returned by a school in order to comply with the Act or with applicable regulations.

10. Section 685.212 is amended by revising paragraph (b) to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(b) *Total and permanent disability.* (1) If the Secretary receives acceptable documentation that a borrower has become totally and permanently disabled, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(2) Except as provided in paragraph (b)(3)(i) of this section, a borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(3)(i) For a Direct Consolidation Loan, a borrower is considered totally and permanently disabled if he or she would be considered totally and permanently disabled under paragraphs (b) (1) and (2) of this section for all of the loans that were included in the Direct Consolidation Loan if those loans had not been consolidated.

(ii) For the purposes of discharging a loan under paragraph (b)(3)(i) of this section, provisions in paragraphs (b) (1) and (2) of this section apply to each loan included in the Direct Consolidation Loan, even if the loan is not a Direct Loan Program loan.

(iii) If requested, a borrower seeking to discharge a loan obligation under paragraph (b)(3)(i) of this section must provide the Secretary with the disbursement dates of the underlying loans.

* * * * *

11. Section 685.301 is amended by redesignating paragraphs (a)(6) and (a)(7) as paragraphs (a)(7) and (a)(8), respectively, and by adding a new paragraph (a)(6) to read as follows:

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

* * * * *

(a) * * *

(6) If a student has received a determination of need for a Direct Subsidized Loan that is $200 or less, a school may choose not to originate a Direct Subsidized Loan for that student and to include the amount as part of a Direct Unsubsidized Loan.

* * * * *

12. Section 685.304 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 685.304 Counseling borrowers.

* * * * *

(b) * * *

(2) * * *

(i) Inform the student of the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Direct Subsidized or Direct Unsubsidized Loans for attendance at that school or in the borrower's program of study.

* * * * *

[FR Doc. 97–31212 Filed 11–26–97; 8:45 am]

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