

**DRAFT *Federal Register* Instructions for Amendatory Language**

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

4 PART 674 -- FEDERAL PERKINS LOAN PROGRAM

5 x. The authority citation for part 674 continues to  
6 read as follows:

7 Authority: 20 U.S.C. 1087aa-1087hh and 20 U.S.C. 421-  
8 429, unless otherwise noted.

9 x. Section 674.8 is amended by:

10 A. In paragraph (d)(1), removing the words "; or" and  
11 adding in their place the punctuation ".".

12 A. Adding a new paragraph (d)(3).

13 The addition reads as follows:

14 §674.8 Program participation agreement.

15 \* \* \* \* \*

16 (d) \* \* \*

17 (3) The institution shall, at the request of the  
18 Secretary, assign its rights to a loan to the United States  
19 without recompense if--

20 (i) The amount of the loan, including outstanding  
21 principal, accrued interest, collection costs, and late  
22 charges, is \$50.00 or more;

23 (ii) The loan has been past due for five or more  
24 years; and

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1 (iii) A payment has not been received on the loan in  
2 the past year.

3 \* \* \* \* \*

4 x. Section 674.16 is amended by adding new paragraph  
5 (j) to read as follows:

6 §674.16 Making and disbursing loans.

7 \* \* \* \* \*

8 (j) The institution shall report enrollment and loan  
9 status information, or any Title IV loan related  
10 information required by the Secretary, to the Secretary by  
11 the deadline date established by the Secretary.

12 \* \* \* \* \*

13 x. Section 674.19 is amended by:

14 A. Adding new paragraph (d)(1)(3).

15 B. Redesignating paragraphs (e)(2)(i) and (ii) as  
16 paragraphs (e)(2) (iii) and (iv).

17 C. Adding new paragraphs (e)(2)(i) and (ii).

18 D. Revising paragraph (e)(3).

19 The additions and revisions read as follows:

20 §674.19 Fiscal procedures and records.

21 \* \* \* \* \*

22 (d) \* \* \*

23 (e) When assigning an electronically signed promissory  
24 note or MPN to the Secretary, an institution must submit an

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1 affidavit or certification, and supporting documentation  
2 specified by the Secretary, regarding the creation and  
3 maintenance of the institution's electronic MPN or  
4 promissory note, including the institution's authentication  
5 and signature process.

6 (e) \* \* \*

7 (2) \* \* \*

8 (i) An institution shall retain a record of  
9 disbursements for each loan made to a borrower on an MPN.  
10 This record must show the date and amount of each  
11 disbursement.

12 (ii) For any loan signed electronically, an  
13 institution must maintain an affidavit or certification,  
14 and other supporting documentation specified by the  
15 Secretary, regarding the creation and maintenance of the  
16 institution's electronic MPN or promissory note, including  
17 the institution's authentication and signature process.

18 (3) Period of retention of disbursement records,  
19 electronic authentication and signature records, and  
20 repayment records.

21 (i) An institution shall retain disbursement and  
22 electronic authentication and signature records for each  
23 loan made using an MPN until the loan is canceled, repaid,  
24 or otherwise satisfied.

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1 (ii) An institution shall retain repayment records,  
2 including cancellation and deferment requests for at least  
3 three years from the date on which a loan is assigned to  
4 the Department of Education, canceled or repaid.

5 \* \* \* \* \*

6 x. Section 674.38 is amended by:

7 A. In paragraph (a)(1), removing the words "(a)(2)"  
8 and adding, in their place, the words "(a)(3)".

9 B. Redesignating paragraphs (a)(2) and (a)(3) as  
10 paragraphs (a)(5) and (a)(6), respectively.

11 C. By adding new paragraphs (a)(2), (a)(3) and (a)(4).

12 The additions read as follows:

13 §674.38 Deferment procedures.

14 \* \* \* \* \*

15 (a) \* \* \*

16 (2) After receiving a borrower's written or verbal  
17 request, an institution may grant a deferment under §§  
18 674.34(b)(1)(ii), 674.34(b)(1)(iii), 674.34(b)(1)(iv),  
19 674.34(d), 674.34(e), and 674.34(h) if the institution is  
20 able to confirm that the borrower has received a deferment  
21 on another Perkins Loan, a FFEL Loan, or a Direct Loan for  
22 the same reason and the same time period. The institution  
23 may grant the deferment based on information from the other  
24 Perkins Loan holder, the FFEL Loan holder or the Secretary

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1 or from an authoritative electronic database maintained or  
2 authorized by the Secretary that supports eligibility for  
3 the deferment for the same reason and the same time period.

4 (3) An institution may rely on the information it  
5 receives under paragraph (a)(2) of this section when  
6 determining a borrower's eligibility for a deferment unless  
7 the institution, as of the date of the determination, has  
8 information indicating that the borrower does not qualify  
9 for the deferment. An institution must resolve any  
10 discrepant information before granting a deferment under  
11 paragraph (a)(2) of this section.

12 (4) An institution that grants a deferment under  
13 paragraph (a)(2) of this section must notify the borrower  
14 that the deferment has been granted and that the borrower  
15 has the option to cancel the deferment and continue to make  
16 payments on the loan.

17 \* \* \* \* \*

18 x. Section 674.45 is amended by:

19 A. Redesignating paragraph (e)(3) as paragraph  
20 (e)(4).

21 B. Adding a new paragraph (e)(3).

22 The addition reads as follows:

23 §674.45 Collection procedures.

24 \* \* \* \* \*

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1 (e) \* \* \*

2 (3) Reasonable collection costs charged to the  
3 borrower may not exceed 24 percent of the unpaid principal  
4 and accrued interest on the loan.

5 \* \* \* \* \*

6 x. Section 674.50 is amended by:

7 A. Adding new paragraphs (b)(11) and (12).

8 B. In paragraph (e)(1) adding the words ", unless the  
9 loan is submitted for assignment under paragraph  
10 674.8(d)(3) of this section" immediately after the word  
11 "borrower".

12 The additions read as follows:

13 §674.50 Assignment of defaulted loans to the United States.

14 \* \* \* \* \*

15 (c) \* \* \*

16 (11) A record of disbursements for each loan made to a  
17 borrower on a Master Promissory Note (MPN) that shows the  
18 date and amount of each disbursement.

19 (12) For any electronically signed promissory note or  
20 MPN, an affidavit or certification, and other supporting  
21 documentation as specified by the Secretary, regarding the  
22 creation and maintenance of the institution's electronic  
23 MPN or promissory note, including the institution's  
24 authentication and signature process.

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1 \* \* \* \* \*

2 x. Section 674.56 is amended by revising paragraph  
3 (b)(1).

4 The revision reads as follows:

5 §674.56 Employment Cancellation - Federal Perkins, NDSL and  
6 Defense loans.

7 \* \* \* \* \*

8 (b) Cancellation for full-time employment in a public  
9 or private nonprofit child or family service agency. (1)

10 An institution must cancel up to 100 percent of the  
11 outstanding balance on a borrower's Federal Perkins or NDSL  
12 made on or after July 23, 1992, for service as a full-time  
13 employee in a public or private nonprofit child or family  
14 service agency who is providing services directly and  
15 exclusively to high-risk children who are from low-income  
16 communities and the families of these children, or who is  
17 supervising the provision of services to high-risk children  
18 who are from low-income communities and the families of  
19 these children. To qualify for a child or family service  
20 cancellation, a non-supervisory employee of a child or  
21 family service agency must be providing services only to  
22 high-risk children from low-income communities and the  
23 families of these children. The employee must work  
24 directly with the high-risk children from low-income

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1 communities, and the services provided to the children's  
2 families must be secondary to the services provided to the  
3 children.

4 \* \* \* \* \*

5 x. Section 674.61 is amended by:

6 A. Revising the second sentence in paragraphs (a).

7 B. Revising paragraphs (b), (c) and (d).

8 The revisions read as follows:

9 §674.61 Discharge for death or disability.

10 (a) Death. \* \* \* The institution must discharge the loan  
11 on the basis of an original, certified, or accurate and  
12 complete photocopy of the original or certified copy of the  
13 death certificate. \* \* \*

14 \* \* \* \*

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

20 (2) Discharge application process. (i) To qualify for  
21 discharge of a Defense, NDSL or Perkins loan based on a  
22 total and permanent disability, a borrower must submit a  
23 discharge application approved by the Secretary to the  
24 institution that holds the loan. The application must



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1 contain a certification by a physician, who is a doctor of  
2 medicine or osteopathy legally authorized to practice in a  
3 State, that the borrower is totally and permanently  
4 disabled as defined in §674.51(s). The borrower must  
5 submit the application to the institution within 30 days of  
6 the date the physician certifies the application.

7 (ii) If, after reviewing the borrower's application,  
8 the institution determines that the application is complete  
9 and supports the conclusion that the borrower is totally  
10 and permanently disabled, the institution must suspend  
11 collection activities and assign the loan to the Secretary.

12 (iii) At the time the loan is assigned to the  
13 Secretary, the institution must notify the borrower that—

14 (A) The loan has been assigned to the Secretary for  
15 determination of eligibility for a total and permanent  
16 disability discharge and that no payments are due on the  
17 loan; and,

18 (B) In order to remain eligible for the discharge from  
19 the date the physician completes and certifies the  
20 borrower's total and permanent disability on the  
21 application until the date the Secretary makes an initial  
22 eligibility determination—

23 (1) The borrower cannot work and earn money or receive  
24 any new title IV loans; and

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1           (2) The borrower must, within 120 days of the  
2 disbursement date, ensure that the full amount of any title  
3 IV loan disbursement made to the borrower on or after the  
4 date the physician completed and certified the application  
5 is returned to the holder.

6           (3) Secretary's Initial Eligibility Determination.

7           (i) The borrower must continue to meet the conditions of  
8 paragraph (b)(2)(iii)(B) of this section from the date the  
9 physician completes and certifies the borrower's total and  
10 permanent disability on the application until the date the  
11 Secretary makes an initial determination of the borrower's  
12 eligibility in accordance with paragraph (b)(3)(ii) of this  
13 section.

14           (ii) If the Secretary determines that the  
15 certification provided by the borrower supports the  
16 conclusion that the borrower meets the criteria for a total  
17 and permanent disability discharge, the borrower is  
18 considered totally and permanently disabled as of the date  
19 the physician completes and certifies the borrower's  
20 application.

21           (iii) Upon making an initial determination that the  
22 borrower is totally and permanently disabled as defined in  
23 §674.51(s), the Secretary notifies the borrower that the  
24 loan will be in a conditional discharge status for a period

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1 of up to three years, beginning on the date the Secretary  
2 makes the initial determination that the borrower is  
3 totally and permanently disabled. The notification to the  
4 borrower identifies the conditions of the conditional  
5 discharge period specified in paragraph (b)(4)(i) of this  
6 section.

7 (iv) If the Secretary determines that the  
8 certification provided by the borrower does not support the  
9 conclusion that the borrower meets the criteria for a total  
10 and permanent disability discharge, the Secretary notifies  
11 the borrower that the application for a disability  
12 discharge has been denied, and that the loan is due and  
13 payable under the terms of the promissory note.

14 (4) Eligibility Requirements for a Total and Permanent  
15 Disability Discharge. (i) A borrower meets the eligibility  
16 criteria for a discharge of a loan based on a total and  
17 permanent disability if, during and at the end of the  
18 three-year conditional discharge period—

19 (A) The borrower's annual earnings from employment do  
20 not exceed 100 percent of the poverty line for a family of  
21 two, as determined in accordance with the Community Service  
22 Block Grant Act; and

23 (B) The borrower does not receive a new loan under the  
24 Perkins, FFEL or Direct Loan programs, except for a FFEL or

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1 Direct Consolidation Loan that does not include any loans  
2 that are in a conditional discharge status; and

3 (C) The borrower ensures that the full amount of any  
4 title IV loan disbursement made on or after the date of the  
5 Secretary's initial eligibility determination is returned  
6 to the holder within 120 days of the disbursement date.

7 (ii) During the conditional discharge period, the  
8 borrower or, if applicable, the borrower's representative—

9 (A) Is not required to make any payments on the loan;

10 (B) Is not considered past due or in default on the  
11 loan, unless the loan was past due or in default at the  
12 time the conditional discharge was granted;

13 (C) Must promptly notify the Secretary of any changes  
14 in address or phone number;

15 (D) Must promptly notify the Secretary if the  
16 borrower's annual earnings from employment exceed the  
17 amount specified in paragraph (4)(i)(A) of this section;  
18 and

19 (E) Must provide the Secretary, upon request, with  
20 additional documentation or information related to the  
21 borrower's eligibility for a discharge under this section.

22 (iii) If, at any time during or at the end of the  
23 three-year conditional discharge period, the Secretary  
24 determines that the borrower does not continue to meet the

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1 eligibility requirements for a total and permanent  
2 disability discharge, the Secretary ends the conditional  
3 period and resumes collection activity on the loan. The  
4 Secretary does not require the borrower to pay any interest  
5 that accrued on the loan from the date of the Secretary's  
6 initial determination described in paragraph (b)(3) of this  
7 section through the end of the conditional discharge  
8 period.

9 (5) Payments Received After the Physician's  
10 Certification of Total and Permanent Disability. (i) If,  
11 after the date the physician completes and certifies the  
12 borrower's loan discharge application, the institution  
13 receives any payments from or on behalf of the borrower on  
14 or attributable to a loan that was assigned to the  
15 Secretary for determination of eligibility for a total and  
16 permanent disability discharge, the institution must  
17 forward those payments to the Secretary for crediting to  
18 the borrower's account.

19 (ii) At the same time that the institution forwards  
20 the payment, it must notify the borrower that there is no  
21 obligation to make payments on the loan while it is  
22 conditionally discharged prior to a final determination of  
23 eligibility for a total and permanent disability discharge,  
24 unless the Secretary directs the borrower otherwise.

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1 (iii) When the Secretary makes a final determination  
2 to discharge the loan, the Secretary returns to the sender  
3 any payments received on the loan after the date the  
4 physician completed and certified the borrower's loan  
5 discharge application.

6 (c) No Federal Reimbursement. No Federal  
7 reimbursement is made to an institution for cancellation of  
8 loans due to death or disability.

9 (d) Retroactive. Discharge for death applies  
10 retroactively to all Defense, NDSL and Perkins loans.

11 \* \* \* \* \*  
12

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

14 x. The authority citation for part 682 continues to  
15 read as follows:

16 Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise  
17 noted.

18 x. Section 682.200 is amended by:

19 A. Revising the definition of Lender in paragraph (b).

20 B. Adding a definition of School-affiliated  
21 organization in paragraph (b).

22 The revisions and additions read as follows:  
23 §682.200 Definitions.

24 (b) \* \* \*

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1        Lender. (1) \* \* \*

2            (5) The term "eligible lender" does not include any  
3 lender that the Secretary determines, after notice and  
4 opportunity for a hearing before a designated Department  
5 official, has, directly or through an agent or contractor--

6            (i) Offered directly or indirectly points, premiums,  
7 payments, or other inducements to any school or other party  
8 to secure applications for FFEL loans or to secure FFEL  
9 loan volume, which includes but is not limited to--

10           (A) Payments or offerings of other benefits, including  
11 prizes or additional financial aid funds, to a prospective  
12 student, parent, or Consolidation Loan borrower in exchange  
13 for applying or accepting a FFEL loan from the lender;

14           (B) Payments or other benefits to a school or any  
15 school-affiliated organization in exchange for FFEL  
16 applications or application referrals or a specified volume  
17 or dollar amount of loans made, or placement on a school's  
18 list of recommended or suggested lenders;

19           (C) Payments or other benefits provided to a school or  
20 school-affiliated organization under a practice or policy  
21 that such payments or other benefits are provided to the  
22 school or organization to secure applications for FFEL  
23 loans or to secure FFEL loan volume;

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1 (D) Payments or other benefits provided to a student  
2 at a school who acts as the lender's representative to  
3 secure FFEL loan applications from individual prospective  
4 borrowers;

5 (E) Payments or other benefits to a loan solicitor or  
6 sales representative of a lender who visits schools to  
7 solicit individual prospective borrowers to apply for FFEL  
8 loans from the lender;

9 (F) Payment of referral or processing fees to another  
10 lender that exceed reasonable compensation for the  
11 administrative handling and marketing of FFEL loans by the  
12 referring or processing lender, or that are based on the  
13 volume or dollar amount of FFEL loans made;

14 (G) Payment of conference or training registration,  
15 transportation, and lodging costs for an employee of a  
16 school or school-affiliated organization;

17 (H) Payment of entertainment expenses for employees of  
18 a school or a school-affiliated organization, including  
19 private hospitality suites, tickets to shows or sporting  
20 events, meals, alcoholic beverages, and any lodging,  
21 rental, transportation, and other gratuities related to  
22 lender-sponsored social activities; and

23 (I) Undertaking philanthropic activities including  
24 providing scholarships, grants, restricted gifts or



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1 financial contributions in exchange for FFEL loan  
2 applications or application referrals, or specified volume  
3 or dollar amount of FFEL loans made, or placement on a  
4 school's list of recommended or suggested lenders.

5 (ii) For these purposes, a school-affiliated  
6 organization is defined in section 682.200. The term  
7 "applications" includes the Free Application for Federal  
8 Student Aid (FAFSA) and FFEL loan master promissory notes.  
9 The term "other benefits" includes, but is not limited to,  
10 preferential rates for or access to the lender's other  
11 financial products, computer hardware or non-loan  
12 processing or non-financial aid related computer software  
13 at below market rental or purchase cost and printing and  
14 distribution of college catalogs and other materials at  
15 reduced or no cost.

16 (iii) A lender may provide—

17 (A) Assistance to a school that is comparable to the  
18 kinds of assistance provided by the Department of Education  
19 to a school in the William D. Ford Direct Loan Program as  
20 identified by the Secretary in a notice in the Federal  
21 Register.

22 (B) Staffing services to a school as a third-party  
23 servicer or otherwise on an occasional, short-term,

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1 emergency basis to assist the school with financial aid  
2 related functions;

3 (C) Support of and participation in a school's or a  
4 guaranty agency's student aid related outreach activities;

5 (D) Meals, refreshments, and receptions that are  
6 scheduled in conjunction with meeting, training, or  
7 conference events if those meals, refreshments, or  
8 receptions are open to all meeting or conference attendees;

9 (E) Toll-free telephone numbers for use by schools or  
10 others to obtain information about FFEL program loans, or  
11 for use by schools to electronically submit applicant loan  
12 processing information or student status confirmation data;

13 (F) A reduced origination fee in accordance with  
14 §682.202(c);

15 (G) A reduced interest rate as provided under the Act;

16 (H) Payment of Federal default fees in accordance with  
17 the Act;

18 (I) Other benefits to a borrower under a repayment  
19 incentive program that requires, at a minimum, one or more  
20 scheduled payments to receive or retain the benefit; and

21 (J) Items of a nominal value to school-affiliated  
22 organizations, and borrowers that are offered as a form of  
23 generalized marketing or advertising or to create good  
24 will.

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1           (iv) Conducted unsolicited mailings to a student or a  
2 student's parents of FFEL loan application forms, except to  
3 a student who previously has received a FFEL loan from the  
4 lender or to a student's parent who previously has received  
5 a FFEL loan from the lender;

6           (v) Offered, directly or indirectly, a FFEL loan to a  
7 prospective borrower to induce the purchase of a policy of  
8 insurance or other product or service by the borrower or  
9 other person; or

10           (vi) Engaged in fraudulent or misleading advertising  
11 with respect to its FFEL program loan activities.

12           (vii) Presumptions- (a) For purposes of any action to  
13 enforce the limitations included in paragraph (5), the  
14 Secretary applies a rebuttable presumption that the  
15 payments or activities listed in (5)(i) were offered or  
16 provided to secure applications for FFEL loans.

17           (b) For purposes of any action to enforce the  
18 limitations included in paragraph (5), the Secretary  
19 applies a rebuttable presumption that the payments or  
20 activities listed in paragraph (5)(ii) were not offered or  
21 provided to secure applications for FFEL loans.

22 \* \* \* \* \*

23           (7) An eligible lender may not make or hold a loan as  
24 trustee for a school, or for a school-affiliated

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1 organization as defined in this section unless, on or  
2 before September 30, 2006 -

3  
4 (i) The eligible lender was serving as trustee for a  
5 school or a school-affiliated organization under a contract  
6 entered into and continuing in effect as of that date, and

7  
8 (ii) The eligible lender held at least one loan in  
9 trust on behalf of the school or school-affiliated  
10 organization on that date.

11  
12 (8) Effective January 1, 2007, and for loans first  
13 disbursed on or after that date under a trustee  
14 arrangement, an eligible lender operating as a trustee  
15 under a contract entered into on or before September 30,  
16 2006 and which continues in effect with a school or a  
17 school-affiliated organization, must comply with the  
18 requirements of §682.601(a)(3), (4), (5), (7), and (9).

19 \* \* \* \* \*

20  
21 School-affiliated organization. For the purpose of an  
22 eligible lender trustee arrangement with a lender, a  
23 school-affiliated organization is any organization that is  
24 directly or indirectly related to a school and includes,  
25 but is not limited to alumni organizations, foundations,

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1 athletic organizations, and social, academic, and  
2 professional organizations.

3 \* \* \* \* \*

4 x. Section 682.202 is amended by:

5 A. Redesignating paragraph (b)(5) as paragraph (b)(6).

6 B. Adding a new paragraph (b)(5).

7 The addition reads as follows:

8 §682.202 Permissible charges by lenders to borrowers.

9 \* \* \* \* \*

10 (b) \* \* \*

11 (5) For any Consolidation Loan, the lender may  
12 capitalize the unpaid interest—

13 (i) At the expiration of a period of authorized in-  
14 school deferment; or

15 (ii) When the borrower defaults.

16 \* \* \* \* \*

17 x. Section 682.208 is amended by:

18 A. Revising paragraph (a).

19 B. Adding new paragraph (i).

20 The revisions and addition read as follows:

21 §682.208 Due diligence in servicing a loan.

22 (a) The loan servicing process includes reporting to  
23 national credit bureaus, responding to borrower inquiries,

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1 establishing the terms of repayment, and reporting a  
2 borrower's enrollment and loan status information.

3 \* \* \* \* \*

4 (i) A lender shall report enrollment and loan status  
5 information, or any Title IV loan related data required by  
6 the Secretary, to the guaranty agency or to the Secretary,  
7 applicable, by the deadline date established by the  
8 Secretary.

9 \* \* \* \* \*

10 x. Section 682.210 is amended by:

11 A. By redesignating paragraph (s)(1) as paragraph  
12 (s)(1)(i).

13 B. By adding new paragraphs (s)(1)(ii), (s)(1)(iii),  
14 (s)(1)(iv), (s)(1)(v), and (t)(7).

15 The additions read as follows:

16 § 682.210 Deferment.

17 \* \* \* \* \*

18 (s)(1)(i) \* \* \*

19 (ii) As a condition for receiving a deferment, except  
20 for purposes of paragraph (s)(2) of this section, the  
21 borrower must request the deferment, and provide the lender  
22 with all information and documents required to establish  
23 eligibility for the deferment.

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1           (iii) After receiving a borrower's written or verbal  
2 request, a lender may grant a deferment under paragraphs  
3 (s)(3) through (s)(6) of this section if the lender is able  
4 to confirm that the borrower has received a deferment on  
5 another FFEL loan or a Direct Loan for the same reason and  
6 same time period. The lender may grant the deferment based  
7 on information from the other FFEL loan holder or the  
8 Secretary or from an authoritative electronic database  
9 maintained or authorized by the Secretary that supports  
10 eligibility for the deferment for the same reason and the  
11 same time period.

12           (iv) A lender may rely on the information it receives  
13 under paragraph (s)(1)(iii) of this section when  
14 determining a borrower's eligibility for a deferment,  
15 unless the lender, as of the date of the determination, has  
16 information indicating that the borrower does not qualify  
17 for the deferment. A lender must resolve any discrepant  
18 information before granting a deferment under paragraph  
19 (s)(1)(iii) of this section.

20           (v) A lender that grants a deferment under paragraph  
21 (s)(1)(iii) of this section must notify the borrower that  
22 the deferment has been granted and that the borrower has  
23 the option to pay interest that accrues on an unsubsidized

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1 FFEL loan or to cancel the deferment and continue to make  
2 payments on the loan.

3 \* \* \* \* \*

4 (t) \* \* \*

5 (7) To receive a military service deferment, the  
6 borrower must request the deferment and provide the lender  
7 with all information and documents required to establish  
8 eligibility for the deferment, except that a lender may  
9 grant a borrower a military service deferment under the  
10 procedures specified in paragraphs (s)(1)(iii) through  
11 (s)(1)(v) of this section.

12 \* \* \* \* \*

13 x. Section 682.212 is amended by:

14 A. In paragraphs (c) and (d), by removing the words  
15 "the Student Loan Marketing Association".

16 B. Adding new paragraph (h).

17 The addition reads as follows:

18 §682.212 Prohibited transactions.

19 \* \* \* \* \*

20 (h) (1) A school may not provide or make available a  
21 list of recommended or suggested lenders in print or any  
22 other medium or form for use by the school's students or  
23 their parents that—



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1           (i) Is used to deny or otherwise impede a borrower's  
2 choice of lender;

3           (ii) Contains fewer than three lenders who will make  
4 loans to borrowers or students attending the school; and

5           (iii) Includes lenders that have offered, or have been  
6 solicited to offer, financial or other benefits to the  
7 school or its borrowers in exchange for inclusion on the  
8 list or any promise that a certain number of loan  
9 applications will be sent to the lender by the school or  
10 its students.

11          (2) A school that provides or makes available a list  
12 of recommended or suggested lenders must—

13           (i) Disclose to prospective borrowers as part of a  
14 list the method and criteria used by the school to choose  
15 the lenders that are recommended or suggested;

16           (ii) Include a prominent statement in any information  
17 related to its list of lenders advising prospective  
18 borrowers that they are not required to use one of the  
19 school's recommended or suggested lenders;

20           (iii) For first time borrowers, not assign, through  
21 award packaging or other methods, a borrower's loan to a  
22 particular lender; and

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1 (iv) Not cause unnecessary certification delays for  
2 borrowers who use a lender that has not been recommended or  
3 suggested by the school.

4 \* \* \* \* \*

5 x. Section 682.401 is amended by:

6 A. In paragraph (b)(2)(ii)(A), removing the  
7 punctuation ";" at the end of the paragraph and adding, in  
8 its place, the words "as defined by 34 CFR 668.3; or".

9 B. Revising paragraph (b)(2)(ii)(B).

10 C. Removing paragraph (b)(2)(ii)(C).

11 D. In paragraph (b)(20), by removing the number "60"  
12 and adding, in its place, the number "30".

13 E. Revising paragraph (e).

14 The revisions read as follows:

15 §682.401 Basic program agreement.

16 \* \* \* \* \*

17 (b) \* \* \*

18 (2)(ii) \* \* \*

19 (B) A period attributable to the academic year, that  
20 is not less than the period specified in (2)(ii)(A) of this  
21 section, in which the student earns the amount of credit in  
22 the student's program of study required by the student's  
23 school as the amount necessary for the student to advance  
24 in academic standing as normally measured on an academic

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1 year basis (for example, from freshman to sophomore or, in  
2 the case of schools using clock hours, completion of at  
3 least 900 clock hours.

4 \* \* \* \* \*

5 (e) Prohibited inducements. (1) A guaranty agency may  
6 not directly or through an agent or contractor—

7 (i) Offer directly or indirectly from any fund or  
8 assets available to the guaranty agency, any premium,  
9 payment, or other inducement to a student or a student's  
10 parents, a prospective borrower of a FFEL loan, or an  
11 employee of or an entity or individual affiliated with a  
12 school, to secure applications for FFEL loans, which  
13 includes, but is not limited to—

14 (A) Payments or offerings of other benefits, including  
15 prizes or additional financial aid funds, to a prospective  
16 student or parent borrower in exchange for processing a  
17 loan using the agency's loan guarantee;

18 (B) Payments or other benefits, including prizes or  
19 additional financial aid funds under any title IV or State  
20 or private programs, to a school based on the school's  
21 voluntary or coerced agreement to use the guaranty agency

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1 for processing loans, or a specified volume of loans, using  
2 the agency's loan guarantee;

3 (C) Payments or other benefits to a school or any  
4 school-affiliated organization, or to any individual in  
5 exchange for FFEL loan applications or application  
6 referrals, a specified volume or dollar amount of FFEL  
7 loans, or the placement of a lender that uses the agency's  
8 loan guarantee on a school's list of recommended or  
9 suggested lenders; and

10 (D) Payments or other benefits provided to a school or  
11 school-affiliated organization under a practice or policy  
12 that such payments or other benefits are provided to the  
13 school or organization to secure applications for FFEL  
14 loans or to secure FFEL loan volume for the guaranty agency  
15 or a lender that uses the agency's loan guarantee;

16 (E) Payment of entertainment expenses for school  
17 employees or employees of school-affiliated organizations,  
18 including private hospitality suites, tickets to shows or  
19 sporting events, meals, alcoholic beverages, and any  
20 lodging, rental, transportation or other gratuities related  
21 to any social activity sponsored by the guaranty agency or  
22 a lender participating in the agency's program; and

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1 (F) Undertaking philanthropic activities including  
2 providing scholarships, grants, restricted gifts or  
3 financial contributions in exchange for FFEL loan  
4 applications or application referrals, a specified volume  
5 or dollar amount of FFEL loans using the agency's loan  
6 guarantee, or the placement of a lender that uses the  
7 agency's loan guarantee on a school's list of recommended  
8 or suggested lenders.

9 (ii) For these purposes, a school-affiliated  
10 organization is defined in section 682.200. The term  
11 "applications" includes the Free Application for Federal  
12 Student Aid (FAFSA) and FFEL loan master promissory notes.  
13 The term "other benefits" includes, but is not limited to,  
14 preferential rates for or access to a guaranty agency's  
15 products and services, computer hardware at below market  
16 rental or purchase cost, and the printing and distribution  
17 of college catalogs and other non-counseling or non-student  
18 financial aid related materials at reduced or no cost.

19 (iii) Assess additional costs or deny benefits  
20 otherwise provided to schools and lenders participating in  
21 the agency's program on the basis of the lender's or  
22 school's failure to agree to participate in, or to provide  
23 a specified volume of loan applications or loan volume to

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1 the agency's program or to place a lender that uses the  
2 agency's loan guarantee on a school's list of recommended  
3 or suggested lenders.

4 (2) A guaranty agency is not prohibited from  
5 providing—

6 (i) Assistance to a school that is comparable to that  
7 provided by the Department of Education to a school in the  
8 William D. Ford Direct Loan Program, as identified by the  
9 Secretary in a notice in the Federal Register;

10 (ii) Staffing services to a school as a third-party  
11 servicer or otherwise on an occasional, short-term, or  
12 emergency basis to assist in carrying out the school's  
13 financial aid related functions or assist the school in  
14 resolving identified compliance-related issues;

15 (iii) Meals and refreshments that are reasonable in  
16 cost and provided in connection with guaranty agency  
17 sponsored training of program participants and elementary,  
18 secondary, and postsecondary school personnel and with  
19 workshops and forums customarily used by the agency to  
20 fulfill its responsibilities under the Act;(iv) Meals,  
21 refreshments and receptions that are scheduled in  
22 conjunction with training, meeting or conference events if

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1 those meals, refreshments, and receptions are open to all  
2 training, meeting or conference attendees;

3 (iv) Travel and lodging costs that are reasonable as  
4 to cost, location, and duration to facilitate the  
5 attendance of school staff in training or service facility  
6 tours that they would otherwise not be able to undertake,  
7 or to participate in the activities of an agency's  
8 governing board, a standing official advisory committee, or  
9 in support of other official activities of the agency;

10 (v) Toll-free telephone numbers for use by schools or  
11 others to obtain information about FFEL program loans, or  
12 for use by schools to electronically submit applicant loan  
13 processing information or student status confirmation data;  
14 and

15 (vi) Payment of Federal default fees in accordance  
16 with the Act.

17 (vii) Items of nominal value to schools, school-  
18 affiliated organizations, and borrowers that are offered as  
19 a form of generalized marketing or advertising, or to  
20 create good will.

21 (3)(i) Offer, directly or indirectly, any premium,  
22 incentive payment, or other inducement to any lender, or  
23 any person acting as an agent, employee, or independent

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1 contractor of any lender or other guaranty agency to  
2 administer or market FFEL loans, other than unsubsidized  
3 Stafford loans or subsidized Stafford loans made under a  
4 guaranty agency's lender-of-last-resort program, in an  
5 effort to secure the guaranty agency as an insurer of FFEL  
6 loans. Examples of prohibited inducements include, but are  
7 not limited to—

8 (A) Compensating lenders or their representatives for  
9 the purpose of securing loan applications for guarantee;

10 (B) Performing functions normally performed by lenders  
11 without appropriate compensation;

12 (C) Providing equipment or supplies to lenders at  
13 below market cost or rental; or

14 (D) Offering to pay a lender, that does not hold loans  
15 guaranteed by the agency, a fee for each application  
16 forwarded for the agency's guarantee.

17 (ii) For the purposes of this section, the terms  
18 "premium", "inducement", and "incentive" do not include  
19 services directly related to the enhancement of the  
20 administration of the FFEL Program the guaranty agency  
21 generally provides to lenders that participate in its  
22 program. However, the terms "premium", "inducement", and  
23 "incentive" do apply to other activities specifically



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1 intended to secure a lender's participation in the agency's  
2 program.

3 (4) Mail or otherwise distribute unsolicited loan  
4 applications to students enrolled in a secondary school or  
5 a postsecondary institution, or to parents of those  
6 students, unless the potential borrower has previously  
7 received loans insured by the guaranty agency;

8 (5) Conduct fraudulent or misleading advertising  
9 concerning loan availability.

10 (6) Presumptions- (a) For purposes of any action to  
11 enforce the prohibition on inducements included in  
12 paragraph (e), the Secretary applies a rebuttable  
13 presumption that the payments or activities listed in  
14 paragraph (e)(1) were offered or provided to secure  
15 applications for FFEL Loans or guarantees.

16 (7) For purposes of any action to enforce the  
17 prohibition on inducements included in paragraph (e), the  
18 Secretary applies a rebuttable presumption that the  
19 payments or activities listed in paragraph (e)(2) were not  
20 offered or provided to secure applications for loans or  
21 guarantees.

22 \* \* \* \* \*

23 Section 682.402 is amended by:

24 A. Revising the first sentence in paragraph (b)(2).

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1 B. Revising the third sentence in paragraph (b)(3).

2 C. Revising paragraph (c).

3 The revisions read as follows:

4 §682.402 Death, disability, closed school, false  
5 certification, unpaid refunds, and bankruptcy payments.

6 \* \* \* \* \*

7 (b) \* \* \*

8 (1) \* \* \*

9 (2) A discharge of a loan based on the death of the  
10 borrower (or student in the case of a PLUS loan) must be  
11 based on an original, certified, or accurate and complete  
12 photocopy of the original or certified copy of the death  
13 certificate. \* \* \*

14 (3) \* \* \* If the lender is not able to obtain an  
15 original, certified, or accurate and complete photocopy of  
16 the original or c certified copy of the death certificate  
17 or other documentation acceptable to the guaranty agency,  
18 under the provisions of paragraph (b)(2) of this section,  
19 during the period of suspension, the lender must resume  
20 collection activity from the point that it had been  
21 discontinued. \* \* \*

22 \* \* \* \* \*

23 (c) Total and permanent disability. (1) A borrower's  
24 loan is discharged if the borrower becomes totally and

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1 permanently disabled, as defined in §682.200(b), and  
2 satisfies the additional eligibility requirements contained  
3 in this section.

4 (2) Discharge application process. (i) After being  
5 notified by the borrower or the borrower's representative  
6 that the borrower claims to be totally and permanently  
7 disabled, the lender promptly requests that the borrower or  
8 the borrower's representative submit, on a form approved by  
9 the Secretary, a certification by a physician, who is a  
10 doctor of medicine or osteopathy legally authorized to  
11 practice in a State, that the borrower is totally and  
12 permanently disabled as defined in §682.200(b). The  
13 borrower must submit the application to the lender within  
14 30 days of the date the physician certifies the  
15 application. If the lender and guaranty agency approve the  
16 discharge claim, under the procedures in paragraph (c)(5)  
17 of this section, the guaranty agency assigns the loan to  
18 the Secretary.

19 (3) Secretary's Initial Eligibility Determination. (i)  
20 From the date the physician completes and certifies the  
21 borrower's total and permanent disability on the  
22 application until the Secretary makes an initial

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1 determination of the borrower's eligibility in accordance  
2 with paragraph (c)(3)(ii) of this section—

3 (A) The borrower cannot work and earn money or receive  
4 any new title IV loans; and

5 (B) The borrower must, within 120 days of the  
6 disbursement date, ensure that the full amount of any title  
7 IV loan disbursement made to the borrower on or after the  
8 date the physician completed and certified the application  
9 is returned to the holder.

10 (ii) If the Secretary determines that the  
11 certification provided by the borrower supports the  
12 conclusion that the borrower meets the criteria for a total  
13 and permanent disability discharge, the borrower is  
14 considered totally and permanently disabled as of the date  
15 the physician completes and certifies the borrower's  
16 application.

17 (iii) Upon making an initial determination that the  
18 borrower is totally and permanently disabled as defined in  
19 §682.200(b), the Secretary suspends collection activity and  
20 notifies the borrower that the loan will be in a  
21 conditional discharge status for a period of up to three  
22 years. This notification identifies the conditions of the

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1 conditional discharge specified in paragraph (c)(4)(i) of  
2 this section. The conditional period begins on the date  
3 the Secretary makes the initial determination that the  
4 borrower is totally and permanently disabled.

5 (iv) If the Secretary determines that the  
6 certification and information provided by the borrower do  
7 not support the conclusion that the borrower meets the  
8 criteria for a total and permanent disability discharge,  
9 the Secretary notifies the borrower that the application  
10 for a disability discharge has been denied, and that the  
11 loan is due and payable to the Secretary under the terms of  
12 the promissory note.

13 (4) Eligibility Requirements for Total and Permanent  
14 Disability Discharge. (i) A borrower meets the eligibility  
15 criteria for a discharge of a loan based on total and  
16 permanent disability if, during and at the end of the  
17 three-year conditional discharge period—

18 (A) The borrower's annual earnings from employment do  
19 not exceed 100 percent of the poverty line for a family of  
20 two, as determined in accordance with the Community Service  
21 Block Grant Act; and

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1 (B) The borrower does not receive a new loan under the  
2 Perkins, FFEL, or Direct Loan programs, except for a FFEL  
3 or Direct Consolidation loan that does not include any  
4 loans that are in a conditional discharge status; and

5 (C) The borrower ensures that the full amount of any  
6 title IV loan disbursement made on or after the date of the  
7 Secretary's initial eligibility determination is returned  
8 to the holder within 120 days of the disbursement date.

9 (ii) During the conditional discharge period, the  
10 borrower or, if applicable, the borrower's representative—

11 (A) Is not required to make any payments on the loan;

12 (B) Is not considered delinquent or in default on the  
13 loan, unless the borrower was delinquent or in default at  
14 the time the conditional discharge was granted;

15 (C) Must promptly notify the Secretary of any changes  
16 in address or phone number;

17 (D) Must promptly notify the Secretary if the  
18 borrower's annual earnings from employment exceed the  
19 amount specified in paragraph (c)(1)(ii)(A) of this  
20 section; and

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1 (E) Must provide the Secretary, upon request, with  
2 additional documentation or information related to the  
3 borrower's eligibility for discharge under this section.

4 (iii) If the borrower satisfies the criteria for a  
5 total and permanent disability discharge during and at the  
6 end of the conditional discharge period, the balance of the  
7 loan is discharged at the end of the conditional discharge  
8 period and any payments received after the physician  
9 completed and certified the borrower's loan discharge  
10 application, are returned to the sender.

11 (iv) If, at any time during the three-year conditional  
12 discharge period, the borrower does not continue to meet  
13 the eligibility requirements for a total and permanent  
14 disability discharge, the Secretary ends the conditional  
15 discharge period and resumes collection activity on the  
16 loan. The Secretary does not require the borrower to pay  
17 any interest that accrued on the loan from the date of the  
18 initial determination described in paragraph (c)(3)(ii) of  
19 this section through the end of the conditional discharge  
20 period.

21 (5) Lender and guaranty agency responsibilities (i)  
22 After being notified by a borrower or a borrower's

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1 representative that the borrower claims to be totally and  
2 permanently disabled, the lender must continue collection  
3 activities until it receives either the certification of  
4 total and permanent disability from a physician or a letter  
5 from a physician stating that the certification has been  
6 requested and that additional time is needed to determine  
7 if the borrower is totally and permanently disabled.  
8 Except as provided in paragraph (c)(5)(iii) of this  
9 section, after receiving the physician's certification or  
10 letter the lender may not attempt to collect from the  
11 borrower or any endorser.

12 (ii) The lender must submit a disability claim to the  
13 guaranty agency if the borrower submits a certification by  
14 a physician and the lender makes a determination that the  
15 certification supports the conclusion that the borrower  
16 meets the criteria for a total and permanent disability  
17 discharge, as defined in §682.200(b).

18 (iii) If the lender determines that a borrower who  
19 claims to be totally and permanently disabled is not  
20 totally and permanently disabled, or if the lender does not  
21 receive the physician's certification of total and  
22 permanent disability within 60 days of the receipt of the  
23 physician's letter requesting additional time, as described



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1 in paragraph (c)(3) of this section, the lender must resume  
2 collection and is deemed to have exercised forbearance of  
3 payment of both principal and interest from the date  
4 collection activity was suspended. The lender may  
5 capitalize, in accordance with §682.202(b), any interest  
6 accrued and not paid during that period.

7 (iv) The guaranty agency must pay a claim submitted by  
8 the lender if the guaranty agency has reviewed the  
9 application and determined that it is complete and that it  
10 supports the conclusion that the borrower meets the  
11 criteria for a total and permanent disability discharge, as  
12 defined in §682.200(b).

13 (v) If the guaranty agency does not pay the disability  
14 claim, the guaranty agency must return the claim to the  
15 lender with an explanation of the basis for the agency's  
16 denial of the claim. Upon receipt of the returned claim,  
17 the lender must notify the borrower that the application  
18 for a disability discharge has been denied, provide the  
19 basis for the denial, and inform the borrower that the  
20 lender will resume collection on the loan. The lender is  
21 deemed to have exercised forbearance of both principal and  
22 interest from the date collection activity was suspended  
23 until the first payment due date. The lender may

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1 capitalize, in accordance with §682.202(b), any interest  
2 accrued and not paid during that period.

3 (vi) If the guaranty agency pays the disability claim,  
4 the lender must notify the borrower that—

5 (1) The loan will be assigned to the Secretary for  
6 determination of eligibility for a total and permanent  
7 disability discharge and that no payments are due on the  
8 loan; and

9 (2) To remain eligible for the discharge from the date  
10 the physician completes and certifies the borrower's total  
11 and permanent disability on the application until the  
12 Secretary makes an initial eligibility determination—

13 (A) The borrower cannot work and earn money or receive  
14 any new title IV loans; and

15 (B) The borrower must, within 120 days of the  
16 disbursement date, ensure that the full amount of any title  
17 IV loan disbursement made to the borrower on or after the  
18 date the physician completed and certified the application  
19 is returned to the holder.

20 (vii) After receiving a claim payment from the  
21 guaranty agency, the lender must forward to the guaranty

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1 agency any payments subsequently received from or on behalf  
2 of the borrower.

3 (viii) The Secretary reimburses the guaranty agency  
4 for a disability claim paid to the lender after the agency  
5 pays the claim to the lender.

6 (ix) The guaranty agency must assign the loan to the  
7 Secretary after the guaranty agency pays the disability  
8 claim.

9 \* \* \* \* \*

10 x. Section 682.406 is amended by:

11 A. Revising paragraph (a)(3).

12 B. Removing paragraph (c).

13 The revision reads as follows:

14 §682.406 Conditions for claim payments from the Federal  
15 Fund and for reinsurance coverage.

16 (a) \* \* \*

17 (3) The lender provided—

18 (i) The record of the school's delivery of the loan  
19 disbursements to the borrower;

20 (ii) If the MPN or promissory note was signed  
21 electronically, an affidavit or certification, and other  
22 supporting documentation specified by the Secretary,  
23 regarding the creation and maintenance of the lender's

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1 electronic MPN or promissory note, including the lender's  
2 authentication and signature process; and

3 (iii) An accurate collection history and an accurate  
4 payment history to the guaranty agency with the default  
5 claim filed on the loan showing that the lender exercised  
6 due diligence in collecting the loan through collection  
7 efforts meeting the requirements of §682.411, including  
8 collection efforts against each endorser;

9 \* \* \* \* \*

10 x. Section 682.409 is amended by adding new paragraphs  
11 (c)(4)(vii) and (viii).

12 The additions read as follows:

13 §682.409 Mandatory assignment by guaranty agencies of  
14 defaulted loans to the Secretary.

15 \* \* \* \* \*

16 (c) \* \* \*

17 (4) \* \* \*

18 (vii) The record of the school's delivery of the loan  
19 disbursements to the borrower.

20 (viii) If the MPN or promissory note was signed  
21 electronically, an affidavit or certification, and other  
22 supporting documentation specified by the Secretary,  
23 regarding the creation and maintenance of the lender's

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1 electronic MPN or promissory note, including authentication  
2 and signature process.

3 \* \* \* \* \*

4 x. Section 682.414 is amended by:

5 A. Redesignating paragraph (a)(1)(ii)(G) as paragraph  
6 (a)(1)(ii)(H).

7 B. Adding new paragraph (a)(1)(ii)(G).

8 C. Revising paragraph (b)(4).

9 The additions and revisions read as follows:

10 §682.414 Records, reports, and inspection requirements for  
11 guaranty agency programs.

12 (a) \* \* \*

13 (1) (ii) \* \* \*

14 (G) If the MPN or promissory note was signed  
15 electronically, an affidavit or certification, and other  
16 supporting documentation specified by the Secretary,  
17 regarding the creation and maintenance of the lender's  
18 electronic MPN or promissory note, including the lender's  
19 authentication and signature process.

20 \* \* \* \* \*

21 (b) \* \* \*

22 (4) A guaranty agency shall report to the Secretary  
23 the borrower's enrollment and loan status information, or

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1 any Title IV loan related data required by the Secretary,  
2 by the deadline date established by the Secretary.

3 \* \* \* \* \*

4 x. Section 682.602 is amended to read as follows:

5 §682.602 Rules for a school or school-affiliated  
6 organization that makes or originates loans through an  
7 eligible lender trustee.

8 (a) A school or school-affiliated organization may not  
9 contract with an eligible lender to serve as trustee for  
10 the school or school-affiliated organization unless—

11 (1) The school or school-affiliated organization  
12 originated and continues or renews a contract made on or  
13 before September 30, 2006 with the eligible lender; and

14 (2) The eligible lender held at least one loan in  
15 trust on behalf of the school or school-affiliated  
16 organization on that date.

17 (b) Effective January 1, 2007, and for loans first  
18 disbursed on or after that date under a lender trustee  
19 arrangement that continues in effect after September 30,  
20 2006 —

21 (1) A school in a trustee arrangement or affiliated  
22 with an organization involved in a trustee arrangement to  
23 originate loans must comply with the requirements of  
24 §682.601(a) except for subparagraphs (a)(4) and (a)(9); and

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1 (2) A school-affiliated organization, as defined in  
2 §682.200(b), involved in a trustee arrangement to make  
3 loans must comply with the requirements of §682.601(a)  
4 except for subparagraphs (a)(1), (a)(2), (a)(4), (a)(6),  
5 and (a)(9).

6 \* \* \* \* \*

7 x. Section 682.603 is amended by:

8 A. In paragraph (a), at the end of the last sentence,  
9 removing the words "on the application by the student" and  
10 adding, in their place, the words "by the borrower and, in  
11 the case of a parent borrower of a PLUS loan, the student".

12 B. In paragraph (b), by removing the words "making  
13 application for the loan".

14 C. Redesignating paragraphs (d), (e), (f), (g), (h),  
15 and (i) as paragraphs (e), (f), (g), (h), (i), and (j),  
16 respectively.

17 D. Adding a new paragraph (d).

18 E. In newly redesignated paragraph (e), removing the  
19 work ",application, or combination of loan applications,"  
20 and adding, in their place, the words ",or a combination of  
21 loans,".

22 F. In newly redesignated paragraph (e)(2)(ii), adding  
23 the word "Subsidized" immediately before the word "loan"

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1 and removing the words "that is eligible for interest  
2 benefits" immediately after the word "loan".

3 G. Revising new redesignated paragraph (f).

4 H. In newly redesignated paragraph (g)(2)(i), removing  
5 the words ", not to exceed 12 months,".

6 The revision reads as follows:

7 §682.603 Certification by a participating school in  
8 connection with a loan application.

9 \* \* \* \* \*

10 (d) Before certifying a PLUS loan application for a  
11 graduate or professional student borrower, the school must  
12 determine the borrower's eligibility for a Stafford loan.  
13 If the borrower is eligible for a Stafford loan but has not  
14 requested the maximum Stafford loan amount for which the  
15 borrower is eligible, the school must—

16 (1) Notify the graduate or professional student  
17 borrower of the maximum Stafford loan amount that he or she  
18 is eligible to receive and provide the borrower with a  
19 comparison of--

20 (i) The maximum interest rate for a Stafford loan and  
21 the maximum interest rate for a PLUS loan;

22 (ii) Periods when interest accrues on a Stafford loan  
23 and periods when interest accrues on a PLUS loan; and



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1 (iii) The point at which a Stafford loan enters  
2 repayment and the point at which a PLUS loan enters  
3 repayment.

4 (2) Give the graduate or professional student borrower  
5 the opportunity to request the maximum Stafford loan amount  
6 for which the borrower is eligible.

7 \* \* \* \* \*

8 (f) In certifying loans, a school—

9 (1) May not refuse to certify, or delay certification,  
10 of a Stafford or PLUS loan based on the borrower's  
11 selection of a particular lender or guaranty agency;

12 (2) May not, for first-time borrowers, assign through  
13 award packaging or other methods, a borrower's loan to a  
14 particular lender; and

15 (3) May refuse to certify a Stafford or PLUS loan or  
16 may reduce the borrower's determination of need for the  
17 loan if the reason for that action is documented and  
18 provided to the borrower in writing, provided—

19 (i) The determination is made on a case-by-case basis;

20 (ii) The documentation supporting the determination is  
21 retained in the student's file; and

22 (4) May not, under subsection (1), engage in any  
23 pattern or practice that results in a denial of a  
24 borrower's access to FFEL loans because of the borrower's

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1 race, sex, color, religion, national origin, age,  
2 handicapped status, or income, or selection of a particular  
3 lender or guaranty agency.

4 \* \* \* \* \*

5 x. Section 682.604 is amended by:

6 A. In paragraph (f)(1), removing the words "either in  
7 person, by audiovisual presentation, or by interactive  
8 electronic means" and removing the words "A school must  
9 ensure that an individual with expertise in the title IV  
10 programs is reasonably available shortly after the  
11 counseling to answer the student borrower's questions  
12 regarding those programs. As an alternative, in the case of  
13 a student borrower enrolled in a correspondence program or  
14 a student borrower enrolled in a study-abroad program that  
15 the home institution approves for credit, the counseling  
16 may be provided through written materials, prior to  
17 releasing those loan proceeds."

18 B. Redesignating paragraphs (f)(2), (f)(3), and  
19 (f)(4) as paragraphs (f)(5), (f)(6), and (f)(7),  
20 respectively.

21 C. Adding new paragraphs (f)(2), (f)(3) and (f)(4).

22 D. In newly redesignated paragraph (f)(5)(iv),  
23 adding the words, "or a graduate or professional student

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1 borrower of a PLUS loan" immediately after the words  
2 "Stafford loan".

3 E. In newly redesignated paragraph (f)(5)(v), adding  
4 the words "or graduate or professional student PLUS loan  
5 borrowers, or student borrowers with Stafford and PLUS  
6 loans, depending on the types of loans the borrower has  
7 obtained," immediately after the words "Stafford loan  
8 borrowers".

9 F. In paragraph (g)(2)(i), removing the words  
10 "Stafford or SLS loans" and adding, in their place,  
11 "Stafford loans or, student borrowers who have obtained  
12 Stafford and PLUS loans, depending on the types of loans  
13 the student borrower has obtained,".

14 The additions read as follows:

15 §682.604 Processing the borrower's loan proceeds and  
16 counseling borrowers.

17 \* \* \* \* \*

18 (f)(1) \* \* \*

19 (2) A school must ensure that initial counseling is  
20 conducted with each graduate or professional student PLUS  
21 loan borrower prior to its release of the first  
22 disbursement, unless the student has received a prior  
23 Federal PLUS loan or Direct PLUS loan.

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1           (3) Initial counseling must be conducted either in  
2 person, by audiovisual presentation, or by interactive  
3 electronic means.

4           (4) A school must ensure that an individual with  
5 expertise in the title IV programs is reasonably available  
6 shortly after the counseling to answer the student  
7 borrower's questions regarding those programs. As an  
8 alternative, in the case of a student borrower enrolled in  
9 a correspondence program or a student borrower enrolled in  
10 a study-abroad program that the home institution approves  
11 for credit, the counseling may be provided through written  
12 materials, prior to releasing those loan proceeds.

13 \* \* \* \* \*

14           x. Section 682.610 is amended by adding new paragraph  
15 (d).

16           The addition reads as follows:

17 §682.610 Administrative and fiscal requirements for  
18 participating schools.

19 \* \* \* \* \*

20           (d) Loan delivery reporting requirements. A school  
21 must report information to the lender on the delivery of  
22 each disbursement of loan funds to a borrower's account.  
23 This record must show the date and amount of each  
24 disbursement and must be provided to the lender no later

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1 than 30 days after the delivery of the disbursement to the  
2 borrower.

3 \* \* \* \* \*

4

5 PART 685 -- WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

6 x. The authority citation for part 685 continues to  
7 read as follows:

8 AUTHORITY: 20 U.S.C. 1087a et. seq., unless otherwise  
9 noted.

10 x. Section 685.204 is amended by:

11 A. In paragraph (b)(1)(iii)(A), removing the words  
12 "(b)(1)(i)" and adding, in their place, the words  
13 "(b)(1)(i)(A)".

14 B. In paragraph (d)(1), removing the word "the" and  
15 adding, in its place, the word "The".

16 C. In paragraph (d)(2), removing the word "the" and  
17 adding, in its place, the word "The".

18 B. By adding new paragraphs (g)(1), (g)(2), (g)(3),  
19 and (g)(4).

20 The additions read as follows:

21 §685.204 Deferments.

22 \* \* \* \* \*

23 (g)(1) To receive a deferment, except as provided  
24 under paragraph (b)(1)(i)(A) of this section, the borrower

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1 must request the deferment and provide the Secretary with  
2 all information and documents required to establish  
3 eligibility for the deferment.

4 (2) After receiving a borrower's written or verbal  
5 request, the Secretary may grant a deferment under  
6 (b)(1)(i)(B), (b)(1)(i)(C), (b)(2)(i), (b)(3)(i) and (e)(1)  
7 of this section if the Secretary confirms that the borrower  
8 has received a deferment on a FFEL Loan for the same reason  
9 and the same time period.

10 (3) The Secretary relies on the information obtained  
11 under paragraph (g)(2) of this section when determining a  
12 borrower's eligibility for a deferment, unless the  
13 Secretary, as of the date of determination, has information  
14 indicating that the borrower does not qualify for the  
15 deferment. The Secretary resolves any discrepant  
16 information before granting a deferment under paragraph  
17 (g)(2) of this section.

18 (4) If the Secretary grants a deferment under  
19 paragraph (g)(2) of this section, the Secretary notifies  
20 the borrower that the deferment has been granted and that  
21 the borrower has the option to cancel the deferment and  
22 continue to make payments on the loan.

23 \* \* \* \* \*

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1           x. Section 685.212 is amended by revising paragraphs  
2 (a)(1) and (2) to read as follows:

3 §685.212 Discharge of a loan obligation.

4           (a) Death. (1) If a borrower (or a student on whose  
5 behalf a parent borrowed a Direct PLUS Loan) dies, the  
6 Secretary discharges the obligation of the borrower and any  
7 endorser to make any further payments on the loan based on  
8 an original, certified, or accurate and complete photocopy  
9 of the original or certified copy of the borrower's (or  
10 student's in the case of a Direct PLUS loan obtained by a  
11 parent borrower) death certificate.

12           (2) If an original, certified, or accurate and  
13 complete photocopy of the original or certified copy of the  
14 death certificate is not available, the Secretary  
15 discharges the loan only based on other reliable  
16 documentation that establishes, to the Secretary's  
17 satisfaction, that the borrower (or student) has died. The  
18 Secretary discharges a loan based on documentation other  
19 than an original, certified, or accurate and complete  
20 photocopy of the original or certified copy of the death  
21 certificate only under exception circumstances and on a  
22 case-by-case basis.

23 \* \* \* \* \*

24           x. Section 685.213 is revised to read as follows:

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1 §685.213 Total and Permanent Disability.

2 (a) General. A borrower's Direct Loan is discharged  
3 if the borrower becomes totally and permanently disabled,  
4 as defined in §682.200(b), and satisfies the additional  
5 eligibility requirements contained in this section.

6 (b) Discharge application process. (1) To qualify for  
7 a discharge of a Direct Loan based on a total and permanent  
8 disability, a borrower must submit to the Secretary a  
9 certification by a physician, who is a doctor of medicine  
10 or osteopathy legally authorized to practice in a State,  
11 that the borrower is totally and permanently disabled as  
12 defined in §682.200(b). The certification must be on a  
13 form approved by the Secretary. The borrower must submit  
14 the application to the Secretary within 30 days of the date  
15 the physician certifies the application.

16 (2) Upon receipt of the borrower's application, the  
17 Secretary notifies the borrower that—

18 (i) No payments are due on the loan; and

19 (ii) To remain eligible for the discharge from the  
20 date the physician completes and certifies the borrower's  
21 total and permanent disability on the application until the  
22 date the Secretary makes an initial eligibility  
23 determination—



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1 (A) The borrower cannot work and earn money or receive  
2 any new title IV loans; and

3 (B) The borrower must, within 120days of the  
4 disbursement date, ensure that the full amount of any title  
5 IV loan disbursement made to the borrower on or after the  
6 date the physician completed and certified the application  
7 is returned to the holder.

8 (c) Initial Determination of Eligibility. (1) The  
9 borrower must continue to meet the conditions of paragraph  
10 (b)(2)(ii) of this section from the date the physician  
11 completes and certifies the borrower's total and permanent  
12 disability on the application until the Secretary makes an  
13 initial determination of the borrower's eligibility in  
14 accordance with paragraph (c)(2) of this section.

15 (2) If, after reviewing the borrower's application,  
16 the Secretary determines that the certification provided by  
17 the borrower supports the conclusion that the borrower  
18 meets the criteria for a total and permanent disability  
19 discharge, the borrower is considered totally and  
20 permanently disabled as of the date the physician completes  
21 and certifies the borrower's application.

22 (3) The Secretary suspends collection activity and  
23 notifies the borrower that the loan will be in a  
24 conditional discharge status for a period of up to three

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1 years upon making an initial determination that the  
2 borrower is totally and permanently disabled as defined in  
3 §682.200(b). This notification identifies the conditions  
4 of the conditional discharge period specified in paragraph  
5 (d)(1) of this section. The conditional discharge period  
6 begins on the date the Secretary makes the initial  
7 determination that the borrower is totally and permanently  
8 disabled.

9 (4) If the Secretary determines that the certification  
10 provided by the borrower does not support the conclusion  
11 that the borrower meets the criteria for a total and  
12 permanent disability discharge, the Secretary notifies the  
13 borrower that the application for a disability discharge  
14 has been denied, and that the loan is due and payable under  
15 the terms of the promissory note.

16 (d) Eligibility Requirements for Total and Permanent  
17 Disability. (1) A borrower meets the eligibility  
18 requirements for a total and permanent disability discharge  
19 if, during and at the end of the three-year conditional  
20 discharge period—

21 (A) The borrower's annual earnings from employment do  
22 not exceed 100 percent of the poverty line for a family of  
23 two, as determined in accordance with the Community Service  
24 Block Grant Act; and

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1 (B) The borrower does not receive a new loan under the  
2 Perkins, FFEL or Direct Loan programs, except for a FFEL or  
3 Direct Consolidation Loan that does not include any loans  
4 that are in a conditional discharge status; and

5 (C) The borrower ensures that the full amount of any  
6 title IV loan disbursement made on or after the date of the  
7 Secretary's initial eligibility determination is returned  
8 to the holder within 120 days of the disbursement date.

9 (2) During the conditional discharge period, the  
10 borrower or, if applicable, the borrower's representative—

11 (A) Is not required to make any payments on the loan;

12 (B) Is not considered past due or in default on the  
13 loan, unless the loan was past due or in default at the  
14 time the conditional discharge was granted;

15 (C) Must promptly notify the Secretary of any changes  
16 in address or phone number;

17 (D) Must promptly notify the Secretary if the  
18 borrower's annual earnings from employment exceed the  
19 amount specified in paragraph (d)(1)(A) of this section;  
20 and

21 (E) Must provide the Secretary, upon request, with  
22 additional documentation or information related to the  
23 borrower's eligibility for a discharge under this section.

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1           (3) If the borrower continues to meet the eligibility  
2 requirements for a total and permanent disability discharge  
3 during and the end of the three-year conditional discharge  
4 period, the Secretary—

5           (i) Discharges the obligation of the borrower and any  
6 endorser to make any further payments on the loan at the  
7 end of that period; and

8           (ii) Returns to the borrower any payments received  
9 after the date the physician completed and certified the  
10 borrower's loan discharge application.

11           (4) If, at any time during or at the end of the three-  
12 year conditional discharge period, the borrower does not  
13 continue to meet the eligibility requirements for total and  
14 permanent disability discharge, the Secretary resumes  
15 collection activity on the loan. The Secretary does not  
16 require the borrower to pay any interest that accrued on  
17 the loan from the date of the Secretary's initial  
18 determination described in paragraph (c)(2) of this section  
19 through the end of the conditional discharge period.

20 \* \* \* \* \*

21           x. Section 685.301 is amended by:

22           A. In paragraph (a)(1), removing the words "in the  
23 application by the student" and adding, in their place, the

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1 words, "by the borrower and, in the case of a parent PLUS  
2 loan borrower, the student."

3 B. Redesignating paragraphs (a)(3), (a)(4), (a)(5),  
4 (a)(6), (a)(7), (a)(8) and (a)(9) as (a)(4), (a)(5),  
5 (a)(6), (a)(7), (a)(8), (a)(9) and (a)(10), respectively.

6 C. Adding new paragraph (a)(3).

7 D. Revising newly redesignated paragraph  
8 (a)(10)(i)(B)(2).

9 E. Revising newly redesignated paragraph  
10 (a)(10)(ii)(A).

11 The revisions read as follows:

12 §685.301 Determining eligibility and loan amount.

13 (a) \* \* \*

14 (3) Before originating a Direct PLUS Loan for a  
15 graduate or professional student borrower, the school must  
16 determine the borrower's eligibility for a Direct  
17 Subsidized and a Direct Unsubsidized Loan. If the borrower  
18 is eligible for a Direct Subsidized or Direct Unsubsidized  
19 Loan but has not requested the maximum Direct Subsidized or  
20 Direct Unsubsidized Loan amount for which the borrower is  
21 eligible, the school must--

22 (i) Notify the graduate or professional student  
23 borrower of the maximum Direct Subsidized or Direct

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1 Unsubsidized Loan amount that he or she is eligible to  
2 receive and provide the borrower with a comparison of--

3 (A) The maximum interest rate for a Direct Subsidized  
4 Loan and a Direct Unsubsidized Loan and the maximum  
5 interest rate for a Direct PLUS Loan;

6 (B) Periods when interest accrues on a Direct  
7 Subsidized Loan and a Direct Unsubsidized Loan, and periods  
8 when interest accrues on a Direct PLUS Loan;

9 (C) The point at which a Direct Subsidized Loan and a  
10 Direct Unsubsidized Loan enters repayment, and the point at  
11 which a Direct PLUS Loan enters repayment.

12 (ii) Give the graduate or professional student  
13 borrower the opportunity to request the maximum Direct  
14 Subsidized or Direct Unsubsidized Loan amount for which the  
15 borrower is eligible.

16 \* \* \* \* \*

17 (10) \* \* \*

18 (i)(B)(1) \* \* \*

19 (2) The academic year as defined by the school in  
20 accordance with 34 CFR 668.3.

21 (ii) \* \* \*

22 (A) Generally an academic year, as defined by the  
23 school in accordance with 34 CFR 668.3, except that the  
24 school may use a longer period of time corresponding to the

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1 period to which the school applies the annual loan limits  
2 under §685.203; or

3 \* \* \* \* \*

4 §685.304 [Amended]

5 x. Section 685.304 is amended by:

6 A. In paragraph (a)(1) removing the words "(a)(4)" and  
7 adding in their place the words "(a)(5)".

8 B. Redesignating paragraphs (a)(3), (a)(4), (a)(5),  
9 and (a)(6) as paragraphs (a)(4), (a)(5), (a)(6), and  
10 (a)(7), respectively.

11 C. Adding a new paragraph (a)(2).

12 D. In newly redesignated paragraph (a)(4)(iv) removing  
13 the words "Direct Unsubsidized Loan borrowers" and adding,  
14 in their place, the words "and Direct Unsubsidized Loan  
15 borrowers, or graduate or professional student Direct PLUS  
16 Loan borrowers, or student borrowers with Direct  
17 Subsidized, Direct Unsubsidized, and Direct PLUS Loans,  
18 depending on the types of loans the borrower has  
19 obtained,".

20 E. In newly redesignated paragraph (a)(5), removing  
21 the words "(a)(1)-(3)" and adding, in their place, the  
22 words "(a)(1)-(4)".

23 F. In newly redesignated paragraph (a)(5)(i),  
24 removing the words "(a)(1)" and adding in their place the

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1 words "(a)(1) or (a)(2)", and removing the words "(a)(3)"  
2 and adding in their place the words "(a)(4)".

3 G. In paragraph (b)(4)(i), removing the words "Direct  
4 Subsidized Loan and Direct Unsubsidized Loan borrowers" and  
5 adding, in their place, the words "student borrowers who  
6 have obtained Direct Subsidized Loans and Direct  
7 Unsubsidized Loans, or student borrowers who have obtained  
8 Direct Subsidized, Direct Unsubsidized, and Direct PLUS  
9 Loans, depending on the types of loans the student borrower  
10 has obtained, for attendance".

11 \* \* \* \* \*

12

13