Federal Register

Tuesday,
July 28, 2009

Part IV

Department of Education

34 CFR Parts 601, 668, 674, 682, and 685

Institutions and Lender Requirements Relating to Education Loans, Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

[Docket ID ED–2009–OPE–0003]

34 CFR Parts 601, 668, 674, 682, and 685

RIN 1840–AC95

Institutions and Lender Requirements Relating to Education Loans, Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to establish new regulations in 34 CFR part 601, Institutions and Lender Requirements Relating to Education Loans, to implement requirements relating to education loans that were added to the Higher Education Act of 1965, as amended (HEA) by the Higher Education Opportunity Act of 2008 (HEOA). The Secretary also proposes to amend the regulations for Student Assistance General Provisions in part 668, the Federal Perkins Loan (Perkins Loan) Program in part 674, the Federal Family Education Loan (FFEL) Program in part 682, and the William D. Ford Federal Direct Loan (Direct Loan) Program in part 685 to implement certain provisions of the HEA that involve school-based loan issues and that were affected by the statutory changes made to the HEA by the HEOA.

DATES: We must receive your comments on or before August 27, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Brian Smith, U.S. Department of Education, 1990 K Street, NW., room 8033, Washington, DC 20006–8502.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Marty Guthrie, U.S. Department of Education, 1990 K Street, NW., Room 8042, Washington, DC 20006–8502. Telephone: (202) 219–7031 or via the Internet at: *Marty.Guthrie@ed.gov,* or Gail McLarnon, U.S. Department of Education, 1990 K Street, NW., room 8026, Washington, DC 20006–8502. Telephone: (202) 219–7048 or via the Internet at: *Gail.McLarnon@ed.gov.*

If you use a telecommunications device for the deaf, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

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

SUPPLEMENTARY INFORMATION:

Invitation To Comment

As outlined in the section of this notice entitled *Negotiated Rulemaking,* significant public participation, through six public hearings and three negotiated rulemaking sessions, has occurred in developing this notice of proposed rulemaking (NPRM). In accordance with the requirements of the Administrative Procedure Act, the Department invites you to submit comments regarding these proposed regulations on or before August 27, 2009. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866, including its overall requirements to assess both the costs and the benefits of the proposed regulations and feasible alternatives, and to make a reasoned determination that the benefits of these proposed regulations justify their costs. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

As noted elsewhere in this NPRM, two of the Department's negotiated rulemaking committees considered proposed revisions to 34 CFR 674.51 (Special Definitions) in subpart D of part 674 of the Federal Perkins Loan Program regulations. Team I—Loans—Lender General Loan Issues, the negotiating committee responsible for regulations involving issues related to lender and general loan issues, negotiated the proposed definitions of *substantial gainful activity* and *permanent and total disability.* Team II—Loans—School-based Loans Issues negotiated all other changes in this section.

We have included all proposed changes to 34 CFR 674.51 in this NPRM as well as in the notice of proposed rulemaking that we are publishing as a result of the negotiations of Team I—Loans—Lender General Loan Issues. However, we ask that when submitting your comments on the proposed changes to 34 CFR 674.51, you submit any comments on the proposed definitions of *substantial gainful activity* and *total and permanent disability* in the docket (Docket ID ED–2009–OPE–0004) for the Team I notice of proposed rulemaking. Comments on all other provisions in this section should be submitted in the docket (Docket ID ED–2009–OPE–0003) for this NPRM.

In addition, in this NPRM we have included a proposed change to § 668.184(a)(1). As amended by the HEOA, section 498(k) of the HEA states that an institution that conducts a teach-out under certain circumstances is not responsible for any liabilities of the closed institution. As a result of this statutory change, the Department intends to propose, in a separate notice of proposed rulemaking (Docket ID ED–2009–OPE–0005, an amendment to 34 CFR 600.32(d) to provide that the default rate of an institution that establishes an additional location at the site of a closed institution for which it conducted a teach-out would not be affected in any way by the closed institution's cohort default rate. In light of this statutory change and our intended amendment to 34 CFR 600.32(d), the Department also proposes to amend § 668.184(a)(1) to cross-reference 34 CFR 600.32(d) and to include a similar cross-reference to 34 CFR 600.32(d) in new § 668.203(a)(1). We have included the proposed amendment to § 668.184(a)(1) and proposed § 668.203(a)(1) in this NPRM

to enable the public to view all changes to these sections in context. These proposed changes will also be included and discussed in a separate notice of proposed rulemaking based on the negotiations of the negotiating rulemaking committee responsible for regulatory issues involving Title IV general provisions. Accordingly, we ask that when submitting any comments on the proposed changes to §§ 600.32(d) or the proposed cross-references to that section in §§ 668.184(a)(1) and 668.203(a)(1), you submit any comments in the docket for that notice of proposed rulemaking (Docket ID ED–2009–OPE–0005).

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

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by Title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: *http://www.ed.gov/policy/highered/leg/hea08/index.html.*

On December 31, 2008, the Department published a notice in the **Federal Register** (73 FR 80314) announcing our intent to establish five negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to lender and general loan issues (Team I—Loans—Lender General Loan Issues). A second committee would focus on school-based loan issues (Team II—Loans—School-based Loan Issues). A third committee would focus on accreditation (Team III—Accreditation). A fourth committee would focus on discretionary grants (Team IV—Discretionary Grants). A fifth committee would focus on general and non-loan programmatic issues (Team V—General and Non-Loan Programmatic Issues). The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee.

Team II—Loans—School-based Loan Issues (Team II) met to develop proposed regulations during the months of March 2009, April 2009, and May 2009. This NPRM resulted primarily from the work of Team II and, in a couple of instances where the subject matter of the proposed regulations overlapped, the work of Team I—Loans—Lender General Loan Issues (Team I).[1] This NPRM proposes regulations relating to the administration of the Federal student loan programs.

The Department developed a list of proposed regulatory provisions based on the provisions contained in the HEOA and from advice and recommendations submitted by individuals and organizations as testimony to the Department in a series of six public hearings held on:

- September 19, 2008 at Texas Christian University in Fort Worth, Texas;
- September 29, 2008, at the University of Rhode Island, in Providence, Rhode Island;
- October 2, 2008, at Pepperdine University, in Malibu, California;
- October 6, 2008, at Johnson C. Smith University, in Charlotte, North Carolina;
- October 8, 2008, at the U.S. Department of Education in Washington, DC; and
- October 15, 2008, at Cuyahoga Community College, in Cleveland, Ohio.

In addition, the Department accepted written comments on possible regulatory provisions submitted directly to the Department by interested parties and organizations. A summary of all comments received orally and in writing is posted as background material in the docket for this NPRM. Transcripts of the regional meetings can be accessed at *http://www.ed.gov/policy/highered/leg/hea08/index.html.*

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

At its first meeting, Team II reached agreement on its protocols. These protocols provided that for each community of interest identified as having interests that were significantly affected by the subject matter of the negotiations, the non-Federal negotiators would represent the organizations listed after their names in the protocols in the negotiated rulemaking process.

Team II included the following members:

- Angela Peoples, United States Student Association, and Rich Williams (alternate), State Public Interest Research Groups representing students.
- Richard Heath, Anne Arundel Community College, and Pat Hurley (alternate), Glendale Community College representing 2-year public institutions.
- Roberta Johnson, Iowa State University, and Mr. Kim Jenerette (alternate), University of South Carolina-Upstate representing 4-year public institutions.
- Elizabeth Hicks, Columbia University, and Nancy Hoover (alternate), Denison University representing private, nonprofit institutions.
- Mary Dorrell, Career Education Corporation, and Nancy Broff (alternate), Dickstein Shapiro LLP representing private, for-profit institutions.
- Thelma Ross, Lincoln University, and Helga Greenfield (alternate), Spelman College representing minority-serving institutions.
- Justin Draeger, National Association of Student Financial Aid Administrators, and Charles ''Buddy'' Mayfield (alternate), Missouri Valley College representing financial aid administrators.
- Virginia Layton, Miami University, and Anne Gross (alternate), National Association of College and University

[1] As discussed elsewhere in this preamble, Team I—Loans—Lender General Loan Issues was responsible for negotiating the following provisions, which appear in this NPRM: 34 CFR 601.2 (definitions of the terms *lender* and *private education loan*), 34 CFR 601.40 (Disclosure and reporting requirements for lenders), and 34 CFR 674.51 (definitions of the terms *substantial gainful activity* and *total and permanent disability*).

Business Officers representing business officers.

- Mary Lyn Hammer, Champion College Solutions, and James B. Parker (alternate), Panhandle Plains Student Loan Center representing institutional and loan servicers.
- Scot Williams, EdFund/CSAC, and Jacqueline Fairbairn (alternate), Great Lakes Higher Education Guaranty Corp. representing guaranty agencies.
- Jackie Ito-Woo, University of California, and Beth Stack (alternate), University of Pittsburgh representing institutions participating in the Perkins Loan Program.
- J.D. LaRock, Massachusetts Office of Higher Education representing States.
- Gail McLarnon, U.S. Department of Education representing the Federal Government.

These protocols also provided that, unless agreed to otherwise, consensus on all of the amendments in the proposed regulations had to be achieved for consensus to be reached on the entire NPRM. Consensus means that there must be no dissent by any member.

During the meetings, Team II reviewed and discussed drafts of proposed regulations. At the final meeting in May 2009, Team II reached consensus on all of the proposed regulations in this document except:

- The proposed definitions of the terms *lender* and *private education loan* in 34 CFR 601.2 (Definitions).
- The proposed requirements in 34 CFR 601.40 (Disclosure and reporting requirements for lenders).
- The proposed definitions of the terms *substantial gainful employment* and *total and permanent disability* in 34 CFR 674.51 (Special Definitions).

These proposed regulatory provisions were assigned to Team I for negotiated rulemaking purposes because the substance of the provisions fell within the purview of Team I's expertise. Team I reached consensus on all of its proposed regulations, including the provisions identified in this paragraph, in its final meeting in May 2009.

Team I and Team II were advised that, to ensure transparency and ease of use for public commenters, the Department would propose the entirety of 34 CFR part 601 in a single NPRM. Given Team I's consensus, which included consensus on the definitions of the terms *lender* and *private education loan* in proposed § 601.2 as well as the requirements in § 601.40, Team I members were advised that they may not comment negatively on the provisions they negotiated notwithstanding that they would appear in Team II's NPRM. Likewise, Team II members were advised that, while they may not comment negatively on the majority of proposed 34 CFR part 601 as a result of their consensus agreement, they may comment on the definitions of *lender* and *private education loan* as well as proposed § 601.40.

With regard to the proposed changes to 34 CFR 674.51, the Department determined that it would be helpful for the public to be able to view all proposed changes to this special definitions section for the Perkins Program in both Team I's notice of proposed rulemaking and Team II's NPRM. Team I and Team II were advised that the proposed changes to § 674.51 would appear in their entirety in both documents to provide context and enhance understanding of both committees' proposed changes to this section. Each team was advised by its respective Federal negotiator that its consensus agreement did not apply to the definitions negotiated by the other team and that any comments they may have on the definitions negotiated by the other team should be submitted in response to the notice of proposed rulemaking published as a result of the other team's negotiations.

More information on the work of Team II can be found at *http://www.ed.gov/policy/highered/reg/hearulemaking/2009/loans-school-based.html* and more information on the work of Team I can be found at *http://www.ed.gov/policy/highered/reg/hearulemaking/2009/loans-lender.html.*

Summary of Proposed Changes

These proposed regulations would implement the school-based loan provisions of the HEA, as amended by the HEOA. These provisions include:

- An increase in the period used to calculate the cohort default rate (CDR) from 2 to 3 years effective for CDRs calculated for fiscal year 2009 and subsequent years, the requirement that an institution whose CDR is greater than or equal to 30 percent for any fiscal year establish a default prevention plan, and an increase from 25 to 30 percent in the threshold default that would render an institution ineligible to participate in the Pell, FFEL, and Direct Loan Programs (see section 435(a) and (m) of the HEA);
- An expansion of exit counseling requirements in the title IV, HEA loan programs (see section 485(b)(1)(A) of the HEA);
- An expansion of entrance counseling requirements in the FFEL and Direct Loan Programs (see section 485(l) of the HEA);
- Additions to the conditions an institution must agree to in its program participation agreement with the Secretary of Education (the agreement between the institution and the Department that enables the institution to participate in the loan programs under Title IV of the HEA). These conditions include: (1) A requirement that an institution develop, publish, administer and enforce a code of conduct with respect to its FFEL Program activities (see section 487(a)(25) of the HEA); (2) a requirement that an institution compile, maintain and make available to students and their families a list of its preferred lenders if it enters into any preferred lender arrangement (see section 487(a)(27) of the HEA); and (3) a requirement that an institution, upon the request of an applicant of a private education loan, provide the applicant with the private education loan certification form developed by the Secretary (see section 487(a)(28) of the HEA);
- The addition of education loan borrower disclosures by institutions of higher education, and institution-affiliated organizations, including definitions (see sections 151 through 155, 487(a) and 487(h) of the HEA);
- The addition of borrower disclosures by covered institutions and institution-affiliated organizations that participate in a preferred lender arrangement (see section 153(c) of the HEA);
- The addition of reporting requirements for covered institutions and institution-affiliated organizations (see section 153(c)(2) of the HEA);
- Dissemination of information to prospective and enrolled students regarding the terms and conditions of title IV, HEA loans (see section 485(a) of the HEA);
- Disclosure to the Secretary of any reimbursements made to employees of an institution of higher education for service on advisory boards (see section 485(m) of the HEA); and
- An expansion of cancellation benefits for Perkins Loan borrowers, including cancellation benefits for teachers in an educational service agency; staff members in a pre-kindergarten or childcare program; attorneys employed in a Federal Public Defender Organization or community Defender Organization; fire fighters, faculty members of a Tribal College or University, librarians with a master's degree employed in an elementary or secondary school or in a public library that serves one or more schools eligible for funding under title I of the Elementary and Secondary Education Act of 1965, as amended; and speech pathologists with a master's degree who

work exclusively with title I-eligible schools (see section 465(a) of the HEA).

Significant Proposed Regulations

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address regulatory changes that are technical or otherwise minor in effect.

Part 601—Institution and Lender Requirements Relating to Education Loans

Subpart A—General

Scope (§ 601.1)

Statute: Sections 120 and 1021(b) of the HEOA added a new part E to title I of the HEA, titled *Lender and Institution Requirements Relating to Education Loans.* Part E, consisting of new sections 151 through 155, requires significant new disclosures to borrowers of education loans and related institutional and lender reporting to the Department. The required borrower disclosures apply to both Title IV student loans and private education loans, and are required of institutions of higher education, institution-affiliated organizations, and lenders.

Current Regulations: None.

Proposed Regulations: We propose to add a new part 601 to title 34 of the Code of Federal Regulations to implement the statutory provisions of sections 151 through 155 of the HEA. Proposed § 601.1 would briefly summarize the content of the new part 601.

Reasons: Proposed § 601.1 would be added to implement part E of title I of the HEA, which was added by the HEOA.

Definitions (§ 601.2)

Statute: Section 120 of the HEOA added section 151 to the HEA. Section 151 of the HEA sets forth the definitions for terms used in part E of title I of the HEA. These terms include *covered institution, education loan, institution-affiliated organization, preferred lender arrangement,* and *private education loan.*

The term *covered institution* is defined as an institution of higher education, as defined in section 102 of the HEA, that receives any Federal funding or assistance. Thus, the term *covered institution* includes any institution of higher education that receives any type of Federal funding or assistance, not just any institution of higher education that receives Title IV, HEA funding or assistance.

The term *institution-affiliated organization* is defined as any organization directly or indirectly related to a covered institution, including alumni organizations, foundations, or social organizations, that recommends, promotes, or endorses education loans for students attending the covered institution.

The term *education loan* is defined as a FFEL Loan, a Direct Loan, or a private education loan. Section 151(9) of the HEA defines the term *private education loan* as that term is defined in section 140 of the Truth in Lending Act (TILA) (15 U.S.C. 1631). Under this definition, a private education loan is a non-Title IV loan provided by a private educational lender to a borrower expressly for postsecondary educational expenses, and that is not an extension of credit under an open-end consumer credit plan, or secured by real property or a dwelling.

The term *preferred lender arrangement* is defined as an arrangement or agreement between a lender and a covered institution or an institution-affiliated organization, under which the lender provides or otherwise issues education loans to the covered institution's students or their families, and that relates to the covered institution or institution-affiliated organization recommending, promoting, or endorsing the lender's education loan products. The term *preferred lender arrangement* does *not* include arrangements or agreements with respect to Direct Loan Program loans or loans that originate through the PLUS Loan auction pilot program, authorized under section 499(b) of the HEA.

Section 151 of the HEA also provides definitions for the terms *agent, eligible lender, lender,* and *officer* as those terms are used in title I, part E of the HEA.

Section 151(4) of the HEA states that the term *eligible lender* has the same meaning as provided in section 435(d) of the HEA. The term *lender* is defined in section 151(6) of the HEA as an eligible lender for Federal Family Education Loan (FFEL) Program loans, the Department of Education for William D. Ford Direct Loans, and a *private educational lender* as that term is defined in section 140 of the TILA (15 U.S.C. 1631) for private education loans. The term *lender* includes any other person engaged in the business of securing, making, or extending educational loans on behalf of the lender.

The term *agent* is defined as an officer or employee of a covered institution or an institution-affiliated organization. The definition of the term *officer* includes a director or trustee of a covered institution or institution-affiliated organization, if such individual is treated as an employee of the covered institution or the institution-affiliated organization.

Current Regulations: None.

Proposed Regulations: Proposed § 601.2(b) would set forth the definitions for the terms described in the preceding *Statute* section that apply to new part 601. With one exception, the regulatory definitions do not make substantive changes to the corresponding statutory definitions.

The one exception is for the term *preferred lender arrangement.* The definition for *preferred lender arrangement* in proposed § 601.2(b) would track the statutory definition in section 151(8) of the HEA, except that it would specify that an arrangement or agreement does not exist for private education loans that a covered institution makes to its own students, as long as the private education loan is funded by the covered institution's own funds; is funded by donor-directed contributions; is made under title VII or title VIII of the Public Service Health Act; or is made under an institutional payment plan of the covered institution.

Reasons: The proposed regulations in § 601.2(b) were negotiated by two teams during the negotiated rulemaking process. Team I, which covered general and lender loan issues, negotiated the definitions for the terms *eligible lender, lender,* and *private education loan.* Team II, which covered school-based loan issues, negotiated the remaining definitions.

The statutory definitions for the terms that would be used in part 601 are detailed and specific. Therefore, except as noted for the definition of *preferred lender arrangement,* the Department has declined to expand on the statutory definitions in the regulations.

The proposed regulations negotiated by Team I reflect the statutory definitions for the terms *lender* and *private education loan.* The definition of *lender,* as reflected in the proposed regulations, would simply provide a cross reference to the definition of that term in current § 682.200(b). The definition of *private education loan* would mirror the definition provided for *private education loan* in section 140 of the TILA (15 U.S.C. 1631). Use of this TILA definition is required by section 151(9) of the HEA.

The Team I non-Federal negotiators raised some concern over the cross references in our proposed regulations to the requirements in the TILA. Specifically, there was discussion about the regulations implementing the TILA, which will not be published in final form before the conclusion of the negotiation process for these regulations. The Department made clear

that, in terms of the definition of *private education loan,* section 151(9) of the HEA requires the Department to use the TILA definition. Under this requirement, the Department has no authority to negotiate that definition for purposes of these proposed regulations.

For Team II, discussions regarding the proposed definitions focused on two terms: *Agent* and *preferred lender arrangement.*

The meaning of the term *agent* came up as part of the discussion around the code of conduct requirements in proposed § 601.21. This discussion is summarized in the code of conduct section of the preamble.

The meaning of the term *preferred lender arrangement* came up frequently during the negotiated rulemaking sessions, and is discussed in the following paragraphs.

Several of the Team II non-Federal negotiators argued that a preferred lender arrangement can exist only if there is a written or verbal agreement between a lender and a covered institution or institution-affiliated organization. One of the non-Federal negotiators submitted an alternative definition for *preferred lender arrangement* that would have built this written or verbal agreement requirement into the definition, only allowing exceptions to this requirement in cases when a course of conduct evidencing intention by the parties to create an arrangement exists.

The Department declined to adopt this proposed alternative definition because the statutory definition of *preferred lender arrangement* does not address how the arrangement comes about, nor does it specify that a written or verbal agreement must exist. Instead, section 151(8) of the HEA provides that two conditions must be met for a preferred lender arrangement to exist between a lender and a covered institution or an institution-affiliated organization. These conditions are that—

(1) A lender provides or issues education loans to students, or the families of such students, attending a covered institution; and

(2) The covered institution or an institution-affiliated organization recommends, promotes, or endorses the education loan products of the lender.

If both of those conditions are met, a preferred lender arrangement exists, whether or not the covered institution and the lender entered into a formal agreement.

Several non-Federal negotiators asked whether the Department viewed institutional loans—that is, loans made directly by a covered institution to its own students—as being covered by the term *preferred lender arrangement.* These non-Federal negotiators identified several preferred lender arrangement requirements in section 487(e) of the HEA (and proposed § 601.21) that they believed would be impossible or impractical for a covered institution to comply with if the preferred lender arrangement requirements applied to institutional loans (*i.e.,* loans made directly by a covered institution to its own students). For example, non-Federal negotiators noted that a school, in its capacity as a lender, could be prohibited from paying its own employees. They argued that, if we applied the code of conduct requirement that a *lender* not provide gifts to employees of a covered institution's financial aid office to a covered institution that makes loans directly to their students (and, therefore, falls within the definition of ''lender''), these covered institutions would be prohibited from paying the employees in its financial aid office.

To avoid this unintended consequence, some of the Team II non-Federal negotiators recommended that the Department exempt institutional loans from the definition of *private education loan.* As noted earlier in this preamble, the definition of the term *private education loan* is established by the TILA and any regulations the Federal Reserve issues in connection with this statutory definition. The Department has no authority to alter the statutory definition of private education loan.

Furthermore, we do not agree that the Federal Reserve should interpret, through its regulations implementing TILA, that the term *private education loan* does not include institutional loans. If the Federal Reserve did so, such loans would not only be exempt from the preferred lender arrangement requirements in part E, title I of the HEA, and proposed 34 CFR part 601, but they would also be exempt from certain TILA requirements that the Department believes provide beneficial protections to student borrowers (such as requiring private educational lenders to inform a potential private education loan borrower that the borrower may qualify for title IV, HEA student financial assistance in addition to or in lieu of the private education loan, as required under section 128(e)(1)(M) of the TILA).

Recognizing that the Department cannot modify the definition of *private education loan,* non-Federal negotiators asked that institutional loans, and other Federal Loans, be excluded from the definition of *preferred lender arrangement.* As an alternative, if that approach could not be accepted, several non-Federal negotiators offered a proposal in which certain types of institutional loans, with certain types of terms and conditions, would be exempt from some or all of the requirements governing loans made pursuant to a preferred lender arrangement.

After considering the proposals from the non-Federal negotiators, the Department declined to adopt this approach. The term *preferred lender arrangement* defines a relationship between two parties regarding loans offered to student borrowers and their families. Nothing in the statutory definition of the term suggests that the relationship is contingent on the terms and conditions of the loans being provided. The relationship is defined by the actions of the two parties—that is, the lender provides or issues education loans and the covered institution or institution-affiliated organization recommends, promotes or endorses the education loan products of the lender.

The Department believes that these actions must be taken by at least two separate parties for a preferred lender arrangement to exist. The definition of the term *preferred lender arrangement* refers to ''an arrangement or agreement between a lender and a covered institution or institution-affiliated organization.'' Implicit in the definition is the understanding that the lender and the covered institution are not one and the same entity.

The Department responded to the non-Federal negotiators by proposing to expand the regulatory definition for *preferred lender arrangement* in proposed § 601.2(b) by specifying that such an arrangement does not exist for a private education loan made by a covered institution to the covered institution's students.

The proposed definition for *preferred lender arrangement* also would clarify that a preferred lender arrangement does would not exist for a private education loan made by a covered institution to the covered institution's students, but only if the covered institution made the loan using its own funds.

Some non-Federal negotiators requested clarification of the phrase ''own funds'' as used in the proposed definition of *preferred lender arrangement.* For example, they presented a scenario in which a lender provides funds to a covered institution, the covered institution uses the funds to make loans to its students, and then the covered institution sells the loans to the lender (possibly immediately after the loan is made). These non-Federal negotiators requested that funds

provided under these conditions be considered the covered institution's ''own funds'' for purposes of the proposed definition of *preferred lender arrangement.* The Department strongly disagreed with this suggestion. In the current context, the Department does not consider funds obtained by covered institutions under this or similar scenarios in which loans are sold shortly after they are made to be the covered institution's ''own funds'' because the covered institution is merely acting as a pass-through for the lender's funds in these cases. The Department believes that exempting loans made under these conditions from the preferred lender arrangement requirements would open the door to abuse, potentially creating a loophole that covered institutions might use to evade the preferred lender arrangement requirements. The Department has long been concerned about this type of arrangement involving schools which are lenders in the FFEL Program but which use funds provided by FFEL lenders to make the loans and then immediately sell the loans. The Department believes that such arrangements could be a loophole for institutions to avoid the limitation on improper inducements in the FFEL Program. Moreover, these arrangements may be deceptive to students who believe they are making an arrangement with the institution but are quickly dealing with a different lender. The Department does not want to repeat those problems in the area of preferred lender arrangements. As the Department's negotiator emphasized to the negotiated rulemaking committee, the Department intends for the proposed definition of *preferred lender arrangement* to be applied in such a manner as to avoid the masking of the true source of loan funds.

Team II's discussions concerning the definition of the term *preferred lender arrangement* also focused on the requirements surrounding preferred lender lists under section 487(h)of the HEA (and proposed § 668.14(b)(28)). Proposed § 668.14 of the program participation agreement regulations, which would implement changes made to section 487(h) of the HEA by section 493(c) of the HEOA, would specify that for any year in which an institution has a preferred lender arrangement, the institution must compile, maintain, and make available for students attending the institution, and their families, a preferred lender list. The non-Federal negotiators asked for clarification from the Department regarding what constitutes a preferred lender list.

The Department referred non-Federal negotiators to Dear Colleague Letter GEN–08–06 [2] in which we stated that if a school provides to its students a neutral, comprehensive list of lenders who have made loans to students at the covered institution within a set period of time, such as three to five years, and the school provides a clear statement on the list that a borrower can choose to use any FFEL lender, not just the lenders identified on the list, the list is not a preferred lender list.

The Department also clarified for the non-Federal negotiators that if a covered institution provides a list of lenders to students, and the list includes some lenders who lend to students at the school but not others, the Department views the covered institution as inherently showing a preference for the lenders it includes on the list. In this case, therefore, the covered institution would be considered to have created a preferred lender list.

If a covered institution includes certain lenders on the list and leaves other lenders off the list, the Department views the covered institution as recommending, promoting, or endorsing the lenders on the list over the lenders that it has chosen to leave off the list regardless of whether the covered institution includes a disclaimer on the list, asserting that the covered institution does not recommend, promote, or endorse the lenders on its list. Unless the list is a neutral, comprehensive list of lenders who lent to students at the school, the list serves to recommend, promote, or endorse the lenders on the list, despite whatever disclaimers the school may attach to the list.

Subpart B—Loan Information To Be Disclosed by Covered Institutions and Institution-Affiliated Organizations

Preferred Lender Arrangement Disclosures (§ 601.10)

Statute: Section 152(a)(1)(A)(i) of the HEA, as amended by section 120 of the HEOA, requires a covered institution or an institution-affiliated organization with a preferred lender arrangement to provide on its Web site and in all informational materials including publications, mailings, electronic messages, or materials that are distributed to current or prospective students and that describe or discuss education loans, the following disclosures:

- The maximum amount of Title IV grant and loan aid available to students in an easy to understand format.
- Information on the model disclosure form for each FFEL loan offered pursuant to a preferred lender arrangement, to be determined by the Department of Education in coordination with the Board of Governors of the Federal Reserve System.
- A statement that the institution is required to process documents necessary to obtain a FFEL loan from any eligible lender the student selects.

Section 152(a)(1)(A)(ii) of the HEA also requires a covered institution or institution-affiliated organization's Web site or other information materials, including publications, electronic messages or materials, that describe or discuss private education loans made to students or the families of such students pursuant to a preferred lender arrangement to provide the disclosures specified in the TILA. A covered institution must provide the information required by section 128(e)(11) of the TILA and an institution-affiliated organization must provide the information required by section 128(e)(1) of the TILA.

Section 493(c) of the HEOA amended section 487 of the HEA by adding a new subsection (h). Section 487(h)(1)(A) of the HEA requires that if a covered institution compiles, maintains, and makes available a preferred lender list, the institution must clearly and fully disclose on the preferred lender list (a) at least the information required to be disclosed under Section 153(a)(2)(A) of the HEA; (b) why the institution participates in a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and (c) that the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list.

Section 487(h)(1)(B) of the HEA requires covered institutions to ensure, through the use of the list of lender affiliates provided by the Secretary under Section 487(h)(2) of the HEA, that there are not less than three FFEL lenders that are not affiliates of each other included on the preferred lender list and, for institutions that recommend, promote, or endorse private education loans, that there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list.

The preferred lender list must specifically indicate, for each listed

[2] GEN–08–06 was issued by the Department on May 9, 2008, and can be accessed on *http://www.ifap.ed.gov/dpcletters/GEN0806.html.*

lender, whether the lender is or is not an affiliate of another lender on the preferred lender list; and if a lender is an affiliate of another lender on the preferred lender list, must describe the details of such affiliation.

Section 487(h)(1)(C) of the HEA requires institutions to prominently disclose the method and criteria used by the institution in selecting lenders with which to participate in preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers. These criteria include payment of origination or other fees on behalf of the borrower; highly competitive interest rates, or other terms and conditions or provisions of Title IV, HEA program loans or private education loans; high-quality servicing; or additional benefits beyond the standard terms and conditions or provisions for such loans.

Section 487(h)(1)(D) of the HEA requires institutions to exercise a duty of care and a duty of loyalty to compile the preferred lender list without prejudice and for the sole benefit of the students attending the institution, or the families of such students.

Section 487(h)(1)(E) of the HEA requires institutions to not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in certification of a Title IV loan for those borrowers who choose a lender that is not included on the preferred lender list.

Current Regulations: None.

Proposed Regulations: Under proposed § 601.10(a)(1), a covered institution, or an institution-affiliated organization of a covered institution, that participates in a preferred lender arrangement would be required to disclose to students the maximum amount of Federal grant and loan aid available under Title IV of the HEA; the information identified on the model disclosure form developed by the Secretary for each type of education loan that is offered pursuant to a preferred lender arrangement; and a statement that the institution is required to process the documents required to obtain a loan under the FFEL Program from any eligible lender the student selects.

Consistent with section 152(a)(1)(A)(ii) of the HEA, proposed § 601.10(a) would require that these disclosures be provided on the covered institution's or institution-affiliated organization's Web site and in all informational materials such as publications, mailings, or electronic messages or materials that are distributed to prospective or current students of a covered institution and families of such students and that describe or discuss the financial aid opportunities available to students at an institution of higher education.

Proposed § 601.10(a)(2)(i) would require a covered institution to provide the disclosures required under section 128(e)(11) of the TILA for each type of private education loan offered pursuant to a preferred lender arrangement. For an institution-affiliated organization, proposed § 601.10(a)(2)(ii) would require the institution-affiliated organization to provide the disclosures required under section 128(e)(1) of TILA for each type of private education loan offered pursuant to a preferred lender arrangement.

Proposed § 601.10(c) would require covered institutions and institution-affiliated organizations that participate in a preferred lender arrangement to provide the information described in proposed § 601.10(a)(1)(ii), and the information described in proposed §§ 601.10(a)(2)(i) and (a)(2)(ii), respectively, for each type of education loan offered pursuant to the preferred lender arrangement. Covered institutions and institution-affiliated organizations would be required to provide this information to students attending the covered institution, or the families of such students, as applicable. The information would be provided annually and must be provided in a manner that allows for the students or their families to take the information into account before selecting a lender or applying for an education loan.

Consistent with new section 487(h)(1)(A) of the HEA, proposed § 601.10(d) would require that if a covered institution compiles, maintains, and makes available a preferred lender list, the covered institution clearly and fully disclose on the preferred lender list (a) at least the information required to be disclosed under section 153(a)(2)(A) of the HEA; (b) why the institution participates in a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and (c) that the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list.

Proposed § 601.10(d)(2) would track the statutory requirement reflected in section 487(h)(1)(B)(i) of the HEA, which requires the covered institution to ensure, through the use of the list of lender affiliates provided by the Secretary under section 487(h)(2) of the HEA, that there are not less than three FFEL lenders that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, that there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list.

Proposed § 601.10(d)(2) would incorporate the statutory requirements in section 487(h)(1)(B)(ii) of the HEA that the preferred lender list (a) specifically indicate, for each listed lender, whether the lender is or is not an affiliate of another lender on the preferred lender list, and (b) if a lender is an affiliate of another lender on the preferred lender list, must describe the details of such affiliation.

Proposed § 601.10(d)(3) would incorporate the requirement in section 487(h)(1)(C) of the HEA that requires the preferred lender list to prominently disclose the method and criteria used by the institution in selecting lenders with which to participate in preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers.

Under proposed § 601.10(d)(4) and consistent with section 487(h)(1)(D) of the HEA, covered institutions would be required to exercise a duty of care and a duty of loyalty to compile the preferred lender list without prejudice and for the sole benefit of the students attending the institution, or the families of such students. Proposed § 601.10(d)(5) would incorporate the requirement from section 487(h)(1)(E) of the HEA that requires a covered institution to not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in certification of a Title IV loan for those borrowers who choose a lender that is not included on the preferred lender list.

Reasons: Proposed § 601.10 would be included in new part 601 in order to implement the provisions relating to preferred lender arrangement disclosures in new part E, title I of the HEA.

Some non-Federal negotiators expressed a concern regarding proposed § 601.10(a)(1)(iii), which would require a covered institution that participates in a preferred lender arrangement to include a statement on its Web site and other informational materials that the covered institution is required to process loan documents from any eligible FFEL Program lender. The non-Federal negotiators pointed out that a Direct Loan school could have a preferred lender arrangement with a private education lender (and, therefore, be covered by the requirements in proposed § 601.10), but that most Direct

Loan schools do not also participate in the FFEL program, and would not be able to process FFEL loans.

The Department responded that the requirement in proposed § 601.10(a)(1)(iii) is not applicable to Direct Loan-only schools, and such schools would not be required to provide this statement on their Web sites or other informational materials.

The non-Federal negotiators asked for clarification regarding the information that a covered institution is required to provide on the informational materials referenced in proposed § 601.10(b)(1). The informational materials are publications, mailings, or electronic materials that the covered institution makes available to prospective and current students and their families. The non-Federal negotiators asked whether a brochure would be required to provide all of the information specified in proposed § 601.10(a), or whether the brochure could provide a link to an institutional Web site with the required information.

The non-Federal negotiators were particularly concerned about ''first touch'' information provided to prospective students, which is intended to provide basic information regarding the institution, and might briefly summarize financial aid opportunities at the school. The non-Federal negotiators were concerned that including the detailed student loan information required by proposed § 601.10(a) in such ''first touch'' materials would be overwhelming to potential students.

The non-Federal negotiators also pointed out that information provided in print publications can quickly become outdated, whereas information provided on a Web site can be updated easily, on an as-needed basis.

The Department responded that a link to a Web site that contains information that meets the requirements in proposed § 601.10(a) would be sufficient for printed materials provided to potential borrowers, as long as the printed materials provide the potential borrower with information for a point of contact at the school where the potential borrower can obtain the information in printed form.

Non-Federal negotiators expressed concerns about proposed § 601.10(c)(2), which would require a covered institution to ''provide'' certain information to students in a manner that allows the students to take that information into account before selecting a lender or applying for an education loan. The non-Federal negotiators requested the Department to change this requirement from ''provide'' to ''make available.''

The Department declined to make this requested change. The purpose of the requirement to provide the described information is to give students current information on education loans available at the school before the student selects a lender or applies for an education loan. The term ''make available'' is more passive than the term ''provide.'' The Department expects schools to be more proactive in providing this information to borrowers than the phrase ''make available'' implies. However, the Department recognizes that, regardless of how proactive a school may be, the school cannot guaranty that every student attending the school will receive the information. A school that makes reasonable efforts to give this information to its students at the appropriate time in the award year would be in compliance with proposed § 601.10(c)(2), even if not all students at the school actually receive the information.

Non-Federal negotiators asked if the requirements for a preferred lender list specified in proposed § 601.10(d) would apply to a neutral, comprehensive list of lenders who lent at the school, as discussed earlier in the preamble discussion regarding proposed § 601.2 (Definitions). The Department responded that a neutral, comprehensive list of lenders that have provided loans to students at a covered institution is not a preferred lender list under the HEA or these proposed regulations. If the covered institution has not made a judgment regarding which lenders to include on the list, it is not using the list to identify the lenders it prefers its students to use. A comprehensive, neutral list of lenders is not a preferred lender list and is not covered by the requirements in proposed § 601.10(c).

Private Education Loan Disclosures and Self-Certification Form (§ 601.11)

Statute: Section 152(a)(1)(B) of the HEA, which was added by section 120 of the HEOA, requires a covered institution, or an institution-affiliated organization, that provides information regarding a private education loan from a lender to a prospective borrower, regardless of whether the covered institution or institution-affiliated organization participates in a preferred lender arrangement, to provide the following disclosures:

- The information required by section 128(e)(1) of the TILA.
- Information on the availability of Title IV loans or other assistance.
- That the terms and conditions of Title IV loans or assistance may be more beneficial than the terms and conditions of private education loans.

Section 153(c)(1)(B) of the HEA, which also was added by section 120 of the HEOA, requires covered institutions and institution-affiliated organizations to provide the information described in the previous paragraphs in a manner that allows students or their families to take that information into account before selecting a lender or applying for an education loan.

Section 152(a)(1)(B)(iii) of the HEA specifies that the information regarding private education loans must be presented in a manner that is distinct from information regarding Title IV, HEA program loans.

Covered institutions or institution-affiliated organizations must provide these disclosures whether or not they have a preferred lender arrangement with the lender.

Section 155(a) of the HEA, as amended by section 1021(b) of the HEOA, requires the Department, in consultation with the Board of Governors of the Federal Reserve System, to develop a self-certification form for private education loans. The form must be provided to an applicant for a private education loan by an institution of higher education at the request of the applicant. In addition, the institution of higher education is required to provide to the applicant the information needed to complete the form, if the institution of higher education has that information. Under section 155(a)(4) of the HEA, information required to complete the self-certification form includes the applicant's cost of attendance at the institution, the applicant's expected family contribution, and the applicant's estimated financial assistance.

Current Regulations: None.

Proposed Regulations: Proposed § 601.11(a) would provide that a covered institution, or an institution-affiliated organization of a covered institution, that provides information regarding a private education loan from a lender to a prospective borrower must provide private education loan disclosures to the prospective borrower. These disclosures would need to be provided regardless of whether the covered institution or institution-affiliated organization participates in a preferred lender arrangement.

The private education loan disclosures required under proposed § 601.11(b)(1) and (b)(2) would need to provide the prospective borrower with the information required under section 128(e)(1) of the TILA; and would need

to inform the prospective borrower that he or she may qualify for loans or other assistance under title IV of the HEA; and that the terms and conditions of Title IV, HEA program loans may be more favorable than the provisions of private education loans.

Under proposed § 601.11(c), the covered institution or institution-affiliated organization would need to ensure that information regarding private education loans is presented in such a manner as to be distinct from information regarding Title IV, HEA program loans.

Proposed § 601.11(d) would require that, upon an enrolled or admitted student applicant's request for a private education loan self-certification form, an institution must provide to the applicant, in written or electronic form, the self-certification form for private education loans developed by the Secretary to satisfy the requirements of section 128(e)(3) of the TILA. The institution would also be required to provide the information necessary to complete the form, if the institution possesses that information.

Reasons: The Department would include proposed § 601.11 in new part 601 to implement the HEOA provisions relating to private education loan disclosures and the self-certification form the Department is required to develop pursuant to section 155(a) of the HEA.

Non-Federal negotiators questioned the value of requiring a school to provide an applicant with the private education loan self-certification form in cases where the applicant is applying for a private education loan made by the covered institution. Non-Federal negotiators asserted that in these cases the covered institution would simply be providing the private education loan self-certification form to itself.

In the Department's view, the purpose of the private education loan self-certification form is to provide disclosure information to the borrower, not to the lender. In cases where the covered institution is also the lender, the Department believes that the borrower should still receive and complete the private education loan self-certification form before obtaining the institutional loan.

In addition, the TILA requires private education lenders to obtain the completed private education loan self-certification form from a borrower before it makes a private education loan. In that regard, the Department advised the non-Federal negotiators that submitting public comment on the Federal Reserve's TILA proposed regulations may be an appropriate forum for addressing this issue.

Further discussion of the private education loan self-certification form is provided under the program participation agreement section of this preamble.

Use of Institution and Lender Name (§ 601.12)

Statute: Section 152(a)(2) of the HEA, added by section 120 of the HEOA, prohibits a covered institution or an institution-affiliated organization from allowing a lender with which it has a preferred lender arrangement to use the name, emblem, mascot, logo, or other identifiable symbol of the covered institution or institution-affiliated organization to market private education loans to students.

Section 152(a)(3) of the HEA, added by section 120 of the HEOA, requires a covered institution or an institution-affiliated organization to ensure that the name of a lender with which it has a preferred lender arrangement is displayed in all information and documentation related to private education loans offered by the lender.

Current Regulations: None.

Proposed Regulations: Under proposed § 601.12(a), a covered institution, or an institution-affiliated organization of a covered institution, that participates in a preferred lender arrangement regarding private education loans would be prohibited from agreeing to the lender's use of the name, emblem, mascot, or logo of the institution or organization, or other words, pictures, or symbols readily identified with the institution or organization, in the marketing of private education loans to students attending the institution in any way that implies that the loan is offered or made by the institution or organization instead of the lender.

Proposed § 601.12(b) also would require covered institutions or institution-affiliated organizations that participate in preferred lender arrangements regarding private education loans to ensure that the name of the lender is displayed in all information and documentation related to the private education loans.

Reasons: We propose to include proposed § 601.12 in new part 601 to implement the provisions relating to the use of institution and lender name in section 152 of the HEA.

During the negotiated rulemaking process, non-Federal negotiators expressed concern about the use of the term ''ensure'' in proposed § 601.12(b). The non-Federal negotiators argued that covered institutions have no direct control over lenders with which they have preferred lender arrangements, particularly if there is no formal agreement between the covered institution and the lender. Therefore, argued the non-Federal negotiators, a covered institution cannot ensure that the lender displays its name in all information and documentation relating to the lender's private education loans.

The Department understands that a covered institution cannot control a lender with which it has a preferred lender arrangement. However, we believe that a covered institution does have leverage over such lenders, and can use that leverage to require the lender to display the lender's own name on information or documentation about private education loans provided by the lender. If a lender refuses to display its own name on private education loan marketing materials that the lender provides to students at the covered institution, and the covered institution cannot convince the lender to do so, the covered institution always has the option to end the preferred lender arrangement with the lender and remove the lender from its preferred lender list.

Non-Federal negotiators asked whether a credit union that shares its name with the name of a covered institution would be prohibited under proposed § 601.12(a) from using its own name in its marketing materials regarding private education loans. The Department responded that if the name of the covered institution is part of the name of the credit union, the prohibition against allowing the lender to use the institution's name would not apply. In these cases, the credit union is using its own name, not the institution's name.

This interpretation is consistent with the Manager's Report for the Higher Education Opportunity Act, which states that ''the Conferees understand that some credit unions share the names of the institutions of higher education whose communities they serve. Nothing in [section 140 of the TILA] is intended to prohibit a credit union whose name includes the name of a covered educational institution from using its own name in marketing its private education loans'' (Joint Explanatory Statement of the Committee of Conference, p. 198).

Subpart C—Responsibilities of Covered Institutions and Institution-Affiliated Organizations

Annual Report (§ 601.20)

Statute: Section 153(c)(2)(A)(i) of the HEA, added by section 120 of the HEOA, requires a covered institution

and an institution-affiliated organization that has a preferred lender arrangement to submit to the Department of Education an annual report that provides the information described in section 153(c)(1)(A)(i) and (ii) of the HEA. This is the same information required under section 152(a)(1)(A)(i) and (a)(1)(A)(ii) of the HEA, and discussed earlier in the preamble discussion for proposed subpart B of part 601.

Section 153(c)(2)(A)(ii) of the HEA, added by section 120 of the HEOA, requires that the annual report include a detailed explanation of why the covered institution or institution-affiliated organization entered into a preferred lender arrangement with each lender. The explanation must explain how the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial to students attending the covered institution.

Section 153(c)(2)(B) of the HEA requires the covered institution and institution-affiliated organization to ensure that the annual report is made available to the public, and is provided to students attending or planning to attend the covered institution.

Current Regulations: None.

Proposed Regulations: Proposed § 601.20(a) would require a covered institution and an institution-affiliated organization that participates in a preferred lender arrangement to prepare and submit to the Secretary an annual report, by a date determined by the Secretary. The annual report would include, for each lender that participates in a preferred lender arrangement with the covered institution or organization, the information described in proposed § 601.10(c); and a detailed explanation of why the covered institution or institution-affiliated organization participates in a preferred lender arrangement with the lender. Under the proposed regulations, this explanation would need to include an explanation of why the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial for students attending the institution, or the families of such students, as applicable.

Proposed § 601.20(b) would require a covered institution or institution-affiliated organization to ensure that the annual report is made available to the public and provided to students attending or planning to attend the covered institution and the families of such students.

Reasons: Proposed § 601.20 would implement the annual report requirements governing covered institutions and institution-affiliated organizations that have a preferred lender arrangement in section 153(c) of the HEA.

There was significant discussion among the negotiators regarding the timing and content of the annual report required under 153(c)(2) of the HEA. Non-Federal negotiators believed it would be reasonable for the annual report to be due by July 1st each year. However, negotiators decided that determining the due date for the annual report is an operational issue, not a regulatory issue. For this reason, the Department does not propose to specify a due date for the annual report in the regulations.

The non-Federal negotiators also pointed out that in the course of a year, lenders on a preferred lender list can change. Some lenders might drop off the list, or new lenders might be added. The negotiators agreed that the annual report would have most utility for the Department and for potential borrowers if it identified the lenders on the covered institution's preferred lender list at the time the report is submitted to the Department, providing a snapshot of the lenders on its preferred lender list at that time. The Department agreed that covered institutions would not be required to update the annual report during the year as lenders are added or dropped from the preferred lender list. The Department believed that a yearly snapshot would provide it with adequate information to monitor the preferred lender activities of covered institutions.

Code of Conduct (§ 601.21)

Statute: Section 153(c)(3)(A) of the HEA, added by Section 120 of the HEOA, requires a covered institution and an institution-affiliated organization that has a preferred lender arrangement to comply with the code of conduct requirements in section 487(a)(25)(A) through (C) of the HEA.

Section 153(c)(3)(B) of the HEA requires an institution-affiliated organization of a covered institution to comply with the code of conduct developed and published by the covered institution; publish the code of conduct prominently on its Web site, if it has one; and administer and enforce the code of conduct. At a minimum, the institution-affiliated organization must require that all of the organization's agents with responsibilities with respect to education loans are annually informed of the provisions of the code of conduct.

In accordance with section 487(e)(1) through (e)(7) of the HEA, as amended by section 493(c) of the HEOA, the code of conduct must ban revenue-sharing arrangements; gifts; consulting or other contracting arrangements; directing borrowers to particular lenders or delaying loan certification; offers of funds for private loans, including opportunity pool loans; staffing assistance; and advisory board compensation, as these terms are defined and further explained in section 487(e) of the HEA.

Current Regulations: None.

Proposed Regulations: A covered institution that participates in a preferred lender arrangement would be required to comply with the code of conduct requirements described in proposed § 601.21. Under this section, the covered institution would be required to develop a code of conduct with respect to FFEL Program loans and private education loans with which the institution's agents must comply.

Proposed § 601.21(a)(2)(i) would require the code of conduct to prohibit a conflict of interest with the responsibilities of an agent of an institution with respect to FFEL Program loans and private education loans and, at a minimum, include the provisions specified in the following paragraphs. Under proposed § 601.21(a)(2)(ii) and (iii), the institution would be required to publish the code of conduct prominently on the institution's Web site and administer and enforce the code by, at a minimum, requiring that all of the institution's agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of the code of conduct.

Proposed § 601.21(b)(1) and (b)(2) would require any institution-affiliated organization of a covered institution that participates in a preferred lender arrangement to comply with the code of conduct developed and published by the covered institution and, if the institution-affiliated organization has a Web site, publish the code of conduct prominently on the Web site.

Under proposed § 601.21(b)(3), the institution-affiliated organization would be required to administer and enforce the code of conduct by, at a minimum, requiring that all of the institution-affiliated organization's agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of the code of conduct.

Proposed § 601.21(c) would prescribe the minimum requirements of a covered institution's code of conduct. Under this section, an institution's code of conduct would be required to prohibit—

- Revenue-sharing arrangements with any lender;
- Soliciting or accepting gifts from a lender, guarantor, or servicer;
- Accepting any fee, payment, or other financial benefit as compensation for any type of consulting or any contractual relationship with a lender;
- Assigning a first-time borrower's loan to a particular lender or refusing to certify, or delaying certification of, any loan based on a borrower's selection of a particular lender;
- Requesting offers of funds for private education loans, including opportunity pool loans, from a lender in exchange for providing the lender with a specified number or loan volume of FFEL Program loans or private education loans or a preferred lender arrangement;
- Requesting or accepting staffing assistance from a lender; and
- Receipt of compensation for serving on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors.

Proposed § 601.21(c)(6) would incorporate language from section 487(e)(6) of the HEA and set forth exceptions to the ban on staffing assistance, such as staffing assistance related to professional development or training; providing educational counseling materials, or short-term, nonrecurring staffing assistance during disasters or emergencies.

In addition, the proposed regulations would include the statutory definitions provided for the terms *revenue-sharing arrangement, gift,* and *opportunity pool loan.*

Proposed § 601.21(c)(1) would incorporate the definition of the term *revenue-sharing arrangement* from section 487(e)(1)(B)of the HEA: An arrangement between a covered institution and FFEL lender or a private education loan lender in which the lender pays a fee or provides material benefits in exchange for the covered institution recommending the lender or its loan products to students attending the institution or to the families of such students.

Proposed § 601.21(c)(2)(ii) would incorporate the definition of the term *gift* from section 487(e)(2)(B)of the HEA: As any gratuity, favor, discount, entertainment, hospitality, loan or other item with a monetary value of more than a de minimus amount, including gifts of services, transportation, lodging or meals. Proposed § 601.21(c)(2)(iii)(A) through (F) would identify the items of monetary value that are excluded from the definition of *gift.*

Proposed § 601.21(c)(5)(ii) would incorporate the definition of the term *opportunity pool loan* from section 487(e)(5)(B)of the HEA: As a private education loan made by a lender to a student, or a family member of a student, attending the institution that involves a payment, directly or indirectly, by the institution of points, premiums, additional interest, or financial support to the lender for the purpose of the lender extending credit to the student or the student's family.

Reasons: Proposed § 601.21(c) would be included in new part 601 to implement the code of conduct provisions added to section 487(e) of the HEA.

Numerous questions and concerns relating to the code of conduct were discussed during the negotiated rulemaking sessions. For example, non-Federal negotiators asked if the prohibition against revenue-sharing arrangements would apply to a servicer collecting student loans on behalf a school. The Department responded that this is a standard service provided by loan servicers, and that it does not view this service as a revenue-sharing arrangement that is prohibited under section 487(e)(1) of the HEA.

Non-Federal negotiators pointed out that, in some cases, if a borrower selects a lender that the covered institution does not normally do business with, there could be delays in processing the borrower's student loans due to compatibility issues with the computer programs used by the lender and covered institution. These delays would not be due to the school deliberately attempting to impede the borrower's choice of lender, but simply due to processing complications that may occur when a school is working with an unfamiliar lender. The Department agrees that processing delays may occur if a borrower selects a lender with which the school is unaccustomed to doing business. We expect the covered institution to do everything it can to minimize such delays, but it is the Department's view that reasonable delays in situations such as these would not be considered to be a violation of the code of conduct. That said, the Department also points out that the requirement in the code of conduct refers to certifying a loan, not other aspects of processing a loan. Because certification of a loan is an internal school process, we do not believe that choice of a lender would normally affect a school's ability to certify a loan in a timely manner.

Non-Federal negotiators asked about proposed § 601.21(c)(4)(ii), which states that a borrower may choose a particular lender or guaranty agency. The non-Federal negotiators asked about the reference to guaranty agencies, pointing out that the guaranty agency that guarantees a borrower's loan depends on the borrower's choice of lender. They argued that this provision does not make sense because a borrower does not have the ability to select from among different guaranty agencies, except to the extent that a borrower does have the ability to select from among different lenders. The Department clarified that guaranty agencies are included in this proposed provision because they can serve as lenders-of-last-resort. When a borrower is using a guaranty agency as a lender-of-last-resort, the borrower can choose among different guaranty agencies.

Non-Federal negotiators asked about proposed § 601.21(c)(2)(iii)(C), which would exclude from the definition of the term *gift,* favorable terms, conditions, and borrower benefits on a loan provided to students employed at a covered institution, if the terms, conditions, or benefits are comparable to those provided to all students at the institution. The non-Federal negotiators asked the Department to clarify whether the reference to ''all students'' at the institution meant the general student population, or if it meant other similarly situated students. The intent of proposed § 601.21(c)(2)(iii)(C) is to allow student employees of a covered institution's financial aid office to receive favorable terms, conditions, or benefits on a student loan, as long as those favorable terms, conditions, and benefits are comparable to the benefits other students at the school receive. In recognition of the fact that a lender may offer favorable terms, conditions and borrower benefits to certain types of students at an institution—such as students at a particular grade level or in a particular program of study—we believe that it would be acceptable for a school to use benefits offered to similarly situated students as a benchmark, rather than benefits available to all students at the institution.

Non-Federal negotiators asked if recourse loans qualify as *opportunity pool loans,* as defined in proposed § 0601.21(c)(5)(ii). Recourse loan arrangements are arrangements between schools and lenders, in which the school provides funds to a lender to offset the risk of the lender providing loans to students at the school who have a high risk of default. As discussed earlier in this preamble, an *opportunity pool loan* is defined in section 487(e)(5)(B) of the HEA as a private education loan that involves a payment,

either directly or indirectly, from an institution to the lender for the purpose of the lender offering a loan to a borrower at the school. Because the Department sees no real distinction between the meaning of the terms *opportunity pool loan* and *recourse loan,* we believe that recourse loans would be covered by the requirements in proposed § 601.21(c)(5)(i). However, the Department notes that proposed § 601.21(c)(5)(i) would not prohibit opportunity pool loans or recourse loans in all cases. It would only prohibit such loans if the funds for the opportunity pool loan or recourse loan are provided in exchange for concessions or promises regarding providing the lender with a specified number or loan volume of FFEL or private education loans, or a preferred lender arrangement for FFEL or private education loans.

Consistent with section 487(e)(7) of the HEA, proposed § 601.21(c)(7) would prohibit compensation from a lender, guarantor, or group of lenders or guarantors for service on an advisory board established by such group. This provision would, however, allow for reimbursement for reasonable expenses incurred for serving on such an advisory board. The non-Federal negotiators asked that we clarify the meaning of the term *reasonable expenses* for this purpose. We agreed that such clarification would be useful, and added a cross-reference to § 668.16(d)(2)(ii) in proposed § 601.21(c)(7). For further discussion of this topic, see the preamble discussion under ''Standards of administrative capability.''

Non-Federal negotiators asked if the code of conduct covers employees of a covered institution who work on the back end of the student loan process, such as employees who work on default prevention with lenders. In general, it is the view of the Department that the code of conduct regulations apply to agents of a covered institution who are employed in the financial aid office of a covered institution, or who otherwise have responsibilities with respect to FFEL program loans or private education loans. Nothing in the HEA, as amended by the HEOA or these proposed regulations would exempt agents of a covered institution who are involved in the back end of the student loan process. We believe that employees working at this stage of the process have responsibilities with regard to student loans and, therefore, are covered by the code of conduct.

Non-Federal negotiators noted that the term *agent* is defined as an officer or an employee in section 151(1) of the HEA (and proposed § 601.2(b)) and asked whether there is a distinction between the meaning of agents of a covered institution and officers or employees of a covered institution.

The Department agreed that, when coupled with the terms ''officer'' and ''employee'', the term *agent* is redundant. The Department also agreed that use of all three terms in the code of conduct section of the regulations could potentially be confusing, given that use of all three terms implies that the term *agent* is intended to include individuals who are not officers or employees of a covered institution, but have some other connection to the covered institution. To avoid this confusion, the Department agreed to remove the terms ''officer'' and ''employee'' from those sections of the code of conduct regulations where the term agent is sufficient.

Further discussion of the code of conduct requirements is provided in the program participation agreement section of this preamble.

Duties of Institutions Participating in the William D. Ford Direct Loan Program (§ 601.30)

Statute: Section 154(a) of the HEA, as amended by section 120 of the HEOA, requires a school participating in the William D. Ford Direct Loan Program (Direct Loan Program) to provide the information on a Direct Loan model disclosure form developed by the Department to students attending or planning to attend the school, or to their families. If the Direct Loan school provides information regarding a private education loan to a prospective borrower, it must provide the information from the Direct Loan model disclosure form at the same time.

The Direct Loan school may use the Direct Loan model disclosure form for this purpose, or may use a comparable form designed by the school.

Current Regulations: None.

Proposed Regulations: Under proposed § 601.30(a), a covered institution participating in the Direct Loan Program would be required to make the information identified in a model disclosure form developed by the Secretary available to students attending or planning to attend the institution, or the families of such students. If the institution provides information regarding a private education loan to a prospective borrower, the institution would concurrently provide the borrower with the information identified on the model disclosure form. Proposed § 601.30(b) would allow a covered institution to use a comparable form designed by the institution to provide this information, instead of the model disclosure form.

Reasons: We would include proposed § 601.30(b) in new part 601 to implement the requirements in section 154(a) of the HEA.

Subpart E—Lender Responsibilities

Statute: Section 152 of the HEA requires lenders to disclose certain information to borrowers of a FFEL or Federal Direct Loan. These disclosures include the information described in section 433(a) and (c) of the HEA. In addition, for each lender's private education loans, the lender must comply with the disclosure requirements of section 128(e) of the TILA.

Section 152 of the HEA also requires lenders to report certain information about its FFEL Program preferred lender arrangements to the Secretary. This report must include information about expenses paid or provided by the lender to any agent of a covered institution employed in the financial aid office of that institution or who otherwise has responsibility with respect to education loan or other financial aid of the institution for service by that employee on an advisory board, commission or group established by a lender or group of lenders. The lender must also report this information for expenses paid or provided to any agent of an institution-affiliated organization involved in recommending, promoting or endorsing education loans.

Section 153 of the HEA also requires FFEL lenders that participate in one or more preferred lender arrangements, to certify annually to the Secretary, that they are in compliance with the requirements of the HEA. If the lender submits an audit under section 428(b)(1)(U)(iii) of the HEA, the auditor may provide this certification as part of that audit. If the lender is not required to submit an audit, it must provide the certification separately.

Section 153 of the HEA requires lenders to provide an annual report to covered institutions or a covered institution's affiliated organization and to the Secretary, disclosing certain information about its loans. The Secretary, in consultation with the Federal Reserve will determine the information to be disclosed. The information will have to address each type of FFEL loan the lender plans to offer pursuant to the preferred lender arrangement to the students or families of students attending that institution for the next award year.

Current Regulations: None.

Proposed Regulations: Proposed § 601.40(a) would require FFEL lenders to provide FFEL borrowers the disclosures required under current

§ 682.205(a) and (b). Proposed § 601.40(a) would require that a lender offering private education loans comply with the disclosures required under section 128(e) of TILA for each type of private loan.

Proposed § 601.40(b) would set forth the information the lenders will have to provide to the Secretary on an annual basis regarding any reasonable expenses paid or provided to any agent of a covered institution who is employed in the financial aid office or has responsibilities with respect to education loans or other financial aid of the institution for service by the employee on an advisory board, commission or group established by a lender or a group of lenders. Under proposed § 601.40(b), lenders would be required to report this information for expenses paid or provided to any agent of an institution-affiliated organization involved in recommending, promoting or endorsing education loans. Lenders would be required to report the amount of the expenses paid and the specific instances for which it was paid; the names of the agent to whom expenses were paid; and the date and description of each activity for which expenses were paid.

Proposed § 601.40(c) would also require the lender to submit a certification of compliance to the Secretary.

Proposed § 601.40(c) would require any FFEL lender participating in one or more preferred lender arrangements to annually certify to the Secretary its compliance with the HEA. Under this proposed provision, lenders required to file an audit under § 682.305(c) would need to include the certification as part of the audit and lenders that are not required to submit an audit would be required to provide the certification separately.

Proposed § 601.40(d) would require FFEL lenders with a preferred lender arrangement with a covered institution or an institution-affiliated organization to annually provide to the institution, institution-affiliated organization, and the Secretary information regarding the FFEL loans the lender will provide to students and families pursuant to the preferred lender arrangement for the next award year. The information that would be provided will be prescribed by the Secretary, after consultation with the Federal Reserve, pursuant to section 153(a)(2)(A)(i) of the HEA.

Reasons: These regulations are provided to implement statutory requirements.

During the negotiations, some negotiators raised a question as to the lender certification requirements proposed as part of § 601.40. In particular, a negotiator asked the Department to clarify the application of the certification requirements to holders of FFEL Program loans who make private education loans. The Department explained that the certification requirements apply to any lender who holds FFEL loans and has a preferred lender arrangement that relates to FFEL loans or to private education loans. A lender who holds FFEL Program loans and has a preferred lender arrangement relating to private education loans has to provide the required certifications even if the lender is not actively making new FFEL loans and does not have a preferred lender arrangement for FFEL loans.

Under section 152(b)(2) of the HEA, a FFEL loan holder that has a preferred lender arrangement for FFEL or private education loans has to annually certify that it is in compliance with the HEA, whether or not the lender is actively making FFEL Program loans. A lender that is required to have an independent financial and compliance audit can provide the certification through that process. The HEA requires a lender to provide two specific certifications about its private education loans: (1) A certification that it is in compliance with the disclosure requirements under section 128(e) of the Truth in Lending Act (reflected in section 152(b)(1)(A)(ii) of the HEA); and (2) that it has provided the required annual report to the Secretary on any reasonable expenses paid or provided to any agent of a covered institution who is employed in the institution's financial aid office or who otherwise has responsibilities with respect to education loans or other financial aid of the institution and any similar expenses paid or provided to any agent of an institution-affiliated organization who is involved in the practice of recommending, promoting or endorsing education loans (see section 152(b)(1)(B) of the HEA). The specific requirements for these certifications will be addressed in audit guides issued by the Department.

Program Participation Agreement (§ 668.14)

Statute: Section 493(e) of the HEOA amended section 487(a)(25) of the HEA by adding to the program participation agreement (PPA) requirements a requirement that an institution participating in a Title IV loan program develop, publish, administer, and enforce a code of conduct that prohibits a conflict of interest with the responsibilities of an officer, employee or agent of the institution with respect to any Title IV loan and that contains, at a minimum, the provisions described in section 487(e) of the HEA. Under section 487(a)(25)(B) and (C), the institution must publish the code of conduct prominently on its Web site and annually inform its officers, employees, and agents with responsibilities for loans made, insured, or guaranteed under Title IV loan programs of the provisions of the code of conduct.

Current Regulations: The Department's current regulations governing PPA requirements appear in § 668.14.

Proposed Regulations: Consistent with section 487(a)(25) of the HEA, we propose to amend § 668.14 (Program participation agreement) by adding a new paragraph (b)(27) that would reflect the requirement that institutions agree, as part of their PPA, to develop, publish, administer, and enforce a code of conduct with respect to loans made, insured, or guaranteed under Title IV loan programs.

Reason: We propose to add paragraph (b)(27) to § 668.14 in order to implement the new statutory requirement in section 487(a)(25) of the HEA.

Statute: Section 493(a)(1)(A) of the HEOA amended section 487(a)(28)(A) of the HEA by adding to the PPA requirements a requirement that an institution will, at the request of an applicant for a private education loan, provide the applicant with the self-certification form required under section 128(e)(3) of the TILA (15 U.S.C. 1638(e)(3)). This section also requires the institution to provide the applicant with the specific information needed to complete the form, to the extent that the institution possesses the information.

Section 487(a)(28)(B) of the HEA states that the term ''private education loan'' has the meaning given to the term in section 140(a)(7) of the TILA. That statute defines ''private education loan'' as a loan provided by a private educational lender that is not made, insured, or guaranteed under Title IV of the HEA and is issued expressly for postsecondary educational expenses to a borrower. It does not include an extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan secured by real property or a dwelling.

Under section 155(a)(4) of the HEA, the information to be supplied to the applicant by the institution (if available) includes cost of attendance and resource information regarding the applicant.

Current Regulations: The Department's current regulations governing PPA requirements appear in § 668.14.

Proposed Regulations: Proposed § 668.14(b)(29) would incorporate the requirement for an institution participating in the Title IV, HEA programs to agree as part of its PPA to provide, upon request, an enrolled or admitted applicant for a private education loan with the self-certification form and the information to complete it, to the extent the institution possesses that information.

In addition, proposed § 668.14(b)(29)(ii) would require the institution, at the request of the applicant for a private education loan, to discuss with the applicant the Federal, State, and institutional student aid that may be available.

Reasons: This section implements the new statutory requirement in section 487(a)(25) of the HEA that an institution provide a private education loan applicant with a self-certification form, and the information required to complete the form to the extent the institution possesses such information, in order to participate in the Title IV, HEA programs.

The non-Federal negotiators engaged in considerable discussion about the information items to be supplied to the applicant for a private education loan. Negotiators were concerned about several aspects, including how an institution should provide the information to an applicant, how an applicant might use the information provided by the institution, and how the institution could ensure that an applicant would complete the self-certification form accurately using the information the institution supplies. In addition, non-Federal negotiators were concerned about whether the self-certification information would need to be updated if the institution received additional information after initially providing the self-certification information to the applicant.

The Department explained during negotiations that it is bound by the specific items and processes required in the HEA. We believe that the intent of the self-certification form is to prevent over-borrowing and provide for a more educated private education loan consumer by ensuring the provision of disclosures, through the institution, regarding the availability of Federal student aid, information on the cost of attendance, expected family contribution and the applicant's estimated financial assistance so that the applicant will be aware of the amount that must be borrowed to cover any gaps before consummating a private education loan. New section 487(a)(28) of the HEA requires that the institution provide the form and the required information to the applicant. As we discussed during negotiations, an institution may post the self-certification form on its Web site for the applicant to download or it may provide the self-certification form directly through its financial aid or other designated office. While the Department believes that contact between the institution and the applicant is an essential component of this process, once the form and information has been disseminated to the applicant, nothing in the HEA or the proposed regulations require institutions to track the status of private education loans. A non-Federal negotiator asked whether updates to the information provided to the applicant would be needed if the applicant subsequently filed or updated an application. The Department responded that when an institution is asked for the self-certification form and the required information, it should supply the form and information available to the institution at that time. There is no requirement to update it.

In response to concerns about the potential for fraudulent use of the self-certification form, the negotiating committee agreed to specify in the proposed regulations that the required self-certification form and information that must be provided to an applicant for a private education loan must be provided only to an applicant who is ''enrolled or admitted'' to the institution rather than to any student who requests the information. The non-Federal negotiators believed that this modification would minimize the possibility that a student who is not enrolled or admitted to the institution may request the form and the requisite information—which, if the student has not completed a Free Application for Federal Student Aid (FAFSA), may be limited to the cost of attendance only—and receive a private education loan for which the student is not eligible.

The committee also agreed to add a provision to the proposed regulations requiring an institution to discuss the availability of Federal, State, and institutional aid with the applicant, at the request of the applicant. The addition of this requirement (reflected in proposed § 668.14(b)(29)(ii)) addressed the concerns of several non-Federal negotiators who wanted to assure that an applicant for a private education loan could receive as much information as possible regarding available aid options.

The Department agrees that it is important to call attention to the availability of other more favorable types of aid and believes that the addition of the requirement in § 668.14(b)(29)(ii) will support this purpose. A request by the applicant for a private education loan will initiate the discussion about other aid options, permit the financial aid administrator to counsel the applicant about such options, and offer the applicant the opportunity to ask any questions he or she may have about the aid options or how to apply for the aid.

Statute: The HEOA amended section 487(h) of the HEA by adding a new paragraph (27) to require any institution that enters into a preferred lender arrangement to agree, as a condition of program participation under the PPA, to compile, maintain, and make available to students and their families a list of the specific lenders for loans made under a Title IV program and for private education loans the institution recommends or promotes in accordance with its lender arrangement. New section 487(h)(27) of the HEA also requires that the institution must, at least annually, compile and make the list available in print or other medium.

Current Regulations: While current § 668.14(b) does not include any information related to preferred lender arrangements, current § 682.212(h) contains, consistent with our authority under sections 432(m)(1)(B)(ii) and 479A(c) of the HEA, the Department's restrictions on the development and content of a preferred lender list.

Proposed Regulations: Proposed § 668.14(b)(28) would add the requirements reflected in section 487(h)(27) of the HEA to the Department's regulations governing the PPA requirements. In conjunction with this proposed addition, we also propose to amend § 682.212(h) to remove information about the preferred lender list restrictions and instead provide a cross-reference to the requirements in proposed § 602.10. We propose to include the preferred lender list requirements in new § 602.10, rather than part 682, because, under section 152(a)(1)(A) of the HEA, as amended by the HEOA, all covered institutions (as defined in section 151(2) of the HEA) that have preferred lender arrangements must comply with these requirements. Part 682 only covers the FFEL program.

Reasons: Proposed § 668.14(b)(28) would implement the new statutory requirements any institution that has established a preferred lender arrangement must meet in order to participate in the Title IV, HEA programs. Please refer to the preamble discussions regarding proposed §§ 601.2 and 601.10 for more information on the definition of a *preferred lender arrangement* and the requirements

associated with such an arrangement and preferred lender lists.

Standards of Administrative Capability (§ 668.16)

Statute: The HEOA amended section 485(m) of the HEA by adding a requirement that an institution participating in any Title IV program must report annually to the Secretary, any reasonable reimbursements paid or provided by a private educational lender or group of such lenders for service on an advisory board, commission, or group established by such lenders.

Under section 485(m) of the HEA, the reports must include, among other items, the amount for each specific instance of reasonable expenses paid or provided and a brief description of the activity for which the expenses were paid or provided.

Current Regulations: None.

Proposed Regulations: We propose to amend § 668.16 (Standards of administrative capability) to incorporate the requirement from section 485(m) of the HEA that institutions participating in the Title IV, HEA Program report annually to the Secretary any reasonable expenses paid or provided to any employee of the financial aid office, or any employee who otherwise has responsibilities with respect to education loans or other financial aid at the institution, for service on an advisory board, commission, or group established by a private educational lender or group of lenders. Consistent with section 485(m)(1)(A) through (D) of the HEA, the information to be reported pursuant to proposed § 668.16(d)(2)(i) would consist of: (1) The amount for each specific instance of reasonable expenses paid or provided; (2) The name of the individual to whom the expenses were paid or provided; (3) The dates of the activity for which the expenses were paid or provided; and (4) A brief description of the activity for which the expenses were paid or provided.

Under proposed § 668.16(d)(2)(ii), expenses would be considered ''reasonable'' if the expenses meet the standards of and are paid in accordance with an applicable State government reimbursement policy or, if no applicable State policy exists, in accordance with applicable Federal cost principles. In addition, for purposes of determining whether expenses are ''reasonable'' under this provision, the applicable policy would need to be consistently applied to an institution's employees being reimbursed.

Reasons: Proposed § 668.16(d)(2)(i) would implement the changes made to section 485(m) of the HEA by the HEOA. We propose to include the requirements from section 485(m) of the HEA in current § 668.16, because this section identifies standards of administrative capability applicable to all institutions that participate in any Title IV program and includes similar requirements not specified in the PPA.

Proposed § 668.16(d)(2)(ii) would clarify how to determine whether expenses are ''reasonable expenses'' under section 485(m) of the HEA and proposed § 668.16(d)(2)(i). Many negotiators asked for clarification about what constitutes a ''reasonable'' expense. While the Department declined to define the term ''reasonable,'' the Department developed language loosely modeled after the language included in § 682.418(b)(10). The language reflected in proposed § 668.16(d)(2)(ii) describes reasonable expenses as those paid in accordance with an applicable State government reimbursement policy or with applicable Federal cost principles. Federal cost principles would include those contained in the Office of Management and Budget (OMB) circulars A–21 and A–122.

We propose to tie ''reasonable expenses'' to State policies or the applicable Federal cost principles because we envision that a public institution generally would use the State government reimbursement policy of the State in which the institution is located and that a private institution generally would use the applicable Federal cost principles contained in either OMB Circular A–21 or Circular A–122.

In addition, we understand that there may be circumstances under which a private institution receives funding from a State and may therefore use the State government reimbursement policy. In such cases, private schools may choose whether to use a State policy or the Federal cost principles. Proposed § 668.16(d)(2)(ii) would not specify which policy or principles must be used, but rather would provide institutions with some flexibility as long as the policy or principle is consistently applied to an institution's employees.

The non-Federal negotiators also had concerns regarding how an institution is to determine the correct amount to report for each expense. The Department believes that an institution can rely on information provided by a third party (in this case, the lender or lenders) in reporting the amount of reasonable expenses.

Lastly, non-Federal negotiators requested clarification on whether an annual report must be filed with the Secretary if no employee has received reimbursements. After the required form is developed, the Department will provide clarification on this issue through the **Federal Register** notice that announces and describes the reporting process.

Financial Assistance Information (§ 668.42)

Statute: The HEOA amended section 485(a)(1)(M) of the HEA by adding a requirement that institutions that participate in the Title IV programs describe—for prospective and enrolled students—the terms and conditions of the loans students receive under the FFEL, Direct Loan and Perkins Loan programs.

The HEOA removed from section 485(a)(1)(M) of the HEA the requirement that institutions provide information about the terms and conditions under which FFEL and Perkins Loans could be deferred or partially cancelled for service under the Peace Corps Act or the Domestic Volunteer Service Act.

Current Regulations: Current § 668.42(a)(1) requires that an institution provide a description of all student financial assistance programs to prospective and enrolled students.

For students receiving financial assistance, current § 668.42(c)(4) requires an institution to provide specific information about any loan received by the student as part of the aid package.

Proposed Regulations: Proposed § 668.42(a)(4) would require institutions to describe for prospective and enrolled students the terms and conditions of loans students receive under the FFEL, Direct Loan, and Perkins Loan programs in addition to a general description of the programs.

The proposed regulations also would remove the requirement, reflected in current § 668.42(c)(7), to describe the terms and conditions under which FFEL and Perkins Loans could be deferred for service under the Peace Corps Act or the Domestic Volunteer Service Act.

Reason: We propose to amend § 668.42 to incorporate the expanded information dissemination requirement for prospective and enrolled students reflected in the new statutory language and to remove the description of the Peace Corps Act and Domestic Volunteer Service Act deferments and partial cancellations in accordance with changes made to section 485(a)(1)(M) of the HEA by the HEOA.

Cohort Default Rates

Three-Year Cohort Default Rate (§§ 668.200 Through 668.217)

Statute: The HEOA amended section 435(m) of the HEA by increasing the period used to calculate the cohort default rate from two to three years. Under the new three-year method, the cohort default rate is the percentage of borrowers who default on their FFEL or Direct Loans before the end of the second fiscal year (instead of the first fiscal year) following the fiscal year in which the borrowers entered repayment. The three-year method is effective for cohort default rates calculated for fiscal year 2009 and subsequent years. However, section 436(e)(2) of the HEA provides for a transition period during which sanctions will continue to be imposed based on the two-year cohort default rates until rates based on the three-year method are calculated for three consecutive years.

Current Regulations: Current § 668.183 under subpart M of part 668 provides for a two-year cohort default rate. The two-year rate is the percentage of borrowers who default on their loans by the end of the fiscal year following the year those borrowers entered repayment.

Proposed Regulations: We propose to add a new subpart N to part 668 to provide for regulations for calculating the three-year cohort default rate. Proposed § 668.202 would describe the four steps that the Department follows to calculate and apply the three-year cohort default rate for a fiscal year. With regard to the transition period, proposed §§ 668.181 and 668.200(b) would specify that the Department will issue annually two sets of draft and official cohort default rates for fiscal years 2009, 2010, and 2011. For each of these years, an institution would receive one set of draft and official rates under proposed subpart N and another set under subpart M, and could take administrative appeals as outlined in those subparts from the two-year rates, the three-year rates, or both. For consistency with the HEOA's transition provision, proposed § 668.206(a)(1) would specify that institutions would not lose eligibility based on one three-year rate of 40 percent or higher until the Department's issuance of official three-year rates for the fiscal year 2011 cohort (i.e., in 2014).

Reasons: Proposed subpart N would include the three-year calculation as well as all of the statutory and regulatory changes relating to the three-year default rates. In most other respects, the provisions in proposed subpart N would parallel the two-year provisions in current subpart M. We believe that having two subparts for the two cohort default rates provides the best solution for dealing with the transition period during which some provisions from both subparts would apply. After the transition period, an institution would rely solely on the provisions in subpart N because the Department would no longer be calculating or issuing two-year cohort default rates.

Institutional Eligibility and Appeals (§ 668.16(m))

Statute: For three-year cohort default rates, issued beginning in fiscal year 2012 with the three-year rate for fiscal year 2009, section 435(a)(2)(B) of the HEA imposes a threshold default rate of 30 percent (an increase from the 25 percent rate applicable to the two-year default rates under the transition provision in section 436(e)(2) of the HEOA). Under section 435(a)(2)(B) of the HEA, an institution may lose its eligibility to participate in the Pell Grant, FFEL, and Direct Loan programs if its three-year default rate is equal to or greater than 30 percent for three consecutive years. However, section 435(a)(3) of the HEA allows an institution whose three-year default rate is 30 percent or more for two consecutive years to file an appeal demonstrating exceptional mitigating circumstances as described in section 435(a)(5) of the HEA (this appeal is referred to as the ''economically disadvantaged'' appeal in the regulations). The institution must file the appeal no later than 30 days after it receives a notice from the Department regarding its second successive three-year default rate that exceeds the 30 percent threshold. If the Department determines that the institution satisfies the requirements specified for the appeal, the Department will not place the institution on provisional certification based solely on its default rate.

In addition, the HEOA increased the participation rate index, as reflected in section 435(a)(8) of the HEA, from 0.0375 to 0.0625. Under this section, an institution may avoid sanctions based on three consecutive years of three-year default rates that are 30 percent or higher if its participation rate index for any of the three years is equal to or lower than 0.0625.

Current Regulations: Under current §§ 668.16(m) and 668.187, an institution is subject to loss of eligibility if its three most recent cohort default rates are 25 percent but less than 40 percent, or if its most recent cohort default rate is 40 percent or more, and it is subject to provisional certification if any of its three most recent two-year cohort default rates are 25 percent or more. The threshold for a participation rate index appeal under current § 668.195(a)(2) is 0.0375.

Proposed Regulations: Proposed § 668.16(m)(1)(ii) would apply the current rules for administrative capability based on two-year cohort default rates during the transition period. Thereafter, a school would be administratively capable if two of its three most recent three-year rates are less than 30 percent. Under proposed § 668.16(m)(2), the current rules for provisional certification based on two-year cohort default rates of 25 percent or more but less than 40 percent would continue to apply during the transition period. Thereafter, an institution whose three-year default rates are 30 percent or more, but less than 40 percent, for two years would not be provisionally certified based solely on its default rates under the following circumstances:

(1) The institution files timely a request for adjustment or appeal from the second such rate under proposed §§ 668.209 (Uncorrected data adjustments), 668.210 (New data adjustments), or 668.212 (Loan servicing appeals) and the request or appeal is pending or succeeds in reducing the institution's three-year rate below 30 percent.

(2) The institution files timely an appeal under proposed § 668.213 (Economically disadvantaged appeals) from the second such rate and the appeal is pending or successful. Proposed § 668.213 provides that the two rates of 30 percent or more must be successive to permit the appeal.

(3) The institution files a timely participation rate index appeal under § 668.214 and the appeal is pending or successful.

(4) The institution had 30 or fewer borrowers in the three most recent cohorts of borrowers used to calculate the institution's rates.

(5) A three-year rate that would otherwise potentially subject the institution to provisional certification was calculated as an average rate.

To avoid provisional certification by invoking exceptions (1), (2) or (3), the institution would file a request for adjustment or appeal in response to a notice from the Department that the institution's second three-year cohort default rate, or second successive three-year default rate for an economically disadvantaged appeal, is 30 percent or more, but less than 40 percent.

Under proposed § 668.214, a participation rate index appeal could be taken from a loss of eligibility, or

potential placement on provisional certification, based on three-year cohort default rates if the participation rate index for any of the excessive rates was .0625 or less. The appeal would be taken within 30 days of receiving the most recent excessive official rate.

In addition, under proposed § 668.204(c)(1)(iii), an institution would be allowed to challenge a potential placement on provisional certification because its three-year cohort default rates for two of the most recent three years would be 30 percent or more, but less than 40 percent, even though the second such rate was available only as a draft rate, if its participation rate index was equal to or less than 0.0625 for either its draft rate, or its most recent official rate equaling or exceeding 30 percent but less than 40 percent. The challenge would be taken following notice to the school of its draft rate.

Reasons: The proposed amendments to § 668.16(m) would incorporate into the Department's cohort default rate regulations the statutory requirements relating to appeals for extenuating circumstances and raising the ceiling for the participation rate index appeal.

The proposed regulations would also allow data appeals to ensure that schools are not provisionally certified based on incorrect data.

In addition, the Department proposes to exempt from provisional certification based solely on cohort default rates any school that has thirty or fewer borrowers included in its most recent three cohort default rates, or had its excessive rates calculated by the ''average rates'' method, or that qualifies for a successful participation rate challenge or appeal. The Department believes that two relatively high cohort default rates that are average rates, or that pertain to very small schools, or to schools that certify loans for only a very small portion of their enrollment, are not necessarily indicative of a lack of administrative capability necessitating provisional certification.

Default Prevention Plans (§ 668.217)

Statute: Section 435(a)(7) of the HEA requires an institution whose 3-year cohort default rate for a fiscal year is 30 percent or more to establish a default prevention task force to prepare a default prevention plan to (1) identify the factors causing the institution's rate to be 30 percent or more, (2) establish measurable objectives and steps to improve its default rate, and (3) specify actions that can be taken to improve student loan repayment, including counseling regarding loan repayment options. The institution must submit the plan to the Department, and, after reviewing the plan, the Department offers technical assistance to the institution to help improve the default rate.

In cases where the institution's default rate is 30 percent or more for two consecutive fiscal years, the institution's default prevention task force must review and revise its plan. The institution must send the revised plan to the Department, and, after reviewing the plan, we may require the institution to take actions that promote student loan repayment.

Current Regulations: The Department's current regulations do not address default prevention plans. However, current Appendix B to subpart M provides guidance to an institution on strategies it may employ or measures it may use in developing a default management plan.

Proposed Regulations: Proposed § 668.217 would incorporate the statutory requirements from section 435(a)(7) of the HEA, and would apply to all 3-year rates published, beginning with the 3-year rate to be published in 2012, that would cover borrowers who entered repayment in FY 2009. The guidance in current Appendix B to subpart M would be slightly modified and reorganized and included as Appendix A to new subpart N.

Reasons: The statute provides flexibility to an institution to develop a default prevention plan pertinent to its circumstances, and the Department does not wish to specify in regulations what the institution may or may not include in its default prevention plan. The Department already has the authority, under the statutory provisions for reviewing the plan, to require institutions to take actions on a case by case basis. For this reason, the Department elected not to specify detailed requirements for the default prevention plan.

Electronic Processes (§§ 668.186, 668.190(b), 668.191(b), 668.209, 668.210, 668.211, and 668.212)

Statute: Section 435(a)(2) of the HEA requires the Department to provide institutions that are subject to loss of eligibility based on cohort default rates with an opportunity to appeal within 30 days of their receipt of notice of the impending loss of eligibility.

Current Regulations: Under current § 668.186(c), an institution whose cohort default rate is less than 10 percent receives a copy of a loan record detail report that lists the loans included in its default rate calculation only on request. If the institution is requesting an adjustment to, or appealing, its default rate under current subpart M, and does not have a copy of its loan record detail report, current § 668.190(b)(1) (Uncorrected data adjustments), § 668.191(b) (New data adjustments), § 668.192(b)(1) (Erroneous data appeals) and § 668.193(c) (Loan servicing appeals) require the institution to request the report within 15 days after it receives notice from the Department of its official cohort default rate.

Proposed Regulations: Proposed § 668.186 would eliminate the need to request a loan record detail report, and the associated 15-day deadline, by providing that the report will be sent electronically to the institution as part of a package notifying the institution of its official cohort default rate. The institution would have five business days, from the transmission date of the package as posted on the Department's Web site, to report any problem with receiving that transmission. If the institution reports a problem within the five-day period, and the Department agrees that the institution did not cause the problem, the Department would extend the adjustment, challenge, and appeal deadlines and timeframes to account for retransmitting the package after the problem is resolved. If no problems are reported by the institution, the timeframe associated with filing or requesting the adjustment, challenge, or appeal would begin on the sixth day following the transmission date of the package that is posted on the Department's Web site. The timeframes for the adjustments, challenges, and appeals, and eliminating the fifteen-day deadlines for requesting the loan record detail reports are reflected in §§ 668.190(b), 668.191(b), 668.192(b), and 668.193(c).

The provisions in proposed § 668.186 regarding electronic delivery of the loan detail report, and the proposed elimination, from subpart M provisions regarding adjustments, challenges and appeals, of the fifteen-day deadline for requesting a copy of the report, would also be reflected in the following parallel provisions in subpart N: §§ 668.209, 668.210, 668.211, and 668.212.

Reasons: These proposed changes merely update the regulations to reflect the shift from paper to electronic processes, as established by a notice published in the **Federal Register** on February 25, 2003 (68 FR 8746).

Conforming Changes

Statute: Section 428G(a)(4) and (b)(3) of the HEA provide that beginning October 1, 2011, an institution whose cohort default rate for each of the three most recent fiscal years is less than 15

percent (1) may disburse a FFEL loan in one installment for a period of enrollment that is no longer than one semester, trimester, quarter, or 4 months; and (2) does not have to delay for 30 days disbursing a FFEL loan to a first year, first time borrower. These disbursement provisions currently apply only to an institution whose default rate is less than 10 percent. The HEOA added section 428G(a)(4) and (b)(3) to the HEA and, in doing so, substituted the 15 percent default rate for the 10 percent rate beginning on October 1, 2011.

Current regulations: The FFEL regulations in § 682.604(c)(5) and (c)(8), and the corresponding Direct Loan regulations in §§ 685.301(b)(6) and 685.303(b)(4), make the HEA's disbursement benefits available only to institutions whose cohort default rate is less than 10 percent.

Proposed regulations: We propose to amend § 668.604(c)(5) and (c)(8), 668.301(b)(6), and 685.303(b)(4) to use the new 15 percent default threshold for FFEL and Direct Loans first disbursed on or after October 1, 2011. These proposed amendments would provide the disbursement benefits to an institution whose default rate, as calculated under either subpart M or subpart N, was less than 15 percent.

Reasons: Because the Department will issue cohort default rates for fiscal years 2009, 2010, and 2011 under both subpart M and subpart N, we believe it is reasonable to allow an institution to use the default rates under either subpart for its three most recent fiscal years to qualify for the disbursement benefits. For this reason, we have drafted proposed § 668.604(c)(5) and (c)(8), 668.301(b)(6), and 685.303(b)(4) to permit institutions to use either default rate.

Statute: As amended by the HEOA, sections 487(f) and 498(k) of the HEA provide, in part, that an institution that conducts a teach-out at a site of a closed institution may have that site approved as an additional location if—

(1) The closed institution ceased operations as a result of an emergency action or other action initiated by the Department to limit, suspend, or terminate the institution's participation in the Title IV, HEA programs; and

(2) The closed institution submitted a teach-out plan that was approved by its accrediting agency.

Under section 498(k) of the HEA, as amended, an institution that conducts a teach-out under these circumstances is not responsible for any liabilities of the closed institution.

Current Regulations: Current § 668.184 describes how cohort default rates are calculated or determined for institutions that undergo a change in status. A change in status occurs whenever an institution acquires or merges with another institution, acquires a branch or location of another institution, or whenever a branch or location of an institution becomes a separate institution. For these cases, current § 668.184 describes how the default rate of the merged or acquired institution is blended with or used to determine the institution's default rate before and after the change in status.

Proposed Regulations: In a separate notice of proposed rulemaking and consistent with sections 487(f) and 498(k) of the HEA, the Department intends to propose to amend 34 CFR 600.32(d) to provide that the default rate of an institution that establishes an additional location at the site of a closed institution for which it conducted a teach-out would not be affected in any way by the closed institution's cohort default rate. In light of the statutory changes and our intended amendment to 34 CFR 600.32(d), we propose to amend §§ 668.184(a)(1) and 668.203(a)(1) to cross-reference 34 CFR 600.32(d).

Reasons: In keeping with the statutory intent to encourage an institution to conduct a teach-out of a closed institution, we view the cohort default rate of a closed institution as a non-monetary liability that could dissuade an institution from conducting the teach-out if its cohort default rate would be adversely affected by the closed institution's cohort default rate. For this reason, we believe that it is appropriate to ensure that the default rate of an institution that establishes an additional location at the site of a closed institution for which it conducted a teach-out would not be affected in any way by the closed institution's cohort default rate.

Entrance Counseling

Counseling Borrowers (§§ 682.604 and 685.304)

Statute: Section 488(g) of the HEOA modified the entrance counseling that institutions are required to provide to first-time borrowers of FFEL or Direct Loan Program loans at or prior to the first disbursement of such loans. The HEOA added these requirements to new section 485(l) of the HEA. Prior to the enactment of the HEOA, the Department's entrance counseling requirements were purely regulatory. Section 485(l) of the HEA modifies and expands on the Department's current regulatory entrance counseling requirements in §§ 682.604 and 685.304.

Under section 485(l) of the HEA, entrance counseling may be conducted during an in-person session, provided to a borrower in a separate notice that the borrower signs and returns to the institution, or provided to a borrower online or by interactive electronic means, with the borrower acknowledging receipt of the information.

The entrance counseling required under section 485(l) of the HEA must include the following information:

- To the extent practicable, the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student aid;
- An explanation of the use of the master promissory note;
- Information on how interest accrues and is capitalized during periods when the interest is not paid by the borrower or the Secretary;
- For Unsubsidized Stafford Loans or PLUS Loans made under the FFEL or Direct Loan programs, the option of the borrower to pay the interest while in school;
- The definition of half-time enrollment at the institution, during regular terms and summer school, and the consequences of not maintaining half-time enrollment;

An explanation of the importance of contacting the appropriate offices at the institution if the borrower withdraws prior to completing the program of study so the institution can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation;

- Examples of monthly repayment amounts based on a range of level of indebtedness of borrowers of Stafford Loans and, as appropriate, graduate borrowers of Stafford or PLUS loans, or the average cumulative indebtedness of other borrowers in the same programs as the borrower at the same institution;
- The obligation of the borrower to repay the full amount of the loan, regardless of whether the borrower completes the program in which the borrower is enrolled within the regular time for completion;
- The likely consequences of default on the loan, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;
- Information on the National Student Loan Data System (NSLDS) and how the borrower may access his or her records; and
- The name and contact information of the individual a borrower can contact with questions regarding the borrower's rights and responsibilities or the terms and conditions of the loan.

When providing entrance counseling, institutions are encouraged to use interactive programs to test the borrower's understanding of the terms and conditions of their student loans.

Current Regulations: For the FFEL Program, current § 682.604(f) requires a school to conduct initial counseling with each Stafford Loan borrower prior to its release of the first disbursement, unless the borrower has received a prior Stafford, SLS, or Direct Subsidized or Unsubsidized loan. Current §§ 682.604(f)(1) and 682.604(f)(5) describe what must be included in the initial counseling for Stafford Loan borrowers (*e.g.*, an explanation of the use of a Master Promissory Note; the seriousness and importance of the repayment obligation the student borrower is assuming; and the likely consequences of default, including adverse credit reports, Federal offset, and litigation).

Current § 682.604(f)(2) requires a school to ensure that initial counseling is conducted with each graduate or professional student PLUS loan borrower prior to its release of the first disbursement of the PLUS Loan, unless the student has received a prior FFEL PLUS loan or Direct PLUS loan. Current § 682.604(f)(2) also specifies what must be included in the initial counseling for graduate or professional student PLUS Loan borrowers (*e.g.*, sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained, at the same school or in the same program of study at the same school).

For both Stafford and PLUS loan borrowers, current § 682.604(f)(3) requires schools to conduct initial counseling either in person, by audiovisual presentation, or by interactive electronic means. Under current § 682.604(f)(6), if initial counseling is conducted through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes the initial counseling.

Current § 682.604(f)(4) requires a school to ensure that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions regarding those programs. As an alternative, prior to releasing the proceeds of a loan in the case of a student borrower enrolled in a correspondence program or a student borrower enrolled in a study-abroad program that the home institution approves for credit, the counseling may be provided through written materials.

Current § 682.604(f)(7) requires a school to maintain documentation substantiating the school's compliance with the entrance counseling requirements for each student borrower.

For the Direct Loan program, current § 685.304(a) requires schools to ensure that initial counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan student borrower prior to making the first disbursement of the proceeds of a loan to a student borrower unless the student borrower has received a prior Direct Subsidized, Direct Unsubsidized, FFEL Stafford, or Federal SLS Loan.

Current § 685.304(b) requires schools to conduct initial counseling with each graduate or professional student Direct PLUS Loan borrower prior to making the first disbursement of the loan unless the student borrower has received a prior Direct PLUS Loan or FFEL PLUS Loan.

The entrance counseling requirements specified in current §§ 685.304(a) and 685.304(b) of the Direct Loan Program regulations correspond to the entrance counseling requirements in the FFEL program, except that, as provided for in current § 685.304(a)(5), a Direct Loan school may adopt an alternative approach for initial counseling as part of the school's quality assurance plan.

Proposed Regulations: The Department has restructured and modified § 682.604(f) of the FFEL regulations to align the regulations with section 485(l) of the HEA. Under proposed § 682.604(f)(3), initial counseling for Stafford and graduate or professional student PLUS Loan borrowers must provide comprehensive information on the terms and conditions of the loan and on the responsibilities of the borrower with respect to the loan. This information would be provided to the borrower during an entrance counseling session conducted in person; on a separate written form provided to the borrower that the borrower signs and returns to the school; or online or by interactive electronic means, with the borrower acknowledging receipt of the information.

Proposed § 682.604(f)(4) would largely mirror current § 682.604(f)(6) by requiring a school that conducts initial counseling online or through interactive electronic means to take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes the initial counseling. Consistent with new section 485(l)(1)(B) of the HEA, proposed § 682.604(f)(4) would also provide that such reasonable steps may include completion of any interactive program that tests the borrower's understanding of the terms and conditions of the borrower's loans.

Proposed § 682.604(f)(5), which provides that a school must ensure that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer questions regarding those programs, would mirror current § 682.604(f)(4).

The content of the initial counseling, which appears in current § 682.604(f)(1) and 682.604(f)(5), would be included, with modifications aligning the regulatory language with new section 485(l) of the HEA, in proposed § 682.604(f)(6) (for Stafford Loan borrowers) and § 682.604(f)(7) (for graduate and professional student PLUS Loan borrowers). Under proposed § 682.604(f)(6), initial counseling for Stafford Loan borrowers must—

- Explain the use of a Master Promissory Note;
- Emphasize to the student borrower the seriousness and importance of the repayment obligation the student borrower is assuming;
- Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;
- In the case of a student borrower (for other than a loan made or originated by the school), emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school;
- Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness of Stafford loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained; or the average indebtedness of other borrowers in the same program at the same school as the borrower;
- To the extent practicable, explain the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance;
- Provide information on how interest accrues and is capitalized during periods when the interest is not

paid by either the borrower or the Secretary;

• Inform the borrower of the option to pay the interest on an unsubsidized Stafford Loan while the borrower is in school;

• Explain the definition of half-time enrollment at the school, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment;

• Explain the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the borrower's program of study so that the school can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation;

• Provide information on NSLDS and how the borrower can access the borrower's records; and

• Provide the name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan.

Under proposed § 682.604(f)(7), initial counseling for graduate or professional student PLUS Loan borrowers must—

• Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained; or the average indebtedness of other borrowers in the same program at the same school as the borrower;

• Inform the borrower of the option to pay interest on a PLUS Loan while the borrower is in school;

• For a graduate or professional student PLUS Loan borrower who has received a prior FFEL Stafford or Direct Subsidized or Unsubsidized loan, provide the information, specified in § 682.603(d)(1)(i) through § 682.603(d)(1)(iii), that compares Stafford and PLUS Loan interest rates, interest accrual periods, and repayment period begin dates; and

• For a graduate or professional student PLUS Loan borrower who has not received a prior FFEL Stafford, or Direct Subsidized or Unsubsidized loan, provide the Stafford Loan initial counseling information specified in proposed § 682.604(f)(6)(i) through § 682.604(f)(6)(xii).

Corresponding initial counseling requirements for Direct Subsidized, Direct Unsubsidized, and Direct PLUS loan borrowers are included in proposed § 685.304(a)(1) through § 685.304(a)(9) of the Direct Loan regulations.

Reasons: These proposed amendments to §§ 682.694(f) and 685.304(a) are intended to implement the changes made to section 485(l) of the HEA. The HEOA incorporated into the HEA many of the entrance counseling requirements already reflected in current §§ 682.694(f) and 685.304(a) and also added several new requirements. In cases where the statutory language in the HEA is similar to current regulatory language, the Department modified the current regulations to track more closely the new statutory language. In cases where no current regulatory requirements exist, we propose to incorporate—with a few minor changes—the statutory language regarding the requirements into our regulations. To this end, the proposed regulations closely follow the language of section 485(l) of the HEA. For this reason, only a few issues generated extensive discussion during the negotiated rulemaking sessions.

Initially, the Department proposed language that would allow schools to provide entrance counseling ''online by interactive electronic means.'' The non-Federal negotiators pointed out that the term ''online'' does not necessarily mean the same thing as ''interactive.'' The Department agreed with the non-Federal negotiators, and changed the wording of the proposed regulations to read ''online or through interactive electronic means.''

The draft language initially proposed by the Department for § 682.604(f)(6)(v)(B) of the Stafford Loan entrance counseling requirements would have given schools the option to provide information on the ''average cumulative indebtedness of other borrowers in the same program at the same school as the borrower'' during Stafford Loan entrance counseling. The Department proposed similar language in proposed § 682.604(f)(7)(i)(B) for PLUS Loan entrance counseling. When presented with this draft language, the non-Federal negotiators expressed concern that requiring the provision of ''cumulative'' indebtedness information could be misleading, especially in the case of graduate or professional student PLUS Loan borrowers, whose level of undergraduate indebtedness could vary significantly by the time the student enters a graduate or professional program.

The Department agreed that the information on indebtedness provided to students would be more useful if it were limited to the average indebtedness incurred by the borrowers while they are in the program of study. For this reason, we agreed not to include the word ''cumulative'' in proposed §§ 682.604(f)(6)(v)(B) and 682.604(f)(7)(i)(B), and to make corresponding changes in proposed §§ 685.304(a)(6)(v)(B) and 685.304(a)(7)(i)(B) of the Direct Loan regulations.

Some non-Federal negotiators raised questions about the scope of proposed § 682.604(f)(6)(iv), which would require schools to inform borrowers that the borrower is responsible for repaying the loan, even if the borrower does not complete the program within the regular time for completion. The negotiators questioned how this requirement would affect requests for in-school deferments for borrowers who are attending less than full time. The Department responded that this requirement is unrelated to a borrower's eligibility for an in-school deferment and that it merely would require that borrowers be informed that they are still obligated to repay the loan, even if it takes them a longer time to complete the program than is normally expected (as might be the case with a borrower attending less than full time).

Exit Counseling

Counseling Borrowers (§§ 674.42(b), 682.604(g) and 685.304(b))

Statute: Section 488(b) of the HEOA modified section 485(b)(1)(A) of the HEA to require each eligible institution, through financial aid offices or otherwise, to conduct exit counseling for borrowers receiving loans made, insured or guaranteed under the FFEL Program (except for Consolidation Loans or Federal PLUS loans made to parent borrowers) or loans made under the Direct Loan Program (other than Federal Direct Consolidation Loans or Federal Direct PLUS loans made to parent borrowers) or made under the Perkins Loan Program prior to the completion of the borrower's course of study or the borrower's departure from the institution. Many of the exit counseling requirements in section 485(b)(1)(A) of the HEA are similar to the exit counseling requirements in current 34 CFR §§ 674.42(b), 682.604(g), and 685.304(b).

Section 485(b)(1)(A) of the HEA, as amended by the HEOA, requires exit counseling to include:

• Information on repayment plans, including a description of the different features of each plan and samples showing average anticipated monthly payments with the difference in interest paid and total payments shown with each plan.

• Debt management strategies to assist the borrower in repaying the debt.

• Options the borrower has to prepay each loan or pay each loan on a shorter schedule or to change repayment plans.

• Information on loan forgiveness and cancellation provisions and the conditions under which the borrower may obtain full or partial forgiveness or cancellation of principal and interest.

• Information on forbearance provisions and a general description of terms and conditions under which the borrower may defer repayment of principal or interest or be granted forbearance.

• Information on the consequences of default on a loan, including adverse credit reports and delinquent debt collection procedures under Federal law and litigation.

• Information with respect to Consolidation Loans to discharge FFEL, Direct Loan, and Perkins Loan program loans, which includes—

(1) The effects of the consolidation on total interest to be paid, fees, and length of repayment;

(2) The effect on a borrower's underlying loan benefits, which includes grace periods, loan forgiveness, cancellation and deferment;

(3) The option the borrower has to prepay the loan or to change repayment plans; and

(4) That borrower benefit programs may vary depending on the lender.

• A general description of the types of tax benefits that might be available to borrowers.

• Information on how a borrower can use NSLDS to get information on the status of his or her loans.

Current Regulations: Under current §§ 674.42(b), 682.604(g), and 685.304(b), schools must ensure that exit counseling is conducted with Perkins, FFEL Stafford, and Direct Subsidized and Unsubsidized Loan borrowers. These regulations provide that (a) the exit counseling must be conducted with each borrower either in person, by audiovisual presentation, or by interactive electronic means; (b) exit counseling must be conducted shortly before the student borrower ceases at least half-time study at the school; and (c) an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. Current §§ 674.42(b)(1), 682.604(g)(1), and 685.304(b)(2) also provide that, in the case of a student borrower enrolled in a correspondence program or a study-abroad program that the home institution approves for credit, written counseling materials may be provided by mail within 30 days after the student borrower completes the program. Under §§ 674.42(b)(1), 682.604(g)(1), and 685.304(b)(3), if a student borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must ensure that exit counseling is provided through either interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after learning that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

If exit counseling is conducted by electronic interactive means, under current §§ 674.42(b)(3), 682.604(g)(3), and 685.304(b)(6), the school must take reasonable steps to ensure that each Perkins, FFEL Stafford and Direct Subsidized and Unsubsidized Loan student borrower receives the counseling materials, and participates in and completes the counseling.

Under current §§ 674.42(b)(4), 682.604(g)(4), and 685.304(b)(7), the school must maintain documentation substantiating the school's compliance with the exit counseling requirements for each Perkins, FFEL Stafford, and Direct Subsidized and Unsubsidized Loan student borrower.

As specified in current §§ 674.42(b)(2), 682.604(g)(2), and 685.304(b)(4), the exit counseling for Perkins, FFEL Stafford, and Direct Subsidized and Unsubsidized Loan borrowers must—

• Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained the same types of Title IV loans the student borrower has obtained for attendance at the same school or in the same program of study at the same school;

• Review loan consolidation for the student borrower;

• Suggest to the student borrower debt-management strategies that would facilitate repayment;

• Include the entrance counseling topics described in the FFEL regulations in § 682.604(f)(2)(i) (use of the Master Promissory Note), § 682.604(f)(2)(ii) (seriousness of the repayment obligation), § 682.604(f)(2)(iii) (consequences of default), and § 682.604(f)(2)(iv) (obligation to repay despite the failure of a borrower to complete the program);

• Review for the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial forgiveness, discharge or cancellation of a loan;

• Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known);

• Review for the student borrower information on the availability of the Student Loan Ombudsman's office; and

• Inform the student borrower of the availability of Title IV loan information in the National Student Loan Data System (NSLDS).

In addition, current § 685.304(b)(4)(iv) of the Direct Subsidized and Unsubsidized Loan regulations requires that exit counseling for a Direct Subsidized and Unsubsidized Loan borrower must explain to the borrower how to contact the party servicing the borrower's Direct Loan. For FFEL Stafford and Direct Subsidized and Unsubsidized Loan borrowers, the exit counseling must review available repayment plan options (see current §§ 682.604(g)(2)(ii) and 685.304(b)(4)(ii)) and explain the use of the Master Promissory Note (see current §§ 682.604(g)(2)(iv) and 685.304(b)(4)(v)).

Proposed Regulations: Because the HEA incorporated the majority of the exit counseling requirements from the Department's current regulations, proposed § 674.42(b) (Perkins Loan exit counseling), § 682.604(g) (FFEL Stafford Loan exit counseling), and § 685.304(b) (Direct Subsidized and Unsubsidized Loan exit counseling) would continue to include the substantive requirements from current §§ 674.42(b), 682.604(g) and 685.304(b). The major proposed changes would be as follows:

Exit Counseling for Perkins Loan Borrowers (§ 674.42(b))

• The addition of § 674.42(b)(2)(ii), which would require that exit counseling explain the options the borrower has to prepay each loan and pay each loan on a shorter schedule.

• The redesignation of current § 674.42(b)(2)(ii) as proposed § 674.42(b)(2)(iii) and revision of the section to focus on reviewing for the borrower the option to consolidate a Federal Perkins Loan and the consequences of doing so.

• The addition of a new § 674.42(b)(2)(v), which would require that exit counseling explain the use of a master promissory note.

• The redesignation of current § 674.42(b)(2)(v) as proposed § 674.42(b)(2)(vii) and revision of the section to include, in the required description of the likely consequences of default, delinquent debt collection procedures under Federal law.

• The redesignation of current § 674.42(b)(2)(vi) as proposed § 674.42(b)(2)(viii) and revision of the section to include, as part of Perkins Loan exit counseling, information about the borrower's obligation to repay the full amount of the loan even if the borrower has not completed the program within the regular time for completion.

• The redesignation of current § 674.42(b)(2)(vii) as proposed § 674.42(b)(2)(ix) and revision of the section to require that exit counseling provide a general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or cancellation of principal and interest, defer repayment of principal or interest, or be granted an extension of the repayment period or a forbearance on a Title IV loan; and a copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d)of the HEA.

• The addition of language in proposed § 674.42(b)(2)(xi) (current § 674.42(b)(2)(viii)) to clarify that exit counseling must not only inform the student borrower of the availability of information in the National Student Loan Data System (NSLDS), but also how the NSLDS can be used to obtain title IV loan status information.

• The addition of new § 674.42(b)(2)(xii), which would require exit counseling to include a general description of the types of tax benefits that may be available to borrowers.

Exit Counseling for FFEL Stafford Loan Borrowers (§ 682.604(g))

• The revision of current § 682.604(g)(2)(i) to include borrowers who have only obtained PLUS Loans, in addition to borrowers who have obtained both PLUS and Stafford Loans.

• The revision of current § 682.604(g)(2)(ii) to include, as part of the review of borrower repayment plans, a description of the different features of each repayment plan and sample information showing the average anticipated monthly payments, and the difference in interest paid under each plan.

• The addition of a new § 682.604(g)(2)(iii), which would require that exit counseling explain the options the borrower has to prepay each loan, pay each loan on a shorter schedule, and change repayment plans.

• The addition of a new 682.604(g)(2)(iv), which would require exit counseling to provide information on the effects of loan consolidation.

• The redesignation of current § 682.604(g)(2)(iii) as § 682.604(g)(2)(v), and the revision of the section to require that exit counseling ''include'' debt-management strategies rather than ''suggest'' debt-management strategies.

• The redesignation of current § 682.604(g)(2)(iv) as § 682.604(g)(2)(vi), with no other changes except to update the cross-references.

• The addition of new § 682.604(g)(2)(vii) to describe the likely consequences of default, including the delinquent debt collection procedures under Federal law and litigation.

• The redesignation of current § 682.604(g)(2)(v) as § 682.604(g)(2)(viii), and revision of the section to require that exit counseling provide a general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or cancellation of principal and interest, defer repayment of principal or interest, or be granted an extension of the repayment period or a forbearance on a title IV loan; and a copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d)of the HEA.

• The redesignation of current § 682.604(g)(2)(vi) as § 682.604(g)(2)(ix), with no other revisions.

• The redesignation of current § 682.604(g)(2)(vii) as § 682.604(g)(2)(x), with no other revisions.

• The redesignation of current § 682.604(g)(2)(viii) as § 682.604(g)(2)(xi), and the addition of language to clarify that exit counseling must not only inform the student borrower of the availability of information in the National Student Loan Data System (NSLDS), but also how the NSLDS can be used to obtain title IV loan status information.

• The addition of new § 682.604(g)(2)(xii), which would require exit counseling to include a general description of the types of tax benefits that may be available to borrowers.

Exit Counseling for Direct Subsidized and Unsubsidized Loan Borrowers (§ 685.304(b))

• The revision of current § 685.304(b)(4)(i) to include borrowers who have only obtained PLUS Loans, in addition to borrowers who have obtained both PLUS and Stafford Loans.

• The revision of current § 685.304(b)(4)(ii) to include, as part of the review of borrower repayment plans, a description of the different features of each repayment plan and sample information showing the average anticipated monthly payments, and the difference in interest paid under each plan.

• The addition of a new § 685.304(b)(4)(iii), which would require that exit counseling explain the options the borrower has to prepay each loan, pay each loan on a shorter schedule, and change repayment plans.

• The addition of a new § 685.304(b)(4)(iv), which would require exit counseling to provide information on the effects of loan consolidation.

• The redesignation of current § 685.304(b)(4)(iii) as § 685.304(b)(4)(v), and the revision of the section to require that exit counseling ''include'' debt-management strategies rather than ''suggest'' debt-management strategies.

• The redesignation of current § 685.304(b)(4)(iv) as § 685.304(b)(4)(vi), with no other changes.

• The redesignation of current § 685.304(b)(4)(v) as § 685.304(b)(4)(vii), with no other changes except to update the cross-references.

• The addition of new § 685.304(b)(4)(viii) to describe the likely consequences of default, delinquent debt collection procedures under Federal law and litigation.

• The redesignation of current § 685.304(b)(4)(vii) as § 685.304(b)(4)(ix) and revision of the section to require that exit counseling provide a general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or cancellation of principal and interest, defer repayment of principal or interest, or be granted an extension of the repayment period or a forbearance on a title IV loan; and a copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA.

• The redesignation of current § 685.304(b)(4)(vii) as § 685.304(b)(4)(x), with no other revisions.

• The redesignation of current § 685.304(b)(4)(viii) as § 685.304(b)(4)(xi) and the addition of language to clarify that exit counseling must not only inform the student borrower of the availability of information in the National Student Loan Data System (NSLDS), but also how the NSLDS can be used to obtain title IV loan status information.

• The addition of new § 685.304(b)(4)(xii), which would require exit counseling to include a general description of the types of tax benefits that may be available to borrowers.

• The redesignation of current § 685.304(b)(4)(ix) as § 685.304(b)(4)(xiii), with no other revisions.

Reasons: These proposed amendments to §§ 674.42(b), 682.604(g), and 685.304(b) are intended to align the Department's exit counseling requirements for its Perkins Loan, FFEL Stafford, and Direct Subsidized and Unsubsidized Loan programs with the exit counseling requirements added to section 485(b)(1)(A) of the HEA by section 488(b) of the HEOA.

For the most part, we were able to simply incorporate the statutory language from section 485(b)(1)(A) of the HEA into our current regulations. One exception includes the requirement that exit counseling include reviewing with the borrower different repayment plan options. Perkins Loan borrowers, unlike FFEL Stafford and Direct Subsidized and Unsubsidized Loan borrowers, do not have the option to choose among different repayment plans. For this reason, we did not include this requirement in the Perkins Loan regulations.

In addition to implementing the statutory changes made by the HEOA, we also propose to amend the Perkins Loan exit counseling requirements to include explaining the use of a Master Promissory Note (MPN). The MPN has been in use for the Perkins Loan program since August 2003, and the Department believes it is appropriate to require schools to explain the use of the MPN as part of Perkins Loan exit counseling, just as we do for FFEL and Direct Loan exit counseling.

Several questions and concerns relating to the exit counseling requirements in the proposed regulations were discussed at the negotiated rulemaking sessions.

Although explaining the use of the Master Promissory Note (MPN) during exit counseling has been a long-standing requirement in the FFEL Stafford and Direct Subsidized and Unsubsidized Loan programs, non-Federal negotiators questioned the value of explaining how the MPN works during exit counseling, at a time when the borrower has already received his or her student loans and is about to leave the school. The Department responded that an MPN may be used for up to ten years after a borrower initially signs it. Therefore, we believe that it would be helpful to remind the borrower—during exit counseling—that the borrower may continue to use the MPN to borrow Title IV loans if the borrower returns to school before the 10-year period expires.

Non-Federal negotiators asked the Department to clarify the meaning of the term ''delinquent debt collection procedures under Federal law.'' The Department responded that these procedures refer to debt collection procedures under the Fair Debt Collection Act. During this discussion, the Department also noted that the exit counseling session would be an appropriate time for schools to advise FFEL Stafford and Perkins Loan borrowers that defaulted FFEL Stafford and Perkins Loans may be assigned to the Department of Education. In cases where the Department accepts the loan assignment, borrowers who have defaulted on these loans are subject to Federal income tax offset.

Non-Federal negotiators also asked if providing borrowers with the information relating to forbearance, deferment, forgiveness, discharge and cancellation that appears on the borrower's MPN would be sufficient to meet the requirement of providing a description of the terms and conditions for obtaining these benefits under proposed §§ 674.42(b)(2)(ix)(A), 682.604(g)(2)(viii)(A), and 685.304(b)(4)(ix)(A). The Department responded that the information relating to these benefits available on the MPNs is necessarily limited. For this reason, we expect schools to provide more detailed and comprehensive information on these benefits during exit counseling.

Non-Federal negotiators asked about the information relating to Consolidation Loans that schools are required to provide, particularly with regard to changing repayment plans. Non-Federal negotiators pointed out that the Perkins Loan Program does not have different repayment plans, and that Perkins borrowers do not have this option. The Department clarified that the reference to changing repayment plans in proposed § 674.42(b)(2)(iii)(C) refers to the Consolidation Loan, not the Perkins Loan. If a borrower consolidates his or her Perkins Loan into a FFEL or Direct Consolidation Loan, the terms and conditions of the Perkins Loan are replaced by the terms and conditions of the Consolidation Loan. Borrowers with Consolidation Loans have the option to change repayment plans on the Consolidation Loan.

Special Definitions (§ 674.51)

Statute: The HEOA amended section 465(a) of the HEA by expanding the existing teacher, Head Start, and law enforcement cancellation categories to include:

• A teacher in a designated low-income elementary or secondary school who is employed by, or working in a school operated by, an educational service agency (see new section 465(a)(2)(A) of the HEA).

• Full-time special education teacher, including teachers of infants, toddlers, children, or youth with disabilities, in a public or other nonprofit elementary or secondary school system administered by an educational service agency (see new section 465(a)(2)(C) of the HEA).

• Full-time staff members in a pre-kindergarten or childcare program that is licensed or regulated by the State (see new section 465(a)(2)(B) of the HEA).

• Full-time attorneys employed in Federal Public Defender Organizations or Community Defender Organizations, established in accordance with section 3006A(g)(2) of title 18, U.S.C. (see new section 465(a)(2)(F) of the HEA).

Section 465(a) of the HEA also was amended to allow for cancellation benefits for the following additional categories of borrowers:

• Full-time fire fighters with a local, State, or Federal fire department or fire district (see new section 465(a)(2)(J) of the HEA).

• Full-time faculty members at a Tribal College or University, as defined in section 316 of the HEA (see new section 465(a)(2)(K) of the HEA).

• Librarians with a master's degree in library science who are employed in an elementary or secondary school that qualifies for funding under title I of the Elementary and Secondary Education Act of 1965, as amended, or in a public library that serves a geographic area that includes one or more Title I schools (see new section 465(a)(2)(L) of the HEA).

• Full-time speech-language pathologists with a master's degree who are working exclusively with Title I eligible schools (see new section 465(a)(2)(M) of the HEA).

Current regulations: Current § 674.51 contains the definitions of key terms in the Federal Perkins Loan program regulations.

Proposed regulations: With the statutory expansion of the categories of borrowers eligible for cancellation benefits under the Perkins program, it is necessary to make several amendments to § 674.51.

For purposes of determining cancellation benefits under § 674.53 (Teacher cancellation—Federal Perkins, NDSL and Defense loans), we propose to define the term *education service agency* as a regional multi-service agency authorized by State law to develop, manage, and provide services or programs to local educational agencies as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended (see proposed § 674.51(g)).

For purposes of determining cancellation benefits under § 674.57 (Cancellation for law enforcement or corrections officer service—Federal Perkins, NDSL and Defense loans), the Secretary proposes to define the term *Community Defender Organizations* as defender organizations established in accordance with section 3006A(g)(2)(B) of title 18, United States Code (see proposed § 674.51(e)), and the term *Federal Public Defender Organization* as defender organizations established in accordance with section 3006A(g)(2)(A) of title 18, United States Code (see proposed § 674.51(j)).

For purposes of implementing the cancellation benefits for full-time faculty members at a Tribal College or University, full-time firefighters, librarians with a master's degree, and full-time speech pathologists with a master's degree under § 674.56 (employment cancellation—Federal Perkins, NDSL and Defense loans), the Secretary proposes to add the following definitions to § 674.51:

A *faculty member at a Tribal College or University* is an educator or tenured individual who is employed by a Tribal College or University, as that term is defined in section 316 of the HEA, to teach, research, or perform administrative functions. For purposes of this definition an educator may be an instructor, lecturer, lab faculty, assistant professor, associate professor, or full professor, dean, or academic department head (see proposed § 674.51(i)).

A *Tribal College or University* is an institution that qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.), or the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a note), or is cited in section 532 of the Equity in Education Land Grant Status Act of 1994 (7 U.S.C. 301 note) (see proposed § 674.51(bb)).

A *firefighter* is an individual who is employed by a Federal, State, or local firefighting agency to extinguish destructive fires or provides firefighting related services such as (a) providing community disaster support and, as a first responder, emergency medical services; (b) conducting search and rescue; or (c) providing hazardous material mitigation (HAZMAT) (see proposed § 674.51(k)).

A *librarian with a master's degree* is an information professional trained in library or information science who has obtained a postgraduate academic degree awarded after the completion of an academic program in library science of up to six years in duration, excluding a doctorate or professional degree (see proposed § 674.51(o)).

A *speech language pathologist with a master's degree* is an individual who evaluates or treat disorders that affect a person's speech, language, cognition, voice, swallowing and the rehabilitative or corrective treatment of physical or cognitive deficits/disorders resulting in difficulty with communication, swallowing, or both and has obtained a postgraduate academic degree awarded after the completion of an academic program of up to six years in duration, excluding a doctorate or professional degree.

Finally, as noted earlier in this preamble, Team I, the negotiating committee responsible for regulations involving issues related to lender and general loan issues, negotiated proposed definitions for the terms *substantial gainful activity* and *total and permanent disability,* as those terms are used in the Perkins Loan Program regulations. In proposed § 674.51(x), the term *substantial gainful activity* is defined as a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both. Proposed § 674.51(aa) would define *total and permanent disability* as the condition of an individual who (a) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months; or (b) has been determined by the Secretary of Veteran Affairs to be unemployable due to a service-connected disability. In addition to incorporating new definitions to implement the expanded cancellation benefits provided by the HEOA, we propose to update a few of the longstanding definitions in § 674.51 that are based on the Individuals with Disabilities Education Act (IDEA), which was reauthorized in 2004. Specifically, we propose to replace the current definition of the term *children and youth with disabilities* with the definition of the term *child with a disability* and the definition of the term *infants and toddlers with disabilities* with the definition of the term *infant or toddler with a disability.* These proposed definitions align with the definitions of these terms in the IDEA.

Reasons: We propose to revise § 674.51 to incorporate the definitions of key terms that are used in section 465(a) of the HEA, as amended by the HEOA. Definitions of the terms *Community Defender Organizations, education service agency, Federal Public Defender Organization*, and *Tribal College or University* would be based on the statutory language referencing their definitions in the HEA.

The Department developed definitions for the terms *faculty member at a Tribal College or University, firefighter, librarian with a master's degree,* and *speech language pathologist with a master's degree* by considering the generally accepted meaning of these terms as well as the discussion of these terms during the negotiated rulemaking sessions. During the sessions, there was much discussion about how broad these definitions should be. The general consensus was that the definitions should be written to incorporate as many eligible borrowers as possible for the expanded cancellation benefits. The proposed definitions reflect the consensus of Team II.

Expansion of Teacher, Head Start, and Law Enforcement Cancellation Categories (§§ 674.53, 674.57, 674.58)

Statute: Effective August 14, 2008, section 465 of the HEOA expanded the existing teacher, Head Start, and law enforcement cancellation provisions in section 465(a) of the HEA.

The cancellation for borrowers who teach in a designated low-income elementary or secondary school authorized by section 465(a)(2)(A) of the HEA has been expanded to include borrowers who are employed by an educational service agency as that term is defined section 481(f) of the HEA. The cancellation for full-time staff members in a Head Start preschool program authorized by section 465(a)(2)(B) of the HEA has been expanded to include borrowers who are full-time staff members in a pre-kindergarten or childcare program that is licensed or regulated by the State. The cancellation authorized by section 465(a)(2)(C) of the HEA for borrowers who are full-time special education teachers, including teachers of infants, toddlers, children, or youth with disabilities in a public or other nonprofit elementary or secondary school system, has been expanded to include borrowers who are special education teachers in a system administered by an educational service agency. Lastly, the cancellation for full-time local, State, or Federal law enforcement or corrections officers authorized by section 465(a)(2)(F) of the HEA has been expanded to include full-time attorneys employed in Federal Public Defender Organizations or Community Defender Organizations established in accordance with section

3006A(g)(2) of title 18 of the United States Code.

Effective August 14, 2008, an institution must cancel up to 100 percent of the outstanding balance of a borrower's NDSL, Defense, or Federal Perkins loan for eligible service performed in each of these expanded cancellation categories.

Current Regulations: Current § 674.53 of the Perkins Loan Program regulations requires an institution to cancel up to 100 percent of the outstanding balance on a Perkins Loan for borrowers who perform eligible service as a:

- Full-time teacher in a designated elementary or secondary school serving low-income families;
- Full-time special education teacher (including teaching children with disabilities in a public or other nonprofit elementary or secondary school);
- Full-time teacher of math, science, foreign languages, bilingual, or other fields designated as teacher shortage areas.

Current § 674.57 requires an institution to cancel up to 100 percent of the outstanding balance of a Perkins Loan for borrowers who perform eligible service as a full-time local, State, or Federal law enforcement or corrections officer and who are employed by an eligible employing agency. Lastly, current § 674.58 requires an institution to cancel up to 100 percent of the outstanding balance of a Perkins Loan for borrowers who perform eligible service as a full-time staff member in the educational component of a Head Start program.

Proposed regulations: The proposed changes to §§ 674.53, 674.57, 674.58 would extend the new cancellation categories to current Federal Perkins Loan borrowers with outstanding balances on loans already in repayment and all new borrowers who perform eligible service that includes August 14, 2008, or begins on or after that date, regardless of whether information on the expanded cancellation categories appears on the borrower's promissory note.

Under proposed § 674.53, a teacher who is employed by an educational service agency, or a full-time special education teacher, including teachers of infants, toddlers, children, or youth with disabilities, who is working in a system administered by an educational service agency, is eligible for cancellation benefits.

We propose to amend the cancellation provisions for law enforcement or correction officer regulations in § 674.57 to include borrowers who are employed full-time as an attorney in Federal Public Defender Organizations or Community Defender Organizations established in accordance with section 3006A(g)(2) of title 18, United States Code. The HEA provides for cancellation benefits for public defenders that work in these community defender organizations and Federal courts only. State public defenders (unless they are employed by one of the specified organizations) are not eligible for cancellation benefits under this provision.

Consistent with section 465(a)(2)(B) of the HEA, the Secretary proposes to amend current § 674.58 of the Head Start cancellation provisions by expanding cancellation benefits to include borrowers who are performing qualifying service as full-time staff members in a pre-kindergarten or childcare program that is licensed or regulated by the State. We propose to change the heading of § 674.51 to *Cancellation for service in an early childhood education program* to reflect the fact that the expansion of cancellation benefits available to borrowers under this provision are no longer limited to service in early childhood education programs authorized by the Head Start Act. We also propose to add ''pre-kindergarten or child care program'' to the definition of ''full-time staff member'' in § 674.58.

We propose to add definitions of the terms *pre-kindergarten program* and *child care program* to § 674.58(c). A *pre-kindergarten program* would be defined as a State-funded program that serves children from birth through age six and addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development (see proposed § 674.58(c)(2)). A *child care program* would be defined as a program that is licensed and regulated by the State and provides child care services for fewer than 24 hours per day per child, unless care in excess of 24 consecutive hours is needed due to the nature of the parents' work (see proposed § 674.58(c)(3)).

Reasons: We are proposing to make changes to §§ 674.53, 674.57, and 674.58 to ensure that the Department's regulations reflect the expansion of benefits that are now available for borrowers in the Federal Perkins Loan program as a result of the enactment of the HEOA.

It is important to note that in order to be consistent with Team I's development of the proposed regulations for the teacher loan forgiveness program contained in the Federal Family Education Loan (FFEL) and William D. Federal Direct Loan (Direct Loan) programs, the Department proposed regulatory language to allow borrowers in the Perkins Loans program to receive credit for a full year of cancellation, as long as the eligible service crossed over the enactment date of August 14, 2008. The non-Federal negotiators agreed with this proposal as it will ensure equitable treatment of borrowers in all three loan programs.

Addition of New Public Service Cancellation Categories (§ 674.56)

Statute: Section 465 of the HEOA amended section 465(a)(2) of the HEA by adding the following new public service cancellation categories for borrowers in the Federal Perkins Loan program who are performing qualifying service:

- Full-time faculty members at a Tribal College or University, as that term is defined in section 316 of the HEA.
- Full-time fire fighters who serve a local, State, or Federal fire department or fire district.
- Librarians with a master's degree in library science who are employed in an elementary or secondary school that qualifies for Title I funding, or in a public library that serves a geographic area that includes one or more Title I-eligible schools.
- Full-time speech-language pathologists with a master's degree who are working exclusively with Title I-eligible schools.

Current Regulations: None.

Proposed regulations: The Secretary proposes to amend § 674.56 to incorporate the new public service employment cancellations for borrowers in the Federal Perkins Loan program who are performing qualifying service as full-time faculty members at a Tribal College or University, full-time fire fighters who serve a local, State, or Federal fire department or fire district, librarians with a master's degree in library science, and full-time speech-language pathologists with a master's degree.

Under proposed § 674.56, current borrowers with outstanding balances on loans already in repayment and all new borrowers who perform eligible service that includes August 14, 2008, or begins on or after that date, in these new cancellation categories, would qualify for cancellation, regardless of whether the cancellation category appears on the borrower's promissory note.

Reasons: The Secretary proposes to amend § 674.56 (Employment cancellation—Federal Perkins, NDSL and Defense loans) to incorporate the new public service employment

cancellations reflected in amended section 465(a) of the HEA.

Military Service Cancellation (§ 674.59)

Statute: Section 465 of the HEOA amended section 465(a)(3)(A) of the HEA to eliminate the provision that limited cancellation for eligible military service to 50 percent of a borrower's outstanding balance on his or her Perkins Loan.

Current regulations: Current § 674.59 provides that Federal Perkins Loan borrowers who are serving in areas of hostility are eligible for cancellation of up to 50 percent of their outstanding balance, in increments of 12 percent a year for each full year of active duty service, if the borrower is serving in an area of imminent danger that qualifies for special pay under section 310 of title 37 of the United States Code.

Proposed regulations: Proposed § 674.59 would amend the cancellation rate for each year of qualifying service for the military service cancellation. Specifically, borrowers who are serving in areas of hostility are now eligible to receive a cancellation of up to 100 percent of the loan for each full year of active duty service that includes August 14, 2008, or begins on or after that date in the following increments: 15 percent for the first and second years of service; 20 percent for the third and fourth years of service; and, 30 percent for the fifth year of service.

Reasons: The changes in the military service cancellation provisions implement the new statutory changes in the Federal Perkins Loan program as a result of the HEOA.

Executive Order 12866

1. Regulatory Impact Analysis

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

Pursuant to the terms of the Executive order, it has been determined this proposed regulatory action will not have an annual effect on the economy of more than $100 million. Therefore, this action is not ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, the Secretary has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

Need for Federal Regulatory Action

These proposed regulations are needed to implement provisions of the HEA, as amended by the HEOA, particularly related to the new part E to the HEA, *Lender and Institution Requirements Relating to Education Loans,* which establishes extensive new disclosure requirements for lenders and institutions participating in Federal and private student loan programs. These regulations also implement significant changes made by the HEOA to provisions related to institutional cohort default rates and Perkins Loan cancellations.

In general, these regulations simply restate specific HEOA requirements, in many cases using language drawn directly from the statute. In the following areas, the Secretary has exercised limited discretion in implementing the HEOA provisions through proposed regulations:

Preferred lender arrangement: In defining a preferred lender arrangement, the Secretary determined that such an arrangement does not exist for private education loans that a covered institution makes to its own students, as long as the private education loan is funded by the covered institution's own funds; is funded by donor-directed contributions; is made under title VII or title VIII of the Public Service Health Act; or is made under an institutional repayment plan of the covered institution.

Disclosures from schools with preferred lender lists: In response to concerns from a number of non-Federal negotiators, the Secretary considered whether to require institutions to ''provide'' students and parents with the required materials or, as suggested by the non-Federal negotiators, ''make available'' the required materials. As discussed elsewhere in this preamble, the Secretary determined that a requirement to provide the materials was more appropriate.

Private loan self-certification forms: The Secretary determined that private education loan borrowers should be required to fill out self-certification forms even if the lender is their institution.

Definition of ''gift'': In defining the term *gift* for the purposes of institutional codes of conduct, section 487(e)(2)(B)(ii) of the HEA excluded favorable terms, conditions, and borrower benefits on a loan provided to students employed at a covered institution, if the terms, conditions, or benefits are comparable to those provided to all students at the institution. As discussed more fully in the code of conduct discussion in this preamble, the Secretary determined that ''all students'' refers to all students employed at the covered institution, rather than to the general student population at that institution.

Self-certification forms: The Secretary determined that self-certification forms and information must only be provided to an applicant for a private education loan who is ''enrolled or admitted'' to an institution rather than to any student who requests the information. The Secretary also included a provision to the proposed regulations to require an institution to discuss the availability of Federal, State, and institutional aid with an applicant for a private loan at the request of the applicant.

Cohort Default Rate: As discussed further in the discussion surrounding cohort default rates in this preamble, the Secretary determined that the default rate of an institution that establishes an additional location at the site of a closed institution for which it conducted a teach-out would not be affected in any way by the closed institution's cohort default rate.

Perkins loan cancellations: Following discussions with the non-Federal negotiators, the Secretary proposed to define a number of key terms used for purposes of determining cancellation benefits in the Perkins Loan Program (see proposed § 674.51). It was determined that additional clarity was needed for some of the terms used in the HEA in order for the Department to implement the Perkins Loan cancellation provisions of the HEA. Some of the key terms proposed to be defined in these regulations include firefighter, faculty member at a Tribal College or University, librarian with a master's degree, and speech language pathologist with a master's degree. The other definitions provided in proposed § 674.51 incorporate the language from the HEA.

The following section addresses the alternatives that the Secretary considered in implementing these discretionary portions of the HEOA provisions. These alternatives are also discussed in more detail in the *Reasons* sections of this preamble related to the specific regulatory provisions.

Regulatory Alternatives Considered

Preferred lender arrangement: Several non-Federal negotiators argued that preferred lender arrangements can exist only in cases where a written or verbal agreement exists between a lender and a covered institution or institution-affiliated organization. One non-Federal negotiator submitted an alternative definition for *preferred lender arrangement* that would have built this requirement into the definition, except in cases where conduct by the parties indicates an intention to create a preferred lender arrangement. The Department declined to adopt this alternative definition, arguing that the statutory definition of *preferred lender arrangement* does not address how the arrangement comes about, nor does the definition specify that a written or verbal agreement must exist.

Several non-Federal negotiators proposed to exempt loans made directly by a covered institution to its own students from falling under the term *preferred lender arrangement,* arguing that under those circumstances covered institutions would find it impossible or impractical to comply with a number of the regulatory requirements that flow from having a preferred lender arrangement. For example, non-Federal negotiators noted that a school, in its capacity as a lender, could be prohibited from paying its own employees, in its capacity as a covered institution, under the code of conduct requirement that prohibits a lender from providing gifts to employees of a covered institution's financial aid office.

After considering proposals from non-Federal negotiators, the Department determined that a preferred lender arrangement requires the participation of at least two separate parties. Accordingly, the Department agreed to clarify in the regulatory definition for *preferred lender arrangement* that a preferred lender arrangement does not exist for a private education loan made by a covered institution to the covered institution's own students provided that the loan is paid for by the institution's own funds, funded by donor-directed contributions, made under title VII or title VIII of the Public Service Health Act, or made under an institutional payment plan of the covered institution.

Disclosures from schools with preferred lender lists: Non-Federal negotiators raised concerns about the proposed requirement, reflected in proposed § 601.10 that covered institutions ''provide'' certain information to students before those students select a lender or apply for an education loan. These negotiators asked that the requirement be changed from ''provide'' to ''make available.'' The Department declined to make this change, arguing that the term ''make available'' is more passive than the term ''provide,'' and as such is inconsistent with the intent of the requirement. While schools are expected to be proactive in providing information to potential borrowers, the Department did acknowledge that schools cannot ensure every student receives the required information, and that schools making reasonable efforts to give this information to its students at the appropriate time in the award year would be considered to have complied with the requirement.

Private loan self-certification forms: Non-Federal negotiators questioned the value of requiring schools to provide applicants with a private education loan self-certification form in cases where the applicant is applying for a private education loan made by the covered institution. These negotiators argued that there was no reason for the covered institution to provide the form to itself. The Department determined that, because the self-certification form is intended to disclose information to the borrower, not to the lender, borrowers should still receive and complete the form before obtaining an institutional loan.

Definition of ''gift'': Non-Federal negotiators raised concerns about proposed language excluding from the definition of the term *gift,* favorable terms, conditions, and borrower benefits on a loan provided to students employed at a covered institution, if the terms, conditions, or benefits are comparable to those provided to all students at the institution. These negotiators asked whether ''all students'' at the institution meant the general student population or only other students employed at the institution. After considering the intent of the statutory requirement underlying the proposed regulation and recognizing that lenders may offer preferable terms and conditions to student employees at the school as a matter of course, the Department determined that it is acceptable to use benefits offered to all student employees as a benchmark, rather than the benefits the students in the general population receive.

Self-certification forms: A number of negotiators raised concerns about the potential for fraudulent use of the self-certification form. In response, it was suggested that the required self-certification form and information only must be provided to an applicant who is ''enrolled or admitted'' to the institution rather than to any student who requests the information. The Department agreed to adopt this approach, which non-Federal negotiators agreed would minimize the chances a student who is not enrolled or admitted to the institution would use the form and information to obtain a private education loan for which the student is not eligible.

Several non-Federal negotiators requested that an applicant for a private education loan receive as much information as possible regarding available aid options. Accordingly, the Department agreed to add a provision to proposed § 668.14(29)(ii) that would require an institution to discuss the availability of Federal, State, and institutional aid with the applicant, at the request of the applicant. The Department and the non-Federal negotiators agreed that this would result in financial aid administrators counseling the applicant and providing students with an opportunity to ask questions about aid options or how to apply for aid.

Cohort Default Rate: The Department and non-Federal negotiators considered the best way to support the clear statutory intent of the HEA to encourage institutions to conduct teach-outs of closed institutions. Discussions indicated that a requirement to include a closed school's cohort default rate in its own rate could dissuade an institution from conducting the teach-out. Accordingly, the Department determined that the cohort default rate of an institution that establishes an additional location at the site of a closed institution for which it conducted a teach-out would not be affected in any way by the closed institution's cohort default rate.

Perkins loan cancellations: The Department proposed to define a number of terms, such as *faculty member at a Tribal College or University, firefighter, librarian with a master's degree,* and *speech language pathologist with a master's degree* in proposed § 674.51. The Department included definitions for these terms after considering the generally accepted meaning of the terms as well as the discussion of these terms during the negotiated rulemaking sessions. In addition, to be consistent with proposed regulations developed for the teacher

loan forgiveness program contained in the FFEL and Direct Loan programs, the Secretary determined that borrowers in the Perkins Loans program should receive credit for a full year of cancellation, as long as the eligible service crossed over the enactment date of August 14, 2008.

Benefits

Benefits provided in these regulations include greater transparency for borrowers participating in the Federal and private student loan programs, clearer guidelines on acceptable behavior by and relationships among institutions participating in the student loan programs, and expanded eligibility for Perkins Loan cancellation benefits. It is difficult to quantify benefits related to the new institutional and lender requirements, as there is little specific data available on either the extent of improper or questionable relationships between institutions and lenders prior to the HEOA or of the harm such relationships actually caused for borrowers, institutions, or the Federal taxpayer. The Department is interested in receiving comments or data that would support a more rigorous analysis of the impact of these provisions.

The Department estimates that expanded eligibility for Perkins Loan cancellations would benefit approximately 33,000 borrowers annually. This estimate is based on an analysis of data from a number of sources, including primarily Baccalaureate and Beyond 1993/2003, to project the number of Perkins Loan borrowers in each profession among those included in the newly expanded cancellation categories. Specific estimates by category are shown in the following table.

PERKINS LOAN BORROWERS ELIGIBLE FOR EXPANDED CANCELLATIONS ANNUAL BY OCCUPATION

Occupation	Estimated number of borrowers
ESA Teachers	20,000
Childcare workers	5,296
Firefighters	3,240
Speech pathologists	2,968
Law enforcement	770
Librarians	640
Tribal college faculty	24
Total	32,938

These benefits all flow directly from statutory changes included in the HEOA; they are not materially affected by discretionary choices exercised by the Department in developing these proposed regulations. As discussed in greater detail under *Net Budget Impacts,* these proposed provisions result in net costs to the government of $71.953 million over 2009–2013.

Costs

Many of the statutory provisions implemented through this NPRM will require regulated entities to develop new disclosures and other materials, as well as accompanying dissemination processes. In total, these changes are estimated to increase burden on entities or individuals participating in the student loan programs by 4,636,495 hours. Of this increased burden, 292 hours are associated with lenders and 1,195,769 hours with institutions. An additional 3,440,434 hours—or 74.2 percent of the total burden associated with the proposed regulations—are associated with borrowers. The monetized cost of this additional burden, using loaded wage data developed by the Bureau of Labor Statistics, is $78.5 million. In estimating the cost of these provisions, the Department used wage information from the Bureau of Labor Statistics. For lenders, institutions, and guaranty agencies, the May 2009 total private non-agricultural average hourly earnings of $18.54 was used as the hourly rate to monetize the burden of these provisions. For borrowers, the first quarter 2009 median weekly earnings for full-time wage and salary workers were used. This was weighted to reflect the age profile of the student loan portfolio, with half at the $472 per week of the 20 to 24 age bracket and half at the $674 per week of the 25 to 34 year old bracket. This resulted in a $16.37 hourly wage rate to use in monetizing the burden on borrowers.

While there is additional burden associated with a range of proposed provisions in this NPRM, as noted earlier in this preamble nearly three-quarters of this burden is associated with individual borrowers. For most provisions, this estimated burden assumes nearly 3 million borrowers will devote very small amounts of time—often as little as five minutes—to review additional disclosures added to existing documents or processes such as entrance and exit counseling. In the case of private loan borrowers, the Department estimates roughly 3.3 million borrowers will devote fifteen minutes to reviewing new Truth in Lending Act disclosures required under the proposed regulations.

For provisions affecting entities other than borrowers, 92.6 percent of the burden hours associated with this package—or 1,107,115 hours—result from new requirements for institutions involving the distribution of private education loans. The following discussion provides additional detail on the impact of this provision.

The proposed regulations require a covered institution, or an institution-affiliated organization of a covered institution, to provide loan disclosures to a prospective borrower private education. These disclosures must provide the prospective borrower with the information required under section 128(e)(1) of the TILA; and must inform the prospective borrower that he or she may qualify for loans or other assistance under Title IV of the HEA; and that the terms and conditions of Title IV, HEA program loans may be more favorable than the provisions of private education loans. The information regarding private education loans must be presented in such a manner as to be distinct from information regarding Title IV, HEA program loans.

The proposed regulations require that, upon an enrolled or admitted student applicant's request for a private education loan self-certification form, an institution must provide to the applicant, in written or electronic form, the self-certification form for private education loans developed by the Secretary to satisfy the requirements of Section 128(e)(3) of the TILA. The institution must also provide the information required to complete the form, if the institution possesses that information.

In assessing burden associated with these new requirements, the Department estimated 6,264 covered institutions (and their institutionally-affiliated organizations) must comply with these proposed disclosure regulations to be. Of these, we estimate 1,757 covered institutions and their institutionally-affiliated organizations will be providing private education loans and therefore adopting TILA compliant disclosures for all private education loans they offer. The burden for the implementation of the TILA compliant disclosures is estimated to be 4 hours per institution. We estimate 3,333,600 borrowers of private education loans and that the average amount of burden to provide the TILA disclosures to be .25 hour per loan, for a total burden of 7,028 hours.

The Department will issue a self-certification form for adoption by all covered institutions. We estimate that on average, there will be 3 hours of additional burden per institution for the adoption and implementation of the Department's self-certification. Additionally, we estimate that 3,333,600 borrowers will receive this new self-

certification form in their pursuit of a private education loan. We estimate the burden to the institution to provide each self-certification form to be .33 hours per form, for a total burden of 1,100,008 hours.

The other provisions that increase burden and associated costs are relatively minor, especially when looked at for an individual entity rather than in total. To a large extent, the cost of many of these requirements can be avoided if institutions choose not to maintain a preferred lender arrangement. Given that there is little data indicating that the absence of such an agreement imposes a significant cost on institutions or their students—particularly given the alternative of simply listing all lenders who have provided loans to an institution, the Department expects few institutions to enter into these arrangements. Other proposed regulations generally would require discrete changes in specific parameters associated with existing requirements—such as changes to entrance and exit counseling, cohort default rates, and Perkins Loan cancellations—rather than wholly new requirements. Accordingly, entities wishing to continue to participate in the student aid programs have already absorbed most of the administrative costs related to implementing these proposed regulations. Marginal costs over this baseline are primarily related to one-time system changes that, while possibly significant in some cases, are an unavoidable cost of continued program participation. In assessing the potential impact of these proposed regulations, the Department recognizes that certain provisions are likely to increase workload for some program participants. In general, the Department estimates that it would take institutions 3 hours to implement each of these minor provisions. (This additional workload is discussed in more detail under the *Paperwork Reduction Act of 1995* section of this preamble.) Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. Given the limited data available, the Department is interested in comments and supporting information related to possible burden stemming from the proposed regulations. In particular, we ask institutions to provide detailed data on actual staffing and system costs associated with implementing these proposed regulations; data on the implementation of proposed regulations regarding private education loans would be especially helpful. Estimates included in this notice will be reevaluated based on any information received during the public comment period.

Net Budget Impacts

HEOA provisions implemented by these proposed regulations are estimated to have a net budget impact of $12.408 million in 2009 and $71.953 million over FY 2009–2013. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

These estimates were developed using the Office of Management and Budget's Credit Subsidy Calculator. (This calculator will also be used for re-estimates of prior-year costs, which will be performed each year beginning in FY 2009). The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a ''basket of zeros'' methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these proposed regulations. That said, however, in developing the following Accounting Statement, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

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

The Department estimates no budgetary impact for most of the proposed regulations included in this NPRM. There is no data indicating that the extensive new requirements for disclosures and codes of conduct for student loan program participants will have any impact on the volume or composition of Federal student loans. Similarly, changes to the cohort default rate calculation are not estimated to affect Federal costs, as students are typically assumed to resume their education at another school in the event the school they are attending loses eligibility to participate in the student loan program. In addition, changes to the calculation formula are not estimated to have a significant effect on the number of schools that lose eligibility, as the impact of adding a third year to the calculation is expected to be offset by the higher threshold.

The Department's analysis indicates that approximately 3 percent of schools will be affected by the change to a 3-year cohort default rate calculation. In an analysis of 4,241 schools, 83 with 2-year cohort default rates below 25 were estimated to have 3-year cohort default rates above 30. A total of 133 schools with a 2-year CDR under 25 are estimated to have a 3-year CDR between 25 and 30, demonstrating that the effect of changing to the calculation period is offset by the increased threshold. The small number of schools involved and the ability of students to pursue their education at other institutions means that this change is not expected to affect aggregate loan volumes or Federal costs.

Perkins Loan Cancellations. The Department estimates the Perkins Loan cancellation provisions in these proposed regulations would increase the Federal costs by $71.953 million over FY 2009–2013. This estimate reflects the cost of additional cancellation benefits for the newly eligible borrowers discussed elsewhere in this analysis, under *Benefits.*

Assumptions, Limitations, and Data Sources

Because these proposed regulations would largely restate statutory requirements that would be self-implementing in the absence of regulatory action, impact estimates

provided in the preceding section reflect a pre-statutory baseline in which the HEOA changes implemented in these proposed regulations do not exist. Costs have been quantified for five years. In general, these estimates should be considered preliminary; they will be reevaluated in light of any comments or information received by the Department prior to the publication of the final regulations. The final regulations will incorporate this information in a revised analysis.

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education systems, including especially the Fiscal Operations Report and Application to Participate (FISAP); and data from a range of surveys conducted by the National Center for Education Statistics such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. Data from other sources, such as the U.S. Census Bureau, were also used. Data on administrative burden at participating schools, lenders, guaranty agencies, and third-party servicers are extremely limited; accordingly, as noted earlier in this discussion, the Department is particularly interested in receiving comments in this area.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995.*

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 2, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these proposed regulations. Expenditures are classified as transfers from the Federal government to student loan borrowers (for expanded Perkins loan cancellations).

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers	$90.731.
From Whom to Whom?	Federal Government to Student Loan Borrowers.

2. Clarity of the Regulations

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

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

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 601.30.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education, lenders, and guaranty agencies that participate in Title IV, HEA programs and individual students and loan borrowers. The U.S. Small Business Administration Size Standards define institutions and lenders as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by small governmental jurisdictions, which are comprised of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.

Based on data from the Integrated Postsecondary Education Data System (IPEDS), roughly 1,200 institutions participating in the FFEL program meet the definition of ''small entities.'' More than half of these institutions are short-term, for-profit schools focusing on vocational training. Other affected small institutions include small community colleges and tribally controlled schools. Burden on institutions associated with these proposed regulations is largely associated with the requirements to provide students with new disclosures related to preferred lender lists, private loan TILA requirements, and other new borrower rights and responsibilities. In many cases, these requirements only require one-time changes to existing entrance and exit counseling materials and should not represent significant new burden. (The Department estimates these changes generally require three hours or less to implement.) For other requirements, such as those affecting schools choosing to maintain a preferred lender list, the Department is providing model disclosure forms the adoption of which should minimize institutional burden. In addition, FFEL schools meeting the definition of small entities generally have difficulty accessing multiple lenders—during the negotiated rule-making process, representatives of these schools noted that a requirement to include even three lenders on a preferred lender list would represent a major problem for them. The proposed regulation, however, allows these schools to avoid the burdens associated with maintaining such a list by simply providing students with all lenders who have provided loans at the schools in the past. This would effectively accomplish the same thing as the schools' previous preferred lender list without adding significant new burden. To assess overall burden imposed on schools meeting the definition of small entities, the Department developed a

methodology using IPEDS data and the percentage of borrowers attending these institutions. Using this methodology, the Department estimates the proposed regulations will increase total burden hours for these schools by 37,723, or roughly 32 hours per institution. (Monetized using salary data from the Bureau of Labor Statistics, this burden is $699,384 and $593, respectively.) Based on these estimates, the Department believes the proposed new requirements do not impose significant new costs on these institutions.

The Department believes few if any lenders participating in the FFEL program have revenues of less than $5 million. FFEL program activity is highly concentrated among the largest lenders; should an extremely small number of lenders that meet the threshold participate in the program, they likely are making loans as a service to current clients rather than soliciting new business. This type of lender, with a tangential relationship to Federal and private student loans, is highly unlikely to incur significant new compliance costs as a result of the proposed regulation. Accordingly, the Department has determined that the proposed regulations do not represent a significant burden on small lenders.

Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered ''small entities'' under the Regulatory Flexibility Act. The impact of the proposed regulations on individuals is not subject to the Regulatory Flexibility Act.

The Secretary invites comments from small institutions and lenders as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief. In particular, we are interested in detailed information on actual staff and systems costs related to implementing new disclosure requirements, particularly related to private loans.

Paperwork Reduction Act of 1995

Proposed §§ 601.10, 601.11, 601.20, 601.21, 601.30, 601.40, 668.16, 668.181, 668.186, 668.190, 668.191, 668.200, 668.202, 668.209, 668.210, 668.211, 668.212, 668.213, 668.214, 668.217, 674.42, 674.53, 674.57, 674.58, 674.56, 674.59, 682.604, and 685.304 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Section 601.10—Preferred Lender Arrangement Disclosures

Proposed § 601.10(a) would require that a covered institution, or an institution-affiliated organization of a covered institution, that participates in a preferred lender arrangement disclose the maximum amount of Federal grant and loan aid under Title IV of the HEA available to students; the information identified on the model disclosure form developed by the Secretary for each type of education loan that is offered pursuant to a preferred lender arrangement; and a statement that the institution is required to process the documents required to obtain a loan under the FFEL Program from any eligible lender the student selects.

Proposed § 601.10(a)(2) would require a covered institution, or an institution-affiliated organization of a covered institution to provide the disclosures required under section 128(e)(11) of the TILA for each type of private education loan offered pursuant to a preferred lender arrangement.

Proposed § 601.10(c) would require a covered institution and institution-affiliated organization that participates in a preferred lender arrangement to provide the disclosure of the maximum amount of Federal grant and loan aid available to students, the information identified on a model disclosure form developed by the Department, as well as a statement indicating to students and parents that the institution is required to process the documents required to obtain a FFEL loan from any eligible lender the student selects. This information would need to be provided to students attending the covered institution, or the families of such students, as applicable. The information would need to be provided annually and in a manner that allows for the students or their families to take the information into account before selecting a lender or applying for an education loan.

Proposed § 601.10(d) would require that if a covered institution compiles, maintains, and makes available a preferred lender list, the institution must clearly and fully disclose on the preferred lender list why the institution participates in a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and that the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list.

Proposed § 601.10(d)(2) would require the covered institution to ensure, through the use of the list of lender affiliates provided by the Secretary, that there are not less than three FFEL lenders that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, that there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list.

Proposed § 601.10(d)(1)(ii) would require that the preferred lender list must specifically indicate, for each listed lender, whether the lender is or is not an affiliate of another lender on the preferred lender list; and if a lender is an affiliate of another lender on the preferred lender list, must describe the details of such affiliation.

Proposed § 601.10(d)(3) would require that the preferred lender list prominently disclose the method and criteria used by the institution in selecting lenders with which to participate in preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers. These criteria would include payment of origination or other fees on behalf of the borrower; highly competitive interest rates, or other terms and conditions or provisions of Title IV, HEA program loans or private education loans; high-quality servicing; or additional benefits beyond the standard terms and conditions or provisions for such loans.

Proposed § 601.10(d)(4)(ii) would require that the covered institution exercise a duty of care and a duty of loyalty to compile the preferred lender list without prejudice and for the sole benefit of the students attending the institution, or the families of such students.

Proposed § 601.10(d)(5) would require a covered institution to not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in certification of a Title IV loan for those borrowers who choose a lender that is not included on the preferred lender list.

These proposed regulations would represent an increase in burden. The affected entities under the proposed regulations are borrowers, and institutions and their institutionally-affiliated organizations. We estimate that the burden for borrowers would increase by 323,103 hours and the burden for institutions and institutionally-affiliated organizations would increase by 12,078 hours, respectively, and we will include the total burden of 335,181 hours in OMB Control Number 1845–XXXA.

Section 601.11—Private Education Loan Disclosures and Self-Certification Form

Proposed § 601.11(a) would require a covered institution, or an institution-affiliated organization of a covered institution, to provide to a prospective borrower private education loan disclosures. The private education loan disclosures required would need to provide the prospective borrower with the information required under section 128(e)(1) of the TILA; and would need to inform the prospective borrower that he or she may qualify for loans or other assistance under Title IV of the HEA; and that the terms and conditions of Title IV, HEA program loans may be more favorable than the provisions of private education loans.

Proposed § 601.11(c) would require the covered institution or institution-affiliated organization to ensure that information regarding private education loans is presented in such a manner as to be distinct from information regarding Title IV, HEA program loans.

Proposed § 601.11(d) would require that, upon an enrolled or admitted student applicant's request for a private education loan self-certification form, an institution must provide to the applicant, in written or electronic form, the self-certification form for private education loans developed by the Secretary to satisfy the requirements of section 128(e)(3) of the TILA. The institution also would need to provide the information required to complete the form, if the institution possesses that information.

These proposed regulations would represent an increase in burden. The affected entities under the proposed regulations are borrowers, and institutions and institutionally-affiliated organizations. We estimate that burden to borrowers would increase by 833,400 hours and the burden to institutions and institutionally-affiliated organizations, respectively would increase by 1,107,115 hours and we will include the total burden of 1,940,515 hours in OMB Control Number 1845–XXXA.

Section 601.20—Annual Report Due From Covered Institutions and Institution-Affiliated Organizations

Proposed § 601.20(a) would require a covered institution, and an institution-affiliated organization, that participates in a preferred lender arrangement to prepare and submit to the Secretary an annual report, by a date determined by the Secretary. The annual report would include, for each lender that participates in a preferred lender arrangement with the covered institution or organization, the information about preferred lenders arrangements that must also be described for students and parents; and a detailed explanation of why the covered institution or institution-affiliated organization participates in a preferred lender arrangement with the lender. The explanation would need to include an explanation of why the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial for students attending the institution, or the families of such students, as applicable.

Proposed § 601.20(b) would require a covered institution or institution affiliated organization to ensure that the annual report is made available to the public and provided to students attending or planning to attend the covered institution and the families of such students.

These proposed regulations would represent an increase in burden. The affected entities under the proposed regulations are institutions and institutionally-affiliated organizations. We estimate that burden for institutions and institutionally-affiliated organizations would increase by 336 hours in OMB Control Number 1845–XXXA.

Section 601.21—Code of Conduct

Proposed § 601.21 would require a covered institution that participates in a preferred lender arrangement to develop a code of conduct with respect to FFEL Program loans and private education loans with which the institution's agents must comply to prohibit a conflict of interest with the responsibilities of an agent of an institution with respect to FFEL Program loans and private education loans.

Proposed § 601.21(a)(2)(ii) and (iii) would require the institution to publish the code of conduct prominently on the institution's Web site; and administer and enforce the code by, at a minimum, requiring that all of the institution's agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of the code of conduct.

Proposed § 601.21(b)(1) and (b)(2) would require any institution-affiliated organization of a covered institution that participates in a preferred lender arrangement to comply with the code of conduct developed and published by the covered institution and, if the institution-affiliated organization has a Web site, publish the code of conduct prominently on the Web site.

Under proposed § 601.21(b)(3), the institution-affiliated organization would be required to administer and enforce the code of conduct by, at a minimum, requiring that all of the institution-affiliated organization's agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of the code of conduct.

The code of conduct would apply to agents of an institution who are employees of the financial aid office of the institution or who have responsibilities with respect to FFEL Program loans or private education loans.

Proposed § 601.21(c) would prescribe the minimum requirements of a covered institution's code of conduct. An institution's code of conduct must prohibit: Revenue-sharing arrangements with any lender; soliciting or accepting gifts from a lender, guarantor, or servicer; accepting any fee, payment, or other financial benefit as compensation for any type of consulting or any contractual relationship with a lender; assigning a first-time borrower's loan to a particular lender or refusing to certify, or delaying certification of, any loan based on a borrower's selection of a particular lender; requesting offers of funds for private education loans, including opportunity pool loans, from a lender in exchange for providing the lender with a specified number or loan volume of FFEL Program loans or private education loans or a preferred lender arrangement; requesting or accepting staffing assistance from a lender; and receipt of compensation for serving on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors.

Proposed 601.21(c)(6) would provide exceptions to the ban on staffing assistance, such as staffing assistance related to professional development or training; providing educational counseling materials; or providing short-term, nonrecurring staffing assistance during disasters or emergencies.

These proposed regulations represent an increase in burden. The affected entities under the proposed regulations are institutions and institutionally-affiliated organizations. We estimate that burden for institutions and institutionally-affiliated organizations, respectively, would increase to 4,697 in OMB Control Number 1845–XXXA.

Section 601.30—Duties of Institutions Participating in the William D. Ford Direct Loan Program

Proposed § 601.30 would require a covered institution participating in the William D. Ford Direct Loan Program to make the information identified in a

model disclosure form developed by the Secretary available to students attending or planning to attend the institution, or the families of such students. If the institution provides information regarding a private education loan to a prospective borrower, the institution must concurrently provide the borrower with the information identified on the model disclosure form.

Proposed § 601.30(b) would allow a covered institution to use a comparable form designed by the institution to provide this information, instead of the model disclosure form.

These proposed regulations represent an increase in burden. The affected entities under the proposed regulations are borrowers, and institutions and their institutionally-affiliated organizations. We estimate that burden to borrowers would increase by 56,671 hours and 1,353 hours for institutions and institutionally-affiliated organizations, respectively, and we will include the total burden of 58,024 hours in OMB Control Number 1845–XXXB.

Section 601.40—Lender Responsibilities

Proposed § 601.40(a) would require FFEL lenders to provide FFEL borrowers the disclosures required under current § 682.205(a) and (b). A lender offering private education loans would be required to comply with the disclosures required under section 128(e) of the TILA for each type of private loan.

Proposed § 601.40(b) would set forth the information the lenders will have to provide to the Secretary on an annual basis regarding any reasonable expenses paid or provided to any agent of a covered institution who is employed in the financial aid office or has responsibilities with respect to education loans or other financial aid of the institution for service by the employee on an advisory board, commission or group established by a lender or a group of lenders. This information also would need to be reported for expenses paid or provided to any agent of an institution-affiliated organization involved in recommending, promoting or endorsing education loans. Lenders would be required to report the amount of the expenses paid and the specific instances for which it was paid; the names of the agents to whom expenses were paid; and the date and description of each activity for which expenses were paid. This section of the regulations would also require the lender to submit a certification of compliance to the Secretary.

Proposed § 601.40(c) would require any FFEL lender participating in one or more preferred lender arrangements to annually certify to the Secretary its compliance with the HEA. Lenders required to file an audit under § 682.305(c) would be required to include the certification as part of the audit. A lender that is not required to submit an audit would need to provide the certification separately.

Proposed § 601.40(d) would require FFEL lenders with a preferred lender arrangement with a covered institution or an institution-affiliated organization to annually provide to the institution, institution-affiliated organization and the Secretary information regarding the FFEL loans the lender will provide to students and families pursuant to the preferred lender arrangement for the next award year. The information will be prescribed by the Secretary, after consultation with the Federal Reserve.

These proposed regulations represent an increase in burden. The affected entities under the proposed regulations are borrowers and lenders. We estimate that burden to borrowers would increase by 632,383 hours and that burden for lenders would increase by 292 hours in OMB Control Number 1845–XXXA.

Sections 668.181, 668.200, and 668.202—Three-Year Cohort Default Rates

The proposed regulations reflected in new proposed subpart N of part 668 would incorporate the three-year cohort default method under proposed § 668.202. With regard to the transition period for use of the current cohort default rate method, proposed §§ 668.181 and 668.200(b) would specify that the Department will issue annually two sets of draft and official cohort default rates for fiscal years 2009, 2010, and 2011.

These proposed regulations describe the purpose of the 3-year rate and explain the calculation and application of the 3-year cohort default rate. As a result, the statement of purpose of this subpart and the description of how the Department will calculate and apply the 3-year cohort default rate will not impact the burden in OMB 1845–0022.

Section 668.16—Administrative Capabilities and Cohort Default Rate Appeals

Proposed § 668.16(m)(1)(ii) would apply the current rules for administrative capability based on two-year cohort default rates during the transition period. Thereafter, a school would be administratively capable if two of its three most recent three-year rates are less than 30 percent. Under proposed § 668.16(m)(2), the current rules for provisional certification based on two year cohort default rates of 25 percent or more but less than 40 percent would continue to apply during the transition period. Thereafter, an institution whose three year default rates are 30 percent or more, but less than 40 percent, for two years would not be provisionally certified based solely on its default rates under the following circumstances:

(1) The institution files timely a request for adjustment or appeal from the second such rate under proposed §§ 668.209 (Uncorrected data adjustments), 668.210 (New data adjustments), or 668.212 (Loan servicing appeals) and the request or appeal is pending or succeeds in reducing the institution's three-year rate below 30 percent.

(2) The institution files timely an appeal under proposed § 668.213 (Economically disadvantaged appeals) from the second such rate and the appeal is pending or successful. proposed § 668.213 would provide that the two rates of 30 percent or more must be successive to permit the appeal.

(3) The institution files a timely participation rate index appeal under proposed § 668.214 and the appeal is pending or successful.

(4) The institution had 30 or fewer borrowers in the three most recent cohorts of borrowers used to calculate the institution's rates.

(5) A three-year rate that would otherwise potentially subject the institution to provisional certification was calculated as an average rate.

To avoid provisional certification by invoking exceptions (1), (2) or (3), the institution would be required to file a request for adjustment or appeal in response to a notice from the Department that the institution's second three-year cohort default rate, or second successive three-year default rate for an economically disadvantaged appeal, is 30 percent or more, but less than 40 percent.

Under proposed § 668.214, a participation rate index appeal could be taken from a loss of eligibility, or potential placement on provisional certification, based on three-year cohort default rates if the participation rate index for any of the excessive rates was .0625 or less. The appeal would be taken within 30 days of receiving the notice of loss of eligibility with the most recent excessive official rate.

In addition, under proposed § 668.204(c)(1)(iii), an institution would be allowed to challenge a potential placement on provisional certification because its three-year cohort default rates for two of the most recent three years would be 30 percent or more, but

less than 40 percent, even though the second such rate was available only as a draft rate, if its participation rate index was equal to or less than 0.0625 for either its draft rate, or its most recent official rate equaling or exceeding 30 percent but less than 40 percent. The challenge would be taken following notice to the school of its draft rate.

The proposed changes in § 668.16 apply the current rules on administrative capability during the transition period. We estimate that the proposed regulations will not impact burden in OMB 1845–0022.

Section 668.186, 668.190, 668.191, 668.209, 668.210, 668.211, and 668.212—Electronic Processes

Proposed § 668.186 would eliminate the need to request a loan record detail report by providing that the report will be sent electronically to the institution as part of a package notifying the institution of its official cohort default rate. The institution would have five business days, from the transmission date of the package as posted on the Department's Web site, to report any problem with receiving that transmission. If the institution reports a problem within the five-day period, and the Department agrees that the institution did not cause the problem, we will extend the adjustment, challenge, and appeal deadlines and timeframes to account for retransmitting the package after the problem is resolved. If no problems are reported by the institution, the timeframe associated with filing or requesting the adjustment, challenge, or appeal begins on the sixth day following the transmission date of the package that is posted on the Department's Web site. The timeframes for the adjustments, challenges, and appeals are reflected in proposed §§ 668.190(b) and 668.191(b).

The subpart M, part 668 provisions reflected in § 668.186, and the provisions for adjustments, challenges, and appeals in the related sections in subpart M of part 668 would also be reflected in the following parallel provisions in subpart N, part 668: §§ 668.209, 668.210, 668.211, and 668.212.

These proposed regulations represent a decrease in burden. The affected entities under these proposed regulations are institutions. We estimate that burden would decrease by −725 hours for institutions which would be reflected in OMB Control Number 1845–0022.

Sections 682.604 and 685.304—Entrance Counseling

Proposed § 682.604(f)(3) would require that institutions provide initial counseling for Stafford and graduate or professional student PLUS Loan borrowers. Comprehensive information on the terms and conditions of the loan and on the responsibilities of the borrower with respect to the loan would need to be provided. Under this proposed regulation, this information may be provided to the borrower during an entrance counseling session conducted in person; on a separate written form provided to the borrower that the borrower signs and returns to the school; or online or by interactive electronic means, with the borrower acknowledging receipt of the information.

Proposed § 682.604(f)(4) would require a school that conducts initial counseling online or through interactive electronic means to take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes the initial counseling, which may include completion of any interactive program that tests the borrower's understanding of the terms and conditions of the borrower's loans.

Proposed § 682.604(f)(6) would require that initial counseling for Stafford Loan borrowers: Explain the use of a Master Promissory Note; emphasize to the student borrower the seriousness and importance of the repayment obligation the student borrower is assuming; describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation; in the case of a student borrower (other than a loan made or originated by the school), emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school; inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness of Stafford loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained—or the average indebtedness of other borrowers in the same program at the same school as the borrower; to the extent practicable, explain the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance; provide information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary; inform the borrower of the option to pay the interest on an unsubsidized Stafford Loan while the borrower is in school; explain the definition of half-time enrollment at the school, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment; explain the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the borrower's program of study so that the school can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation; provide information on NSLDS and how the borrower can access the borrower's records; and provide the name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan.

Proposed § 682.604(f)(7) would require that initial counseling for graduate or professional student PLUS Loan borrowers must: Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained or the average indebtedness of other borrowers in the same program at the same school as the borrower; inform the borrower of the option to pay interest on a PLUS Loan while the borrower is in school; for a graduate or professional student PLUS Loan borrower who has received a prior FFEL Stafford, or Direct Subsidized or Unsubsidized loan, provide the information, specified in § 682.603(d)(1)(i) through (d)(1)(iii), that compares Stafford and PLUS Loan interest rates, interest accrual periods, and repayment period begin dates; and for a graduate or professional student PLUS Loan borrower who has not received a prior FFEL Stafford, or Direct Subsidized or Unsubsidized loan, provide the Stafford Loan initial counseling information specified in proposed § 682.604(f)(6)(i) through (f)(6)(xii).

Corresponding initial counseling requirements for Direct Subsidized, Direct Unsubsidized, and Direct PLUS

loan borrowers are proposed in § 685.304(a)(1) through (a)(9) of the Direct Loan regulations.

These proposed regulations would represent an increase in burden. The affected entities under the proposed regulations are borrowers and institutions. We estimate that burden in OMB 1845–0020 would increase by 475,152 hours for borrowers and 12,582 hours for institutions; and we estimate that burden in OMB 1845–0021 would increase by 217,900 hours for borrowers and 12,582 hours for institutions for a total of 487,735 hours which would be reflected in OMB Control Number 1845–0020 and a total of 230,482 hours in OMB Control Number 1845–0021.

Sections 674.42, 682.604 and 685.304—Exit Counseling

Proposed §§ 674.42(b), 682.604(g) and 685.304(b) would continue to require a school to ensure that exit counseling is conducted with each Perkins, FFEL Stafford, and Direct Subsidized and Unsubsidized Loan borrower. In addition, schools would be required to provide exit counseling to graduate or professional student FFEL PLUS Loan borrowers and graduate or professional student Direct PLUS Loan borrowers.

Under proposed §§ 674.42(b)(1), 682.604(g)(1) and 685.304(b)(2) and (b)(3), schools would continue to be required to conduct exit counseling either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school would be required to ensure that the exit counseling is conducted shortly before the student borrower ceases at least half-time study at the school, and that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. The alternative approach for student borrowers enrolled in a correspondence program or a study-abroad program that the home institution approves for credit would be maintained in the proposed new regulations. The current regulatory procedures for student borrowers who withdraw from school without the school's prior knowledge or fail to complete an exit counseling session as required also would be maintained in the proposed new regulations.

Proposed §§ 674.42(b)(3), 682.604(g)(3) and 685.304(b)(6) would continue to require that if exit counseling is conducted by electronic interactive means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the counseling. Proposed §§ 674.42(b)(4), 682.604(g)(4) and 685.304(b)(7) would retain the requirement that schools maintain documentation substantiating the school's compliance with this section for each student borrower.

Proposed §§ 674.42(b)(2), 682.604(g)(2) and 685.304(b)(4) also would require exit counseling for Perkins, FFEL, and Direct Loan student borrowers to: Review for the student borrower information on the availability of the Student Loan Ombudsman's office; inform the student borrower of the availability of Title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain Title IV loan status information; and provide a general description of the types of tax benefits that may be available to borrowers.

Additionally, proposed §§ 682.604(g)(2)(ii) and 685.304(b)(4)(ii) would require the exit counseling for FFEL and Direct Loan student borrowers to review the available FFEL and Direct Loan repayment plan options, including standard, graduated, extended, income sensitive and income-based repayment plans, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments under each plan. The exit counseling also would need to inform FFEL and Direct Loan borrowers of their option to change repayment plans.

For Direct Loan borrowers, proposed § 685.304(b)(4)(vi) would retain the requirement that schools explain to the student borrower how to contact the party servicing the Direct Loan.

These proposed regulations represent an increase in burden. The affected entities under the proposed regulations are borrowers and institutions. We estimate that burden would increase by 444,970 hours for borrowers and 12,582 hours for institutions for a total of 457,552 hours which would be reflected in OMB Control Number 1845–0020. We estimate that burden would increase by 213,542 hours for borrowers and 12,582 hours for institutions for a total of 226,124 hours which would be reflected in OMB Control Number 1845–0021. We estimate that burden would increase by 214,022 hours for borrowers and 5,940 hours for institutions for a total of 219,962 hours which would be reflected in OMB Control Number 1845.0023.

Sections 674.53, 674.57, and 674.58—Expansion of Teacher, Head Start, and Law Enforcement Cancellation Categories

These proposed regulations would extend the new cancellation categories to current Federal Perkins Loan borrowers with outstanding balances on loans already in repayment and all new borrowers who perform eligible service that includes August 14, 2008, or begins on or after that date, regardless of whether information on the expanded cancellation categories appears on the borrower's promissory note.

Proposed § 674.53 would provide that a teacher who is employed by an educational service agency, or a full-time special education teacher, including teachers of infants, toddlers, children, or youth with disabilities, who is working in a system administered by an educational service agency, is eligible for cancellation benefits.

Proposed § 674.57 would be amended such that the cancellation provisions for law enforcement or correction officer would include borrowers who are employed full-time as an attorney in Federal Public Defender Organizations or Community Defender Organizations.

Proposed § 674.58 of the Head Start cancellation provisions would be amended by expanding cancellation benefits to include borrowers who are performing qualifying service as full-time staff members in a pre-kindergarten or childcare program that is licensed or regulated by the State.

For purposes of determining a borrower's eligibility for cancellation benefits, proposed § 674.58(c)(1) and (2) would define the terms ''pre-kindergarten program'' and ''childcare program.'' A pre-kindergarten program would be defined as a State-funded program that serves children from birth through age six and addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development. A *childcare program* would be defined as a program that is licensed and regulated by the State and provides child care services for fewer than 24 hours per day per child, unless care in excess of 24 consecutive hours is needed due to the nature of the parents' work.

Proposed § 674.58 also would amend the Head Start cancellation provisions by renaming the regulation ''Cancellation for service in an early childhood education program'' to reflect the fact that the expansion of cancellation benefits available to borrowers under this provision are no longer limited to service in early childhood education programs authorized by the Head Start Act.

These proposed regulations represent an increase in burden. The affected entities under the proposed regulations are borrowers and institutions. We estimate that burden as a result of the

proposed changes in § 674.53 would increase by 2,290 hours for borrowers and 1,145 hours for institutions for a total of 3,435 hours which would be reflected in OMB Control Numbers 1845–XXXC. We estimate that burden as a result of the proposed changes in § 674.57 would increase by 385 hours for borrowers and 193 hours for institutions for a total of 578 hours which would be reflected in OMB Control Number 1845–XXXC. We estimate that burden as a result of the proposed changes in § 674.58 would increase by 2,648 hours for borrowers and 1,325 hours for institutions for a total of 3,973 hours which would be reflected in OMB Control Number 1845–XXXC.

Section 674.56—Addition of New Public Service Cancellation Categories

Proposed § 674.56 would add new public service cancellation categories for borrowers in the Federal Perkins Loan program who are performing qualifying service as: Full-time faculty members at a Tribal College or University; full-time fire fighters who serve a local, State, or Federal fire department or fire district; librarians with a master's degree in library science who are employed in an elementary or secondary school that qualifies for Title I funding, or in a public library that serves a geographic area that includes one or more Title I-eligible schools; or full-time speech-language pathologists with a master's degree who are working exclusively with Title I-eligible schools.

Under these proposed regulations, current borrowers with outstanding balances on loans already in repayment and all new borrowers who perform eligible service that includes August 14, 2008, or begins on or after that date, in these new cancellation categories, would qualify for cancellation, regardless of whether the cancellation category appears on the borrower's promissory note.

These proposed regulations represent an increase in burden. The affected entities under the proposed regulations are borrowers and institutions. We estimate that burden would increase by 3,436 hours for borrowers and 1,718 hours for institutions for a total of 5,154 hours which would be reflected in OMB Control Number 1845–XXXC.

Section 674.59—Military Service Cancellation

Proposed § 674.59 would amend the cancellation rate for each year of qualifying service for the military service cancellation. Borrowers who are serving in areas of hostility are now eligible to receive a cancellation of up to 100 percent of the loan for each full year of active duty service that includes August 14, 2008, or begins on or after that date in the following increments: 15 percent for the first and second years of service; 20 percent for the third and fourth years of service; and, 30 percent for the fifth year of service.

These proposed regulations represent an increase in burden. The affected entities under the proposed regulations are borrowers and institutions. We estimate that burden would increase by 20,532 hours for borrowers and 10,266 hours for institutions for a total of 30,798 hours which would be reflected in OMB Control Number 1845–XXXC.

Consistent with the discussion in the preceding paragraphs, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to the Office of Management and Budget for approval and public comment under the Paperwork and Reduction Act.

Regulatory section	Information section	Collection
601.10	Proposed § 601.10(a) would require that a covered institution, or an institution-affiliated organization of a covered institution, that participates in a preferred lender arrangement disclose the information identified on the model disclosure form developed by the Secretary and its preferred lender list.	OMB 1845–XXXA. This will be new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on the form.
601.11	Proposed § 601.11(a) would require a covered institution, or an institution-affiliated organization of a covered institution, to provide to a prospective borrower private education loan disclosures consistent with section 128(e)(1) of the TILA; to provide a student who requests a private education loan a self-certification form; and to inform the prospective borrower that he or she may qualify for loans or other assistance under Title IV of the HEA; and to inform the prospective borrower that the terms and conditions of Title IV, HEA program loans may be more favorable than the provisions of private education loans.	OMB 1845–XXXA. This will be new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on the form.
601.20	Proposed § 601.20(a) would require a covered institution, and an institution-affiliated organization that participates in a preferred lender arrangement to prepare and submit to the Secretary an annual report.	OMB 1845–XXXA. This will be new collection. A separate 60-day **Federal Register** notice will be published to solicit comments.
601.21	Proposed § 601.21 would require a covered institution that participates in a preferred lender arrangement to develop a code of conduct with respect to FFEL Program loans and private education loans with which the institution's agents must comply to prohibit a conflict of interest with the responsibilities of an agent of an institution with respect to FFEL Program loans and private education loans.	OMB 1845–XXXA. This will be new collection. A separate 60-day **Federal Register** notice will be published to solicit comments.

Regulatory section	Information section	Collection
601.30	Proposed § 601.30 would require a covered institution participating in the William D. Ford Direct Loan Program to make the information identified in a model disclosure form developed by the Secretary available to students attending or planning to attend the institution, or the families of such students. If the institution provides information regarding a private education loan to a prospective borrower, the institution must concurrently provide the borrower with the information identified on the model disclosure form.	OMB 1845–XXXB. This will be new collection. A separate 60-day **Federal Register** notice will be published to solicit comments.
601.40	Proposed § 601.40 would set forth the information the lenders will have to provide to the Secretary on an annual basis regarding any reasonable expenses paid or provided to any agent of a covered institution who is employed in the financial aid office or has responsibilities with respect to education loans or other financial aid of the institution for service by the employee on an advisory board, commission or group established by a lender or a group of lenders.	OMB 1845–XXXA. This will be new collection. A separate 60-day **Federal Register** notice will be published to solicit comments.
668.181, 668.200, & 668.202.	Proposed §§ 668.181, 668.200, and 668.202 would provide a new proposed subpart N, part 668 to incorporate the three-year method under § 668.202. With regard to the transition period, proposed §§ 668.181 and 668.200(b) would specify that the Department will issue annually two sets of draft and official cohort default rates for fiscal years 2009, 2010, and 2011. As a result, the statement of purpose of this subpart and the description of how the Department will calculate and apply the 3-year cohort default rate will not impact the burden in OMB 1845–0022.	OMB 1845–0022. No change in burden.
668.16	Proposed § 668.16(m) would require institutions to have the new three-year cohort default rate, and would incorporate the transition rules and the basis for appeals for that cohort default rate. The proposed changes in § 668.16 apply the current rules on administrative capability during the transition period. We estimate that the proposed regulations will not impact burden in OMB 1845–0022.	OMB 1845–0022. No change in burden.
668.186, 668.190, 668.191, 668.209, 668.210, 668.211, and 668.212.	These proposed regulations would eliminate the need to request a loan record detail report from the Department; instead an electronic loan report would be sent to each institution.	OMB 1845–0022.
682.604 & 685.304	Proposed §§ 682.604 and 685.304 would require that institutions provide initial counseling for Stafford and graduate or professional student PLUS Loan borrowers.	OMB 1845–0020 and 1845–0021.
674.42, 682.604, and 685.304.	Proposed §§ 674.42, 682.604 and 685.304 would continue to require a school to ensure that exit counseling is conducted with each Perkins, FFEL Stafford, and Direct Subsidized and Unsubsidized Loan borrower. In addition, schools would be required to provide exit counseling to graduate or professional student FFEL PLUS Loan borrowers and graduate or professional student Direct PLUS Loan borrowers.	OMB 1845–0020, 1845–0021, and 1845–0023.
674.53, 674.57, and 674.58.	Proposed §§ 674.53, 674.57, and 674.58 would extend the new cancellation categories to current Federal Perkins Loan borrowers with outstanding balances on loans already in repayment and all new borrowers who perform eligible service that includes August 14, 2008, or begins on or after that date, regardless of whether information on the expanded cancellation categories appears on the borrower's promissory note.	OMB 1845–XXXC. This will be new collection. A separate 60-day **Federal Register** notice will be published to solicit comments.

Regulatory section	Information section	Collection
674.56	Proposed § 674.56 would add new public service cancellation categories for borrowers in the Federal Perkins Loan program who are performing qualifying service as: Full-time faculty members at a Tribal College or University; full-time fire fighters who serve a local, State, or Federal fire department or fire district; librarians with a master's degree in library science who are employed in an elementary or secondary school that qualifies for Title I funding, or in a public library that serves a geographic area that includes one or more Title I-eligible schools; or full-time speech-language pathologists with a master's degree who are working exclusively with Title I-eligible schools.	OMB 1845–XXXC. This will be new collection. A separate 60-day **Federal Register** notice will be published to solicit comments.
674.59	Proposed § 674.59 would amend the cancellation rate for each year of qualifying service for the military service cancellation. Borrowers who are serving in areas of hostility are now eligible to receive a cancellation of up to 100 percent of the loan for each full year of active duty service that includes August 14, 2008, or begins on or after that date in the following increments: 15 percent for the first and second years; 20 percent for the third and fourth years of service; and 30 percent for the fifth year of service.	OMB 1845–XXXC. This will be new collection. A separate 60-day **Federal Register** notice will be published to solicit comments.

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

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

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

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

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

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

List of Subjects

34 CFR Part 601

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

34 CFR Part 668

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

34 CFR Parts 674, 682 and 685

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

Dated: July 14, 2009.

Arne Duncan,

Secretary of Education.

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

1. Add part 601 to read as follows:

PART 601—INSTITUTION AND LENDER REQUIREMENTS RELATING TO EDUCATION LOANS

Subpart A—General

Sec.

Authority: 20 U.S.C. 1019–1019d, 1021, 1094(a) and (h).

Subpart A—General

§ 601.1 Scope.

This part establishes disclosure and reporting requirements for covered institutions, institution-affiliated organizations, and lenders that provide, issue, recommend, promote, endorse, or provide information relating to education loans. Education loans include loans authorized by the Higher Education Act of 1965, as amended (HEA) and private education loans.

(Authority: 20 U.S.C. 1019–1019d, 1021, 1094(a)(25) and (e))

§ 601.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Federal Family Education Loan (FFEL) Program
Secretary
Title IV, HEA program

(b) The following definitions also apply to this part:

Agent: An officer or employee of a covered institution or an institution-affiliated organization.

Covered institution: Any institution of higher education, proprietary institution of higher education, postsecondary vocational institution, or institution outside the United States, as these terms are defined in 34 CFR part 600, that receives any Federal funding or assistance.

Education loan: Except when used as part of the term ''private education loan'',

(1) Any loan made, insured, or guaranteed under the Federal Family Education Loan (FFEL) Program;

(2) Any loan made under the William D. Ford Federal Direct Loan Program; or

(3) A private education loan.

Institution-affiliated organization: (1) Any organization that—

(i) Is directly or indirectly related to a covered institution; and

(ii) Is engaged in the practice of recommending, promoting, or endorsing education loans for students attending such covered institution or the families of such students.

(2) An institution-affiliated organization—

(i) May include an alumni organization, athletic organization, foundation, or social, academic, or professional organization, of a covered institution; and

(ii) Does not include any lender with respect to any education loan secured, made, or extended by such lender.

Lender: (1) An eligible lender in the Federal Family Education Loan (FFEL) Program, as defined in 34 CFR 682.200(b);

(2) The Department in the Direct Loan program;

(3) In the case of a private educational loan, a private education lender as defined in section 140 of the Truth in Lending Act; and

(4) Any other person engaged in the business of securing, making, or extending education loans on behalf of the lender.

Officer: A director or trustee of a covered institution or institution-affiliated organization, if such individual is treated as an employee of such covered institution or institution-affiliated organization, respectively.

Preferred lender arrangement: (1) An arrangement or agreement between a lender and a covered institution or an institution-affiliated organization of such covered institution—

(i) Under which a lender provides or otherwise issues education loans to the students attending such covered institution or the families of such students; and

(ii) That relates to such covered institution or such institution-affiliated organization recommending, promoting, or endorsing the education loan products of the lender.

(2) A preferred lender arrangement does not include—

(i) Arrangements or agreements with respect to loans made under the William D. Ford Federal Direct Loan Program; or

(ii) Arrangements or agreements with respect to loans that originate through the PLUS Loan auction pilot program under section 499(b) of the HEA.

(3) For purpose of this definition, an arrangement or agreement does not exist if the private education loan provided or issued to a student attending a covered institution is made by the covered institution, and the private education loan is—

(i) Funded by the covered institution's own funds;

(ii) Funded by donor-directed contributions;

(iii) Made under title VII or title VIII of the Public Service Health Act; or

(iv) Made under an institutional payment plan of the covered institution.

Private education loan: As the term is defined in section 140 of the Truth in Lending Act, a loan provided by a private educational lender that is not a title IV loan and that is issued expressly for postsecondary education expenses to a borrower, regardless of whether the loan is provided through the educational institution that the student attends or directly to the borrower from the private educational lender. A private education loan does not include an extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.

(Authority: 20 U.S.C. 1019)

Subpart B—Loan Information To Be Disclosed by Covered Institutions and Institution-Affiliated Organizations

§ 601.10 Preferred lender arrangement disclosures.

(a) A covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement must disclose—

(1) On such covered institution's or institution-affiliated organization's Web site and in all informational materials described in paragraph (b) of this section that describe or discuss education loans—

(i) The maximum amount of Federal grant and loan aid under title IV of the HEA available to students, in an easy to understand format;

(ii) The information identified on a model disclosure form developed by the Secretary pursuant to section 153(a)(2)(B) of the HEA, for each type of education loan that is offered pursuant to a preferred lender arrangement of the institution or institution-affiliated organization to students of the institution or the families of such students; and

(iii) A statement that such institution is required to process the documents required to obtain a loan under the

Federal Family Education Loan (FFEL) Program from any eligible lender the student selects; and

(2) On such covered institution's or institution-affiliated organization's Web site and in all informational materials described in paragraph (b) of this section that describe or discuss private education loans—

(i) In the case of a covered institution, the information that the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(11) of the Truth in Lending Act (15 U.S.C. 1638(e)(11)), for each type of private education loan offered pursuant to a preferred lender arrangement of the institution to students of the institution or the families of such students; and

(ii) In the case of an institution-affiliated organization of a covered institution, the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)), for each type of private education loan offered pursuant to a preferred lender arrangement of the organization to students of such institution or the families of such students.

(b) The informational materials described in paragraphs (a)(1) and (a)(2) of this section are publications, mailings, or electronic messages or materials that—

(1) Are distributed to prospective or current students of a covered institution and families of such students; and

(2) Describe or discuss the financial aid opportunities available to students at an institution of higher education.

(c)(1) Each covered institution and each institution-affiliated organization that participates in a preferred lender arrangement must provide the information described in paragraph (a)(1)(ii) of this section, and the information described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, respectively, for each type of education loan offered pursuant to the preferred lender arrangement.

(2) The information identified in paragraph (c)(1) of this section must be provided to students attending the covered institution, or the families of such students, as applicable, annually and must be provided in a manner that allows for the students or their families to take such information into account before selecting a lender or applying for an education loan.

(d) If a covered institution compiles, maintains, and makes available a preferred lender list as required under § 668.14(b)(28), the institution must—

(1) Clearly and fully disclose on such preferred lender list—

(i) Not less than the information required to be disclosed under section 153(a)(2)(A) of the HEA;

(ii) Why the institution participates in a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and

(iii) That the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list;

(2) Ensure, through the use of the list of lender affiliates provided by the Secretary under section 487(h)(2) of the HEA, that—

(i) There are not less than three FFEL lenders that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list; and

(ii) The preferred lender list under paragraph (d) of this section—

(A) Specifically indicates, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list; and

(B) If a lender is an affiliate of another lender on the preferred lender list, describes the details of such affiliation;

(3) Prominently disclose the method and criteria used by the institution in selecting lenders with which to participate in preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers, including—

(i) Payment of origination or other fees on behalf of the borrower;

(ii) Highly competitive interest rates, or other terms and conditions or provisions of Title IV, HEA program loans or private education loans;

(iii) High-quality servicing for such loans; or

(iv) Additional benefits beyond the standard terms and conditions or provisions for such loans;

(4) Exercise a duty of care and a duty of loyalty to compile the preferred lender list under paragraph (d) of this section without prejudice and for the sole benefit of the students attending the institution, or the families of such students; and

(5) Not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in loan certification under title IV of the HEA for those borrowers who choose a lender that is not included on the preferred lender list.

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

(Authority: 20 U.S.C. 1019a(a)(1)(A) and 1019b(c))

§ 601.11 Private education loan disclosures and self-certification form.

(a) A covered institution, or an institution-affiliated organization of such covered institution, that provides information regarding a private education loan from a lender to a prospective borrower must provide private education loan disclosures to the prospective borrower, regardless of whether the covered institution or institution-affiliated organization participates in a preferred lender arrangement.

(b) The private education loan disclosures must—

(1) Provide the prospective borrower with the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)) for such loan;

(2) Inform the prospective borrower that—

(i) The prospective borrower may qualify for loans or other assistance under title IV of the HEA; and

(ii) The terms and conditions of Title IV, HEA program loans may be more favorable than the provisions of private education loans.

(c) The covered institution or institution-affiliated organization must ensure that information regarding private education loans is presented in such a manner as to be distinct from information regarding Title IV, HEA program loans.

(d) Upon an enrolled or admitted student applicant's request for a private education loan self-certification form, an institution must provide to the applicant, in written or electronic form—

(1) The self-certification form for private education loans developed by the Secretary in consultation with the Board of Governors of the Federal Reserve System, to satisfy the requirements of section 128(e)(3) of the Truth in Lending Act (15 U.S.C. 1638(e)(3)); and

(2) The information required to complete the form, to the extent the institution possesses such information as specified in 34 CFR 668.14(b)(29).

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

(Authority: 20 U.S.C. 1019a(a)(1)(B) and 1019d)

§ 601.12 Use of institution and lender name.

A covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement with a lender regarding private education loans must—

(a) Not agree to the lender's use of the name, emblem, mascot, or logo of such institution or organization, or other words, pictures, or symbols readily identified with such institution or organization, in the marketing of private education loans to students attending such institution in any way that implies that the loan is offered or made by such institution or organization instead of the lender; and

(b) Ensure that the name of the lender is displayed in all information and documentation related to the private education loans described in this section.

(Authority: 20 U.S.C. 1019a(a)(2)–(a)(3))

Subpart C—Responsibilities of Covered Institutions and Institution-Affiliated Organizations

§ 601.20 Annual report.

Each covered institution, and each institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement, must—

(a) Prepare and submit to the Secretary an annual report, by a date determined by the Secretary, that includes, for each lender that participates in a preferred lender arrangement with such covered institution or organization—

(1) The information described in § 601.10(c); and

(2) A detailed explanation of why such covered institution or institution-affiliated organization participates in a preferred lender arrangement with the lender, including why the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial for students attending such institution, or the families of such students, as applicable; and

(b) Ensure that the report required under this section is made available to the public and provided to students attending or planning to attend such covered institution and the families of such students.

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

(Authority: 20 U.S.C. 1019b(c)(2))

§ 601.21 Code of conduct.

(a)(1) A covered institution that participates in a preferred lender arrangement must comply with the code of conduct requirements described in this section.

(2) The covered institution must—

(i) Develop a code of conduct with respect to FFEL Program loans and private education loans with which the institution's agents must comply. The code of conduct must—

(A) Prohibit a conflict of interest with the responsibilities of an agent of an institution with respect to FFEL Program loans and private education loans; and

(B) At a minimum, include the provisions specified in paragraph (c) of this section;

(ii) Publish such code of conduct prominently on the institution's Web site; and

(iii) Administer and enforce such code by, at a minimum, requiring that all of the institution's agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of the code of conduct.

(b) Any institution-affiliated organization of a covered institution that participates in a preferred lender arrangement must—

(1) Comply with the code of conduct developed and published by such covered institution under paragraph (a)(1) of this section;

(2) If such institution-affiliated organization has a Web site, publish such code of conduct prominently on the Web site; and

(3) Administer and enforce such code of conduct by, at a minimum, requiring that all of such institution-affiliated organization's agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of such code of conduct.

(c) A covered institution's code of conduct must prohibit—

(1) Revenue-sharing arrangements with any lender. The institution must not enter into any revenue-sharing arrangement with any lender. For purposes of this paragraph, the term *revenue-sharing arrangement* means an arrangement between a covered institution and a lender under which—

(i) A lender provides or issues a FFEL Program loan or private education loan to students attending the institution or to the families of such students; and

(ii) The institution recommends the lender or the loan products of the lender and in exchange, the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution, an agent;

(2)(i) Employees of the financial aid office receiving gifts from a lender, a guarantor, or a loan servicer. Agents who are employed in the financial aid office of the institution or who otherwise have responsibilities with respect to FFEL Program loans or private education loans, must not solicit or accept any gift from a lender, guarantor, or servicer of FFEL Program loans or private education loans;

(ii) For purposes of paragraph (c) of this section, the term *gift* means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimus amount. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred;

(iii) The term *gift* does not include any of the following:

(A) Standard material, activities, or programs on issues related to a loan, default aversion, default prevention, or financial literacy, such as a brochure, a workshop, or training.

(B) Food, refreshments, training, or informational material furnished to an agent as an integral part of a training session that is designed to improve the service of a lender, guarantor, or servicer of FFEL Program loans or private education loans to the institution, if such training contributes to the professional development of the agent.

(C) Favorable terms, conditions, and borrower benefits on a FFEL Program loan or private education loan provided to a student employed by the institution if such terms, conditions, or benefits are comparable to those provided to all students of the institution.

(D) Entrance and exit counseling services provided to borrowers to meet the institution's responsibilities for entrance and exit counseling as required by §§ 682.604(f) and 682.604(g), as long as the institution's staff are in control of the counseling (whether in person or via electronic capabilities) and such counseling does not promote the products or services of any specific lender.

(E) Philanthropic contributions to an institution from a lender, servicer, or guarantor of FFEL Program loans or private education loans that are unrelated to FFEL Program loans or private education loans or any contribution from any lender, servicer, or guarantor, that is not made in exchange for any advantage related to

FFEL Program loans or private education loans.

(F) State education grants, scholarships, or financial aid funds administered by or on behalf of a State; and

(iv) For purposes of paragraph (c) of this section, a gift to a family member of an agent, or to any other individual based on that individual's relationship with the agent, is considered a gift to the agent if—

(A) The gift is given with the knowledge and acquiescence of the agent; and

(B) The agent has reason to believe the gift was given because of the official position of the agent;

(3) Consulting or other contracting arrangements. An agent who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to FFEL Program loans or private education loans must not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to FFEL Program loans or private education loans. Nothing in paragraph (c)(3) of this section will be construed as prohibiting—

(i) An agent who is not employed in the institution's financial aid office and who does not otherwise have responsibilities with respect to FFEL Program loans or private education loans from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans;

(ii) An agent who is not employed in the institution's financial aid office but who has responsibility with respect to FFEL Program loans or private education loans from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of FFEL Program loans or private education loans, if the institution has a written conflict of interest policy that clearly sets forth that agents must recuse themselves from participating in any decision of the board regarding FFEL Program loans or private education loans at the institution; or

(iii) An officer, employee, or contractor of a lender, guarantor, or servicer of FFEL Program loans or private education loans from serving on a board of directors, or serving as a trustee, of an institution, if the institution has a written conflict of interest policy that the board member or trustee must recuse themselves from any decision regarding FFEL Program loans or private education loans at the institution;

(4) Directing borrowers to particular lenders or delaying loan certifications. The institution must not—

(i) For any first-time borrower, assign, through award packaging or other methods, the borrower's loan to a particular lender; or

(ii) Refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender or guaranty agency;

(5)(i) Offers of funds for private loans. The institution must not request or accept from any lender any offer of funds to be used for private education loans, including funds for an opportunity pool loan, to students in exchange for the institution providing concessions or promises regarding providing the lender with—

(A) A specified number of FFEL Program loans or private education loans;

(B) A specified loan volume of such loans; or

(C) A preferred lender arrangement for such loans.

(ii) For purposes of paragraph (c) of this section, the term *opportunity pool loan* means a private education loan made by a lender to a student attending the institution or the family member of such a student that involves a payment, directly or indirectly, by such institution of points, premiums, additional interest, or financial support to such lender for the purpose of such lender extending credit to the student or the family;

(6) Staffing assistance. The institution must not request or accept from any lender any assistance with call center staffing or financial aid office staffing, except that nothing in this paragraph will be construed to prohibit the institution from requesting or accepting assistance from a lender related to—

(i) Professional development training for financial aid administrators;

(ii) Providing educational counseling materials, financial literacy materials, or debt management materials to borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing such materials; or

(iii) Staffing services on a short-term, nonrecurring basis to assist the institution with financial aid-related functions during emergencies, including State-declared or federally declared natural disasters, federally declared national disasters, and other localized disasters and emergencies identified by the Secretary; and

(7) Advisory board compensation. Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to FFEL Program loans or private education loans or other student financial aid of the institution, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, must not receive anything of value from the lender, guarantor, or group of lenders or guarantors, except that the employee may be reimbursed for reasonable expenses, as that term is defined in § 668.16(d)(2)(ii), incurred in serving on such advisory board, commission, or group.

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

(Authority: 20 U.S.C. 1019b(c)(2)), 1094(a)(25) and (e))

Subpart D—Loan Information To Be Disclosed by Institutions Participating in the William D. Ford Direct Loan Program

§ 601.30 Duties of institutions.

(a) Each covered institution participating in the William D. Ford Direct Loan Program under part D of title IV of the HEA must—

(1) Make the information identified in a model disclosure form developed by the Secretary pursuant to section 154(a) of the HEA available to students attending or planning to attend the institution, or the families of such students, as applicable; and

(2) If the institution provides information regarding a private education loan to a prospective borrower, concurrently provide such borrower with the information identified on the model disclosure form that the Secretary provides to the institution under section 154(a) of the HEA.

(b) In providing the information required under paragraph (a) of this section, a covered institution may use a comparable form designed by the institution instead of the model disclosure form.

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

(Authority: 20 U.S.C. 1019c(b)).

Subpart E—Lender Responsibilities

§ 601.40 Disclosure and reporting requirements for lenders.

(a) *Disclosures to borrowers.* (1) A lender must, at or prior to disbursement of a FFEL loan, provide the borrower, in writing (including through electronic means), in clear and understandable

terms, the disclosures required in § 682.205(a) and (b).

(2) A lender must, for each of its private education loans, comply with the disclosure requirements under section 128(e) of the Truth in Lending Act (15 U.S.C. 1638(e)).

(b) *Reports to the Secretary.* Each FFEL lender must report annually to the Secretary—

(1) Any reasonable expenses paid or provided to any agent of a covered institution who is employed in the financial aid office or has other responsibilities with respect to education loans or other student financial aid of the institution for service on a lender advisory board, commission or group established by a lender or group of lenders; or

(2) Any similar expenses paid or provided to any agent of an institution-affiliated organization who is involved in recommending, promoting, or endorsing education loans.

(3) The report required by this paragraph must include—

(i) The amount of expenses paid or provided for each specific instance in which the lender provided expenses;

(ii) The name of any agent described in paragraph (b)(1) of this section to whom the expenses were paid or provided;

(iii) The dates of the activity for which the expenses were paid or provided; and

(iv) A brief description of the activity for which the expenses were paid or provided.

(c) *Lender certification of compliance.* (1) Any FFEL lender participating in one or more preferred lender arrangements must annually certify to the Secretary its compliance with the Higher Education Act of 1965, as amended; and

(2) If the lender is required to submit an audit under 34 CFR 682.305(c), the lender's compliance with the requirements under this section must be reported on and attested to annually by the lender's auditor.

(3) A lender may comply with the certification requirements of this section if the certifications are provided as part of the annual audit required by 34 CFR 682.305(c).

(4) A lender who is not required to submit an audit must submit the required certification at such time and in such manner as directed by the Secretary.

(d) *Annual lender report to covered institutions.* A FFEL lender with a preferred lender arrangement with a covered institution or an institution-affiliated organization relating to FFEL loans must annually, on a date prescribed by the Secretary, provide to the covered institution or the institution-affiliated organization and to the Secretary, such information required by the Secretary in relation to the FFEL loans the lender plans to offer pursuant to that preferred lender arrangement for the next award year.

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

(Authority: 20 U.S.C. 1019a(b) and 1019b(b))

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

2. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

3. Section 668.14 is amended by adding new paragraphs (b)(27), (b)(28) and (b)(29) as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(27) In the case of an institution participating in a Title IV, HEA loan program, the institution—

(i) Will develop, publish, administer, and enforce a code of conduct with respect to loans made, insured or guaranteed under the Title IV, HEA loan programs in accordance with 34 CFR 601.21; and

(ii) Must inform its officers, employees, and agents with responsibilities with respect to loans made, insured or guaranteed under the Title IV, HEA loan programs annually of the provisions of the code required under paragraph (b)(27) of this section;

(28) For any year in which the institution has a preferred lender arrangement (as defined in 34 CFR 601.2(b)), it will at least annually compile, maintain, and make available for students attending the institution, and the families of such students, a list in print or other medium, of the specific lenders for loans made, insured, or guaranteed under title IV of the HEA or private education loans that the institution recommends, promotes, or endorses in accordance with such preferred lender arrangement. In making such a list, the institution must comply with the requirements in 34 CFR 682.212(h) and 34 CFR 601.10;

(29)(i) It will, upon the request of an enrolled or admitted student who is an applicant for a private education loan (as defined in 34 CFR 601.2(b)), provide to the applicant the self-certification form required under 34 CFR 601.11(d) and the information required to complete the form, to the extent the institution possesses such information, including—

(A) The applicant's cost of attendance at the institution, as determined by the institution under part F of title IV of the HEA;

(B) The applicant's expected family contribution, for students who have completed the Free Application for Federal Student Aid;

(C) The applicant's estimated financial assistance, as determined by the institution in accordance with 34 CFR 682.200;

(D) The difference between the amounts under paragraphs (b)(29)(i)(A) and (29)(i)(C) of this section, as applicable; and

(E) The sum of the amounts under paragraphs (b)(29)(i)(B) and (b)(29)(i)(D) of this section, as applicable.

(ii) It will, upon the request of the applicant, discuss with the applicant the availability of Federal, State, and institutional student financial aid;

* * * * *

4. Section 668.16 is amended by:

A. Revising paragraph (d).

B. Revising paragraph (m).

C. Revising the authority citation that appears at the end of the section.

The revisions read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(d)(1) Establishes and maintains records required under this part and the individual Title IV, HEA program regulations; and

(2)(i) Reports annually to the Secretary on any reasonable reimbursements paid or provided by a private education lender or group of lenders as described under section 140(d) of the Truth in Lending Act (15 U.S.C. 1631(d)) to any employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans or other financial aid of the institution, including—

(A) The amount for each specific instance of reasonable expenses paid or provided;

(B) The name of the financial aid official, other employee, or agent to whom the expenses were paid or provided;

(C) The dates of the activity for which the expenses were paid or provided; and

(D) A brief description of the activity for which the expenses were paid or provided.

(ii) Expenses are considered to be reasonable if the expenses—

(A) Meet the standards of and are paid in accordance with a State government reimbursement policy applicable to the entity; or

(B) Meet the standards of and are paid in accordance with the applicable Federal cost principles for reimbursement, if no State policy that is applicable to the entity exists.

(iii) The policy must be consistently applied to an institution's employees reimbursed under this paragraph;

* * * * *

(m)(1) Has a cohort default rate—

(i) That is less than 25 percent for each of the three most recent fiscal years during which rates have been issued, to the extent those rates are calculated under subpart M of this part;

(ii) On or after 2014, that is less than 30 percent for at least two of the three most recent fiscal years during which the Secretary has issued rates for the institution under subpart N of this part; and

(iii) As defined in 34 CFR 674.5, on loans made under the Federal Perkins Loan Program to students for attendance at that institution that does not exceed 15 percent.

(2)(i) However, if the Secretary determines that an institution's administrative capability is impaired solely because the institution fails to comply with paragraph (m)(1) of this section, and the institution is not subject to a loss of eligibility under §§ 668.187(a) or 668.206(a), the Secretary allows the institution to continue to participate in the Title IV, HEA programs. In such a case, the Secretary may provisionally certify the institution in accordance with § 668.13(c) except as provided in paragraphs (m)(2)(ii), (m)(2)(iii), (m)(2)(iv), and (m)(2)(v) of this section.

(ii) An institution that fails to meet the standard of administrative capability under paragraph (m)(1)(ii) based on two cohort default rates that are greater than or equal to 30 percent but less than 40 percent is not placed on provisional certification under paragraph (m)(2)(i) of this section—

(A) If it has timely filed a request for adjustment or appeal under §§ 668.209, 668.210, or 668.212 with respect to the second such rate, and the request for adjustment or appeal is either pending or succeeds in reducing the rate below 30 percent; or

(B) If it has timely filed an appeal under §§ 668.213 or 668.214 after receiving the second such rate, and the appeal is either pending or successful.

(iii) The institution may appeal the loss of full participation in a Title IV, HEA program under paragraph (m)(2)(i) of this section by submitting an erroneous data appeal in writing to the Secretary in accordance with and on the grounds specified in §§ 668.192 or 668.211 as applicable;

(iv) If you have 30 or fewer borrowers in the three most recent cohorts of borrowers used to calculate your cohort default rate under subpart N of this part, we not provisionally certify you solely based on cohort default rates;

(v) If a rate that would otherwise potentially subject you to provisional certification under paragraph (m)(1)(ii) and (m)(2)(i) of this section is calculated as an average rate, we will not provisionally certify you solely based on cohort default rates;

* * * * *

(Authority: 20 U.S.C. 1082, 1085, 1092, 1094, and 1099c)

5. Section 668.42 is amended by:

A. In paragraph (a)(1), removing the word ''student's'' and adding, in its place, the word ''students''.

B. In paragraph (a), adding a new paragraph (4).

C. In paragraph (c) introductory text, removing the word ''shall'' and adding, in its place, the word ''must''.

D. In paragraph (c)(5), adding the word ''and'' after the punctuation ''\;''.

E. In paragraph (c)(6), removing the words ''The institution shall provide and collect exit counseling information'' and adding, in their place, the words ''The exit counseling the institution provides and collects''.

F. In paragraph (c)(6), removing the punctuation and word ''; and'' and adding, in their place, the punctuation ''.''.

G. In paragraph (c), removing paragraph (7).

The addition reads as follows:

§ 668.42 Financial assistance information.

(a) * * *

(4) The institution must describe the terms and conditions of the loans students receive under the Federal Family Education Loan Program, the William D. Ford Federal Direct Student Loan Program, and the Federal Perkins Loan Program.

* * * * *

6. Revise the subpart heading of subpart M to read as follows:

Subpart M—Two Year Cohort Default Rates

7. Section 668.181 is revised to read as follows:

§ 668.181 Purpose of this subpart.

(a) *General.* Your cohort default rate is a measure we use to determine your eligibility to participate in various Title IV, HEA programs. We may also use it for determining your eligibility for exemptions, such as those for certain disbursement requirements under the FFEL and Direct Loan Programs. This subpart applies solely to cohorts, as defined in §§ 668.182(a) and 668.183(b), for fiscal years through 2011. For these cohorts, this subpart describes how cohort default rates are calculated, some of the consequences of cohort default rates, and how you may request changes to your cohort default rates or appeal their consequences. Under this subpart, you submit a ''challenge'' after you receive your draft cohort default rate, and you request an ''adjustment'' or ''appeal'' after your official cohort default rate is published.

(b) *Cohort Default Rates.* Notwithstanding anything to the contrary in this subpart, we will issue annually two sets of draft and official cohort default rates for fiscal years 2009, 2010, and 2011. For each of these years, you will receive one set of draft and official cohort default rates under this subpart and another set of draft and official cohort default rates under subpart N of this part.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.184 [Amended]

8. Section 668.184(a)(1) is amended by removing the word ''If'' and adding, in its place, the words ''Except as provided under 34 CFR 600.32(d), if''.

9. Section 668.185(a)(3) is revised to read as follows:

§ 668.185 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.

(a) * * *

(3) Your draft cohort default rate and the loan record detail report are not considered public information and may not be otherwise voluntarily released to the public by a data manager.

* * * * *

10. Section 668.186 is revised to read as follows:

§ 668.186 Notice of your official cohort default rate.

(a) We electronically notify you of your cohort default rate after we calculate it, by sending you an eCDR notification package to the destination point you designate. After we send our notice to you, we publish a list of cohort default rates calculated under this subpart for all institutions.

(b) If you have one or more borrowers entering repayment or are subject to sanctions, or if the Department believes you will have an official cohort default rate calculated as an average rate, you will receive a loan record detail report as part of your eCDR notification package.

(c) You have five business days, from the transmission date for eCDR notification packages as posted on the Department's Web site, to report any problem with receipt of the electronic transmission of your eCDR notification package.

(d) Except as provided in paragraph (e) of this section, timelines for submitting challenges, adjustments, and appeals begin on the sixth business day following the transmission date for eCDR notification packages that is posted on the Department's Web site.

(e) If you timely report a problem with the receipt of the electronic transmission of your eCDR notification package under paragraph (c) of this section and the Department agrees that the problem with transmission was not caused by you, the Department will extend the challenge, appeal and adjustment deadlines and timeframes to account for a retransmission of your eCDR notification package after the technical problem is resolved.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

11. Section 668.187 is revised to read as follows:

§ 668.187 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.

(a) *End of participation.* (1) Except as provided in paragraph (e) of this section, you lose your eligibility to participate in the FFEL and Direct Loan programs 30 days after you receive our notice that your most recent cohort default rate is greater than 40 percent.

(2) Except as provided in paragraphs (d) and (e) of this section, you lose your eligibility to participate in the FFEL, Direct Loan, and Federal Pell Grant programs 30 days after you receive our notice that your three most recent cohort default rates are each 25 percent or greater.

(b) *Length of period of ineligibility.* Your loss of eligibility under this section continues—

(1) For the remainder of the fiscal year in which we notify you that you are subject to a loss of eligibility; and

(2) For the next 2 fiscal years.

(c) *Using a cohort default rate more than once.* The use of a cohort default rate as a basis for a loss of eligibility under this section does not preclude its use as a basis for—

(1) Any concurrent or subsequent loss of eligibility under this section; or

(2) Any other action by us.

(d) *Continuing participation in Pell.* If you are subject to a loss of eligibility under paragraph (a)(2) of this section, based on three cohort default rates of 25 percent or greater, you may continue to participate in the Federal Pell Grant Program if we determine that you—

(1) Were ineligible to participate in the FFEL and Direct Loan programs before October 7, 1998, and your eligibility was not reinstated;

(2) Requested in writing, before October 7, 1998, to withdraw your participation in the FFEL and Direct Loan programs, and you were not later reinstated; or

(3) Have not certified an FFELP loan or originated a Direct Loan Program loan on or after July 7, 1998.

(e) *Requests for adjustments and appeals.* (1) A loss of eligibility under this section does not take effect while your request for adjustment or appeal, as listed in § 668.189(a), is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.

(2) Eligibility continued under paragraph (e)(1) of this section ends if we determine that none of the requests for adjustments and appeals you have submitted qualify you for continued eligibility under § 668.189. Loss of eligibility takes effect on the date that you receive notice of our determination on your last pending request for adjustment or appeal.

(3) You do not lose eligibility under this section if we determine that your request for adjustment or appeal meets all requirements of this subpart and qualifies you for continued eligibility under § 668.189.

(4) To avoid liabilities you might otherwise incur under paragraph (g) of this section, you may choose to suspend your participation in the FFEL and Direct Loan programs during the adjustment or appeal process.

(f) *Liabilities during the adjustment or appeal process.* If you continued to participate in the FFEL or Direct Loan Program under paragraph (d)(1) of this section, and we determine that none of your requests for adjustments or appeals qualify you for continued eligibility—

(1) For any FFEL or Direct Loan Program loan that you certified and delivered or originated and disbursed more than 30 days after you received the notice of your cohort default rate, we estimate the amount of interest, special allowance, reinsurance, and any related or similar payments we make or are obligated to make on those loans;

(2) We exclude from this estimate any amount attributable to funds that you delivered or disbursed more than 45 days after you submitted your completed appeal to us;

(3) We notify you of the estimated amount; and

(4) Within 45 days after you receive our notice of the estimated amount, you must pay us that amount, unless—

(i) You file an appeal under the procedures established in subpart H of this part (for the purposes of subpart H of this part, our notice of the estimate is considered to be a final program review determination); or

(ii) We permit a longer repayment period.

(g) *Regaining eligibility.* If you lose your eligibility to participate in a program under this section, you may not participate in that program until—

(1) The period described in paragraph (b) of this section has ended;

(2) You pay any amount owed to us under this section or are meeting that obligation under an agreement acceptable to us;

(3) You submit a new application for participation in the program;

(4) We determine that you meet all of the participation requirements in effect at the time of your application; and

(5) You and we enter into a new program participation agreement.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

12. In § 668.188, the introductory text in paragraph (a) is revised to read as follows:

§ 668.188 Preventing evasion of the consequences of cohort default rates.

(a) *General.* You are subject to a loss of eligibility that has already been imposed against another institution as a result of cohort default rates if—

* * * * *

13. Section 668.190 is revised to read as follows:

§ 668.190 Uncorrected data adjustments.

(a) *Eligibility.* You may request an uncorrected data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if in response to your challenge under § 668.185(b), a data manager agreed correctly to change the data, but the changes are not reflected in your official cohort default rate.

(b) *Deadlines for requesting an uncorrected data adjustment.* You must send us a request for an uncorrected data adjustment, including all supporting documentation, within 30 days after you receive your loan record detail report from us.

(c) *Determination.* We recalculate your cohort default rate, based on the

corrected data, and electronically correct the rate that is publicly released, if we determine that—

(1) In response to your challenge under § 668.185(b), a data manager agreed to change the data;

(2) The changes described in paragraph (c)(1) of this section are not reflected in your official cohort default rate; and

(3) We agree that the data are incorrect.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

14. Section 668.191 is revised to read as follows:

§ 668.191 New data adjustments.

(a) *Eligibility.* You may request a new data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if—

(1) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed; and

(2) You identify errors in the data described in paragraph (a)(1) of this section that are confirmed by the data manager.

(b) *Deadlines for requesting a new data adjustment.* (1) You must send to the relevant data manager, or data managers, and us a request for a new data adjustment, including all supporting documentation, within 15 days after you receive your loan record detail report from us.

(2) Within 20 days after receiving your request for a new data adjustment, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request as set forth under paragraph (b)(3) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data from a data manager, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send us your completed request for a new data adjustment, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request or requests; or

(ii) If you are also filing an erroneous data appeal or a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(7)(i) of this section or in § 668.192(b)(6)(i) or § 668.193(c)(10)(i).

(c) *Determination.* If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data and electronically correct the rate that is publicly released.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

15. Section 668.192(c) is revised to read as follows:

§ 668.192 Erroneous data appeals.

* * * * *

(c) *Determination.* If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data and electronically correct the rate that is publicly released.

* * * * *

16. Section 668.193(f)(2) is revised to read as follows:

§ 668.193 Loan servicing appeals.

* * * * *

(2) Based on our determination, we use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of your cohort default rate, and electronically correct the rate that is publicly released.

* * * * *

17. Section 668.196(c) is revised to read as follows:

§ 668.196 Average rates appeals.

* * * * *

(c) *Determination.* You do not lose eligibility under § 668.187 if we determine that you meet the requirements for an average rates appeal. In such a case, we electronically correct the rate that is publicly released.

* * * * *

§ 668.198 [Removed]

18. Section 668.198 is removed.

19. Part 668, subpart M, is amended by:

A. Removing appendix A.

B. Redesignating appendix B as appendix A.

20. Part 668 is amended by adding new subpart N to read as follows:

Subpart N—Cohort Default Rates

Sec.

Subpart N—Cohort Default Rates

§ 668.200 Purpose of this subpart.

(a) *General.* Your cohort default rate is a measure we use to determine your eligibility to participate in various Title IV, HEA programs. We may also use it for determining your eligibility for exemptions, such as those for certain disbursement requirements under the FFEL and Direct Loan Programs. This subpart applies solely to cohorts, as defined in §§ 668.201(a) and 668.202(b), for fiscal years 2009 and later. For these cohorts, this subpart describes how cohort default rates are calculated, some of the consequences of cohort default rates, and how you may request changes to your cohort default rates or appeal their consequences. Under this subpart, you submit a ''challenge'' after you receive your draft cohort default rate, and you request an ''adjustment'' or ''appeal'' after your official cohort default rate is published.

(b) *Cohort Default Rates.* Notwithstanding anything to the

contrary in this subpart, we will issue annually two sets of draft and official cohort default rates for fiscal years 2009, 2010, and 2011. For each of these years, you will receive one set of draft and official cohort default rates under this subpart and another set of draft and official cohort default rates under subpart M of this part.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.201 Definitions of terms used in this subpart.

We use the following definitions in this subpart:

(a) *Cohort.* Your cohort is a group of borrowers used to determine your cohort default rate. The method for identifying the borrowers in a cohort is provided in § 668.202(b).

(b) *Data manager.* (1) For FFELP loans held by a guaranty agency or lender, the guaranty agency is the data manager.

(2) For FFELP loans that we hold, we are the data manager.

(3) For Direct Loan Program loans, the Direct Loan Servicer, as defined in 34 CFR 685.102, is the data manager.

(c) *Days.* In this subpart, ''days'' means calendar days.

(d) *Default.* A borrower is considered to be in default for cohort default rate purposes under the rules in § 668.202(c).

(e) *Draft cohort default rate.* Your draft cohort default rate is a rate we issue, for your review, before we issue your official cohort default rate. A draft cohort default rate is used only for the purposes described in § 668.204.

(f) *Entering repayment.* (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, loans are considered to enter repayment on the dates described in 34 CFR 682.200 (under the definition of ''repayment period'') and in 34 CFR 685.207.

(2) A Federal SLS loan is considered to enter repayment—

(i) At the same time the borrower's Federal Stafford loan enters repayment, if the borrower received the Federal SLS loan and the Federal Stafford loan during the same period of continuous enrollment; or

(ii) In all other cases, on the day after the student ceases to be enrolled at an institution on at least a half-time basis in an educational program leading to a degree, certificate, or other recognized educational credential.

(3) For the purposes of this subpart, a loan is considered to enter repayment on the date that a borrower repays it in full, if the loan is paid in full before the loan enters repayment under paragraphs (f)(1) or (f)(2) of this section.

(g) *Fiscal year.* A fiscal year begins on October 1 and ends on the following September 30. A fiscal year is identified by the calendar year in which it ends.

(h) *Loan record detail report.* The loan record detail report is a report that we produce. It contains the data used to calculate your draft or official cohort default rate.

(i) *Official cohort default rate.* Your official cohort default rate is the cohort default rate that we publish for you under § 668.205. Cohort default rates calculated under this subpart are not related in any way to cohort default rates that are calculated for the Federal Perkins Loan Program.

(j) *We.* We are the Department, the Secretary, or the Secretary's designee.

(k) *You.* You are an institution.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.202 Calculating and applying cohort default rates.

(a) *General.* This section describes the four steps that we follow to calculate and apply your cohort default rate for a fiscal year:

(1) First, under paragraph (b) of this section, we identify the borrowers in your cohort for the fiscal year. If the total number of borrowers in that cohort is fewer than 30, we also identify the borrowers in your cohorts for the 2 most recent prior fiscal years.

(2) Second, under paragraph (c) of this section, we identify the borrowers in the cohort (or cohorts) who are considered to be in default by the end of the second fiscal year following the fiscal year those borrowers entered repayment. If more than one cohort will be used to calculate your cohort default rate, we identify defaulted borrowers separately for each cohort.

(3) Third, under paragraph (d) of this section, we calculate your cohort default rate.

(4) Fourth, we apply your cohort default rate to all of your locations—

(i) As you exist on the date you receive the notice of your official cohort default rate; and

(ii) From the date on which you receive the notice of your official cohort default rate until you receive our notice that the cohort default rate no longer applies.

(b) *Identify the borrowers in a cohort.* (1) Except as provided in paragraph (b)(3) of this section, your cohort for a fiscal year consists of all of your current and former students who, during that fiscal year, entered repayment on any Federal Stafford loan, Federal SLS loan, Direct Subsidized loan, or Direct Unsubsidized loan that they received to attend your institution, or on the portion of a loan made under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program (as defined in 34 CFR 685.102) that is used to repay those loans.

(2) A borrower may be included in more than one of your cohorts and may be included in the cohorts of more than one institution in the same fiscal year.

(3) A TEACH Grant that has been converted to a Federal Direct Unsubsidized Loan is not considered for the purpose of calculating and applying cohort default rates.

(c) *Identify the borrowers in a cohort who are in default.* (1) Except as provided in paragraph (c)(2) of this section, a borrower in a cohort for a fiscal year is considered to be in default if, before the end of the second fiscal year following the fiscal year the borrower entered repayment—

(i) The borrower defaults on any FFELP loan that was used to include the borrower in the cohort or on any Federal Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort (however, a borrower is not considered to be in default unless a claim for insurance has been paid on the loan by a guaranty agency or by us);

(ii) The borrower fails to make an installment payment, when due, on any Direct Loan Program loan that was used to include the borrower in the cohort or on any Federal Direct Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort, and the borrower's failure persists for 360 days (or for 270 days, if the borrower's first day of delinquency was before October 7, 1998); or

(iii) You or your owner, agent, contractor, employee, or any other affiliated entity or individual make a payment to prevent a borrower's default on a loan that is used to include the borrower in that cohort.

(2) A borrower is not considered to be in default based on a loan that is, before the end of the second fiscal year following the fiscal year in which it entered repayment—

(i) Rehabilitated under 34 CFR 682.405 or 34 CFR 685.211(e); or

(ii) Repurchased by a lender because the claim for insurance was submitted or paid in error.

(d) Calculate the cohort default rate. Except as provided in § 668.203, if there are—

(1)(i) Thirty or more borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is calculated by—

(ii) Dividing the number of borrowers in the cohort who are in default, as determined under paragraph (c) of this

section by the number of borrowers in the cohort, as determined under paragraph (b) of this section.

(2)(i) Fewer than 30 borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is calculated by—

(ii) Dividing the total number of borrowers in that cohort and in the two most recent prior cohorts who are in default, as determined for each cohort under paragraph (c) of this section by the total number of borrowers in that cohort and the two most recent prior cohorts, as determined for each cohort under paragraph (b) of this section.

(Authority: 20 U.S.C. 1070g, 1082, 1085, 1094, 1099c)

§ 668.203 Determining cohort default rates for institutions that have undergone a change in status.

(a) *General.* (1) Except as provided under 34 CFR 600.32(d), if you undergo a change in status identified in this section, your cohort default rate is determined under this section.

(2) In determining cohort default rates under this section, the date of a merger, acquisition, or other change in status is the date the change occurs.

(3) A change in status may affect your eligibility to participate in Title IV, HEA programs under § 668.206 or § 668.207.

(4) If another institution's cohort default rate is applicable to you under this section, you may challenge, request an adjustment, or submit an appeal for the cohort default rate under the same requirements that would be applicable to the other institution under §§ 668.204 and 668.208.

(b) *Acquisition or merger of institutions.* If your institution acquires, or was created by the merger of, one or more institutions that participated independently in the Title IV, HEA programs immediately before the acquisition or merger—

(1) For the cohort default rates published before the date of the acquisition or merger, your cohort default rates are the same as those of your predecessor that had the highest total number of borrowers entering repayment in the two most recent cohorts used to calculate those cohort default rates; and

(2) Beginning with the first cohort default rate published after the date of the acquisition or merger, your cohort default rates are determined by including the applicable borrowers from each institution involved in the acquisition or merger in the calculation under § 668.202.

(c) *Acquisition of branches or locations.* If you acquire a branch or a location from another institution participating in the Title IV, HEA programs—

(1) The cohort default rates published for you before the date of the change apply to you and to the newly acquired branch or location;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and the other institution (including all of its locations) in the calculation under § 668.202;

(3) After the period described in paragraph (c)(2) of this section, your cohort default rates do not include borrowers from the other institution in the calculation under § 668.202; and

(4) At all times, the cohort default rate for the institution from which you acquired the branch or location is not affected by this change in status.

(d) *Branches or locations becoming institutions.* If you are a branch or location of an institution that is participating in the Title IV, HEA programs, and you become a separate, new institution for the purposes of participating in those programs—

(1) The cohort default rates published before the date of the change for your former parent institution are also applicable to you;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and your former parent institution (including all of its locations) in the calculation under § 668.202; and

(3) After the period described in paragraph (d)(2) of this section, your cohort default rates do not include borrowers from your former parent institution in the calculation under § 668.202.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.204 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.

(a) *General.* (1) We notify you of your draft cohort default rate before your official cohort default rate is calculated. Our notice includes the loan record detail report for the draft cohort default rate.

(2) Regardless of the number of borrowers included in your cohort, your draft cohort default rate is always calculated using data for that fiscal year alone, using the method described in § 668.202(d)(1).

(3) Your draft cohort default rate and the loan record detail report are not considered public information and may not be otherwise voluntarily released to the public by a data manager.

(4) Any challenge you submit under this section and any response provided by a data manager must be in a format acceptable to us. This acceptable format is described in the ''Cohort Default Rate Guide'' that we provide to you. If your challenge does not comply with the requirements in the ''Cohort Default Rate Guide,'' we may deny your challenge.

(b) *Incorrect data challenges.* (1) You may challenge the accuracy of the data included on the loan record detail report by sending a challenge to the relevant data manager, or data managers, within 45 days after you receive the data. Your challenge must include—

(i) A description of the information in the loan record detail report that you believe is incorrect; and

(ii) Documentation that supports your contention that the data are incorrect.

(2) Within 30 days after receiving your challenge, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation that supports the data manager's position.

(3) If your data manager concludes that draft data in the loan record detail report are incorrect, and we agree, we use the corrected data to calculate your cohort default rate.

(4) If you fail to challenge the accuracy of data under this section, you cannot contest the accuracy of those data in an uncorrected data adjustment, under § 668.209, or in an erroneous data appeal, under § 668.211.

(c) *Participation rate index challenges.* (1)(i) You may challenge an anticipated loss of eligibility under § 668.206(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than 0.06015.

(ii) You may challenge an anticipated loss of eligibility under § 668.206(a)(2), based on three cohort default rates of 30 percent or greater, if your participation rate index is equal to or less than 0.0625 for any of those three cohorts' fiscal years.

(iii) You may challenge a potential placement on provisional certification under § 668.16(m)(2)(i), based on two cohort default rates that fail to satisfy the standard of administrative capability in § 668.16(m)(1)(ii), if your participation rate index is equal to or less than 0.0625 for either of the two cohorts' fiscal years.

(2) For a participation rate index challenge, your participation rate index

is calculated as described in § 668.214(b), except that—

(i) The draft cohort default rate is considered to be your most recent cohort default rate; and

(ii) If the cohort used to calculate your draft cohort default rate included fewer than 30 borrowers, you may calculate your participation rate index for that fiscal year using either your most recent draft cohort default rate or the average rate that would be calculated for that fiscal year, using the method described in § 668.202(d)(2).

(3) You must send your participation rate index challenge, including all supporting documentation, to us within 45 days after you receive your draft cohort default rate.

(4) We notify you of our determination on your participation rate index challenge before your official cohort default rate is published.

(5) If we determine that you qualify for continued eligibility or full certification based on your participation rate index challenge, you will not lose eligibility under § 668.206 or be placed on provisional certification under § 668.16(m)(2)(i) when your next official cohort default rate is published. A successful challenge that is based on your draft cohort default rate does not excuse you from any other loss of eligibility or placement on provisional certification. However, if your successful challenge under paragraph (c)(1)(ii) or (c)(1)(iii) of this section is based on a prior, official cohort default rate, and not on your draft cohort default rate, we also excuse you from any subsequent loss of eligibility, under § 668.206(a)(2) or placement on provisional certification, under § 668.16(m)(2)(i), that would be based on that official cohort default rate.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.205 Notice of your official cohort default rate.

(a) We electronically notify you of your cohort default rate after we calculate it, by sending you an eCDR notification package to the destination point you designate. After we send our notice to you, we publish a list of cohort default rates for all institutions.

(b) If you had one or more borrowers entering repayment in the fiscal year for which the rate is calculated, or are subject to sanctions, or if the Department believes you will have an official cohort default rate calculated as an average rate, you will receive a loan record detail report as part of your eCDR notification package.

(c) You have five business days, from the transmission date for eCDR notification packages as posted on the Department's Web site, to report any problem with receipt of the electronic transmission of your eCDR notification package.

(d) Except as provided in paragraph (e) of this section, timelines for submitting challenges, adjustments, and appeals begin on the sixth business day following the announced transmission date.

(e) If you timely report a problem with transmission of your eCDR notification package under paragraph (c) of this section and the Department agrees that the problem with transmission was not caused by you, the Department will extend the challenge, appeal and adjustment deadlines and timeframes to account for a retransmission of your eCDR notification package after the technical problem is resolved.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.206 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.

(a) *End of participation.* (1) Except as provided in paragraph (e) of this section, you lose your eligibility to participate in the FFEL and Direct Loan programs 30 days after you receive our notice that your most recent cohort default rate for fiscal year 2011 or later is greater than 40 percent.

(2) Except as provided in paragraphs (d) and (e) of this section, you lose your eligibility to participate in the FFEL, Direct Loan, and Federal Pell Grant programs 30 days after you receive our notice that your three most recent cohort default rates are each 30 percent or greater.

(b) *Length of period of ineligibility.* Your loss of eligibility under this section continues—

(1) For the remainder of the fiscal year in which we notify you that you are subject to a loss of eligibility; and

(2) For the next 2 fiscal years.

(c) *Using a cohort default rate more than once.* The use of a cohort default rate as a basis for a loss of eligibility under this section does not preclude its use as a basis for—

(1) Any concurrent or subsequent loss of eligibility under this section; or

(2) Any other action by us.

(d) *Continuing participation in Pell.* If you are subject to a loss of eligibility under paragraph (a)(2) of this section, based on three cohort default rates of 30 percent or greater, you may continue to participate in the Federal Pell Grant Program if we determine that you—

(1) Were ineligible to participate in the FFEL and Direct Loan programs before October 7, 1998, and your eligibility was not reinstated;

(2) Requested in writing, before October 7, 1998, to withdraw your participation in the FFEL and Direct Loan programs, and you were not later reinstated; or

(3) Have not certified an FFELP loan or originated a Direct Loan Program loan on or after July 7, 1998.

(e) *Requests for adjustments and appeals.* (1) A loss of eligibility under this section does not take effect while your request for adjustment or appeal, as listed in § 668.208(a), is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.

(2) Eligibility continued under paragraph (e)(1) of this section ends if we determine that none of the requests for adjustments and appeals you have submitted qualify you for continued eligibility under § 668.208. Loss of eligibility takes effect on the date that you receive notice of our determination on your last pending request for adjustment or appeal.

(3) You do not lose eligibility under this section if we determine that your request for adjustment or appeal meets all requirements of this subpart and qualifies you for continued eligibility under § 668.208.

(4) To avoid liabilities you might otherwise incur under paragraph (f) of this section, you may choose to suspend your participation in the FFEL and Direct Loan programs during the adjustment or appeal process.

(f) *Liabilities during the adjustment or appeal process.* If you continued to participate in the FFEL or Direct Loan Program under paragraph (e)(1) of this section, and we determine that none of your requests for adjustments or appeals qualify you for continued eligibility—

(1) For any FFEL or Direct Loan Program loan that you certified and delivered or originated and disbursed more than 30 days after you received the notice of your cohort default rate, we estimate the amount of interest, special allowance, reinsurance, and any related or similar payments we make or are obligated to make on those loans;

(2) We exclude from this estimate any amount attributable to funds that you delivered or disbursed more than 45 days after you submitted your completed appeal to us;

(3) We notify you of the estimated amount; and

(4) Within 45 days after you receive our notice of the estimated amount, you must pay us that amount, unless—

(i) You file an appeal under the procedures established in subpart H of this part (for the purposes of subpart H

of this part, our notice of the estimate is considered to be a final program review determination); or

(ii) We permit a longer repayment period.

(g) *Regaining eligibility.* If you lose your eligibility to participate in a program under this section, you may not participate in that program until—

(1) The period described in paragraph (b) of this section has ended;

(2) You pay any amount owed to us under this section or are meeting that obligation under an agreement acceptable to us;

(3) You submit a new application for participation in the program;

(4) We determine that you meet all of the participation requirements in effect at the time of your application; and

(5) You and we enter into a new program participation agreement.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.207 Preventing evasion of the consequences of cohort default rates.

(a) *General.* You are subject to a loss of eligibility that has already been imposed against another institution as a result of cohort default rates if—

(1) You and the ineligible institution are both parties to a transaction that results in a change of ownership, a change in control, a merger, a consolidation, an acquisition, a change of name, a change of address, any change that results in a location becoming a freestanding institution, a purchase or sale, a transfer of assets, an assignment, a change of identification number, a contract for services, an addition or closure of one or more locations or branches or educational programs, or any other change in whole or in part in institutional structure or identity;

(2) Following the change described in paragraph (a)(1) of this section, you offer an educational program at substantially the same address at which the ineligible institution had offered an educational program before the change; and

(3) There is a commonality of ownership or management between you and the ineligible institution, as the ineligible institution existed before the change.

(b) *Commonality of ownership or management.* For the purposes of this section, a commonality of ownership or management exists if, at each institution, the same person (as defined in 34 CFR 600.31) or members of that person's family, directly or indirectly—

(1) Holds or held a managerial role; or

(2) Has or had the ability to affect substantially the institution's actions, within the meaning of 34 CFR 600.21.

(c) *Teach-outs.* Notwithstanding paragraph (b)(1) of this section, a commonality of management does not exist if you are conducting a teach-out under a teach-out agreement as defined in 34 CFR 602.3 and administered in accordance with 34 CFR 602.24(c), and—

(1)(i) Within 60 days after the change described in this section, you send us the names of the managers for each facility undergoing the teach-out as it existed before the change and for each facility as it exists after you believe that the commonality of management has ended; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended; or

(2)(i) Within 30 days after you receive our notice that we have denied your submission under paragraph (c)(1)(i) of this section, you make the management changes we request and send us a list of the names of the managers for each facility undergoing the teach-out as it exists after you make those changes; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended.

(d) *Initial determination.* We encourage you to contact us before undergoing a change described in this section. If you write to us, providing the information we request, we will provide a written initial determination of the anticipated change's effect on your eligibility.

(e) *Notice of accountability.* (1) We notify you in writing if, in response to your notice or application filed under 34 CFR 600.20 or 600.21, we determine that you are subject to a loss of eligibility, under paragraph (a) of this section, that has been imposed against another institution.

(2) Our notice also advises you of the scope and duration of your loss of eligibility. The loss of eligibility applies to all of your locations from the date you receive our notice until the expiration of the period of ineligibility applicable to the other institution.

(3) If you are subject to a loss of eligibility under this section that has already been imposed against another institution, you may only request an adjustment or submit an appeal for the loss of eligibility under the same requirements that would be applicable to the other institution under § 668.208.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.208 General requirements for adjusting official cohort default rates and for appealing their consequences.

(a) *Remaining eligible.* You do not lose eligibility under § 668.206 if—

(1) We recalculate your cohort default rate, and it is below the percentage threshold for the loss of eligibility as the result of—

(i) An uncorrected data adjustment submitted under this section and § 668.209;

(ii) A new data adjustment submitted under this section and § 668.210;

(iii) An erroneous data appeal submitted under this section and § 668.211; or

(iv) A loan servicing appeal submitted under this section and § 668.212; or

(2) You meet the requirements for—

(i) An economically disadvantaged appeal submitted under this section and § 668.213;

(ii) A participation rate index appeal submitted under this section and § 668.214;

(iii) An average rates appeal submitted under this section and § 668.215; or

(iv) A thirty-or-fewer borrowers appeal submitted under this section and § 668.216.

(b) *Limitations on your ability to dispute your cohort default rate.* (1) You may not dispute the calculation of a cohort default rate except as described in this subpart or in § 668.16(m)(2).

(2) You may not request an adjustment or appeal a cohort default rate, under § 668.209, § 668.210, § 668.211, or § 668.212, more than once.

(3) You may not request an adjustment or appeal a cohort default rate, under § 668.209, § 668.210, § 668.211, or § 668.212, if you previously lost your eligibility to participate in a Title IV, HEA program, under § 668.206, or were placed on provisional certification under § 668.16(m)(2)(i), based entirely or partially on that cohort default rate.

(c) *Content and format of requests for adjustments and appeals.* We may deny your request for adjustment or appeal if it does not meet the following requirements:

(1) All appeals, notices, requests, independent auditor's opinions, management's written assertions, and other correspondence that you are required to send under this subpart must be complete, timely, accurate, and in a format acceptable to us. This acceptable format is described in the ''Cohort Default Rate Guide'' that we provide to you.

(2) Your completed request for adjustment or appeal must include—

(i) All of the information necessary to substantiate your request for adjustment or appeal; and

(ii) A certification by your chief executive officer, under penalty of perjury, that all the information you provide is true and correct.

(d) *Our copies of your correspondence*. Whenever you are required by this subpart to correspond with a party other than us, you must send us a copy of your correspondence within the same time deadlines. However, you are not required to send us copies of documents that you received from us originally.

(e) *Requirements for data managers' responses*. (1) Except as otherwise provided in this subpart, if this subpart requires a data manager to correspond with any party other than us, the data manager must send us a copy of the correspondence within the same time deadlines.

(2) If a data manager sends us correspondence under this subpart that is not in a format acceptable to us, we may require the data manager to revise that correspondence's format, and we may prescribe a format for that data manager's subsequent correspondence with us.

(f) *Our decision on your request for adjustment or appeal*. (1) We determine whether your request for an adjustment or appeal is in compliance with this subpart.

(2) In making our decision for an adjustment, under § 668.209 or § 668.210, or an appeal, under § 668.211 or § 668.212—

(i) We presume that the information provided to you by a data manager is correct unless you provide substantial evidence that shows the information is not correct; and

(ii) If we determine that a data manager did not provide the necessary clarifying information or legible records in meeting the requirements of this subpart, we presume that the evidence that you provide to us is correct unless it is contradicted or otherwise proven to be incorrect by information we maintain.

(3) Our decision is based on the materials you submit under this subpart. We do not provide an oral hearing.

(4) We notify you of our decision—

(i) If you request an adjustment or appeal because you are subject to a loss of eligibility under § 668.206 or potential placement on provisional certification under § 668.16(m)(2)(i) or file an economically disadvantaged appeal under § 668.213(a)(2), within 45 days after we receive your completed request for an adjustment or appeal; or

(ii) In all other cases, except for appeals submitted under § 668.211(a) following placement on provisional certification, before we notify you of your next official cohort default rate.

(5) You may not seek judicial review of our determination of a cohort default rate until we issue our decision on all pending requests for adjustments or appeals for that cohort default rate.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.209 Uncorrected data adjustments.

(a) *Eligibility*. You may request an uncorrected data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if in response to your challenge under § 668.204(b), a data manager agreed correctly to change the data, but the changes are not reflected in your official cohort default rate.

(b) *Deadlines for requesting an uncorrected data adjustment*. You must send us a request for an uncorrected data adjustment, including all supporting documentation, within 30 days after you receive your loan record detail report from us.

(c) *Determination*. We recalculate your cohort default rate, based on the corrected data, and electronically correct the rate that is publicly released if we determine that—

(1) In response to your challenge under § 668.204(b), a data manager agreed to change the data;

(2) The changes described in paragraph (c)(1) of this section are not reflected in your official cohort default rate; and

(3) We agree that the data are incorrect.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.210 New data adjustments.

(a) *Eligibility*. You may request a new data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if—

(1) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed; and

(2) You identify errors in the data described in paragraph (a)(1) of this section that are confirmed by the data manager.

(b) *Deadlines for requesting a new data adjustment*. (1) You must send to the relevant data manager, or data managers, and us a request for a new data adjustment, including all supporting documentation, within 15 days after you receive your loan record detail report from us.

(2) Within 20 days after receiving your request for a new data adjustment, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data from a data manager, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send us your completed request for a new data adjustment, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request or requests; or

(ii) If you are also filing an erroneous data appeal or a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(7)(i) of this section or in § 668.211(b)(6)(i) or § 668.212(c)(10)(i).

(c) *Determination*. If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data and make electronic corrections to the rate that is publicly released.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.211 Erroneous data appeals.

(a) *Eligibility*. Except as provided in § 668.208(b), you may appeal the calculation of a cohort default rate upon which a loss of eligibility, under

§ 668.206, or provisional certification, under § 668.16(m), is based if—

(1) You dispute the accuracy of data that you previously challenged on the basis of incorrect data, under § 668.204(b); or

(2) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed, and you dispute the accuracy of that data.

(b) *Deadlines for submitting an appeal.* (1) You must send a request for verification of data errors to the relevant data manager, or data managers, and to us within 15 days after you receive the notice of your loss of eligibility or provisional certification. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error.

(2) Within 20 days after receiving your request for verification of data errors, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for verification of that loan's data errors. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send your completed appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request; or

(ii) If you are also requesting a new data adjustment or filing a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.210(b)(6)(i) or § 668.212(c)(10)(i).

(c) *Determination.* If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data and electronically correct the rate that is publicly released.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.212 Loan servicing appeals.

(a) *Eligibility.* Except as provided in § 668.208(b), you may appeal, on the basis of improper loan servicing or collection, the calculation of—

(1) Your most recent cohort default rate; or

(2) Any cohort default rate upon which a loss of eligibility under § 668.206 is based.

(b) *Improper loan servicing.* For the purposes of this section, a default is considered to have been due to improper loan servicing or collection only if the borrower did not make a payment on the loan and you prove that the FFEL Program lender or the Direct Loan Servicer, as defined in 34 CFR 685.102, failed to perform one or more of the following activities, if that activity applies to the loan:

(1) Send at least one letter (other than the final demand letter) urging the borrower to make payments on the loan.

(2) Attempt at least one phone call to the borrower.

(3) Send a final demand letter to the borrower.

(4) For a Direct Loan Program loan only, document that skip tracing was performed if the Direct Loan Servicer determined that it did not have the borrower's current address.

(5) For an FFELP loan only—

(i) Submit a request for preclaims or default aversion assistance to the guaranty agency; and

(ii) Submit a certification or other documentation that skip tracing was performed to the guaranty agency.

(c) *Deadlines for submitting an appeal.* (1) If the loan record detail report was not included with your official cohort default rate notice, you must request it within 15 days after you receive the notice of your official cohort default rate.

(2) You must send a request for loan servicing records to the relevant data manager, or data managers, and to us within 15 days after you receive your loan record detail report from us. If the data manager is a guaranty agency, your request must include a copy of the loan record detail report.

(3) Within 20 days after receiving your request for loan servicing records, the data manager must—

(i) Send you and us a list of the borrowers in your representative sample, as described in paragraph (d) of this section (the list must be in social security number order, and it must include the number of defaulted loans included in the cohort for each listed borrower);

(ii) Send you and us a description of how your representative sample was chosen; and

(iii) Either send you copies of the loan servicing records for the borrowers in your representative sample and send us a copy of its cover letter indicating that the records were sent, or send you and us a notice of the amount of its fee for providing copies of the loan servicing records.

(4) The data manager may charge you a reasonable fee for providing copies of loan servicing records, but it may not charge more than $10 per borrower file. If a data manager charges a fee, it is not required to send the documents to you until it receives your payment of the fee.

(5) If the data manager charges a fee for providing copies of loan servicing records, you must send payment in full to the data manager within 15 days after you receive the notice of the fee.

(6) If the data manager charges a fee for providing copies of loan servicing records, and—

(i) You pay the fee in full and on time, the data manager must send you, within 20 days after it receives your payment, a copy of all loan servicing records for each loan in your representative sample (the copies are provided to you in hard copy format unless the data manager and you agree that another format may be used), and it must send us a copy of its cover letter indicating that the records were sent; or

(ii) You do not pay the fee in full and on time, the data manager must notify you and us of your failure to pay the fee and that you have waived your right to challenge the calculation of your cohort default rate based on the data manager's records. We accept that determination unless you prove that it is incorrect.

(7) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for the loan servicing records for that loan. We respond to your request under paragraph (c)(3) of this section.

(8) Within 15 days after receiving incomplete or illegible records, you

must send a request for replacement records to the data manager and us.

(9) Within 20 days after receiving your request for replacement records, the data manager must either—

(i) Replace the missing or illegible records; or

(ii) Notify you and us that no additional or improved copies are available.

(10) You must send your appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request for loan servicing records; or

(ii) If you are also requesting a new data adjustment or filing an erroneous data appeal, by the latest of the filing dates required in paragraph (c)(10)(i) of this section or in § 668.210(b)(6)(i) or § 668.211(b)(6)(i).

(d) *Representative sample of records.* (1) To select a representative sample of records, the data manager first identifies all of the borrowers for whom it is responsible and who had loans that were considered to be in default in the calculation of the cohort default rate you are appealing.

(2) From the group of borrowers identified under paragraph (d)(1) of this section, the data manager identifies a sample that is large enough to derive an estimate, acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval, for use in determining the number of borrowers who should be excluded from the calculation of the cohort default rate due to improper loan servicing or collection.

(e) *Loan servicing records.* Loan servicing records are the collection and payment history records—

(1) Provided to the guaranty agency by the lender and used by the guaranty agency in determining whether to pay a claim on a defaulted loan; or

(2) Maintained by our Direct Loan Servicer that are used in determining your cohort default rate.

(f) *Determination.* (1) We determine the number of loans, included in your representative sample of loan servicing records, that defaulted due to improper loan servicing or collection, as described in paragraph (b) of this section.

(2) Based on our determination, we use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of your cohort default rate, and electronically correct the rate that is publicly released.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.213 Economically disadvantaged appeals.

(a) *General.* As provided in this section you may appeal—

(1) A notice of a loss of eligibility under § 668.206; or

(2) A notice of a second successive official cohort default rate calculated under this subpart that is equal to or greater than 30 percent but less than or equal to 40 percent, potentially subjecting you to provisional certification under § 668.16(m)(2)(i).

(b) *Eligibility.* You may appeal under this section if an independent auditor's opinion certifies that your low income rate is two-thirds or more and—

(1) You offer an associate, baccalaureate, graduate, or professional degree, and your completion rate is 70 percent or more; or

(2) You do not offer an associate, baccalaureate, graduate, or professional degree, and your placement rate is 44 percent or more.

(c) *Low income rate.* (1) Your low income rate is the percentage of your students, as described in paragraph (c)(2) of this section, who—

(i) For an award year that overlaps the 12-month period selected under paragraph (c)(2) of this section, have an expected family contribution, as defined in 34 CFR 690.2, that is equal to or less than the largest expected family contribution that would allow a student to receive one-half of the maximum Federal Pell Grant award, regardless of the student's enrollment status or cost of attendance; or

(ii) For a calendar year that overlaps the 12-month period selected under paragraph (c)(2) of this section, have an adjusted gross income that, when added to the adjusted gross income of the student's parents (if the student is a dependent student) or spouse (if the student is a married independent student), is less than the amount listed in the Department of Health and Human Services poverty guidelines for the size of the student's family unit.

(2) The students who are used to determine your low income rate include only students who were enrolled on at least a half-time basis in an eligible program at your institution during any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year.

(d) *Completion rate.* (1) Your completion rate is the percentage of your students, as described in paragraph (d)(2) of this section, who—

(i) Completed the educational programs in which they were enrolled;

(ii) Transferred from your institution to a higher level educational program;

(iii) Remained enrolled and are making satisfactory progress toward completion of their educational programs at the end of the same 12-month period used to calculate the low income rate; or

(iv) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) The students who are used to determine your completion rate include only regular students who were—

(i) Initially enrolled on a full-time basis in an eligible program; and

(ii) Originally scheduled to complete their programs during the same 12-month period used to calculate the low income rate.

(e) *Placement rate.* (1) Except as provided in paragraph (e)(2) of this section, your placement rate is the percentage of your students, as described in paragraphs (e)(3) and (e)(4) of this section, who—

(i) Are employed, in an occupation for which you provided training, on the date following 1 year after their last date of attendance at your institution;

(ii) Were employed for at least 13 weeks, in an occupation for which you provided training, between the date they enrolled at your institution and the first date that is more than a year after their last date of attendance at your institution; or

(iii) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) For the purposes of this section, a former student is not considered to have been employed based on any employment by your institution.

(3) The students who are used to determine your placement rate include only former students who—

(i) Were initially enrolled in an eligible program on at least a half-time basis;

(ii) Were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period used to calculate the low income rate; and

(iii) Remained in the program beyond the point at which a student would have received a 100 percent tuition refund from you.

(4) A student is not included in the calculation of your placement rate if that student, on the date that is 1 year after the student's originally scheduled completion date, remains enrolled in the same program and is making satisfactory progress.

(f) *Scheduled to complete.* In calculating a completion or placement

rate under this section, the date on which a student is originally scheduled to complete a program is based on—

(1) For a student who is initially enrolled full-time, the amount of time specified in your enrollment contract, catalog, or other materials for completion of the program by a full-time student; or

(2) For a student who is initially enrolled less than full-time, the amount of time that it would take the student to complete the program if the student remained at that level of enrollment throughout the program.

(g) *Deadline for submitting an appeal.* (1) Within 30 days after you receive the notice of your loss of eligibility, you must send us your management's written assertion, as described in the Cohort Default Rate Guide.

(2) Within 60 days after you receive the notice of your loss of eligibility, you must send us the independent auditor's opinion described in paragraph (h) of this section.

(h) *Independent auditor's opinion.* (1) The independent auditor's opinion must state whether your management's written assertion, as you provided it to the auditor and to us, meets the requirements for an economically disadvantaged appeal and is fairly stated in all material respects.

(2) The engagement that forms the basis of the independent auditor's opinion must be an examination-level compliance attestation engagement performed in accordance with—

(i) The American Institute of Certified Public Accountants' (AICPA) Statement on Standards for Attestation Engagements, Compliance Attestation (AICPA, Professional Standards, vol. 1, AT sec. 500), as amended (these standards may be obtained by calling the AICPA's order department, at 1–888–777–7077); and

(ii) Government Auditing Standards issued by the Comptroller General of the United States.

(i) *Determination.* You do not lose eligibility under § 668.206, and we do not provisionally certify you under § 668.16(m)(2)(i), if—

(1) Your independent auditor's opinion agrees that you meet the requirements for an economically disadvantaged appeal; and

(2) We determine that the independent auditor's opinion and your management's written assertion—

(i) Meet the requirements for an economically disadvantaged appeal; and

(ii) Are not contradicted or otherwise proven to be incorrect by information we maintain, to an extent that would render the independent auditor's opinion unacceptable.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.214 Participation rate index appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under § 668.206(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than 0.06015.

(2) You may appeal a notice of a loss of eligibility under § 668.206(a)(2), based on three cohort default rates of 30 percent or greater, if your participation rate index is equal to or less than 0.0625 for any of those three cohorts' fiscal years.

(3) You may appeal potential placement on provisional certification under § 668.16(m)(2)(i) based on two cohort default rates that fail to satisfy the standard of administrative capability in § 668.16(m)(1)(ii) if your participation rate index is equal to or less than 0.0625 for either of the two cohorts' fiscal years.

(b) *Calculating your participation rate index.* (1) Except as provided in paragraph (b)(2) of this section, your participation rate index for a fiscal year is determined by multiplying your cohort default rate for that fiscal year by the percentage that is derived by dividing—

(i) The number of students who received an FFELP or a Direct Loan Program loan to attend your institution during a period of enrollment, as defined in 34 CFR 682.200 or 685.102, that overlaps any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year, by

(ii) The number of regular students who were enrolled at your institution on at least a half-time basis during any part of the same 12-month period.

(2) If your cohort default rate for a fiscal year is calculated as an average rate under § 668.202(d)(2), you may calculate your participation rate index for that fiscal year using either that average rate or the cohort default rate that would be calculated for the fiscal year alone using the method described in § 668.202(d)(1).

(c) *Deadline for submitting an appeal.* You must send us your appeal under this section, including all supporting documentation, within 30 days after you receive—

(1) Notice of your loss of eligibility; or

(2) Notice of a second cohort default rate that equals or exceeds 30 percent but is less than 40 percent and that, in combination with an earlier rate, potentially subjects you to provisional certification under § 668.16(m)(2)(i).

(d) *Determination.* (1) You do not lose eligibility under § 668.206 and we do not place you on provisional certification, if we determine that you meet the requirements for a participation rate index appeal.

(2) If we determine that your participation rate index for a fiscal year is equal to or less than 0.06015 or 0.0625, under paragraph (d)(1) of this section, we also excuse you from any subsequent loss of eligibility under § 668.206(a)(2) or placement on provisional certification under § 668.16(m)(2)(i) that would be based on the official cohort default rate for that fiscal year.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.215 Average rates appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under § 668.206(a)(1), based on one cohort default rate over 40 percent, if that cohort default rate is calculated as an average rate under § 668.202(d)(2).

(2) You may appeal a notice of a loss of eligibility under § 668.206(a)(2), based on three cohort default rates of 30 percent or greater, if at least two of those cohort default rates—

(i) Are calculated as average rates under § 668.202(d)(2); and

(ii) Would be less than 30 percent if calculated for the fiscal year alone using the method described in § 668.202(d)(1).

(b) *Deadline for submitting an appeal.* (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for an average rates appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your average rates appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination.* You do not lose eligibility under § 668.206 if we determine that you meet the requirements for an average rates appeal. In such a case, we electronically correct the rate that is publicly released.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.216 Thirty-or-fewer borrowers appeals.

(a) *Eligibility.* You may appeal a notice of a loss of eligibility under § 668.206 if 30 or fewer borrowers, in total, are included in the 3 most recent cohorts of borrowers used to calculate your cohort default rates.

(b) *Deadline for submitting an appeal.* (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for a thirty-or-fewer borrowers appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your thirty-or-fewer borrowers appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination.* You do not lose eligibility under § 668.206 if we determine that you meet the requirements for a thirty-or-fewer borrowers appeal.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.217 Default prevention plans.

(a) *First year.* (1) If your cohort default rate is equal to or greater than 30 percent you must establish a default prevention task force that prepares a plan to—

(i) Identify the factors causing your cohort default rate to exceed the threshold;

(ii) Establish measurable objectives and the steps you will take to improve your cohort default rate;

(iii) Specify the actions you will take to improve student loan repayment, including counseling students on repayment options; and

(iv) Submit your default prevention plan to us.

(2) We will review your default prevention plan and offer technical assistance intended to improve student loan repayment.

(b) *Second year.* (1) If your cohort default rate is equal to or greater than 30 percent for two consecutive fiscal years, you must revise your default prevention plan and submit it to us for review.

(2) We may require you to revise your default prevention plan or specify actions you need to take to improve student loan repayment.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

Appendix A to Subpart N of Part 668—Sample Default Prevention Plan

This appendix is provided as a sample plan for those institutions developing a default prevention plan in accordance with § 668.199(a)(1). It describes some measures you may find helpful in reducing the number of students that default on federally funded loans. These are not the only measures you could implement when developing a default prevention plan.

I. Core Default Reduction Strategies

1. Establish your default prevention team by engaging your chief executive officer and relevant senior executive officials and enlisting the support of representatives from offices other than the financial aid office. Consider including individuals and organizations independent of your institution that have experience in preventing title IV loan defaults.

2. Consider your history, resources, dollars in default, and targets for default reduction to determine which activities will result in the most benefit to you and your students.

3. Define evaluation methods and establish a data collection system for measuring and verifying relevant default prevention statistics, including a statistical analysis of the borrowers who default on their loans.

4. Identify and allocate the personnel, administrative, and financial resources appropriate to implement the default prevention plan.

5. Establish annual targets for reductions in your rate.

6. Establish a process to ensure the accuracy of your rate.

II. Additional Default Reduction Strategies

1. Enhance the borrower's understanding of his or her loan repayment responsibilities through counseling and debt management activities.

2. Enhance the enrollment retention and academic persistence of borrowers through counseling and academic assistance.

3. Maintain contact with the borrower after he or she leaves your institution by using activities such as skip tracing to locate the borrower.

4. Track the borrower's delinquency status by obtaining reports from data managers and FFEL Program lenders.

5. Enhance student loan repayments through counseling the borrower on loan repayment options and facilitating contact between the borrower and the data manager or FFEL Program lender.

6. Assist a borrower who is experiencing difficulty in finding employment through career counseling, job placement assistance, and facilitating unemployment deferments.

7. Identify and implement alternative financial aid award policies and develop alternative financial resources that will reduce the need for student borrowing in the first 2 years of academic study.

III. Statistics for Measuring Progress

1. The number of students enrolled at your institution during each fiscal year.

2. The average amount borrowed by a student each fiscal year.

3. The number of borrowers scheduled to enter repayment each fiscal year.

4. The number of enrolled borrowers who received default prevention counseling services each fiscal year.

5. The average number of contacts that you or your agent had with a borrower who was in deferment or forbearance or in repayment status during each fiscal year.

6. The number of borrowers at least 60 days delinquent each fiscal year.

7. The number of borrowers who defaulted in each fiscal year.

8. The type, frequency, and results of activities performed in accordance with the default prevention plan.

PART 674—FEDERAL PERKINS LOAN PROGRAM

21. The authority citation for part 674 is revised to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa–1087hh, unless otherwise noted.

22. Section 674.42 is amended by revising paragraph (b) to read as follows:

§ 674.42 Contact with the borrower.

* * * * *

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

(2) The exit counseling must—

(i) Inform the student as to the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Perkins loans for attendance at the institution or in the borrower's program of study;

(ii) Explain to the borrower the options to prepay each loan and pay each loan on a shorter schedule;

(iii) Review for the borrower the option to consolidate a Federal Perkins Loan, including the consequences of consolidating a Perkins Loan. Information on the consequences of loan consolidation must include, at a minimum—

(A) The effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

(B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan

forgiveness, cancellation, and deferment opportunities;

(C) The options of the borrower to prepay the loan or to change repayment plans; and

(D) That borrower benefit programs may vary among different lenders;

(iv) Include debt-management strategies that are designed to facilitate repayment;

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

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

(vii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(viii) Emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower has not completed the program, has not completed the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or did not receive educational or other services that the borrower purchased from the institution;

(ix) Provide—

(A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or cancellation of principal and interest, defer repayment of principal or interest, or be granted an extension of the repayment period or a forbearance on a title IV loan; and

(B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;

(x) Require the borrower to provide current information concerning name, address, social security number, references, and driver's license number, the borrower's expected permanent address, the address of the borrower's next of kin, as well as the name and address of the borrower's expected employer;

(xi) Review for the borrower information on the availability of the Student Loan Ombudsman's office;

(xii) Inform the borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain title IV loan status information; and

(xiii) A general description of the types of tax benefits that may be available to borrowers.

(3) If exit counseling is conducted through interactive electronic means, the institution must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

(4) The institution must maintain documentation substantiating the institution's compliance with this section for each borrower.

* * * * *

23. Section 674.51 is amended by:

A. Revising paragraph (d).

B. Redesignating paragraphs (e) through (s) as follows:

Old paragraph	New paragraph
674.51(e)	674.51(f)
674.51(f)	674.51(h)
674.51(g)	674.51(l)
674.51(h)	674.51(m)
674.51(i)	674.51(n)
674.51(j)	674.51(p)
674.51(k)	674.51(q)
674.51(l)	674.51(r)
674.51(m)	674.51(s)
674.51(n)	674.51(t)
674.51(o)	674.51(u)
674.51(p)	674.51(w)
674.51(q)	674.51(y)
674.51(r)	674.51(z)
674.51(s)	674.51(aa)

C. Adding new paragraphs (e), (g), (i), (j), (k), (o), (v), (x), and (bb).

D. In newly redesignated paragraph (f), removing the number ''672(2)'', and adding, in its place, the number ''632(4)''.

E. Revising newly redesignated paragraph (n).

F. In newly redesignated paragraph (t), by removing the number ''672(2)'', and adding, in its place, the number ''632''.

G. Revising newly designated paragraph (aa).

H. Revising the authority citation that appears at the end of the section.

The revisions and additions read as follows:

§ 674.51 Special Definitions.

* * * * *

(d) *Child with a disability:* A child or youth from ages 3 through 21, inclusive, who requires special education and related services because he or she has one or more disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act.

(e) *Community defender organizations:* A defender organization established in accordance with section 3006A(g)(2)(B) of title 18, United States Code.

* * * * *

(g) *Educational service agency:* A regional public multi-service agency authorized by State law to develop, manage, and provide services or programs to local educational agencies as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

* * * * *

(i) *Faculty member at a Tribal College or University:* An educator or tenured individual who is employed by a Tribal College or University, as that term is defined in section 316 of the HEA, to teach, research, or perform administrative functions. For purposes of this definition an educator may be an instructor, lecturer, lab faculty, assistant professor, associate professor, full professor, dean, or academic department head.

(j) *Federal public defender organization:* A defender organization established in accordance with section 3006A(g)(2)(A) of title 18, United States Code.

(k) *Firefighter:* A firefighter is an individual who is employed by a Federal, State, or local firefighting agency to extinguish destructive fires; or provide firefighting related services such as—

(1) Providing community disaster support and, as a first responder, providing emergency medical services;

(2) Conducting search and rescue; or

(3) Providing hazardous materials mitigation (HAZMAT).

* * * * *

(n) *Infant or toddler with a disability:* An infant or toddler from birth to age 2, inclusive, who need early intervention services for specified reasons, as defined in section 632(5)(A) of the Individuals with Disabilities Education Act.

(o) *Librarian with a master's degree:* A librarian with a master's degree is an information professional trained in library or information science who has obtained a postgraduate academic degree in library science awarded after the completion of an academic program of up to six years in duration, excluding a doctorate or professional degree.

* * * * *

(v) *Speech language pathologist with a master's degree:* An individual who evaluates or treats disorders that affect a person's speech, language, cognition, voice, swallowing and the rehabilitative or corrective treatment of physical or cognitive deficits/disorders resulting in difficulty with communication, swallowing, or both and has obtained a postgraduate academic degree awarded after the completion of an academic program of up to six years in duration, excluding a doctorate or professional degree.

(x) *Substantial gainful activity:* A level of work performed for pay or profit that involves doing significant physical

or mental activities, or a combination of both.

* * * * *

(aa) *Total and permanent disability:* The condition of an individual who—

(1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

(i) Can be expected to result in death;

(ii) Has lasted for a continuous period of not less than 60 months; or

(iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

(bb) *Tribal College or University:* An institution that—

(1) Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a note); or

(2) Is cited in section 532 of the Equity in Education Land Grant Status Act of 1994 (7 U.S.C. 301 note).

* * * * *

24. Section 674.53 is amended by:

A. Adding new paragraph (a)(1)(iii).

B. Revising paragraphs (a)(2)(i) and (a)(2)(ii).

C. Revising paragraph (a)(3).

D. Revising paragraphs (a)(4)(i) and (a)(4)(ii).

E. Removing paragraph (a)(4)(iii).

F. Revising paragraph (a)(6).

G. Adding new paragraph (b)(3).

H. In paragraph (d)(1), removing the word ''shall'' and adding, in its place, the word ''must''.

I. Revising paragraph (e).

The revisions and additions read as follows:

§ 674.53 Teacher cancellation—Federal Perkins, NDSL and Defense loans.

* * * * *

(a) * * *

(1) * * *

(iii) An institution must cancel up to 100 percent of the outstanding balance of a Federal Perkins, NDSL, or Defense loan for teaching service that includes August 14, 2008, or begins on or after that date, at an educational service agency.

* * * * *

(2) * * *

(i) Is in a school district that qualified for funds, in that year, under part A of title I of the Elementary and Secondary Education Act of 1965, as amended; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's or educational service agency's total enrollment is made up of title I children.

(3) For each academic year, the Secretary notifies participating institutions of the schools and educational service agencies selected under paragraph (a) of this section.

(4)(i) The Secretary selects schools and educational service agencies under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency must base its ranking of the schools and educational service agencies on objective standards and methods. These standards must take into account the numbers and percentages of title I children attending those schools and educational service agencies.

* * * * *

(6) A teacher, who performs service in a school or educational service agency that meets the requirement of paragraph (a)(1) of this section in any year and in a subsequent year fails to meet these requirements, may continue to teach in that school or educational service agency and will be eligible for loan cancellation pursuant to paragraph (a) of this section in subsequent years.

* * * * *

(b) * * *

(3) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins, NDSL, or Defense loan for a borrower's service that includes August 14, 2008, or begins on or after that date, as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in an educational service agency.

* * * * *

(e) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system or an educational service agency only if the borrower is directly employed by the school system.

* * * * *

25. Section 674.56 is amended by:

A. Revising paragraph (c)(1).

B. Redesignating paragraph (d) as paragraph (h).

C. Adding paragraphs (d), (e), (f), and (g), respectively.

C. Revising newly redesignated paragraph (h).

The revisions and additions read as follows:

§ 674.56 Employment cancellation—Federal Perkins, NDSL, and Defense loans.

* * * * *

(c) * * * (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or NDSL made on or after July 23, 1992, for the borrower's service as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 632 of the Individuals with Disabilities Education Act.

* * * * *

(d) *Cancellation for full-time employment as a firefighter to a local, State, or Federal fire department or fire district.* An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins, NDSL, or Defense loan for service that includes August 14, 2008, or begins on or after that date, as a full-time firefighter.

(e) *Cancellation for full-time employment as a faculty member at a Tribal College or University.* An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins, NDSL, or Defense loan for service that includes August 14, 2008, or begins on or after that date, as a full-time faculty member at a Tribal College or University.

(f) *Cancellation for full-time employment as a librarian with a master's degree.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins Loan, NDSL, or Defense loan for service that includes August 14, 2008, or begins on or after that date, as a full-time librarian, provided that the individual—

(i) Is a librarian with a master's degree; and

(ii) Is employed in an elementary school or secondary school that is eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965, as amended; or

(iii) Is employed by a public library that serves a geographic area that contains one or more schools eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965, as amended.

(2) For the purposes of paragraph (f) of this section, the term *geographic area* is defined as the area served by the local school district.

(g) *Cancellation for full-time employment as a speech pathologist with a master's degree.* An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins Loan, NDSL, or Defense loan for full-time employment that includes August 14, 2008, or begins on or after that date, as a speech pathologist

with a master's degree who is working exclusively with schools eligible for funds under part A of title I of the Elementary and Secondary Education Act of 1965, as amended.

(h) *Cancellation rates.* (1) To qualify for cancellation under paragraphs (a), (b), (c), (d), (e), (f), and (g) of this section, a borrower must work full-time for 12 consecutive months.

* * * * *

26. Section 674.57 is revised to read as follows:

§ 674.57 Cancellation for law enforcement or corrections officer service—Federal Perkins, NDSL, and Defense loans.

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or NDSL made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, NDSL, or Defense loan made prior to November 29, 1990, for law enforcement or correction officer service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(3) An eligible employing agency is an agency—

(i) That is a local, State, or Federal law enforcement or corrections agency;

(ii) That is public-funded; and

(iii) The principal activities of which pertain to crime prevention, control, or reduction or the enforcement of the criminal law.

(4) Agencies that are primarily responsible for enforcement of civil, regulatory, or administrative laws are ineligible employing agencies.

(5) A borrower qualifies for cancellation under this section only if the borrower is—

(i) A sworn law enforcement or corrections officer; or

(ii) A person whose principal responsibilities are unique to the criminal justice system.

(6) To qualify for a cancellation under this section, the borrower's service must be essential in the performance of the eligible employing agency's primary mission.

(7) The agency must be able to document the employee's functions.

(8) A borrower whose principal official responsibilities are administrative or supportive does not qualify for cancellation under this section.

(b) An institution must cancel up to 100 percent of the outstanding balance of a borrower's Federal Perkins, NDSL, or Defense loan for service that includes August 14, 2008, or begins on or after that date, as a full-time attorney employed in Federal public defender organizations or community defender organizations, established in accordance with section 3006A(g)(2) of title 18, U.S.C.

(c)(1) To qualify for cancellation under paragraph (a) of this section, a borrower must work full-time for 12 consecutive months.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time employment;

(ii) 20 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time employment; and

(iii) 30 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time employment.

(Authority: 20 U.S.C. 1087ee)

27. Section 674.58 is amended by:

A. Revising the section heading.

B. Redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively.

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

D. Revising newly redesignated paragraph (a)(4).

E. Revising newly redesignated paragraph (a)(5).

F. Redesignating paragraph (c)(2) as paragraph (c)(4).

G. Adding new paragraphs (c)(2) and (c)(3).

H. Revising newly redesignated paragraph (c)(4).

The revisions and additions read as follows:

§ 674.58 Cancellation for service in an early childhood education program.

* * * * *

(a) * * *

(3) An institution must cancel up to 100 percent of the outstanding balance of a borrower's NDSL, Defense, or Federal Perkins loan for service that includes August 14, 2008, or begins on or after that date, as a full-time staff member of a pre-kindergarten or childcare program that is licensed or regulated by the State.

(4) The Head Start, pre-kindergarten or child care program in which the borrower serves must operate for a complete academic year, or its equivalent.

(5) In order to qualify for cancellation, the borrower's salary may not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start, pre-kindergarten or child care program.

* * * * *

(c) * * *

(2) A pre-kindergarten program is a State-funded program that serves children from birth through age six and addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development.

(3) A child care program is a program that is licensed and regulated by the State and provides child care services for fewer than 24 hours per day per child, unless care in excess of 24 consecutive hours is needed due to the nature of the parents' work.

(4) ''Full-time staff member'' is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start, pre-kindergarten or child care program.

* * * * *

28. Section 674.59 is amended by:

a. Revising the section heading.

b. Removing in paragraph (a)(1) the word ''shall'' and adding, in its place, the word ''must''.

c. Revising paragraph (b)(1).

d. Adding new paragraph (c).

e. Redesignating paragraph (b)(3) as paragraph (d).

f. Revising the authority citation that appears at the end of the section.

The addition and revisions read as follows:

§ 674.59 Cancellation for military service.

* * * * *

(b) * * * (1) An institution must cancel up to 50 percent of the outstanding balance on an NDSL or Perkins loan for active duty service that ended before August 14, 2008, as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code.

* * * * *

(c)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or NDSL loan for a borrower's full year of active duty service that includes August 14, 2008, or begins on or after that date, as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code.

(2) The cancellation rate is 15 percent for the first and second year of

qualifying service, 20 percent for the third and fourth year of qualifying service, and 30 percent for the fifth year of qualifying service.

* * * * *

(Authority: 20 U.S.C. 1087ee)

§ 674.61 [Amended]

29. Section 674.61 is amended by removing the citation ''§ 674.51(s)'' each time it appears and adding, in its place, the citation ''§ 674.51(aa)''.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

30. The authority citation for part 682 is revised to read as follows:

Authority: 20 U.S.C. 1070g, 1071 to 1087–2, unless otherwise noted.

31. Paragraph (h) of § 682.212 is revised to read as follows:

§ 682.212 Prohibited transactions.

* * * * *

(h) A school may, at its option, make available a list of recommended or suggested lenders, in print or any other medium or form, for use by the school's students or their parents provided that such list complies with the requirements in 34 CFR 601.10 and 668.14(a)(28).

* * * * *

32. Section 682.604 is amended by revising paragraphs (c)(5), (c)(8), (f), and (g) to read as follows:

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

* * * * *

(c) * * *

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

(i) Except as provided in paragraph (c)(5)(ii) of this section, the school in which the student is enrolled has a cohort default rate, calculated under subpart M of 34 CFR part 668, of less than 10 percent for each of the three most recent fiscal years for which data are available; or

(ii) For loans first disbursed on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668 of less than 15 percent for each of the three most recent fiscal years for which data are available; or

(iii) The school is an eligible home institution certifying a loan to cover the student's cost of attendance in a study abroad program and has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668, of less than 5 percent for the single most recent fiscal year for which data are available.

* * * * *

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

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

(B)(*1*) Except as provided in paragraph (c)(8)(i)(B)(*2*) of this section, the school in which the student is enrolled has a cohort default rate, calculated under subpart M of 34 CFR part 668, of less than 10 percent for each of the three most recent fiscal years for which data are available; or

(*2*) For loan disbursements made on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668 of less than 15 percent for each of the three most recent fiscal years for which data are available; or

(ii) The school is an eligible home institution certifying a loan to cover the student's cost of attendance in a study abroad program and has a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, of less than 5 percent for the single most recent fiscal year for which data are available.

* * * * *

(f) *Initial counseling.* (1) A school must ensure that initial counseling is conducted with each Stafford loan borrower prior to its release of the first disbursement, unless the student borrower has received a prior Federal Stafford, Federal SLS, or Direct subsidized or unsubsidized loan.

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

(3) Initial counseling for Stafford and graduate or professional student PLUS Loan borrowers must provide comprehensive information on the terms and conditions of the loan and on the responsibilities of the borrower with respect to the loan. This information may be provided to the borrower—

(i) During an entrance counseling session conducted in person;

(ii) On a separate written form provided to the borrower that the borrower signs and returns to the school; or

(iii) Online or by interactive electronic means, with the borrower acknowledging receipt of the information.

(4) If initial counseling is conducted online or through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling, which may include completion of any interactive program that tests the borrower's understanding of the terms and conditions of the borrower's loans.

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

(6) Initial counseling for Stafford Loan borrowers must—

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

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

(iii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

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

(v) Inform the student borrower of sample monthly repayment amounts based on—

(A) A range of student levels of indebtedness of Stafford loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained; or

(B) The average indebtedness of other borrowers in the same program at the same school as the borrower;

(vi) To the extent practicable, explain the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance;

(vii) Provide information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary;

(viii) Inform the borrower of the option to pay the interest on an unsubsidized Stafford Loan while the borrower is in school;

(ix) Explain the definition of half-time enrollment at the school, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment;

(x) Explain the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the borrower's program of study so that the school can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation;

(xi) Provide information on the National Student Loan Data System and how the borrower can access the borrower's records; and

(xii) Provide the name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan.

(7) Initial counseling for graduate or professional student PLUS Loan borrowers must—

(i) Inform the student borrower of sample monthly repayment amounts based on—

(A) A range of student levels of indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained; or

(B) The average indebtedness of other borrowers in the same program at the same school as the borrower;

(ii) Inform the borrower of the option to pay interest on a PLUS Loan while the borrower is in school;

(iii) For a graduate or professional student PLUS Loan borrower who has received a prior FFEL Stafford, or Direct subsidized or unsubsidized loan, provide the information specified in § 682.603(d)(1)(i) through § 682.603(d)(1)(iii); and

(iv) For a graduate or professional student PLUS Loan borrower who has not received a prior FFEL Stafford, or Direct subsidized or unsubsidized loan, provide the information specified in paragraph (f)(6)(i) through (f)(6)(xii) of this section.

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

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

(2) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Stafford loans, PLUS Loans, or student borrowers who have obtained both Stafford and PLUS loans, depending on the types of loans the student borrower has obtained, for attendance at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment plan options, including standard, graduated, extended, income sensitive and income-based repayment plans, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments under each plan;

(iii) Explain to the borrower the options to prepay each loan, to pay each loan on a shorter schedule, and to change repayment plans;

(iv) Provide information on the effects of loan consolidation including, at a minimum—

(A) The effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

(B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;

(C) The options of the borrower to prepay the loan and to change repayment plans; and

(D) That borrower benefit programs may vary among different lenders;

(v) Include debt-management strategies that are designed to facilitate repayment;

(vi) Include the matters described in paragraph (f)(6)(i), (f)(6)(ii), and (f)(6)(iv) of this section;

(vii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(viii) Provide—

(A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or discharge of principal and interest, defer repayment of principal or interest, or be granted forbearance on a title IV loan, including forgiveness benefits or discharge benefits available to a FFEL borrower who consolidates his or her loan into the Direct Loan program; and

(B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;

(ix) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known). The school must ensure that this information is provided to the guaranty agency or agencies listed in the student borrower's records within 60 days after the student borrower provides the information;

(x) Review for the student borrower information on the availability of the Student Loan Ombudsman's office;

(xi) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS) and how

NSLDS can be used to obtain title IV loan status information; and

(xii) A general description of the types of tax benefits that may be available to borrowers.

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

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

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

Authority: 20 U.S.C. 1070g, 1087a, *et seq.*, unless otherwise noted.

34. Section 685.301(b)(6) is amended by:

A. Revising paragraph (b)(6)(i).

B. In paragraph (b)(6)(ii), removing the reference to ''Paragraphs (b)(8)(i)(A) and (B) of this section'' and adding, in its place, a reference to ''Paragraphs (b)(6)(i)(A) and (B) of this section''.

C. In paragraph (b)(6)(ii), adding the words ''or subpart N'' after the words ''under subpart M''.

D. In paragraph (b)(6)(iii), removing the reference to ''Paragraph (b)(8)(i)(B) of this section'' and adding, in its place, a reference to ''Paragraph (b)(6)(i)(B) of this section''.

E. In paragraph (b)(6)(iii), adding the words ''or subpart N'' after the words ''under subpart M''.

The revision reads as follows:

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

* * * * *

(b) * * *

(6)(i) A school is not required to make more than one disbursement if—

(A)(*1*) The loan period is not more than one semester, one trimester, one quarter, or, for non term-based schools or schools with non-standard terms, 4 months; and

(*2*)(*i*) Except as provided in paragraph (b)(6)(i)(A)(*2*)(*ii*) of this section, the school has a cohort default rate, calculated under subpart M of 34 CFR part 668 of less than 10 percent for each of the three most recent fiscal years for which data are available;

(*ii*) For loan disbursements made on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668 of less than 15 percent for each of the three most recent fiscal years, for which data are available.

(B) The school is an eligible home institution originating a loan to cover the cost of attendance in a study abroad program and has a cohort default rate, calculated under subpart M or subpart N of 34 part 668, of less than 5 percent for the single most recent fiscal year for which data are available; or

(C) The school is not in a State.

* * * * *

35. Section 685.303(b)(4) is amended by:

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

B. In paragraph (b)(4)(ii), adding the words ''or subpart N'' after the words ''under subpart M''.

C. In paragraph (b)(4)(iii), removing the words ''Subpart M'' and adding in their place the words ''subpart M or subpart N''.

The revision reads as follows:

§ 685.303 Processing loan proceeds.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(A)(*1*) Except as provided in paragraph (b)(4)(i)(A)(*2*) of this section, the school has a cohort default rate, calculated under subpart M of 34 CFR part 668, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available; or

(*2*) For loans first disbursed on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or N of 34 CFR part 668 of less than 15 percent for each of the three most recent fiscal years for which data are available;

* * * * *

36. Section 685.304 is revised to read as follows:

§ 685.304 Counseling borrowers.

(a) *Initial counseling.* (1) Except as provided in paragraph (a)(8) of this section, a school must ensure that initial counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan student borrower prior to making the first disbursement of the proceeds of a loan to a student borrower unless the student borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, or Federal SLS Loan.

(2) Except as provided in paragraph (a)(8) of this section, a school must ensure that initial counseling is conducted with each graduate or professional student Direct PLUS Loan borrower prior to making the first disbursement of the loan unless the student borrower has received a prior Direct PLUS Loan or Federal PLUS Loan.

(3) Initial counseling for Direct Subsidized Loan, Direct Unsubsidized Loan, and graduate or professional student Direct PLUS Loan borrowers must provide the borrower with comprehensive information on the terms and conditions of the loan and on the responsibilities of the borrower with respect to the loan. This information may be provided to the borrower—

(i) During an entrance counseling session, conducted in person;

(ii) On a separate written form provided to the borrower that the borrower signs and returns to the school; or

(iii) Online or by interactive electronic means, with the borrower acknowledging receipt of the information.

(4) If initial counseling is conducted online or through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling, which may include completion of any interactive program that tests the borrower's understanding of the terms and conditions of the borrower's loans.

(5) A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials before the loan proceeds are disbursed.

(6) Initial counseling for Direct Subsidized Loan and Direct Unsubsidized Loan borrowers must—

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

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

(iii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(iv) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not

receive the educational or other services that the student borrower purchased from the school;

(v) Inform the student borrower of sample monthly repayment amounts based on—

(A) A range of student levels of indebtedness of Direct Subsidized Loan and Direct Unsubsidized Loan borrowers, or student borrowers with Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans depending on the types of loans the borrower has obtained; or

(B) The average indebtedness of other borrowers in the same program at the same school as the borrower;

(vi) To the extent practicable, explain the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance;

(vii) Provide information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary;

(viii) Inform the borrower of the option to pay the interest on a Direct Unsubsidized Loan while the borrower is in school;

(ix) Explain the definition of half-time enrollment at the school, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment;

(x) Explain the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the borrower's program of study so that the school can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation;

(xi) Provide information on the National Student Loan Data System and how the borrower can access the borrower's records; and

(xii) Provide the name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan.

(7) Initial counseling for graduate or professional student Direct PLUS Loan borrowers must—

(i) Inform the student borrower of sample monthly repayment amounts based on—

(A) A range of student levels or indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Direct PLUS Loans and Direct Subsidized Loans or Direct Unsubsidized Loans, depending on the types of loans the borrower has obtained; or

(B) The average indebtedness of other borrowers in the same program at the same school;

(ii) Inform the borrower of the option to pay interest on a PLUS Loan while the borrower is in school;

(iii) For a graduate or professional student PLUS Loan borrower who has received a prior FFEL Stafford, or Direct Subsidized or Unsubsidized Loan, provide the information specified in § 685.301(a)(3)(i)(A) through § 685.301(a)(3)(i)(C); and

(iv) For a graduate or professional student PLUS Loan borrower who has not received a prior FFEL Stafford, or Direct Subsidized or Direct Unsubsidized Loan, provide the information specified in paragraph (a)(6)(i) through paragraph (a)(6)(xii) of this section.

(8) A school may adopt an alternative approach for initial counseling as part of the school's quality assurance plan described in § 685.300(b)(9). If a school adopts an alternative approach, it is not required to meet the requirements of paragraphs (a)(1) through (a)(7) of this section unless the Secretary determines that the alternative approach is not adequate for the school. The alternative approach must—

(i) Ensure that each student borrower subject to initial counseling under paragraph (a)(1) or (a)(2) of this section is provided written counseling materials that contain the information described in paragraphs (a)(6)(i) through (a)(6)(v) of this section;

(ii) Be designed to target those student borrowers who are most likely to default on their repayment obligations and provide them more intensive counseling and support services; and

(iii) Include performance measures that demonstrate the effectiveness of the school's alternative approach. These performance measures must include objective outcomes, such as levels of borrowing, default rates, and withdrawal rates.

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

(b) *Exit counseling.* (1) A school must ensure that exit counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan borrower and graduate or professional student Direct PLUS Loan borrower shortly before the student borrower ceases at least half-time study at the school.

(2) The exit counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials within 30 days after the student borrower completes the program.

(3) If a student borrower withdraws from school without the school's prior knowledge or fails to complete the exit counseling as required, exit counseling must be provided either through interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after the school learns that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(4) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Direct Subsidized Loans and Direct Unsubsidized Loans, student borrowers who have obtained only Direct PLUS Loans, or student borrowers who have obtained Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the student borrower has obtained, for attendance at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment plan options including the standard repayment, extended repayment, graduated repayment, income contingent repayment plans, and income-based repayment plans, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments under each plan;

(iii) Explain to the borrower the options to prepay each loan, to pay each loan on a shorter schedule, and to change repayment plans;

(iv) Provide information on the effects of loan consolidation including, at a minimum—

(A) The effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

(B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;

(C) The options of the borrower to prepay the loan and to change repayment plans; and

(D) That borrower benefit programs may vary among different lenders;

(v) Include debt-management strategies that are designed to facilitate repayment;

(vi) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

(vii) Meet the requirements described in paragraphs (a)(6)(i), (a)(6)(ii), and (a)(6)(iv) of this section;

(viii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(ix) Provide—

(A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or discharge of principal and interest, defer repayment of principal or interest, or be granted forbearance on a title IV loan; and

(B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;

(x) Review for the student borrower information on the availability of the Department's Student Loan Ombudsman's office;

(xi) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain title IV loan status information;

(xii) A general description of the types of tax benefits that may be available to borrowers; and

(xiii) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known).

(5) The school must ensure that the information required in paragraph (b)(4)(xiii) of this section is provided to the Secretary within 60 days after the student borrower provides the information.

(6) If exit counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

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

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

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

[FR Doc. E9–17119 Filed 7–27–09; 8:45 am]

BILLING CODE 4000–01–P