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: Final regulations.

SUMMARY: The Secretary establishes new regulations regarding 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 amends the regulations for Student Assistance General Provisions, the Federal Perkins Loan (Perkins Loan) Program, the Federal Family Education Loan (FFEL) Program, and the William D. Ford Federal Direct Loan (Direct Loan) Program 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: *Effective Date:* These regulations are effective July 1, 2010.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA (20 U.S.C. 1089(c)(2)(A)), that institutions, lenders, guaranty agencies, or servicers may, at their discretion, choose to implement the following new and amended provisions(as appropriate):

Sections 601.11(a), (b), and (c), which describe the private education loan disclosures.

Section 601.12 describing the use of institution and lender name.

Section 601.21 describing the content of the code of conduct.

Section 601.40(a), which requires certain lender disclosures to borrowers.

Section 668.16(d)(2), which requires institutions to report on reimbursements received for certain service on advisory boards.

Section 668.42(a)(4), which requires institutions to describe for prospective and enrolled students the terms and conditions of the loans students receive under the FFEL, Direct Loan, and Perkins Loan programs.

Section 674.12(a) and (b), which increases undergraduate and graduate student annual and aggregate loan maximums in the Perkins Loan Program.

Section 674.33(d), which eliminates the requirement that a borrower make a ''written'' request in order to obtain a forbearance on his or her Perkins Loan, and that the institution confirm the terms of the forbearance by notice to the borrower and record the terms in the borrower's file.

Section 674.39(a)(2), which changes the number of consecutive on-time, monthly payments a borrower must make to successfully rehabilitate a defaulted Perkins Loan from 12 to 9.

Sections 674.42(b), 682.604(g), and 685.304(b), which modify the exit counseling provisions.

Sections 674.53, 674.57, 674.58, and 674.59, which expand the existing cancellation provisions for certain teachers, Head Start employees, law enforcement employees, and military personnel.

Sections 682.604 and 685.304, which modify the entrance counseling provisions.

For further information, *see* the section entitled *Implementation Date of These Regulations* in the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For information related to Part 601—Institution and Lender Requirements Relating to Education Loans, Gail McLarnon or Brian Smith. Telephone: (202) 219–7048 or (202) 502–7551 or via the Internet at: *Gail.McLarnon@ed.gov* or *Brian.Smith@ed.gov.*

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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: On July 28, the Secretary published a notice of proposed rulemaking (NPRM) for the Institutions and Lender Requirements Relating to Education Loans, the Student Assistance General Provisions, and for the Perkins Loan, FFEL and Direct Loan Programs in the **Federal Register** (74 FR 37432).

In the preamble to the NPRM, the Secretary discussed on pages 37434 through 37457 the major regulations proposed in that document to implement the provisions of the HEOA, including the following:

- Amending §§ 668.181, 668.184, 668.185, 668.186, 668.187, 668.188, 668.190, 668.191, 668.192, 668.193, 668.196, 668.198, and adding new §§ 668.200, 668.201, 668.202, 668.203, 668.204, 668.205, 668.206, 668.207, 668.209, 668.210, 668.211, 668.212, 668.213, 668.214, 668.215, 668.216, and 668.217 to reflect 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);
- Amending §§ 674.42(b), 682.604(g), and 685.304(b) to reflect the expansion of exit counseling requirements in the title IV, HEA loan programs (*see* section 485(b)(1)(A) of the HEA);
- Amending §§ 682.604 and 685.304 to reflect the expansion of entrance counseling requirements in the FFEL and Direct Loan Programs (*see* section 485(l) of the HEA);
- Amending § 668.14 to add 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);

• Adding new §§ 601.2, 601.11, and 601.30 to reflect the requirements for 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);

• Adding a new § 601.10 to add the borrower disclosures by covered institutions and institution-affiliated organizations that participate in a preferred lender arrangement (*see* section 153(c) of the HEA);

• Adding a new § 601.20 to add the reporting requirements for covered institutions and institution-affiliated organizations (*see* section 153(c)(2) of the HEA);

• Adding a new § 668.42 to add information dissemination requirements for prospective and enrolled students regarding the terms and conditions of title IV, HEA loans (*see* section 485(a) of the HEA);

• Adding a new § 668.16(d)(2) to reflect the 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

• Amending §§ 674.51, 674.53, 674.56, 674.57, 674.58, 674.59, and 674.61 to reflect the 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).

In addition to these changes, we have made a number of minor technical corrections and conforming changes. Changes that are statutory or that involve only minor technical corrections are generally not discussed in the *Analysis of Comments and Changes* section.

Waiver of Proposed Rulemaking for Additional Conforming Changes

These final regulations incorporate certain statutory changes made to the HEA by the HEOA that were not included on Team II's negotiating agenda. These changes are:

• Amending §§ 674.12(a) and (b) to increase undergraduate and graduate student annual and aggregate loan maximums in the Perkins Loan Program.

• Amending §§ 674.33(d) to eliminate the requirement that a borrower make a "written" request in order to obtain a forbearance on his or her Perkins Loan.

• Amending §§ 674.39(a) and (b) to change the number of consecutive on-time, monthly payments a borrower must make to successfully rehabilitate a defaulted Perkins Loan from 12 to 9.

Because these amendments implement changes to the HEA that were not negotiated, we do not discuss them in the *Analysis of Comments and Changes* section.

Under the Administrative Procedure Act (5 U.S.C. 553), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to issuing final regulations. In addition, all Department regulations for programs authorized under Title IV of the HEA are subject to the negotiated rulemaking requirements of section 492 of the HEA. However, both the APA and HEA provide for exemptions from these rulemaking requirements. The APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest. Similarly, section 492 of the HEA provides that the Secretary is not required to conduct negotiated rulemaking for Title IV, HEA program regulations if the Secretary determines that applying that requirement is impracticable, unnecessary or contrary to the public interest within the meaning of the HEA.

Although the regulations implementing the HEOA are subject to the APA's notice-and-comment and the HEA's negotiated rulemaking requirements, the Secretary determined that it was unnecessary to conduct negotiated rulemaking or notice-and-comment rulemaking on the changes needed in §§ 674.12, 674.33 and 674.39. These amendments simply modify the Department's regulations to reflect statutory changes made by the HEOA to paragraphs (a), (e), and (h) of section 464 of the HEA and these changes are already effective. The Secretary does not have discretion in whether or how to implement these changes. Accordingly, negotiated rulemaking and notice-and-comment rulemaking are unnecessary.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and the conditions under which the entity may implement the provisions early.

Consistent with the intent of this regulatory effort to strengthen and improve the administration of the title IV, HEA programs, the Secretary is using the authority granted him under section 482(c) of the HEA to designate the following new and amended provisions for early implementation, at the discretion of each institution, lender, guaranty agency, or servicer, as appropriate: §§ 601.11(a), (b), and (c), 601.12, 601.21, 601.40(a), 668.16(d)(2), 668.42(a)(4), 674.12(a) and (b), 674.33(d), 674.39(a)(2), 674.42(b), 674.53, 674.57, 674.58, 674.59, 682.604, and 685.304.

Analysis of Comments and Changes

Except as noted earlier in this document regarding the limited regulations implementing provisions of the HEOA, the regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on July 28, 2009, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by August 27, 2009. More than 25 parties submitted comments, a number of which were substantially similar. An analysis of the comments and the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, non-substantive changes, recommended changes that the law does not authorize the Secretary to make, or comments pertaining to operational processes. We also do not address comments pertaining to issues that were not within the scope of the NPRM.

PART 601—INSTITUTION AND LENDER REQUIREMENTS RELATING TO EDUCATION LOANS

Subpart A—General

Definitions (§ 601.2)

Comment: Several commenters recommended that we modify the definition of the term *preferred lender arrangement* in proposed § 601.2(b), based on final regulations published in the **Federal Register** by the Federal Reserve Board on August 14, 2009 (74 FR 41194). The Official Staff Interpretations included with the Federal Reserve's final regulations state that a lender is only required to comply with the preferred lender arrangement disclosure requirements in 12 CFR 226.48(f) if the lender is aware that it is a party to a preferred lender arrangement (74 FR 41236). In the commenters' view, this acknowledgement by the Federal Reserve Board that a lender may be in a preferred lender arrangement without realizing it means that a preferred lender arrangement does not exist unless both parties are aware of the arrangement. These commenters recommended that we revise our proposed definition of *preferred lender arrangement* to specify that a preferred lender arrangement can only arise when both the lender and the school are aware of the arrangement. These commenters argued that this change in the definition would align our regulations with the Official Staff Interpretations included with the Federal Reserve's final regulations.

Discussion: We disagree that there is a conflict between our definition of *preferred lender arrangement* and the statement in the Official Staff Interpretations included with the Federal Reserve's final regulations that a lender is only required to comply with the preferred lender arrangement disclosure requirements in 12 CFR 226.48(f) if the lender is aware that it is a party to a preferred lender arrangement.

The issue of whether a preferred lender arrangement exists if a lender is not aware that it is a party to the arrangement came up frequently during the negotiated rulemaking process. As we stated during negotiated rulemaking and in the preamble to the NPRM, a preferred lender arrangement exists if a lender provides or issues education loans to students (or the families of students) attending a covered institution and the covered institution or an institution-affiliated organization recommends, promotes, or endorses the education loan products of the lender. If both of these conditions are met, a preferred lender arrangement exists, whether or not the covered institution and the lender have entered into a formal agreement.

We agree with the Federal Reserve Board that it is possible for a lender to make loans to students at a covered institution and not be aware that the covered institution recommends, promotes, or endorses the education loan products of the lender. We do not view the Federal Reserve Board's position to be, however, that a preferred lender arrangement does not exist if the lender is not aware of the preferred lender arrangement. The Federal Reserve Board acknowledges that the arrangement exists, but states that the lender is not required to comply with the preferred lender arrangement disclosure requirements in 12 CFR 226.48(f) unless the lender is aware that it is a party to a preferred lender arrangement.

Changes: None.

Comment: Paragraph (3) of the definition of *preferred lender arrangement* specifies that a preferred lender arrangement does not exist with regard to private education loans made by a covered institution to its own students, if the private education loans meet the requirements in paragraphs (3)(i), (3)(ii), (3)(iii) and (3)(iv) of the *preferred lender arrangement* definition in proposed § 601.2(b). One commenter recommended that private education loans made by a foundation created to support a covered institution also should be exempted, if the loans meet the other criteria stipulated in the definition. The commenter defined ''foundations'' to include non-profit endowments, foundations, or other entities that are created to support a covered institution and its students. The commenter stated that these foundations are not lenders or lending institutions in the traditional sense, but they often make loans to students at covered institutions, funded by donor-directed contributions and other assets of the foundation.

This commenter also recommended that we amend paragraph (3)(iii) of the definition of *preferred lender arrangement* in proposed § 601.2(b) to exempt loans made through State aid programs available to in-state students. The commenter noted that such State aid loan programs may have a service requirement, resulting in no monetary payback if the borrower meets the service obligations.

Discussion: We agree with the comment relating to foundations, and note that the lead-in language to the definition of the term *preferred lender arrangement* in proposed § 601.2(b) refers to both covered institutions and institution-affiliated organizations. We believe that the exceptions specified in paragraph (3) of the *preferred lender arrangement* definition apply to private education loans provided or issued by institution-affiliated organizations, as well as private education loans provided or issued by covered institutions. The definition of the term *institution-affiliated organization* includes foundations and other entities of the type the commenter included under its definition of the term ''foundations''.

We also agree with the recommendation to include loans made to students from State-funded financial aid programs among the exceptions for Public Health Service Loans in paragraph (3)(iii) of the *preferred lender arrangement* definition in § 601.2(b), if the terms and conditions of the loans include a loan forgiveness option for public service. However, we have not limited this exemption to State-funded financial aid programs for in-state students, as the commenter suggested. We believe that these types of State-funded loans should be exempt from the *preferred lender arrangement* definition regardless of whether the loans are limited to in-state students.

Changes: We have revised paragraphs (3) and (3)(i) of the definition of the term *preferred lender arrangement* in § 601.2(b) to reference institution-affiliated organizations (not only covered institutions). We also have revised paragraph (3)(iv) of the definition to refer to State-funded financial aid programs.

Comment: One commenter requested clarification of the provision in the definition of *preferred lender* *arrangement* that states that 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 using its own funds. The commenter referred to language in the preamble of the NPRM stating that an institution would not be considered to be using its own funds if it borrowed money from a lender to make a private education loan to a student and then sold the loan to that lender shortly after making the loan, in effect acting as a pass-through for the lender's funds. While sharing the Department's concern that an institution may become a pass-through for a lender if the institution sells a private education loan back to the lender from which the institution received the initial funding, the commenter also worried that limitations placed on selling private education loans made by a covered institution would prevent schools from raising capital to make additional institutional loans. The commenter asked if an institution would be permitted to sell a private education loan to a different or unaffiliated lender that was not the source of the funds used to make the loan and still be considered to be using its own funds.

Discussion: The Department remains concerned about situations where a covered institution obtains funds from a lender to make private education loans to its students and then sells the loans back to that lender, or another unaffiliated lender, shortly after making the loan. As stated in the preamble to the NPRM, we believe that the covered institution is merely acting as a pass-through for the lender's funds in these situations. Exempting loans made under these conditions from the preferred lender arrangement requirements would create a loophole that covered institutions could use to avoid the preferred lender requirements. The Department also continues to believe that these arrangements may be deceptive to borrowers who believe they are receiving a private education loan from the covered institution only to find that, very shortly after the loan is made, the actual loan holder is another entity entirely.

The Department recognizes, however, that borrowing money or using a business line of credit from a lender is a common form of financing that enables a covered institution to meet its working capital needs and operating expenses. Rather than focus on the use of a line of credit or borrowed funds in defining an institution's own funds, the Department believes that it is more helpful to consider the totality of the circumstances around the extension of private education loans by a covered institution and what happens to these loans over a period of time. In that vein, the Department will consider a covered institution that makes a private education loan to be using its own funds if the loan is made using funds that include, but are not necessarily limited to, tuition and fee revenue, investment income, endowment funds, borrowed money or a line of credit, and the covered institution does not sell or collateralize the private education loan for two years from the date the loan is fully disbursed, nor does the covered institution engage in an arrangement tying the sale of a private education loan to a lender after the two year period has elapsed.

Changes: None.

Comment: The definition of *private education loan* in proposed § 601.2(b) corresponds to the definition of *private education loan* in section 140 of the Truth in Lending Act (TILA) (15 U.S.C. 1631). The definition of *private education loan* in 12 CFR 226.46(b)(5) of the Federal Reserve's final regulations is also based on the definition in section 140 of the TILA. However, through regulations, the Federal Reserve has interpreted the statutory term private education loan to include certain exemptions. Under 12 CFR 226.46(b)(5), an extension of credit provided by a covered educational institution is not a private education loan if the extension of credit is for a term of 90 days or less, or if the term of the extension of credit is one year or less and an interest rate will not be applied to the credit balance.

Several commenters recommended that we revise the definition of *private education loan* in § 601.2(b) by including these exemptions. One commenter noted that applying the private education loan disclosures to such short-term extensions of credit would not provide meaningful disclosures to students. Requiring such disclosure for short-term extensions of credit could lead schools to stop providing such extensions of credit, making it more difficult for students to benefit from the flexible payment options offered by these extensions of credit.

Discussion: We agree with the commenters. We also note that the Federal Reserve Board's interpretation of the definition of *private education loan,* as reflected in 12 CFR 226.46(b)(5), renders the proposed exception for loans made under an institutional payment plan in paragraph (3)(iv) of the definition of *preferred lender arrangement* in proposed § 601.2(b) superfluous.

Changes: We have revised the definition of *private education loan* in § 601.2(b) to exclude extensions of credit that meet the criteria specified by the Federal Reserve Board in 12 CFR 226.46(b)(5). We also have removed the reference to institutional payment plans in subparagraph (3)(iv) of the definition of *preferred lender arrangement.*

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

Preferred Lender Arrangement Disclosures (§ 601.10)

Comment: One commenter recommended that we modify proposed § 601.10(a)(1)(i), which requires a covered institution in a preferred lender arrangement to disclose the maximum amount of title IV grant and loan aid available to students in the informational materials that discuss education loans that the covered institution makes available. The commenter recommended that instead of referring to title IV grant aid that the regulations specify Pell Grant aid. The commenter also recommended that the regulations include a statement that the title IV information only address title IV aid available to students attending the school. The commenter stated that it would be misleading to students to mandate disclosure of information about all title IV grant and loan programs, since not all schools participate in all of the title IV grant and loan programs.

Discussion: The information required to be disclosed to students by covered institutions and institution-affiliated organizations is specified in section 152(a)(1)(i)(I) of the HEA. This section specifically refers to grant and loan aid under title IV of the HEA, not just Pell Grant aid. Limiting the information provided to Pell Grant aid would not be consistent with the HEA.

We agree with the commenter that the information provided in these materials should be specific to the covered institution. However, we do not agree that a change to § 601.10(a)(1)(i) is necessary. In our view, § 601.10(a)(1)(i), taken in context with the other regulatory provisions in § 601.10, clearly refers to title IV information specific to the covered institution.

The information specified in § 601.10(a)(1)(i) must be included in information materials that are provided to current or prospective students of the covered institution and must describe or discuss financial aid opportunities available to students (*see* § 601.10(b)). This information must be provided in a manner that allows a student to take the information into account before selecting a lender or applying for an education loan (*see* § 601.10(c)(2)).

The information provided under this section is intended to help students make informed decisions when applying for student financial aid. Providing a student with information on title IV financial aid programs not available at the covered institution could be misleading to the student. In addition, for prospective students who have not made a final decision on which school to attend, we believe it would be more helpful for the student to be able to easily compare the title IV financial aid opportunities available at the different schools the student is considering.

Changes: None.

Comment: The preamble to the NPRM makes a reference to *Dear Colleague Letter GEN–08–06* (DCL GEN–08–06), which discusses the use of preferred lender lists in the FFEL Program. DCL GEN–08–06, which is available at *http://www.ifap.ed.gov/dpcletters/GEN0806.html,* states that a neutral, comprehensive list of lenders that have made loans to students at a school within a set period of time, such as three to five years, and that provides a clear statement that a borrower can choose to use any FFEL lender, is not considered a preferred lender list. DCL GEN–08–06 also states that the school may not provide any additional information about the lender on the list.

Commenters asked whether the guidance in DCL GEN–08–06 applies to a list of lenders who have made private education loans at a covered institution, as well as to a list of FFEL lenders.

Discussion: The guidance in DCL GEN–08–06 applies to a list of lenders who have made private education loans at a covered institution, as well as a list of FFEL lenders. During the negotiated rulemaking sessions, we stated that the list of lenders could also include a comparison of terms and conditions offered by the lenders on the loans being offered.

As noted in the NPRM, 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.

Changes: None.

Comment: One commenter noted that many institutions are no longer providing students and their families with a preferred lender list for private education loans. Instead, many institutions are referring borrowers to Web sites developed by third party entities that contain neutral lists of private education lenders and the loan products they offer. The commenter requested that the Department clarify its position on the use of these private education lender lists by institutions of higher education in helping students and their families explore their higher education financing options.

Discussion: The Department does not consider an institution that refers its students to a third party entity that maintains a comprehensive, neutral listing of private education lenders to be participating in a preferred lender arrangement as long as the institution ensures that the listing is broad in scope, does not endorse or recommend any of the lenders on the list and the lenders on the list do not pay the third party entity to be placed on the list or pay the third party entity a fee based on any loan volume generated. However, if an institution retains a third party entity to develop a customized lender list for the institution to provide to its students as a resource, either through a Request for Information or some other process, the Department does consider the institution to be participating in, and subject to the requirements of, a preferred lender arrangement under part 601.

Changes: None.

Comment: One commenter asked us to clarify whether a covered institution could be required to comply with the preferred lender arrangement disclosures if the covered institution does not have a preferred lender list. The commenter wanted to know if there are instances in which an institution would be considered to be recommending, promoting, or endorsing an education loan product in the absence of a preferred lender list. The commenter expressed concern that a covered institution might not realize that it is in a preferred lender arrangement, and therefore fail to comply with the preferred lender arrangement requirements.

Discussion: Any action that a covered institution takes to recommend, promote, or endorse the education loan products of a lender that provides or issues education loans to students attending the covered institution triggers the preferred lender arrangement requirements. The actions a covered institution may take to recommend, promote, or endorse the education loan products of a lender are not limited to including the lender on a preferred lender list.

If a covered institution is unsure whether it is in a preferred lender arrangement with a lender, the covered institution should review its policies and practices with regard to that lender. We do not believe that a covered institution would have difficulty determining whether or not the covered institution is recommending, promoting, or endorsing a lender's loan products, or whether or not the covered institution is complying with DCL GEN–08–06.

Moreover, the program participation agreement requirements in § 668.14(b)(28) require an institution that participates in a preferred lender arrangement to annually publish a list of lenders with which it has preferred lender arrangements. To comply with this requirement, an institution must routinely determine whether it is in a preferred lender arrangement with any lender that provides education loans to the institution's students.

Changes: None.

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

Comment: Several commenters stated that the requirement for a self-certification form should be confined to direct-to-consumer private education loans and that the self-certification form should not be required if an institution is already certifying the borrower's cost of attendance, estimated financial assistance, enrollment status and academic progress directly to the private education lender. These commenters stated that requiring an institution to provide an enrolled or admitted student applicant of a private education loan with the self-certification form and the information necessary to complete the form, in addition to the school certification to the private education lender, would delay the delivery of loan funds to students and families, result in conflicting information if the borrower changed the information on the form, and create a duplicative and unnecessary administrative burden on institutions.

Another commenter asked the Department to provide relief from the self-certification form requirements when:

• The borrower is an international student (non-citizen) and not eligible for title IV aid;

• The borrower has been determined not eligible for title IV aid; or

• The borrower has already received all of the title IV funds for which she is eligible.

This commenter further suggested that the Department exempt an institution of higher education that makes private education loans to its students from the requirement that it provide an applicant for the institutional loan with the self-certification form or, alternatively, to allow the institution to provide clarification to the prospective borrower on his or her eligibility for title IV aid.

Discussion: The Department understands that requiring an institution to provide the private self-certification form, and making available the information needed to complete the form, represents an increase in burden and may, in some cases, create duplicative processes. However, the statutory language in section 128(e)(3) of the TILA and sections 155 and 487(a)(28)(A) of the HEA is clear: The TILA requires private education lenders to obtain the self-certification form from all borrowers of private education loans, as that term is defined in the TILA, without exception. The HEA requires the form, and the information required to complete it, to be made available to the applicant by the relevant institution of higher education, in written or electronic form, upon request of the applicant, without exceptions, and conditions an institution's participation in any title IV, HEA program, on compliance with this requirement.

The Department, in negotiating rules implementing this provision in §§ 601.11(d) and 668.14(b)(29)(i), clarified that the institution must provide the form only to an enrolled or admitted student. We believe this clarification will help minimize the potential burden of this requirement.

Moreover, the Federal Reserve Board, in implementing section 128(e)(3) of the TILA provided some flexibility to private education lenders in obtaining the form that has an impact on an institution's responsibilities. The Federal Reserve Board, in 12 CFR 226.48, provides three ways for a private education lender to obtain the self-certification form: (1) The lender may receive the form directly from the consumer; (2) the lender may receive the form from the consumer through the institution of higher education; or (3) the lender may provide the form, and the information the consumer will require to complete the form, directly to the consumer.

While all three of these options require the institution to provide the form, and the information required to complete the form, to either the private loan applicant or the private education lender, the Department believes that options 2 and 3 may be less burdensome on the institution, especially if the institution has an existing relationship with the lender.

Although the Federal Reserve has built some flexibility into the process of obtaining the self-certification form for the lender, the Department emphasizes that an institution is not required to provide the form, or the information needed to complete the form, to anyone other than the borrower in order to comply with §§ 601.11(d) and 668.14(b)(29)(i). An institution may provide the form to the lender at its option.

Changes: None.

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

Code of Conduct (§ 601.21)

Comment: The code of conduct provisions in § 601.21(c)(2)(i) prohibit employees of the financial aid office of a covered institution from soliciting or accepting gifts from a lender, guarantor, or loan servicer. However, as specified in § 601.21(c)(2)(iii)(D), entrance and exit counseling services provided to borrowers do not qualify as a gift, as long as the covered institution's staff are in control of the counseling and the counseling does not promote the products or services of a specific lender. One commenter recommended that the Department clarify the meaning of ''in control'' with respect to the counseling, and in a manner that minimizes the potential for conflicts of interest, particularly with regard to opportunities for lenders to build awareness of their brand through the counseling. This commenter also recommended that we modify § 601.21(c)(2)(iii)(D) to explicitly prohibit lender-provided personnel from providing the counseling, except in emergency situations as specified in § 601.21(c)(6)(iii)(D).

Discussion: The code of conduct requirements in § 601.21 track very closely the code of conduct requirements in section 487(e)(1) through 487(e)(7) of the HEA. The statutory provisions and corresponding provision in § 601.21(c)(6)(iii)(D) specifically allow a lender to provide entrance and exit counseling ''services to borrowers.'' We believe that it would be inconsistent with the statute to prohibit lender-provided personnel from providing these services. However, as the commenter points out, the covered institution's staff must be in control of the counseling.

To remain in control of the counseling, the covered institution has to review and approve the content of the counseling and provide oversight over how the counseling is conducted. Ultimately, the covered institution is responsible for the entrance and exit counseling that its borrowers receive. We believe this oversight by the covered institution will mitigate against lenders using the counseling to promote their products.

Changes: None.

Comment: One commenter believed that proposed § 601.21(c)(5)(i) goes beyond Congressional intent and may reduce the availability of private education loans to certain students. This section prohibits a covered institution from accepting any offer from a lender for funds to be used for private education loans, if the offer is made in exchange for the covered institution's providing concessions or promises to provide the lender a specified number of loans, a specified loan volume, or a preferred lender arrangement for FFEL loans or private education loans. The commenter noted that section 487(e)(5)(A)(i) of the HEA limits this provision to FFEL Loans. The commenter recommended that we remove the reference to private education loans from § 601.21(c)(5)(i)(A).

Discussion: The code of conduct requirements specified in section 487(e) of the HEA are from the section of the HEA that describes program participation agreements for institutions that participate in the title IV programs. Section 487(a)(25)(A)(ii) of the HEA specifies that the code of conduct shall, ''at a minimum,'' include the provisions described in section 487(e) of the HEA. Section 153(c)(3)(A) of the HEA requires covered institutions and institution-affiliated organizations that participate in preferred lender arrangements to comply with the code of conduct requirements in section 487(a)(25) of the HEA. Because covered institutions do not necessarily participate in the title IV programs, and preferred lender arrangements may relate to private non-title IV education loans as well as title IV education loans, we continue to believe that it is necessary to include private education loans in § 601.21(c)(5)(i)(A).

Changes: None.

Comment: The code of conduct provisions prohibit a covered institution from requesting or accepting any assistance with call center staffing or financial aid office staffing from a lender. However, § 601.21(c)(6)(ii) specifies that a covered institution may request or accept educational counseling materials, financial literacy materials, or debt management materials from a lender, provided that the materials identify any lender that assisted in preparing or providing the materials. One commenter believed that the requirement to identify the lender on the materials could result in direct or indirect promotional opportunities for the lender. The commenter recommended that we prescribe the text and format of the language that identifies the lender on the materials. The commenter also recommended that we require the language identifying the lender to clearly state that the borrower is not expected or required to use the lender's products and has the right to obtain loans from a lender of the borrower's choice.

Discussion: We believe that it would be overly prescriptive for the Department to mandate the specific language and formatting used to identify the lender or lenders who developed the materials.

Changes: None.

Comment: While the code of conduct provisions generally prohibit a covered institution from requesting or accepting staffing assistance from a lender, § 601.21(c)(6)(iii) provides an exception for staffing assistance provided on a short-term, non-recurring basis to assist the covered institution with financial aid-related functions during emergencies.

One commenter stated that this provision conflicts with the prohibited inducement provisions in the Team I NPRM, published in the **Federal Register** on July 23, 2009 (74 FR 36556). Specifically, the commenter stated that § 682.200(b)(5)(i)(A)(*10*) prohibits lenders from offering to perform any function required under title IV for a school, other than exit counseling.

Discussion: Section 682.200(b)(5)(i)(A)(*10*) does not prohibit a lender from providing these services to a school in all circumstances. The prohibition only applies if a lender provides the services ''to secure applications for FFEL loans or to secure FFEL loan volume'' (*see* § 682.200(b)(5)(i)(A)). The Department assumes the necessary intent if we take action against a lender for providing such prohibited inducements, but the lender may demonstrate to the Department that such intent was not present, and there was no quid pro quo between the school and the lender. As long as there is no evidence that the lender was providing the services to increase the number or volume of loans, there would not be a prohibited inducement. Therefore, the provisions in § 682.200(b)(5)(i)(A)(*10*) and § 601.21(c)(6)(iii) do not conflict.

Changes: None.

Subpart E—Lender Responsibilities

Disclosure and Reporting Requirements for Lenders (§ 601.21)

Comment: One commenter noted that § 601.40(c) requires FFEL lenders to annually certify to the Secretary their compliance with the HEA if they are in a preferred lender arrangement with any school. The commenter noted that a lender could be in a preferred lender arrangement without being aware of it, and suggested that the requirement in § 601.40(c) only apply to lenders that know they are in a preferred lender arrangement.

Discussion: If a lender is providing or issuing education loans to students attending a covered institution, it is incumbent on the lender to determine whether or not the lender and the covered institution are in a preferred lender arrangement. Being unaware of its obligation to comply with the preferred lender arrangement requirements does not exempt a lender from its obligation to comply with the requirements.

Given the extensive reporting and disclosure requirements specified in part 601, we believe that it is extremely unlikely that a lender will be unaware when it is in a preferred lender arrangement with a covered institution.

Specifically, covered institutions are required to provide detailed information on private education loans offered pursuant to a preferred lender arrangement, as well as information on why the covered institution participates in a preferred lender arrangement with the lenders on its preferred lender list. The preferred lender list must disclose the method and criteria used by the covered institution to select lenders for inclusion on the list. Covered institutions are likely to contact lenders to determine if the lender meets the selection criteria established by the covered institution.

If the covered institution has not directly contacted the lender to obtain the information needed for its various disclosures and reports, a lender can quickly and easily determine whether it is in a preferred lender arrangement by accessing the covered institution's Web site. A covered institution that participates in a preferred lender arrangement must post on its Web site information on private education loans offered through the preferred lender arrangement, pursuant to § 601.10(a)(2)(i). The covered institution must also submit an annual report to the Department, which includes a detailed explanation of why the covered institution participates in the preferred lender arrangement. The covered institution must make the annual report available to the public, pursuant to § 601.20(b).

If a lender reviews all of this information and still cannot determine whether or not it is in a preferred lender arrangement with a covered institution, the lender can always contact the covered institution directly.

Enforcement actions taken by the Department against a lender for failing to comply with the preferred lender arrangement requirements will take into account the extent of the efforts made by the lender to determine whether it was in a preferred lender arrangement.

Changes: None.

Comment: Proposed § 601.40(d) requires lenders in a preferred lender arrangement to annually provide to the institution or institution-affiliated organization, and to 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. One commenter recommended that a FFEL lender with a preferred lender arrangement with a covered institution or an institution-affiliated organization relating to FFEL loans must annually, or upon the request of the institution, provide such information as required.

Discussion: Proposed § 601.40(d) is consistent with the statutory requirements in section 153(b) of the HEA. Because the commenter provided no explanation or justification for the requested change, we have no basis for making the requested change.

Changes: None.

Code of Conduct (§ 668.14(b)(27))

Comment: One commenter requested that the Department clarify the applicability of the code of conduct requirements. The commenter asked under what circumstances § 601.21(a) applies and under what circumstances § 668.14(b)(27) applies.

Discussion: The HEOA added requirements for an institutional code of conduct in both section 153(c)(3) and section 487(a)(25) of the HEA. These changes are reflected in §§ 601.21(a) and 668.14(b)(27), respectively. The code of conduct requirements in § 601.21(a) apply to covered institutions and institution-affiliated organizations that have a preferred lender arrangement. A covered institution is any institution that receives Federal funding, including institutions that do not participate in the Title IV programs. The regulations in § 668.14(b)(27) require all institutions to develop a code of conduct as a condition of program participation in any of the Title IV, HEA loan program.

Changes: None.

Private Education Loan Certification (§ 668.14(b)(29))

Comment: Several commenters noted that Congress enacted technical amendments to the HEA that changed the data that must be included on the private loan self-certification form. The commenters requested that corresponding changes be made to § 668.14(b)(29).

Discussion: The Higher Education Technical Corrections (Pub. L. 111–39) made technical amendments to the HEA that changed the information on the private loan self-certification form that an institution must provide to any enrolled student who requests it. Public Law 111–39 added a requirement to report amounts of estimated financial assistance used to replace the expected family contribution and removed the requirement to report the expected family contribution.

Changes: We revised § 668.14(b)(29) to reflect the changes made by Public Law 111–39 to the information to be reported to students on the private loan self-certification form.

Disclosures of Reimbursement for Service on Advisory Boards (§ 668.16(d)(2))

Comment: One commenter urged the Department to amend § 668.16(d)(2) by expanding the requirement to report to the Secretary any reasonable expenses paid or provided under section 140(d) of the TILA to all institutional officials with authority or influence on the selection of lenders.

Discussion: The HEOA amended section 485(m) of the HEA by adding, as a condition of participation in any title IV, HEA program, the requirement that the institution must annually report to the Secretary on any reasonable reimbursements paid or provided by a private education lender or group of lenders to any individual 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. The institution must report the amount of reasonable expenses paid or reimbursed, the name of the individual to whom the expenses were paid or provided, the dates of the activity for which the expenses were paid or provided, and must provide a brief description of the activity for which the expenses were paid or provided. While we believe that individuals who assist in or influence the selection of lenders would be included in the language as proposed, we agree that the recommended change is appropriate to highlight the HEOA's goal of transparency and accountability.

Changes: We have amended § 668.16(d)(2) to specifically reference, as an example of individuals who have responsibilities with respect to education loans, individuals with responsibilities for the selection of lenders.

Cohort Default Rates

Comment: A few commenters asked the Department to clarify the circumstances under which an institution's published cohort default rate would be recalculated as a result of an average rates appeal.

Discussion: Regarding the provision for publicly correcting rates as a result of average rate appeals, we note that average rate appeals under §§ 668.196(a)(1)(i) and 668.215(a)(1)(i) do not involve new rates, so the provision for correction is inapplicable. Average rate appeals under §§ 668.196(a)(1)(ii) and 668.215(a)(1)(ii) do not involve new rates either, but instead are a comparison of the average rate with the draft rate, as corrected by any timely adjustment, challenge or appeal. The regulations continue to provide that draft rates will be kept confidential. As a result, in the case of an average rates appeal, there is no corrected rate available for the Department to publish.

Changes: We have removed from §§ 668.196(c) and 668.215(c) the language stating that we will electronically correct the rate that is publicly released following a successful average rates appeal.

Comment: None.

Discussion: As part of our intradepartmental review of the cohort default rate regulations affected by the NPRM, we realized that proposed § 668.202(c) and current § 668.183(c), which identify the conditions and timeframes relating to when a borrower is considered to be in default on a loan, do not explicitly address uninsured loans held by the Department under the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA)(Pub. L. 110–227). As explained more fully in a notice published in the **Federal Register** on July 1, 2008 (73 FR 37422), under the ECASLA, the Secretary has authority to purchase, or enter into forward commitments to purchase, FFELP loans. Loans that the Department holds under this authority are not insured. The Department is responsible for servicing these uninsured FFELP loans.

The Department's CDR regulations need to identify when these uninsured FFELP loans that the Department holds are considered in default for CDR purposes. The date of default for CDR purposes for other FFELP loans is defined under § 668.183(c)(1)(i) and new § 668.202(c)(1)(i) as the date a claim for insurance is paid. Because the uninsured FFELP loans are indistinguishable from Direct Loan Program loans for CDR purposes, we have revised §§ 668.183(c) and 668.202(c) to follow the approach used in § 668.183(c)(1)(ii), concerning the date of default of Direct Loan Program loans, for defining the date of default of uninsured FFELP loans held by the Department.

Changes: We have revised §§ 668.183(c) and 668.202(c) to clarify that FFELP loans held by the Department under ECASLA are treated in the same way as Direct Loans with respect to determining when a borrower defaults.

Special Definitions (§ 674.51(b))

Comment: One commenter asked if there is a list of institutions that may be used as a reference when determining a borrower's eligibility for cancellation based on service as a full-time faculty member of a Tribal College or University, as that term is defined in section 316 of the HEA.

Discussion: The HEOA amended section 465(a)(2) of the HEA by adding a new public service cancellation category for borrowers in the Federal Perkins Loan program who are performing qualifying service as a full-time faculty member at a Tribal College or University, as that term is defined in section 316 of the HEA. We amended § 674.51(b) to reflect this change.

The Department provides a list of Tribal Colleges and Universities on its Web site at *http://www.ed.gov/about/inits/list/whtc/edlite-tclist.html#MN*. This list can be used as a resource when establishing a borrower's eligibility for cancellation under this provision.

Changes: None.

Teacher Cancellation (§ 674.53(e))

Comment: One commenter noted that proposed § 674.53(e) stated that a borrower is eligible for cancellation of a Perkins loan if she is a teacher in a designated public or other non-profit low-income elementary or secondary school or an educational service agency and the borrower is directly employed by the school system. The commenter further noted that, in the case of a borrower who is teaching in an educational service agency, the borrower may be working for many school districts. The commenter asked the Department to clarify if a borrower in this situation would qualify for cancellation benefits under this provision.

Discussion: The HEOA amended section 465(a)(2)(A) of the HEA to expand cancellation benefits to a Perkins Loan borrower who is a teacher employed by an educational service agency, or who is a full-time special education teacher, including a teacher of infants, toddlers, children, or youth with disabilities, who is working in a system administered by an educational service agency. We amended § 674.53(a) to reflect this statutory change.

With regard to a borrower who is employed by an educational service agency, we consider the borrower to be employed by the school system and to qualify for cancellation benefits regardless of the number of school districts in which the borrower works. A more detailed discussion of educational service agencies is contained in the Department's final regulations implementing the lender and guaranty agency provisions (RIN 1840–AC98) [Docket ID ED–2009–OPE—0004].

Changes: None.

Cancellation for Law Enforcement or Corrections Officer Service (§ 674.57)

Comment: One commenter asked the Department to clarify how to determine if Community Defender Organizations and Federal Public Defender Organizations are established in accordance with section 3006A(g)(2)(B) and 3006A(g)(2)(A) of the Criminal Justice Act, respectively, when establishing a borrower's eligibility for cancellation based on her service as a full-time attorney employed in a defender organization.

Discussion: The HEOA amended section 465(a)(2)(F) of the HEA to extend cancellation benefits to 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 the Criminal Justice Act. We amended § 674.57 of the Perkins Loan Program regulations to reflect this change.

Pursuant to the Criminal Justice Act, the Office of Defender Services of the Administrative Office of the U.S. Courts provides information on its Web site that lists these Community Defender and Federal Public Defender Organizations. The Directory can be found at the following address: *http://www.fd.org/pdf_lib/defenderdir8_17_09.pdf.*

This Directory is updated daily. Although this is not a Web site that is administered by the Department of Education, the directory provided on this site may assist in determining a borrower's eligibility for cancellation under this provision. Additional guidance on this cancellation benefit will be provided in the Department's Federal Student Aid Handbook.

Changes: None.

Cancellation for Military Service (§ 674.59)

Comment: One commenter asked the Department to clarify the percentage rate of cancellation for a borrower in her third year of qualifying military service under the newly authorized military service cancellation rates if the borrower had previously received two years of cancellation at the previously authorized cancellation rate of 12½ percent.

Discussion: The HEOA amended section 465(a)(3)(A) of the HEA to allow borrowers who are serving in areas of hostility to receive a cancellation of up to 100 percent of the loan for each full year of qualifying active duty service effective on August 14, 2008, 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. Previously, the percentage of a loan canceled for qualifying military service could not exceed a total of 50 percent of the loan at a rate of 12½ percent per year. We amended § 674.59 to reflect these changes.

To clarify, a borrower who has received a military service cancellation for two years under the previously authorized cancellation rate of 12.5 percent, and who now qualifies for a third year of military service under the new cancellation rates, would qualify at the third-year 20 percent cancellation rate for the third year of eligible military service.

Changes: None.

Entrance Counseling

Counseling Borrowers (§§ 682.604 and 685.304)

Comment: One commenter recommended that the Department add disclosures to the entrance counseling provisions alerting students to some of the negative aspects of private student loans and the availability of parent PLUS loans. The commenter also recommended that the Department provide guidance to schools about the format, presentation, and timing of the information so that it is more useful to borrowers.

Discussion: We believe that the Truth-in-Lending Act disclosures private education lenders are required to provide to borrowers of a private education loan, which include a disclosure about the availability of Federal student aid, adequately address the information a borrower needs to know before borrowing a private education loan.

Changes: None.

Exit Counseling

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

Comment: One commenter encouraged the Department to add information about the eligibility criteria for the Income-Based Repayment and Public Service Loan Forgiveness Programs to exit counseling provisions.

Discussion: The exit counseling provisions in §§ 682.604(g)(2)(ii) and 685.304(b)(4)(ii) require that the features of all the available repayment plans be reviewed for the borrower. The exit counseling provisions in §§ 682.604(g)(2)(viii)(A) and 685.304(b)(4)(ix)(A) require that a general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or discharge of a loan be reviewed for the borrower. The Department considers the eligibility criteria for an income-based repayment plan and for public service loan forgiveness to be covered under these requirements.

Changes: None.

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 that this 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

As discussed in the NPRM, these 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.

Regulatory Alternatives Considered

Regulatory alternatives were considered as part of the rulemaking process. These alternatives were reviewed in detail in the preamble to the NPRM under both the *Regulatory Impact Analysis* and the *Reasons* sections accompanying the discussion to each proposed regulatory provision. To the extent that they were addressed in response to comments received on the NPRM, alternatives are also considered elsewhere in this preamble to the final regulations under the *Discussions* sections related to each provision. No comments were received related to the *Regulatory Impact Analysis* discussion of these alternatives.

As discussed in the *Analysis of Comments and Changes* section of this preamble, these final regulations restate specific HEOA requirements, in many cases using language drawn directly from the statute, language for which consensus was reached through negotiated rulemaking, and minor revisions in response to public comments. In most cases, these revisions were technical in nature and intended to address drafting issues or to provide additional clarity. None of these changes result in revisions to cost estimates prepared for and discussed in the *Regulatory Impact Analysis* of the NPRM.

Benefits

As discussed in the NPRM, 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 enactment of the HEOA or of the harm such relationships actually caused for borrowers, institutions, or the Federal taxpayer. In the NPRM, the Department requested comments or data that would support a more rigorous analysis of the impact of these provisions. No comments or additional data were received.

Benefits under these regulations flow directly from statutory changes included in the HEOA; they are not materially affected by discretionary choices exercised by the Department in developing these regulations, or by changes made in response to comments on the NPRM. As noted in the *Regulatory Impact Analysis* in the NPRM, these proposed provisions result in net costs to the Federal Government of $71.953 million over 2009–2013.

Costs

As discussed extensively in the *Regulatory Impact Analysis* of the NPRM, many of the statutory provisions implemented though these regulations 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, of which $56.3 million is associated with borrowers and $22.2 million with schools. Lender costs are de minimus because of the small number of hours associated with those entities.

Given the limited availability of data underlying these burden estimates, in the NPRM the Department requested comments and supporting information for use in developing more robust estimates. In particular, we asked institutions to provide detailed data on actual staffing and system costs associated with implementing these regulations. No comments or additional data were provided.

Net Budget Impacts

HEOA provisions implemented by these 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.)

The budgetary impact of these regulations is largely driven by changes to Perkins loan cancellations for military service. The Department estimates no budgetary impact for other provisions included in these regulations. 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.

Assumptions, Limitations, and Data sources

As noted in the NPRM, because these regulations 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 regulations do not exist. Costs have been quantified for five years. 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. 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

In Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these 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.

Regulatory Flexibility Act Certification

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

As discussed in more detail in the *Regulatory Flexibility Act* section of the NPRM, data from the Integrated Postsecondary Education Data System (IPEDS) indicate that 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 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, the regulations allow schools to avoid the burdens associated with maintaining preferred lender lists with at least three lenders by simply providing students with a list of all lenders who have provided loans at the schools in the past. Accordingly, the Department believes the new requirements reflected in these regulations 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 these regulations. Accordingly, the Department has determined that these 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 regulations on individuals is not subject to the Regulatory Flexibility Act.

In the NPRM, the Secretary invited comments from small institutions and lenders as to whether they believe the proposed changes would have a significant economic impact on them and requested evidence to support that belief. No comments were received.

Paperwork Reduction Act of 1995

Final §§ 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

Final § 601.10(a) requires 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.

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

Final § 601.10(c) requires a covered institution and institution-affiliated organization that participate 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 needs to be provided to students attending the covered institution, or the families of such students, as applicable. The information needs 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.

Final § 601.10(d) 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 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.

Final § 601.10(d)(1)(ii) requires 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.

Final § 601.10(d)(2) requires 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.

Final § 601.10(d)(3) requires 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 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.

Final § 601.10(d)(4)(ii) requires 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.

Final § 601.10(d)(5) 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.

These final regulations represent an increase in burden. The affected entities under the final regulations are borrowers, and institutions and their institutionally-affiliated organizations. We estimate that the burden for borrowers will increase by 323,103 hours and the burden for institutions and institutionally-affiliated organizations will 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

Final § 601.11(a) requires 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 need to provide the prospective borrower with the information required under section 128(e)(1) of the TILA; and 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.

Final § 601.11(c) requires 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.

Final § 601.11(d) requires 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 needs to provide the information required to complete the form, if the institution possesses that information.

These final regulations represent an increase in burden. The entities affected under these regulations are borrowers, and institutions and institutionally-affiliated organizations. We estimate that burden to borrowers will increase by 833,400 hours and the burden to institutions and institutionally-affiliated organizations respectively will 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

Final § 601.20(a) requires 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 includes, 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 needs 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.

Final § 601.20(b) requires 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 final regulations represent an increase in burden. The affected entities under the final regulations are institutions and institutionally-affiliated organizations. We estimate that burden for institutions and institutionally-affiliated organizations will increase by 336 hours in OMB Control Number 1845–XXXA.

Section 601.21—Code of Conduct

Final § 601.21 requires 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.

Final § 601.21(a)(2)(ii) and (iii) requires 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.

Final § 601.21(b)(1) and (b)(2) requires 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 final § 601.21(b)(3), the institution-affiliated organization is 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 applies 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.

Final § 601.21(c) prescribes 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.

Final § 601.21(c)(6) provides 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 final regulations represent an increase in burden. The affected entities under these regulations are institutions and institutionally-affiliated organizations. We estimate that burden for institutions and institutionally-affiliated organizations, respectively, will 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

Final § 601.30 requires 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.

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

These final regulations represent an increase in burden. The affected entities under the regulations are borrowers, and institutions and their institutionally-affiliated organizations. We estimate that burden to borrowers will 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

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

Final § 601.40(b) sets 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 needs 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 are 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 also requires the lender to submit a certification of compliance to the Secretary.

Final § 601.40(c) requires 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) will be required to include the certification as part of the audit. A lender that is not required to submit an audit will need to provide the certification separately.

Final § 601.40(d) requires 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 final regulations represent an increase in burden. The affected entities under the regulations are borrowers and lenders. The estimated burden hours in the NPRM were inaccurate, and the correct estimates follow. We estimate that burden to borrowers will increase by 293,357 hours and that burden for lenders will increase by 623,675 hours and we will include the total burden of 917,032 in OMB Control Number 1845–XXXA.

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

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

These final 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

Final § 668.16(m)(1)(ii) applies the current rules for administrative capability based on two-year cohort default rates during the transition period. Thereafter, a school will be administratively capable if two of its three most recent three-year rates are less than 30 percent. Under final § 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 continues 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 final §§ 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 final § 668.213 (Economically disadvantaged appeals) from the second such rate and the appeal is pending or successful. Final § 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 final § 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 is 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 final § 668.214, a participation rate index appeal is 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 is taken within 30 days of receiving the notice of loss of eligibility with the most recent excessive official rate.

In addition, under final § 668.204(c)(1)(iii), an institution is 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 is taken following notice to the school of its draft rate.

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

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

Final § 668.186 eliminates 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 will 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 final §§ 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 are also reflected in the following parallel provisions in subpart N, part 668: §§ 668.209, 668.210, 668.211, and 668.212.

These final regulations represent a decrease in burden. The affected entities under these regulations are institutions. We estimate that burden will decrease by 725 hours for institutions and this decrease in burden will be reflected in OMB Control Number 1845–0022.

Sections 682.604 and 685.304—Entrance Counseling

Final § 682.604(f)(3) requires 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 needs to be provided. Under the final regulations, 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.

Final § 682.604(f)(4) requires 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.

Final § 682.604(f)(6) requires 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.

Final § 682.604(f)(7) requires 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 included in § 685.304(a)(1) through (a)(9) of the Direct Loan regulations.

These final regulations represent an increase in burden. The affected entities under the final regulations are borrowers and institutions. We estimate that burden in OMB 1845–0020 will increase by 475,152 hours for borrowers and 12,582 hours for institutions; and we estimate that burden in OMB 1845–0021 will increase by 217,900 hours for borrowers and 12,582 hours for institutions for a total of 487,734 hours which will 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

Final §§ 674.42(b), 682.604(g) and 685.304(b) 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 are required to provide exit counseling to graduate or professional student FFEL PLUS Loan borrowers and graduate or professional student Direct PLUS Loan borrowers.

Under final §§ 674.42(b)(1), 682.604(g)(1) and 685.304(b)(2) and (b)(3), schools continue to be required to conduct exit counseling either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school is 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 is maintained in the 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 are maintained in these regulations.

Final §§ 674.42(b)(3), 682.604(g)(3) and 685.304(b)(6) 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, participates in and completes the counseling. Final §§ 674.42(b)(4), 682.604(g)(4) and 685.304(b)(7) retain the requirement that schools maintain documentation substantiating the school's compliance with this section for each student borrower.

Final §§ 674.42(b)(2), 682.604(g)(2) and 685.304(b)(4) also 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, final §§ 682.604(g)(2)(ii) and 685.304(b)(4)(ii) require 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 needs to inform FFEL and Direct Loan borrowers of their option to change repayment plans.

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

These final regulations represent an increase in burden. The affected entities under the final regulations are borrowers and institutions. We estimate that burden will increase by 432,388 hours for borrowers and 12,582 hours for institutions for a total of 444,970 hours which will be reflected in OMB Control Number 1845–0020. We estimate that burden will increase by 213,542 hours for borrowers and 12,582 hours for institutions for a total of 226,124 hours which will be reflected in OMB Control Number 1845–0021. We estimate that burden will increase by 214,022 hours for borrowers and 5,940 hours for institutions for a total of 219,962 hours which will 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 final regulations 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.

Final § 674.53 provides 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.

Final § 674.57 is amended so that the cancellation provisions for law enforcement or correction officers include borrowers who are employed full-time as an attorney in Federal Public Defender Organizations or Community Defender Organizations.

Final § 674.58 of the Head Start cancellation provisions is 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, final § 674.58(c)(1) and (2) define the terms ''pre-kindergarten program'' and ''childcare program.'' A pre-kindergarten program is 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* is 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.

Final § 674.58 also amends the Head Start cancellation provisions by renaming the regulatory section ''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 final regulations represent an increase in burden. The affected entities under the final regulations are borrowers and institutions. We estimate that burden as a result of the final changes in § 674.53 will increase by 2,290 hours for borrowers and 1,145 hours for institutions for a total of 3,435 hours which will be reflected in OMB Control Numbers 1845–XXXC. We estimate that burden as a result of the final changes in § 674.57 will increase by 385 hours for borrowers and 193 hours for institutions for a total of 578 hours which will be reflected in OMB Control Number 1845–XXXC. We estimate that burden as a result of the final changes in § 674.58 will increase by 2,648 hours for borrowers and 1,325 hours for institutions for a total of 3,973 hours which will be reflected in OMB Control Number 1845–XXXC.

Section 674.56—Addition of New Public Service Cancellation Categories

Final § 674.56 adds 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.

These final regulations 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.

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

Section 674.59—Military Service Cancellation

Final § 674.59 amends 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 final regulations represent an increase in burden. The affected entities under the final regulations are borrowers and institutions. We estimate that burden will increase by 20,532 hours for borrowers and 10,266 hours for institutions for a total of 30,798 hours which will be reflected in OMB Control Number 1845–XXXC.

Consistent with the discussion in the preceding paragraphs, the following chart describes the sections of the final regulations involving information collections, the information collected, and the collections that the Department submitted 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	Final § 601.10(a) requires 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 is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on the form. There will be an increase in burden of 335,181 hours.

Regulatory section	Information section	Collection
601.11	Final § 601.11(a) requires 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; 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 is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on the form. There will be an increase in burden of 1,940,515 hours.
601.20	Final § 601.20(a) requires 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 is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 336 hours.
601.21	Final § 601.21 requires 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 is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 4,697 hours.
601.30	Final § 601.30 requires 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 is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 58,024 hours.
601.40	Final § 601.40 sets forth the information the lenders must 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 is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 917,032 hours.
668.181, 668.200, & 668.202.	Final §§ 668.181, 668.200, and 668.202 provides a new proposed subpart N, part 668 to incorporate the three-year method under § 668.202. With regard to the transition period, final §§ 668.181 and 668.200(b) specifies 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	Final § 668.16(m) requires institutions to have the new three-year cohort default rate, and incorporates the transition rules and the basis for appeals for that cohort default rate. The final changes in § 668.16 apply the current rules on administrative capability during the transition period. We estimate that these 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 final regulations eliminate the need to request a loan record detail report from the Department; instead an electronic loan report will be sent to each institution.	OMB 1845–0022. There will be a decrease in burden of 725 hours.
682.604 & 685.304	Final §§ 682.604 and 685.304 requires that institutions provide initial counseling for Stafford and graduate or professional student PLUS Loan borrowers.	OMB 1845–0020. There will be an increase in burden of 487,734 hours. OMB 1845–0021. There will be an increase in burden of 230,482 hours.
674.42, 682.604, and 685.304.	Final §§ 674.42, 682.604 and 685.304 continues 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 are 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. There will be an increase in burden of 457,552 hours. OMB 1845–0021. There will be an increase in burden of 226,124 hours. OMB 1845–0023. There will be an increase in burden of 219,962 hours.

Regulatory section	Information section	Collection
674.53, 674.57, and 674.58.	Final §§ 674.53, 674.57, and 674.58 extends 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 the cancellation categories appears on the borrower's promissory note.	OMB 1845–XXXC. This is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 7,986 hours.
674.56	Final § 674.56 adds 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 is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 5,154 hours.
674.59	Final § 674.59 amends 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 is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 30,798 hours.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, and based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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

List of Subjects

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: October 14, 2009.

Arne Duncan,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends 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.
601.1 Scope.
601.2 Definitions.

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

Sec.
601.10 Preferred lender arrangement disclosures.
601.11 Private education loan disclosures and self-certification form.
601.12 Use of institution and lender name.

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

Sec.
601.20 Annual report.
601.21 Code of conduct.

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

Sec.
601.30 Duties of institutions.

Subpart E—Lender Responsibilities

Sec.
601.40 Disclosure and reporting requirements for lenders.

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 or by an institution-affiliated organization of the covered institution, and the private education loan is—

(i) Funded by the covered institution's or institution-affiliated organization'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 a State-funded financial aid program, if the terms and conditions of the loan include a loan forgiveness option for public service.

Private education loan: As the term is defined in 12 CFR 226.46(b)(5), 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—

(1) 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; or

(2) An extension of credit in which the educational institution is the lender if—

(i) The term of the extension of credit is 90 days or less; or

(ii) An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

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 estimated financial assistance, including amounts of financial assistance used to replace the expected family contribution as determined by the institution in accordance with title IV, for students who have completed the Free Application for Federal Student Aid; and

(C) The difference between the amounts under paragraphs (b)(29)(i)(A) and (29)(i)(B) 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, including responsibilities involving the selection of lenders, 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 or equal to 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 information 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.

§ 668.183 [Amended]

■ 8. Section 668.183(c)(1) is amended by:

■ (A) Removing the word ''or'' at the end of paragraph (c)(1)(ii);

■ (B) Removing the period at the end of paragraph (c)(1)(iii) and adding a colon followed by the word ''or'';

■ (C) Adding a new paragraph (iv).

The addition reads as follows:

§ 668.183 Calculating and applying cohort default rates.

* * * * *

(c) * * *

(iv) Before the end of the following fiscal year, the borrower fails to make an installment payment, when due, on a Federal Stafford Loan that is held by the Secretary or a Federal Consolidation Loan that is held by the Secretary and was used to repay a Federal Stafford Loan, if such Federal Stafford Loan or Federal Consolidation Loan was used to include the borrower in the cohort, and the borrower's failure persists for 360 days.

* * * * *

§ 668.184 [Amended]

■ 9. 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''.

■ 10. 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.

* * * * *

■ 11. 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.

■ 12. 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 (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.

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

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

■ 13. 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—

* * * * *

■ 14. 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.

■ 15. 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)(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)(6)(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.

■ 16. Section 668.192 is amended by:

■ (A) In paragraph (b)(6)(ii), removing the reference § 668.191(b)(7)(i) and adding, in its place, § 668.191(b)(6)(i).

■ (B) Revising paragraph (c).

The revision reads 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.

* * * * *

■ 17. Section 668.193 is amended by:

■ (A) In paragraph (c)(10)(ii), removing the reference § 668.191(b)(7)(i) and adding, in its place, § 668.191(b)(6)(i).

■ (B) Revising paragraph (f)(2).

The revision reads as follows:

§ 668.193 Loan servicing appeals.

* * * * *

(f) * * *

(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.

* * * * *

■ 18. 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.

* * * * *

§ 668.198 [Removed]

■ 19. Section 668.198 is removed.

Subpart M—[Amended]

■ 20. Subpart M of Part 668 is amended by removing appendices A and B.

■ 21. Add a new subpart N to Part 668 to read as follows:

Subpart N—Cohort Default Rates

Sec.

668.217 Default prevention plans.

Appendix A to Subpart N of Part 668—Sample Default Prevention Plan

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);

(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; or

(iv) The borrower fails to make an installment payment, when due, on a Federal Stafford Loan that is held by the Secretary or a Federal Consolidation Loan that is held by the Secretary and that was used to repay a Federal Stafford Loan, if such Federal Stafford Loan or Federal Consolidation was used to include the borrower in the cohort, and the borrower's failure persists for 360 days.

(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 transmission date for eCDR notification packages that is posted on the Department's Web site.

(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)(6)(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 or equal to 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.

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 § 668.217(a). 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

■ 22. The authority citation for part 674 is revised to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa–1087hh, unless otherwise noted.

§ 674.12 [Amended]

■ 23. Section 674.12 is amended by:

■ (A) In paragraph (a)(1), removing the amount ''$4,000'' and adding, it its place, the amount ''$5,500''.

■ (B) In paragraph (a)(2), removing the amount ''$6,000'' and adding, in its place, the amount ''$8,000''.

■ (C) In paragraph (b)(1), removing the amount ''$20,000'' and adding, in its place, the amount ''$27,500''.

■ (D) In paragraph (b)(2), removing the amount ''$40,000'' and adding, in its place, the amount ''$60,000''.

■ (E) In paragraph (b)(3), removing the amount ''$8,000'' and adding, in its place, the amount ''$11,000''.

■ 24. Section 674.33 is amended by:

■ (A) In paragraph (d)(2), removing the word ''written''.

■ (B) In paragraph (d)(3), adding the words ''The school confirms this agreement by notice to the borrower, and by recording the terms in the borrower's file.'' after the word ''institution.''.

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

The revision reads as follows:

§ 674.33 Repayment.

* * * * *

Authority: 20 U.S.C. 1087dd.

■ 25. Section 674.39 is amended by:

■ (A) In paragraph (a)(2), removing the word ''twelve'' and adding, in its place, the word ''nine''.

■ (B) In paragraph (b)(2), removing the number ''12'' and adding, in its place, the word ''nine''.

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

The revision reads as follows:

§ 674.39 Loan rehabilitation.

* * * * *

Authority: 20 U.S.C. 1087dd.

■ 26. Section 674.42 is amended by revising paragraph (b) to read as follows:

§ 674.42 Contact with the borrower.

* * * * *

(b) *Exit counseling.* (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.

* * * * *

■ 27. 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 needs 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).

Authority: 20 U.S.C. 1087ee(a).

■ 28. 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.

* * * * *

■ 29. 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.

* * * * *

■ 30. 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 publicly-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.

■ 31. 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 or 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.

* * * * *

■ 32. Section 674.59 is amended by:

■ A. In paragraph (a)(1), removing the word ''shall'' and adding, in its place, the word ''must''.

■ B. Revising paragraph (b)(1).

■ C. Adding new paragraph (c).

■ D. Redesignating paragraph (b)(3) as paragraph (d).

■ E. 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]

■ 33. 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

■ 34. 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.

■ 35. In § 682.212, revise paragraph (h) 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).

* * * * *

■ 36. 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) *Entrance counseling.* (1) A school must ensure that entrance 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 entrance 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) Entrance 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 entrance 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 entrance 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) Entrance 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) Entrance 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

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

Authority: 20 U.S.C. 1070g, 1087a, *et seq.*, unless otherwise noted.

■ 38. 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.

* * * * *

■ 39. 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;

* * * * *

■ 40. Section 685.304 is revised to read as follows:

§ 685.304 Counseling borrowers.

(a) *Entrance counseling.* (1) Except as provided in paragraph (a)(8)of this section, a school must ensure that entrance 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 entrance 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) Entrance 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 entrance 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 entrance 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) Entrance 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) Entrance 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 entrance 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 entrance 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.*).

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