

DEPARTMENT OF EDUCATION**34 CFR Parts 682 and 685**

RIN 1845-AA11

Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program**AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Final regulations.

SUMMARY: The Secretary amends the Federal Family Education Loan (FFEL) Program and the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. These final regulations implement changes made to the Higher Education Act of 1965, as amended, (HEA) by the Higher Education Amendments of 1998 (1998 Amendments). The final regulations implement the teacher loan forgiveness programs in the FFEL and Direct Loan programs that were included in the 1998 Amendments. In addition, these final regulations make conforming changes for both the FFEL Program and the Direct Loan Program, as well as unrelated technical amendments to the Direct Loan Program regulations.

DATES: These regulations are effective July 1, 2001.

FOR FURTHER INFORMATION CONTACT: For the FFEL Program, Ms. Beth Grebeldinger, or for the Direct Loan Program, Mr. Don Watson, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building #3, Washington, DC 20202-5346. Telephone: (202) 708-8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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SUPPLEMENTARY INFORMATION: These regulations implement certain changes made to the HEA by the 1998 Amendments (Pub.L. 105-244) that affect the FFEL and Direct Loan programs.

On August 10, 2000, the Secretary published a notice of proposed rulemaking (NPRM) for the FFEL and Direct Loan programs in the **Federal Register** (65 FR 49124).

In the preamble to the NPRM, on pages 49125 to 49127, the Secretary discussed the proposed regulations that would implement the teacher loan forgiveness program in the FFEL and

Direct Loan programs. These include the following:

Amending §§ 682.211(h)(2) and (3), 682.215(e), 685.205(a)(5), and 685.205(b)(6) to allow some borrowers to request forbearance while performing qualifying teaching service, and during the submission and processing of their applications for teacher loan forgiveness.

Amending §§ 682.215(a), 685.212(h), and 685.217(a) to reflect sections 428J and 460 of the HEA, which established teacher loan forgiveness programs for certain borrowers in the FFEL Direct Loan programs.

Amending §§ 682.215(b) and 685.217(b) to provide specific definitions for the terms “academic year”, “elementary school”, “full-time”, “secondary school”, and “teacher” for purposes of the teacher loan forgiveness program.

Amending §§ 682.215(c) and 685.217(c) to provide that to qualify for the teacher loan forgiveness program a borrower must have been employed full-time for five consecutive complete years in a low-income elementary or secondary school that has been listed in a designated Department directory.

Amending §§ 682.215(d) and 685.217(d) to provide that \$5,000 is the maximum amount that may be forgiven for an individual teacher under these programs.

Amending §§ 682.215(f) and 685.217(e) to explain the application process for both the borrower and the loan holder.

Analysis of Comments and Changes

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 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.

These regulations were published in proposed form on August 10, 2000, following completion of the negotiated rulemaking process. The Secretary invited comments on the proposed regulations by September 25, 2000. In response to the Secretary's invitation in the NPRM, 10 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We discuss substantive issues under the sections of the regulations to which

they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

Section 682.215(a)—General

Comment: One commenter requested additional information regarding the regulatory requirement that the loan for which the borrower is requesting forgiveness must have been made prior to the end of the fifth year of qualifying teaching service.

Discussion: The regulations require that the loan for which forgiveness is sought must have been made prior to the end of the five-year qualifying teaching service. This requirement was included to be consistent with the stated intent of the statute that the teacher loan forgiveness programs encourage individuals to enter and continue in the teaching profession. We believe that there needs to be a safeguard against the possibility that a borrower, who after meeting the teaching requirements of the forgiveness program, quits teaching, returns to school to train for another profession and then asks to have \$5,000 in loans for the new training forgiven based on that earlier teaching. To avoid this situation, the regulations require that loans for which forgiveness is being sought must have been made prior to the end of the qualifying five-year teaching service.

Changes: None.

Comment: Four commenters recommended modifying § 682.215(a) to clarify that \$5,000 is the total amount for all loans that a borrower may be eligible to have forgiven, not a per program amount.

Discussion: We agree that the regulations would be clearer with the recommended change.

Change: We have revised the language in both § 682.215(a) and § 685.217(a) to state that the combined total forgiveness limit is \$5,000 for loans in the FFEL or Direct Loan programs.

Section 682.215(c)—Borrower Eligibility

Comment: Four commenters stated that they believed that the discussion in the preamble to the NPRM, regarding when the borrower's qualifying teaching at the school begins, seemed contradictory to the statute and the proposed regulations and requested clarification.

Discussion: To clarify, if the school at which a borrower is performing qualifying teaching is not a designated eligible low-income school when the borrower begins the teaching service, but becomes such a school while the borrower is performing qualifying

teaching, the required five years begins from the point that the school gains the designated eligible low-income school status. Any years of teaching prior to that designation do not apply to the five complete, consecutive years required for forgiveness. On the other hand, if an eligible, designated school loses its designation while the borrower is teaching there, any continuous subsequent years of qualified teaching service at that same school may be included in the five-year requirement.

Change: None.

Comment: Three commenters suggested specifically including criteria to § 682.215(c)(3) and (4) to make special education teachers eligible for the loan forgiveness based solely on their role as a special education teacher.

Discussion: The regulations that the commenters wish to revise are based directly on the statute and the requested change is not supported by the statutory language. Special education teaching is not one of the specific criteria included in the statute, but the teacher may qualify for the loan forgiveness program if the qualifying teaching otherwise meets the statutory requirements. The regulations do specifically include special education teachers in the definition of a teacher, so if a special education teacher met the other criteria in paragraphs (c)(3) or (c)(4), he or she could be eligible for teacher loan forgiveness.

Change: None.

Comment: One commenter suggested that the regulations provide certification criteria for school officials to follow to ensure consistent, objective and fair determinations of a teacher's eligibility to participate in the loan forgiveness program.

Discussion: We do not see a need for such regulatory guidance. The statute requires that the chief administrative officer of the school determine that a borrower has met the criteria outlined in the statute and the regulations. We believe that the criteria are sufficiently clear and that school administrators will be able to provide the needed certifications. Our experience with the certifications used in the Federal Perkins Loan Program, while based on slightly different eligibility criteria, has shown that school administrators can apply the required standards without prescriptive regulatory guidance.

Change: None.

Comment: One commenter indicated that § 682.215(c)(5) did not address "gaps" that may occur between the end of an accepted condition that would not constitute a "break" in the consecutive complete years of teaching required by the law and the resumption of qualified

teaching. This commenter requested that these regulations allow borrowers to delay their return to qualifying teaching service to the beginning of the next academic year if necessary, as was done in connection with the special grace period for borrowers returning from active duty military service.

Discussion: We agree that due to the scheduling of academic years, it may be impossible for a teacher to resume teaching immediately at the conclusion of one of the exempted conditions. Such "gap" periods should not penalize a borrower who met an exempted condition.

Change: We have made a change in §§ 682.215(c)(6) and 685.217(c)(6) to ensure that these gaps are not treated as a break in qualifying service.

Comment: One commenter suggested an expansion of conditions that would not constitute a break in the consecutive, complete qualifying teaching service. The commenter argued that there are other conditions over which the teacher has no control. Among the conditions suggested were: periods of protracted labor disputes, natural disasters or emergencies, and funding shortfalls.

Discussion: While we acknowledge that these conditions are events over which the teacher may have no control, it was not our intent to address every possible event that could disrupt the school year. We believe that if the events listed by the commenter occur, the school or school district would extend the academic year or declare that the academic year has been completed early. Either of these results would qualify the year as a complete academic year for purposes of teacher loan forgiveness.

Change: None.

Comment: One commenter suggested that the school's certifying chief administrative official should have greater flexibility in determining the relationship of the studies the borrower undertakes in returning to postsecondary education while taking a break in their qualifying teaching if the borrower returns to qualifying teaching.

Discussion: We believe that it is appropriate to require that the teacher undertake education that is "directly related" to the performance of the service that the statute wants to support. We do not think it would be appropriate to allow the borrower to engage in postsecondary education that is unrelated to the performance of the qualifying service and still receive the loan forgiveness.

Change: None.

Sections 682.215(d) and 685.217(d)—Forgiveness Amount

Comment: Three commenters suggested changing the regulations to clarify that a borrower with a consolidation loan qualifies for loan forgiveness only if the consolidation loan is outstanding and the forgiveness amount relates to a qualifying loan (a subsidized or unsubsidized loan made under the FFEL Program or the Direct Loan Program) that was repaid by the Consolidation Loan.

Discussion: We agree that the regulations need to be clarified to describe the relationship between the consolidation loan and the underlying loans for purposes of the loan forgiveness.

Change: We have changed §§ 682.215(d)(1) and 685.217(d)(1) to clarify how loan forgiveness affects consolidation loans.

Comment: Three commenters suggested clarifying that the forgiveness amount total of \$5,000 includes both outstanding principal and accrued interest.

Discussion: We agree that this change would clarify the regulations.

Change: We have made the suggested change to §§ 682.215(d)(2) and 685.217(d)(2) to clarify that the forgiveness amount limit of \$5,000 applies to both outstanding principal and accrued interest.

Comment: Four commenters suggested revising § 682.215(d)(3) to clarify that payments received from a borrower or on behalf of a borrower would not be refunded as directed in the statute.

Discussion: Proposed §§ 682.215(d)(3) and 685.217(d)(3) reflect the statutory provision that payments received from a borrower are not refunded if the borrower qualifies for loan forgiveness. However, the statutory provision also applies to payments made on behalf of the borrower and we agree with the commenters that the regulations should make it clear that payments made on the borrower's behalf also will not be refunded.

Change: We have modified §§ 682.215(d)(3) and 685.217(d)(3) to clarify that payments made on a borrower's behalf are not returned if the borrower qualifies for loan forgiveness.

Section 682.215(e)—Authorized Forbearance During Qualifying Teaching Service and Discharge Processing

Comment: Two commenters questioned the interchangeable use of "holder" and "lender" in the FFEL proposed regulations. They argued that

this practice creates consistency and accuracy problems.

Discussion: We agree that it is important to use the terms "lender" and "holder" carefully since the term "holder" includes parties who are not included in the definition of a lender.

Change: Throughout these regulations we will use the term "holder" since the obligations placed on the loan holders in the teacher loan forgiveness program do not just apply to lenders but to all loan holders.

Comment: Four commenters proposed using the term "must" in § 682.215(e)(1), as well as redesignating paragraphs. These changes would require a loan holder to provide an annual forbearance to a borrower for certain qualified periods without a request from the borrower. The commenters noted that a borrower is not required to request a forbearance in connection with other loan cancellation opportunities such as the unpaid refund, false certification, and closed school discharges.

Discussion: The commenter incorrectly assumes that the regulations do not require the loan holder to grant a forbearance to a borrower who may qualify for the teacher loan forgiveness program. Section 682.215(e)(1) includes a cross-reference to the mandatory forbearance section of the FFEL regulations. Therefore, the use of "must" is not necessary. We also do not agree with the commenter's suggestion that a borrower should not have to request the forbearance. This mandatory forbearance requires an annual request from the borrower, in part to allow the loan holder to ensure that the borrower still meets the qualifications for the discharge. The request also allows the borrower to certify his or her intent to satisfy the five-year teaching requirement. In addition, since the \$5,000 discharge will not, for many borrowers, extinguish their entire debt, a borrower may determine that it is better to make payments for a period of time and not request the forbearance. The requirement for an annual request gives the borrower an opportunity to consider his or her options. As to the commenter's statement that other loan cancellation programs do not require a borrower request, we note that those loan cancellations are based on situations relating to the loan that would be reflected in records that are otherwise available to the holder. The borrower's qualification for a teacher loan forgiveness and the related forbearance would not be reflected in other information available to the loan holder.

Change: None.

Comment: Some commenters also suggested that lenders only be required to review the borrower's balance at the time the initial forbearance request is submitted instead of multiple times throughout the qualifying five-year teaching period.

Discussion: As noted earlier, these regulations permit the borrower to request a forbearance for each year of the qualifying service. As discussed in the preamble to the NPRM, this mandatory forbearance was added to ensure that borrowers with a low balance loan who qualify for loan forgiveness would not lose the maximum benefit by continuing to make monthly payments. The annual request allows the lender to determine if capitalized interest will create an outstanding balance for the borrower at the end of the five-year period. It also provides an opportunity for the lender to counsel the borrower regarding the effects of capitalized interest and to advise the borrower of any balance that may remain outstanding at the conclusion of the qualifying teaching period.

Change: None.

Section 682.215(f)—Application and processing

Comment: Three commenters suggested adding an additional cross-reference to § 682.215(f)(2)(i) to include all references to certifying officials. Another commenter suggested revising the language of § 682.215(f)(2)(i) to make it clear that the application may include the certifications of the borrower and the appropriate chief administrative official or officials.

Discussion: With respect to the comment about adding a cross-reference, we believe that removing all cross-references is the better approach to address the commenters' concerns. We agree with the commenter who expressed concern that the proposed rule implied that there would be multiple application and certification forms.

Change: Section 682.215(f)(2)(i) has been modified by removing the cross-references and broadening the language regarding the application to address the commenters' concerns.

Comment: Three commenters recommended adding to the regulations a provision allowing late filing by a lender of the request for payment with the guaranty agency. One commenter suggested that for late filings the lender would be responsible for repaying the Secretary all interest and special allowance for the late period.

Discussion: We agree and thank the commenters for pointing out this oversight.

Change: A new paragraph (iii) has been added to § 682.215(f)(2) to address the comments.

Comment: One commenter suggested clarifying that forgiveness payments should first be applied to unsubsidized and then to subsidized Federal Consolidation loans.

Discussion: The FFEL Program does not distinguish between subsidized and unsubsidized Federal Consolidation Loans. Thus, this change will not be made.

Change: None

Comment: One commenter requested an addition to the regulations to allow a guaranty agency that holds a defaulted loan that is eligible for this forgiveness to be able to recover from the Department the complement of the reinsurance percentage paid on the applicable loan amount. The commenter noted that this change would be consistent with the treatment provided in other loan discharge situations.

Discussion: Since a defaulted loan for which the borrower has made satisfactory arrangement may be eligible for discharge under these programs, we agree with the commenter.

Change: We have added a new paragraph (g) to § 682.215 to reflect this correction.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section, we identify and explain any burdens specifically associated with information collection requirements.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

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

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (65 FR 49127).

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The Paperwork Reduction Act of 1995 does not require you to respond to a

collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of the information in these final regulations at the end of the affected section of the regulations.

Assessment of Educational Impact

Based on the response to the NPRM and on our 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, and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 682 and 685

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

Dated: October 24, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons stated in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by revising parts 682 and 685 as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

2. Section 682.211 is amended as follows:

A. In paragraph (h)(2)(ii)(B), by removing the period at the end and adding in its place, “; or”.

B. By adding a new paragraph (h)(2)(ii)(C).

C. By adding a new paragraph (h)(3)(iii).

The additions and revisions read as follows:

§ 682.211 Forbearance.

* * * * *

(h) * * *

(2) * * *

(ii) * * *

(C) Is performing the type of service that would qualify the borrower for loan forgiveness and associated forbearance under the requirements of the teacher loan forgiveness program in § 682.215.

* * * * *

(3) * * *

(iii) Before granting a forbearance to a borrower under paragraph (h)(2)(ii)(C) of this section, the lender must require the borrower to—

(A) Submit documentation for the period of the annual forbearance request showing the beginning and anticipated ending dates that the borrower is expected to perform, for that year, the type of service described in § 682.215(c); and

(B) Certify the borrower's intent to satisfy the requirements of § 682.215(c).

(Approved by the Office of Management and Budget under control number 1845–0020)

* * * * *

3. A new § 682.215 is added to read as follows:

§ 682.215 Teacher loan forgiveness program.

(a) *General.* The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays up to a combined total of \$5,000 of subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998. In addition, the borrower must have been employed as a full-time teacher for five consecutive complete academic years, at least one of which was after the 1997–1998 academic year,

in certain eligible elementary or secondary schools that serve low-income families. The loan for which forgiveness is sought must have been made prior to the end of the borrower's fifth year of qualifying teaching service.

(b) *Definitions.* The following definitions apply to this section:

Academic year means one complete school year at the same school, or two complete and consecutive half years at different schools, or two complete and consecutive half years from different school years at either the same school or different schools. Half years exclude summer sessions and generally fall within a twelve-month period. For schools that have a year-round program of instruction, nine months is considered an academic year.

Elementary school means a public or nonprofit private school that provides elementary education as determined by State law or the Secretary if that school is not in a State.

Full-time means the standard used by a State in defining full-time employment as a teacher. For a borrower teaching in more than one school, the determination of full-time is based on the combination of all qualifying employment.

Secondary school means a public or nonprofit private school that provides secondary education as determined by State law or the Secretary if the school is not in a State.

Teacher means a person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including Special Education teachers.

(c) *Borrower eligibility.* (1) A borrower may obtain loan forgiveness under this program if he or she has been employed as a full-time teacher for five consecutive complete academic years, at least one of which was after the 1997–1998 academic year, in an elementary or secondary school that—

(i) Is in a school district that qualifies for funds under title I of the Elementary and Secondary Education Act of 1965, as amended;

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of children who qualify for services provided under title I; and

(iii) Is listed in the *Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits*. If this directory is not available before May 1 of any year, the previous year's directory may be used.

(2) If the school at which the borrower is employed meets the requirements specified in paragraph (c)(1) of this

section for at least one year of the borrower's five consecutive complete academic years of teaching and the school fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that borrower.

(3) A borrower who is employed as an elementary school teacher must demonstrate knowledge and teaching skills in reading, writing, mathematics, and other areas of the elementary school curriculum, as certified by the chief administrative officer of the school in which the borrower was employed.

(4) A borrower who is employed as a secondary school teacher must teach in a subject area that is relevant to the borrower's academic major as certified by the chief administrative officer of the school in which the borrower was employed.

(5) The academic year may be counted as one of the borrower's five consecutive complete academic years if the borrower completes at least one-half of the academic year and the borrower's employer considers the borrower to have fulfilled his or her contract requirements for the academic year for the purposes of salary increases, tenure, and retirement if the borrower is unable to complete an academic year due to—

(i) A return to postsecondary education, on at least a half-time basis, that is directly related to the performance of the service described in this section;

(ii) A condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (19 U.S.C. 2654); or

(iii) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code.

(6) A borrower's period of postsecondary education, qualifying FMLA condition, or military active duty as described in paragraph (c)(5) of this section, including the time necessary for the borrower to resume qualifying teaching no later than the beginning of the next regularly scheduled academic year, does not constitute a break in the required five consecutive years of qualifying teaching service.

(7) A borrower who taught in more than one qualifying school during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools involved, is considered to have completed one academic year of qualifying teaching.

(8) A borrower is not eligible for teacher loan forgiveness on a defaulted

loan unless the borrower has made satisfactory repayment arrangements to re-establish title IV eligibility, as defined in § 682.200.

(9) A borrower may not receive loan forgiveness for qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under subtitle D of title I of the National and Community Service Act of 1990.

(d) *Forgiveness amount.* (1) A qualified borrower is eligible for forgiveness of up to \$5,000 of the aggregate amount of a borrower's subsidized or unsubsidized Federal Stafford or Federal Consolidation Loan obligation that is outstanding after the borrower completes his or her fifth consecutive complete academic year of teaching as described in paragraph (c) of this section. Only the outstanding portion of the consolidation loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford loan, an eligible Direct Subsidized Loan, or an eligible Direct Unsubsidized Loan qualifies for loan forgiveness under this section.

(2) A borrower may not receive more than a total of \$5,000 in loan forgiveness for outstanding principal and accrued interest under both this section and under section 34 CFR 685.217.

(3) The holder does not refund payments that were received from or on behalf of a borrower who qualifies for loan forgiveness under this section.

(e) *Authorized forbearance during qualifying teaching service and discharge processing.* (1) At the borrower's request, a holder grants a forbearance—

(i) Under § 682.211(h)(2)(ii)(C) and (h)(3)(iii), in annual increments for each of the years of qualifying teaching service, if the holder believes, at the time of each annual request, that the expected cancellation amount will satisfy the anticipated remaining outstanding balance on the loan at the time of the expected cancellation;

(ii) For a period not to exceed 60 days while the holder is awaiting a completed teacher loan forgiveness application from the borrower; and

(iii) For the period beginning on the date the holder receives a completed loan forgiveness application to the date the holder receives either a denial of the request or the loan discharge amount from the guaranty agency, in accordance with paragraph (f) of this section.

(2) At the conclusion of a forbearance authorized under paragraph (e)(1) of this section, the holder must resume collection activities and may capitalize any interest accrued and not paid

during the forbearance period in accordance with § 682.202(b).

(3) Nothing in paragraph (e) of this section restricts holders from offering other forbearance options to borrowers who do not meet the requirements of paragraph (e)(1)(i) of this section.

(f) *Application and processing.* (1) A borrower, after completing the qualifying teaching service, requests loan forgiveness from the holder of the loan on a form approved by the Secretary.

(2)(i) The holder must file a request for payment with the guaranty agency on a teacher forgiveness discharge no later than 60 days after the receipt, from the borrower, of a completed teacher loan forgiveness application.

(ii) When filing a request for payment on a teacher forgiveness discharge, the holder must provide the guaranty agency with the completed loan forgiveness application submitted by the borrower and any required supporting documentation.

(iii) If the holder files a request for payment later than 60 days after the receipt of the completed teacher loan forgiveness application form, interest that accrued on the loan after the expiration of the 60-day filing period is ineligible for reimbursement by the Secretary, and the holder must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period. The holder cannot collect from the borrower any interest that is not paid by the Secretary under this paragraph.

(3)(i) Within 45 days of receiving the holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan forgiveness under this section and must notify the holder of its determination of the borrower's eligibility for loan forgiveness under this section.

(ii) If the guaranty agency approves the discharge, it must, within the same 45-day period, pay the holder the amount of the discharge, up to \$5,000, subject to paragraphs (c)(9), (d)(1) and (d)(2) of this section.

(4) After being notified by the guaranty agency of its determination of the eligibility of the borrower for the discharge, the holder must, within 30 days, inform the borrower of the determination. If the discharge is approved, the holder must also provide the borrower with information regarding any new repayment terms of remaining loan balances.

(5) Unless otherwise instructed by the borrower, the holder must apply the proceeds of the teacher forgiveness discharge first to any outstanding

unsubsidized Federal Stafford loan balances, next to any outstanding subsidized Federal Stafford loan balances, then to any eligible outstanding Federal Consolidation loan balances.

(g) *Claims for reimbursement from the Secretary on loans held by guaranty agencies.* In the case of a teacher loan forgiveness discharge applied to a defaulted loan held by the guaranty agency, the Secretary pays the guaranty agency a percentage of the amount discharged that is equal to the complement of the reinsurance percentage paid on the loan. The payment of up to \$5,000 may also include interest that accrues on the discharged amount during the period from the date on which the guaranty agency received payment from the Secretary on a default claim to the date on which the guaranty agency determines that the borrower is eligible for the teacher loan forgiveness discharge. (Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1078-10)

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

§ 685.102 [Amended]

5. Section 685.102(b) is amended in paragraph (2) of the definition of "Satisfactory repayment arrangement" by removing the reference to "34 CFR 685.215(d)(1)(ii)(E)" and adding, in its place, "34 CFR 685.220(d)(1)(ii)(E)".

§ 685.200 [Amended]

6. Section 685.200 is amended by:

A. Removing from paragraph (a)(1)(v) "34 CFR 668.7(b)" and adding, in its place, "34 CFR 668.32(e)(2) or (3)".

B. Removing from paragraph (b)(1)(iv) "34 CFR 668.7" and adding, in its place "34 CFR 668.32(g)".

C. Removing from paragraph (c) "\$ 685.215(d)(1)(ii)(F)" and adding, in its place, "685.220(d)(1)(ii)(F)".

§ 685.201 [Amended]

7. Section 685.201(c)(2) is amended by removing the reference to "\$ 685.216" and by adding, in its place "\$ 685.220".

8. Section 685.205 is amended by:

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

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

C. Removing from paragraph (b)(6)(i) the reference to "\$ 685.213" and adding, in its place, "\$ 685.214".

D. Removing from paragraph (b)(6)(ii) the reference to "\$ 685.214" and adding, in its place, "\$ 685.215".

E. Removing from paragraph (b)(6)(iii) the reference to "\$ 685.215; or" and adding, in its place, "\$ 685.216;".

F. By redesignating paragraph (b)(6)(iv), as paragraph (b)(6)(v).

G. By adding a new paragraph (b)(6)(iv).

The additions read as follows:

§ 685.205 Forbearance.

(a) * * *

(5) The borrower—

(i) Is performing the type of service that would qualify the borrower for loan forgiveness under the requirements of the teacher loan forgiveness program in § 685.217; and

(ii) Is required, by the Secretary, before a forbearance is granted under § 685.205(a)(5)(i) to—

(A) Submit documentation for the period of the annual forbearance request showing the beginning and ending dates that the borrower is expected to perform, for that year, the type of service described in § 685.217(c); and

(B) Certify the borrower's intent to satisfy the requirements of § 685.217(c).

* * * * *

(b) * * *

(6) * * *

(iv) Under § 685.217; or

(Approved by the Office of Management and Budget under control number 1845-0021)

* * * * *

§ 685.210 [Amended]

9. Section 685.210(b)(2)(ii) is amended by removing the reference to "\$ 685.209(d)(2)" and by adding, in its place "\$ 685.209(c)(4)".

§ 685.211 [Amended]

10. Section 685.211(e)(4) is amended by removing the reference to "\$ 685.215" and by adding, in its place, "\$ 685.220".

11. Section 685.212 is amended by:

A. Removing from paragraph (d) the reference to "\$ 685.213" and adding, in its place, "\$ 685.214".

B. Removing from paragraph (e) the reference to "\$ 685.214" and adding, in its place, "\$ 685.215".

C. Removing from paragraph (f) the reference to "\$ 685.215" and adding, in its place, "\$ 685.216".

D. By adding a new paragraph (h).

The addition reads as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(h) *Teacher loan forgiveness program.* If a new borrower meets the

requirements in § 685.217, the Secretary repays up to \$5,000 of the borrower's Direct Subsidized Loans, Direct Unsubsidized Loans, and, in certain cases, Direct Consolidation Loans.

§§ 685.214, 685.215, 685.216

[Redesignated as §§ 685.215, 685.216, and 685.220]

12. Sections 685.214, 685.215, and 685.216 are redesignated as §§ 685.215, 685.216, and 685.220, respectively.

§ 685.213 [Redesignated as § 685.214, § 685.213 Reserved]

13. Section 685.213 is redesignated as § 685.214, and § 685.213 is reserved.

§ 685.215 [Amended]

14. In § 685.215, paragraph (c)(5)(ii) is amended by removing the references to "\$ 685.213(d)" and "\$ 685.213(e)" and adding, in their place, "\$ 685.214(d)" and "\$ 685.214(e)", respectively.

§ 685.216 [Amended]

15. In § 685.216, paragraph (c)(1)(iii)(B) is amended by removing the references to "\$ 685.213(d)" and "\$ 685.213(e)" and adding, in their place, "\$ 685.214(d)" and "\$ 685.214(e)", respectively.

16. A new § 685.217 is added to read as follows:

§ 685.217 Teacher loan forgiveness program.

(a) *General.* The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary will repay up to a combined total of \$5,000 of subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and, in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998. In addition, the borrower must have been employed as a full-time teacher for five consecutive complete academic years, at least one of which was after the 1997-1998 academic year, in certain eligible elementary or secondary schools that serve low-income families. The loan for which the borrower is seeking forgiveness must have been made prior to the end of the fifth year of qualifying teaching service.

(b) *Definitions.* The following definitions apply to this section:

Academic year means one complete school year at the same school, or two complete and consecutive half years at different schools, or two complete and consecutive half years from different school years at either the same school or different schools. Half years exclude summer sessions and generally fall within a twelve-month period. For schools that have a year-round program of instruction, a minimum of nine months is considered an academic year.

Elementary school means a public or nonprofit private school that provides elementary education as determined by State law or the Secretary if that school is not in a State.

Full-time means the standard used by a State in defining full-time employment as a teacher. For a borrower teaching in more than one school, the determination of full-time is based on the combination of all qualifying employment.

Secondary school means a public or nonprofit private school that provides secondary education as determined by State law or the Secretary if the school is not in a State.

Teacher means a person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including Special Education teachers.

(c) *Borrower eligibility.* (1) A borrower may obtain loan forgiveness under this program if he or she has been employed as a full-time teacher for five consecutive complete academic years, at least one of which was after the 1997–1998 academic year, in an elementary or secondary school that—

(i) Is in a school district that qualifies for funds under title I of the Elementary and Secondary Education Act of 1965, as amended;

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of children who qualify for services provided under title I; and

(iii) Is listed in the *Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits*. If this directory is not available before May 1 of any year, the previous year's directory may be used.

(2) If the school at which the borrower is employed meets the requirements specified in paragraph (c)(1) of this section for at least one year of the borrower's five consecutive complete academic years of teaching and the school failed to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that borrower.

(3) A borrower who is employed as an elementary school teacher must demonstrate knowledge and teaching skills in reading, writing, mathematics, and other areas of the elementary school curriculum, as certified by the chief administrative officer of the school in which the borrower was employed.

(4) A borrower who is employed as a secondary school teacher must teach in a subject area that is relevant to the borrower's academic major as certified by the chief administrative officer of the school in which the borrower was employed.

(5) The academic year may be counted as one of the borrower's five consecutive complete academic years if the borrower completes at least one-half of the academic year and the borrower's employer considers the borrower to have fulfilled his or her contract requirements for the academic year for the purposes of salary increases, tenure, and retirement if the borrower is unable to complete an academic year due to—

(i) A return to postsecondary education, on at least a half-time basis, that is directly related to the performance of the service described in this section;

(ii) A condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (19 U.S.C. 2654); or

(iii) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code.

(6) If a borrower meets the requirements of paragraph (c)(5) of this section, the borrower's period of postsecondary education, active duty, or qualifying FMLA condition including the time necessary for the borrower to resume qualifying teaching no later than the beginning of the next regularly scheduled academic year, does not constitute a break in the required five consecutive years of qualifying teaching service.

(7) A borrower who teaches in more than one qualifying school during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools involved, is considered to have completed one academic year of qualifying teaching.

(8) A borrower is not eligible for teacher loan forgiveness on a defaulted loan unless the borrower has made satisfactory repayment arrangements to re-establish title IV eligibility, as defined in § 685.200(b).

(9) A borrower may not receive loan forgiveness for qualifying teaching

service under this section if the borrower receives a benefit for the same teaching service under subtitle D of title I of the National and Community Service Act of 1990.

(d) *Forgiveness amount.* (1) A qualified borrower is eligible for forgiveness of up to \$5,000 of the aggregate amount of a borrower's Direct Subsidized Loan, Direct Unsubsidized Loan, or Direct Consolidation Loan obligation that is outstanding after the borrower completes his or her fifth consecutive complete academic year of teaching as described in paragraph (c) of this section. Only the outstanding portion of a Direct Consolidation Loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford loan, an eligible Direct Subsidized Loan, or an eligible Direct Unsubsidized Loan qualifies for loan forgiveness under this section.

(2) A borrower may not receive more than a total of \$5,000 in loan forgiveness for outstanding principal and accrued interest under both this section and 34 CFR § 682.215.

(3) The Secretary does not refund payments that were received from or on behalf of a borrower who qualifies for loan forgiveness under this section.

(e) *Application.* (1) A borrower, after completing the qualifying teacher service, must request loan forgiveness from the Secretary on a form provided by the Secretary.

(2) If the Secretary determines that the borrower meets the eligibility requirements for loan forgiveness under this section, the Secretary—

(i) Notifies the borrower of this determination; and

(ii) Unless otherwise instructed by the borrower, applies the proceeds of the loan forgiveness first to any outstanding Direct Unsubsidized Loan balances, next to any outstanding Direct Subsidized Loan balances, next to any qualifying Direct Unsubsidized Consolidation Loan balances, and last to any qualifying outstanding Direct Subsidized Consolidation Loan balances.

(3) If the Secretary determines that the borrower does not meet the eligibility requirements for loan forgiveness under this section, the Secretary notifies the borrower of this determination.

(Approved by the Office of Management and Budget under the control number 1845–0021)
(Authority: 20 U.S.C. 1087a *et seq.*)

§§ 685.218, 685.219 [Added and Reserved]

17. New §§ 685.218 and 685.219 are added and reserved.

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