Docket No. CP93–141–003, Iroquois Gas Transmission System, L.P.
Docket No. CP93–145–002, Tennessee Gas Pipeline Company
CAG–53.
Docket No. CP94–166–001, Viosca Knoll Gathering System
CAG–54.
Docket No. CP93–616–000, Tennessee Gas Pipeline Company
CAG–55.
Docket No. CP93–706–000, Questar Pipeline Company
CAG–56.
Docket No. CP94–109–000, Transcontinental Gas Pipe Line Corporation
CAG–57.
Docket No. CP94–161–000, Avoca Natural Gas Storage
CAG–58.
Docket Nos. CP93–493–000 and 001, Ozark Gas Transmission System
CAG–59.
Docket No. CP93–548–000, Wallkill Transport Company, L.P.
CAG–60.
Docket No. CP93–716–000, HNG Sulphur Mines Company
CAG–61. Docket No. CP94–87–000, Great Lakes Gas Transmission Limited Partnership
CAG–62.
Docket No. CP94–143–000, Great Lakes Gas Transmission Limited Partnership
CAG–63.
Docket Nos. CP90–454–002, 004, 005, CP94–358–000 and MT94–3–000, Midwest Gas Storage Inc.
CAG–64.
Docket No. CP93–732–000, Murphy Exploration and Production Company
Docket No. CP93–733–000, Texas Eastern Transmission Corporation
CAG–65.
Docket No. CP94–82–000, National Fuel Gas Supply Corporation
CAG–66.
Omitted
CAG–67.
Docket No. CP94–306–000, Texas Utilities Fuel Company
CAG–68.
Docket No. CP94–332–000, Columbia Gas Transmission Corporation
CAG–69.
Docket No. CP90–1391–006, Arcadian Corporation v. Southern Natural Gas Company
CAG–70.
Docket No. CP91–2069–001, NorAM Gas Transmission Company
CAG–71.
Docket No. RM93–4–003, Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations
CAG–72.
Docket No. CP92–606–002, Great Lakes Gas Transmission Limited Partnership

Hydro Agenda

H–1.
Omitted
H–2.
4Omitted

Electric Agenda

E–1.
Docket No. TX94–2–000, El Paso Electric Company and Central and South West Services, Inc., as agent for Public Service Company of Oklahoma, West Texas Utilities Company, Southwestern Electric Power Company and Central Power and Light Company v. Southwestern Public Service Company. Order on request for transmission service.
E–2.
Docket No. EC94–7–000, El Paso Electric Company and Central and South West Services, Inc.
Docket No. ER94–898–000, Central and South West Services, Inc. Merger and amendment to system agreement.
E–3.
Docket No. TX93–2–001, City of Bedford, Virginia, City of Danville, Virginia, City of Martinsville, Virginia, Town of Richlands, Virginia and Blue Ridge Power Agency. Order on request for transmission service.
E–4.
Docket No. EL94–59–000, City of Bedford, Virginia, City of Danville, Virginia, City of Martinsville, Virginia, Town of Richlands, Virginia and Blue Ridge Power Agency v. Appalachian Power Company. Order on complaint.
E–5.
Docket No. RM94–7–000, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities. Notice of proposed rulemaking.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Restructuring Matters

RS–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Reserved

Dated: June 22, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–15801 Filed 6–24–94; 2:38 pm]

BILLING CODE 6717–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Friday, July 1, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551 .

STATUS: CLOSED.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 23, 1994

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–15716 Filed 6–24–94; 9:16 am]

BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 27, July 4, 11 and 18, 1994.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 27—Tentative

There are no meetings scheduled for the Week of June 27.

Week of July 4—Tentative

Friday July 8

10:00 a.m.
Protocol For Study Of Thyroid Disease In Belarus as a Result Of The Chernobyl Accident (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 11—Tentative

Tuesday, July 12

2:00 p.m.
Periodic Briefing on EEO Program (Public Meeting)
Contact: Vandy Miller, 301–492–4665)

Wednesday, July 13

10:00 a.m.
Briefing on Decommissioning Process (Public Meeting)
Contact: David Futoma, 301–504–1621)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
2:00 p.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

Thursday, July 14

2:00 p.m.
Briefing on Proposed Changes to 10 CFR 50.36—Technical Specifications (Public Meeting)
(Contact: Christopher Grimes, 301–504–1161)

Friday, July 15

10:00 a.m.
Briefing on Information Technology Strategic Plan (Public Meeting)

(Contact: Francine Goldberg, 301–415–7460)

Week of July 18—Tentative

Tuesday, July 19

10:00 a.m.

Briefing On Fuel Cycle and Waste Management Activities In France (Public Meeting)

Wednesday, July 20

11:30 a.m.

Affirmation/Discussion And Vote (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill—(301) 504–1661.

Dated: June 24, 1994.

Andrew L. Bates

Chief Operations Branch, Office of the Secretary.

[FR Doc. 94–15746 Filed 6–24–94; 8:45 am]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 9:00 a.m. on Tuesday, July 12, 1994, in Boston, Massachusetts. The meeting is open to the public and will be held at the Boston Harbor Hotel, 70 Rowes Wharf, in the John Foster Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, July 11, 1994, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

July 12—9:00 a.m. (Open)

1. Minutes of the Previous Meeting, June 6–7, 1994.
2. Remarks of the Postmaster General and CEO. (Marvin Runyon).
3. Report on Mail Forwarding. (Arthur I. Porwick, Manager, Operations Programs).
4. Report on the Employee Assistance Program. (John G. Kurutz, Manager, Employee Assistance Program).
5. Ninety-Day Status Report on Chicago Mail Service. (William J. Good, Manager, Great Lakes Area).
6. Report on the Northeast Area. (Nancy George and J. Buford White, Managers, Northeast Area).
7. Capital Investments.
   a. 120 Remote Bar Coding Systems. (William J. Dowling, Vice President, Engineering).
   b. Kalamazoo, Michigan, Processing & Distribution Center. (Thomas K. Ranft, Manager, Great Lakes Area).
7. Tentative Agenda for the August 1–2, 1994, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 94–15822 Filed 6–24–94; 3:44 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 59, No. 123
Tuesday, June 28, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Direct Grant Programs and Fellowship Programs

Correction

In notice document 94-14026 beginning on page 30189 in the issue of Friday, June 10, 1994 make the following corrections:

1. On page 30189, in the part cover, in the last line, "Fiscal Year 1994" should read "Fiscal Year 1995".

2. On page 30190, in the third column, in the fourth full paragraph, "Within the next month the Secretary intends to publish in the **Federal Register**" should read "Elsewhere in this issue of the **Federal Register**, the Secretary is publishing".

3. On page 30192, in Chart 4, in the first column, under entry "84.055A", in the last line, "part a" should read "Part A".

4. On page 30193, in Chart 4, under entry "84.120", in the last column, "....." should read "1".

5. On page 30197, in the first column, under "84.220A", "*Program Authority:* 20 U.S.C. 1130-1." add the following text:

84.202A Grants to Institutions and Consortia to Encourage Women and Minority Participation in Graduate Education Program

Purpose of Program: To provide grants to enable institutions of higher education to (1) recruit talented undergraduate students who demonstrate financial need and are individuals from minority groups or women underrepresented in graduate education; and (2) provide students with effective preparation for graduate study.

Eligible Applicants: Institutions of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended; and consortia of institutions of higher education.

Applicable Regulations: The Education Department GeneralAdministrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210(a) and (c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of Operation. (34 CFR 75.210(b)(3)). Fifteen points are added to this criterion for a possible total of 30 points.

Project Period: Six weeks to 24 months. All student activities must begin during summer 1995.

BILLING CODE 1505-01-D

Federal Register

Tuesday
June 28, 1994

Part II

Department of Education

34 CFR Part 682
Federal Education Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AB97

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL Program regulations govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan Program. The Federal Stafford Loan, the Federal SLS, the Federal PLUS and the Federal Consolidation Loan programs are hereinafter referred to as the Stafford, SLS, PLUS and Consolidation Loan programs. The final regulations incorporate statutory changes made to the Higher Education Act of 1965 (HEA) by the Higher Education Amendments of 1992 (the 1992 Amendments), self-implementing provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA), and the Higher Education Technical Amendments of 1993 (1993 Technical Amendments). Regulations needed to implement other OBRA amendments and the 1993 Technical Amendments will be published separately. The final regulations also reflect various policy initiatives intended to improve program administration.

EFFECTIVE DATE: Pursuant to section 482(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089(c)), these regulations take effect July 1, 1995, with the exception of §§ 682.401, 682.405, and 682.409. These sections will become effective on July 1, 1995, or after the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, whichever is later. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Patricia Beavan, Senior Program Specialist, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4310, ROB–3), Washington, DC 20202–5449. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Stafford, SLS, and PLUS Loan programs provide loans to eligible student or parent borrowers who might otherwise be unable to finance the costs of postsecondary education. The Consolidation Loan Program gives borrowers an opportunity to consolidate loans made under the Stafford loan, Perkins (formerly National Direct Student Loan), Auxiliary Loans to Assist Students (as in effect before October 17, 1986), PLUS, SLS, Health Professions Student Loan (HPSL), and the Higher Education Assistance Loan (HEAL) programs.

On March 16, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for the FFEL program in the **Federal Register** (59 FR 12484). Those proposed regulations were developed in compliance with section 492 of the 1992 Amendments (Pub. L. 102–325), mandating that the regulations be submitted to a negotiated rulemaking process. Regional meetings were held during September 1992 to obtain public involvement in the development of the proposed regulations and a negotiated rulemaking process was conducted during January and February 1993. The NPRM published on March 16, 1994 provided an indepth discussion of those areas where the negotiators reached a consensus as reflected in those regulations.

These regulations improve the efficiency of the Federal student aid programs, and, by so doing, improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the National Education Goals. The student aid programs also enable current and future workers to have the opportunity to acquire both basic and technologically advanced skills needed for today's and tomorrow's workplace. They provide the financial means for an increasing number of Americans to receive an education that will prepare them to think critically, communicate effectively, and solve problems efficiently, as called for in the National Education Goals.

Substantive Revisions to the Notice of Proposed Rulemaking

Subpart B—General Provisions

Section 682.200 Definitions

- The Secretary has revised the definition of "disposable income" to exclude: (1) child support or alimony payments that are made under a court order or in accordance with a written legally enforceable agreement and (2) the amounts withheld under wage garnishment.
- The Secretary has revised the definition of "estimated financial assistance" to exclude the amount of expected Federal Perkins loan or Federal Work-study aid if the borrower did not apply for those funds.
- The Secretary has revised the definition of "repayment period" as it applies to the SLS Program to reflect the borrower's option to delay repayment for a period consistent with the grace period in the Stafford Loan Program.
- The Secretary has revised the definition of "satisfactory repayment arrangement" to provide that for purposes of consolidating a defaulted loan, the borrower will be required to make three consecutive reasonable and affordable full monthly voluntary payments rather than six as provided in the NPRM. The definition has been also revised to specify that an on-time payment is one received by a guaranty agency or its agent within 15 days of the scheduled due date.

Section 682.204 Maximum Loan Amounts

- The Secretary has revised the regulations to reflect the changes to the proration of loan amounts made by the 1993 Technical Amendments (Pub. L. 103–208).

Section 682.207 Due Diligence in Disbursing a Loan

- The Secretary has revised the regulations to permit lenders to disburse loans proceeds by use of a "master check" for a number of borrowers in addition to an individual check or Electronic Funds Transfer for each borrower.

Subpart D—Administration of the Federal Family Education Loan Programs by a Guaranty Agency

Section 682.401 Basic Program Agreement

- The Secretary has revised the regulations to delete the proposed regulations reflecting limitation of lender-of-last-resort (LLR) services in light of the deletion of these requirements by OBRA (Pub. L. 103–66).

Section 682.405 Loan Rehabilitation Agreement

- The Secretary has revised the regulations to allow the guaranty agency to determine if the sale of a loan to a lender is practicable.
- The Secretary has revised the regulations to require guaranty agencies to inform borrowers of the consequences of loan rehabilitation.

Section 682.409 Mandatory Assignment by Guaranty Agencies of Defaulted Loans to the Secretary

- The Secretary has revised the regulations to require the immediate assignment to the Department of loans held by a guaranty agency if the Secretary deems it necessary to protect the Federal fiscal interest, which includes ensuring an orderly transition from the FFEL program to the Federal Direct Student Loan (FDSL) Program and requiring the collection of unpaid loans owed by Federal employees by Federal salary offset.

Section 682.414 Records, Reports, and Inspection Requirements for Guaranty Agency Programs

- The Secretary has revised the regulations to require a lender to maintain a copy of the report of the required annual independent audit for not less than five years after the report is issued.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 71 parties submitted comments on the proposed regulations. An analysis of the comments and the changes in the regulations since publication of the NPRM follows. Substantive issues and significant technical changes are discussed under the section of the regulations to which they pertain.

Numerous comments were received to the effect that the proposed regulations did not reflect OBRA or the 1993 Technical Amendments changes and suggested that the Secretary publish a revised notice of proposed rulemaking (NPRM) indicating which sections were superseded by subsequent changes in law. Other than those provisions that are self-implementing and are reflected in this package, the Secretary will issue regulations to implement most substantive provisions from OBRA and the 1993 Technical Amendments in a separate rulemaking package.

The Secretary also notes that technical corrections to the regulations governing the FFEL Program were published in the **Federal Register** on May 17, 1994 (59 FR 25750). Some comments made on the NPRM are addressed by those corrections.

Section 682.100 The Federal Family Education Loan Programs

Section 682.100(a)(2)

Comments: Several commenters suggested that the regulations be revised to reflect the elimination of the SLS program by OBRA.

Discussion: As the commenters noted, OBRA amended the HEA to end the SLS program effective July 1, 1994. However, the Secretary does not agree with the commenters that references to that program should be removed from these regulations. SLS loans will remain outstanding for many years after the program ends and the regulations need to reflect the requirements relating to those loans. However, the Secretary revises the regulations to make reference to the SLS program as in effect prior to July 1, 1994.

Changes: The regulations have been revised to refer to the SLS Program as in effect prior to July 1, 1994.

Section 682.100(a)(4)

Comments: Commenters suggested that the Secretary delete the reference to parent PLUS loans made on or after October 17, 1986 because the statutory use of this term was ended by the 1993 Technical Amendments. The commenters also suggested that the reference to a requirement that a borrower must consolidate at least $7500 in eligible student loans in the Consolidation Loan Program be deleted to reflect the elimination of this requirement by OBRA. The commenters noted that this change needs to be reflected in other sections of the regulations.

Discussion: The Secretary agrees that it is appropriate to reflect these statutory changes. The reference to parent PLUS loans made on or after October 17, 1986 was deleted in the technical corrections package.

Changes: The regulations have been revised to reflect the commenters' recommendations.

Section 682.102 Obtaining and Repaying a Loan

Section 682.102(e)(1)

Comments: A commenter suggested that the regulations imply that all FFEL debt is forgiven for borrowers in certain areas of teaching or nursing professions or community service.

Discussion: The Secretary agrees that the regulations could be interpreted to indicate that the borrower's entire obligation to repay a debt may be forgiven for borrowers performing certain public service. However, section 428J of the HEA only authorizes the Secretary to repay limited portions of certain Federal Stafford loan obligations for individuals who enter certain specified teaching and nursing professions or perform certain other national and community service. Moreover, the loan forgiveness program is a demonstration program which is not currently funded.

Changes: The regulations have been revised to reflect the limitation on loan forgiveness for public service. The Secretary notes that regulations reflecting this loan forgiveness demonstration program are being published separately.

Section 682.200 Definitions

Co-Maker

Comments: A commenter noted that there is an understanding throughout the FFEL industry that the Department is considering deleting references to "co-maker" and replacing that term with the term "endorser."

Discussion: The terms "endorser" and "co-maker" are not synonymous and reflect different legal obligations. The Secretary will not be deleting the reference to co-maker, since it is a term used in the Consolidation Loan Program. "Endorser" is the term used in the Federal PLUS Program for borrowers with adverse credit.

Changes: None.

Disposable Income

Comments: Some commenters suggested that in the definition of "disposable income" the reference to "any amounts required by law to be withheld" was unclear and recommended further clarification. The commenters noted, for example, that child support payments would qualify under this definition if the payments were made under a divorce settlement rather than a court order. The commenters believed that the Department should not treat borrowers who are subject to garnishment for private debts more favorably than borrowers who are making payments without the need for court intervention.

Discussion: The Secretary clarifies that the definition of "disposable income" is that part of a borrower's compensation from an employer and other income from any source that remains after the deduction of amounts required by law to be withheld or any child support or alimony payments that are made under a court order or in accordance with a legally enforceable written agreement. The Secretary has also revised the definition to exclude

payments made under a wage garnishment order.

Changes: The definition of "disposable income" has been revised to clarify those payments that may be deducted from the borrower's compensation.

Estimated Financial Assistance

Comments: Some commenters expressed the same opinion raised during the negotiations that requiring aid officers to certify the student's estimated eligibility for the Federal Perkins loan or Federal Work-Study program regardless of whether the student applies for the aid is not reasonable. Some commenters believed that it is unjust to penalize a student who declines campus-based awards and that it is inappropriate to have the financial aid administrator determine what is an "acceptable reason" for declining aid.

Discussion: After further consideration of the commenter's views, the Secretary agrees that financial aid officers should not be required to certify estimated eligibility for other aid that the student does not apply for or consider as estimated financial assistance aid offered but declined by the student. The Secretary believes that students and their families should have discretion in those areas not prescribed by law and that aid administrators should not be placed in the position of evaluating the merits of a student's reason for declining an award. The Secretary notes that this position is consistent with Federal Direct Student Loan (FDSL) Program.

Changes: The regulations have been revised to delete reference to "whether or not the student applied" under paragraph (1)(vii) and paragraph (2) has been added to delete the reference to the declining aid for an acceptable reason.

Nonsubsidized Stafford Loan

Comments: A commenter recommended that the definition be revised to reflect that those loans are not eligible for special allowance under § 682.302. The commenter suggested that confusion exists between the terms "unsubsidized Stafford Loan" and "nonsubsidized Stafford Loan" and the revision would clarify the difference.

Discussion: The Secretary agrees with the commenter's concern that the regulations need to reflect a clear distinction between the two programs and has revised the regulations to clarify that a nonsubsidized loan does not qualify for special allowance payments.

Changes: The regulations have been revised to reflect the comment.

Repayment Period

Comments: Some commenters stated that they understood that the Secretary had agreed during the negotiated rulemaking process to permit a 13-year repayment schedule to be established for a borrower who chooses to repay a loan under an income-sensitive repayment schedule. The commenters also suggested that the definition be revised to incorporate the 10-year repayment requirement for variable rate interest loans. The commenters suggested that the 10-year repayment period be extended in the case of an Unsubsidized Stafford Loan.

The commenters also pointed out that during negotiated rulemaking, the Department agreed that in the case of the PLUS and SLS loans with a variable rate, the lender could use the rate at the time the loan entered repayment for purposes of establishing the initial repayment period.

Discussion: During the negotiations the Secretary repeatedly made it clear that he had no authority to extend the 10-year repayment period provided by statute. The Secretary did agree to authorize a three-year forbearance period in the case of an income-sensitive repayment schedule and agreed to allow forbearance for a period of up to one year in the case of a variable interest rate loan or graduated repayment schedule.

The Secretary noted that these extensions have the practical effect of extending the repayment period to eleven or thirteen years. The Secretary is developing final regulations to the NPRM published on March 24, 1994 that addresses extending the period of forbearance in cases where the repayment schedule causes the extension of the maximum repayment term of the loan.

The Secretary agrees with the commenters that a lender should use the variable interest rate at the time the loan entered repayment for purposes of establishing the initial repayment period. If the repayment schedule leads to balloon payments or increased payments, and the borrower is unable to make those payments, the lender may grant forbearance, which is excluded from the 10-year period.

Changes: None.

Comments: A few commenters suggested that the Secretary revise the definition of repayment period to include a cross-reference to § 682.209(d), which requires that the calculation of the repayment period on the loans included in a PLUS or SLS combined repayment schedule be based on the date entered repayment of the most recent included loan.

Discussion: The Secretary does not agree that there should be a cross-reference to § 682.209(d). The definition of repayment reflects statutory requirements. The provisions in § 682.209(d) govern specific servicing adjustments necessary in a combined repayment situation and do not modify the basic statutory definition.

Changes: None.

Comments: Some commenters suggested that the definition of repayment period for SLS be revised to incorporate the borrower's option to delay repayment for a period consistent with the grace period in the Stafford Loan Program. The commenters noted that it should be clear that the delay in the repayment of an SLS is not a period of deferment or forbearance and, as such, special documentation is not required. The commenters also suggested that, since § 682.202(c) permits capitalization during grace periods if provided for in the promissory note (and the addendum and common applications provided for this capitalization), the Secretary should clarify that the lender may capitalize interest during this period.

Discussion: The Secretary agrees with the commenters.

Changes: The Secretary has revised the definition of repayment period to reflect the borrower's option in the SLS program to delay repayment for a period consistent with the grace period in the Stafford Loan Program. This change is consistent with the change made in § 682.102(e)(3) by the technical corrections. The regulations have also been revised to clarify that the lender may capitalize interest during this period.

Satisfactory Repayment Arrangements

Comments: While a number of commenters supported a uniform standard for determining "satisfactory repayment arrangements" for defaulted borrowers, many commenters objected to the use of the proposed uniform standard for all purposes, including reinstatement of Title IV eligibility for defaulted borrowers, rehabilitation of defaulted student loans, and consolidation of defaulted student loans. The commenters believed that use of the proposed standardized definition to qualify a borrower for rehabilitation and consolidation is not in the FFEL Program's best interest. Although the commenters supported a standard definition of the term "satisfactory repayment arrangements", they did not view the proposed definition as adequate. Commenters

believed that it did not adequately recognize the increase in payments once the loan has been rehabilitated or consolidated and that it did not provide for more lenient treatment based on the borrower's individual circumstances.

Discussion: The Secretary notes that for purposes of rehabilitation and reinstatement of borrower eligibility, the statutory language does not provide flexibility in establishing the number of payments to regain eligibility or rehabilitate a defaulted loan. In regard to Consolidation loans, the 1993 Technical Amendments amended section 428C of the HEA to refer to "arrangements satisfactory to the holder." The Secretary does not believe that this language was intended to conflict with the statutory requirement in section 432 of the HEA that common procedures be established or the need to ensure that similarly situated borrowers be treated fairly. In light of these considerations and the other comments received on this provision, the Secretary has determined that three consecutive monthly payments will be required for a borrower to consolidate a defaulted loan. The Secretary believes the making of three consecutive monthly payments would allow a borrower to initiate loan consolidation and add the defaulted loan to the consolidation loan within the 180-day provision provided under section 428C(a)(3)(b)(II) of the HEA.

Changes: The definition has been revised to distinguish the monthly payments required to establish eligibility for rehabilitating, consolidating or reinstating a defaulted loan.

Comments: Some commenters suggested that defining "on-time" to be making a payment within 15 days of the scheduled due date is a new condition that could not have been anticipated by guarantors, servicers and lenders making good faith efforts to program their systems to handle loan rehabilitation. Some commenters suggested that "on-time" be revised to mean a payment made within the calendar month. Other commenters suggested that "on-time" be revised to be a payment received by the guaranty agency or its agent within 15 days. The commenters suggested that a guaranty agency is aware of the date on which payments are received. Using the term "made" could be interpreted to mean the date on which the check was issued by the borrower, or the post-mark date, etc.

Discussion: The Secretary believes that it is critically important for borrowers who have previously defaulted and who are entering into satisfactory repayment arrangements with a guaranty agency to establish a pattern of monthly payments that are made timely. For this reason, the Secretary does not agree that an "on-time" payment should be one that is made anytime during the calendar month. The Secretary also notes that the kind of latitude provided by a payment deadline that is anytime within the calendar month will not be available to the borrower if the loan is rehabilitated subsequently and is then serviced by a lender or lender servicer. The Secretary also believes there is sufficient time for guaranty agencies to reprogram their systems prior to the July 1, 1995 effective date of these regulations. The Secretary agrees with the commenters who suggest that the on-time standard should be based on when payments are "received" rather than "made" because a guaranty agency or its agency is aware of this date and the word "made" is open to several different interpretations.

Changes: The definition has been revised to read that an on-time payment is one that is received by the guaranty agency or its agent within 15 days of the scheduled due date.

Comments: Some commenters suggested that the addition of a definition of "reasonable and affordable" would impact the collection of defaulted loans. The commenters suggested that, based upon the definition provided, each time a guaranty agency changed the monthly payment amount the agency would have to go through the process of determining what is reasonable and affordable. The commenters further suggested that a guaranty agency's collection agents or attorneys will also be subject to conducting the same review whenever they attempt to reach a repayment arrangement.

Discussion: The Secretary believes that this definition will not have an impact on the collection of defaulted loans. This provision applies to voluntary payments the borrower is making after the borrower specifically initiates voluntary payment to reinstate eligibility, rehabilitate, or consolidate a defaulted loan. These requirements do not relate to other routine changes the guaranty agency makes to monthly payment amounts.

Changes: None.

Comments: Commenters suggested that borrowers, whose loans are non-dischargeable and who have not filed a hardship petition, should be allowed to have their Chapter 12 or 13 plan payments count toward regaining eligibility for FFEL loans. The commenters suggested that these borrowers are not attempting to have the loan discharged and, as such, are making voluntary payments.

Discussion: The Secretary does not agree with the commenters. The Secretary believes that if a defaulted loan has been included in a bankruptcy petition, then payments received under a court mandated bankruptcy plan are not voluntary payments as required for this purpose.

Changes: None.

Write-Off

Comments: Some commenters expressed concern that the definition of "write-off" was unclear as to which applicable standards the definition incorporates. Some commenters suggested that the "applicable standards" could be easily read to include the closed school/false certification provision.

Discussion: During negotiations, the Secretary agreed with certain negotiators that a uniform standard for "write-off" was desirable for guaranty agencies to use in determining what constitutes a "write-off" in determining whether a borrower has an adverse credit history. The applicable standards referenced in the definition refers to the Write-off and Compromise Procedures which the Department of Education is now developing in consultation with the Department of Treasury, in accordance with the Treasury financial manual and OMB A–129. The Secretary does not consider a loan that has been discharged under section 437(c) of the Act (language in the preamble incorrectly referred to 437(b)) to be considered a write-off nor does the Secretary intend to require borrowers to reaffirm those loans to receive additional aid under the FFEL program.

Changes: None.

Section 682.201 Eligible Borrowers

Section 682.201(b)

Comments: A few commenters suggested that the term "endorser" as used in the NPRM implies that an endorser on a PLUS loan application must be the other parent of the student for whom the loan is made. These commenters pointed out that the Secretary has issued policy guidance for the FFEL Program that would permit a creditworthy nonparent to be an endorser on the Federal PLUS application of a non-creditworthy parent borrower and that this would be in keeping with the provisions of the Federal Direct Loan Program.

Discussion: The Secretary does not believe that the term "endorser" suggests such a restriction and believes that it is unnecessary to reflect this guidance in the regulations.

Changes: None.

Section 682.201(b)(7)

Comments: Several commenters expressed a concern that lenders be permitted to exercise "professional judgment" in determining whether to make a Federal PLUS loan in spite of an initial finding of adverse credit. They stated that the lender should have the option of using this "professional judgment" to *document* the existence of extenuating circumstances. They specifically expressed concern that the NPRM, as written, restricted valid documentation of extenuating circumstances to a new credit report, a statement from the creditor, or a statement from the borrower in the event of a debt less than $500.

Discussion: These commenters were addressing two different but related issues in their comments. The first issue addresses lender flexibility in determining whether to make a loan when the initial credit report includes indicators of adverse credit. The second issue relates to the documentation needed by a lender when making a determination that extenuating circumstances exist and determining to make the PLUS loan based on that determination. The NPRM, as written, states in § 682.201(b)(7)(iii) that "Unless the lender determines that extenuating circumstances existed, the lender must consider each applicant to have an adverse credit history * * *." This provision specifically gives the lender the flexibility to determine that some cases involve extenuating circumstances that would provide a legitimate criterion for PLUS loan approval. The NPRM further states that the lender must retain documentation demonstrating its basis for determining that extenuating circumstances existed and that the documentation *may* include an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than $500. The use of the word "may" indicates that there could be other documentation that the lender would deem sufficient to override the adverse credit determination.

Changes: The Secretary has amended the language in § 682.201(b)(7)(vi) of the regulations to include the phrase "but is not limited to" to the list of documentation to clarify that the list is not all-inclusive.

Comments: Some commenters believed that the definition of adverse credit is too restrictive. The commenters believed that allowing one account that is 90 days past due to prohibit borrowing when the parent may have ten other accounts that are current is not a true indication of the borrower's payment history. The commenters recommended that the credit history have no more than an *average* of 30-day delinquency on all debts.

Discussion: The Department views the averaging of past-due accounts to be more burdensome than the 90-day standard proposed in the regulations. Further, it is unnecessary given the discretion available to a lender to apply the extenuating circumstances criterion.

Changes: None.

Comments: Several commenters stated that lenders should be given the right to restrict the amount a parent borrows if the parent does not have the capacity to repay the loan. This is especially significant since Congress removed the cap on PLUS loans.

Discussion: This issue was discussed in the preamble to the NPRM. While the statute does not include the ability to repay a PLUS loan as an eligibility criterion, a lender is not prohibited from maintaining a lending policy that would examine parental ability to repay in determining whether to make a loan. However, once the lender has decided to make a loan, the lender has no authority to reduce the statutory limit provided under the PLUS program.

Changes: None.

Comments: A few commenters expressed concern about confusion resulting from slightly different wording in Dear Colleague Letter 93–L–159, dated September 1993, and the NPRM regarding interpretation of the wording in the proposed regulation that "* * * the applicant is considered 90 or more days delinquent on the repayment of a debt." The DCL indicated that one criterion for having adverse credit is that the applicant is considered 90 days or more delinquent on the repayment of a debt "on the day of the lender's examination of the credit report." This was interpreted by some commenters to mean that the lender must extrapolate delinquency based on the date of the credit report and the date on which the lender examined that report.

Discussion: It was the Secretary's intention in the Dear Colleague Letter that the lender would consider the applicant as being 90 days or more delinquent on the repayment of a debt *only* if the applicant was reported 90 days delinquent on the credit report being reviewed. The regulations are consistent with this approach.

Changes: None.

Comments: Commenters expressed concern that there was no timeframe in the NPRM indicating that the credit bureau report used in determining adverse credit history must be current and accurate and not outdated.

Discussion: In an attempt to give the lender greater flexibility, the Secretary had not included a reference to a specific timeframe for the credit report in the regulations. However, in DCL 93–L–159 the Department stated that the credit report must be secured within a timeframe that would ensure the most accurate, current representation of the borrower's credit history before the first day of the period of enrollment for which the loan was intended.

Changes: Since the language in the DCL reflects the Secretary's position on the timing of securing the credit report, that language has been added to the final regulations.

Comments: One commenter indicated that the "90 days or more delinquent on any debt" requirement did not make any allowance for disputed debts with a credit bureau that is still investigating the dispute. This same commenter also found the term "default determination" too vague and undefined.

Discussion: The Secretary believes that the lender's option of applying the extenuating circumstances criterion would permit the lender, based on its examination of supporting documentation presented by the borrower, to override a determination of adverse credit in the case of a legitimately disputed debt that was not resolved at the time of the credit report.

The commenter correctly pointed out that while default has been defined for purposes of the FFEL Program, its definition could vary with regard to other debts. It is specifically for this reason that the Secretary has not attempted to define, for purposes of these regulations, the term non-Title IV debt.

Changes: None.

Section 682.201(c)

Comments: Several commenters recommended that the Secretary amend this section to reflect the changes made to the Consolidation Loan Program by OBRA and 1993 Technical Amendments. The commenters specifically noted that OBRA deleted the requirement that the borrower must consolidate at least $7,500 in eligible student loans. The commenters also noted that the 1993 Technical Amendments modified the requirement that a defaulted borrower who has made satisfactory repayment arrangements may be eligible to borrow under the Consolidation Loan Program.

Discussion: The Secretary agrees that these regulations should reflect the self-

implementing statutory changes made to the Consolidation Loan Program.

Changes: The regulations have been revised to incorporate the self-implementing statutory changes.

Section 682.204 Maximum Loan Amounts

Comments: Many commenters recommended that the annual loan limits be revised to include changes made to the proration requirements by the 1993 Technical Amendments.

Discussion: The Secretary agrees with the commenters that the regulations should reflect the new proration requirements.

Changes: The regulations have been revised to incorporate the new loan proration requirements. The Secretary has also revised § 682.603(f)(3) to reflect the formula to be used in certifying a Stafford or SLS loan amounts subject to proration.

Comments: Some commenters recommended that the regulations should reflect the loan limits for the Unsubsidized Stafford Loan Program.

Discussion: The Secretary agrees with the commenters.

Changes: Section 682.204 (c), (d) and (e) incorporates the loan limits for the Unsubsidized Stafford Loan Program.

Section 682.207 Due Diligence in Disbursing a Loan

Section 682.207(b)(1)(v)(B)(1)

Comments: Some commenters suggested that the regulations be revised to specifically allow for the delivery of a lump sum or master check from a lender to a school that can be placed in an account of the school, as with electronic funds transfer, and credited to an individual student's account.

Discussion: The Secretary agrees that the regulations should allow for delivery of loan proceeds by means of a lump sum check. This change recognizes the acceptance by the Department of the "master check" concept as provided in earlier guidance.

Changes: The regulations have been revised to permit the disbursement of loan proceeds by "master check" for a number of borrowers in addition to an individual check for each borrower. The definition of "disbursement" has also been revised to include the transfer of loan proceeds by a master check that represents loan amounts for more than one borrower.

Comments: A commenter suggested that the Secretary expand the regulations to provide that a student enrolled in a foreign school have the option of having the loan proceeds delivered to the student or to the foreign school. The commenter suggested that the regulations apply to students studying abroad for credit at the home school and appear to exclude students enrolled in a foreign school who are not studying for credit at the home school.

Discussion: The Secretary agrees with the commenter that the proposed regulations did not provide students attending eligible foreign schools the option of receiving the loan proceeds directly or having the funds delivered to the school. The Secretary recognizes that section 428(b)(1)(N) of the HEA specifically provides borrowers in this circumstance this option.

Changes: Section 682.207(b)(1)(v)(D) has been added to provide the option to borrowers attending an eligible foreign school but who are not studying for credit at a home school to have their loan proceeds delivered to them directly or sent to the school.

Section 682.300 Payments of Interest Benefits on Stafford and Consolidation Loans

Section 682.300 (a)

Comments: Several commenters noted that proposed § 682.300(a) should be revised to specify that the Secretary pays interest on *subsidized* Stafford loans.

Discussion: The Secretary agrees that this change is necessary to prevent confusion.

Changes: The regulations have been revised to specify "subsidized Stafford" loans.

Section 682.300(c)

Comments: Several commenters suggested that the use of the word "disbursement" as it relates to the limitations on interest paid to a lender prior to disbursement of a loan should be restricted to its more "traditional" use, *i.e.*, issuing of loan proceeds by the lender, rather than interpreting it to mean "delivery" of loan proceeds to the borrower by the school.

Discussion: As noted in the preamble to the NPRM of March 16, 1994 (59 FR 12489), the Department's interpretation of Congress' use of the word "disbursement" in this context and its applicability to the interest limitation provision were thoroughly discussed during negotiated rulemaking. However, as a result of discussions with the negotiators, the Department agreed to proposed regulatory language that would achieve the statutory intent while developing a schedule for lender billing of interest on the more easily documented disbursement date. The term "disbursed" as it is used in § 682.300(c) refers to the traditional use for issuance of funds by the lender. The interest limitation provisions are then applied depending on whether the loan proceeds are disbursed by the lender before or after the first day of the period of enrollment for which the loan is intended.

Changes: None.

Section 682.301 Eligibility of Borrowers for Interest Benefits on Stafford and Consolidation Loans

Section 682.301(a)(3)

Comments: Several commenters noted that § 682.301(a)(3), regarding the eligibility of Consolidation loan borrowers for interest benefits during authorized deferment periods, should be revised to reflect OBRA.

Discussion: OBRA changed section 428C(b)(4)(C)(i) of the HEA to limit interest subsidized deferments to Consolidation loan borrowers who receive Consolidation loans that discharge only subsidized Stafford loans. This change was effective for Consolidation loans made based on applications received by the lender on or after August 10, 1993.

Changes: The regulations have been revised to reflect the changes made by OBRA.

Section 682.401 Basic Program Agreement

Section 682.401(b)(4)

Section 682.401(b)(4)(i)(B)

Comments: Some commenters expressed concern that borrowers not be subjected to unreasonable and onerous demands for documentation for purposes of reinstatement of borrower eligibility. The commenters suggested that borrowers be allowed to provide documentation over the phone or by facsimile.

Discussion: The Secretary does not believe that an agency can assess a borrower's total financial circumstances to determine a reasonable and affordable payment amount without examining documentation from the borrower. The Secretary does not believe that the documentation requirements contained in the regulations are onerous. The Secretary believes that submission of a monthly budget statement on a guaranty agency prepared form and some proof of current income are minimal requirements. The Secretary believes that a statement of the unpaid balance of all of a borrower's FFEL loans is necessary only if the guaranty agency does not already have this information. The Secretary has no objection to the borrower submitting this documentation via facsimile technology.

Changes: None.

Comments: Many commenters were strongly opposed to the reference to the $50 payment in proposed § 682.401(b)(4)(i)(B) in regard to the requirement that the guaranty agency document the borrower's file if the borrower's reasonable and affordable payment is determined to be less than $50. The commenters believe that agencies are using the reference to $50 to justify their denial of payments of less than $50.

Discussion: The Secretary expects a guaranty agency to make a determination of what constitutes a "reasonable and affordable" payment amount on a case-by-case basis after examining financial information from the defaulted borrower who requests reinstatement of eligibility for federal student financial assistance. The proposed rule clearly stated that $50 may not be the required minimum payment for a borrower if the agency determines that a smaller payment amount is appropriate based on its examination of the borrower's total financial circumstances. An agency is prohibited from establishing $50 or any other amount as a required minimum threshold payment amount in lieu of the appropriate reasonable and affordable payment based on the borrower's total financial these circumstances. The reference to $50 in the regulations is intended by the Secretary to be a documentation standard for guaranty agencies. A guaranty agency is required to document its determination of a borrower's reasonable and affordable payment only if the payment is less than $50.

Changes: The regulations have been revised to clearly provide that a guaranty agency must not establish a minimum payment amount of $50 if the agency determines that a smaller payment amount is reasonable and affordable based on the borrower's total financial circumstances.

Comments: Some commenters expressed concern that consideration of a spouse's income in the determination of reasonable and affordable payments may be in violation of the Federal Equal Credit Opportunity Act. The commenters noted that the spouse is not liable for the other spouse's individual debt and, therefore, consideration of the secondary spouse's income may not be considered in determining a monthly reasonable and affordable payment. The commenter suggested that clarification must also be made in this section that disclosure of child support and/or alimony payments is voluntary, consistent with the Federal Equal Credit Opportunity Act.

Discussion: The Secretary believes that, for a borrower with dependents, examining only the borrower's income and expenses may not reveal the borrower's true financial circumstances. The Equal Credit Opportunity Act relates to the application for credit. The determination of reasonable and affordable payments in connection with reinstatement of eligibility, rehabilitation or meeting conditions for consolidation does not relate to the application for credit. See 12 CFR Part 202.

Changes: None.

Section 682.401(b)(6)(i)

Comments: Some commenters supported the regulations that provide a guaranty agency the authority to establish reasonable criteria for an institution to participate in the guaranty agency's program. However, many other commenters strongly objected to this provision. The objecting commenters suggested that in § 682.401(b)(6)(i), the Secretary allows a guaranty agency to determine that an institution does not satisfy the standards of administrative capability and financial stability standards as defined in 34 CFR Part 668 and believed that the Secretary is making the guaranty agencies enforcers of the set of administrative capability and financial responsibility standards. The commenters believed that this structure is entirely outside of the statute and clearly ignores the program integrity triad as mandated under the new Part H (Program Integrity) of the HEA with a particular role for each part of the Triad. The commenters suggested that if the Triad is to be successful, the responsibilities contained in the statute must be clearly set forth in regulations with no vagaries concerning responsibility. The commenters noted that in the General Provisions NPRM, the Secretary proposed to provisionally certify an institution that does not currently meet the standards of administrative capability but is expected to meet those standards in a reasonable period of time. The commenters suggested that under the March 16, 1994 NPRM, a guaranty agency could deny participation to these institutions, including an institution with a cohort default rate of 20% or greater. The commenters believed that it is the Secretary's role to ensure that institutions meet appropriate standards of administrative capability and financial responsibility and believed the Secretary does so by certifying institutions. The commenters suggested that if the institution has been certified, the guaranty agency should be required to rely on that certification unless and until the Secretary uses his authority to revoke that certification. The commenters suggested that a guaranty agency provided this improper delegation of authority may well have an incentive to retaliate against certain institutions as a result of their filing of appeals of their cohort default rates. The commenters suggested that appeals of cohort default rates, especially appeals alleging servicing error, may directly or indirectly challenge the integrity of the guaranty agency and may have the economic effect of removing certain loans from being eligible for federal reinsurance. The commenters further suggested that because of the clear possibility of conflict of interest, it is irrational to allow guaranty agencies to effectively terminate the participation of institutions in Title IV programs. The commenters asserted that in contrast to a State Postsecondary Review Entity (SPRE), an accreditation agency or the Department, a guaranty agency is not an impartial adjudicator of these issues.

Discussion: The Secretary understands that a guaranty agency is not a member of the Program Integrity Triad authorized under Part H of the HEA and that the Triad has imposed a new management structure on the oversight of schools participating in the Title IV student assistance programs. However, the Secretary believes that the statute continues to provide a guaranty agency with oversight authority for schools applying to or continuing to participate in its guaranteed loan program and disagrees that the regulations provide an improper delegation beyond the scope of statutory authority. Section 428(b)(1)(V) provides authority for the guaranty agency to require a participation agreement between the agency and the school as a condition for the agency guaranteeing loans for students attending the school. As part of that process, the Secretary believes that a guaranty agency must be permitted to establish standards that are consistent with the standards of administrative capability and financial responsibility contained in 34 CFR 668 for a school's participation in its guaranteed loan program. The Secretary believes that a guaranty agency should be allowed to protect itself from schools that abuse the FFEL program. Generally, a guaranty agency must assume that a school that the Secretary has found to be eligible is eligible. However, because the agency's examination of a school for participation in its program may take place a significant period of time after the Secretary's examination of the school for certification, the Secretary understands that the agency may

uncover information relevant to the school's administrative capability and financial responsibility that it wishes the Secretary to consider before signing a participation agreement with the school. Subject to the Secretary's agreement that such information indicates the school's failure to meet the standards of administrative capability and financial responsibility contained in 34 CFR 668, the agency may decline to establish a participation agreement with the school. The Secretary believes this authority provided to a guaranty agency does not intrude upon the statutory responsibilities of other members of the Triad. The Secretary also notes that the guaranty agencies have long had responsibility for reviewing schools and have specific statutory authority in section 428(b)(1)(T)(ii)(I) for limiting, suspending, or terminating a school from the FFEL program. The Secretary believes that these regulations are consistent with the agency's statutory authority and longstanding Department policy and regulation. Additionally, the Secretary does not believe that this regulatory authority would provide an agency with the opportunity to retaliate against a school as a result of a school's appeal of its cohort default rate. Such an appeal presumes that a school already participates in the agency's program. The statute authorizes an agency to initiate an emergency action, limitation, suspension or termination (LST) of an eligible institution, but provides that the action must be undertaken pursuant to criteria, rules, or regulations issued under the student loan insurance program which are substantially the same as regulations issued by the Secretary. Further, an emergency action or LST is subject to review by the Secretary. Therefore, the Secretary does not believe that the guaranty agency can use its authority to retaliate against a school as the commenter suggests.

Changes: The Secretary has revised § 682.401(b)(6)(i)(F) of the regulations to clarify that a guaranty agency's determination that a school does not satisfy the standards of administrative capability and financial responsibility defined in 34 CFR 668 is subject to the agreement of the Secretary.

Section 682.401(b)(6)(ii)

Comments: A number of commenters objected to the provision that gives a guaranty agency the authority to limit the total number of loans or the volume of loans made to students attending a particular school, or to otherwise establish appropriate limitations on the school's participation in the agency's program where the agency has determined that a school does not satisfy the financial responsibility and administrative capability standards. The commenters suggested that this inappropriately places responsibility for evaluating a school's administrative and financial responsibility in the hands of the guaranty agency. Some commenters objected to applying this provision to schools that are renewing an application to continue to participate. Some commenters suggested that allowing guaranty agencies to limit the participation of schools that seek to renew participation gives guaranty agencies an easy way to retaliate against institutions that appeal their cohort default rates or take other actions that challenge the guaranty agency.

Discussion: Section 428(b)(1)(T) of the HEA authorizes a guaranty agency to limit the total number of loans or the volume of loans to students attending a particular eligible institution during any academic year. The Secretary notes that there must be a legitimate basis for the agency to impose such a limitation. The Secretary expects a guaranty agency to maintain evidence of the school's questionable administrative capability.

Changes: None.

Section 682.401(b)(6)(iii)

Comments: The commenters suggested that if a guaranty agency limits, suspends, or terminates (LST) the participation of a school that the Secretary should not extend the LST to all locations of the school until the Department determines that the guaranty agency in fact followed proper procedures, correctly interpreted the law and regulations, and gave all due process rights to the institution.

Discussion: Section 428(b)(1)(T)(ii)(I) provides authority to a guaranty agency to limit, suspend, terminate (or take emergency action against) a school based on the Secretary's regulations or regulations of the guaranty agency that are substantially the same as regulations issued by the Secretary. The statute further directs the Secretary to apply the limitation, suspension, or termination proceeding to all locations of those schools unless the Secretary finds, within 30 days of the guaranty agency's notification to the Secretary of the action, that the action did not comply with the statute and regulations. To make this finding, the Secretary reviews the guaranty agency's actions under section 428(b)(1)(T)(ii) of the HEA before extending the LST to all locations.

Changes: None.

Section 682.401(b)(16)

Comments: A few commenters suggested that the regulations be revised to permit assignment of partially disbursed loans if the lending institution closes or is terminated and the assignment is necessary to be certain that undisbursed funds are delivered to the student.

Discussion: Section 428G(g) of the HEA allows for sale and transfers only when a loan is fully disbursed unless the sale will not change the party to whom payments are to be made and the first disbursement has been made.

Changes: None.

Section 682.401(b)(24)

Section 682.401(b)(24)(iv)

Comments: A few commenters suggested that the regulations be revised to provide that the guaranty agency provide schools that request information under this paragraph an appropriate number for borrower inquiries if the assignee of a loan uses a lender servicer, rather than the number of the lender. The commenters pointed out that many lenders use servicers to address loan inquiries. The commenters suggested that these lenders do not staff their offices to address borrower inquiries, or maintain on-line access to borrower information. Inclusion of the assignee's number will flood these offices with calls, frustrating the intent of providing the borrower with loan information.

Discussion: The Secretary agrees with the commenters.

Changes: The regulations have been revised to include reference to another appropriate number for borrower inquiries if the assignee uses a lender servicer.

Section 682.401(b)(25)

Comments: Some commenters suggested that the designation as exceptional servicer or lender is a significant event in the business of the servicer or lender. The commenters suggested that the parties should be aware of the progress of their application. Another commenter suggested that the period of time for the guaranty agency to provide the Secretary with any information regarding an eligible lender or servicer applying for designation for exceptional performance should be increased to 60 days.

Discussion: The Secretary notes that these comments relate to § 682.415 of the regulations included in a Notice of Proposed Rulemaking published on April 20, 1994. The commenters' concerns will be addressed in that package.

Changes: Section 682.401(b)(25) has been removed.

Section 682.401(c)

Comments: A number of commenters suggested that the Secretary delete the LLR provisions from the regulations since some of these provisions have been repealed by OBRA. Other commenters suggested that the regulations should be revised to address the issues and changes made by OBRA.

Discussion: The Secretary recognizes that OBRA repealed the provisions providing guaranty agencies the authority to deny LLR services to students attending certain categories of schools and has removed these provisions from the regulations. In addition, the Secretary has reflected certain other changes made by OBRA in these regulations.

Changes: The regulations have been revised to delete the provisions allowing limitations of LLR services. The Secretary has also incorporated some changes made by OBRA affecting LLR services. Section 682.401(c) of the regulations has been revised to incorporate the new requirements that: (1) The guaranty agency must respond to a student within 60 days after the student submits an original complete application; and (2) prohibit the agency from requiring a borrower to obtain more than two rejections from eligible lenders.

Section 682.401(c)(8)

Comments: A commenter suggested that the provision be revised to reflect that during the appeal process, for schools that have been notified that LLR services will not be provided to the school's students, the guaranty agency must provide LLR services to students attending the school until the date on which the *guarantor is notified* rather than until the date the Secretary rejects the appeal. The commenter noted that the guaranty agency should be protected for LLR loans made in the brief period between the date that the Secretary rejects the appeal and the date that the guaranty agency is aware of the rejection and ceases origination activities. The commenter suggested that the regulations as currently written would appear to cause these "interim" loans to be uninsured.

Discussion: The Secretary notes that, with the removal of the provisions eliminating LLR services, the school's appeal process is no longer applicable. Therefore, the Secretary has deleted this provision from the regulations.

Changes: Section 682.401(c)(8) has been deleted.

Section 682.405 Loan Rehabilitation

Comments: Several commenters suggested that a defaulted borrower be afforded only one opportunity to benefit from an agency's loan rehabilitation program. The commenters believe that a borrower who defaults again subsequent to rehabilitation is not likely to be a good candidate for loan rehabilitation.

Discussion: The Secretary points out that pursuant to section 428F(a)(1)(A) of the HEA, a borrower may request to have a defaulted loan rehabilitated and after the borrower has made 12 consecutive monthly payments, the guaranty agency must, if practicable, sell the loan to an eligible lender. Once a borrower's loan is rehabilitated, the borrower is no longer considered to be in default on the loan and regains eligibility for all program benefits. Section 428F(b) of the HEA allows a borrower with one or more defaulted loans to regain eligibility for Title IV student financial assistance after the borrower has made six consecutive monthly payments. The Secretary notes that section 428F(b) was amended by the 1993 Technical Amendments to specifically permit borrowers to receive this benefit only once. However, no such limitation was placed on the benefits of rehabilitation. In determining whether rehabilitation is practicable, a guaranty agency should determine whether a borrower who has made 12 consecutive monthly payments is a good candidate for loan rehabilitation. A borrower's previous experience in the loan rehabilitation program may be a factor considered by the guaranty agency in making this assessment.

Changes: None.

Section 682.405(a)(1)

Comments: Some commenters suggested the regulations should be revised to allow guaranty agencies to consider whether the borrower is a good candidate for loan rehabilitation. The commenters noted that the Dear Colleague Letter (GEN 92–91 dated October 1992) provides that "In determining whether a sale is practicable, a guaranty agency should determine whether a borrower * * * is a good candidate for loan rehabilitation." The commenters believed that the guaranty agency should have the discretion to deny borrowers access to its rehabilitation program if it believes existing circumstances so warrant. The commenters suggested, for example, if there is a judgment against a borrower, the original terms of the promissory note may have been altered, and the original note may be nonexistent. The commenters believed that it is overly burdensome, if not illegal, to rehabilitate a loan if a judgment has been issued against the borrower.

Discussion: The Secretary interprets section 428F of the HEA to require that the rehabilitation program must be available to all defaulted borrowers even if a guaranty agency has previously been able to secure payment from the borrower only through involuntary means (e.g., through a court-ordered judgment, Internal Revenue Service tax offset, or wage garnishment). The Secretary expects guaranty agencies to provide, on an unsolicited basis, information on the loan rehabilitation program to all defaulted borrowers. However, the Secretary does not expect that payments made on the loan through involuntary means be counted toward the borrower's required 12 consecutive payments for rehabilitation. The Secretary believes that the defaulted borrower must initiate a voluntary series of payments for this purpose. The Secretary understands, however, that even after the required voluntary series of monthly reasonable and affordable payments, the rehabilitation of the loan through its purchase by a lender may not be possible in all cases. The Department expects guaranty agencies to work diligently to identify lenders willing to purchase these loans, thereby rehabilitating them. However, section 428F(a)(2) of the HEA states that the guaranty agency shall sell the loan, *if practicable* [emphasis added]. The Secretary believes that the agency has the authority in working with its repurchasing lenders to determine if some borrowers are not good candidates for loan rehabilitation because they continue to represent a high risk of default once the loan is purchased. In those instances, the borrower's loan would remain with the guaranty agency and the borrower would continue to make payments on the loan to the agency.

Changes: Section 682.405(a)(1) of the regulations has been revised to allow the agency to determine if the sale of a loan to another lender is practicable for the purposes of loan rehabilitation.

Comments: Some commenters suggested that a loan should be considered rehabilitated at such point that the borrower has met the criteria over which the borrower has control, *i.e.*, when the twelve payments have been made. The commenters believed that the sale of the loan to an eligible lender is an unrelated administrative task.

Discussion: The Secretary disagrees with the commenters. The Secretary notes that the loan is still in default as

long as it is with the guaranty agency, even after the required series of payments are made and the borrower is not eligible for all benefits of the program (e.g., deferment). The Secretary notes that section 428F(a) of the HEA provides that only after the loan has been repurchased by the lender has it been effectively rehabilitated.

Changes: None.

Comments: Some commenters suggested that the proposed regulations should be clarified to state that the borrower who rehabilitates a loan regains full eligibility for deferments and forbearances, even if the borrower previously received a deferment.

Discussion: The Secretary disagrees with the commenters that the borrower should regain full eligibility for deferments. The Secretary notes longstanding Department policy that the deferments with which a maximum period is associated apply to the borrower and not to individual sets of loans and that the borrower will only qualify for the balance of deferment eligibility.

Changes: Section 682.405(a)(3) of the regulations has been revised to provide that once the loan is rehabilitated, the borrower regains all benefits of the program, including any remaining deferment eligibility the borrower may have under the law from the date of the rehabilitation.

Section 682.405(b)(1)

Comments: Some commenters suggested that the regulations be revised to define "voluntary payments" to include payments made on behalf of the borrower.

Discussion: The Secretary believes that the borrower must make a good faith effort in making the required consecutive monthly payments to qualify for loan rehabilitation. The Secretary does not believe that payments made by parents or other individuals on behalf of the borrower for purposes of rehabilitating a defaulted loan constitutes a good faith effort on the part of the borrower.

Changes: None.

Comments: Some commenters noted that the regulations suggested that a borrower may qualify for loan rehabilitation even if the guaranty agency has obtained a judgment against the borrower for the defaulted loan. The commenters suggested that since the original promissory note is surrendered to the court when there is a judgment on the loan, it would become very difficult to initiate legal proceedings against a rehabilitated borrower who again defaulted on the rehabilitated loan.

Discussion: The Secretary shares the concerns raised by the commenters. However, the Secretary also believes that a borrower should not lose the opportunity to rehabilitate a defaulted loan due solely to a judgment. Accordingly, the Secretary has modified the regulations to require a borrower who wishes to rehabilitate a loan on which a judgment has been entered to sign a new promissory note prior to the sale of the loan to an eligible lender. This approach is necessary to make sale of the loan practicable.

Changes: The Secretary has amended § 682.405(a) to add a new paragraph (4) to require a borrower against whom the agency has a judgment to enter into a new promissory note.

Section 682.405(b)(1)(i)(A)

Comments: Some commenters suggested that the regulations should allow for the inclusion of utilities and work-related expenses in the listing of necessary expenses for the purpose of determining a reasonable and affordable payment.

Discussion: The Secretary agrees with the commenters.

Changes: The regulations have been revised to include utilities and work-related expenses.

Section 682.405(b)(1)(i)(C)(1)

Comments: Some commenters suggested that the regulations should be revised to clarify that the borrower's financial status should be determined by reviewing the most current information available, particularly the most recent U.S. income tax return for documentation of the borrower's current income.

Discussion: The Secretary agrees with the commenters.

Changes: The regulations have been revised to provide that the borrower must provide the most recent U.S. income tax return.

Section 682.405(b)(1)(i)(C)(3)

Comments: A few commenters recommended that the unpaid balances on all FFEL Program loans be considered when determining the monthly loan amount that is reasonable and affordable, not just defaulted FFEL loans.

Discussion: The Secretary agrees with the commenters.

Changes: Section 682.405(b)(1)(i)(C)(3) of the regulations has been revised to provide that a guaranty agency shall consider unpaid balances on all FFEL Program loans held by other holders when making a determination of what constitutes a "reasonable and affordable" payment for loan rehabilitation or reinstatement of Title IV eligibility.

Section 682.405(b)(1)(i)(C)(iv)

Comments: Some commenters suggested that a guaranty agency should not be required to provide the borrower with a *written* statement because the borrower may interpret such a statement as a new obligation. The commenters stated that if the loan is rehabilitated, the lender purchasing the rehabilitated loan will be required to disclose new terms. The commenters further stated that if the borrower has a written statement from the guaranty agency, but not from the lender, the borrower may be able to claim that he or she has no legal obligation to abide by the terms established by the rehabilitating lender.

Discussion: The Secretary did not intend to require the guaranty agency to disclose new repayment terms on the rehabilitation loan. The Secretary agrees that it would be more appropriate for the disclosure to be done by the purchasing lender. Rather, the Secretary merely intended the guaranty agency to provide written confirmation of the agency's determination of the borrower's reasonable and affordable payment amount, the number of consecutive monthly payments that must be made to qualify for consideration for loan rehabilitation, any deadlines attached to those payments, and any factors the agency will consider in determining whether the repurchase of the borrower's loan is practicable.

Changes: Section 682.405(b)(1)(iv) of the regulations has been revised to require the guaranty agency to provide a written statement confirming the borrower's reasonable and affordable payment amount and other conditions surrounding the loan rehabilitation.

Comments: Some commenters suggested that the guaranty agencies be required to inform borrowers who enter into a renewed eligibility plan of the possibility of loan rehabilitation after 12 months. The commenters suggested that by doing so borrowers can make informed decisions about whether exercising the option after 12 payments is to their advantage.

Discussion: The Secretary agrees with the commenters that a guaranty agency should be required to inform a borrower when entering into an agreement to reinstate loan eligibility of the possibility of loan rehabilitation after an additional six monthly payment amounts and the potential consequences of loan rehabilitation. The Secretary believes that a borrower should be provided sufficient information about the circumstances and potential

consequences of loan rehabilitation to have an understanding of what is expected before making the required 12 monthly payments. Borrowers should be aware of, for example, that a potential increase in loan payment amounts may be necessary once the loan is repurchased by the lender if the reasonable and affordable monthly payment amount paid to the guaranty agency will not provide for the borrower to repay the loan within the 10-year maximum repayment period. The Secretary agrees that providing this information will place the borrower in a position to make an informed decision of whether or not to exercise his or her option for loan rehabilitation.

Changes: The regulations have been revised to provide that guaranty agencies must inform borrowers of the consequences of loan rehabilitation after 12 months. Additionally, a new paragraph has been added as § 682.401(b)(4)(iv) to require guaranty agencies to provide information to defaulted borrowers who made the required series of monthly payments to reinstate Title IV eligibility of the possibility of loan rehabilitation.

Section 682.406(a)(14)

Comments: A few commenters recommended that the regulations be revised to reflect the 1993 Technical Amendments change that provides that the guaranty agencies certify that diligent attempts of skip-tracing have been made by the lender under § 682.411 before receiving reinsurance payments.

Some commenters suggested that the regulations should indicate that the guaranty agency assures the Secretary that diligent attempts have been made by the lender and the guaranty agency under § 682.411 to locate the borrower through the use of reasonable skip-tracing techniques.

Discussion: Section 428(c)(2)(G) of the HEA, as changed by the 1993 Technical Amendments, provides that the guaranty agency may not receive reinsurance payments unless it *certifies* that diligent attempts have been made to locate the borrower through the use of reasonable skip-tracing techniques. As pointed out in the preamble to the proposed regulations, the Secretary believes that it is primarily a lender responsibility to locate the borrower through the use of skip-tracing techniques. However, the Secretary intends that diligent attempts must be made by either the lender or the agency to locate the borrower. The language of the regulations is intended to insure that if the lender does not perform the required skip-tracing, the guaranty agency will be responsible for doing so.

Changes: Section 682.406(a)(14) of the regulations has been revised by using the word "certifies" rather than "assures".

Section 682.407

Comments: A few commenters pointed out that the language in § 682.407(f) incorrectly references ED Form 1189 for adjusting improperly paid administrative cost allowance payments.

Discussion: The Secretary agrees with the commenters.

Changes: The regulations have been revised to reflect that the adjustment is to be made on the ED Form 1130.

Section 682.409 Mandatory Assignment by Guaranty Agencies of Defaulted Loans to the Secretary

Comments: One commenter asked if it is the intent of the Secretary to only benefit borrowers who move from the FFEL program to the Federal Direct Student Loan (FDSL) Program under this provision.

Discussion: Although the Secretary is authorized to require FFEL loans to be assigned to the Secretary to affect an orderly transition from the FFEL to the Federal Direct Loan Program, one of the primary reasons for loan assignment is that the guaranty agency has been unable to collect on a defaulted loan it holds and the Secretary believes that the Department can more effectively collect on the loan. Loans assigned to the Department under the authority specified in section 682.409 are all defaulted FFEL loans held by guaranty agencies. These loans do not include non-defaulted FFEL loans which a borrower has requested to be consolidated under the Federal Direct Loan Consolidation Program. Until a defaulted FFEL borrower resolves his default status with the holder of the loan, either the guaranty agency prior to the assignment or the Department following assignment, the borrower is not eligible for any benefits under the FFEL or Federal Direct Loan Program. As a result, the Secretary does not believe that the mandatory assignment process benefits particular defaulted borrowers over others.

Changes: None.

Comments: One commenter asked what guidelines the Secretary would choose to have loans assigned. Specifically, the commenter was concerned that loan assignment might cause a guaranty agency to experience financial instability.

Discussion: To the extent that the financial stability of a guaranty agency is in the Federal fiscal interest, the Secretary may choose, on a case-by-case basis, not to require the assignment of loans if the assignment will jeopardize the agency's financial stability.

Changes: None.

Comments: One commenter requested clarification on how mandatory assignment of FFEL loans relates to an orderly transition from the FFEL Program to the FDSL Program.

Discussion: As noted by the commenter, section 428(c)(8) of the HEA provides that the Secretary will require an agency to assign loans if the Federal fiscal interest so requires. In addition, the statute deems the orderly transition to the FDSL Program to be in the Federal fiscal interest. The proposed regulations did not clearly reflect the Secretary's discretion in this area. Accordingly, the Secretary has revised the regulations to reflect the Secretary's statutory discretion. The Secretary believes that the assignment of FFEL loans will not impede the orderly transition to the FDSL Program. If it appears to the Secretary that the orderly transition to the FDSL Program is either impeded or facilitated by mandatory assignment, the Secretary will exercise his authority to modify the assignment criteria.

It is also the view of the Secretary that it is in the Federal fiscal interest for the Federal government to collect defaulted student loans owed by Federal employees unless the guaranty agency has obtained a judgment against the Federal employee to collect by wage garnishment 15 percent or more of disposable pay as defined in 34 CFR Part 31.

Changes: The regulations have been changed to reflect the Secretary's discretion.

Comments: One commenter indicated support for the criteria for performance standards established in this section for mandatory assignment of certain loans to the Secretary by a guaranty agency. The commenter said the language in this section represents the efforts of the community and the Secretary's staff in developing an equitable criteria for the assignment of loans and that the criteria outlined in this section best protect the Federal fiscal interest.

Discussion: The Secretary agrees with the commenter.

Changes: None.

Comments: Two commenters asked if this section should be revised to exclude those agencies that are determined to qualify for Exceptional Performer status.

Discussion: Designation as an Exceptional Performer means that a guaranty agency has shown a high level

of compliance with the provisions of 34 CFR 682.410. That section of the regulations focuses on the default collection process, not the results of the process. Section 682.409 establishes standards that focus on outcomes as expressed in fiscal year loan type recovery rates. The Secretary believes that the collection of defaulted FFEL loans is important and should be governed by both process and outcome requirements. The Secretary does not believe that excusing guaranty agencies from complying with outcome requirements because they have complied (even to a high degree) with process requirements would adequately protect the Federal fiscal interest.

Changes: None.

Comments: A commenter asked if these provisions would force guaranty agencies to evaluate their entire preclaim and default collection operations, in order to achieve the highest recovery rate.

Discussion: The Secretary agrees that guaranty agencies need to evaluate their default prevention and default collection operations. These regulations represent the initial attempt by the Secretary, in consultation with the guaranty agencies, to establish default collection performance standards. The Secretary believes that it is in the Department's and the guaranty agencies' best interest to establish default prevention performance standards as soon as practicable.

Changes: None.

Comments: A commenter observed that guaranty agencies will be required to monitor their operations constantly, indicating that it will be more difficult for an agency to continue producing recoveries over the 80 percent standard required by the regulations. The commenter noted that once the Secretary imposes additional assignment requirements on agencies that fall below the 80 percent standard, this provision will automatically increase the average recovery rate on which the 80 percent is based.

Discussion: The Secretary agrees that guaranty agencies will have to constantly monitor their operations to satisfy these standards. The Secretary also expects that the assignment process based on recovery rate standards will result in the gradual, steady increase in the average recovery rate.

Changes: None.

Comments: A commenter observed that this section does not require the Department to load and begin collection on defaulted loans assigned to it within a specified time period. Collection activity could cease for months while an account is being processed. The commenter noted that it is in the Department's best interest to ensure that this gap in collection activities is minimized by providing specific time periods to begin the collection of new accounts.

Discussion: The Secretary agrees that it is desirable to load assigned accounts quickly so that gaps in collection activity are minimized. While these regulations do not control this process, the Secretary intends to loan assigned accounts as quickly as possible.

Changes: None.

Section 682.409(a)(2)(i)

Comments: A commenter observed that participation in the IRS offset program is required by the Department and recommended that offset collections be included in calculating the recovery rate standards. The commenter believed that this will help assure guarantor participation in the IRS offset program to the maximum extent possible.

Discussion: The Secretary agrees with the commenter. However, the Secretary notes that the regulations do not reflect the requirement that guaranty agencies participate in the Federal Income Tax Refund Offset program. The Secretary has modified the regulations to reflect this requirement.

Changes: Section 682.409(a)(2)(i) has been revised to reference collections by Federal Income Tax Refund Offset.

Section 682.409(a)(3)(i)(B)

Comments: A few commenters suggested that the Secretary amend the appeals process for failure to meet performance standards. They asked that the Secretary either permit agencies that have a large number of borrowers making "reasonable and affordable" payments as a result of the borrowers' financial circumstances to appeal on that basis or that these loans be excluded entirely from the calculation.

Discussion: The Secretary agrees with the commenters that the regulations should be revised to encourage compliance with the provisions in § 682.401(b)(4) and § 682.405 requiring guaranty agencies to provide certain borrowers with "reasonable and affordable" payment plans. However, the Secretary believes that excluding loans with "reasonable and affordable" payment plans from the calculation would place an unnecessary reporting burden on the guaranty agencies, as well as increase the costs that would be incurred by the Department associated with collecting and auditing the data. The Department will provide a guaranty agency with the opportunity to demonstrate how "reasonable and affordable" payment arrangements have affected its recovery rate. The Department will make a determination on an acceptable agency recovery rate on an agency-by-agency basis. The agency will be required to identify all borrower accounts for which required reasonable and affordable payment amounts have impacted the agency's collection recovery rate. The Department will examine a sample of these accounts to determine how this should be assessed in determining the agency's recovery rate.

Changes: The Secretary has revised § 682.409(a)(3)(i)(B) to provide that the Federal interest will be served if the agency demonstrates that its compliance with § 682.401(b)(4) and § 682.405 has reduced substantially its fiscal year loan type recovery rate or rates.

Section 682.409(a)(3)(i)(C)(2)

Comments: A commenter suggested that as the paragraph is not describing a mathematical derivation, the word "categorized" is more appropriate.

Discussion: The Secretary agrees with the commenter.

Changes: Section 682.409(a)(3)(i)(C)(2) has been revised to replace "divided" with "categorized."

Section 682.409(c)(1)

Comments: A few commenters asked if § 682.409(c)(1) needs to specify the manner, information, and documentation necessary for mandatory assignment.

Discussion: The Secretary considered expanding § 682.409(c)(1) to incorporate the manual assignment and computer tape assignment procedures that are transmitted to the guaranty agencies each year by mail. However, the Secretary believes that this informal notification process has worked particularly well over the last two years, in part because it has been accomplished without the burden presented by the regulatory process. He believes that the current procedures have provided for a flexible process that has been responsive to changing guaranty agency and Departmental needs. Therefore, the Secretary has decided not to expand these regulations to include operational procedures associated with mandatory assignment.

Changes: None.

Section 682.410 Fiscal, Administrative, and Enforcement Requirements

Section 682.410 General

Comments: A few commenters noted that on-going negotiated rulemaking sessions are addressing matters covered in this section of the regulations. The commenters suggested that it would be

inappropriate for final rules to be issued in light of the negotiations underway. Commenters recommended that the Department should propose regulations for issues related to this section later through an NPRM and final rules process devoted solely to these issues.

Discussion: The Secretary notes that these regulations are directly related to the 1992 Amendments and were developed under the negotiated rulemaking sessions required by the 1992 Amendments. The provisions of the 1992 Amendments that were not changed by OBRA are reflected in these final regulations. The Secretary intends to propose rules to implement the provisions of OBRA related to guaranty agency reserves soon after the conclusion of current negotiated rulemaking sessions on this subject. In addition, the Secretary intends to have final regulations implementing both the 1992 Amendments and OBRA go into effect at the same time on July 1, 1995.

Changes: None.

Section 682.410(a)(1)(vii)

Comments: Commenters recommended that funds collected by the guaranty agency, included under § 682.410(a)(1)(vii) as reserve fund assets, should include only funds collected on FFELP loans held by that agency or FFELP loans for which the agency paid a claim.

Discussion: The Secretary agrees that clarification is necessary.

Changes: The final regulations have been revised to clarify that only funds collected on FFELP loans on which a claim has been paid are included in § 682.410(a)(1)(vii).

Section 682.410(a)(3)

Comments: Commenters objected to § 682.410(a)(3), Special rule for use of certain reserve fund assets, as redundant and confusing.

Discussion: The Secretary agrees that § 682.410(a)(3) is unnecessary.

Changes: The language in § 682.410(a)(3) has been simplified and merged into § 682.410(a)(2).

Section 682.410(a)(6)

Comments: A commenter urged that the Secretary consider provisions for further review and due process in connection with the requirements of § 682.410(a)(6), minimum reserve fund level.

Discussion: Section 682.410(a)(6) simply states the statutory requirements for minimum reserve levels. This paragraph specifies no action by the Department requiring review or due process.

Changes: None.

Section 682.410(a)(7)

Comments: A commenter suggested that the calculation of the guaranty agency "Reserve fund level" include receivables from ED and exclude payables to ED. The commenter argued that acknowledgment of those amounts is essential for an accurate determination of a guarantor's financial status.

Discussion: The Secretary is interested in determining the amount of assets in a guaranty agency's reserve fund at a point in time. The Secretary acknowledges that the reserve fund level as defined in this paragraph does not accurately reflect the overall financial condition of the guaranty agency. However, the Secretary also believes that including receivables from ED and deducting payables to ED would also not result in an accurate calculation of the agency's financial condition since agencies have receivables from and payables to parties other than ED. The Secretary agrees that if an agency's reserve fund level, calculated in accordance with this section, is less than the minimum specified in § 682.410(a)(6), the guaranty agency will be provided with the opportunity to submit information concerning its accounts payable and accounts receivable in extenuation of its reserve level.

Changes: None.

Section 682.410(a)(8)(ii)(B)

Comments: A commenter recommended removing loan guarantees transferred to another agency pursuant to a plan of the Secretary in response to the insolvency of the agency as an exclusion from loan guarantees transferred to another agency in § 682.410(a)(8)(ii)(B).

Discussion: The Secretary agrees that the reference to those loans should be removed from § 682.410(a)(8)(ii)(B) because it is duplicative of 34 CFR 682.410(a)(8)(i)(B) which already provides for this exclusion.

Changes: Section 682.410(a)(8)(ii)(B) has been revised to delete the reference to loans transferred because of insolvency.

Section 682.410(a)(8)(ii)(E)

Comments: Some commenters recommended that all loans for which a claim has been paid be subtracted from the total loans guaranteed in calculating loans outstanding in § 682.410(a)(8), definition of amount of loans outstanding. One commenter recommended subtracting from the amount of loans for which a claim has been paid only those loans for which claims were paid at the direction of the Secretary.

Discussion: The proposed rule would have subtracted loans for which claims are paid under § 682.412(e) on ineligible loans, under § 682.509(a)(1) because of school closing, or at the direction of the Secretary, from total loans for which a claim has been paid. The Secretary agrees that loans for which claims have been paid are not outstanding.

Changes: The regulations have been revised to remove the three exclusions.

Section 682.410(a)(8)

Comments: A commenter recommended adding to § 682.410(a)(8), amount of loans outstanding, a new paragraph (iii) to subtract the principal amount of loans not disbursed because the loan guarantee was partially canceled.

Discussion: Reporting requirements for Form 1130 provide detailed definitions for the items listed in § 682.410(a)(8). Partially canceled loans are one of the categories reported under cancelled loan guarantees and are therefore included in § 682.410(a)(8)(ii)(A).

Changes: None.

Section 682.414 Records, Reports, and Inspection Requirements for Guaranty Agency Programs

Comments: A commenter recommended that § 682.414(a)(3)(ii)(K) be revised to explicitly require lenders to retain copies of audit reports for not less than five years after the report is issued. While § 682.414(a)(3)(ii)(K) implies that audits are covered under this section because they are reports, the commenter suggested that the section be revised explicitly to require that the audit reports be kept on file.

Discussion: The Secretary agrees with the commenter that the regulations should explicitly require a lender to retain a copy of its annual audit report for not less than five years after the report is issued.

Changes: Section 682.414(a)(3) has been revised to incorporate the commenter's recommendation.

Section 682.511 Due Diligence in Collecting a Loan

Comments: A few commenters suggested that the regulations be revised to reflect that joint borrowers may cancel a loan even if they do not simultaneously satisfy the same cancellation criterion but the loan would otherwise be "cancellable". The commenters cited the example of a loan with joint borrowers where one borrower becomes totally, permanently disabled and the other files for

bankruptcy (with the loan subject to discharge), both conditions under which a borrower would normally be able to cancel a loan.

Discussion: The Secretary clarifies that a lender may file a claim for reimbursement based on the fact that, at the time of the request for discharge, joint borrowers both have a condition under which a borrower would qualify to cancel a loan.

Changes: The regulations have been revised to reflect that a claim may be filed based on each borrower satisfying the criteria.

Section 682.603 Certification by a Participating School in Connection With a Loan Application

Section 682.603(h)

Comments: Several commenters suggested that the wording of § 682.603(h) could be made clearer by substituting "earlier than the 24th day of the student's period of enrollment" for "earlier than 7 days prior to the 31st day of the student's period of enrollment."

Discussion: Paragraph (h) of § 682.603 is meant to achieve, in the case of new borrowers subject to delayed delivery of loan proceeds, the appropriate interest limitation Congress intended in § 682.300 using a schedule based on the date of disbursement by the lender. The Secretary agrees that the suggested rewording would more clearly state that requirement.

Changes: A change has been made to reflect that a school may not request the disbursement of loan proceeds for a first time borrower who has not previously borrowed a Stafford or SLS loan earlier than the 24th day of the student's period of enrollment.

Section 682.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

Section 682.604(c)(3)

Comments: Some commenters suggested that the Secretary revise the language to codify the Department's earlier guidance that eliminates the separate borrower authorization statement for those students who provide the authorization for electronic fund transfer disbursement on the common loan application.

Discussion: The Secretary agrees that this provision does not apply in those instances where the borrower has provided a separate authorization for electronic fund transfer via the common loan application.

Changes: The regulations have been revised to provide that the school fulfills this requirement if the borrower has authorized the electronic fund transfer on the common loan application.

Section 682.604(g)(2)(vi)

Comments: A commenter recommended that the language be revised to reflect that when a borrower has obtained loans from multiple guarantors, that the institution provide the required updated information to all guarantors listed in the borrower's file.

Discussion: The Secretary agrees that updated information should be provided to the guaranty agency or agencies within the specified time.

Changes: The regulations have been revised to incorporate the commenter's recommendation.

Section 682.604(h)

Comments: A few commenters suggested that the overaward tolerance for the FFEL program be consistent with the $200 overaward allowed in the campus-based programs. Some commenters suggested that the statutory silence on the issue of tolerance does not constitute a prohibition.

Discussion: There is no statutory basis for providing a $200 tolerance in the treatment of an FFEL program overaward. Congress has provided specific statutory tolerances in the campus-based overaward provisions and for limited purposes in the FFEL program in section 428G(d) of the HEA. Given these precedents, if Congress had intended to provide for a general tolerance it would have included it in the statute.

Changes: None.

Executive Order 12866

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

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements were identified and explained in the NPRM.

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

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

Waiver of Proposed Rulemaking

In addition to the changes made to part 682 based on public comment on the notice of proposed rulemaking, the Secretary has revised the regulations to include technical changes made by certain legislation, as stated above.

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553. However, since these changes merely reflect statutory changes in the regulations and do not establish substantive policy changes, public comment could have no effect. Therefore, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on these amendments to the regulations is unnecessary and contrary to the public interest.

Assessment of Educational Impact

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

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

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

Dated: May 25, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary amends Part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN 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 682.100 is amended by revising paragraphs (a)(2), (a)(3) and (a)(4) to read as follows:

§ 682.100 The Federal Family Education Loan programs.

(a)* * *

(2) The Federal Supplemental Loans for Students (SLS) Program, as in effect for periods of enrollment beginning prior to July 1, 1994, which encourages making loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(3) The Federal PLUS (PLUS) Program, which encourages making loans to parents of dependent undergraduate students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students. Before July 1, 1993, the PLUS Program also provided for making loans to parents of dependent graduate students.

(4) The Federal Consolidation Loan (Consolidation) Program, which encourages making loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received while they were students, under the Federal Insured Student Loan (FISL), Stafford loan, SLS, ALAS (as in effect before October 17, 1986), PLUS, and Perkins Loan programs, the Health Professions Student Loan (HPSL) Program authorized by subpart II of Part A of Title VII of the Public Health Services Act, and Health Education Assistance Loans (HEAL) authorized by Subpart I of Part A of Title VII of the Health Services Act.

* * * * *

3. Section 682.101 is amended by revising paragraph (c) to read as follows:

§ 682.101 Participation in the FFEL programs.

* * * * *

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the Stafford Loan and, prior to July 1, 1994, the SLS program. Parents of eligible dependent undergraduate students may borrow under the PLUS Program. Borrowers with outstanding Stafford, SLS, FISL, Perkins, HPSL, HEAL, ALAS, or PLUS loans or married couples each of whom have eligible loans under these programs may borrow under the Consolidation Loan Program.

* * * * *

4. Section 682.102 is amended by adding a new sentence at the end of the second sentence in paragraph (d); and by adding a new sentence at the end of paragraph (e)(1) to read as follows:

§ 682.102 Obtaining and repaying a loan.

* * * * *

(d) *Consolidation loan application.* * * * In the case of a married couple seeking a Consolidation loan, only the holders for one of the applicants must be contacted for consolidation. * * *

(e) *Repaying a loan.* (1) * * * The borrower's obligation to repay a PLUS loan is cancelled if the student, on whose behalf the parent borrowed, dies. The borrower's obligation to repay all or a portion of his or her loan may be cancelled if the borrower is unable to complete his or her program of study because the school closed or the borrower's eligibility to borrow was falsely certified by the school. The obligation to repay all or a portion of a loan may be forgiven for borrowers who enter certain areas of the teaching or nursing professions or perform certain kinds of national or community service.

* * * * *

5. Section 682.200 is amended by redesignating paragraphs (a)(1)(i) and (a)(1)(ii) as paragraphs (a)(1) and (a)(2) respectively; removing "Eligible institution" from redesignated paragraph (a)(2); revising the definition of "Co-maker" in paragraph (b); revising the definition of "Disbursement" in paragraph (b); revising paragraph (1) of the definition of "Estimated financial assistance"in paragraph (b); adding a new sentence at the end of the definition of "Grace period" in paragraph (b); revising paragraph (2), and redesignating paragraphs (3) and (4) as paragraphs (4) and (5) respectively, and adding a new paragraph 3, in the definition of "Lender" in paragraph (b); revising the definitions of "Repayment period" and "Stafford Loan Program" in paragraph (b); adding, in alphabetical order, new definitions of "Disposable income", "Nonsubsidized Stafford loan", "Satisfactory repayment arrangement", "Subsidized Stafford loan", "Unsubsidized Stafford loan", and "Write-off" in paragraph (b) to read as follows:

§ 682.200 Definitions.

* * * * *

Co-maker. One of two parents who are joint borrowers on a PLUS loan or one of two individuals who are joint borrowers on a Consolidation loan, each of whom are eligible and who are jointly and severally liable for repayment of the loan.

Disbursement. The transfer of loan proceeds by a lender to a borrower, a school, or an escrow agent by issuance of an individual check, a master check that represents loan amounts for more than one borrower, or by electronic funds transfer.

* * * * *

Disposable income. That part of a borrower's compensation from an employer and other income from any source that remains after the deduction of any amounts required by law to be withheld, or any child support or alimony payments that are made under a court order or legally enforceable written agreement. Amounts required by law to be withheld include, but are not limited, to Federal and State taxes, Social Security contributions, and wage garnishment payments.

* * * * *

Estimated financial assistance. (1) The estimated amount of assistance that a student has been or will be awarded for a period of enrollment, beginning on or after July 1, 1993, for which the loan is sought, from Federal, State, institutional, or other scholarship, grant, financial need-based employment, or loan programs, including but not limited to—

(i) Veterans' educational benefits paid under Chapters 30, 31, 32, and 35 of Title 38 of the United States Code;

(ii) Educational benefits paid under Chapters 106 and 107 of Title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under Chapter 2 of Title 10 and Chapter 2 of Title 37 of the United States Code;

(iv) Benefits paid under Pub. L. 97–376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Pub. L. 96–342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including, but not limited to, a Stafford loan, Pell Grant and, to the extent funding is available and according to the school's award packaging policy, campus-based aid the student is expected to receive;

(viii) In the case of a PLUS loan, the estimated amount of other Federal student financial aid, including but not limited to, a Stafford loan, Pell Grant and campus-based aid that the student has been or will be awarded.

(2) The estimated amount of assistance does not include—

(i) Those amounts used to replace the expected family contribution, including—

(A) Nonsubsidized Stafford loan amounts for which interest benefits are not payable;

(B) SLS and PLUS loan amounts; or

(C) Private and state-sponsored loan programs; and

(ii) Perkins loan and College Work-Study funds that the school determines the student has declined.

* * * * *

Grace period. * * * For an SLS borrower who also has a Federal Stafford loan on which the borrower has not yet entered repayment, the grace period is an equivalent period after the borrower ceases to be enrolled as at least a half-time student at an eligible institution.

* * * * *

Lender. * * *

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, or a credit union—

(i) The phrase "subject to examination and supervision" in section 435(d) of the Act means "subject to examination and supervision in its capacity as a lender";

(ii) The phrase "does not have as its primary consumer credit function the making or holding of loans made to students under this part" in section 435(d) of the Act means that the lender does not, or in the case of a bank holding company, the company's wholly-owned subsidiaries as a group do not at any time, hold FFEL Program loans that total more than one-half of the lender's or subsidiaries' combined consumer credit loan portfolio, including home mortgages held by the lender or its subsidiaries.

(3) A bank that is subject to examination and supervision by an agency of the United States, making student loans as a trustee, may be an eligible lender if it makes loans under an express trust, operated as a lender in the FFEL programs prior to January 1, 1975, and met the requirements of this paragraph prior to July 23, 1992.

* * * * *

Nonsubsidized Stafford loan. A Stafford loan made prior to October 1, 1992 that does not qualify for interest benefits under § 682.301(b) or special allowance payments under § 682.302.

* * * * *

Repayment period. (1) For a Stafford loan, the period beginning on the date following the expiration of the grace period and ending no later than 10 years from the date the first payment of principal is due from the borrower, exclusive of any period of deferment or forbearance.

(2) For unsubsidized Stafford loans, the period that begins on the day after the expiration of the applicable grace period that follows after the student ceases to be enrolled on at least a half-time basis and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance. However, payments of interest are the responsibility of the borrower during the in-school and grace period, but may be capitalized by the lender.

(3) For SLS loans, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, on the date the last disbursement is made and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance. The first payment of principal is due within 60 days after the loan is fully disbursed unless a borrower who is also a Stafford loan borrower but who, has not yet entered repayment on the Stafford loan requests that commencement of repayment on the SLS loan be delayed until the borrower's grace period on the Stafford loan expires. Interest on the loan accrues and is due and payable from the date of the first disbursement of the loan. The borrower is responsible for paying interest on the loan during the grace period and periods of deferment, but the interest may be capitalized by the lender.

(4) For Federal PLUS loans, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, on the date the last disbursement is made and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance. Interest on the loan accrues and is due and payable from the date of the first disbursement of the loan.

(5) For Federal Consolidation loans, the period that begins on the date the loan is disbursed and ends no later than 10, 12, 15, 20, 25, or 30 years from that date depending upon the sum of the amount of the Consolidation loan, and the unpaid balance on other student loans, exclusive of any period of deferment or forbearance.

Satisfactory repayment arrangement. (1) For purposes of regaining eligibility under section 428F(b) of the HEA, the making of six (6) consecutive voluntary full monthly payments on a defaulted loan.

(2) For purposes of consolidating a defaulted loan under 34 CFR 682.201(c)(iii)(C), the making of three (3) consecutive voluntary full monthly payments on a defaulted loan.

(3) The required full monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. Voluntary payments are those payments made directly by the borrower, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution. On-time means a payment received by the Secretary or a guaranty agency or its agent within 15 days of the scheduled due date.

* * * * *

Stafford Loan Program. The loan program authorized by Title IV–B of the Act which encourages the making of subsidized and unsubsidized loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs.

* * * * *

Subsidized Stafford loan. A loan authorized under section 428(b) of the Act for borrowers who qualify for interest benefits under § 682.301(b).

* * * * *

Unsubsidized Stafford loan. A loan made after October 1, 1992, authorized under section 428H of the Act for borrowers who do not qualify for interest benefits under § 682.301(b).

Write-off. Cessation of collection activity on a defaulted FFEL loan due to a determination in accordance with applicable standards that no further collection activity is warranted.

6. Section 682.201 is amended by revising paragraph (a)(2); revising paragraphs (b) introductory text and (b)(1); removing "and" at the end of paragraph (b)(5); removing the period at the end of paragraph (b)(6), and adding in its place, "; and"; adding a new paragraph (b)(7); and revising paragraph (c) to read as follows:

§ 682.201 Eligible borrowers.

(a) * * *

(2) In the case of any student who, for a period of enrollment that begins prior to July 1, 1994, seeks an SLS loan for the cost of attendance at a school that participates in the Stafford Loan Program, the student must have—

(i) Received a determination of need for a subsidized Stafford loan, and if determined to have need in excess of $200, have filed an application with a lender for a subsidized Stafford loan;

(ii) Filed an application with a lender for an unsubsidized Stafford loan up to the Stafford loan annual maximum unless the school declines to certify such an application under section 428(a)(2)(F) of the HEA; and

(iii) Received a certification of graduation from a school providing

secondary education or the recognized equivalent;

* * * * *

(b) *Parent borrower.* A parent borrower, is eligible to receive a PLUS Program loan, other than a loan made under § 682.209(e), if the parent—

(1) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student set forth in 34 CFR Part 668;

* * * * *

(7) (i) In the case of a Federal PLUS loan made on or after July 1, 1993, does not have an adverse credit history.

(ii) For purposes of this section, the lender must obtain a credit report on each applicant from at least one national credit bureau. The credit report must be secured within a timeframe that would ensure the most accurate, current representation of the borrower's credit history before the first day of the period of enrollment for which the loan is intended.

(iii) Unless the lender determines that extenuating circumstances existed, the lender must consider each applicant to have an adverse credit history based on the credit report if—

(A) The applicant is considered 90 or more days delinquent on the repayment of a debt;

(B) The applicant has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a Title IV debt, during the five years preceding the date of the credit report.

(iv) Nothing in this paragraph precludes the lender from establishing more restrictive credit standards to determine whether the applicant has an adverse credit history.

(v) The absence of any credit history is not an indication that the applicant has an adverse credit history and is not to be used as a reason to deny a PLUS loan to that applicant.

(vi) The lender must retain documentation demonstrating its basis for determining that extenuating circumstances existed. This documentation may include, but is not limited to, an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than $500.

(c) *Consolidation Program Borrower.* (1) An individual is eligible to receive a Consolidation loan if, at the time of application for a Consolidation loan, the individual—

(i) For a Consolidation loan made on or after January 1, 1993 but prior to July 1, 1994, has an outstanding indebtedness of not less than $7,500 that are eligible for consolidation under § 682.100;

(ii) Has ceased, or, in the case of a PLUS borrower, the dependent student on whose behalf the parent is borrowing has ceased, at least half-time enrollment at a school;

(iii) Is, on the loans being consolidated—

(A) In a grace period preceding repayment on the loans being consolidated;

(B) Is in repayment status; or

(C) In a default status and has made satisfactory repayment arrangements with the holder on a defaulted loan being consolidated;

(iv) Certifies that no other application for a Consolidation loan is pending;

(v) Agrees to notify the holder of any changes in address; and

(vi) Certifies that the lender holds an outstanding loan of the borrower that is being consolidated or that the borrower has unsuccessfully sought a loan from the holders of the outstanding loans and was unable to secure a Consolidation loan from the holder.

(2) A married couple is eligible to receive a Consolidation loan in accordance with this section if each—

(i) Agrees to be held jointly and severally liable for the repayment of the total amount of the Consolidation loan;

(ii) Agrees to repay the debt regardless of any change in marital status; and

(iii) Meets the requirements of paragraph (c)(1) of this section, and only one must have met the requirements of paragraph (c)(1)(vi) of this section.

(3) To be eligible to receive a Consolidation loan, in the case of a student, parent, or Consolidation loan borrower who is currently in default on an FFEL Program loan, the borrower must have made satisfactory repayment arrangements.

(4) A borrower's eligibility to receive a Consolidation loan terminates upon receipt of a Consolidation loan except—

(i) With respect to student loans received after the date the Consolidation loan is made; or

(ii) Eligible loans received prior to the date the Consolidation loan was made can be added to the Consolidation loan during the 180-day period after the making of the Consolidation loan.

7. Section 682.204 is revised to read as follows:

§ 682.204 Maximum loan amounts.

(a) *Stafford Loan Program annual limits.* (1) In the case of a dependent undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Stafford Loan Program and the Direct Stafford Loan Program may not exceed—

(i) $2,625 for a program whose length is at least a full academic year in length;

(ii) $1,750 for a program whose length is at least two-thirds but less than a full academic year in length; and

(iii) $875 for a program whose length is at least one-third but less than two-thirds of an academic year length.

(2) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program may not exceed—

(i) $3,500 for a program whose length is at least a full academic year in length; or

(ii) For a Stafford loan first disbursed on or after July 1, 1994 for a period of enrollment beginning on or after July 1, 1994, if the student is enrolled in a program, with less than a full academic year remaining, a prorated amount that bears the same ratio to $3,500 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year.

(3) In the case of a student who has successfully completed the first and second year of a program of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for academic year of study under the Stafford Loan and Direct Stafford Loan Program may not exceed—

(i) $5,500 for a program whose length is at least an academic year in length;

(ii) For a Stafford loan first disbursed on or after July 1, 1994 for a period of enrollment beginning on or after July 1, 1994, if the student is enrolled in a program with less than a full academic year remaining, a prorated amount that bears the same ratio to $5,500 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year.

(4) In the case of a student in a program who has an associate or baccalaureate degree which is required for admission into the program, the total amount the student may borrow for an academic year of study may not exceed the amount in paragraph (a)(3)(i) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the

Stafford Loan Program, in combination with any amount borrowed under the Direct Stafford Loan Program, may not exceed $8,500.

(b) *Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Stafford Loan Program and loans received under the Direct Stafford Loan Program may not exceed—

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level; and

(2) $65,000, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *Unsubsidized Stafford Loan Program.* In the case of a dependent graduate student, the total amount the student may borrow for any period of study for the Unsubsidized Stafford Loan Program and Direct Unsubsidized Stafford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program.

(d) *Additional eligibility under the Unsubsidized Stafford Loan Program.* In addition to any amount borrowed under paragraph (b) of this section, an independent undergraduate student, graduate or professional student, or certain dependent undergraduate students may borrow additional amounts under the Unsubsidized Stafford Loan Program. The additional amount that such a student may borrow under the Unsubsidized Stafford Loan Program, in combination with Unsubsidized Stafford loans, for any academic year of study—

(1) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education, may not exceed—

(i) $4,000 for enrollment in a program whose length is at least a full academic year in length;

(ii) $2,500 for enrollment in a program whose length is at least two-thirds but less than a full academic year in length;

(iii) $1,500 for enrollment in a program whose length is at least one-third but less than two-thirds of an academic year in length;

(2) In the case of a student who has successfully completed the first and second year of an undergraduate program, but has not completed the remainder of the program, may not exceed—

(i) $5,000 for enrollment in a program whose length is at least a full academic year;

(ii) If the student is enrolled in a program with less than a full academic year remaining, a prorated amount that bears the same ratio to $5,000 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year;

(3) In the case of a student in a program who has an associate or baccalaureate degree which is required for admission into the program, the total amount the student may borrow for an academic year under the Unsubsidized Stafford Loan and Direct Unsubsidized Stafford Loan Program may not exceed the amount in paragraph (d)(2)(i) of this section; and

(4) In the case of a graduate or professional student, may not exceed $10,000.

(e) *Unsubsidized Stafford Loan Program aggregate limits.* The total unpaid principal amount of Stafford Loans, Direct Stafford Loans, Unsubsidized Stafford Loans, Direct Unsubsidized Stafford Loans and SLS Loans, may not exceed—

(1) $46,000 for an undergraduate student; and

(2) $138,500 for a graduate or professional student.

(f) *SLS Program annual limit.* (1) In the case of a loan for which the first disbursement is made prior to July 1, 1993, the total amount of all SLS loans that a student may borrow for any academic year may not exceed $4,000 or, if the student is entering or is enrolled in a program of undergraduate education that is less than one academic year in length and the student's SLS loan application is certified pursuant to § 682.603 by the school on or after January 1, 1990—

(i) $2,500 for a student enrolled in a program whose length is at least two-thirds of an academic year but less than a full academic year in length;

(ii) $1,500 for a student enrolled in a program whose length is less than two-thirds of an academic year in length; and

(iii) $0 for a student enrolled in a program whose length is less than one-third of an academic year in length.

(2) In the case of a loan for which a first disbursement is made on or after July 1, 1993, the total amount a student may borrow for an academic year under the SLS program—

(i) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education, may not exceed—

(A) $4,000 for enrollment in a program whose length is at least a full academic year in length;

(B) $2,500 for enrollment in a program whose length is at least two-thirds but less than a full academic year in length;

(C) $1,500 for enrollment in a program whose length is least one-third but less than two-thirds of an academic year in length;

(ii) Except as provided in paragraph (f)(4) of this section, in the case of a student who successfully completed the first and second year of an undergraduate program, but has not completed the remainder of the program, may not exceed—

(A) $5,000 for enrollment in a program whose length is at least a full academic year;

(B) $3,325 for enrollment in a program whose length is at least two-thirds of an academic year but less than a full academic year in length; and

(C) $1,675 for enrollment in a program whose length is at least one-third of an academic year but less than two-thirds of an academic year; and

(iii) In the case of a graduate or professional student, may not exceed $10,000.

(4) For a period of enrollment beginning after October 1, 1993, but prior to July 1, 1994 for which the first disbursement is made prior to July 1, 1994, in the case of a student who has successfully completed the first and second years of a program but has not successfully completed the remainder of a program of undergraduate education—

(i) $5,000; or

(ii) If the student is enrolled in a program, the remainder of which is less than a full academic year, the maximum annual amount that the study may receive may not exceed the amount that bears the same ratio to the amount in paragraph (f)(4)(i) of this section as the remainder measured in semester, trimester, quarter, or clock hours bears to one academic year.

(g) *SLS Program aggregate limit.* The total unpaid principal amount of SLS Program loans made to—

(1) An undergraduate student may not exceed—

(i) $20,000, for loans for which the first disbursement is made prior to July 1, 1993; or

(ii) $23,000, for loans for which the first disbursement was made on or after July 1, 1993; and

(2) A graduate student may not exceed—

(i) $20,000, for loans for which the first disbursement is made prior to July 1, 1993; or

(ii) $73,000, for loans for which the first disbursement was made on or after July 1, 1993 including loans for undergraduate study.

(h) *PLUS Program annual limit.* The total amount of all PLUS Program loans that parents may borrow on behalf of each dependent student for any

academic year of study may borrow for enrollment in an eligible program of study may not exceed the student's cost of education minus other estimated financial assistance for that student.

(i) *Minimum loan interval.* The annual loan limits applicable to a student apply to the length of the school's academic year.

(j) *Treatment of Consolidation loans for purposes of determining loan limits.* The percentage of the outstanding balance on a Consolidation loan counted against a borrower's aggregate loan limits under the Stafford loan, Unsubsidized Stafford loan, Direct Stafford loan, Direct Unsubsidized loan, SLS, PLUS, Perkins Loan, or HPSL program must equal the percentage of the original amount of the Consolidation loan attributable to loans made to the borrower under that program.

(k) *Maximum loan amounts.* In no case may a Stafford, PLUS, or SLS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Stafford loan that is eligible for interest benefits.

(l) In determining a Stafford loan amount in accordance with § 682.204 (a), (c) and (d), the school must use the definition of academic year in 34 CFR 668.2.

8. Section 682.206 is amended by revising the introductory text in paragraph (c)(2); and revising paragraph (e)(2) to read as follows:

§ 682.206 Due diligence in making a loan.

* * * * *

(c) * * *

(2) Except in the case of a Consolidation loan, in determining the amount of the loan to be made, the lender must review the data on the student's cost of attendance and estimated financial assistance that is provided by the school. In no case may the loan amount exceed the student's estimated cost of attendance less the sum of—

* * * * *

(e) * * *

(2) A Federal PLUS Program loan and Federal Consolidation Program Loan may be made to two eligible borrowers who agree to be jointly and severally liable for repayment of the loan as co-makers.

* * * * *

9. Section 682.207 is amended by revising paragraphs (b)(1)(v) (A) and (B),and adding a new paragraph (b)(1)(v)(D) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b)(1) * * *

(v) * * *

(A) Except as provided in paragraph (b)(1)(v) (C)(*1*) and (D) of this section, directly to the school;

(B) In the case of a Federal PLUS loan—

(*1*) By electronic funds transfer or master check from the lender to the eligible institution to a separate account maintained by the school as trustee for the lender; or

(*2*) By a check from the lender that is made co-payable to the institution and the parent borrower directly to the eligible institution.

* * * * *

(D) In the case of a student enrolled in an eligible foreign school, if the student requests—

(*1*) Directly to the student; or

(*2*) To the institution if the borrower provides a power-of-attorney to an individual not affiliated with the institution to endorse the check or complete an electronic funds transfer authorization.

* * * * *

10. Section 682.209 is amended by revising paragraph (c)(2) to read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(c) * * *

(2) The provisions of paragraphs (c)(1) (i) and (ii) of this section may not result in an extension of the maximum repayment period unless forbearance as described in § 682.211, or deferment described in § 682.210, has been approved.

* * * * *

11. Section 682.300 is amended by revising the section heading; revising paragraph (a); revising paragraph (b)(1)(i); and revising paragraph (c) to read as follows:

§ 682.300 Payment of interest benefits on Stafford and Consolidation loans.

(a) *General.* The Secretary pays a lender a portion of the interest on a subsidized Stafford loan and, on a Consolidation loan that only consolidated subsidized Stafford loans, on behalf of a borrower who qualifies under § 682.301. This payment is known as interest benefits.

(b) * * *

(1) * * *

(i) During all periods prior to the beginning of the repayment period, except as provided in paragraphs (b)(2) and (c) of this section.

* * * * *

(c) *Interest not covered.* The Secretary does not pay—

(1) Interest for which the borrower is not otherwise liable;

(2) Interest paid on behalf of the borrower by a guaranty agency;

(3) Interest that accrues on the first disbursement of a loan for any period that is earlier than—

(i) In the case of a subsidized Stafford loan disbursed by a check, 10 days prior to the first day of the period of enrollment for which the loan is intended or, if the loan is disbursed after the first day of the period of enrollment, 3 days after the disbursement date on the check; or

(ii) In the case of a loan disbursed by electronic funds transfer, 3 days prior to the first day of the period of enrollment or, if the loan is disbursed after the first day of the period of enrollment, 3 days after disbursement.

(4) In the case of a loan disbursed on or after October 1, 1992, interest on a loan if—

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer has not been released from the restricted account maintained by the school before that date.

* * * * *

12. Section 682.301 is amended by revising the section heading; revising paragraph (a)(1); adding new paragraphs (a)(3) and (a)(4); and revising paragraph (b) introductory text to read as follows:

§ 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.

(a) * * *

(1) To qualify for benefits on a Stafford loan, a borrower must demonstrate financial need in accordance with Part F of the Act.

* * * * *

(3) A Consolidation loan borrower qualifies for interest benefits during authorized periods of deferment on the portion of the loan that does not represent HEAL loans if the loan application was received by the lender on or after January 1, 1993 but prior to August 10, 1993.

(4) A Consolidation loan borrower qualifies for interest benefits only if the

loan consolidates subsidized Stafford loans.

(b) *Application for interest benefits.* To apply for interest benefits on a Stafford loan, the student, or the school at the direction of the student, must submit a loan application to the lender. The application must include a certification from the student's school of the following information:

* * * * *

13. Section 682.302 is amended by revising paragraphs (b), (c)(1)(iii), (c)(2) introductory text, (c)(3)(i) introductory text, (c)(3)(ii) introductory text, and adding paragraph (c)(3)(iii) to read as follows:

§ 682.302 Payment of special allowance on FFEL loans.

* * * * *

(b) *Eligible loans.* (1) Except for nonsubsidized Federal Stafford loans disbursed on or after October 1, 1981, for periods of enrollment beginning prior to October 1, 1992, or as provided in paragraph (b)(2) or (e) of this section, FFEL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the Federal SLS or Federal PLUS Program on or after July 1, 1987 or under § 682.209 (e) or (f), no special allowance is paid for any period for which the interest rate determined under § 682.202(a)(2)(iv)(A) for that loan does not exceed—

(i) 12 percent in the case of a Federal SLS or PLUS loan made prior to October 1, 1992;

(ii) 11 percent in the case of a Federal SLS loan made on or after October 1, 1992; or

(iii) 10 percent in the case of a Federal PLUS loan made on or after October 1, 1992.

(3) In the case of a subsidized Stafford loan disbursed on or after October 1, 1992, the Secretary does not pay special allowance on a disbursement if—

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer has not been released from the restricted account maintained by the school before that date.

(c) * * *

(1) * * *

(iii) Adding—

(A) 3.1 percent to the resulting percentage for a loan made on or after October 1, 1992;

(B) 3.25 percent to the resulting percentage, for a loan made on or after November 16, 1986, but before October 1, 1992;

(C) 3.25 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning on or after November 16, 1986;

(D) 3.5 percent to the resulting percentage, for a loan made prior to October 17, 1986, or a loan described in paragraph (c)(2) of this section; or

(E) 3.5 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning prior to November 16, 1986;

* * * * *

(2) The special allowance rate determined under paragraph (c)(1)(iii)(D) of this section applies to loans made or purchased from funds obtained from the issuance of an obligation of the—

* * * * *

(3)(i) Subject to paragraphs (c)(3) (ii) and (iii) of this section, the special allowance rate is one-half of the rate calculated under paragraph (c)(1)(iii)(D) of this section for a loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained by the holder from—

* * * * *

(ii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made prior to October 1, 1992, may not be less than—

* * * * *

(iii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made on or after October 1, 1992, may not be less than 9½ percent minus the applicable interest rate.

* * * * *

14. Section 682.400 is amended by revising paragraph (b) introductory text; revising paragraph (b)(1)(i); and adding a new paragraph (b)(4) to read as follows:

§ 682.400 Agreements between a guaranty agency and the Secretary.

* * * * *

(b) There are four agreements:

(1) * * *

(i) Borrowers whose Stafford and Consolidation loans that consolidate only subsidized Stafford loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower's behalf;

* * * * *

(4) *Loan Rehabilitation Agreement.* A guaranty agency must have an agreement for rehabilitating a loan for which the Secretary has made a reinsurance payment under section 428(c)(1) of the Act.

* * * * *

15. Section 682.401 is amended by revising paragraphs (b)(1) and (b)(2); redesignating paragraphs (b)(4) through (b)(24) as paragraphs (b)(5) through (b)(25), respectively; adding a new paragraph (b)(4); revising redesignated paragraph (b)(6); revising redesignated paragraph (b)(14); revising redesignated paragraph (b)(16)(i) introductory text; adding a new paragraph (b)(16)(iii); adding new paragraphs (b)(24); revising paragraph (c); redesignating paragraphs (e)(2) and (e)(3) as paragraphs (e)(3) and (e)(4) respectively; and adding a new paragraph (e)(2) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(1) *Aggregate loan limits.* The aggregate guaranteed unpaid principal amount for all Stafford, SLS, PLUS loans made to a borrower may not exceed the amounts set forth in § 682.204 (b), (e), and (h).

(2) *Annual loan limits.* (i) The annual loan maximum amount for a borrower that may be guaranteed for an academic year may not exceed the amounts set forth in § 682.204 (a), (c), (d), (f), and (g).

(ii) A guaranty agency may make the loan amounts authorized under paragraph (b)(2)(i) of this section applicable for either—

(A) A period of not less than that attributable to the academic year; or

(B) A period attributable to the academic year in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore or, in the case of schools using clock hours, completion of at least 900 clock hours.

(iii) The amount of a loan guaranteed may not exceed the amount set forth in § 682.204(i).

* * * * *

(4) *Reinstatement of borrower eligibility.* For a borrower's loans held by a guaranty agency on which a reinsurance claim has been paid by the Secretary, the guaranty agency must afford a defaulted borrower, upon the borrower's request, renewed eligibility for Title IV assistance once the borrower has made satisfactory repayment

arrangements as that term is defined in § 682.200.

(i) For purposes of this section, the determination of reasonable and affordable must—

(A) Include consideration of the borrower's and spouse's disposable income and necessary expenses including, but not limited to, housing, utilities, food, medical costs, dependent care costs, work-related expenses and other Title IV repayment;

(B) Not be a required minimum payment amount, e.g. $50, if the agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. The agency must include documentation in the borrower's file of the basis for the determination, if the monthly reasonable and affordable payment established under this section is less than $50.00 or the monthly accrued interest on the loan, whichever is greater.

(C) Be based on the documentation provided by the borrower or other sources including, but not limited to—

(*1*) Evidence of current income (e.g. proof of welfare benefits, Social Security benefits, Supplemental Security Income, Workers' Compensation, child support, veterans' benefits, two most recent pay stubs, most recent copy of U.S. income tax return, State Department of Labor reports);

(*2*) Evidence of current expenses (e.g. a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(*3*) A statement of the unpaid balance on all FFEL loans held by other holders.

(ii) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances upon providing the documentation specified in paragraph (b)(4)(i)(C) of this section.

(iii) A guaranty agency must provide the borrower with a written statement of the reasonable and affordable payment amount required for the reinstatement of the borrower's eligibility for Title IV student assistance, and provide the borrower with an opportunity to object to those terms.

(iv) A guaranty agency must provide the borrower with written information regarding the possibility of loan rehabilitation if the borrower makes six additional reasonable and affordable monthly payments after making payments to regain eligibility for Title IV assistance and the consequences of loan rehabilitation.

* * * * *

(6) *School eligibility.* (i) *General.* A school that has a program participation agreement in effect with the Secretary under § 682.600 is eligible to participate in the program of the agency under reasonable criteria established by the guaranty agency, and approved by the Secretary, under paragraph (d)(2) of this section, except to the extent that—

(A) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR Part 668 or by the guaranty agency under standards and procedures that are substantially the same as those in 34 CFR Part 668;

(B) The Secretary upholds the limitation, suspension, or termination of a school by a guaranty agency and extends that sanction to all guaranty agency programs under section 432(h)(3) of the Act or § 682.713;

(C) The school is ineligible under sections 428A(a)(2) or 435(a)(2) of the Act;

(D) There is a State constitutional prohibition affecting the school's eligibility;

(E) The school's programs consist of study solely by correspondence;

(F) The agency determines, subject to the agreement of the Secretary, that the school does not satisfy the standards of administrative capability and financial responsibility as defined in 34 CFR Part 668;

(G) The school fails to make timely refunds to students as required in § 682.607(c);

(H) The school has not satisfied, within 30 days of issuance, a final judgment obtained by a student seeking a refund;

(I) The school or an owner, director, or officer of the school is found guilty or liable in any criminal, civil, or administrative proceeding regarding the obtaining, maintenance, or disbursement of State or Federal student grant, loan, or work assistance funds; or

(J) The school or an owner, director, or officer of the school has unpaid financial liabilities involving the improper acquisition, expenditure, or refund of State or Federal student financial assistance funds.

(ii) *Limitation by a guaranty agency of a school's participation.* For purposes of this paragraph, a school that is subject to limitation of participation in the guaranty agency's program may be either a school that is applying to participate in the agency's program for the first time, or a school that is renewing its application to continue participation in the agency's program. A guaranty agency may limit the total number of loans or the volume of loans made to students attending a particular school, or otherwise establish appropriate limitations on the school's participation, if the agency makes a determination that the school does not satisfy—

(A) The standards of financial responsibility defined in 34 CFR 668.5; or

(B) The standards of administrative capability defined in 34 CFR 668.16.

(iii) *Limitation, suspension, or termination of school eligibility.* A guaranty agency may limit, suspend, or terminate the participation of an eligible school. If a guaranty agency limits, suspends, or terminates the participation of a school from the agency's program, the Secretary applies that limitation, suspension, or termination to all locations of the school.

(iv) *Condition for guaranteeing loans for students attending a school.* The guaranty agency may require the school to execute a participation agreement with the agency and to submit documentation that establishes the school's eligibility to participate in the agency's program.

* * * * *

(14) *Guaranty agency verification of default data.* A guaranty agency must respond to an institution's written request for verification of its default rate data for purposes of an appeal pursuant to 34 CFR 668.15(g)(1)(i) within 15 working days of the date the agency receives the institution's written request pursuant to 34 CFR 668.15(g)(7), and simultaneously provide a copy of that response to the Secretary's designated Department official.

* * * * *

(16) * * *

(i) Except as provided in paragraph (b)(16)(iii) of this section, the guaranty agency must allow a loan to be assigned only if the loan is fully disbursed and is assigned to—

* * * * *

(iii) The guaranty agency must allow a loan to be assigned under paragraph (b)(16)(i) of this section, following the first disbursement of the loan if the assignment does not result in a change in the identity of the party to whom payments must be made.

* * * * *

(24) *Information on loan sales or transfers.* The guaranty agency must, upon the request of an eligible school, furnish to the school last attended by the student, information with respect to the sale or transfer of a borrower's loan prior to the beginning of the repayment period, including—

(i) Notice of the assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party by which contact may be made

with the holder concerning repayment of the loan; and

(iv) The telephone number of the assignee, or if the assignee uses a lender servicer, another appropriate number for borrower inquiries.

* * * * *

(c)(1) *Lender-of-last-resort.* The guaranty agency must ensure that it or an eligible lender described in section 435(d)(1)(D) of the Act serves as a lender-of-last-resort in the State in which it is the principal guaranty agency, as defined in § 682.800(d).

(2) The lender-of-last-resort must make a subsidized Stafford loan to any eligible student who satisfies the lender's eligibility requirements and—

(i) Qualifies for interest benefits, pursuant to § 682.301, for a loan amount of at least $200; and

(ii) Has been otherwise unable after conscientious efforts to obtain a loan from another eligible lender for the same period of enrollment.

(3) The guaranty agency or an eligible lender described in section 435(d)(1)(D) of the Act may arrange for a loan required to be made under paragraph (c)(1) of this section to be made by another eligible lender.

(4) The guaranty agency must develop policies and operating procedures for its lender-of-last-resort program that provide for the accessibility of lender-of-last-resort loans. These policies and procedures must be submitted to the Secretary for approval as required under paragraph (d)(2) of this section. The policies and procedures for the agency's lender-of-last-resort program must ensure that—

(i) The guaranty agency will serve eligible students attending any eligible school;

(ii) The program establishes operating hours and methods of application designed to facilitate application by students; and

(iii) Information about the availability of loans under the program is made available to schools in the State;

(iv) Appropriate steps are taken to ensure that borrowers receiving loans under the program are appropriately counseled on their loan obligation;

(v) The guaranty agency will respond to a student within 60 days after the student submits an original complete application; and

(vi) Borrowers are not required to obtain more than two objections from eligible lenders prior to requesting assistance under the lender-of-last-resort program.

* * * * *

(e) * * *

(2)(i) Offer, directly or indirectly, any premium, incentive payment, or other inducement to any lender, or any person acting as an agent, employee, or independent contractor of any lender or other guaranty agency to administer or market FFEL loans, other than unsubsidized Stafford loans or subsidized Stafford loans made under a guaranty agency's lender-of-last-resort program, in an effort to secure the guaranty agency as an insurer of FFEL loans. Examples of prohibited inducements include, but are not limited to—

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

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

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

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

(ii) For the purposes of this section, the terms "premium", "inducement", and "incentive" do not include services directly related to the enhancement of the administration of the FFEL Program the guaranty agency generally provides to lenders that participate in its program. However, the terms "premium", "inducement", and "incentive" do apply to other activities specifically intended to secure a lender's participation in the agency's program.

* * * * *

16. A new § 682.405 is added to read as follows:

§ 682.405 Loan rehabilitation agreement.

(a) *General.* (1) A guaranty agency that has a basic program agreement must enter into a loan rehabilitation agreement with the Secretary. The guaranty agency must establish a loan rehabilitation program for all borrowers with an enforceable promissory note for the purpose of rehabilitating defaulted loans so that the loan may be purchased, if practicable, by an eligible lender and removed from default status.

(2) A loan is considered to be rehabilitated only after the borrower has made one voluntary reasonable and affordable full payment each month and the payment is received by a guaranty agency or its agent within 15 days of the scheduled due date for 12 consecutive months in accordance with this section, and the loan has been sold to an eligible lender.

(3) After the loan has been rehabilitated, the borrower regains all benefits of the program, including any remaining deferment eligibility under section 428(b)(1)(M) of the Act, from the date of the rehabilitation.

(4) A borrower who wishes to rehabilitate a loan on which a judgment has been entered must sign a new promissory note prior to the sale of the loan to an eligible lender.

(b) *Terms of agreement.* In the loan rehabilitation agreement, the guaranty agency agrees to ensure that its loan rehabilitation program meets the following requirements at all times:

(1) A borrower may request the rehabilitation of the borrower's defaulted FFEL loan held by the guaranty agency. The borrower must make one voluntary full payment each month for 12 consecutive months to be eligible to have the defaulted loans rehabilitated. For purposes of this section, "full payment" means a reasonable and affordable payment agreed to by the borrower and the agency. The required amount of such monthly payment may be no more than is reasonable and affordable based upon the borrower's total financial circumstances. Voluntary payments are those made directly by the borrower regardless of whether there is a judgment against the borrower, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution. A guaranty agency must attempt to secure a lender to purchase the loan at the end of the twelve-(12-)month payment period.

(i) For purposes of this section, the determination of reasonable and affordable must—

(A) Include a consideration of the borrower's and spouse's disposable income and reasonable and necessary expenses including, but not limited to, housing, utilities, food, medical costs, work-related expenses, dependent care costs and other Title IV repayment;

(B) Not be a required minimum payment amount, e.g. $50, if the agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. The agency must include documentation in the borrower's file of the basis for the determination if the monthly reasonable and affordable payment established under this section is less than $50.00 or the monthly accrued interest on the loan, whichever is greater. However, $50.00 may not be the minimum payment for a borrower if the agency determines that a smaller amount is reasonable and affordable; and

(C) Be based on the documentation provided by the borrower or other sources including, but not be limited to—

(1) Evidence of current income (e.g., proof of welfare benefits, Social Security benefits, child support, veterans' benefits, Supplemental Security Income, Workmen's Compensation, two most recent pay stubs, most recent copy of U.S. income tax return, State Department of Labor reports);

(2) Evidence of current expenses (e.g., a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(3) A statement of the unpaid balance on all FFEL loans held by other holders.

(ii) The agency must include any payment made under § 682.401(b)(4) in determining whether the 12 consecutive payments required under paragraph (b)(1) of this section have been made.

(iii) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (b)(1)(i)(C) of this section.

(iv) A guaranty agency must provide the borrower with a written statement confirming the borrower's reasonable and affordable payment amount, as determined by the agency, and explaining any other terms and conditions applicable to the required series of payments that must be made before a borrower's account can be considered for repurchase by an eligible lender. The statement must inform borrowers of the consequences of having their loans rehabilitated (e.g. credit clearing, possibility of increased monthly payments). The statement must inform the borrower of the amount of the collection costs to be added to the unpaid principal at the time of the sale. The collection costs may not exceed 18.5 percent of the unpaid principal and accrued interest at the time of the sale.

(v) A guaranty agency must provide the borrower with an opportunity to object to terms of the rehabilitation of the borrower's defaulted loan.

(2) The guaranty agency must report to all national credit bureaus within 90 days of the date the loan was rehabilitated that the loan is no longer in a default status.

(3) An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans made under the same loan type and provides for the borrower to make monthly payments at least as great as the average of the 12 consecutive monthly payments received by the guaranty agency. For the purposes of the maximum loan repayment period, the lender must treat the first payment made under the 12 consecutive payments as the first payment under the 10-year maximum.

(Authority: 20 U.S.C. 1078–6)

17. Section 682.406 is amended by removing "and" at the end of paragraph (a)(12); removing the period at the end of paragraph (a)(13) and adding in its place, "; and" and adding a new paragraph (a)(14) to read as follows:

§ 682.406 Conditions of reinsurance coverage.

(a) * * *

(14) The guaranty agency certifies to the Secretary that diligent attempts have been made by the lender and the guaranty agency under § 682.411(g) to locate the borrower through the use of reasonable skip-tracing techniques.

* * * * *

18. Section 682.407 is amended by adding a new paragraph (e) to read as follows:

§ 682.407 Administrative cost allowance for guaranty agencies.

* * * * *

(e) An administrative cost allowance improperly paid on a loan to a guaranty agency must be deducted by the agency from the amount reflected in the following quarter's ED form 1130 when it is submitted to the Department for payment.

* * * * *

19. Section 682.409 is amended by revising paragraph (a); revising paragraph (c)(1); and adding a new paragraph (c)(6) to read as follows:

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

(a) (1) If the Secretary determines that action is necessary to protect the Federal fiscal interest, the Secretary will direct a guaranty agency to promptly assign to the Secretary any loan held by the agency on which the agency has received payment under § 682.402(d), 682.402(i), or 682.404. An orderly transition from the FFEL program to the Federal Direct Student Loan (FDSL) Program and the collection of unpaid loans owed by Federal employees by Federal salary offset are, among other things, deemed to be in the Federal fiscal interest. Unless the Secretary notifies an agency, in writing, that other loans must be assigned to the Secretary, an agency must assign any loan that meets all of the following criteria as of April 15 of each year:

(i) The unpaid principal balance is at least $100.

(ii) For each of the two fiscal years following the fiscal year in which these regulations are effective, the loan, and any other loans held by the agency for that borrower, have been held by the agency for at least four years; for any subsequent fiscal year such loan must have been held by the agency for at least five years.

(iii) A payment has not been received on the loan in the last year.

(iv) A judgment has not been entered on the loan against the borrower.

(2) If the agency fails to meet a fiscal year recovery rate standard under paragraph (a)(2)(ii) of this section for a loan type, and the Secretary determines that additional assignments are necessary to protect the Federal fiscal interest, the Secretary may require the agency to assign in addition to those loans described in paragraph (a)(1) of this section, loans in amounts needed to satisfy the requirements of paragraph (a)(2)(iii) or (a)(3)(i) of this section.

(i) *Calculation of fiscal year loan type recovery rate.* A fiscal year loan type recovery rate for an agency is determined by dividing the amount collected on defaulted loans, including collections by Federal Income Tax Refund Offset, for each loan program (i.e., the Stafford, PLUS, SLS, and Consolidation loan programs) by the agency for loans of that program (including payments received by the agency on loans under § 682.401(b)(4) and § 682.409 and the amounts of any loans purchased from the guaranty agency by an eligible lender) during the most recent fiscal year for which data are available by the total of principal and interest owed to an agency on defaulted loans for each loan program at the beginning of the same fiscal year, less accounts permanently assigned to the Secretary through the most recent fiscal year.

(ii) *Fiscal year loan type recovery rates standards.* (A) If, in each of the two fiscal years following the fiscal year in which these regulations are effective, the fiscal year loan type recovery rate for a loan program for an agency is below 80 percent of the average recovery rate of all active guaranty agencies in each of the same two fiscal years for that program type, and the Secretary determines that additional assignments are necessary to protect the Federal fiscal interest, the Secretary may require the agency to make additional assignments in accordance with paragraph (a)(2)(iii) of this section.

(B) In any subsequent fiscal year the loan type recovery rate standard for a loan program must be 90 percent of the average recovery rate of all active guaranty agencies.

(iii) *Non-achievement of loan type recovery rate standards.*

(A) Unless the Secretary determines under paragraph (a)(2)(iv) of this section

that protection of the Federal fiscal interest requires that a lesser amount be assigned, upon notice from the Secretary, an agency with a fiscal year loan type recovery rate described in paragraph (a)(2)(ii) of this section must promptly assign to the Secretary a sufficient amount of defaulted loans, in addition to loans to be assigned in accordance with paragraph (a)(1) of this section, to cause the fiscal year loan type recovery rate of the agency that fiscal year to equal or exceed the average rate of all agencies described in paragraph (a)(2)(ii) of this section when recalculated to exclude from the denominator of the agency's fiscal year loan type recovery rate the amount of these additional loans.

(B) The Secretary, in consultation with the guaranty agency, may require the amount of loans to be assigned under paragraph (a)(2) of this section to include particular categories of loans that share characteristics that make the performance of the agency fall below the appropriate percentage of the loan type recovery rate as described in paragraph (a)(2)(ii) of this section.

(iv) *Calculation of loan type recovery rate standards.* The Secretary, within 30 days after the date for submission of the second quarterly report from all agencies, makes available to all agencies a mid-year report, showing the recovery rate for each agency and the average recovery rate of all active guaranty agencies for each loan type. In addition, the Secretary, within 120 days after the beginning of each fiscal year, makes available a final report showing those rates and the average rate for each loan type for the preceding fiscal year.

(3)(i) *Determination that the protection of the Federal fiscal interest requires assignments.* Upon petition by an agency submitted within 45 days of the notice required by paragraph (a)(2)(iii)(A) of this section, the Secretary may determine that protection of the Federal fiscal interest does not require assignment of all loans described in paragraph (a)(1) of this section or of loans in the full amount described in paragraph (a)(2)(iii) of this section only after review of the agency's petition. In making this determination, the Secretary considers all relevant information available to him (including any information and documentation obtained by the Secretary in reviews of the agency or submitted to the Secretary by the agency) as follows:

(A) For each of the two fiscal years following the fiscal year in which these regulations are effective, the Secretary considers information presented by an agency with a fiscal year loan type recovery rate above the average rate of all active agencies to demonstrate that the protection of the Federal fiscal interest will be served if any amounts of loans of the loan type required to be assigned to the Secretary under paragraph (a)(1) of this section are retained by that agency. For any subsequent fiscal year, the Secretary considers information presented by an agency with a fiscal year recovery rate 10 percent above the average rate of all active agencies.

(B) The Secretary considers information presented by an agency that is required to assign loans under paragraph (a)(2) of this section to demonstrate that the protection of the Federal fiscal interest will be served if the agency demonstrates that its compliance with § 682.401(b)(4) and § 682.405 has reduced substantially its fiscal year loan type recovery rate or rates or if the agency is not required to assign amounts of loans that would otherwise have to be assigned.

(C) The information provided by an agency pursuant to paragraphs (a)(3)(i)(A) and (B) of this section may include, but is not limited to the following:

(*1*) The fiscal year loan type recovery rate within such school sectors as the Secretary may designate for the agency, and for all agencies.

(*2*) The fiscal year loan type recovery rate for loans for the agency and for all agencies categorized by age of the loans as the Secretary may determine.

(*3*) The performance of the agency, and all agencies, in default aversion.

(*4*) The agency's performance on judgment enforcement.

(*5*) The existence and use of any state or guaranty agency-specific collection tools.

(*6*) The agency's level of compliance with §§ 682.409 and 682.410(b)(6).

(*7*) Other factors that may affect loan repayment such as State or regional unemployment and natural disasters.

(ii) *Denial of an agency's petition.* If the Secretary does not accept the agency's petition, the Secretary provides, in writing, to the agency the Secretary's reasons for concluding that the Federal fiscal interest is best protected by requiring the assignment.

* * * * *

(c)(1) A guaranty agency must assign a loan to the Secretary under this section at the time, in the manner, and with the information and documentation that the Secretary requires. The agency must submit this information and documentation in the form (including magnetic media) and format specified by the Secretary.

* * * * *

(6) The Secretary may accept the assignment of a loan without all of the documents listed in paragraph (c)(4) of this section. If directed to do so, the agency must retain these documents for submission to the Secretary at some future date.

* * * * *

20. Section 682.410 is amended by revising paragraphs (a)(1) and (a)(2); and adding paragraphs (a)(6), (a)(7), and (a)(8) to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) * * *

(1) *Reserve fund assets.* The guaranty agency must establish and maintain a reserve fund to be used solely for the FFEL Program to which the guaranty agency must credit—

(i) The total amount of insurance premiums collected;

(ii) Funds appropriated by a State for the agency's loan guaranty program, including matching funds under section 422(a) of the Act;

(iii) Federal advances obtained under sections 422(a) and (c) of the Act;

(iv) Federal payments for default, bankruptcy, death and disability, closed schools and false certification claims;

(v) Supplemental preclaims assistance payments;

(vi) Administrative cost allowance payments received under § 682.407;

(vii) Funds collected by the guaranty agency on FFELP loans for which the guaranty agency has paid claims;

(viii) Investment earnings on the reserve fund; and

(ix) Funds received by the guaranty agency from any other source for the agency's loan guaranty program.

(2) *Uses of reserve fund assets.* A guaranty agency may only use the assets of the reserve fund established under paragraph (a)(1) of this section to pay—

(i) Insurance claims;

(ii) Operating costs, including payments necessary in administering loan collections, preclaims assistance, monitoring enrollment and repayment status and any other loan guaranty activities under this part;

(iii) Lenders that participate in a loan referral service under section 428(e) of the Act;

(iv) The Secretary's equitable share of collections;

(v) Federal advances and other funds owed to the Secretary;

(vi) Reinsurance fees;

(vii) Insurance premiums related to cancelled loans; and

(viii) Any other amounts authorized or directed by the Secretary.

* * * * *

(6) *Minimum reserve fund level.* The guaranty agency must maintain a

current minimum reserve level of not less than—

(i) .5 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1993;

(ii) .7 percent of the amount of loans outstanding, for the fiscal year that begins in calendar year 1994;

(iii) .9 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1995; and

(iv) 1.1 percent of the amount of loans outstanding, for each fiscal year of the agency that begins on or after January 1, 1996.

(7) For purposes of this section, *reserve fund level* means—

(i) The total of the reserve fund assets as defined in paragraph (a)(1) of this section, minus

(ii) The total of the amount of the reserve fund assets used in accordance with paragraphs (a)(2) and (a)(3) of this section.

(8) For purposes of this section, *amount of loans outstanding* means—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another guarantor, excluding loan guarantees transferred to another agency pursuant to a plan of the Secretary in response to the insolvency of the agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was cancelled;

(B) The loan guarantee was transferred to another agency;

(C) Payment in full has been made by the borrower;

(D) Reinsurance coverage has been lost and cannot be regained; and

(E) The agency paid claims.

* * * * *

21. Section 682.414 is amended by revising paragraph (a)(3)(iii) and adding a new paragraph (a)(3)(iv) to read as follows:

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

(a) * * *

(3) * * *

(iii) Except as provided in paragraph (a)(3)(iv) of this section, a lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases, the Secretary or the guaranty agency may require the retention of records beyond this minimum period.

(iv) A lender shall retain a copy of the audit report for not less than five years after the report is issued.

* * * * *

21. Section 682.507 is amended by revising paragraph (a)(2) to read as follows:

§ 682.507 Due diligence in collecting a loan.

(a) * * *

(2) If two borrowers are liable for repayment of a Federal PLUS or Consolidation loan as co-makers, the lender must follow these procedures with respect to both borrowers.

* * * * *

22. Section 682.511 is amending by revising paragraph (a)(2) to read as follows:

§ 682.511 Procedures for filing a claim.

(a) * * *

(2) If a Federal PLUS loan was obtained by two eligible parents as co-makers, or a Consolidation loan was obtained jointly by a married couple, the reason for filing a claim must hold true for both applicants, or each applicant must have satisfied a claimable criterion at the time of the request for discharge of the loan.

* * * * *

23. Section 682.601 is amended by removing "and" at the end of paragraph (a)(4); removing the period at the end of paragraph (a)(5) and adding in its place, "; and"; and adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 682.601 Rules for a school that makes or originates loans.

(a) * * *

(6) The school's cohort default rate as calculated under § 668.17 may not exceed 15 percent; and

(7) Except for reasonable administrative expenses directly related to the FFEL Program, the school must use payments received under § 682.300 and § 682.302 for need-based grant programs for its students.

* * * * *

24. Section 682.603 is amended by adding new paragraphs (f)(3) and (h) to read as follows:

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

* * * * *

(f) * * *

(3) In certifying a Stafford or SLS loan amount in accordance with § 682.204—

(i) A program of study must be considered at least one full academic year if—

(A) The number of weeks of instruction time is at least 30 weeks; and

(B) The number of clock hours is at least 900, the number of semester or trimester hours is at least 24, or the number of quarter hours is at least 36.

(ii) A program of study must be considered two-thirds ⅔ of an academic year if—

(A) The number of weeks of instruction is at least 20 weeks; and

(B) The number of clock hours is at least 600, the number of semester or trimester hours is at least 16, or the number of quarter hours is at least 24.

(iii) A program of study must be considered one-third ⅓ of an academic year if—

(A) The number of weeks of instruction time is at least 10 weeks; and

(B) The number of clock hours is at least 300, the number of semester or trimester hours is at least 8, or the number of quarter hours is at least 12.

* * * * *

(h) Pursuant to paragraph (b)(5) of this section, a school may not request the disbursement of loan proceeds, for a borrower who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford or SLS loan, earlier that the 24th day of the student's period of enrollment.

25. Section 682.604 is amended by revising paragraph (c)(3) introductory text; removing paragraph (g)(2)(i); redesignating paragraphs (g)(2)(ii) through (g)(2)(vi), as paragraphs (g)(2)(i) through (g)(2)(v) respectively; removing "and" at the end of redesignated (g)(2)(iv); revising redesignated paragraph (g)(2)(v); adding a new paragraph (g)(2)(vi); revising the introductory text of paragraph (h); and adding a new paragraph (i) to read as follows:

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

* * * * *

(c) * * *

(3) If the loan proceeds are disbursed by electronic funds transfer to an account of the school on behalf of a borrower in accordance with § 682.207(b)(1)(ii)(B), the school must, unless authorization was provided in the loan application, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended, obtain the student's, or in the case of a Federal PLUS loan, the parent borrower's written authorization for the release of the initial and any subsequent disbursement of each FFEL loan to be made, and after the student has registered either—

* * * * *

(g) * * *

(2) * * *

(v) Review with the borrower the conditions under which the borrower may defer repayment or obtain partial cancellation of a loan; and

(vi) Require the borrower to provide corrections to the institution's records concerning name, address, social security number, references, and driver's license number, as well as the name and address of the borrower's expected employer that will then be provided within 60 days to the guaranty agency or agencies listed in the borrower's records.

* * * * *

(h) *Treatment of excess loan proceeds.* Except as provided under paragraph (i) of this section, or in the case of a student attending a foreign school, if, before the delivery of any Stafford or SLS loan disbursement, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which the loan was made that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

* * * * *

(i) For purposes of paragraph (h) of this section, funds obtained from any Federal College Work-Study employment that do not exceed the borrower's financial need by more than $300 may not be considered as excess loan proceeds.

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June 28, 1994

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Ch. I

Fair Housing: Accessibility Guidelines; Questions and Answers; Supplement to Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Chapter I

[Docket No. N-94-2011; FR-2665-N-09]

Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Supplement to notice of fair housing accessibility guidelines.

SUMMARY: On March 6, 1991, the Department published final Fair Housing Accessibility Guidelines (Guidelines) to provide builders and developers with technical guidance on how to comply with the accessibility requirements of the Fair Housing Amendments Act of 1988 (Fair Housing Act) that are applicable to certain multifamily dwellings designed and constructed for first occupancy after March 13, 1991. Since publication of the Guidelines, the Department has received many questions regarding the applicability of the technical specifications set forth in the Guidelines to certain types of new multifamily dwellings and certain types of units within covered multifamily dwellings. The Department also has received several questions concerning the types of new multifamily dwellings that are subject to the design and construction requirements of the Fair Housing Act.

This document reproduces the questions that have been most frequently asked by members of the public, and the Department's answers to these questions. The Department believes that the issues addressed by these questions and answers may be of interest and assistance to other members of the public who must comply with the design and construction requirements of the Fair Housing Act.

EFFECTIVE DATE: June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Judith Keeler, Director, Office of Program Compliance and Disability Rights. For technical questions regarding this notice, contact Office of Fair Housing and Equal Opportunity, room 5112, Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410, telephone 202-708-2618 (voice), 202-708-1734 TTY; for copies of this notice contact the Fair Housing Information Clearinghouse at 1-800-795-7915 (this is a toll-free number), or 1-800-483-2209 (this is a toll-free TTY number).

SUPPLEMENTARY INFORMATION:

Background

The Fair Housing Amendments Act of 1988 (Pub.L. 100-430, approved September 13, 1988) (the Fair Housing Amendments Act) amended title VIII of the Civil Rights Act of 1968 (Fair Housing Act or Act) to add prohibitions against discrimination in housing on the basis of disability and familial status. The Fair Housing Amendments Act also made it unlawful to design and construct certain multifamily dwellings for first occupancy after March 13, 1991, in a manner that makes them inaccessible to persons with disabilities, and established design and construction requirements to make these dwellings readily accessible to and usable by persons with disabilities.[1] Section 100.205 of the Department's regulations at 24 CFR part 100 implements the Fair Housing Act's design and construction requirements (also referred to as accessibility requirements).

On March 6, 1991 (56 FR 9472), the Department published final Fair Housing Accessibility Guidelines (Guidelines) to provide builders and developers with technical guidance on how to comply with the accessibility requirements of the Fair Housing Act. (The Guidelines are codified at 24 CFR Ch.I, Subch.A., App. II. The preamble to the Guidelines is codified at 24 CFR Ch.I, Subch.A., App.III.) The Guidelines are organized to follow the sequence of requirements as they are presented in the Fair Housing Act and in 24 CFR 100.205. The Guidelines provide technical guidance on the following seven requirements:

Requirement 1. Accessible building entrance on an accessible route.
Requirement 2. Accessible common and public use areas.
Requirement 3. Usable doors (usable by a person in a wheelchair).
Requirement 4. Accessible route into and through the dwelling unit.
Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
Requirement 6. Reinforced walls for grab bars.
Requirement 7. Usable kitchens and bathrooms.

The design specifications presented in the Guidelines are recommended guidelines only. Builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act. The Fair Housing Act and the Department's implementing regulation provides, for example, for use of the appropriate requirements of the ANSI A117.1 standard. However, adherence to the Guidelines does constitute a safe harbor in the Department's administrative enforcement process for compliance with the Fair Housing Act's design and construction requirements.

Since publication of the Guidelines, the Department has received many questions regarding applicability of the design specifications set forth in the Guidelines to certain types of new multifamily dwellings and to certain types of interior housing designs. The Department also has received several questions concerning the types of new multifamily dwellings that are subject to compliance with the design and construction requirements of the Fair Housing Act. Given the wide variety in the types of multifamily dwellings and the types of dwelling units, and the continual introduction into the housing market of new building and interior designs, it was not possible for the Department to prepare accessibility guidelines that would address every housing type or housing design. Although the Guidelines cannot address every housing design, it is the Department's intention to assist the public in complying with the design and construction requirements of the Fair Housing Act through workshops and seminars, telephone assistance, written replies to written inquiries, and through the publication of documents such as this one. The Department has contracted for the preparation of a design manual that will further explain and illustrate the Fair Housing Act Accessibility Guidelines.

The questions and answers set forth in this notice address the issues most frequently raised by the public with respect to types of multifamily dwellings subject to the design and construction requirements of the Fair Housing Act, and the technical specifications contained in the Guidelines.

The question and answer format is divided into two sections. Section 1, entitled "Dwellings Subject to the New Construction Requirements of the Fair Housing Act" addresses the issues raised in connection with the types of multifamily dwellings (including portions of such dwellings) constructed for first occupancy after March 13, 1991, that must comply with the Act's design and construction requirements. Section

[1] Although this notice uses the terms "disability" and "disabilities," the terms used in the Fair Housing Amendments Act are "handicap" and "handicaps."

2, entitled "Accessibility Guidelines," addresses the issues raised in connection with the design and construction specifications set forth in the Guidelines.

Dated: March 23, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

Accordingly, the Department adds the "Questions and Answers about the Fair Housing Accessibility Guidelines" as Appendix IV to 24 CFR Chapter I, Subchapter A to read as follows:

Appendix IV to Subchapter A—Questions and Answers About the Fair Housing Accessibility Guidelines

Introduction

On March 6, 1991 (56 FR 9472), the Department published final Fair Housing Accessibility Guidelines (Guidelines). (The Guidelines are codified at 24 CFR Ch. I, Subch. A, App. II.) The Guidelines provide builders and developers with technical guidance on how to comply with the accessibility requirements of the Fair Housing Amendments Act of 1988 (Fair Housing Act) that are applicable to certain multifamily dwellings designed and constructed for first occupancy after March 13, 1991. Since publication of the Guidelines, the Department has received many questions regarding the applicability of the technical specifications set forth in the Guidelines to certain types of new multifamily dwellings and certain types of units within covered multifamily dwellings. The Department also has received several questions concerning the types of new multifamily dwellings that are subject to the design and construction requirements of the Fair Housing Act.

The questions and answers contained in this document address some of the issues most frequently raised by the public with respect to the types of multifamily dwellings subject to the design and construction requirements of the Fair Housing Act, and the technical specifications contained in the Guidelines.

The issues addressed in this document are addressed only with respect to the application of the Fair Housing Act and the Guidelines to dwellings which are "covered multifamily dwellings" under the Fair Housing Act. Certain of these dwellings, as well as certain public and common use areas of such dwellings, may *also* be covered by various other laws, such as section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Architectural Barriers Act of 1968 (42 U.S.C. 4151 through 4157); and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 through 12213).

Section 504 applies to programs and activities receiving federal financial assistance. The Department's regulations for section 504 are found at 24 CFR part 8.

The Architectural Barriers Act applies to certain buildings financed in whole or in part with federal funds. The Department's regulations for the Architectural Barriers Act are found at 24 CFR parts 40 and 41.

The Americans with Disabilities Act (ADA) is a broad civil rights law guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. The Department of Justice is the lead federal agency for implementation of the ADA and should be contacted for copies of relevant ADA regulations.

The Department has received a number of questions regarding applicability of the ADA to residential housing, particularly with respect to title III of the ADA, which addresses accessibility requirements for public accommodations. The Department has been asked, in particular, if public and common use areas of residential housing are covered by title III of the ADA. Strictly residential facilities are not considered places of public accommodation and therefore would not be subject to title III of the ADA, nor would amenities provided for the exclusive use of residents and their guests. However, common areas that function as one of the ADA's twelve categories of places of public accommodation within residential facilities are considered places of public accommodation if they are open to persons other than residents and their guests. Rental offices and sales office for residential housing, for example, are by their nature open to the public, and are places of public accommodation and must comply with the ADA requirements in addition to all applicable requirements of the Fair Housing Act.

As stated above, the remainder of this notice addresses issues most frequently raised by the public with respect to the types of multifamily dwellings subject to the design and construction requirements of the Fair Housing Act, and the technical specifications contained in the Guidelines.

Section 1: Dwellings Subject to the New Construction Requirements of the Fair Housing Act

The issues addressed in this section concern the types of multifamily dwellings (or portions of such dwellings) designed and constructed for first occupancy after March 13, 1991 that must comply with the design and construction requirements of the Fair Housing Act.

1. Townhouses

(a) Q. Are townhouses in non-elevator buildings which have individual exterior entrances required to be accessible?

A. Yes, if they are single-story townhouses. If they are multistory townhouses, accessibility is not required. (*See* the discussion of townhouses in the preamble to the Guidelines under "Section 2—Definitions [Covered Multifamily Dwellings]" at 56 FR 9481, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)

(b) Q. Does the Fair Housing Act cover four one-story dwelling units that share common walls and have individual entrances?

A. Yes. The Fair Housing Act applies to all units in buildings consisting of four or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units. This would include one-story homes, sometimes called "single-story townhouses," "villas," or "patio apartments," regardless of ownership, even though such homes may not be considered multifamily dwellings under various building codes.

(c) Q. What if the single-story dwelling units are separated by firewalls?

A. The Fair Housing Act would still apply. The Guidelines define covered multifamily dwellings to include buildings having four or more units within a single structure separated by firewalls.

2. Commercial Space

Q. If a building includes three residential dwelling units and one or more commercial spaces, is the building a "covered multifamily dwelling" under the Fair Housing Act?

A. No. Covered multifamily dwellings are buildings consisting of four or more dwelling units, if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units. Commercial space does not meet the definition of "dwelling unit." Note,

however, that title III of the ADA applies to public accommodations and commercial facilities, therefore an independent determination should be made regarding applicability of the ADA to the commercial space in such a building. (*See* the introduction to these questions and answers, which provides some background on the ADA.)

3. Condominiums

(a) Q. Are condominiums covered by the Fair Housing Act?

A. Yes. Condominiums in covered multifamily dwellings are covered by the Fair Housing Act. The Fair Housing Act makes no distinctions based on ownership.

(b) Q. If a condominium is pre-sold as a shell and the interior is designed and constructed by the buyer, are the Guidelines applicable?

A. Yes. The Fair Housing Act applies to design and construction of covered multifamily dwellings, regardless of whether the person doing the design and construction is an architect, builder, or private individual. (*See* discussion of condominiums in the preamble to Guidelines under "Section 2—Definitions [Dwelling Units]" at 56 FR 9481, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)

4. Additions

(a) Q. If an owner adds four or more dwelling units to an existing building, are those units covered by the Fair Housing Act?

A. Yes, provided that the units constitute a new addition to the building and not substantial rehabilitation of existing units.

(b) Q. What if new public and common use spaces are also being added?

A. If new public and common use areas or buildings are also added, they are required to be accessible.

(c) Q. If the only new construction is an addition consisting of four or more dwelling units, would the existing public and common use spaces have to be made accessible?

A. No, existing public and common use areas would not have to be made accessible. The Fair Housing Act applies to *new construction* of covered multifamily dwellings. (*See* section 804(f)(3)(C)(i) of the Act.) Existing public and common use facilities are not newly constructed portions of covered multifamily dwellings. However, reasonable modifications to the existing public and common use areas to provide access would have to be allowed, and the Americans with Disabilities Act (ADA) may apply to certain public and common use areas. An independent determination should be made regarding applicability of the ADA. (*See* the introduction to these questions and answers, which provides some background on the ADA.)

5. Units Over Parking

(a) Q. Plans for a three-story building consist of a common parking area with assigned stalls on grade as the first story, and two stories of single-story dwelling units stacked over the parking. All of the stories above the parking level are to be accessed by stairways. There are no elevators planned to be in the building. Would the first story of single-story dwelling units over the parking level be required to be accessible?

A. Yes. The Guidelines adopt and amplify the definition of "ground floor" found in HUD's regulation implementing the Fair Housing Act (*see* 24 CFR 100.201) to indicate that "* * * where the first floor containing dwelling units is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor." (*See* definition of "ground floor" in the Guidelines at 24 CFR Ch. I, Subch. A, App. II, Section 2.) Where no dwelling units in a covered multifamily dwelling are located on grade, the first floor with dwelling units will be considered to be a ground floor, and must be served by a building entrance on an accessible route. However, the definition of "ground floor" does not require that there be more than one ground floor.

(b) Q. If a building design contains a mix of single-story flats on grade and single-story flats located above grade over a public parking area, do the flats over the parking area have to be accessible?

A. No. In the example in the above question, because some single-story flats are situated on grade, these flats would be the ground floor dwelling units and would be required to be accessible. The definition of ground floor in the Guidelines states, in part, that "ground floor means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors * * *." Thus, the definition includes situations where the design plan is such that more than one floor of a building may be accessed by means of an accessible route (for an example, see Question 6, which follows). There is no requirement in the Department's regulations implementing the Fair Housing Act that there be more than one ground floor.

6. More Than One Ground Floor

Q. If a two or three story building is to be constructed on a slope, such that the lowest story can be accessed on grade on one side of the building and the second story can be accessed on grade on the other side of the building, do the dwelling units on both the first and second stories have to be made accessible?

A. Yes. By defining "ground floor" to be any floor of a building with an accessible entrance on an accessible route, the Fair Housing Act regulations recognize that certain buildings, based on the site and the design plan, have more than one story which can be accessed at or near grade. In such cases, if more than one story can be designed to have an accessible entrance on an accessible route, then all such stories should be so designed. Each story becomes a ground floor and the dwelling units on that story must meet the accessibility requirements of the Act. (*See* the discussion on this issue in Question 12 of this document.)

7. Continuing Care Facilities

Q. Do the new construction requirements of the Fair Housing Act apply to continuing care facilities which incorporate housing, health care and other types of services?

A. The new construction requirements of the Fair Housing Act would apply to continuing care facilities if the facility includes at least one building with four or more dwelling units. Whether a facility is a "dwelling" under the Act depends on whether the facility is to be used as a residence for more than a brief period of time. As a result, the operation of each continuing care facility must be examined on a case-by-case basis to determine whether it contains dwellings. Factors that the Department will consider in making such an examination include, but are not limited to: (1) the length of time persons stay in the project; (2) whether policies are in effect at the project that are designed and intended to encourage or discourage occupants from forming an expectation and intent to continue to occupy space at the project; and (3) the nature of the services provided by or at the project.

8. Evidence of First Occupancy

Q. The Fair Housing Act applies to covered multifamily dwellings built for first occupancy after March 13, 1991. What is acceptable evidence of "first occupancy"?

A. The determination of first occupancy is made on a building by building basis. The Fair Housing Act

regulations provide that "covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991 (and therefore exempt from the Act's accessibility requirements) if they are occupied by that date or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, county or local government on or before June 15, 1990."

For buildings that did not obtain the final building permit on or before June 15, 1990, proof of the date of first occupancy consists of (1) a certificate of occupancy, and (2) a showing that at least one dwelling unit in the building actually was occupied by March 13, 1991. For example, a tenant has signed a lease and has taken possession of a unit. The tenant need not have moved into the unit, but the tenant must have taken possession so that, if desired, he or she could have moved into the building by March 13, 1991. For dwelling units that were for sale, this means that the new owner had completed settlement and taken possession of the dwelling unit by March 13, 1991. Once again, the new owner need not have moved in, but the owner must have been in possession of the unit and able to move in, if desired, on or before March 13, 1991. A certificate of occupancy alone would not be an acceptable means of establishing first occupancy, and units offered for sale, but not sold, would not meet the test for first occupancy.

9. Converted Buildings

Q. If a building was used previously for a nonresidential purpose, such as a warehouse, office building, or school, and is being converted to a multifamily dwelling, must the building meet the requirements of the Fair Housing Act?

A. No, the Fair Housing Act applies to "covered multifamily dwellings for first occupancy after" March 13, 1991, and the Fair Housing Act regulation defines "first occupancy" as "a building that has never before been used for any purpose." (*See* 24 CFR 100.201, for the definition of "first occupancy," and also 24 CFR Ch. I, Subch. A, App. I.)

Section 2: Accessibility Guidelines

The issues addressed in this section concern the technical specifications set forth in the Fair Housing Accessibility Guidelines.

Requirement 1—Accessible Entrance on an Accessible Route

10. Accessible Routes to Garages

(a) Q. Is it necessary to have an accessible path of travel from a subterranean garage to single-story covered multifamily dwellings built on top of the garage?

A. Yes. The Fair Housing Act requires that there be an accessible building entrance on an accessible route. To satisfy Requirement 1 of the Guidelines, there would have to be an accessible route leading to grade level entrances serving the single-story dwelling units from a public street or sidewalk or other pedestrian arrival point. The below grade parking garage is a public and common use facility. Therefore, there must also be an accessible route from this parking area to the covered dwelling units. This may be provided either by a properly sloped ramp leading from the below grade parking to grade level, or by means of an elevator from the parking garage to the dwelling units.

(b) Q. Does the route leading from inside a private attached garage to the dwelling unit have to be accessible?

A. No. Under Requirement 1 of the Guidelines, there must be an accessible entrance to the dwelling unit on an accessible route. However, this route and entrance need not originate inside the garage. Most units with attached garages have a separate main entry, and this would be the entrance required to be accessible. Thus, if there were one or two steps inside the garage leading into the unit, there would be no requirement to put a ramp in place of the steps. However, the door connecting the garage and dwelling unit would have to meet the requirements for usable doors.

11. Site Impracticality Tests

(a) Q. Under the individual building test, how is the second step of the test performed, which involves measuring the slope of the finished grade between the entrance and applicable arrival points?

A. The slope is measured at ground level from the entrance to the top of the pavement of all vehicular and pedestrian arrival points within 50 feet of the planned entrance, or, if there are none within 50 feet, the vehicular or pedestrian arrival point closest to the planned entrance.

(b) Q. Under the individual building test, at what point of the planned entrance is the measurement taken?

A. On a horizontal plane, the center of each individual doorway should be the point of measurement when measuring to an arrival point, whether the doorway is an entrance door to the building or an entrance door to a unit.

(c) Q. The site analysis test calls for a calculation of the percentage of the buildable areas having slopes of less than 10 percent. What is the definition of "buildable areas"?

A. The "buildable area" is any area of the lot or site where a building can be located in compliance with applicable codes and zoning regulations.

12. Second Ground Floors

(a) Q. The Department's regulation for the Fair Housing Act provides that there can be more than one ground floor in a covered multifamily dwelling (such as a three-story building built on a slope with three stories at and above grade in front and two stories at grade in back). How is the individual building test performed for additional stories, to determine if those stories must also be treated as "ground floors"?

A. For purposes of determining whether a non-elevator building has more than one ground floor, the point of measurement for additional ground floors, after the first ground floor has been established, is at the center of the entrance (building entrance for buildings with one or more common entrance and each dwelling unit entrance for buildings with separate ground floor unit entrances) at floor level for that story.

(b) Q. What happens if a builder deliberately manipulates the grade so that a second story, which also might have been treated as a ground floor, requires steps?

A. Deliberate manipulation of the height of the finished floor level to avoid the requirements of the Fair Housing Act would serve as a basis for the Department to determine that there is reasonable cause to believe that a discriminatory housing practice has occurred.

Requirement 2—Public and Common Use Areas

13. No Covered Dwellings

Q. Are the public and common use areas of a newly constructed development that consists entirely of buildings having four or more multistory townhouses, with no elevators, required to be accessible?

A. No. The Fair Housing Act applies only to new construction of covered multifamily dwellings. Multistory townhouses, provided that they meet the definition of "multistory" in the Guidelines, are not covered multifamily dwellings if the building does not have an elevator. (*See* discussion of townhouses in the preamble to the Guidelines under "Section 2—Definitions [Covered Multifamily Dwellings]" at 56 FR 9481, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.) If there are no covered multifamily

dwellings on a site, then the public and common use areas of the site are not required to be accessible. However, the Americans with Disabilities Act (ADA) may apply to certain public and common use areas. Again, an independent determination should be made regarding applicability of the ADA. (*See* the introduction to these questions and answers, which provides some background on the ADA.)

14. Parking Spaces and Garages

(a) Q. How many resident parking spaces must be made accessible at the time of construction?

A. The Guidelines provide that a minimum of two percent of the parking spaces serving covered dwelling units be made accessible and located on an accessible route to wheelchair users. Also, if a resident requests an accessible space, additional accessible parking spaces would be necessary if the two percent are already reserved.

(b) Q. If both open and covered parking spaces are provided, how many of each type must be accessible?

A. The Guidelines require that accessible parking be provided for residents with disabilities on the same terms and with the full range of choices, *e.g.*, surface parking or garage, that are provided for other residents of the project. Thus, if a project provides different types of parking such as surface parking, garage, or covered spaces, some of each must be made accessible. While the total parking spaces required to be accessible is only two percent, at least one space for each type of parking should be made accessible even if this number exceeds two percent.

(c) Q. If a project having covered multifamily dwellings provides parking garages where there are several individual garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, are there any requirements for the inside dimensions of these individual parking garages?

A. Yes. These garages would be public and common use space, even though the individual garages may be assigned to a particular dwelling unit. Therefore, at least two percent of the garages should be at least 14′ 2″ wide and the vehicular door should be at least 10′–0″ wide.

(d) Q. If a covered multifamily dwelling has a below grade common use parking garage, is there a requirement for a vertical clearance to allow vans to park?

A. This issue was addressed in the preamble to the Guidelines, but continues to be a frequently asked question. (*See* the preamble to the Guidelines under the discussion of "Section 5—Guidelines for Requirement 2" at 56 FR 9486, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.) In response to comments from the public that the Guidelines for parking specify minimum vertical clearance for garage parking, the Department responded:

> No national accessibility standards, including UFAS, require particular vertical clearances in parking garages. The Department did not consider it appropriate to exceed commonly accepted standards by including a minimum vertical clearance in the Fair Housing Accessibility Guidelines, in view of the minimal accessibility requirements of the Fair Housing Act.

Since the Guidelines refer to ANSI A117.1 1986 for the standards to follow for public and common use areas, and since the ANSI does not include a vertical clearance for garage parking, the Guidelines likewise do not. (Note: UFAS is the Uniform Federal Accessibility Standard.)

15. Public Telephones

Q. If a covered multifamily dwelling has public telephones in the lobby, what are the requirements for accessibility for these telephones?

A. The requirements governing public telephones are found in Item #14, "Common use spaces and facilities," in the chart under Requirement 2 of the Guidelines. While the chart does not address the quantity of accessible public telephones, at a minimum, at least one accessible telephone per bank of telephones would be required. The specifications at ANSI 4.29 would apply.

Requirement 3—Usable Doors

16. Required Width

Q. Will a standard hung 32-inch door provide sufficient clear width to meet the requirements of the Fair Housing Act?

A. No, a 32-inch door would not provide a sufficient clear opening to meet the requirement for usable doors. A notation in the Guidelines for Requirement 3 indicates that a 34-inch door, hung in the standard manner, provides an acceptable nominal 32-inch clear opening.

17. Maneuvering Clearances and Hardware

Q. Is it correct that only the exterior side of the main entry door of covered multifamily dwellings must meet the ANSI requirements?

A. Yes. The exterior side of the main entry door is part of the public and common use areas and therefore must meet ANSI A117.1 1986 specifications for doors. These specifications include necessary maneuvering clearances and accessible door hardware. The interior of the main entry door is part of the dwelling unit and only needs to meet the requirements for usable doors within the dwelling intended for user passage, i.e., at least 32 inches nominal clear width, with no requirements for maneuvering clearances and hardware. (*See* 56 FR 9487–9488, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)

18. Doors to Inaccessible Areas

Q. Is it necessary to provide usable doors when the door leads to an area of the dwelling that is not accessible, such as the door leading down to an unfinished basement, or the door connecting a single-story dwelling with an attached garage? (In the latter case, there is a separate entrance door to the unit which is accessible.)

A. Yes. Within the dwelling unit, doors intended for user passage through the unit must meet the requirements for usable doors. Such doors would have to provide at least 32 inches nominal clear width when the door is open 90 degrees, measured between the face of the door and the stop. This will ensure that, if a wheelchair user occupying the dwelling unit chooses to modify the unit to provide accessibility to these areas, such as installing a ramp from the dwelling unit into the garage, the door will be sufficiently wide to allow passage. It also will allow passage for people using walkers or crutches.

Requirement 4—Accessible Route Into and Through the Unit

19. Sliding Door

Q. If a sliding door track has a threshold of ¾″, does this trigger requirements for ramps?

A. No. The Guidelines at Requirement 4 provide that thresholds at doors, including sliding door tracks, may be no higher than ¾″ and must be beveled with a slope no greater than 1:2.

20. Private Attached Garages

(a) Q. If a covered multifamily dwelling has an individual, private garage which is attached to and serves only that dwelling, does the garage have to be accessible in terms of width and length?

A. Garages attached to and which serve only one covered multifamily dwelling are part of that dwelling unit, and are not covered by Requirement 2 of the Guidelines, which addresses accessible and usable public and common use space. Because such individual garages attached to and serving only one covered multifamily

dwelling typically are not finished living space, the garage is not required to be accessible in terms of width or length. The answer to this question should be distinguished from the answer to Question 14(c). Question 14(c) addresses parking garages where there are several garages or stalls located together, either in a separate, detached building, or in a central area of the building, such as at one end. These types of garages are not attached to, and do not serve, only one unit and are therefore considered public and common use garages.

21. Split-Level Entry

Q. Is a dwelling unit that has a split entry foyer, with the foyer and living room on an accessible route and the remainder of the unit down two steps, required to be accessible if it is a ground floor unit in a covered multifamily dwelling?

A. Yes. Under Requirement 4, there must be an accessible route into and through the dwelling unit. This would preclude a split level foyer, unless a properly sloped ramp can be provided.

Requirement 5—Environmental Controls

22. Range Hood Fans

Q. Must the switches on range hood kitchen ventilation fans be in accessible locations?

A. No. Kitchen ventilation fans located on a range hood are considered to be part of the appliance. The Fair Housing Act has no requirements for appliances in the interiors of dwelling units, or the switches that operate them. (See "Guidelines for Requirement 5" and "Controls for Ranges and Cooktops" at 56 FR 9490 and 9492, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)

Requirement 6—Reinforced Walls for Grab Bars

23. Type of Reinforcement

Q. What type of reinforcement should be used to reinforce bathroom walls for the later installation of grab bars?

A. The Guidelines do not prescribe the type of material to use or method of providing reinforcement for bathroom walls. The Guidelines recognize that grab bar reinforcing may be accomplished in a variety of ways, such as by providing plywood panels in the areas illustrated in the Guidelines under Requirement 6, or by installing vertical reinforcement in the form of double studs at the points noted on the figures in the Guidelines. The builder/owners should maintain records that reflect the placement of the reinforcing material, for later reference by a resident who wishes to install a grab bar.

24. Type of Grab Bar

Q. What types of grab bars should the reinforcement be designed to accommodate and what types may be used if the builder elects to install grab bars in some units at the time of construction?

A. The Guidelines do not prescribe the type of product for grab bars, or the structural strength for grab bars. The Guidelines only state that the necessary reinforcement must be placed "so as to permit later installation of *appropriate* grab bars." (Emphasis added.) In determining what is an appropriate grab bar, builders are encouraged to look to the 1986 ANSI A117.1 standard, the standard cited in the Fair Housing Act. Builders also may follow State or local standards in planning for or selecting appropriate grab bars.

Requirement 7—Usable Kitchens and Bathrooms

25. Counters and Vanities

Q. It appears from Figure 2(c) of the Guidelines (under Requirement 5) that there is a 34 inch height requirement for kitchen counters and vanities. Is this true?

A. No. Requirement 7 addresses the requirement for usable kitchens and bathrooms so that a person in a wheelchair can maneuver about the space. The legislative history of the Fair Housing Act makes it clear that the Congress intended that the Act affect ability to maneuver within the space of the kitchen and bathroom, but not to require fixtures, cabinetry or plumbing of adjustable design. Figure 2(c) of the Guidelines is illustrating the maximum side reach range over an obstruction. Because the picture was taken directly from the ANSI A117.1 1986 standard, the diagram also shows the height of the obstruction, which, in this picture, is a countertop. This 34 inch height, however, should not be regarded as a requirement.

26. Showers

Q. Is a parallel approach required at the shower, as shown in Figure 7(d) of the Guidelines?

A. Yes. For a 36" x 36" shower, as shown in Figure 7(d), a person in a wheelchair would typically add a wall hung seat. Thus the parallel approach as shown in Figure 7(d) is essential in order to be able to transfer from the wheelchair to the shower seat.

27. Tub Controls

Q. Do the Guidelines set any requirements for the type or location of bathtub controls?

A. No, except where the specifications in Requirement 7(2)(b) are used. In that case, while the type of control is not specified, the control must be located as shown in Figure 8 of the Guidelines.

28. Paragraph (b) Bathrooms

Q. If an architect or builder chooses to follow the bathroom specifications in Requirement 7, Guideline 2, paragraph (b), where at least one bathroom is designed to comply with the provisions of paragraph (b), are the other bathrooms in the dwelling unit required to have reinforced walls for grab bars?

A. Yes. Requirement 6 of the Guidelines requires reinforced walls in bathrooms for later installation of grab bars. Even though Requirement 6 was not repeated under Requirement 7—Guideline 2, it is a separate requirement which must be met in all bathrooms. The same would be true for other Requirements in the Guidelines, such as Requirement 5, which applies to usable light switches, electrical outlets, thermostats and other environmental controls; Requirement 4 for accessible route; and Requirement 3 for usable doors.

29. Bathroom Clear Floor Space

Q. Is it acceptable to design a bathroom with an in-swinging 2'10" door which can be retrofitted to swing out in order to provide the necessary clear floor space in the bathroom?

A. No. The requirements in the Guidelines must be included at the time of construction. Thus, for a bathroom, there must be sufficient maneuvering space and clear floor space so that a person using a wheelchair or other mobility aid can enter and close the door, use the fixtures and exit.

30. Lavatories

Q. Would it be acceptable to use removable base cabinets beneath a wall-hung lavatory where a parallel approach is not possible?

A. Yes. The space under and around the cabinet should be finished prior to installation. For example, the tile or other floor finish must extend under the removable base cabinet.

31. Wing Walls

Q. Can a water closet (toilet) be located in an alcove with a wing wall?

A. Yes, as long as the necessary clear floor space shown in Figure 7(a) is provided. This would mean that the wing wall could not extend beyond the front edge of a lavatory located on the other side of the wall from the water closet.

32. Penalties

Q. What types of penalties or monetary damages will be assessed if covered multifamily dwellings are found not to be in compliance with the Fair Housing Act?

A. Under the Fair Housing Act, if an administrative law judge finds that a respondent has engaged in or is about to engage in a discriminatory housing practice, the administrative law judge will order appropriate relief. Such relief may include actual and compensatory damages, injunctive or other equitable relief, attorney's fees and costs, and may also include civil penalties ranging from $10,000 for the first offense to $50,000 for repeated offenses. In addition, in the case of buildings which have been completed, structural changes could be ordered, and an escrow fund might be required to finance future changes.

Further, a Federal district court judge can order similar relief plus punitive damages as well as civil penalties for up to $100,000 in an action brought by a private individual or by the U.S. Department of Justice.

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