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DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840-AD17

[Docket ID ED-2014-OPE-0082]

William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program. These regulations strengthen and improve administration of the Federal Direct PLUS Loan Program authorized under title IV of the Higher Education Act of 1965, as amended (HEA).

DATES: These regulations are effective July 1, 2015.

Implementation date: For the implementation date, see the Implementation Date of These Regulations section of this document.

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SUPPLEMENTARY INFORMATION:

Executive Summary:

Purpose of This Regulatory Action: We are amending §685.200 of title 34 of the Code of Federal Regulations (CFR) to update the standard for determining if a potential parent or student borrower has an adverse credit history for purposes of eligibility for a Direct PLUS Loan (PLUS loan). Specifically, the final regulations will revise the definition of "adverse credit history" and require that parents and students who have an adverse credit history but who are approved for a PLUS loan on the basis that extenuating circumstances exist or who obtain an endorser for the PLUS loan must receive loan counseling before receiving the loan. The current regulations governing adverse credit history determinations have not been updated since the Direct Loan Program was established in 1994. The final regulations will reflect programmatic and economic changes that have occurred since 1994.

Summary of the Major Provisions of This Regulatory Action: These final regulations will--

- Revise the student PLUS loan borrower eligibility criteria to state more clearly that the PLUS loan adverse credit history requirements apply to student, as well as parent, PLUS loan borrowers.

- Add definitions of the terms "charged off" and "in collection" for purposes of determining whether an applicant for a PLUS loan has an adverse credit history.

- Specify that a PLUS loan applicant has an adverse credit history if the applicant has one or more debts with a total combined outstanding balance greater than \$2,085 that are 90 or more days delinquent as of the date of the credit report, or that have been placed in collection or charged off during the two years preceding the date of the credit report.

- Provide that the combined outstanding balance threshold of \$2,085 will be increased over time based on the rate of inflation, as measured by the Consumer Price Index for All Urban Consumers (CPI-U).

- Revise the provision that specifies the types of documentation the Secretary may accept as a basis for determining that extenuating circumstances exist for a PLUS loan applicant who is determined to have an adverse credit history.

- Specify that an applicant for a PLUS loan who is determined to have an adverse credit history, but who obtains an endorser, must complete PLUS loan counseling offered by the Secretary before receiving a PLUS loan.

- Specify that an applicant for a PLUS loan who is determined to have an adverse credit history, but who documents to the Secretary's satisfaction that extenuating circumstances exist, must complete PLUS loan counseling offered by the Secretary before receiving the PLUS loan.

Costs and Benefits: As further detailed in the Regulatory Impact Analysis section of this document, the final regulations will affect applicants for parent and student PLUS loans by modifying the standard for a determination of an adverse credit history. In particular, a student or parent will be considered to have an adverse credit history if the student or parent has one or more debts with a combined outstanding balance greater than \$2,085 that are 90 or more days delinquent as of the date of the credit report, or that have been placed in collection or charged off during the two years preceding the date of the credit report.

The final regulations will also require that an applicant for a PLUS loan who is determined to have an adverse credit history but who documents to the

satisfaction of the Secretary that extenuating circumstances exist or who obtains an endorser must complete PLUS loan counseling offered by the Secretary prior to receiving the loan.

In November 2011, the Department modified its procedures relating to adverse credit history determinations to be consistent with the regulations. This modification resulted in an increase in the number of PLUS loan applicants who were determined to have an adverse credit history. The Department expects that the final regulations will increase the number of PLUS loan applicants who pass the adverse credit history check. We estimate an increase of approximately 370,000 PLUS loan applicants who will pass the adverse credit history check under the final regulations. As a result of the changes in these final regulations, these applicants will not need to apply for reconsideration of an initial PLUS loan denial due to an adverse credit history, saving them time and effort.

Additionally, because the final regulations strike a balance between increased availability of PLUS loan funds to improve student access to postsecondary education and helping to limit overborrowing through improved financial

literacy, we believe that there will be benefits for both borrowers and the Department.

On August 8, 2014, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the Federal Register (79 FR 46640).¹ The final regulations contain changes from the NPRM, which are fully explained in the Analysis of Comments and Changes section of this document.

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

Consistent with the Department's objective to improve the loan application process for Direct PLUS loan borrowers, the Secretary is exercising his authority under section 482(c) to implement the new and amended regulations included in this document as soon as possible after the publication date of these final regulations. We will

¹ The NPRM is available at www.gpo.gov/fdsys/pkg/FR-2014-08-08/pdf/2014-18673.pdf.

publish a separate Federal Register notice to announce when we are ready to implement these regulations.

Public Comment: In response to our invitation in the NPRM, 310 parties submitted comments on the proposed regulations. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address technical or other minor changes.

Analysis of Comments and Changes:

An analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

General

Comments: The majority of commenters expressed strong support for the proposed regulations. One commenter described the proposed regulations as an important step in making PLUS loans work better for students.

Several commenters urged the Department to launch an aggressive awareness and outreach campaign so that parents and students are made aware of the changes to the PLUS loan eligibility requirements.

A small number of commenters objected to the proposed regulations. One commenter expressed disappointment that,

in the commenter's view, only small changes were made to the regulatory definition of "adverse credit history." This commenter felt that the revisions to the definition would make no difference for low-income families who may take on more debt than they can afford when borrowing PLUS loans.

We also received comments recommending additional changes to the PLUS loan regulations. One commenter recommended allowing parent borrowers to repay PLUS loans using the Income Based Repayment (IBR) plan. Another commenter recommended that we include "aggressive" loan forgiveness policies for PLUS loans. A commenter recommended that parent PLUS loans and graduate and professional student PLUS loans be separated into two different lending programs. One commenter recommended that parent PLUS loan borrowers not be allowed to borrow more for all their children than they can afford to repay in ten years, or by time the parent retires, whichever comes first.

Discussion: We appreciate the support from the overwhelming majority of commenters.

We disagree that the changes to the adverse credit history requirements are minor and will have little impact. We believe these changes will have a significant impact in

providing low-income students with access to higher education and will make the financial aid process more transparent for students and their parents. In our view, the enthusiastic support for these regulations evidenced in comments submitted by students, alumni and employees of institutions of higher education, and by organizations representing students and institutions of higher education bolster that belief.

While we share the commenters' concerns about the ability of low-income students and parents who borrow PLUS loans to repay their loans, we disagree that these regulations will put low-income borrowers at risk. We believe that the enhanced consumer information that the Department will provide, which will include voluntary PLUS loan counseling for all student and parent PLUS borrowers, and the mandatory PLUS loan counseling for certain borrowers will help students and parents to understand the obligations associated with borrowing a PLUS loan and assist them in making careful decisions about taking on student loan debt.

The recommendations relating to IBR, loan forgiveness, creating two separate PLUS loan programs, and limiting the amount parent PLUS borrowers may borrow would require statutory changes.

Changes: None.

Implementation

Comments: Several commenters requested that we implement these final regulations early, by making them effective no later than January 1, 2015. One commenter noted that the procedural modifications to the process for determining whether a borrower has an adverse credit history have been in effect for three years. This commenter stated that there is a critical need to restore access to PLUS loans for low-income borrowers who do not meet the current adverse credit history standards.

Discussion: We agree that it would be beneficial to student and parent borrowers for these final regulations to be implemented as soon as possible. As stated in the Implementation Date of These Regulations section of this document, the Department has designated these final regulations for early implementation. The Department will implement these regulations as soon as possible after the publication date. The Department will work with schools to inform parents and students of the changes to the PLUS loan adverse credit history standards and will publish a separate Federal Register notice announcing the implementation date.

Student PLUS Borrower (34 CFR 685.200(b))

Comments: One commenter agreed that the adverse credit history requirements should apply to both student and parent PLUS loan applicants. This commenter also stated that a parent's adverse credit history should not prevent an eligible student from obtaining a PLUS loan.

Another commenter recommended that the Department develop separate definitions of "adverse credit history" for student PLUS loan applicants and parent PLUS loan applicants. The commenter argued that the typical borrowing profiles of parents and of graduate and professional students are quite different, and believed that different definitions of "adverse credit history" would allow variations in the credit approval process tailored to each type of borrower.

Discussion: We appreciate the support of the commenter who agreed that the adverse credit history requirements should apply to both parent and graduate and professional student borrowers. These final regulations will state more clearly that the same requirement applies to all PLUS loan borrowers. We also note that a parent's credit history does not affect a student PLUS loan applicant's eligibility for a PLUS loan, nor does the dependent student's credit history affect the parent's PLUS loan eligibility.

We disagree with the commenter who recommended separate definitions of "adverse credit history" for parent and graduate and professional student borrowers. As noted in the NPRM, the HEA authorizes a single PLUS loan program and limits borrowing to graduate and professional students or parents who do not have an adverse credit history, as determined pursuant to regulations promulgated by the Secretary. This requirement applies equally to student and parent borrowers. The HEA does not support different definitions of "adverse credit history" for student PLUS loan applicants and parent PLUS loan applicants.

Changes: None.

Parent PLUS Borrower: Definitions (34 CFR 685.200(c)(1))

Comments: Two commenters recommended alternative definitions for the terms "charged off" and "in collection." One of these commenters believed these definitions should be consistent with definitions found on the Investopedia Web site. Another commenter recommended that the 90-day delinquent standard be incorporated into the definitions of "in collection" and "charged off." This commenter interpreted the proposed regulations to provide that debts in an "in collection" or "charged off" status for less than 90 days would not be considered to represent an adverse credit history. This commenter also recommended

incorporating language into the definitions stating that a debt would not be considered to be "in collection" or "charged off" unless an appropriate administrative or judicial body had determined that the debt was 90-days delinquent.

Discussion: While we appreciate the commenter's suggestion that the Department adopt the definitions of "charged off" and "in collection" from Investopedia, using commonly understood definitions that are used in the collections industry will provide greater clarity and transparency in the PLUS loan application process. We do not agree with the suggestion that we incorporate language into the definitions stating that an appropriate administrative or judicial body would have to determine that a debt was 90 days delinquent before the debt is considered "charged off" or "in collection." It is unlikely that a creditor would incur the cost of putting a debt in collection, or would charge off a debt and stop collecting on it altogether, before the debt is at least 90 days delinquent. This is why we proposed the 90-day delinquency standard as separate from the "charged off" or "in collection" standards. Further, it is impractical, burdensome, and unnecessary to require an administrative or judicial body to determine that a debt is 90 days delinquent before it is appropriate

to consider the delinquency as demonstrating an adverse credit history.

Changes: None.

Parent PLUS Borrower: Adverse Credit History (34 CFR 685.200(c)(2))

Comments: A few commenters recommended that the PLUS adverse credit history regulations take into consideration an applicant's ability to repay the PLUS loan. These commenters argued that parent eligibility under the adverse credit history criteria should include some measure of likely ability to repay the loan based on the applicant's current financial circumstances. These commenters recommended including factors such as debt-to-income ratios, minimum income requirements, credit scores, or debt-service-to-income ratios in the definition of "adverse credit history." One commenter recommended revising the PLUS loan eligibility criteria to prevent borrowing by parents whose income is below the poverty line.

These commenters stated that they did not agree with our position that consideration of a borrower's ability to repay would require an amendment to the HEA. These commenters offered several rationales to support their position.

One commenter recommended expanding the definition of adverse credit history to include those without a credit history. This commenter asked if lack of a credit history could be considered an indicator of a borrower's willingness or ability to repay a loan.

Another commenter recommended that any changes to the adverse credit history standards that would restrict PLUS loan access be implemented for new borrowers only, so as not to affect currently enrolled students who rely on PLUS loans to assist in financing their education.

Discussion: As noted in the NPRM, adverse credit history is a measure of an individual's history of repaying existing debt. It does not measure whether the individual will have the financial ability in the future to repay a specific debt; but whether the individual has paid debt in the past. As such, the commenters' recommendations to include measures of creditworthiness in determining whether an applicant has an adverse credit history are not supported by section 428B(a)(1)(A) of the HEA, which provides that an applicant is not eligible to borrow a PLUS loan if the applicant has an adverse credit history. Lack of a credit history is not an indicator that a borrower was unable or unwilling to repay a prior debt. Therefore, we

do not consider lack of a credit history to be an indicator of an adverse credit history.

These final regulations will increase the number of applicants who qualify for PLUS loans based on the initial credit check and consequently decrease the total number of applicants who are approved through the extenuating circumstances process. We do not anticipate that the changes to the adverse credit history standards in these regulations will restrict access to PLUS loans for borrowers who are currently eligible for PLUS loans. Therefore, we do not see the need to limit the applicability of these final regulations to new borrowers.

Changes: None.

Component 1--Outstanding Balance Greater than \$2,085

Comments: Many commenters supported the provision that would use the threshold amount of \$2,085 in debts that are 90 or more days delinquent for determining whether the applicant has an adverse credit history. However, some commenters objected to the \$2,085 amount as either too low or too high.

Two commenters recommended that the threshold amount be increased to \$5,000. However, one commenter argued that the \$2,085 threshold amount was too high and noted that this amount could lead to a determination that an applicant

who has debts significant enough to warrant ongoing collection attempts and lawsuits does not have an adverse credit history for purposes of the PLUS loan program. This commenter recommended reducing the threshold amount to \$1,000.

Another commenter asserted that there is no evidence to suggest that granting unlimited credit to applicants with \$2,085 of delinquent debt will not harm borrowers and taxpayers.

Several commenters recommended that in determining whether an applicant has an adverse credit history, we should exclude debt that is not correlated with credit risk from consideration. Several commenters cited medical debt as an example of debt that does not affect the likelihood that a consumer will repay other debt. Commenters also recommended that delinquencies on debts relating to accidents, illness, or unemployment in the immediately preceding two years be disregarded. One commenter suggested that the Department disregard car loans under \$7,000.

Discussion: We believe that the \$2,085 threshold amount is the appropriate amount to use in determining whether a PLUS loan applicant has an adverse credit history. As explained in the NPRM, we arrived at the amount of \$2,085 by

calculating the estimated median debt level for the purposes of documenting extenuating circumstances for all debts with a status of in collection, charged off, or 90 or more days delinquent, for all parent PLUS loan denials resulting from all credit checks conducted between the spring of 2012 and the spring of 2013. In these regulations, we use the \$2,085 threshold as a standard for the determination of an adverse credit history, rather than as part of the process for documenting extenuating circumstances to reduce the burden on borrowers. Lastly, the Department already provides special consideration for medical debt or delinquencies relating to accidents, illness, or unemployment when determining whether an applicant has an adverse credit history. Under §685.200(c)(2)(viii)(D), the Secretary may consider the type of debt when deciding that extenuating circumstances exist with regard to an adverse credit history determination. However, we do not believe there is a justification for treating a delinquency on a car loan differently than other consumer debt which does not relate to accidents, illness or unemployment.

Changes: None.

Component 2--Adjustment Over Time

Comments: Several commenters strongly supported the provision in the proposed regulations that would provide for the Department to adjust the \$2,085 threshold amount over time. Most commenters recommended using the Consumer Price Index for All Urban Consumers (CPI-U) as the basis for indexing the threshold amount. One commenter pointed out that CPI-U is the most commonly used measure of inflation. Another commenter noted that using CPI-U would be consistent with inflation measures used in other Federal programs such as the Social Security Administration's Old-Age, Survivors, and Disability Insurance (OASDI) program. The commenter stated that as the CPI rises, what is considered as "negligible debt" should also rise.

Another commenter suggested that we utilize the same methodology we used to calculate the initial \$2,085 threshold amount to recalculate the threshold amount annually. The commenter argued that the threshold amount is a function of total consumer debt and overall economic conditions and that it is not affected by inflation. The commenter noted that during the time period measured to arrive at the \$2,085 threshold amount, consumers had just gone through a period of easy credit followed by a recession, resulting in larger debt levels and more delinquencies. The commenter stated that, in future years,

the \$2,085 threshold amount may need to be reduced as debt levels and delinquencies decrease.

One commenter recommended that the Department not adjust the \$2,085 threshold amount. This commenter noted that the threshold amount is relatively high, and represents potentially significant financial trouble for an applicant. The commenter stated that the threshold amount should not be adjusted, to ensure that parents with substantial financial troubles do not overborrow. However, this commenter recommended that if the Department decides to adjust the threshold amount any future changes should be based on CPI, as a recognized measure of inflation. The commenter also recommended that we inform institutions and borrowers of the yearly adjustment when we announce the new Federal student loan interest rates.

One commenter recommended that the regulations require the Secretary to increase the threshold amount, rather than permit the Secretary to adjust the amount periodically. The commenter believed that a mandatory annual adjustment to the threshold amount would prevent the value of the threshold amount from eroding over time, and could have a significant impact in preventing future PLUS loan denials.

Several commenters recommended that there be no reduction in the threshold amount in years when the CPI-U is a negative number.

Discussion: We agree with the recommendation that we index the \$2,085 threshold to the Consumer Price Index (CPI-U). As the commenters noted, indexing the threshold amount to inflation will help ensure that it remains a meaningful limit to the amount of delinquent debt a PLUS loan applicant may have and still qualify for a PLUS loan.

We disagree with the recommendation that, instead of using the rate of inflation, we use the median debt levels for all debts with a status of in collection, charged off, or 90 or more days delinquent. Although this calculation of delinquent debt of PLUS borrowers was a factor used in determining the \$2,085 threshold amount, we do not believe that this methodology is appropriate for use for determining appropriate changes to the future threshold amount. As the commenter pointed out, debt levels and delinquencies may decrease in the future, meaning that we would have to either decrease or not adjust the threshold amount. Using the CPI-U index gives borrowers and schools transparency about the limit of debt that is not considered to reflect an "an adverse credit history".

Similarly, we disagree with the commenter who recommended that we not index the threshold amount. In our view, if the threshold amount is not indexed to inflation, over time it would erode the value of the threshold amount due to inflation.

We agree with the commenters that the CPI-U is an appropriate measure of inflation for indexing the threshold amount. The CPI-U is used by the Social Security Administration and other Federal programs and by private firms in collective bargaining agreements. A more detailed discussion of the widespread application of the CPI-U is provided in the Threshold Amount Indexed to Inflation section.

Although we agree with the commenters who suggested adjusting for inflation, we disagree with the recommendation that the threshold amount be adjusted annually. An annual adjustment for inflation may result in minimal changes to the threshold amount that could cause confusion for institutions and loan applicants. Therefore these final regulations provide for increasing the \$2,085 threshold amount periodically but only when the adjustment results in a significant change in the threshold amount. The Department will determine when the change in the CPI-U since the publication of these regulations or the most

recent adjustment would result in an increase of at least \$100. In addition, any inflation-adjusted increase to the threshold amount will be rounded upward to the nearest \$5.

Changes: We have added §685.200(c)(2)(viii)(C) and §685.200(c)(2)(viii)(D) to provide that the Secretary adjusts the \$2,085 threshold amount, or the most recent inflation-adjusted threshold amount, when the application of the percentage change in the CPI-U to the then current threshold amount results in an increase of \$100 or more. The provision also specifies that the Secretary will round up adjustments, when made, to the nearest \$5.

Component 3--Debts 90 or More Days Delinquent

Comments: One commenter recommended that an applicant with delinquent debts not be considered as having an adverse credit history unless 40 percent or more of the applicant's total accounts are an average of 120 days or more past due.

Discussion: Under the commenter's proposal, an unlimited amount of delinquent debt would not be considered to be an indicator of an adverse credit history, as long as the debt represented less than 40 percent of the applicant's total accounts. Such an open-ended standard would not be in the best interests of the PLUS loan program, or of potential PLUS loan borrowers.

Changes: None.

Component 4--In Collection or Charged Off

Comments: One commenter objected to us considering debts that have been charged off as an indicator of an adverse credit history. This commenter asserted a creditor may charge off a debt for many reasons that are not indicative of a borrower's ability to repay. The commenter asserted that it is common practice in some fields, such as the agriculture industry, to charge off debts when there are significant changes beyond the control of the lender or borrower, such as natural disasters or unforeseen and unanticipated changes in economic circumstances.

This commenter also asserted that, in other industries, creditors will refer debts that are not delinquent to a collection agency as a way of escalating collection efforts. As a result, the fact that a debt is in collection does not necessarily mean that the borrower is delinquent in payment or even that the borrower owes the amount in question. Rather, it is an expression of the lender's intent to move the collection efforts to the next level.

One commenter stated that the Department had not provided evidence to demonstrate that the consideration of debts in collection or charged off as reflecting an adverse credit history will reduce PLUS loan default rates. The

commenter argued that whether an applicant has accounts that are in collection or have been charged off does not provide insight into the applicant's likely repayment behavior. The commenter noted that the proposed regulatory changes may deny PLUS loans to borrowers who are capable of repaying the loans.

Several commenters expressed support for the proposal to change the period in which we consider debts in collection or charged off as reflecting an adverse credit history from the current five years to two years. One commenter suggested that two years is a reasonable time frame to demonstrate that borrowers are likely to be able to repay their loans. These commenters asserted that a longer look-back period might hamper parental access to PLUS loans due to the lingering effects of the recession. One commenter expressed the view that a one-year look-back period is not sufficient and that a five-year look-back period is not appropriate for PLUS loan applicants. This commenter stated that using a two-year look-back period, instead of a five-year look-back period, will limit the impact of unusual economic conditions.

One commenter recommended that the Department change the look-back period from two years to three years, because many States have a three-year statute of limitations on

debts for written contracts. The commenter recommended extending the look-back period to reflect these statutes of limitations and to ensure that PLUS borrowers with debt that is delinquent, charged off, or in collection, are able to either rehabilitate that debt or avoid costly lawsuits that may hinder their ability to repay a PLUS loan.

Another commenter noted that the statute of limitations on a written contract varies from State to State. According to this commenter, the average statute of limitations period in all States and the District of Columbia is just over six years. The shortest statute of limitations in any State is three years, and the most common statute of limitations is six years.

Another commenter who recommended setting the look-back period at three years noted that applicants with debts in collection or that have been charged off for two years could still be subject to aggressive collection practices, which may cause further financial distress to the borrower in the near future. This commenter stated that such applicants are not good candidates for automatic approval for a PLUS loan.

Discussion: While it may be true that a debt can be charged off for reasons other than the debtor's ability or willingness to repay, generally, if a creditor has written off a debt as a loss it is an indicator that the applicant

has had some difficulty repaying the amounts owed. If the reason for the charge off was something outside of the applicant's control, as suggested by the commenter, the applicant could document that reason during the extenuating circumstances process.

We are skeptical of the commenter's assertion that a creditor would refer a debt to a collection agency if a borrower is current on his or her payments. Referring a debt to a collection agency costs the creditor. Further, the commenter does not explain why a creditor would escalate collection efforts on a borrower who consistently makes on-time payments.

We also disagree that whether an applicant has accounts in collection or a charged off status does not provide insight into likely repayment behavior. The HEA requires us to determine whether an applicant has an adverse credit history and we believe that past repayment behavior is a necessary part of this required adverse credit history determination.

We thank the commenters for their support for a two-year look-back period. The Department reviewed other lenders' look-back periods (as discussed in the NPRM) and determined that the two year look-back period presents a more accurate sample of an applicant's recent credit

history than the longer periods recommended by a small number of commenters.

Changes: None.

Extenuating Circumstances (34 CFR

685.200(c)(2)(viii)(A)(3))

Comments: Commenters generally expressed support for adding a provision to require loan counseling for PLUS loan applicants who are determined to have an adverse credit history, but who qualify for a PLUS loan by demonstrating that extenuating circumstances exist. However, one commenter questioned the premise that loan counseling is helpful and reduces overborrowing. This commenter was not aware of any studies demonstrating that requiring additional counseling for parent borrowers has a positive effect on loan repayment. Another commenter echoed this statement, citing a report that questions the benefit of financial education programs.

One commenter recommended that, before requiring PLUS loan counseling, the Department conduct a comprehensive review of how such counseling would add value to the PLUS loan borrowing experience and how it would affect PLUS loan outcomes. This commenter recommended that the Department conduct focus groups to evaluate future PLUS loan counseling.

The proposed regulations would not have required PLUS loan counseling for a borrower with an adverse credit history who qualifies for a PLUS loan by obtaining an endorser. In the NPRM, the Department requested comment on whether an applicant who qualifies for a PLUS loan by obtaining an endorser who does not have an adverse credit history should be required to complete PLUS loan counseling. Several commenters expressed support for a counseling requirement for these applicants. One commenter noted that, although the applicant has an endorser, the applicant is still primarily responsible for repaying the loan. Another commenter stated that the change requiring counseling for these two groups would target some of the most vulnerable borrowers, and would help to ensure that they understand the terms and conditions of the PLUS loan.

Another commenter asserted that the Department should establish standards for documentation of extenuating circumstances. Examples of documentation that this commenter stated should be acceptable include income tax returns, bank statements or a documented lack of alternative financial support.

One commenter recommended that the extenuating circumstances that the Department would consider should be all-inclusive. The commenter stated that an applicant's

good faith effort to submit documentation of extenuating circumstances should be sufficient for the applicant to obtain the loan.

Another commenter contended that the new standards for PLUS loan eligibility should apply to endorsers as well as parent and student PLUS loan borrowers. This commenter pointed out that, while an applicant with an adverse credit history may still qualify for a PLUS loan if extenuating circumstances exist, an endorser does not have the opportunity to demonstrate extenuating circumstances.

Discussion: We believe that loan counseling is a helpful tool for all borrowers but especially borrowers who may have experienced difficulties in repaying debts in the past. The Department will make voluntary counseling materials available to all PLUS loan borrowers and endorsers but require counseling for borrowers who receive PLUS loans due to extenuating circumstances or by obtaining an endorser. The counseling will provide borrowers with information specific to PLUS loans and with information that can help them successfully manage debt. The mandatory counseling will include information on the borrowers' current loan indebtedness, provide estimated loan repayment amounts, describe ways to avoid delinquency and default and

provide additional financial aid literacy information. The voluntary counseling is discussed in the "Enhanced PLUS Borrower Consumer Information" section of this document. We will consider the suggestion to conduct consumer testing to evaluate PLUS loan counseling tools and materials.

We thank the commenters who responded to our request for comment on whether an applicant who qualifies for a PLUS loan by obtaining an endorser should be required to complete PLUS loan counseling. We agree with the commenters that these applicants, as well as applicants who qualify for PLUS loans based on extenuating circumstances, should be required to complete PLUS loan counseling.

We thank the commenter for recommendations on the types of documentation that the Secretary should accept to document extenuating circumstances. We agree that the types of documentation that the commenter described would be helpful in making extenuating circumstances determinations, but we do not believe it is necessary to include the examples in the regulations.

We disagree with the recommendation that extenuating circumstances be all inclusive. Under this proposal, a borrower with an adverse credit history could obtain a PLUS loan under the extenuating circumstances provisions for any

reason at all, regardless of whether the extenuating circumstance was truly justified.

We disagree with the recommendation that an individual with an adverse credit history be permitted to act as an endorser for a PLUS loan applicant if the endorser can demonstrate that extenuating circumstances exist. While the "adverse credit history" definition is the same for endorsers as it is for borrowers, we do not believe that it would provide sufficient protection for taxpayers to allow an applicant who has been determined to have an adverse credit history to qualify for the loan by obtaining an endorser who also has an adverse credit history.

Changes: We have revised §685.200(c)(2)(viii)(A)(2) to specify that an applicant with an adverse credit history and who has obtained an endorser must complete PLUS loan counseling offered by the Secretary to receive a PLUS loan.

Operational Issues

Extending the Validity of Credit Checks from 90 Days to 180 Days

In the NPRM, the Department announced its intention to modify its procedures so that a credit check indicating that a PLUS loan applicant does not have an adverse credit history will remain valid for 180 days, instead of the current 90 days.

With this change to the Department's procedures, any action that would normally trigger a credit check (for example, the submission of a Direct PLUS Loan Request or a PLUS loan origination record) will not do so if a prior credit check on the applicant that revealed no adverse credit issues was conducted within the past 180 days. We plan to implement this procedural change as soon as possible, and will inform schools in advance of the effective date of the change through an announcement on the Department's Information for Financial Aid Professionals Web site.

Comments: Several commenters expressed support for this increase in the length of the period during which a credit check is valid. One commenter encouraged the Department to continue to review this issue, with the goal of eventually extending the validity of an approved credit check for at least one award year, so that PLUS borrowers would have additional certainty about their continued eligibility to receive PLUS loan funds. Another commenter agreed that the current 90-day period was too short, but felt that a period longer than 180 days may be too long.

Discussion: We appreciate the support for this change. We believe that extending the window for more than 180 days would result in individuals receiving PLUS loans based on

credit checks that do not reasonably reflect their current financial circumstances.

Collecting and Publishing Information on the Performance of PLUS Loans

In the NPRM, the Department stated that it intends to collect and, where appropriate, publish information about the performance of parent and graduate and professional student PLUS loans, including default rate information based on credit history characteristics of PLUS loan applicants and individual institutional default rates.

Comments: Several commenters responded to the Department's plan to collect and publish this information. One organization stated that it is not opposed to the Department improving transparency by providing more information about participation in the PLUS Loan program, such as the number of applications; approval, denial and reconsideration rates; and amounts borrowed. However, the commenter expressed concerns about the Department's intent to publish PLUS loan default rate information. The commenter argued that, in its view, the overall PLUS loan default rate is relatively low. The commenter also argued that since the Department, not institutions, establishes PLUS loan eligibility criteria and makes the loans, it

would not be fair to publish institutional PLUS loan default rates.

Another commenter asserted that it would make sense to provide institutional default rates for PLUS loans made to graduate and professional students, but expressed concerns about publishing parent PLUS loan default rates. The commenter asserted that there is no correlation between a parent PLUS borrower's repayment behavior and the earnings capacity of an institution's graduates.

One commenter supported the Department's plan to release more information about the PLUS loan program, including default rate information, but felt that default rates alone do not provide a complete picture of how widespread financial distress might be. The commenter urged us to collect, analyze, and publish robust data on the repayment patterns of PLUS loan borrowers, and to disaggregate the data for student and parent borrowers.

One commenter noted that the Department provided the members of the negotiated rulemaking committee that considered the draft proposed regulations with data on this topic, including PLUS loan application rejection rates, reasons for rejection, sector-level default rates, and other information (see the discussion in the NPRM at 79 FR 46640, 46641-46643 (August 8, 2014)). The commenter urged

the Department to continue providing this information annually, keeping student and parent PLUS borrower data separate, so that researchers and policymakers can better understand the performance of the PLUS loan program. The commenter also strongly recommended that the Department create a process for institutions to review PLUS loan default rate data and then publish institutional PLUS loan cohort default rates annually.

Discussion: We appreciate the feedback and will take the commenters' concerns and recommendations into consideration as we formalize our plans to collect and publish information on the performance of PLUS loans. The Department will collect and, where appropriate, publish information about the performance of parent and graduate and professional student PLUS loans, including default rate information based on credit history characteristics of PLUS loan applicants and individual institutional default rates.

Enhanced PLUS Borrower Consumer Information

In the NPRM, we invited suggestions for specific types of enhanced consumer information that the Department should develop for PLUS applicants, particularly parent PLUS applicants who may be planning to borrow for more than one dependent over multiple academic years.

Comments: Several commenters supported the Department's plans to develop enhanced consumer information for PLUS loan borrowers and provided suggestions for topics to be covered. These suggestions included the following:

- An explanation of the definition of "adverse credit history" and a description of consumer credit reports;
- For parent PLUS loan borrowers, a reminder that the parent, not the student on whose behalf the loan is obtained, is responsible for repaying the loan, and that a parent PLUS loan cannot be transferred to the student;
- An explanation of the repayment options available to parent PLUS loan borrowers;
- A reminder to borrowers who take out more than one PLUS loan on how future PLUS loans will affect loan payments; and
- A calculator to permit PLUS loan applicants to enter non-mortgage debt and net income to determine whether they can manage additional debt.

One commenter strongly encouraged us to explore ways for PLUS loan borrowers and their families to receive personalized, customized, and sustained counseling from subject-matter experts on navigating the financial aid process, avoiding over-borrowing, the importance of

managing student loan debt, and budgeting and personal financial management skills. The commenter noted that such specialized counseling services should be available to those with adverse credit histories to help prevent delinquency and default and promote long-term financial well-being.

Discussion: We agree that it would be helpful to include some of the recommended items in our enhanced consumer information for all PLUS applicants. The enhanced consumer information will include voluntary PLUS loan counseling for all student and parent PLUS borrowers. The voluntary PLUS loan counseling will be easily accessible to borrowers who are seeking PLUS loans and will also be made available through links on other Department Web sites. The following are some of the items that will be included in the voluntary counseling for all PLUS borrowers:

- A calculator that will allow borrowers to estimate their future required monthly payment amount under available repayment plans.
- Tools to assist borrowers in determining how factors such as taking out additional PLUS loans or deferring repayment until the student leaves school will affect the required monthly payment amount and total loan amount to be repaid.

- Available repayment plans for student and parent PLUS borrowers.
- Information about loan consolidation.
- Budgeting information, with an emphasis on borrowing only the minimum amount needed.
- Strategies for avoiding delinquency and default.

This enhanced consumer information will be made available prior to the start of the 2015-2016 academic year.

PLUS Loan Information for Institutions and Consumers and the Most Effective Way to Communicate with Parent PLUS Borrowers

In the NPRM, we invited comments on what other types of information about parent PLUS loans would be helpful for institutions and consumers, and suggestions on the most effective way for the Department to communicate with parent PLUS loan borrowers.

Comments: We received suggestions that included some of the recommendations for enhanced PLUS loan borrower consumer information described earlier in this section, as well as the following:

- Resources for borrowers to learn how to improve their credit history to qualify for future borrowing;

- The definition of "endorser" and an explanation of the responsibilities assumed by a PLUS loan endorser;
- The importance of understanding debt-to-earnings considerations before an individual takes on new loan debt; and
- The penalties for fraudulent PLUS loan applications.

One commenter suggested that effective ways to communicate with parent PLUS loan borrowers include the following:

- In-person counseling with qualified professionals;
- Online counseling that is engaging, interactive, and includes knowledge checks;
- Online tutorials on specific topics; and
- Customer service using certified financial counselors who understand the concepts and tools needed to assist parents throughout the PLUS loan process.

Another commenter suggested that it may be helpful for the Department to provide paper informational materials to parent PLUS borrowers in addition to providing online resources, since some parent borrowers may have computer literacy challenges or may not have access to a computer.

Discussion: We appreciate these comments. The commenters provided many useful recommendations that will assist the

Department as we consider options for better communicating with parent PLUS borrowers and providing enhanced information about parent PLUS loans to borrowers and institutions. Consistent with these goals, the voluntary PLUS loan counseling that the Department is developing will make use of graphs and charts to more clearly and effectively explain important concepts. The counseling will include knowledge checks to assess the borrower's understanding of the material. Borrowers will be able to download the content of the voluntary counseling for future reference.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Introduction

The Department makes Direct PLUS Loans to graduate and professional students and to parents of dependent undergraduate students to help them pay for education expenses not covered by other financial aid. According to data from the Department's Federal Student Aid (FSA) office, approximately 3.9 million borrowers owe a combined balance of \$100 billion in total Direct PLUS loans. The Department is amending these regulations to update the standard for determining if a potential borrower has an

adverse credit history for purposes of eligibility for a Direct PLUS loan.

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits to borrowers and institutions. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

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

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those we have determined as necessary for administering the Department's programs and activities.

This Regulatory Impact Analysis is divided into six sections. The "Need for Regulatory Action" section discusses why updating the regulatory requirements governing PLUS loan adverse credit history determinations is necessary.

The "Summary of Changes from the NPRM" section summarizes the most important revisions the Department made in these final regulations since publication of the NPRM. These changes were informed by the Department's consideration of the comments of 310 parties who submitted comments on the proposed regulations. The changes are intended to clarify the Department's regulations on adverse credit history determinations and eligibility for PLUS loans. In these final regulations, the Department is

making two major changes in the proposed rules since the NPRM: (1) permitting the Secretary to increase the debt threshold amount of \$2,085 based on a measure of inflation; and (2) requiring borrowers who qualify for a PLUS loan by obtaining an endorser to complete PLUS loan counseling provided by the Department.

The "Discussion of Costs, Benefits, and Transfers" section considers the cost and benefit implications of these regulations for institutions of higher education, students, and parents. We anticipate that the final regulations will result in a lower denial rate for PLUS loan applicants and a decline in the number of applicants who are subject to the extenuating circumstances process. For some parents and graduate and professional students who would be denied PLUS loans under the current standards, the final regulations will allow them to borrow a PLUS loan.

Under "Net Budget Impacts," the Department presents its estimate that the final regulations will not have a significant net budgetary impact on the Federal government.

In "Alternatives Considered," we describe other approaches we considered for key provisions of these regulations, including an automatic annual adjustment of the \$2,085 threshold based on the CPI-U.

Finally, the "Final Regulatory Flexibility Analysis" considers issues relevant to small businesses and nonprofit institutions.

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

Need for Regulatory Action

Executive Order 12866 emphasizes that "Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people." In this case, there is indeed a compelling public need for regulation. Congress amended the HEA in 2010 to end the origination of new loans under the Federal Family Education Loan (FFEL) Program. All new subsidized and unsubsidized Stafford loans, PLUS loans, and Consolidation loans are made under the Direct Loan Program. To be eligible for a Federal Direct PLUS loan, under the statute, an applicant must not have an adverse credit history. To determine if an applicant has an adverse credit history, the Department conducts a credit check on the applicant. Under current regulations, a PLUS

loan applicant is considered to have an adverse credit history if the credit report shows that the applicant is 90 days delinquent on any debt, or has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a title IV, HEA program debt in the five years preceding the date of the credit report.

Since 2011, we have made operational changes to the Direct Loan Program to improve compliance with the applicable regulations. In accordance with those regulations, the Department has applied standards for adverse credit history determinations for PLUS loan applicants under which an applicant with debts in collection or charged off is considered to have an adverse credit history because the applicant is 90 or more days delinquent on a debt. Based on these standards, more PLUS loan applicants were determined to have an adverse credit history and had to request reconsideration of the PLUS loan denial through the Department's process for determining whether there are extenuating circumstances for an adverse credit history. After these changes resulted in an increase in PLUS loan denials, the Department made operational changes to the extenuating circumstances process to ensure that the statutory adverse credit history

requirement was applied fairly without burdening borrowers or restricting access to higher education. In the interest of providing transparency to institutions and families, we concluded that the Department's operational changes should be reflected in the regulatory requirements governing PLUS loan adverse credit history determinations, which were originally established in 1994.

The final regulations will amend the definition of "adverse credit history" and will update the standard for determining if a potential PLUS loan borrower has an adverse credit history. In addition, the final regulations require that a parent or student with an adverse credit history who is approved for a PLUS loan as a result of the Secretary's determination that extenuating circumstances exist or who qualifies for a PLUS loan by obtaining an endorser must complete PLUS loan counseling before receiving the loan.

Summary of Changes from the NPRM

1. Threshold Amount Indexed to Inflation

In the NPRM, the Department solicited comments on the appropriate inflation measure to use to index the \$2,085 threshold debt amount. Most of the commenters that responded to this solicitation agreed that the Department should index the \$2,085 to an inflation measure, and that

the CPI-U produced by the Bureau of Labor Statistics would be the most appropriate measure. The Department believes that indexing the threshold amount to inflation will ensure that it remains a meaningful limit on the amount of delinquent debt a PLUS applicant may have. The CPI-U is the most commonly used measure of inflation and it is also commonly used as a means of adjusting dollar values. The CPI-U is used to adjust consumers' income payments (for example, Social Security), to adjust income eligibility levels for government assistance and to provide cost-of-living wage adjustments to workers. Over 50 million Social Security beneficiaries and military and Federal Civil Service retirees, have cost-of-living adjustments tied to the CPI-U. In addition, eligibility criteria for millions of food stamp recipients are tied to the CPI-U². Along with other agencies, the Department also uses the CPI-U for many purposes such as determining various amounts under the Individuals with Disabilities Education Act (IDEA) and the Rehabilitation Act of 1973. To be consistent with the practice of other Federal agencies and the Department itself, we have determined that the CPI-U is the most

² "Consumer Price Index: Addendum to Frequently Asked Questions." Bureau of Labor Statistics. (<http://stats.bls.gov/cpi/cpiadd.htm#2> 3)

appropriate inflation measure to use to adjust the threshold debt amount.

The initial threshold amount will be \$2,085. The Department will adjust this amount for inflation, using the CPI-U, only when doing so will result in a cumulative increase in the threshold amount of \$100 or more. The adjustments will be determined by multiplying \$2,085, or the most recent inflation adjusted amount, by the sum of all subsequent annual average percentage changes of All Items CPI-U, before seasonal adjustment, for the 12-month periods ending in December. When the product of this calculation equals or exceeds \$100, the product will be rounded up to the nearest \$5. This adjustment amount will then be added to the threshold amount to derive a revised higher threshold amount that reflects inflation. When the recalculated adjustment amount increases by \$100 or more, the Department will notify the public of the new threshold amount and apply it to PLUS loan eligibility determinations after it is announced.

Some commenters recommended an annual adjustment of the threshold amount based on inflation. The Department believes that adjusting the threshold amount for inflation annually would result in minimal annual increases and is unnecessary. Therefore these final regulations provide for

increasing the \$2,085 threshold only when applying the CPI-U for prior years would result in an increase of \$100 or more.

2. Counseling for PLUS Loan Borrowers who Qualify for a PLUS loan by Obtaining an Endorser

The proposed regulations in the NPRM did not include a requirement that an applicant with an adverse credit history who qualifies for a PLUS loan by obtaining an endorser must receive PLUS loan counseling before receiving the loan. The Department solicited comments on whether these applicants should be required to complete PLUS loan counseling. Most commenters expressed support for a counseling requirement for these applicants. One commenter noted that, although the applicant has an endorser, the applicant is still primarily responsible for repaying the loan. Another commenter stated that the change requiring counseling for these two groups would target some of the most vulnerable borrowers, and would help to ensure that they understand the terms and conditions of the PLUS loan.

The Department agrees with the comments suggesting that loan counseling is a helpful tool for all borrowers, especially borrowers who may have experienced difficulties in repaying debts in the past. Counseling designed to provide borrowers with information specific to PLUS loans

and to help borrowers successfully manage debt is important. The Department has revised these regulations to require that an applicant who has an adverse credit history and who has obtained an endorser complete PLUS loan counseling offered by the Secretary in order to receive a PLUS loan.

Discussion of Costs, Benefits, and Transfers

The Department expects that, as a result of these regulations, the number of approved applications for parent and graduate and professional student PLUS loans will increase from current levels and that this will result in a series of costs, benefits, and transfers. The most significant factor leading to this increase is expected to be the establishment of a new standard for the determination that an applicant has an adverse credit history. In particular, under these final regulations, an adverse credit history means that the applicant has one or more debts with a total combined outstanding balance greater than \$2,085 that are 90 or more days delinquent as of the date of the credit report, or that have been placed in collection or charged off during the two years preceding the date of the credit report.

These final regulations also clarify the process by which PLUS loan applicants who were denied a loan may

request reconsideration, and may increase the percentage of denied loan applicants who eventually qualify for PLUS loans after requesting reconsideration or obtaining an endorser who does not have an adverse credit history.

As discussed in the NPRM, parent PLUS loan applicants and their dependent students would be affected by these final regulations. Under these regulations, a larger number of parent PLUS loan applicants would be approved for PLUS loans on behalf of their dependent students without the extenuating circumstances process. As a result, some families could accrue higher loan debt amounts.

Parents who take out PLUS loans on behalf of their dependent children are acquiring some of the debt burden associated with their child's education and in some cases, most of the burden since there are no loan limits on how much parents may borrow, unlike the subsidized and unsubsidized loan limits for undergraduate students. Parent PLUS loans have higher interest rates and origination fees than Direct Subsidized and Direct Unsubsidized loans.

Increased access to PLUS loans may allow some students to continue their attendance in programs that they otherwise would not be able to afford. While some applicants may use additional Direct Unsubsidized loans to

cover their educational expenses after their applicant parents have been denied PLUS loans, others may be unable to make up the difference because of annual or lifetime aggregate limits on Stafford loans and the larger cost of their selected institution. This could result in a student having to withdraw from a particular education program, transfer to another less-expensive program or institution, or find additional means of financing education, such as private student loans. Since PLUS loans can be borrowed up to the cost of attendance, they may be used to more fully cover funding gaps for dependent students who have exhausted their annual or lifetime aggregate limits for Direct Subsidized and Unsubsidized loans or allow students to attend more expensive institutions. PLUS loans often help lower-income students whose parents may lack the personal or family resources to pay for college. PLUS loans can also help graduate and professional students without their own personal resources achieve graduate degrees.

Applicants with an adverse credit history who qualify for a PLUS Loan by demonstrating that extenuating circumstances exist, or who qualify for a PLUS loan by obtaining an endorser, will be required to participate in loan counseling provided by the Department. This

requirement could help PLUS loan applicants make better-informed decisions and avoid overborrowing for their own or their child's education.

Net Budget Impacts

As detailed in the NPRM, many of the changes are already reflected in the baseline budget estimates related to the PLUS loan program. However, due to data limitations, the net budget impact of this proposal could not be determined at this time. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

As described in the NPRM, the Department's changes to the process for making adverse credit history determinations in 2011 have already been incorporated into the Department's budget baseline. A commenter argued that the Department should have compared the effects of the proposed regulations to a baseline that did not include the 2011 changes so that the effect of the regulations would be a net increase in the level of PLUS loan application denials. The Department appreciates the comment. However, the Department believes that using the President's Budget

2015 baseline that reflects current operations and any changes in PLUS loan volume from the 2011 changes in the process for adverse credit determinations is appropriate

As discussed in the NPRM, the changes in the regulations, including (1) using \$2,085 as an upfront threshold amount in the determination of an adverse credit history, and (2) the reduced look-back period of two years for accounts in collection and accounts that have been charged off to trigger a determination of adverse credit, will likely decrease the number of PLUS loan applicants who are denied loans based on an adverse credit history determination.

However, loans made to borrowers who would have been considered to have an adverse credit history before the changes in the regulations could have a higher incidence of default or could be difficult for borrowers to repay. If that were the case, potential savings from any increased PLUS volume resulting from the regulations would be reduced or even reversed. The Department does not have data to determine if borrowers who would have been considered to have an adverse credit history in the absence of the regulations have a greater incidence of default or repayment difficulty but, if a subsidy rate were available for this subgroup of PLUS borrowers, it would likely differ

from the overall PLUS subsidy rate. The budget baseline already reflects the \$2,085 threshold amount as currently used in the Department's process for considering requests for reconsideration and most of the charged-off accounts or accounts in collection that would result in an adverse credit history determination fall within the two-year period that is in the final regulations. Therefore, the Department has not estimated a significant net budget impact from the regulations.

Assumptions, Limitations, and Data Sources

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education systems, including especially the Fiscal Operations Report and Application to Participate (FISAP) from institutions; and data from a range of surveys conducted by the National Center for Education Statistics, such as the 2011-2012 National Postsecondary Student Aid Survey and the 2004/09 Beginning Postsecondary Student Survey. Data from other sources, such as the U.S. Census Bureau, were also used.

Accounting Statement

As required by OMB Circular A-4 (available at www.whitehouse.gov/sites/default/files/omb/assets/omb/circu

lars/a004/a-4.pdf), in Table 1, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. Expenditures are classified as transfers from the Federal Government to student loan borrowers.

Table 1: Accounting Statement: Classification of Estimated Expenditures (in millions)

Category	Benefits	
Improved clarity in process for adverse credit determinations for PLUS loans	Not quantified	
Category	Costs	
	7%	3%
Costs of compliance with paperwork requirements	\$6.21	\$6.25

Alternatives Considered

The regulatory alternatives that were considered were discussed in the NPRM (79 FR 46653). Further, as discussed in the Analysis of Comments and Changes section of this document, we received comments from 310 parties during the comment period following publication of the NPRM. These comments covered a range of issues, including indexing the \$2,085 minimum threshold amount to an inflation measure. The Department considered the suggestion made by commenters that the \$2,085 debt threshold amount be automatically adjusted each year based on CPI-U but decided that

adjusting for inflation annually for what may be a minimal increase is unnecessary.

Final Regulatory Flexibility Analysis

The regulations will affect institutions that participate in the title IV, HEA programs, including alternative certification programs not housed at institutions, and individual borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit institutions as "small businesses" if they are independently owned and operated and not dominant in their field of operation, with total annual revenue below \$7,000,000. The SBA Size Standards define nonprofit institutions as "small organizations" if they are independently owned and operated and not dominant in their field of operation, or as "small entities" if they are institutions controlled by governmental entities with populations below 50,000. The number of title IV, HEA-eligible institutions that are small entities would be limited because of the revenues involved in the sector that would be affected by the regulations and the concentration of ownership of institutions by private owners or public systems. However, the definition of "small organization" does not factor in revenue. Accordingly, several of the entities subject to the regulations are "small entities,"

and we have prepared this Final Regulatory Flexibility Analysis.

Description of the Reasons that Action by the Agency Is Being Considered

These regulations will update the standards for determining whether a parent or student has an adverse credit history for purposes of eligibility for a Direct PLUS Loan. The regulations will require PLUS loan counseling for a parent or student with an adverse credit history who obtains a PLUS loan as a result of the Secretary's determination that extenuating circumstances exist or who receives a loan after obtaining an endorser.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

Current Direct Loan regulations (34 CFR 685.200(b) and (c)) specify that graduate and professional students, and parents borrowing on behalf of their dependent children, may borrow PLUS loans. PLUS loan borrowers must meet applicable eligibility requirements.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to which the Regulations Will Apply

The regulations will affect the approximately 7,500 institutions that participate in the title IV, HEA loan

programs, as the amount and composition of title IV, HEA program aid that is available to students affects students' enrollment decisions and institutional choice.

Approximately 60 percent of institutions of higher education qualify as small entities. Using data from the Integrated Postsecondary Education Data System, we estimate that 4,365 institutions qualify as small entities--1,891 are nonprofit institutions, 2,196 are for-profit institutions with programs of two years or less, and 278 are for-profit institutions with four-year programs.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities that Will Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

The new regulations will not change the reporting requirements related to PLUS loans for institutions. Accordingly, the Department does not expect a change in institutional burden from the current regulations. However, PLUS loan borrowers with an adverse credit history who request reconsideration based on extenuating circumstances must provide satisfactory documentation that extenuating circumstances exist, and will be required to complete loan counseling offered by the Secretary. In

addition, PLUS loan borrowers who qualify for a PLUS loan after obtaining an endorser will also be required to complete loan counseling.

Identification, to the Extent Practicable, of all Relevant Federal Regulations that May Duplicate, Overlap, or Conflict with the Regulations

The regulations are unlikely to conflict with or duplicate existing Federal regulations.

Alternatives Considered

The Department conducted a negotiated rulemaking process to develop the proposed regulations and considered a number of options for some of the provisions. No alternatives were aimed specifically at small entities.

Paperwork Reduction Act of 1995

Section 685.200 contains information collection requirements. Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(d)), the Department has submitted a copy of the section, and will submit the Information Collections Request (ICR) to the Office of Management and Budget (OMB) for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB

control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

Section 685.200 Borrower Eligibility

Requirements: Under the final regulations in §685.200(b)(5) and (c)(2)(viii)(A)(3), we require that a PLUS loan applicant who is determined to have an adverse credit history, in addition to providing documentation to the Secretary demonstrating that extenuating circumstances exist, must complete enhanced PLUS loan counseling to receive the PLUS loan. We believe that enhanced loan counseling will help these PLUS loan applicants to understand the ramifications of incurring this additional debt.

Based on comments received on the NPRM, we are expanding the requirement that PLUS loan applicants receive new enhanced PLUS loan counseling to also apply to PLUS loan applicants who have an adverse credit history, but who qualify for a PLUS loan by obtaining an endorser who does not have an adverse credit history. The PLUS loan applicant (but not the endorser) will be required to complete

enhanced PLUS loan counseling under §685.200(c)(2)(viii)(A)(2).

General: Since the publication of the NPRM, we have continued to examine available data and have based our revised burden calculation on the actual number of borrowers with adverse credit histories who documented extenuating circumstances, and the actual number of borrowers with adverse credit histories who obtained an endorser who does not have an adverse credit history during the period of March 23, 2013, through February 26, 2014, instead of basing our burden estimate on derived numbers.

Burden Calculation: During the period of March 23, 2013 through February 26, 2014, there were 785,734 PLUS loan denials. Our records indicate that, of those denials, 147,400 PLUS loans were approved after the extenuating circumstances process was completed and 63,126 PLUS loans were approved after the borrower obtained an endorser who does not have an adverse credit history.

Graduate and Professional PLUS Borrowers

All graduate and professional students who are first-time PLUS borrowers are currently required to undergo PLUS loan entrance counseling. We estimate that the enhanced PLUS loan borrower counseling requirements for each graduate and professional student who qualifies for a PLUS

loan based on extenuating circumstances will, on average, increase loan counseling by 0.50 hours (30 minutes).

We estimate that, on average, each borrower's submission of documentation for the Secretary's consideration of the borrower's extenuating circumstances will take 1 hour.

We estimate that, on average, a borrower with an adverse credit history who elects to obtain an endorser who does not have an adverse credit history will require 1 hour to obtain such an endorser.

For applicants that qualify for a PLUS loan after obtaining an endorser, we estimate that, on average, each borrower will require an additional 0.50 hours to complete the enhanced PLUS loan counseling.

Of the 29,179 applicants for PLUS loans to pay for attendance at private for-profit institutions whose applications were denied, our data show that there were 10,984 graduate and professional students who received a loan after the initial denial of a PLUS loan request using the extenuating circumstances process review or after obtaining an endorser who does not have an adverse credit history. Of the 10,984 PLUS loan applicants, 7,607 were approved by documenting that extenuating circumstances existed and 3,377 PLUS loan applicants were approved after

the applicant obtained an endorser who does not have an adverse credit history.

Our data show that there were 7,607 borrowers who were approved for a loan based on documentation of existing extenuating circumstances and we estimate that the burden will increase by 3,804 hours (7,607 approved requests multiplied by 0.50 hours per enhanced counseling session). Our data show that there were 3,377 borrowers who received a loan after obtaining an endorser who does not have an adverse credit history and we estimate that the burden will increase by 1,689 hours (3,377 approved requests multiplied by 0.50 hours per enhanced counseling session).

We estimate a total increase of 16,477 hours of burden for graduate and professional student PLUS borrowers at private for-profit institutions (10,984 hours for the collection and submission of documentation of existing extenuating circumstances or to obtain an endorser who does not have an adverse credit history, plus an additional 3,804 hours of enhanced counseling for borrowers who qualify for a loan after demonstrating that extenuating circumstances exist, and an additional 1,689 hours of enhanced counseling for the borrowers who receive a loan after obtaining an endorser who does not have an adverse credit history) under OMB Control Number 1845-0129.

Of the 56,484 applicants for PLUS loans to pay for attendance at private non-profit institutions whose applications were denied, our data show that there were 33,594 graduate and professional students who received a loan after the initial denial of a PLUS loan request using the extenuating circumstances process review or after obtaining an endorser who did not have an adverse credit history. Of the 33,594 PLUS applicants, 21,424 were approved by documenting that extenuating circumstances existed and 12,170 PLUS applicants were approved after the applicant obtained an endorser who does not have an adverse credit history.

Our 2013-14 data show that there were 21,424 borrowers who were approved for a loan based on documentation of existing extenuating circumstances and we estimate that the burden will increase by 10,712 hours (21,424 approved requests multiplied by 0.50 hours per enhanced counseling session). Our data show that there were 12,170 borrowers who received a loan after obtaining an endorser who does not have an adverse credit history and we estimate that the burden will increase by 6,085 hours (12,170 approved requests multiplied by 0.50 hours per enhanced counseling session).

We estimate a total increase of 50,391 hours of burden for graduate and professional PLUS borrowers at private non-profit institutions (33,594 hours for the collection and submission of documentation of existing extenuating circumstances or to obtain an endorser who does not have an adverse credit history plus an additional 10,712 hours of enhanced counseling for borrowers who received a loan after demonstrating that extenuating circumstances exist and an additional 6,085 hours of enhanced counseling for the borrowers who received a loan after obtaining an endorser who does not have an adverse credit history) under OMB Control Number 1845-0129.

Of the 40,385 applicants for PLUS loans to pay for attendance at public institutions whose applications were denied, our data show that there were 18,503 graduate and professional students who received a loan after the initial denial of a PLUS loan request using the extenuating circumstances process review or after obtaining an endorser who does not have an adverse credit history. Of the 18,503 PLUS applicants, 12,650 were approved by documenting existing extenuating circumstances and 5,853 were approved after the applicant obtained an endorser who does not have an adverse credit history.

Our data show that there were 12,650 borrowers who were approved for a loan based on documentation of existing extenuating circumstances and we estimate that the burden will increase by 6,325 hours (12,650 approved requests multiplied by 0.50 hours per enhanced counseling session). Our data show that there were 5,853 borrowers who received a loan after obtaining an endorser who does not have an adverse credit history and we estimate that the burden will increase by 2,927 hours (5,853 approved requests multiplied by 0.50 hours per enhanced counseling session).

We estimate a total increase of 27,755 hours of burden for graduate and professional student PLUS borrowers at public institutions (18,503 hours for the collection and submission of documentation of extenuating circumstances or to obtain an endorser who does not have an adverse credit history plus an additional 6,325 hours of enhanced counseling for borrowers with extenuating circumstances and an additional 2,927 hours of enhanced counseling for the borrowers who receive a loan after obtaining an endorser who does not have an adverse credit history) under OMB Control Number 1845-0129.

Of the 3,052 denials of applicants for PLUS loans to pay for attendance at foreign institutions whose applications were denied, our data show that there were

2,426 graduate and professional students who received a loan after the initial denial of a PLUS loan request using the extenuating circumstances process review or after obtaining an endorser who does not have an adverse credit history. Of the 2,426 PLUS loan applicants, 1,505 were approved by documenting existing extenuating circumstances and 921 PLUS applicants approved after the applicant obtained an endorser who does not have an adverse credit history.

Our data show that there were 1,505 borrowers who were approved for a loan based on documentation of existing extenuating circumstances and we estimate that the burden will increase by 753 hours (1,505 approved requests multiplied by 0.50 hours per enhanced counseling session). Our data show that there were 921 borrowers who received a loan after obtaining an endorser who does not have an adverse credit history and we estimate that the burden will increase by 461 hours (921 approved requests multiplied by 0.50 hours per enhanced counseling session).

We estimate a total increase of 3,640 hours of burden for graduate and professional student borrowers at foreign institutions (2,426 hours for the collection and submission of documentation of extenuating circumstances, or to obtain an endorser who does not have an adverse credit history,

plus an additional 753 hours of enhanced counseling for borrowers who qualify for a loan after demonstrating that extenuating circumstances exist, and an additional 461 hours of enhanced counseling for the borrowers who receive a loan after obtaining an endorser who does not have an adverse credit history) under OMB Control Number 1845-0129.

The total increase in burden for §685.200(b)(5) will be 98,263 hours under OMB Control Number 1845-0129.

Parent PLUS loan borrowers

Based on comments received on the NPRM, these final regulations provide that any parent PLUS loan applicant who has an adverse credit history, but who qualifies for a loan after demonstrating extenuating circumstance or after obtaining an endorser who does not have an adverse credit history, must complete enhanced PLUS loan counseling before receiving a PLUS loan. Under the proposed regulations only a parent with an adverse credit history who was approved for a loan after demonstrating extenuating circumstances would have been required to complete the enhanced PLUS loan counseling before receiving a PLUS loan.

As a result of the Department's development of enhanced PLUS loan counseling, the amount of time that it will take a parent to complete the PLUS loan counseling has been increased from the NPRM estimate. We now estimate

that, on average, each parent PLUS loan borrower who is required to complete the enhanced PLUS loan counseling will take 0.75 hours (45 minutes) to complete the loan counseling session. This is an additional 15 minutes from the NPRM estimate.

We estimate that, on average, each borrower submission of documentation for the Secretary's consideration of the borrower's extenuating circumstances will take 1 hour.

We estimate that, on average, a borrower who elects to obtain an endorser who does not have an adverse credit history will require 1 hour to obtain an endorser.

For applicants who receive a PLUS loan after obtaining an endorser, we estimate that, on average, each borrower (but not the endorser) will require an additional 0.75 hours to complete the enhanced PLUS loan counseling.

Of the 83,432 applicants for parent PLUS loans to pay for attendance at private for-profit institutions whose applications were denied, our data show that there were 10,480 parent borrowers who received a loan after the initial denial of a PLUS loan using the extenuating circumstances review process or after obtaining an endorser who did not have an adverse credit history. Of the 10,480 PLUS applicants, 7,612 were approved by documenting that extenuating circumstances existed and 2,868 PLUS applicants

were approved after the applicant obtained an endorser who does not have an adverse credit history.

Our data show that there were 7,612 parent borrowers who were approved for a loan based on documentation of existing extenuating circumstances and we estimate that the burden will increase by 5,709 hours (7,612 approved requests multiplied by 0.75 hours per enhanced PLUS loan counseling session). Our data show that there were 2,868 parent borrowers who received a loan after obtaining an endorser who does not have an adverse credit history and we estimate that burden will increase by 2,151 hours (2,868 approved requests multiplied by 0.75 hours per enhanced loan counseling session).

We estimate a total increase of 18,340 hours of burden for parent PLUS borrowers at private for-profit institutions (10,480 hours for the collection and submission of documentation of extenuating circumstances or to obtain an endorser who does not have an adverse credit history, plus an additional 5,709 hours of enhanced counseling for parent borrowers who qualify for a loan after demonstrating extenuating circumstances, and an additional 2,151 hours of enhanced counseling for the parent borrowers who received a loan after obtaining an endorser who does not have an adverse credit history) under OMB Control Number 1845-0129.

Of the 210,621 applicants for parent PLUS loans to pay for attendance at private nonprofit institutions whose applications were denied, our data show that there were 56,192 parent borrowers who received a loan after the initial denial of a PLUS loan using the extenuating circumstances process review or after obtaining an endorser who did not have an adverse credit history. Of the 56,192 parent PLUS applicants, 38,707 parent applicants were approved by documenting that extenuating circumstances exist and 17,485 parent applicants were approved after the applicant obtained an endorser who does not have an adverse credit history.

Our data show that there were 38,707 parent PLUS borrowers who were approved for a loan based on documentation of existing extenuating circumstances and we estimate that the burden will increase by 29,030 hours (38,707 approved requests times 0.75 hours per enhanced loan counseling session). Our data show that there were 17,485 parent PLUS borrowers who received a loan after obtaining an endorser who does not have an adverse credit history and we estimate that burden will increase by 13,114 hours (17,485 approved requests multiplied by 0.75 hours per enhanced PLUS loan counseling session).

We estimate a total increase of 98,336 hours of burden for parent PLUS applicants at private non-profit institutions (56,192 hours for the collection and submission of documentation of existing extenuating circumstances or to obtain an endorser who does not have an adverse credit history, plus an additional 29,030 hours of enhanced counseling for parent applicants who qualify for a loan after demonstrating that extenuating circumstances exist, and an additional 13,114 hours of enhanced counseling for parent applicants who receive a loan after obtaining an endorser who does not have an adverse credit history) under OMB Control Number 1845-0129.

Of the 361,894 applicants for PLUS loans to pay for attendance at public institutions whose applications were denied, our data show that there were 78,039 parents borrowers who received a loan after an initial denial of a PLUS loan using the extenuating circumstances process review or after obtaining an endorser who does not have an adverse credit history. Of the 78,039 PLUS applicants, 57,706 were approved by documenting that extenuating circumstances exist and 20,333 parent applicants were approved after the applicant obtained an endorser who does not have an adverse credit history.

Our data show that there were 57,706 parent borrowers who were approved for a loan based on documentation of existing extenuating circumstances and we estimate that the burden will increase by 43,280 hours (57,706 approved requests multiplied by 0.75 hours per enhanced loan counseling session). Our data show that there were 20,333 parent applicants who received a loan after obtaining an endorser who does not have an adverse credit history, and we estimate that burden will increase by 15,250 hours (20,333 approved requests multiplied by 0.75 hours per enhanced loan counseling session).

We estimate a total increase of 136,569 hours of burden for parent PLUS applicants at public institutions (78,039 hours for the collection and submission of documentation of existing extenuating circumstances or to obtain an endorser who does not have an adverse credit history, plus an additional 43,280 hours of enhanced counseling for parent applicants who qualify for a loan after demonstrating that extenuating circumstances exist, and an additional 15,250 hours of enhanced counseling for parent applicants who received a loan after obtaining an endorser who does not have an adverse credit history) under OMB Control Number 1845-0129.

Of the 687 applicants for parent PLUS loans to pay for attendance at foreign institutions whose applications were denied, our data show that there were 308 parent borrowers who received a loan after the initial denial of a PLUS loan using the extenuating circumstances process review or after obtaining an endorser who does not have an adverse credit history. Of the 308 PLUS applicants, 189 were approved by documenting that extenuating circumstances exist and 119 parent applicants were approved after the applicant obtained an endorser who did not have an adverse credit history.

Our data show that there were 189 parent borrowers who were approved for a loan based on documentation of existing extenuating circumstances and we estimate that the burden will increase by 142 hours (189 approved requests review multiplied by 0.75 hours per enhanced loan counseling session). Our data show that there were 119 parent applicants who received a loan after obtaining an endorser who does not have an adverse credit history and we estimate that burden will increase by 89 hours (119 approved requests multiplied by 0.75 hours per enhanced loan counseling session).

We estimate a total increase of 539 hours of burden for parent PLUS loan applicants at foreign institutions

(308 hours for the collection and submission of documentation of extenuating circumstances or to obtain an endorser who does not have an adverse credit history, plus an additional 142 hours for enhanced counseling for parent PLUS loan applicants who qualify for a loan after demonstrating extenuating circumstances and an additional 89 hours of enhanced counseling for applicants who receive a loan after obtaining an endorser who does not have an adverse credit history) under OMB Control Number 1845-0129.

The total increase in burden for §685.200(c)(2)(viii)(A)(2) and (3) will be 253,784 hours under OMB Control Number 1845-0129.

Overall, burden would increase by 352,047 hours under OMB Control Number 1845-0129.

Consistent with the discussion above, the following chart describes the sections of these final regulations involving information collections, the information being collected, the collections that the Department will submit to OMB for approval, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on applicants and borrowers, using wage data developed using BLS data, available at www.bls.gov/ncs/ect/sp/ecsuphst.pdf, is \$5,738,366, as

shown in the chart below. This cost was based on an hourly rate of \$16.30 for applicants and borrowers.

Collection of Information

Regulatory Section	Information Collection	OMB Control Number and Estimated Burden [change in burden]	Estimated Costs
Sections 685.200 (b) (5) and 685.200 (c) (1) (viii) (A) (2) and (3) <i>Borrower Eligibility</i>	Revises language requiring documentation for extenuating circumstances and requires enhanced PLUS loan counseling for graduate and professional students. These final regulations also require loan counseling for parent PLUS borrowers with a determination of adverse credit.	OMB 1845-0129 We estimate that the burden will increase by 352,047 hours.	\$5,738,366

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of

information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

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List of Subjects in 34 CFR Part 685

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

Dated: October 20, 2014.

Arne Duncan,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends part 685 of title 34 of the Code of Federal Regulations as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

2. Section 685.200 is amended by:

A. In paragraph (b)(5), removing the words "of paragraph (c)(1)(vii)" and adding, in their place, the words "that apply to a parent under paragraphs (c)(2)(viii)(A) through (G) of this section"; and

B. Revising paragraph (c) to read as follows:

§685.200 Borrower eligibility.

* * * * *

(c) Parent PLUS borrower – (1) Definitions. The following definitions apply to this paragraph (c):

(i) Charged off means a debt that a creditor has written off as a loss, but that is still subject to collection action.

(ii) In collection means a debt that has been placed with a collection agency by a creditor or that is subject to more intensive efforts by a creditor to recover amounts

owed from a borrower who has not responded satisfactorily to the demands routinely made as part of the creditor's billing procedures.

(2) Eligibility. A parent is eligible to receive a Direct PLUS Loan if the parent meets the following requirements:

(i) The parent is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student under 34 CFR part 668.

(ii) The parent provides his or her and the student's social security number.

(iii) The parent meets the requirements pertaining to citizenship and residency that apply to the student under 34 CFR 668.33.

(iv) The parent meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.32(g).

(v) The parent complies with the requirements for submission of a Statement of Educational Purpose that apply to the student under 34 CFR part 668, except for the completion of a Statement of Selective Service Registration Status.

(vi) The parent meets the requirements that apply to a student under paragraph (a)(1)(iv) of this section.

(vii) The parent has completed repayment of any title IV, HEA program assistance obtained by fraud, if the parent has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance.

(viii)(A) The parent--

(1) Does not have an adverse credit history;

(2) Has an adverse credit history, but has obtained an endorser who does not have an adverse credit history, and completes PLUS loan counseling offered by the Secretary; or

(3) Has an adverse credit history but documents to the satisfaction of the Secretary that extenuating circumstances exist and completes PLUS loan counseling offered by the Secretary.

(B) For purposes of this paragraph (c), an adverse credit history means that the parent--

(1) Has one or more debts with a total combined outstanding balance greater than \$2,085, as may be adjusted by the Secretary in accordance with paragraphs

(c)(2)(viii)(C) and (D) of this section, that are 90 or more days delinquent as of the date of the credit report,

or that have been placed in collection or charged off, as defined in paragraph (c) (1) of this section, during the two years preceding the date of the credit report; or

(2) Has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a debt under title IV of the Act during the five years preceding the date of the credit report.

(C) The Secretary increases the amount specified in paragraph (c) (2) (viii) (B) (1) of this section, or its inflation-adjusted equivalent, when the Secretary determines that an inflation adjustment to that amount would result in an increase of \$100 or more.

(D) In making the inflation adjustment described in paragraph (c) (2) (viii) (C) of this section, the Secretary:

(1) Uses the annual average percent change of the All Items Consumer Price Index for All Urban Consumers (CPI-U), before seasonal adjustment, as the measurement of inflation; and

(2) If the adjustment calculated under paragraph (c) (2) (viii) (D) (1) of this section is equal to or greater than \$100, adding the adjustment to \$2,085 threshold amount, or its inflation-adjusted equivalent, and rounding up to the nearest \$5.

(E) The Secretary will publish a notice in the Federal Register announcing any increase to the amount specified in paragraph (c)(2)(viii)(B)(1) of this section.

(F) For purposes of this paragraph (c), the Secretary does not consider the absence of a credit history as an adverse credit history and does not deny a Direct PLUS loan on that basis.

(G) For purposes of this paragraph (c), the Secretary may determine that extenuating circumstances exist based on documentation that may include, but is not limited to--

(1) An updated credit report for the parent; or

(2) A statement from the creditor that the parent has repaid or made satisfactory arrangements to repay a debt that was considered in determining that the parent has an adverse credit history.

(3) For purposes of paragraph (c)(2) of this section, a "parent" includes the individuals described in the definition of "parent" in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets would have been taken into account when calculating a dependent student's expected family contribution.

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