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DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 682, and 685

[Docket ID ED-2017-OPE-0108]

RIN 1840-AD25

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College And Higher Education Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Interim final rule; delay of effective date; request for comments.

SUMMARY: Consistent with section 553(b)(3)(B) and (d)(3) of the Administrative Procedure Act (APA), which allows Federal agencies to promulgate rules without advance notice and opportunity for comment for good cause, the Secretary issues this interim final rule with request for comment. This interim final rule delays until July 1, 2018, the effective date of selected provisions of the final regulations entitled Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan (FFEL) Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program (the final

regulations), published in the Federal Register on November 1, 2016. The provisions this interim final rule delays are listed in the SUPPLEMENTARY INFORMATION section of this document. The original effective date of the final regulations was July 1, 2017.

DATES: *Effective date:* As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the effective date for the amendments to or additions of: §§ 668.14(b)(30), (31), and (32); 668.41(h) and (i); 668.71(c); 668.90(a)(3); 668.93(h), (i), (j); 668.171; 668.175 (c) and (d) and (f) and (h); Appendix C to Subpart L of Part 668; 674.33(g)(3) and (g)(8); 682.202(b)(1); 682.211(i)(7); 682.402(d)(3), (d)(6)(ii)(B)(1) and (2), (d)(6)(ii)(F) introductory text, (d)(6)(ii)(F)(5), (d)(6)(ii)(G), (d)(6)(ii)(H) through (K), (d)(7)(ii) and (iii), (d)(8), and (e)(6)(iii); 682.405(b)(4); 682.410(b)(4) and (b)(6)(viii); 685.200(f)(3)(v) and (f)(4)(iii); 685.205(b)(6); 685.206(c); 685.212(k); 685.214(c)(2), (f)(4) through (7); 685.215(a)(1), (c)(1) through (c)(8), and (d); 685.222; Appendix A to Subpart B of Part 685; and 685.308(a), published November 1, 2016, at 81 FR 75926, and delayed until further notice on June 16, 2017, in 82 FR 27621, is further delayed until July 1, 2018.

Comment date: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Help."

- Postal Mail, Commercial Delivery, or Hand Delivery: The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your

comments about the interim final rule, address them to Jean-Didier Gaina, U.S. Department of Education, 400 Maryland Ave., SW., mail stop 6W247, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing on the Federal eRulemaking Portal at www.regulations.gov.

Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Barbara Hoblitzell, U.S. Department of Education, 400 Maryland Ave., SW., mail stop 6W247, Washington, DC 20202. Telephone: (202) 453-7583 or by email at: Barbara.Hoblitzell@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this interim final rule. We will consider comments on the delayed effective date only and will not consider comments on the wording or substance of the final regulations. See "ADDRESSES" for instructions on how to submit comments.

During and after the comment period, you may inspect all public comments about this interim final rule by accessing

Regulations.gov. You may also inspect the comments in person in room 6W245, 400 Maryland Avenue, SW., Washington, DC, between 8:30 a.m. and 4:00 p.m. Washington, DC time, Monday through Friday of each week, except Federal holidays. If you want to schedule time to inspect comments, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this interim final rule. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Delay of Effective Date

On May 24, 2017, the California Association of Private Postsecondary Schools (CAPPS) filed a Complaint and Prayer for Declaratory and Injunctive Relief in the United States District Court for the District of Columbia (Court) challenging the final regulations in their entirety, and in particular those provisions of the regulations pertaining to the standard and process for the Department to adjudicate borrower defense claims, requirements pertaining to financial responsibility standards, provisions requiring proprietary institutions to

provide warnings about their students' loan repayment rates, and prohibitions against institutions including arbitration or class action waivers in their agreements with students. Complaint and Prayer for Declaratory and Injunctive Relief, *California Association of Private Postsecondary Schools v. DeVos*, No. 1:17-cv-00999 (D.D.C. May 24, 2017). As of the date of this interim final rule, the litigation is ongoing.

In light of the pending litigation, on June 16, 2017, the Department published in the *Federal Register* a notification of the partial delay of effective dates under section 705 of the APA (5 U.S.C. 705) (82 FR 27621) (705 Notice), to delay the effectiveness of certain provisions of the final regulations until the legal challenge is resolved. The 705 Notice postponed the effective date of the regulations to preserve the regulatory status quo while the litigation is pending and the Court makes a decision. As explained in the 705 Notice, the plaintiff has raised serious questions concerning the validity of certain provisions of the final regulations and has identified substantial injuries that could result if they go into effect before those questions are resolved. Given the legal uncertainty, maintaining the status quo is critical. For instance, if the final regulations took effect, institutions participating in programs under title IV of the Higher Education Act of 1965, as amended (HEA), would have been required, as of

July 1, 2017, to modify their contracts in accordance with the arbitration and class action waiver regulations. Postponing the final regulations avoids the cost that institutions would incur in making these changes while the final regulations are subject to judicial review. Meanwhile, the Department is continuing to process borrower defense claims under the existing regulations that will remain in effect during the postponement.

Because the final regulations have been postponed beyond July 1, 2017, pursuant to the 705 Notice, the postponement of the final regulations must be for at least one year to comply with section 482 of the HEA (20 U.S.C. 1089). That section imposes a requirement (the "master calendar requirement") on the Department for the effective date of regulations affecting programs under title IV of the HEA. Under the master calendar requirement, a regulatory change that has been published in final form on or before November 1 prior to the start of an award year--which begins on July 1 of any given year--may take effect only at the beginning of the next award year, or in other words, on July 1 of the next year. Any regulatory change that has not been published in final form by November 1 prior to the start of an award year may not become effective until the beginning of the second award year after the November 1 date.

The master calendar requirement provides that regulatory changes affecting the title IV programs must become effective at

the beginning of an award year and does not authorize the Department to make a regulatory change affecting the title IV programs effective in the middle of an award year.¹ Accordingly, regulations promulgated under title IV of the HEA have an effective date of July 1. Congress enacted the master calendar requirement to ensure that institutions have sufficient notice of the timing of any regulatory change in order to implement regulatory changes at the start of each award year. In this way, institutions avoid incurring the costs of compliance on a rolling basis throughout the year and avoid any disruption to the timely delivery of title IV funds. See S. Rep. No. 99-296, at 11 (1986); see also *Reauthorization of the Higher Education Act, 1985: Hearings Before the S. Subcomm. On Educ., Arts and Humanities, 99th Cong. 10* (1985) (statement of the Conference on Higher Education) (“Although progress will always require updating, there is an equally important need for stability so that proper planning by all those involved—including families, aid administrators, and agency officials—can be achieved.”).

Congress has been clear that “the effective dates of all regulations on Title IV are driven by the Master Calendar

¹ We note that in the limited circumstance where the Secretary designates a regulation for early implementation pursuant to 20 U.S.C. 1089(c)(2), regulated parties may choose to implement the regulation before the July 1 effective date. Early implementation, however, does not change the effective date of the regulation.

requirements in Section 482," H.R. Rep. No. 102-447, at 77 (1992), and it has reaffirmed the breadth of the master calendar requirement by providing express waivers of the requirement only in specific limited circumstances. See, e.g., Higher Education Opportunity Act, Pub. L. No. 110-315, sec. 402(b), 122 Stat. 3078, 3191 (2008); Higher Education Act - Technical Corrections, Pub. L. No. 111-39, sec. 409, 123 Stat. 1950, 1953 (2009). Accordingly, the Department has consistently interpreted and applied the master calendar requirement to provide that any regulatory change relating to student financial aid programs may take effect only at the beginning of an award year.

With respect to the final regulations, implementing this substantial regulatory change in the middle of an award year would frustrate the notice objectives of the HEA and deny schools the assurance of the master calendar. For the July 1, 2017, postponement to be consistent with the HEA, therefore, the effective date must be July 1, 2018 (or July 1 of a later year). Because the 705 Notice does not establish a specific effective date but is tied to the pending litigation, this interim final rule provides the public and regulated parties notice that even if the litigation concludes before July 1, 2018, the final regulations will not take effect until that date consistent with the master calendar requirement.

Separately, we note that the delayed effective date is consistent with the Memorandum for the Heads of Executive Departments and Agencies entitled "Regulatory Freeze Pending Review," published in the *Federal Register* on January 24, 2017 (Memorandum), which was intended to ensure that the President's appointees or designees have the opportunity to review any new or pending regulations and where appropriate to suggest changes. Among other things, the Memorandum directed the heads of executive departments and agencies to consider temporarily postponing the effective dates of all regulations that had been published in the *Federal Register* but had not yet taken effect. In addition, on February 24, 2017, the President issued Executive Order 13777, which requires each agency head to consider recommendations to repeal, replace, or modify existing regulations, consistent with applicable law. In accordance with these evaluative efforts, we announced on June 16, 2017, our intent to engage in negotiated and notice-and-comment rulemaking on the topics addressed by the final regulations on (82 FR 27640). The Department is reevaluating its regulations in this area and the burdens on regulated parties may change.

To provide adequate notice to these parties in accordance with the HEA's master calendar requirement, the Department has determined that it is necessary to delay until July 1, 2018, the effective date of the revisions to or additions of the following

provisions of the final regulations in title 34 of the Code of Federal Regulations (CFR):

- §668.14(b) (30), (31), and (32) Program participation agreement.
- §668.41(h) and (i) Reporting and disclosure of information.
- §668.71(c) Scope and special definitions.
- §668.90(a) (3) Initial and final decisions.
- §668.93(h), (i) and (j) Limitation.
- §668.171 General.
- §668.175(c), (d), (f), and (h) Alternative standards and requirements.
- Part 668 subpart L, Appendix C.
- §674.33(g) (3) and (g) (8) Repayment.
- §682.202(b) (1) Permissible charges by lenders to borrowers.
- §682.211(i) (7) Forbearance.
- §682.402(d) (3), (d) (6) (ii) (B) (1) and (2), (d) (6) (ii) (F) introductory text, (d) (6) (ii) (F) (5), (d) (6) (ii) (G), (d) (6) (ii) (H) through (K), (d) (7) (ii) and (iii), (d) (8), and (e) (6) (iii) Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.
- §682.405(b) (4) (ii) Loan rehabilitation agreement.
- §682.410(b) (4) and (b) (6) (viii) Fiscal, administrative, and enforcement requirements.
- §685.200(f) (3) (v) and (f) (4) (iii) Borrower eligibility.

- §685.205(b)(6) Forbearance.
- §685.206(c) Borrower responsibilities and defenses.
- §685.212(k) Discharge of a loan obligation.
- §685.214(c)(2), (f)(4) through (7) Closed school discharge.
- §685.215(a)(1), (c)(1) through (c)(8), and (d) Discharge for false certification of student eligibility or unauthorized payment.
- §685.222 Borrower defenses.
- Part 685 subpart B, Appendix A Examples of borrower relief.
- §685.300(b)(11), (b)(12), and (d) through (i) Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.
- §685.308(a) Remedial actions.

In addition, in connection with this delay, the Department interprets all references to "July 1, 2017" in the text of the above-referenced regulations to mean the effective date of those regulations. The regulatory text included references to the specific July 1, 2017, date in part to provide clarity to readers in the future as to when the regulations had taken effect. Because the regulations have not taken effect on July 1, 2017, we will read those regulations as referring to the new effective date established by this delay, i.e., July 1, 2018.

We do not intend to delay the effective dates of the regulatory provisions published in 81 FR 75926 which: (1) expand

the types of documentation that may be used for the granting of a discharge based on the death of the borrower; (2) amend the regulations governing the consolidation of Nursing Student Loans and Nurse Faculty Loans so that they align with the statutory requirements of section 428C(a)(4)(E) of the HEA; (3) amend the regulations governing Direct Consolidation Loans to allow a borrower to obtain a Direct Consolidation Loan regardless of whether the borrower is also seeking to consolidate a Direct Program or FFEL loan, if the borrower has a loan type identified in 34 CFR 685.220(b); (4) address severability; and (5) make technical corrections. As established in 81 FR 75926, 34 CFR 682.211(i)(7) and 682.410(b)(6)(viii) remain designated for early implementation, at the discretion of each lender or guaranty agency.

Waiver of Notice-and-Comment Rulemaking, Negotiated Rulemaking, and Delayed Effective Date under the APA: Under the APA (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations and publishes rules not less than 30 days before their effective dates. In addition, under section 492 of the HEA (20 U.S.C. 1098a), all regulations proposed by the Department for programs authorized under title IV of the HEA are subject to negotiated rulemaking requirements. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking or delay

effective dates when the agency, for good cause, finds that the requirement is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(3)(B) and (d)(3)). In addition, section 492(b)(2) of the HEA provides that negotiated rulemaking may be waived for good cause when doing so would be "impracticable, unnecessary, or contrary to the public interest." Section 492(b)(2) of the HEA also requires the Secretary to publish the basis for waiving negotiations in the *Federal Register* at the same time as the proposed regulations in question are first published.

The Department determined under the APA and the HEA that notice-and-comment and negotiated rulemaking are unnecessary and impracticable and therefore is waiving both requirements in this interim final rule. As noted previously, the 705 Notice delayed the effective date of the final regulations to maintain the status quo pending the outcome of the litigation, which could not be resolved before July 1, 2017. Given that delay, the next possible date for the regulations to become effective would be July 1, 2018, in accordance with the HEA's master calendar requirement. Thus, even if the litigation were resolved before July 1, 2018, under the HEA, July 1, 2018, would be the earliest the regulations could take effect. Given the Department's limited discretion to set an effective date under the master calendar requirement, the Department determined that both

notice-and-comment and negotiated rulemaking are unnecessary. The Department also determined that it was impracticable to conduct notice-and-comment and negotiated rulemaking before the original July 1, 2017, effective date. The litigation was initiated on May 24, 2017; the Department would not have been able to conduct negotiated rulemaking or notice-and-comment rulemaking to obtain comment on a possible new effective date in the short amount of time between May 24, and July 1, 2017. And, once the July 1, 2017, date passed, under the master calendar requirement, the Department did not have any discretion to set an effective date earlier than July 1, 2018. For the same reasons, we are also waiving the 30-day delay of the effective date of this interim final rule under the APA. However, the Department is providing a 30-day comment period and invites interested persons to comment on the delay of the effective date of the final regulations from July 1, 2017, to July 1, 2018. In addition, the Department plans to issue a notice of proposed rulemaking to seek public comment on further delaying the effective date of the final regulations until July 1, 2019, to allow for completion of the negotiated rulemaking process before regulatory changes become effective in this area (see 82 FR 27640). The Department will seek public comments on whether such a further delay is desirable to avoid the costs to

regulated parties of implementing regulations that may be subject to change in the near future.

Executive Orders 12866, 13563 and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined 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.

The Department estimates the quantified annualized economic and net budget impacts of the delay of the effective date to be -\$18.6 million in reduced costs to institutions and the Federal government. These reduced costs result from the delay of the borrower defense rules on the 2017 and 2018 loan cohorts, as well as from the delayed paperwork burden on institutions, and the delayed execution of the closed school automatic discharge. This final regulatory action is not 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-

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(1) Propose or adopt regulations only on 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 this interim final rule only on a reasoned determination that its benefits justify its costs. Based on the analysis that follows, the Department believes that this interim final rule is consistent with the principles in Executive Order 13563.

We also have 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 quantified economic effects and net budget impact associated with the delayed effective date are not expected to be economically significant.

Effects of One-Year Delay:

As indicated in the Regulatory Impact Analysis (RIA) published with the final regulations on November 1, 2016, the final regulations were economically significant with a total estimated net budget impact of \$16.6 billion over the 2017-2026 loan cohorts in the primary estimate scenario, including a cost of \$381 million for cohorts 2014-2016 attributable to the provisions for a three-year automatic closed school discharge. As the net budget impact is based on the net present value of the cash flows of the relevant cohorts over a forty-year timeframe, simply delaying the final regulations for a year will have a much more limited effect, as discussed below. This analysis is limited to the effect of delaying the effective date of the final regulations, and does not account for any potential future substantive changes in the final regulations.

Even with the delayed effective date, borrowers will still be able to submit claims. The provisions of the final regulations pertaining to the process for review and determination of claims were not limited to specific cohorts designated by the effective date so the delay will not result in specific cohorts of borrowers being excluded from the process reflected in the final regulations, when implemented. Once in effect, the protection generated by the financial protection provisions will be available to be applied to claims from loans originated earlier, including the period from July 1, 2017 to June 30, 2018. Loans made before July 1, 2017, were always subject to the State-based standard and their ability to bring claims under that standard is unchanged by the delay. For claims filed after the effective date of the regulations, the Federal standard established in the final regulations would apply. As discussed previously, the Department interprets all references to "July 1, 2017" in the text of the regulations to mean the effective date of the regulations. As a result, the delayed effective date means that loans made between July 1, 2017 and June 30, 2018, will be subject to the current State-based standard. As we noted in the final regulations, the Federal standard was designed to address much of the conduct already covered by the State-based standard, so the vast majority of claims associated with loans made between July 1,

2017, and the delayed effective date could be made under the current, State law-based standard as well.

In addition to borrowers, institutions are also affected by the delayed effective date. As indicated in the RIA for the final regulations, institutions bear the major costs of compliance, paperwork burden, and providing financial protection. The financial protection provisions of the final regulations depend on the effective date, so institutions will not incur these costs until the final regulations are in effect. In terms of cost savings for institutions, the estimated annual paperwork burden was approximately \$9.4 million in the initial year of the final regulations. In the revised scenario developed to estimate the effect of the one-year delay in the effective date, transfers from institutions to students, via the Federal government, would be reduced by approximately \$1.3 million for the 2017 and 2018 loan cohorts. The costs of providing financial protection were not quantified in the final regulations, and the Department has no additional data to estimate costs institutions may avoid from the delayed effective date of the financial protection provisions.

There is some uncertainty as to the regulatory baseline against which this interim final rule's impacts should be assessed. As noted previously, the 705 Notice delayed the effectiveness of certain provisions of the 2016 final

regulations until a legal challenge is resolved. If the legal resolution were to be reached on or after July 1, 2018, then the 705 Notice would provide for the delay of effectiveness between now and then, and the interim final rule would not have any impact. By contrast, if the legal resolution were to be reached earlier, this interim final rule could have substantial impacts associated with the avoidance of confusion and legal ambiguity regarding the interaction among the 705 Notice, the master calendar, and the 2016 final regulations. Although an analysis of a simple one-year delay does not exactly capture this collection of impacts (due to, among other reasons, the fact that July 1, 2018, is already less than a year away and thus this interim final rule cannot have a full year's impact), it can provide a general sense of the magnitude of upper bound effects.

Net Budget Impact:

In order to estimate the net budget impact of the one-year delay in the effective date, the Department developed a scenario that revised the primary estimate assumptions from the final regulations from the affected 2017 and 2018 loan cohorts. The assumptions for the primary scenario from the 2016 final regulation were the basis for the President's Budget 2018 (PB2018) baseline that assumed the regulation would go into effect on July 1, 2017. The scenario developed for this interim

final rule is designed to capture the incremental change from the PB2018 baseline associated with the one-year delay in the effective date. Table 1 presents assumptions for the primary estimate from the final regulations and the revised estimate for the one-year delay in the effective date. In this scenario, the conduct percent is 90 percent of the primary scenario from the final regulation and the borrower percent is the same. The financial protection provided was always expected to increase over time so the delayed effective date in the near term is not expected to significantly affect the amount of recoveries over the life of any particular loan cohort, limiting any net budget impact from the delay. To estimate the potential reduction in recoveries related to the delayed effective date, we reduced recoveries for the affected portion of the 2017 and 2018 cohorts by five percent for the private not-for-profit and proprietary sectors. As in the final regulations, recoveries from public institutions were held constant at 75 percent across scenarios.

Table 1: Revised Assumptions for One-Year Delay

Cohort	2017		2018	
	Public/ Private Not for Profit	Proprietary	Public/ Private Not for Profit	Proprietary

Conduct Percent:				
Final Primary	3.0	20	2.4	16
Delay Revised	2.7	18	2.16	14.4
Borrower Percent:				
Final Primary	35	45	36.8	47.3
Delay Revised	35	45	36.8	47.3
Recovery Percent:	Public:	Priv/Prop:	Public:	Priv/Prop:
Final Primary	75	23.8	75	23.8
Delay Revised	75	22.61	75	22.61

The net budget impact associated with these effects of the one-year delay in the effective date on the borrower defense provisions only is approximately -\$37.7 million from the 2017 and 2018 loan cohorts.

As the amount and composition of borrower defense claims and estimated recoveries over the lifetime of the relevant loan cohorts are not expected to change greatly due to the delayed effective date, the Department does not estimate an economically significant net budget impact from the delay itself, with a potential net budget impact related to borrower defense claims of -\$37.7 million in reduced costs.

The closed school automatic discharge provisions were the other significant source of estimated net budget impact in the final regulations. Under credit reform scoring, the

modification to older cohorts for the automatic discharge provision estimated to cost \$364 million was expected to occur in FY 2017 in the President's Budget for FY 2018 (PB2018). As a result of the delay in the effective date, the Department will not execute the modification in FY 2017.

The Department does expect to incur the costs associated with the three-year automatic discharge after the delayed effective date, but moving the execution of the modification beyond FY 2017 will require a new cost analysis with economic assumptions from the fiscal year of the execution. This will result in a change of cost, but at this point it is not possible to know the discount rates in future fiscal years, so the cost of the modification will be determined in the year that it is executed. While the actual cost of the future modification cannot be determined at this time, the Department did approximate the effect of the delay by shifting the timing of the relevant discharges back by a year and recalculating a modification using the discount rates and economic assumptions used for the calculation of the PB2018 modification. When calculated in this manner, the delay in the modification is expected to result in estimated savings of less than \$10 million.

As the delay does not change the substance of the automatic discharge, we would expect the amount and composition of loans

affected by the automatic discharge not to change significantly. The closed school three-year automatic discharge provisions were applicable to loans made on or after November 1, 2013, and were not linked to the effective date of the final regulations. Therefore, delaying the effective date of those provisions will not change the set of loans eligible for this automatic discharge. Additionally, borrowers would have the ability to apply for a closed school discharge before July 1, 2018, if they did not want to wait for the automatic discharge to be implemented. For future cohorts, the delay is not significant as the three-year period will fall beyond the delayed effective date. Any significant change to the estimated net budget impact associated with the closed school automatic discharge depends on any substantive changes made to the provisions as a result of the upcoming rulemaking and changes to economic assumptions when the modification is executed.

Consistent with Executive Order 13771 (82 FR 9339, February 3, 2017), we have estimated that this interim final rule will result in cost savings. Therefore, this interim final rule is considered an Executive Order 13771 deregulatory action.

Accounting Statement:

In evaluating whether a regulation is economically significant, a key consideration is whether the annual effect in any given year is over \$100 million. To evaluate this, the

Department looked at the difference in the undiscounted cashflows related to the death, disability, and bankruptcy (DDB) claims in which borrower defense claims are included for the PB2018 baseline and the one-year delay scenario described in the Net Budget Impacts section of this interim final rule. The difference from subtracting the one-year delay scenario from the baseline for the 2017 and 2018 cohorts for FY2017 to FY 2026 is summarized in Table 2.

Table 2: Difference in Undiscounted Net Cashflows for the 2017 and 2018 Loan Cohorts from One-Year Delay in 2016 Borrower Defense Rule for FY2017 to FY2026

	2017	2018	2019	2020	2021
Change in DDB Cashflow	406,737	846,076	514,402	4,457,479	11,564,985
	2022	2023	2024	2025	2026
Change in DDB Cashflow	9,114,464	635,180	(2,086,812)	(981,585)	166,597

Table 3 shows the effects when those differences in the DDB cashflows are discounted at 7 and 3 percent and annualized.

Category	Benefits
Institutions may not incur compliance costs or costs of obtaining financial protection	Not Quantified

until the rule is in effect.		
Category	Costs	
	7%	3%
Continued use of state law based standard. Delay in providing consumer information about institution's performance and practices. Potential decreased awareness and usage of closed school and false certification discharges.	Not Quantified	
Savings associated with delay in compliance with paperwork requirements.	-9.5	-9.51
Category	Transfers	
	7%	3%
Reduction in transfers from the Federal Government to affected borrowers in the 2017 and 2018 cohorts that would have been partially borne by affected institutions via reimbursements.	-3.8	-3.8
Reduced reimbursements from affected institutions to affected students, via the Federal government as loan cohorts 2017 and 2018 are subject to the existing borrower defense regulation.	-1.3	-1.2

Delay in closed school automatic discharge	-6.6	-6.6
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Paperwork Reduction Act of 1995

As indicated in the Paperwork Reduction Act section published in the final regulations, the assessed estimated burden was 253,136 hours, affecting both institutions and individuals, with an estimated annual cost of \$9,458,484. The table below identifies the regulatory sections, OMB Control Numbers, estimated burden hours, and estimated costs of the final regulations.

Regulatory Section	OMB Control Number	Burden Hours	Estimated Cost \$36.55/hour Institution \$16.30/hour Individual
668.14	1845-0022	1,953	71,382
668.41	1845-0004	5,346	195,396
668.171	1845-0022	3,028	110,673
668.175	1845-0022	60,560	2,213,468
682.211	1845-0020	5,784	211,405
682.402	1845-0020	1,838	67,179
685.222	1845-0142	249 (Individuals)	4,059
685.222	1845-0142	800 (Institutions)	29,240
685.300	1845-0143	179,362	6,555,681

	TOTAL	258,920	9,458,484
Cost savings due to delayed effective date excluding 682.211, for which early implementation is allowed		253,136	9,247,079
Burden remaining		5,784	211,405

This interim final rule delays the effective date of all of the cited regulations and would result in a cost savings of the total amount of \$9,247,079. This cost savings equals the cost savings from delaying the effective date of all of the identified provisions of the final regulations other than § 682.211(i)(7), regarding mandatory forbearance based on a borrower defense claim, with an estimated 5,784 hours and \$211,405 cost, as such section has been designated for early implementation. Lenders may have elected to invoke early implementation, and, therefore, those specific costs and hours remain applicable and have been subtracted from the overall estimated cost savings. Based on the delayed effective date of July 1, 2018, the revised estimated annual cost savings to institutions and individuals is \$9,247,079 (\$9,458,484 - \$211,405) with an estimated burden hours savings of 253,136 (258,920 - 5,784).

Regulatory Flexibility Act

The Secretary certifies that this interim final regulation will not have a significant economic impact on a substantial number of small entities. The small entities that are affected by these regulations are small postsecondary institutions. As stated above, this delayed effective date is not expected to have a significant economic impact generally. This same analysis applies with regard to affected small entities.

Intergovernmental Review

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

Assessment of Educational Impact

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

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List of Subjects

34 CFR Part 668

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

34 CFR Part 674

Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Parts 682 and 685

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

Dated: October 16, 2017

Betsy DeVos,
Secretary of Education.

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