August 28, 2013 via email to www.regulations.gov

Ms. Jessica Finkel
U.S. Department of Education
1990 K Street, NW
Room 8031
Washington DC 20006-8502

RE: Docket ID ED-2013-OPE-0063

Dear Ms. Finkel:

As the trade associations representing the majority of student loan providers (guaranty agencies, lenders and servicers) in the Federal Family Education Loan Program (FFELP), and having had colleagues act as negotiators during the 2012 negotiated rulemaking sessions for the "Loan Issues" committee, we write to express our appreciation for the opportunity to contribute to this essential process. We are also pleased that consensus was reached.

Since reaching consensus on the proposed regulatory package, our members have continued to review and analyze the language as published in the July 29th Notice of Proposed Rulemaking (NPRM). Given the importance of loan rehabilitation and the need to ensure a process that helps borrowers succeed rather than creating additional complexities and other unintended negative consequences, we offer a revised *Financial Disclosure for Reasonable and Affordable Rehabilitation Payments* for the Department's consideration. Our comments also reflect our understanding of the operational details associated with these proposed regulations since we did not have the opportunity to have those discussions during the negotiated rulemaking sessions. We look forward to continuing the dialogue with the Department regarding the operational issues associated with these new provisions.

Based on our discussions and upon further review of the topics discussed by the negotiators, we provide the attached clarifying responses.

We also request the Secretary to authorize voluntary and early implementation of the following borrower-friendly provisions.

- Forbearance for borrowers who are 270 or more days delinquent prior to guaranty agency default claim payment or transfer by the Department to collection status - 34 CFR 682.211(d) and 685.205
- Forbearance provisions for borrowers receiving Department of Defense student loan repayment benefits - 34 CFR 682.211(h) and 685.205
- Borrowers who are delinquent when an authorized forbearance is granted - 34 CFR 682.211(f) and 685.205

- FFEL lender repayment disclosures for borrowers who are 60 days delinquent - 34 CFR 682.205(c)
- FFEL lender repayment disclosures for borrowers who are having difficulty making payments - 34 CFR 682.205(c)(4)

Finally, we extend our appreciation to the Department staff that spent countless hours with the negotiators to better understand issues, complete research, hear all sides of issues and develop consensus-building positions. We are grateful for the time and commitment put forth by all involved.

We and our colleagues remain committed to working with the Department in the implementation of these regulations and the development of those to come.

Sincerely,

Consumer Bankers Association (CBA)
Education Finance Council (EFC)
National Council of Higher Education Resources (NCHER)
Student Loan Servicing Alliance (SLSA)

cc: Pam Moran
Gail McLarnon

USE OF SECRETARY-APPROVED FORM TO DETERMINE REASONABLE AND AFFORDABLE PAYMENTS FOR LOAN REHABILITATION PURPOSES
34 CFR 682.405(b)(1)(iii) and 685.211(f)(1)(i); Preamble pp. 45619, 45632-45635

Comment: Proposed §§ 682.405(b)(1)(iii) and 685.211(f)(1)(i) require the use of a form approved by the Secretary to determine reasonable and affordable payment amounts for borrowers pursuing loan rehabilitation. It appears that an incorrect trigger event is proposed for the form's use.

Section 428F of the Higher Education Act (HEA) states, "Neither the guaranty agency nor the Secretary shall demand from a borrower as monthly payment amounts…more than is reasonable and affordable based on the borrower's total financial circumstances" to rehabilitate defaulted loans.

The determination of a "reasonable and affordable" payment amount can often be accomplished in a telephone conversation in which a borrower's overall financial circumstances are evaluated to establish an acceptable payment amount. In these discussions, the borrower's own assessment of his or her total financial circumstances and ability to pay the requested amount serves as the basis for the guaranty agency or Department's determination that the payment amount is reasonable and affordable. This is a fair conclusion, since the borrower understands his or her financial resources and constraints better than others. Guaranty agencies find that nearly half of borrowers seeking rehabilitation are able to obtain reasonable and affordable payment amounts in this manner.

In other cases, the borrower objects to the repayment terms discussed with the guaranty agency or Department. If the borrower indicates an unwillingness or inability to make payments in the amount requested, a reasonable and affordable payment must be determined by a closer examination of the borrower's total financial circumstances, requiring the collection of additional financial information.

To achieve consensus during the negotiated rulemaking process, a compromise was reached to use a proposed, new Department-approved form as the standardized tool to collect additional financial information from borrowers who indicate that an initially-requested payment amount is too high. This type of borrower feedback has always been the trigger event for collecting additional financial information to determine reasonable and affordable payments, and no change to this trigger event was discussed or agreed to during the negotiations.

Our understanding of the process that guaranty agencies and the Department (and their respective agents), referred to as "loan holders" below, will use to implement the proposed rules follows:

- Step 1: A borrower discusses repayment options regarding his or her defaulted loans with the loan holder or visits the website of the loan holder to learn about the loan rehabilitation program.

- Step 2: The determination of a reasonable and affordable payment amount for purposes of rehabilitation is made, generally in a telephone conversation between the borrower and the loan holder where the borrower's overall financial circumstances are evaluated to establish an acceptable payment amount. If the borrower indicates that the requested payment is not affordable, skip to Step 5.

- Step 3: Within 15 business days of determining an acceptable payment amount, the loan holder provides the borrower with a written rehabilitation agreement which includes the borrower's reasonable and affordable payment amount, a prominent statement that the borrower may object orally or in writing to the payment amount, and other required information.
- Step 4: If the borrower agrees with the payment amount, no other action is required by the borrower unless the loan holder requires the borrower to sign and return a copy of the agreement to acknowledge an understanding of the terms and to provide updated contact information and/or additional references as appropriate. The borrower simply begins making the required series of payments, and the rehabilitation process moves forward immediately.
- Step 5: If the borrower objects to the payment amount, the borrower is instructed to complete, sign and submit a *Financial Disclosure for Reasonable and Affordable Rehabilitation Payments* form in order for the loan holder to determine a reasonable and affordable payment amount based on the detailed income and expense information provided by the borrower. After determining a reasonable and affordable payment, the loan holder performs Step 3 above, and then the borrower's response determines whether Step 4 or Steps 6 and 7 apply.
- Step 6: If the borrower objects to the monthly payment amount calculated in Step 5, the loan holder recalculates the payment amount to be 15 percent of the amount by which the borrower's Adjusted Gross Income (AGI) exceeds 150 percent of the poverty line income for the borrower's family size, divided by 12. The borrower will not be required to submit additional information to the loan holder unless needed by the loan holder. Step 3 is repeated to notify the borrower of the new payment amount, and the borrower's response determines whether Step 4 or Step 7 applies.
- Step 7: After completing Step 6, the borrower may choose either payment amount calculated in Steps 5 or 6 as a reasonable and affordable payment for rehabilitation purposes. If the borrower objects to both of these amounts, the rehabilitation does not proceed.

The Department shared a draft version of its proposed form with negotiators after the conclusion of the negotiated rulemaking process last year. In response, the FFELP community offered suggested edits on August 1, 2012 to enhance the effectiveness of the form and to clarify the trigger event for its use, which was not clearly established in negotiations. The community did not receive a response from the Department regarding the suggested edits. Therefore, the FFELP community was not aware that our understanding of the trigger event was different from the Department's until the revised form was published for public notice and comment a year later, at the same time as the proposed rules.

The proposed rules and accompanying form specify that all reasonable and affordable payment determinations for rehabilitation purposes must be made only after a borrower's financial information has been collected on the proposed form. This is a significant departure from the FFELP community's understanding of the trigger event for using the form. During the negotiations, policy issues were discussed and agreed upon; however, specific operational procedures for determining a rehabilitation payment amount were not discussed in detail. Upon review of these operational issues, we have identified a number of reasons that the proposed use of the form in all cases would be very detrimental to borrowers and to the effectiveness of the rehabilitation process.

First, the Department's objective in revising these regulations is to provide an improved and more consistent rehabilitation process for FFEL and Direct Loan Program borrowers. The Department has heard complaints that the requested payment amounts are not always reasonable and affordable to borrowers, and that some borrowers are not informed of their right to object to these amounts. The Department should address any such concerns by reminding its own staff and collection agencies, along with guaranty agencies and their collection agency contractors, of the importance of full compliance with statutory and regulatory requirements designed to ensure that reasonable and affordable payments are available to borrowers seeking to rehabilitate their loans. The improvement sought by the Department can be readily achieved by requiring use of the form in the absence of agreement with the borrower as to what is reasonable and affordable based on the borrower's individual circumstances.

This approach provides targeted help to borrowers who are uncomfortable with the initially-requested payment amount but who still wish to participate in the rehabilitation program, while not unnecessarily encumbering the process for those who agree that the requested payment is reasonable and affordable. A proposal to collect voluminous, personal financial information from every borrower seeking rehabilitation, even when there is no indication that the requested payment amount is too high, is unreasonable, unwarranted, and inconsistent with the Department's goal to improve the process as described above.

The Department's second goal in revising these regulations, as explained in the Preamble, is to increase the participation rate of defaulted borrowers working to resume full economic participation by completing the rehabilitation program. The Department considers this to be in the best interests of the borrowers and taxpayers. However, requiring all borrowers to submit financial information on the proposed form before beginning the program would have the opposite effect on those who are willing to make the requested payment and wish to get started, but who would be prevented from doing so under the proposed rule. The form is lengthy and complicated, and it would unnecessarily increase the amount of time required for borrowers who can afford the requested payment to resolve their default status. This delay would be the "best case" scenario; the unfortunate "worst case" scenario is that many borrowers would find the form-based process to be too burdensome, complicated, and intrusive to complete. This would lead to a *lower* participation rate of borrowers in the rehabilitation program. The private collection agencies (PCAs) supporting the Department's debt collection efforts have estimated that 40% of borrowers fail to return requested forms or complete them inaccurately, bringing the entire rehabilitation process to a halt.

In the current fiscal year, guaranty agencies and the Department together will assist an estimated 800,000 borrowers to successfully complete the rehabilitation of $10 billion in defaulted loans. Based on the recent experiences of guaranty agencies and the Department, up to half of them — 400,000 borrowers rehabilitating $5 billion in loans — were able to agree upon a reasonable and affordable payment without completing a financial disclosure form. Had all of these borrowers been required to complete a form to begin the rehabilitation process, up to 40% of them — 160,000 borrowers seeking to rehabilitate $2 billion in loans — likely would have not properly completed or returned the form, resulting in delayed or abandoned efforts to complete the rehabilitation process and remove this barrier to full economic participation. This is further evidence that the form should be used only as needed to permit a more detailed analysis of a borrower's financial circumstances, triggered by the borrower's indication that a requested rehabilitation payment amount is too high.

A third concern with the proposed use of the form pertains to individual privacy considerations. Its purpose is to extract detailed financial information from borrowers on sources and uses of personal and household income. This is highly-sensitive information that should be collected only when fully justified by the necessity of its intended use. Those who work with borrowers in operations and ombudsman roles at guaranty agencies have expressed substantial concerns about whether a borrower *who has already agreed to a payment amount* in conversation with the guaranty agency should be required to divulge additional, unnecessary personal, spousal, and household financial information to the agency or "the government" for this purpose. This would directly contradict Fair Information Practice Principles. It makes no sense to use the form to collect further financial data in such cases.

A fourth concern is that this requirement would impose an additional impediment on borrowers seeking to regain Title IV eligibility while also rehabilitating their defaulted loans. The delay caused by requiring all borrowers to complete the proposed form would unnecessarily prevent some borrowers from receiving Title IV program funds in time to meet payment deadlines to return to school.

The final concern of guaranty agencies, which is also relevant to the Department, is the enormous administrative burden the proposed use of the form would impose on all parties at the expense of current flexibility to use the tool when warranted, but not when unnecessary. The Preamble affirms the authority and flexibility of guaranty agencies to continue to work with borrowers to negotiate reasonable and affordable payment amounts: "As the negotiation process and factors considered in determining the reasonable and affordable payments will largely remain the same for FFEL Program loans, the Department does not estimate a budget impact from the proposed changes."

The estimated burden hours and costs associated with the proposed use of the form in the FFEL and Direct Loan programs, however, appear to indicate a very different expectation. The Preamble indicates, "Collectively, the proposed changes in §§ 682.405 and 685.211 associated with the completion and submission of the reasonable and affordable form would increase burden by 588,044 hours…". The total OMB estimated burden of the new information collection requirement is quoted at 732,040 hours and $18,015,505 in costs. This is a *huge* collective effort for borrowers, guaranty agencies, the Department, and collection agencies to undertake without justification.

In light of Executive Order 13563 requiring a federal agency to "propose or adopt regulations only upon a reasoned determination that their benefits justify their costs" and to "tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives", it is unclear how the Department could conclude that the information collection requirements associated with use of the new form in all rehabilitation scenarios, if that is truly intended, would be cost-justified.

Guaranty agencies share the Department's concern for the success of the rehabilitation program as a tool to improve repayment outcomes for borrowers and default recoveries for taxpayers. We understand the importance of the Department's goal to provide an improved and more transparent process to ensure borrower success in completing rehabilitation. We remain committed to implementing a standardized form to collect the least information necessary in the most understandable manner possible, for borrowers who must supply this additional data to permit a determination of a reasonable and affordable payment amount, as agreed to during the negotiations.

Recommendation: We strongly urge the Department to revise proposed §§ 682.405(b)(1)(iii) and 685.211(f)(1)(i) to require use of the form to determine reasonable and affordable rehabilitation

payments only in cases where the borrower and the loan holder (or its agent) have not reached agreement.

§682.405(b)(1)(iii) For the purposes of this section, except where the borrower and guaranty agency otherwise agree, the borrower's reasonable and affordable payment amount, as determined by the guaranty agency or its agents, is based solely on information provided on a form approved by the Secretary and, if requested, supporting documentation from the borrower and other sources, and considers—

§685.211(f) *Rehabilitation of defaulted loans*. (1) A defaulted Direct Loan, except for a loan on which a judgment has been obtained, is rehabilitated if the borrower makes 9 voluntary, reasonable, and affordable monthly payments within 20 days of the due date during 10 consecutive months. The Secretary determines the amount of such a borrower's reasonable and affordable payment on the basis of a borrower's total financial circumstances.

(i) For the purposes of this section, except where the borrower and Secretary otherwise agree, the borrower's reasonable and affordable payment amount, as determined by the Secretary, is based solely on information provided on a form approved by the Secretary and, if requested, supporting documentation from the borrower and other sources, and considers—

INVITATION FOR COMMENTS ON POSSIBLE USE OF STANDARDIZED METHODOLOGY TO DETERMINE REASONABLE AND AFFORDABLE REHABILITATION PAYMENTS
Preamble p. 45635

On page 45635 of the Notice of Proposed Rulemaking (NPRM), the Secretary invites comments on whether to require a standardized methodology to calculate a borrower's reasonable and affordable rehabilitation payment amount, in addition to standardizing the types of expenses considered and the form used to collect this financial information as was agreed during negotiated rulemaking.

The topic of standardization was discussed at great length in the negotiations. Much discussion was focused on how to ensure the fair and equitable treatment of borrowers, regardless of their financial circumstances, loan balance, and loan holder. While a more consistent approach may help to ensure such equitable treatment, an overly rigid framework would eliminate the rehabilitation opportunity for those whose financial circumstances do not exactly "fit" within that framework. As noted in the preamble, the Department concluded that preserving appropriate flexibility in the methodology is very important to enable guaranty agencies and the Secretary to ensure that a reasonable and affordable payment is available to all borrowers who wish to pursue rehabilitation.

Just as the HEA and current regulations permit school financial aid officers to exercise professional judgment within the framework of the need analysis methodology to provide appropriate flexibility in awarding Title IV aid, similar flexibility here strengthens the effectiveness of the proposed rules in determining reasonable and affordable payments for borrowers. This flexibility does not undermine the purpose for requiring a standardized form to collect income and expense data from borrowers. It simply permits prudent use of the data to address nuanced circumstances of individual borrowers.

For this reason, the negotiating team decided *not* to require a standardized methodology that could inappropriately prevent some borrowers from obtaining reasonable and affordable payments.

The statutory provisions governing negotiated rulemaking in Sec. 492 of the HEA stipulate, "All published proposed regulations shall conform to agreements resulting from such negotiated rulemaking unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from such agreements."

In this case, the Department's proposed rule generally conforms to the agreement reached by negotiators, but the Secretary's specific request for comments as to whether that agreement was appropriate invites challenges from individuals whose opinions on the matter may lack the benefit of the very rigorous deliberations that occurred during the negotiations. We are concerned that this new round of requested comments will serve to reopen deliberations outside of the negotiation process, which would violate agreed-upon protocols and weaken the trust that is critical to successful negotiated rulemaking.

It is our strong belief that the best, borrower-focused approach was adopted by the negotiating team in deciding that the form and the types of data collected on it should be standardized, but not the methodology used to determine a borrower's reasonable and affordable payment based on that data. Appropriate flexibility exercised here will enable borrowers to receive due consideration of unique circumstances, leading to more appropriate and expeditious determinations.

Recommendation: We urge the Department to honor the consensus agreement of the negotiators in the final rules it publishes on this topic.

LOAN REHABILITATION AGREEMENT: CONDITIONS UNRELATED TO AMOUNT OR TIMING OF PAYMENTS
34 CFR 682.405(b)(1)(v); Preamble pp. 45633 – 45634

Comment: A proposed FFELP regulatory change states that a guaranty agency "may not impose any other conditions unrelated to the amount or timing of the rehabilitation payments" in a rehabilitation agreement provided to a borrower.

In today's environment, some guaranty agencies require a borrower's written acknowledgement of understanding of the terms and conditions of rehabilitation, which is a prudent practice when establishing a new repayment agreement with the borrower. In such cases, the borrower may be required to sign and return the agreement or provide a separate, signed authorization statement acknowledging at a minimum that collection costs will be added to the loan balance at the time of purchase by an eligible lender. This requirement for the borrower to review and acknowledge the information provided in the rehabilitation agreement underscores the importance of this one-time opportunity to remove loans from default status. It also reduces future borrower misunderstandings and related risks for guaranty agencies in the event of a dispute concerning the applicable repayment terms and conditions, costs, and benefits of loan rehabilitation for the borrower.

Guaranty agencies may also currently require a borrower to provide updated references and contact information to facilitate the rehabilitation process. This provides a purchasing lender with important default prevention information, if needed, since the borrower's contact information may be

incomplete or outdated and the references provided in the promissory note may no longer be valid. This enhances a guaranty agency's ability to sell the borrower's rehabilitation-eligible loans.

Recommendation: Since these types of requirements directly support a borrower's success during and after the rehabilitation process, we request confirmation that the proposed regulatory provision cited above will not preclude their continued use by guaranty agencies in rehabilitation agreements.

ALTERNATIVE PAYMENT AMOUNT FOR LOAN REHABILITATION
34 CFR 682.405(b)(1)(vi) and (vii), 685.211(f)(3), and 685.211(f)(5); Preamble pp. 45635-45636

Comment: The proposed rules would establish an additional process to permit a borrower to object to a rehabilitation payment amount requested by the Department or guaranty agency. When the Department or guaranty agency determines a reasonable and affordable payment amount based on financial information provided by a borrower on the proposed form, the borrower would be notified of the result and permitted to object to that amount verbally or in writing. If the borrower objects, the Department or guaranty agency would be required to recalculate the reasonable and affordable payment amount using the income-based repayment (IBR) formula.

We believe it is vital that the industry as a whole cease to refer to this as the "IBR formula or calculation", as this will cause significant confusion for borrowers. Payments made under this formula will not count toward the forgiveness benefit associated with IBR, nor will interest subsidies apply, as defaulted borrowers are not eligible for IBR under the statute. Therefore, referencing "IBR" incorrectly implies that a borrower is eligible for these benefits. Consistent with the Department's approach in the Preamble discussion, we suggest that the term "alternative payment amount" or "APA" be used to refer to this formula going forward.

During the negotiated rulemaking process, the team discussed that an APA would equal 15 percent of the amount by which a borrower's adjusted gross income (AGI) exceeds 150 percent of the poverty line amount for the borrower's family size, divided by 12 to derive a monthly payment. This would be a straightforward calculation for the Department, guaranty agencies, and collection contractors to use in determining the borrower's APA. Calculators have already been developed for this purpose and are readily available to these entities. The team did not discuss any other IBR-related provisions that apply to non-defaulted borrowers opting to use this repayment plan, since the HEA, as previously mentioned, does not permit defaulted borrowers to repay loans using IBR.

However, proposed §§ 682.405(b)(1)(vi) and 685.211(f)(5) cross-reference more comprehensive IBR rules at §682.215(b)(1), §685.221(b)(1), and §685.221(b)(2). These include provisions beyond the formula described above. Since the negotiating team did not discuss payment considerations other than the formula itself and when it would be used, it is unclear if the other cross-referenced provisions were intended to apply in this scenario. Some of them would pose significant operational complexities (e.g., proration of the calculated payment amount if a borrower has loans with more than one holder; authorization to obtain spousal loan information). These more extensive provisions were carefully crafted to be workable in the non-defaulted student loan environment of lenders and servicers; however, they are not well suited to the defaulted student loan environment. For example, access to the National Student Loan Data System (NSLDS) is not available to collection contractors; therefore, they would be unable to support implementation of IBR-related provisions beyond the formula described above.

Recommendation: Since the reasonableness of incorporating IBR provisions other than the payment formula was not discussed by the Department and guaranty agencies during negotiated rulemaking, we request that the Department remove the regulatory cross-references to other IBR payment calculation provisions in the final rules. If a reasonable and affordable payment determination needs to consider additional factors, those can be addressed using the flexibility afforded to the Department and guaranty agencies in the methodology for making such determinations based on a borrower's information. This will accommodate special circumstances without adding complexities that may be unworkable. We suggest the following revisions to the proposed regulatory language:

§682.405(b)(1)(vi) If the borrower objects to the monthly payment amount determined under paragraph (b)(1)(iii) of this section, the guaranty agency must recalculate the payment amount~~. The guaranty agency must follow the monthly payment calculation rules in § 682.215(b)(1)~~ by using the formula—15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty line income applicable to the borrower's family size and state, divided by 12—to determine a borrower's recalculated reasonable and affordable payment amount, except that if the recalculated amount ~~under §682.215(b)(1)~~ is less than $5, the borrower's recalculated monthly rehabilitation payment is $5. The guaranty agency must provide the borrower with a new written rehabilitation agreement confirming the borrower's recalculated reasonable and affordable payment amount within the timeframe specified in (b)(1)(v) of this section.

(vii) If the borrower objects to the monthly payment amount determined under paragraph (b)(1)(iii) of this section, but does not provide the documentation required to recalculate a monthly payment amount under ~~§682.215(b)(1)~~ (b)(1)(vi) of this section, no rehabilitation agreement exists between the borrower and the guaranty agency, and the rehabilitation does not proceed.

§685.211(f)(3) If the borrower objects to the monthly payment amount determined under paragraph (f)(1) of this section, the Secretary recalculates the payment amount by using the ~~monthly payment calculation rules in §685.221(b)(1) and §685.221(b)(2)~~ formula—15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty line income applicable to the borrower's family size and state, divided by 12~~,~~ — except that if the recalculated amount ~~under these sections~~ is less than $5, the monthly rehabilitation payment is $5.

§685.211(f)(5) If the borrower objects to the monthly payment amount determined under paragraph (f)(1) of this section, but does not provide the documentation required to recalculate a monthly payment amount under ~~§685.221(b)(1) and §685.221(b)(2)~~ (f)(3) of this section, no rehabilitation agreement exists between the borrower and the Secretary, and the rehabilitation does not proceed.

DOCUMENTATION FOR LOAN REHABILITATION
34 CFR 682.405(b)(1)(vii) and 685.211(f)(5); Preamble p. 45636

Comment: On page 45636 of the NPRM, the Secretary invites comments on whether it would be appropriate to make a change in the final regulations to require a borrower to submit information needed to recalculate the borrower's reasonable and affordable rehabilitation payment amount only if new information is required beyond what the borrower provided when he or she initially requested loan rehabilitation.

Recommendation: We support the Department in making this change in the final regulations, but request that the Department's description of this proposed change in the final regulatory language be written flexibly enough to cover the following possible scenarios:

- Some information or documentation originally submitted by the borrower is illegible or difficult to understand, and needs to be requested again or explained after submission

- Significant time passes between the borrower's initial request for rehabilitation and the borrower's subsequent request for a recalculated payment amount, so a verification of critical information may be needed to determine an appropriate payment amount

- The borrower realizes after submitting the original information/documentation that the submission was incomplete or inaccurate, and that additional information or documentation is needed by the loan holder to determine an appropriate payment amount

We suggest that the Department use the following regulatory language in §§ 682.405(b)(1)(vii) and 685.211(f)(5) to encompass these scenarios:

> "A borrower is not required to submit additional information or documentation to recalculate a reasonable and affordable payment under <regulatory citation>, unless new or updated information or documentation is needed by the loan holder to determine a reasonable and affordable payment amount."

LOAN REHABILITATION AGREEMENT: TREATMENT OF BORROWERS SUBJECT TO AWG
34 CFR 682.405(a)(3), 682.410(b)(9), and 685.211(f)(12); Preamble pp. 45636-45637

Comment: Under proposed §682.405(a)(3), if a borrower currently subject to administrative wage garnishment (AWG) wishes to pursue loan rehabilitation, the guaranty agency must continue collecting the borrower's loans through AWG until the borrower has made five qualifying rehabilitation payments. At that time, the guaranty agency must, unless otherwise directed by the borrower, suspend the garnishment order while the borrower attempts to complete the remainder of the rehabilitation process. This is a one-time opportunity for the borrower to be released from AWG; if the borrower does not successfully complete the rehabilitation process while the garnishment order is suspended, garnishment resumes and any future rehabilitation attempts by the borrower will not result in a suspension of AWG while the borrower attempts to complete the rehabilitation process. The same language is proposed in §685.211(f)(12) to apply to Direct Loan borrowers currently subject to AWG who wish to pursue loan rehabilitation.

This proposed rule in §682.405(a)(3) appears to assume that a guaranty agency would not be required to suspend the borrower's current garnishment order for another reason prior to receipt of the borrower's fifth rehabilitation payment. However, this may not always be the case under current and proposed AWG rules in §682.410(b)(9). For instance, if a borrower does not request a hearing prior to the initiation of AWG, but does so shortly after AWG commences, the AWG hearing process would occur during the period of the borrower's first five payments under a rehabilitation agreement and could result in a required suspension of the garnishment order during that time.

Recommendation: The Department's proposed rule at §682.405(a)(3) should be modified to include a reference to §682.410(b)(9), in order to clarify that a guaranty agency may suspend a garnishment order for a borrower pursuing loan rehabilitation prior to receipt of the borrower's fifth rehabilitation payment, if required to do so for another reason in accordance with §682.410(b)(9).

Proposed §682.405(a)(3)(i) should also be aligned with proposed §682.410(b)(9)(i)(H) to clarify that while a guaranty agency will "suspend a garnishment order" issued to a borrower's employer, only the employer can discontinue the actual garnishment activity. A similar change should be made in §685.211(f)(12)(i).

> (3)(i) If a borrower's loan is being collected by administrative wage garnishment while the borrower is also making monthly payments on the same loan under a loan rehabilitation agreement, the guaranty agency must continue collecting the loan by administrative wage garnishment until the borrower makes five qualifying monthly payments under the rehabilitation agreement, unless the guaranty agency is otherwise precluded from doing so under §682.410(b)(9).
>
> (ii) After the borrower makes the fifth qualifying monthly payment, the guaranty agency must, unless otherwise directed by the borrower, suspend the garnishment order issued to the borrower's employer. ~~collecting the loan by administrative wage garnishment.~~
>
> (iii) A borrower may only obtain the benefit of a suspension of administrative wage garnishment while also attempting to rehabilitate a defaulted loan once.

Proposed §682.410(b)(9) should also be revised to reference the suspension of a garnishment order by a guaranty agency for a borrower who makes five qualifying payments under a rehabilitation agreement, so that all AWG regulatory provisions are either located or referenced in §682.410(b)(9) to minimize confusion or a lack of full awareness of all AWG-related rules in the final regulations. The most appropriate place to insert this new provision in §682.410(b)(9) appears to be immediately following §682.410(b)(9)(i)(H), in a new paragraph §682.410(b)(9)(i)(I) as follows:

> (I) A guaranty agency may also be required to suspend a garnishment order because the agency has received a borrower's fifth qualifying payment under a loan rehabilitation agreement with the agency, in accordance with §682.405(a)(3).

Please note the use of the word "may" above, since the suspension of a garnishment order for a borrower seeking to rehabilitate loans is a one-time benefit. In some cases, the guaranty agency's receipt of the borrower's fifth payment will result in suspension of a garnishment order, while in other cases it will not (during any subsequent rehabilitation attempts by the borrower).

We realize that this would necessitate a re-lettering of current and proposed regulatory provisions in §682.410(b)(9)(i)(I) through (U), and adjustments to any cross-references to those paragraphs.

In the interest of further minimizing confusion, it would also be helpful for the Department to avoid alternately referring to the document requiring an employer to deduct AWG payments from an employee's paycheck as a "withholding order", "garnishment notice", or "garnishment order". The Department defines "garnishment" and "withholding order" at §682.410(b)(9)(ii)(F) and (G), respectively, in a circular manner which appears to indicate that the terms "withholding order" and

"garnishment order" are synonymous. If that is true, the Department should use one term or the other, but not both, in its rules and modify or eliminate §682.410(b)(9)(ii)(F) and (G) accordingly.

These same changes should be made to the Department's Direct Loan regulations and the rules governing the Department's AWG activities at 34 CFR 34. Proposed §685.211(f)(12) would read:

> (12)(i) If a borrower's loan is being collected by administrative wage garnishment while the borrower is also making monthly payments on the same loan under a loan rehabilitation agreement, the Secretary continues collecting the loan by administrative wage garnishment until the borrower makes five qualifying monthly payments under the rehabilitation agreement, unless the Secretary is otherwise precluded from doing so.
>
> (ii) After the borrower makes the fifth qualifying monthly payment, the Secretary, unless otherwise directed by the borrower, suspends the garnishment order issued to the borrower's employer. ~~collecting the loan by administrative wage garnishment.~~
>
> (iii) A borrower may only obtain the benefit of a suspension of administrative wage garnishment while also attempting to rehabilitate a defaulted loan once.

ADMINISTRATIVE WAGE GARNISHMENT
34 CFR 682.410(b)(9)(i)(F)(*2*)(*ii*) and (*iii*); Preamble p. 45641

Comment: On page 45641 of the NPRM, the Secretary invites comments on whether the term "National Standards" used in the proposed rules should be changed to "Collection Financial Standards" in the final rules to conform to the term used by the IRS to refer to such standards.

Recommendation: We support the Department in making this change in the final regulations. The term "Collection Financial Standards" more accurately reflects all living expense category standards used in determining if a withholding amount would cause a financial hardship for the borrower.

AWG OF DISPOSABLE PAY OF DEFAULTED FFEL PROGRAM BORROWERS
34 CFR 682.410(b); Preamble pp. 45641-45642

Comment: The proposed rule includes two new bases on which a borrower may explicitly object to AWG in the FFEL and Direct Loan programs: enforceability of the debt and financial hardship. The HEA does not specifically name these as permissible objections, but borrowers have been permitted to object that a debt is uncollectable through AWG or a wage garnishment amount is too high.

We understand that the Department was asked to take up this issue in negotiated rulemaking, so in the interest of fairness to borrowers, we did not withhold consensus based on the addition of these new provisions that are not included in the statute. However, we have concerns about whether AWG hearing officials, who may lack a good understanding of what constitutes legal enforceability in the context of federal student loans, are well equipped to make such determinations in some cases.

Recommendation: If a hearing official erroneously determines that a loan is unenforceable, the adverse consequences of that error could be significant for guaranty agencies, lenders, and/or

servicers in the FFEL program, as well as for the Department and ultimately federal taxpayers. We realize that it is incumbent upon guaranty agencies to attempt to use knowledgeable individuals in this capacity, but it may not always be possible to acquire the services of independent AWG hearing officials that have been appropriately trained to address federal student loan enforceability matters.

In the event that a hearing official makes an enforceability determination that the guaranty agency believes to be incorrect, guaranty agencies request that the Department provide a clearly-defined, intermediate appeal process to enable the guaranty agency or Department to seek an administrative review of the official's determination of unenforceability by a Department official or other designated, independent third party. This will afford further review of these complex issues under the Department's authority.

Comment: Under proposed §682.410(b)(9)(i)(F)(*2*)(*iv*), if a hearing official upholds a borrower's objection to the amount or rate of withholding, the garnishment *may* (italics added) be ordered at a lesser rate or amount that would allow the borrower to meet basic living expenses.

The Department pointed out in the preamble that the wording of this provision differs from the rules governing AWG for Department-held loans; the word "may" is used in these proposed rules but the word "must" is used in the rules for Department-held loans. The Department invited comments as to whether this provision might be interpreted to mean that a guaranty agency could choose not to follow a hearing official's decision and instead order wage garnishment at a higher rate or amount, contrary to the intent of providing a borrower an independent determination of financial hardship.

Recommendation: We agree that a hearing official's financial hardship determination and decision regarding the amount or rate of withholding is binding on the guaranty agency in issuing an AWG order. The regulatory language for guaranty agencies and the Department should be fully aligned. However, we suggest the following changes to improve the clarity of §682.410(b)(9)(i)(F)(*2*)(*iv*):

> (*iv*) If the hearing official upholds a borrower's objection to the rate or amount proposed in the notice described in paragraph (b)(9)(i)(B) of this section, ~~is upheld in part,~~ the hearing official may determine that the garnishment must be limited to ~~may be ordered at~~ a lesser rate or amount~~,~~ that is determined will allow the borrower to meet basic living expenses proven to be reasonable and necessary. If this financial hardship determination is made after a garnishment order is already in effect, the guaranty agency must notify the borrower's employer of any change required by the determination in the amount to be withheld or the rate of withholding under that order;

BORROWER HEARING OPPORTUNITIES ON ENFORCEABILITY OF DEBT & CLAIMS OF FINANCIAL HARDSHIP

34 CFR 682.410(b)(9)(i)(I); Preamble pp. 45641-45642

Comment: Proposed §682.410(b)(9)(i)(I) includes a new rule that all oral communications with a hearing official must be made with both the guaranty agency representative and borrower present.

As we have begun to further evaluate operational implications of the proposed rule, we are concerned that the exact language of the rule introduces inappropriate impediments to reasonable administration of the hearing process. For instance, the proposed language does not address the

need for oral communications to schedule written statement hearings; only "oral hearings" are mentioned. It also does not accommodate the need for communications of an administrative nature between hearing officials and guaranty agencies after hearings are concluded to formally communicate hearing decisions to borrowers and carry out other regulatory responsibilities.

Recommendation: Guaranty agencies understand that all oral communications with a hearing official regarding the merits of an AWG case must be made with both the guaranty agency representative and borrower present, to avoid ex parte communications — i.e., substantive discussions of the merits of the case outside of a hearing without notice to the other party. Interactions to set or determine administrative matters such as the time, place, type of hearing, and issuance of the hearing decision; as well as interactions during the course of a hearing, conducted upon proper notice, in which one or more parties has failed to attend, are permitted.

To reflect our understanding of the Department's intention with regard to this new provision, we request that the following changes be made to the proposed regulatory language to align it with the preamble explanation of the Department's objective (which is to avoid ex parte communications regarding the substance of the hearing without notice to the other party):

> (I) …The guaranty agency must ensure that, except as needed for administrative matters pertaining to a hearing (e.g., ~~to arrange the type of hearing requested by the borrower and~~ arranging the time, place, and type ~~manner~~ of ~~conducting an oral~~ hearing and post-hearing administrative matters such as the issuance of a hearing decision), all oral communications ~~with any representative of the guaranty agency or with the borrower~~ between a hearing official and either party are made within the hearing of ~~the other party,~~ both parties. However, interaction including the presentation of a case to the hearing official during a hearing, conducted upon proper notice, at which one or more of the parties has failed to attend, may occur without the absent party. ~~and that c~~Copies of any written communication with either party ~~are~~ must promptly be provided to the other party.

BORROWER HEARING REQUESTS
34 CFR 682.410(b)(9); Preamble pp. 45643-45644

Comment: While proposed rule §682.410(b)(9)(i)(J) permits a hearing official to grant extensions of time for new evidence and objections, proposed rules §§ 682.410(b)(9)(i)(G) and (H) do not accommodate the effect of these extensions.

Recommendation: We request that the regulations be clarified to state that the 60-day hearing decision deadline is extended if a hearing official grants an extension to the borrower or guaranty agency under proposed §682.410(b)(9)(i)(J). We recommend the following changes:

> (G) If the borrower's written request for a hearing is received by the guaranty agency on or before the 30th day following the date of the notice described in paragraph (b)(9)(i)(B) of this section, the guaranty agency may not issue a garnishment order until the borrower has been provided the requested hearing and a decision has been rendered. The guaranty agency must provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the agency may prescribe, to be rendered within 60 days. Any extension of time granted by the hearing official pursuant to paragraph

(b)(9)(i)(J) of this section extends the deadline for issuing a garnishment order accordingly.

(H) If the borrower's written request for a hearing is received by the guaranty agency after the 30th day following the date of the notice described in paragraph (b)(9)(i)(B) of this section, the guaranty agency must provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the agency may prescribe, may be rendered within 60 days, but may not delay issuance of a garnishment order unless the agency determines that the delay in filing the request was caused by factors over which the borrower had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the garnishment order. If a decision is not rendered within 60 days following receipt of a borrower's written request for a hearing, the guaranty agency must suspend the order beginning on the 61st day after the hearing request was received until a hearing is provided and a decision is rendered. Any extension of time granted by the hearing official pursuant to paragraph (b)(9)(i)(J) of this section extends the deadline for issuing or suspending a garnishment order accordingly.

Comment: The proposed rules provide for suspension of a garnishment order for a borrower pursuing loan rehabilitation while subject to garnishment, upon receipt of the borrower's fifth rehabilitation payment. Under the new rules, a borrower may opt to remain in AWG while completing the loan rehabilitation process. However, the new rules do not permit a borrower to opt to remain in AWG while the hearing decision process is completed. The rules specify that the garnishment order must be suspended on the 61st day after the borrower's hearing request was received by the guaranty agency, and garnishment may not resume until the hearing decision is rendered.

Recommendation: We recommend that the Department provide the same flexibility for borrowers regarding the 60-day hearing decision rule as is being proposed for a borrower subject to AWG while completing the rehabilitation process. If a borrower does not wish to disrupt the AWG process in place with the employer while completing the hearing process with a guaranty agency and awaiting the decision, the borrower should be permitted to make that choice.

This may be especially helpful for a borrower whose AWG suspension order is likely to be followed shortly thereafter by an order to resume garnishment, if the borrower does not wish to experience potential "off" and "on" garnishment actions in short succession. This could create confusion for the employer and uncertainty for the borrower regarding the timing of payroll adjustments.

We recommend that §682.410(b)(9)(i)(H) be further modified (i.e., in addition to the comments above) as follows:

(H) If the borrower's written request for a hearing is received by the guaranty agency after the 30th day following the date of the notice described in paragraph (b)(9)(i)(B) of this section, the guaranty agency must provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the agency may prescribe, may be rendered within 60 days, but may not delay issuance of a garnishment order unless the agency determines that the delay in filing the request was caused by factors over which the borrower had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the garnishment order. If a decision is not rendered within 60 days following receipt of a borrower's written request for a

hearing, the guaranty agency must suspend the order beginning on the 61st day after the hearing request was received until a hearing is provided and a decision is rendered, unless otherwise directed by the borrower. Any extension of time granted by the hearing official pursuant to paragraph (b)(9)(i)(J) of this section extends the deadline for issuing or suspending a garnishment order accordingly.

Comment: As noted, proposed §§ 682.410(b)(9)(i)(F)(*1*)(*ii*) and (J) permit a borrower to raise new objections and provide additional evidence until the hearing official closes that opportunity in order to issue a final decision. The proposed rules provide for an extension of the 60-day hearing decision deadline, if needed, for this purpose. However, a mention of "new objections" was inadvertently omitted from the borrower provisions of (J)(1).

Recommendation: We request that the Department clarify in §682.410(b)(9)(i)(J)(*1*) that a borrower may request an extension of the 60-day hearing decision deadline in order to raise new objections or submit additional evidence for consideration by the hearing official, since that appears to be the Department's intent as described in the Preamble to the proposed rule:

(1) The borrower may request an extension of that deadline for a reasonable period, as determined by the hearing official, for the purpose of submitting additional evidence or raising new objections pursuant to paragraph (b)(9)(i)(F)(*1*)(*ii*) of this section; and

(*2*) The agency may request, and the hearing official must grant, a reasonable extension of time sufficient to enable the guaranty agency to evaluate and respond to any such additional evidence or any objections raised pursuant to paragraph (b)(9)(i)(F)(*1*)(*ii*) of this section.

REIMBURSEMENTS, REFUNDS, AND OFFSETS: "TECHNICAL CORRECTION"
34 CFR 682.709(d)

Comment: This change deals with the application of a rebuttable presumption within a limitation, suspension, or termination (LS&T) proceeding that certain payments were provided to secure applications for FFEL loans based on a violation of the inducements provisions of the HEA (§435(d)(5)). The NPRM removed the rebuttable presumption language from those sections of the regulations dealing with suspension proceedings (§682.705(c)) and limitation and termination proceedings (§682.706(d)), and inserted it at the end of the section dealing with reimbursements, refunds, and offsets (§682.709(d)). This change was represented by the Department as one of many purely non-substantive, technical changes. The new language in §682.709(d) was not added until the final meeting of the negotiations, and the Department did not highlight it in its overview of the technical changes. It was part of a very large package which the negotiators were struggling to approve on deadline.

At least part of the change is not technical in nature. The rebuttable presumption has always applied within the context of subpart G of Part 682, and has since its adoption in 2007 been preconditioned on the Secretary providing the lender written notice detailing the facts and circumstances that form the basis for the Secretary's contention that the lender made a payment or engaged in an activity listed in HEA §435(d)(5)(i) in order to secure FFEL loan applications or designation as one of a school's recommended or suggested lenders. As rewritten, §682.709(d) would apply this presumption

in *any* action under all of Part 682—including actions that may be taken outside of an LS&T proceeding.

When the "rebuttable presumption" was originally added to the Secretary's regulations in 2007, the federal and non-federal negotiators extensively negotiated and carefully placed the presumption within the context of LS&T proceedings to assure that the Secretary applied the presumption subject to the due process protections afforded by an LS&T proceeding. The proposal to expand use of the rebuttable presumption to actions not subject to the LS&T provisions of subpart G of Part 682 does not conform to the letter or spirit of a non-substantive, technical change—and for this reason we assume that the substantive nature of the change is inadvertent. Had the Department represented the proposed change as a substantive issue for discussion during negotiations, we would have objected. The Secretary should ensure that the proposed change meets the contours of a "technical" change by specifying within §682.709(d) that the rebuttable presumption applies to actions under that subpart.

Recommendation: We urge the Department not to move forward with the proposal on the basis that it is a non-technical change that clearly and materially impacts the procedural and substantive due process rights of lenders. In order to ensure that the change remains in the realm of a technical correction, as stated by the Department, revise §682.709(d) to read "In any action under this subpart…."

TECHNICAL CORRECTIONS

1. Technical Correction – Inconsistent Use of "a" and "an" with "FFEL" Cite: §682; §685

Comment: Throughout §682, the words "a" and "an" are used inconsistently when preceding "FFEL." The use of "a FFEL" appears throughout §685; however, the phrase "an FFEL" is not present.

Recommendation: Ensure the consistent use of either "a" or "an" prior to "FFEL" throughout both §682 and §685.

2. Technical Correction – Inconsistent Use of "title IV" and "Title IV" Cite: §682; §685

Comment: Throughout §682, "title IV" and "Title IV" are used inconsistently. The use of "title IV" appears throughout §685; however, the phrase "Title IV" is not present.

Recommendation: Ensure the consistent use of either "Title IV" or "title IV" throughout both §682 and §685.

3. Technical Correction – Inconsistent Use of "federal" and "Federal" Cite: §682; §685

Comment: Throughout §682 and §685, the word "federal" is inconsistently capitalized when it is not part of a proper noun.

Recommendation: Ensure the consistent use of either "federal" or "Federal" when used in occurrences throughout §682 and §685 that are not proper nouns.

4. Technical Correction – Inconsistent Use of "FFEL programs" and "FFEL Program" Cite: §682; §685

Comment: Throughout §682, the terms "FFEL programs," "FFEL program," and "FFEL Program" are used inconsistently. In §685, the terms "FFEL program" and "FFEL Program" are used.

Recommendation: Ensure the consistent use of one term throughout both §682 and §685.

5. Technical Correction – Definition of Repayment Period Cite: §682.200(b)

Comment: This correction was previously submitted to the Department in the 2012 Negotiated Rulemaking comments from the FFELP community. During a conference call between the Department and the FFELP community on March 1, 2012, to discuss outstanding technical corrections, the Department stated it was inclined to make these changes but was still looking at the issue.

The suggested changes make the provisions for unsubsidized Stafford, SLS, PLUS, and Consolidation loans consistent with the language in paragraph (1) of the definition of "Repayment Period" and with what is permitted under paragraph (1) for subsidized Stafford loans in regard to when the repayment period ends. In addition, this conforms with what is permitted by statute under §428H(e)(6) and longstanding Department policy.

Recommendation: Revise §682.200(b) "Repayment Period" as follows:

"(2) For unsubsidized Stafford loans, the period ~~that begins on the day after the expiration of the applicable~~ beginning on the date following the expiration of the grace period ~~that follows after the student ceases to be enrolled on at least a half-time basis~~ and ending no later than 10 years or 25 years under an extended repayment schedule, from ~~that~~ the date the first payment of principal is due from the borrower, exclusive of any period of deferment or forbearance. However, payments of interest are the responsibility of the borrower during the in-school and grace period, but may be capitalized by the lender.
(3) For SLS loans, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, on the date the last disbursement is made and ending no later than 10 years from ~~that~~ the date the first payment of principal is due from the borrower, exclusive of any period of deferment or forbearance. The first payment of principal is due within 60 days after the loan is fully disbursed unless a borrower who is also a Stafford loan borrower but who, has not yet entered repayment on the Stafford loan requests that commencement of repayment on the SLS loan be delayed until the borrower's grace period on the Stafford loan expires. Interest on the loan accrues and is due and payable from the date of the first disbursement of the loan. The borrower is responsible for paying interest on the loan during the grace period and periods of deferment, but the interest may be capitalized by the lender.

(4) For Federal PLUS loans, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, on the date the last disbursement is made and ending no later than 10 years, or 25 years under an extended repayment schedule, from ~~that~~ the date the first payment of principal is due from the borrower, exclusive of any period of deferment or forbearance. Interest on the loan accrues and is due and payable from the date of the first disbursement of the loan.

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

6. Technical Correction – Definition of Satisfactory Repayment Arrangement Cite: §682.200(b)

Comment: To be consistent with the definition of "satisfactory repayment arrangement" in §685.102(b) and to be clear grammatically, a comma should be inserted after "voluntary" to denote that the payment must be both voluntary and full.

Recommendation: Revise the definition of "satisfactory repayment arrangement" in §682.200(b) as follows:

"(3) A borrower has not used the one opportunity to renew eligibility for title IV assistance if the borrower makes six consecutive, on-time, voluntary, full monthly payments under an agreement to rehabilitate a defaulted loan but does not receive additional title IV assistance prior to defaulting on that loan again."

7. Technical Correction – Reinstatement of a Borrower Who Received Final TPD Discharge
Cite: §682.201(a)(6)(ii) & (iii)

Comment: In both paragraphs, replace "FFEL" with "title IV" (or "Title IV" as outlined in comment #2 above) as agreed to during a conference call between the Department and the FFELP community on March 1, 2012, to discuss outstanding technical corrections at that time.

Recommendation: Revise §682.201(a)(6)(ii) as follows:

"Sign a statement acknowledging that the ~~FFEL~~ title IV loan the borrower receives cannot be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates; and"

Revise §682.201(a)(6)(iii) as follows:

"If a borrower receives a new ~~FFEL~~ title IV loan, other than a Federal Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability…."

8. Technical Correction – Reserve Sections
Cite: §682.206; §682.207; §682.214; §682.403; §682.408; §682.418; §682.420; §682.421; §682.422; §682.601; §682.602; §682.608; §682.713

Comment: The Proposed Rule deletes numerous sections but does not reserve them. The deleted sections need to be reserved; otherwise, all of the sections that follow will need to be re-numbered and all cross-references checked.

Recommendation: Reserve all of the following deleted sections: §682.206, §682.207, §682.214, §682.403, §682.408, §682.418, §682.420, §682.421, §682.422, §682.601, §682.602, §682.608, and §682.713.

9. Technical Corrections – Repayment of a Loan
Cite: §682.209(a)(3)(i)(D)

Comment: In the newly added paragraph (a)(3)(i)(D), the punctuation at the end should be a period, not a semicolon.

Recommendation: Revise §682.209(a)(3)(i)(D) as follows:

"For a borrower with a loan for which the applicable interest rate is fixed at 6.0 percent per year, 5.6 percent per year, or 6.8 percent per year, the day after 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an institution of higher education;."

10. Technical Correction – Holder's Receipt of Direct Consolidation Proceeds for Underlying FFEL Loan
Cite: §682.209(e)(5)

Comment: The cross-reference to (e)(2), in §682.209(e)(5) should be removed since FFELP Consolidation loans are no longer made. Responsibilities of the holder are provided for in §685.220(f)(2), (4), and (5).

Recommendation: Revise §682.209(e)(5) as follows:

"Upon receipt of the proceeds of a Direct Consolidation Loan ~~loan~~ made under 34 CFR 685.220 ~~paragraph (e)(2) of this section~~, the holder of the underlying loan must ~~shall~~ promptly apply the proceeds in accordance with 34 CFR 685.220(f)(2), (4), and (5) ~~to discharge fully the borrower's obligation on the underlying loan, and provide the consolidating lender with the holder's written certification that the borrower's obligation on the underlying loan has been fully discharged~~."

11. Technical Correction – Certification of Loans to be Repaid through Consolidation
Cite: §682.209(j)

Comment: In addition to deleting the paragraphs §682.209(e) through (g), as outlined in Issue Paper #11 from the Negotiated Rulemaking sessions, the Proposed Rule strikes the entire paragraph §682.209(j). Without this paragraph, the only reference to the responsibility of a FFELP loan holder to complete a consolidation loan verification certificate is under §685.220(f). Retain this paragraph as "(g)" and renumber subsequent paragraphs accordingly.

Recommendation: Revise §682.209(g), previously (j), as follows:

"~~(j)~~(g) *Certification on loans to be repaid through consolidation.* ~~Within 10 business days after~~After receiving a written request for a certification from the Secretary under 34 CFR 685.220(f) ~~a lender under § 682.206(f)~~, a holder must respond to the certification request in accordance with 34 CFR 685.220(f)(1)(i) ~~shall either provide the requesting lender the certification or, if it is unable to certify to the matters described in that paragraph, provide the requesting lender and the guarantor on the loan at issue with a written explanation of the reasons for its inability to provide the certification~~."

12. Technical Correction – General Deferment Provisions
Cite: §682.210(a)(10)

Comment: The heading for the deferment provisions in §682.210(b) has been revised to clarify that they apply to only borrowers prior to July 1, 1993. Other deferment provisions are found in (s), (t), (u) and (v). The general statement in §682.210(a)(10) should be clarified to avoid potential confusion. Due to the addition of multiple cross-references, change "paragraph" to "paragraphs."

Recommendation: Revise current §682.210(a)(10) as follows:

"Authorized deferments are described in paragraphs (b), (s), (t), (u) and (v) of this section. Specific requirements for each deferment are set forth in paragraphs (c) through (s), (t), (u), and (v) of this section."

Or strike current §682.210(a)(10) as follows:

"~~Authorized deferments are described in paragraph (b) of this section. Specific requirements for each deferment are set forth in paragraphs (c) through (s) of this section.~~"

13. Technical Correction – In-school Deferment
Cite: §682.210(c)(3) & (4)

Comment: Change the phrase "Student Status Confirmation Report" to "enrollment report" for consistency with the preamble language in the Proposed Rule (p. 45629).

Recommendation: Revise §682.210(c)(3) and (4) as follows:

"(3) The lender must consider a deferment granted on the basis of a certified loan application or other information certified by the school to cover the period lasting until the anticipated graduation date appearing on the application, and as updated by notice or ~~Student Status Confirmation Report~~ an enrollment report update to the lender from the school or guaranty agency, unless and until it receives notice that the borrower has ceased the level of study (i.e., full-time or half-time) required for the deferment.

(4) In the case of a FFEL borrower, the lender shall treat a certified loan application or other form certified by the school or for multiple holders of a borrower's loans, shared data from ~~the Student Status Confirmation Report~~ an enrollment report, as sufficient documentation for an in-school student deferment for any outstanding FFEL loan previously made to the borrower that is held by the lender."

14. Technical Correction – Graduate Fellowship Deferment
Cite: §674.34(f)(2); §682.210(d)(2)

Comment: The proposed Direct Loan regulations regarding the graduate fellowship deferment have an additional requirement that is not found in the current FFEL regulations, nor is it in the proposed Perkins loan regulations. This additional requirement states that the borrower cannot be in a medical internship or residency, but can be in a dental residency. As it appears that this requirement regarding a medical internship or residency is statutory, and to provide consistency in all three loan program regulations (one of the goals of this Proposed Rule), we make the following recommendation.

Recommendation: Revise the proposed Perkins regulation under §674.34(f)(2) as follows:

"(2) For purposes of paragraph (b)(1)(ii) of this section, an eligible graduate fellowship program is a fellowship program that—
(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;
(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;
(iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; ~~and~~

(iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program~~.~~; and
(v) Is not a medical internship or residency program, except for a residency program in dentistry."

Also, revise the existing FFELP regulation under §682.210(d)(2) as follows:

"(2) For purposes of paragraph (d)(1) of this section, an eligible graduate fellowship program is a fellowship program that—
(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;
(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;
(iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; ~~and~~
(iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program~~.~~; and
(v) Is not a medical internship or residency program, except for a residency program in dentistry."

15. Technical Correction – Internship or Residency Deferment
Cite: §682.210(n)(1)

Comment: The cite reference to (b)(5)(iii) is no longer accurate under the proposed regulation changes and should be deleted. Due to the deletion, change "paragraphs" to "paragraph".

Recommendation: Revise proposed §682.210(n)(1) as follows:

"(1) To qualify for an internship or residency deferment under paragraph~~s~~ (b)(3)(iv) ~~or (b)(5)(iii)~~ of this section, the borrower shall provide the lender with a statement from an authorized official of the organization with which the borrower is undertaking the internship or residency program certifying—"

16. Technical Correction - Forbearance
Cite: §682.211(f)(8)

Comment: Expand the cross-reference to include the unpaid refund discharge provision in the regulations.

Recommendation: Revise §682.211(f)(8) as follows:

"For periods necessary for the Secretary or agency to determine the borrower's eligibility for discharge of the loan because of an unpaid refund, attendance at a closed school or false certification of loan eligibility, pursuant to § 682.402 (d)~~,~~ ~~or~~ (e) or (l), or the borrower's or, if applicable, endorser's bankruptcy, pursuant to § 682.402(f);"

17. Technical Correction - Mandatory Forbearance for Borrowers Receiving Department of Defense Student Loan Repayment Benefits
Cite: §682.211(h)(2)(ii)(B); §685.205(a)(9)

Comment: Now that the forbearance authority under this paragraph has been expanded to benefit borrowers who receive periodic payments under any student loan repayment program administered by the Department of Defense (DOD), some of which offer full loan repayment, including interest, up to a certain limit, the qualifier "partial" in the regulatory language is no longer sufficient. We recommend this qualifier be expanded to "full or partial" so that no lenders or servicers incorrectly infer that the expanded authority covers only those DOD repayment programs that provide partial loan repayment. We also recommend the insertion of the word "available" immediately before each final mention of "education loan repayment programs," to make it clear that this expanded forbearance authority covers not only those repayment programs that are active now, but any additional ones that may become active in the future and similarly require forbearance. We also recommend changing each occurrence of the phrase "Student Loan Repayment Programs" to "education loan repayment programs," to ensure consistency with the statutory language under 10 U.S.C. for the various education loan repayment plans administered by the DOD. Lastly, we believe the reference to 10 U.S.C. 2174 is, at the very least, misplaced. 10 U.S.C. 2174, established under the Bob Stump National Defense Authorization Act (P.L. 107-314), encompasses a time-limited (36-month) interest payment program and is accompanied under that same Act by a similarly time-limited forbearance, codified in §428(c)(3)(A)(i)(IV), §428(o)(2), and §455(l)(2) of the HEA. Because of this 36-month limitation, we believe the mandatory forbearance for 10 U.S.C 2174, if retained, would need to be referenced separately under 34 CFR 682.211(h)(2)(i) and 685.205(a)(6), which currently house only the Student Loan Debt Burden mandatory forbearance.

However, there has never been and continues not to be any funding in support of the repayment program under 10 U.S.C. 2174. Therefore, we strongly recommend, in the interests of clarity and simplicity, that the reference to 10 U.S.C 2174 simply be deleted from both §682.211(h)(2)(ii)(B) and §685.205(a)(9) instead of moved to the other paragraphs cited above. Nevertheless, to illustrate the scope and complexity of the changes we believe would need to be made to both sections if the reference to 10 U.S.C. 2174 is retained, we have provided an alternate technical correction further below:

Recommendation: Revise §682.211(h)(2)(ii)(B) as follows:

"Is performing the type of service that would qualify the borrower for a full or partial repayment of his or her loan under the ~~Student~~ education ~~L~~loan ~~R~~repayment ~~P~~programs administered by the Department of Defense under 10 U.S.C. 2171, 2173, ~~2174~~ or any other available ~~student~~ education loan repayment programs administered by the Department of Defense; or"

For consistency between the FFELP and FDLP regulations, revise §685.205(a)(9) as follows:

"(i) The borrower is performing the type of service that would qualify the borrower for a full or partial repayment of his or her loan under the ~~Student~~ education ~~L~~loan ~~R~~repayment ~~P~~programs administered by the Department of Defense under 10 U.S.C. 2171, 2173, ~~2174~~ or any other available ~~student~~ education loan repayment programs administered by the Department of Defense.

(ii) To receive a forbearance under this paragraph, the borrower must submit documentation showing the time period during which the Department of Defense considers the borrower to be eligible for a full or partial repayment of his or her loan under an ~~student~~ education loan repayment program."

Alternate recommendation (based on retention of reference to 10 U.S.C. 2174): Revise §682.211(h)(2)(i) as follows:

"(i) In increments up to one year, for periods that collectively do not exceed three years, if—
(A)*(1)* The borrower or endorser is currently obligated to make payments on Title IV loans; and
~~(B)~~*(2)* The amount of those payments each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower's or endorser's total monthly income~~;~~.
(B) The borrower is performing the type of service that would qualify the borrower for interest payments under the Armed Forces Student Loan Interest Payment Program administered by the Department of Defense under 10 U.S.C. 2174."

Revise §682.211(h)(2)(ii)(B) as follows:

"(B) Is performing the type of service that would qualify the borrower for a full or partial repayment of his or her loan under the ~~Student~~ education ~~L~~loan ~~R~~repayment ~~P~~programs administered by the Department of Defense under 10 U.S.C. 2171, 2173, ~~2174~~ or any other available ~~student~~ education loan repayment programs administered by the Department of Defense, except as provided in paragraph (h)(2)(i)(B) of this section; or"

For consistency between the FFELP and FDLP regulations, revise §685.205(a)(6) and (9) as follows:

"(6) For not more than three years during which ~~the borrower or endorser~~—
(i)(A) The borrower or endorser ~~I~~is currently obligated to make payments on loans under title IV of the Act; and
~~(ii)~~(B) The sum of these payments each month (or a proportional share if the payments are due less frequently than monthly) is equal to or greater than 20 percent of the borrower's or endorser's total monthly gross income.
(ii) The borrower is performing the type of service that would qualify the borrower for interest payments under the Armed Forces Student Loan Interest Payment Program administered by the Department of Defense under 10 U.S.C. 2174."

"(9)(i) The borrower is performing the type of service that would qualify the borrower for a full or partial repayment of his or her loan under the ~~Student~~ education ~~L~~loan ~~R~~repayment ~~P~~programs administered by the Department of Defense under 10 U.S.C. 2171, 2173, ~~2174~~ or any other available ~~student~~ education loan repayment programs administered by the Department of Defense, except as provided in paragraph (a)(6)(ii) of this section.
(ii) To receive a forbearance under this paragraph, the borrower must submit documentation showing the time period during which the Department of Defense considers the borrower to be eligible for a full or partial repayment of his or her loan under an ~~student~~ education loan repayment program."

18. Technical Correction – Annual Payment Period and Income Driven Repayment Plans Cite: §682.215(e)(8)(ii); §685.209(a)(5)(viii)(A)(*1*); §685.209(b)(3)(vi)(E)(*2*); §685.221(e)(8)(i)(A)

Comment: The phrase "unless the borrower requests otherwise" that precedes a cross-reference to the applicable payment allocation rules in each of these regulatory cites could be interpreted to allow a borrower to request an allocation of his or her payment other than the specified order. Given the

current environment in which borrowers desire to specify how their payment is applied to outstanding principal, interest, charges and fees, the phrase should be moved so that it follows the cross-reference to the rules regarding the advancement of the payment due date. By specifying that the next due date is not advanced unless the borrower so requests enhances the clarity of the provision.

Including "§682.215" within section 682.215(e)(8)(ii)(A) and "§685.221" within section §685.221(e)(8)(i)(A) in lieu of "paragraph . . . of this section" provides clarity, conciseness, and consistency with the other two regulatory sections applicable to this same requirement. A reference to §685.211(a)(3)(ii) in §685.209(a)(5)(viii)(A)(*1)*, §685.209(b)(3)(vi)(E)(*2*), and §685.221(e)(8)(i)(A) adds clarity since §685.211(a)(3) in its entirety includes a cross-reference in §685.211(a)(3)(i) to the payment allocation rules.

Recommendation: Revise §682.215(e)(8)(ii)(A) as follows:

"If the new monthly payment amount is less than the borrower's previously calculated income-based monthly payment amount, the loan holder must make the appropriate adjustment to the borrower's account to reflect any payments at the previously calculated amount that the borrower made after the end of the most recent annual payment period. ~~Notwithstanding the requirements of §682.209(b)(2)(ii), unless the borrower requests otherwise~~ ~~t~~The loan holder applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of §682.215~~paragraph~~ (c)(1) ~~of this section~~ and, notwithstanding the requirements of §682.209(b)(2)(ii), does not advance the next due date unless the borrower so requests."

Revise §685.209(a)(5)(viii)(A)(*1)* as follows:

"If the new monthly payment amount is less than the borrower's previously calculated Pay As You Earn repayment plan monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. ~~Notwithstanding the requirements of §685.211(a)(3), unless the borrower requests otherwise, t~~The Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of §685.209(a)(3)(i) and, notwithstanding the requirements of §685.211(a)(3)(ii), does not advance the next due date unless the borrower so requests."

Revise §685.209(b)(3)(vi)(E)(*2*) as follows:

"If the new calculated monthly payment amount is less than the borrower's previously calculated monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. ~~Notwithstanding §685.211(a)(3), t~~The Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of §685.211(a)(1)~~, unless the borrower requests otherwise~~ and, notwithstanding the requirements of §685.211(a)(3)(ii), does not advance the next due date unless the borrower so requests."

Revise §685.221(e)(8)(i)(A) as follows:

"If the new monthly payment amount is less than the borrower's previously calculated income-based monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. ~~Notwithstanding the requirements of §685.211(a)(3), unless the borrower requests otherwise, t~~The Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of §685.221~~paragraph~~ (c)(1) ~~of this section~~ and, notwithstanding the requirements of §685.211(a)(3)(ii), does not advance the next due date unless the borrower so requests."

19. Technical Correction – Qualifying Payments for IBR, Pay As You Earn, and ICR Loan Forgiveness
Cite: §685.209(a)(5)(ix); §685.209(b)(3)(vi)(F**); §685.221(e)(9)**

Comment: A preamble comment and the regulatory language in the November 1, 2012 Final Rule may have unintended consequences regarding qualifying forgiveness payments for all of the income-driven repayment plans. The preamble to the November 1, 2012 Final Rule (p. 66104) states the following (emphasis added):

"Likewise, we do not believe it is necessary to make the similar changes that were recommended for §§ 682.215(e)(9), 685.209(a)(5)(ix)(B), 685.209(b)(3)(vi)(F)(2), and 685.221(e)(9)(ii). ***In the case of a borrower whose income information is received more than 10 days after the annual deadline, and the borrower's monthly payment is converted to the permanent standard payment amount, any payments that the borrower continues to make at the previously calculated payment amount are qualifying payments made under the IBR, ICR, or Pay As You Earn repayment plan and count as qualifying payments for purposes of loan forgiveness under those plans.*** *The proposed regulations clarified that payments a Direct Loan borrower continues to make at the previously calculated amount would count for Public Service Loan Forgiveness purposes because otherwise these payments might be viewed as not meeting the eligibility requirements of the Public Service Loan Forgiveness program. We do not believe this clarification is needed with regard to counting payments for other loan forgiveness purposes."*

The bolded sentence may allow borrowers to wait until they are well into their "permanent-standard" schedule of payments to submit income information, continue to pay their "previously calculated" partial financial hardship (PFH) payment amount, and have those PFH payments count as qualifying payments towards forgiveness during a period of time when the previously calculated PFH payment would not satisfy the payment amount due. We believe the intent was for borrowers who submitted income documentation more than 10 days after the annual deadline to be able to continue making qualifying payments at the PFH payment amount if there were delinquent PFH payments still due after the conversion to permanent-standard. Although the regulatory language specifically speaks to qualifying payments for Public Service Loan Forgiveness (PSLF), the preamble comment regarding forgiveness-qualifying payments for the income-driven plans makes it necessary to clarify how this provision is to be applied.

Example:
The PFH payment is $10, and the permanent-standard payment is $50. The hard deadline is at the beginning of September. The loan will convert to the permanent-standard payment with a $50 payment due in October.

The borrower makes a $10 payment in September and has ignored requests for income documentation. The borrower continues to make $10 payments in October, November, and December and provides income documentation with his December payment. The borrower qualifies for a new PFH annual period, and the new PFH payment amount is $0 effective in January. An administrative forbearance would be granted to cover the months of October, November, and December.

Qualifying forgiveness payments based on existing regulatory language and preamble comment:
The $10 payments the borrower made in October, November, and December while the permanent-standard payment was due would appear to qualify for forgiveness purposes for the income-driven plans (and for PSLF if the payments were on-time in accordance with the PSLF requirements) even though the payments were subsequently covered by an administrative forbearance.

Qualifying forgiveness payments based on what we believe to be the intent:
The October, November, and December PFH payments of $10 the borrower made would not qualify toward forgiveness as the scheduled payment amount for those months was the permanent-standard payment amount.

Example based on what we believe was the intent when the borrower does not qualify for administrative forbearance:
In addition, the preamble comment suggests that, even when the borrower does not qualify for administrative forbearance, all the payments made by the borrower at the prior PFH payment amount after the conversion to permanent-standard qualify.

The PFH payment is $10, and the permanent-standard payment is $50. The hard deadline is at the beginning of September. The loan will convert to the permanent-standard payment with a $50 payment due in October.

The borrower is behind in making payments. The $10 payment he makes in September satisfies his July payment. He has ignored requests for income documentation. The borrower continues to make $10 payments in October (satisfies August), November (satisfies September), and December (satisfies $10 of the $50 payment permanent-standard payment that is due for October) and provides income documentation with his December payment. The borrower qualifies for a new PFH annual period, but the new PFH payment amount is $20 effective in January. Administrative forbearance cannot be granted to cover the delinquency. The borrower is still $40 delinquent on his October payment and owes $50 each for November and December.

Of the three $10 payments the borrower made after conversion to the permanent-standard payment amount of $50, only the $10 payments made in October and November should count towards forgiveness under the respective income-driven plan requirements as those payments satisfied the scheduled $10 payments that were due in August and September (but would likely not count toward PSLF as they were untimely payments). The borrower will need to make a payment of $40 to have a qualifying payment for the month of October. The borrower will need to make two $50 payments to have qualifying payments for November and December.

Recommendation: Revise §685.209(a)(5)(ix) as follows:

"(A) If the Secretary receives the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (a)(4)(i) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated Pay As You Earn monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.
(B) Any scheduled payments that were due ~~the borrower continued to make~~ at the previously calculated payment amount and were made by the borrower after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of §685.219, provided that the payments otherwise meet the requirements described in §685.219(c)(1)."

Revise §685.209(b)(3)(vi)(F) as follows:

"*(1)* If the Secretary receives the documentation described in paragraph (b)(3)(vi)(A)*(1)* of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (b)(3)(vii)(D) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.
(2) Any scheduled payments that were due ~~the borrower continued to make~~ at the previously calculated payment amount and were made by the borrower after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of §685.219, provided that the payments otherwise meet the requirements described in §685.219(c)(1)."

Revise §685.221(e)(9) as follows:

"(i) If the Secretary receives the documentation described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (d)(1) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.
(ii) Any scheduled payments that were due ~~the borrower continued to make~~ at the previously calculated payment amount and were made by the borrower after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of §685.219, provided that the payments otherwise meet the requirements described in §685.219(c)(1)."

20. Technical Correction – Consistency of Forgiveness Payment Eligibility for Income-Based Repayment and Pay As You Earn
Cite: §682.215(f)(1)(iii) & (iv), §685.209(a)(6)(C) & (D), §685.221(f)(1)(iii) & (iv)

Comment: During the 2012 Negotiated Rulemaking sessions, consensus was reached on a technical correction that has previously been approved by the Department to clarify forgiveness eligible payments in the FFEL regulations. This technical correction was to align these regulations with the agreements made during the 2008 Negotiated Rulemaking session. This same technical correction language was carried over to the Pay As You Earn and Direct Loan IBR regulations in the consensus language. In response to a comment on the July 17, 2012 Proposed Rule (Package 1), the Department responded that the Pay As You Earn and DL IBR regulations should be consistent with the FFEL regulations in regard to the forgiveness payment eligibility criteria. However, it appears that the Department changed the consensus language in the Pay As You Earn and DL IBR regulations to be consistent with the FFEL regulation language that was currently in existence, not with the consensus language for the FFEL regulations. It should be pointed out that during the 2008 Negotiated Rulemaking sessions, the Department chose to make the comparison for any payments made under any other repayment plan to the standard-standard payment amount instead of what appears to be the permanent-standard payment amount in the HEA. For comparison purposes, the consensus language, as adopted in the November 1, 2012 final rules in FFEL, is as follows:

§682.215(f)(1)
…
"(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the FFEL standard repayment plan described in §682.209(a)(6)(vi) with a 10-year repayment period for the amount of the borrower's loans that were outstanding at the time the loans initially entered repayment;
(iv) Made monthly payments under the FFEL standard repayment plan described in §682.209(a)(6)(vi) based on a 10-year repayment period; or"

Recommendation: For consistency, and as agreed to during the 2012 Negotiated Rulemaking sessions, revise §685.209(a)(6)(C) & (D) and §685.221(f)(1)(iii) & (iv) as follows:

§685.209(a)(6)
…
"(C) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in §685.208(b) with a 10-year repayment period <u>for the amount of the borrower's loans that were outstanding at the time the loans initially entered repayment</u>.
(D) Made monthly payments under the Direct Loan standard repayment plan described in §685.208(b) ~~for the amount of the borrower's loans that were outstanding at the time the borrower first selected the Pay As You Earn repayment plan~~ <u>based on a 10-year repayment period</u>."

§685.221(f)(1)
…
"(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in §685.208(b) with a 10-year repayment period <u>for the amount of the borrower's loans that were outstanding at the time the loans initially entered repayment</u>.

(iv) Made monthly payments under the Direct Loan standard repayment plan described in §685.208(b) ~~for the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan~~ based on a 10-year repayment period."

21. Technical Correction – Teacher Loan Forgiveness
Cite: §682.216

Comment: To ensure consistency between the FFELP and FDLP regulations for teacher loan forgiveness, the following revisions and corrections are recommended to the FFELP regulations.

Recommendation: Revise §682.216(a)(4)(ii) as follows:

"At an eligible elementary or secondary school or by an eligible educational service agency as a highly qualified special education teacher."

Revise §682.216(c) as follows:

"*Borrower eligibility*. (1) A borrower who has been employed at an elementary or secondary school or ~~for~~ by an educational service agency as a full-time teacher…."

Revise §682.216(c)(4)(ii)(B) as follows:

"Taught as a special education teacher on a full-time basis to children with disabilities or at an eligible elementary or secondary school or for an eligible educational service agency and was…."

Revise §682.216(c)(9) as follows:

"A borrower's period of postsecondary education, qualifying FMLA condition, or military active duty as described in paragraph (c)~~(7)~~(8) of this section…."

Revise §682.216(d)(2) as follows:

"A borrower may not receive more than a total of $5,000, or $17,500 if the borrower meets the requirements of paragraphs (c)~~(3)~~(4)(ii) or (c)~~(4)~~(5)(ii) of this section, in loan forgiveness…."

Revise §682.216(e)(1)(i) as follows:

"…will satisfy the anticipated remaining outstanding balance on the loan at the time of the expected ~~cancellation~~ forgiveness;"

22. Technical Correction – Teacher Loan Forgiveness Amount
Cite: §682.216(d)(1) & (2)

Comment: The cross-references to paragraphs (c)(3)(ii) and (c)(4)(ii) in §682.216(d)(1) and (2) were not updated following the renumbering within that section. Paragraphs (1) and (2) should cross reference (c)(4)(ii) and (c)(5)(ii). Also, change the word "paragraphs" to "paragraph."

Recommendation: Revise §682.216(d)(1) and (2) as follows:

"*Forgiveness amount.* (1) A qualified borrower is eligible for forgiveness of up to $5,000, or up to $17,500 if the borrower meets the requirements of paragraphs ~~(c)(3)(ii) or~~ (c)(4)(ii) or (c)(5)(ii) of this section. The forgiveness amount is . . . for loan forgiveness under this section.
(2) A borrower may not receive more than a total of $5,000, or $17,500 if the borrower meets the requirements of paragraphs ~~(c)(3)(ii) or~~ (c)(4)(ii) or (c)(5)(ii) of this section, in loan forgiveness for outstanding principal and accrued interest under both this section and under section 34 CFR 685.217."

23. Technical Correction – Lender Eligibility
Cite: §682.401(b)(2)(ii)-(iv)

Comment: The Proposed Rule states provisions related to the origination of FFELP loans are removed. Since the issuance of a guarantee is part of the origination process, delete paragraphs (ii) and (iii) in §682.401(b)(2). Re-designate paragraph (iv) as a new paragraph (ii).

Recommendation: Revise §682.401(b)(2) as follows:

"*Lender eligibility.* (i) An eligible lender may participate in the program of the agency under reasonable criteria established by the guaranty agency except to the extent that—
(A) The lender's eligibility has been limited, suspended, or terminated by the Secretary under subpart G of this part or by the agency under standards and procedures that are substantially the same as those in subpart G of this part; or
(B) The lender is disqualified by the Secretary under sections 432(h)(1), 432(h)(2), 435(d)(3), or 435(d)(5) of the Act or § 682.712; or
(C) There is a State constitutional prohibition affecting the lender's eligibility.
~~(ii) The agency may not guarantee a loan made by a school lender that is not located in the geographical area that the agency serves.~~
~~(iii) The guaranty agency may refuse to guarantee loans made by a school on behalf of students not attending that school.~~
~~(iv)~~(ii) The guaranty agency may, in determining whether to enter into a guarantee agreement with a lender, consider whether the lender has had prior experience in a similar Federal, State, or private nonprofit student loan program and the amount and percentage of loans that are currently delinquent or in default under that program.

24. Technical Correction – Review of Forms and Procedures
Cite: §682.401(c)(3)

Comment: For proper formatting, insert "(i)" and "(ii)" before the two paragraphs in this section. Change the punctuation after the first paragraph from a period to "; and".

Recommendation: Revise §682.401(c)(3) as follows:

"(i) The guaranty agency must use common application forms, promissory notes, Master Promissory Notes (MPN), and other common forms approved by the Secretary~~.~~; and
(ii) Each loan made under an MPN is enforceable in accordance with the terms of the MPN and is eligible for claim payment based on a true and exact copy of such MPN."

25. Technical Correction - Total and Permanent Disability Discharge
Cite: §682.402(c); §685.213

Comment: Throughout §682.402(c), the terms "total and permanent disability discharge application" and "total and permanent disability discharge request" are used inconsistently when referring to the processing, approval or denial of the discharge. For example, see §682.402(c)(4), (c)(5), (c)(8)(i), (c)(8)(ii), (c)(9)(ix), (c)(9)(xii)(A), and (c)(9)(xii)(E). Similarly, throughout §685.213 the terms "discharge application" and "discharge request" are used inconsistently. See §685.213(b)(4)(iv), (b)(5), (b)(6), and (c)(2)(ii).

Recommendation: Use one term or the other consistently throughout §682.402(c) and §685.213.

26. Technical Correction – Total and Permanent Disability Discharge
Cite: §682.402(c)(2)(ii)(A)

Comment: Insert the word "the" between "with" and "information" in order to be consistent with other paragraphs in this section, such as (c)(2)(i).

Recommendation: Revise §682.402(c)(2)(ii)(A) as follows:

"Provides the borrower with the information needed for the borrower to apply for a total and permanent disability discharge;"

27. Technical Correction – Total and Permanent Disability Discharge
Cite: §682.402(c)(2)(ii)(D)

Comment: The punctuation at the end of paragraph (c)(2)(ii)(D) should be a period rather than a semi-colon.

Recommendation: Revise §682.402(c)(2)(ii)(D) as follows:

"Informs the borrower that the suspension of collection activity described in paragraph (c)(2)(ii)(C) of this section will end after 120 days and collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time;."

28. Technical Correction – Total and Permanent Disability Discharge
Cite: §682.402(c)(3)(iii)

Comment: In the last sentence of paragraph (c)(3)(iii), both instances of the word "payment" should be plural "payments."

Recommendation: Revise §682.402(c)(3)(iii) as follows:

"… With this notification, the Secretary provides the date the physician certified the borrower's loan discharge application or the date the Secretary received the SSA notice of award for SSDI or SSI benefits and directs each lender to submit a disability claim to the applicable guaranty agency so the loan can be assigned to the Secretary. The Secretary returns any payments received by the Secretary

after the date the physician certified the borrower's loan discharge application or received the SSA notice of award for SSDI or SSI benefits to the person who made the payments."

29. Technical Correction – Total and Permanent Disability Discharge
Cite: §682.402(c)(9)(ii)(A)

Comment: In paragraph (9)(ii)(A), insert the word "the" between "with" and "information" to be consistent with other paragraphs in this section.

Recommendation: Revise §682.402(c)(9)(ii)(A) as follows:

"Provides the veteran with the information needed for the veteran to apply for a total and permanent disability discharge;"

30. Technical Correction – Closed School Discharge
Cite: §682.402(d)(2)(iv)

Comment: For consistency with language in other sections of the regulations, replace the term "credit reporting agencies" with "consumer reporting agencies."

Recommendation: Revise §682.402(d)(2)(iv) as follows:

"A discharge of a loan under paragraph (d) of this section must be reported by the loan holder to all ~~credit~~ consumer reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan."

31. Technical Correction – False Certification Discharge
Cite: §682.402(e)

Comment: For consistency with language in other sections of the regulations, replace the term "credit reporting agencies" with "consumer reporting agencies."

Recommendation: Revise the following provisions within §682.402(e): (e)(2)(iv), (e)(7)(ii)(C)*(2)*, (e)(8)(ii)(B)*(2)*, (e)(8)(iii)(C)*(2)*, (e)(9)(ii)(B), (e)(10)(ii)(B), and (e)(10)(iii)(C).

32. Technical Correction – Death Discharge Claim Documentation
Cite: §682.402(g)(1)(iii)

Comment: Section §682.402(b)(2) allows for a photocopy of a death certificate for the purpose of discharging a loan. This change is needed to provide the same allowance for the purpose of claim filing. Otherwise the disconnect could imply that, while a photocopy of a death certificate is sufficient basis for discharge, that same photocopy is not sufficient for the purpose of claim filing.

Recommendation: Revise §682.402(g)(1)(iii) as follows:

"In the case of a death claim, an original or certified death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate, or other documentation supporting the discharge request that formed the basis for the determination of death."

33. Technical Correction – Claims for Reimbursement from the Secretary on Loans Held by Guarantee Agencies
Cite: §682.402(k)

Comment: In the introductory text for paragraph (k), the final consensus language revised the word "guarantee" to be "guaranty." However, the Final Rule published November 1, 2012, did not reflect this change.

Recommendation: Revise §682.402(k) as follows:

"Claims for reimbursement from the Secretary on loans held by ~~guarantee~~ guaranty agencies. (1)(i) The Secretary reimburses the guaranty agency for its losses on bankruptcy claims paid to lenders after—"

34. Technical Correction – Unpaid Refund Discharge
Cite: §682.402(l)(3)(ii)

Comment: For consistency with language in other sections of the regulations, replace the term "credit reporting agencies" with "consumer reporting agencies."

Recommendation: Revise §682.402(l)(3)(ii) as follows:

"The holder of the loan reports the discharge of a portion of a loan under this section to all ~~credit~~ consumer reporting agencies to which the holder of the loan previously reported the status of the loan."

35. Technical Correction – Loan Rehabilitation Agreement
Cite: §682.405; §685.211(f)

Comment: The Proposed Rule changes words to numerals (e.g. "nine" to "9" and "ten" to "10") in §682.405(b)(1), §682.405(b)(1)(viii), and §685.211(f)(1) but fails to make similar changes in §682.405(a)(2)(i), §682.405(a)(2)(i)(B), §682.405(b)(1)(ii), §682.405(b)(4), and §685.211(f)(12)(i).

Recommendation: Ensure the appropriate and consistent use of either words or numerals throughout both §682.405 and §685.211(f) in accordance with the U.S. Government Printing Office Style Manual.

36. Technical Correction – Loan Rehabilitation Agreement
Cite: §682.405(a)(2)(i)(A); §682.405(b)(1)(i)

Comment: The language in §682.405(a)(2)(i)(A) was changed to read, "A qualifying payment is—" and §682.405(b)(1)(i) should read identically.

Recommendation: Revise §682.405(b)(1)(i) as follows:

"~~Each of which~~ A qualifying payment is—"

37. Technical Correction – Loan Rehabilitation Agreement
Cite: §682.405(b)(1)(iii)(A); §685.211(f)(1)(i)(A)

Comment: Insert the word "benefits" after "Supplemental Security Income" to be consistent with the references to welfare benefits and Social Security benefits.

Recommendation: Revise §682.405(b)(1)(iii)(A) as follows:

"Include a consideration of the borrower's, and if applicable, the spouse's current disposable income, including public assistance payments, and other income received by the borrower and the spouse, such as welfare benefits, Social Security benefits, Supplemental Security Income benefits, and workers' compensation. Spousal income is not considered if the spouse does not contribute to the borrower's household income."

Revise §685.211(f)(1)(i)(A) as follows:

"The borrower's, and if applicable, the spouse's current disposable income, including public assistance payments, and other income received by the borrower and the spouse, such as welfare benefits, Social Security benefits, Supplemental Security Income benefits, and workers' compensation. Spousal income is not considered if the spouse does not contribute to the borrower's household income."

38. Technical Correction – Loan Rehabilitation Agreement
Cite: §682.405(b)(1)(v); §685.211(f)(1)(iii)

Comment: The list of required topics to be covered in a rehabilitation agreement is complex and lengthy and would benefit from being laid out more concisely. The FFELP provision is more complex than the FDLP provision, but we would recommend that both be restructured for simplicity and clarity. A borrower seeking to understand the regulations will be aided by a straightforward list of requirements.

Recommendation: Revise §682.405(b)(1)(v) as follows:

"(v) Within 15 business days of its determination of the borrower's reasonable and affordable payment amount, the guaranty agency must provide the borrower with a written rehabilitation agreement. ~~which includes~~
(A) The rehabilitation agreement must include—
(1) ~~the~~ The borrower's reasonable and affordable payment amount;~~,~~
(2) ~~a~~ A prominent statement that the borrower may object orally or in writing to the reasonable and affordable payment amount, along with the method and timeframe for raising such an objection;~~, and~~
(3) ~~an~~ An explanation of any other terms and conditions applicable to the required series of payments that must be made before the borrower's account can be considered for repurchase by an eligible lender (i.e., rehabilitated);~~ The agency may not impose any other conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement. The written rehabilitation agreement must inform the borrower of—~~
(4) ~~(A)~~ An explanation of the ~~The~~ effects of having the loans rehabilitated (e.g., removal of the record of default from the borrower's credit history and return to normal repayment); and

(5)~~(B)~~ The amount of any collection costs to be added to the unpaid principal of the loan when the loan is sold to an eligible lender, which may not exceed 18.5 percent of the unpaid principal and accrued interest on the loan at the time of the sale.
(B) The agency may not impose any other conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement."

Revise §685.211(f)(1)(iii) as follows:

"(iii) Within 15 business days of the Secretary's determination of the borrower's reasonable and affordable payment amount, the Secretary provides the borrower with a written rehabilitation agreement. ~~which includes~~
(A) The rehabilitation agreement must include—
(1) ~~the~~ The borrower's reasonable and affordable payment amount;~~,~~
(2) ~~a~~ A prominent statement that the borrower may object orally or in writing to the reasonable and affordable payment amount, along with the method and timeframe for raising such an objection;~~,~~ ~~and~~
(3) ~~an~~ An explanation of any other terms and conditions applicable to the required series of payments that must be made. ~~The Secretary does not impose any other conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement. The written rehabilitation agreement informs the borrower of~~ ; and
(4) An explanation of the effects of having the loans rehabilitated (*e.g.,* removal of the record of default from the borrower's credit history and return to normal repayment).
(B) The Secretary does not impose any other conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement."

39. Technical Correction – Loan Rehabilitation Agreement
Cite: §682.405(b)(4)

Comment: Cross-reference correction.

Recommendation: Revise §682.405(b)(4) as follows:

"…The lender must treat the first payment made under the nine payments as the first payment under the applicable maximum repayment term, as defined under § 682.209(a) and ~~(h)~~(e)."

40. Technical Correction – Fiscal, Administrative, and Enforcement Requirements – Administrative Garnishment
Cite: §682.410(b)(9)(i)(F)*(2)*

Comment: There are some words missing from this paragraph, in both the clean version of the final consensus language for Issue Paper #25 and the Proposed Rule (78 FR 45697, first column), which seem to be necessary and appropriate based on the context of the paragraph and on the initial appearance of this language in paragraph (E)*(1)*.

Recommendation: Revise §682.410(b)(9)(i)(F)*(2)* as follows:

"If the borrower submits a written request for a hearing on an objection that withholding in the amount or at the rate that the agency proposed in its notice would cause financial hardship to the borrower and the borrower's spouse and dependents—"

41. Technical Correction – Fiscal, Administrative, and Enforcement Requirements – Administrative Garnishment
Cite: §682.410(b)(9)(i)(F)*(2)(ii)*

Comment: The initial, parenthetical reference to "National Standards," as a term that will be used later in this section of the regulations, is properly quoted in the clean version of the final consensus language for Issue Paper #25 but not in the Proposed Rule revision (78 FR 45697, first column). Placing quotes around this term would ensure consistency with other sections of 34 CFR 682. In addition, add the word "as" after "same size."

Recommendation: Revise §682.410(b)(9)(i)(F)*(2)(ii)* as follows:

"The borrower's claim of financial hardship must be evaluated by comparing the amounts that the borrower proves are being incurred for basic living expenses against the amounts spent for basic living expenses by families of the same size as and similar income to the borrower's. For the purposes of this section, the standards published by the Internal Revenue Service under 26 U.S.C. 7122(c)(2) (the "National Standards") establish the average amounts spent for basic living expenses for families of the same size as, and with family incomes comparable to, the borrower's family;"

42. Technical Correction – Consequences of the Failure of a Borrower or Student to Establish Eligibility
Cite: §682.412(a)(2)

Comment: The only change the Proposed Rule makes in §682.412(a)(2) is to strike the phrase "as provided under §682.301," which would lead one to believe that §682.301 was deleted or at least materially altered. However, a review of §682.301, which deals with borrower eligibility for interest benefits on Stafford and Consolidation loans, indicates that the only change made to that section was to delete the paragraph regarding the use of loan proceeds to replace expected family contribution. Given that there are still reasons that a borrower could lose eligibility for the interest subsidy, this cross-reference is still relevant and should not be deleted.

Recommendation: Retain the cross-reference in §682.412(a)(2) as follows:

"To receive a Stafford loan subject to payment of Federal interest benefits as provided under § 682.301 for which he or she was ineligible, or"

43. Technical Correction – Certification by a School that Participated in the FFEL Program in Connection with a Loan Application
Cite: §682.603(h)(3)(i)

Comment: The word "instruction" needs to be changed to "instructional" in order to conform to the language in the rest of this section of the regulations.

Recommendation: Revise §682.603(h)(3)(i) as follows:

"The number if weeks of instructional time is at least 10 weeks; and"

44. Technical Correction – Certification by a School that Participated in the FFEL Program in Connection with a Loan Application
Cite: §682.603(j)(1) & (2)

Comment: These paragraphs were re-written to refer to the statutory requirements because the regulatory requirements that the paragraphs referred to were deleted. The problem is that the statutory reference is broader ["section 428G(a)(3)"] than the more detailed and nuanced regulatory references that it replaces. Therefore, as written, the regulatory language is now almost identical, except for the additional criterion of "no later than October 1, 2002" contained in (j)(1)(i). As an example of the detail in the regulatory sections, (j)(1) (formerly §682.603(i)(1)) used to refer to the exceptions in §682.604(c)(5)(i) and §682.604(c)(8)(i). These were the ability of schools with low cohort default rates to release the first disbursement of a loan to a first-time student and the ability of the school to release the entire loan amount to a student that was only attending one semester, trimester, or quarter. Subparagraph (j)(2), on the other hand, referred to the restrictions in §682.604(c)(5)(ii) and §682.604(c)(8)(ii). Given that schools are no longer certifying FFELP loans and that the statutory reference is broader, only one of these paragraphs is needed. We recommend deleting paragraph (1) in its entirety as well as "(2)" so that the language in paragraph (2) becomes all of (j).

In addition, the reference to "the qualifications outlined in those paragraphs" should now refer to the statute instead of the regulations.

Recommendation: Revise §682.603(j) as shown:

"~~(1) A school must cease certifying loans based on the exceptions in section 428G(a)(3) of the Act no later than –~~
~~(i) 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, calculated under subpart M of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in those paragraphs; or~~
~~(ii) October 1, 2002.~~
~~(2)~~ A school must cease certifying loans based on the exceptions in section 428G(a)(3) of the Act no later than 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, calculated under subpart M of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in ~~those paragraphs~~ that section of the Act."

45. Technical Correction – Required Exit Counseling for Borrowers
Cite: §682.604(a)(1)

Comment: The Proposed Rule adds the ability to provide written exit counseling by email, but as written, it changes the sense of the regulations so that it appears that only email counseling is subject to the 30-day limitation after withdrawal or failure to complete exit counseling. Re-write to provide clarity.

Recommendation: Revise §682.604(a)(1) as follows:

"… If a student borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must ensure that exit counseling is provided within 30 days after learning that the student borrower has withdrawn from school or failed to complete the exit counseling as required through either –
(i) interactive electronic means;
(ii) ~~or by~~ mailing written counseling materials to the student borrower at the student borrower's last known address~~,~~; or
(iii) ~~by~~ sending written counseling materials by e-mail to an e-mail address provided by the student borrower ~~within 30 days after learning that the student borrower has withdrawn from school or failed to complete the exit counseling as required~~."

46. Technical Correction – Required Exit Counseling for Borrowers
Cite: §682.604(a)(5)(i)

Comment: The word "paragraph" should be plural.
Recommendation: Revise §682.604(a)(5)(i) as follows:
"… provides the borrower with the information described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section."

47. Technical Correction – Administrative and Fiscal Requirements for Schools that Participated
Cite: §682.610

Comment: The words "in the FFEL Program" should be added to the end of the heading. This would make the heading consistent with other headings in the Proposed Rule.

Recommendation: Revise the heading of §682.610 as follows:

"**Administrative and fiscal requirements for schools that participated in the FFEL Program.**"

48. Technical Correction – Purpose and Scope
Cite: §682.700(a)

Comment: The Proposed Rule deletes all references to schools as lenders in this section of the regulations but neglects to delete the statutory reference to schools (section 432(h)(3)) in the section. Delete the reference to (h)(3).

Recommendation: Revise §682.700(a) as follows:

"…These regulations also govern the Secretary's disqualification of a lender from participation in the FFEL programs under section 432(h)(2) ~~and (h)(3)~~ of the Act."

49. Technical Correction – Appendix C
Cite: Appendix C to Part §682

Comment: Change number 78 on page 45702 of the Proposed Rule states, "Remove and reserve Appendix C to part 682." However, the title preceding the description of change number 78 does not indicate that Appendix C is reserved.

Recommendation: Ensure the Final Rule reflects an accurate title for change number 78 to read, "Appendix C to Part 682 [Removed and Reserved]."

50. Technical Correction – Deferment
Cite: §685.204(a)(1)

Comment: The Proposed Rule uses the word "and" to link the deferment subparagraph citations when describing the eligibility of a borrower of a Direct Subsidized or Direct Subsidized Consolidation Loan for deferment of principal and interest payments. The connecting word should be "or" since the borrower does not need to meet the requirements of all deferments.

Recommendation: Revise §685.204(a)(1) as follows:

"A Direct Subsidized Loan or Direct Subsidized Consolidation Loan borrower who meets the requirements described in paragraphs (b), (d), (e), (f), (g), (h), (i), ~~and~~ or (j) of this section is eligible for a deferment during which periodic installments of principal and interest need not be paid."

51. Technical Correction – Deferment for Co-made Loans
Cite: §685.204(a)

Comment: Unlike §682.210(a), §685.204(a) does not contain provisions for co-made loans. We recommend inserting language into §685.204(a) for consistency with §682.210(a).

Recommendation: Revise §685.204(a) by inserting a new subparagraph (4) and renumbering the remaining subparagraphs, as follows:

"(3) A borrower whose loan is in default is not eligible for a deferment, unless the borrower has made payment arrangements satisfactory to the Secretary.

(4) If two individuals are jointly liable for repayment of a Direct PLUS loan or a Direct Consolidation loan, the Secretary grants a request for deferment if both individuals simultaneously meet the requirements of this section for receiving the same, or different deferments.

(~~4~~)(5)(i) To receive a deferment, except as provided for in-school deferments under paragraphs (b)(2)(ii) through (iv) of this section, the borrower must request…."

52. Technical Correction – Unemployment Deferment
Cite: §685.204(f)(3)(iii)

Comment: The Proposed Rule revises the term "three months" to read "3 months". This term should remain as "three months" to be consistent with similar language in this section.

Recommendation: Revise §685.204(f)(3)(iii) as follows:

"Full-time employment involves at least 30 hours of work a week and is expected to last at least three ~~3~~ months."

53. Technical Correction – Forbearance for Co-made Loans
Cite: §685.205(a)

Comment: Unlike §682.211(a), §685.205(a) does not contain provisions for co-made loans. We recommend inserting language into §685.205(a) for consistency with §682.211(a).

Recommendation: Revise §685.205(a) as follows:

"*General*. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. The borrower has the option to choose the form of forbearance. Except as provided in paragraph (b)(9) of this section, if payments of interest are forborne, they are capitalized. If two individuals are jointly liable for repayment of a Direct PLUS loan or a Direct Consolidation loan, the Secretary grants forbearance on repayment of the loan only if the ability of both individuals to make scheduled payments has been impaired based on the same or differing conditions. The Secretary grants forbearance if the borrower or endorser intends to repay the loan but requests forbearance and provides sufficient documentation to support this request, and—"

54. Technical Correction - Forbearance
Cite: §685.205(a)(8)(i)

Comment: For language simplification and consistency with the parallel provision in §682.211(d)(1), delete the phrase "terms of the."

Recommendation: Revise §685.205(a)(8)(i) as follows:

"…The ~~terms of the~~ forbearance agreement in this situation must include a new agreement to repay the debt…."

55. Technical Correction - Forbearance
Cite: §685.205(a)(8)(ii)

Comment: The language should be consistent with the parallel provision in §682.211(d)(2).

Recommendation: Revise §685.205(a)(8)(ii) as follows:

"If the forbearance is based on the borrower's or endorser's oral request and affirmation of the obligation to repay the debt, the forbearance period is limited to a period of 120 days, such a forbearance is not granted consecutively, and the Secretary will— "

56. Technical Correction - Forbearance
Cite: §685.205(a)(8)(iii)

Comment: Insert a comma after "limited to" for consistency with the parallel provision in §682.211(d)(3).

Recommendation: Revise §685.205(a)(8)(iii) as follows:

"… The form of the affirmation may include, but is not limited to, the borrower's or endorser's—"

57. Technical Correction - Forbearance
Cite: §685.205(c)(1)

Comment: For language consistency with §682.211(c), insert the phrase shown to indicate the 120-day forbearance period is an exception to the general rule that a forbearance period may be up to one year in length.

Recommendation: Revise §685.205(c)(1) as follows:

"Except as provided in paragraph (a)(8)(ii) of this section, the ~~The~~ Secretary grants forbearance for a period of up to one year."

58. Technical Correction - Income-Based Repayment Plan
Cite: §685.208(a)(2)(i)(E)

Comment: Delete the comma after "plan" to be consistent with similar changes made to this section.

Recommendation: Revise §685.208(a)(2)(i)(E) as follows:

"The income-based repayment plan, in accordance with paragraph (m) of this section."

59. Technical Correction – Income-Contingent Repayment Plans
Cite: §685.209(a)(1)(iii)(A)

Comment: The second instance of the word "loan" in the phrase "Direct Loan Program Loan" should not be capitalized to be consistent with similar language in this part.

Recommendation: Revise §685.209(a)(1)(iii)(A) as follows:

"Has no outstanding balance on a Direct Loan Program ~~Loan~~ loan or a FFEL Program loan as of October 1, 2007, or who has no outstanding balance on such a loan on the date he or she receives a new loan after October 1, 2007; and"

60. Technical Correction - Loan Rehabilitation Agreement
Cite: §685.211(f)(1)(ii)(A)

Comment: Insert a comma in the parenthetical after "e.g."

Recommendation: Revise §685.211(f)(1)(ii)(A) as follows:

"A required minimum loan payment amount (*e.g.*, $50) if the Secretary determines that a smaller amount is reasonable and affordable."

61. Technical Correction - Total and Permanent Disability Discharge
Cite: §685.213(c)(1)(i)

Comment: Move the word "the" to appear between "that" and "Secretary."

Recommendation: Revised §685.213(c)(1)(i) as follows:

"Identifies all title IV loans owed by the veteran and notifies the lenders ~~the~~ that the Secretary has received a total and permanent disability discharge application from the borrower;"

62. Technical Correction – Repayment Period of Consolidation Loan
Cite: §685.220(i)(2)(ii)

Comment: Italicize the heading of this paragraph for consistency with the heading in (i)(2)(i).

Recommendation: Revise §685.220(i)(2)(ii) as follows:

"~~Borrowers entering repayment on or after July 1, 2006.~~ *Borrowers entering repayment on or after July 1, 2006.* The Secretary determines the repayment period under §685.208(j)…."

63. Technical Correction – Deferment and Forbearance for Joint Consolidation Loans
Cite: §685.220(l)(1) & (2)

Comment: For greater clarity and consistency with recommendations 51 and 53 above, we recommend adding more specific language to §685.220(l) regarding deferment and forbearance provisions for joint Consolidation loans.

Recommendation: Revise §685.220(l) as follows:

"*Special provisions for joint consolidation loans.* The provisions of paragraphs (l)(1) through (3) of this section apply to a Direct Consolidation Loan obtained by two married borrowers in accordance with the regulations that were in effect for consolidation applications received prior to July 1, 2006.
(1) *Deferment*. To obtain a deferment on a joint Direct Consolidation Loan under § 685.204, both borrowers must simultaneously meet the requirements of that section for the same or different deferments.
(2) *Forbearance*. To obtain forbearance on a joint Direct Consolidation Loan under § 685.205, both borrowers must meet the requirements of that section for the same or different types of forbearance.

64. Technical Correction - Income-Based Repayment Plan
Cite: §685.221(f)(1)(i)

Comment: Correct the cross-reference to refer to the $0.00 payment determination found in §685.221(b)(2)(iii).

Recommendation: Revise §685.221(f)(1)(i) as follows:

"Made reduced monthly payments under a partial financial hardship as provided in paragraph (b)(1) or (b)(2) of this section, including a monthly payment amount of $0.00, as provided under paragraph (b)(2)~~(ii)~~(iii) of this section."

65. Technical Correction – Income-Based Repayment Plan Qualifying Forgiveness Payments
Cite: §685.221(f)(1)(ii)

Comment: To be consistent with the FFELP IBR and FDLP Pay As You Earn regulations, the cite reference should be specific to the permanent-standard payment paragraph.

Recommendation: Revise §685.221(f)(1)(ii) as follows:

"Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-based payments as provided in paragraph (d)(1) of this section."

66. Technical Correction - Income-Based Repayment Plan
Cite: §685.221(f)(3)(ii)(E)

Comment: Delete the word "determining" so that the structure of paragraph (E) is consistent with the preceding paragraphs.

Recommendation: Revise §685.221(f)(3)(ii)(E) as follows:

"If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (f)(3)(ii) of this section, ~~determining~~ the date the borrower made a payment under the income-based repayment plan on the loan."