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DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 682, and 685

[Docket ID ED-2015-OPE-0103]

RIN 1840-AD19

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

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final rule; correction; announcement of effective date.

SUMMARY: Consistent with the decisions of the U.S. District Court for the District of Columbia, this document memorializes that selected provisions of these final regulations took effect. Due to more recently-effective amendments, the Department must also correct affected amendatory instructions to ensure their incorporation into the CFR.

DATES: As of October 16, 2018, the corrections to the amendatory instructions and the amendments to §668.14(b)(30), (31), and (32); §668.41(h) and (i); §668.71(c); §668.91(a)(3); §668.94(h), (i) and (j); §668.171; §668.175(c), (d), (f), and (h); part 668, subpart L, appendix C; §674.33(g)(3) and (8); §682.202(b)(1); §682.211(i)(7); §682.402(d)(3), (d)(6)(ii)(B)(1)

and (2), (d) (6) (ii) (F) introductory text, (d) (6) (ii) (F) (5), (d) (6) (ii) (G) through (K), (d) (7) (ii) and (iii), (d) (8), and (e) (6) (iii); §682.405(b) (4) (ii); §682.410(b) (4) and (b) (6) (viii); §685.200(f) (3) (v) and (f) (4) (iii); §685.205(b) (6); §685.206(c); §685.212(k); §685.214(c) (2) and (f) (4) through (7); §685.215(a) (1), (c) (1) through (8), and (d); §685.222; part 685, subpart B, appendix A; §685.300(b) (11) and (12) and (d) through (i); and §685.308(a), published November 1, 2016, at 81 FR 75926, and delayed June 16, 2017 (82 FR 27621), October 24, 2017 (82 FR 49114), and February 14, 2018 (83 FR 6458), are effective.

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SUPPLEMENTARY INFORMATION: The original "effective date" for these provisions was July 1, 2017. 81 FR 75926. To the extent the provisions explicitly use this date as a benchmark (e.g., §685.206(c) ("For loans first disbursed prior to July 1, 2017, the borrower may assert a borrower defense under this paragraph")), the Department will use July 1, 2017 as the

relevant date. Because the provisions referenced above did not actually take effect on July 1, 2017, the Department is, concurrently with this announcement, releasing an Electronic Announcement available at <https://ifap.ed.gov/eannouncements/030719GuidConcernProv2016BorrowerDefensetoRypmtRegs.html> to clarify the responsibilities of institutions with respect to the Financial Responsibility, Class Action Bans, and Predispute Arbitration Agreements Provisions, and Repayment Rate Disclosure sections of the final regulations, which are now effective.

Background:

On May 24, 2017, the California Association of Private Postsecondary Schools (CAPPS) filed a Complaint and Prayer for Declaratory and Injunctive Relief in the United States District Court for the District of Columbia (Court) challenging the final regulations in their entirety, and in particular those provisions of the regulations pertaining to the standard and process for the Department to adjudicate borrower defense claims, requirements pertaining to financial responsibility standards, provisions requiring proprietary institutions to provide warnings about their students' loan repayment rates, and prohibitions against institutions including arbitration or class action waivers in their agreements with students. Complaint and Prayer for Declaratory and Injunctive Relief, *California*

Association of Private Postsecondary Schools v. DeVos, No. 17-cv-00999 (D.D.C. May 24, 2017). The provisions in the challenged regulations were scheduled to become effective on July 1, 2017.

In light of the pending litigation, on June 16, 2017, the Department published a notification of the partial delay of effective dates (82 FR 27621) under section 705 of the APA (5 U.S.C. 705), to delay the effectiveness of certain provisions of the final regulations until the legal challenge is resolved (705 Notice). Subsequently, on October 24, 2017, the Department issued an interim final rule (IFR) delaying the effective date of those provisions of the final regulations to July 1, 2018 (82 FR 49114), and a notice of proposed rulemaking to further delay the effective date to July 1, 2019 (82 FR 49155). On February 14, 2018, the Department published a final rule delaying the regulations' effective date until July 1, 2019 (83 FR 6458) (Final Delay Rule).

Following issuance of the 705 Notice, plaintiffs Meaghan Bauer and Stephano Del Rose filed a complaint challenging the validity of the 705 Notice. Complaint for Declaratory and Injunctive Relief, *Bauer v. DeVos*, No.17-cv-1330 (D.D.C. Jul. 6, 2017). The attorneys general of 18 states and the District of Columbia also filed a complaint challenging the validity of the 705 Notice. Complaint for Declaratory and Injunctive Relief,

Massachusetts v. U.S. Dep't of Educ., No. 17-cv-01331 (D.D.C. Jul. 6, 2017). Plaintiffs in both cases subsequently amended their complaints to include the IFR and the Final Delay Rule, and these cases were consolidated by the Court.

On September 12, 2018, the Court issued its Memorandum Opinion and Order in the consolidated matter, finding the challenge to the IFR was moot, declaring the 705 Notice and the Final Delay Rule invalid, and convening a status conference to consider appropriate remedies. *Bauer v. DeVos*, No. 17-cv-1330 (D.D.C. Sept. 12, 2018). Subsequently, on September 17, 2018, the Court issued its Memorandum Opinion and Order immediately vacating the Final Delay Rule and vacating the 705 Notice but suspending its vacatur of the 705 Notice until 5:00 p.m. on October 12, 2018, to allow for renewal and briefing of CAPPS' motion for a preliminary injunction in the *CAPPS v. DeVos* case and to give the Department an opportunity to remedy the deficiencies with the 705 Notice. *Bauer*, No. 17-cv-1330 (D.D.C. Sept. 17, 2018). The Department decided not to issue a revised 705 notice. On October 12, 2018, the Court extended the suspension of its vacatur until noon on October 16, 2018. Minute Order (Oct. 12, 2018), *Bauer*, No. 17-cv-1330. On October 16, 2018, the Court denied CAPPS' motion for a preliminary injunction, ending the suspension of the vacatur. Memorandum Opinion and Order, *CAPPS*, No. 17-cv-0999 (Oct. 16, 2018).

Regulations:

With this action by the Court, the final regulations published November 1, 2016, at 81 FR 75926, listed below took effect. Information clarifying the responsibilities of institutions with respect to the now-effective provisions is available in the Electronic Announcement, <https://ifap.ed.gov/eannouncements/030719GuidConcernProv2016BorrowerDefensetoRypmtRegs.html>, the Department is releasing concurrently with this announcement.

- Section 668.14(b)(30), (31), and (32) Program participation agreement.
- Section 668.41(h) and (i) Reporting and disclosure of information.
- Section 668.71(c) Scope and special definitions.
- Section 668.90(a)(3) Initial and final decisions.
- Section 668.93(h), (i), and (j) Limitation.
- Section 668.171 General.
- Section 668.175(c), (d), (f), and (h) Alternative standards and requirements.
- Part 668, subpart L, appendix C.
- Section 674.33(g)(3) and (8) Repayment.
- Section 682.202(b)(1) Permissible charges by lenders to borrowers.
- Section 682.211(i)(7) Forbearance.

- Section 682.402(d)(3), (d)(6)(ii)(B)(1) and (2), (d)(6)(ii)(F) introductory text, (d)(6)(ii)(F)(5), (d)(6)(ii)(G) through (K), (d)(7)(ii) and (iii), (d)(8), and (e)(6)(iii) Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.
- Section 682.405(b)(4)(ii) Loan rehabilitation agreement.
- Section 682.410(b)(4) and (b)(6)(viii) Fiscal, administrative, and enforcement requirements.
- Section 685.200(f)(3)(v) and (f)(4)(iii) Borrower eligibility.
- Section 685.205(b)(6) Forbearance.
- Section 685.206(c) Borrower responsibilities and defenses.
- Section 685.212(k) Discharge of a loan obligation.
- Section 685.214(c)(2) and (f)(4) through (7) Closed school discharge.
- Section 685.215(a)(1), (c)(1) through (8), and (d) Discharge for false certification of student eligibility or unauthorized payment.
- Section 685.222 Borrower defenses.
- Part 685, subpart B, appendix A Examples of borrower relief.
- Section 685.300(b)(11), (b)(12), and (d) through (i) Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

- Section 685.308(a) Remedial actions.

Note: Section 668.90 has been redesignated as §668.91 and §668.93 has been redesignated as § 668.94 pursuant to the borrower defense procedural rule, published January 19, 2017 at 82 FR 6253 (the borrower defense procedural rule), so the Department must correct the amendatory instructions from the November 2016 rule to reflect the newly redesignated section numbers.

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

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Corrections

In FR Doc. 2016-25448, appearing on page 75926 in the *Federal Register* of Tuesday, November 1, 2016, the following corrections are made:

§ 668.90 [Corrected]

1. On page 76072, in the first column, in amendatory instruction 7, "Section 668.90" is corrected to read "Section 688.91" and "§668.90" is corrected to read "§668.91".

§ 668.93 [Corrected]

2. On page 76072, in the third column, in amendatory instruction 8, "Section 668.93" is corrected to read "Section 688.94" and "§668.93" is corrected to read "§668.94".

Dated: March 12, 2019.

Betsy DeVos,
Secretary of Education.

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