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DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682, and 685

RIN 1840-AD48

[Docket ID ED-2019-FSA-0115]

Total and Permanent Disability Discharge of Loans under Title IV of the Higher Education Act

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Interim final regulations.

SUMMARY: The Department of Education (Department) issues these interim final regulations to amend and update the regulations for total and permanent disability student loan discharge for veterans by removing administrative burdens that may have prevented at least 20,000 totally and permanently disabled veterans from obtaining discharges of their student loans, as the law provides. These barriers create significant and unnecessary hardship for these veterans. Removing these barriers is a matter of pressing national concern. Although the Department construes its interim final rulemaking power narrowly, under these circumstances the Department finds good cause to implement the rule immediately.

DATES: These regulations are effective July 1, 2020.

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

We must receive your comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

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

electronically search and copy certain portions of your submissions.

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

- Postal Mail, Commercial Delivery, or Hand Delivery: The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments, address them to Robert King, U.S. Department of Education, 400 Maryland Ave., SW, Washington, DC 20202.

Privacy Note: The Department's policy is to make comments received from members of the public available for public viewing on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Robert King, U.S. Department of Education, Office of Postsecondary Education,

400 Maryland Avenue, SW, Washington, DC 20202-2241.

Telephone: (202) 453-6914. Email: robert.king@ed.gov.

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

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Implementation Date of These Regulations: These regulations are effective on July 1, 2020. Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1, prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulations may choose to implement earlier, as well as the conditions for early implementation.

The Secretary is exercising her authority under section 482(c) of the HEA to designate the regulatory changes to parts 674, 682, and section 685.213 of the Code of Federal Regulations, included in this document, for

early implementation effective immediately for the reasons set forth in the Summary, Background, and Need for Regulatory Action sections included in this document. Under this rule, eligible veterans who do not opt out of receiving a discharge will receive one.

Invitation to Comment:

Although the Secretary has decided to issue these final regulations without first publishing proposed regulations for public comment, we are interested in whether you think we should make any changes in these regulations. We invite your comments. We will consider these comments in determining whether to revise the regulations.

To ensure that your comment has maximum effect, we urge you to clearly identify the specific section or sections of the proposed regulations that your comment addresses, and provide relevant information and data whenever possible, even when there is no specific solicitation of data and other supporting materials in the request for comment. We also urge you to arrange your comments in the same order as the regulations. Please do not submit a comment that is outside the scope of this notice of interim final regulations (IFR).

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about the regulations by accessing regulations.gov. You may also inspect the comments in person at 400 Maryland Ave., SW, Washington, DC, between 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. To schedule a time to inspect comments, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the regulations. To schedule an appointment for this

type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Background:

Congress has authorized the discharge of student loans made pursuant to Title IV of the Higher Education Act of 1965, as amended (HEA), due to the borrower's total and permanent disability. 20 U.S.C. 1087(a), 1087e(a)(1), and 1087dd(c)(1)(F).

For veterans, Congress has specifically authorized total and permanent disability discharge if the Department of Veterans Affairs (VA) has determined that the veteran is unemployable due to a service-connected disability. 20 U.S.C. 1087(a)(2), 1087e(a)(1), and 1087dd(c)(1)(F)(iv). The Secretary has promulgated regulations governing the total and permanent disability discharge process for veterans. See 34 CFR 674.61(c), 682.402(c)(9), and 685.213(c). At the time these regulations were promulgated, the Department did not obtain information directly from the VA, and therefore required the eligible veteran to submit an application and supporting documentation from the VA to receive student loan discharge. However, in 2018 the Department enter into a data sharing agreement with the VA to retrieve the

necessary information directly from the VA. As such, the application is an unnecessary administrative barrier, which the Department believes may have prevented more than 20,000 disabled veterans from obtaining the student loan discharge that they are by law entitled to receive.

Despite streamlining the application process, it continues to be a barrier that creates significant and unnecessary hardship for our disabled veterans. Consequently, removing these barriers is a pressing problem of national concern. For example, Congress directed the Secretary to take additional actions to automate the total and permanent disability discharge application process for eligible veterans. S. Rep. No. 115-150, at 182 (2017). The Attorneys General of more than 50 States and territories wrote to encourage the Department to remove administrative barriers so that veterans are able to receive loan discharge. Letter from National Association of Attorneys General to the Honorable Betsy DeVos, U.S. Secretary of Education (May 24, 2019). Finally, the President has directed the Secretary to facilitate the discharge of student loans for totally and permanently disabled veterans in a manner that is quick, efficient, and minimally burdensome. Presidential Memorandum of August

21, 2019, Discharging the Federal Student Loan Debt of Totally and Permanently Disabled Veterans, 84 FR 44677.

SIGNIFICANT REGULATIONS

The following is a discussion of the significant regulations.

Statute: Pursuant to 20 U.S.C. 1087(a)(2), 1087e(a)(1), and 1087dd(c)(1)(F)(iv), the Secretary is directed to discharge the loans under the Federal Direct Loan Program, the Federal Family Education Loan Program, and the Federal Perkins Loan Program of borrowers who have become permanently and totally disabled if the Secretary of Veterans Affairs has determined the borrower unemployable due to a service-connected condition and the borrower provides that documentation to the Secretary.

Current Regulations: Under 34 CFR 674.61(c), 682.402(c)(9), and 685.213(c), if a veteran who is also a student loan borrower is determined to be unemployable by the Secretary of Veterans Affairs due to a service-connected disability, the borrower must apply to the Secretary of Education for a discharge of his or her student loans. This application must include documentation of the Secretary of Veterans Affairs determination.

New Regulations: Under 34 CFR 674.61(c)(2)(x), 682.402(c)(9)(xiii), and 685.213(c)(1)(v), the Secretary will consider a borrower for whom data is obtained from the Department of Veterans Affairs showing that the borrower is "totally and permanently disabled" to be eligible for discharge and will not require additional documentation to discharge the borrower's loans.

Reasons: The Secretary is amending the regulations for the Federal Direct Loan Program, the Federal Family Education Loan Program, and the Federal Perkins Loan Program to remove administrative barriers for veterans who are entitled to student loan discharge due to a service-related total and permanent disability.

Due to concerns that unnecessary bureaucratic burdens prevented eligible veterans from obtaining loan discharges guaranteed by law, in 2018 the Departments of Education and Veterans Affairs entered into a data sharing agreement to enable the Department of Education to identify eligible totally and permanently disabled veterans. Approximately 50,000 eligible veterans were identified as the result of this agreement. However, due to a burdensome administrative process, more than 20,000 eligible veterans have failed to receive relief.

Consequently, to help veterans receive the relief to which they are entitled, the Secretary is amending the regulations to eliminate the need for a separate application from each borrower. Instead, the Secretary will consider a borrower to be eligible for a loan discharge when the Secretary has received information from the Department of Veterans Affairs showing that the borrower has a total and permanent disability. After determining that this information demonstrates the borrower meets statutory criteria and is eligible for a loan discharge, the Secretary will notify the borrower that his or her loan is being discharged. The borrower may reject the discharge within the number of days specified in the notification. In that case, the borrower will be liable for the full amount of the principal and interest on the loan, as well as any other fees and costs that may be legally assessed.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of

Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may-

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

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

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

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

This IFR is an economically significant action and will have an annual effect on the economy of more than \$100 million because the proposed changes to an opt-out process for veterans are expected to increase transfers from the federal government to qualifying veterans by \$138.7 million

when annualized at a 7 percent discount rate. Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as a "major rule," as defined by 5 U.S.C. 804(2).

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. These regulations are expected to reduce burden on qualifying veterans by eliminating the application for discharge. We estimate that this rule will generate approximately \$0.11 million in annualized net PRA savings at a 7 percent discount rate, discounted to a 2016 equivalent, over a perpetual time horizon. This regulation is a deregulatory action under Executive Order 13771 and therefore the requirements of Executive Order 13771 do not apply.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly

reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

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

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

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

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

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired

behavior, or providing information that enables the public to make choices.

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

The Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and we are issuing this IFR in response to the pressing need for, and manifest public interest in, deregulatory relief from bureaucratic burdens that have denied tens of thousands of veterans who are totally and permanently disabled due to service-related injuries their statutory right to student loan discharges. The harm caused to our veterans and to the public interest by the unnecessary bureaucratic burdens targeted for deregulatory action here is significant and widely recognized. See Presidential Memorandum at 44677; S. Rep. No. 115-150, at 182. Based on this analysis and the reasons stated in the

preamble, the Department believes that this IFR is consistent with the principles in Executive Order 13563.

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

Need for Regulatory Action

The Higher Education Act of 1965 as amended, provides that veterans who are totally and permanently disabled are eligible to have their Federal student loans discharged. Once determined by the Secretary of Veterans Affairs to be totally and permanently disabled due to a service-connected condition, under the current regulations the veteran must obtain documentation of that status from the Department of Veterans Affairs and provide it to the Secretary of Education, along with an application for total and permanent disability discharge, to receive the discharge of a student loan. However, now that the Department has a data sharing agreement with the VA in place, the Department obtains all of the information it needs to discharge loans directly from the VA. This makes the application an unnecessary and burdensome step. Consequently, the President and Congress have asked the Department to ensure

our veterans receive all benefits the law allows. Veterans would only need to contact the Department if they choose not to accept the discharge, in which case they would be responsible for full payment on the loan.

The Department of Education has been working with the Department of Veterans Affairs since 2018 to facilitate a more expedited process and about 22,000 veterans have received approximately \$650 million in discharges. However, thousands more have not applied for the discharge for which they were eligible.

The amendments in this rule should result in a quicker, more efficient process and many more qualified veterans receiving the discharge to which they are legally entitled. Based on available data, this regulatory action would be significant and the initial annual impact on the economy would be estimated at over \$100 million.

In the past, loan discharge amounts were subject to Federal and in some geographies State tax, which may have dissuaded some veterans who could otherwise navigate the bureaucratic process from seeking a discharge. However, under the Tax Cuts and Jobs Act of 2017 (P.L. 115-97), all Federal tax was eliminated on loan discharges of borrowers based on death or total and permanent disability. Some

small percentage of these eligible veterans may opt out due to concerns over State tax treatment that was not affected by the 2017 Federal tax law.

In addition, veterans who are enrolled at the time of the disability determination, or who plan to enroll in postsecondary education in the future, may opt to forego loan forgiveness so that they can continue to receive new Federal student loans in the future. Although a veteran who accepts loan forgiveness may still be able to borrow in the future, the Department requires such a borrower to obtain a certification from a physician that the borrower is able to engage in substantial gainful employment and must sign a statement acknowledging that neither the new Direct Loan the borrower receives cannot be discharge in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates. Some veterans may elect to simply forego loan forgiveness to preserve future borrowing opportunities or the need to obtain medical certification.

Nevertheless, this new deregulatory approach should remove unnecessary bureaucratic barriers and allow many more qualified veterans to receive the discharge to which they are entitled.

Costs, Benefits and Transfers

The primary parties affected by these regulations will be the veterans who qualify for the discharge and the taxpayers, through the transfers from the Federal Government to the qualifying veterans. Qualifying veterans and their families will be relieved of a financial burden related to Federal student loans, including the stress associated with repayment or potential defaults and collections. The Department of Veteran's Affairs estimates that approximately 150,000 veterans a year will reach a qualifying disability rating over the next ten years, of which approximately 18 percent will be 50 years old or under and around 20 percent will have at least some postsecondary education at the time of their separation from the armed services. Many more likely use education benefits and loans to pursue postsecondary credentials after separation. Therefore, it makes sense that thousands of current and future veterans will benefit from the change to the opt-out approach.

As described in the Paperwork Reduction Act section of this preamble, the elimination of the application will reduce the burden on veterans who qualify for the discharge. The elimination of the application is a

reduction in burden of [5,000] hours and \$140,900 calculated at a wage rate of \$28.18¹.

The increase in transfers will affect taxpayers, through the Federal government, as more veterans receive the loan discharge for which they qualify. This effect is described in the Net Budget Impacts section of this preamble. Estimated annualized transfers are \$138.7 million at a 7 percent discount rate.

Net Budget Impact

We estimate that these final regulations will have a net Federal budget impact over the 2020-2029 loan cohorts of \$787 million in outlays and a modification to past cohorts of \$543.8 million, for a total net impact of \$1.3 billion. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. The Net Budget Impact

¹ Bureau of Labor Statistics, Economic News Release Table B-3. Average hourly and weekly earnings of all employees on private nonfarm payrolls by industry sector, seasonally adjusted. Applying average hourly wage rate for October 2019 for total private industry. Available at <https://www.bls.gov/news.release/empsit.t19.htm>

is compared to the 2020 President's Budget baseline, as estimated for Mid-Session Review (PB2020).

As discussed throughout this preamble, these regulations will make the discharge process of loans for veterans with a service-related disability an opt-out process instead of the opt-in process associated with the current match between the Department and the Department of Veterans Affairs. While the existing match has been processed since 2018 and the Department has accepted Department of Veterans' Affairs determinations of disability status without additional medical information since 2013, a significant percentage of veterans who would qualify for the discharge do not submit applications. Of approximately 58,000 likely qualifying veterans identified in the match process, only about 22,000 veterans have received approximately \$650 million in discharges. According to Federal Student Aid, approximately 4,000 additional veterans are identified in each quarterly match.

To estimate the effect of the opt-out procedure, the Department adjusted the disability component of its Death, Disability, and Bankruptcy assumption (DDB), which also includes closed school and borrower defense discharges that have been the subject of recent regulations. To calculate

the effect on past cohorts from borrowers currently eligible for the discharge who have no record of receiving one, the Department summarized the balances, collections, and payments associated with veterans identified in the August 2018 match who had not received a disability or death discharge by the end of FY 2019. These potential claims were grouped by population identification (non-consolidated, consolidated not-from-default, and consolidated from default), and offset between the fiscal year of loan origination and fiscal year of disability. Baseline disability claims were also summarized by these factors and an adjustment factor for the increase represented by the potential claims was calculated. For example, for the 2010 cohort for consolidated loans, potential claims were approximately 5 percent of baseline disability claims, so the adjustment factor was 1.05 percent.

This adjustment accounts for the potential increase in claims from former borrowers with an existing qualifying disability rating. The change to the opt-out approach will increase the level of disability discharges going forward, but not to the same degree as the significant adjustment in FY2020 that captures the build-up of years from those who

did not submit applications. To estimate the adjustment for future claims, the Department focused on those newly identified as disabled in 2018 and calculated an adjustment factor based on those who received a discharge versus those potential discharges who were in the match but did not submit applications. This adjustment was applied to future cohorts and future disability determinations for borrowers in past cohorts.

The Department incorporated this increase into the DDB assumption estimated for PB2020 and this generated the \$1.3 billion in costs associated with the regulations.

A number of factors may affect the estimated cost of these regulations. Some borrowers may have lacked awareness of the potential discharge or found the application process difficult. To the extent existing borrowers choose to not apply for tax reasons, the tax provision granting that relief is currently scheduled to expire on December 31, 2025. While it may be renewed, the opt-out rate for future discharges occurring in 2026 and later could increase. In estimating the net budget impact of these interim final regulations, the Department reduced the adjustment factor for 2026 and later by 15 percent to account for this. If that provision is extended or if more

of the unfiled applications were for process reasons and did not reflect deliberate tax planning, the opt-out rate may decrease and the costs could go up.

Another issue is the assumption that the non-applicants and future qualifying veterans will have a similar profile to applicants in terms of the amount of loans, repayment profiles, and the timing of their qualifying disability. It is possible that those who applied for a discharge as the result of the match had higher balances and thus more incentive to file, especially once the federal tax consequences were removed. Applicants and non-applicants could vary by debt level, educational attainment, nature of their disability, availability of support or other factors that could result in the discharges granted through the opt-out provision having a different average amount or subsidy cost for the Department.

Another challenge is predicting the effect on future loan cohorts. We assume the level and timing of service-related disabilities will remain similar to that for existing borrowers. Clearly, geopolitical factors that the Department of Education does not predict could affect the number of veterans who qualify for the discharge.

Additionally, student loan borrowing among those who may serve in the military and eventually qualify for a discharge could increase depending upon recruitment patterns and further education pursued by those serving in the military. However, it is possible that the relatively generous provisions of the Post 9/11 GI bill will reduce borrowing by more recent and future cohorts of veterans relative to past cohorts. An analysis done by Veterans Education Success of National Postsecondary Student Aid Survey data for the most recent three survey cycles (NPSAS:08, NPSAS:12 and NPSAS:16) indicated that the percentage of veterans borrowing at proprietary schools decreased from 78 percent in NPSAS:08 to 42 percent in NPSAS:16 and the average annual amount borrowed decreased slightly from \$8,680 to \$8,630 in 2015 dollars.² The percent of veterans borrowing declined slightly in other sectors (38 percent to 32 percent for public 4-year institutions) and the average amounts borrowed also declined (\$10,410 for 4-year private non-profit in NPSAS:08 to \$8,980 in NPSAS:16).³

² Walter Ochinko and Kathy Payea, Veterans Education Success, *Veteran Student Loan Debt: Data from NPSAS: 08,12,16*, January 2019, Figure 1, p.4. Available at <https://vetsedsuccess.org/veteran-student-loan-debt-7-years-after-implementation-of-the-post-9-11-gi-bill/>

³ *Id.*

Medical or technical advances that affect the classification of disability could potentially be a factor reducing the estimated costs associated with future loan cohorts. For estimation purposes, we assume future cohorts will look like existing cohorts but acknowledge that a number of factors could shift the estimated costs in either direction.

Accounting Statement

As required by OMB Circular A-4 (available at www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the changes in annual monetized transfers as a result of these final regulations. Expenditures are classified as transfers from the Federal Government to veterans who qualify for a total and permanent disability discharge.⁴

⁴ An indirect cost of the interim final rule is the increased distortions in the nationwide labor market and other markets taxed to pay for the loan discharge program. Such distortions are sometimes referred to as marginal excess tax burden (METB), and Circular A-94—OMB’s guidance on cost-benefit analysis of federal programs, available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A94/a094.pdf>—suggests that METB may be valued at roughly 25 percent of the estimated transfer attributed to a policy change; the Circular goes on to direct the inclusion of estimated METB change in supplementary analyses. If secondary costs—such as increased marginal excess tax burden is, in the case of this IFR—are included in regulatory impact analyses, then secondary benefits must be as well, in order to avoid inappropriately

Table 6: Accounting Statement: Classification of Estimated Expenditures (in millions)

Category	Benefits	
Increased share of qualifying veterans who receive a total and permanent disability discharge	Not Quantified	
	Not Quantified	
Reduced paperwork burden on Veterans who qualify for a TPD discharge	7% \$-.141	3% \$\$-.141
Category	Transfers	
Increased loan discharges for veterans with a qualifying total and permanent disability status	7% \$138.7]	3% \$130.2

Waiver of Notice and Comment Rulemaking, Negotiated Rulemaking, and Delayed Effective Date under the Administrative Procedure Act

The Department believes its interim final rulemaking authority must be narrowly construed and exercised only when there is a sound basis for doing so. However, Congress has directed the Department to remove unnecessary bureaucratic barriers that constructively deny lawful benefits to veterans who are totally and permanently

skewing the net benefits results, and including METB only in supplementary analyses provides some acknowledgement of this potential imbalance.

disabled because of service-connected injuries and has left the Department no discretion in the matter. Consequently, given the uniquely specific facts of this case, the critical public need for the Federal Government to support disabled veterans, and the nature of this deregulatory action, the Department has determined that there is good cause for interim final rulemaking and that such action is in the public interest.

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)).

Section 437(a)(2) of the HEA provides that "[a] borrower who has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected condition and who provides documentation of such determination to the Secretary of Education, shall be considered permanently and totally disabled for the purpose of discharging such borrower's loans under this subsection,

and such borrower shall not be required to present additional documentation for purposes of this subsection." (emphasis added). The Senate Appropriations Committee Report (S. Rep. No. 115-150, at 182 (2017)) directed "the Secretary of Education to enter into a Memorandum of Understanding with the Secretaries of Defense and Veterans Affairs to automate the application of loan benefits to eligible servicemembers and veterans using information in existing Federal databases in a timely manner so that servicemembers and veterans can receive the benefits due under law." To effectuate this automation, the Departments of Education and Veterans Affairs entered into a data sharing agreement to enable the Department of Education to identify eligible totally and permanently disabled veterans. As this automation through the data sharing agreement will fulfill the statutory requirement of providing documentation from the Secretary of Veterans Affairs of a borrower's unemployability due to a service-connected condition, borrowers will not be required to submit additional documentation to the Secretary. As a result of this automated process and the requirements of section 437(a)(2), which specifically states no additional documentation is to be required, there will no longer be a

need for, nor will the Department have the discretion to require, a separate application from identified borrowers. We are revising the regulations accordingly.

As the Court found in *Metzenbaum v. Federal Energy Regulatory Commission*, 675 F.2d 1282, 1291 (D.C. Cir. 1982), the opportunity for notice and comment where there is no discretion is "unnecessary." *Id.* (quoting 5 U.S.C. 553(b)(B)). The Court further stated that notice and comment for such a nondiscretionary action "might even have been 'contrary to the public interest,' given the expense that would have been involved in a futile gesture." *Id.* See also *Lake Carriers' Ass'n v. E.P.A.*, 652 F.3d 1, 10 (D.C. Cir. 2011) (notice and comment rulemaking "would have served no purpose" where EPA lacked the authority to amend or reject the conditions at issue). Therefore, there is good cause to waive notice and comment rulemaking for these interim final regulations.

In addition, under section 492 of the HEA (20 U.S.C. 1098a), all regulations proposed by the Department for programs authorized under title IV of the HEA are subject to negotiated rulemaking requirements. Section 492(b)(2) of the HEA provides that negotiated rulemaking may be waived for good cause when doing so would be

"impracticable, unnecessary, or contrary to the public interest." Section 492(b)(2) of the HEA also requires the Secretary to publish the basis for waiving negotiations in the *Federal Register* at the same time as the regulations in question are first published. There is likewise good cause to waive the negotiated rulemaking requirement in this case, since, as explained above, notice and comment rulemaking is unnecessary in this case.

The APA also generally requires that regulations be published at least 30 days before their effective date, but exempts from that requirement rules which grant or recognize an exemption or relieve a restriction (5 U.S.C. 553(d)(1)). Because these regulations relieve restrictions on veterans by removing unintended administrative burdens, this exception to the delayed effective date under the APA applies. The CRA requires a major rule may take effect no sooner than 60 calendar days after an agency submits a CRA report to Congress or the rule is published in the Federal Register, whichever is later. 5 U.S.C. § 801(a)(3)(A). However, the CRA creates limited exceptions to this requirement. See *id.* § 801(c); § 808. An agency may invoke the "good cause" exception under § 808(2) in the case of rules for which the agency has found "good cause" under the

APA, § 553(b)(3)(B), to issue the rule without providing the public with an advance opportunity to comment. As stated above the Department has found good cause to issue this rule without notice and comment rulemaking and thus we are not including the 60-day delayed effective date in this rule.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below \$7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

This regulation would not affect any small entities. Small entities do not qualify as borrowers under these Federal loan programs, nor do small entities provide or fund Federal loans or their discharge.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 674.61, 682.402, and 685.213 of this interim final rule contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections and an Information Collections Request to the Office of Management and Budget (OMB) for its review. This interim final rule does not impose any new information collection burden. OMB previously approved the information collection requirements under OMB control number 1845-0065. The forms that are part of this information collection do not change as a result of this interim final rule.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of the law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

Sections 674.61(c), 682.402(c)(9), and 685.213(c)

Discussion: Currently the regulations pertain to a veteran's cancellation or discharge of a Federal Perkins Loan Program, Federal Family Education Loan Program, or Federal Direct Loan Program loan based on total and permanent disability as certified by the U.S. Department of Veterans Affairs (VA). This information has been collected under OMB approved form control number 1845-0065. The current regulations required a veteran to submit a separate application with documentation from the VA. These regulatory changes eliminate the application requirement where appropriate.

Requirements: These changes allow the Secretary to offer a Federal student loan borrower who is identified from VA documentation as being totally and permanently disabled a discharge of his or her loans without submitting a separate application. The veteran may elect to reject the discharge and continue to repay the loans.

Burden Calculation: These changes eliminate burden on the veteran. The currently approved form, 1845-0065, estimates 30 minutes (.50 hours) to read, gather documentation, and complete the discharge application. We estimate that annually approximately 10,000 veterans would have submitted the application for discharge due to total permanent disability. This regulatory change reduces the burden assessed on the approved form by 5,000 hours (10,000 applicants x .50 hours = 5,000 hours). This would be a one-time reduction in burden. We do not anticipate changing the Discharge Application currently in renewal to remove the section applicable to a veteran's request for such a discharge.

1845-0065 Discharge Application - Total and Permanent Disability				
Entity	Number of Respondents	Number of Responses	Burden per Response	Total Burden Hours
Individual (Veteran)	-10,000	-10,000	.50 hours	-5,000

We consider your comments on these proposed collections of information in -

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have a practical use;
- Evaluating the accuracy of our estimate of burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collection of information contained in this interim final rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

Based on our own review, we have determined that this IFR does not require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects

34 CFR Part 674

Loan programs-education, Reporting and recordkeeping
Student aid.

34 CFR Part 682

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

34 CFR Part 685

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

Dated: November 22, 2019.

Betsy DeVos,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 674, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 674-FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

AUTHORITY: 20 U.S.C. 1070g, 1087aa-1087hh; Pub. L. 111-256, 124 Stat. 2643; unless otherwise noted.

2. Section 674.61 is amended by adding paragraph (c) (2) (x) to read as follows:

§ 674.61 Discharge for death or disability.

* * * * *

(c) * * *

(2) * * *

(x) The Secretary will consider a borrower for whom data is obtained from the Department of Veterans Affairs showing that the borrower has a total and permanent disability as defined in § 674.51(aa)(2) to be eligible for discharge and will not require additional documentation to discharge the borrower's loans.

* * * * *

PART 682-FEDERAL FAMILY EDUCATION LOAN PROGRAM (FFEL)

3. The authority citation for part 682 continues to read as follows:

AUTHORITY: 20 U.S.C. 1071-1087-4, unless otherwise noted.

4. Section 682.402 is amended by adding paragraph (c) (9) (xiii) to read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(c) * * *

(9) * * *

(xiii) The Secretary will consider a borrower for whom data is obtained from the Department of Veterans Affairs showing that the borrower is "totally and permanently disabled" as defined in paragraph (2) of the definition of that term in § 682.200(b) (2) to be eligible for discharge) and will not require additional documentation to discharge the borrower's loans.

* * * * *

PART 685-WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

6. Section 685.213 is amended by adding paragraph (c)(1)(v) to read as follows:

§ 685.213 Total and permanent disability discharge.

* * * * *

(c) * * *

(1) * * *

(v) The Secretary will consider a borrower for whom data is obtained from the Department of Veterans Affairs showing that the borrower is "totally and permanently disabled" as defined in paragraph (2) of the definition of that term in § 685.102(b) to be eligible for discharge and will not require additional documentation to discharge the borrower's loans.

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