



DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 685

[Docket ID ED-2023-OPE-0004]

RIN 1840-AD81

**Improving Income Driven Repayment for the William D. Ford
Federal Direct Loan Program and the Federal Family
Education Loan (FFEL) Program; Correction**

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations; correction.

SUMMARY: On July 10, 2023, the Department of Education (Department) published in the *Federal Register* final regulations amending regulations related to income-driven repayment. This document corrects technical errors in the regulations and preamble. This document does not contain any substantive changes to the regulations.

DATES: Effective July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Bruce Honer, U.S. Department of Education, 400 Maryland Avenue SW, 5th Floor, Washington, DC 20202. Telephone: (202) 987-0750. Email: Bruce.Honer@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION: On July 10, 2023, the Department published in the *Federal Register* a final rule amending regulations related to income-driven repayment (88 FR 43820). Those final regulations contain technical errors, which we are correcting.

Waiver of Proposed Rulemaking, Negotiated Rulemaking, and Delayed Effective Date

In accordance with 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)(3)(B)). There is good cause to waive rulemaking here as unnecessary.

Rulemaking is "unnecessary" in those situations in which "the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public." *Utility Solid Waste Activities Group v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001), quoting U.S. Department of Justice, *Attorney General's Manual on the Administrative Procedure Act* 31 (1947) and *South Carolina v. Block*, 558 F. Supp. 1004, 1016 (D.S.C. 1983). The regulatory changes in this document are necessary to correct technical errors and do not establish

any new substantive rules and do not make substantive changes to this regulation. Therefore, the Department has determined that publication of a proposed rule is unnecessary under 5 U.S.C. 553(b)(3)(B).

In addition, under section 492 of the Higher Education Act of 1965, as amended (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." There is likewise good cause to waive the negotiated rulemaking requirement in this case, since, as explained above, notice and comment rulemaking is unnecessary.

The APA generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). As previously stated, because the regulatory changes correct errors, there is good cause to waive the delayed effective date in the APA and make the corrections effective July 1, 2024.

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Corrections

In FR Doc. 2023-13112, published in the *Federal Register* on July 10, 2023 (88 FR 43820), we make the following technical corrections:

1. On page 43871, in table 3.1, in the third column, correct the first sentence to read as follows:

“Stating that a Direct Consolidation loan disbursed on or after July 1, 2025, that repaid a Direct parent PLUS

loan, a FFEL parent PLUS loan, or a Direct Consolidation Loan that repaid a consolidation loan that included a Direct parent PLUS or FFEL parent PLUS loan may only chose the ICR plan.”

2. On page 43901, starting in the first column, in instruction 6, in § 685.209, correct paragraphs (c) (5) (i), (c) (5) (i) (B), and (c) (5) (iii) to read as follows:

§ 685.209 [Corrected]

* * * * *

(c) * * *

(5) (i) Except as provided in (c) (5) (ii) or (c) (5) (iii) of this section, a borrower may enroll under the ICR plan only if the borrower -.

* * * * *

(B) Was repaying a loan under the ICR plan on July 1, 2024. A borrower who was repaying under the ICR plan on or after July 1, 2024, and changes to a different repayment plan in accordance with § 685.210 (b) may not re-enroll in the ICR plan unless they meet the criteria in paragraph (c) (5) (ii) or (c) (5) (iii).

* * * * *

(iii) A borrower who has a Direct Consolidation Loan disbursed on or after July 1, 2025, which repaid a Direct parent PLUS loan, a FFEL parent PLUS loan, or a Direct Consolidation Loan that repaid a consolidation loan that

included a Direct parent PLUS or FFEL parent PLUS loan may not choose any IDR plan except the ICR plan.

3. On page 43902, in the second column, in instruction 6, correct § 685.209 by removing paragraphs (g) (1) (i) (C) and g) (1) (ii) (C) and adding paragraph (g) (1) (iii) to read as follows:

§ 685.209 [Corrected]

* * * * *

(g) * * *

(1) * * *

(iii) In cases where the borrower's monthly payment amount calculated under paragraphs (f) (1) through (3) of this section or the borrower's adjusted monthly payment as calculated under paragraphs (g) (1) (i) or (g) (1) (ii) of this section is—

(A) Less than \$5, the monthly payment is \$0; or

(B) Equal to or greater than \$5 but less than \$10, the monthly payment is \$10.

* * * * *

4. On page 43904, in the second column, in instruction 6, in § 685.209, correct paragraph (m) (2) to read as follows:

§ 685.209 [Corrected]

* * * * *

(m) * * *

(2) The borrower has approved the disclosure of tax information under paragraph (1) (1) of this section;

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Miguel A. Cardona,

Secretary of Education.

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