



DEPARTMENT OF EDUCATION

34 CFR Part 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: Correcting amendment.

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 a technical error in the regulations. This document does not contain any substantive changes to the regulations.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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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 contained a technical error, which we are correcting. Specifically, with respect to 34 CFR 685.209(k)(6)(i), we indicated in the preamble to the final rule in a response to public comment that we were modifying the regulations to exclude periods in which a borrower is in an in-school deferment from counting toward the borrower's time to forgiveness, and we explained our reasons for doing so, see, e.g., 88 FR 43855, but we inadvertently omitted that change in the regulatory text. This notice corrects that inadvertent omission.

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)). 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 change in this document is necessary to properly and accurately reflect the outcome of the rulemaking process, by correcting a technical error: regulatory text that was proposed and explained but inadvertently was omitted from the final regulatory text. It reflects the substantive rule stated in the preamble, which was the product of the notice and comment process and does not establish any new substantive rule. Therefore, the Department has determined that publication of a proposed rule is unnecessary under 5 U.S.C. 553(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 and has already been conducted.

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 change corrects an error, there is good cause to waive the delayed effective date in the APA and make the correction effective as of the date of publication.

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List of Subjects in 34 CFR Part 685

Administrative practice and procedure; Colleges and universities; Education; Loan programs-education; Reporting and recordkeeping requirements; Student aid; Vocational education.

Nasser Paydar,
Assistant Secretary

Office of Postsecondary Education.

Accordingly, the Secretary corrects 34 CFR part 685 by making the following correcting amendment:

PART 685--WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

2. Section 685.209 is amended by revising paragraph (k)(6)(i) to read as follows:

685.209 Income-driven repayment plans.

* * * * *

(k) * * *

(6) * * *

(i) A borrower may obtain credit toward forgiveness as defined in paragraph (k) of this section for any months in which a borrower was in a deferment or forbearance not listed in paragraph (k)(4)(iv) of this section, other than periods in an in-school deferment, by making an additional payment equal to or greater than their current IDR payment, including a payment of \$0, for a deferment or forbearance that ended within 3 years of the additional repayment date and occurred after July 1, 2024.

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