



Summary of final rules effective July 1, 2010

These final rules are necessary to implement changes to the Higher Education Act of 1965, as amended (HEA), resulting from enactment of the Higher Education Opportunity Act (HEOA) and other recently-enacted legislation; and to clarify, improve, and update the current regulations.

All of the new rules are effective July 1, 2010. However, schools, lenders, guarantors, or servicers may, at their discretion, choose to implement certain rules early, as noted within the official *Federal Register* notices for each set of rules.

School-based loan issues

These final rules, available in the October 28, 2009, *Federal Register*, revise existing regulations by:

- Amending and adding numerous sections of the regulations to reflect :
 - An increase in the period used to calculate the cohort default rate (CDR) from two to three years effective for CDRs calculated for fiscal year 2009 and subsequent years,
 - The requirement that an institution whose CDR is greater than or equal to 30 percent for any fiscal year establish a default prevention plan, and
 - An increase from 25 to 30 percent in the threshold default that would render an institution ineligible to participate in the Pell, FFEL, and Direct Loan Programs
- Amending sections 674.42(b), 682.604(g), and 685.304(b) to reflect the expansion of exit counseling requirements in the title IV, HEA loan programs
- Amending sections 682.604 and 685.304 to reflect the expansion of entrance counseling requirements in the FFEL and Direct Loan Programs
- Amending section 668.14 to add to the conditions an institution must agree to in its program participation agreement with the Secretary of Education. These conditions include requirements that an institution:
 - Develop, publish, administer and enforce a code of conduct with respect to its FFELP activities
 - Compile, maintain and make available to students and their families a list of its preferred lenders if it enters into any preferred lender arrangement, and
 - Upon the request of an applicant of a private education loan, provide the applicant with the private education loan certification form developed by the Secretary
- Adding new sections 601.2, 601.11, and 601.30 to reflect the requirements for education loan borrower disclosures by institutions of higher education, and institution affiliated organizations, including definitions
- Adding a new section 601.10 to include the borrower disclosures by covered institutions and institution-affiliated organizations that participate in a preferred lender arrangement
- Adding a new section 601.20 to include the reporting requirements for covered institutions and institution-affiliated organizations
- Adding a new section 668.42 to include information dissemination requirements for prospective and enrolled students regarding the terms and conditions of title IV, HEA loans
- Adding a new section 668.16(d)(2) to reflect the disclosure to the Secretary of any reimbursements made to employees of an institution of higher education for service on advisory boards
- Amending sections 674.51, 674.53, 674.56, 674.57, 674.58, 674.59, and 674.61 to reflect the expansion of cancellation benefits for Perkins Loan borrowers, including cancellation benefits for teachers in an educational service agency; staff members in a prekindergarten or childcare program; attorneys employed in a Federal Public Defender Organization or Community Defender Organization; fire fighters, faculty members of a Tribal College or University, librarians with a

master's degree employed in an elementary or secondary school or in a public library that serves one or more schools eligible for funding under title I of the Elementary and Secondary Education Act of 1965, as amended; and speech pathologists with a master's degree who work exclusively with title I-eligible schools

In addition to these changes, ED made a number of minor technical corrections and conforming changes to the Perkins Loan Program regulations. These final regulations incorporate certain statutory changes made to the HEA by the HEOA that were not included on Team II's negotiating agenda. These changes include:

- Amending section 674.12(a) and (b) to increase undergraduate and graduate student annual and aggregate loan maximums in the Perkins Loan Program.
- Amending section 674.33(d) to eliminate the requirement that a borrower make a "written" request in order to obtain a forbearance on his or her Perkins loan.
- Amending section 674.39(a) and (b) to change the number of consecutive on-time, monthly payments a borrower must make to successfully rehabilitate a defaulted Perkins loan from twelve to nine.

General and non-loan programmatic issues

These final rules, available in the October 29, 2009, *Federal Register*, revise existing regulations by:

- Amending sections 690.63(h), 690.64, and 690.67 to establish the conditions under which students may receive up to two Pell grant scheduled awards during a single award year.
- Amending sections 686.12(c), 686.41, and 686.42(c) to establish the extenuating circumstances under which a TEACH Grant recipient may be excused from fulfilling all or part of his or her service obligation.
- Amending section 675.18(g) to permit institutions to use FWS funds to compensate students employed in projects that teach civics in school, raise awareness of government functions or resources, or increase civic participation.
- Amending section 675.18 by adding paragraph (i) to allow institutions located in major disaster areas to make FWS payments to disaster-affected students.
- Amending sections 675.41 and 675.43 to revise definitions and terms relating to work colleges.
- Adding section 668.28 to establish the requirement that proprietary institutions derive at least 10 percent of their revenue from sources other than title IV, HEA program funds and specify how institutions calculate the revenue percentage.
- Amending sections 668.41(a) and (d) and §668.45 to expand the information that institutions must make available to prospective and enrolled students to include information on:
 - The employment and placement of students; the retention rates of first-time, full-time undergraduate students, and
 - The placement rate for any program offered by the institution, if the institution calculates this rate; and the completion and graduation rate data that is disaggregated by gender, race, and grant or loan assistance.
- Amending section 668.41(e) to provide that institutions that maintain on-campus housing facilities must publish annually a fire safety report, maintain a fire log, and report fire statistics to the Department.
- Amending section 668.46 to require institutions that provide on-campus housing facilities to develop and make available a missing student notification policy and allow students who reside on campus to confidentially register contact information.

- Amending section 668.46(c) to expand the list of crimes that institutions must include in the hate crimes statistics reported to the Department.
- Amending section 668.46 to require institutions to include in their annual security report a statement of emergency response and evacuation procedures.
- Adding subpart O to 34 CFR part 668, to specify the conditions under which students with intellectual disabilities may receive Pell grant, FWS, and FSEOG funds.
- Adding section 668.18 to establish requirements under which an institution must readmit servicemembers to the same academic status they had when they last attended the institution.
- Amending section 600.32(d) to provide that an institution that conducts a teach-out at a site of a closed institution may, under certain conditions, establish that site as an additional location.
- Amending section 600.5(a) and (e) to include in the definition of “proprietary institution of higher education” an institution that provides a program leading to a baccalaureate degree in liberal arts, if the institution provided that program since January 1, 2009, and has been accredited by a regional accrediting agency since October 1, 2007, or earlier.
- Amending section 668.14(b) to provide that an institution must have developed and implemented written plans to effectively combat unauthorized distribution of copyrighted material and that the institution will offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property.
- Amending section 668.43(a) to include, as part of the information an institution must make available to prospective and enrolled students, a description of any plans the institution has to improve its academic program.
- Amending section 692.10(b) to provide that the non-federal share of student grants or work-study jobs under the LEAP Program must be state funds and that the non-federal share no longer has to come from a direct appropriation of state funds.
- Amending section 692.21(k) to provide that the state program must notify students that grants are LEAP Grants that are funded by the federal government, the state, and, for LEAP grants to students under the new Grants for Access and Persistence (GAP) Program, other contributing partners.
- Adding subpart C to 34 CFR part 692 to establish the activities, awards, allotments to states, matching funds requirements, consumer information requirements, application requirements, and other requirements needed to begin and continue participating in the GAP Program.

In addition, these final regulations incorporate numerous technical amendments made to the HEA by The Higher Education Technical Corrections, enacted on July 1, 2009. These include changes to Pell grant eligibility and need analysis for certain students, the establishment of the new Iraq and Afghanistan Service Grants Program, and allotments to states under the GAP Program.

General and lender loan issues

These final rules, available in the October 29, 2009, *Federal Register*, revise existing regulations by:

- Amending sections 674.51(aa) and 682.200(b) by revising the definition of “totally and permanently disabled” for title IV loan discharges to incorporate statutory changes made by the HEOA, including a separate total and permanent disability standard for certain veterans, and adding a definition of “substantial gainful activity” in sections 674.51(x) and 685.200(b) to explain the meaning of that term as used in the revised definition of totally and permanently disabled. The changes to sections 674.51(aa) and §674.51(x) appear in the school-based loan issues final regulations published in the October 28, 2009, *Federal Register*.
- Amending sections 674.61(b), 682.402(c)(2) through (7), and 685.213(b) by revising the process for discharging a borrower’s title IV loans due to total and permanent disability to reflect the

revised definition of totally and permanently disabled, including the establishment of a separate discharge process for certain veterans.

- Amending sections 674.9(g), 682.201(a), and 685.200(a) by making conforming changes to the borrower eligibility regulations needed to effectively implement the new total and permanent disability loan discharge process in sections 674.61(b), 682.402(c)(2) through (7), and 685.213(b).
- Amending sections 682.201(e) and 685.220(d) to provide that a borrower with only FFELP loans may consolidate those loans into the Direct Loan Program to use the no accrual of interest benefit for active duty military service members.
- Amending section 682.206(f) to require FFELP lenders to inform borrowers that by applying for a Consolidation loan, the borrower is not obligated to agree to take the loan, and to provide borrowers with a 10-day period to cancel the Consolidation loan.
- Amending sections 682.210 and 685.204 to provide that:
 - A parent PLUS borrower may receive a deferment on a PLUS loan first disbursed on or after July 1, 2008, while the dependent student for whom the loan was obtained is enrolled on at least a half-time basis at an eligible institution, and during the 6-month period after the student ceases to be enrolled at least half time; and
 - A Grad PLUS borrower may receive a deferment on a PLUS loan first disbursed on or after July 1, 2008, during the 6-month period after the student ceases to be enrolled on at least a half-time basis at an eligible institution.
- Amending section 682.202(b) to provide that a lender may capitalize PLUS loan interest that has accrued from the date of the first disbursement until the date the repayment period begins, and making a corresponding change in section 685.202(b) to provide that the Secretary may capitalize interest on a PLUS loan when the loan enters repayment.
- Amending sections 682.211(f) and 685.205(b) to provide that a FFELP lender or the Secretary (for a Direct Loan) may grant an administrative forbearance on a borrower's PLUS loans that were first disbursed before July 1, 2008, to align the repayment begin date of those loans with the borrower's PLUS loans first disbursed on or after July 1, 2008, that are eligible for the new PLUS loan deferments in sections 682.210 and 685.204.
- Amending sections 682.202 and 685.202 to provide that any FFEL or Direct Loan Program loans of a military servicemember that were incurred before the servicemember entered military service are subject to the provision in section 207 of the Servicemembers Civil Relief Act (SCRA) that limits the interest rate on a loan to six percent during periods of active duty service. In addition, section 682.302 was amended to provide that for FFELP loans first disbursed on or after July 1, 2008, that are subject to the SCRA interest rate cap, a lender's special allowance payment is calculated as it otherwise would be under program requirements, except that the applicable interest rate is six percent.
- Amending sections 682.210(c)(1) and 685.204(b)(1)(iii)(A) to provide that a FFELP lender or the Secretary (for a Direct Loan) may grant an in-school deferment based on confirmation of the borrower's enrollment status through the National Student Loan Data System (NSLDS), if requested by the borrower's school.
- Amending section 682.210(a)(3) to require a lender to notify a borrower of an unsubsidized loan, at or before the time a deferment is granted, that he or she has the option to pay the interest that accrues on the loan during the deferment or to cancel the deferment, and to provide the borrower with information on the impact of interest capitalization if accrued interest is not paid. A comparable change was made in section 685.204(b)(1)(ii)(B) to provide for the same information to be given to Direct Loan borrowers.

- Amending sections 682.215(a) and 685.221(a) by revising the definition of partial financial hardship for the purpose of determining a borrower's eligibility to repay under the income-based repayment (IBR) plan. The revised definition specifies that the annual amount due on a borrower's eligible loans (under a standard repayment plan with a 10-year repayment period) for purposes of determining whether a borrower has a partial financial hardship is calculated based on the greater of:
 - The amount owed on the eligible loans when the borrower initially entered repayment; or
 - The amount owed when the borrower selected the IBR plan.
- Amending sections 682.215(b)(1) and 685.221(b)(2) to provide that if a borrower who requests the IBR plan and the borrower's spouse both have eligible loans and file a joint federal tax return, the calculated IBR partial financial hardship payment amount for each borrower would be adjusted based on each borrower's percentage of the couple's total eligible loan debt.
- Amending sections 682.216 and 685.217 to specify that an otherwise eligible borrower may qualify for teacher loan forgiveness based on teaching service performed as an employee of an eligible educational service agency. The proposed regulations also added HEOA prohibitions on receiving loan forgiveness under the FFELP or Direct Loan teacher loan forgiveness programs and certain other loan forgiveness programs for the same period of teaching service.
- Amending sections 682.405(a) and 685.211(f) to provide that a borrower may not rehabilitate a defaulted FFELP or Direct Loan program loan more than once. The proposed regulations also amended section 682.405(b)(1)(iii) to clarify that both the guarantor and its agents must comply with the requirements in that section when determining what constitutes a "reasonable and affordable" payment amount for loan rehabilitation purposes.
- Amending sections 682.200(b) and 682.401(e) by incorporating new prohibited and permissible activities by lenders and guarantors that were added to the HEA by the HEOA.
- Amending section 682.205 by adding new disclosure requirements for FFELP lenders that were added by the HEOA, and by reorganizing the existing disclosure provisions to accommodate the new disclosure requirements and more clearly distinguish the various disclosures that are required at various points during the lifecycle of a loan.
- Amending section 682.208(e) to specify additional information that must be provided to a borrower if the assignment or transfer of ownership interest on a FFELP loan results in a change in the identity of the party to whom the borrower must send subsequent payments.
- Amending section 682.211(e) to require a lender, at the time a borrower is granted a forbearance, to provide the borrower with information on the impact of interest capitalization, and to contact the borrower at least once every 180 days during any period of forbearance and provide additional information on the impact of forbearance on the borrower's loan.
- Amending sections 682.305(c) to require that a FFELP school lender or an eligible lender trustee (ELT) originating loans on behalf of a school submit an annual compliance audit to the Secretary, regardless of the dollar volume of loans originated. The proposed regulations also specify the requirements that the annual audit must meet.
- Adding a new section 682.401(g) to implement a statutory requirement for a guarantor to work with the schools that it serves to develop and make available to students and their families high-quality educational materials that provide training in budgeting and financial management.
- Amending section 682.405 to require a guarantor to make available financial and economic education materials, including debt management information, to any borrower who has rehabilitated a defaulted loan.

- Amending section 682.405(b) to require the prior holder of a previously defaulted loan that has been rehabilitated, in addition to the guarantor, to request that any consumer reporting agency to which the default was reported remove the default from the borrower's credit history.
- Amending section 682.410(b) by expanding the information that a guarantor must provide to a borrower who is in default, and by adding a requirement that the guarantor provide this same information to a defaulted borrower in a second notice that the guarantor must send as part of its collection efforts.
- Amending section 682.200(b) by removing the definition of "national credit bureau" and replacing it with a definition of "nationwide consumer reporting agency". The proposed regulations also replaced all references to "credit bureau" in section 682.410(b)(5) and (b)(6) with "consumer reporting agency".

In addition, these final regulations incorporate certain changes made to the HEA by The Higher Education Technical Corrections, enacted on July 1, 2009, and by the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA), enacted on May 7, 2008. These changes are:

- Amending the definition of "estimated financial assistance" (EFA) in sections 673.5(c), 682.200(b), and 685.102(b). The HEOA amended the HEA to exclude federal veterans' education benefits from the definition of EFA for the title IV student assistance programs. The Higher Education Technical Corrections subsequently updated the list of federal veterans' education benefits that are excluded from EFA and also excluded the new Iraq and Afghanistan Service Grants from the definition of EFA. ED has made changes to the definition of EFA in sections 673.5(c), 682.200(b), and 685.102(b) accordingly.
- Amending the lists of prohibited activities in sections 682.200 and 682.401 to reflect a change made by The Higher Education Technical Corrections that allows FFELP lenders and guarantors to provide in-person entrance counseling as well as exit counseling to borrowers.
- Amending sections 682.216 and 685.217 to reflect a change made by The Higher Education Technical Corrections to the provisions that prohibit a borrower from receiving, for the same teaching service, loan forgiveness under the FFELP or Direct Loan teacher loan forgiveness program and certain other loan forgiveness programs.
- Amending sections 682.204 and 685.203 to reflect the changes to the annual and aggregate loan limits for unsubsidized Stafford Loans in both the FFEL and Direct Loan Programs that were made by ECASLA.

Accreditation and institutional eligibility

These final rules, available in the October 27, 2009, *Federal Register*, revise existing regulations by:

- Adding the statutory definition of "distance education", and add a definition of "correspondence education" to sections 600.2, 600.3, and 602.3
- Adding a definition in section 602.3 of a "direct assessment program", an instructional program that uses or recognizes direct assessment of a student's learning in lieu of credit or clock hours
- Adding a definition of a "teach-out plan" and require agencies to require the institutions they accredit to submit a teach-out plan to the agency under certain circumstances in sections 602.3 and 602.24
- Implementing several new requirements pertaining to distance education and correspondence education in sections 602.16, 602.17, 602.18, and 602.27
- Expanding due process requirements for agencies in sections 602.18, 602.23, and 602.25
- Requiring agencies to confirm that institutions they accredit have transfer of credit policies in section 602.24

- Requiring that accreditation team members be well-trained and knowledgeable about their responsibilities regarding distance education in section 602.15
- Requiring that agencies monitor enrollment growth at institutions they accredit in section 602.19
- Expanding agency disclosure requirements in section 602.26
- Adding a definition of "recognition" in section 602.3
- Modifying recordkeeping and confidentiality requirements in sections 602.15 and 602.27
- Clarifying existing requirements in section 602.22 related to substantive change and add flexibility to accrediting agencies in granting prior approval of additional locations under specified circumstances
- Amending subpart C by combining current subparts C and D into one subpart in order to streamline procedures for agency review; establishing the senior Department official as the deciding official, with appeal to the Secretary; and providing a list of various laws regarding public requests for information with which the Secretary must comply.

More information

If you have questions or need more information, please contact TG Customer Assistance at (800) 845-6267, or send an e-mail message to cust.assist@tgslc.org.