

borrower may be in the first two years of repayment on some loans but may have been in repayment for a longer period of time on other loans. Finally, this commenter asked whether the Secretary would collect alternative documentation of income from a borrower and the borrower's spouse, if the borrower is in his or her first or second year of repayment and is married.

Discussion: With regard to the comment that all borrowers be allowed to submit alternative documentation of income while the Servicer is waiting for AGI, the Secretary may use other documentation of income provided by the borrower if AGI is not available or if, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect current income. Therefore, if a borrower's AGI will not reflect current income, the borrower can submit alternative documentation of income to the Servicer before IRS-reported AGI becomes available.

The Secretary intends to collect alternative documentation of income from borrowers in their first and second years of repayment, when IRS-reported AGI does not reasonably reflect the borrower's current income. The Secretary will likely collect alternative documentation of income from borrowers who are in their first and second years of repayment on any of their loans, even if they have been in repayment for a longer period of time on other loans. These borrowers have recently completed school and, therefore, the prior year's AGI is unlikely to reflect current income.

On the other hand, the Secretary does not intend to collect alternative documentation of income from borrowers who have been in repayment for more than two years but have recently changed into the income contingent repayment plan or from borrowers who have recently consolidated and chosen to repay under this plan. These borrowers have not recently left school and have likely been working. For these borrowers, the prior year's AGI will probably reflect the current year's income.

Finally, the Secretary intends to collect alternative documentation of income from the borrower and the borrower's spouse if the borrower is in his or her first or second year of repayment and AGI does not, in the Secretary's opinion, accurately reflect the borrower's current income. The Secretary will collect this alternative documentation of income from the spouse of these borrowers in order to assess accurately the borrower's ability to repay.

Changes: None.

Section 685.209(c)(5) Limitation on Capitalization of Interest

Comments: One commenter mistakenly believed that the Secretary has removed the existing limit on capitalization.

Discussion: The Secretary has not removed the existing limit on capitalization, which provides that unpaid interest is capitalized only until the outstanding principal amount is ten percent greater than the original principal amount. While the Secretary has revised certain provisions under the income contingent repayment plan, the Secretary has not altered the provision that limits interest capitalization under the income contingent repayment plan.

Changes: None.

Section 685.209(c)(4)(iv) Forgiveness after 25 Years of Repayment

Comments: Several commenters asked whether the Secretary is pursuing a legislative solution to the current tax problem under the income contingent repayment plan (that is, the problem that any amount forgiven at the end of 25 years is treated as income).

Discussion: The Secretary is working with the Department of the Treasury to pursue a legislative solution to the tax liability problem under the income contingent repayment plan. The Department included its proposal to remove the tax liability under the income contingent repayment plan in the Administration's Sallie Mae privatization bill that was submitted to Congress.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the following heading: *Analysis of Comments and Changes*.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

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.

(Catalog of Federal Domestic Assistance Number 84.268, William D. Ford Federal Direct Loan Program)

Dated: November 27, 1995.

Richard W. Riley,
Secretary of Education.

The Secretary amends Part 685 of Title 34 of the Code of Federal Regulations as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation continues to read as follows:

Authority: 20 U.S.C. 1087a et seq.

2. Section 685.209 is amended by revising paragraphs (a) and (b); removing paragraph (c) and redesignating paragraph (d) as paragraph (c); redesignating newly redesignated paragraphs (c)(2) through (5) as (c)(4) through (7), respectively; and adding new paragraphs (c)(2) and (c)(3) to read as follows:

§ 685.209 Income contingent repayment plan.

(a) *Repayment amount calculation.* (1) The amount the borrower would repay is based upon the borrower's Direct Loan debt when the borrower's first loan enters repayment, and this basis for calculation does not change unless the borrower obtains another Direct Loan or the borrower and the borrower's spouse obtain approval to repay their loans jointly under paragraph (b)(2) of this