

U.S. Department of Education Retrospective Review Plan Report

May 14, 2012

The U.S. Department of Education (ED or the Department) submits this report in response to the memorandum dated October 26, 2011, from OIRA Director Sunstein to the heads of executive departments and agencies requesting that agencies report on the status of their retrospective review efforts by the second Monday of May, 2012. This report will be posted on the Department's Open Government website.

Since the issuance of its last Retrospective Review Plan Report, dated January 9, 2012, the Department has completed the piloting of a survey to be administered to ED staff in program offices, the Office of the General Counsel, and the Department's Budget Service. The survey will assess the views of those staff on several issues including the effectiveness, benefits, and costs of regulations. Full administration of this survey has been delayed but the Department anticipates that it will begin using the survey in selected offices by fall 2012.

On May 10, 2012, the President issued Executive Order 13610, "Identifying and Reducing Regulatory Burdens" (EO). The EO directs agencies to invite comment from the public on a regular basis about regulations in need of retrospective review, including appropriate modifications to regulations. The EO also directs agencies, in implementing and revising their retrospective review plans, to give priority to those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burden while protecting public health, welfare, safety, and the environment and to give special consideration to those initiatives that would reduce unjustified regulatory burden on small businesses. The Department looks forward to implementing this EO and working with OIRA on further retrospective review efforts.

The Department's retrospective review efforts with respect to specific regulatory actions are described below.

Report on Specific Regulatory Actions.

1. Title IV, Higher Education Act of 1965, as amended (HEA) – Income-Contingent Repayment, Income-Based Repayment, and Total and Permanent Disability Loan Discharges

Agency/Sub-Agency: ED/Office of Postsecondary Education (OPE)

RIN/OMB Control No.: 1840-AD05

Title of Initiative/Rule/ICR: Title IV of the HEA

Brief Description: The proposed regulations create a new Income-Contingent Repayment (ICR-A) plan in the Direct Loan program based on the President's "Pay As You Earn" repayment initiative, incorporate recent statutory changes to the Income-Based Repayment (IBR) plan in the William D. Ford Direct Loan program and the Federal Family Education Loan (FFEL) program, and streamline and add clarity to the total and permanent disability (TPD) discharge process for borrowers in these two loan programs as well as the Federal Perkins Loan (Perkins Loan) program.

Actual/Target Completion Date: ED completed negotiated rulemaking with respect to these proposed amendments in March 2012. The negotiating committee reached consensus on the proposed regulatory amendments. ED anticipates issuing a notice of proposed rulemaking (NPRM) in June 2012.

Anticipated savings in costs and anticipated changes in benefits: Significant benefits of these proposed regulations include a streamlined process for TPD discharges, enhanced notifications related to TPD, IBR, and ICR application and servicing processes, and reduced monthly payments for borrowers in partial financial hardship (PFH). Cost estimates for these proposed regulations will be identified in the NPRM.

Progress updates and anticipated accomplishments: ED completed negotiated rulemaking in March 2012 and anticipates issuing an NPRM in June 2012.

2. Transitioning from the FFEL Program to the Direct Loan Program and Loan Rehabilitation under the FFEL, Direct Loan, and Perkins Loan Programs

Agency/Sub-Agency: ED/OPE

RIN/OMB Control No.: To be determined.

Title of Initiative/Rule/ICR: Title IV of the HEA

Brief Description: Proposed amendments to the title IV, HEA student assistance regulations to (a) reflect that, as of July 1, 2010, under the SAFRA Act, no new FFEL Program loans will be made, and (b) allow a borrower to get out of default on his or her loans if the borrower makes 9 reasonable and affordable payments over a 10-month period.

Actual/Target Completion Date: ED completed negotiated rulemaking with respect to these proposed amendments in March 2012. The negotiating committee reached consensus on the proposed regulatory amendments. ED anticipates issuing an NPRM in the summer of 2012.

Anticipated savings in costs and anticipated changes in benefits: Estimates of the costs and benefits of these proposed regulations will be included in the NPRM.

Progress updates and anticipated accomplishments: ED completed negotiated rulemaking in March 2012 and anticipates issuing an NPRM in the summer of 2012.

3. Federal Pell Grant Program Interim Final Regulations

Agency/Sub-Agency: ED/OPE

RIN/OMB Control No.: 1840-AD11

Title of Initiative/Rule/ICR: Federal Pell Grant Program

Brief Description: Amendments to the Federal Pell Grant Program regulations to make them consistent with recent changes in the HEA that prohibit a student from receiving two consecutive Pell Grants in a single award year.

Actual/Target Completion Date: ED issued interim final regulations on May 2, 2012 (77 FR 25893). Public comments on the interim final regulations are due on or before June 18, 2012. ED anticipates issuing final regulations in the fall of 2012.

Anticipated savings in costs and anticipated changes in benefits: In August of 2008, the Higher Education Opportunity Act (HEOA), Public Law 110–315, added section 401(b)(5) to the HEA, which provided that a student enrolled in a certificate, associate degree, or baccalaureate degree program at least half-time for more than one academic year may receive up to two consecutive Federal Pell Grant Scheduled Awards during a single award year. The Department amended its regulations to implement these changes but subsequently, section 1860(a)(2) of division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112– 10) repealed section 401(b)(5) of the HEA. The repeal of this provision became effective with the 2011–2012 award year. Because there is no longer an opportunity for a student to receive a second Federal Pell Grant Scheduled Award, we are amending the current regulations.

This regulatory action updates our regulations to conform to the statutory changes and provides clarity for institutions and students on implementing these changes. The elimination of the option for two Pell Grants in one year will remove the eligibility of about 1.9 million students annually and reduce costs in the program by approximately \$24.3 billion over five years. These reduced costs are attributed to the passage of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, to which these interim final regulations give effect.

Progress updates and anticipated accomplishments: ED issued interim final regulations on May 2, 2012 (77 FR 25893). Public comments on the interim final regulations are due on or before June 18, 2012. ED anticipates issuing final regulations in the fall of 2012.

4. Gainful Employment Regulations

Agency/Sub-Agency: ED/OPE

RIN/OMB Control No.: 1840-AD10

Title of Initiative/Rule/ICR:	Application and Approval Process for New Programs
Brief Description:	Proposed amendments to the regulations for Institutional Eligibility under the HEA to streamline the application and approval process for new educational programs that qualify for student financial assistance under title IV of the HEA and provide training leading to gainful employment in a recognized occupation.
Actual/Target Completion Date:	ED issued an NPRM to amend these regulations on September 27, 2011 (76 FR 59864) (September 27, 2011, NPRM). ED is developing the final regulations and anticipates issuing those in the summer of 2012.
Anticipated savings in costs and anticipated changes in benefits:	<p>Background: Between November 2009 and January 2010, the Department held three negotiated rulemaking sessions aimed at improving integrity in the title IV, HEA programs. As a result of these sessions, the Department published two NPRMs, one on June 18, 2010, and one on July 26, 2010 (July 26th NPRM). The July 26th NPRM proposed measures for determining whether an educational program offered by an institution prepares students for gainful employment in a recognized occupation (Gainful Employment program), and also would have required institutions to report to the Department and obtain approval for any new Gainful Employment programs. After considering comments on the July 26th NPRM, the Department published final regulations on October 29, 2010 (Gainful Employment—New Programs) that modified the proposal to require institutions to notify the Department before offering a new Gainful Employment program. Through this notification process, the Department screens the proposed new programs and determines whether approval requires more information or whether the new program may be offered without further action by the Department.</p> <p>The Department established the notification requirement out of concern that some institutions might attempt to circumvent the proposed gainful employment standards in §668.7(a)(1) of the July 26th NPRM by adding new programs before those standards would take effect. The Department explained that the notification process requirements, referred to as “interim requirements,” were intended to remain in effect until the final regulations establishing eligibility measures for gainful employment programs take effect. Specifically, the Department stated that, with regard to approving additional programs, “[w]e intend to establish performance-based requirements in subsequent regulations” and that “[u]ntil those subsequent regulations take effect, institutions must comply with the interim requirements in [the Gainful Employment--New Programs final] regulations.”</p> <p>The Department published the final regulations establishing the gainful employment eligibility measures on June 13, 2011 (Gainful Employment—Debt Measures). In those regulations, the Department established measures for gainful employment programs that are intended to identify the worst-performing</p>

programs. The Gainful Employment—Debt Measures final regulations also place restrictions on when an institution may reestablish the eligibility of an ineligible program or a failing program that was voluntarily discontinued or establish the eligibility of a new program that is substantially similar to an ineligible program.

The Department believes that, when these new provisions go into effect on July 1, 2013, the notification process for all new gainful employment programs established in the Gainful Employment—New Programs final regulations will no longer be needed. Thus, in the September 27, 2011, NPRM, the Department is proposing to eliminate the notification process for new gainful employment programs by amending the Gainful Employment—New Programs final regulations to establish a smaller group of gainful employment programs for which an institution must obtain approval from the Department.

Costs and Benefits: The Department believes that the changes proposed in the September 27, 2011, NPRM will significantly reduce burden on institutions and the Department while still ensuring the effectiveness of the debt measures established in the Gainful Employment—Debt Measures final regulations.

As outlined in the September 27, 2011, NPRM, following issuance of the Gainful Employment—New Programs final regulations, the Department continued to review the estimates of new programs that would be subject to the notice requirement in those regulations. Based on that analysis and an increase in the estimated number of new program applications, the Department revised the estimated burden of the Gainful Employment—New Programs final regulations from 3,591 hours to 12,343 hours. Based on a wage rate of \$25.35, this results in a revised estimate of \$312,895 for complying with the Gainful Employment—New Programs final regulations.

The changes proposed in the September 27, 2011, NPRM are expected to reduce burden by 7,068 hours to an estimated 5,275 hours, primarily by restricting the application requirement to programs that are the same as or substantially similar to failing programs voluntarily discontinued or ineligible programs, or the same as a failing program. Thus, the estimated cost is also reduced to \$133,721.

More specific detail regarding the burden estimates can be found in the September 27, 2011, NPRM. The estimated cost savings are expected to occur annually and will affect institutions proposing to offer certain new gainful employment programs, including small institutions.

Progress updates and anticipated accomplishments:

ED is preparing the final regulations and anticipates publication in the summer of 2012.

5. Individuals with Disabilities Education Act (IDEA) -- Part B Program

Agency/Sub-Agency: ED/Office of Special Education and Rehabilitative Services

RIN/OMB Control No.: 1820-AB64

Title of Initiative/Rule/ICR: Assistance to States for the Education of Children with Disabilities

Brief Description: These regulations would implement changes regarding the use of public benefits or insurance under Part B of the Individuals with Disabilities Education Act (IDEA)--Assistance to States for the Education of Children with Disabilities program.

Actual/Target Completion Date: ED issued an NPRM proposing to amend these regulations on September 28, 2011 (76 FR 60310). ED anticipates issuing final regulations by July or August of 2012.

Anticipated savings in costs and anticipated changes in benefits:

Background: Under current Part B, IDEA regulations, public agencies are required to obtain informed written consent from parents to use a child's or parents' public benefits or insurance (e.g., Medicaid) to pay for services identified in the child's individualized education program. Consent must be obtained for a specified type (e.g., physical therapy, speech therapy) and amount (e.g., number of hours per week) of services for a specified period of time (e.g., a year). If the type or amount of service changes, or if the amount charged for services changes, the public agency must obtain parental consent covering the change in services or costs to be charged to the child's or parents' public benefits or insurance. The proposed regulations would permit a public agency to access a child's or parent's benefits under a public benefits or insurance program in which a child participates to provide or pay for services required under Part B of IDEA without obtaining parental consent each time it seeks access to those benefits or insurance. Instead, a public agency would be required to provide parents a written notification about the circumstances in which the agency may use public benefits or insurance to provide or pay for services under Part B of IDEA. This includes notification of the agency's obligation to obtain the parental consent required under 34 CFR part 99 of the regulations for the Family Educational Rights and Privacy Act and 34 CFR §300.622 of the IDEA regulations before disclosing a child's or parent's personally identifiable information to the public benefits or insurance program for billing purposes. These changes would allow public agencies to save the administrative and postage costs necessary to obtain written consent from parents each time access to their public benefits or insurance is sought, but they would add a requirement that public agencies provide a written notification to parents prior to accessing their public insurance benefits to inform them of their rights and protections, including their rights under FERPA and the IDEA confidentiality of information provisions.

Costs and Benefits: The Department estimates that the proposed regulatory changes would result in a net cost savings and provide an economic benefit to a number of local

educational agencies (LEAs) in many States. In the NPRM, the Department estimated that the net savings upon adoption of these proposed regulatory changes would be \$14,144,000 to \$40,622,000 in the first year after adoption and then \$15,231,000 to \$41,423,000 annually thereafter. The estimates are based on ED's analysis of the cost of complying with the current regulations as compared to the anticipated costs for complying with the proposed regulations. These cost savings will affect LEAs and public agencies. Final cost savings and benefits will be included in the final regulations.

Progress updates and anticipated accomplishments:

ED received approximately 500 comments in response to the NPRM. ED anticipates issuing final regulations by July or August of 2012.

6. ESEA Flexibility

Agency/Sub-Agency:

ED/Office of Elementary and Secondary Education

RIN/OMB Control No.:

N/A

Title of Initiative/Rule/ICR:

Flexibility to Improve Student Academic Achievement and Increase the Quality of Instruction under the Elementary and Secondary Education Act of 1965, as amended (ESEA)

Brief Description:

The Department is offering State educational agencies (SEAs) the opportunity to request flexibility on behalf of the State, its LEAs, and schools, in order to better focus on improving student learning and increasing the quality of instruction.

Actual/Target Completion Date:

ED issued the invitation to SEAs to submit requests for ESEA flexibility on September 23, 2011 (see <http://www.ed.gov/esea/flexibility>).

Anticipated savings in costs and anticipated changes in benefits:

This voluntary opportunity provides educators and State and local leaders with flexibility regarding specific requirements of the ESEA in exchange for implementation of rigorous and comprehensive State-developed plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. This flexibility is intended to build on and support the significant State and local reform efforts already underway in critical areas such as transitioning to college- and career-ready standards and assessments; developing systems of differentiated school and district recognition, accountability, and support; and evaluating and supporting teacher and principal effectiveness.

Progress updates and anticipated accomplishments:

The Department has received requests for ESEA flexibility from 37 States and the District of Columbia. The Department approved 11 of these requests in February 2012, and the additional 27 requests are currently under review. We anticipate responding to these additional requests on a rolling basis.

Another five States have indicated their intent to submit requests for ESEA flexibility on September 6, 2012.

7. Title IV, HEA Campus-Based Programs

Agency/Sub-Agency:	ED/OPE
RIN/OMB Control No.:	To be determined.
Title of Initiative/Rule/ICR:	Title IV, HEA – Federal Perkins Loan, Federal Supplemental Educational Opportunity Grants, and Federal Work-Study programs
Brief Description:	The Secretary plans to conduct negotiated rulemaking and to propose amendments to its regulations in 34 CFR parts 673, 674, 675, and 676 governing the campus-based Federal Student aid programs (i.e., the Federal Perkins Loan, the Federal Supplemental Educational Opportunity Grants, and Federal Work-Study programs). These regulations need to be updated to reflect statutory changes made in 2008 but we will look for opportunities to reduce institutional burden in implementing these programs. In addition, we will use this opportunity to work to prevent fraud and otherwise ensure proper use of title IV, HEA program funds, especially within the context of current technologies.
Actual/Target Completion Date:	On May 1, 2012, ED published a notice of intent to establish a negotiated rulemaking committee to prepare proposed regulations with respect to these programs as well as regulations to ensure the proper use of title IV, HEA funds within the context of current technologies (77 FR 25658). ED will be holding public hearings to discuss a rulemaking agenda on May 23 and May 31, 2012. Following these public hearings and a review of written submissions, the Department will announce through a separate notice the specific subject areas to be covered by the negotiated rulemaking and request nominations for negotiators for the negotiated rulemaking committee.
Anticipated savings in costs and anticipated changes in benefits:	We believe any changes to the regulations governing the campus-based programs would help improve the administration and efficiency of these programs, while reducing burden on regulated parties. The Department cannot provide estimates of any specific savings or benefits until it has completed the negotiations of these regulations.
Progress updates and anticipated accomplishments:	See information above.

8. IDEA State Performance Plan and Annual Performance Report (SPP/APR)

Agency/Sub-Agency:	ED/OSERS
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RIN/OMB Control No.: 1820-0624

Title of Initiative/Rule/ICR: IDEA Part B State Performance Plan (SPP) and Annual Performance Report (APR)

Brief Description: In accordance with 20 U.S.C. 1416(b)(1), not later than 1 year after the date of enactment of the IDEA, as amended in 2004, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B and describe how the State will improve such implementation. This plan is called the Part B State Performance Plan (Part B – SPP). In accordance with 20 U.S.C. 1416(b)(2)(C)(ii) the State shall report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan. The State also shall report annually to the Secretary on the performance of the State under the State's performance plan. This report is called the Part B Annual Performance Report (Part B – APR).

Actual/Target Completion Date: ED issued a notice of proposed information collection request (NPICR) in the *Federal Register* on October 17, 2011 (76 FR 64080). In response, we received comments from 36 entities representing States, advocacy organizations, parents, and other interested parties regarding the proposed changes to the approved collection. We responded to those comments and a notice of submission for OMB review was published in the *Federal Register* on February 23, 2012 (77 FR 10727). We anticipate that the collection will be approved by the end of summer 2012.

Anticipated savings in costs and anticipated changes in benefits: **Background:** 1820-0624, developed with broad stakeholder input, was originally approved by OMB in 2005. The SPP/APR originally included 20 indicators. It has since gone through several substantial revisions to align the collection with other ED collections with similar reporting requirements, to reduce burden, and to address the concerns and suggestions of interested parties, including, but not limited to, SEAs, advocacy organizations, parent groups, and LEAs. In previous Information Collection approval cycles, we have revised measurements for clarity, to align with the Consolidated State Performance Report submitted under the ESEA, and to reduce reporting burden. Most recently, we convened a broad-based stakeholder group of SEA and LEA representatives, advocates, parents, and representatives from national groups such as AASA to gather input on how we might revise the SPP/APR to reduce burden. As a result of that meeting, we proposed to combine or eliminate indicators that were either duplicative, had overlapping components, or where the data were collected through other OMB-approved collections and where the SPP/APR provided no additional needed information. After incorporating public comment, the Information Collection currently awaiting OMB approval includes 18 indicators instead of the original 20 and allows respondents to consolidate reporting requirements across indicators when those requirements are similar or overlapping.

Costs and Benefits: The Department believes that the changes proposed in the NPICR will reduce burden on States by a total of 11,400 hours annually and continue to allow ED to collect the information necessary to ensure the fidelity of implementation of the IDEA.

As outlined in the supporting statement to 1820-0624, this significant reduction in reporting burden is the result of eliminating the requirement to report on two indicators in the SPP/APR and combining overlapping reporting requirements.

More specific detail regarding the burden estimates can be found in the Information Collection Data Form 1 and the supporting statement to 1820-0624.

Progress updates and anticipated accomplishments:

ED anticipates that 1820-0624 will be final in the summer of 2012.