

§ 685.211

34 CFR Ch. VI (7–1–11 Edition)

(ii) If a borrower changes plans, the repayment period is the period provided under the borrower's new repayment plan, calculated from the date the loan initially entered repayment. However, if a borrower changes to the income contingent repayment plan or the income-based repayment plan, the repayment period is calculated as described in § 685.209(c)(4) or § 685.221(b)(6), respectively.

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 65 FR 65629, Nov. 1, 2000; 68 FR 75430, Dec. 31, 2003; 73 FR 63256, Oct. 23, 2008]

§ 685.211 Miscellaneous repayment provisions.

(a) *Payment application and prepayment.* (1) Except as provided for the income-based repayment plan under § 685.221(c)(1), the Secretary applies any payment first to any accrued charges and collection costs, then to any outstanding interest, and then to outstanding principal.

(2) A borrower may prepay all or part of a loan at any time without penalty. If a borrower pays any amount in excess of the amount due, the excess amount is a prepayment.

(3) If a prepayment equals or exceeds the monthly repayment amount under the borrower's repayment plan, the Secretary—

(i) Applies the prepaid amount according to paragraph (a)(1) of this section;

(ii) Advances the due date of the next payment unless the borrower requests otherwise; and

(iii) Notifies the borrower of any revised due date for the next payment.

(4) If a prepayment is less than the monthly repayment amount, the Secretary applies the prepayment according to paragraph (a)(1) of this section.

(b) *Repayment incentives.* To encourage on-time repayment, the Secretary may reduce the interest rate for a borrower who repays a loan under a system or on a schedule that meets requirements specified by the Secretary.

(c) *Refunds and returns of title IV, HEA program funds from schools.* The Secretary applies any refund or return of title IV, HEA program funds that the Secretary receives from a school under § 668.22 against the borrower's

outstanding principal and notifies the borrower of the refund or return.

(d) *Default—(1) Acceleration.* If a borrower defaults on a Direct Loan, the entire unpaid balance and accrued interest are immediately due and payable.

(2) *Collection charges.* If a borrower defaults on a Direct Loan, the Secretary assesses collection charges in accordance with § 685.202(e).

(3) *Collection of a defaulted loan.* (i) The Secretary may take any action authorized by law to collect a defaulted Direct Loan including, but not limited to, filing a lawsuit against the borrower, reporting the default to national credit bureaus, requesting the Internal Revenue Service to offset the borrower's Federal income tax refund, and garnishing the borrower's wages.

(ii) If a borrower defaults on a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Consolidation Loan, or a student Direct PLUS Loan, the Secretary may designate the income contingent repayment plan or the income-based repayment plan for the borrower.

(e) *Ineligible borrowers.* (1) The Secretary determines that a borrower is ineligible if, at the time the loan was made and without the school's or the Secretary's knowledge, the borrower (or the student on whose behalf a parent borrowed) provided false or erroneous information, has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving fraud in obtaining title IV, HEA program funds, or took actions that caused the borrower or student—

(i) To receive a loan for which the borrower is wholly or partially ineligible;

(ii) To receive interest benefits for which the borrower was ineligible; or

(iii) To receive loan proceeds for a period of enrollment for which the borrower was not eligible.

(2) If the Secretary makes the determination described in paragraph (e)(1) of this section, the Secretary sends an ineligible borrower a demand letter that requires the borrower to repay some or all of a loan, as appropriate. The demand letter requires that within 30 days from the date the letter is mailed, the borrower repay any principal amount for which the borrower is

ineligible and any accrued interest, including interest subsidized by the Secretary, through the previous quarter.

(3) If a borrower fails to comply with the demand letter described in paragraph (e)(2) of this section, the borrower is in default on the entire loan.

(4) A borrower may not consolidate a loan under § 685.220 for which the borrower is wholly or partially ineligible.

(f) *Rehabilitation of defaulted loans.* (1) A defaulted Direct Loan, except for a loan on which a judgment has been obtained, is rehabilitated if the borrower makes nine voluntary, reasonable, and affordable monthly payments within 20 days of the due date during ten consecutive months. The amount of such a payment is determined on the basis of the borrower's total financial circumstances. If a defaulted loan is rehabilitated, the Secretary instructs any consumer reporting agency to which the default was reported to remove the default from the borrower's credit history.

(2) A defaulted Direct Loan on which a judgment has been obtained may not be rehabilitated.

(3) A Direct Loan obtained by fraud for which the borrower has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance may not be rehabilitated.

(4) Effective for any defaulted Direct Loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 64 FR 57961, Oct. 27, 1999; 64 FR 59043, Nov. 1, 1999; 65 FR 65629, Nov. 1, 2000; 66 FR 34765, June 29, 2001; 67 FR 67081, Nov. 1, 2002; 71 FR 45714, Aug. 9, 2006; 73 FR 63256, Oct. 23, 2008; 74 FR 56003, Oct. 29, 2009]

§ 685.212 Discharge of a loan obligation.

(a) *Death.* (1) If a borrower (or a student on whose behalf a parent borrowed a Direct PLUS Loan) dies, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan based on an original or certified copy of the borrower's (or student's in the

case of a Direct PLUS loan obtained by a parent borrower) death certificate, or an accurate and complete photocopy of the original or certified copy of the borrower's (or student's in the case of a Direct PLUS loan obtained by a parent borrower) death certificate.

(2) If an original or certified copy of the death certificate or an accurate and complete photocopy of the original or certified copy of the death certificate is not available, the Secretary discharges the loan only if other reliable documentation establishes, to the Secretary's satisfaction, that the borrower (or student) has died. The Secretary discharges a loan based on documentation other than an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate only under exceptional circumstances and on a case-by-case basis.

(3) In the case of a Direct PLUS Consolidation Loan that repaid a Direct PLUS Loan or a Federal PLUS Loan obtained on behalf of a student who dies, the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date of the student's death, attributable to that Direct PLUS Loan or Federal PLUS Loan.

(b) *Total and permanent disability.* If a borrower meets the requirements in § 685.213(c), the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(c) *Bankruptcy.* If a borrower's obligation to repay a loan is discharged in bankruptcy, the Secretary does not require the borrower to make any further payments on the loan.

(d) *Closed schools.* If a borrower meets the requirements in § 685.214, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the discharge applicable to any loan disbursed, in whole or in part, on or after January 1, 1986 that was included in the consolidation loan.

(e) *False certification and unauthorized disbursement.* If a borrower meets the