

position, the borrower must make the monthly payments within 15 days of the scheduled due date for the full scheduled installment amount; and

(iv) Makes the required 120 monthly payments under one or more of the following repayment plans—

(A) Except for a parent PLUS borrower, an income-based repayment plan, as determined in accordance with § 685.221;

(B) Except for a parent PLUS borrower, an income-contingent repayment plan, as determined in accordance with § 685.209;

(C) A standard repayment plan, as determined in accordance with § 685.208(b); or

(D) Any other repayment plan if the monthly payment amount paid is not less than what would have been paid under the Direct Loan standard repayment plan described in § 685.208(b).

(2) If a borrower makes a lump sum payment on an eligible loan for which the borrower is seeking forgiveness by using all or part of a Segal Education Award received after a year of AmeriCorps service, or by using all or part of a Peace Corps transition payment if the lump sum payment is made no later than six months after leaving the Peace Corps, the Secretary will consider the borrower to have made qualifying payments equal to the lesser of—

(i) The number of payments resulting after dividing the amount of the lump sum payment by the monthly payment amount the borrower would have made under paragraph (c)(1)(iv) of this section; or

(ii) Twelve payments.

(d) *Forgiveness Amount.* The Secretary forgives the principal and accrued interest that remains on all eligible loans for which loan forgiveness is requested by the borrower. The Secretary forgives this amount after the borrower makes the 120 monthly qualifying payments under paragraph (c) of this section.

(e) *Application.* (1) After making the 120 monthly qualifying payments on the eligible loans for which loan forgiveness is requested, a borrower may request loan forgiveness on a form provided by the Secretary.

(2) If the Secretary determines that the borrower meets the eligibility requirements for loan forgiveness under this section, the Secretary—

(i) Notifies the borrower of this determination; and

(ii) Forgives the outstanding balance of the eligible loans.

(3) If the Secretary determines that the borrower does not meet the eligibility requirements for loan forgiveness under this section, the Secretary resumes collection of the loan and grants forbearance of payment on both principal and interest for the period in which collection activity was suspended. The Secretary notifies the borrower that the application has been denied, provides the basis for the denial, and informs the borrower that the Secretary will resume collection of the loan. The Secretary may capitalize any interest accrued and not paid during this period.

(Authority: 20 U.S.C. 1087e(m))

[73 FR 63256, Oct. 23, 2008, as amended at 74 FR 56005, Oct. 29, 2009]

§ 685.220 Consolidation.

(a) *Direct Consolidation Loans.* A borrower may consolidate education loans made under certain Federal programs into a Direct Consolidation Loan. Loans consolidated into a Direct Consolidation Loan are discharged when the Direct Consolidation Loan is originated.

(b) *Loans eligible for consolidation.* The following loans may be consolidated into a Direct Consolidation Loan:

(1) Federal Subsidized Stafford Loans.

(2) Guaranteed Student Loans.

(3) Federal Insured Student Loans (FISL).

(4) Direct Subsidized Loans.

(5) Direct Subsidized Consolidation Loans.

(6) Federal Perkins Loans.

(7) National Direct Student Loans (NDSL).

(8) National Defense Student Loans (NDSL).

(9) Federal PLUS Loans.

(10) Parent Loans for Undergraduate Students (PLUS).

(11) Direct PLUS Loans.

§ 685.220

34 CFR Ch. VI (7-1-11 Edition)

(12) Direct PLUS Consolidation Loans.

(13) Federal Unsubsidized Stafford Loans.

(14) Federal Supplemental Loans for Students (SLS).

(15) Federal Consolidation Loans.

(16) Direct Unsubsidized Loans.

(17) Direct Unsubsidized Consolidation Loans.

(18) Auxiliary Loans to Assist Students (ALAS).

(19) Health Professions Student Loans (HPSL) and Loans for Disadvantaged Students (LDS) made under subpart II of part A of title VII of the Public Health Service Act.

(20) Health Education Assistance Loans (HEAL).

(21) Nursing loans made under subpart II of part B of title VIII of the Public Health Service Act.

(c) *Subsidized, unsubsidized, and PLUS components of Direct Consolidation Loans.* (1) The portion of a Direct Consolidation Loan attributable to the loans identified in paragraphs (b)(1) through (5) of this section, and attributable to the portion of Federal Consolidation Loans under paragraph (b)(15) of this section that is eligible for interest benefits during a deferment period under Section 428C(b)(4)(C) of the Act, is referred to as a Direct Subsidized Consolidation Loan.

(2) Except as provided in paragraph (c)(1) of this section, the portion of a Direct Consolidation Loan attributable to the loans identified in paragraphs (b)(6) through (8) and (b)(13) through (21) of this section is referred to as a Direct Unsubsidized Consolidation Loan.

(3) The portion of a Direct Consolidation Loan attributable to the loans identified in paragraphs (b)(9) through (12) of this section is referred to as a Direct PLUS Consolidation Loan.

(d) *Eligibility for a Direct Consolidation Loan.* (1) A borrower may obtain a Direct Consolidation Loan if the borrower meets the following requirements:

(i) At the time the borrower applies for a Direct Consolidation Loan, the borrower either—

(A) Has an outstanding balance on a Direct Loan; or

(B) Has an outstanding balance on an FFEL loan and—

(1) The borrower is unable to obtain a FFEL consolidation loan;

(2) The borrower is unable to obtain a FFEL consolidation loan with income-sensitive repayment terms acceptable to the borrower;

(3) The borrower wishes to use the Public Service Loan Forgiveness Program or the no accrual of interest benefit for active duty service;

(4) The borrower has an FFEL Consolidation Loan that is in default or has been submitted to the guaranty agency by the lender for default aversion, and the borrower wants to consolidate the FFEL Consolidation Loan into the Direct Loan Program for the purpose of obtaining an income contingent repayment plan or an income-based repayment plan; or

(5) The borrower has a FFEL Consolidation Loan and the borrower wants to consolidate that loan into the Direct Loan Program for purposes of using the Public Service Loan Forgiveness Program or the no accrual of interest benefit for active duty service.

(ii) At the time the borrower applies for the Direct Consolidation Loan, the borrower is—

(A) In the grace period;

(B) In a repayment period but not in default;

(C) In default but has made satisfactory repayment arrangements, as defined in applicable program regulations, on the defaulted loan; or

(D) In default but agrees to repay the consolidation loan under the income contingent repayment plan described in § 685.208(k) or the income-based repayment plan described in § 685.208(m), and signs the consent form described in § 685.209(d)(5) or § 685.221(e).

(E) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(F) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted.

(iii) On the loans being consolidated, the borrower is—

(A) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(B) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted.

(iv) The borrower certifies that no other application to consolidate any of the borrower's loans listed in paragraph (b) of this section is pending with any other lender.

(v) The borrower agrees to notify the Secretary of any change in address.

(2) A borrower may not consolidate a Direct Consolidation Loan into a new consolidation loan under this section or under § 682.201(c) unless at least one additional eligible loan is included in the consolidation.

(3) Eligible loans received before or after the date a Direct Consolidation Loan is made may be added to a subsequent Direct Consolidation Loan.

(e) *Application for a Direct Consolidation Loan.* To obtain a Direct Consolidation Loan, a borrower shall submit a completed application to the Secretary. A borrower may add eligible loans to a Direct Consolidation Loan by submitting a request to the Secretary within 180 days after the date on which the Direct Consolidation Loan is originated.

(f) *Origination of a consolidation loan.* (1)(i) The holder of a loan that a borrower wishes to consolidate into a Direct Loan shall complete and return the Secretary's request for certification of the amount owed within 10 business days of receipt or, if it is unable to provide the certification, provide to the Secretary a written explanation of the reasons for its inability to provide the certification.

(ii) If the Secretary approves an application for a consolidation loan, the Secretary pays to each holder of a loan selected for consolidation the amount necessary to discharge the loan.

(iii) For a Direct loan or FFEL Program loan that is in default, the Secretary limits collection costs that may be charged to the borrower to no more than those authorized under the FFEL Program.

(2) Upon receipt of the proceeds of a Direct Consolidation Loan, the holder of a consolidated loan shall promptly apply the proceeds to fully discharge the borrower's obligation on the consolidated loan. The holder of a consoli-

dated loan shall notify the borrower that the loan has been paid in full.

(3) The principal balance of a Direct Consolidation Loan is equal to the sum of the amounts paid to the holders of the consolidated loans.

(4) If the amount paid by the Secretary to the holder of a consolidated loan exceeds the amount needed to discharge that loan, the holder of the consolidated loan shall promptly refund the excess amount to the Secretary to be credited against the outstanding balance of the Direct Consolidation Loan.

(5) If the amount paid by the Secretary to the holder of the consolidated loan is insufficient to discharge that loan, the holder shall notify the Secretary in writing of the remaining amount due on the loan. The Secretary promptly pays the remaining amount due.

(g) *Interest rate.* The interest rate on a Direct Subsidized Consolidation Loan or a Direct Unsubsidized Consolidation Loan is the rate established in § 685.202(a)(3)(i). The interest rate on a Direct PLUS Consolidation Loan is the rate established in § 685.202(a)(3)(ii).

(h) *Repayment plans.* A borrower may choose a repayment plan for a Direct Consolidation Loan in accordance with § 685.208, except that a borrower who became eligible to consolidate a defaulted loan under paragraph (d)(1)(ii)(D) of this section must repay the consolidation loan under the income contingent repayment plan unless—

(1)(i) The borrower was required to and did make a payment under the income contingent repayment plan in each of the prior three (3) months; or

(ii) The borrower was not required to make payments but made three reasonable and affordable payments in each of the prior three (3) months; and

(2) The borrower makes and the Secretary approves a request to change plans.

(i) *Repayment period.* (1) Except as noted in paragraph (1)(4) of this section, the repayment period for a Direct Consolidation Loan begins on the day the loan is disbursed.

(2)(i) *Borrowers who entered repayment before July 1, 2006.* The Secretary determines the repayment period under

§ 685.208(i) on the basis of the outstanding balances on all of the borrower's loans that are eligible for consolidation and the balances on other education loans except as provided in paragraphs (i)(3)(i), (ii), and (iii) of this section.

(ii) Borrowers entering repayment on or after July 1, 2006. The Secretary determines the repayment period under § 685.208(j) on the basis of the outstanding balances on all of the borrower's loans that are eligible for consolidation and the balances on other education loans except as provided in paragraphs (i)(3)(i) and (ii) of this section.

(3)(i) The total amount of outstanding balances on the other education loans used to determine the repayment period under §§ 685.208(i) and (j) may not exceed the amount of the Direct Consolidation Loan.

(ii) The borrower may not be in default on the other education loan unless the borrower has made satisfactory repayment arrangements with the holder of the loan.

(iii) The lender of the other educational loan may not be an individual.

(4) Borrowers whose consolidation application was received before July 1, 2006. A Direct Consolidation Loan receives a grace period if it includes a Direct Loan or FFEL Program loan for which the borrower is in an in-school period at the time of consolidation. The repayment period begins the day after the grace period ends.

(j) *Repayment schedule.* (1) The Secretary provides a borrower of a Direct Consolidation Loan a repayment schedule before the borrower's first payment is due. The repayment schedule identifies the borrower's monthly repayment amount under the repayment plan selected.

(2) If a borrower adds an eligible loan to the consolidation loan under paragraph (e) of this section, the Secretary makes appropriate adjustments to the borrower's monthly repayment amount and repayment period.

(k) *Refunds and returns of title IV, HEA program funds received from schools.* If a lender receives a refund or return of title IV, HEA program funds from a school on a loan that has been consolidated into a Direct Consolidation

Loan, the lender shall transmit the refund or return and an explanation of the source of the refund or return to the Secretary within 30 days of receipt.

(1) *Special provisions for joint consolidation loans.* The provisions of paragraphs (1)(1) through (3) of this section apply to a Direct Consolidation Loan obtained by two married borrowers in accordance with the regulations that were in effect for consolidation applications received prior to July 1, 2006.

(1) *Deferment.* To obtain a deferment on a joint Direct Consolidation Loan under § 685.204, both borrowers must meet the requirements of that section.

(2) *Forbearance.* To obtain forbearance on a joint Direct Consolidation Loan under § 685.205, both borrowers must meet the requirements of that section.

(3) *Discharge.* (i) If a borrower dies and the Secretary receives the documentation described in § 685.212(a), the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date of the borrower's death, attributable to any of that borrower's loans that were repaid by the consolidation loan.

(ii) If a borrower meets the requirements for total and permanent disability discharge under § 685.212(b), the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date the borrower became totally and permanently disabled, attributable to any of that borrower's loans that were repaid by the consolidation loan.

(iii) If a borrower meets the requirements for discharge under § 685.212(d), (e), or (f) on a loan that was consolidated into a joint Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the loan that would be eligible for discharge under the provisions of § 685.212(d), (e), or (f) as applicable, and that was repaid by the consolidation loan.

(iv) If a borrower meets the requirements for loan forgiveness under § 685.212(h) on a loan that was consolidated into a joint Direct Consolidation Loan, the Secretary repays the portion of the outstanding balance of the consolidation loan attributable to the loan

that would be eligible for forgiveness under the provisions of § 685.212(h), and that was repaid by the consolidation loan.

(Approved by the Office of Management and Budget under control number 1845-0021)

(Authority: 20 U.S.C. 1078-8, 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994. Redesignated and amended at 64 FR 58969, 58970, 59044, Nov. 1, 1999; 65 FR 37045, June 13, 2000. Redesignated at 65 FR 65629, Nov. 1, 2000, as amended at 66 FR 34765, June 29, 2001; 67 FR 67082, Nov. 1, 2002; 68 FR 75430, Dec. 31, 2003; 71 FR 45716, Aug. 9, 2006; 71 FR 64400, Nov. 1, 2006; 73 FR 63257, Oct. 23, 2008; 74 FR 56005, Oct. 29, 2009]

EDITORIAL NOTE: At 73 FR 63257, Oct. 23, 2008, § 685.220 was amended; however, the amendment could not be incorporated due to inaccurate amendatory instruction.

§ 685.221 Income-based repayment plan.

(a) *Definitions.* As used in this section—

(1) *Adjusted gross income (AGI)* means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. For a married borrower filing separately, AGI includes only the borrower's income.

(2) *Eligible loan* means any outstanding loan made to a borrower under the FFEL or Direct Loan programs except for a defaulted loan, a FFEL or Direct PLUS Loan made to a parent borrower, or a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.

(3) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(i) Live with the borrower; and

(ii) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower cer-

tifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(4) *Partial financial hardship* means a circumstance in which—

(i) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(ii) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size.

(5) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(b) *Terms of the repayment plan.* (1) A borrower may select the income-based repayment plan only if the borrower has a partial financial hardship. The borrower's aggregate monthly loan payments are limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12.