

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.

(2) The Secretary adjusts the calculated monthly payment if—

(i) Except for borrowers provided for in paragraph (b)(2)(ii) of this section, the total amount of the borrower's eligible loans are not Direct Loans, in which case the Secretary determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total amount of eligible loans that are Direct Loans;

(ii) Both the borrower and borrower's spouse have eligible loans and filed a joint Federal tax return, in which case the Secretary determines—

(A) Each borrower's percentage of the couple's total eligible loan debt;

(B) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (b)(2)(ii)(A) of this section; and

(C) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly Direct Loan payment by multiplying the payment determined in paragraph (b)(2)(ii)(B) of this section by the percentage of the outstanding principal amount of eligible loans that are Direct Loans;

(iii) The calculated amount under paragraph (b)(1), (b)(2)(i), or (b)(2)(ii) of this section is less than \$5.00, in which case the borrower's monthly payment is \$0.00; or

(iv) The calculated amount under paragraph (b)(1), (b)(2)(i), or (b)(2)(ii) of this section is equal to or greater than \$5.00 but less than \$10.00, in which case the borrower's monthly payment is \$10.00.

(3) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's Direct Subsidized loan or the subsidized portion of a Direct Consolidation Loan, the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the income-based repayment plan. On a Direct Consolidation Loan that repays loans on which the Secretary has not charged the borrower accrued interest, the three-year period includes the period for which the Secretary did not

charge the borrower accrued interest on the underlying loans. This three-year period does not include any period during which the borrower receives an economic hardship deferment.

(4) Except as provided in paragraph (b)(3) of this section, accrued interest is capitalized at the time a borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(5) If the borrower's monthly payment amount is not sufficient to pay any of the principal due, the payment of that principal is postponed until the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(6) The repayment period for a borrower under the income-based repayment plan may be greater than 10 years.

(c) *Payment application and prepayment.* The Secretary applies any payment made under an income-based repayment plan in the following order:

- (1) Accrued interest.
- (2) Collection costs.
- (3) Late charges.
- (4) Loan principal.

(d) *Changes in the payment amount.* (1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan, but the Secretary recalculates the borrower's monthly payment. The Secretary also recalculates the monthly payment for a borrower who chooses to stop making income-based payments. In either case, as result of the recalculation—

(i) The maximum monthly amount that the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on the amount of the borrower's eligible loans that were outstanding at the time the borrower began repayment on the loans under the income-based repayment plan; and

(ii) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

(2) If a borrower no longer wishes to pay under the income-based payment plan, the borrower must pay under the

standard repayment plan and the Secretary recalculates the borrower's monthly payment based on—

(i) The time remaining under the maximum ten-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(ii) For a Direct Consolidation Loan, the applicable repayment period specified in § 685.208(j) for the amount of that loan and the balance of other student loans that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(e) *Eligibility documentation and verification.* (1) The Secretary determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower selects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the Secretary requires the borrower to—

(i)(A) Provide written consent to the disclosure of AGI and other tax return information by the Internal Revenue Service to the Secretary. The borrower provides consent by signing a consent form and returning it to the Secretary;

(B) If a borrower's AGI is not available, or the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the Secretary may use other documentation provided by the borrower to verify income; and

(ii) Annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.

(2) The Secretary designates the repayment option described in paragraph (d)(1) of this section for any borrower who selects the income-based repayment plan but—

(i) Fails to renew the required written consent for income verification; or

(ii) Withdraws consent and does not select another repayment plan.

(f) *Loan forgiveness.* (1) To qualify for loan forgiveness after 25 years, a borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during that period:

(i) Made reduced monthly payments under a partial financial hardship as provided in paragraph (b)(1) or (2) of this section, including a monthly payment amount of \$0.00, as provided under paragraph (b)(2)(ii) of this section.

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-based payments as provided in paragraph (d) of this section.

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b).

(iv) Made monthly payments under the Direct Loan standard repayment plan described in § 685.208(b) based on the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan.

(v) Paid Direct Loans under the income-contingent repayment plan.

(vi) Received an economic hardship deferment on eligible Direct Loans.

(2) As provided under paragraph (f)(4) of this section, the Secretary cancels any outstanding balance of principal and accrued interest on Direct loans for which the borrower qualifies for forgiveness if the Secretary determines that—

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1) of this section, including a monthly payment amount of \$0.00, as provided under paragraph (b)(2)(ii) of this section; and

(ii)(A) The borrower made those monthly payments each year for a 25-year period, or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 25 years of payments.

(3) For a borrower who qualifies for the income-based repayment plan, the beginning date for the 25-year period is—

(i) If the borrower made payments under the income contingent repayment plan, the date the borrower made a payment on the loan under that plan at any time after July 1, 1994;

**§ 685.300**

(ii) If the borrower did not make payments under the income contingent repayment plan—

(A) For a borrower who has a Direct Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for income-based repayment. The beginning date is the date the borrower made the payment or received the deferment, but no earlier than July 1, 2009;

(B) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan, but no earlier than July 1, 2009;

(C) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(ii)(A) or (B) of this section, the date the borrower made a payment under the income-based repayment plan on the loan;

(D) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the Direct Consolidation Loan after qualifying for the income-based repayment plan; or

(E) If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (ii) of this section, determining the date the borrower made a payment under the income-based repayment plan on the loan.

(4) If the Secretary determines that a borrower satisfies the loan forgiveness requirements, the Secretary cancels the outstanding balance and accrued interest on the Direct Consolidation Loan described in paragraph (f)(3)(i), (iii) or (iv) of this section or other eligible Direct Loans described in paragraph (f)(3)(ii) or (iv) of this section.

(Authority: 20 U.S.C. 1098e)

[73 FR 63258, Oct. 23, 2008, as amended at 74 FR 56006, Oct. 29, 2009]

**34 CFR Ch. VI (7–1–11 Edition)**

**Subpart C—Requirements, Standards, and Payments for Direct Loan Program Schools**

**§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.**

(a) *General.* (1) Participation of a school in the Direct Loan Program means that eligible students at the school may receive Direct Loans. To participate in the Direct Loan Program, a school shall—

(i) Demonstrate to the satisfaction of the Secretary that the school meets the requirements for eligibility under the Act and applicable regulations; and

(ii) Enter into a written program participation agreement with the Secretary that identifies the loan program or programs in which the school chooses to participate.

(2) The chief executive officer of the school shall sign the program participation agreement on behalf of the school.

(b) *Program participation agreement.* In the program participation agreement, the school shall promise to comply with the Act and applicable regulations and shall agree to—

(1) Identify eligible students who seek student financial assistance at the institution in accordance with section 484 of the Act;

(2) Estimate the need of each of these students as required by part F of the Act for an academic year. For purposes of estimating need, a Direct Unsubsidized Loan, a Direct PLUS Loan, or any loan obtained under any State-sponsored or private loan program may be used to offset the expected family contribution of the student for that year;

(3) Certify that the amount of the loan for any student under part D of the Act is not in excess of the annual limit applicable for that loan program and that the amount of the loan, in combination with previous loans received by the borrower, is not in excess of the aggregate limit for that loan program;

(4) Set forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 428G of the Act;