

is told during its second telephone contact attempt that the borrower can be reached at another number or at a different time of day, the lender must then attempt to reach the borrower by telephone at that number or that time of day.

2. *Q:* What must a lender do when it receives conflicting information regarding the date a borrower ceased at least half-time study?

A: A lender must promptly attempt to reconcile conflicting information regarding a borrower's in-school status by making inquiries of appropriate parties, including the borrower's school. Pending reconciliation, the lender may rely on the most recent credible information it has.

3. *Q:* If a loan is transferred from one lender to another, is the transferee held responsible for information regarding the borrower's status that is received by the transferor but is not passed on to the transferee?

A: No. A lender is responsible only for information received by its agents and employees. However, if the transferee has reason to believe that the transferor has received additional information regarding the loan, the transferee must make a reasonable inquiry of the transferor as to the nature and substance of that information.

4. *Q:* What are a lender's due diligence responsibilities where a check received on a loan is dishonored by the bank on which it was drawn?

A: Upon receiving notice that a check has been dishonored, the lender must treat the payment as having never been made for purposes of determining the number of days that the borrower is delinquent at that time. The lender must then begin (or resume) attempting collection on the loan in accordance with §682.411, commencing with the first 30-day delinquency period described in §682.411 that begins after the 30-day delinquency period in which the notice of dishonor is received. The same result occurs when the lender successfully obtains a delinquent borrower's correct address through skip-tracing, or when a delinquent borrower leaves deferment or forbearance status.

[64 FR 58636, Oct. 29, 1999, as amended at 66 FR 34765, June 29, 2001]

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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AUTHORITY: 20 U.S.C 1070g, 1087a, *et seq.*, unless otherwise noted.

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SOURCE: 59 FR 61690, Dec. 1, 1994, unless otherwise noted.

Subpart A—Purpose and Scope

§ 685.100 The William D. Ford Federal Direct Loan Program.

(a) Under the William D. Ford Federal Direct Loan (Direct Loan) Program (formerly known as the Federal Direct Student Loan Program), the Secretary makes loans to enable a student or parent to pay the costs of the student's attendance at a postsecondary school. This part governs the Federal Direct Stafford/Ford Loan Program, the Federal Direct Unsubsidized Stafford/Ford Loan Program, the Federal Direct PLUS Program, and the Federal Direct Consolidation Loan Program. The Secretary makes loans under the following program components:

(1) Federal Direct Stafford/Ford Loan Program (formerly known as the Federal Direct Stafford Loan Program), which provides loans to undergraduate, graduate, and professional students. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period.

(2) Federal Direct Unsubsidized Stafford/Ford Loan Program (formerly known as the Federal Direct Unsubsidized Stafford Loan Program), which provides loans to undergraduate, graduate and professional students. The borrower is responsible for the interest that accrues during any period.

(3) Federal Direct PLUS Program, which provides loans to parents of dependent students and to graduate or professional students. The borrower is responsible for the interest that accrues during any period.

(4) Federal Direct Consolidation Loan Program, which provides loans to borrowers to consolidate certain Federal educational loans.

(b) The Secretary makes a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan only to a student or a parent of a student enrolled in a school that has been selected by the Secretary to participate in the Direct Loan Program.

(c) The Secretary makes a Direct Consolidation Loan only to—

(1) A borrower with a loan made under the Direct Loan Program; or

(2) A borrower with a loan made under the Federal Family Education Loan Program who—

(i) Is not able to obtain a Federal Consolidation Loan;

(ii) Is not able to obtain a Federal Consolidation Loan with income-sensitive repayment terms that are satisfactory to the borrower; or

(iii) Has a Federal Consolidation Loan that has been submitted by the lender to the guaranty agency for default aversion, and wishes to consolidate the Federal Consolidation Loan into the Direct Loan Program for the purpose of obtaining an income contingent repayment plan.

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

[59 FR 61690, Dec. 1, 1994, as amended at 71 FR 45709, Aug. 9, 2006]

§ 685.101 Participation in the Direct Loan Program.

(a)(1) Colleges, universities, graduate and professional schools, vocational schools, and proprietary schools selected by the Secretary may participate in the Direct Loan Program. Participation in the Direct Loan Program enables an eligible student or parent to obtain a loan to pay for the student's cost of attendance at the school.

(2) The Secretary may permit a school to participate in both the Federal Family Education Loan (FFEL) Program, as defined in 34 CFR part 600, and the Direct Loan Program. A school permitted to participate in both the FFEL Program and the Direct Loan Program may certify loan applications under the FFEL Program according to the terms of its agreement with the Secretary.

(b) An eligible undergraduate student who is enrolled at a school participating in the Direct Loan Program may borrow under the Federal Direct Stafford/Ford Loan and Federal Direct Unsubsidized Stafford/Ford Loan Programs. An eligible graduate or professional student enrolled at a school participating in the Direct Loan Program may borrow under the Federal Direct Stafford/Ford Loan, Federal Direct Unsubsidized Stafford/Ford Loan, and Federal Direct PLUS Programs. An eligible parent of an eligible dependent

student enrolled at a school participating in the Direct Loan Program may borrow under the Federal Direct PLUS Program.

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

[59 FR 61690, Dec. 1, 1994, as amended at 71 FR 45709, Aug. 9, 2006]

§ 685.102 Definitions.

(a)(1) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

- Academic Competitiveness Grant (ACG) Program
- Academic year
- Campus-based programs
- Dependent student
- Disburse
- Eligible program
- Eligible student
- Enrolled
- Expected family contribution (EFC)
- Federal Consolidation Loan Program
- Federal Direct Student Loan Program (Direct Loan Program)
- Federal Pell Grant Program
- Federal Perkins Loan Program
- Federal PLUS Program
- Federal Supplemental Educational Opportunity Grant Program
- Federal Work-Study Program
- Full-time student
- Graduate or professional student
- Half-time student
- Independent student
- Leveraging Educational Assistance Partnership Program
- National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program
- One-third of an academic year
- Parent
- Payment period
- State
- Teacher Education Assistance for College and Higher Education (TEACH) Grant Program
- TEACH Grant
- Two-thirds of an academic year
- Undergraduate student
- U.S. citizen or national

(2) The following definitions are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

- Accredited
- Clock hour
- Credit hour
- Educational program
- Eligible institution

- Federal Family Education Loan (FFEL) Program
- Foreign institution
- Institution of higher education
- Nationally recognized accrediting agency or association
- Preaccredited
- Program of study by correspondence
- Secretary

(3) The following definitions are set forth in the regulations for the Federal Family Education Loan (FFEL) Program, 34 CFR part 682:

- Act
- Endorser
- Federal Insured Student Loan (FISL) Program
- Federal Stafford Loan Program
- Guaranty agency
- Holder
- Legal guardian
- Lender
- Totally and permanently disabled

(b) The following definitions also apply to this part:

Alternative originator: An entity under contract with the Secretary that originates Direct Loans to students and parents of students who attend a Direct Loan Program school that does not originate loans.

Consortium: For purposes of this part, a consortium is a group of two or more schools that interacts with the Secretary in the same manner as other schools, except that the electronic communication between the Secretary and the schools is channeled through a single point. Each school in a consortium shall sign a Direct Loan Program participation agreement with the Secretary and be responsible for the information it supplies through the consortium.

Default: The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for 270 days.

Estimated financial assistance. (1) The estimated amount of assistance for a period of enrollment that a student (or a parent on behalf of a student) will receive from Federal, State, institutional, or other sources, such as scholarships, grants, net earnings from

need-based employment, or loans, including but not limited to—

(i) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 (AmeriCorps).

(ii) Except as provided in paragraph (2)(vii) of this definition, veterans' education benefits;

(iii) Any educational benefits paid because of enrollment in a postsecondary education institution, or to cover postsecondary education expenses;

(iv) Fellowships or assistantships, except non-need-based employment portions of such awards;

(v) Insurance programs for the student's education; and

(vi) The estimated amount of other Federal student financial aid, including but not limited to a Federal Pell Grant, Academic Competitiveness Grant, National SMART Grant, campus-based aid, and the gross amount (including fees) of subsidized and unsubsidized Federal Stafford Loans or subsidized and unsubsidized Direct Stafford Loans and Federal PLUS or Direct PLUS Loans.

(2) Estimated financial assistance does not include—

(i) Those amounts used to replace the expected family contribution (EFC), including the amounts of any TEACH Grant unsubsidized Federal Stafford Loans or Direct Stafford Loans, Federal PLUS or Direct PLUS Loans, and non-federal non-need-based loans, including private, state-sponsored, and institutional loans. However, if the sum of the amounts received that are being used to replace the student's EFC exceed the EFC, the excess amount must be treated as estimated financial assistance;

(ii) Federal Perkins loan and Federal Work-Study funds that the student has declined;

(iii) For the purpose of determining eligibility for a Direct Subsidized Loan, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 (AmeriCorps);

(iv) Any portion of the estimated financial assistance described in para-

graph (1) of this definition that is included in the calculation of the student's EFC;

(v) Non-need-based employment earnings;

(vi) Assistance not received under a title IV, HEA program, if that assistance is designated to offset all or a portion of a specific amount of the cost of attendance and that component is excluded from the cost of attendance as well. If that assistance is excluded from either estimated financial assistance or cost of attendance, it must be excluded from both;

(vii) Federal veterans' education benefits paid under—

(A) Chapter 103 of title 10, United States Code (Senior Reserve Officers' Training Corps);

(B) Chapter 106A of title 10, United States Code (Educational Assistance for Persons Enlisting for Active Duty);

(C) Chapter 1606 of title 10, United States Code (Selected Reserve Educational Assistance Program);

(D) Chapter 1607 of title 10, United States Code (Educational Assistance Program for Reserve Component Members Supporting Contingency Operations and Certain Other Operations);

(E) Chapter 30 of title 38, United States Code (All-Volunteer Force Educational Assistance Program, also known as the "Montgomery GI Bill—active duty");

(F) Chapter 31 of title 38, United States Code (Training and Rehabilitation for Veterans with Service-Connected Disabilities);

(G) Chapter 32 of title 38, United States Code (Post-Vietnam Era Veterans' Educational Assistance Program);

(H) Chapter 33 of title 38, United States Code (Post 9/11 Educational Assistance);

(I) Chapter 35 of title 38, United States Code (Survivors' and Dependents' Educational Assistance Program);

(J) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note) (Educational Assistance Pilot Program);

(K) Section 156(b) of the "Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes" (42 U.S.C.

402 note) (Restored Entitlement Program for Survivors, also known as “Quayle benefits”);

(L) The provisions of chapter 3 of title 37, United States Code, related to subsistence allowances for members of the Reserve Officers Training Corps; and

(M) Any program that the Secretary may determine is covered by section 480(c)(2) of the HEA; and

(viii) Iraq and Afghanistan Service Grants made under section 420R of the HEA.

Federal Direct Consolidation Loan Program: (1) A loan program authorized by title IV, part D of the Act that provides loans to borrowers who consolidate certain Federal educational loan(s), and one of the components of the Direct Loan Program. Loans made under this program are referred to as Direct Consolidation Loans.

(2) The term “Direct Subsidized Consolidation Loan” refers to the portion of a Direct Consolidation Loan attributable to certain subsidized title IV education loans that were repaid by the consolidation loan. Interest is not charged to the borrower during deferment periods, or, for a borrower whose consolidation application was received before July 1, 2006, during in-school and grace periods.

(3) The term “Direct Unsubsidized Consolidation Loan” refers to the portion of a Direct Consolidation Loan attributable to unsubsidized title IV education loans, certain subsidized title IV education loans, and certain other Federal education loans that were repaid by the consolidation loan. The borrower is responsible for the interest that accrues during any period.

(4) The term “Direct PLUS Consolidation Loan” refers to the portion of a Direct Consolidation Loan attributable to Direct PLUS Loans, Direct PLUS Consolidation Loans, Federal PLUS Loans, and Parent Loans for Undergraduate Students that were repaid by the consolidation loan. The borrower is responsible for the interest that accrues during any period.

Federal Direct PLUS Program: A loan program authorized by title IV, Part D of the Act that is one of the components of the Federal Direct Loan Program. The Federal Direct PLUS Pro-

gram provides loans to parents of dependent students attending schools that participate in the Direct Loan Program. The Federal Direct PLUS Program also provides loans to graduate or professional students attending schools that participate in the Direct Loan Program. The borrower is responsible for the interest that accrues during any period. Loans made under this program are referred to as Direct PLUS Loans.

Federal Direct Stafford/Ford Loan Program: A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools, and one of the components of the Direct Loan Program. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period. Loans made under this program are referred to as Direct Subsidized Loans.

Federal Direct Unsubsidized Stafford/Ford Loan Program: A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools, and one of the components of the Direct Loan Program. The borrower is responsible for the interest that accrues during any period. Loans made under this program are referred to as Direct Unsubsidized Loans.

Grace period: A six-month period that begins on the day after a Direct Loan Program borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins.

Interest rate: The annual interest rate that is charged on a loan, under title IV, part D of the Act.

Loan fee: A fee, payable by the borrower, that is used to help defray the costs of the Direct Loan Program.

Master Promissory Note (MPN): (1) A promissory note under which the borrower may receive loans for a single academic year or multiple academic years.

(2) For MPNs processed by the Secretary before July 1, 2003, loans may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower’s written

notice that no further loans may be disbursed;

(ii) One year after the date of the borrower's first anticipated disbursement if no disbursement is made during that twelve-month period; or

(iii) Ten years after the date of the first anticipated disbursement, except that a remaining portion of a loan may be disbursed after this date.

(3) For MPNs processed by the Secretary on or after July 1, 2003, loans may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be made;

(ii) One year after the date the borrower signed the MPN or the date the Secretary receives the MPN, if no disbursements are made under that MPN; or

(iii) Ten years after the date the borrower signed the MPN or the date the Secretary receives the MPN, except that a remaining portion of a loan may be disbursed after this date.

Payment data: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

Period of enrollment: The period for which a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan is intended. The period of enrollment must coincide with one or more bona fide academic terms established by the school for which institutional charges are generally assessed (e.g., a semester, trimester, or quarter in weeks of instructional time; an academic year; or the length of the program of study in weeks of instructional time). The period of enrollment is also referred to as the loan period.

Satisfactory repayment arrangement. (1) For the purpose of regaining eligibility under section 428F(b) of the HEA, the making of six consecutive, voluntary, on-time, full monthly payments on a defaulted loan. A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) For the purpose of consolidating a defaulted loan under 34 CFR 685.220(d)(1)(ii)(C), the making of three

consecutive, voluntary, on-time, full monthly payments on a defaulted loan.

(3) The required monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. "On-time" means a payment made within 15 days of the scheduled due date, and voluntary payments are those payments made directly by the borrower and do not include payments obtained by Federal offset, garnishment, or income or asset execution.

School origination option 1: In general, under this option the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, prepares the promissory note, obtains a completed and signed promissory note from a borrower, transmits the promissory note to the Servicer, receives the funds electronically, disburses a loan to a borrower, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Servicer initiates the drawdown of funds for schools participating in school origination option 1. The Secretary may modify the functions performed by a particular school.

School origination option 2: In general, under this option the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, prepares the promissory note, obtains a completed and signed promissory note from a borrower, transmits the promissory note to the Servicer, determines funding needs, initiates the drawdown of funds, receives the funds electronically, disburses a loan to a borrower, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Secretary may modify the functions performed by a particular school.

Servicer: An entity that has contracted with the Secretary to act as the Secretary's agent in providing services relating to the origination or servicing of Direct Loans.

Standard origination: In general, under this option the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, receives funds

electronically, disburses funds, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Servicer prepares the promissory note, obtains a completed and signed promissory note from a borrower, and initiates the drawdown of funds for schools participating in standard origination. The Secretary may modify the functions performed by a particular school.

(Authority: 20 U.S.C. 1070g, 1087a, *et seq.*)

[59 FR 61690, Dec. 1, 1994]

EDITORIAL NOTE: FOR FEDERAL REGISTER citations affecting § 685.102, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 685.103 Applicability of subparts.

(a) Subpart A contains general provisions regarding the purpose and scope of the Direct Loan Program.

(b) Subpart B contains provisions regarding borrowers in the Direct Loan Program.

(c) Subpart C contains certain requirements regarding schools in the Direct Loan Program.

(d) Subpart D contains provisions regarding school eligibility for participation and origination in the Direct Loan Program.

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

Subpart B—Borrower Provisions

§ 685.200 Borrower eligibility.

(a) *Student Direct Subsidized or Direct Unsubsidized borrower.* (1) A student is eligible to receive a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a combination of these loans, if the student meets the following requirements:

(i) The student is enrolled, or accepted for enrollment, on at least a half-time basis in a school that participates in the Direct Loan Program.

(ii) The student meets the requirements for an eligible student under 34 CFR part 668.

(iii) In the case of an undergraduate student who seeks a Direct Subsidized Loan or a Direct Unsubsidized Loan at a school that participates in the Federal Pell Grant Program, the student has received a determination of Federal Pell Grant eligibility for the pe-

riod of enrollment for which the loan is sought.

(iv) In the case of a borrower whose previous loan or TEACH Grant service obligation was cancelled due to total and permanent disability, the student—

(A) In the case of a borrower whose prior loan under title IV of the Act or TEACH Grant service obligation was discharged after a final determination of total and permanent disability, the borrower—

(1) Obtains a certification from a physician that the borrower is able to engage in substantial gainful activity;

(2) Signs a statement acknowledging that the Direct Loan the borrower receives cannot be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates; and

(3) If the borrower receives a new Direct Loan, other than a Direct Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 685.213(b)(4), 34 CFR 674.61(b)(3)(i), 34 CFR 682.402(c), or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resumes repayment on the previously discharged loan in accordance with § 685.213(b)(3)(ii)(A), 34 CFR 674.61(b)(5), or 34 CFR 682.402(c)(5), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

(B) In the case of a borrower whose prior loan under title IV of the Act was conditionally discharged after an initial determination that the borrower was totally and permanently disabled based on a discharge request received prior to July 1, 2010—

(1) The suspension of collection activity on the prior loan has been lifted;

(2) The borrower complies with the requirements in paragraphs (a)(1)(iv)(A)(1) and (2) of this section;

(3) The borrower signs a statement acknowledging that the loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged

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in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge or when the new loan is made, unless that impairment substantially deteriorates; and

(4) The borrower signs a statement acknowledging that the suspension of collection activity on the prior loan will be lifted.

(v) In the case of a student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, the student meets the requirements under 34 CFR 668.32(e)(2), (3) or (4).

(2)(i) A Direct Subsidized Loan borrower must demonstrate financial need in accordance with title IV, part F of the Act.

(ii) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(A) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(B) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(C)(1) Directs the member to pursue the course of study; or

(2) Provides subsistence support to its members.

(b) *Student PLUS borrower.* (1) The student is enrolled, or accepted for enrollment, on at least a half-time basis in a school that participates in the Direct Loan Program.

(2) The student meets the requirements for an eligible student under 34 CFR part 668.

(3) The student meets the requirements of paragraphs (a)(1)(iv) and (a)(1)(v) of this section, if applicable.

(4) The student has received a determination of his or her annual loan maximum eligibility under the Federal Direct Stafford/Ford Loan Program and the Federal Direct Unsubsidized Stafford/Ford Loan Program or under the Federal Subsidized and Unsubsidized Stafford Loan Program, as applicable; and

(5) The student meets the requirements of paragraph (c)(1)(vii) of this section.

(c) *Parent PLUS borrower.* (1) A parent is eligible to receive a Direct PLUS Loan if the parent meets the following requirements:

(i) The parent is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student under 34 CFR part 668.

(ii) The parent provides his or her and the student's social security number.

(iii) The parent meets the requirements pertaining to citizenship and residency that apply to the student under 34 CFR 668.33.

(iv) The parent meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.32(g).

(v) The parent complies with the requirements for submission of a Statement of Educational Purpose that apply to the student under 34 CFR part 668, except for the completion of a Statement of Selective Service Registration Status.

(vi) The parent meets the requirements that apply to a student under paragraph (a)(1)(iv) of this section.

(vii)(A) The parent—

(1) Does not have an adverse credit history;

(2) Has an adverse credit history but has obtained an endorser who does not have an adverse credit history; or

(3) Has an adverse credit history but documents to the satisfaction of the Secretary that extenuating circumstances exist.

(B) For purposes of paragraph (c)(1)(vii)(A) of this section, an adverse credit history means that as of the date of the credit report, the applicant—

(1) Is 90 or more days delinquent on any debt; or

(2) Has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a debt under title IV of the Act during the five years preceding the date of the credit report.

(C) For the purposes of (c)(1)(vii)(A) of this section, the Secretary does not

consider the absence of a credit history as an adverse credit history and does not deny a Direct PLUS loan on that basis.

(2) For purposes of paragraph (c)(1) of this section, a “parent” includes the individuals described in the definition of “parent” in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse’s income and assets would have been taken into account when calculating a dependent student’s expected family contribution.

(3) Has completed repayment of any title IV, HEA program assistance obtained by fraud, if the parent has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance.

(d) *Defaulted FFEL Program and Direct Loan borrowers.* Except as noted in § 685.220(d)(1)(ii)(D), in the case of a student or parent borrower who is currently in default on an FFEL Program or a Direct Loan Program Loan, the borrower shall make satisfactory repayment arrangements, as described in paragraph (2) of the definition of that term under § 685.102(b), on the defaulted loan.

(e) *Use of loan proceeds to replace expected family contribution.* The amount of a Direct Unsubsidized Loan, a Direct PLUS loan, or a non-federal non-need based loan, including a private, state-sponsored, or institution loan, obtained for a loan period may be used to replace the expected family contribution for that loan period.

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

[59 FR 61690, Dec. 1, 1994, as amended at 60 FR 61816, Dec. 1, 1995; 61 FR 29900, June 12, 1996; 65 FR 65629, 65693, Nov. 1, 2000; 66 FR 34765, June 29, 2001; 66 FR 44007, Aug. 21, 2001; 68 FR 75430, Dec. 31, 2003; 71 FR 45710, Aug. 9, 2006; 71 FR 64399, Nov. 1, 2006; 74 FR 56001, Oct. 29, 2009]

§ 685.201 Obtaining a loan.

(a) *Application for a Direct Subsidized Loan or a Direct Unsubsidized Loan.* (1) To obtain a Direct Subsidized Loan or a Direct Unsubsidized Loan, a student must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application.

(2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the Secretary or the school in which the student is enrolled must perform specific functions. Unless a school’s agreement with the Secretary specifies otherwise, the school must perform the following functions:

(i) A school participating under school origination option 2 must create a loan origination record, ensure that the loan is supported by a completed Master Promissory Note (MPN), draw down funds, and disburse the funds to the student.

(ii) A school participating under school origination option 1 must create a loan origination record, ensure that the loan is supported by a completed MPN, and transmit the record and MPN (if required) to the Servicer. The Servicer initiates the drawdown of funds. The school must disburse the funds to the student.

(iii) If the student is attending a school participating under standard origination, the school must create a loan origination record and transmit the record to the alternative originator, which either confirms that a completed MPN supports the loan or prepares an MPN and sends it to the student. The Servicer receives the completed MPN from the student (if required) and initiates the drawdown of funds. The school must disburse the funds to the student.

(b) *Application for a Direct PLUS Loan.* (1) For a parent to obtain a Direct PLUS Loan, the parent must complete the Direct PLUS MPN and submit it to the school at which the student is enrolled.

(2) For a graduate or professional student to apply for a Direct PLUS Loan, the student must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application. The graduate or professional student must also complete the PLUS MPN and submit it to the school.

(3) For either a parent or student PLUS borrower, as applicable, the school must complete its portion of the PLUS MPN and submit it to the Servicer, which makes a determination as to whether the parent or graduate or professional student has an adverse

credit history. Unless a school's agreement with the Secretary specifies otherwise, the school must perform the following functions: A school participating under school origination option 2 must draw down funds and disburse the funds. For a school participating under school origination option 1 or standard origination, the Servicer initiates the drawdown of funds, and the school disburses the funds.

(c) *Application for a Direct Consolidation Loan.* (1) To obtain a Direct Consolidation Loan, the applicant must complete the application and promissory note and submit it to the Servicer. The application and promissory note sets forth the terms and conditions of the Direct Consolidation Loan and informs the applicant how to contact the Servicer. The Servicer answers questions regarding the process of applying for a Direct Consolidation Loan and provides information about the terms and conditions of both Direct Consolidation Loans and the types of loans that may be consolidated.

(2) Once the applicant has submitted the completed application and promissory note to the Servicer, the Secretary makes the Direct Consolidation Loan under the procedures specified in § 685.220.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

[64 FR 58965, Nov. 1, 1999, as amended at 65 FR 65629, Nov. 1, 2000; 71 FR 45711, Aug. 9, 2006]

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) *Interest*—(1) *Interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans.* (i) *Loans first disbursed before July 1, 1995.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(ii) *Loans first disbursed on or after July 1, 1995 and before July 1, 1998.* (A) *During the in-school, grace, and deferment periods.* The interest rate dur-

ing any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.5 percentage points, but does not exceed 8.25 percent.

(B) *During all other periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(iii) *Loans first disbursed on or after July 1, 1998 and before July 1, 2006.* (A) *During the in-school, grace, and deferment periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 1.7 percentage points, but does not exceed 8.25 percent.

(B) *During all other periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(iv) *Loans first disbursed on or after July 1, 2006.* The interest rate is 6.8 percent.

(v) For a subsidized Stafford loan made to an undergraduate student for which the first disbursement is made on or after:

(A) July 1, 2006 and before July 1, 2008, the interest rate is 6.8 percent on the unpaid principal balance of the loan.

(B) July 1, 2008 and before July 1, 2009, the interest rate is 6 percent on the unpaid principal balance of the loan.

(C) July 1, 2009 and before July 1, 2010, the interest rate is 5.6 percent on the unpaid principal balance of the loan.

(D) July 1, 2010 and before July 1, 2011, the interest rate is 4.5 percent on the unpaid principal balance of the loan.

(E) July 1, 2011 and before July 2012, the interest rate is 3.4 percent on the unpaid balance of the loan.

(2) *Interest rate for Direct PLUS Loans.*

(i) *Loans first disbursed before July 1, 1998.* (A) *Interest rates for periods ending before July 1, 2001.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.

(B) *Interest rates for periods beginning on or after July 1, 2001.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 26 preceding that period. The interest rate is equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before that June 26 plus 3.1 percentage points, but does not exceed 9 percent.

(ii) *Loans first disbursed on or after July 1, 1998 and before July 1, 2006.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.

(iii) *Loans first disbursed on or after July 1, 2006.* The interest rate is 7.9 percent.

(3) *Interest rate of Direct Consolidation Loans—*(i) *Interest rate for Direct Subsidized Consolidation Loans and Direct Unsubsidized Consolidation Loans.* (A) *Loans first disbursed before July 1, 1995.* The interest rate is the rate estab-

lished for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(i) of this section.

(B) *Loans first disbursed on or after July 1, 1995 and before July 1, 1998.* The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(ii) of this section.

(C) *Loans for which the first disbursement is made on or after July 1, 1998 and prior to October 1, 1998, and loans for which the disbursement is made on or after October 1, 1998 for which the consolidation application was received by the Secretary before October 1, 1998.* The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(iii) of this section.

(D) *Loans for which the consolidation application is received by the Secretary on or after October 1, 1998 and before February 1, 1999.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(E) *Loans for which the consolidation application is received by the Secretary on or after February 1, 1999.* During all periods, the interest rate is based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent, but does not exceed 8.25 percent.

(ii) *Interest rate for Direct PLUS Consolidation Loans.* (A) *Loans first disbursed before July 1, 1998.* The interest rate is the rate established for Direct PLUS Loans in paragraph (a)(2)(i) of this section.

(B) *Loans for which the first disbursement is made on or after July 1, 1998 and prior to October 1, 1998, and loans for which the disbursement is made on or after October 1, 1998 for which the consolidation application was received by the Secretary before October 1, 1998.* The interest rate is the rate established for Direct PLUS Loans in paragraph (a)(2)(ii) of this section.

(C) *Loans for which the consolidation application is received by the Secretary on or after October 1, 1998 and before February 1, 1999.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(D) *Loans for which the consolidation application is received by the Secretary on or after February 1, 1999.* During all periods, the interest rate is based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent, but does not exceed 8.25 percent.

(4) *Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (3) of this section, effective August 14, 2008, upon the Secretary's receipt of a borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on Direct Loan Program loans made prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

(b) *Capitalization.* (1) The Secretary may add unpaid accrued interest to the borrower's unpaid principal balance. This increase in the principal balance of a loan is called "capitalization."

(2) For a Direct Unsubsidized Loan or a Direct Unsubsidized Consolidation Loan that qualifies for a grace period under the regulations that were in effect for consolidation applications received before July 1, 2006, or for a Direct PLUS Loan, the Secretary may capitalize the unpaid interest that accrues on the loan when the borrower enters repayment.

(3) Notwithstanding § 685.208(1)(5) and § 685.209(d)(3), for a Direct Loan not eligible for interest subsidies during periods of deferment, and for all Direct Loans during periods of forbearance, the Secretary capitalizes the unpaid interest that has accrued on the loan

upon the expiration of the deferment or forbearance.

(4) Except as provided in paragraph (b)(3) of this section and in § 685.208(1)(5), and § 685.209(d)(3), the Secretary annually capitalizes unpaid interest when the borrower is paying under the alternative or income contingent repayment plans and the borrower's scheduled payments do not cover the interest that has accrued on the loan.

(5) The Secretary may capitalize unpaid interest when the borrower defaults on the loan.

(c) *Loan fee for Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans.* The Secretary—

(1)(i) For a Direct Subsidized or Direct Unsubsidized loan first disbursed prior to February 8, 2006, charges a borrower a loan fee not to exceed 4 percent of the principal amount of the loan;

(ii) For a Direct Subsidized or Direct Unsubsidized loan first disbursed on or after February 8, 2006, but before July 1, 2007, charges a borrower a loan fee not to exceed 3 percent of the principal amount of the loan;

(iii) For a Direct Subsidized or Direct Unsubsidized loan first disbursed on or after July 1, 2007, but before July 1, 2008, charges a borrower a loan fee not to exceed 2.5 percent of the principal amount of the loan;

(iv) For a Direct Subsidized or Direct Unsubsidized loan first disbursed on or after July 1, 2008, but before July 1, 2009, charges the borrower a loan fee not to exceed 2 percent of the principal amount of the loan;

(v) For a Direct Subsidized or Direct Unsubsidized loan first disbursed on or after July 1, 2009, but before July 1, 2010, charges the borrower a loan fee not to exceed 1.5 percent of the principal amount of the loan;

(vi) For a Direct Subsidized or Direct Unsubsidized loan first disbursed on or after July 1, 2010, charges the borrower a loan fee not to exceed 1 percent of the principal amount of the loan; and

(vii) Charges a borrower a loan fee of four percent of the principal amount of the loan on a Direct PLUS loan.

(2) Deducts the loan fee from the proceeds of the loan;

(3) In the case of a loan disbursed in multiple installments, deducts a pro

rated portion of the fee from each disbursement; and

(4) Applies to a borrower's loan balance the portion of the loan fee previously deducted from the loan that is attributable to any portion of the loan that is—

(i) Repaid or returned within 120 days of disbursement, unless—

(A) The borrower has no Direct Loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(B) The borrower has a Direct Loan in repayment status, in which case the payment is applied in accordance with § 685.211(a) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan; or

(ii) Returned by a school in order to comply with the Act or with applicable regulations.

(d) *Late charge.* (1) The Secretary may require the borrower to pay a late charge of up to six cents for each dollar of each installment or portion thereof that is late under the circumstances described in paragraph (d)(2) of this section.

(2) The late charge may be assessed if the borrower fails to pay all or a portion of a required installment payment within 30 days after it is due.

(e)(1) *Collection charges before default.* Notwithstanding any provision of State law, the Secretary may require that the borrower or any endorser pay costs incurred by the Secretary or the Secretary's agents in collecting in-

stallments not paid when due. These charges do not include routine collection costs associated with preparing letters or notices or with making personal contacts with the borrower (*e.g.*, local and long-distance telephone calls).

(2) *Collection charges after default.* If a borrower defaults on a Direct Loan, the Secretary assesses collection costs on the basis of 34 CFR 30.60.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

[59 FR 61690, Dec. 1, 1994, as amended at 61 FR 29900, June 12, 1996; 62 FR 63434, Nov. 28, 1997; 64 FR 46254, Aug. 24, 1999; 66 FR 34765, June 29, 2001; 71 FR 45711, Aug. 9, 2006; 72 FR 62009, Nov. 1, 2007; 74 FR 56001, Oct. 29, 2009]

§ 685.203 Loan limits.

(a) *Direct Subsidized Loans.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) \$2,625, or, for a loan disbursed on or after July 1, 2007, \$3,500, for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to \$2,625, or, for a loan disbursed on or after July 1, 2007, \$3,500, as the—

Number of semester, trimester, quarter, or clock hours enrolled

Number of semester, trimester, quarter, or clock hours in academic year.

(iii) For a program of study that is less than a full academic year in length, the amount that is the same

ratio to \$2,625, or, for a loan disbursed on or after July 1, 2007, \$3,500, as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(2) In the case of an undergraduate student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal

Stafford Loan Program may not exceed the following:

- (i) \$3,500, or, for a loan disbursed on or after July 1, 2007, \$4,500, for a program of study of at least a full academic year in length.
- (ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$3,500, or, for a loan disbursed on or after July 1, 2007, \$4,500, as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Federal Direct Staf-

ford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

- (i) \$5,500 for a program of study of at least an academic year in length.
- (ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$5,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.

Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed \$8,500.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Federal Direct

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan

Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) \$2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) \$5,500 for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed \$5,500.

(8) Except as provided in paragraph (a)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(9) Except as provided in paragraph (a)(4) of this section—

(i) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is more

than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(2) of this section.

(b) *Direct Unsubsidized Loans.* (1) In the case of a dependent undergraduate student—

(i) For a loan first disbursed before July 1, 2008, the total amount a student may borrow for any period of study under the Federal Direct Unsubsidized Loan Program and the Federal Unsubsidized Stafford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Federal Direct Stafford/Ford Loan Program or the Federal Stafford Loan Program.

(ii) Except as provided in paragraph (c)(3) of this section, for a loan first disbursed on or after July 1, 2008, the total amount a student may borrow for any period of study under the Federal Direct Unsubsidized Stafford/Ford Loan Program in combination with the Federal Unsubsidized Stafford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Federal Direct Stafford/Ford Loan Program or the Federal Stafford Loan Program, plus—

(A) \$2,000, for a program of study of at least a full academic year in length.

(B) For a program of study that is one academic year or more in length with less than a full academic year remaining, the amount that is the same ratio to \$2,000 as the—

Number of semester, trimester, quarter, or clock hours enrolled.	
Number of semester, trimester, quarter, or clock hours in academic year.	

(C) For a program of study that is less than a full academic year in length, the amount that is the same ratio to \$2,000 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled.}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

or

$$\frac{\text{Number of weeks in program.}}{\text{Number of weeks in academic year.}}$$

(2) In the case of an independent undergraduate student, a graduate or professional student, or certain dependent undergraduate students under the conditions specified in paragraph (c)(1)(ii) of this section, except as provided in paragraph (c)(3) of this section, the total amount the student may borrow for any period of enrollment under the Federal Direct Unsubsidized Stafford/Ford Loan and Federal Unsubsidized Stafford Loan programs may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Federal Direct Stafford/Ford Loan Program or the Federal Stafford Loan Program, in combination with the amounts determined under paragraph (c) of this section.

(c) *Additional eligibility for Direct Unsubsidized Loans.* (1)(i) An independent undergraduate student, graduate or professional student, and certain dependent undergraduate students may borrow amounts under the Federal Direct Unsubsidized Loan Program in addition to any amount borrowed under paragraph (b) of this section, except as provided in paragraph (c)(3) for certain dependent undergraduate students.

(ii) In order for a dependent undergraduate student to receive this additional loan amount, the financial aid administrator must determine that the student's parent likely will be precluded by exceptional circumstances from borrowing under the Federal Direct PLUS Program or the Federal PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution.

The financial aid administrator shall base the determination on a review of the family financial information provided by the student and consideration of the student's debt burden and shall document the determination in the school's file.

(iii) "Exceptional circumstances" under paragraph (c)(1)(ii) of this section include but are not limited to circumstances in which the student's parent receives only public assistance or disability benefits, the parent is incarcerated, the parent has an adverse credit history, or the parent's whereabouts are unknown. A parent's refusal to borrow a Federal PLUS Loan or Direct PLUS Loan does not constitute "exceptional circumstances."

(2) The additional amount that a student described in paragraph (c)(1)(i) of this section may borrow under the Federal Direct Unsubsidized Stafford/Ford Loan Program and the Federal Unsubsidized Stafford Loan Program for any academic year of study may not exceed the following:

(i) In the case of a student who has not successfully completed the first year of a program of undergraduate education—

(A) \$4,000, or, for a loan first disbursed on or after July 1, 2008, \$6,000, for a program of study of at least a full academic year in length.

(B) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to \$4,000, or, for a loan first disbursed on or after July 1, 2008, \$6,000, as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(C) For a program of study that is less than a full academic year in length, an amount that is the same ratio to \$4,000, or, for a loan first disbursed on or after July 1, 2008, \$6,000, as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(ii) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year of a program of undergraduate education—
 (A) \$4,000, or, for a loan first disbursed on or after July 1, 2008, \$6,000, for a program of study of at least a full academic year in length.
 (B) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$4,000, or, for a loan first disbursed on or after July 1, 2008, \$6,000, as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) In the case of a student who has successfully completed the second year of a program of undergraduate education but has not completed the remainder of the program of study—
 (A) \$5,000, or, for a loan first disbursed on or after July 1, 2008, \$7,000, for a program of study of at least a full academic year in length.
 (B) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$5,000, or, for a loan first disbursed on or after July 1, 2008, \$7,000, as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iv) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (c)(2)(iii) of this section.
 (v) In the case of a graduate or professional student, \$10,000, or, for a loan disbursed on or after July 1, 2007, \$12,000.
 (vi) In the case of a student enrolled for no longer than one consecutive 12-

month period in a course of study necessary for enrollment in a program leading to a degree or a certificate—

(A) \$4,000, or, for a loan first disbursed on or after July 1, 2008, \$6,000, for coursework necessary for enrollment in an undergraduate degree or certificate program.

(B) \$5,000, or, for a loan disbursed on or after July 1, 2007, \$7,000, for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.

(vii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, \$5,000, or, for a loan disbursed on or after July 1, 2007, \$7,000.

(viii) Except as provided in paragraph (c)(2)(iv) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(i) of this section.

(ix) Except as provided in paragraph (c)(2)(iv) of this section—

(A) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(i) of this section.

(B) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(ii) of this section.

(3) A dependent undergraduate student who qualifies for additional Direct Unsubsidized Loan amounts under this section in accordance with paragraph (c)(1)(ii) is not eligible to receive the additional Direct Unsubsidized Loan

amounts provided under paragraph (b)(1)(ii) of this section.

(d) *Federal Direct Stafford/Ford Loan Program and Federal Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Direct Subsidized Loans and Federal Stafford Loans made to a student but excluding the amount of capitalized interest may not exceed the following:

(1) \$23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level.

(2) \$65,500 in the case of a graduate or professional student, including loans for undergraduate study.

(e) *Aggregate limits for unsubsidized loans.* The total amount of Direct Unsubsidized Loans, Federal Unsubsidized Stafford Loans, and Federal SLS Loans but excluding the amount of capitalized interest may not exceed the following:

(1) For a dependent undergraduate student, \$23,000, or, effective July 1, 2008, \$31,000, minus any Direct Subsidized Loan and Federal Stafford Loan amounts, unless the student qualifies under paragraph (c) of this section for additional eligibility or qualified for that additional eligibility under the Federal SLS Program.

(2) For an independent undergraduate or a dependent undergraduate who qualifies for additional eligibility under paragraph (c) of this section or qualified for this additional eligibility under the Federal SLS Program, \$46,000, or, effective July 1, 2008, \$57,500, minus any Direct Subsidized Loan and Federal Stafford Loan amounts.

(3) For a graduate or professional student, \$138,500 including any loans for undergraduate study, minus any Direct Subsidized Loan, Federal Stafford Loan, and Federal SLS Program loan amounts.

(f) *Direct PLUS Loans annual limit.* The total amount of all Direct PLUS Loans that a parent or parents may borrow on behalf of each dependent student, or that a graduate or professional student may borrow, for any academic year of study may not exceed the cost of attendance minus other estimated financial assistance for the student.

(g) *Direct PLUS Loans aggregate limit.* The total amount of all Direct PLUS Loans that a parent or parents may borrow on behalf of each dependent student, or that a graduate or professional student may borrow, for enrollment in an eligible program of study may not exceed the student's cost of attendance minus other estimated financial assistance for that student for the entire period of enrollment.

(h) *Loan limit period.* The annual loan limits apply to an academic year, as defined in 34 CFR 668.3.

(i) *Treatment of Direct Consolidation Loans and Federal Consolidation Loans.* The percentage of the outstanding balance on Direct Consolidation Loans or Federal Consolidation Loans counted against a borrower's aggregate loan limits is calculated as follows:

(1) For Direct Subsidized Loans, the percentage equals the percentage of the original amount of the Direct Consolidation Loan or Federal Consolidation Loan attributable to the Direct Subsidized and Federal Stafford Loans.

(2) For Direct Unsubsidized Loans, the percentage equals the percentage of the original amount of the Direct Consolidation Loan or Federal Consolidation Loan attributable to the Direct Unsubsidized, Federal SLS, and Federal Unsubsidized Stafford Loans.

(j) *Maximum loan amounts.* In no case may a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) In the case of a Direct Subsidized Loan, the borrower's expected family contribution for that period.

(k) Any TEACH Grants that have been converted to Direct Unsubsidized Loans are not counted against any annual or aggregate loan limits under this section.

(Authority: 20 U.S.C. 1070g, 1087a, *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 64 FR 58966, Nov. 1, 1999; 67 FR 67081, Nov. 1, 2002; 68 FR 75430, Dec. 31, 2003; 71 FR 45711, Aug. 9, 2006; 71 FR 64399, Nov. 1, 2006; 73 FR 35495, June 23, 2008; 74 FR 56001, Oct. 29, 2009]

§ 685.204 Deferment.

(a)(1) A Direct Loan borrower whose loan is eligible for interest subsidies and who meets the requirements described in paragraphs (b) and (e) of this section is eligible for a deferment during which periodic installments of principal and interest need not be paid.

(2) A Direct Loan borrower whose loan is not eligible for interest subsidies and who meets the requirements described in paragraphs (b) and (e) of this section is eligible for a deferment during which periodic installments of principal need not be paid but interest does accrue and is capitalized or paid by the borrower.

(b) Except as provided in paragraphs (d) and (g) of this section, a Direct Loan borrower is eligible for a deferment during any period during which the borrower meets any of the following requirements:

(1)(i) The borrower—

(A) Is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible school the borrower is attending;

(B) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(C) Is pursuing a rehabilitation training program, approved by the Secretary, for individuals with disabilities; and

(ii) The borrower is not serving in a medical internship or residency program, except for a residency program in dentistry.

(iii)(A) For the purpose of paragraph (b)(1)(i)(A) of this section, the Secretary processes a deferment when—

(1) The borrower submits a request to the Secretary along with documentation verifying the borrower's eligibility;

(2) The Secretary receives information from the borrower's school indicating that the borrower is eligible to receive a new loan;

(3) The Secretary receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis; or

(4) The Secretary confirms a borrower's half-time enrollment status

through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending.

(B)(1) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(1)(iii)(A)(2), (3), or (4) of this section, the borrower has the option to cancel the deferment and continue paying on the loan.

(2) If the borrower elects to cancel the deferment and continue paying on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest. The Secretary will provide information, including an example, to assist the borrower in understanding the impact of capitalization of accrued, unpaid interest on the borrower's loan principal and on the total amount of interest to be paid over the life of the loan.

(2)(i) The borrower is seeking and unable to find full-time employment.

(ii) For purposes of paragraph (b)(2)(i) of this section, the Secretary determines whether a borrower is eligible for a deferment due to the inability to find full-time employment using the standards and procedures set forth in 34 CFR 682.210(h) with references to the lender understood to mean the Secretary.

(3)(i) The borrower has experienced or will experience an economic hardship.

(ii) For purposes of paragraph (b)(3)(i) of this section, the Secretary determines whether a borrower is eligible for a deferment due to an economic hardship using the standards and procedures set forth in 34 CFR 682.210(s)(6) with references to the lender understood to mean the Secretary.

(c) No deferment under paragraphs (b) (2) or (3) of this section may exceed three years.

(d) If, at the time of application for a borrower's first Direct Loan, a borrower has an outstanding balance of principal or interest owing on any FFEL Program loan that was made, insured, or guaranteed prior to July 1, 1993, the borrower is eligible for a deferment during—

(1) The periods described in paragraphs (b) and (e) of this section; and

(2) The periods described in 34 CFR 682.210(b), including those periods that apply to a “new borrower” as that term is defined in 34 CFR 682.210(b)(7).

(e) *Military service deferment.* (1) A borrower who receives a Direct Loan Program loan, may receive a military service deferment for such loan for any period during which the borrower is—

(i) Serving on active duty during a war or other military operation or national emergency; or

(ii) Performing qualifying National Guard duty during a war or other military operation or national emergency.

(2) For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the deferment period ends 180 days after the demobilization date for each period of the service described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(3) *Serving on active duty during a war or other military operation or national emergency* means service by an individual who is—

(i) A Reserve of an Armed Force ordered to active duty under 10 U.S.C. 12301(a), 12301(g), 12302, 12304, or 12306;

(ii) A retired member of an Armed Force ordered to active duty under 10 U.S.C. 688 for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; or

(iii) Any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which the member is normally assigned.

(4) *Qualifying National Guard duty during a war or other operation or national emergency* means service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. 502(f) in connection with a war, other military operation, or national emergency declared by the President and supported by Federal funds.

(5) These provisions do not authorize the refunding of any payments made by or on behalf of a borrower during a period for which the borrower qualified for a military service deferment.

(6) As used in this paragraph—

(i) *Active duty* means active duty as defined in 10 U.S.C. 101(d)(1) except that it does not include active duty for training or attendance at a service school;

(ii) *Military operation* means a contingency operation as defined in 10 U.S.C. 101(a)(13); and

(iii) *National emergency* means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

(7) Without supporting documentation, the military service deferment will be granted to an otherwise eligible borrower for a period not to exceed 12 months from the date of the qualifying eligible service based on a request from the borrower or the borrower's representative.

(f) *Post-active duty student deferment.*

(1) A borrower who receives a Direct Loan Program loan is entitled to receive a military active duty student deferment for 13 months following the conclusion of the borrower's active duty military service if—

(i) The borrower is a member of the National Guard or other reserve component of the Armed Forces of the United States or a member of such forces in retired status; and

(ii) The borrower was enrolled on at least a half-time basis in a program of instruction at an eligible institution at the time, or within six months prior to the time, the borrower was called to active duty.

(2) As used in paragraph (f)(1) of this section, "Active Duty" means active duty as defined in section 101(d)(1) of title 10, United States Code, except that—

(i) Active duty includes active State duty for members of the National Guard under which a Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which a Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (f)(2)(i) of this section or full-time National Guard duty under paragraph (f)(2)(ii) of this section.

(3) If the borrower returns to enrolled student status on at least a half-time basis during the grace period or the 13-month deferment period, the deferment expires at the time the borrower returns to enrolled student status on at least a half-time basis.

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment, the 180-day post-demobilization deferment period and the 13-month post-active duty student deferment period apply concurrently.

(g) *In-school deferments for Direct PLUS Loan borrowers with loans first disbursed on or after July 1, 2008.* (1)(i) A student Direct PLUS Loan borrower is entitled to a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If the Secretary grants an in-school deferment to a student Direct PLUS Loan borrower based on §682.204(b)(1)(iii)(A)(2), (3), or (4), the deferment period for a Direct PLUS Loan first disbursed on or after July 1, 2008 includes the 6-month post-enrollment period described in paragraph (g)(1)(i) of this section.

(2) Upon the request of the borrower, an eligible parent Direct PLUS Loan borrower will receive a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008—

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(i) During the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) During the 6-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

(h) A borrower whose loan is in default is not eligible for a deferment, unless the borrower has made payment arrangements satisfactory to the Secretary.

(i)(1) To receive a deferment, except as provided under paragraph (b)(1)(i)(A) of this section, the borrower must request the deferment and provide the Secretary with all information and documents required to establish eligibility for the deferment. In the case of a deferment under paragraph (e)(1) of this section, a borrower's representative may request the deferment and provide the required information and documents on behalf of the borrower.

(2) After receiving a borrower's written or verbal request, the Secretary may grant a deferment under paragraphs (b)(1)(i)(B), (b)(1)(i)(C), (b)(2)(i), (b)(3)(i), (e)(1), and (f)(1) of this section if the Secretary confirms that the borrower has received a deferment on a Perkins or FFEL Loan for the same reason and the same time period.

(3) The Secretary relies in good faith on the information obtained under paragraph (i)(2) of this section when determining a borrower's eligibility for a deferment, unless the Secretary, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. The Secretary resolves any discrepant information before granting a deferment under paragraph (i)(2) of this section.

(4) If the Secretary grants a deferment under paragraph (i)(2) of this section, the Secretary notifies the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan.

(5) If the Secretary grants a military service deferment based on a request

from a borrower's representative, the Secretary notifies the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The Secretary may also notify the borrower's representative of the outcome of the deferment request.

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

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

[59 FR 61690, Dec. 1, 1994, as amended at 60 FR 33345, June 28, 1995; 61 FR 29900, June 12, 1996; 64 FR 58968, Nov. 1, 1999; 71 FR 45711, Aug. 9, 2006; 72 FR 62009, Nov. 1, 2007; 73 FR 63254, Oct. 23, 2008; 74 FR 56002, Oct. 29, 2009]

§ 685.205 Forbearance.

(a) *General.* “Forbearance” means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. The borrower has the option to choose the form of forbearance. Except as provided in paragraph (b)(9) of this section, if payments of interest are forborne, they are capitalized. The Secretary grants forbearance if the borrower or endorser intends to repay the loan but requests forbearance and provides sufficient documentation to support this request, and—

(1) The Secretary determines that, due to poor health or other acceptable reasons, the borrower or endorser is currently unable to make scheduled payments;

(2) The borrower's payments of principal are deferred under § 685.204 and the Secretary does not subsidize the interest benefits on behalf of the borrower;

(3) The borrower is in a medical or dental internship or residency that must be successfully completed before the borrower may begin professional practice or service, or the borrower is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(4) The borrower is serving in a national service position for which the borrower is receiving a national service

education award under title I of the National and Community Service Act of 1990; or

(5) The borrower—

(i) Is performing the type of service that would qualify the borrower for loan forgiveness under the requirements of the teacher loan forgiveness program in § 685.217; and

(ii) Is required, by the Secretary, before a forbearance is granted under § 685.205(a)(5)(i) to—

(A) Submit documentation for the period of the annual forbearance request showing the beginning and ending dates that the borrower is expected to perform, for that year, the type of service described in § 685.217(c); and

(B) Certify the borrower's intent to satisfy the requirements of § 685.217(c).

(6) For not more than three years during which the borrower or endorser—

(i) Is currently obligated to make payments on loans under title IV of the Act; and

(ii) The sum of these payments each month (or a proportional share if the payments are due less frequently than monthly) is equal to or greater than 20 percent of the borrower's or endorser's total monthly gross income.

(7) The borrower is a member of the National Guard who qualifies for a post-active duty student deferment, but does not qualify for a military service or other deferment, and is engaged in active State duty for a period of more than 30 consecutive days, beginning—

(i) On the day after the grace period expires for a Direct Subsidized Loan or Direct Unsubsidized Loan that has not entered repayment; or

(ii) On the day after the borrower ceases enrollment on at least a half-time basis, for a Direct Loan in repayment.

(b) *Administrative forbearance.* In certain circumstances, the Secretary grants forbearance without requiring documentation from the borrower. These circumstances include but are not limited to—

(1) A properly granted period of deferment for which the Secretary learns the borrower did not qualify;

(2) The period for which payments are overdue at the beginning of an authorized deferment period;

(3) The period beginning when the borrower entered repayment without the Secretary's knowledge until the first payment due date was established;

(4) The period prior to a borrower's filing of a bankruptcy petition;

(5) A period after the Secretary receives reliable information indicating that the borrower (or the student in the case of a Direct PLUS Loan obtained by a parent borrower) has died, or the borrower has become totally and permanently disabled, until the Secretary receives documentation of death or total and permanent disability;

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge—

(i) Under § 685.214;

(ii) Under § 685.215;

(iii) Under § 685.216;

(iv) Under § 685.217; or

(v) Due to the borrower's or endorser's (if applicable) bankruptcy;

(7) A period of up to three years in cases where the effect of a variable interest rate on a fixed-amount or graduated repayment schedule causes the extension of the maximum repayment term;

(8) A period during which the Secretary has authorized forbearance due to a national military mobilization or other local or national emergency;

(9) A period of up to 60 days necessary for the Secretary to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized; or

(10) For Direct PLUS Loans first disbursed before July 1, 2008, to align repayment with a borrower's Direct PLUS Loans that were first disbursed on or after July 1, 2008, or with Direct Subsidized Loans or Direct Unsubsidized Loans that have a grace period in accordance with § 685.207(b) or (c). The Secretary notifies the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

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(c) *Period of forbearance.* (1) The Secretary grants forbearance for a period of up to one year.

(2) The forbearance is renewable, upon request of the borrower, for the duration of the period in which the borrower meets the condition required for the forbearance.

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

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

[59 FR 61690, Dec. 1, 1994, as amended at 61 FR 29900, June 12, 1996; 64 FR 58968, Nov. 1, 1999; 65 FR 65629, Nov. 1, 2000; 66 FR 34765, June 29, 2001; 68 FR 75430, Dec. 31, 2003; 71 FR 45712, Aug. 9, 2006; 73 FR 63255, Oct. 23, 2008; 74 FR 56003, Oct. 29, 2010]

§ 685.206 Borrower responsibilities and defenses.

(a) The borrower shall give the school the following information as part of the origination process for a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan:

(1) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance.

(2) Information demonstrating that the borrower is eligible for the loan.

(3) Information concerning the outstanding FFEL Program and Direct Loan Program loans of the borrower and, for a parent borrower, of the student, including any Federal Consolidation Loan or Direct Consolidation Loan.

(4) A statement authorizing the school to release to the Secretary information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records).

(b)(1) The borrower shall promptly notify the Secretary of any change of name, address, student status to less than half-time, employer, or employer's address; and

(2) The borrower shall promptly notify the school of any change in address during enrollment.

(c) *Borrower defenses.* (1) In any proceeding to collect on a Direct Loan, the borrower may assert as a defense against repayment, any act or omission of the school attended by the stu-

dent that would give rise to a cause of action against the school under applicable State law. These proceedings include, but are not limited to, the following:

(i) Tax refund offset proceedings under 34 CFR 30.33.

(ii) Wage garnishment proceedings under section 488A of the Act.

(iii) Salary offset proceedings for Federal employees under 34 CFR part 31.

(iv) Credit bureau reporting proceedings under 31 U.S.C. 3711(f).

(2) If the borrower's defense against repayment is successful, the Secretary notifies the borrower that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay. The Secretary affords the borrower such further relief as the Secretary determines is appropriate under the circumstances. Further relief may include, but is not limited to, the following:

(i) Reimbursing the borrower for amounts paid toward the loan voluntarily or through enforced collection.

(ii) Determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act.

(iii) Updating reports to credit bureaus to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan.

(3) The Secretary may initiate an appropriate proceeding to require the school whose act or omission resulted in the borrower's successful defense against repayment of a Direct Loan to pay to the Secretary the amount of the loan to which the defense applies. However, the Secretary does not initiate such a proceeding after the period for the retention of records described in § 685.309(c) unless the school received actual notice of the claim during that period.

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

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

[59 FR 61690, Dec. 1, 1994, as amended at 60 FR 33345, June 28, 1995; 64 FR 58972, Nov. 1, 1999]

§ 685.207 Obligation to repay.*(a) Obligation of repayment in general.*

(1) A borrower is obligated to repay the full amount of a Direct Loan, including the principal balance, fees, any collection costs charged under § 685.202(e), and any interest not subsidized by the Secretary, unless the borrower is relieved of the obligation to repay as provided in this part.

(2) The borrower's repayment of a Direct Loan may also be subject to the deferment provisions in § 685.204, the forbearance provisions in § 685.205, and the discharge provisions in § 685.212.

(b) Direct Subsidized Loan repayment.

(1) During the period in which a borrower is enrolled at an eligible school on at least a half-time basis, the borrower is in an "in-school" period and is not required to make payments on a Direct Subsidized Loan unless—

(i) The loan entered repayment before the in-school period began; and

(ii) The borrower has not been granted a deferment under § 685.204.

(2)(i) When a borrower ceases to be enrolled at an eligible school on at least a half-time basis, a six-month grace period begins, unless the grace period has been previously exhausted.

(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the six-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (b)(2)(ii)(A) of this section is entitled to a full six-month grace period upon completion of the excluded period.

(iii) During a grace period, the borrower is not required to make any principal payments on a Direct Subsidized Loan.

(3) A borrower is not obligated to pay interest on a Direct Subsidized Loan for in-school or grace periods unless the borrower is required to make pay-

ments on the loan during those periods under paragraph (b)(1) of this section.

(4) The repayment period for a Direct Subsidized Loan begins the day after the grace period ends. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(c) Direct Unsubsidized Loan repayment. (1) During the period in which a borrower is enrolled at an eligible school on at least a half-time basis, the borrower is in an "in-school" period and is not required to make payments of principal on a Direct Unsubsidized Loan unless—

(i) The loan entered repayment before the in-school period began; and

(ii) The borrower has not been granted a deferment under § 685.204.

(2)(i) When a borrower ceases to be enrolled at an eligible school on at least a half-time basis, a six-month grace period begins, unless the grace period has been previously exhausted.

(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the six-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (c)(2)(ii)(A) of this section is entitled to a full six-month grace period upon completion of the excluded period.

(iii) During a grace period, the borrower is not required to make any principal payments on a Direct Unsubsidized Loan.

(3) A borrower is responsible for the interest that accrues on a Direct Unsubsidized Loan during in-school and grace periods. Interest begins to accrue on the day the first installment is disbursed. Interest that accrues may be capitalized or paid by the borrower.

(4) The repayment period for a Direct Unsubsidized Loan begins the day after

the grace period ends. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(d) *Direct PLUS Loan repayment.* The repayment period for a Direct PLUS Loan begins on the day the loan is fully disbursed. Interest begins to accrue on the day the first installment is disbursed. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(e) *Direct Consolidation Loan repayment.* (1) Except as provided in paragraphs (e)(2) and (e)(3) of this section, the repayment period for a Direct Consolidation Loan begins and interest begins to accrue on the day the loan is made. The borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(2) In the case of a borrower whose consolidation application was received before July 1, 2006, a borrower who obtains a Direct Subsidized Consolidation Loan during an in-school period will be subject to the repayment provisions in paragraph (b) of this section.

(3) In the case of a borrower whose consolidation application was received before July 1, 2006, a borrower who obtains a Direct Unsubsidized Consolidation Loan during an in-school period will be subject to the repayment provisions in paragraph (c) of this section.

(f) *Determining the date on which the grace period begins for a borrower in a correspondence program.* For a borrower of a Direct Subsidized or Direct Unsubsidized Loan who is a correspondence student, the grace period specified in paragraphs (b)(2) and (c)(2) of this section begins on the earliest of—

(1) The day after the borrower completes the program;

(2) The day after withdrawal as determined pursuant to 34 CFR 668.22; or

(3) 60 days following the last day for completing the program as established by the school.

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

[59 FR 61690, Dec. 1, 1994, as amended at 64 FR 58968, Nov. 1, 1999; 68 FR 75430, Dec. 31, 2003; 71 FR 45712, Aug. 9, 2006]

§ 685.208 Repayment plans.

(a) *General.* (1) Borrowers who entered repayment before July 1, 2006. (i) A borrower may repay a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or the income-based repayment plan, in accordance with paragraphs (b), (d), (f), (k), and (m) of this section, respectively.

(ii) A borrower may repay a Direct PLUS Loan or a Direct PLUS Consolidation Loan under the standard repayment plan, the extended repayment plan, or the graduated repayment plan, in accordance with paragraphs (b), (d), and (f) of this section, respectively.

(2) *Borrowers entering repayment on or after July 1, 2006.* (i) A borrower may repay a Direct Subsidized Loan or a Direct Unsubsidized Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or the income-based repayment plan, in accordance with paragraphs (b), (e), (g), (k), and (m) of this section, respectively.

(ii)(A) A Direct PLUS Loan that was made to a graduate or professional student borrower may be repaid under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income-contingent repayment plan, or the income-based repayment plan in accordance with paragraphs (b), (e), (g), (k), and (m) of this section, respectively.

(B) A Direct PLUS Loan that was made to a parent borrower may be repaid under the standard repayment plan, the extended repayment plan, or the graduated repayment plan, in accordance with paragraphs (b), (e), and (g) of this section, respectively.

(iii) A borrower may repay a Direct Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or, unless the Direct Consolidation Loan repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan, the income-based repayment plan, in

accordance with paragraphs (c), (e), (h), (k), and (m) of this section, respectively. A Direct Consolidation Loan that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan may not be repaid under the income-based repayment plan.

(iv) No scheduled payment may be less than the amount of interest accrued on the loan between monthly payments, except under the income contingent repayment plan, the income-based repayment plan, or an alternative repayment plan.

(3) The Secretary may provide an alternative repayment plan in accordance with paragraph (1) of this section.

(4) All Direct Loans obtained by one borrower must be repaid together under the same repayment plan, except that—

(i) A borrower of a Direct PLUS Loan or a Direct Consolidation Loan that is not eligible for repayment under the income-contingent repayment plan or the income-based repayment plan may repay the Direct PLUS Loan or Direct Consolidation Loan separately from other Direct Loans obtained by the borrower; and

(ii) A borrower of a Direct PLUS Consolidation Loan that entered repayment before July 1, 2006, may repay the Direct PLUS Consolidation Loan separately from other Direct Loans obtained by that borrower.

(5) Except as provided in § 685.209 and § 685.221 for the income contingent or income-based repayment plan, the repayment period for any of the repayment plans described in this section does not include periods of authorized deferment or forbearance.

(b) *Standard repayment plan for all Direct Subsidized Loan, Direct Unsubsidized Loan, and Direct PLUS Loan borrowers, regardless of when they entered repayment, and for Direct Consolidation Loan borrowers who entered repayment before July 1, 2006.* (1) Under this repayment plan, a borrower must repay a loan in full within ten years from the date the loan entered repayment by making fixed monthly payments.

(2) A borrower's payments under this repayment plan are at least \$50 per month, except that a borrower's final payment may be less than \$50.

(3) The number of payments or the fixed monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(c) *Standard repayment plan for Direct Consolidation Loan borrowers entering repayment on or after July 1, 2006.*

(1) Under this repayment plan, a borrower must repay a loan in full by making fixed monthly payments over a repayment period that varies with the total amount of the borrower's student loans, as described in paragraph (j) of this section.

(2) A borrower's payments under this repayment plan are at least \$50 per month, except that a borrower's final payment may be less than \$50.

(d) *Extended repayment plan for all Direct Loan borrowers who entered repayment before July 1, 2006.*

(1) Under this repayment plan, a borrower must repay a loan in full by making fixed monthly payments within an extended period of time that varies with the total amount of the borrower's loans, as described in paragraph (i) of this section.

(2) A borrower makes fixed monthly payments of at least \$50, except that a borrower's final payment may be less than \$50.

(3) The number of payments or the fixed monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(e) *Extended repayment plan for all Direct Loan borrowers entering repayment on or after July 1, 2006.*

(1) Under this repayment plan, a new borrower with more than \$30,000 in outstanding Direct Loans accumulated on or after October 7, 1998 must repay either a fixed annual or graduated repayment amount over a period not to exceed 25 years from the date the loan entered repayment. For this repayment plan, a new borrower is defined as an individual who has no outstanding principal or interest balance on a Direct Loan as of October 7, 1998, or on the date the borrower obtains a Direct Loan on or after October 7, 1998.

(2) A borrower's payments under this plan are at least \$50 per month, and will be more if necessary to repay the loan within the required time period.

(3) The number of payments or the monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(f) *Graduated repayment plan for all Direct Loan borrowers who entered repayment before July 1, 2006.*

(1) Under this repayment plan, a borrower must repay a loan in full by making payments at two or more levels within a period of time that varies with the total amount of the borrower's loans, as described in paragraph (i) of this section.

(2) The number of payments or the monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(3) No scheduled payment under this repayment plan may be less than the amount of interest accrued on the loan between monthly payments, less than 50 percent of the payment amount that would be required under the standard repayment plan described in paragraph (b) of this section, or more than 150 percent of the payment amount that would be required under the standard repayment plan described in paragraph (b) of this section.

(g) *Graduated repayment plan for Direct Subsidized Loan, Direct Unsubsidized Loan, and Direct PLUS Loan borrowers entering repayment on or after July 1, 2006.*

(1) Under this repayment plan, a borrower must repay a loan in full by making payments at two or more levels over a period of time not to exceed ten years from the date the loan entered repayment.

(2) The number of payments or the monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(3) A borrower's payments under this repayment plan may be less than \$50 per month. No single payment under this plan will be more than three times greater than any other payment.

(h) *Graduated repayment plan for Direct Consolidation Loan borrowers entering repayment on or after July 1, 2006.*

(1) Under this repayment plan, a borrower must repay a loan in full by making monthly payments that gradu-

ally increase in stages over the course of a repayment period that varies with the total amount of the borrower's student loans, as described in paragraph (j) of this section.

(2) A borrower's payments under this repayment plan may be less than \$50 per month. No single payment under this plan will be more than three times greater than any other payment.

(i) *Repayment period for the extended and graduated plans described in paragraphs (d) and (f) of this section, respectively.* Under these repayment plans, if the total amount of the borrower's Direct Loans is—

(1) Less than \$10,000, the borrower must repay the loans within 12 years of entering repayment;

(2) Greater than or equal to \$10,000 but less than \$20,000, the borrower must repay the loans within 15 years of entering repayment;

(3) Greater than or equal to \$20,000 but less than \$40,000, the borrower must repay the loans within 20 years of entering repayment;

(4) Greater than or equal to \$40,000 but less than \$60,000, the borrower must repay the loans within 25 years of entering repayment; and

(5) Greater than or equal to \$60,000, the borrower must repay the loans within 30 years of entering repayment.

(j) *Repayment period for the standard and graduated repayment plans described in paragraphs (c) and (h) of this section, respectively.* Under these repayment plans, if the total amount of the Direct Consolidation Loan and the borrower's other student loans, as defined in § 685.220(i), is—

(1) Less than \$7,500, the borrower must repay the Consolidation Loan within 10 years of entering repayment;

(2) Equal to or greater than \$7,500 but less than \$10,000, the borrower must repay the Consolidation Loan within 12 years of entering repayment;

(3) Equal to or greater than \$10,000 but less than \$20,000, the borrower must repay the Consolidation Loan within 15 years of entering repayment;

(4) Equal to or greater than \$20,000 but less than \$40,000, the borrower must repay the Consolidation Loan within 20 years of entering repayment;

(5) Equal to or greater than \$40,000 but less than \$60,000, the borrower must

repay the Consolidation Loan within 25 years of entering repayment; and

(6) Equal to or greater than \$60,000, the borrower must repay the Consolidation Loan within 30 years of entering repayment.

(k) *Income contingent repayment plan.*

(1) Under the income contingent repayment plan, a borrower's monthly repayment amount is generally based on the total amount of the borrower's Direct Loans, family size, and Adjusted Gross Income (AGI) reported by the borrower for the most recent year for which the Secretary has obtained income information. The borrower's AGI includes the income of the borrower's spouse. A borrower must make payments on a loan until the loan is repaid in full or until the loan has been in repayment through the end of the income contingent repayment period.

(2) The regulations in effect at the time a borrower enters repayment and selects the income contingent repayment plan or changes into the income contingent repayment plan from another plan govern the method for determining the borrower's monthly repayment amount for all of the borrower's Direct Loans, unless—

(i) The Secretary amends the regulations relating to a borrower's monthly repayment amount under the income contingent repayment plan; and

(ii) The borrower submits a written request that the amended regulations apply to the repayment of the borrower's Direct Loans.

(3) Provisions governing the income contingent repayment plan are in § 685.209.

(1) *Alternative repayment.* (1) The Secretary may provide an alternative repayment plan for a borrower who demonstrates to the Secretary's satisfaction that the terms and conditions of the repayment plans specified in paragraphs (b) through (h) of this section are not adequate to accommodate the borrower's exceptional circumstances.

(2) The Secretary may require a borrower to provide evidence of the borrower's exceptional circumstances before permitting the borrower to repay a loan under an alternative repayment plan.

(3) If the Secretary agrees to permit a borrower to repay a loan under an al-

ternative repayment plan, the Secretary notifies the borrower in writing of the terms of the plan. After the borrower receives notification of the terms of the plan, the borrower may accept the plan or choose another repayment plan.

(4) A borrower must repay a loan under an alternative repayment plan within 30 years of the date the loan entered repayment, not including periods of deferment and forbearance.

(5) If the amount of a borrower's monthly payment under an alternative repayment plan is less than the accrued interest on the loan, the unpaid interest is capitalized until the outstanding principal amount is 10 percent greater than the original principal amount. After the outstanding principal amount is 10 percent greater than the original principal amount, interest continues to accrue but is not capitalized. For purposes of this paragraph, the original principal amount is the amount owed by the borrower when the borrower enters repayment.

(m) *Income-based repayment plan.* (1) Under this repayment plan, the required monthly payment for a borrower who has a partial financial hardship is 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. The Secretary determines annually whether the borrower continues to qualify for this reduced monthly payment based on the amount of the borrower's eligible loans, AGI, and poverty guideline.

(2) The specific provisions governing the income-based repayment plan are in § 685.221.

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

[71 FR 45712, Aug. 9, 2006, as amended at 71 FR 64400, Nov. 1, 2006; 73 FR 63255, Oct. 23, 2008]

§ 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 section. If the borrower obtains another Direct Loan, the amount the borrower would repay is based on the combined amounts of the loans when the last loan enters repayment. If the borrower and the borrower's spouse repay the loans jointly, the amount the borrowers would repay is based on both borrowers' Direct Loan debts at the time they enter joint repayment.

(2) The annual amount payable under the income contingent repayment plan by a borrower is the lesser of—

(i) The amount the borrower would repay annually over 12 years using standard amortization multiplied by an income percentage factor that corresponds to the borrower's adjusted gross income (AGI) as shown in the income percentage factor table in a notice published annually by the Secretary in the FEDERAL REGISTER; or

(ii) 20 percent of discretionary income.

(3) For purposes of this section, discretionary income is defined as a borrower's AGI minus the amount of the "HHS Poverty Guidelines for all States (except Alaska and Hawaii) and the District of Columbia" as published by the United States Department of Health and Human Services on an annual basis.¹ For residents of Alaska and Hawaii, discretionary income is defined as a borrower's AGI minus the amounts in the "HHS Poverty Guidelines for Alaska" and the "HHS Poverty Guidelines for Hawaii" respectively. If a borrower provides documentation acceptable to the Secretary that the borrower has more than one person in the borrower's family, the Secretary applies the HHS Poverty Guidelines for the borrower's family size.

(4) For exact incomes not shown in the income percentage factor table in the annual notice published by the Sec-

retary, an income percentage factor is calculated, based upon the intervals between the incomes and income percentage factors shown on the table.

(5) Each year, the Secretary recalculates the borrower's annual payment amount based on changes in the borrower's AGI, the variable interest rate, the income percentage factors in the table in the annual notice published by the Secretary, and updated HHS Poverty Guidelines (if applicable).

(6) If a borrower's monthly payment is calculated to be greater than \$0 but less than or equal to \$5.00, the amount payable by the borrower shall be \$5.00.

(7) For purposes of the annual recalculation described in paragraph (a)(5) of this section, after periods in which a borrower makes payments that are less than interest accrued on the loan, the payment amount is recalculated based upon unpaid accrued interest and the highest outstanding principal loan amount (including amount capitalized) calculated for that borrower while paying under the income contingent repayment plan.

(8) For each calendar year after calendar year 1996, the Secretary publishes in the FEDERAL REGISTER a revised income percentage factor table reflecting changes based on inflation. This revised table is developed by changing each of the dollar amounts contained in the table by a percentage equal to the estimated percentage changes in the Consumer Price Index (as determined by the Secretary) between December 1995 and the December next preceding the beginning of such calendar year.

(9) Examples of the calculation of monthly repayment amounts and tables that show monthly repayment amounts for borrowers at various income and debt levels are included in the annual notice published by the Secretary.

(b) *Treatment of married borrowers.* (1) A married borrower who wishes to repay under the income contingent repayment plan and who has filed an income tax return separately from his or her spouse must provide his or her spouse's written consent to the disclosure of certain tax return information under paragraph (c)(5) of this section (unless the borrower is separated from

¹The HHS Poverty Guidelines are available from the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services (HHS), Room 438F, Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201

his or her spouse). The AGI for both spouses is used to calculate the monthly repayment amount.

(2) Married borrowers may repay their loans jointly. The outstanding balances on the loans of each borrower are added together to determine the borrowers' payback rate under (a)(1) of this section.

(3) The amount of the payment applied to each borrower's debt is the proportion of the payments that equals the same proportion as that borrower's debt to the total outstanding balance, except that the payment is credited toward outstanding interest on any loan before any payment is credited toward principal.

(c) *Other features of the income contingent repayment plan*—(1) *Alternative documentation of income.* If a borrower's AGI is not available or if, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income, the Secretary may use other documentation of income provided by the borrower to calculate the borrower's monthly repayment amount.

(2) *First and second year borrowers.* The Secretary requires alternative documentation of income from borrowers in their first and second years of repayment, when in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income.

(3) *Adjustments to repayment obligations.* The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment to the borrower's repayment obligations.

(4) *Repayment period.* (i) The maximum repayment period under the income contingent repayment plan is 25 years.

(ii) The repayment period includes—

(A) Periods in which the borrower makes payments under the income-contingent repayment plan on loans that are not in default;

(B) Periods in which the borrower makes reduced monthly payments under the income-based repayment plan or a recalculated reduced monthly payment after the borrower no longer has a partial financial hardship or

stops making income-based payments, as provided in § 685.221(d)(1)(i);

(C) Periods in which the borrower made monthly payments under the standard repayment plan after leaving the income-based repayment plan as provided in § 685.221(d)(2);

(D) Periods in which the borrower makes payments under the standard repayment plan described in § 685.208(b);

(E) For borrowers who entered repayment before October 1, 2007, and if the repayment period is not more than 12 years, periods in which the borrower makes monthly payments under the extended repayment plans described in § 685.208(d) and (e), or the standard repayment plan described in § 685.208(c);

(F) Periods after October 1, 2007, in which the borrower makes monthly payments under any other repayment plan that are not less than the amount required under the standard repayment plan described in § 685.208(b); or

(G) Periods of economic hardship deferment after October 1, 2007.

(5) *Limitation on capitalization of interest.* If the amount of a borrower's monthly payment is less than the accrued interest, the unpaid interest is capitalized until the outstanding principal amount is ten percent greater than the original principal amount. After the outstanding principal amount is ten percent greater than the original amount, interest continues to accrue but is not capitalized. For purposes of this paragraph, the original amount is the amount owed by the borrower when the borrower enters repayment.

(6) *Notification of terms and conditions.* When a borrower elects or is required by the Secretary to repay a loan under the income contingent repayment plan, the Secretary notifies the borrower of the terms and conditions of the plan, including—

(i) That the Internal Revenue Service will disclose certain tax return information to the Secretary or the Secretary's agents; and

(ii) That if the borrower believes that special circumstances warrant an adjustment to the borrower's repayment obligations, as described in

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§ 685.209(c)(3), the borrower may contact the Secretary and obtain the Secretary's determination as to whether an adjustment is appropriate.

(7) *Consent to disclosure of tax return information.* (i) A borrower shall provide written consent to the disclosure of certain tax return information by the Internal Revenue Service (IRS) to agents of the Secretary for purposes of calculating a monthly repayment amount and servicing and collecting a loan under the income contingent repayment plan. The borrower shall provide consent by signing a consent form, developed consistent with 26 CFR 301.6103(c)-1 and provided to the borrower by the Secretary, and shall return the signed form to the Secretary.

(ii) The borrower shall consent to disclosure of the borrower's taxpayer identity information as defined in 26 U.S.C. 6103(b)(6), tax filing status, and AGI.

(iii) The borrower shall provide consent for a period of five years from the date the borrower signs the consent form. The Secretary provides the borrower a new consent form before that period expires. The IRS does not disclose tax return information after the IRS has processed a borrower's withdrawal of consent.

(iv) The Secretary designates the standard repayment plan for a borrower who selects the income contingent repayment plan but—

(A) Fails to provide the required written consent;

(B) Fails to renew written consent upon the expiration of the five-year period for consent; or

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

(v) If a borrower defaults and the Secretary designates the income contingent repayment plan for the borrower but the borrower fails to provide the required written consent, the Secretary mails a notice to the borrower

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establishing a repayment schedule for the borrower.

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

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

[59 FR 66134, Dec. 22, 1994, as amended at 60 FR 33345, June 28, 1995; 60 FR 61823, Dec. 1, 1995; 61 FR 24447, May 15, 1996; 61 FR 31359, June 19, 1996; 64 FR 29183, May 28, 1999; 64 FR 58972, Nov. 1, 1999; 71 FR 45714, Aug. 9, 2006; 73 FR 63256, Oct. 23, 2008]

§ 685.210 Choice of repayment plan.

(a) *Initial selection of a repayment plan.* (1) Before a Direct Loan enters into repayment, the Secretary provides the borrower a description of the available repayment plans and requests the borrower to select one. A borrower may select a repayment plan before the loan enters repayment by notifying the Secretary of the borrower's selection in writing.

(2) If a borrower does not select a repayment plan, the Secretary designates the standard repayment plan described in § 685.208(b) for the borrower.

(b) *Changing repayment plans.* (1) A borrower may change repayment plans at any time after the loan has entered repayment by notifying the Secretary. However, a borrower who is repaying a defaulted loan under the income contingent repayment plan under § 685.211(d)(3)(ii) may not change to another repayment plan unless—

(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 months; and

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

(2)(i) A borrower may not change to a repayment plan that has a maximum repayment period of less than the number of years the loan has already been in repayment, except that a borrower may change to either the income contingent or income-based repayment plan at any time.

(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

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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

requirements in § 685.215, 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.

(f) *Unpaid refunds.* If a borrower meets the requirements in § 685.216, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the amount of the loan equal to the unpaid refund and any accrued interest and other charges associated with the unpaid refund. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the unpaid refund owed on any loan disbursed, in whole or in part, on or after January 1, 1986 that was included in the consolidation loan.

(g) *Payments received after eligibility for discharge—*(1) *For the discharge conditions in paragraphs (a), (c), (d), and (e) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender, or, for a discharge based on death, the borrower's estate, any payments received after the date that the eligibility requirements for discharge were met.

(2) *For the discharge condition in paragraph (b) of this section.* Upon making a final determination of eligibility for discharge based on total and permanent disability, the Secretary returns to the sender any payments received after the date the borrower became totally and permanently disabled, as certified under § 685.213(b).

(3) *For the discharge condition in paragraph (f) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender payments received in excess of the amount owed on the loan after applying the unpaid refund.

(h) *Teacher loan forgiveness program.* If a new borrower meets the requirements in § 685.217, the Secretary repays up to \$5,000, or up to \$17,500, of the borrower's Direct Subsidized Loans, Direct Unsub-

sidized Loans, and, in certain cases, Direct Consolidation Loans.

(i) *Public Service Loan Forgiveness Program.* If a borrower meets the requirements in § 685.219, the Secretary cancels the remaining principal and accrued interest of the borrower's eligible Direct Subsidized Loan, Direct Unsubsidized Loan, Direct PLUS Loan, and Direct Consolidation Loan.

(j) *September 11 survivors discharge.* If a borrower meets the requirements in § 685.218, the Secretary discharges the obligation of the borrower and any endorser to make any further payments—

(1) On an eligible Direct Loan if the borrower qualifies as the spouse of an eligible public servant;

(2) On the portion of a joint Direct Consolidation Loan incurred on behalf of an eligible victim, if the borrower qualifies as the spouse of an eligible victim;

(3) On a Direct PLUS Loan incurred on behalf of an eligible victim if the borrower qualifies as an eligible parent; and

(4) On the portion of a Direct Consolidation Loan that repaid a PLUS loan incurred on behalf of an eligible victim, if the borrower qualifies as an eligible parent.

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

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

[59 FR 61690, Dec. 1, 1994, as amended at 61 FR 29900, June 12, 1996; 62 FR 30412, June 3, 1997; 62 FR 63435, Nov. 28, 1997; 63 FR 34816, June 26, 1998; 64 FR 58969, Nov. 1, 1999; 65 FR 65629, 65694, Nov. 1, 2000; 66 FR 34765, June 29, 2001; 67 FR 67081, Nov. 1, 2002; 71 FR 45714, Aug. 9, 2006; 71 FR 78083, Dec. 28, 2006; 72 FR 62010, Nov. 1, 2007; 73 FR 63256, Oct. 23, 2008]

§ 685.213 Total and permanent disability discharge.

(a) *General.* (1) A borrower's Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in 34 CFR 682.200(b), and satisfies the eligibility requirements in this section.

(2) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the borrower's loan discharge application is processed in accordance with paragraph (b) of this section.

(3) For veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), the veteran's loan discharge application is processed in accordance with paragraph (c) of this section.

(b) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b)* —(1) *Borrower application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit a discharge application to the Secretary on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b). The borrower must submit the application to the Secretary within 90 days of the date the physician certifies the application. Upon receipt of the borrower's application, the Secretary notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge.

(2) *Determination of eligibility.* (i) If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the borrower is considered totally and permanently disabled as of the date the physician certifies the borrower's application.

(ii) Upon making a determination that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the Secretary discharges the borrower's obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date the physician certified the borrower's loan discharge applica-

tion. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(4)(i) of this section.

(iii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(iv) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(3) *Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge.* If a borrower received a title IV loan or TEACH Grant prior to the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(4) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(2)(ii) of this section if, within three years after the

date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If the borrower's obligation to repay the loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated; and

(B) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(4)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(5) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(4)(i) of this section, the borrower or, if applicable, the borrower's representative must—

(i) Promptly notify the Secretary of any changes in address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(4)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(c) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b).*(1) *Veteran's application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), a veteran must submit a discharge application to the Secretary on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The Secretary does not require the veteran to provide any additional documentation related to the veteran's disability. Upon receipt of the veteran's application, the Secretary notifies the veteran that no payments are due on the loan while the Secretary determines the veteran's eligibility for discharge.

(2) *Determination of eligibility.* (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the Secretary discharges the veteran's obligation to make any further payments on the loan and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(ii)(A) If the Secretary determines, based on a review of the documentation

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from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), the Secretary notifies the veteran that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(B) The Secretary notifies the veteran that he or she may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraph (b) of this section if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

[74 FR 56003, Oct. 29, 2009]

§ 685.214 Closed school discharge.

(a) *General.* (1) The Secretary discharges the borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if the borrower (or the student on whose behalf a parent borrowed) did not complete the program of study for which the loan was made because the school at which the borrower (or student) was enrolled closed, as described in paragraph (c) of this section.

(2) For purposes of this section—

(i) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary; and

(ii) "School" means a school's main campus or any location or branch of the main campus.

(b) *Relief pursuant to discharge.* (1) Discharge under this section relieves the borrower of any past or present obligation to repay the loan and any accrued charges or collection costs with respect to the loan.

(2) The discharge of a loan under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the loan.

(3) The Secretary does not regard a borrower who has defaulted on a loan discharged under this section as in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the Act.

(4) The Secretary reports the discharge of a loan under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* In order to qualify for discharge of a loan under this section, a borrower shall submit to the Secretary a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower shall—

(1) State that the borrower (or the student on whose behalf a parent borrowed)—

(i) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986 to attend a school;

(ii) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 90 days before the school closed (or longer in exceptional circumstances); and

(iii) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(2) State whether the borrower (or student) has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation; and

(3) State that the borrower (or student)—

(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(ii) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (d) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (e) of this section.

(d) *Cooperation by borrower in enforcement actions.* (1) In order to obtain a discharge under this section, a borrower shall cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower shall—

(i) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(ii) Produce any documents reasonably available to the borrower with respect to those representations; and

(iii) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(2) The Secretary denies the request for a discharge or revokes the discharge of a borrower who—

(i) Fails to provide the testimony, documents, or a sworn statement required under paragraph (d)(1) of this section; or

(ii) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(e) *Transfer to the Secretary of borrower's right of recovery against third parties.* (1) Upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a

public fund that represents funds received from a private party.

(2) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(3) Nothing in this section limits or forecloses the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged Direct Loan.

(f) *Discharge procedures.* (1) After confirming the date of a school's closure, the Secretary identifies any Direct Loan borrower (or student on whose behalf a parent borrowed) who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 90 days prior to the closure date.

(2) If the borrower's current address is known, the Secretary mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(3) If the borrower's current address is unknown, the Secretary attempts to locate the borrower and determines the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school, the school's licensing agency, the school's accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (f)(2) of this section.

(4) If a borrower fails to submit the written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary's mailing the discharge application, the Secretary resumes collection and

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grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(5) If the Secretary determines that a borrower who requests a discharge meets the qualifications for a discharge, the Secretary notifies the borrower in writing of that determination.

(6) If the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower in writing of that determination and the reasons for the determination.

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

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

[59 FR 61690, Dec. 1, 1994, as amended at 59 FR 66134, Dec. 22, 1994; 64 FR 58972, Nov. 1, 1999. Redesignated at 65 FR 65629, Nov. 1, 2000, as amended at 66 FR 34765, June 29, 2001]

§ 685.215 Discharge for false certification of student eligibility or unauthorized payment.

(a) *Basis for discharge*—(1) *False certification.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school—

(i) Certified the student's eligibility for a Direct Loan on the basis of ability to benefit from its training and the student did not meet the eligibility requirements described in 34 CFR part 668 and section 484(d) of the Act, as applicable;

(ii) Signed the borrower's name on the loan application or promissory note without the borrower's authorization; or

(iii) Certified the eligibility of a student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet the requirements for employment (in the student's State of residence when the loan was originated) in the occupation for

which the training program supported by the loan was intended.

(iv) Certified the individual's eligibility for a Direct Loan as a result of the crime of identity theft committed against the individual, as that crime is defined in § 682.402(e)(14).

(2) *Unauthorized payment.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan if the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, unless the proceeds of the loan were delivered to the student or applied to charges owed by the student to the school.

(b) *Relief pursuant to discharge.* (1) Discharge for false certification under paragraph (a)(1) of this section relieves the borrower of any past or present obligation to repay the loan and any accrued charges and collection costs with respect to the loan.

(2) Discharge for unauthorized payment under paragraph (a)(2) of this section relieves the borrower of the obligation to repay the amount of the payment discharged.

(3) The discharge under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the discharged loan or payment.

(4) The Secretary does not regard a borrower who has defaulted on a loan discharged under this section as in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the Act.

(5) The Secretary reports the discharge under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* In order to qualify for discharge under this section, the borrower shall submit to the Secretary a written request and a sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower shall meet the requirements in paragraphs (c) (1) through (6) of this section.

(1) *Ability to benefit.* In the case of a borrower requesting a discharge based on defective testing of the student's ability to benefit, the borrower shall state that the borrower (or the student on whose behalf a parent borrowed)—

(i) Received a disbursement of a loan, in whole or in part, on or after January 1, 1986 to attend a school; and

(ii) Received a Direct Loan at that school on the basis of an ability to benefit from the school's training and did not meet the eligibility requirements described in 34 CFR part 668 and section 484(d) of the Act, as applicable;

(2) *Unauthorized loan.* In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note without the borrower's authorization, the borrower shall—

(i) State that he or she did not sign the document in question or authorize the school to do so; and

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature.

(3) *Unauthorized payment.* In the case of a borrower requesting a discharge because the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, the borrower shall—

(i) State that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or authorize the school to do so;

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature;

(iii) State that the proceeds of the contested disbursement were not delivered to the student or applied to charges owed by the student to the school.

(4) *Identity theft.* In the case of an individual whose eligibility to borrow was falsely certified because he or she was a victim of the crime of identity theft and is requesting a discharge, the individual shall—

(i) Certify that the individual did not sign the promissory note, or that any other means of identification used to obtain the loan was used without the

authorization of the individual claiming relief;

(ii) Certify that the individual did not receive or benefit from the proceeds of the loan with knowledge that the loan had been made without the authorization of the individual;

(iii) Provide a copy of a local, State, or Federal court verdict or judgment that conclusively determines that the individual who is named as the borrower of the loan was the victim of a crime of identity theft; and

(iv) If the judicial determination of the crime does not expressly state that the loan was obtained as a result of the crime of identity theft, provide—

(A) Authentic specimens of the signature of the individual, as provided in paragraph (c)(2)(ii), or of other means of identification of the individual, as applicable, corresponding to the means of identification falsely used to obtain the loan; and

(B) A statement of facts that demonstrate, to the satisfaction of the Secretary, that eligibility for the loan in question was falsely certified as a result of the crime of identity theft committed against that individual.

(5) *Claim to third party.* The borrower shall state whether the borrower (or student) has made a claim with respect to the school's false certification or unauthorized payment with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation.

(6) *Cooperation with Secretary.* The borrower shall state that the borrower (or student)—

(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(ii) Agrees to cooperate with the Secretary in enforcement actions as described in §685.214(d) and to transfer any right to recovery against a third party to the Secretary as described in §685.214(e).

(7) *Discharge without an application.* The Secretary may discharge a loan

under this section without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge.

(d) *Discharge procedures.* (1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary mails the borrower a disclosure application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If the borrower fails to submit the written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary's mailing the disclosure application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If the borrower submits the written request and sworn statement described in paragraph (c) of the section, the Secretary determines whether to grant a request for discharge under this section by reviewing the request and sworn statement in light of information available from the Secretary's records and from other sources, including guaranty agencies, State authorities, and cognizant accrediting associations.

(4) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

(5) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the bor-

rower in writing of that determination and the reasons for the determination.

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

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

[59 FR 61690, Dec. 1, 1994, as amended at 59 FR 66134, Dec. 22, 1994; 61 FR 29900, June 12, 1996; 64 FR 58972, Nov. 1, 1999; 65 FR 65622, Nov. 1, 2000. Redesignated and amended at 65 FR 65629, Nov. 1, 2000; 66 FR 34765, June 29, 2001; 71 FR 45714, Aug. 9, 2006]

§ 685.216 Unpaid refund discharge.

(a)(1) *Unpaid refunds in closed school situations.* In the case of a school that has closed, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(2) *Unpaid refunds in open school situations.* (i) In the case of a school that is open, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section, if—

(A) The borrower (or the student on whose behalf a parent borrowed) is not attending the school that owes the refund;

(B) The borrower has been unable to resolve the unpaid refund with the school; and

(C) The Secretary is unable to resolve the unpaid refund with the school within 120 days from the date the borrower submits a complete application in accordance with paragraph (c)(1) of this section regarding the unpaid refund. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(ii) For the purpose of paragraph (a)(2)(i)(C) of this section, within 60 days of the date notified by the Secretary, the school must submit to the Secretary documentation demonstrating that the refund was made by the school or that the refund was not required to be made by the school.

(b) *Relief to borrower following discharge.* (1) If the borrower receives a discharge of a portion of a loan under this section, the borrower is reimbursed for any amounts paid in excess of the remaining balance of the loan (including accrued interest and other charges) owed by the borrower at the time of discharge.

(2) The Secretary reports the discharge of a portion of a loan under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.*

(1) Except as provided in paragraph (c)(2) of this section, to receive a discharge of a portion of a loan under this section, a borrower must submit a written application to the Secretary. The application requests the information required to calculate the amount of the discharge and requires the borrower to sign a statement swearing to the accuracy of the information in the application. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986 to attend a school;

(B) Did not attend, withdrew, or was terminated from the school within a timeframe that entitled the borrower to a refund; and

(C) Did not receive the benefit of a refund to which the borrower was entitled either from the school or from a third party, such as the holder of a performance bond or a tuition recovery program;

(ii) State whether the borrower (or student) has any other application for discharge pending for this loan; and

(iii) State that the borrower (or student)—

(A) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions as described in § 685.214(d) and to transfer

any right to recovery against a third party to the Secretary as described in § 685.214(e).

(2) The Secretary may discharge a portion of a loan under this section without an application if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge.

(d) *Determination of amount eligible for discharge.* (1) The Secretary determines the amount eligible for discharge based on information showing the refund amount or by applying the appropriate refund formula to information that the borrower provides or that is otherwise available to the Secretary. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (d)(1) of this section is not available, the Secretary uses the following formulas to determine the amount eligible for discharge:

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000 and who completes less than 60 percent of the loan period, the Secretary discharges the lesser of the institutional charges unearned or the loan amount. The Secretary determines the amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the institutional charges assessed the student for the loan period.

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October 7, 2000 and who completes less than 60 percent of the loan period, the Secretary discharges the loan amount unearned. The Secretary determines the loan amount unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the total amount of title IV grants

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and loans received by the student, or, if unknown, the loan amount.

(iii) In the case of a student who completes 60 percent or more of the loan period, the Secretary does not discharge any amount because a student who completes 60 percent or more of the loan period is not entitled to a refund.

(e) *Discharge procedures.* (1) Except as provided in paragraph (c)(2) of this section, if the Secretary learns that a school did not make a refund of loan proceeds owed under applicable law and regulations, the Secretary sends the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If a borrower who is sent a discharge application fails to submit the application within 60 days of the Secretary's sending the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If a borrower qualifies for a discharge, the Secretary notifies the borrower in writing. The Secretary resumes collection and grants forbearance of principal and interest on the portion of the loan not discharged for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(4) If a borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of the reasons for the determination. The Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may cap-

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italize any interest accrued and not paid during that period.

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

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

[64 FR 58969, Nov. 1, 1999. Redesignated and amended at 65 FR 65629, Nov. 1, 2000; 66 FR 34765, June 29, 2001]

§ 685.217 Teacher loan forgiveness program.

(a) *General.* (1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph (a) on the borrower's subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

(2)(i) The borrower must have been employed at an eligible elementary or secondary school that serves low-income families or by an educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years. The required five years of teaching may include any combination of qualifying teaching service at an eligible elementary or secondary school or an eligible educational service agency.

(ii) Teaching at an eligible elementary or secondary school may be counted toward the required five consecutive complete academic years only if at least one year of teaching was after the 1997-1998 academic year.

(iii) Teaching at an eligible educational service agency may be counted toward the required five consecutive complete academic years only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007-2008 academic year.

(3) All borrowers eligible for teacher loan forgiveness may receive loan forgiveness of up to a combined total of \$5,000 on the borrower's eligible FFEL and Direct Loan Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of \$17,500 on the borrower's eligible FFEL and Direct Loan Program loans if the borrower was employed for five consecutive years—

(i) At an eligible secondary school as a highly qualified mathematics or science teacher, or at an eligible educational service agency as a highly qualified teacher of mathematics or science to secondary school students; or

(ii) At an eligible elementary or secondary school or educational service agency as a highly qualified special education teacher.

(5) The loan for which the borrower is seeking forgiveness must have been made prior to the end of the borrower's fifth year of qualifying teaching service.

(b) *Definitions.* The following definitions apply to this section:

Academic year means one complete school year at the same school, or two complete and consecutive half years at different schools, or two complete and consecutive half years from different school years at either the same school or different schools. Half years exclude summer sessions and generally fall within a twelve-month period. For schools that have a year-round program of instruction, a minimum of nine months is considered an academic year.

Educational service agency means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

Elementary school means a public or nonprofit private school that provides elementary education as determined by State law or the Secretary if that school is not in a State.

Full-time means the standard used by a State in defining full-time employment as a teacher. For a borrower teaching in more than one school, the

determination of full-time is based on the combination of all qualifying employment.

Highly qualified means highly qualified as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

Secondary school means a public or nonprofit private school that provides secondary education as determined by State law or the Secretary if the school is not in a State.

Teacher means a person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including Special Education teachers.

(c) *Borrower eligibility.* (1) A borrower who has been employed at an elementary or secondary school or an educational service agency as a full-time teacher for five consecutive complete academic years may obtain loan forgiveness under this program if the elementary or secondary school or educational service agency—

(i) Is in a school district that qualifies for funds under title I of the Elementary and Secondary Education Act of 1965, as amended;

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's or educational service agency's total enrollment is made up of children who qualify for services provided under title I; and

(iii) Is listed in the *Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits*. If this directory is not available before May 1 of any year, the previous year's directory may be used. The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Education (BIE) or operated on Indian reservations by Indian tribal groups under contract with the BIE to qualify as schools serving low-income students.

(2) If the school or educational service agency at which the borrower is employed meets the requirements specified in paragraph (c)(1) of this section for at least one year of the borrower's five consecutive complete academic years of teaching and fails to meet those requirements in subsequent

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years, those subsequent years of teaching qualify for purposes of this section for that borrower.

(3) In the case of a borrower whose five consecutive complete years of qualifying teaching service began before October 30, 2004, the borrower—

(i) May receive up to \$5,000 of loan forgiveness if the borrower—

(A) Demonstrated knowledge and teaching skills in reading, writing, mathematics, and other areas of the elementary school curriculum, as certified by the chief administrative officer of the eligible elementary school or educational service agency where the borrower was employed; or

(B) Taught in a subject area that is relevant to the borrower's academic major as certified by the chief administrative officer of the eligible secondary school or educational service agency where the borrower was employed.

(ii) May receive up to \$17,500 of loan forgiveness if the borrower—

(A) Taught mathematics or science on a full-time basis at an eligible secondary school, or taught mathematics or science to secondary school students on a full-time basis at an eligible educational service agency, and was a highly qualified mathematics or science teacher; or

(B) Taught as a special education teacher on a full-time basis to children with disabilities at an eligible elementary or secondary school or educational service agency and was a highly qualified special education teacher whose special education training corresponded to the children's disabilities and who has demonstrated knowledge and teaching skills in the content areas of the elementary or secondary school curriculum.

(iii) Teaching service performed at an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007-2008 academic year.

(4) In the case of a borrower whose five consecutive years of qualifying teaching service began on or after October 30, 2004, the borrower—

(i) May receive up to \$5,000 of loan forgiveness if the borrower taught full

time at an eligible elementary or secondary school or educational service agency and was a highly qualified elementary or secondary school teacher.

(ii) May receive up to \$17,500 of loan forgiveness if the borrower—

(A) Taught mathematics or science on a full-time basis at an eligible secondary school, or taught mathematics or science on a full-time basis to secondary school students at an eligible educational service agency, and was a highly qualified mathematics or science teacher; or

(B) Taught as a special education teacher on a full-time basis to children with disabilities at an eligible elementary or secondary school or educational service agency and was a highly qualified special education teacher whose special education training corresponded to the children's disabilities and who has demonstrated knowledge and teaching skills in the content areas of the elementary or secondary school curriculum.

(iii) Teaching service performed at an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007-2008 academic year.

(5) To qualify for loan forgiveness as a highly qualified teacher, the teacher must have been a highly qualified teacher for all five years of eligible teaching service.

(6) For teacher loan forgiveness applications received by the Secretary on or after July 1, 2006, a teacher in a private, non-profit elementary or secondary school who is exempt from State certification requirements unless otherwise applicable under State law may qualify for loan forgiveness under paragraphs (c)(3)(ii) or (c)(4) of this section if—

(i) The private school teacher is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in applicable grade levels and subject areas;

(ii) The competency tests are recognized by 5 or more States for the purposes of fulfilling the highly qualified teacher requirements under section

9101 of the Elementary and Secondary Education Act of 1965; and

(iii) The private school teacher achieves a score on each test that equals or exceeds the average passing score for those 5 states.

(7) The academic year may be counted as one of the borrower's five consecutive complete academic years if the borrower completes at least one-half of the academic year and the borrower's employer considers the borrower to have fulfilled his or her contract requirements for the academic year for the purposes of salary increases, tenure, and retirement if the borrower is unable to complete an academic year due to—

(i) A return to postsecondary education, on at least a half-time basis, that is directly related to the performance of the service described in this section;

(ii) A condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601, *et seq.*); or

(iii) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code.

(8) If a borrower meets the requirements of paragraph (c)(7) of this section, the borrower's period of postsecondary education, active duty, or qualifying FMLA condition including the time necessary for the borrower to resume qualifying teaching no later than the beginning of the next regularly scheduled academic year, does not constitute a break in the required five consecutive years of qualifying teaching service.

(9) A borrower who was employed as a teacher at more than one qualifying school, at more than one qualifying educational service agency, or at a combination of both during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

(10) A borrower is not eligible for teacher loan forgiveness on a defaulted

loan unless the borrower has made satisfactory repayment arrangements to re-establish title IV eligibility, as defined in § 685.200(b).

(11) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under—

(i) Subtitle D of title I of the National and Community Service Act of 1990;

(ii) 34 CFR 685.219; or

(iii) Section 428 K of the Act.

(d) *Forgiveness amount.* (1) A qualified borrower is eligible for forgiveness of up to \$5,000, or up to \$17,500 if the borrower meets the requirements of paragraphs (c)(3)(ii) or (c)(4)(ii) of this section. The forgiveness amount is deducted from the aggregate amount of the borrower's Direct Subsidized Loan or Direct Unsubsidized Loan or Direct Consolidation Loan obligation that is outstanding after the borrower completes his or her fifth consecutive complete academic year of teaching as described in paragraph (c) of this section. Only the outstanding portion of the Direct Consolidation Loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan, an eligible Direct Subsidized Loan, or an eligible Direct Unsubsidized Loan qualifies for loan forgiveness under this section.

(2) A borrower may not receive more than a total of \$5,000, or \$17,500 if the borrower meets the requirements of paragraphs (c)(3)(ii) or (c)(4)(ii) of this section, in loan forgiveness for outstanding principal and accrued interest under both this section and under section 34 CFR 682.216.

(3) The Secretary does not refund payments that were received from or on behalf of a borrower who qualifies for loan forgiveness under this section.

(e) *Application.* (1) A borrower, after completing the qualifying teacher service, must request loan forgiveness from the Secretary 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

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(ii) Unless otherwise instructed by the borrower, applies the proceeds of the loan forgiveness first to any outstanding Direct Unsubsidized Loan balances, next to any outstanding Direct Subsidized Loan balances, next to any qualifying Direct Unsubsidized Consolidation Loan balances, and last to any qualifying outstanding Direct Subsidized Consolidation Loan balances.

(3) If the Secretary determines that the borrower does not meet the eligibility requirements for loan forgiveness under this section, the Secretary notifies the borrower of this determination.

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

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

[65 FR 65629, Nov. 1, 2000, as amended at 71 FR 45715, Aug. 9, 2006; 71 FR 64400, Nov. 1, 2006; 73 FR 35495, June 23, 2008; 74 FR 56004, Oct. 29, 2009]

§ 685.218 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

(a) *Definition of terms.* As used in this section—

(1) *Eligible public servant* means an individual who—

(i) Served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces; and

(ii)(A) Died due to injuries suffered in the terrorist attacks on September 11, 2001; or

(B) Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) *Eligible victim* means an individual who died due to injuries suffered in the terrorist attacks on September 11, 2001 or became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) *Eligible parent* means the parent of an eligible victim if—

(i) The parent owes a Direct PLUS Loan incurred on behalf of an eligible victim; or

(ii) The parent owes a Direct Consolidation Loan that was used to repay a Direct PLUS Loan or a FFEL PLUS Loan incurred on behalf of an eligible victim.

(4) *Died due to injuries suffered in the terrorist attacks on September 11, 2001*

means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual died as a direct result of these crashes.

(5) *Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001 and the individual became permanently and totally disabled as a direct result of these crashes.

(i) An individual is considered permanently and totally disabled if—

(A) The disability is the result of a physical injury to the individual that was treated by a medical professional within 72 hours of the injury having been sustained or within 72 hours of the rescue;

(B) The physical injury that caused the disability is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care; and

(C) The individual is unable to work and earn money due to the disability and the disability is expected to continue indefinitely or result in death.

(ii) If the injuries suffered due to the terrorist-related aircraft crashes did not make the individual permanently and totally disabled at the time of or in the immediate aftermath of the attacks, the individual may be considered to be permanently and totally disabled for purposes of this section if the individual's medical condition has deteriorated to the extent that the individual is permanently and totally disabled.

(6) *Immediate aftermath* means, except in the case of an eligible public servant, the period of time from the aircraft crashes until 12 hours after the crashes. With respect to eligible public

servants, the immediate aftermath includes the period of time from the aircraft crashes until 96 hours after the crashes.

(7) *Present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site* means physically present at the time of the terrorist-related aircraft crashes or in the immediate aftermath—

(i) In the buildings or portions of the buildings that were destroyed as a result of the terrorist-related aircraft crashes;

(ii) In any area contiguous to the crash site that was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses. Generally, this includes the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured persons; or

(iii) On board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

(b) *September 11 survivors discharge.* (1) The Secretary discharges the obligation of a borrower and any endorser to make any further payments on an eligible Direct Loan if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible public servant, unless the eligible public servant has died. If the eligible public servant has died, the borrower must have been the spouse of the eligible public servant at the time of the terrorist attacks on September 11, 2001 and until the date the eligible public servant died.

(2) The Secretary discharges the obligation of a borrower and any endorser to make any further payments towards the portion of a joint Direct Consolidation Loan incurred on behalf of an eligible victim if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible victim, unless the eligible victim has died. If the eligible victim has died, the borrower must have been the spouse of the eligible victim at the time of the terrorist attacks on September 11, 2001 and until the date the eligible victim died.

(3) If the borrower is an eligible parent—

(i) The Secretary discharges the obligation of a borrower and any endorser to make any further payments on a Direct PLUS Loan incurred on behalf of an eligible victim.

(ii) The Secretary discharges the obligation of the borrower and any endorser to make any further payments towards the portion of a Direct Consolidation Loan that repaid a PLUS Loan incurred on behalf of an eligible victim.

(4) The parent of an eligible public servant may qualify for a discharge of a Direct PLUS loan incurred on behalf of the eligible public servant, or the portion of a Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan incurred on behalf of the eligible public servant, under the procedures, eligibility criteria, and documentation requirements described in this section for an eligible parent applying for a discharge of a loan incurred on behalf of an eligible victim.

(c) *Applying for discharge.* (1) In accordance with the procedures in paragraphs (c)(2) through (c)(4) of this section, the Secretary discharges—

(i) A Direct Loan owed by the spouse of an eligible public servant;

(ii) A Direct PLUS Loan incurred on behalf of an eligible victim;

(iii) The portion of a Direct Consolidation Loan that repaid a PLUS loan incurred on behalf of an eligible victim; and

(iv) The portion of a joint Direct Consolidation Loan incurred on behalf of an eligible victim.

(2) After being notified by the borrower that the borrower claims to qualify for a discharge under this section, the Secretary suspends collection activity on the borrower's eligible Direct Loans and requests that the borrower submit a request for discharge on a form approved by the Secretary.

(3) If the Secretary determines that the borrower does not qualify for a discharge under this section, or the Secretary does not receive the completed discharge request form from the borrower within 60 days of the borrower notifying the Secretary that the borrower claims to qualify for a discharge, the Secretary resumes collection and

grants forbearance of payment of both principal and interest for the period in which collection activity was suspended. The Secretary notifies the borrower that the application for the discharge has been denied, provides the basis for the denial, and informs the borrower that the Secretary will resume collection on the loan. The Secretary may capitalize any interest accrued and not paid during this period.

(4) If the Secretary determines that the borrower qualifies for a discharge under this section, the Secretary notifies the borrower that the loan has been discharged or, in the case of a partial discharge of a Direct Consolidation Loan, partially discharged. Except in the case of a partial discharge of a Direct Consolidation Loan, the Secretary returns to the sender any payments received by the Secretary after the date the loan was discharged.

(5) The Secretary discharges a Direct Loan owed by an eligible victim or an eligible public servant under the procedures in § 685.212 for a discharge based on death or under the procedures in § 685.213 for a discharge based on a total and permanent disability.

(d) *Documentation that an eligible public servant or eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes; and

(ii) The inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(2) If the individual is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The certification described in paragraph (d)(1)(i) of this section;

(ii) An original or certified copy of the individual's death certificate; and

(iii) A certification from a physician or a medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) If the individual owed a FFEL Program Loan, a Direct Loan, or a Perkins Loan at the time of the terrorist attacks on September 11, 2001, documentation that the individual's loans were discharged by the lender, the Secretary, or the institution due to death may be substituted for the original or certified copy of a death certificate.

(4) Documentation that an eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001 is the inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(5) If the eligible victim is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The documentation described in paragraphs (d)(2)(ii) or (d)(3), and (d)(2)(iii) of this section; and

(ii) A certification signed by the borrower that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(6) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a FFEL Program loan or another Direct Loan because the eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(1) through (d)(3) of this section.

(7) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a FFEL Program Loan or another Direct Loan because the eligible victim died due to

injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(4) and (d)(5) of this section.

(8) The Secretary may discharge the loan based on other reliable documentation that establishes, to the Secretary's satisfaction, that the eligible public servant or the eligible victim died due to injuries suffered in the September 11, 2001 attacks. The Secretary discharges a loan based on documentation other than the documentation specified in paragraphs (d)(1) through (d)(5) of this section only under exceptional circumstances and on a case-by-case basis.

(e) *Documentation that an eligible public servant or eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces or was employed as a police officer, firefighter or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes;

(ii) Copies of contemporaneous medical records created by or at the direction of a medical professional who provided medical care to the individual within 24 hours of the injury having been sustained or within 24 hours of the rescue; and

(iii) A certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a state, that the individual became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) Documentation that an eligible victim became permanently and totally disabled due to injuries suffered

in the terrorist attacks on September 11, 2001 must include—

(i) The documentation described in paragraphs (e)(1)(ii) and (e)(1)(iii) of this section; and

(ii) A certification signed by the borrower that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(3) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a FFEL Program loan, or another Direct Loan because the eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(1) of this section.

(4) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a FFEL Program Loan, or another Direct Loan because the eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(2) of this section.

(f) *Additional information.* (1) The Secretary may require the borrower to submit additional information that the Secretary deems necessary to determine the borrower's eligibility for a discharge under this section.

(2) To establish that the eligible public servant or eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site, such additional information may include but is not limited to—

(i) Records of employment;

(ii) Contemporaneous records of a federal, state, city, or local government agency;

(iii) An affidavit or declaration of the eligible public servant's or eligible victim's employer; or

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(iv) A sworn statement (or an unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the eligible public servant or eligible victim at the site.

(3) To establish that the disability of the eligible public servant or eligible victim is due to injuries suffered in the terrorist attacks on September 11, 2001, such additional information may include but is not limited to—

(i) Contemporaneous medical records of hospitals, clinics, physicians, or other licensed medical personnel;

(ii) Registries maintained by federal, state, or local governments; or

(iii) Records of all continuing medical treatment.

(4) To establish the borrower's relationship to the eligible public servant or eligible victim, such additional information may include but is not limited to—

(i) Copies of relevant legal records including court orders, letters of testamentary or similar documentation;

(ii) Copies of wills, trusts, or other testamentary documents; or

(iii) Copies of approved joint FFEL or Direct Loan Consolidation Loan applications or an approved Direct PLUS Loan application.

(g) *Limitations on discharge.* (1) Only outstanding Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans and Direct Consolidation Loans for which amounts were owed on September 11, 2001, or outstanding Direct Consolidation Loans incurred to pay off loan amounts that were owed on September 11, 2001, are eligible for discharge under this section.

(2)(i) Eligibility for a discharge under this section does not qualify a borrower for a refund of any payments made on the borrower's Direct Loans prior to the date the loan was discharged.

(ii) A borrower may apply for a partial discharge of a joint Direct Consolidation loan due to death or total and permanent disability under the procedures in § 685.212(a) or § 685.213. If the borrower is granted a partial discharge under the procedures in § 685.212(a) or § 685.213 the borrower may qualify for a refund of payments in accordance with § 685.212(g)(1) or § 685.212(g)(2).

(iii) A borrower may apply for a discharge of a Direct PLUS loan due to the death of the student for whom the borrower received the PLUS loan under the procedures in § 685.212(a). If a borrower is granted a discharge under the procedures in § 685.212(a), the borrower may qualify for a refund of payments in accordance with § 685.212(g)(1).

(3) A determination that an eligible public servant or an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 for purposes of this section does not qualify the eligible public servant or the eligible victim for a discharge based on a total and permanent disability under § 685.213.

(4) The spouse of an eligible public servant or eligible victim may not receive a discharge under this section if the eligible public servant or eligible victim has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001. An eligible parent may not receive a discharge on a Direct PLUS Loan or on a Direct Consolidation Loan that was used to repay a Direct Loan or FFEL Program PLUS Loan incurred on behalf of an individual who has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001.

[71 FR 78083, Dec. 28, 2006, as amended at 72 FR 55054, Sept. 28, 2007]

§ 685.219 Public Service Loan Forgiveness Program.

(a) *General.* The Public Service Loan Forgiveness Program is intended to encourage individuals to enter and continue in full-time public service employment by forgiving the remaining balance of their Direct loans after they satisfy the public service and loan payment requirements of this section.

(b) *Definitions.* The following definitions apply to this section:

AmeriCorps position means a position approved by the Corporation for National and Community Service under section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573).

Eligible Direct loan means a Direct Subsidized Loan, Direct Unsubsidized

Loan, Direct PLUS loan, or a Direct Consolidation loan.

Employee or employed means an individual who is hired and paid by a public service organization.

Full-time (1) means working in qualifying employment in one or more jobs for the greater of—

(i)(A) An annual average of at least 30 hours per week, or

(B) For a contractual or employment period of at least 8 months, an average of 30 hours per week; or

(ii) Unless the qualifying employment is with two or more employers, the number of hours the employer considers full-time.

(2) Vacation or leave time provided by the employer or leave taken for a condition that is a qualifying reason for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2612(a)(1) and (3) is not considered in determining the average hours worked on an annual or contract basis.

Government employee means an individual who is employed by a local, State, Federal, or Tribal government, but does not include a member of the U.S. Congress.

Law enforcement means service performed by an employee of a public service organization that is publicly funded and whose principal activities pertain to crime prevention, control or reduction of crime, or the enforcement of criminal law.

Military service, for uniformed members of the U.S. Armed Forces or the National Guard, means “active duty” service or “full-time National Guard duty” as defined in section 101(d)(1) and (d)(5) of title 10 in the United States Code, but does not include active duty for training or attendance at a service school. For civilians, “Military service” means service on behalf of the U.S. Armed Forces or the National Guard performed by an employee of a public service organization.

Peace Corps position means a full-time assignment under the Peace Corps Act as provided for under 22 U.S.C. 2504.

Public interest law refers to legal services provided by a public service organization that are funded in whole or in part by a local, State, Federal, or Tribal government.

Public service organization means:

(1) A Federal, State, local, or Tribal government organization, agency, or entity;

(2) A public child or family service agency;

(3) A non-profit organization under section 501(c)(3) of the Internal Revenue Code that is exempt from taxation under section 501(a) of the Internal Revenue Code;

(4) A Tribal college or university; or

(5) A private organization that—

(i) Provides the following public services: Emergency management, military service, public safety, law enforcement, public interest law services, early childhood education (including licensed or regulated child care, Head Start, and State funded pre-kindergarten), public service for individuals with disabilities and the elderly, public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics), public education, public library services, school library or other school-based services; and

(ii) Is not a business organized for profit, a labor union, a partisan political organization, or an organization engaged in religious activities, unless the qualifying activities are unrelated to religious instruction, worship services, or any form of proselytizing.

(c) *Borrower eligibility.* (1) A borrower may obtain loan forgiveness under this program if he or she—

(i) Is not in default on the loan for which forgiveness is requested;

(ii) Is employed full-time by a public service organization or serving in a full-time AmeriCorps or Peace Corps position—

(A) When the borrower makes the 120 monthly payments described under paragraph (c)(1)(iii) of this section;

(B) At the time of application for loan forgiveness; and

(C) At the time the remaining principal and accrued interest are forgiven;

(iii) Makes 120 separate monthly payments after October 1, 2007, on eligible Direct loans for which forgiveness is sought. Except as provided in paragraph (c)(2) of this section for a borrower in an AmeriCorps or Peace Corps

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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.

(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

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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;

(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]

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;

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(5) Provide timely and accurate information to the Secretary for the servicing and collecting of loans—

(i) Concerning the status of student borrowers (and students on whose behalf parents borrow) while these students are in attendance at the school;

(ii) Upon request by the Secretary, concerning any new information of which the school becomes aware for these students (or their parents) after the student leaves the school; and

(iii) Concerning student eligibility and need, for the alternative origination of loans to eligible students and parents in accordance with part D of the Act;

(6) Provide assurances that the school will comply with requirements established by the Secretary relating to student loan information with respect to loans made under the Direct Loan Program;

(7) Provide that the school will accept responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

(8) Provide that eligible students at the school and their parents may participate in the programs under part B of the Act at the discretion of the Secretary for the period during which the school participates in the Direct Loan Program under part D of the Act, except that—

(i) A student may not receive a Direct Subsidized Loan and/or a Direct Unsubsidized Loan under part D of the Act and a subsidized and/or unsubsidized Federal Stafford Loan under part B of the Act for the same period of enrollment;

(ii) A graduate or professional student or a parent borrowing for the same dependent student may not receive a Direct PLUS Loan under part D of the Act and a Federal PLUS Loan under part B of the Act for the same period of enrollment;

(9) Provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with the school, to ensure that the school is complying with program requirements and meeting program objectives;

(10) Provide that the school will not charge any fees of any kind, however

described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under part D of the Act or any benefits associated with such a loan; and

(11) Comply with other provisions that the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of part D of the Act.

(c) *Origination.* (1) If a school or consortium originates loans in the Direct Loan Program, it shall enter into a supplemental agreement that—

(i) Provides that the school or consortium will originate loans to eligible students and parents in accordance with part D of the Act; and

(ii) Provides that the note or evidence of obligation on the loan is the property of the Secretary.

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

(Authority: 20 U.S.C. 1087a *et seq.*, 1094)

[59 FR 61690, Dec. 1, 1994, as amended at 64 FR 58970, Nov. 1, 1999; 71 FR 64400, Nov. 1, 2006]

§ 685.301 Origination of a loan by a Direct Loan Program school.

(a) *Determining eligibility and loan amount.* (1) A school participating in the Direct Loan Program shall ensure that any information it provides to the Secretary in connection with loan origination is complete and accurate. A school shall originate a Direct Loan while the student meets the borrower eligibility requirements of § 685.200. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made by the borrower and, in the case of a parent PLUS loan borrower, the student and the parent borrower.

(2) A school shall provide to the Secretary borrower information that includes but is not limited to—

(i) The borrower's eligibility for a loan, as determined in accordance with § 685.200 and § 685.203;

(ii) The student's loan amount; and

(iii) The anticipated and actual disbursement date or dates and disbursement amounts of the loan proceeds.

(3) Before originating a Direct PLUS Loan for a graduate or professional student borrower, the school must determine the borrower's eligibility for a Direct Subsidized and a Direct Unsubsidized Loan. If the borrower is eligible for a Direct Subsidized or Direct Unsubsidized Loan, but has not requested the maximum Direct Subsidized or Direct Unsubsidized Loan amount for which the borrower is eligible, the school must—

(i) Notify the graduate or professional student borrower of the maximum Direct Subsidized or Direct Unsubsidized Loan amount that he or she is eligible to receive and provide the borrower with a comparison of—

(A) The maximum interest rate for a Direct Subsidized Loan and a Direct Unsubsidized Loan and the maximum interest rate for a Direct PLUS Loan;

(B) Periods when interest accrues on a Direct Subsidized Loan and a Direct Unsubsidized Loan, and periods when interest accrues on a Direct PLUS Loan; and

(C) The point at which a Direct Subsidized Loan and a Direct Unsubsidized Loan enters repayment, and the point at which a Direct PLUS Loan enters repayment; and

(ii) Give the graduate or professional student borrower the opportunity to request the maximum Direct Subsidized or Direct Unsubsidized Loan amount for which the borrower is eligible.

(4) A school may not originate a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan, or a combination of loans, for an amount that—

(i) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in § 685.203; or

(ii) Exceeds the student's estimated cost of attendance less—

(A) The student's estimated financial assistance for that period; and

(B) In the case of a Direct Subsidized Loan, the borrower's expected family contribution for that period.

(5)(i) A school determines a Direct Subsidized or Direct Unsubsidized Loan amount in accordance with § 685.203.

(ii) When prorating a loan amount for a student enrolled in a program of study with less than a full academic

year remaining, the school need not recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school originates the loan.

(6) The date of loan origination is the date a school creates the electronic loan origination record.

(7) If a student has received a determination of need for a Direct Subsidized Loan that is \$200 or less, a school may choose not to originate a Direct Subsidized Loan for that student and to include the amount as part of a Direct Unsubsidized Loan.

(8) A school may refuse to originate a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the borrower in writing, and if—

(i) The determination is made on a case-by-case basis;

(ii) The documentation supporting the determination is retained in the student's file; and

(iii) The school does not engage in any pattern or practice that results in a denial of a borrower's access to Direct Loans because of the borrower's race, gender, color, religion, national origin, age, disability status, or income.

(9) A school may not assess a fee for the completion or certification of any Direct Loan Program forms or information or for the origination of a Direct Loan.

(10)(i) The minimum period of enrollment for which a school may originate a Direct Loan is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, a single academic term (e.g., a semester or quarter); or

(B) At a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system, the lesser of—

(1) The length of the student's program at the school; or

(2) The academic year as defined by the school in accordance with 34 CFR 668.3.

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(ii) The maximum period for which a school may originate a Direct Loan is—

(A) Generally an academic year, as defined by the school in accordance with 34 CFR 668.3, except that the school may use a longer period of time corresponding to the period to which the school applies the annual loan limits under § 685.203; or

(B) For a defaulted borrower who has regained eligibility, the academic year in which the borrower regained eligibility.

(b) *Determining disbursement dates and amounts.* (1) Before disbursing a loan, a school that originates loans shall determine that all information required by the loan application and promissory note has been provided by the borrower and, if applicable, the student.

(2) An institution must disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraphs (b)(4) or (b)(8) of this section applies—

(i) If a loan period is more than one payment period, the school must disburse loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school must make at least two disbursements during that payment period.

(A) For a loan originated under § 685.301(a)(9)(i)(A), the school may not make the second disbursement until the calendar midpoint between the first and last scheduled days of class of the loan period; or

(B) For a loan originated under § 685.301(a)(9)(i)(B), the school may not make the second disbursement until the student successfully completes half of the number of credit hours or clock hours and half of the number of weeks of instructional time in the payment period.

(4)(i) If one or more payment periods have elapsed before a school makes a disbursement, the school may include in the disbursement loan proceeds for completed payment periods; or

(ii) If the loan period is equal to one payment period and more than one-half of it has elapsed, the school may include in the disbursement loan proceeds for the entire payment period.

(5) The school must disburse loan proceeds in substantially equal installments, and no installment may exceed one-half of the loan.

(6)(i) A school is not required to make more than one disbursement if—

(A)(I) The loan period is not more than one semester, one trimester, one quarter, or, for non term-based schools or schools with non-standard terms, 4 months; and

(2)(i) Except as provided in paragraph (b)(6)(i)(A)(2)(ii) of this section, the school has a cohort default rate, calculated under subpart M of 34 CFR part 668 of less than 10 percent for each of the three most recent fiscal years for which data are available;

(ii) For loan disbursements made on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668 of less than 15 percent for each of the three most recent fiscal years, for which data are available.

(B) The school is an eligible home institution originating a loan to cover the cost of attendance in a study abroad program and has a cohort default rate, calculated under subpart M or subpart N of 34 part 668, of less than 5 percent for the single most recent fiscal year for which data are available.

(ii) Paragraphs (b)(6)(i)(A) and (B) of this section do not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in paragraph (A) or (B), as applicable.

(iii) Paragraph (b)(6)(i)(B) of this section does not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in that paragraph.

(c) *Annual loan limit progression based on completion of an academic year.* (1) If a school measures academic progress in an educational program in credit hours

and uses either standard terms (semesters, trimesters, or quarters) or non-standard terms that are substantially equal in length, and each term is at least nine weeks of instructional time in length, a student is considered to have completed an academic year and progresses to the next annual loan limit when the academic year calendar period has elapsed.

(2) If a school measures academic progress in an educational program in credit hours and uses nonstandard terms that are not substantially equal in length or each term is not at least nine weeks of instructional time in length, or measures academic progress in credit hours and does not have academic terms, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the academic coursework in the student's academic year.

(3) If a school measures academic progress in an educational program in clock hours, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the clock hours in the student's academic year.

(4) For purposes of this section, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in that loan period.

(d) *Promissory note handling.* (1) The Secretary provides promissory notes for use in the Direct Loan Program. A school may not modify, or make any additions to, the promissory note without the Secretary's prior written approval.

(2) A school that originates a loan must ensure that the loan is supported

by a completed promissory note as proof of the borrower's indebtedness.

(e) *Reporting to the Secretary.* (1) The Secretary accepts a student's Payment Data that is submitted in accordance with procedures established through publication in the FEDERAL REGISTER, and that contains information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

(2) A school that participates under school origination option 1 or standard origination must submit the initial disbursement record for a loan to the Secretary no later than 30 days following the date of the initial disbursement. The school must submit subsequent disbursement records, including adjustment and cancellation records, to the Secretary no later than 30 days following the date the disbursement, adjustment, or cancellation is made.

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

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

[59 FR 61690, Dec. 1, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 685.301, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

EDITORIAL NOTE: At 72 FR 62011, Nov. 1, 2007, § 685.301 was amended, in part, by redesignating (a)(8) and (9) as (a)(9) and (10). At 72 FR 62032, Nov. 1, 2007, (a)(9) was amended by redesignating (a)(9)(ii) as (a)(9)(iv), revising (a)(9)(i), and adding new (a)(9)(ii) and (iii), but the amendatory instruction could not be followed. For the convenience of the user the revisions and addition are set forth to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

(a)* * *

(9)(i) The minimum period of enrollment for which a school may originate a Direct Loan application is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, or has terms that are substantially equal in length with no term less than nine weeks in length, a single academic term (e.g., a semester or quarter); or

(B) Except as provided in paragraph (a)(9)(ii) or (iii) of this section, at a school that measures academic progress in clock hours, or measures academic progress in

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credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, the lesser of—

(1) The length of the student's program (or the remaining portion of that program if the student has less than the full program remaining) at the school; or

(2) The academic year as defined by the school in accordance with 34 CFR 668.3.

(i) For a student who transfers into a school with credit or clock hours from another school, and the prior school originated or certified a loan for a period of enrollment that overlaps the period of enrollment at the new school, the new school may originate a loan for the remaining portion of the program or academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student's annual loan limit.

(iii) For a student who completes a program at a school, where the student's last loan to complete that program had been for less than an academic year, and the student then begins a new program at the same school, the school may originate a loan for the remainder of the academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student's annual loan limit at the loan level associated with the new program.

* * * * *

§ 685.302 [Reserved]

§ 685.303 Processing loan proceeds.

(a) *Purpose.* This section establishes rules governing a school's processing of a borrower's Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan proceeds. The school shall also comply with any rules for processing loan proceeds contained in 34 CFR part 668.

(b) *General*—(1)(i) *A school that initiates the drawdown of funds.* A school may not disburse loan proceeds to a borrower unless the school has obtained an executed, legally enforceable promissory note from the borrower.

(ii) *A school that does not initiate the drawdown of funds.* A school may disburse loan proceeds only to a borrower for whom the school has received funds from the Secretary.

(2)(i) Except in the case of a late disbursement under paragraph (d) of this section, or as provided in paragraph (b)(2)(iii) of this section, a school may disburse loan proceeds only to a stu-

dent, or a parent in the case of a PLUS Loan obtained by a parent borrower, if the school determines the student has continuously maintained eligibility in accordance with the provisions of § 685.200 from the beginning of the loan period for which the loan was intended.

(ii) In the event a student delays attending school for a period of time, the school may consider that student to have maintained eligibility for the loan from the first day of the period of enrollment. However, the school must comply with the requirements under paragraph (b)(3) of this section.

(iii) If, after a school makes the first disbursement to a borrower, the student becomes ineligible due solely to the school's loss of eligibility to participate in the title IV programs or the Direct Loan Program, the school may make subsequent disbursements to the borrower as permitted by 34 CFR part 668.

(iv) If, prior to making any disbursement to a borrower, the student temporarily ceases to be enrolled on at least a half-time basis, the school may make a disbursement and any subsequent disbursement to the student if the school determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(3) If a student does not begin attendance in the period of enrollment, disbursed loan proceeds must be handled in accordance with 34 CFR 668.21.

(4)(i) If a student is enrolled in the first year of an undergraduate program of study and has not previously received a Federal Stafford, Federal Supplemental Loans for Students, Direct Subsidized, or Direct Unsubsidized Loan, a school may not disburse the proceeds of a Direct Subsidized or Direct Unsubsidized Loan until 30 days after the first day of the student's program of study unless—

(A)(I) Except as provided in paragraph (b)(4)(i)(A)(2) of this section, the school has a cohort default rate, calculated under subpart M of 34 CFR part 668, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available; or

(2) For loans first disbursed on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or N of 34 CFR part 668 of less than 15 percent for each of the three most recent fiscal years for which data are available;

(B) The school is an eligible home institution originating a loan to cover the cost of attendance in a study abroad program and has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available.

(ii) Paragraphs (b)(4)(i)(A) and (B) of this section do not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in paragraph (A) or (B), as applicable.

(iii) Paragraph (b)(4)(i)(B) of this section does not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in that paragraph.

(c) *Processing of the proceeds of a Direct Loan.* Schools shall follow the procedures for disbursing funds in 34 CFR 668.164.

(d) *Late Disbursement.* A school may make a late disbursement according to the provisions found under 34 CFR 668.164(g).

(e) *Treatment of excess loan proceeds.* Before the disbursement of any Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan proceeds, if a school learns that the borrower will receive or has received financial aid for the pe-

riod of enrollment for which the loan was intended that exceeds the amount of assistance for which the student is eligible (except for Federal Work-Study Program funds up to \$300), the school shall reduce or eliminate the overaward by either—

(1) Using the student's Direct Unsubsidized, Direct PLUS, or State-sponsored or another non-Federal loan to cover the expected family contribution, if not already done; or

(2) Reducing one or more subsequent disbursements to eliminate the overaward.

(Approved by the Office of Management and Budget under control number 1840-0672)

[59 FR 61690, Dec. 1, 1994, as amended at 60 FR 33345, June 28, 1995; 61 FR 29901, June 12, 1996; 61 FR 60610, Nov. 29, 1996; 64 FR 58971, Nov. 1, 1999; 65 FR 65651, Nov. 1, 2000; 66 FR 34766, June 29, 2001; 68 FR 75430, Dec. 31, 2003; 71 FR 45717, Aug. 9, 2006; 71 FR 64400, Nov. 1, 2006; 72 FR 62033, Nov. 1, 2007; 74 FR 55666, Oct. 28, 2009; 75 FR 67200, Nov. 1, 2010]

§ 685.304 Counseling borrowers.

(a) *Entrance counseling.* (1) Except as provided in paragraph (a)(8) of this section, a school must ensure that entrance counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan student borrower prior to making the first disbursement of the proceeds of a loan to a student borrower unless the student borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, or Federal SLS Loan.

(2) Except as provided in paragraph (a)(8) of this section, a school must ensure that entrance counseling is conducted with each graduate or professional student Direct PLUS Loan borrower prior to making the first disbursement of the loan unless the student borrower has received a prior Direct PLUS Loan or Federal PLUS Loan.

(3) Entrance counseling for Direct Subsidized Loan, Direct Unsubsidized Loan, and graduate or professional student Direct PLUS Loan borrowers must provide the borrower with comprehensive information on the terms and conditions of the loan and on the responsibilities of the borrower with respect to the loan. This information may be provided to the borrower—

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(i) During an entrance counseling session, conducted in person;

(ii) On a separate written form provided to the borrower that the borrower signs and returns to the school; or

(iii) Online or by interactive electronic means, with the borrower acknowledging receipt of the information.

(4) If entrance counseling is conducted online or through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the entrance counseling, which may include completion of any interactive program that tests the borrower's understanding of the terms and conditions of the borrower's loans.

(5) A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials before the loan proceeds are disbursed.

(6) Entrance counseling for Direct Subsidized Loan and Direct Unsubsidized Loan borrowers must—

(i) Explain the use of a Master Promissory Note (MPN);

(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

(iii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(iv) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services

that the student borrower purchased from the school;

(v) Inform the student borrower of sample monthly repayment amounts based on—

(A) A range of student levels of indebtedness of Direct Subsidized Loan and Direct Unsubsidized Loan borrowers, or student borrowers with Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans depending on the types of loans the borrower has obtained; or

(B) The average indebtedness of other borrowers in the same program at the same school as the borrower;

(vi) To the extent practicable, explain the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance;

(vii) Provide information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary;

(viii) Inform the borrower of the option to pay the interest on a Direct Unsubsidized Loan while the borrower is in school;

(ix) Explain the definition of half-time enrollment at the school, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment;

(x) Explain the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the borrower's program of study so that the school can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation;

(xi) Provide information on the National Student Loan Data System and how the borrower can access the borrower's records; and

(xii) Provide the name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan.

(7) Entrance counseling for graduate or professional student Direct PLUS Loan borrowers must—

(i) Inform the student borrower of sample monthly repayment amounts based on—

(A) A range of student levels or indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Direct PLUS Loans and Direct Subsidized Loans or Direct Unsubsidized Loans, depending on the types of loans the borrower has obtained; or

(B) The average indebtedness of other borrowers in the same program at the same school;

(ii) Inform the borrower of the option to pay interest on a PLUS Loan while the borrower is in school;

(iii) For a graduate or professional student PLUS Loan borrower who has received a prior FFEL Stafford, or Direct Subsidized or Unsubsidized Loan, provide the information specified in § 685.301(a)(3)(i)(A) through § 685.301(a)(3)(i)(C); and

(iv) For a graduate or professional student PLUS Loan borrower who has not received a prior FFEL Stafford, or Direct Subsidized or Direct Unsubsidized Loan, provide the information specified in paragraph (a)(6)(i) through paragraph (a)(6)(xii) of this section.

(8) A school may adopt an alternative approach for entrance counseling as part of the school's quality assurance plan described in § 685.300(b)(9). If a school adopts an alternative approach, it is not required to meet the requirements of paragraphs (a)(1) through (a)(7) of this section unless the Secretary determines that the alternative approach is not adequate for the school. The alternative approach must—

(i) Ensure that each student borrower subject to entrance counseling under paragraph (a)(1) or (a)(2) of this section is provided written counseling materials that contain the information described in paragraphs (a)(6)(i) through (a)(6)(v) of this section;

(ii) Be designed to target those student borrowers who are most likely to default on their repayment obligations and provide them more intensive counseling and support services; and

(iii) Include performance measures that demonstrate the effectiveness of the school's alternative approach. These performance measures must include objective outcomes, such as levels of borrowing, default rates, and withdrawal rates.

(9) The school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(b) *Exit counseling.* (1) A school must ensure that exit counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan borrower and graduate or professional student Direct PLUS Loan borrower shortly before the student borrower ceases at least half-time study at the school.

(2) The exit counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials within 30 days after the student borrower completes the program.

(3) If a student borrower withdraws from school without the school's prior knowledge or fails to complete the exit counseling as required, exit counseling must be provided either through interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after the school learns that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(4) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Direct Subsidized Loans and Direct Unsubsidized Loans, student borrowers who have obtained only Direct PLUS Loans, or student borrowers who have obtained Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the student borrower has obtained, for attendance at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment plan options including the standard repayment, extended repayment, graduated repayment, income contingent repayment plans, and income-based repayment plans, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments under each plan;

(iii) Explain to the borrower the options to prepay each loan, to pay each loan on a shorter schedule, and to change repayment plans;

(iv) Provide information on the effects of loan consolidation including, at a minimum—

(A) The effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

(B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;

(C) The options of the borrower to prepay the loan and to change repayment plans; and

(D) That borrower benefit programs may vary among different lenders;

(v) Include debt-management strategies that are designed to facilitate repayment;

(vi) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

(vii) Meet the requirements described in paragraphs (a)(6)(i), (a)(6)(ii), and (a)(6)(iv) of this section;

(viii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(ix) Provide—

(A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or discharge of principal and interest, defer repayment of principal or interest, or be granted forbearance on a title IV loan; and

(B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;

(x) Review for the student borrower information on the availability of the Department's Student Loan Ombudsman's office;

(xi) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain title IV loan status information;

(xii) A general description of the types of tax benefits that may be available to borrowers; and

(xiii) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known).

(5) The school must ensure that the information required in paragraph (b)(4)(xiii) of this section is provided to the Secretary within 60 days after the student borrower provides the information.

(6) If exit counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

(7) The school must maintain documentation substantiating the school's compliance with this section for each student borrower.

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

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

[74 FR 55666, Oct. 28, 2009]

§ 685.305 Determining the date of a student's withdrawal.

(a) Except as provided in paragraph (b) of this section, a school shall follow the procedures in § 668.22(b) or (c), as applicable, for determining the student's date of withdrawal.

(b) For a student who does not return for the next scheduled term following a summer break, which includes any summer term(s) in which classes are offered but students are not generally

required to attend, a school shall follow the procedures in § 668.22(b) or (c), as applicable, for determining the student's date of withdrawal except that the school must determine the student's date of withdrawal no later than 30 days after the start of the next scheduled term.

(c) The school shall use the date determined under paragraph (a) or (b) of this section for the purpose of reporting to the Secretary the student's date of withdrawal and for determining when a refund or return of title IV, HEA program funds must be paid under § 685.306.

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

[64 FR 59044, Nov. 1, 1999]

§ 685.306 Payment of a refund or return of title IV, HEA program funds to the Secretary.

(a) *General.* By applying for a Direct Loan, a borrower authorizes the school to pay directly to the Secretary that portion of a refund or return of title IV, HEA program funds from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund or return of title IV, HEA program funds that is allocable to a Direct Loan to the Secretary; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund or return of title IV, HEA program funds to the Secretary on behalf of that student.

(b) *Determination, allocation, and payment of a refund or return of title IV, HEA program funds.* In determining the portion of a student's refund or return of title IV, HEA program funds that is allocable to a Direct Loan, the school shall follow the procedures established in 34 CFR 668.22 for allocating and paying a refund or return of title IV, HEA program funds that is due.

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

[64 FR 59044, Nov. 1, 1999; 65 FR 37045, June 13, 2000]

§ 685.307 Withdrawal procedure for schools participating in the Direct Loan Program.

(a) A school participating in the Direct Loan Program may withdraw from the program by providing written notice to the Secretary.

(b) A participating school that intends to withdraw from the Direct Loan Program shall give at least 60 days notice to the Secretary.

(c) Unless the Secretary approves an earlier date, the withdrawal is effective on the later of—

(1) 60 days after the school notifies the Secretary; or

(2) The date designated by the school.

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

§ 685.308 Remedial actions.

(a) *General.* The Secretary may require the repayment of funds and the purchase of loans by the school if the Secretary determines that the unenforceability of a loan or loans, or the disbursement of loan amounts for which the borrower was ineligible, resulted in whole or in part from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to purchase loans from the Secretary in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the Direct Loan Program in accordance with 34 CFR part 668, subpart G.

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

§ 685.309 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

(a) *General.* A participating school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in this part and in 34 CFR part 668; and

(2) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) *Student status confirmation reports.* A school shall—

(1) Upon receipt of a student status confirmation report from the Secretary, complete and return that report to the Secretary within 30 days of receipt; and

§ 685.400

(2) Unless it expects to submit its next student status confirmation report to the Secretary within the next 60 days, notify the Secretary within 30 days if it discovers that a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan has been made to or on behalf of a student who—

(i) Enrolled at that school but has ceased to be enrolled on at least a half-time basis;

(ii) Has been accepted for enrollment at that school but failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) Has changed his or her permanent address.

(3) The Secretary provides student status confirmation reports to a school at least semi-annually.

(4) The Secretary may provide the student status confirmation report in either paper or electronic format.

(c) *Record retention requirements.* An institution shall follow the record retention and examination requirements in this part and in 34 CFR 668.24.

(d) *Accounting requirements.* A school shall follow accounting requirements in 34 CFR 668.24(b).

(e) *Direct Loan Program bank account.* Schools shall follow the procedures for maintaining funds established in 34 CFR 668.163.

(f) *Division of functions.* Schools shall follow the procedures for division of functions in 34 CFR 668.16(c).

(g) *Limit on use of funds.* Except for funds paid to a school under section 452(b)(1) of the Act, funds received by a school under this part may be used only to make Direct Loans to eligible borrowers and may not be used or hypothecated for any other purpose.

(Approved by the Office of Management and Budget under control number 1840-0672)

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

[59 FR 61690, Dec. 1, 1994, as amended at 60 FR 33345, June 28, 1995; 61 FR 60493, Nov. 27, 1996; 61 FR 60610, Nov. 29, 1996]

34 CFR Ch. VI (7-1-12 Edition)

Subpart D—School Participation and Loan Origination in the Direct Loan Program

§ 685.400 School participation requirements.

(a)(1) In order to qualify for initial participation in the Direct Loan Program, a school must meet the eligibility requirements in section 435(a) of the Act, including the requirement that it have a cohort default rate of less than 25 percent for at least one of the three most recent fiscal years for which data are available unless the school is exempt from this requirement under section 435(a)(2)(C) of the Act.

(2) In order to continue to participate in the Direct Loan Program, a school must continue to meet the requirements of paragraph (a)(1) of this section for years for which cohort default rate data represent the years prior to the school's participation in the Direct Loan Program.

(b) In order to qualify for initial participation, the school must not be subject to an emergency action or a proposed or final limitation, suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the Act.

(c) If schools apply as a consortium, each school in the consortium must meet the requirements in paragraphs (a) and (b) of this section.

(d) The Secretary selects schools to participate in the Direct Loan Program from among those that apply to participate and meet the requirements in paragraphs (a)(1), (b), and (c) of this section.

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

[59 FR 61690, Dec. 1, 1994, as amended at 64 FR 46255, Aug. 24, 1999]

§ 685.401 [Reserved]

§ 685.402 Criteria for schools to originate loans.

(a) *Initial determination of origination status—(1) Standard origination.* Any school eligible to participate in the Direct Loan Program under § 685.400 is eligible to participate under standard origination.

(2) *School Origination.* To be eligible to originate loans, a school must meet the following criteria:

(i) Have participated in the Federal Perkins Loan Program, the Federal Pell Grant Program, or, for a graduate and professional school, a similar program for the three most recent years preceding the date of application to participate in the Direct Loan Program.

(ii) If participating in the Federal Pell Grant Program, not be on the reimbursement system of payment.

(iii) In the opinion of the Secretary, have had no severe performance deficiencies for any of the programs under title IV of the Act, including deficiencies demonstrated by the most recent audit or program review.

(iv) Be financially responsible in accordance with the standards of 34 CFR 668.15.

(v) Be current on program and financial reports and audits required under title IV of the Act for the 12-month period immediately preceding the date of application to participate in the Direct Loan Program.

(vi) Be current on Federal cash transaction reports required under title IV of the Act for the 12-month period immediately preceding the date of application to participate in the Direct Loan Program and have no final determination of cash on hand that exceeds immediate title IV program needs.

(vii) Have no material findings in any of the annual financial audits submitted for the three most recent years preceding the date of application to participate in the Direct Loan Program.

(viii) Provide an assurance that the school has no delinquent outstanding debts to the Federal Government, unless—

(A) Those debts are being repaid under or in accordance with a repayment arrangement satisfactory to the Federal Government; or

(B) The Secretary determines that the existence or amount of the debts has not been finally determined by the cognizant Federal agency.

(3) A school that meets the criteria to originate loans may participate under school origination option 1 or 2 or under standard origination.

(b) *Change in origination status.* (1) After the initial determination of a school's origination status, the Sec-

retary may allow a school that does not qualify to originate loans under either origination option 1 or origination option 2 to do so if the Secretary determines that the school is fully capable of originating loans under one of those options.

(2)(i) At any time after the initial determination of a school's origination status, a school participating under origination option 2 may request to change to origination option 1 or standard origination, and a school participating under origination option 1 may request to change to standard origination.

(ii) The change in origination status becomes effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(3)(i) A school participating under origination option 1 may apply to participate under option 2, and a school participating in standard origination may apply to participate under either origination option 1 or 2 after one full year of participation in its initial origination status.

(ii) Applications to participate under another origination option are considered on an annual basis.

(iii) An application to participate under another origination option is evaluated on the basis of criteria and performance standards established by the Secretary, including but not limited to—

(A) Eligibility under paragraph (a)(2) of this section;

(B) Timely submission of accurate origination and disbursement records;

(C) Successful completion of reconciliation on a monthly basis; and

(D) Timely submission of completed and signed promissory notes, if applicable.

(iv) The change in origination status becomes effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(c) *Secretarial determination of change in origination status.* (1) At any time after a school has been approved to originate loans, the Secretary may require a school participating under origination option 2 to convert to option 1 or to standard origination and

may require a school participating under origination option 1 to convert to standard origination.

(2) The Secretary may require a school to change origination status if the Secretary determines that such a change is necessary to ensure program integrity or if the school fails to meet the criteria and performance standards established by the Secretary, including but not limited to—

(i) For an origination option 1 school, eligibility under paragraph (a)(2) of this section, the timely submission of completed and signed promissory notes and accurate origination and disbursement records, and the successful completion of reconciliation on a monthly basis; and

(ii) For an origination option 2 school, the criteria and performance standards required of origination option 1 schools and accurate and timely drawdown requests.

(3) The change in origination status becomes effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(d) *Origination by consortia.* A consortium of schools may participate under origination options 1 or 2 only if all members of the consortium are eligible to participate under paragraph (a)(2) of this section. All provisions of this section that apply to an individual school apply to a consortium.

(e) *School determination of change of Servicer.* (1) The Secretary assigns one or more Servicers to work with a school to perform certain functions relating to the origination and servicing of Direct Loans.

(2) A school may request the Secretary to designate a different Servicer. Documentation of the unsatisfactory performance of the school's current Servicer must accompany the request. The Servicer requested must be one of those approved by the Secretary for participation in the Direct Loan Program.

(3) The Secretary grants the request if the Secretary determines that—

(i) The claim of unsatisfactory performance is accurate and substantial; and

(ii) The Servicer requested by the school can accommodate such a change.

(4) If the Secretary denies the school's request based on a determination under paragraph (e)(3)(ii) of this section, the school may request another Servicer.

(5) The change in Servicer is effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(f) *Determination of eligibility for multi-year use of the Master Promissory Note.*

(1) A school must be authorized by the Secretary to use a single Master Promissory Note (MPN) as the basis for all loans borrowed by a student or parent borrower for attendance at that school. A school that is not authorized by the Secretary for multi-year use of the MPN must obtain a new MPN from a student or parent borrower for each academic year.

(2) To be authorized for multi-year use of the MPN, a school must—

(i) Be a four-year or graduate/professional school, or other institution meeting criteria or otherwise designated at the sole discretion of the Secretary; and

(ii)(A) Not be subject to an emergency action or a proposed or final limitation, suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the Act; and

(B) Meet other performance criteria determined by the Secretary.

(3) A school that is authorized by the Secretary for multi-year use of the MPN must develop and document a confirmation process in accordance with guidelines established by the Secretary for loans made under the multi-year feature of the MPN.

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

[62 FR 35602, July 1, 1997, as amended at 64 FR 58972, Nov. 1, 1999]

PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

Subpart A—Scope, Purpose and General Definitions

Sec.
686.1 Scope and purpose.