

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; 78 FR 65823, Nov. 1, 2013]

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.

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)(i) Federal Direct Stafford/Ford Loan Program (Direct Subsidized Loan Program), which provides loans to undergraduate, graduate, and professional students. Loans made under this program are referred to as Direct Subsidized Loans. Except as provided in paragraph (a)(1)(ii) of this section, the Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period. Graduate and professional students are not eligible to receive Direct Subsidized Loans for any period of enrollment beginning on or after July 1, 2012.

(ii) The Secretary does not subsidize the interest that accrues during the grace period on any Direct Subsidized Loan for which the first disbursement

is made on or after July 1, 2012 and before July 1, 2014.

(2) Federal Direct Unsubsidized Stafford/Ford Loan Program (Direct Unsubsidized Loan Program), which provides loans to undergraduate, graduate and professional students. Loans made under this program are referred to as Direct Unsubsidized Loans. The borrower is responsible for the interest that accrues during any period.

(3) Federal Direct PLUS Program (Direct PLUS Loan Program), which provides loans to parents of dependent students and to graduate or professional students. Loans made under this program are referred to as Direct PLUS Loans. The borrower is responsible for the interest that accrues during any period.

(4) Federal Direct Consolidation Loan Program (Direct Consolidation Loan Program), which provides loans to borrowers to consolidate certain Federal educational loans. Loans made under this program are referred to as Direct Consolidation 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 participates in the Direct Loan Program.

(c) The Secretary makes a Direct Consolidation Loan only to a borrower who is consolidating at least one loan made under the Direct Loan Program or the Federal Family Education Loan (FFEL) Program.

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

[59 FR 61690, Dec. 1, 1994, as amended at 71 FR 45709, Aug. 9, 2006; 78 FR 65823, Nov. 1, 2013]

§ 685.101 Participation in the Direct Loan Program.

(a) Colleges, universities, graduate and professional schools, vocational schools, and proprietary schools 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.

(b)(1) An eligible undergraduate student who is enrolled at a school participating in the Direct Loan Program

may borrow under the Direct Subsidized Loan and Direct Unsubsidized Loan programs.

(2) An eligible graduate or professional student enrolled at a school participating in the Direct Loan Program may borrow under the Direct Subsidized Loan, Direct Unsubsidized Loan, and Direct PLUS Loan programs, except that a graduate or professional student may not borrow under the Direct Subsidized Loan Program for any period of enrollment beginning on or after July 1, 2012.

(3) An eligible parent of an eligible dependent student enrolled at a school participating in the Direct Loan Program may borrow under the Direct PLUS Loan Program.

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

[78 FR 65823, Nov. 1, 2013]

§ 685.102 Definitions.

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

Academic year
Campus-based programs
Dependent student
Disbursement
Eligible program
Eligible student
Enrolled
Expected family contribution (EFC)
Federal Consolidation 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
One-third of an academic year
Parent
Payment period
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
William D. Ford Federal Direct Loan (Direct Loan) Program

(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
Correspondence course
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
Secretary
State

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

Act: The Higher Education Act of 1965, as amended, 20 U.S.C. 1071 *et seq.*

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.

Endorser: An individual who signs a promissory note and agrees to repay the loan in the event that the borrower does not.

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, campus-based aid, and the gross amount (including fees) of subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized and Unsubsidized 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 Grants, unsubsidized Federal Stafford Loans or Direct Unsubsidized 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 paragraph (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 (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) In the case of a Direct Consolidation Loan that entered repayment prior to July 1, 2006, 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 (Direct PLUS Loan 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 Program 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 (Direct Subsidized 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, except that the Secretary does not subsidize the interest that accrues during the grace period on a loan for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014. Loans made under this program are referred to as Direct Subsidized Loans. Graduate and professional students are not eligible to receive Direct Subsidized Loans for any period of enrollment beginning on or after July 1, 2012.

Federal Direct Unsubsidized Stafford/Ford Loan Program (Direct Unsubsidized 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.

Federal Insured Student Loan Program: The loan program authorized by title IV, part B of the Act under which the Secretary directly insures lenders against losses.

Federal Stafford Loan Program: The loan program authorized by title IV, part B of the Act which encouraged the making of subsidized and unsubsidized loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs.

Grace period: A six-month period that begins on the day after a Direct Subsidized Loan borrower, a Direct Unsubsidized Loan borrower, or, in some cases, a Direct Consolidation Loan borrower whose consolidation application was received before July 1, 2006, 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.

Guaranty agency: A State or private nonprofit organization that has an agreement with the Secretary under

which it will administer a loan guarantee program under the Act.

Holder: The entity that owns a loan. For a FFEL Program loan, the term “holder” refers to an eligible lender owning a FFEL Program loan, including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

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

Lender: As used in this part, the term “lender” has the meaning specified in section 435(d) of the Act for purposes of the FFEL Program.

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.

(4) Unless the Secretary determines otherwise, a school may use a single MPN as the basis for all loans borrowed by a student or parent borrower for attendance at that school. If a school is not authorized by the Secretary for multi-year use of the MPN, a student or parent borrower must sign a new MPN for each academic year.

Nationwide consumer reporting agency: A consumer reporting agency as defined in 15 U.S.C. 1681a(p).

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 § 685.220(d)(1)(ii)(A)(3)—

(i) The making of three consecutive, voluntary, on-time, full monthly payments on a defaulted loan prior to consolidation; or

(ii) Agreeing to repay the Direct Consolidation Loan under one of the income-contingent repayment plans described in § 685.209 or the income-based repayment plan described in § 685.221.

(3) For the purpose of paragraph (2)(i) of this definition, 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 20 days of the scheduled due date, and voluntary payments are payments made directly by the borrower and do not include payments obtained by Federal offset, garnishment, or income or asset execution.

(4) A borrower has not used the one opportunity to renew eligibility for title IV assistance if the borrower makes six consecutive, on-time, voluntary, full monthly payments under an agreement to rehabilitate a defaulted loan, but does not receive additional title IV assistance prior to defaulting on that loan again.

Substantial gainful activity: A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

Totally and permanently disabled: The condition of an individual who—

(1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

- (i) Can be expected to result in death;
- (ii) Has lasted for a continuous period of not less than 60 months; or
- (iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

(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.govinfo.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 of this part contains provisions regarding borrower defense

to repayment in the Direct Loan Program.

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

[59 FR 61690, Dec. 1, 1994, as amended at 87 FR 66055, Nov. 1, 2022]

§ 685.109 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice will not be affected thereby.

[87 FR 66055, Nov. 1, 2022]

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 period of enrollment for which the loan is sought.

(iv) In the case of a borrower whose previous loan or TEACH Grant service obligation was discharged 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; and

(2) Signs a statement acknowledging that neither the new Direct Loan the borrower receives nor any previously

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discharged loan on which the borrower is required to resume payment in accordance with paragraph (a)(1)(iv)(B) of this section can be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates;

(B) In the case of a borrower who 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)(iii), 34 CFR 674.61(b)(3)(v), 34 CFR 682.402(c)(3)(iv), or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, the borrower resumes repayment on the previously discharged loan in accordance with § 685.213(b)(7), 34 CFR 674.61(b)(6), or 34 CFR 682.402(c)(6), 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; and

(C) 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 requirement in paragraph (a)(1)(iv)(A)(I) of this section;

(3) The borrower signs a statement acknowledging that neither the new Direct Loan the borrower receives nor the loan that has been conditionally discharged prior to a final determination of total and permanent disability can be discharged 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 was enrolled in a program of study prior to

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July 1, 2012 and 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), (4), or (5).

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

(ii) [Reserved]

(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 Direct Unsubsidized Loan Program and, for periods of enrollment beginning before July 1, 2012, the Direct Subsidized Loan Program; and

(5) The student meets the requirements that apply to a parent under paragraphs (c)(2)(viii)(A) through (G) of this section.

(c) *Parent PLUS borrower—*(1) *Definitions.* The following definitions apply to this paragraph (c):

(i) *Charged off* means a debt that a creditor has written off as a loss, but that is still subject to collection action.

(ii) *In collection* means a debt that has been placed with a collection agency by a creditor or that is subject to more intensive efforts by a creditor to recover amounts owed from a borrower who has not responded satisfactorily to the demands routinely made as part of the creditor's billing procedures.

(2) *Eligibility.* 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) The parent 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.

(viii)(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, and completes PLUS loan counseling offered by the Secretary; or

(3) Has an adverse credit history but documents to the satisfaction of the Secretary that extenuating circumstances exist and completes PLUS loan counseling offered by the Secretary.

(B) For purposes of this paragraph (c), an adverse credit history means that the parent—

(1) Has one or more debts with a total combined outstanding balance greater than \$2,085, as may be adjusted by the Secretary in accordance with paragraphs (c)(2)(viii)(C) and (D) of this section, that are 90 or more days delinquent as of the date of the credit report, or that have been placed in collection or charged off, as defined in paragraph (c)(1) of this section, during the two years preceding the date of the credit report; 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) The Secretary increases the amount specified in paragraph (c)(2)(viii)(B)(1) of this section, or its inflation-adjusted equivalent, when the Secretary determines that an inflation adjustment to that amount would result in an increase of \$100 or more.

(D) In making the inflation adjustment described in paragraph (c)(2)(viii)(C) of this section, the Secretary:

(1) Uses the annual average percent change of the All Items Consumer Price Index for All Urban Consumers (CPI-U), before seasonal adjustment, as the measurement of inflation; and

(2) If the adjustment calculated under paragraph (c)(2)(viii)(D)(1) of this section is equal to or greater than \$100, adding the adjustment to \$2,085 threshold amount, or its inflation-adjusted equivalent, and rounding up to the nearest \$5.

(E) The Secretary will publish a notice in the FEDERAL REGISTER announcing any increase to the amount specified in paragraph (c)(2)(viii)(B)(1) of this section.

(F) For purposes of this paragraph (c), 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.

(G) For purposes of this paragraph (c), the Secretary may determine that extenuating circumstances exist based on documentation that may include, but is not limited to—

(1) An updated credit report for the parent; or

(2) A statement from the creditor that the parent has repaid or made satisfactory arrangements to repay a debt that was considered in determining that the parent has an adverse credit history.

(3) For purposes of paragraph (c)(2) 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

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have been taken into account when calculating a dependent student's expected family contribution.

(d) *Defaulted Perkins, FFEL, and Direct Loan program borrowers.* Except as noted in § 685.220(d)(1)(ii)(A)(3), in the case of a student or parent borrower who is currently in default on a Perkins, FFEL, or Direct Loan program loan, the borrower must make satisfactory repayment arrangements, as described in paragraph (1) 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.

[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; 77 FR 66135, Nov. 1, 2012; 78 FR 28984, May 16, 2013; 79 FR 3120, Jan. 17, 2014; 78 FR 65824, Nov. 1, 2013; 79 FR 63331, Oct. 23, 2014; 81 FR 76080, Nov. 1, 2016; 85 FR 49821, Aug. 14, 2020; 86 FR 31438, June 14, 2021]

§ 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 school in which the student is enrolled must perform the following functions:

(i) Create a loan origination record and transmit the record to the Secretary.

(ii) Ensure that the loan is supported by a completed Master Promissory Note (MPN) and, if applicable, transmit the MPN to the Secretary.

(iii) In accordance with 34 CFR 668.162, draw down funds or receive funds from the Secretary, and 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 Loan MPN and the dependent student on whose behalf the parent is borrowing must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application.

(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 Direct PLUS Loan MPN.

(3) For either a parent or student PLUS borrower, as applicable, the school must complete its portion of the Direct PLUS Loan MPN and, if applicable, submit it to the Secretary. The Secretary makes a determination as to whether the parent or graduate or professional student has an adverse credit history. The school performs the functions described in paragraph (a)(2) of this section.

(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 Secretary. The application and promissory note sets forth the terms and conditions of the Direct Consolidation Loan and informs the applicant how to contact the Secretary. The Secretary 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 Secretary, 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; 78 FR 65825, Nov. 1, 2013]

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

(a) *Interest*—(1) *Interest rate for Direct Subsidized Loans and Direct Unsubsidized 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.

(2) *Interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans first disbursed on or after July 1, 1995, and before July 1, 1998.* (i) *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 2.5 percentage points, but does not exceed 8.25 percent.

(ii) *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.

(3) *Interest Rate for Direct Subsidized Loans and Direct Subsidized Loans first disbursed on or after July 1, 1998, and before July 1, 2006.* (i) *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.

(ii) *During all other periods.* The interest rate during any twelve-month pe-

riod 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.

(4) *Interest rate for Direct Subsidized Loans made to undergraduate students for which the first disbursement is made on or after July 1, 2006, and before July 1, 2013.* For a loan for which the first disbursement is made:

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

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

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

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

(v) On or after July 1, 2011, and before July 1, 2013, the interest rate is 3.4 percent on the unpaid balance of the loan.

(5) *Interest rate for Direct Subsidized Loans made to graduate or professional students for which the first disbursement is made on or after July 1, 2006, and before July 1, 2012.* The interest rate is 6.8 percent.

(6) *Interest rate for Direct Unsubsidized Loans first disbursed on or after July 1, 2006, and before July 1, 2013.* The interest rate is 6.8 percent.

(7) *Interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans made to undergraduate students for which the first disbursement is made on or after July 1, 2013.* The interest rate for loans first disbursed during any 12-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period and is a fixed rate for the life of the loan. The interest rate is the lesser of—

(i) A rate equal to the high yield of the 10-year Treasury note auctioned at the final auction held prior to the June

1 preceding the 12-month period, plus 2.05 percentage points, or

(ii) 8.25 percent.

(8) *Interest rate for Direct Unsubsidized Loans made to graduate or professional students for which the first disbursement is made on or after July 1, 2013.* The interest rate for loans first disbursed during any 12-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period and is a fixed rate for the life of the loan. The interest rate is the lesser of—

(i) A rate equal to the high yield of the 10-year Treasury note auctioned at the final auction held prior to the June 1 preceding the 12-month period, plus 3.6 percentage points, or

(ii) 9.5 percent.

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

(i) *Direct PLUS 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) *Direct PLUS 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) *Direct PLUS Loans first disbursed on or after July 1, 2006, and before July 1, 2013.* The interest rate is 7.9 percent.

(iv) *Direct PLUS Loans first disbursed on or after July 1, 2013.* The interest rate for loans first disbursed during any 12-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period and is a fixed rate for the life of the loan. The interest rate is the lesser of—

(A) A rate equal to the high yield of the 10-year Treasury note auctioned at the final auction held prior to the June 1 preceding the 12-month period, plus 4.6 percentage points, or

(B) 10.5 percent.

(10) *Interest rate for 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 established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1) 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)(2) 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)(3) 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, and before July 1, 2013.* 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.

(F) *Loans for which the consolidation application is received by the Secretary on or after July 1, 2013.* 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.

(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)(9)(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)(9)(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, and before July 1, 2006.* 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.

(11) *Applicability of the Servicemembers Civil Relief Act (SCRA)(50 U.S.C. 527, App. sec. 207).* Notwithstanding para-

graphs (a)(1) through (10) of this section, upon the Secretary's receipt of evidence of the borrower's military service, the maximum interest rate under 50 U.S.C. 527, App. section 207(a), on Direct Loan Program loans made prior to the borrower entering military service status is six percent while the borrower is in military service. For purposes of this paragraph, the interest rate includes any other charges or fees applied to the loan. For purposes of this paragraph (a)(11), the term "military service" means—

(i) In the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—

(A) Active duty, meaning full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(B) In the case of a member of the National Guard, including service under a call to active service, which means service on active duty or full-time National Guard duty, authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency declared by the President and supported by Federal funds;

(ii) In the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(iii) Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(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 Loan not eligible for interest subsidies during periods of deferment, the Secretary capitalizes the unpaid interest that has accrued on the loan upon the expiration of the deferment.

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(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 installments 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; 77 FR 66135, Nov. 1, 2012; 78 FR 28986, May 16, 2013; 78 FR 65825, Nov. 1, 2013; 80 FR 67238, Oct. 30, 2015; 87 FR 66055, Nov. 1, 2022]

§ 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 Direct Subsidized Loan Program may not exceed the following:

(i) \$3,500 for a program of study of at least a full academic year in length.

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(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to \$3,500 as the—

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

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to \$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 Direct Subsidized Loan Program may not exceed the following:

(i) \$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 \$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 Direct Subsidized 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

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the amounts in paragraph (a)(3) of this section.

(5) In the case of a graduate or professional student for periods of enrollment beginning before July 1, 2012, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed \$8,500.

(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 Direct Subsidized 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 Direct Subsidized 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, except as provided in paragraph (c)(3) of this section, the total amount a student may borrow for any academic year of study under the Direct Unsubsidized Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Direct Subsidized Loan Program, plus—

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

(ii) 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

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

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

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

or

Number of weeks enrolled

Number of weeks in academic year

(2)(i) In the case of an independent undergraduate 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 Direct Unsubsidized Loan Program may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Direct Subsidized Loan Program in combination with the amounts determined under paragraph (c) of this section.

(ii) In the case of a graduate or professional student for a period of enrollment beginning before July 1, 2012, the total amount the student may borrow for any academic year of study under the Direct Unsubsidized Loan Program may not exceed the amount determined under paragraph (a)(5) of this section, less any amount received under the Direct Subsidized Loan Program.

(iii) In the case of a graduate or professional student for a period of enrollment beginning on or after July 1, 2012, the total amount the student may borrow for any academic year of study under the Direct Unsubsidized Loan Program may not exceed \$8,500.

(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 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 Direct PLUS Loan Program and the student's family is otherwise unable to provide the student's expected family contribution. The financial aid administrator must base the determination on a review of the family financial information provided by the student and consideration of the student's debt burden and must 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 Direct PLUS Loan does not constitute "exceptional circumstances."

(2) The additional amount that a student described in paragraph (c)(1)(i) of

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this section may borrow under the Direct Unsubsidized 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) \$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 \$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 \$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) \$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 \$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) \$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 \$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, \$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) \$6,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(B) \$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, \$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) *Aggregate limits for subsidized loans.* The aggregate unpaid principal amount of all Direct Subsidized Loans and Subsidized 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, Unsubsidized Federal Stafford Loans, and Federal SLS Loans, excluding the amount of capitalized interest, may not exceed the following:

(1) For a dependent undergraduate student, \$31,000 minus any Direct Subsidized Loan and Subsidized 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, \$57,500 minus any Direct Subsidized Loan and Subsidized Federal Stafford Loan amounts.

(3) For a graduate or professional student, \$138,500, including any loans for undergraduate study, minus any Direct Subsidized Loan, Subsidized 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.

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(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 Subsidized 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 Unsubsidized Federal 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; 78 FR 65827, Nov. 1, 2013]

§ 685.204 Deferment.

(a) *General.* (1) A Direct Subsidized Loan or Direct Subsidized Consolidation Loan borrower who meets the requirements described in paragraphs (b), (d), (e), (f), (g), (h), (i), or (j) of this section is eligible for a deferment during which periodic installments of principal and interest need not be paid.

(2) A Direct Unsubsidized Loan, Direct Unsubsidized Consolidation Loan, Direct PLUS Loan, or Direct PLUS Consolidation Loan borrower who meets the requirements described in paragraphs (b) through (j) 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. At or before the time a deferment is granted, the Secretary provides 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.

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

(4)(i) To receive a deferment, except as provided for in-school deferments under paragraphs (b)(2)(ii) through (iv) of this section, the borrower must request the deferment and, except as provided in paragraph (a)(5)(i) of this section, provide the Secretary with all information and documents required to establish eligibility for the deferment.

(ii) In the case of a military service deferment under paragraph (h) of this section, a borrower's representative may request the deferment and provide the required information and documents on behalf of the borrower. 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.

(5)(i) After receiving a borrower's written or verbal request for a deferment, the Secretary may grant a graduate fellowship deferment under paragraph (d), a rehabilitation training deferment under paragraph (e), an unemployment deferment under paragraph (f), an economic hardship deferment under paragraph (g), a military service deferment under paragraph (h), or a post-active duty student deferment under paragraph (i) of this section if the Secretary confirms that the borrower has received a deferment on a FFEL Program loan for the same reason and during the same time period.

(ii) The Secretary will grant a deferment based on the information obtained under paragraph (a)(5)(i) 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 will resolve any discrepant information before granting a deferment under paragraph (a)(5)(i) of this section.

(iii) If the Secretary grants a deferment under paragraph (a)(5)(i) 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.

(b) *In-school deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period during which—

(i) The borrower 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; and

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

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

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

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

(iii) 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

(iv) 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.

(3)(i) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(2)(ii), (iii), or (iv) of this section, the borrower has the option to cancel the deferment and continue to make payments on the loan.

(ii) If the borrower elects to cancel the deferment and continue to make payments 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.

(c) *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 eligible for a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008 during the six-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 in accordance with § 685.204(b)(2)(ii), (iii), or (iv), the deferment period for a Direct PLUS Loan first disbursed on or after July 1, 2008 includes the six-month post-enrollment period described in paragraph (c)(1)(i) of this section.

(2) A parent Direct PLUS Loan borrower is eligible for a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008—

(i) Upon the request of the borrower, 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) Upon the request of the borrower, during the six-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.

(d) *Graduate fellowship deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period in which an authorized official of the borrower's graduate fellowship program certifies that the borrower is pursuing a course of study pursuant to an eligible graduate fellowship program in accordance with paragraph (d)(2) of this section.

(2)(i) To qualify for a deferment under paragraph (d)(1) of this section, a borrower must—

(A) Hold at least a baccalaureate degree conferred by an institution of higher education;

(B) Have been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program, as defined in paragraph (d)(2)(ii) of this section; and

(C) Not be serving in a medical internship or residency program, except for a residency program in dentistry.

(ii) An eligible graduate fellowship program is a fellowship program that—

(A) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(B) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;

(C) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and

(D) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

(e) *Rehabilitation training program deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period in which an authorized official of the borrower's rehabilitation training program certifies that the borrower is pursuing an eligible rehabilitation training program for individuals with

disabilities in accordance with paragraph (e)(2) of this section.

(2) For purposes of paragraph (e)(1) of this section, an eligible rehabilitation training program for disabled individuals is a program that—

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that normally would prevent an individual from engaging in full-time employment, either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(f) *Unemployment deferment.* (1) A Direct Loan borrower is eligible for a deferment during periods that, collectively, do not exceed three years in which the borrower is seeking and unable to find full-time employment.

(2) A borrower qualifies for an unemployment deferment by—

(i) Providing evidence of eligibility for unemployment benefits to the Secretary; or

(ii) Providing to the Secretary a written certification, or an equivalent as approved by the Secretary, that—

(A) The borrower has registered with a public or private employment agency, if one is available to the borrower within a 50-mile radius of the borrower's current address; and

(B) For all requests beyond the initial request, the borrower has made at least six diligent attempts during the preceding six-month period to secure full-time employment.

(3) For purposes of obtaining an unemployment deferment under paragraph (f)(2)(ii) of this section, the following rules apply:

(i) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(ii) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels overqualified by virtue of education or previous experience.

(iii) Full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(iv) The initial period of unemployment deferment may be granted for a period of unemployment beginning up to six months before the date the Secretary receives the borrower's request, and may be granted for up to six months after that date.

(4) The Secretary does not grant an unemployment deferment beyond the date that is six months after the date the borrower provides evidence of the borrower's eligibility for unemployment insurance benefits under paragraph (f)(2)(i) of this section or the date the borrower provides the written certification, or an approved equivalent, under paragraph (f)(2)(ii) of this section.

(g) *Economic hardship deferment.* (1)(i) A Direct Loan borrower is eligible for a deferment during periods that, collectively, do not exceed three years in which the borrower has experienced or will experience an economic hardship in accordance with paragraph (g)(2) of this section.

(ii) An economic hardship deferment is granted for periods of up to one year

at a time, except that a borrower who receives a deferment under paragraph (g)(2)(iv) of this section may receive an economic hardship deferment for the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility under the 3-year maximum.

(2) A borrower qualifies for an economic hardship deferment if the borrower—

(i) Has been granted an economic hardship deferment under either the FFEL or the Federal Perkins Loan programs for the period of time for which the borrower has requested an economic hardship deferment for his or her Direct Loan;

(ii) Is receiving payment under a Federal or State public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or State general public assistance;

(iii) Is working full-time (as defined in paragraph (g)(3)(iii) of this section) and has a monthly income (as defined in paragraph (g)(3)(iv) of this section) that does not exceed the greater of (as calculated on a monthly basis)—

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 150 percent of the poverty guideline applicable to the borrower's family size (as defined in paragraph (g)(3)(v) of this section) as published annually by the 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; or

(iv) Is serving as a volunteer in the Peace Corps.

(3) The following rules apply to a deferment granted under paragraph (g)(2)(iii) of this section:

(i) For an initial period of deferment, the Secretary requires the borrower to submit evidence showing the amount of the borrower's monthly income.

(ii) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of

deferment under paragraph (g)(2)(iii) of this section, the Secretary requires the borrower to submit evidence showing the amount of the borrower's monthly income or a copy of the borrower's most recently filed Federal income tax return.

(iii) A borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(iv) A borrower's monthly income is the gross amount of income received by the borrower from employment and from other sources, or one-twelfth of the borrower's adjusted gross income, as recorded on the borrower's most recently filed Federal income tax return.

(v) 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 period covered by the deferment, 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 requests the economic hardship deferment, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(h) *Military service deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period in which the borrower is—

(i) Serving on active duty during a war or other military operation or national emergency, as defined in paragraph (h)(5) of this section; or

(ii) Performing qualifying National Guard duty during a war or other military operation or national emergency, as defined in paragraph (h)(5) of this section.

(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 (h)(1)(i) and (h)(1)(ii) of this section.

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

(4) The provisions of paragraph (h) of this section 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.

(5) As used in paragraph (h) of this section—

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

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

(B) 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

(C) 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;

(ii) *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;

(iii) *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;

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

(v) *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.

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

(1) A Direct Loan borrower is eligible for a deferment for 13 months following the conclusion of the borrower's active duty military service and any applicable grace period 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 (i)(1) of this section, “active duty” means active duty as defined in 10 U.S.C. 101(d)(1) for at least a 30-day period, 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 (i)(2)(i) of this section or full-time National Guard duty under paragraph (i)(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 military service deferment period and the 13-month post-active duty student deferment period apply concurrently.

(j) *Additional deferments for Direct Loan borrowers with FFEL Program loans made before July 1, 1993.* 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) through (i) 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).

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

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

[78 FR 65829, Nov. 1, 2013]

§ 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

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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;

(5)(i) The borrower 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.

(ii) Before a forbearance is granted under § 685.205(a)(5)(i), the borrower must—

(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).

(iii) The Secretary grants forbearance under paragraph (a)(5) of this section only if the Secretary believes, at the time of the borrower's annual request, that the expected forgiveness amount under § 685.217(d) will satisfy the anticipated remaining outstanding balance on the borrower's loan at the time of the expected forgiveness;

(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.

(8)(i) The Secretary may grant a forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after default. The terms of the forbearance agreement in this situation must include a new agreement to repay the debt signed by the borrower or endorser or a written or oral affirmation of the borrower's or endorser's obligation to repay the debt.

(ii) If the forbearance is based on the borrower's or endorser's oral affirmation of the obligation to repay the debt, the forbearance period is limited to 120 days, such a forbearance is not granted consecutively, and the Secretary will—

(A) Orally review with the borrower the terms and conditions of the forbearance, including the consequences of interest capitalization, and all other repayment options available to the borrower;

(B) Send a notice to the borrower or endorser that confirms the terms of the forbearance and the borrower's or endorser's affirmation of the obligation to repay the debt and that includes information on all other repayment options available to the borrower; and

(C) Retain a record of the terms of the forbearance and affirmation in the borrower's or endorser's file.

(iii) For purposes of this section, an "affirmation" means an acknowledgement of the loan by the borrower or endorser in a legally binding manner. The form of the affirmation may include, but is not limited to, the borrower's or endorser's—

(A) New signed repayment agreement or schedule, or another form of signed agreement to repay the debt;

(B) Oral acknowledgement and agreement to repay the debt documented by the Secretary in the borrower's or endorser's file and confirmed by the Secretary in a notice to the borrower; or

(C) A payment made on the loan by the borrower or endorser.

(9)(i) The borrower is performing the type of service that would qualify the borrower for a partial repayment of his or her loan under the Student Loan Repayment Programs administered by the Department of Defense under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense.

(ii) To receive a forbearance under this paragraph, the borrower must submit documentation showing the time period during which the Department of Defense considers the borrower to be eligible for a partial repayment of his or her loan under a student loan repayment program.

(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 or forbearance 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 § 685.206(c) through (e);

(ii) Under § 685.214;

(iii) Under § 685.215;

(iv) Under § 685.216;

(v) Under § 685.217;

(vi) Under § 685.222;

(vii) Under subpart D of this part; or

(viii) 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.

(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)

[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; 78 FR 65832, Nov. 1, 2013; 81 FR 76080, Nov. 1, 2016; 84 FR 49926, Sept. 23, 2019; 87 FR 66055, Nov. 1, 2022]

§ 685.206 Borrower responsibilities and defenses.

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

(c) *Borrower defense to repayment for loans first disbursed prior to July 1, 2017.*

(1) For loans first disbursed prior to July 1, 2017, the borrower may assert a borrower defense under this paragraph. A "borrower defense" refers to any act or omission of the school attended by the student that relates to the making of the loan for enrollment at the school or the provision of educational services for which the loan was provided that would give rise to a cause of action against the school under applicable State law, and includes one or both of the following:

(i) A defense to repayment of amounts owed to the Secretary on a Direct Loan, in whole or in part.

(ii) A claim to recover amounts previously collected by the Secretary on the Direct Loan, in whole or in part.

(2) The order of objections for defaulted Direct Loans are as described in § 685.222(a)(6). A borrower defense claim under this section must be asserted, and will be resolved, under the procedures in § 685.222(e) to (k).

(3) For an approved borrower defense under this section, except as provided in paragraph (c)(4) of this section, the Secretary may initiate an appropriate proceeding to collect from the school whose act or omission resulted in the borrower defense the amount of relief arising from the borrower defense, within the later of—

(i) Three years from the end of the last award year in which the student attended the institution; or

(ii) The limitation period that State law would apply to an action by the borrower to recover on the cause of action on which the borrower defense is based.

(4) The Secretary may initiate a proceeding to collect at any time if the institution received notice of the claim before the end of the later of the periods described in paragraph (c)(3) of this section. For purposes of this paragraph, notice includes receipt of—

(i) Actual notice from the borrower, from a representative of the borrower, or from the Department;

(ii) A class action complaint asserting relief for a class that may include the borrower; and

(iii) Written notice, including a civil investigative demand or other written demand for information, from a Federal or State agency that has power to initiate an investigation into conduct of the school relating to specific programs, periods, or practices that may have affected the borrower.

(d) *Borrower defense to repayment for loans first disbursed on or after July 1, 2017, and before July 1, 2020.* For borrower defense to repayment for loans first disbursed on or after July 1, 2017, and before July 1, 2020, a borrower asserts and the Secretary considers a borrower defense in accordance with § 685.222.

(e) *Borrower defense to repayment for loans first disbursed on or after July 1, 2020, and before July 1, 2023.* This paragraph (e) applies to borrower defense to repayment for loans first disbursed on or after July 1, 2020, and before July 1, 2023.

(1) *Definitions.* For the purposes of this paragraph (e), the following definitions apply:

(i) A "Direct Loan" under this paragraph (e) means a Direct Subsidized

Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan.

(ii) “Borrower” means:

(A) The borrower; and

(B) In the case of a Direct PLUS Loan, any endorsers, and for a Direct PLUS Loan made to a parent, the student on whose behalf the parent borrowed.

(iii) A “borrower defense to repayment” under this paragraph (e) includes—

(A) A defense to repayment of amounts owed to the Secretary on a Direct Loan, or a Direct Consolidation Loan that was used to repay a Direct Loan, FFEL Program Loan, Federal Perkins Loan, Health Professions Student Loan, Loan for Disadvantaged Students under subpart II of part A of title VII of the Public Health Service Act, Health Education Assistance Loan, or Nursing Loan made under part E of the Public Health Service Act; and

(B) Any accompanying request for reimbursement of payments previously made to the Secretary on the Direct Loan or on a loan repaid by the Direct Consolidation Loan.

(iv) The term “provision of educational services” under this paragraph (e) refers to the educational resources provided by the institution that are required by an accreditation agency or a State licensing or authorizing agency for the completion of the student’s educational program.

(v) The terms “school” and “institution” under this paragraph (e) may be used interchangeably and include an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting, or admissions services.

(2) *Federal standard for loans first disbursed on or after July 1, 2020, and before July 1, 2023.* For a Direct Loan or Direct Consolidation Loan first disbursed on or after July 1, 2020, and before July 1, 2023, a borrower may assert a defense to repayment under this paragraph (e), if the borrower establishes by a preponderance of the evidence that—

(i) The institution at which the borrower enrolled made a misrepresentation,

as defined in § 685.206(e)(3), of material fact upon which the borrower reasonably relied in deciding to obtain a Direct Loan, or a loan repaid by a Direct Consolidation Loan, and that directly and clearly relates to:

(A) Enrollment or continuing enrollment at the institution or

(B) The provision of educational services for which the loan was made; and

(ii) The borrower was financially harmed by the misrepresentation.

(3) *Misrepresentation.* A “misrepresentation,” for purposes of this paragraph (e), is a statement, act, or omission by an eligible school to a borrower that is false, misleading, or deceptive; that was made with knowledge of its false, misleading, or deceptive nature or with a reckless disregard for the truth; and that directly and clearly relates to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made. Evidence that a misrepresentation defined in this paragraph (e) may have occurred includes, but is not limited to:

(i) Actual licensure passage rates materially different from those included in the institution’s marketing materials, website, or other communications made to the student;

(ii) Actual employment rates materially different from those included in the institution’s marketing materials, website, or other communications made to the student;

(iii) Actual institutional selectivity rates or rankings, student admission profiles, or institutional rankings that are materially different from those included in the institution’s marketing materials, website, or other communications made to the student or provided by the institution to national ranking organizations;

(iv) The inclusion in the institution’s marketing materials, website, or other communication made to the student of specialized, programmatic, or institutional certifications, accreditation, or approvals not actually obtained, or the failure to remove within a reasonable period of time such certifications or approvals from marketing materials, website, or other communication when revoked or withdrawn;

(v) The inclusion in the institution's marketing materials, website, or other communication made to the student of representations regarding the widespread or general transferability of credits that are only transferrable to limited types of programs or institutions or the transferability of credits to a specific program or institution when no reciprocal agreement exists with another institution, or such agreement is materially different than what was represented;

(vi) A representation regarding the employability or specific earnings of graduates without an agreement between the institution and another entity for such employment data, or sufficient evidence of past employment or earnings to justify such a representation, or without citing appropriate national, State, or regional data for earnings in the same field as provided by an appropriate Federal agency that provides such data. (In the event that national data are used, institutions should include a written, plain language disclaimer that national averages may not accurately reflect the earnings of workers in particular parts of the country and may include earners at all stages of their career and not just entry level wages for recent graduates.);

(vii) A representation regarding the availability, amount, or nature of any financial assistance available to students from the institution or any other entity to pay the costs of attendance at the institution that is materially different in availability, amount, or nature from the actual financial assistance available to the borrower from the institution or any other entity to pay the costs of attendance at the institution after enrollment;

(viii) A representation regarding the amount, method, or timing of payment of tuition and fees that the student would be charged for the program that is materially different in amount, method, or timing of payment from the actual tuition and fees charged to the student;

(ix) A representation that the institution, its courses, or programs are endorsed by vocational counselors, high schools, colleges, educational organizations, employment agencies, members

of a particular industry, students, former students, governmental officials, Federal or State agencies, the United States Armed Forces, or other individuals or entities when the institution has no permission or is not otherwise authorized to make or use such an endorsement;

(x) A representation regarding the educational resources provided by the institution that are required for the completion of the student's educational program that are materially different from the institution's actual circumstances at the time the representation is made, such as representations regarding the institution's size; location; facilities; training equipment; or the number, availability, or qualifications of its personnel; and

(xi) A representation regarding the nature or extent of prerequisites for enrollment in a course or program offered by the institution that are materially different from the institution's actual circumstances at the time the representation is made, or that the institution knows will be materially different during the student's anticipated enrollment at the institution.

(4) *Financial harm.* Under this paragraph (e), financial harm is the amount of monetary loss that a borrower incurs as a consequence of a misrepresentation, as defined in paragraph (e)(3) of this section. Financial harm does not include damages for nonmonetary loss, such as personal injury, inconvenience, aggravation, emotional distress, pain and suffering, punitive damages, or opportunity costs. The Department does not consider the act of taking out a Direct Loan or a loan repaid by a Direct Consolidation Loan, alone, as evidence of financial harm to the borrower. Financial harm is such monetary loss that is not predominantly due to intervening local, regional, or national economic or labor market conditions as demonstrated by evidence before the Secretary or provided to the Secretary by the borrower or the school. Financial harm cannot arise from the borrower's voluntary decision to pursue less than full-time work or not to work or result from a voluntary change in occupation. Evidence of financial harm may include, but is not limited to, the following circumstances:

(i) Periods of unemployment upon graduating from the school's programs that are unrelated to national or local economic recessions;

(ii) A significant difference between the amount or nature of the tuition and fees that the institution represented to the borrower that the institution would charge or was charging, and the actual amount or nature of the tuition and fees charged by the institution for which the Direct Loan was disbursed or for which a loan repaid by the Direct Consolidation Loan was disbursed;

(iii) The borrower's inability to secure employment in the field of study for which the institution expressly guaranteed employment; and

(iv) The borrower's inability to complete the program because the institution no longer offers a requirement necessary for completion of the program in which the borrower enrolled and the institution did not provide for an acceptable alternative requirement to enable completion of the program.

(5) *Exclusions.* The Secretary will not accept the following as a basis for a borrower defense to repayment under this paragraph (e)—

(i) A violation by the institution of a requirement of the Act or the Department's regulations for a borrower defense to repayment under paragraph (c) or (d) of this section or under § 685.222, unless the violation would otherwise constitute the basis for a successful borrower defense to repayment under this paragraph (e); or

(ii) A claim that does not directly and clearly relate to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made, including, but not limited to—

- (A) Personal injury;
- (B) Sexual harassment;
- (C) A violation of civil rights;
- (D) Slander or defamation;
- (E) Property damage;

(F) The general quality of the student's education or the reasonableness of an educator's conduct in providing educational services;

(G) Informal communication from other students;

(H) Academic disputes and disciplinary matters; and

(I) Breach of contract unless the school's act or omission would otherwise constitute the basis for a successful defense to repayment under this paragraph (e).

(6) *Limitations period.* A borrower must assert a defense to repayment under this paragraph (e) within 3 years from the date the student is no longer enrolled at the institution. A borrower may only assert a defense to repayment under this paragraph (e) within the timeframes set forth in this paragraph (e)(6) and paragraph (e)(7) of this section.

(7) *Extension of limitation periods and reopening of applications.* For loans first disbursed on or after July 1, 2020, and before July 1, 2023, the Secretary may extend the time period when a borrower may assert a defense to repayment under § 685.206(e)(6) or may reopen a borrower's defense to repayment application to consider evidence that was not previously considered only if there is:

(i) A final, non-default judgment on the merits by a State or Federal Court that has not been appealed or that is not subject to further appeal and that establishes the institution made a misrepresentation, as defined in paragraph (e)(3) of this section; or

(ii) A final decision by a duly appointed arbitrator or arbitration panel that establishes that the institution made a misrepresentation, as defined in paragraph (e)(3) of this section.

(8) *Application and forbearance.* To assert a defense to repayment under this paragraph (e), a borrower must submit an application under penalty of perjury on a form approved by the Secretary and sign a waiver permitting the institution to provide the Department with items from the borrower's education record relevant to the defense to repayment claim. The form will note that pursuant to § 685.205(b)(6)(i), if the borrower is not in default on the loan for which a borrower defense has been asserted, the Secretary will grant forbearance and notify the borrower of the option to decline forbearance. The application requires the borrower to—

(i) Certify that the borrower received the proceeds of a loan, in whole or in part, to attend the named institution;

(ii) Provide evidence that supports the borrower defense to repayment application;

(iii) State whether the borrower has made a claim with any other third party, such as the holder of a performance bond, a public fund, or a tuition recovery program, based on the same act or omission of the institution on which the borrower defense to repayment is based;

(iv) State the amount of any payment received by the borrower or credited to the borrower's loan obligation through the third party, in connection with a borrower defense to repayment described in paragraph (e)(2) of this section;

(v) State the financial harm, as defined in paragraph (e)(4) of this section, that the borrower alleges to have been caused and provide any information relevant to assessing whether the borrower incurred financial harm, including providing documentation that the borrower actively pursued employment in the field for which the borrower's education prepared the borrower if the borrower is a recent graduate (failure to provide such information results in a presumption that the borrower failed to actively pursue employment in the field); whether the borrower was terminated or removed for performance reasons from a position in the field for which the borrower's education prepared the borrower, or in a related field; and whether the borrower failed to meet other requirements of or qualifications for employment in such field for reasons unrelated to the school's misrepresentation underlying the borrower defense to repayment, such as the borrower's ability to pass a drug test, satisfy driving record requirements, and meet any health qualifications; and

(vi) State that the borrower understands that in the event that the borrower receives a 100 percent discharge of the balance of the loan for which the defense to repayment application has been submitted, the institution may, if allowed or not prohibited by other applicable law, refuse to verify or to provide an official transcript that verifies the borrower's completion of credits or a credential associated with the discharged loan.

(9) *Consideration of order of objections and of evidence in possession of the Secretary under this paragraph (e).* (i) If the borrower asserts both a borrower defense to repayment and any other objection to an action of the Secretary with regard to a Direct Loan or a loan repaid by a Direct Consolidation Loan under this paragraph (e), the order in which the Secretary will consider objections, including a borrower defense to repayment under this paragraph (e), will be determined as appropriate under the circumstances.

(ii) With respect to the borrower defense to repayment application submitted under this paragraph (e), the Secretary may consider evidence otherwise in the possession of the Secretary, including from the Department's internal records or other relevant evidence obtained by the Secretary, as practicable, provided that the Secretary permits the institution and the borrower to review and respond to this evidence and to submit additional evidence.

(10) *School response and borrower reply under this paragraph (e).* (i) Upon receipt of a borrower defense to repayment application under this paragraph (e), the Department will notify the school of the pending application and provide a copy of the borrower's request and any supporting documents, a copy of any evidence otherwise in the possession of the Secretary, and a waiver signed by the student permitting the institution to provide the Department with items from the student's education record relevant to the defense to repayment claim to the school, and invite the school to respond and to submit evidence, within the specified timeframe included in the notice, which will be no less than 60 days.

(ii) Upon receipt of the school's response, the Department will provide the borrower a copy of the school's submission as well as any evidence otherwise in possession of the Secretary, which was provided to the school, and will give the borrower an opportunity to submit a reply within a specified timeframe, which will be no less than 60 days. The borrower's reply must be limited to issues and evidence raised in

the school's submission and any evidence otherwise in the possession of the Secretary.

(iii) The Department will provide the school a copy of the borrower's reply.

(iv) There will be no other submissions by the borrower or the school to the Secretary unless the Secretary requests further clarifying information.

(11) *Written decision under this paragraph (e).* (i) After considering the borrower's application and all applicable evidence under this paragraph (e), the Secretary issues a written decision—

(A) Notifying the borrower and the school of the decision on the borrower defense to repayment under this paragraph (e);

(B) Providing the reasons for the decision; and

(C) Informing the borrower and the school of the relief, if any, that the borrower will receive, consistent with paragraph (e)(12) of this section and specifying the relief determination.

(ii) If the Department receives a borrower defense to repayment application that is incomplete and is within the limitations period in paragraph (e)(6) or (7) of this section, the Department will not issue a written decision on the application and instead will notify the borrower in writing that the application is incomplete and will return the application to the borrower.

(12) *Borrower defense to repayment relief under this paragraph (e).* (i) If the Secretary grants the borrower's request for relief based on a borrower defense to repayment under this paragraph (e), the Secretary notifies the borrower and the school 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 or will be reimbursed for amounts paid toward the loan voluntarily or through enforced collection. The amount of relief that a borrower receives under this paragraph (e) may exceed the amount of financial harm, as defined in paragraph (e)(4) of this section, that the borrower alleges in the application pursuant to paragraph (e)(8)(v) of this section. The Secretary determines the amount of relief and awards relief limited to the monetary loss that a borrower incurred as a consequence of a

misrepresentation, as defined in paragraph (e)(3) of this section. The amount of relief cannot exceed the amount of the loan and any associated costs and fees and will be reduced by the amount of refund, reimbursement, indemnification, restitution, compensatory damages, settlement, debt forgiveness, discharge, cancellation, compromise, or any other financial benefit received by, or on behalf of, the borrower that was related to the borrower defense to repayment under this paragraph (e). In awarding relief under this paragraph (e), the Secretary considers the borrower's application, as described in paragraph (e)(8) of this section, which includes information about any payments received by the borrower and the financial harm alleged by the borrower. In awarding relief under this paragraph (e), the Secretary also considers the school's response, the borrower's reply, and any evidence otherwise in the possession of the Secretary, which was previously provided to the borrower and the school, as described in paragraph (e)(10) of this section. The Secretary also updates reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan or loans repaid by the borrower's Direct Consolidation Loan under this paragraph (e).

(ii) The Secretary affords the borrower such further relief as the Secretary determines is appropriate under the circumstances. Further relief may include determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act.

(13) *Finality of borrower defense to repayment decisions under this paragraph (e).* The determination of a borrower's defense to repayment by the Department included in the written decision referenced in paragraph (e)(11) of this section is the final decision of the Department and is not subject to appeal within the Department.

(14) *Cooperation by the borrower under this paragraph (e).* The Secretary may revoke any relief granted to a borrower under this section who refuses to cooperate with the Secretary in any proceeding under this paragraph (e) or

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under part 668, subpart G. Such cooperation includes, but is not limited to—

(i) Providing testimony regarding any representation made by the borrower to support a successful borrower defense to repayment under this paragraph (e); and

(ii) Producing, within timeframes established by the Secretary, any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(15) *Transfer to the Secretary of the borrower's right of recovery against third parties under this paragraph (e).* (i) Upon the grant of any relief under this paragraph (e), 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 may have by contract or applicable law with respect to the loan or the provision of educational services for which the loan was received, against the school, its principals, its affiliates and their successors, or its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party. If the borrower asserts a claim to, and recovers from, a public fund, the Secretary may reinstate the borrower's obligation to repay on the loan an amount based on the amount recovered from the public fund, if the Secretary determines that the borrower's recovery from the public fund was based on the same borrower defense to repayment and for the same loan for which the discharge was granted under this section.

(ii) The provisions of this paragraph (e)(15) apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, 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.

(iii) Nothing in this paragraph (e)(15) limits or forecloses the borrower's right to pursue legal and equitable relief arising under applicable law

against a party described in this paragraph (e)(15) for recovery of any portion of a claim exceeding that assigned to the Secretary or any other claims arising from matters unrelated to the claim on which the loan is discharged.

(16) *Recovery from the school under this paragraph (e).* (i) The Secretary may initiate an appropriate proceeding to require the school whose misrepresentation resulted in the borrower's successful borrower defense to repayment under this paragraph (e) to pay to the Secretary the amount of the loan to which the defense applies in accordance with part 668, subpart G. This paragraph (e)(16) would also be applicable for provisionally certified institutions.

(ii) Under this paragraph (e), the Secretary will not initiate such a proceeding more than 5 years after the date of the final determination included in the written decision referenced in paragraph (e)(11) of this section. The Department will notify the school of the borrower defense to repayment application within 60 days of the date of the Department's receipt of the borrower's application.

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

[59 FR 61690, Dec. 1, 1994, as amended at 60 FR 33345, June 28, 1995; 64 FR 58972, Nov. 1, 1999; 78 FR 65832, Nov. 1, 2013; 81 FR 76080, Nov. 1, 2016; 84 FR 49926, Sept. 23, 2019; 87 FR 66055, Nov. 1, 2022]

§ 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, the discharge provisions in § 685.212, and the loan forgiveness provisions in §§ 685.217 and 685.219.

(3) A borrower's first payment on a Direct Loan is due within 60 days of the beginning date of the repayment period as determined in accordance

with paragraph (b), (c), (d), or (e) of this section.

(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(b).

(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)(i) A borrower is not obligated to pay interest on a Direct Subsidized Loan during periods when the borrower is enrolled at an eligible school on at least a half-time basis unless the borrower is required to make payments on the loan during those periods under paragraph (b)(1) of this section.

(ii) Except as provided in paragraph (b)(3)(iii) of this section, a borrower is not obligated to pay interest on a Direct Subsidized Loan during grace periods.

(iii) In the case of a Direct Subsidized Loan for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014, a borrower is respon-

sible for the interest that accrues during the grace period.

(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; 78 FR 65832, Nov. 1, 2013]

§ 685.208 Repayment plans.

(a) *General*—(1) *Borrowers who entered repayment before July 1, 2006.* (i) A Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan may be repaid under—

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (d) of this section;

(C) The graduated repayment plan in accordance with paragraph (f) of this section;

(D) The income-contingent repayment plans in accordance with paragraph (k)(2) or (3) of this section; or

(E) The income-based repayment plan in accordance with paragraph (m) of this section.

(ii) A Direct PLUS Loan or a Direct PLUS Consolidation Loan may be repaid under—

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (d) of this section; or

(C) The graduated repayment plan in accordance with paragraph (f) of this section.

(2) *Borrowers entering repayment on or after July 1, 2006.* (i) A Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan that was made to a graduate or professional student borrower may be repaid under—

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section;

(C) The graduated repayment plan in accordance with paragraph (g) of this section;

(D) The income-contingent repayment plans in accordance with paragraph (k) of this section; or

(E) The income-based repayment plan in accordance with paragraph (m) of this section.

(ii) A Direct PLUS Loan that was made to a parent borrower may be repaid under—

(A) The standard repayment plan in accordance with paragraph (b) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section; or

(C) The graduated repayment plan in accordance with paragraph (g) of this section.

(iii) A Direct Consolidation Loan that did not repay a parent Direct PLUS Loan or a parent Federal PLUS Loan may be repaid under—

(A) The standard repayment plan in accordance with paragraph (c) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section;

(C) The graduated repayment plan in accordance with paragraph (h) of this section;

(D) The income-contingent repayment plans in accordance with paragraph (k) of this section; or

(E) The income-based repayment plan in accordance with paragraph (m) of this section.

(iv) A Direct Consolidation Loan that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan may be repaid under—

(A) The standard repayment plan in accordance with paragraph (c) of this section;

(B) The extended repayment plan in accordance with paragraph (e) of this section;

(C) The graduated repayment plan in accordance with paragraph (h) of this section; or

(D) The income-contingent repayment plan in accordance with paragraph (k)(2) of this section.

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

(3) The Secretary may provide an alternative repayment plan in accordance with paragraph (l) 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 an 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 repayment plans and the 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.

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(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 gradually 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 plans.*

(1) Under the income-contingent repayment plan described in § 685.209(a), the required monthly payment for a borrower who has a partial financial hardship is limited to no more than 10 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) Under the income-contingent repayment plan described in § 685.209(b), a borrower's monthly repayment amount is generally based on the total amount of the borrower's Direct Loans, family size, and AGI reported by the borrower for the most recent year for which the Secretary has obtained income information.

(3) Under the income-contingent repayment plan described in § 685.209(c), a borrower's required monthly payment is limited to no more than 10 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, unless the borrower's monthly payment amount is adjusted in accordance with § 685.209(c)(4)(vi)(E).

(4) For the income-contingent repayment plan described in § 685.209(b), 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.

(5) Provisions governing the income-contingent repayment plans 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 alternative 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.

(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 or, for a new borrower as of July 1, 2014, as defined in § 685.221(a)(4), 10 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; 77 FR 66135, Nov. 1, 2012; 78 FR 65833, Nov. 1, 2013; 80 FR 67238, Oct. 30, 2015; 87 FR 66058, Nov. 1, 2022]

§ 685.209 Income-contingent repayment plans.

(a) *Pay As You Earn repayment plan:* The Pay As You Earn repayment plan is an income-contingent repayment plan for eligible new borrowers.

(1) *Definitions.* As used in this section, other than as expressly provided for in paragraph (c) of this section—

(i) *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;

(ii) *Eligible loan*, for purposes of determining whether a borrower has a partial financial hardship in accordance with paragraph (a)(1)(v) of this section or adjusting a borrower's monthly payment amount in accordance with paragraph (a)(2)(ii) of this section, means any outstanding loan made to a borrower under the Direct Loan Program or the FFEL Program except for a defaulted loan, a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower, or a Direct Consolidation Loan or Federal Consolidation Loan that repaid a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower;

(iii) *Eligible new borrower* means an individual who—(A) Has no outstanding balance on a Direct Loan Program loan or a FFEL Program loan as of October 1, 2007, or who has no outstanding balance on such a loan on the date he or she receives a new loan after October 1, 2007; and

(B)(1) Receives a disbursement of a Direct Subsidized Loan, Direct Unsubsidized Loan, or student Direct PLUS Loan on or after October 1, 2011; or

(2) Receives a Direct Consolidation Loan based on an application received on or after October 1, 2011, except that a borrower is not considered an eligible new borrower if the Direct Consolidation Loan repays a loan that would otherwise make the borrower ineligible under paragraph (a)(1)(iii)(A) of this section;

(iv) *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—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs;

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

(A) 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 Pay As You Earn repayment plan, exceeds 10 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(B) 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 Pay As You Earn repayment plan, exceeds 10 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; and

(vi) *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.

(2) *Terms of the Pay As You Earn repayment plan.* (i) A borrower may select the Pay As You Earn repayment plan only if the borrower has a partial financial hardship. The borrower's aggregate monthly loan payments are limited to no more than 10 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.

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

(A) Except for borrowers provided for in paragraph (a)(2)(ii)(B) 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 outstanding principal amount of the borrower's eligible loans that are Direct Loans;

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

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

(2) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (a)(2)(ii)(B)(1) of this section; and

(3) 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 (a)(2)(ii)(B)(2) of this section by the percentage of the total outstanding principal amount of the borrower's eligible loans that are Direct Loans;

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

(D) The calculated amount under paragraph (a)(2)(i), (a)(2)(ii)(A), or (a)(2)(ii)(B) 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.

(iii) 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 Pay As You Earn repayment plan. Any period during which the Secretary has previously not charged the borrower accrued interest on an eligible loan under the income-based repayment plan or

the Revised Pay As You Earn repayment plan counts toward the maximum three years of subsidy a borrower is eligible to receive under the Pay As You Earn 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.

(iv) 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 Pay As You Earn repayment plan or no longer has a partial financial hardship.

(v) The repayment period for a borrower under the Pay As You Earn repayment plan may be greater than 10 years.

(3) *Payment application and prepayment.* (i) The Secretary applies any payment made under the Pay As You Earn repayment plan in the following order:

- (A) Accrued interest.
- (B) Collection costs.
- (C) Late charges.
- (D) Loan principal.

(ii) The borrower may prepay all or part of a loan at any time without penalty, as provided under § 685.211(a)(2).

(iii) If the prepayment amount equals or exceeds a monthly payment amount of \$10.00 or more under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of § 685.211(a)(3).

(iv) If the prepayment amount exceeds a monthly payment amount of \$0.00 under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of paragraph (a)(3)(i) of this section.

(4) *Changes in the payment amount.* (i) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the Pay As You Earn repayment plan, but the Secretary recalculates the borrower's monthly payment. The Sec-

retary also recalculates the monthly payment for a borrower who chooses to stop making income-contingent payments. In either case, as a result of the recalculation—

(A) 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 a 10-year repayment period using the amount of the borrower's eligible loans that was outstanding at the time the borrower began repayment on the loans under the Pay As You Earn repayment plan; and

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

(ii) A borrower who no longer wishes to repay under the Pay As You Earn repayment plan may change to a different repayment plan in accordance with § 685.210(b).

(5) *Eligibility documentation, verification, and notifications.* (i)(A) The Secretary determines whether a borrower has a partial financial hardship to qualify for the Pay As You Earn 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 provide documentation, acceptable to the Secretary, of the borrower's AGI.

(B) If the borrower's AGI is not available, or if the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the borrower must provide other documentation to verify income.

(C) The borrower must 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.

(ii) After making a determination that a borrower has a partial financial hardship to qualify for the Pay As You Earn repayment plan for the year the borrower initially elects the plan and for each subsequent year that the borrower has a partial financial hardship, the Secretary sends the borrower a written notification that provides the borrower with—

(A) The borrower's scheduled monthly payment amount, as calculated under paragraph (a)(2) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (a)(5)(i) of this section, if the borrower chooses to remain on the Pay As You Earn repayment plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(C) An explanation of the consequences, as described in paragraphs (a)(5)(i)(C) and (a)(5)(vii) of this section, if the borrower does not provide the required information; and

(D) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described in paragraphs (a)(5)(ii)(A) through (a)(5)(ii)(D) of this section.

(iii) For each subsequent year that a borrower who currently has a partial financial hardship remains on the Pay As You Earn repayment plan, the Secretary notifies the borrower in writing of the requirements in paragraph (a)(5)(i) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (a)(5)(iii)(A) of this section. The notification provides the borrower with—

(A) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the documentation described in paragraph (a)(5)(i) of this section (annual deadline); and

(B) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (a)(4)(i) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period in accordance with paragraph (a)(2)(iv) of this section.

(iv) Each time the Secretary makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the Secretary sends the borrower a written notification that provides the borrower with—

(A) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (a)(4)(i) of this section;

(B) An explanation that unpaid interest will be capitalized in accordance with paragraph (a)(2)(iv) of this section; and

(C) Information about the borrower's option to request, at any time, that the Secretary redetermine whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the Secretary determines that the borrower again has a partial financial hardship, the Secretary recalculates the borrower's monthly payment in accordance with paragraph (a)(2)(i) of this section and sends the borrower a written notification that includes the information described in paragraphs (a)(5)(ii)(A) through (a)(5)(ii)(D) of this section.

(v) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the Pay As You Earn repayment plan, the Secretary sends the borrower a written notification that includes the

information described in paragraph (a)(5)(iv)(C) of this section.

(vi) If a borrower who is currently repaying under another repayment plan selects the Pay As You Earn repayment plan but does not provide the documentation described in paragraphs (a)(5)(i)(A) or (a)(5)(i)(B) of this section, or if the Secretary determines that the borrower does not have a partial financial hardship, the borrower remains on his or her current repayment plan.

(vii) The Secretary designates the repayment option described in paragraph (a)(4)(i) of this section if a borrower who is currently repaying under the Pay As You Earn repayment plan remains on the plan for a subsequent year but the Secretary does not receive the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section within 10 days of the specified annual deadline, unless the Secretary is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

(viii) If the Secretary receives the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section within 10 days of the specified annual deadline—

(A) The Secretary promptly determines the borrower's new scheduled monthly payment amount and maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined.

(I) If the new monthly payment amount is less than the borrower's previously calculated Pay As You Earn repayment plan monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of § 685.211(a)(3), unless the borrower requests otherwise, the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of § 685.209(a)(3)(i).

(2) If the new monthly payment amount is equal to or greater than the borrower's previously calculated Pay

As You Earn repayment plan monthly payment amount, and the borrower made payments at the previously calculated payment amount after the end of the most recent annual payment period, the Secretary does not make any adjustment to the borrower's account.

(3) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 685.219, provided that the payments otherwise meet the requirements described in § 685.219(c)(1).

(B) The new annual payment period begins on the day after the end of the most recent annual payment period.

(ix)(A) If the Secretary receives the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (a)(4)(i) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated Pay As You Earn repayment plan monthly payment amount is determined, if the new monthly payment amount is \$0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

(B) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 685.219, provided that the payments otherwise meet the requirements described in § 685.219(c)(1).

(6) *Loan forgiveness.* (i) To qualify for loan forgiveness after 20 years, a borrower must have participated in the Pay As You Earn repayment plan and satisfied at least one of the following conditions during that period:

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

(B) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-contingent payments as provided in paragraph (a)(4)(i) of this section.

(C) 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) with a 10-year repayment period.

(D) Made monthly payments under the Direct Loan standard repayment plan described in § 685.208(b) for the amount of the borrower's loans that were outstanding at the time the borrower first selected the Pay As You Earn repayment plan.

(E) Made monthly payments under the income-contingent repayment plan described in paragraph (b) of this section, the Revised Pay As You Earn repayment plan described in paragraph (c) of this section, or the income-based repayment plan described in § 685.221, including a calculated monthly payment amount of \$0.00.

(F) Made monthly payments under the alternative repayment plan described in paragraph (c)(4)(v) of this section prior to changing to a repayment plan described under this section or § 685.221;

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

(ii) As provided under paragraph (a)(6)(v) 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—

(A) The borrower made monthly payments under one or more of the repayment plans described in paragraph (a)(6)(i) of this section, including a monthly payment amount of \$0.00, as provided under paragraph (a)(2)(ii)(C) of this section; and

(B)(I) The borrower made those monthly payments each year for a 20-year period; or

(2) Through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 20 years of payments.

(iii) For a borrower who qualifies for the Pay As You Earn repayment plan, the beginning date for the 20-year period is—

(A) If the borrower made payments under the income-contingent repayment plan described in paragraph (b) of this section, the Revised Pay As You Earn repayment plan described in paragraph (c) of this section, or the income-based repayment plan described in § 685.221, the earliest date the borrower made a payment on the loan under one of those plans at any time after October 1, 2007; or

(B) If the borrower did not make payments under the income-contingent repayment plan described in paragraph (b) of this section, the Revised Pay As You Earn repayment plan described in paragraph (c) of this section, or the income-based repayment plan described in § 685.221—

(I) For a borrower who has an eligible 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 the Pay As You Earn repayment plan. The beginning date is the date the borrower made the payment or received the deferment after October 1, 2007;

(2) 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 after October 1, 2007;

(3) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (a)(6)(iii)(B)(I) or (a)(6)(iii)(B)(2) of this section, the date the borrower made a payment on the loan under the Pay As You Earn repayment plan;

(4) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the Direct Consolidation Loan that met the requirements of paragraph (a)(6)(i) of this section; or

(5) If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (a)(6)(iii)(A) or (a)(6)(iii)(B) of this section, the date the borrower made a payment on the loan under the Pay As You Earn repayment plan.

(iv) Any payments made on a defaulted loan are not made under a qualifying repayment plan and are not counted toward the 20-year forgiveness period.

(v)(A) When the Secretary determines that a borrower has satisfied the loan forgiveness requirements under paragraph (a)(6) of this section on an eligible loan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than six months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notice that includes—

(1) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;

(2) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

(3) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(B) The Secretary determines when a borrower has met the loan forgiveness requirements in paragraph (a)(6) of this section and does not require the borrower to submit a request for loan forgiveness.

(C) After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary—

(1) Notifies the borrower that the borrower's obligation on the loans is satisfied;

(2) Provides the borrower with the information described in paragraph (a)(6)(v)(A)(3) of this section; and

(3) Returns to the sender any payment received on a loan after loan forgiveness has been granted.

(b) *Income-contingent repayment plan:* The income-contingent repayment (ICR) plan is an income-contingent repayment plan under which a borrower's monthly payment amount is generally based on the total amount of the borrower's Direct Loans, family size, and AGI.

(1) *Repayment amount calculation.* (i) 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)(ii) 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.

(ii) The annual amount payable by a borrower under the ICR plan is the lesser of—

(A) 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 AGI as shown in the income percentage factor table in a notice published annually by the Secretary in the FEDERAL REGISTER; or

(B) 20 percent of discretionary income.

(iii)(A) For purposes of paragraph (b) of this section, discretionary income is defined as a borrower's AGI minus the amount of the poverty guideline, as defined in paragraph (b)(1)(iii)(B) of this section, for the borrower's family size as defined in § 685.209(a)(1)(iv).

(B) For purposes of paragraph (b) of this section, the term "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 line to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(iv) For exact incomes not shown in the income percentage factor table in the annual notice published by the Secretary, an income percentage factor is calculated, based upon the intervals between the incomes and income percentage factors shown on the table.

(v) 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).

(vi) 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 is \$5.00.

(vii) For purposes of the annual recalculation described in paragraph (b)(1)(v) 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 calculated for that borrower while paying under the ICR plan.

(viii) For each calendar year, 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.

(ix) 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.

(x) At the beginning of the repayment period under the ICR plan, the

borrower must make monthly payments of the amount of interest that accrues on the borrower's Direct Loan until the Secretary calculates the borrower's monthly payment amount on the basis of the borrower's income.

(2) *Treatment of married borrowers.*

(i)(A) For a married borrower who files a joint Federal tax return with his or her spouse, the AGI for both spouses is used to calculate the monthly payment amount under the ICR plan.

(B) For a married borrower who files a Federal income tax return separately from his or her spouse, only the borrower's AGI is used to determine the monthly payment amount under the ICR plan.

(ii) 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 paragraph (b)(1) of this section.

(iii) 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.

(3) *Other features of the ICR plan—(i) 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.

(ii) *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.

(iii) *Repayment period.* (A) The maximum repayment period under the ICR plan is 25 years.

(B) The repayment period includes—

(1) Periods in which the borrower makes payments under the ICR plan on loans that are not in default;

(2) 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);

(3) Periods in which the borrower made monthly payments under the Pay As You Earn repayment plan or the Revised Pay As You Earn repayment plan;

(4) Periods in which the borrower made monthly payments under the alternative repayment plan described in paragraph (c)(4)(v) of this section prior to changing to a repayment plan described under this section or § 685.221;

(5) 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);

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

(7) 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);

(8) 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

(9) Periods of economic hardship deferment.

(C) If a borrower repays more than one loan under the ICR plan, a separate repayment period for each loan begins when that loan enters repayment.

(D) If a borrower has not repaid a loan in full at the end of the 25-year repayment period under the ICR plan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than six months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notification that includes—

(1) An explanation that the borrower is approaching the date that he or she

is expected to meet the requirements to receive loan forgiveness;

(2) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

(3) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(E) The Secretary determines when a borrower has met the loan forgiveness requirements under paragraph (b)(3)(iii)(D) of this section and does not require the borrower to submit a request for loan forgiveness. After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary—

(1) Notifies the borrower that the borrower's obligation on the loans is satisfied;

(2) Provides the information described in paragraph (b)(3)(iii)(D)(3) of this section; and

(3) Returns to the sender any payment received on a loan after loan forgiveness has been granted.

(iv) [Reserved]

(v) *Notification of terms and conditions.* When a borrower elects or is required by the Secretary to repay a loan under the ICR plan, and for each subsequent year that the borrower remains on the plan, the Secretary sends the borrower a written notification that provides the terms and conditions of the plan, including—

(A) The borrower's scheduled monthly payment amount as calculated under paragraph (b)(1) or (b)(3)(vi)(D) of this section, as applicable, and the time period during which this scheduled monthly payment will apply (annual payment period);

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (b)(3)(vi)(A) of this section, if the borrower chooses to remain on the ICR plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive the information;

(C) That if the borrower believes that special circumstances warrant an adjustment to the borrower's repayment

obligations, as described in paragraph (b)(3)(ii) of this section, the borrower may contact the Secretary at any time during the borrower's current annual payment period and obtain the Secretary's determination as to whether an adjustment is appropriate; and

(D) An explanation of the consequences, as described in paragraph (b)(3)(vi)(D) of this section, if the borrower does not provide the required information.

(vi) *Documentation of income and certification of family size.* (A) For the initial year that a borrower selects the ICR plan and for each subsequent year that the borrower remains on the plan, the borrower must—

(1) Provide to the Secretary, for purposes of calculating a monthly repayment amount and servicing and collecting the borrower's loan, acceptable documentation, as determined by the Secretary, of the borrower's AGI or alternative documentation of income in accordance with paragraph (b)(3)(i) of this section; and

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

(B) For each subsequent year that a borrower remains on the ICR plan, the Secretary notifies the borrower in writing of the requirements described in paragraph (b)(3)(vi)(A) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (b)(3)(vi)(B)(1) of this section. The notification provides the borrower with—

(1) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive the documentation described in paragraph (b)(3)(vi)(A) of this section (annual deadline); and

(2) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (b)(3)(vi)(D) of this section, and the effective date for the recalculated monthly payment amount.

(C) The Secretary designates the standard repayment plan for a borrower who initially selects the ICR

plan but does not comply with the requirement in paragraph (b)(3)(vi)(A)(1) of this section.

(D) If, during a subsequent year that a borrower remains on the ICR plan, the Secretary does not receive the documentation described in paragraph (b)(3)(vi)(A)(1) of this section within 10 days of the specified annual deadline, the Secretary recalculates the borrower's required monthly payment amount, unless the Secretary is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period. The maximum recalculated monthly amount the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower's loans that was outstanding at the time the borrower began repayment under the ICR plan. The repayment period based on the recalculated payment may exceed 10 years.

(E) If the Secretary receives the documentation described in paragraph (b)(3)(vi)(A)(1) of this section within 10 days of the specified annual deadline—

(1) The Secretary promptly determines the borrower's new scheduled monthly payment amount and maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined.

(i) If the new calculated monthly payment amount is less than the borrower's previously calculated monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding § 685.211(a)(3), the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of § 685.211(a)(1), unless the borrower requests otherwise.

(ii) If the new monthly payment amount is equal to or greater than the borrower's previously calculated monthly payment amount, and the borrower made payments at the previously

calculated payment amount after the end of the most recent annual payment period, the Secretary does not make any adjustment to the borrower's account.

(iii) Any payments the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 685.219, provided that the payments otherwise meet the requirements described in § 685.219(c)(1).

(2) The new annual payment period begins on the day after the end of the most recent annual payment period.

(F)(1) If the Secretary receives the documentation described in paragraph (b)(3)(vi)(A)(I) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (b)(3)(vi)(D) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated monthly payment amount is determined, if the new monthly payment amount is \$0.00 or is less than the borrower's previously calculated monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

(2) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 685.219, provided that the payments otherwise meet the requirements described in § 685.219(c)(1).

(G) If a borrower defaults and the Secretary designates the ICR plan for the borrower but the borrower fails to comply with the requirements in paragraph (b)(3)(vi)(A) of this section, the Secretary mails a notice to the borrower establishing a repayment schedule for the borrower.

(c) *Revised Pay As You Earn repayment plan.* The Revised Pay As You Earn repayment plan (REPAYE plan) is an in-

come-contingent repayment plan under which a borrower's monthly payment amount is based on the borrower's AGI and family size.

(1) *Definitions.* As used in this paragraph (c)—

(i) *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 and is used to calculate the monthly payment amount. For a married borrower filing separately, the AGI for each spouse is combined to calculate the monthly payment amount, unless the borrower certifies, on a form approved by the Secretary, that the borrower is—

(A) Separated from his or her spouse; or

(B) Unable to reasonably access the income information of his or her spouse.

(ii) *Eligible loan*, for purposes of adjusting a borrower's monthly payment amount in accordance with paragraph (c)(2)(ii) of this section, means any outstanding loan made to a borrower under the Direct Loan Program or the FFEL Program except for a defaulted loan, a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower, or a Direct Consolidation Loan or Federal Consolidation Loan that repaid a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower;

(iii) *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. Family size does not include the borrower's spouse if the borrower is separated from his or her spouse, or if the borrower is filing separately and is unable to reasonably access the spouse's income information. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the

borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs; and

(iv) *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.

(2) *Terms of the Revised Pay As You Earn repayment plan.* (i) The aggregate monthly loan payments of a borrower who selects the REPAYE plan are limited to no more than 10 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, unless the borrower's monthly payment amount is adjusted in accordance with paragraph (c)(4)(vi)(E) of this section.

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

(A) Except for borrowers provided for in paragraph (c)(2)(ii)(B) of this section, the borrower's eligible loans are not solely 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 outstanding principal amount of the borrower's eligible loans that are Direct Loans;

(B) Except in the case of a married borrower filing separately whose spouse's income is excluded in accordance with paragraph (c)(1)(i)(A) or (B) of this section, both the borrower and borrower's spouse have eligible loans, in which case the Secretary determines—

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

(2) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (c)(2)(ii)(B)(1) of this section; and

(3) 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 (c)(2)(ii)(B)(2) of this section by the percentage of the total outstanding principal amount of the borrower's eligible loans that are Direct Loans;

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

(D) The calculated amount under paragraph (c)(2)(i) or (c)(2)(ii)(A) or (B) 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.

(iii) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's loan—

(A) Except as provided in paragraph (c)(2)(iii)(B) of this section, for a 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 REPAYE plan. Following this three-year period, the Secretary charges the borrower 50 percent of the remaining accrued interest on the Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan.

(B) For a Direct Unsubsidized Loan, a Direct PLUS Loan made to a graduate or professional student, the unsubsidized portion of a Direct Consolidation Loan, or for a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan for which the borrower has become responsible for accruing interest in accordance with § 685.200(f)(3), the Secretary charges the borrower 50 percent of the remaining accrued interest.

(C) The three-year period described in paragraph (c)(2)(iii)(A) of this section—

(1) Does not include any period during which the borrower receives an economic hardship deferment;

(2) Includes any prior period of repayment under the income-based repayment plan or the Pay As You Earn repayment plan; and

(3) For a Direct Consolidation Loan, includes any period in which the underlying loans were repaid under the income-based repayment plan or the Pay As You Earn repayment plan.

(iv) 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 leaves the REPAYE plan.

(v) A borrower who no longer wishes to repay under the REPAYE plan may change to a different repayment plan in accordance with § 685.210(b). A borrower who changes to a different repayment plan in accordance with this paragraph or paragraph (c)(4)(vi)(C) of this section may return to the REPAYE plan pursuant to the requirements in paragraphs (c)(4)(vi)(D) and (E) of this section.

(3) *Payment application and prepayment.* (i) The Secretary applies any payment made under the REPAYE plan in the following order:

- (A) Accrued interest.
- (B) Collection costs.
- (C) Late charges.
- (D) Loan principal.

(ii) The borrower may prepay all or part of a loan at any time without penalty, as provided under § 685.211(a)(2).

(iii) If the prepayment amount equals or exceeds a monthly payment amount of \$10.00 or more under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of § 685.211(a)(3).

(iv) If the prepayment amount exceeds a monthly payment amount of \$0.00 under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of paragraph (c)(3)(i) of this section.

(4) *Eligibility documentation, verification, and notifications.* (i)(A) For the year the borrower initially selects the REPAYE plan and for each subsequent year that the borrower remains on the plan, the Secretary determines the borrower's monthly payment amount for that year. To make this determination, the Secretary requires the borrower to provide documentation, acceptable to the Secretary, of the borrower's AGI.

(B) If the borrower's AGI is not available, or if the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the borrower must provide other documentation to verify income.

(C) Unless otherwise directed by the Secretary, the borrower must 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.

(ii) After making the determination described in paragraph (c)(4)(i)(A) of this section for the initial year that the borrower selects the REPAYE plan and for each subsequent year that the borrower remains on the plan, the Secretary sends the borrower a written notification that provides the borrower with—

(A) The borrower's scheduled monthly payment amount, as calculated under paragraph (c)(2) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (c)(4)(i) of this section, if the borrower chooses to remain on the REPAYE plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(C) An explanation of the consequences, as described in paragraphs (c)(4)(i)(C) and (c)(4)(v) and (vi) of this section, if the borrower does not provide the required information; and

(D) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described

in paragraphs (c)(4)(ii)(A) through (D) of this section.

(iii) For each subsequent year that a borrower remains on the REPAYE plan, the Secretary notifies the borrower in writing of the requirements in paragraph (c)(4)(i) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (c)(4)(iii)(A) of this section. The notification provides the borrower with—

(A) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the documentation described in paragraph (c)(4)(i) of this section (annual deadline); and

(B) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, as described in paragraph (c)(4)(v) of this section.

(iv) If a borrower who is currently repaying under another repayment plan selects the REPAYE plan but does not provide the documentation described in paragraph (c)(4)(i)(A) or (B) of this section, the borrower remains on his or her current repayment plan.

(v) Except as provided in paragraph (c)(4)(vii) of this section, if a borrower who is currently repaying under the REPAYE plan remains on the plan for a subsequent year but the Secretary does not receive the documentation described in paragraph (c)(4)(i)(A) or (B) of this section within 10 days of the specified annual deadline, the Secretary removes the borrower from the REPAYE plan and places the borrower on an alternative repayment plan under which the borrower's required monthly payment is the amount necessary to repay the borrower's loan in full within the earlier of—

(A) Ten years from the date the borrower begins repayment under the alternative repayment plan; or

(B) The ending date of the 20- or 25-year period as described in paragraphs (c)(5)(i) and (ii) of this section.

(vi) If the Secretary places the borrower on an alternative repayment plan in accordance with paragraph (c)(4)(v) of this section, the Secretary sends the borrower a written notification

containing the borrower's new monthly payment amount and informing the borrower that—

(A) The borrower has been placed on an alternative repayment plan;

(B) The borrower's monthly payment amount has been recalculated in accordance with paragraph (c)(4)(v) of this section;

(C) The borrower may change to another repayment plan in accordance with § 685.210(b);

(D) The borrower may return to the REPAYE plan if he or she provides the documentation, as described in paragraph (c)(4)(i)(A) or (B) of this section, necessary for the Secretary to calculate the borrower's current REPAYE plan monthly payment amount and the monthly amount the borrower would have been required to pay under the REPAYE plan during the period when the borrower was on the alternative repayment plan or any other repayment plan;

(E) If the Secretary determines that the total amount of the payments the borrower was required to make while on the alternative repayment plan or any other repayment plan is less than the total amount the borrower would have been required to make under the REPAYE plan during that period, the Secretary will adjust the borrower's monthly REPAYE plan payment amount to ensure that the difference between the two amounts is paid in full by the end of the 20- or 25-year period described in paragraphs (c)(5)(i) and (ii) of this section;

(F) If the borrower returns to the REPAYE plan or changes to the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221, any payments that the borrower made under the alternative repayment plan after the borrower was removed from the REPAYE plan will count toward forgiveness under the REPAYE plan or the other repayment plans under paragraph (a) or (b) of this section or § 685.221; and

(G) Payments made under the alternative repayment plan described in paragraph (c)(4)(v) of this section will

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not count toward public service loan forgiveness under § 685.219.

(vii) The Secretary does not take the action described in paragraph (c)(4)(v) of this section if the Secretary receives the documentation described in paragraph (c)(4)(i)(A) or (B) of this section more than 10 days after the specified annual deadline, but is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

(viii) If the Secretary receives the documentation described in paragraph (c)(4)(i)(A) or (B) of this section within 10 days of the specified annual deadline—

(A) The Secretary promptly determines the borrower's new scheduled monthly payment amount and maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined.

(I) If the new monthly payment amount is less than the borrower's previously calculated REPAYE plan monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of § 685.211(a)(3), unless the borrower requests otherwise, the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of paragraph (c)(3)(i) of this section.

(2) If the new monthly payment amount is equal to or greater than the borrower's previously calculated REPAYE plan monthly payment amount, and the borrower made payments at the previously calculated payment amount after the end of the most recent annual payment period, the Secretary does not make any adjustment to the borrower's account.

(3) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of

§ 685.219, provided that the payments otherwise meet the requirements described in § 685.219(c)(1).

(B) The new annual payment period begins on the day after the end of the most recent annual payment period.

(5) *Loan forgiveness.* (i) A borrower who meets the requirements specified in paragraph (c)(5)(iii) of this section may qualify for loan forgiveness after 20 or 25 years, as determined in accordance with paragraph (c)(5)(ii) of this section.

(ii)(A) A borrower whose loans being repaid under the REPAYE plan include only loans the borrower received as an undergraduate student or a consolidation loan that repaid only loans the borrower received as an undergraduate student may qualify for forgiveness after 20 years.

(B) A borrower whose loans being repaid under the REPAYE plan include a loan the borrower received as a graduate or professional student or a consolidation loan that repaid a loan received as a graduate or professional student may qualify for forgiveness after 25 years.

(iii) The Secretary cancels any remaining outstanding balance of principal and accrued interest on a borrower's Direct Loans that are being repaid under the REPAYE plan after—

(A) The borrower has made the equivalent of 240 or 300, as applicable, qualifying monthly payments as defined in paragraph (c)(5)(iv) of this section; and

(B) Twenty or 25 years, as applicable, have elapsed, beginning on the date determined in accordance with paragraph (c)(5)(v) of this section.

(iv) For the purpose of paragraph (c)(5)(iii)(A) of this section, a qualifying monthly payment is—

(A) A monthly payment under the REPAYE plan, including a monthly payment amount of \$0.00, as provided under paragraph (c)(2)(ii)(C) of this section;

(B) A monthly payment under the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221, including a monthly payment amount of \$0.00;

(C) A monthly payment made under—

(1) The Direct Loan standard repayment plan described in § 685.208(b);

(2) The alternative repayment plan described in paragraphs (c)(4)(v) of this section prior to changing to a repayment plan described in paragraph (a), (b), or (c) of this section or § 685.221;

(3) Any other Direct Loan repayment plan, if the amount of the payment was not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b); or

(D) A month during which the borrower was not required to make a payment due to receiving an economic hardship deferment on his or her eligible Direct Loans.

(v) For a borrower who makes payments under the REPAYE plan, the beginning date for the 20-year or 25-year repayment period is—

(A) If the borrower made payments under the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221, the earliest date the borrower made a payment on the loan under one of those plans; or

(B) If the borrower did not make payments under the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221—

(1) For a borrower who has an eligible Direct Consolidation Loan, the date the borrower made a qualifying monthly payment on the consolidation loan, before the date the borrower began repayment under the REPAYE plan;

(2) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a qualifying monthly payment on that loan, before the date the borrower began repayment under the REPAYE plan;

(3) For a borrower who did not make a qualifying monthly payment on the loan under paragraph (c)(5)(v)(B)(1) or (2) of this section, the date the borrower made a payment on the loan under the REPAYE plan;

(4) If the borrower consolidates his or her eligible loans, the date the bor-

rower made a qualifying monthly payment on the Direct Consolidation Loan; or

(5) If the borrower did not make a qualifying monthly payment on the loan under paragraph (c)(5)(v)(A) or (B) of this section, the date the borrower made a payment on the loan under the REPAYE plan.

(vi) Any payments made on a defaulted loan are not qualifying monthly payments and are not counted toward the 20-year or 25-year forgiveness period.

(vii)(A) When the Secretary determines that a borrower has satisfied the loan forgiveness requirements under paragraph (c)(5) of this section on an eligible loan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than six months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notice that includes—

(1) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;

(2) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

(3) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(B) The Secretary determines when a borrower has met the loan forgiveness requirements in paragraph (c)(5) of this section and does not require the borrower to submit a request for loan forgiveness.

(C) After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary—

(1) Notifies the borrower that the borrower's obligation on the loans is satisfied;

(2) Provides the borrower with the information described in paragraph (c)(5)(vii)(A)(3) of this section; and

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(3) Returns to the sender any payment received on a loan after loan forgiveness has been granted.

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

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

[77 FR 66136, Nov. 1, 2012, as amended at 80 FR 67238, Oct. 30, 2015; 81 FR 76081, Nov. 1, 2016; 87 FR 66058, Nov. 1, 2022]

§ 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) or (c) for the borrower, as applicable.

(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 an income-contingent repayment plan or the income-based repayment plan in accordance with § 685.211(d)(3)(ii), or who is repaying a Direct Consolidation Loan under the income-contingent repayment plan or the income-based repayment plan in accordance with § 685.220(d)(1)(ii)(A)(3) 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 or income-based repayment plan in each of the prior three 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

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may change to either the income-contingent or income-based repayment plan at any time.

(ii) If a borrower changes repayment 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 under § 685.209(a), the income-contingent repayment plan under § 685.209(b), the income-contingent repayment plan under § 685.209(c), or the income-based repayment plan under § 685.221, the repayment period is calculated as described in § 685.209(a)(6)(iii), § 685.209(b)(3)(iii), § 685.209(c)(5)(v), or § 685.221(f)(3), 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; 77 FR 66142, Nov. 1, 2012; 78 FR 65833, Nov. 1, 2013; 80 FR 67242, Oct. 30, 2015]

§ 685.211 Miscellaneous repayment provisions.

(a) *Payment application and prepayment.* (1) Except as provided for the income-contingent repayment plan under § 685.209(a)(3) or 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 § 688.22 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 nationwide consumer reporting agencies, requesting the Internal Revenue Service to offset the borrower's Federal income tax refund, and garnishing the borrower's wages.

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

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

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

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

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

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

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

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

(f) *Rehabilitation of defaulted loans.* (1) A defaulted Direct Loan, except for a loan on which a judgment has been obtained, is rehabilitated if the borrower makes 9 voluntary, reasonable and affordable monthly payments within 20 days of the due date during 10 consecutive months. The Secretary determines the amount of a borrower's reasonable and affordable payment on the basis of a borrower's total financial circumstances.

(i) The Secretary initially considers the borrower's reasonable and affordable payment amount to be an amount equal to 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline amount applicable to the borrower's family size and State, divided by 12, except that if this amount is less than \$5, the borrower's monthly rehabilitation payment is \$5.

(ii) The Secretary may calculate the payment amount based on information provided orally by the borrower or the borrower's representative and provide the borrower with a rehabilitation agreement using that amount. The Secretary requires the borrower to provide documentation to confirm the borrower's AGI and family size. If the borrower does not provide the Secretary with any documentation requested by the Secretary to calculate or confirm the reasonable and affordable payment

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amount within a reasonable time deadline set by the Secretary, the rehabilitation agreement provided is null and void.

(iii) A reasonable and affordable payment amount is not—

(A) A required minimum loan payment amount (*e.g.*, \$50) if the Secretary determines that a smaller amount is reasonable and affordable;

(B) A percentage of the borrower's total loan balance; or

(C) Based on other criteria unrelated to the borrower's total financial circumstances.

(iv) Within 15 business days of the Secretary's determination of the borrower's loan rehabilitation payment amount, the Secretary provides the borrower with a written rehabilitation agreement which includes the borrower's reasonable and affordable payment amount, a prominent statement that the borrower may object orally or in writing to the reasonable and affordable payment amount with the method and timeframe for raising such an objection, a statement that the rehabilitation is null and void if the borrower does not provide the documentation required to calculate the reasonable and affordable payment amount, and an explanation of any other terms and conditions applicable to the required series of payments that must be made. To accept the agreement, the borrower must sign and return the agreement or accept the agreement electronically under a process provided by the Secretary. The Secretary does not impose any other conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement. The written rehabilitation agreement informs the borrower of the effects of having the loans rehabilitated (*e.g.*, removal of the record of default from the borrower's credit history and return to normal repayment).

(2) The Secretary provides the borrower with a written statement confirming the borrower's reasonable and affordable payment amount, as determined by the Secretary, and explaining any other terms and conditions applicable to the required series of payments that must be made before the borrower's account can be rehabilitated. The statement informs the bor-

rower that the borrower may object to the terms and conditions of the rehabilitation agreement, and explains the method and timeframe for objecting to the terms and conditions of the rehabilitation agreement.

(3) If the borrower objects to the monthly payment amount determined under paragraph (f)(1) of this section, the Secretary recalculates the payment based solely on information provided on a form approved by the Secretary and, if requested, supporting documentation from the borrower and other sources, and considers—

(i) The borrower's, and if applicable, the spouse's current disposable income, including public assistance payments, and other income received by the borrower and the spouse, such as welfare benefits, Social Security benefits, Supplemental Security Income, and workers' compensation. Spousal income is not considered if the spouse does not contribute to the borrower's household income;

(ii) Family size as defined in § 685.221(a)(3); and

(iii) Reasonable and necessary expenses, which include—

- (A) Food;
- (B) Housing;
- (C) Utilities;
- (D) Basic communication expenses;
- (E) Necessary medical and dental costs;
- (F) Necessary insurance costs;
- (G) Transportation costs;
- (H) Dependent care and other work-related expenses;
- (I) Legally required child and spousal support;
- (J) Other title IV and non-title IV student loan payments; and
- (K) Other expenses approved by the Secretary.

(4) The Secretary provides the borrower with a new written rehabilitation agreement confirming the borrower's recalculated reasonable and affordable payment amount. To accept the agreement, the borrower must sign and return the agreement or accept the agreement electronically under a process provided by the Secretary.

(5) The Secretary includes any payment made under paragraph (1) of the definition of "satisfactory repayment

arrangement” in §685.102(b) in determining whether the 9 out of 10 payments required under paragraph (f)(1) of this section have been made.

(6) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (f)(3) of this section.

(7) During the rehabilitation period, the Secretary limits contact with the borrower on the loan being rehabilitated to collection activities that are required by law or regulation and to communications that support the rehabilitation.

(8) 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.

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

(10) 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.

(11)(i) If a borrower's loan is being collected by administrative wage garnishment while the borrower is also making monthly payments on the same loan under a loan rehabilitation agreement, the Secretary continues collecting the loan by administrative wage garnishment until the borrower makes five qualifying monthly payments under the rehabilitation agreement, unless the Secretary is otherwise precluded from doing so.

(ii) After the borrower makes the fifth qualifying monthly payment, the Secretary, unless otherwise directed by the borrower, suspends the garnishment order issued to the borrower's employer.

(iii) A borrower may only obtain the benefit of a suspension of administrative wage garnishment while also attempting to rehabilitate a defaulted loan once.

(12) 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 re-

turns 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; 77 FR 66142, Nov. 1, 2012; 78 FR 65833, Nov. 1, 2013]

§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—

(i) An original or certified copy of the death certificate;

(ii) An accurate and complete photocopy of the original or certified copy of the death certificate;

(iii) An accurate and complete original or certified copy of the death certificate that is scanned and submitted electronically or sent by facsimile transmission; or

(iv) Verification of the borrower's or student's death through an authoritative Federal or State electronic database approved for use by the Secretary.

(2) Under exceptional circumstances and on a case-by-case basis, the Secretary discharges a loan based upon other reliable documentation of the borrower's or student's death that is acceptable to the Secretary.

(3) In the case of a Direct 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, 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

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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 specified in § 685.213(b)(4)(iii) or 685.213(c)(2)(i), as applicable.

(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 Unsubsidized 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.

(k) *Borrower defenses.* (1) If a borrower defense is approved under § 685.206(c) or under § 685.206(d) and § 685.222—

(i) The Secretary discharges the obligation of the borrower in whole or in part in accordance with the procedures in §§ 685.206(c) and 685.222, respectively; and

(ii) The Secretary returns to the borrower payments made by the borrower

or otherwise recovered on the loan that exceed the amount owed on that portion of the loan not discharged, if the borrower asserted the claim not later than—

(A) For a claim subject to § 685.206(c), the limitation period under applicable law to the claim on which relief was granted; or

(B) For a claim subject to § 685.222, the limitation period in § 685.222(b), (c), or (d), as applicable.

(2) In the case of a Direct Consolidation Loan, a borrower may assert a borrower defense under § 685.206(c) or § 685.222 with respect to a Direct Loan, FFEL Program Loan, Federal Perkins Loan, Health Professions Student Loan, Loan for Disadvantaged Students under subpart II of part A of title VII of the Public Health Service Act, Health Education Assistance Loan, or Nursing Loan made under part E of the Public Health Service Act that was repaid by the Direct Consolidation Loan.

(i) The Secretary considers a borrower defense claim asserted on a Direct Consolidation Loan by determining—

(A) Whether the act or omission of the school with regard to the loan described in this paragraph (k)(2), other than a Direct Subsidized, Unsubsidized, or PLUS Loan, constitutes a borrower defense under § 685.206(c), for a Direct Consolidation Loan made before July 1, 2017, or under § 685.222, for a Direct Consolidation Loan made on or after July 1, 2017, and before July 1, 2020; or

(B) Whether the act or omission of the school with regard to a Direct Subsidized, Unsubsidized, or PLUS Loan made on after July 1, 2017, and before July 1, 2020, that was paid off by the Direct Consolidation Loan, constitutes a borrower defense under § 685.222.

(ii) If the borrower defense is approved, the Secretary discharges the appropriate portion of the Direct Consolidation Loan.

(iii) The Secretary returns to the borrower payments made by the borrower or otherwise recovered on the Direct Consolidation Loan that exceed the amount owed on that portion of the Direct Consolidation Loan not discharged, if the borrower asserted the claim not later than—

(A) For a claim asserted under § 685.206(c), the limitation period under the law applicable to the claim on which relief was granted; or

(B) For a claim asserted under § 685.222, the limitation period in § 685.222(b), (c), or (d), as applicable.

(iv) The Secretary returns to the borrower a payment made by the borrower or otherwise recovered on the loan described in this paragraph (k)(2) only if—

(A) The payment was made directly to the Secretary on the loan; and

(B) The borrower proves that the loan to which the payment was credited was not legally enforceable under applicable law in the amount for which that payment was applied.

(3) If a borrower's application for a discharge of a loan based on a borrower defense is approved under § 685.206(e), the Secretary discharges the obligation of the borrower, in whole or in part, in accordance with the procedures described in § 685.206(e).

(4) If a borrower's application for a discharge of a loan based on a borrower defense is approved under 34 CFR part 685, subpart D, the Secretary discharges the obligation of the borrower, in accordance with the procedures described in subpart D of this part.

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

[59 FR 61690, Dec. 1, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 685.212, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 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 § 685.102(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 § 685.102(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 § 685.102(b), the veteran's loan discharge application is processed in accordance with paragraph (c) of this section.

(4) For purposes of this section, a borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a "borrower" or a "veteran" include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary.

(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 § 685.102(b)—*

(1) *Borrower application for discharge.* Except as provided in paragraph (d)(2) of this section, 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. If the borrower notifies the Secretary that the borrower claims to be totally and permanently disabled prior to submitting a total and permanent disability discharge application, the Secretary—

(i) Provides the borrower with information needed for the borrower to apply for a total and permanent disability discharge;

(ii) Suspends collection activity on any of the borrower's title IV loans held by the Secretary, and notifies the borrower's other title IV loan holders to suspend collection activity on the borrower's title IV loans for a period not to exceed 120 days; and

(iii) Informs the borrower that the suspension of collection activity will end after 120 days and collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time.

(2) *Disability certification or Social Security Administration (SSA) disability de-*

termination. The application must contain—

(i) 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 § 685.102(b);

(ii) A certification by a nurse practitioner or physician assistant licensed by a State, or a certified psychologist at the independent practice level who are licensed to practice in the United States, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b); or

(iii) An SSA Benefit Planning Query (BPQY) or an SSA notice of award, or other documentation deemed acceptable by the Secretary, indicating that—

(A) The borrower qualifies for Social Security Disability Insurance (SSDI) benefits or Supplemental Security Income (SSI) based on disability, and the borrower's next continuing disability review has been scheduled between 5 and 7 years;

(B) The borrower qualifies for SSDI benefits or SSI based on disability and the borrower's next continuing disability review has been scheduled at 3 years;

(C) The borrower has an established onset date for SSDI benefits or SSI of at least 5 years prior to the application for a disability discharge or has been receiving SSDI benefits or SSI based on disability for at least 5 years prior to the application for a TPD discharge;

(D) The borrower qualifies for SSDI or SSI based on a compassionate allowance; or

(E) For borrowers currently receiving SSA retirement benefits, documentation that, prior to the borrower qualifying for SSA retirement benefits, the borrower met the requirements in paragraphs (b)(2)(iii)(A) through (D) of this section.

(3) *Deadline for application submission.* The borrower must submit the application described in paragraph (b)(1) of this section to the Secretary within 90 days of the date the physician, nurse practitioner, physician assistant, or psychologist certifies the application,

if applicable. Upon receipt of the borrower's application, the Secretary—

(i) Identifies all title IV loans owed by the borrower, notifies the lenders that the Secretary has received a total and permanent disability discharge application from the borrower and directs the lenders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans;

(ii) If the application is incomplete, notifies the borrower of the missing information and requests the missing information from the borrower or the physician, nurse practitioner, physician assistant, or psychologist who certified the application, as appropriate, and does not make a determination of eligibility for discharge until the application is complete;

(iii) Notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge; and

(iv) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(4) *Determination of eligibility.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the data described in paragraph (b)(2) of this section 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 §685.102(b), the borrower is considered totally and permanently disabled—

(A) As of the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's application; or

(B) As of the date the Secretary received the SSA data described in paragraph (b)(2)(iii) of this section.

(ii) If the Secretary determines that the borrower's application 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 §685.102(b), the Secretary may require the borrower to submit additional medical evidence. As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional

review of the borrower's condition by an independent physician or other medical professional identified by the Secretary at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in §685.102(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, nurse practitioner, physician assistant, or psychologist certified the borrower's loan discharge application or the date the Secretary received the SSA data described in paragraph (b)(2)(iii) of this section. 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)(7)(i) of this section.

(iv) If the Secretary determines that the physician, nurse practitioner, physician assistant, or psychologist certification or the SSA data described in paragraph (b)(2)(iii) of this section 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 §685.102(b), the Secretary notifies the borrower that the application for a disability discharge has been denied. The notification to the borrower includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the Secretary under the terms of the promissory note and that the loan will return to the status that would have existed if the total and permanent disability discharge application had not been received;

(C) The date that the borrower must resume making payments;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the borrower's application for discharge by providing, within 12 months of the date

of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(v) If the borrower requests re-evaluation in accordance with paragraph (b)(4)(iv)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(4)(iv)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for total and permanent disability discharge.

(5) *Treatment of disbursements made during the period from the date of the certification or the date the Secretary received the SSA data until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's discharge application or before the date the Secretary received the SSA data described in paragraph (b)(2)(iii) of this section and a disbursement of that loan or grant is made during the period from the date of the physician, nurse practitioner, physician assistant, or psychologist certification or the receipt of the SSA data described in paragraph (b)(2)(iii) of this section 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.

(6) *Receipt of new title IV loans or TEACH Grants certification, or after the date the Secretary received the SSA data.* If a borrower receives a disbursement

of a new title IV loan or receives a new TEACH Grant made on or after the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's discharge application or on or after the date the Secretary received the SSA data described in paragraph (b)(2)(iii) of this section and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and resumes collection on the borrower's loan.

(7) *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)(4)(iii) of this section if, within 3 years after the date the Secretary granted the discharge, the borrower receives a new TEACH Grant or a new loan under the Direct Loan Program, except for a Direct Consolidation Loan that includes loans that were not discharged.

(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;

(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and

(C) 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)(7)(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 90 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.

(c) *Discharge application process for veterans who are totally and permanently*

disabled as described in paragraph (2) of the definition of that term in § 685.102(b)—

(1) *Veteran's application for discharge.* Except as provided in paragraph (d)(1) of this section, 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 § 685.102(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—

(i) Identifies all title IV loans owed by the veteran and notifies the lenders that the Secretary has received a total and permanent disability discharge application from the borrower;

(ii) If the application is incomplete, requests the missing information from the veteran and does not make a determination of eligibility for discharge until the application is complete;

(iii) Notifies the veteran that no payments are due on the loan while the Secretary determines the veteran's eligibility for discharge; and

(iv) Explains the Secretary's process for reviewing total and permanent disability discharge applications.

(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 § 685.102(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) If the Secretary determines, based on a review of the documentation

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 § 685.102(b), the Secretary notifies the veteran that the application for a disability discharge has been denied. The notification to the veteran includes—

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the Secretary under the terms of the promissory note and that the loan will return to the status it was in at the time the veteran applied for a total and permanent disability discharge;

(C) The date that the veteran must resume making payments;

(D) An explanation that the veteran is not required to submit a new total and permanent disability discharge application if the veteran requests that the Secretary re-evaluate the veteran's application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

(E) Information on how the veteran 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 § 685.102(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

(d) *Discharge without an application.*

(1) The Secretary will discharge a loan under this section without an application or any additional documentation from the borrower if the Secretary:

(i) Obtains data from the Department of Veterans Affairs showing that the borrower is unemployable due to a service-connected disability; or

(ii) Obtains data from the Social Security Administration (SSA) described in paragraph (b)(2)(iii) of this section

(2) [Reserved]

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(e) *Notification to the borrower.* (1) After determining that a borrower qualifies for a total and permanent disability discharge under paragraph (d) of this section, the Secretary sends a notification to the borrower informing the borrower that the Secretary will discharge the borrower's title IV loans unless the borrower notifies the Secretary, by a date specified in the Secretary's notification, that the borrower does not wish to receive the loan discharge.

(2) Unless the borrower notifies the Secretary that the borrower does not wish to receive the discharge the Secretary discharges the loan:

(i) In accordance with paragraph (b)(4)(iii) of this section for a discharge based on data from the SSA; or

(ii) In accordance with paragraph (c)(2)(i) of this section for a discharge based on data from VA.

(3) If the borrower notifies the Secretary that they do not wish to receive the discharge, the borrower will remain responsible for repayment of the borrower's loans in accordance with the terms and conditions of the promissory notes that the borrower signed.

[77 FR 66142, Nov. 1, 2012, as amended at 84 FR 65007, Nov. 26, 2019; 86 FR 46982, Aug. 23, 2021; 87 FR 66058, Nov. 1, 2022]

§ 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 (d) of this section.

(2) For purposes of this section—

(i) If a school has closed, the school's closure date is the earlier of: the date, determined by the Secretary, that the school ceased to provide educational instruction in programs in which most students at the school were enrolled, or a date determined by the Secretary that reflects when the school ceased to provide educational instruction for all of its students;

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

the main campus, regardless of whether the school or its location or branch is considered title IV eligible;

(iii) "Program" means the credential defined by the level and Classification of Instructional Program code in which a student is enrolled, except that the Secretary may define a borrower's program as multiple levels or Classification of Instructional Program codes if:

(A) The enrollment occurred at the same institution in closely proximate periods;

(B) The school granted a credential in a program while the student was enrolled in a different program; or

(C) The programs must be taken in a set order or were presented as necessary for borrowers to complete in order to succeed in the relevant field of employment;

(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 consumer reporting agencies to which the Secretary previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(c) *Discharge without an application.*

(1) If the Secretary determines based on information in the Secretary's possession that the borrower qualifies for the discharge of a loan under this section, the Secretary discharges the loan without an application or any statement from the borrower 1 year after the institution's closure date if the borrower did not complete the program at another branch or location of the school or through a teach-out agreement at another school, approved by

the school's accrediting agency and, if applicable, the school's State authorizing agency.

(2) If a borrower accepts but does not complete a continuation of the program at another branch or location of the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency, then the Secretary discharges the loan 1 year after the borrower's last date of attendance at the other branch or location or in the teach-out program.

(d) *Borrower qualification for discharge.* (1) Except as provided in paragraphs (c) and (h) of this section, to qualify for discharge of a loan under this section, a borrower must submit to the Secretary a completed application and the factual assertions in the application must be true and must be made by the borrower under penalty of perjury. The application explains the procedures and eligibility criteria for obtaining a discharge and requires the borrower to—

(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 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 180 calendar days before the school closed. The Secretary may extend the 180-day period if the Secretary determines that exceptional circumstances, as described in paragraph (i) of this section, justify an extension; and

(C) On or after July 1, 2023, state that the borrower did not complete the program at another branch or location of the school or through a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.

(ii) 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

(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 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.

(2) [Reserved]

(e) *Cooperation by borrower in enforcement actions.* (1) To obtain a discharge under this section, a borrower must 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 must—

(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.

(f) *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.

(g) *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 180 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 (g)(2) of this section.

(4) If a borrower fails to submit the application described in paragraph (d) of this section within 90 days of the Secretary's providing the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended.

(5) Upon resuming collection on any affected loan, the Secretary provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

(6) 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.

(7) 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.

(h) *Exceptional circumstances.* For purposes of this section, exceptional circumstances include, but are not limited to—

(1) The revocation or withdrawal by an accrediting agency of the school's institutional accreditation;

(2) The school is or was placed on probation or issued a show-cause order, or was placed on an equivalent accreditation status, by its accrediting agency for failing to meet one or more of the agency's standards;

(3) The revocation or withdrawal by the State authorization or licensing authority to operate or to award academic credentials in the State;

(4) The termination by the Department of the school's participation in a title IV, HEA program;

(5) A finding by a State or Federal government agency that the school violated State or Federal law related to education or services to students;

(6) A State or Federal court judgment that a School violated State or Federal law related to education or services to students;

(7) The teach-out of the student's educational program exceeds the 180-day look-back period for a closed school discharge;

(8) The school responsible for the teach-out of the student's educational program fails to perform the material terms of the teach-out plan or agreement, such that the student does not have a reasonable opportunity to complete his or her program of study;

(9) The school discontinued a significant share of its academic programs;

(10) The school permanently closed all or most of its in-person locations while maintaining online programs; and

(11) The school was placed on the heightened cash monitoring payment method as defined in § 668.162(d)(2) of this chapter.

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

[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; 78 FR 65834, Nov. 1, 2013; 81 FR 76081, Nov. 1, 2016; 84 FR 49930, Sept. 23, 2019; 87 FR 66060, Nov. 1, 2022]

§ 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 proceeds of a Direct Loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school—

(i) Certified the eligibility of a student who—

(A) Reported not having a high school diploma or its equivalent; and

(B) Did not satisfy the alternative to graduation from high school requirements under section 484(d) of the Act and 34 CFR 668.32(e) of this chapter that were in effect when the loan was originated;

(ii) Certified the eligibility of a student who is not a high school graduate based on—

(A) A high school graduation status falsified by the school; or

(B) A high school diploma falsified by the school or a third party to which the school referred the borrower;

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

(iv) Certified the eligibility of the student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet State 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; or

(v) Certified the eligibility of a student for a Direct Loan as a result of the crime of identity theft committed against the individual, as that crime is defined in paragraph (c)(6) of this section.

(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.

(3) *Loan origination.* For purposes of this section, a loan is originated when the school submits the loan record to the Department's Common Origination and Disbursement (COD) System. Before originating a Direct Loan, a school must determine the student's or parent's eligibility for the loan. For each Direct Loan that a school disburses to a student or parent, the school must first submit a loan award record to the COD system and receive an accepted response.

(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 consumer reporting agencies to which the Secretary previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(c) *Borrower qualification for discharge.* To qualify for discharge under this paragraph, the borrower must submit to the Secretary an application for discharge on a form approved by the Secretary. The application need not be notarized but must be made by the borrower under penalty of perjury; and in the application, the borrower's responses must demonstrate to the satisfaction of the Secretary that the requirements in paragraphs (c)(1) through (7) of this section have been met. If the Secretary determines the application does not meet the requirements, the Secretary notifies the applicant and explains why the application does not meet the requirements.

(1) *High school diploma or equivalent.* In the case of a borrower requesting a discharge based on not having a high school diploma and not having met the alternative to graduation from high school eligibility requirements under section 484(d) of the Act and 34 CFR 688.32(e) of this chapter as applicable when the loan was originated, and the school or a third party to which the school referred the borrower falsified the student's high school diploma, the borrower must state in the application that the borrower (or the student on whose behalf a parent received a PLUS loan)—

(i) Reported not having a valid high school diploma or its equivalent when the loan was originated; and

(ii) Did not satisfy the alternative to graduation from high school statutory or regulatory eligibility requirements identified on the application form and applicable when the loan was originated.

(2) *Disqualifying condition.* In the case of a borrower requesting a discharge based on a condition that would disqualify the borrower from employment in the occupation that the training program for which the borrower received the loan was intended, the borrower must state in the application that the borrower (or student for whom a parent received a PLUS loan) did not meet State requirements for employment in the student's State of residence in the occupation that the training program for which the borrower received the loan was intended because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary.

(3) *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 must state that he or she did not sign the document in question or authorize the school to do so.

(4) *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 must—

(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; and

(ii) 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.

(5) *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 must—

(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; and

(iii) Provide a statement of facts and supporting evidence that demonstrate, to the satisfaction of the Secretary, that eligibility for the loan in question was falsely certified as a result of identity theft committed against that individual. Supporting evidence may include—

(A) A judicial determination of identity theft relating to the individual;

(B) A Federal Trade Commission identity theft affidavit;

(C) A police report alleging identity theft relating to the individual;

(D) Documentation of a dispute of the validity of the loan due to identity theft filed with at least three major consumer reporting agencies; and

(E) Other evidence acceptable to the Secretary.

(6) *Definition of identity theft.* (i) For purposes of this section, identity theft is defined as the unauthorized use of the identifying information of another individual that is punishable under 18 U.S.C. 1028, 1028A, 1029, or 1030, or substantially comparable State or local law.

(ii) Identifying information includes, but is not limited to—

(A) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, and employer or taxpayer identification number;

(B) Unique biometric data, such as fingerprints, voiceprint, retina or iris image, or unique physical representation;

(C) Unique electronic identification number, address, or routing code; or

(D) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

(7) *Claim to third party.* The borrower must 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.

(8) *Cooperation with Secretary.* The borrower must 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).

(9) *Discharge without an application.* The Secretary discharges all or part of a loan as appropriate 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. Such information includes, but is not limited to, evidence that the school has falsified the Satisfactory Academic Progress of its students, as described in §668.34.

(10) *Application for group discharge.* A State Attorney General or nonprofit legal services representative may submit to the Secretary an application for a group discharge under this section.

(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 provides the borrower an 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 application for discharge and supporting information described in paragraph (c) of this section within 60 days

of the Secretary's providing the application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended.

(3) If the borrower submits an application for discharge that the Secretary determines is incomplete, the Secretary notifies the borrower of that determination and allows the borrower an additional 30-days to amend their application and provide supplemental information. If the borrower does not amend their application within 30 days of receiving the notification from the Secretary, the borrower's application is closed as incomplete and the Secretary resumes collection of the loan and grants forbearance of principal and interest for the period in which collection activity was suspended.

(4) If the borrower submits a completed application described in paragraph (c) of this section, the Secretary determines whether the available evidence supports the claim for discharge. Available evidence includes evidence provided by the borrower and any other relevant information from the Secretary's records and gathered by the Secretary from other sources, including guaranty agencies, other Federal agencies, State authorities, test publishers, independent test administrators, school records, and cognizant accrediting associations. The Secretary issues a decision that explains the reasons for any adverse determination on the application, describes the evidence on which the decision was made, and provides the borrower, upon request, copies of the evidence. The Secretary considers any response from the borrower and any additional information from the borrower and notifies the borrower whether the determination is changed.

(5) 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.

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

(7) A borrower is not precluded from re-applying for a discharge under paragraph (c) of this section if the discharge request is closed as incomplete, or if the Secretary determines that the borrower does not qualify for a discharge if the borrower provides additional supporting evidence.

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

[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; 78 FR 65835, Nov. 1, 2013; 81 FR 76082, Nov. 1, 2016; 84 FR 49931, Sept. 23, 2019; 87 FR 66062, Nov. 1, 2022]

§ 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 consumer 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 bor-

rower 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

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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 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; 78 FR 65835, Nov. 1, 2013]

§ 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 Direct Subsidized Loans, Direct Unsubsidized Loans, Subsidized and Unsubsidized Federal Stafford Loans, and in certain cases, Direct Consolidation Loans or Federal Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the Direct Loan Program or the FFEL 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 for an eligible educational service agency.

(ii) Teaching for an eligible elementary or secondary school may be counted toward the required five consecutive complete academic years only if for 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 Direct Loan and FFEL Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of \$17,500 on the borrower's eligible Direct Loan and FFEL 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 by 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 by an eligible 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 by 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.

(2) 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.

(3) 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

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

(4) 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 for 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 for an eligible 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) 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 for 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 for an eligible 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 for 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 for an eligible educational service agency performed after the 2007–2008 academic year.

(6) 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.

(7) 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)(4)(ii) or (c)(5) 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.

(8) 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.

(9) A borrower's period of postsecondary education, qualifying FMLA condition, or military active duty as described in paragraph (c)(8) of this section, 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.

(10) A borrower who was employed as a teacher at more than one qualifying school, for more than one qualifying educational service agency, or 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.

(11) 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).

(12) 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.

(13) A borrower may request forbearance during each of the five years of qualifying teaching service in accordance with §685.205(a)(5).

(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 paragraph (c)(4)(ii) or (c)(5)(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 Direct Subsidized Loan, an eligible Direct Unsubsidized Loan, or an eligible Subsidized or Unsubsidized Federal Stafford 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 paragraph (c)(4)(ii) or (c)(5)(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

(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; 78 FR 65835, Nov. 1, 2013]

§ 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 Direct or FFEL 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

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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 Direct Loan, a FFEL Program 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 Secretary, the lender, 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 another Direct Loan, a FFEL Program Loan, or a Perkins 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 another Direct Loan or a FFEL Program 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 72 hours of the injury having been sustained or within 72 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 Direct Loan or FFEL Consolidation Loan applications or an approved Direct or FFEL 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 Loan 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; 78 FR 65836, Nov. 1, 2013]

§ 685.219 Public Service Loan Forgiveness Program (PSLF).

(a) *Purpose.* 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 service means service in 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).

Civilian service to the military means providing services to or on behalf of

members, veterans, or the families or survivors of deceased members of the U.S. Armed Forces or the National Guard that is provided to a person because of the person's status in one of those groups.

Early childhood education program means an early childhood education program as defined in section 103(8) of the Act (20 U.S.C. 1003).

Eligible Direct Loan means a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct PLUS Loan, or a Direct Consolidation Loan.

Emergency management services means services that help remediate, lessen, or eliminate the effects or potential effects of emergencies that threaten human life or health, or real property.

Employee or employed means an individual—

(i) To whom an organization issues an IRS Form W-2;

(ii) Who receives an IRS Form W-2 from an organization that has contracted with a qualifying employer to provide payroll or similar services for the qualifying employer, and which provides the Form W-2 under that contract;

(iii) who works as a contracted employee for a qualifying employer in a position or providing services which, under applicable state law, cannot be filled or provided by a direct employee of the qualifying employer.

Full-time means:

(i) Working in qualifying employment in one or more jobs—

(A) A minimum average of 30 hours per week during the period being certified,

(B) A minimum of 30 hours per week throughout a contractual or employment period of at least 8 months in a 12-month period, such as elementary and secondary school teachers and professors and instructors, in higher education, in which case the borrower is deemed to have worked full time; or

(C) The equivalent of 30 hours per week as determined by multiplying each credit or contact hour taught per week by at least 3.35 in non-tenure track employment at an institution of higher education.

(ii) Routine paid vacation or paid leave time provided by the employer, and leave taken under the Family and

Medical Leave Act of 1993 (29 U.S.C. 2612(a)(1)) will be considered when determining if the borrower is working full-time.

Law enforcement means service 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 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 and does not include active duty for training or attendance at a service school.

Non-governmental public service means services provided by employees of a non-governmental qualified employer where the employer has devoted a majority of its full-time equivalent employees to working in at least one of the following areas (as defined in this section): emergency management, civilian service to military personnel military service, public safety, law enforcement, public interest law services, early childhood education, public service for individuals with disabilities or the elderly, public health, public education, public library services, school library, or other school-based services. Service as a member of the U.S. Congress is not qualifying public service employment for purposes of this section.

Non-tenure track employment means work performed by adjunct, contingent or part time faculty, teachers, or lecturers who are paid based on the credit hours they teach at institutions of higher education.

Other school-based service means the provision of services to schools or students in a school or a school-like setting that are not public education services, such as school health services and school nurse services, social work services in schools, and parent counseling and training.

Peace Corps position means a full-time assignment under the Peace Corps Act as provided for under 22 U.S.C. 2504.

Public education service means the provision of educational enrichment or support to students in a public school or a public school-like setting, including teaching.

Public health means those engaged in the following occupations (as those terms are defined by the Bureau of Labor Statistics): physicians, nurse practitioners, nurses in a clinical setting, health care practitioners, health care support, counselors, social workers, and other community and social service specialists.

Public interest law is legal services that are funded in whole or in part by a local, State, Federal, or Tribal government.

Public library service means the operation of public libraries or services that support their operation.

Public safety service means services that seek to prevent the need for emergency management services.

Public service for individuals with disabilities means services performed for or to assist individuals with disabilities (as defined in the Americans with Disabilities Act (42 U.S.C. 12102)) that is provided to a person because of the person's status as an individual with a disability.

Public service for the elderly means services that are provided to individuals who are aged 62 years or older and that are provided to a person because of the person's status as an individual of that age.

Qualifying employer means:

(i) A United States-based Federal, State, local, or Tribal government organization, agency, or entity, including the U.S. Armed Forces or the National Guard;

(ii) A public child or family service agency;

(iii) An organization under section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code;

(iv) A Tribal college or university; or

(v) A nonprofit organization that—

(A) Provides a non-governmental public service as defined in this section, attested to by the employer on a form approved by the Secretary; and

(B) Is not a business organized for profit, a labor union, or a partisan political organization.

Qualifying repayment plan means:

(i) An income-contingent repayment plan under § 685.209 or an income-based repayment plan under § 685.221;

(ii) The 10-year standard repayment plan under § 685.208(b) or the consolidation loan standard repayment plan with a 10-year repayment term under § 685.208(c); or

(iii) Except for the alternative repayment plan, any other repayment plan if the monthly payment amount is not less than what would have been paid under the 10-year standard repayment plan under § 685.208(b).

School library services means the operations of school libraries or services that support their operation.

(c) *Borrower eligibility.* (1) A borrower may obtain loan forgiveness under this program if the borrower—

(i) Is not in default on the loan at the time forgiveness is requested;

(ii) Is employed full-time by a qualifying employer or serving in a full-time AmeriCorps or Peace Corps position—

(A) When the borrower satisfied the 120 monthly payments described under paragraph (c)(1)(iii) of this section; and

(B) At the time the borrower applies for forgiveness under paragraph (e) of this section; and

(iii) Satisfies the equivalent of 120 monthly payments after October 1, 2007, as described in paragraph (c)(2) of this section, on eligible Direct loans.

(2) A borrower will be considered to have made monthly payments under paragraph (c)(1)(iii) of this section by—

(i) Paying at least the full scheduled amount due for a monthly payment under the qualifying repayment plan;

(ii) Paying in multiple installments that equal the full scheduled amount due for a monthly payment under the qualifying repayment plan;

(iii) For a borrower on an income-contingent repayment plan under § 685.209 or an income-based repayment plan under § 685.221, paying a lump sum or monthly payment amount that is equal to or greater than the full scheduled amount in advance of the borrower's scheduled payment due date for a period of months not to exceed the period from the Secretary's receipt of the payment until the borrower's next annual repayment plan recertification date under the qualifying repayment plan in which the borrower is enrolled;

(iv) For a borrower on the 10-year standard repayment plan under

§ 685.208(b) or the consolidation loan standard repayment plan with a 10-year repayment term under § 685.208(c), paying a lump sum or monthly payment amount that is equal to or greater than the full scheduled amount in advance of the borrower's scheduled payment due date for a period of months not to exceed the period from the Secretary's receipt of the payment until the lesser of 12 months from that date or the date upon which the Secretary receives the borrower's next submission under subsection (e).

(v) Receiving one of the following deferments or forbearances for the month:

(A) Cancer treatment deferment under section 455(f)(3) of the Act;

(B) Economic hardship deferment under § 685.204(g);

(C) Military service deferment under § 685.204(h);

(D) Post-active-duty student deferment under § 685.204(i);

(E) AmeriCorps forbearance under § 685.205(a)(4);

(F) National Guard Duty forbearance under § 685.205(a)(7);

(G) U.S. Department of Defense Student Loan Repayment Program forbearance under § 685.205(a)(9);

(H) Administrative forbearance or mandatory administrative forbearance under § 685.205(b)(8) or (9); and

(vi) Being employed full-time with a qualifying employer, as defined in this section, at any point during the month for which the payment is credited.

(3) If a borrower consolidates one or more Direct Loans into a Direct Consolidation Loan, including a Direct PLUS Loan made to a parent borrower, the weighted average of the payments the borrower made on the Direct Loans prior to consolidating and that met the criteria in paragraphs (c)(2)(i) through (vi) of this section will count as qualifying payments on the Direct Consolidation Loan.

(d) *Forgiveness amount.* The Secretary forgives the principal and accrued interest that remains on all loans for which the borrower meets the requirements of paragraph (c) of this section as of the date the borrower satisfied the last required monthly payment obligation.

(e) *Application process.* (1) Notwithstanding paragraph (f) of this section, after making the 120 monthly qualifying payments on the eligible loans for which loan forgiveness is requested while working the 120 months of qualifying service, a borrower may request loan forgiveness by filing an application approved by the Secretary.

(2) If the Secretary has sufficient information to determine the borrower's qualifying employer and length of employment, the Secretary informs the borrower if the borrower is eligible for forgiveness.

(3) If the Secretary does not have sufficient information to make a determination of the borrower's eligibility for forgiveness, the borrower must provide additional information about the borrower's employment and employer on a form approved by the Secretary.

(4) If the borrower is unable to secure a certification of employment from a qualifying employer, the Secretary may determine the borrower's qualifying employment or payments based on other documentation provided by the borrower at the Secretary's request.

(5) The Secretary may request reasonable additional documentation pertaining to the borrower's employer or employment before providing a determination.

(6) The Secretary may substantiate an employer's attestation of information provided on the form in paragraph (e)(3) of this section based on a review of information about the employer.

(7) 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.

(8) If the Secretary determines that the borrower does not meet the eligibility requirements for loan forgiveness under this section, 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

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resume collection of the loan. The Secretary does not capitalize any interest accrued and not paid during this period.

(f) *Application not required.* The Secretary forgives a loan under this section without an application from the borrower if the Secretary has sufficient information in the Secretary's possession to determine the borrower has satisfied the requirements for forgiveness under this section.

(g) *Reconsideration process.* (1) Within 90 days of the date the Secretary sent the notice of denial of forgiveness under paragraph (e)(8) of this section to the borrower, the borrower may request that the Secretary reconsider whether the borrower's employer or any payment meets the requirements for credit toward forgiveness by requesting reconsideration on a form approved by the Secretary. Borrowers who were denied loan forgiveness under this section after October 1, 2017, and prior to [EFFECTIVE DATE OF FINAL RULE], have 180 days from the effective date of this Final Rule to request reconsideration.

(2) To evaluate a reconsideration request, the Secretary considers—

(i) Any relevant evidence that is obtained by the Secretary; and

(ii) Additional supporting documentation not previously provided by the borrower or employer.

(3) The Secretary notifies the borrower of the reconsideration decision and the reason for the Secretary's determination.

(4) If the Secretary determines that the borrower qualifies for forgiveness, the Secretary adjusts the borrower's number of qualifying payments or forgives the loan, as appropriate.

(5) After the Secretary makes a decision on the borrower's reconsideration request, the Secretary's decision is final, and the borrower will not receive additional reconsideration unless the borrower presents additional evidence.

(6) For any months in which a borrower postponed monthly payments under a deferment or forbearance and was employed full-time at a qualifying employer as defined in this section but was in a deferment or forbearance status besides those listed in paragraph (c)(2)(v) of this section, the borrower

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may obtain credit toward forgiveness for those months, as defined in paragraph (d) of this section, for any months in which the borrower—

(i) Makes an additional payment equal to or greater than the amount they would have paid at that time on a qualifying repayment plan or

(ii) Otherwise qualified for a \$0 payment on an income-driven repayment plan under § 685.209 and income-based repayment plan under § 685.221.

[87 FR 66063, Nov. 1, 2022]

§ 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) Subsidized Federal 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 Consolidation Loans.

(14) Unsubsidized Federal Stafford Loans.

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

(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 part E of title VIII of the Public Health Service Act.

(c) *Components of Direct Consolidation Loans.* (1) *Subsidized component of Direct Consolidation Loans.* The term “Direct Subsidized Consolidation Loan” refers to the portion of a Direct Consolidation Loan attributable to—

(i) The loans identified in paragraphs (b)(1) through (b)(5) of this section; and

(ii) The portion of a Federal Consolidation Loan under paragraph (b)(13) of this section that is eligible for interest benefits during a deferment period under section 428C(b)(4)(C) of the Act.

(2) *Unsubsidized component of Direct Consolidation Loans.* Except as provided in paragraph (c)(3) of this section, the term “Direct Unsubsidized Consolidation Loan” refers to the portion of a Direct Consolidation Loan attributable to—

(i) The loans identified in paragraphs (b)(6) through (b)(12) of this section;

(ii) The portion of a Federal Consolidation Loan under paragraph (b)(13) of this section that is not eligible for interest benefits during a deferment period under section 428C(b)(4)(C) of the Act; and

(iii) The loans identified in paragraphs (b)(14) through (b)(21) of this section.

(3) *PLUS component of Direct Consolidation Loans.* In the case of a Direct Consolidation Loan made before July 1, 2006, the term “Direct PLUS Consolidation Loan” refers to the portion of a Direct Consolidation Loan attributable to the loans identified in paragraphs (b)(9) through (b)(12) of this section.

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

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

(A) At the time the borrower applies for the Direct Consolidation Loan—

(I) In the grace period;

(2) In a repayment period but not in default; or

(3) In default but has made satisfactory repayment arrangements in accordance with paragraph (2) of the definition of that term in § 685.102(b);

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

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

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

(2) A borrower may not consolidate a Direct Consolidation Loan or a Federal Consolidation Loan into a new consolidation loan under this section unless at least one additional eligible loan is included in the consolidation, except that a borrower may consolidate a Federal Consolidation Loan into a new consolidation loan under this section without including any additional loans if—

(i) The borrower has a Federal 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 Federal Consolidation Loan into the Direct Loan Program for the purpose of obtaining an income-contingent repayment plan or an income-based repayment plan; or

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

(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 must 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 must 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 Program or FFEL Program loan that is in default, the Secretary limits collection costs that may be charged to the borrower to a maximum of 18.5 percent of the outstanding principal and interest amount of the defaulted loan. For any other defaulted Federal education loan, all collection costs that are owed may be charged to the borrower.

(2) Upon receipt of the proceeds of a Direct Consolidation Loan, the holder of a consolidated loan must promptly apply the proceeds to fully discharge the borrower's obligation on the consolidated loan. The holder of a consolidated loan must 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 must 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 must 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)(10)(i). The interest rate on a Direct PLUS Consolidation Loan is the rate established in § 685.202(a)(10)(ii).

(h) *Repayment plans.* A borrower may choose a repayment plan for a Direct Consolidation Loan in accordance with § 685.208, and may change repayment plans in accordance with § 685.210(b).

(i) *Repayment period.* (1) Except as noted in paragraph (i)(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) through (iii) 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) A Direct Consolidation Loan that was made based on an application received before July 1, 2006 receives a grace period if it includes a Direct Loan Program or FFEL Program loan for which the borrower was 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 must transmit the refund or return and an explanation of the source of the refund or return to the Secretary within 30 days of receipt.

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

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

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

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

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

(iii) If a borrower meets the requirements for discharge under § 685.212(d),

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

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

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

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

[78 FR 65836, Nov. 1, 2013, as amended at 81 FR 76083, Nov. 1, 2016]

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

(4) *New borrower* means an individual who has no outstanding balance on a Direct Loan Program or FFEL Program loan on July 1, 2014, or who has no outstanding balance on such a loan on the date he or she obtains a loan after July 1, 2014.

(5) *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 or, for a new borrower, 10 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 or, for a new borrower, 10 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.

(6) *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 bor-

rower 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 or, for a new borrower, 10 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 outstanding principal amount of the borrower's 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 total outstanding principal amount of the borrower's 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. Any period during which the Secretary has previously not charged the borrower accrued interest on an eligible loan under the Pay As You Earn repayment plan or the Revised Pay As You Earn repayment plan counts toward the maximum three years of subsidy a borrower is eligible to receive 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.* (1) The Secretary applies any payment made under the income-based repayment plan in the following order:

- (i) Accrued interest.
- (ii) Collection costs.
- (iii) Late charges.
- (iv) Loan principal.

(2) The borrower may prepay all or part of a loan at any time without penalty, as provided under § 685.211(a)(2).

(3) If the prepayment amount equals or exceeds a monthly payment amount of \$10.00 or more under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of § 685.211(a)(3).

(4) If the prepayment amount exceeds a monthly payment amount of \$0.00 under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of paragraph (c)(1) of this section.

(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 a 10-year repayment period using the amount of the borrower's eligible loans that was 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)(i) If a borrower no longer wishes to pay under the income-based repayment plan, the borrower must pay under the standard repayment plan and the Secretary recalculates the borrower's monthly payment based on—

(A) For a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan, 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

(B) For a Direct Consolidation Loan, the time remaining under the applicable repayment period as initially determined under § 685.208(j) and the amount of that loan that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(ii) A borrower who no longer wishes to repay under the income-based repayment plan and who is required to repay under the Direct Loan standard repayment plan in accordance with paragraph (d)(2)(i) of this section may request a change to a different repayment plan after making one monthly payment under the Direct Loan standard repayment plan. For this purpose, a monthly payment may include one payment made under a forbearance that provides for accepting smaller payments than previously scheduled, in accordance with § 685.205(a).

(e) *Eligibility documentation, verification, and notifications.* (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) Provide documentation, acceptable to the Secretary, of the borrower's AGI;

(ii) If the 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, provide other documentation to verify income; and

(iii) 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) After making a determination that a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower initially elects the plan and for any subsequent year that the borrower has a partial financial hardship, the Secretary sends the borrower a written notification that provides the borrower with—

(i) The borrower's scheduled monthly payment amount, as calculated under paragraph (b)(1) of this section, and the

time period during which this scheduled monthly payment amount will apply (annual payment period);

(ii) Information about the requirement for the borrower to annually provide the information described in paragraph (e)(1) of this section, if the borrower chooses to remain on the income-based repayment plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(iii) An explanation of the consequences, as described in paragraphs (e)(1)(iii) and (e)(7) of this section, if the borrower does not provide the required information;

(iv) An explanation of the consequences if the borrower no longer wishes to repay under the income-based repayment plan; and

(v) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(3) For each subsequent year that a borrower who currently has a partial financial hardship remains on the income-based repayment plan, the Secretary notifies the borrower in writing of the requirements in paragraph (e)(1) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (e)(3)(i) of this section. The notification provides the borrower with—

(i) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the information described in paragraph (e)(1) of this section (annual deadline); and

(ii) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (d)(1) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period in accordance with paragraph (b)(4) of this section.

(4) Each time the Secretary makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the Secretary sends the borrower a written notification that provides the borrower with—

(i) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (d)(1) of this section;

(ii) An explanation that unpaid interest will be capitalized in accordance with paragraph (b)(4) of this section; and

(iii) Information about the borrower's option to request, at any time, that the Secretary redetermine whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the Secretary determines that the borrower again has a partial financial hardship, the Secretary recalculates the borrower's monthly payment in accordance with paragraph (b)(1) of this section and sends the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.

(5) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the income-based repayment plan, the Secretary sends the borrower a written notification that includes the information described in paragraph (e)(4)(iii) of this section.

(6) If a borrower who is currently repaying under another repayment plan selects the income-based repayment plan but does not provide the information described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section, or if the Secretary determines that the borrower does not have a partial financial hardship, the borrower remains on his or her current repayment plan.

(7) The Secretary designates the repayment option described in paragraph (d)(1) of this section if a borrower who is currently repaying under the income-based repayment plan remains on the plan for a subsequent year but the Secretary does not receive the information described in paragraphs (e)(1)(i) through (e)(1)(ii) of this section within 10 days of the specified annual deadline, unless the Secretary is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

(8) If the Secretary receives the information described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section within 10 days of the specified annual deadline—

(i) The Secretary promptly determines the borrower's new scheduled monthly payment amount and maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined.

(A) If the new monthly payment amount is less than the borrower's previously calculated income-based monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of § 685.211(a)(3), unless the borrower requests otherwise, the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of paragraph (c)(1) of this section.

(B) If the new monthly payment amount is equal to or greater than the borrower's previously calculated monthly payment amount, and the borrower made payments at the previously

calculated payment amount after the end of the most recent annual payment period, the Secretary does not make any adjustment to the borrower's account.

(C) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 685.219, provided that the payments otherwise meet the requirements described in § 685.219(c)(1).

(ii) The new annual payment period begins on the day after the end of the most recent annual payment period.

(9)(i) If the Secretary receives the documentation described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (d)(1) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined, if the new monthly payment amount is \$0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

(ii) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 685.219, provided that the payments otherwise meet the requirements described in § 685.219(c)(1).

(f) *Loan forgiveness.* (1) To qualify for loan forgiveness after 25 years or, for a new borrower, after 20 years, a borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during the applicable loan forgiveness period:

(i) Made reduced monthly payments under a partial financial hardship as

provided in paragraph (b)(1) or (b)(2) of this section, including a monthly payment amount of \$0.00, as provided under paragraph (b)(2)(iii) 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) with a 10-year repayment period.

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

(v) Made monthly payments under a Direct Loan income-contingent repayment plan, including a calculated monthly payment amount of \$0.00.

(vi) Made monthly payments under the alternative repayment plan described in § 685.209(c)(4)(v) prior to changing to a repayment plan described under § 685.209 or this section;

(vii) 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)(iii) of this section; and

(ii)(A) The borrower made those monthly payments each year for the applicable loan forgiveness period, or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 25 years of payments or, for a new borrower, the equivalent of 20 years of payments.

(3) For a borrower who qualifies for the income-based repayment plan, the

beginning date for the applicable loan forgiveness period is—

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

(ii) If the borrower did not make payments under one of the repayment plans described in paragraph (f)(3)(i) of this section—

(A) For a borrower who has an eligible 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 (f)(3)(ii)(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 that met the requirements in paragraph (f)(1) of this section; 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 (f)(3)(ii) of this section, the date the borrower made a payment under the income-based repayment plan on the loan.

(4) Any payments made on a defaulted loan are not made under a qualifying repayment plan and are not counted toward the applicable loan forgiveness period.

(5)(i) When the Secretary determines that a borrower has satisfied the loan forgiveness requirements under paragraph (f) of this section on an eligible loan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than six months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notice that includes—

(A) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;

(B) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

(C) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(ii) The Secretary determines when a borrower has met the loan forgiveness requirements under paragraph (f) of this section and does not require the borrower to submit a request for loan forgiveness.

(iii) After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary—

(A) Notifies the borrower that the borrower's obligation on the loans is satisfied;

(B) Provides the borrower with the information described in paragraph (f)(5)(i)(C) of this section; and

(C) Returns to the sender any payment received on a loan after loan forgiveness has been granted in accordance with paragraph (f)(5)(i) of this section.

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

[73 FR 63258, Oct. 23, 2008, as amended at 74 FR 56006, Oct. 29, 2009; 77 FR 66145, Nov. 1, 2012; 80 FR 67242, Oct. 30, 2015]

§ 685.222 Borrower defenses and procedures for loans first disbursed on or after July 1, 2017, and before July 1, 2020, and procedures for loans first disbursed prior to July 1, 2017.

(a) *General.* (1) For loans first disbursed prior to July 1, 2017, a borrower asserts and the Secretary considers a

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borrower defense in accordance with the provisions of § 685.206(c), unless otherwise noted in § 685.206(c).

(2) For loans first disbursed on or after July 1, 2017, and before July 1, 2020, a borrower asserts and the Secretary considers a borrower defense in accordance with this section. To establish a borrower defense under this section, a preponderance of the evidence must show that the borrower has a borrower defense that meets the requirements of this section.

(3) A violation by the school of an eligibility or compliance requirement in the Act or its implementing regulations is not a basis for a borrower defense under either this section or § 685.206(c) unless the violation would otherwise constitute a basis for a borrower defense under this section or § 685.206(c), as applicable.

(4) For the purposes of this section and § 685.206(c), “borrower” means—

(i) The borrower; and

(ii) In the case of a Direct PLUS Loan, any endorser, and for a Direct PLUS Loan made to a parent, the student on whose behalf the parent borrowed.

(5) For the purposes of this section and § 685.206(c), a “borrower defense” refers to an act or omission of the school attended by the student that relates to the making of a Direct Loan for enrollment at the school or the provision of educational services for which the loan was provided, and includes one or both of the following:

(i) A defense to repayment of amounts owed to the Secretary on a Direct Loan, in whole or in part; and

(ii) A right to recover amounts previously collected by the Secretary on the Direct Loan, in whole or in part.

(6) If the borrower asserts both a borrower defense and any other objection to an action of the Secretary with regard to that Direct Loan, the order in which the Secretary will consider objections, including a borrower defense, will be determined as appropriate under the circumstances.

(b) *Judgment against the school.* The borrower has a borrower defense under this section if the borrower, whether as an individual or as a member of a class, or a governmental agency, has obtained against the school a nondefault,

favorable contested judgment based on State or Federal law in a court or administrative tribunal of competent jurisdiction. A borrower may assert a borrower defense under this paragraph at any time.

(c) *Breach of contract by the school.* The borrower has a borrower defense under this section if the school the borrower received the Direct Loan to attend failed to perform its obligations under the terms of a contract with the student. A borrower may assert a defense to repayment of amounts owed to the Secretary under this paragraph at any time after the breach by the school of its contract with the student. A borrower may assert a right to recover amounts previously collected by the Secretary under this paragraph not later than six years after the breach by the school of its contract with the student.

(d) *Substantial misrepresentation by the school.* (1) A borrower has a borrower defense under this section if the school or any of its representatives, or any institution, organization, or person with whom the school has an agreement to provide educational programs, or to provide marketing, advertising, recruiting, or admissions services, made a substantial misrepresentation in accordance with 34 CFR part 668, subpart F, that the borrower reasonably relied on to the borrower’s detriment when the borrower decided to attend, or to continue attending, the school or decided to take out a Direct Loan. A borrower may assert, at any time, a defense to repayment under this paragraph (d) of amounts owed to the Secretary. A borrower may assert a claim under this paragraph (d) to recover funds previously collected by the Secretary not later than six years after the borrower discovers, or reasonably could have discovered, the information constituting the substantial misrepresentation.

(2) For the purposes of this section, a designated Department official pursuant to paragraph (e) of this section or a hearing official pursuant to paragraph (f), (g), or (h) of this section may consider, as evidence supporting the reasonableness of a borrower’s reliance on a misrepresentation, whether the

school or any of the other parties described in paragraph (d)(1) engaged in conduct such as, but not limited to:

(i) Demanding that the borrower make enrollment or loan-related decisions immediately;

(ii) Placing an unreasonable emphasis on unfavorable consequences of delay;

(iii) Discouraging the borrower from consulting an adviser, a family member, or other resource;

(iv) Failing to respond to the borrower's requests for more information including about the cost of the program and the nature of any financial aid; or

(v) Otherwise unreasonably pressuring the borrower or taking advantage of the borrower's distress or lack of knowledge or sophistication.

(e) *Procedure for an individual borrower.* (1) To assert a borrower defense under this section, an individual borrower must—

(i) Submit an application to the Secretary, on a form approved by the Secretary—

(A) Certifying that the borrower received the proceeds of a loan, in whole or in part, to attend the named school;

(B) Providing evidence that supports the borrower defense; and

(C) Indicating whether the borrower has made a claim with respect to the information underlying the borrower defense 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 credited to the borrower's loan obligation; and

(ii) Provide any other information or supporting documentation reasonably requested by the Secretary.

(2) Upon receipt of a borrower's application submitted under this section, the Secretary—

(i) If the borrower is not in default on the loan for which a borrower defense has been asserted, grants forbearance and—

(A) Notifies the borrower of the option to decline the forbearance and to continue making payments on the loan; and

(B) Provides the borrower with information about the availability of the income-contingent repayment plans

under § 685.209 and the income-based repayment plan under § 685.221; or

(ii) If the borrower is in default on the loan for which a borrower defense has been asserted—

(A) Suspends collection activity on the loan until the Secretary issues a decision on the borrower's claim;

(B) Notifies the borrower of the suspension of collection activity and explains that collection activity will resume if the Secretary determines that the borrower does not qualify for a full discharge; and

(C) Notifies the borrower of the option to continue making payments under a rehabilitation agreement or other repayment agreement on the defaulted loan.

(3) The Secretary designates a Department official to review the borrower's application submitted under this section to determine whether the application states a basis for a borrower defense, and resolves the claim through a fact-finding process conducted by the Department official.

(i) As part of the fact-finding process, the Department official notifies the school of the borrower defense application and considers any evidence or argument presented by the borrower and also any additional information, including—

(A) Department records;

(B) Any response or submissions from the school; and

(C) Any additional information or argument that may be obtained by the Department official.

(ii) For borrower defense applications under this section, upon the borrower's request, the Department official identifies to the borrower the records the Department official considers relevant to the borrower defense. The Secretary provides to the borrower any of the identified records upon reasonable request of the borrower.

(4) At the conclusion of the fact-finding process under this section, the Department official issues a written decision as follows:

(i) If the Department official approves the borrower defense in full or in part, the Department official notifies the borrower in writing of that determination and of the relief provided

as described in paragraph (i) of this section.

(ii) If the Department official denies the borrower defense in full or in part, the Department official notifies the borrower of the reasons for the denial, the evidence that was relied upon, any portion of the loan that is due and payable to the Secretary, and whether the Secretary will reimburse any amounts previously collected, and informs the borrower that if any balance remains on the loan, the loan will return to its status prior to the borrower's submission of the application. The Department official also informs the borrower of the opportunity to request reconsideration of the claim based on new evidence pursuant to paragraph (e)(5)(i) of this section.

(5) The decision of the Department official under this section is final as to the merits of the claim and any relief that may be granted on the claim. Notwithstanding the foregoing—

(i) If the borrower defense is denied in full or in part, the borrower may request that the Secretary reconsider the borrower defense upon the identification of new evidence in support of the borrower's claim. "New evidence" is relevant evidence that the borrower did not previously provide and that was not identified in the final decision as evidence that was relied upon for the final decision. If accepted for reconsideration by the Secretary, the Secretary follows the procedure in paragraph (e)(2) of this section for granting forbearance and for defaulted loans; and

(ii) The Secretary may reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision. If a borrower defense application is reopened by the Secretary, the Secretary follows the procedure paragraph (e)(2) of this section for granting forbearance and for defaulted loans.

(6) The Secretary may consolidate applications filed under this paragraph (e) that have common facts and claims, and resolve the borrowers' borrower defense claims as provided in paragraphs (f), (g), and (h) of this section.

(7) The Secretary may initiate a proceeding to collect from the school the amount of relief resulting from a borrower defense under this section—

(i) Within the six-year period applicable to the borrower defense under paragraph (c) or (d) of this section;

(ii) At any time, for a borrower defense under paragraph (b) of this section; or

(iii) At any time if during the period described in paragraph (e)(7)(i) of this section, the institution received notice of the claim. For purposes of this paragraph, notice includes receipt of—

(A) Actual notice from the borrower, a representative of the borrower, or the Department of a claim, including notice of an application filed pursuant to this section or § 685.206(c);

(B) A class action complaint asserting relief for a class that may include the borrower for underlying facts that may form the basis of a claim under this section or § 685.206(c);

(C) Written notice, including a civil investigative demand or other written demand for information, from a Federal or State agency that has power to initiate an investigation into conduct of the school relating to specific programs, periods, or practices that may have affected the borrower, for underlying facts that may form the basis of a claim under this section or § 685.206(c).

(f) *Group process for borrower defense, generally.* (1) Upon consideration of factors including, but not limited to, common facts and claims, fiscal impact, and the promotion of compliance by the school or other title IV, HEA program participant, the Secretary may initiate a process to determine whether a group of borrowers, identified by the Secretary, has a borrower defense under this section.

(i) The members of the group may be identified by the Secretary from individually filed applications pursuant to paragraph (e)(6) of this section or from any other source.

(ii) If the Secretary determines that there are common facts and claims that apply to borrowers who have not filed an application under paragraph (e) of this section, the Secretary may identify such borrowers as members of a group.

(2) Upon the identification of a group of borrowers under paragraph (f)(1) of this section, the Secretary—

(i) Designates a Department official to present the group's claim in the fact-finding process described in paragraph (g) or (h) of this section, as applicable;

(ii) Provides each identified member of the group with notice that allows the borrower to opt out of the proceeding;

(iii) If identified members of the group are borrowers who have not filed an application under paragraph (f)(1)(ii) of this section, follows the procedures in paragraph (e)(2) of this section for granting forbearance and for defaulted loans for such identified members of the group, unless an opt-out by such a member of the group is received; and

(iv) Notifies the school of the basis of the group's borrower defense, the initiation of the fact-finding process described in paragraph (g) or (h) of this section, and of any procedure by which the school may request records and respond. No notice will be provided if notice is impossible or irrelevant due to a school's closure.

(3) For a group of borrowers identified by the Secretary, for which the Secretary determines that there may be a borrower defense under paragraph (d) of this section based upon a substantial misrepresentation that has been widely disseminated, there is a rebuttable presumption that each member reasonably relied on the misrepresentation.

(g) *Procedures for group process for borrower defenses with respect to loans made to attend a closed school.* For groups identified by the Secretary under paragraph (f) of this section, for which the borrower defense under this section is asserted with respect to a Direct Loan to attend a school that has closed and has provided no financial protection currently available to the Secretary from which to recover any losses arising from borrower defenses, and for which there is no appropriate entity from which the Secretary can otherwise practicably recover such losses—

(1) A hearing official resolves the borrower defense under this section through a fact-finding process. As part of the fact-finding process, the hearing official considers any evidence and argument presented by the Department

official on behalf of the group and, as necessary to determine any claims at issue, on behalf of individual members of the group. The hearing official also considers any additional information the Department official considers necessary, including any Department records or response from the school or a person affiliated with the school as described in § 668.174(b), if practicable. The hearing official issues a written decision as follows:

(i) If the hearing official approves the borrower defense in full or in part, the written decision states that determination and the relief provided on the basis of that claim as determined under paragraph (i) of this section.

(ii) If the hearing official denies the borrower defense in full or in part, the written decision states the reasons for the denial, the evidence that was relied upon, the portion of the loans that are due and payable to the Secretary, and whether reimbursement of amounts previously collected is granted, and informs the borrowers that if any balance remains on the loan, the loan will return to its status prior to the group claim process.

(iii) The Secretary provides copies of the written decision to the members of the group and, as practicable, to the school.

(2) The decision of the hearing official is final as to the merits of the group borrower defense and any relief that may be granted on the group claim.

(3) After a final decision has been issued, if relief for the group has been denied in full or in part pursuant to paragraph (g)(1)(ii) of this section, an individual borrower may file a claim for relief pursuant to paragraph (e)(5)(i) of this section.

(4) The Secretary may reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision. If a borrower defense application is reopened by the Secretary, the Secretary follows the procedure in paragraph (e)(2) of this section for granting forbearance and for defaulted loans.

(h) *Procedures for group process for borrower defenses with respect to loans made to attend an open school.* For groups identified by the Secretary

under paragraph (f) of this section, for which the borrower defense under this section is asserted with respect to Direct Loans to attend a school that is not covered by paragraph (g) of this section, the claim is resolved in accordance with the procedures in this paragraph (h).

(1) A hearing official resolves the borrower defense and determines any liability of the school through a fact-finding process. As part of the fact-finding process, the hearing official considers any evidence and argument presented by the school and the Department official on behalf of the group and, as necessary to determine any claims at issue, on behalf of individual members of the group. The hearing official issues a written decision as follows:

(i) If the hearing official approves the borrower defense in full or in part, the written decision establishes the basis for the determination, notifies the members of the group of the relief as described in paragraph (i) of this section, and notifies the school of any liability to the Secretary for the amounts discharged and reimbursed.

(ii) If the hearing official denies the borrower defense for the group in full or in part, the written decision states the reasons for the denial, the evidence that was relied upon, the portion of the loans that are due and payable to the Secretary, and whether reimbursement of amounts previously collected is granted, and informs the borrowers that their loans will return to their statuses prior to the group borrower defense process. The decision notifies the school of any liability to the Secretary for any amounts discharged or reimbursed.

(iii) The Secretary provides copies of the written decision to the members of the group, the Department official, and the school.

(2) The decision of the hearing official becomes final as to the merits of the group borrower defense and any relief that may be granted on the group borrower defense within 30 days after the decision is issued and received by the Department official and the school unless, within that 30-day period, the school or the Department official ap-

peals the decision to the Secretary. In the case of an appeal—

(i) The decision of the hearing official does not take effect pending the appeal; and

(ii) The Secretary renders a final decision.

(3) After a final decision has been issued, if relief for the group has been denied in full or in part pursuant to paragraph (h)(1)(ii) of this section, an individual borrower may file a claim for relief pursuant to paragraph (e)(5)(i) of this section.

(4) The Secretary may reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision. If a borrower defense application is reopened by the Secretary, the Secretary follows the procedure in paragraph (e)(2) of this section for granting forbearance and for defaulted loans.

(5)(i) The Secretary collects from the school any liability to the Secretary for any amounts discharged or reimbursed to borrowers under this paragraph (h).

(ii) For a borrower defense under paragraph (b) of this section, the Secretary may initiate a proceeding to collect at any time.

(iii) For a borrower defense under paragraph (c) or (d) of this section, the Secretary may initiate a proceeding to collect within the limitation period that would apply to the borrower defense, provided that the Secretary may bring an action to collect at any time if, within the limitation period, the school received notice of the borrower's borrower defense claim. For purposes of this paragraph, the school receives notice of the borrower's claim by receipt of—

(A) Actual notice of the claim from the borrower, a representative of the borrower, or the Department, including notice of an application filed pursuant to this section or § 685.206(c);

(B) A class action complaint asserting relief for a class that may include the borrower for underlying facts that may form the basis of a claim under this section or § 685.206(c); or

(C) Written notice, including a civil investigative demand or other written demand for information, from a Federal or State agency that has power to

initiate an investigation into conduct of the school relating to specific programs, periods, or practices that may have affected the borrower, of underlying facts that may form the basis of a claim under this section or § 685.206(c).

(i) *Relief.* If a borrower defense is approved under the procedures in paragraph (e), (g), or (h) of this section, the following procedures apply:

(1) The Department official or the hearing official deciding the claim determines the appropriate amount of relief to award the borrower, which may be a discharge of all amounts owed to the Secretary on the loan at issue and may include the recovery of amounts previously collected by the Secretary on the loan, or some lesser amount.

(2) For a borrower defense brought on the basis of—

(i) A substantial misrepresentation, the Department official or the hearing official will factor the borrower's cost of attendance to attend the school, as well as the value of the education the borrower received, the value of the education that a reasonable borrower in the borrower's circumstances would have received, and/or the value of the education the borrower should have expected given the information provided by the institution, into the determination of appropriate relief. A borrower may be granted full, partial, or no relief. Value will be assessed in a manner that is reasonable and practicable. In addition, the Department official or the hearing official deciding the claim may consider any other relevant factors;

(ii) A judgment against the school—

(A) Where the judgment awards specific financial relief, relief will be the amount of the judgment that remains unsatisfied, subject to the limitation provided for in § 685.222(i)(8) and any other reasonable considerations; and

(B) Where the judgment does not award specific financial relief, the Department will rely on the holding of the case and applicable law to monetize the judgment; and

(iii) A breach of contract, relief will be determined according to the common law of contracts, subject to the limitation provided for in § 685.222(i)(8)

and any other reasonable considerations.

(3) In a fact-finding process brought against an open school under paragraph (h) of this section on the basis of a substantial misrepresentation, the school has the burden of proof as to any value of the education.

(4) In determining the relief, the Department official or the hearing official deciding the claim may consider—

(i) Information derived from a sample of borrowers from the group when calculating relief for a group of borrowers; and

(ii) The examples in Appendix A to this subpart.

(5) In the written decision described in paragraphs (e), (g), and (h) of this section, the designated Department official or hearing official deciding the claim notifies the borrower of the relief provided and—

(i) Specifies the relief determination;

(ii) Advises that there may be tax implications; and

(iii) Advises the borrower of the requirements to file a request for reconsideration upon the identification of new evidence.

(6) Consistent with the determination of relief under paragraph (i)(1) of this section, the Secretary discharges the borrower's obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay and, if applicable, reimburses the borrower for amounts paid toward the loan voluntarily or through enforced collection.

(7) The Department official or the hearing official deciding the case, or the Secretary as applicable, affords the borrower such further relief as appropriate under the circumstances. Such further relief includes, but is not limited to, one or both of the following:

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

(ii) Updating reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan.

(8) The total amount of relief granted with respect to a borrower defense cannot exceed the amount of the loan and

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any associated costs and fees and will be reduced by the amount of any refund, reimbursement, indemnification, restitution, compensatory damages, settlement, debt forgiveness, discharge, cancellation, compromise, or any other financial benefit received by, or on behalf of, the borrower that was related to the borrower defense. The relief to the borrower may not include non-pecuniary damages such as inconvenience, aggravation, emotional distress, or punitive damages.

(j) *Cooperation by the borrower.* To obtain relief under this section, a borrower must reasonably cooperate with the Secretary in any proceeding under paragraph (e), (g), or (h) of this section. The Secretary may revoke any relief granted to a borrower who fails to satisfy his or her obligations under this paragraph (j).

(k) *Transfer to the Secretary of the borrower's right of recovery against third parties.* (1) Upon the granting of any relief 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 may have by contract or applicable law with respect to the loan or the contract for educational services for which the loan was received, against the school, its principals, its affiliates, and their successors, its sureties, and any private fund. If the borrower asserts a claim to, and recovers from, a public fund, the Secretary may reinstate the borrower's obligation to repay on the loan an amount based on the amount recovered from the public fund, if the Secretary determines that the borrower's recovery from the public fund was based on the same borrower defense and for the same loan for which the discharge was granted under this section.

(2) The provisions of this paragraph (k) apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, 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 paragraph (k) limits or forecloses the borrower's right to pursue legal and equitable relief against a party described in this paragraph (k) for recovery of any portion of a claim exceeding that assigned to the Secretary or any other claims arising from matters unrelated to the claim on which the loan is discharged.

(Authority: 20 U.S.C. 1087a *et seq.*; 28 U.S.C. 2401; 31 U.S.C. 3702)

[81 FR 76083, Nov. 1, 2016, as amended at 84 FR 49932, Sept. 23, 2019]

§ 685.223 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

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

[81 FR 76086, Nov. 1, 2016]

APPENDIX A TO SUBPART B OF PART 685—EXAMPLES OF BORROWER RELIEF

As provided in 34 CFR 685.222(i)(4), the Department official or the hearing official deciding a borrower defense claim determines the amount of relief to award the borrower, which may be a discharge of all amounts owed to the Secretary on the loan at issue and may include the recovery of amounts previously collected by the Secretary on the loan, or some lesser amount. The following are some conceptual examples demonstrating relief. The actual relief awarded will be determined by the Department official or the hearing official deciding the claim, who shall not be bound by these examples.

1. A school represents to prospective students, in widely disseminated materials, that its educational program will lead to employment in an occupation that requires State licensure. The program does not in fact meet minimum education requirements to enable its graduates to sit for the exam necessary for them to obtain licensure. The claims are adjudicated in a group process.

Appropriate relief: Borrowers who enrolled in this program during the time that the misrepresentation was made should receive full relief. As a result of the schools' misrepresentation, the borrowers cannot work in the occupation in which they reasonably expected to work when they enrolled. Accordingly, borrowers received limited or no value from this educational program because they did not receive the value that they reasonably expected.

2. A school states to a prospective student that its medical assisting program has a faculty composed of skilled nurses and physicians and offers internships at a local hospital. The borrower enrolls in the school in reliance on that statement. In fact, none of the teachers at the school other than the Director is a nurse or physician. The school has no internship program. The teachers at the school are not qualified to teach medical assisting and the student is not qualified for medical assistant jobs based on the education received at the school.

Appropriate relief: This borrower should receive full relief. None of the teachers at the school are qualified to teach medical assisting, and there was no internship. In contrast to reasonable students' expectations, based on information provided by the school, the typical borrower received no value from the program.

3. An individual interested in becoming a registered nurse meets with a school's admissions counselor who explains that the school does not have a nursing program but that completion of a medical assisting program is a prerequisite for any nursing program. Based on this information, the borrower enrolls in the school's medical assisting program rather than searching for another nursing program, believing that completing a medical assisting program is a necessary step towards becoming a nurse. After one year in the program, the borrower realizes that it is not necessary to become a medical assistant before entering a nursing program. The borrower's credits are not transferrable to a nursing program.

Appropriate relief: This borrower should receive full relief. Because it is not necessary to become a medical assistant prior to entering a nursing program, she has made no progress towards the career she sought, and in fact has received an education that cannot be used for its intended purpose.

4. A school tells a prospective student, who is actively seeking an education, that the cost of the program will be \$20,000. Relying on that statement, the borrower enrolls. The student later learns the cost for that year was \$25,000. There is no evidence of any other misrepresentations in the enrollment process or of any deficiency in value in the school's education.

Appropriate relief: This borrower should receive partial relief of \$5,000. The borrower received precisely the value that she expected. The school provides the education that the student was seeking but misrepresented the price.

5. A school represents in its marketing materials that three of its undergraduate faculty members in a particular program have received the highest award in their field. A borrower choosing among two comparable, selective programs enrolls in that program in reliance on the representation about its

faculty. However, although the program otherwise remains the same, the school had failed to update the marketing materials to reflect the fact that the award-winning faculty had left the school.

Appropriate relief: Although the borrower reasonably relied on a misrepresentation about the faculty in deciding to enroll at this school, she still received the value that she expected. Therefore, no relief is appropriate.

6. An individual wishes to enroll in a selective, regionally accredited liberal arts school. The school gives inflated data to a well-regarded school ranking organization regarding the median grade point average of recent entrants and also includes that inflated data in its own marketing materials. This inflated data raises the place of the school in the organization's rankings in independent publications. The individual enrolls in the school and graduates. Soon after graduating, the individual learns from the news that the school falsified admissions data. Notwithstanding this issue, degrees from the school continue to serve as effective, well-regarded liberal arts credentials.

The Department also determines that the school violated the title IV requirement that it not make substantial misrepresentations pursuant to 34 CFR 668.71, which constitutes an enforceable violation separate and apart from any borrower defense relief.

Appropriate Relief: The borrower relied on the misrepresentation about the admissions data to his detriment, because the misrepresentation factored into the borrower's decision to choose the school over others. However, the borrower received a selective liberal arts education which represents the value that he could reasonably expect, and gets no relief.

[81 FR 76086, Nov. 1, 2016 as amended at 84 FR 49933, Sept. 23, 2019]

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.* 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 must—

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

(2) Enter into a written program participation agreement with the Secretary.

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

(5) On a monthly basis, reconcile institutional records with Direct Loan funds received from the Secretary and Direct Loan disbursement records submitted to and accepted by the Secretary;

(6) 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;

(7) Provide assurances that the school will comply with loan information requirements established by the Secretary with respect to loans made under the Direct Loan Program;

(8) Accept responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

(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 for the provision of information necessary for a student or parent to receive a loan under part D of the Act or for any benefits associated with such a loan;

(11) Comply with the provisions of paragraphs (d) through (i) of this section regarding student claims and disputes;

(12) 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; and

(13) Accept responsibility and financial liability stemming from losses incurred by the Secretary for repayment of amounts discharged by the Secretary pursuant to §§ 685.206, 685.214, 685.215, 685.216, 685.222, and subpart D of this part.

(c) *Origination.* A school that originates loans in the Direct Loan Program must originate loans to eligible students and parents in accordance with part D of the Act. The note or evidence of the borrower's obligation on the loan originated by the school is the property of the Secretary.

(d) *Borrower defense claims in an internal dispute process.* The school will not compel any student to pursue a complaint based on allegations that would provide a basis for a borrower defense claim through an internal dispute process before the student presents the complaint to an accrediting agency or government agency authorized to hear the complaint.

(e) *Class action bans.* (1) The school will not seek to rely in any way on a pre-dispute arbitration agreement or on any other pre-dispute agreement with a student who has obtained or benefited from a Direct Loan, with respect to any aspect of a class action that is related to a borrower defense claim, unless and until the presiding court has ruled that the case may not proceed as a class action and, if that ruling may be subject to appellate review on an interlocutory basis, the time to seek such review has elapsed or the review has been resolved.

(2) Reliance on a pre-dispute arbitration agreement, or on any other pre-dispute agreement, with a student, with respect to any aspect of a class action includes, but is not limited to, any of the following:

(i) Seeking dismissal, deferral, or stay of any aspect of a class action;

(ii) Seeking to exclude a person or persons from a class in a class action;

(iii) Objecting to or seeking a protective order intended to avoid responding to discovery in a class action;

(iv) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action;

(v) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action after the trial court has denied a motion to certify the class but before an appellate court has ruled on an interlocutory appeal of that motion, if the time to seek such an appeal has not elapsed or the appeal has not been resolved; and

(vi) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action, after the trial court in that class action has granted a motion to dismiss the claim and noted that the consumer has leave to refile the claim on a class basis, if the time to refile the claim has not elapsed.

(3) Required provisions and notices:

(i) After the effective date of this regulation, the school must include the following provision in any agreements with a student recipient of a Direct Loan for attendance at the school, or a student for whom the PLUS loan was obtained, that include pre-dispute arbitration or any other pre-dispute agree-

ment addressing class actions: "We agree that this agreement cannot be used to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court, or you may be a member of a class action lawsuit even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Direct Loan or our provision of educational services for which the Direct Loan was obtained. We agree that the court has exclusive jurisdiction to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained."

(ii) When a pre-dispute arbitration agreement or any other pre-dispute agreement addressing class actions has been entered into before the effective date of this regulation and does not contain the provision described in paragraph (e)(3)(i) of this section, the school must either ensure the agreement is amended to contain that provision or provide the student to whom the agreement applies with written notice of that provision.

(iii) The school must ensure the agreement described in paragraph (e)(3)(ii) of this section is amended to contain the provision set forth in paragraph (e)(3)(i) or must provide the notice to students specified in that paragraph no later than the exit counseling required under § 685.304(b), or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment, whichever is earlier.

(A) *Agreement provision.* "We agree that neither we, nor anyone else who later becomes a party to this agreement, will use it to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court, or you may be a member of a class action lawsuit in court even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. We agree that the

court has exclusive jurisdiction to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.”

(B) *Notice provision.* “We agree not to use any pre-dispute agreement to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court, or you may be a member of a class action lawsuit even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. We agree that the court has exclusive jurisdiction to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.”

(f) *Pre-dispute arbitration agreements.* (1)(i) The school will not enter into a pre-dispute agreement to arbitrate a borrower defense claim or rely in any way on a pre-dispute arbitration agreement with respect to any aspect of a borrower defense claim.

(ii) A student may enter into a voluntary post-dispute arbitration agreement with a school to arbitrate a borrower defense claim.

(2) Reliance on a pre-dispute arbitration agreement with a student with respect to any aspect of a borrower defense claim includes, but is not limited to, any of the following:

(i) Seeking dismissal, deferral, or stay of any aspect of a judicial action filed by the student, including joinder with others in an action;

(ii) Objecting to or seeking a protective order intended to avoid responding to discovery in a judicial action filed by the student; and

(iii) Filing a claim in arbitration against a student who has filed a suit on the same claim.

(3) Required provisions and notices: (i) The school must include the following provision in any pre-dispute arbitration agreements with a student recipient of a Direct Loan for attendance at the school, or, with respect to a Parent PLUS Loan, a student for

whom the PLUS loan was obtained, that include any agreement regarding arbitration and that are entered into after the effective date of this regulation: “We agree that neither we nor anyone else will use this agreement to stop you from bringing a lawsuit concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. You may file a lawsuit for such a claim, or you may be a member of a class action lawsuit for such a claim even if you do not file it. This provision does not apply to lawsuits concerning other claims. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.”

(ii) When a pre-dispute arbitration agreement has been entered into before the effective date of this regulation, that did not contain the provision specified in paragraph (f)(3)(i) of this section, the school must either ensure the agreement is amended to contain the provision specified in paragraph (f)(3)(iii)(A) of this section or provide the student to whom the agreement applies with the written notice specified in paragraph (f)(3)(iii)(B) of this section.

(iii) The school must ensure the agreement described in paragraph (f)(3)(ii) of this section is amended to contain the provision specified in paragraph (f)(3)(iii)(A) of this section or must provide the notice specified in paragraph (f)(3)(iii)(B) of this section to students no later than the exit counseling required under § 685.304(b), or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment, whichever is earlier.

(A) *Agreement provision.* “We agree that neither we, nor anyone else who later becomes a party to this pre-dispute arbitration agreement, will use it to stop you from bringing a lawsuit

concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. You may file a lawsuit for such a claim, or you may be a member of a class action lawsuit for such a claim even if you do not file it. This provision does not apply to other claims. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.”

(B) *Notice provision.* “We agree not to use any pre-dispute arbitration agreement to stop you from bringing a lawsuit concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. You may file a lawsuit regarding such a claim, or you may be a member of a class action lawsuit regarding such a claim even if you do not file it. This provision does not apply to any other claims. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Direct Loan or the provision of educational services for which the loan was obtained.”

(g) *Submission of arbitral records.* (1) A school must submit a copy of the following records to the Secretary, in the form and manner specified by the Secretary, in connection with any borrower defense claim filed in arbitration by or against the school:

- (i) The initial claim and any counterclaim;
- (ii) The arbitration agreement filed with the arbitrator or arbitration administrator;
- (iii) The judgment or award, if any, issued by the arbitrator or arbitration administrator;
- (iv) If an arbitrator or arbitration administrator refuses to administer or dismisses a claim due to the school's failure to pay required filing or administrative fees, any communication the school receives from the arbitrator or arbitration administrator related to such a refusal; and

(v) Any communication the school receives from an arbitrator or an arbitration administrator related to a determination that a pre-dispute arbitration agreement regarding educational services provided by the school does not comply with the administrator's fairness principles, rules, or similar requirements, if such a determination occurs;

(2) A school must submit any record required pursuant to paragraph (g)(1) of this section within 60 days of filing by the school of any such record with the arbitrator or arbitration administrator and within 60 days of receipt by the school of any such record filed or sent by someone other than the school, such as the arbitrator, the arbitration administrator, or the student.

(3) The Secretary will publish the records submitted by schools in paragraph (g)(1) of this section in a centralized database accessible to the public.

(h) *Submission of judicial records.* (1) A school must submit a copy of the following records to the Secretary, in the form and manner specified by the Secretary, in connection with any borrower defense claim filed in a lawsuit by the school against the student or by any party, including a government agency, against the school:

- (i) The complaint and any counterclaim;
- (ii) Any dispositive motion filed by a party to the suit; and
- (iii) The ruling on any dispositive motion and the judgment issued by the court;

(2) A school must submit any record required pursuant to paragraph (h)(1) of this section within 30 days of filing or receipt, as applicable, of the complaint, answer, or dispositive motion, and within 30 days of receipt of any ruling on a dispositive motion or a final judgment;

(3) The Secretary will publish the records submitted by schools in paragraph (h)(1) in a centralized database accessible to the public.

(i) *Definitions.* For the purposes of paragraphs (d) through (h) of this section, the term—

(1) *Borrower defense claim* means a claim based on an act or omission that is or could be asserted as a borrower defense as defined in:

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- (i) § 685.206(c)(1);
- (ii) § 685.222(a)(5);
- (iii) § 685.206(e)(1)(iii); or
- (iv) § 685.401(a);

(2) *Class action* means a lawsuit in which one or more parties seek class treatment pursuant to Federal Rule of Civil Procedure 23 or any State process analogous to Federal Rule of Civil Procedure 23;

(3) *Dispositive motion* means a motion asking for a court order that entirely disposes of one or more claims in favor of the party who files the motion without need for further court proceedings;

(4) *Pre-dispute arbitration agreement* means any agreement, regardless of its form or structure, between a school or a party acting on behalf of a school and a student that provides for arbitration of any future dispute between the parties.

[59 FR 61690, Dec. 1, 1994, as amended at 64 FR 58970, Nov. 1, 1999; 71 FR 64400, Nov. 1, 2006; 78 FR 65838, Nov. 1, 2013; 81 FR 76087, Nov. 1, 2016; 83 FR 34048, July 19, 2018; 84 FR 49933, Sept. 23, 2019; 87 FR 66066, Nov. 1, 2022]

§ 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 must ensure that any information it provides to the Secretary in connection with loan origination is complete and accurate. A school must 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 Direct PLUS Loan borrower, the student and the parent borrower.

(2) A school must 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, as determined in accordance with § 685.303(d).

(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, or that 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)(10)(ii) or (iii) of this section, 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 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.

(ii) For a student who transfers into a school from another school and the prior school originated 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.

(iv) 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) *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.

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(c) *Reporting to the Secretary.* 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.

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

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

[78 FR 65833, Nov. 1, 2013]

§ 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 must also comply with any rules for processing loan proceeds contained in 34 CFR part 668.

(b) *General.*—(1) A school may not disburse loan proceeds to a borrower unless the borrower has executed a legally enforceable promissory note.

(2) The Secretary provides Direct Loan funds to a school in accordance with 34 CFR 668.162.

(3)(i) Except in the case of a late disbursement under paragraph (f) of this section, or as provided in paragraph (b)(3)(iii) of this section, a school may disburse loan proceeds only to a student, or a parent in the case of a Direct 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) If 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)(4) 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

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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.

(4) 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.

(5)(i) If a student is enrolled in the first year of an undergraduate program of study and has not previously received a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Subsidized or Unsubsidized Federal Stafford Loan, or a Federal Supplemental Loan for Students, 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)(5)(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)(5)(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 (b)(5)(i)(A) or (B) of this section, as applicable.

(iii) Paragraph (b)(5)(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 must follow the procedures for disbursing funds in 34 CFR 668.164.

(d) *Determining disbursement dates and amounts.* (1) Before disbursing a loan, a school must determine that all information required by the 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 paragraph (d)(4) or (d)(6) 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)(10)(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.

(B) For a loan originated under § 685.301(a)(10)(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.

(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)(1) 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 (d)(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; or

(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; or

(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 CFR part 668, of less than five percent for the single most recent fiscal year for which data are available.

(ii) Paragraphs (d)(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

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paragraph (d)(6)(i)(A) or (B) of this section, as applicable.

(iii) Paragraph (d)(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.

(e) *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.

(f) *Late Disbursement.* A school may make a late disbursement according to the provisions found under 34 CFR 668.164(g).

(g) *Treatment of excess loan proceeds.* Before the disbursement of any Direct Subsidized Loan, Direct Unsubsidized Loan, or Direct PLUS Loan proceeds, if a school learns that the borrower will receive or has received financial aid for the period 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 must reduce or eliminate the overaward by either—

(1) Using the student's Direct Unsubsidized Loan, Direct PLUS Loan, 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)

(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 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; 78 FR 65839, Nov. 1, 2013]

§ 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 Loan, Direct Unsubsidized Loan, Subsidized or Unsubsidized Federal Stafford Loan, 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 student Direct PLUS Loan or student 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—

(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.

(A) Online or by interactive electronic means, with the borrower acknowledging receipt of the information.

(B) If a standardized interactive electronic tool is used to provide entrance counseling to the borrower, the school must provide to the borrower any elements of the required information that are not addressed through the electronic tool:

(1) In person; or

(2) On a separate written or electronic document provided to the borrower.

(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 short-

ly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence, distance education, or 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, of 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 Direct PLUS Loan borrower who has received a prior Direct Subsidized Loan, Direct Unsubsidized Loan, Subsidized Federal Stafford Loan, or Unsubsidized Federal Stafford Loan, provide the information specified in § 685.301(a)(3)(i)(A) through (a)(3)(i)(C); and

(iv) For a graduate or professional student Direct PLUS Loan borrower who has not received a prior Direct

Subsidized Loan, Direct Unsubsidized Loan, Subsidized Federal Stafford Loan, or Unsubsidized Federal Stafford 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, within 30 days after the school learns that the student borrower has withdrawn from school or failed to complete the exit counseling as required, be provided either through interactive electronic means, by mailing written counseling materials to the student borrower at the student borrower's last known address, or by sending written counseling materials to an email address provided by the student borrower that is not an email address associated with the school sending the counseling materials.

(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, 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

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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.

(8)(i) For students who have received loans under both the FFEL Program and the Direct Loan Program for attendance at a school, the school's compliance with the exit counseling requirements in paragraph (b) of this section satisfies the exit counseling requirements in 34 CFR 682.604(a) if the school ensures that the exit counseling also provides the borrower with the information described in 34 CFR 682.604(a)(2)(i) and (ii).

(ii) A student's completion of electronic interactive exit counseling offered by the Secretary satisfies the requirements of paragraph (b) of this section and, for students who have also received FFEL Program loans for attendance at the school, 34 CFR 682.604(a).

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

[74 FR 55666, Oct. 28, 2009, as amended at 78 FR 28986, May 16, 2013; 78 FR 65841, Nov. 1, 2013; 84 FR 49933, Sept. 23, 2019; 86 FR 31438, June 14, 2021; 87 FR 66068, Nov. 1, 2022]

§ 685.305 Determining the date of a student's withdrawal.

(a) Except as provided in paragraph (b) of this section, a school must 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

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summer term(s) in which classes are offered but students are not generally required to attend, a school must 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 must 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, as amended at 78 FR 65841, Nov. 1, 2013]

§ 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) Must 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) Must 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 must 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, as amended at 78 FR 65841, Nov. 1, 2013]

§ 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 must 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.*)

[59 FR 61690, Dec. 1, 1994, as amended at 78 FR 65841, Nov. 1, 2013]

§ 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 school is liable as a result of—

(1) The school's violation of a Federal statute or regulation;

(2) The school's negligent or willful false certification under § 685.215; or

(3) The school's actions that gave rise to a successful claim for which the Secretary discharged a loan, in whole or in part, pursuant to §§ 685.206, 685.214, 685.216, 685.222, or subpart D of this part.

(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.

[59 FR 61690, Dec. 1, 1994, as amended at 81 FR 76089, Nov. 1, 2016; 84 FR 49933, Sept. 23, 2019; 87 FR 66068, Nov. 1, 2022]

§ 685.309 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

(a) *General.* A participating school must—

(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) *Enrollment reporting process.* (1) Upon receipt of an enrollment report from the Secretary, a school must update all information included in the report and return the report to the Secretary—

(i) In the manner and format prescribed by the Secretary; and

(ii) Within the timeframe prescribed by the Secretary.

(2) Unless it expects to submit its next updated enrollment report to the Secretary within the next 60 days, a school must notify the Secretary within 30 days after the date the school discovers that—

(i) A loan under title IV of the Act was made to or on behalf of a student who was enrolled or accepted for enrollment at the school, and the student has ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(ii) A student who is enrolled at the school and who received a loan under title IV of the Act has changed his or her permanent address.

(c) *Record retention requirements.* An institution must follow the record retention and examination requirements in this part and in 34 CFR 668.24.

(d) *Accounting requirements.* A school must follow accounting requirements in 34 CFR 668.24(b).

(e) *Direct Loan Program bank account.* Schools must follow the procedures for maintaining funds established in 34 CFR 668.163.

(f) *Division of functions.* Schools must follow the procedures for division of functions in 34 CFR 668.16(c).

(g) *Limit on use of funds.* Funds received by a school under this part may be used only to make Direct Loans to

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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; 78 FR 65841, Nov. 1, 2013]

§ 685.310 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

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

[81 FR 76089, Nov. 1, 2016]

Subpart D—Borrower Defense to Repayment

SOURCE: 87 FR 66068, Nov. 1, 2022, unless otherwise noted.

§ 685.400 Scope and purpose.

This subpart sets forth the provisions under which a borrower defense to repayment may be asserted and applies to borrower defense applications pending with the Secretary on July 1, 2023, or received by the Secretary on or after July 1, 2023.

§ 685.401 Borrower defense-general.

(a) *Definitions.* For the purposes of this subpart, the following definitions apply:

Borrower means

(i) The borrower; and

(ii) In the case of a Direct PLUS Loan, any endorsers, and for a Direct PLUS Loan made to a parent, the student on whose behalf the parent borrowed.

Borrower defense to repayment means an act or omission of the school attended by the student that relates to the making of a Direct Loan for enrollment at the school or the provision of educational services for which the loan was provided and that caused the borrower detriment warranting relief in the form of:

(i) A defense to repayment of all amounts owed to the Secretary on a

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Direct Loan including a Direct Consolidation Loan that was used to repay a Direct Loan, a FFEL Program Loan, Federal Perkins Loan, Health Professions Student Loan, Loan for Disadvantaged Students under subpart II of part A of title VII of the Public Health Service Act, Health Education Assistance Loan, or Nursing Loan made under part E of the Public Health Service Act;

(ii) Reimbursement of all payments previously made to the Secretary on the Direct Loan or on a loan repaid by the Direct Consolidation Loan;

(iii) For borrowers in default, determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act; and

(iv) Updating or deleting adverse reports the Secretary previously made to consumer reporting agencies regarding the borrower's Direct Loan.

Covered loan means a Direct Loan or other Federal student loan that is or could be consolidated into a Federal Direct Consolidation Loan.

Department official means an employee of the Department who administers the group process described in § 685.402, the individual process as described in § 685.403, and the institutional response process in § 685.405.

Direct Loan means a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct PLUS Loan, or a Direct Consolidation Loan.

Legal assistance organization means a legal assistance organization that:

(i) employs attorneys who:

(A) Are full-time employees;

(B) Provide civil legal assistance on a full-time basis; and

(C) Are continually licensed to practice law; and,

(ii) Is a nonprofit organization that provides legal assistance with respect to civil matters to low-income individuals without a fee.

Legal representation authority means a written agreement entered into between a borrower and a legal assistance organization that authorizes the legal assistance organization to represent the borrower in connection with a claim for borrower defense or a court order appointing the legal assistance

organization class counsel for a certified class that includes the borrower in an action asserting claims with elements substantially similar to the elements of a claim for borrower defense.

School and *institution* may be used interchangeably and include an eligible institution as defined in 34 CFR 600.2, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs or to provide marketing, advertising, recruiting, or admissions services.

State requestor means a State as defined in 34 CFR 600.2, a State attorney general, a State oversight entity, a State agency responsible for approving educational institutions in the State, or a regulatory agency with the authority from that State.

Third-party requestor means a *State requestor* or *legal assistance organization* as defined in § 685.401(a).

(b) *Federal standard for borrower defense applications received on or after July 1, 2023, and for applications pending with the Secretary on July 1, 2023.* A borrower with a balance due on a covered loan will be determined to have a defense to repayment of a Direct Loan under this subpart, if at any time the Department concludes by a preponderance of the evidence that the institution committed an actionable act or omission and, as a result, the borrower suffered detriment of a nature and degree warranting the relief provided by a borrower defense to repayment as defined in this section. An actionable act or omission means—

(1) The institution made a substantial misrepresentation as defined in 34 CFR part 668, subpart F, that misled the borrower in connection with the borrower's decision to attend, or to continue attending, the institution or the borrower's decision to take out a covered loan;

(2) The institution made a substantial omission of fact, as defined in 34 CFR part 668, subpart F, in connection with the borrower's decision to attend, or to continue attending, the institution or the borrower's decision to take out a covered loan;

(3) The institution failed to perform its obligations under the terms of a

contract with the student and such obligation was undertaken as consideration or in exchange for the borrower's decision to attend, or to continue attending, the institution, for the borrower's decision to take out a covered loan, or for funds disbursed in connection with a covered loan;

(4) The institution engaged in aggressive and deceptive recruitment conduct or tactics as defined in 34 CFR part 668, subpart R, in connection with the borrower's decision to attend, or to continue attending, the institution or the borrower's decision to take out a covered loan; or,

(5)(i) The borrower, whether as an individual or as a member of a class, or a governmental agency has obtained against the institution a favorable judgment based on State or Federal law in a court or administrative tribunal of competent jurisdiction based on the institution's act or omission relating to the making of covered loan, or the provision of educational services for which the loan was provided; or,

(ii) The Secretary sanctioned or otherwise took adverse action against the institution at which the borrower enrolled under 34 CFR part 668, subpart G, by denying the institution's application for recertification, or revoking the institution's provisional program participation agreement under 34 CFR 668.13, based on the institution's acts or omissions that could give rise to a borrower defense claim under paragraphs (b)(1) through (4) of this section.

(c) *Violation of State law.* For loans first disbursed prior to July 1, 2017, a borrower has a borrower defense to repayment under this subpart if the Secretary concludes by a preponderance of the evidence that the school attended by the student committed any act or omission that relates to the making of the loan for enrollment at the school or the provision of educational services for which the loan was provided that would give rise to a cause of action against the school under applicable State law without regard to any State statute of limitations, but only upon reconsideration described under § 685.407(a)(1)(ii) or (a)(2)(i).

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(d) *Exclusions.* An institution's violation of an eligibility or compliance requirement in the Act or its implementing regulations is not a basis for a borrower defense under this subpart unless the violation would otherwise constitute a basis for a borrower defense under this subpart.

(e) *Circumstances warranting relief.* In determining whether a detriment caused by an institution's act or omission warrants relief under this section, the Secretary will consider the totality of the circumstances, including the nature and degree of the acts or omissions and of the detriment caused to borrowers. For borrowers who attended a closed school shown to have committed actionable acts or omissions that caused the borrower detriment, there will be a rebuttable presumption that the detriment suffered warrants relief under this section.

§ 685.402 Group process for borrower defense.

(a) *Group process, generally.* Upon consideration of factors including, but not limited to, the existence of common facts and claims by borrowers, the likelihood of actionable acts or omissions that were pervasive or widely disseminated, and the promotion of compliance by an institution or other title IV, HEA program participant, the Secretary may determine whether a group of borrowers from one institution or commonly owned institutions identified by the Secretary has a borrower defense under this subpart.

(b) *Group process initiated by the Secretary.* The Secretary may identify and form a group based upon information from sources that include but are not limited to—

(1) Actions by the Federal Government, State attorneys general, other State agencies or officials, or other law enforcement activity;

(2) Lawsuits related to educational programs filed against the institutions that are the subject of the claims or judgments rendered against the institutions; or,

(3) Individual borrower defense claims pursuant to § 685.403.

(c) *Group process initiated in response to a third-party requestor application.* The Secretary will consider a request

to form a group from a third-party requestor that complies with the requirements of this section. To comply with the requirements of this section, the requestor—

(1) Submits an application to the Secretary, under penalty of perjury, and on a form approved by the Secretary that—

(i) Identifies the requested group, including at minimum:

(A) The name of the institution or commonly owned institutions;

(B) The campuses or programs which are the subject of the claim, if applicable;

(C) A description of the conduct that forms the basis for the group borrower defense claim under the Federal standard in § 685.401(b);

(D) An analysis of why the conduct should result in an approved group borrower defense claim under the Federal standard in § 685.401(b); and,

(E) The period during which the activity in (c)(1)(i)(C) of this section occurred;

(ii) Provides evidence beyond sworn borrower statements that supports each element of the claim made in this paragraph (c)(1), including but not limited to evidence demonstrating the actionable acts or omissions asserted were pervasive or widely disseminated;

(iii) Provides the names and other identifying information of borrowers in the group to the extent available; and

(iv) For requests submitted by a legal assistance organization, includes a certification that the requestor has entered into a legal representation authority with each borrower identified as a member of the group; and,

(2) Provides any other information or supporting documentation reasonably requested by the Secretary within 90 days of the Secretary's request.

(3) The Secretary may consolidate multiple group applications related to the same institution or commonly owned institutions.

(4) Once the Secretary determines that the third-party requestor's application is materially complete, the Secretary will provide notice to the institution of the third-party requestor's application. The institution will have

90 days to respond to the Secretary regarding the third-party requestor's application request to form a group under this paragraph (c).

(5) The Secretary will provide a response to any materially complete third-party requestor group request under this paragraph (c) within two years of receipt. That response will be sent to the third-party requestor and the institution and includes:

(i) Whether the Secretary will choose to form a group and a definition of the group formed; and

(ii) Any additional information needed from the third-party requestor to continue the third-party requestor requested group process.

(6)(i) If the Secretary denies in whole or in part a third-party requestor's request to form a group under the process described in this paragraph (c), for reasons other than that the Secretary already has formed a group that includes the members of the proposed group or has findings that cover the members of the proposed group, the third-party requestor submitting the group claim may request that the Secretary reconsider the decision upon the identification of new evidence that was not previously available to the Secretary in forming the group.

(ii) The third-party requestor submitting the group claim under this paragraph (c) must request reconsideration of the group formation no later than 90 days from the date of the Secretary's initial decision regarding formation of the group.

(iii) The Secretary will provide a response to the third-party requestor that requested reconsideration of the group's formation and the institution after reaching a decision on the reconsideration request.

(d) *Process after group formation.* Upon formation of a group of borrowers under this section, the Secretary—

(1) Designates a Department official to present the group's claim in the institutional response process described in § 685.405;

(2) For borrowers who have an application pending with the Secretary prior to the formation of the group, notifies those borrowers that they are an identified member of the group formed

under this section and follows § 685.403(d) or (e) as appropriate;

(3) For borrowers whose names were submitted by the third-party requestor and that can be identified by the Secretary, or that can otherwise be identified by the Secretary, if the borrower is not in default and does not have a separate application pending with the Secretary, follows the procedures under § 685.403(d) except that interest on the loan will stop accumulating immediately;

(4) For borrowers whose names were submitted by the third-party requestor and that can be identified by the Secretary, or that can otherwise be identified by the Secretary, if the borrower is in default and does not have a separate application pending with the Secretary, follows the procedures under § 685.403(e) except that the interest on the loan will stop accumulating immediately;

(5) For possible group members that the Secretary cannot identify, takes reasonable steps to identify and notify potential members of the group, and if the Secretary ultimately is able to identify any additional members, follows the process under paragraphs (d)(3) and (4) of this section to allow those additional members to opt-in to the group formed; and,

(6) If the Secretary later identifies a borrower that should have received the benefits as described under paragraph (d)(3) or (4) of this section, either prior to the adjudication of the group or after an adjudication that results in the approval of a group borrower defense, retrospectively applies the benefits available to the borrower under those subparagraphs and no other consequences will apply.

§ 685.403 Individual process for borrower defense.

(a) *Individual process, generally.* (1) If § 685.402 does not apply to an individual borrower who has submitted a borrower defense application, the Secretary will initiate a process to determine whether the individual borrower has a borrower defense under this subpart.

(2) If § 685.402 applies to an individual borrower who is covered under a group borrower defense application being

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considered by the Secretary, that group borrower defense application will toll the timelines under § 685.406 on adjudicating the individual borrower application.

(3) Paragraph (a)(1) of this section will not apply to claims covered by a group claim under § 685.402, including claims submitted prior to the formation of such a group, until after the Secretary makes a decision on that group claim.

(b) *Individual process.* (1) The Secretary will consider a borrower defense claim from an individual borrower to be materially complete when the borrower—

(i) Submits an application to the Secretary, under penalty of perjury and on a form approved by the Secretary with the following information:

(A) A description of one or more acts or omissions by the institution;

(B) The school or school representative attributed with the act or omission;

(C) Approximately when the act or omission occurred;

(D) How the act or omission impacted their decision to attend, to continue attending, or to take out the loan for which they are asserting a defense to repayment; and,

(E) A description of the detriment they suffered as a result of the institution's act or omission;

(ii) Provides additional supporting evidence for the claims made under subparagraph (b)(1)(i) of this section, if any;

(2) The individual must provide any other information or supporting documentation reasonably requested by the Secretary.

(c) *Individual borrower status.* Upon receipt of a materially complete application under this section, the Secretary—

(1) Designates a Department official to present the individual's claim in the institutional response process described in § 685.405;

(2) Notifies the borrower that the Department will adjudicate the claim under § 685.406(c); and

(3) Places all the borrower's loans in forbearance in accordance with paragraph (d) of this section or stopped enforcement collections in accordance

with paragraph (e) of this section, as applicable.

(d) *Forbearance.* The Secretary grants forbearance on all of the borrower's title IV loans that are not in default in accordance with § 685.205 and—

(1) Notifies the borrower of the option to decline forbearance and to continue making payments on the borrower's loans, and the availability of income-contingent repayment plans under § 685.209 and the income-based repayment plan under § 685.221; and,

(2) Does not charge interest on the borrower's loans beginning 180 days from the date the borrower was initially granted forbearance under this paragraph (d) if the Secretary has failed to make a determination on the borrower's claim by that date and continuing until the Department notifies the borrower of the decision.

(e) *Loan collection activities during adjudication of borrower defense claim.* The Secretary—

(1) Suspends collection activity on all defaulted title IV loans until the Secretary issues a decision on the borrower defense claim;

(2) Does not charge interest on the borrower's loans beginning 180 days from the date the Secretary initially suspended collection activity under subparagraph (e)(1) of this section if the Secretary has not made a determination on the borrower's claim by that date and continuing until the Department notifies the borrower of the decision;

(3) Notifies the borrower of the suspension of collection activity and explains that collection activity will resume no earlier than 90 days following final adjudication of the borrower defense claim if the Secretary determines that the borrower does not qualify for a full discharge; and

(4) Notifies the borrower of the option to begin or continue making payments under a rehabilitation agreement or other repayment agreement on the defaulted loan.

§ 685.404 Group process based on prior Secretarial final actions.

(a) For purposes of forming a Secretary-initiated group process in accordance with § 685.402(b), the Department official may consider final actions as described in § 685.401(b)(5)(ii).

(b) For groups based on prior Secretarial final actions in accordance with this section, § 685.405 will not apply to the affected institutions.

§ 685.405 Institutional response.

(a) For purposes of adjudicating a borrower defense claim other than those based on prior Secretarial final actions in accordance with § 685.404, the Department official notifies the institution of the group claim under § 685.402 or individual claim under § 685.403 and requests a response from the school. Such notification also may include, but is not limited to, requests for documentation to substantiate the school's response.

(b)(1) The notification in paragraph (a) of this section tolls any limitation period by which the Secretary may recover from the institution under § 685.409.

(2) The Department official requests a response from the institution, which will have 90 days to respond from the date of the Department official's notification.

(c) With its response, the institution must submit an affidavit, on a form approved by the Secretary, certifying under penalty of perjury that the information submitted to the Department official is true and correct.

(d) If the institution does not respond to the Department official's information request within 90 days, the Department official will presume that the institution does not contest the borrower defense to repayment claim.

§ 685.406 Adjudication of borrower defense applications.

(a) *Adjudication.* The Department official adjudicates a borrower defense claim in accordance with this section.

(b) *Group process, adjudication.* (1) For a group formed under § 685.402, the Department official makes a recommendation to the Secretary regarding adjudication after considering any evidence related to the claim, includ-

ing materials submitted as part of the group application, individual claims that are part of the group, evidence in the Secretary's possession, evidence provided by the institution during the institutional response process described in § 685.405, and any other relevant information.

(2) For a group of borrowers under § 685.402 for which the Department official determines that there may be a borrower defense under § 685.401(b), there is a rebuttable presumption that the act or omission giving rise to the borrower defense affected each member of the group in deciding to attend, or continue attending, the institution, and that such reliance was reasonable.

(c) *Individual process, adjudication.* For an individual process under § 685.403, the Department official adjudicates the borrower defense using the information available to the official and makes a recommendation to the Secretary regarding adjudication. The Department official considers any evidence related to the claim, including materials submitted as part of the individual application, evidence in the Secretary's possession, evidence provided by the institution during the institutional response process described in § 685.405, and any other relevant information.

(d) *Additional information needed from the school or individual.* If the Department official requests additional information from the school, the school must respond to the Department official's information request within 90 days. If the Department official requests additional information from the individual, the individual must respond to the Department official's information request within 90 days.

(e) *Secretary decision.* The Secretary makes a final decision after taking into account the Department official's recommendation and the record compiled under §§ 685.402, 685.403, 685.404, 685.405, and 685.407, as applicable.

(f) *Written decision.* The Secretary issues a written decision as follows:

(1) *Approval of a Borrower Defense Claim.* If the Secretary approves the borrower defense claim—

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(i) The written decision states the Secretary's determination and the relief provided as defined in § 685.401 on the basis of that claim.

(ii) The Secretary places a borrower's Direct Loans associated with a group borrower defense claim into forbearance until the Secretary discharges the loan obligations under § 685.212(k). If any balance remains on the Direct Loans not associated with the borrower defense claim, those loans will return to their status prior to the claim process. The Secretary resumes collection activities on those Direct Loans not associated with the borrower defense claim no earlier than 90 days from the date the Department official issues a written decision. No interest will be charged on the loans during the forbearance period.

(2) *Denial of a Borrower Defense Claim*—(i) *Denial, group*. If the Secretary denies the borrower defense claim, the written decision states the reasons for the denial, the evidence upon which the decision was based, and the loans that are due and payable to the Secretary. The Secretary informs the borrowers that for the Direct Loans associated with the group borrower defense claim, those loans will return to their status prior to the group claim process. The Secretary resumes collection activities on the Direct Loans associated with the group borrower defense claim no earlier than 90 days from the date the Secretary issues a written decision. The Secretary also informs individual borrowers from the group claim initially adjudicated under § 685.406(b)(1) of their option to file a new borrower defense application under an individual process in accordance with § 685.403.

(ii) *Denial, individual*. If the Secretary denies the borrower defense claim, the written decision states the reasons for the denial and the evidence upon which the decision was based. The Secretary informs the borrowers that their loans will return to their status prior to the claim process. The Secretary resumes collection activities on the loans under which a forbearance or stopped collection was granted during adjudication of the claim in accordance with §§ 685.403(d) and (e), no earlier than 90 days from the date the Sec-

retary issues a written decision. The Secretary also informs the borrower of the opportunity to request reconsideration of the claim pursuant to § 685.407.

(3) *Copies of written decisions*. The Secretary provides copies of the written decision in this subsection to:

(i) An individual whose claim was adjudicated under § 685.406(c), as applicable;

(ii) The members of the group whose claims were adjudicated under § 685.406(b)(1), as applicable;

(iii) The school; and,

(iv) The third-party requestor who requested the group claims process, as applicable.

(g) *Adjudication, timelines*. (1) The Secretary will issue a decision on a group or individual borrower defense claim under the following timelines:

(i) For a group claim under § 685.402(c), within 1 year of the date the Department official notified the third-party requestor under § 685.402(c)(5).

(ii) For an individual claim under § 685.403, within the later of July 1, 2026 or 3 years after the date the Department determines the borrower submitted a materially complete application.

(2) The timelines in paragraph (g)(1) of this section will not apply for additional adjudications carried out as part of the reconsideration process in § 685.407.

(3) An individual claim under § 685.403 that is included in a group claim under § 685.402 will be subject to the adjudication timeline for that group under paragraph (g)(1)(i) of this section, and any timelines associated with individual adjudication in paragraph (g)(1)(ii) of this section will be tolled until the Secretary renders a decision on the claim under § 685.402.

(4) The Department official will provide an interim update to the individual borrower submitting a claim under § 685.403, the third-party requestor requesting a group process under § 685.402, and the institution contacted for the institutional response under § 685.405 no later than 1 year after the dates in paragraph (g)(1) of this section. Such notification will—

(i) Indicate the Department official's progress in adjudicating the claim or claims; and,

(ii) Provide an expected timeline for rendering a decision on the claim.

(5) If the Secretary does not issue a written decision under paragraph (e) of this section on loans covered by certain claims by the dates identified in paragraph (g)(1) of this section, the loans, or portion of the loans in the case of a Direct Consolidation Loan, will not be enforceable by the Department against the borrower and the school will not be liable for the loan amount.

§ 685.407 Reconsideration.

(a) The decision of the Secretary is final as to the merits of the borrower defense and any discharge that may be granted on the claim. Notwithstanding the foregoing—

(1) If the borrower defense is denied, an individual may request that the Secretary reconsider their individual borrower defense claim on the following grounds:

(i) Administrative or technical errors;

(ii) Consideration under an otherwise applicable State law standard under § 685.401(c) but only for loans first disbursed before July 1, 2017; or,

(iii) Identification of evidence that was not previously provided by the borrower and that was not identified in the final decision as a basis for the Department official's determination;

(2)(i) If the borrower defense is denied for a group claim adjudicated under § 685.406(b)(1), any of the third-party requestors that requested to form a group under § 685.402(c) may request that the Secretary reconsider the borrower defense for the reasons provided under (a)(1)(i) through (iii) of this section. A third-party requestor's reconsideration request made in accordance with subparagraph (a)(1)(ii) of this section must provide:

(A) The applicable State law standard;

(B) Why the third-party requestor requests use of such State law standard;

(C) Why application of the State law standard would result in a different outcome for the group than adjudication under the Federal standard; and

(D) Why the applicable State law standard would lead to a borrower defense.

(ii) An individual borrower from a group claim initially adjudicated under § 685.406(b)(1) may not file a reconsideration request under this section.

(3) The borrower or third-party requestor that requested to form a group under § 685.402(c) must request reconsideration under this section no later than 90 days from the date of the Department official's written decision, for any decisions issued on or after the effective date of these regulations.

(4)(i) The Secretary will consider a reconsideration request under paragraph (a)(1) or (a)(2)(i) of this section in which the individual or third-party requestor—

(A) Submits an application under penalty of perjury to the Secretary, on a form approved by the Secretary; and,

(B) Provides additional supporting evidence for the reconsideration claims made in this paragraph (a)(4)(i), if any; and

(ii) The borrower or third-party requestor submitting the reconsideration request must provide any other information or supporting documentation reasonably requested by the Secretary regarding the reconsideration request.

(b) The Secretary designates a different Department official for the reconsideration process than the one who conducted the initial adjudication.

(c) If accepted for reconsideration by the Secretary, the Department official follows the procedures in § 685.405 to notify the institution of the claim and the basis for the group's borrower defense under § 685.402 or individual's borrower defense under § 685.403 for purposes of adjudicating reconsideration of the borrower defense claim and to request a response from the school to the reconsideration request.

(d) If accepted for reconsideration by the Secretary, the Secretary follows the procedures in § 685.403(d) for granting forbearance and § 685.403(e) for defaulted loans, as applicable.

(e) The Department official adjudicates the borrower's reconsideration request under § 685.406, makes a recommendation to the Secretary, and the Secretary provides notice of the final

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decision upon reconsideration in accordance with § 685.406(f).

(f)(1) The Secretary may reopen at any time a borrower defense application that was denied. If a borrower defense application is reopened by the Secretary, the Secretary follows the procedures in § 685.403(d) for granting forbearance and for § 685.403(e) for defaulted loans, as applicable.

(2) Upon reopening a borrower defense application under paragraph (f) of this section, the Department official adjudicates the claim under § 685.406, makes a recommendation to the Secretary, and the Secretary provides notice of the final decision on the reopened case in accordance with § 685.406(f).

§ 685.408 Discharge.

(a) The Secretary discharges the obligation of the borrower in accordance with the procedures described in subpart D of this part.

(b) Members of a group that received a written notice of an approved borrower defense claim in accordance with § 685.406(f)(1) may request to opt out of the discharge for the group.

§ 685.409 Recovery from institutions.

(a)(1) For loans first disbursed on or after July 1, 2023, the Secretary may collect from the school, or in the case of a closed school, a person affiliated with the school as described in § 668.174(b) of this chapter, any liability to the Secretary for any amounts discharged or reimbursed to borrowers for claims approved under § 685.406.

(2) Notwithstanding paragraph (a) of this section, the Secretary may choose not to collect from the school, or in the case of a closed school, a person affiliated with the school as described in § 668.174(b) of this chapter, any liability to the Secretary for any amounts discharged or reimbursed to borrowers under the discharge process described in § 685.408, under conditions such as:

(i) The cost of collecting would exceed the amounts received; or

(ii) The claims were approved outside of the limitations period in paragraph (c) of this section;

(b) The Secretary will not collect from the school any liability to the Secretary for any amounts discharged

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or reimbursed to borrowers for an approved claim under § 685.406 for loans first disbursed prior to July 1, 2023, unless:

(1) For loans first disbursed before July 1, 2017, the claim would have been approved under the standard in § 685.206(c)(1);

(2) For loans first disbursed on or after July 1, 2017, and before July 1, 2020, the claim would have been approved under the standard in §§ 685.222(b) through (d); or

(3) For loans first disbursed on or after July 1, 2020, and before July 1, 2023, the claim would have been approved under the standard in § 685.206(e)(2).

(c)(1) The Secretary will initiate a proceeding to collect from the school the amount of discharge or reimbursement for the borrower resulting from a borrower defense under § 685.408 no later than 6 years after the borrower's last date of attendance at the institution;

(2) The limitations period described in paragraph (c)(1) of this section will not apply if at any time prior to the end of the limitations period—

(i) The Department official notifies the school of the borrower's claim in accordance with § 685.405(b);

(ii) A class that may include the borrower is certified in a case against the institution asserting relief that may form the basis of a claim in accordance with this subpart; or

(iii) The institution receives written notice, including a civil investigative demand or other written demand for information, from a Federal or State agency that has power to initiate an investigation into conduct of the school relating to specific programs, periods, or practices that may have affected the borrower, for underlying facts that may form the basis of a claim under this subpart.

(3) For a borrower defense under § 685.401(b)(5), the Secretary may initiate a proceeding to collect at any time.

(4) The tolling of the limitations period described in paragraph (c)(2) of this section will cease upon the issuance of a written decision denying an application under § 685.406(f)(2).

(d) In requiring an institution to repay funds to the Secretary based on successful borrower defense claims under this subpart, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

§ 685.410 Cooperation by the borrower.

To obtain a discharge under this subpart, a borrower must reasonably cooperate with the Secretary in any proceeding under this subpart.

§ 685.411 Transfer to the Secretary of the borrower's right of recovery against third parties.

(a) Upon the granting of any discharge under this subpart, 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 may have by contract or applicable law with respect to the loan or the contract for educational services for which the loan was received, against the school, its principals, its affiliates, and their successors, its sureties, and any private fund.

(b) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, 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.

(c) Nothing in this section limits or forecloses the borrower's right to pursue legal and equitable relief against a party described in this section for recovery of any portion of a claim exceeding that assigned to the Secretary or any other claims arising from matters unrelated to the claim on which the loan is discharged.

§ 685.499 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice will not be affected thereby.

PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

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