

DRAFT Amendatory Language—Income Based Repayment Plan
Pre-decisional discussion draft for April 14-15, 2008

April 8, 2008

For the reasons discussed in the preamble, the Secretary amends parts 682 and 685 of title 34 of the Code of Federal Regulations as follows:

PART 682--FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

x. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2 unless otherwise noted.

x. Section 682.205 is amended by revising paragraph (h)(1) to read as follows:

(h) Notice of availability of income-sensitive and income-based repayment options. (1) At the time of offering a borrower a loan and at the time of offering a borrower repayment options, the lender must provide the borrower with a notice that informs the borrower of the availability of income-sensitive and, except for parent PLUS borrowers, income-based repayment plans. This information may be provided in a separate notice or as part of the other disclosures required by this section. The notice must inform the borrower--

(i) That the borrower is eligible for income-sensitive repayment and may be eligible for income-based repayment, including through loan consolidation;

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(ii) Of the procedures by which the borrower can elect income-sensitive or income-based repayment; and

(iii) Of where and how the borrower may obtain more information concerning income-sensitive and income-based repayment plans.

* * * * *

x. Section 682.209 is amended by:

A. Revising paragraph (a)(6)(iii).

B. Revising paragraph (a)(6)(iv).

C. Revising paragraph (a)(6)(v).

D. Redesignating paragraphs (a)(6)(x) and (a)(6)(xi) as (a)(6)(xi) and (a)(6)(xii), respectively.

E. Adding a new paragraph (a)(6)(x).

F. In newly redesignated paragraph (a)(6)(xi), adding the words ", or at any time in the case of a borrower in an income-based repayment plan" immediately after the word "annually".

G. In paragraph (a)(8), adding the words ", except in the case of payments made under an income-based repayment plan." immediately after the words "five dollars" the first time those words appear.

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H. In paragraph (b)(1), removing the word "The" at the beginning of the sentence and adding, in its place, the words "Except in the case of payments made under an income-based repayment plan, the".

I. In paragraph (b)(2)(ii), in the second sentence, removing the words "borrower coupon book" and adding, in their place, "borrower's coupon book".

J. In paragraph (c)(1)(i), removing the word "or" the first time it appears and adding the words ", or income-based" immediately after the word "extended".

The revisions and additions read as follows:

§682.209 Repayment of a loan.

* * * * *

(a) * * *

(6) * * *

(iii) Not more than six months prior to the date that the borrower's first payment is due, the lender must offer the borrower a choice of a standard, income-sensitive, income-based, graduated, or, if applicable, an extended repayment schedule.

(iv) Except in the case of an income-based repayment schedule, the repayment schedule must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

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(v) The lender shall require the borrower to repay the loan under--

(A) A standard repayment schedule described in paragraph (a)(6)(vi) of this section if the borrower--

(1) Does not select an income-sensitive, income-based, graduated, or, if applicable, an extended repayment schedule within 45 days after being notified by the lender to choose a repayment schedule; or

(2) Chooses an income-sensitive repayment schedule, but does not provide the documentation requested by the lender under paragraph (a)(6)(viii)(C) of this section within the time period specified by the lender; or

(B) The repayment schedule described in §682.209(a)(6)(vi) if the borrower chooses an income-based repayment schedule, but does not provide the income documentation requested by the lender under §682.215(e)(1)(i) within the time period specified by the lender.

* * * * *

(x) Under an income-based repayment schedule, the borrower repays the loan in accordance with §682.215.

* * * * *

x. Section 682.211 is amended by:

A. Adding a new paragraph (f)(13).

B. Adding a new paragraph (f)(14).

The additions read as follows:

§682.211 Forbearance.

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* * * * *

(f) * * *

(13) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower's eligibility for loan forgiveness under the income-based repayment program. The lender must notify the borrower that the requirement to make payments on the loans for which forgiveness was requested has been suspended pending approval of the forgiveness by the guaranty agency.

(14) For a period of delinquency at the time a borrower makes a change to the repayment plan.

* * * * *

x. Redesignate §682.215 as §682.216.

x. Add a new §682.215 to read as follows:

§682.215 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 and Direct Loan programs except for a FFEL or Direct PLUS Loan made to a parent borrower or

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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 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) Partial financial hardship means a circumstance in which the annual amount due on all of a borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty line income for the borrower's family size.

(5) Poverty line income 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 borrower's

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poverty line income is the income used for the 48 contiguous States.

(b) Repayment plan. (1) A borrower may elect the income-based repayment plan only if the borrower has a partial financial hardship. Except as provided under paragraph (b)(1)(i) and (b)(1)(ii) of this section, the borrower's aggregate monthly loan payments are limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty line income applicable to the borrower's family size, divided by 12. The loan holder adjusts the calculated monthly payment if--

(i) The total amount of the borrower's eligible loans includes loans not held by the loan holder, in which case the loan holder determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total amount of eligible loans that are held by the loan holder;

(ii) The calculated amount is greater than \$0.00 but less than \$5.00, in which case the borrower's monthly payment is \$0.00; or

(iii) The calculated amount is equal to or greater than \$5.00 but less than \$10.00, in which case the borrower's monthly payment is \$10.00

(2) A borrower with eligible loans held by two or more loan holders must request income-based repayment from each loan holder if the borrower wants to repay all of his or her eligible loans under an income-based repayment plan.

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(3) If a borrower elects an income-based repayment plan, the loan holder must, unless the borrower requests otherwise, require that all eligible loans owed by the borrower to that holder be combined into one account and repaid under the income-based repayment plan.

(4) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's subsidized Stafford Loans or the subsidized portion of the borrower's Federal Consolidation loan, the Secretary pays to the holder the remaining accrued interest for a period not to exceed three consecutive years from the date the borrower began repayment on the loans under the income-based repayment plan for that loan. On a Consolidation Loan that repays loans on which the Secretary has paid accrued interest under this section, the three-year period includes the period for which the Secretary paid accrued interest on the underlying loans. The three-year period does not include any period during which the borrower receives an economic hardship deferment.

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

(6) If the borrower's monthly payment amount is not sufficient to pay any 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.

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(7) The special allowance payment to a lender during the period in which the borrower has a partial financial hardship under an income-based repayment plan is calculated on the principal balance of the loan and any accrued interest unpaid by the borrower.

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

(c) Payment application and prepayment. (1) The loan holder shall apply any payment made under an 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 the whole or any part of a loan at any time without penalty.

(3) If the prepayment amount equals or exceeds the monthly payment amount under the repayment schedule established for the loan, the loan holder shall apply the prepayment consistent with the requirements of §682.209(b)(2)(ii).

(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 loan holder must recalculate the borrower's monthly payment. The loan holder also recalculates the monthly payment for a borrower who chooses

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to stop making income-based payments. In either case, as a result of the recalculation--

(i) The maximum monthly amount that the borrower may be required to repay is the amount the borrower would have paid under the FFEL standard repayment plan based on a 10-year repayment period on the borrower's eligible loans that were outstanding at the time the borrower began repayment on the loans with that holder under the income-based repayment plan; and

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

(2) If a borrower no longer wishes to pay under the income-based repayment plan, the borrower must pay under the FFEL standard repayment plan and the loan holder recalculates the borrower's monthly payment based on--

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

(ii) For a Consolidation Loan, the applicable repayment period specified in §682.209(h)(2) for the total amount of that loan and the balance of other student loans that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(e) Eligibility documentation and verification. (1) The loan holder determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower elects the plan and for each subsequent year that the borrower remains on

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the plan. To make this determination, the loan holder requires the borrower to--

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

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

(ii) Annually certify the borrower's family size. If the borrower fails to certify family size, the loan holder must assume a family size of one for that year.

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

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

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

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

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

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-based payments as provided in paragraph (d)(1) of this section;

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the FFEL standard repayment plan described in §682.209(a)(6)(vi) with a 10-year repayment period;

(iv) Made monthly payments under the FFEL standard repayment plan described in §682.209(a)(6)(vi) based on a 10-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan

(iv) Paid Direct Loans under the income-contingent repayment plan; or

(v) Received an economic hardship deferment on eligible FFEL loans.

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

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1)

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of this section, including a monthly amount of \$0.00 as provided in paragraph (b)(1)(ii) of this section; and

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

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

(3) For a borrower who qualifies for the income-based repayment plan, the loan holder establishes the beginning date for the 25-year period by--

(i) If the borrower has a FFEL Consolidation Loan, determining 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;

(ii) If the borrower has one or more other eligible FFEL loans, determining the date the borrower made a payment, or received an economic hardship deferment, on the loan that first entered repayment before the date the borrower qualified for income-based repayment. 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;

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

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

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

(g) Loan forgiveness processing and payment. (1) No later than 60 days after the loan holder determines that a borrower qualifies for loan forgiveness under paragraph (f) of this section, the loan holder must request payment from the guaranty agency.

(2) If the loan holder requests payment from the guaranty agency later than 60 days after the 25-year repayment period required for forgiveness, interest that accrues on the discharged amount after the expiration of the 60-day filing period is ineligible for reimbursement by the Secretary, and the holder must repay all interest and special allowance received on the discharged amount for periods after the expiration of the 60-day filing period. The holder cannot collect from the borrower any interest that is not paid by the Secretary under this paragraph.

(3)(i) Within 45 days of receiving the holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan

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forgiveness under this section and must notify the holder of its determination.

(ii) If the guaranty agency approves the loan forgiveness, it must, within the same 45-day period required under paragraph (g)(3)(i) of this section, pay the holder the amount of the forgiveness.

(4) After being notified by the guaranty agency of its determination of the eligibility of the borrower for loan forgiveness, the holder must, within 30 days, inform the borrower of the determination and, if appropriate, that the borrower's repayment obligation on the loans for which income-based forgiveness was requested is satisfied. The lender must also provide the borrower with information on the required handling of the forgiveness amount.

(5)(i) The holder must apply the proceeds of the income-based repayment loan forgiveness amount to satisfy the outstanding balance on those loans for which income-based forgiveness was requested; or

(ii) If the forgiveness amount exceeds the outstanding balance on the eligible loans subject to forgiveness, the loan holder must refund the excess amount to the guaranty agency.

(6) In the case of a forgiveness applied to a defaulted loan held by the guaranty agency, the Secretary pays the guaranty agency a percentage of the amount forgiven that is equal to the complement of the reinsurance percentage paid on the loan. The payment may also include interest that accrues on the forgiven amount from the date on which the guaranty agency received payment from the

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Secretary on the default claim to the date on which the guaranty agency determines that the borrower is eligible for the income-based repayment plan loan forgiveness discharge.

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

(Authority: 20 U.S.C. xxxx-xx)

* * * * *

x. Section 682.300 is amended by:

A. In paragraph (b)(1)(ii), removing the word "and" at the end of the sentence.

B. In paragraph (b)(1)(iii), removing the punctuation "." and adding, in its place "; and" at the end of the sentence.

C. Adding a new paragraph (b)(1)(iv).

D. In paragraph (b)(2)(vii), removing the word "or" at the end of the sentence.

E. In paragraph (b)(2)(viii), removing the punctuation "." and adding in its place "; or" at the end of the sentence.

F. Adding a new paragraph (b)(2)(ix).

The additions read as follows:

§682.300 Payment of interest benefits on Stafford and Consolidation loans.

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* * * * *

(b) * * *

(1) * * *

(iv) During a period that does not exceed three consecutive years from the date a borrower began repayment under an income-based repayment plan, if the borrower's monthly payment amount under the plan is not sufficient to pay the accrued interest on the borrower's loan or on the qualifying portion of the borrower's Consolidation Loan.

* * * * *

(2) * * *

(ix) The date the borrower's payment under the income-based repayment plan is sufficient to pay the accrued interest on the borrower's loan or the qualifying portion of the borrower's Consolidation Loan.

* * * * *

x. Section 682.302 is amended by revising paragraph (a) to read as follows:

(a) General. The Secretary pays a special allowance to a lender on an eligible FFEL loan. The special allowance is a percentage of the average unpaid principal balance of a loan, including capitalized interest computed in accordance with paragraphs (c) and (f) of this section.

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Special allowance is also paid on the unpaid accrued interest of a loan covered by §682.215(b)(7) computed in the same manner as in paragraphs (c) and (f), as applicable, except for this purpose the applicable interest rate shall be deemed to be zero..

x. Section 682.304 is amended by:

A. Redesignating paragraph (d)(2) as paragraph (d)(3).

B. Adding a new paragraph (d)(2).

C. In newly designated paragraph (d)(3), removing the words "paragraph (d)(1)" and adding, in their place, the words "paragraphs (d)(1) and (2)".

The addition reads as follows:

§682.304 Method of computing interest benefits and special allowance.

* * * * *

(d) * * *

(2) To compute the average daily balance of unpaid accrued interest for purposes of special allowance on loans covered by §682.215(b)(7), the lender adds the unpaid accrued interest on such loans for each eligible day of the quarter, divides this sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for the

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quarter for qualifying loans at the applicable interest rate.

* * * * *

x. Section 682.405 is amended by:

A. Revising paragraph (b)(4) to read as follows:

§682.405 Loan rehabilitation agreement.

* * * * *

(b) * * *

(4) An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans of the same loan type as the rehabilitated loan and must permit the borrower to choose any statutorily available repayment plan for that loan type. The lender must treat the first payment made under the 9 payments as the first payment under the applicable maximum repayment term, as defined under §682.209(a) or (h). For Consolidation loans, the maximum repayment term is based on the balance outstanding at the time of loan rehabilitation.

* * * * *

x. Section 682.410 is amended by:

A. In paragraph (b)(5)(vi)(G), adding the words ", which must include consideration of the borrower's eligibility for income-based repayment," immediately after the words "satisfactory to the agency".

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B. In paragraph (b)(9)(i)(D), adding the words “, which must include consideration of the borrower’s eligibility for income-based repayment” immediately after the words “to the agency”.

x. Section 682.411 is amended by:

A. In paragraph (d)(1), adding the words “, income-based repayment” immediately after the words “income-sensitive repayment”.

x. Section 682.604 is amended by:

A. In paragraph (g)(1), adding the punctuation “,” immediately after the words “has obtained”.

B. In paragraph (g)(2)(ii), removing the words “and income-sensitive” and adding, in their place, the words “income sensitive, and income-based”.

C. In paragraph (g)(2)(v), adding the words “forgiveness or” immediately after the words “full or partial”, and adding the words “, including forgiveness or discharge benefits available to a FFEL borrower who consolidates his or her loan into the Direct Loan program” immediately after the words “of a loan”.

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PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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x. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a et. seq., unless otherwise noted.

x. Section 685.208 is amended by:

A. Revising paragraph (a).

B. Adding a new paragraph (m).

The revisions and addition read as follows:

§685.208 Repayment plans.

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

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

(2) Borrowers entering repayment on or after July 1, 2006. (i) A borrower may repay a Direct Subsidized Loan or a Direct Unsubsidized Loan under the standard repayment plan, the extended repayment plan, the graduated repayment

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plan, the income contingent repayment plan, or the income-based repayment plan, in accordance with paragraphs (b), (e), (g), (k), and (m) of this section, respectively.

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

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

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

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

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income-based repayment plan, or an alternative repayment plan.

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

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

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

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

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

* * * * *

(m) Income-based repayment plan. (1) Under this repayment plan, the required monthly payment for a borrower who has a partial financial hardship is limited to no more than 15 percent of the amount by which the borrower's AGI

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exceeds 150 percent of the poverty line income 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 line income.

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

x. Section 685.209 is amended by revising paragraph (c)(4) to read as follows:

§685.209 Income contingent repayment plan.

* * * * *

(c) * * *

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

(ii) The repayment period includes--

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

(B) Periods in which the borrower makes reduced monthly payments under the income-based repayment plan, or a recalculated reduced monthly payment after the borrower no longer has a partial financial hardship or stops making income-based payments, as provided in §685.221(d)(i);

(C) Periods in which the borrower made monthly payments under the standard repayment plan after leaving

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the income-based repayment plan as provided in §685.221(d)(2);

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

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

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

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

* * * * *

x. Section 685.210 is amended by revising paragraph (b)(2) to read as follows:

§685.210 Choice of repayment plan.

* * * * *

(b) * * *

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

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

x. Section 685.211 is amended by:

A. Revising paragraph (a)(1).

B. Revising paragraph (d)(3)(ii).

The revisions read as follows:

§685.211 Miscellaneous repayment provisions.

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

* * * * *

(d) * * *

(3) * * *

(ii) If a borrower defaults on a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Consolidation Loan, or a student Direct PLUS Loan--

(A) The Secretary may designate the income contingent repayment plan for the borrower; or

(B) If the borrower qualifies, the borrower may select the income-based repayment plan.

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* * * * *

x. Section 685.220 is amended by:

A. Redesignating paragraph (d)(1)(i)(B)(3) as (d)(1)(i)(B)(4).

B. In newly redesignated paragraph (d)(1)(i)(B)(4), adding the words "is in default or" after the word "that".

C. Adding new paragraph (d)(1)(i)(B)(3).

D. Adding new paragraph (d)(1)(i)(B)(5).

E. In paragraph (d)(1)(ii)(A), removing the word "a" and adding, in its place, the words "the grace" before the word "period".

F. In paragraph (d)(1)(ii)(D), adding the words ", or the income-based repayment plan described in §685.208(m)," after the reference to "§685.220(k)" and the words "or §685.221(e)" after the reference to "§685.209(d)(5)".

The additions read as follows:

§685.220 Consolidation.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) * * *

(3) The borrower wishes to use the Public Service Loan forgiveness program;

* * *

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(5) The borrower has a FFEL Consolidation Loan and the borrower wants to consolidate that loan into the Federal Direct Loan Program for purposes of using the Public Service Loan Forgiveness Program.

* * * * *

x. A new Section 685.221 is added to read as follows:

§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 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 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

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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) Partial financial hardship means a circumstance in which the annual amount due on all of a borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty line income for the borrower's family size.

(5) Poverty line income 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 borrower's poverty line income is the income 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. Except as provided under paragraph (b)(2) of this section, the borrower's aggregate monthly loan payments are limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty line income applicable to the borrower's family size, divided by 12.

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

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(i) The total amount of the borrower's eligible loans are not Direct Loans, in which case, the Secretary determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total amount of eligible loans that are Direct Loans;

(ii) The calculated amount is greater than \$0.00 but less than \$5.00, in which case the borrower's monthly payment is \$0.00; or

(iii) The calculated amount 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 date the borrower began repayment of the loans under the income-based repayment plan for that loan. 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

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borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

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

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

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

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

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

(i) The maximum monthly amount that the borrower may be required to repay is the amount the borrower would have paid under the standard repayment plan based on the amount of the borrower's eligible loans that were outstanding at

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the time the borrower began repayment on the loans under the income-based repayment plan; and

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

(2) If a borrower no longer wishes to pay under the income-based payment plan, the borrower must pay under the standard repayment plan and the Secretary recalculates the borrower's monthly payment based on--

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

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

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

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

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

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

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

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

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

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

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

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped

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making income-based payments as provided in paragraph (d) of this section.

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

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

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

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

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

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

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

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

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

(i) If the borrower has a Direct Consolidation Loan, determining 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;

(ii) If the borrower has one or more other eligible Direct Loans, determining the date the borrower made a payment or received an economic hardship deferment on the loan that first entered repayment before the date the borrower qualified for income-based repayment. 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;

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

(iv) If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (ii) of this section, determining

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the date the borrower made a payment under the income-based repayment plan on the loan.

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

x. Section 685.304 is amended by:

A. Revising paragraph (b)(4)(ii).

B. Revising paragraph (b)(4)(vi).

The revisions read as follows:

§685.304 Counseling borrowers.

* * * * *

(b)(4)(i) * * *

(ii) Review for the student borrower available repayment options including the standard repayment, extended repayment, graduated repayment, income contingent repayment, and income-based repayment plans, and loan consolidation.

* * * * *

(vi) Review for the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial forgiveness or discharge of a loan;

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x. Section 674.34 is amended by:

A. In the introductory text of paragraph (e), removing the reference "(e)(6)" from the cross-reference in the parenthetical phrase that appears after the word "time" and adding, in its place, the reference "(e)(5)", and by removing the words "through (e)(6)" and adding, in their place, the words "through (e)(5)".

B. In paragraph (e)(1), removing the word "FDSL" and adding, in its place, "Federal Direct Loan Program", and adding the word "the" before the words "FFEL programs".

C. In paragraph (e)(3)(ii), removing the words "with section 673(2) of the Community Service Block Grant Act" and adding, in its place, the words "the Department of Health and Human Services guidelines pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the Poverty Guidelines, the borrower's poverty line income is the income used for the 48 contiguous States".

D. Removing paragraph (e)(5).

E. Redesignating paragraphs (e)(6), (e)(7), (e)(8), (e)(9), and (e)(10) as paragraphs (e)(5), (e)(6), (e)(7), (e)(8), and (e)(9) respectively.

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F. In newly redesignated paragraph (e)(6), removing the words "or (e)(5)".

G. In newly redesignated paragraph (e)(7), removing the words ", or (e)(5)", removing the punctuation "," after the reference "(e)(3)", and adding the word "and" after the reference "(e)(3)".

H. In newly redesignated paragraph (e)(8), adding "(i)" after the number "(8)" and removing the words "and (e)(5)".

I. Adding new paragraph (e)(8)(ii).

J. In newly redesignated paragraph (e)(9), removing the words "and (e)(5)".

§674.34 Deferment of repayment - Federal Perkins loans, NDSLs and Defense loans.

* * * * *

(e) * * *

(8)(i) For purposes of paragraphs (e)(3) of this section, 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.

(ii) For purposes of paragraph (e)(3)(ii) of this section, family size means the number that is determined by

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counting the borrower, the borrower's spouse, and the borrower's children 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. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

x. Section 682.210 is amended by:

A. In paragraph (s)(6)(iii)(B), removing the words "with section 673(2) of the Community Service Block Grant Act" and adding, in its place, the words "the Department of Health and Human Services guidelines pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the Poverty Guidelines, the borrower's poverty line income is the income used for the 48 contiguous States".

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B. Removing paragraphs (s)(6)(iv), (s)(6)(v), and (s)(6)(vii).

C. Redesignating paragraphs (s)(6)(vi), (s)(6)(viii), (s)(6)(ix), (s)(6)(x) and (s)(6)(xi) as paragraphs (s)(6)(iv), (s)(6)(v), (s)(6)(vi), (s)(6)(vii), (s)(6)(viii) respectively.

D. In newly redesignated (s)(6)(v), removing the words "through (v)".

E. In newly redesignated (s)(6)(vi), removing the words "through (v)".

F. Adding a new paragraph (s)(6)(ix).

§682.210 Deferment

* * * * *

(s)(6) * * *

(ix) For purposes of paragraph (s)(6)(iii)(B) of this section, family size means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children 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

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

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x. Section 682.201 is amended by:

A. In paragraph (e)(3), removing the word "and" at the end of the paragraph.

B. In paragraph (e)(4), removing the punctuation "." at the end of the paragraph and adding, in its place, the words, "; and".

C. Adding a new paragraph (e)(5) to read as follows:

§682.201 Eligible borrowers.

* * * * *

(e) * * *

(5) A FFEL borrower may consolidate his or her loans (including a FFEL Consolidation Loan) into the Federal Direct Consolidation Loan Program for the purpose of using the Public Service Loan Forgiveness Program.

x. Section 685.212 is amended by:

A. Redesignating paragraph (i) as paragraph (j).

B. Adding new paragraph (i) to read as follows:

§685.212 Discharge of a loan obligation.

* * * * *

(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.

* * * * *

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x. Section 685.219 is added to read as follows:

§685.219 Public Service Loan Forgiveness Program.

(a) General. The Public Service Loan Forgiveness Program is intended to encourage individuals to enter and continue in full-time public service employment by forgiving the remaining balance of their Direct loans after they satisfy the public service and loan payment requirements of this section.

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

AmeriCorps position means a position approved by the Corporation for National and Community Service under section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573).

Eligible Direct loan means a Direct Subsidized Loan, Direct Unsubsidized Loan, Direct PLUS loan, or a Direct Consolidation loan.

Employee or employed means an individual who is hired and paid by a public service organization.

Full-time means working in qualifying employment in one or more jobs for an annual average of at least 30 hours per week, not including vacation or leave time provided by the employer, or the number of hours the employer considers full-time, whichever is greater.

Government employee means an individual who is employed by a local, State, Federal, or Tribal government.

Law enforcement means service performed by an employee of a public service organization that is publicly funded

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and whose principal activities pertain to crime prevention, control or reduction of crime, or the enforcement of criminal law.

Military service, for uniformed members of the U.S. Armed Forces or the National Guard, means "active duty" service or "full-time National Guard duty" as defined in section 101(d)(1) and (d)(5) of title 10 in the United States Code, but does not include active duty for training or attendance at a service school. For civilians, "Military service" means service on behalf of the U.S. Armed Forces or the National Guard performed by an employee of a public service organization.

Public interest law refers to legal services provided by a public service organization that are funded in whole or in part by a local, State, Federal, or Tribal government.

Public service organization means:

- (1) A Federal, State, local, or Tribal government organization, agency or entity;
- (2) A public child or family service agency;
- (3) A non-profit organization under section 501(c)(3) of the Internal Revenue Code that is exempt from taxation under section 501(a) of the Internal Revenue Code;
- (4) A Tribal college or university; or
- (5) A private organization that—
 - (i) Provides the following services: emergency management, military service, public safety, law enforcement, public interest law services, public child

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care, public service for individuals with disabilities and the elderly, public health, public education, public library services, school library or other school-based services; and

(ii) Is not a business organized for profit, a labor union, a partisan political organization, or an organization engaged in religious activities, unless the qualifying activities are unrelated to religious instruction, worship services, or any form of proselytizing.

(c) Borrower eligibility. (1) A borrower may obtain loan forgiveness under this program if he or she--

(i) Is not in default on the loan for which forgiveness is requested;

(ii) Is employed full-time by a public service organization--

(A) When the borrower makes the 120 monthly payments described under paragraph (c)(1)(iii) of this section;

(B) At the time of application for loan forgiveness, and

(C) At the time the remaining principal and accrued interest are forgiven;

(iii) Makes 120 separate monthly payments after October 1, 2007 on eligible Direct loans for which forgiveness is sought. Except as provided in paragraph (c)(2) of this section for a borrower in an AmeriCorps position, the borrower must make the monthly payments

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within 15 days of the scheduled due date for the full scheduled installment amount; and

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

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

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

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

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

(2) If a borrower uses all or part of a Segal AmeriCorps Education Award received after a year of AmeriCorps service to make a lump sum payment on an eligible loan for which the borrower is seeking forgiveness, the Secretary considers the borrower to have made qualifying payments equal to the lesser of--

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

(ii) Twelve payments.

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

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

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

(i) Notifies the borrower of this determination; and

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

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

* * * * *

x. Section 685.220 is amended by:

A. Redesignating paragraph (d)(1)(i)(B)(3) as (d)(1)(i)(B)(4).

B. In newly redesignated paragraph (d)(1)(i)(B)(4), adding the words "is in default or" after the word "that".

C. Adding new paragraph (d)(1)(i)(B)(3).

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D. Adding new paragraph (d)(1)(i)(B)(5).

E. In paragraph (d)(1)(ii)(A), removing the word "a" and adding, in its place, the words "the grace" before the word "period".

F. In paragraph (d)(1)(ii)(D), adding the words ", or the income-based repayment plan described in §685.208(m)," after the reference to "§685.220(k)" and the words "or §685.221(e)" after the reference to "§685.209(d)(5)".

The additions read as follows:

§685.220 Consolidation.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) * * *

(3) The borrower wishes to use the Public Service Loan forgiveness program;

* * *

(5) The borrower has a FFEL Consolidation Loan and the borrower wants to consolidate that loan into the Federal Direct Loan Program for purposes of using the Public Service Loan Forgiveness Program.

* * * * *

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x. Section 674.34 is amended by:

A. In paragraph (h)(1), adding the heading "Military service deferment" before the paragraph designation "(1)" and adding the punctuation "," after the word "principal" and after the word "accrue".

B. In paragraph (h)(4), removing the word "section" and adding, in its place, the word "paragraph".

C. Revising paragraph (h)(6).

D. Adding new paragraph (h)(7).

E. In paragraph (i)(1), revising the introductory text.

F. In paragraph (i)(1)(ii), adding the words ", on at least a half-time basis," after the word "enrolled".

G. Revising paragraph (i)(2).

H. In paragraph (i)(3), adding the words ", on at least a half-time basis," after the word "status" each time it appears.

I. Adding new paragraph (i)(4).

J. In paragraph (j), removing the words "paragraph (j)" and adding, in their place, the words "paragraph (k)".

The revisions and additions read as follows:

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§674.34 Deferment of Repayment - Federal Perkins Loan, NDSLs, and Defense Loans.

* * * * *

(h)(6) 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 service described in paragraphs (h)(1)(i) and (h)(1)(ii) of this section.

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

* * * * *

(i) Post-active duty student deferment. (1) Effective October 1, 2007, a borrower of a Federal Perkins loan, an NDSL, or a Defense loan serving on active duty military service on that date, or who begins serving on or after that date need not pay principal and interest does not accrue for up to 13 months following the conclusion of the borrower's active duty military service and initial grace period if-- * * *

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(2) As used in paragraph (i)(1) of this section "Active duty" means active duty as defined in section 101 (d)(1) of title 10, United States Code for at least a 30-day period, except that--

(i) Active duty includes active State duty for members of the National Guard under which the 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 the 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 as part of a section 101(19) of title 32, United States Code, call to State active duty service.

* * * * *

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(i)(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment under both paragraphs (h) and (i) of this section, the 180-day post-mobilization military service deferment period and the 13-month post-active duty student deferment period apply concurrently.

* * * * *

x. Section 682.210 is amended by:

A. In paragraph (t)(1), removing the word "an" and adding, in its place, the word "a" and by removing the word "loans" and adding, in its place, the word "loan".

B. In paragraph (t)(2), removing the word "The" at the beginning of the sentence, and adding, in its place, the words "For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the" and by removing the words "for the service" and adding, in their place, the words "for each period of service".

C. In paragraph (t)(6), removing the word "section" and adding, in its place, the word "paragraph".

D. Adding new paragraph (t)(9).

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E. Revising the introductory text to paragraph (u)(1).

F. In paragraph (u)(1)(ii), adding the words ", on at least a half-time basis," after the word "enrolled".

G. Revising paragraph (u)(2).

H. In paragraph (u)(3), adding the words ", on at least a half-time basis," after the word "status" each time it appears and by adding the words "grace or" after the word "during".

I. Redesignating paragraph (u)(4) as (u)(5).

J. Adding new paragraph (u)(4).

The revisions and additions read as follows:

§682.210 Deferment.

* * * * *

(t) * * *

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

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(u) Post-active duty student deferment. (1)

Effective October 1, 2007, a borrower who receives an FFEL Program loan and is serving on active duty on that date, or begins serving on or after that date, is entitled to receive a post-active duty student deferment for 13 months following the conclusion of the borrower's active duty military service and any applicable grace period if-- * * *

(2) As used in paragraph (u)(1) of this section, "active duty" means active duty as defined in section 101 (d)(1) of title 10, United States Code 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;

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(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 as part of a section 101(19) of Title 32, United States Code, call to State active duty service.

* * * * *

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

* * * * *

x. Section 682.211 is amended by:

A. In paragraph (h)(2)(ii)(C), removing the punctuation at the end and adding, in its place, "; and".

B. Adding new paragraph (h)(2)(iii).

The addition reads as follows:

§682.211 Forbearance.

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(h) * * *

(2) * * *

(iii) In yearly increments (or a lesser period equal to the actual period for which the borrower is eligible) when a member of the National Guard who qualifies for a post-active duty student deferment, but does not qualify for a military service deferment or other deferment, is engaged in active State duty as defined in §682.210(u)(2)(i) for a period of more than 30 consecutive days, beginning--

(A) On the day after the grace period expires for a Stafford loan that has not entered repayment; or

(B) On the day after the borrower ceases enrollment, for a FFEL loan in repayment.

x. Section 685.204 is amended by:

A. In paragraph (e)(1), adding the heading "Military service deferment" before the paragraph designation "(1)".

B. In paragraph (e)(2), removing the word "The" and adding, in its place, the words "For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the" before the word "deferment" and by

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adding the words "each period of" before the words "service described".

C. In paragraph (e)(6), removing the word "section" and adding in its place the word "paragraph".

D. Adding a new paragraph (e)(7).

E. In paragraph (f), adding the heading "Post-Active Duty Student Deferment" before the paragraph designation "(1)".

F. In paragraph (f)(1)(ii), adding the words "on at least a half-time basis" after the word "enrolled".

G. Revising paragraph (f)(2).

H. In paragraph (f)(3), adding the words "on at least a half-time basis" after the word "status" each time it appears and the words "grace period or the" before the words "13-month".

I. Adding new paragraph (f)(4).

J. In paragraph (h)(1), removing the word "granted".

The revision reads as follows:

§685.204 Deferment.

* * * * *
(e) * * *

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

(f)(1) * * *

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

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

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

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

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(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 as part of a section 101(19) of title 32, United States Code, call to State active duty service.

(f)(3) * * *

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

* * * * *

X. Section 685.205 is amended by:

A. Adding a new paragraph (a)(7) to read as follows:

§685.205 Forbearance.

* * * * *

(a) * * *

(7) The borrower is a member of the National Guard who qualifies for as 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--

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(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.