

greater than the original principal amount. After the outstanding principal amount is 10 percent greater than the original principal amount, interest continues to accrue but is not capitalized. For purposes of this paragraph, the original principal amount is the amount owed by the borrower when the borrower enters repayment.

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

[59 FR 61690, Dec. 1, 1994, as amended at 59 FR 66134, Dec. 22, 1994; 61 FR 31359, June 19, 1996; 62 FR 25515, May 9, 1997; 66 FR 34765, June 29, 2001]

§ 685.209 Income contingent repayment plan.

(a) *Repayment amount calculation.* (1) The amount the borrower would repay is based upon the borrower's Direct Loan debt when the borrower's first loan enters repayment, and this basis for calculation does not change unless the borrower obtains another Direct Loan or the borrower and the borrower's spouse obtain approval to repay their loans jointly under paragraph (b)(2) of this section. If the borrower obtains another Direct Loan, the amount the borrower would repay is based on the combined amounts of the loans when the last loan enters repayment. If the borrower and the borrower's spouse repay the loans jointly, the amount the borrowers would repay is based on both borrowers' Direct Loan debts at the time they enter joint repayment.

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

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

(ii) 20 percent of discretionary income.

(3) For purposes of this section, discretionary income is defined as a borrower's AGI minus the amount of the "HHS Poverty Guidelines for all States (except Alaska and Hawaii) and the District of Columbia" as published by the United States Department of

Health and Human Services on an annual basis.¹ For residents of Alaska and Hawaii, discretionary income is defined as a borrower's AGI minus the amounts in the "HHS Poverty Guidelines for Alaska" and the "HHS Poverty Guidelines for Hawaii" respectively. If a borrower provides documentation acceptable to the Secretary that the borrower has more than one person in the borrower's family, the Secretary applies the HHS Poverty Guidelines for the borrower's family size.

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

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

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

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

(8) For each calendar year after calendar year 1996, the Secretary publishes in the FEDERAL REGISTER a revised income percentage factor table reflecting changes based on inflation. This revised table is developed by changing each of the dollar amounts contained in the table by a percentage equal to the estimated percentage

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

changes in the Consumer Price Index (as determined by the Secretary) between December 1995 and the December next preceding the beginning of such calendar year.

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

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

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

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

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

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

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

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

(ii) The repayment period includes periods in which the borrower makes payments under the standard repayment plan and under extended repayment plans in which payments are based on a repayment period that is up to 12 years. The repayment period does not include periods in which the borrower makes payments under the graduated and alternative repayment plans or periods of authorized deferment or forbearance. The repayment period also does not include periods in which the borrower makes payments under an extended repayment plan in which payments are based on a repayment period that is longer than 12 years.

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

(iv) If a borrower has not repaid a loan in full at the end of the 25-year repayment period under the income contingent repayment plan, the Secretary cancels the unpaid portion of the loan.

(v) At the beginning of the repayment period under the income contingent repayment plan, a borrower shall make monthly payments of the amount of interest that accrues on the borrower's Direct Loans until the Secretary calculates the borrower's monthly repayment amount on the basis of the borrower's income.

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

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amount is the amount owed by the borrower when the borrower enters repayment.

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

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

(ii) That if the borrower believes that special circumstances warrant an adjustment to the borrower's repayment obligations, as described in § 685.209(c)(3), the borrower may contact the Secretary and obtain the Secretary's determination as to whether an adjustment is appropriate.

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

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

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

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

(A) Fails to provide the required written consent;

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

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

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

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

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

[59 FR 66134, Dec. 22, 1994, as amended at 60 FR 33345, June 23, 1995; 60 FR 61823, Dec. 1, 1995; 61 FR 24447, May 15, 1996; 61 FR 31359, June 19, 1996; 64 FR 29183, May 28, 1999; 64 FR 58972, Nov. 1, 1999]

§ 685.210 Choice of repayment plan.

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

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

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

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

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

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