

**Proposed Regulatory Language
"Contextual Format"
Loans Committee**

Origin: ED

Issue: FFEL/DL - Income Based Repayment Plan

Regulatory Cite: §§682.205, 682.209, 682.215, 682.405,
682.410, 682.411, and 682.604
§§685.208, 685.209, 685.210, 685.211,
685.220, 685.221, and 685.304

Summary of Change: Added regulations implementing the Income-Based Repayment Plan in the FFEL and Direct Loan Programs.

Change:

§682.205 Disclosure requirements for lenders.

(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 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;

(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.

(2) The promissory note and associated materials approved by the Secretary satisfy the loan origination notice requirements provided for in paragraph (h)(1) of this section.

§682.209 Repayment of a loan.

(a) *Conversion of a loan to repayment status.*

(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, ~~T~~the repayment schedule must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

(v) The lender shall require the borrower to repay the loan under a standard repayment schedule described in paragraph (a)(6)(vi) of this section if the borrower-

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

(B) 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~~

(C) Chooses an income-based repayment schedule, but does not provide the documentation requested by the lender under §682.215(b)(2).

(vi) Under a standard repayment schedule, the borrower is scheduled to pay either–

(A) The same amount for each installment payment made during the repayment period, except that the borrower's final payment may be slightly more or less than the other payments; or

(B) An installment amount that will be adjusted to reflect annual changes in the loan's variable interest rate.

(vii) Under a graduated repayment schedule–

(A)(1) The amount of the borrower's installment payment is scheduled to change (usually by increasing) during the course of the repayment period; or

(2) If the loan has a variable interest rate that changes annually, the lender may establish a repayment schedule that may have adjustments in the payment amount as provided under paragraph (a)(6)(i) of this section; and

(B) An agreement as specified in paragraph (c)(1)(ii) of this section is not required if the schedule provides for less than the minimum annual payment amount specified in paragraph (c)(1)(i) of this section.

(viii) Under an income-sensitive repayment schedule–

(A)(1) The amount of the borrower's installment payment is adjusted annually, based on the borrower's expected

total monthly gross income received by the borrower from employment and from other sources during the course of the repayment period; or

(2) If the loan has a variable interest rate that changes annually, the lender may establish a repayment schedule that may have adjustments in the payment amount as provided under paragraph (a)(6)(i) of this section; and

(B) In general, the lender shall request the borrower to inform the lender of his or her income no earlier than 90 days prior to the due date of the borrower's initial installment payment and subsequent annual payment adjustment under an income-sensitive repayment schedule. The income information must be sufficient for the lender to make a reasonable determination of what the borrower's payment amount should be. If the lender receives late notification that the borrower has dropped below half-time enrollment status at a school, the lender may request that income information earlier than 90 days prior to the due date of the borrower's initial installment payment;

(C) If the borrower reports income to the lender that the lender considers to be insufficient for establishing monthly installment payments that would repay the loan within the applicable maximum repayment period, the lender shall require the borrower to submit evidence showing the amount of the most recent total monthly gross income received by the borrower from employment and from other sources including, if applicable, pay statements from employers and documentation of any income received by the borrower from other parties;

(D) The lender shall grant a forbearance to the borrower (or endorser, if applicable) for a period of up to 5 years of payments in accordance with §682.211(i)(5) in cases where the effect of decreased installment amounts paid under an income-sensitive repayment schedule would result in a loan not being repaid within the maximum repayment term; and

(E) The lender shall inform the borrower that the loan must be repaid within the time limits specified under paragraph (a)(7) of this section.

(ix) Under an extended repayment schedule, a new borrower whose total outstanding principal and interest in FFEL loans exceed \$30,000 may repay the loan on a fixed annual repayment amount or a graduated repayment amount for a period that may not exceed 25 years. For purposes of this section, a "new borrower" is an individual who has no outstanding principal or interest balance on an FFEL Program loan as of October 7, 1998, or on the date he or she obtains an FFEL Program loan after October 7, 1998.

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

(xi) A borrower may request a change in the repayment schedule on a loan. The lender must permit the borrower to change the repayment schedule no less frequently than annually.

(xii) For purposes of this section, a lender shall, to the extent practicable require that all FFEL loans owed by a borrower to the lender be combined into one account and repaid under one repayment schedule. In that event, the word "loan" in this section shall mean all of the

borrower's loans that were combined by the lender into that account.

(7)(i) Subject to paragraphs (a)(7)(ii) through (iv) of this section, and except as provided in paragraph (a)(6)(ix) a lender shall allow a borrower at least 5 years, but not more than 10 years, or 25 years under an extended repayment plan to repay a Stafford, SLS, or PLUS loan, calculated from the beginning of the repayment period. Except in the case of a FISL loan for a period of enrollment beginning on or after July 1, 1986, the lender shall require a borrower to fully repay a FISL loan within 15 years after it is made.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in §682.210 or §682.211 respectively, the periods of deferment or forbearance are excluded from determinations of the 5-, 10-, and 15- and 25-year periods, and from the 10-, 12-, 15-, 20-, 25-, and 30-year periods for repayment of a Consolidation loan pursuant to §682.209(h).

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iv) The borrower may, prior to the beginning of the repayment period, request and be granted by the lender a repayment period of less than 5 years. Subject to paragraph (a)(7)(iii) of this section, a borrower who makes such a request may notify the lender at any time to extend the repayment period to a minimum of 5 years.

(8) If, with respect to the aggregate of all loans held by a lender, the total payment made by a borrower for a monthly or similar payment period would not otherwise be a multiple of five dollars, the lender may round that periodic payment to the next highest whole dollar amount that is a multiple of five dollars.

(b) *Payment application and prepayment.* (1) Except in the case of payments made under an income-based repayment plan, tThe lender may credit the entire payment amount first to any late charges accrued or collection costs and then to any outstanding interest and then to outstanding principal.

(2)(i) The borrower may prepay the whole or any part of a loan at any time without penalty.

(ii) If the prepayment amount equals or exceeds the monthly payment amount under the repayment schedule established for the loan, the lender shall apply the prepayment to future installments by advancing the next payment due date, unless the borrower requests otherwise. The lender must either inform the borrower in advance using a prominent statement in the borrower's coupon book or billing statement that any additional full payment amounts submitted without instructions to the lender as to their handling will be applied to future scheduled payments with the borrower's next scheduled payment due date advanced consistent with the number of additional payments received, or provide a notification to the borrower after the payments are received informing the borrower that the payments have been so applied and the date of the borrower's next scheduled payment due date. Information related to next scheduled payment due date need not be

provided to borrower's making such prepayments while in an in-school, grace, deferment, or forbearance period when payments are not due.

(c) *Minimum annual payment.* (1)(i) Subject to paragraph (c)(1)(ii) of this section and except as otherwise provided by a graduated, income-sensitive, ~~or~~ extended or income-based repayment plan selected by the borrower, during each year of the repayment period, a borrower's total payments to all holders of the borrower's FFEL Program loans must total at least \$600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the lender agree, the amount paid may be less.

(2) The provisions of paragraphs (c)(1) (i) and (ii) of this section may not result in an extension of the maximum repayment period unless forbearance as described in §682.211, or deferment described in §682.210, has been approved.

[Existing 682.215 (Teacher loan forgiveness program) is renumbered 682.216. New 682.215 reads 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, and for a

married borrower filing separately, 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 a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.

(3) *Family size* means a 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 also includes other individuals if, at the time the borrower elects the income-based repayment plan, the other individuals—

(i) Live with the borrower; and

(ii) Receive more than half their support from the borrower and will continue to get this support from the borrower. 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 adjusted gross income and 150 percent of the poverty line 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.

(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)(2)(i) and (b)(2)(ii) of this section, the borrower's 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. The loan holder determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of total eligible loans that are held by the loan holder; or

(ii) The calculated amount is greater than \$0.00 but less than \$5.00. In this case, the borrower's monthly payment is \$5.00

(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.

(3) If a borrower elects an income-based repayment plan, the loan holder must, to the extent practicable, require that all eligible loans owed by a 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, the Secretary pays to the holder the remaining accrued interest for a period not to exceed three consecutive years from the date the borrower elects the income-based repayment plan. The three-year period during 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 deferred until the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(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, but not more than 25 years. However, periods of authorized deferment or forbearance are not counted as part of the maximum 25-year repayment period.

(9) Payments made on or after July 1, 2009 under an income-sensitive, graduated, or extended repayment plan count towards the 25-year maximum repayment period for the income-based repayment plan.

(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) *Payment amount when a borrower no longer has a partial financial hardship or stops paying under the income-based repayment plan.* If a borrower no longer has a partial financial hardship—

(1) 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 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 all the borrower's eligible loans

that were outstanding at the time the borrower elected an income-based repayment plan; and

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

(2) The loan holder must change a borrower's repayment plan from an income-based repayment plan to the FFEL standard repayment plan at the request of the borrower.

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

(i)(A) Provide written consent, for a period of five years, 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.

(f) *Loan forgiveness.* (1) The Secretary repays or cancels any outstanding balance of principal and accrued interest on a borrower's eligible loans after 25 years if the borrower participated in the income-based repayment plan at any time and the borrower--

(i) Made reduced monthly payments under a partial financial hardship;

(ii) Made reduced monthly payments after leaving the income-based repayment program or after the borrower no longer had a partial financial hardship; or

(iii) Made monthly payments of not less than the amount required under a FFEL or Direct Loan standard repayment plan with a 10-year repayment period on all of the borrower's eligible loans;

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

(v) Received an economic hardship deferment on eligible loans for which the borrower requests forgiveness.

(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 and notify the borrower that no further payments on the eligible loans subject to forgiveness are required to be paid.

(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 forgiveness under this section and must notify the holder borrower 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 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 and notify the borrower that the borrower's repayment obligation is satisfied; or

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

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

from the 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.

§682.405 Loan rehabilitation agreement.

(b) *Terms of agreement.* In the loan rehabilitation agreement, the guaranty agency agrees to ensure that its loan rehabilitation program meets the following requirements at all times:

(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 ~~made under the of the~~ same loan type as the rehabilitated loan and must permit ~~provides for~~ the borrower to choose any available repayment plan for that loan type. ~~make monthly payments at least as great as the average of the 9 monthly payments received by the guaranty agency.~~ 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.

§682.410 Fiscal, administrative, and enforcement requirements.

(b) *Administrative requirements*

(5) *Credit bureau reports.*

(vi) The notice sent by the agency under paragraph (b)(5)(ii)(A) of this section must—

(A) Advise the borrower that the agency has paid a default claim filed by the lender and has taken assignment of the loan;

(B) Identify the lender that made the loan and the school for attendance at which the loan was made;

(C) State the outstanding principal, accrued interest, and any other charges then owing on the loan;

(D) Demand that the borrower immediately begin repayment of the loan;

(E) Explain the rate of interest that will accrue on the loan, that all costs incurred to collect the loan will be charged to the borrower, the authority for assessing these costs, and the manner in which the agency will calculate the amount of these costs;

(F) Notify the borrower that the agency will report the default to all national credit bureaus to the detriment of the borrower's credit rating;

(G) Explain the opportunities available to the borrower under agency rules to request access to the agency's records on the loan, to request an administrative review of the legal enforceability or past-due status of the loan, and to reach an agreement on repayment terms satisfactory to the agency, which must include consideration of the borrower's eligibility for income-based repayment to prevent the agency from reporting the

loan as defaulted to credit bureaus and provide deadlines and method for requesting this relief;

. . .

(9) *Administrative Garnishment.* (i) If a guaranty agency decides to garnish the disposable pay of a borrower who is not making payments on a loan held by the agency, on which the Secretary has paid a reinsurance claim, it shall do so in accordance with the following procedures:

(A) The employer shall deduct and pay to the agency from a borrower's wages an amount that does not exceed the lesser of 15 percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673, unless the borrower provides the agency with written consent to deduct a greater amount. For this purpose, the term "disposable pay" means that part of the borrower's compensation from an employer remaining after the deduction of any amounts required by law to be withheld.

(B) At least 30 days before the initiation of garnishment proceedings, the guaranty agency shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the agency to initiate proceedings to collect the debt through deductions from pay, and an explanation of the borrower's rights.

(C) The guaranty agency shall offer the borrower an opportunity to inspect and copy agency records related to the debt.

(D) The guaranty agency shall offer the borrower an opportunity to enter into a written repayment agreement with the agency under terms agreeable to the agency, which

must include consideration of the borrower's eligibility for income-based repayment.

§682.411 Lender due diligence in collecting guaranty agency loans.

(d) *16-180 days delinquent (16-240 days delinquent for a loan repayable in installments less frequently than monthly).* (1) Unless exempted under paragraph (d)(4) of this section, during this period the lender must engage in at least four diligent efforts to contact the borrower by telephone and send at least four collection letters urging the borrower to make the required payments on the loan. At least one of the diligent efforts to contact the borrower by telephone must occur on or before, and another one must occur after, the 90th day of delinquency. Collection letters sent during this period must include, at a minimum, information for the borrower regarding deferment, forbearance, income-sensitive repayment, income-based repayment and loan consolidation, and other available options to avoid default.

§682.604 Processing the borrower's loan proceeds and counseling borrowers.

(g) *Exit counseling.*

(2) 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 Stafford loans or

student borrowers who have obtained Stafford and 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 options, including standard, graduated, extended, ~~and income-sensitive,~~ and income-based repayment plans and loan consolidation;

(iii) Suggest to the student borrower debt-management strategies that would facilitate repayment;

(iv) Include the matters described in paragraph (f)(2)(i) through (f)(2)(iv) of this section;

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

(vi) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known). The school must ensure that this information is provided to the guaranty agency or agencies listed in the student borrower's records within 60 days after the student borrower provides the information;

(vii) Review for the student borrower information on the availability of the Student Loan Ombudsman's office; and

(viii) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS).

§685.208 Repayment plans.

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

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

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

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

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

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

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

(i) A borrower of a Direct PLUS Loan or a Direct Consolidation Loan that is not eligible for repayment under the income-contingent repayment plan or the income-based

repayment plan may repay the Direct PLUS Loan or Direct Consolidation Loan separately from other Direct Loans obtained by the borrower; and

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

(5) 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 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.

§685.209 Income contingent repayment plan.

(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)(A) The repayment period includes periods in which the borrower—

(1) Makes payments under the income-contingent repayment plan on loans that are not in default;

(2) Is in an economic hardship deferment;

(3) Makes reduced monthly payments under the income-based repayment plan, or a recalculated reduced monthly payment after leaving that plan or after the borrower no longer has a partial financial hardship; or

(4) 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).

~~(1) Periods in which the borrower makes payments under the standard repayment plan described in §685.208(b); and~~

~~(2) If the repayment period is not more than 12 years, periods in which the borrower makes payments under the extended repayment plans described in §685.208(d) and (e), or the standard repayment plan described in §685.208(e).~~

(B) The repayment period does not include—

(1) Periods in which the borrower makes payments under the graduated repayment plans described in §685.208(f), §685.208(g) and §685.208(h);

(2) Periods in which the borrower makes payments under an alternative repayment plan;

(3) Periods of authorized deferment or forbearance; or

(4) Periods in which the borrower makes payments under the extended repayment plans described in §685.208(d) and (e) in which payments are based on a repayment period that is longer than 12 months.

§685.210 Choice of repayment plan.

(b) Changing repayment plans. ...

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

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

§685.211 Miscellaneous repayment provisions.

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

(2) A borrower may prepay all or part of a loan at any time without penalty. If a borrower pays any amount in excess of the amount due, the excess amount is a prepayment.

(3) If a prepayment equals or exceeds the monthly repayment amount under the borrower's repayment plan, the Secretary—

(i) Applies the prepaid amount according to paragraph (a)(1) of this section;

(ii) Advances the due date of the next payment unless the borrower requests otherwise; and

(iii) Notifies the borrower of any revised due date for the next payment.

(4) If a prepayment is less than the monthly repayment amount, the Secretary applies the prepayment according to paragraph (a)(1) of this section.

(b) Repayment incentives. To encourage on-time repayment, the Secretary may reduce the interest rate for a borrower who repays a loan under a system or on a schedule that meets requirements specified by the Secretary.

(c) Refunds and returns of title IV, HEA program funds from schools. The Secretary applies any refund or return of title IV, HEA program funds that the Secretary receives from a school under §668.22 against the borrower's outstanding principal and notifies the borrower of the refund or return.

(d) Default. (1) Acceleration. If a borrower defaults on a Direct Loan, the entire unpaid balance and accrued interest are immediately due and payable.

(2) Collection charges. If a borrower defaults on a Direct Loan, the Secretary assesses collection charges in accordance with §685.202(e).

(3) Collection of a defaulted loan. (i) The Secretary may take any action authorized by law to collect a defaulted Direct Loan including, but not limited to, filing a lawsuit against the borrower, reporting the default to national credit bureaus, requesting the Internal Revenue Service to offset the borrower's Federal income tax refund, and garnishing the borrower's wages.

(ii) If a borrower defaults on a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct Consolidation 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.

§685.220 Consolidation.

(d) Eligibility for a Direct Consolidation Loan. (1) A borrower may obtain a Direct Consolidation Loan if the borrower meets the following requirements:

(i) At the time the borrower applies for a Direct Consolidation Loan, the borrower either—

(A) Has an outstanding balance on a Direct Loan; or

(B) Has an outstanding balance on a FFEL loan and—

(1) The borrower is unable to obtain a FFEL consolidation loan;

(2) The borrower is unable to obtain a FFEL consolidation loan with income-sensitive repayment terms acceptable to the borrower;

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

(4) The borrower has an FFEL Consolidation Loan that is in default or that has been submitted to the guaranty agency for default aversion, and the borrower wants to consolidate the FFEL Consolidation Loan into the Direct Loan Program for purposes of obtaining an income contingent repayment plan or income-based repayment plan; or

(5) The borrower has a FFEL Consolidation Loan and the borrower wants to consolidate that loan into the Direct

Loan Program for purposes of using the Public Service Loan Forgiveness Program.

(ii) At the time the borrower applies for the Direct Consolidation Loan, the borrower is–

(A) In ~~a~~ the grace period;

(B) In a repayment period but not in default;

(C) In default but has made satisfactory repayment arrangements, as defined in applicable program regulations, on the defaulted loan; or

(D) In default but agrees to repay the consolidation loan under the income contingent repayment plan described in §685.208(k), or the income-based repayment plan described in §685.208(m), and signs the consent form described in §685.209(d)(5) or §685.221(e).

(E) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(F) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted.

§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, and for a married borrower filing separately, 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 a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.

(3) *Family size* means a 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 also includes other individuals if, at the time the borrower selects the income-based repayment plan, those other individuals—

(i) Live with the borrower; and

(ii) Receive more than half their support from the borrower and will continue to get this support from the borrower. 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 adjusted gross income 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

(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 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—

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

(ii) The calculated amount is greater than \$0.00 but less than \$5.00. In this case, the borrower's monthly payment is \$5.00.

(3) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's Direct Subsidized 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 selects the income-based repayment plan. 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 deferred 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 but not more than 25 years. However, periods of authorized deferment or forbearance are not counted as part of the maximum 25-year repayment period.

(7) Payments made on or after July 1, 2009 under an income-contingent, graduated, or extended repayment plan count towards the 25-year maximum repayment period for the income-based repayment plan.

(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) Accrued charges and collection costs.
- (3) Loan principal.

(d) Payment amount when a borrower no longer has a partial financial hardship or stops paying under the income-based repayment plan. 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--

(1) 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 all the borrower's eligible loans that were outstanding at the time the borrower selected the income-based repayment plan; and

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

(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, for a period of five years, to the disclosure of AGI and other tax return information by the Internal Revenue Service to the Secretary. The borrower provides consent by signing a consent form and returning it to the Secretary;

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

(ii) Annually certify the borrower's family size;

(2) The Secretary designates the standard repayment plan for a borrower who selects the income-based repayment plan but--

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

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

(f) Loan forgiveness. (1) The Secretary cancels any outstanding balance of principal and accrued interest on a borrower's eligible loans after 25 years if the borrower participated in the income-based repayment plan at any time and the borrower--

(i) Made reduced monthly payments under a partial financial hardship;

(ii) Made reduced monthly payments after leaving the income-based repayment program or after the borrower no longer had a partial financial hardship; or

(iii) Made monthly payments of not less than the amount required under the Direct Loan standard repayment plan described under §685.208(b) on **all** of the borrower's eligible loans;

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

(v) Received an economic hardship deferment on eligible loans for which the borrower requests forgiveness.

§685.304 Counseling borrowers.

(b) Exit counseling. ...

(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 Direct Subsidized Loan and Direct Unsubsidized Loan borrowers at the same school or in the same program of study at the same school;

(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.

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

(iii) Suggest to the student borrower debt-management strategies that would facilitate repayment;

(iv) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

(v) Meet the requirements described in paragraphs (a)(3)(i), (ii), (iii), and (v) of this section;

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

(vii) Review for the student borrower information on the availability of the Department's Student Loan Ombudsman's office;

(viii) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS); and

(ix) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known).

**Proposed Regulatory Language
"Contextual Format"
Loans Committee**

Origin: ED

Issue: Economic Hardship Deferment

Regulatory Cite: §674.34, 682.210

Summary of Change: Amend regulations governing eligibility for an economic hardship deferment to include a definition of family size for purposes of the new poverty line standard contained in the amendments to section 435(o) of the HEA by the CCRAA of 2007.

Change:

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

(e) The borrower need not repay principal, and interest does not accrue, for periods of up to one year at a time (except that a deferment under paragraph (e)(6) of this section may be granted 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) that, collectively, do not exceed 3 years, during which the borrower is suffering an economic hardship, if the borrower provides documentation satisfactory to the institution showing that the borrower is within any of the categories described in paragraphs (e)(1) through (e)(6) of this section.

(1) Has been granted an economic hardship deferment under either the FDSL or FFEL programs for the period of time for which the borrower has requested an economic hardship deferment for his or her Federal Perkins loan.

(2) 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.

(3) Is working full-time and earning a total monthly gross income that does not exceed the greater of—

(i) The monthly earnings of an individual earning the minimum wage described in section 6 of the Fair Labor Standards Act of 1938; or

(ii) An amount equal to 150 percent of the poverty line applicable to the borrower's family size, as determined in accordance with section 673(2) of the Community Service Block Grant Act.

(4) Is not receiving total monthly gross income that exceeds twice the amount specified in paragraph (e)(3) of this section and, after deducting an amount equal to the borrower's monthly payments on Federal postsecondary education loans, as determined under (e)(10) of this section, the remaining amount of that income does not exceed the amount specified in paragraph (e)(3) of this section.

(5) Is working full-time and has a Federal education debt burden as determined under paragraph (e)(10) of this section that equals or exceeds 20 percent of the borrower's total monthly gross income, and the borrower's income minus such burden is less than 220 percent of the amount calculated under paragraph (3) of this section.

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

(7) For a deferment granted under paragraph (e)(4) or (e)(5) of this section, the institution shall require the

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borrower to submit at least the following documentation to qualify for an initial period of deferment-

(i) Evidence showing the amount of the borrower's most recent total monthly gross income, as defined in section 674.2; and

(ii) Evidence that would enable the institution to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period to other entities for Federal postsecondary education loans in accordance with paragraph (e)(9) of this section.

(8) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraph (e)(3), (e)(4), or (e)(5) of this section, the institution shall require the borrower to submit a copy of the borrower's Federal income tax return if the borrower filed a tax return within eight months prior to the date the deferment is requested.

(9)(i) For purposes of paragraphs (e)(3) and (e)(5) 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 a 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 elects the income-based repayment plan, the other individuals-

(A) Live with the borrower; and

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

(10) In determining a borrower's Federal education debt burden under paragraphs (e)(4) and (e)(5) of this section, the institution shall-

(i) If the Federal postsecondary education loan is scheduled to be repaid in 10 years or less, use the actual monthly payment amount (or a proportional share if the payments are due less frequently than monthly); or

(ii) If the Federal postsecondary education loan is scheduled to be repaid in more than 10 years, use a monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been due on the loan if the loan had been scheduled to be repaid in 10 years.

§682.210 Deferment

(s)(6) *Economic hardship deferment.* An eligible borrower is entitled to an economic hardship deferment for periods of up to one year at a time that, collectively, do not exceed 3 years (except that a borrower who receives a deferment under paragraph (s)(6)(vi) of this section is entitled to 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), if the borrower provides documentation satisfactory to the lender

showing that the borrower is within any of the categories described in paragraphs (s)(6)(i) through (s)(6)(vi) of this section.

(i) Has been granted an economic hardship deferment under either the Direct Loan or Federal Perkins Loan Programs for the period of time for which the borrower has requested an economic hardship deferment for his or her FFEL 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 and has a monthly income 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 line applicable to the borrower's family size as determined in accordance with section 673(2) of the Community Services Block Grant Act.

(iv) Is working full-time and has a Federal education debt burden that equals or exceeds 20 percent of the borrower's monthly income, and that income, minus the borrower's Federal education debt burden, is less than 220 percent of the amount described in paragraph (s)(6)(iii) of this section.

(v) Is not working full-time and has a monthly income that–

(A) Does not exceed twice the amount described in paragraph (s)(6)(iii) of this section; and

(B) After deducting an amount equal to the borrower's Federal education debt burden, the remaining amount of the borrower's income does not exceed the amount described in paragraph (s)(6)(iii) of this section.

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

(vii) In determining a borrower's Federal education debt burden for purposes of an economic hardship deferment under paragraphs (s)(6)(iv) and (v) of this section, the lender shall—

(A) If the Federal postsecondary education loan is scheduled to be repaid in 10 years or less, use the actual monthly payment amount (or a proportional share if the payments are due less frequently than monthly);

(B) If the Federal postsecondary education loan is scheduled to be repaid in more than 10 years, use a monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been due on the loan if the loan had been scheduled to be repaid in 10 years; and

(C) Require the borrower to provide evidence that would enable the lender to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period.

(viii) For an initial period of deferment granted under paragraphs (s)(6)(iii) through (v) of this section, the lender must require the borrower to submit evidence showing the amount of the borrower's monthly income.

(ix) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (s)(6)(iii) through (v) of this section, the lender must require 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.

(x) For purposes of paragraph (s)(6) of this section, 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.

(xi) For purposes of paragraph (s)(6) 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.

(xii) For purposes of (s)(6)(iii)(B) of this section, family size means a 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 elects the income- based repayment plan, the other individuals-

(A) Live with the borrower; and

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

**Proposed Regulatory Language
"Contextual Format"
Loans Committee**

Origin: ED

Issue: Direct Loan Public Service Loan
Forgiveness

Regulatory Cite: §§682.201, 685.212, 685.219, and
685.220

Summary of Change: Added regulations implementing the loan forgiveness program for public service employees in the William D. Ford Federal Direct Loan program with conforming changes to Federal Family Education Loan Program (FFEL) regulations.

Change:

§682.201 Eligible borrowers.

* * * * *

(e) A borrower's eligibility to receive a Consolidation loan terminates upon receipt of a Consolidation loan except that—

(1) Eligible loans received prior to the date a Consolidation loan was made and loans received during the 180-day period following the date a Consolidation loan was made, may be added to the Consolidation loan based on the borrower's request received by the lender during the 180-day period after the date the Consolidation loan was made;

(2) A borrower who receives an eligible loan before or after the date a Consolidation loan is made may receive a subsequent Consolidation loan;

(3) A Consolidation loan borrower may consolidate an existing Consolidation loan if the borrower has at least

one other eligible loan made before or after the existing Consolidation loan that will be consolidated; and

(4) If the consolidation loan has been submitted to the guaranty agency for default aversion, the borrower may obtain a subsequent consolidation loan under the Federal Direct Consolidation Loan Program for purposes of obtaining an income contingent repayment plan.

(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 qualifying for the public service loan forgiveness.

§685.212 Discharge of a loan obligation.

* * * * *

(g) *Payments received after eligibility for discharge.*

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

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

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

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

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§685.219 Public Service Loan Forgiveness.

(a) General. The Public Service loan forgiveness program is intended to encourage individuals to enter and continue in full-time public service employment. Under this program, the Secretary forgives the remaining outstanding principal and accrued interest on an eligible Direct Subsidized loan, Direct Unsubsidized loan, Federal Direct PLUS loan, and Direct Consolidation loan of an eligible borrower who is not in default and who has made 120 on-time full monthly payments on an eligible loan after October 1, 2007. The borrower must have been directly employed in a full-time public service job during the same period in which the 120 months of qualifying payments were made, and at the time the borrower applied for and received the loan forgiveness payment.

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

Full-time employment means working a minimum of at least 36 hours per week in qualifying employment.

On-time, full monthly payment means the borrower's full scheduled monthly installment payment made within 15 days of the scheduled due date.

Directly Employed means employed by the eligible public service organization and not by an entity that is a contractor to that public service organization.

Public Service Employment means a full-time job in: emergency management, government, military service, public safety, law enforcement; public interest law services (including prosecution or public defense or legal advocacy in low-income communities at a non-profit organization),

public child care, public service for individuals with disabilities and the elderly, public health, social work in a public child or family service agency, public education (including early childhood education), public library sciences, school-based library sciences and other school-based services; or at a non-profit organization under 501(c)(3) of the Internal Revenue Code that is exempt from taxation under 501(a) of the Code, or teaching full-time as a faculty member at a Tribal College or University, and other faculty teaching in high-needs areas, as determined by the Secretary.

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

Military Service means "active duty" service as defined in section 101(d)(1) of title 10, United States Code, but does include active duty for training or attendance at a service school.

Law Enforcement service means service performed for an agency that is a local, State, or Federal law enforcement or corrections agency that is publicly funded and whose principal activities pertain to crime prevention, control or reduction, or the enforcement of criminal law.

Public Interest Law services are legal services funded in whole or in part by a local, State, Federal, or tribal government.

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

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

(2) Is employed full-time in an eligible public service job during the period when the qualifying payments are made at the time of application for loan forgiveness and at the time the remaining principal and accrued interest are forgiven;

(3) Makes 120 separate on-time monthly qualifying payments while employed full-time in an eligible public service job after October 1, 2007 on the eligible Direct Subsidized loan, Direct Unsubsidized loan, Direct PLUS loan, or Direct Consolidation loan for which forgiveness is sought; and

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

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

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

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

(iv) Any repayment plan if the monthly payment amount paid is not less than what would have been paid under a Direct Loan standard repayment plan based on a 10-year repayment period.

(d) *Forgiveness Amount.* The Secretary pays the principal and accrued interest that remains on all eligible loans for which loan forgiveness is requested by the borrower. The Secretary pays this amount after the borrower makes the 120 separate on-time monthly qualifying payments

on those eligible loans during periods of qualifying service.

(e) *Application.* (1) After completing the 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) Cancels 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 this determination.

§685.220 Consolidation.

(d) Eligibility for a Direct Consolidation Loan. (1) A borrower may obtain a Direct Consolidation Loan if the borrower meets the following requirements:

- (i) At the time the borrower applies for a Direct Consolidation Loan, the borrower either-
 - (A) Has an outstanding balance on a Direct Loan; or
 - (B) Has an outstanding balance on a FFEL loan and-
 - (1) The borrower is unable to obtain a FFEL Consolidation loan;

(2) The borrower is unable to obtain a FFEL consolidation loan with income-sensitive repayment terms acceptable to the borrower;

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

(4) The borrower has an FFEL Consolidation Loan that is in default or that has been submitted by the lender to the guaranty agency for default aversion, and the borrower wants to consolidate the FFEL Consolidation loan into the Direct Loan Program for purposes of obtaining an income contingent repayment plan or income-based repayment plan; or

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

(ii) At the time the borrower applies for the Direct Consolidation Loan, the borrower is—

(A) In the a grace period;

(B) In a repayment period but not in default;

(C) In default but has made satisfactory repayment arrangements, as defined in applicable program regulations, on the defaulted loan; or

(D) In default but agrees to repay the consolidation loan under the income contingent repayment plan described in §685.208(k), or the income-based repayment plan described in §685.208(m), and signs the consent form described in §685.209(d)(5) or §685.221(e).

(E) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(F) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted.

**Proposed Regulatory Language
"Contextual Format"
Loans Committee**

Origin: ED

Issue: HEROES Waivers and Benefits for Active Duty Military Borrowers

Regulatory Cite: §§674.34, 682.210, 685.204

Summary of Change: Amended CCRAA Military Service-Related Deferments to incorporate DCL GEN 08-01 interpretive guidance

Change:

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

(h) *Military Service Deferment.* (1) The borrower need not pay principal and interest does not accrue on a Federal Perkins loan, an NDSL, or a Defense Loan for any period during which the borrower is-

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

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

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

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

(ii) A retired member of an Armed Force ordered to active duty under 10 U.S.C. 688 for service in connection

with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; or

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

(3) *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.

(4) As used in this section—

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

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

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

(5) These provisions do not authorize the refunding of any payments made by or on behalf of a borrower during a

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period for which the borrower qualified for a military service deferment.

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

~~(i)~~(i) Active Duty Student Deferment (1)- Effective October 1, 2007, a borrower of a Federal Perkins Loan, an NDSL, or a Defense loan who is serving on active duty military service on that date, or 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 if -

~~(i)~~(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)~~(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)~~(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, except -

(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 as part of a Title 32 call to State active duty service.

(3) If the borrower returns to enrolled status during the 13-month deferment period, the deferment expires at the time the borrower returns to enrolled student status.

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

682.210 Deferment

(t) Military service deferments --(1) A borrower who receives an FFEL Program loan, may receive a military service deferment for such loans for any period during which the borrower is—

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

or national emergency; or

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

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

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

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

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

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

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

military operation, or national emergency declared by the President and supported by Federal funds.

(5) Payments made by or on behalf of a borrower during a period for which the borrower qualified for a military service deferment are not refunded.

(6) As used in this section–

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

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

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

(7) To receive a military service deferment, the borrower, or the borrower's representative, must request the deferment and provide the lender with all information and documents required to establish eligibility for the deferment, except that a lender may grant a borrower a military service deferment under the procedures specified in paragraphs (s)(1)(iii) through (s)(1)(v) of this section.

(8) A lender that grants a military service deferment based on a request from a borrower's representative must notify 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 lender may

also notify the borrower's representative of the outcome of the deferment request.

(u) Military 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 military active duty student deferment for 13 months following the conclusion of the borrower's active duty military service if -

(i) The borrower is a member of the National Guard or other reserve component of the Armed Forces of the United State 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 (u)(1) of this section, "Active duty" means active duty as defined in section 101(d)(1) of title 10, United States Code, except-

(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; and

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

(iiiiv) 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 Title 32 call to State active duty service.

(3) If the borrower returns to enrolled student status during the 13-month deferment period, the deferment period expires at the time the borrower returns to enrolled student status.

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

~~(45)~~ To receive a military active duty student deferment, the borrower must request the deferment and provide the lender with all information and documents required to establish eligibility for the deferment, except that a lender may grant a borrower a military active duty student deferment under the procedures specified in paragraphs (s)(1)(iii) through (s)(1)(v) of this section.

§685.204 Deferment

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

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

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

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

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

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

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

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

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

under 32 U.S.C. 502(f) in connection with a war, other military operation, or national emergency declared by the President and supported by Federal funds.

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

(6) As used in this section–

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

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

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

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

(f) Active Duty Student Deferment (1) Effective October 1, 2007, A borrower who receives a Direct Loan Program loan and who is serving on active duty military service on that date, or begins serving on or after that date is entitled to receive a military active duty student deferment for 13 months following the conclusion of the borrower's active duty military service if–

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

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

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

(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; and

(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 as part of a Title 32 call to State active duty service.~~

(3) If the borrower returns to enrolled student status during the 13-month deferment period, the deferment expires at the time the borrower returns to enrolled student status.

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

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

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

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

(4) If the Secretary grants a deferment under paragraph (h)(2) of this section, the Secretary notifies

the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan.

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