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## Title 34 – Education

### Subtitle B – Regulations of the Offices of the Department of Education

#### Chapter VI – Office of Postsecondary Education, Department of Education

#### Part 682 – Federal Family Education Loan (FFEL) Program

#### Subpart B – General Provisions

**Authority:** 20 U.S.C. 1071-1087-4, unless otherwise noted. Section 682.410 also issued under 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1080a, 1082, 1087, 1091a, and 1099.

**Source:** 57 FR 60323, Dec. 18, 1992, unless otherwise noted.

### § 682.215 Income-based repayment plan.

(a) **Definitions.** As used in this section—

- (1) **Adjusted gross income** (AGI) means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. For a married borrower filing separately, AGI includes only the borrower's income.
- (2) **Eligible loan** means any outstanding loan made to a borrower under the FFEL and Direct Loan programs except for a defaulted loan, a FFEL or Direct PLUS Loan made to a parent borrower, or a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.
- (3) **Family size** means the number of individuals that is determined by adding together—
  - (i) The borrower;
  - (ii) The borrower's spouse, for a married borrower filing a joint Federal income tax return;
  - (iii) The borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower and are not included in the family size for any other borrower except the borrower's spouse who filed jointly with the borrower; and
  - (iv) Other individuals if, at the time the borrower certifies family size, the other individuals live with the borrower and receive more than half their support from the borrower and will continue to receive this support from the borrower for the year for which the borrower certifies family size.
- (4) **Partial financial hardship** means a circumstance in which—
  - (i) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or
  - (ii) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the

borrower or spouse elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size.

(5) **Poverty guideline** refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(b) **Repayment plan.**

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

(i) Except for borrowers provided for in paragraph (b)(1)(ii) of this section, the total amount of the borrower's eligible loans includes loans not held by the loan holder, in which case the loan holder determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total outstanding principal amount of the borrower's eligible loans that are held by the loan holder;

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

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

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

(C) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly payment by multiplying the payment determined in paragraph (b)(1)(ii)(B) of this section by the percentage of the total outstanding principal amount of the borrower's eligible loans that are held by the loan holder;

(iii) The calculated amount under paragraph (b)(1), (b)(1)(i), or (b)(1)(ii) of this section is less than \$5.00, in which case the borrower's monthly payment is \$0.00; or

(iv) The calculated amount under paragraph (b)(1), (b)(1)(i), or (b)(1)(ii) of this section is equal to or greater than \$5.00 but less than \$10.00, in which case the borrower's monthly payment is \$10.00.

(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 the income-based repayment plan. Each loan holder must apply the payment calculation rules in paragraphs (b)(1)(iii) and (iv) of this section to loans they hold.

(3) If a borrower elects the income-based repayment plan on or after July 1, 2013, the loan holder must, unless the borrower has some loans that are eligible for repayment under the income-based repayment plan and other loans that are not eligible for repayment under that plan, require that all eligible loans owed by the borrower to that holder be repaid under the income-based repayment plan.

- (4) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's subsidized Stafford Loans or the subsidized portion of the borrower's Federal Consolidation loan, the Secretary pays to the holder the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on each loan repaid under the income-based repayment plan. On a Consolidation Loan that repays loans on which the Secretary has paid accrued interest under this section, the three-year period includes the period for which the Secretary paid accrued interest on the underlying loans. The three-year period does not include any period during which the borrower receives an economic hardship deferment.
- (5) Except as provided in paragraph (b)(4) of this section, accrued interest is capitalized at the time the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.
- (6) If the borrower's monthly payment amount is not sufficient to pay any principal due, the payment of that principal is postponed until the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.
- (7) The special allowance payment to a lender during the period in which the borrower has a partial financial hardship under the 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 the income-based repayment plan may be greater than 10 years.

**(c) *Payment application and prepayment.***

- (1) The loan holder shall apply any payment made under the income-based repayment plan in the following order:
  - (i) Accrued interest.
  - (ii) Collection costs.
  - (iii) Late charges.
  - (iv) Loan principal.
- (2) The borrower may prepay the whole or any part of a loan at any time without penalty.
- (3) If the prepayment amount equals or exceeds a monthly payment amount of \$10.00 or more under the repayment schedule established for the loan, the loan holder shall apply the prepayment consistent with the requirements of § 682.209(b)(2)(ii).
- (4) If the prepayment amount exceeds the monthly payment amount of \$0.00 under the repayment schedule established for the loan, the loan holder shall apply the prepayment consistent with the requirements of paragraph (c)(1) of this section.

**(d) *Changes in the payment amount.***

- (1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan but the 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 loan holder requires the borrower to repay is the amount the borrower would have paid under the FFEL standard repayment plan based on a 10-year repayment period using the amount of the borrower's eligible loans that was outstanding at the time the borrower began repayment on the loans with that holder under the income-based repayment plan; and
  - (ii) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.
- (2) If a borrower no longer wishes to pay under the income-based repayment plan, the borrower must pay under the FFEL standard repayment plan and the loan holder recalculates the borrower's monthly payment based on—
- (i) Except as provided in paragraph (d)(2)(ii) of this section, the time remaining under the maximum 10-year repayment period and the amount of the borrower's loans that was outstanding at the time the borrower discontinued paying under the income-based repayment plan; or
  - (ii) For a Consolidation Loan, the time remaining under the applicable repayment period as initially determined under § 682.209(h)(2) and the total amount of that loan that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.
- (3) A borrower who no longer wishes to repay under the income-based repayment plan and who is required to repay under the FFEL standard repayment plan in accordance with paragraph (d)(2) of this section may request a change to a different repayment plan after making one monthly payment under the FFEL standard repayment plan. For this purpose, a monthly payment may include one payment made under a forbearance that provides for temporarily accepting smaller payments than previously scheduled, in accordance with § 682.211(a)(1).

**(e) Eligibility documentation, verification, and notifications.**

- (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) Provide documentation, acceptable to the loan holder, of the borrower's AGI;
  - (ii) 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, provide other documentation to verify income;
  - (iii) If the spouse of a married borrower who files a joint Federal tax return has eligible loans and the loan holder does not hold at least one of the spouse's eligible loans—
    - (A) Ensure that the borrower's spouse has provided consent for the loan holder to obtain information about the spouse's eligible loans from the National Student Loan Data System; or
    - (B) Provide other documentation, acceptable to the loan holder, of the spouse's eligible loan information; and
  - (iv) Annually certify the borrower's family size. If the borrower fails to certify family size, the loan holder must assume a family size of one for that year.

- (2) After making a determination that a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower initially elects the plan and for any subsequent year that the borrower has a partial financial hardship, the loan holder must send the borrower a written notification that provides the borrower with—
  - (i) The borrower's scheduled monthly payment amount, as calculated under paragraph (b)(1) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);
  - (ii) Information about the requirement for the borrower to annually provide the information described in paragraph (e)(1) of this section, if the borrower chooses to remain on the income-based repayment plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the loan holder must receive this information;
  - (iii) An explanation of the consequences, as described in paragraphs (e)(1)(iv) and (e)(7) of this section, if the borrower does not provide the required information;
  - (iv) An explanation of the consequences if the borrower no longer wishes to repay under the income-based repayment plan; and
  - (v) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the loan holder recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the loan holder recalculates the borrower's monthly payment amount based on the borrower's request, the loan holder must send the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.
- (3) For each subsequent year that a borrower who currently has a partial financial hardship remains on the income-based repayment plan, the loan holder must notify the borrower in writing of the requirements in paragraph (e)(1) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (e)(3)(i) of this section. The notification must provide the borrower with—
  - (i) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the loan holder must receive all of the information described in paragraph (e)(1) of this section (annual deadline); and
  - (ii) The consequences if the loan holder does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (d)(1) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period in accordance with paragraph (b)(5) of this section.
- (4) Each time a loan holder makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the loan holder must send the borrower a written notification that provides the borrower with—
  - (i) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (d)(1) of this section;

- (ii) An explanation that unpaid accrued interest will be capitalized in accordance with paragraph (b)(5) of this section; and
  - (iii) Information about the borrower's option to request, at any time, that the loan holder redetermine whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the loan holder determines that the borrower again has a partial financial hardship, the loan holder must recalculate the borrower's monthly payment in accordance with paragraph (b)(1) of this section and send the borrower a written notification that includes the information described in paragraphs (e)(2)(i) through (e)(2)(v) of this section.
- (5) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the income-based repayment plan, the loan holder must send the borrower a written notification that includes the information described in paragraph (e)(4)(iii) of this section.
  - (6) If a borrower who is currently repaying under another repayment plan selects the income-based repayment plan but does not provide the documentation described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section, or if the loan holder determines that the borrower does not have a partial financial hardship, the borrower remains on his or her current repayment plan.
  - (7) The loan holder designates the repayment option described in paragraph (d)(1) of this section if a borrower who is currently repaying under the income-based repayment plan remains on the plan for a subsequent year but the loan holder does not receive the information described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section within 10 days of the specified annual deadline, unless the loan holder is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.
  - (8) If the loan holder receives the information described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section within 10 days of the specified annual deadline—
    - (i) The loan holder must promptly determine the borrower's new monthly payment amount.
    - (ii) If the loan holder does not determine the new monthly payment amount by the end of the borrower's current annual payment period, the loan holder must prevent the borrower's monthly payment amount from being recalculated in accordance with paragraph (d)(1) of this section and maintain the borrower's current scheduled monthly payment amount until the loan holder determines the new monthly payment amount.
      - (A) If the new monthly payment amount is less than the borrower's previously calculated income-based monthly payment amount, the loan holder must make the appropriate adjustment to the borrower's account to reflect any payments at the previously calculated amount that the borrower made after the end of the most recent annual payment period. Notwithstanding the requirements of § 682.209(b)(2)(ii), unless the borrower requests otherwise the loan holder applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of paragraph (c)(1) of this section.
      - (B) If the new monthly payment amount is equal to or greater than the borrower's previously calculated income-based monthly payment amount, the loan holder does not make any adjustments to the borrower's account.

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

(9) If the loan holder receives the documentation described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (d)(1) of this section, the loan holder may grant forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined, if the new monthly payment amount is \$0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.

(f) **Loan forgiveness.**

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

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

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

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the FFEL standard repayment plan described in § 682.209(a)(6)(vi) with a 10-year repayment period for the amount of the borrower's loans that were outstanding at the time the loans initially entered repayment;

(iv) Made monthly payments under the FFEL standard repayment plan described in § 682.209(a)(6)(vi) based on a 10-year repayment period; or

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

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

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

(ii)

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

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

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

- (i) For a borrower who has an eligible FFEL Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for income-based repayment. The beginning date is the date the borrower made the payment or received the deferment, but no earlier than July 1, 2009;
  - (ii) For a borrower who has one or more other eligible FFEL loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan, but no earlier than July 1, 2009;
  - (iii) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (ii) of this section, the date the borrower made a payment under the income-based repayment plan on the loan; or
  - (iv) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the FFEL Consolidation Loan that met the conditions in paragraph (f)(1) of this section.
- (4) If a borrower satisfies the loan forgiveness requirements, the Secretary repays the outstanding balance and accrued interest on the FFEL Consolidation Loan described in paragraph (f)(3)(i), (iii), or (iv) of this section or other eligible FFEL loans described in paragraph (f)(3)(ii) or (iv) of this section.
- (5) Any payments made on a defaulted loan are not made under a qualifying repayment plan and are not counted toward the 25-year forgiveness period.

**(g) Loan forgiveness processing and payment.**

- (1) The loan holder determines when a borrower has met the loan forgiveness requirements under paragraph (f) of this section and does not require the borrower to submit a request for loan forgiveness. No later than six months prior to the anticipated date that the borrower will meet the loan forgiveness requirements, the loan holder must send the borrower a written notice that includes—
- (i) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;
  - (ii) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and
  - (iii) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.
- (2) No later than 60 days after the loan holder determines that a borrower qualifies for loan forgiveness, the loan holder must request payment from the guaranty agency.
- (3) If the loan holder requests payment from the guaranty agency later than the period specified in paragraph (g)(2) of this section, 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.
- (4)

- (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 of its determination.
- (ii) If the guaranty agency approves the loan forgiveness, it must, within the same 45-day period required under paragraph (g)(4)(i) of this section, pay the holder the amount of the forgiveness.
- (5) 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—
  - (i) Inform the borrower of the determination and, if appropriate, that the borrower's repayment obligation on the loans is satisfied; and
  - (ii) Provide the borrower with the information described in paragraph (g)(1)(iii) of this section.
- (6)
  - (i) The holder must apply the payment from the guaranty agency under paragraph (g)(4)(ii) of this section to satisfy the outstanding balance on those loans subject to income-based forgiveness; or
  - (ii) If the forgiveness amount exceeds the outstanding balance on the eligible loans subject to forgiveness, the loan holder must refund the excess amount to the guaranty agency.
- (7) If the guaranty agency does not pay the forgiveness claim, the lender will continue the borrower in repayment on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date the borrower's repayment obligation was suspended until a new payment due date is established. Unless the denial of the forgiveness claim was due to an error by the lender, the lender may capitalize any interest accrued and not paid during this period, in accordance with § 682.202(b).
- (8) The loan holder must promptly return to the sender any payment received on a loan after the guaranty agency pays the loan holder the amount of loan forgiveness.

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

(Authority: 20 U.S.C. 1098e)

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