

§ 685.210

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period for each loan begins when that loan enters repayment.

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

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

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

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

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

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

(7) *Consent to disclosure of tax return information.* (i) A borrower shall provide written consent to the disclosure of certain tax return information by the Internal Revenue Service (IRS) to agents of the Secretary for purposes of calculating a monthly repayment amount and servicing and collecting a loan under the income contingent re-

payment plan. The borrower shall provide consent by signing a consent form, developed consistent with 26 CFR 301.6103(c)-1 and provided to the borrower by the Secretary, and shall return the signed form to the Secretary.

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

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

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

(A) Fails to provide the required written consent;

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

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

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

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

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

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

§ 685.210 Choice of repayment plan.

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

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

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

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

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

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

(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 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, the repayment period is calculated as described in § 685.209(c)(4).

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

[59 FR 61690, Dec. 1, 1994, as amended at 65 FR 65629, Nov. 1, 2000]

§ 685.211 Miscellaneous repayment provisions.

(a) *Payment application and prepayment.* (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, a Direct Unsubsidized Consolidation Loan or a Direct Subsidized Consolidation Loan, the Secretary may designate the income contingent repayment plan for the borrower.

(e) *Ineligible borrowers.* (1) The Secretary determines that a borrower is ineligible if, at the time the loan was