

(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

made and without the school's or the Secretary's knowledge, the borrower (or the student on whose behalf a parent borrowed) provided false or erroneous information or took actions that caused the borrower or student—

(i) To receive a loan for which the borrower is wholly or partially ineligible;

(ii) To receive interest benefits for which the borrower was ineligible; or

(iii) To receive loan proceeds for a period of enrollment for which the borrower was not eligible.

(2) If the Secretary makes the determination described in paragraph (e)(1) of this section, the Secretary sends an ineligible borrower a demand letter that requires the borrower to repay some or all of a loan, as appropriate. The demand letter requires that within 30 days from the date the letter is mailed, the borrower repay any principal amount for which the borrower is ineligible and any accrued interest, including interest subsidized by the Secretary, through the previous quarter.

(3) If a borrower fails to comply with the demand letter described in paragraph (e)(2) of this section, the borrower is in default on the entire loan.

(4) A borrower may not consolidate a loan under §685.220 for which the borrower is wholly or partially ineligible.

(f) *Rehabilitation of defaulted loans.* A defaulted Direct Loan is rehabilitated if the borrower makes 12 consecutive on-time, reasonable, and affordable monthly payments. The amount of such a payment is determined on the basis of the borrower's total financial circumstances. If a defaulted loan is rehabilitated, the Secretary instructs any credit bureau to which the default was reported to remove the default from the borrower's credit history.

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

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**§685.212 Discharge of a loan obligation.**

(a) *Death.* (1) If a borrower (or the student on whose behalf a parent borrowed a Direct PLUS Loan) dies, the Secretary discharges the obligation of the borrower and any endorser to make

any further payments on the loan based on an original or certified copy of the borrower's (or student's in the case of a Direct PLUS loan) death certificate.

(2) If an original or certified copy of the death certificate is not available, the Secretary discharges the loan only based on other reliable documentation that establishes, to the Secretary's satisfaction, that the borrower (or student) has died. The Secretary discharges a loan based on documentation other than an original or certified copy of the death certificate only under exceptional circumstances and on a case-by-case basis.

(b) *Total and permanent disability.* (1) If the Secretary receives acceptable documentation that a borrower has become totally and permanently disabled, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(2) Except as provided in paragraph (b)(3)(i) of this section, a borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(3)(i) For a Direct Consolidation Loan, a borrower is considered totally and permanently disabled if he or she would be considered totally and permanently disabled under paragraphs (b)(1) and (2) of this section for all of the loans that were included in the Direct Consolidation Loan if those loans had not been consolidated.

(ii) For the purposes of discharging a loan under paragraph (b)(3)(i) of this section, provisions in paragraphs (b)(1) and (2) of this section apply to each loan included in the Direct Consolidation Loan, even if the loan is not a Direct Loan Program loan.

(iii) If requested, a borrower seeking to discharge a loan obligation under paragraph (b)(3)(i) of this section must provide the Secretary with the disbursement dates of the underlying loans.

(c) *Bankruptcy.* If a borrower's obligation to repay a loan is discharged in