

**MEETING 2
FEBRUARY 13-17, 2012**

**Issue Paper #2
Proposed Regulatory Language
Loans Group**

Issue: Changes to the Income-Based Repayment (IBR) Plan

Statutory Cite: §493C

Regulatory Cites: §§682.215 and 685.221

Summary of Change:

The proposed regulatory language incorporates statutory changes to the IBR plan that were made by the SAFRA Act included in the Health Care and Reconciliation Act of 2010, and adds new provisions related to notification of income documentation requirements, repayment options after leaving the IBR plan, and the IBR loan forgiveness process.

Change:

See “Proposed Regulatory Language for Issue Paper 2, Loans Group.”

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PROPOSED REGULATORY LANGUAGE FOR ISSUE PAPER 2, LOANS GROUP.

§ 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 that is determined by counting the borrower, the borrower's spouse, and 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. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(i) Live with the borrower; and

(ii) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(4) *New borrower* means an individual who has no outstanding balance on a FFEL Program or Direct Loan Program loan on July 1, 2014, or who has no outstanding balance on such a loan on the date he or she obtains a loan after July 1, 2014.

~~(4)~~(5) *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

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plan, exceeds 15 percent or, for a new borrower, 10 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 or, for a new borrower, 10 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 or, for a new borrower, 10 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;

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(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 an 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 an income-based repayment plan, the loan holder must, unless the borrower requests otherwise, 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.

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(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 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.

(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 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—

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(i) The maximum monthly amount that the loan holder may require 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 on the borrower's eligible loans that were 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 ~~ten~~10-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(ii) For a Consolidation Loan, the applicable repayment period remaining specified in §682.209(h)(2) for the total amount of that loan ~~and the balance of other student loans~~ 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 full monthly payment under the FFEL standard repayment plan.

(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 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; or

(B) Provide other documentation, acceptable to the loan holder, of the borrower's AGI; and

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~~(ii) 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.~~

~~(B)(iii)~~ 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. If the borrower fails to certify family size, the loan holder must assume a family size of one for that year.~~

(2)(i) For each subsequent year that a borrower remains on the income-based repayment plan, the loan holder must notify the borrower in writing of the requirements in paragraphs (e)(1) of this section no later than 60 days prior to the date the borrower will be re-evaluated to determine whether he or she continues to have a partial financial hardship.

(ii) The notification described in paragraph (e)(2)(i) must inform the borrower of –

(A) The date by which the borrower must comply with the requirements described in paragraphs (e)(1)(i) and (ii) of this section; and

(B) The consequences if the borrower does not comply with these requirements by the specified date.

~~(2)(3)~~ The loan holder designates the repayment option described in paragraph (d)(1) of this section for any borrower who selects the income-based repayment plan but—

~~(i) Fails to renew the required written consent for income verification. Does not provide the written consent or other documentation described in paragraph (e)(1)(i) or (iii) of this section within 60 days of the date provided to the borrower in accordance with paragraph (e)(2)(ii)(A) of this section; or~~

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

(f) Loan forgiveness. (1) To qualify for loan forgiveness after 25 years or, for a new borrower, after 20 years, the borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during ~~that~~ the applicable loan forgiveness period—

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(i) Made reduced monthly payments under a partial financial hardship as provided under paragraph (b)(1) of this section. Monthly payments of \$0.00 qualify as reduced monthly payments as provided in paragraph (b)(1)(ii) 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 ~~for the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan~~; 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 the applicable loan forgiveness period; or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower made the equivalent of 25 years of payments or, for a new borrower, the equivalent of 20 years of payments.

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

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(i) For a borrower who has a 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 (f)(1) ~~after qualifying for the income-based repayment plan.~~

(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) A borrower repaying a defaulted loan is not considered to be repaying under a qualifying repayment plan for the purpose of loan forgiveness, and any payments made on a defaulted loan are not counted toward the ~~25-year~~applicable loan 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 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.

(2) If the loan holder requests payment from the guaranty agency later than the period specified in paragraph (g)(1) 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

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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 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 —

(i) inform the borrower of the determination and, if appropriate, that the borrower's repayment obligation on the loans ~~for which income-based forgiveness was requested~~ is satisfied; and

(ii) The lender must also provide the borrower with general information on the required handling/current treatment of the forgiveness amount for tax purposes and refer the borrower to the Internal Revenue Service for further information.

(5)(i) The holder must apply the ~~proceeds of the income-based repayment loan forgiveness amount~~ payment from the guaranty agency under paragraph (g)(3)(ii) to satisfy the outstanding balance on those loans ~~for which~~ subject to income-based forgiveness ~~was requested~~; 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.

(6) 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).

(7) 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.

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§ 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. 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 or 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 that is determined by counting the borrower, the borrower's spouse, and 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. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(i) Live with the borrower; and

(ii) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(4) *New borrower* means an individual who has no outstanding balance on a Direct Loan Program or FFEL Program loan on July 1, 2014, or who has no outstanding balance on such a loan on the date he or she obtains a loan after July 1, 2014.

~~(4)~~(5) *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

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borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent or, for a new borrower, 10 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 or, for a new borrower, 10 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) Terms of the repayment plan. (1) A borrower may select 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 or, for a new borrower, 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12.

(2) The Secretary adjusts the calculated monthly payment if—

(i) Except for borrowers provided for in paragraph (b)(2)(ii) of this section, the total amount of the borrower's eligible loans are not Direct Loans, in which case the Secretary 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 Direct Loans;

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

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

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(B) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (b)(2)(ii)(A) of this section; and

(C) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly Direct Loan payment by multiplying the payment determined in paragraph (b)(2)(ii)(B) of this section by the percentage of the total outstanding principal amount of the borrower's eligible loans that are Direct Loans;

(iii) The calculated amount under paragraph (b)(1), (b)(2)(i), or (b)(2)(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)(2)(i), or (b)(2)(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.

(3) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's Direct Subsidized loan or the subsidized portion of a Direct Consolidation Loan, the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the income-based repayment plan. On a Direct Consolidation Loan that repays loans on which the Secretary has not charged the borrower accrued interest, the three-year period includes the period for which the Secretary did not charge the borrower accrued interest on the underlying loans. 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 postponed 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.

(c) Payment application and prepayment. The Secretary applies any payment made under an income-based repayment plan in the following order:

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- (1) Accrued interest.
- (2) Collection costs.
- (3) Late charges.
- (4) Loan principal.

(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 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—

(i) The maximum monthly amount that the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower's eligible loans that were-was outstanding at the time the borrower began repayment on the loans 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 payment plan, the borrower must pay under the standard repayment plan and the Secretary recalculates the borrower's monthly payment based on—

(i) Except as provided in paragraph (d)(2)(ii) of this section, ~~the~~ the time remaining under the maximum ten-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(ii) For a Direct Consolidation Loan, the applicable repayment period specified in §685.208(j) for the amount of that loan and the balance of other student loans that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(2) A borrower who no longer wishes to repay under the income-based repayment plan and who is required to repay under the Direct Loan standard repayment plan in accordance with paragraph (d)(2) of

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this section may request a change to different repayment plan after making one full monthly payment under the Direct Loan standard repayment plan.

(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 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, or

(B) Provide other documentation, acceptable to the Secretary, of the borrower's AGI; and

(ii) Annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.

~~(B)(iii)~~ 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. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.~~

(2)(i) For each subsequent year that a borrower remains on the income-based repayment plan, the Secretary notifies the borrower in writing of the requirements described in paragraphs (e)(1)(i) and (ii) of this section no later than 60 days prior to the date the borrower will be re-evaluated to determine whether he or she continues to have a partial financial hardship.

(ii) The notification described in paragraph (e)(2)(i) of this section informs the borrower of –

(A) The date by which the borrower must comply with the requirements described in paragraphs (e)(1)(i) and (ii) of this section; and

(B) The consequences if the borrower does not comply with these requirements by the specified date.

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~~(2)~~(3) The Secretary designates the repayment option described in paragraph (d)(1) of this section for any borrower who selects the income-based repayment plan but—

(i) ~~Fails to renew the required written consent for income verification~~Does not provide the written consent or other documentation described in paragraph (e)(1)(i) or (iii) of this section within 60 days of the date provided to the borrower in accordance with paragraph (e)(2)(ii)(A) of this section; or

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

(f) Loan forgiveness. (1) To qualify for loan forgiveness after 25 years or, for a new borrower, after 20 years, a borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during ~~that~~the applicable loan forgiveness period:

(i) Made reduced monthly payments under a partial financial hardship as provided in paragraph (b)(1) or (2) of this section, including a monthly payment amount of \$0.00, as provided under paragraph (b)(2)(ii) 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) of this section.

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in §685.208(b) 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 Direct Loan standard repayment plan described in §685.208(b) ~~based on the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan.~~

(v) Paid Direct Loans under the income-contingent repayment plan.

(vi) Received an economic hardship deferment on eligible Direct Loans.

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

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(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 payment amount of \$0.00, as provided under paragraph (b)(2)(ii) of this section; and

(ii)(A) The borrower made those monthly payments each year for ~~a 25-year~~ the applicable loan forgiveness period, or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 25 ~~years of payments or, for a new borrower, the equivalent of 20~~ years of payments.

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

(i) If the borrower made payments under the income contingent repayment plan, the date the borrower made a payment on the loan under that plan at any time after July 1, 1994;

(ii) If the borrower did not make payments under the income contingent repayment plan—

(A) For a borrower who has a Direct 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;

(B) For a borrower who has one or more other eligible Direct 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;

(C) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(ii)(A) or (B) of this section, the date the borrower made a payment under the income-based repayment plan on the loan;

(D) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the Direct Consolidation Loan ~~that met the requirements in paragraph (f)(1) of this section after qualifying for the income-based repayment plan~~; or

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(E) If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (ii) of this section, determining the date the borrower made a payment under the income-based repayment plan on the loan.

(4) A borrower repaying a defaulted loan is not considered to be repaying under a qualifying repayment plan for the purposes of loan forgiveness, and any payments made on a defaulted loan are not counted toward the applicable loan forgiveness period.

~~(4)(5)(i) If the Secretary determines that a borrower has satisfied~~ satisfies the loan forgiveness requirements on an eligible loan, the Secretary cancels the outstanding balance and accrued interest on that loan. ~~the Direct Consolidation Loan described in paragraph (f)(3)(i), (iii) or (iv) of this section or other eligible Direct Loans described in paragraph (f)(3)(ii) or (iv) of this section.~~

(ii) The Secretary 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.

(iii) After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary

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(A) Notifies the borrower that the borrower's obligation on the loans is satisfied; and

(B) Provides the borrower with general information on the current treatment of the forgiveness amount for tax purposes and refers the borrower to the Internal Revenue Service for further information.

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**Issue Paper #3
Proposed Regulatory Language
Loans Group**

Issue: FFEL Lender Repayment Disclosures: Borrowers Who Are Having Difficulty Making Payments and Borrowers Who Are 60-Days Delinquent

Statutory Cite: §433(e)(3)

Regulatory Cites: §682.205(c)(4) and (5)

Summary of Change:

The proposed regulatory language amends the FFEL lender disclosure requirements for borrowers who are having difficulty making payments and borrowers who are 60 days delinquent by: **(1)** exempting lenders from the requirement to send a disclosure to a borrower who has notified the lender that he or she is having difficulty making payments if prior contact with the borrower has already resolved the borrower's problem, and **(2)** changing the timeframe for sending the 60-day delinquent disclosure from five days (calendar days) after the date the borrower becomes 60 days delinquent to five business days after that date.

Change:

§682.205 Disclosure requirements for lenders.

* * * * *

(c) * * *

(4) *Required disclosures for borrowers having difficulty making payments.* (i) Except as provided in paragraph (ii) of this subsection, the lender shall provide a borrower who has notified the lender that he or she is having difficulty making payments with--

(iA) A description of the repayment plans available to the borrower, and how the borrower may request a change in repayment plan;

(iB) A description of the requirements for obtaining forbearance on the loan and any costs associated with forbearance; and

(C##) A description of the options available to the borrower to avoid default and any fees or costs associated with those options.

(ii) A repayment disclosure is not required if the borrower's difficulty has been resolved through contact with the borrower resulting from an earlier disclosure or other communication between the lender and the borrower.

(5) *Required disclosures for borrowers who are 60-days delinquent in making payments on a loan.* (i) The lender shall provide to a borrower who is 60 days delinquent in making required payments a notice of--

(A) The date on which the loan will default if no payment is made;

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(B) The minimum payment the borrower must make, as of the date of the notice, to avoid default, including the payment amount needed to bring the loan current or payment in full;

(C) A description of the options available to the borrower to avoid default, including deferment and forbearance and any fees and costs associated with those options;

(D) Any options for discharging the loan that may be available to the borrower; and

(E) Any additional resources, including nonprofit organizations, advocates and counselors, including the Department of Education's Student Loan Ombudsman, the lender is aware of where the borrower may obtain additional advice and assistance on loan repayment.

(ii) The notice must be sent within five business days of the date the borrower becomes 60 days delinquent, unless the lender has sent such a notice within the previous 120 days.

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Issue Paper #4
Proposed Regulatory Language
Loans Group

Issue: Forbearance Provisions for Borrowers Receiving Department of Defense Student Loan Repayment Benefits

Statutory Cite: §428(c)(3)

Regulatory Cites: §§682.211(h)(2)(ii)(B) and 685.205

Summary of Change:

Current FFEL regulations require a lender to grant forbearance to a borrower who is performing service that qualifies the borrower for partial loan repayment under the Student Loan Repayment Programs administered by the Department of Defense under 10 U.S.C. 2171. Current Direct Loan regulations do not include this forbearance provision. The proposed regulatory language amends the FFEL forbearance provision to cover borrowers who are performing service that qualifies them for loan repayment under other student loan repayment programs administered by the Department of Defense, and adds the same forbearance provision to the Direct Loan regulations.

Change:

§682.211 Forbearance.

* * * * *

(h) * * *

(2) Borrowers who are not medical or dental interns or residents, and endorsers. Upon receipt of a request and sufficient supporting documentation from an endorser (if applicable), or from a borrower (other than a borrower who is serving in a medical or dental internship or residency described in paragraph (h)(1) of this section), a lender shall grant forbearance--

(i) In increments up to one year, for periods that collectively do not exceed three years, if--

(A) The borrower or endorser is currently obligated to make payments on Title IV loans; and

(B) The amount of those payments each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower's or endorser's total monthly income;

(ii) In yearly increments (or a lesser period equal to the actual period during which the borrower is eligible) for as long as a borrower--

(A) Is serving in a national service position for which the borrower receives a national service educational award under the National and Community Service Trust Act of 1993;

(B) Is performing the type of service that would qualify the borrower for a partial repayment of his or her loan under the Student Loan Repayment Programs administered by the Department of Defense

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under 10 U.S.C. 2171 or [any other student loan repayment programs administered by the Department of Defense](#); or

* * * * *

(4) *Documentation.* (i) * * *

(ii) Before granting a forbearance to a borrower or endorser under paragraph (h)(2)(ii)(B) of this section, the lender shall require the borrower or endorser to submit documentation showing the beginning and ending dates that the Department of Defense considers the borrower to be eligible for a partial repayment of his or her loan under the Student Loan Repayment Programs.

* * * * *

§685.205 Forbearance.

(a) *General.* "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. The borrower has the option to choose the form of forbearance. Except as provided in paragraph (b)(9) of this section, if payments of interest are forborne, they are capitalized. The Secretary grants forbearance if the borrower or endorser intends to repay the loan but requests forbearance and provides sufficient documentation to support this request, and--

(1) The Secretary determines that, due to poor health or other acceptable reasons, the borrower or endorser is currently unable to make scheduled payments;

(2) The borrower's payments of principal are deferred under Sec. 685.204 and the Secretary does not subsidize the interest benefits on behalf of the borrower;

(3) The borrower is in a medical or dental internship or residency that must be successfully completed before the borrower may begin professional practice or service, or the borrower is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(4) The borrower is serving in a national service position for which the borrower is receiving a national service education award under title I of the National and Community Service Act of 1990; or

(5) The borrower--

(i) Is performing the type of service that would qualify the borrower for loan forgiveness under the requirements of the teacher loan forgiveness program in Sec. 685.217; and

(ii) Is required, by the Secretary, before a forbearance is granted under Sec. 685.205(a)(5)(i) to--

(A) Submit documentation for the period of the annual forbearance request showing the beginning and ending dates that the borrower is expected to perform, for that year, the type of service described in Sec. 685.217(c); and

(B) Certify the borrower's intent to satisfy the requirements of Sec. 685.217(c).

(6) For not more than three years during which the borrower or endorser--

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(i) Is currently obligated to make payments on loans under title IV of the Act; and

(ii) The sum of these payments each month (or a proportional share if the payments are due less frequently than monthly) is equal to or greater than 20 percent of the borrower's or endorser's total monthly gross income.

(7) The borrower is a member of the National Guard who qualifies for a post-active duty student deferment, but does not qualify for a military service or other deferment, and is engaged in active State duty for a period of more than 30 consecutive days, beginning--

(i) On the day after the grace period expires for a Direct Subsidized Loan or Direct unsubsidized Loan that has not entered repayment; or

(ii) On the day after the borrower ceases enrollment on at least a half-time basis, for a Direct Loan in repayment.

(8) [SEE ISSUE PAPER #6 FOR PROPOSED NEW (a)(8)]

(9) (i) The borrower is performing the type of service that would qualify the borrower for a partial repayment of his or her loan under the Student Loan Repayment Programs administered by the Department of Defense under 10 U.S.C. 2171 or any other student loan repayment programs administered by the Department of Defense.

(ii) To receive a forbearance under this paragraph, the borrower must submit documentation showing the time period during which the Department of Defense considers the borrower to be eligible for a partial repayment of his or her loan under a student loan repayment program.

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Issue Paper #5
Proposed Regulatory Language
Loans Group

Issue: Borrowers who are Delinquent when Authorized Forbearance is Granted

Statutory Cite: §428(c)(3)

Regulatory Cites: §§682.211(f) and 685.205(b)

Summary of Change:

The proposed regulatory language amends the FFEL administrative forbearance provisions to allow a lender to grant forbearance to a borrower who is delinquent at the beginning of a period of non-mandatory authorized forbearance and makes a corresponding change in the Direct Loan forbearance provisions.

Change:

§682.211 Forbearance.

* * * * *

(f) A lender may grant forbearance, upon notice to the borrower or if applicable, the endorser, with respect to payments of interest and principal that are overdue or would be due--

(1) For a properly granted period of deferment for which the lender learns the borrower did not qualify;

(2) Upon the beginning of an authorized deferment period under Sec. 682.210, an authorized period of forbearance, or an administrative forbearance period as specified under paragraph (f)(11) or (i)(2) of this section;

(3) For the period beginning when the borrower entered repayment without the lender's knowledge until the first payment due date was established;

(4) For the period prior to the borrower's filing of a bankruptcy petition as provided in Sec. 682.402(f);

(5) For the periods described in Sec. 682.402(c) in regard to the borrower's total and permanent disability;

(6) Upon receipt of a valid identity theft report as defined in section 603(q)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681a) or notification from a credit bureau that information furnished by the lender is a result of an alleged identity theft as defined in Sec. 682.402(e)(14), for a period not to exceed 120 days necessary for the lender to determine the enforceability of the loan. If the lender determines that the loan does not qualify for discharge under Sec. 682.402(e)(1)(i)(C), but is nonetheless unenforceable, the lender must comply with Sec. Sec. 682.300(b)(2)(ix) and 682.302(d)(1)(viii).

(7) For a period not to exceed an additional 60 days after the lender has suspended collection activity for the initial 60-day period required pursuant to Sec. 682.211(i)(6) and Sec. 682.402(b)(3), when

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the lender receives reliable information that the borrower (or student on whose behalf a parent has borrowed a PLUS Loan) has died;

(8) For periods necessary for the Secretary or guaranty agency to determine the borrower's eligibility for discharge of the loan because of an unpaid refund, attendance at a closed school or false certification of loan eligibility, pursuant to Sec. 682.402(d) or (e), or the borrower's or, if applicable, endorser's bankruptcy, pursuant to Sec. 682.402(f);

(9) For a period of delinquency at the time a loan is sold or transferred, if the borrower or endorser is less than 60 days delinquent on the loan at the time of sale or transfer;

(10) For a period of delinquency that may remain after a borrower ends a period of deferment or mandatory forbearance until the next due date, which can be no later than 60 days after the period ends;

(11) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized;

(12) For a period not to exceed 3 months when the lender determines that a borrower's ability to make payments has been adversely affected by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization;

(13) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower's eligibility for loan forgiveness under the income-based repayment program. The lender must notify the borrower that the requirement to make payments on the loans for which forgiveness was requested has been suspended pending approval of the forgiveness by the guaranty agency;

(14) For a period of delinquency at the time a borrower makes a change to the repayment plan; or

(15) For PLUS loans first disbursed before July 1, 2008, to align repayment with a borrower's PLUS loans that were first disbursed on or after July 1, 2008, or with Stafford Loans that are subject to a grace period under Sec. 682.209(a)(3). The notice specified in paragraph (f) introductory text of this section must inform the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

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§685.205 Forbearance.

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(b) *Administrative forbearance.* In certain circumstances, the Secretary grants forbearance without requiring documentation from the borrower. These circumstances include but are not limited to--

(1) A properly granted period of deferment for which the Secretary learns the borrower did not qualify;

(2) The period for which payments are overdue at the beginning of an authorized deferment or forbearance period;

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(3) The period beginning when the borrower entered repayment without the Secretary's knowledge until the first payment due date was established;

(4) The period prior to a borrower's filing of a bankruptcy petition;

(5) A period after the Secretary receives reliable information indicating that the borrower (or the student in the case of a Direct PLUS Loan obtained by a parent borrower) has died, or the borrower has become totally and permanently disabled, until the Secretary receives documentation of death or total and permanent disability;

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge--

(i) Under Sec. 685.214;

(ii) Under Sec. 685.215;

(iii) Under Sec. 685.216;

(iv) Under Sec. 685.217; or

(v) Due to the borrower's or endorser's (if applicable) bankruptcy;

(7) A period of up to three years in cases where the effect of a variable interest rate on a fixed-amount or graduated repayment schedule causes the extension of the maximum repayment term;

(8) A period during which the Secretary has authorized forbearance due to a national military mobilization or other local or national emergency;

(9) A period of up to 60 days necessary for the Secretary to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized; or

(10) For Direct PLUS Loans first disbursed before July 1, 2008, to align repayment with a borrower's Direct PLUS Loans that were first disbursed on or after July 1, 2008, or with Direct Subsidized Loans or Direct Unsubsidized Loans that have a grace period in accordance with Sec. 685.207(b) or (c). The Secretary notifies the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

(c) *Period of forbearance.* (1) The Secretary grants forbearance for a period of up to one year.

(2) The forbearance is renewable, upon request of the borrower, for the duration of the period in which the borrower meets the condition required for the forbearance.

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**Issue Paper #6
Proposed Regulatory Language
Loans Group**

Issue: Forbearance for Post-270 day Defaulted Loan Borrowers Prior to Lender Claim Payment or Transfer to ED Default Collections

Statutory Cite: §428(c)(3)

Regulatory Cites: §§682.211(d) and 685.205

Summary of Change:

Under the current FFEL regulations, if a borrower is in default but the lender has not yet submitted a default claim to the guaranty agency, the lender may grant forbearance to the borrower to eliminate the default or reduce the level of delinquency. The terms of the forbearance agreement require the borrower to sign a new agreement to repay the debt. Defaulted Direct Loan borrowers are not required to sign a new repayment agreement when forbearance is granted under the same circumstances. The proposed changes clarify the current FFEL regulatory provision and add the same requirement to the Direct Loan forbearance regulations.

Change:

§682.211 Forbearance.

* * * * *

(d) A guaranty agency may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after default but prior to claim payment. The terms of the forbearance agreement in this situation must include a new signed repayment agreement to repay the debt [or other written affirmation of the borrower's obligation to repay the debt signed by the borrower](#).

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§685.205 Forbearance.

(a) *General.* "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. The borrower has the option to choose the form of forbearance. Except as provided in paragraph (b)(9) of this section, if payments of interest are forborne, they are capitalized. The Secretary grants forbearance if the borrower or endorser intends to repay the loan but requests forbearance and provides sufficient documentation to support this request, and--

(1) The Secretary determines that, due to poor health or other acceptable reasons, the borrower or endorser is currently unable to make scheduled payments;

(2) The borrower's payments of principal are deferred under Sec. 685.204 and the Secretary does not subsidize the interest benefits on behalf of the borrower;

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(3) The borrower is in a medical or dental internship or residency that must be successfully completed before the borrower may begin professional practice or service, or the borrower is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(4) The borrower is serving in a national service position for which the borrower is receiving a national service education award under title I of the National and Community Service Act of 1990; or

(5) The borrower--

(i) Is performing the type of service that would qualify the borrower for loan forgiveness under the requirements of the teacher loan forgiveness program in Sec. 685.217; and

(ii) Is required, by the Secretary, before a forbearance is granted under Sec. 685.205(a)(5)(i) to--

(A) Submit documentation for the period of the annual forbearance request showing the beginning and ending dates that the borrower is expected to perform, for that year, the type of service described in Sec. 685.217(c); and

(B) Certify the borrower's intent to satisfy the requirements of Sec. 685.217(c).

(6) For not more than three years during which the borrower or endorser--

(i) Is currently obligated to make payments on loans under title IV of the Act; and

(ii) The sum of these payments each month (or a proportional share if the payments are due less frequently than monthly) is equal to or greater than 20 percent of the borrower's or endorser's total monthly gross income.

(7) The borrower is a member of the National Guard who qualifies for a post-active duty student deferment, but does not qualify for a military service or other deferment, and is engaged in active State duty for a period of more than 30 consecutive days, beginning--

(i) On the day after the grace period expires for a Direct Subsidized Loan or Direct unsubsidized Loan that has not entered repayment; or

(ii) On the day after the borrower ceases enrollment on at least a half-time basis, for a Direct Loan in repayment.

(8) The Secretary may grant a forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after default. The terms of the forbearance agreement in this situation must include a new repayment agreement or other written affirmation of the borrower's obligation to repay the debt signed by the borrower.

(b) *Administrative forbearance.* In certain circumstances, the Secretary grants forbearance without requiring documentation from the borrower. These circumstances include but are not limited to--

(1) A properly granted period of deferment for which the Secretary learns the borrower did not qualify;

(2) The period for which payments are overdue at the beginning of an authorized deferment period;

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(3) The period beginning when the borrower entered repayment without the Secretary's knowledge until the first payment due date was established;

(4) The period prior to a borrower's filing of a bankruptcy petition;

(5) A period after the Secretary receives reliable information indicating that the borrower (or the student in the case of a Direct PLUS Loan obtained by a parent borrower) has died, or the borrower has become totally and permanently disabled, until the Secretary receives documentation of death or total and permanent disability;

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge--

(i) Under Sec. 685.214;

(ii) Under Sec. 685.215;

(iii) Under Sec. 685.216;

(iv) Under Sec. 685.217; or

(v) Due to the borrower's or endorser's (if applicable) bankruptcy;

(7) A period of up to three years in cases where the effect of a variable interest rate on a fixed-amount or graduated repayment schedule causes the extension of the maximum repayment term;

(8) A period during which the Secretary has authorized forbearance due to a national military mobilization or other local or national emergency;

(9) A period of up to 60 days necessary for the Secretary to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized; or

(10) For Direct PLUS Loans first disbursed before July 1, 2008, to align repayment with a borrower's Direct PLUS Loans that were first disbursed on or after July 1, 2008, or with Direct Subsidized Loans or Direct Unsubsidized Loans that have a grace period in accordance with Sec. 685.207(b) or (c). The Secretary notifies the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

(c) Period of forbearance. (1) The Secretary grants forbearance for a period of up to one year.

(2) The forbearance is renewable, upon request of the borrower, for the duration of the period in which the borrower meets the condition required for the forbearance.

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**Issue Paper #7
Proposed Regulatory Language
Loans Group**

Issue: Minimum Loan Period for Transfer Students in Non-Term and Certain Non-Standard Term Programs

Statutory Cite: N/A

Regulatory Cites: §685.301(a)(9) [refers to §685.301(a)(9) as contained within the second Editorial Note following §685.301 in 34 CFR Part 685, revised as of July 1, 2011]

Summary of Change:

The proposed regulatory language amends the provision that specifies the minimum period for which a school may originate a Direct Loan in the case of a student who transfers from one school to another school, and the new school measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than 9 weeks in length. The revised provision removes the current limitation in paragraph (a)(9)(ii) that allows such a school to originate a loan for a period that is less than the length of the student's program at the new school or the academic year at the new school only if the new school accepts transfer credits or hours from the prior school. The proposed revised language also makes a technical correction by removing the word "application" from paragraph (a)(9)(i).

Change:

§ 685.301 Origination of a loan by a Direct Loan Program school.

(a) * * *

(9)(i) The minimum period of enrollment for which a school may originate a Direct Loan ~~application~~ is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, or has terms that are substantially equal in length with no term less than nine weeks in length, a single academic term (e.g., a semester or quarter); or

(B) Except as provided in paragraph (a)(9)(ii) or (iii) of this section, at a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, the lesser of—

(1) The length of the student's program (or the remaining portion of that program if the student has less than the full program remaining) at the school; or

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(2) The academic year as defined by the school in accordance with 34 CFR 668.3.

(ii) For a student who transfers into a school ~~with credit or clock hours~~ from another school, and the prior school originated or certified a loan for a period of enrollment that overlaps the period of enrollment at the new school, the new school may originate a loan for the remaining portion of the program or academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student's annual loan limit.

(iii) For a student who completes a program at a school, where the student's last loan to complete that program had been for less than an academic year, and the student then begins a new program at the same school, the school may originate a loan for the remainder of the academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student's annual loan limit at the loan level associated with the new program.

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**Issue Paper #8
Proposed Regulatory Language
Loans Group**

Issue: "Reasonable and Affordable" Payment Standard for Rehabilitation of Defaulted Direct Loan and FFEL Program Loans

Statutory Cites: §428F(a)

Regulatory Cites: §§682.405(b)(1)(iii) and 685.211(f)

Summary of Change:

The proposed regulatory language requires "reasonable and affordable" rehabilitation payments for FFEL and Direct Loan borrowers to be calculated by using the current procedures for determining rehabilitation payment amounts in the FFEL and Direct Loan programs. If a borrower objects to the monthly payment amount, the proposed regulations require a guaranty agency or the Secretary to recalculate the reasonable and affordable payment amount using the monthly payment amount that would be calculated under IBR. However, the payment amount calculated under the IBR formula may not be less than \$5.

Change:

§ 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:

(1) A borrower may request rehabilitation of the borrower's defaulted loan held by the guaranty agency. In order to be eligible for rehabilitation of the loan, the borrower must voluntarily make at least nine of the ten payments required under a monthly repayment agreement.

(i) Each of which payment is—

(A) Made voluntarily,

(B) In the full amount required, and

(C) Received within 20 days of the due date for the payment, and

(ii) All nine payments are received within a ten-month period that begins with the month in which the first required due date falls and ends with the ninth consecutive calendar month following that month.

(iii) For the purposes of this section, the determination of reasonable and affordable by the guaranty agency or its agents must—

(A) Include a consideration of the borrower's and spouse's disposable income and reasonable and necessary expenses including, but not limited to, housing, utilities, food, medical costs, work-related expenses, dependent care costs and other Title IV repayment;

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(B) Not be a required minimum payment amount, e.g. \$50, if the agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. The agency must include documentation in the borrower's file of the basis for the determination if the monthly reasonable and affordable payment established under this section is less than \$50 or the monthly accrued interest on the loan, whichever is greater. However, \$50 may not be the minimum payment for a borrower if the agency determines that a smaller amount is reasonable and affordable; and

(C) Be based on the documentation provided by the borrower or other sources including, but not be limited to—

(1) Evidence of current income (e.g., proof of welfare benefits, Social Security benefits, child support, veterans' benefits, Supplemental Security Income, Workmen's Compensation, two most recent pay stubs, most recent copy of U.S. income tax return, State Department of Labor reports);

(2) Evidence of current expenses (e.g., a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(3) A statement of the unpaid balance on all FFEL loans held by other holders.

(iv) The guaranty agency must provide the borrower with a written statement confirming the borrower's reasonable and affordable payment amount, as determined by the agency, and explaining any other terms and conditions applicable to the required series of payments that must be made before the borrower's account can be considered for repurchase by an eligible lender. The statement must inform the borrower of the effects of having the loans rehabilitated (e.g. , removal of the record of default from the borrower's credit history, possibility of increased monthly payments). The statement must inform the borrower of the amount of the collection costs to be added to the unpaid principal at the time of the sale. The collection costs may not exceed 18.5 percent of the unpaid principal and accrued interest at the time of the sale. The statement must inform the borrower that the borrower may object to the terms and conditions of the rehabilitation agreement, and explain the method and timeframe for objecting to the terms and conditions of the rehabilitation agreement.

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(v) If the borrower objects to the monthly payment amount determined under paragraph (b)(1)(iii) of this section, the guaranty agency must recalculate the payment amount. The guaranty agency must follow the monthly payment calculation rules in §682.215(b)(1) to determine a borrower's recalculated reasonable and affordable payment amount , except that if the recalculated amount under §682.215(b)(1) is less than \$5, the borrower's recalculated monthly rehabilitation payment is \$5.

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(vi) The guaranty agency must provide the borrower with a written statement confirming the borrower's recalculated reasonable and affordable payment amount.

(vii) If the borrower objects to the monthly payment amount determined under paragraph (b)(1)(iii) of this section, but does not provide the documentation required to calculate a monthly payment amount under §682.215(b)(1) , no rehabilitation agreement exists between the borrower and the guaranty agency, and the rehabilitation does not proceed.

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(iviii) The agency must include any payment made under §682.401(b)(4) in determining whether the nine out of ten payments required under paragraph (b)(1) of this section have been made.

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(ix) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (b)(1)(iii)(C) of this section.

~~(vi) A guaranty agency must provide the borrower with a written statement confirming the borrower's reasonable and affordable payment amount, as determined by the agency, and explaining any other terms and conditions applicable to the required series of payments that must be made before a borrower's account can be considered for repurchase by an eligible lender. The statement must inform borrowers of the effects of having their loans rehabilitated (e.g., credit clearing, possibility of increased monthly payments). The statement must inform the borrower of the amount of the collection costs to be added to the unpaid principal at the time of the sale. The collection costs may not exceed 18.5 percent of the unpaid principal and accrued interest at the time of the sale.~~

~~(vii) A guaranty agency must provide the borrower with an opportunity to object to terms of the rehabilitation of the borrower's defaulted loan.~~

(2) For the purposes of this section, payment in the full amount required means payment of an amount that is reasonable and affordable, based on the borrower's total financial circumstances, as agreed to by the borrower and the agency. Voluntary payments are those made directly by the borrower and do not include payments obtained by Federal offset, garnishment, income or asset execution, or after a judgment has been entered on a loan. A guaranty agency must attempt to secure a lender to purchase the loan at the end of the 9- or 10-month payment period as applicable.

(3) Upon the sale of a rehabilitated loan to an eligible lender—

(i) The guaranty agency must, within 45 days of the sale—

(A) Provide notice to the prior holder of such sale, and

(B) Request that any consumer reporting agency to which the default was reported remove the record of default from the borrower's credit history.

(ii) The prior holder of the loan must, within 30 days of receiving the notification from the guaranty agency, request that any consumer reporting agency to which the default claim payment or other equivalent record was reported remove such record from the borrower's credit history.

(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 of the same loan type as the rehabilitated loan and must permit the borrower to choose any statutorily available repayment plan for that loan type. The lender must treat the first payment made under the nine 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.

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§ 685.211 Miscellaneous repayment provisions.

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(f) *Rehabilitation of defaulted loans.* (1) A defaulted Direct Loan, except for a loan on which a judgment has been obtained, is rehabilitated if the borrower makes nine voluntary, reasonable, and affordable monthly payments within 20 days of the due date during ten consecutive months. The amount of such a payment is determined on the basis of the borrower's total financial circumstances. The Secretary determines the amount of a borrower's reasonable and affordable payment on the basis of a borrower's total financial circumstances.

(2) The Secretary provides the borrower with a written statement confirming the borrower's reasonable and affordable payment amount, as determined by the Secretary, and explaining any other terms and conditions applicable to the required series of payments that must be made before the borrower's account can be rehabilitated. The statement informs the borrower that the borrower may object to the terms and conditions of the rehabilitation agreement, and explains the method and timeframe for objecting to the terms and conditions of the rehabilitation agreement.

(3) If the borrower objects to the monthly payment amount determined under paragraph (f)(1) of this section, the Secretary recalculates the payment amount by using the monthly payment calculation rules in §685.221(b)(1) and §685.221(b)(2), except that if the calculated amount under these sections is less than \$5, the monthly rehabilitation payment is \$5.

(4) The Secretary provides the borrower with a written statement confirming the borrower's recalculated reasonable and affordable payment amount.

(5) If the borrower objects to the monthly payment amount determined under paragraph (f)(1) of this section, but does not provide the documentation required to calculate a monthly payment amount under §685.221(b)(1) and §685.221(b)(2), no rehabilitation agreement exists between the borrower and the Secretary, and the rehabilitation does not proceed.

(6) If a defaulted loan is rehabilitated, the Secretary instructs any consumer reporting agency to which the default was reported to remove the default from the borrower's credit history.

~~(27)~~ A defaulted Direct Loan on which a judgment has been obtained may not be rehabilitated.

~~(38)~~ A Direct Loan obtained by fraud for which the borrower has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance may not be rehabilitated.

~~(49)~~ Effective for any defaulted Direct Loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.

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Issue Paper #9
Proposed Regulatory Language
Loans Group

Issue: Rehabilitation of Defaulted Direct Loan and FFEL Program Loans: Treatment of Borrowers Subject to Administrative Wage Garnishment

Statutory Cite: §428F(a)

Regulatory Cites: §§682.405(a)(2)(i) and 685.211(f)

Summary of Change:

The proposed regulatory language requires a guaranty agency to withdraw administrative wage garnishment for a FFEL borrower who makes five, monthly, qualifying payments under a loan rehabilitation agreement. In the Direct Loan program, the Department withdraws administrative wage garnishment after the five, monthly, qualifying rehabilitation payments. In both loan programs, the borrower may obtain this benefit only one time.

Change:

§ 682.405 Loan rehabilitation agreement.

(a) *General.* (1) A guaranty agency that has a basic program agreement must enter into a loan rehabilitation agreement with the Secretary. The guaranty agency must establish a loan rehabilitation program for all borrowers with an enforceable promissory note for the purpose of rehabilitating defaulted loans, except for loans for which a judgment has been obtained, loans on which a default claim was filed under §682.412, and loans on which the borrower has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance, so that the loan may be purchased, if practicable, by an eligible lender and removed from default status.

(2) A loan is considered to be rehabilitated only after—

(i) The borrower has made and the guaranty agency has received nine of the ten payments required under a monthly repayment agreement.

(A) Each of which payments is—

(1) Made voluntarily;

(2) In the full amount required; and

(3) Received within 20 days of the due date for the payment, and

(B) All nine payments are received within a 10-month period that begins with the month in which the first required due date falls and ends with the ninth consecutive calendar month following that month, and

(ii) The loan has been sold to an eligible lender.

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(3) If a borrower's loan is being collected by administrative wage garnishment while the borrower is making monthly payments on the same loan under a loan rehabilitation agreement, the guaranty agency must stop collecting the loan by administrative wage garnishment after the borrower makes five qualifying monthly payments under the rehabilitation agreement. A borrower may only obtain the benefit of this paragraph with respect to withdrawal of administrative wage garnishment once.

(34) After the loan has been rehabilitated, the borrower regains all benefits of the program, including any remaining deferment eligibility under section 428(b)(1)(M) of the Act, from the date of the rehabilitation. Effective for any loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.

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§ 685.211 Miscellaneous repayment provisions.

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(f) *Rehabilitation of defaulted loans.* (1) A defaulted Direct Loan, except for a loan on which a judgment has been obtained, is rehabilitated if the borrower makes nine voluntary, reasonable, and affordable monthly payments within 20 days of the due date during ten consecutive months. 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 consumer reporting agency to which the default was reported to remove the default from the borrower's credit history.

(2) A defaulted Direct Loan on which a judgment has been obtained may not be rehabilitated.

(3) A Direct Loan obtained by fraud for which the borrower has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance may not be rehabilitated.

(4) If a borrower's loan is being collected by administrative wage garnishment while the borrower is making monthly payments on the same loan under a loan rehabilitation agreement, the Secretary stops collecting the loan by administrative wage garnishment after the borrower makes five qualifying monthly payments under the rehabilitation agreement. A borrower may only obtain the benefit of this paragraph with respect to withdrawal of administrative wage garnishment once.

(45) Effective for any defaulted Direct Loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.

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**Issue Paper #10
Proposed Regulatory Language
Loans Group**

Issue: Participation Rate Index Appeal for Single Cohort Default Rate Loss of Eligibility to Participate in the Direct Loan Program

Statutory Cite: N/A

Regulatory Cites: 34 CFR 668 Subpart N-Cohort Default Rates; §§668.204(c)(1), 668.206(a)(1) and 668.214(a)(1)

Summary of Change:

The proposed change amends the participation rate for an institution's participation rate index appeal of a single year sanction using a three year cohort default rate.

Change:

§668.204 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.

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(c)(1)(i) *Participation rate index challenges.* (1)(i) You may challenge an anticipated loss of eligibility under §668.206(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than ~~0.06015~~ 0.0832.

* * * * *

§668.206 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.

(a)(1) *End of participation.* (1) Except as provided in paragraph (e) of this section, you lose your eligibility to participate in the FFEL and Direct Loan programs 30 days after you receive our notice that your most recent cohort default rate for fiscal year 2011 or later is greater than 40 percent.

* * *

(e) *Request for adjustments and appeals.* (1) A loss of eligibility under this section does not take effect while your request for adjustment or appeal, as listed in §668.208(a), is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.

(2) Eligibility continued under paragraph (e)(1) of this section ends if we determine that none of the requests for adjustments and appeals you have submitted qualify you for continued eligibility under §668.208. Loss of eligibility takes effect on the date that you receive notice of our determination on your last pending request for adjustment or appeal.

(3) You do not lose eligibility under this section if we determine that your request for adjustment or appeal meets all requirements of this subpart and qualifies you for continued eligibility under §668.208.

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§668.214 Participation rate index appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under Sec. 668.206(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than ~~0.06015~~ 0.0832.

(2) You may appeal a notice of a loss of eligibility under Sec. 668.206(a)(2), based on three cohort default rates of 30 percent or greater, if your participation rate index is equal to or less than 0.0625 for any of those three cohorts' fiscal years.

(3) You may appeal potential placement on provisional certification under Sec. 668.16(m)(2)(i) based on two cohort default rates that fail to satisfy the standard of administrative capability in Sec. 668.16(m)(1)(ii) if your participation rate index is equal to or less than 0.0625 for either of the two cohorts' fiscal years.

(b) Calculating your participation rate index. (1) Except as provided in paragraph (b)(2) of this section, your participation rate index for a fiscal year is determined by multiplying your cohort default rate for that fiscal year by the percentage that is derived by dividing--

(i) The number of students who received an FFELP or a Direct Loan Program loan to attend your institution during a period of enrollment, as defined in 34 CFR 682.200 or 685.102, that overlaps any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year, by

(ii) The number of regular students who were enrolled at your institution on at least a half-time basis during any part of the same 12-month period.

(2) If your cohort default rate for a fiscal year is calculated as an average rate under Sec. 68.202(d)(2), you may calculate your participation rate index for that fiscal year using either that average rate or the cohort default rate that would be calculated for the fiscal year alone using the method described in Sec. 668.202(d)(1).

(c) Deadline for submitting an appeal. You must send us your appeal under this section, including all supporting documentation, within 30 days after you receive—

(1) Notice of your loss of eligibility; or

(2) Notice of a second cohort default rate that equals or exceeds 30 percent but is less than or equal to 40 percent and that, in combination with an earlier rate, potentially subjects you to provisional certification under Sec. 668.16(m)(2)(i).

(d) Determination. (1) You do not lose eligibility under Sec. 668.206 and we do not place you on provisional certification, if we determine that you meet the requirements for a participation rate index appeal.

(2) If we determine that your participation rate index for a fiscal year is equal to or less than ~~0.06015~~ 0.0832 or 0.0625, under paragraph (d)(1) of this section, we also excuse you from any subsequent loss of eligibility under Sec. 668.206(a)(2) or placement on provisional certification under Sec. 668.16(m)(2)(i) that would be based on the official cohort default rate for that fiscal year.

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