



August 10, 2015

via email to www.regulations.gov

Mr. Jean-Didier Giana
U.S. Department of Education
1990 K Street, NW
Room 8055
Washington DC 20006-8502

RE: Docket ID ED-2014-OPE-0161

Dear Mr. Giana:

As the trade associations representing the majority of student loan providers (guaranty agencies, lenders and servicers) in the Federal Family Education Loan Program (FFELP), and having had colleagues act as negotiators during the 2015 negotiated rulemaking sessions to create rules for a new income-contingent repayment plan as well as the required use of the Department of Defense database in granting the Servicemembers Civil Relief Act (SCRA) interest rate limit, we write to express our appreciation for the opportunity to contribute to this essential process. We are also pleased that consensus was reached.

Since reaching consensus on the proposed regulatory package, our members have continued to review and analyze the language published in the July 9th Notice of Proposed Rulemaking (NPRM) along with the proposed SCRA Interest Rate Limitation Request and the revised Income-Driven Repayment Plan Request forms. Comments on the two forms have been submitted separately. We look forward to continuing the dialogue with the Department regarding the operational issues associated with these new provisions.

Our attached comments include several technical corrections for clarity and consistency and also a few requests for confirmation in the preamble of the final regulations to ensure our understanding of certain issues. We also identified what we believe was an oversight with regard to the REPAYE plan— specifically, how the proposed rules treat a married borrower who files a joint tax return but subsequently separates from his or her spouse. As proposed, such a borrower is not allowed to self-certify that he or she is separated at the time of applying for REPAYE. That option is only available to a borrower who is married but files a separate tax return. We respectfully request that the Department review this issue and revise the applicable regulations and the draft IDR Plan Request form to allow a married borrower who files a joint federal tax return the ability to self-certify that he or she is separated from his or her spouse at the time of application for REPAYE, and thereby have the spouse's income excluded from the monthly payment calculation.

Finally, we extend our appreciation to the Department staff that spent countless hours with the negotiators to better understand issues, complete research, hear all sides of issues and develop consensus-building positions. We are grateful for the time and commitment put forth by all involved.

We and our colleagues remain committed to working with the Department in the implementation of these regulations and the development of those to come.

Sincerely,

Education Finance Council (EFC)
National Council of Higher Education Resources (NCHER)
Student Loan Servicing Alliance (SLSA)

cc: Gail McLarnon

SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

1. DEFINITION OF ACTIVE DUTY

Preamble p. 39615, Columns 2-3, Paragraph 3

Comment: The Notice of Proposed Rulemaking (NPRM) published on July 9, 2015 (Federal Register/Vol. 80, No. 131) states "Under 10 U.S.C. 101 the term 'active duty for a period of more than 30 days' means active duty under a call or order that does not specify a period of 30 days or less." However, it is not clear that this active duty requirement only applies to National Guard members.

Pursuant to 50 U.S.C. App. §511(2)(a)(i), "military service" for members of the Army, Navy, Air Force, Marine Corps, or Coast Guard is defined as active duty under 10 U.S.C. 101(d)(1), which states: "The term 'active duty' means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty."

50 U.S.C. App. §511(2)(a)(ii), goes on to define "military service" for members of the National Guard as "service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds." 10 U.S.C. 101(d)(2) clarifies this requirement for National Guard members by defining "active duty for a period of more than 30 days" as "active duty under a call or order that does not specify a period of 30 days or less."

This active duty requirement for National Guard members is reflected accurately in Sections 4 and 7 on the proposed SERVICEMEMBERS CIVIL RELIEF ACT (SCRA): INTEREST RATE LIMITATION REQUEST form.

Recommendation: Clarify in the preamble to the Final Rule that the "active duty for a period of more than 30 days" requirement only applies to National Guard members performing qualifying military service under section 502(f) of title 32, United States Code.

2. PRIOR AND CURRENT PERIODS OF ACTIVE DUTY STATUS FOR DETERMINING ELIGIBILITY FOR INTEREST RATE LIMITATION

34 CFR §682.208(a)(8) & (j)

Comment: Under proposed §682.202(a)(8), the Department would require loan holders to query the DMDC database to identify all active duty borrowers who had one or more outstanding loans "made prior to the borrower entering active duty status" and to apply the six percent maximum interest rate to each such loan for the corresponding active duty service period. However, neither this paragraph nor the supporting paragraphs in §682.208(j) explain whether the phrase "entering active duty status" refers only to the current active duty service period identified in the portfolio-wide DMDC query or to each borrower's first-ever active duty

service period, which may have ended before the current active duty service period listed in the DMDC database.

For example, a borrower obtained her student loans on 9/1/06, 9/1/07, 9/1/08, and 9/1/09, and a portfolio-wide DMDC query on 7/1/16 revealed that she was on active duty from 1/1/13 through 12/31/15. We believe we can apply the SCRA rate of no more than 6% to her loans for the period of 1/1/13 through 12/31/15 without attempting to determine whether she was in active duty status when her loans were disbursed.

However, if the DMDC query had shown that the same borrower was on continuous active duty from 7/1/06 through 12/31/15, her loans would not be eligible for the SCRA rate limitation because the active duty service period began before the borrower obtained her first loan.

In summary, we believe the disbursement date is only relevant to the active duty service period for which we are evaluating eligibility for the SCRA rate limitation.

Recommendation: Confirm in the preamble to the Final Rule that the disbursement date is only relevant to the active duty service period for which the loan holder is evaluating eligibility for the SCRA rate limitation.

3. DMDC DATA FOR RESERVISTS AND NATIONAL GUARD MEMBERS

Comment: For military reservists and SCRA-eligible National Guard members, the Department of Defense's DMDC database reports the active duty service period and preceding order notification period separately but generally not at the same time. If the borrower's active duty period has already begun at the time the loan holder accesses the DMDC, only the active start date will be indicated in the servicemember's record; the preceding order notification start date will be omitted.

For example, a servicemember has an order notification date of August 1st and an active duty start date of August 20th. A loan holder that performs the preemptive monthly query on the 25th of each month would not start the SCRA interest rate limitation until August 20th since on August 25th the order notification date is no longer reflected in the servicemember's record. Unless the loan holder obtains information otherwise, the borrower may not receive the SCRA rate limitation for the full period for which he or she is entitled.

Recommendation: The Secretary working with the Department of Defense should seek ways to improve data provided by the DMDC for reservists and SCRA-eligible National Guard members so that borrowers in similar situations receive consistent treatment.

SCRA TECHNICAL CORRECTION

4. Technical Correction – Insertion of SCRA Acronym

Cite: §685.202(a)(11)

Comment: Insert the "SCRA" acronym into the heading of §685.202(a)(11) for consistency with the change made to §682.202(a)(8).

Recommendation: Revise §685.202(a)(11) as follows:

“(11) *Applicability of the Servicemembers Civil Relief Act (SCRA)* (50 U.S.C. 527, App. sec. 207). Notwithstanding....”

REVISED PAY AS YOU EARN REPAYMENT PLAN (REPAYE)

5. ALTERNATIVE REPAYMENT PLAN PAYMENT AMOUNT CALCULATION FREQUENCY

Preamble p. 39620, Column 1, Paragraph 1

Comment: A borrower can be placed on the alternative repayment plan multiple times over the course of his or her participation in the REPAYE plan if he or she is habitually late in providing income documentation for purposes of renewing the annual payment period. In such cases, the payment amount under the alternative repayment plan needs to be calculated each time the borrower is placed on the plan. This scenario was not explained in the NPRM preamble and is not outlined in the regulation.

Recommendation: Explain in the preamble to the Final Rule that a borrower can be placed on the alternative repayment plan multiple times for not re-certifying timely and that the payment amount is calculated each time the borrower is placed on the plan.

6. SEPARATED BORROWER FILING A JOINT TAX RETURN

34 CFR §685.209(c)(1)

Comment: Section 455(e)(2) requires that income-contingent repayment amounts be based on the AGI of the borrower, and if applicable, the borrower’s spouse. Language in the income-contingent regulation, §685.209(a)(1)(i), states that for a married borrower filing a joint tax return, adjusted gross income (AGI) includes both the borrower’s and spouse’s income and for a married borrower filing separately, AGI includes only the borrower’s income. The Department has included the same criteria in the income-based repayment regulations, §685.221(a)(1). This regulatory language makes the tax filing status an integral part of the monthly payment calculation of a married borrower in the income-contingent and income-based repayment plans for Direct Loan borrowers, as it determines the income to be used in the calculation.

In the preamble to the NPRM, the Department states that in order to provide more equitable treatment of married borrowers, it is proposing a change in the treatment of married borrowers when calculating the REPAYE monthly payment amount. Unlike the other income-driven repayment plans, the proposed rule for REPAYE requires the inclusion of both spouses’ income regardless of tax filing status. We understand the Department’s reasoning to be that a married couple has joint resources with which to make the monthly payment. Proposed §685.209(c)(1) defines AGI used to calculate the monthly payment amount for a married borrower filing jointly to be the combined AGI, both the borrower’s and spouse’s income. And unlike PAYE, the proposed rule requires that for a married borrower filing separately, the AGI of the spouse is to be combined with the AGI of the borrower to calculate the monthly payment amount.

However, the proposed rule allows the married borrower who filed separately to certify that he or she is separated from the spouse, or unable to reasonably access the spouse's income information. Based upon that self-certification, the spouse's income would not be used to calculate the REPAYE monthly payment amount. This distinction was included due to the non-federal negotiators' concern during negotiated rulemaking that some married borrowers filing separately would be unable to provide the spouse's income due to circumstances beyond their control. After further consideration, we realized that the negotiators did not discuss the possibility that a married borrower who filed jointly could be separated from his or her spouse at the time of application to the REPAYE plan.

The situation of inability to access income information of the spouse will not present itself because of the joint tax return. However, we see that the possibility exists for a married borrower who filed a joint tax return to be separated from his or her spouse at the time of application for REPAYE. If the borrower is separated from his or her spouse, the borrower would not have the joint resources with which to make the REPAYE monthly payment amount. Because of a joint tax filing status, the proposed rule and the skip logic of the new IDR form do not allow the married borrower who filed jointly to self-certify separation, and thereby have spousal income excluded from the REPAYE monthly payment calculation. Only the married borrower who filed separately is given that option. In this situation, the joint tax filing status would unfairly impact the monthly payment amount of the borrower who is separated from his or her spouse at the time of application for REPAYE. If the Department is proposing to remove tax filing status as a determinant in the payment calculation, then we believe that the REPAYE monthly payment amount of the married borrower who filed a joint tax return and is separated at the time of application to REPAYE should not be calculated using the spouse's income solely because a joint tax return was previously filed. It seems appropriate for the spouse's income to be excluded from the monthly payment calculation in the case of separation from the spouse.

Recommendation: We strongly urge the Department to revise proposed §685.209(c)(1)(i), §685.209(c)(1)(iii), and §685.209(c)(1)(iv) to allow a married borrower who filed a joint federal tax return the ability to self-certify that he or she is separated from his or her spouse at the time of application for REPAYE, and thereby have the spouse's income excluded from the monthly payment calculation. We propose the following changes:

Revise §685.209(c)(1)(i) as follows:

“(i) *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 the spouse's income and is used to calculate the monthly payment amount, unless the borrower certifies, on a form approved by the Secretary, that the borrower is separated from his or her spouse. For a married borrower filing separately, the AGI for each spouse is combined to calculate the monthly payment amount, unless the borrower certifies, on a form approved by the Secretary, that the borrower is-

(A) Separated from his or her spouse; or

(B) Unable to reasonably access the income information of his or her spouse.”

Revise §685.209(c)(1)(iii) as follows:

“(iii) *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 of their support from the borrower. Family size does not include the borrower’s spouse ~~for a borrower filing separately~~ if the borrower is separated from his or her spouse, or if the borrower is filing separately and is unable to reasonably access the spouse’s income information. A borrower’s family size includes other individuals if, at the time the borrower certifies family size, the other individuals-

- (A) Live with the borrower; and
- (B) Receive more than half of their 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 a payment of college costs.”

Revise §685.209(c)(1)(iv) as follows:

“(iv) *Partial financial hardship* means a circumstance in which—

- (A) For an unmarried borrower, or a married borrower who certifies that he or she is either separated or cannot reasonably access his or her spouse’s income, the annual amount due on all of the 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 elected the REPAYE plan, exceeds 10 percent of the difference between the borrower’s AGI and 150 percent of the poverty guideline for the borrower’s family size; or
- (B) For a married borrower, except one who certifies that he or she is either separated or cannot reasonably access their spouse’s income, 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 elected the REPAYE plan, exceeds 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;”

7. MARRIED BORROWER FILING A SEPARATE TAX RETURN, ELIGIBLE LOAN DEBT, AND PRORATION OF PAYMENT AMOUNT

34 CFR §685.209(c)(1)

Comment: Proposed §685.209(c)(1)(i) defines “Adjusted gross income” for a married borrower filing a separate federal income tax return as the combined AGI for each spouse, unless the borrower certifies, on a form approved by the Secretary, that the borrower is separated from his or her spouse or is unable to reasonably access the income information of his or her spouse.

Proposed §685.209(c)(1)(iii) defines “Family size,” in part, for a married borrower as including the borrower’s spouse, unless the borrower filed a separate federal income tax return because the borrower is separated from his or her spouse or is unable to reasonably access the income information of his or her spouse.

Proposed §685.209(c)(1)(iv) states that the determination of a “Partial financial hardship” for a married borrower is calculated using both the borrower’s eligible loans and, if applicable, the

spouse's eligible loans. There is no provision to exclude the spouse's eligible loans if the borrower filed a separate federal income tax return because the borrower is separated from his or her spouse or is unable to reasonably access the income information of his or her spouse.

Proposed §685.209(c)(2)(ii)(B) provides for an adjustment of the married borrower's calculated monthly payment amount if the borrower's spouse has eligible loans. There is no provision to exclude the spouse's eligible loans if the borrower filed a separate federal income tax return because the borrower is separated from his or her spouse or is unable to reasonably access the income information of his or her spouse.

In the case of a married borrower filing separately due to separation or the inability to obtain the spouse's income information, the spouse's income is excluded from AGI and the spouse is excluded from the family size. After further consideration, we realized that the negotiators did not discuss the determination of partial financial hardship or the adjustment of the payment amount in situations when a spouse is excluded from AGI and family size. It seems appropriate for the spouse's eligible loans to be excluded both when determining whether the borrower has a partial financial hardship and determining the borrower's payment amount.

Recommendation: We strongly urge the Department to revise proposed §685.209(c)(1)(iv) and §685.209(c)(2)(ii)(B) to exclude a spouse's eligible loans from both the determination of a partial financial hardship and from the calculation of the borrower's payment amount when a married borrower files a separate federal income tax return because he or she is separated from his or her spouse or is unable to obtain his or her spouse's income at the time of application for REPAYE. *(Note: The following proposed revisions to the regulatory language will need conforming changes if the Department accepts Comment #6, "Separated Borrower Filing a Joint Tax Return," above.)*

Revise §685.209(c)(1)(iv) as follows:

“(iv) *Partial financial hardship* means a circumstance in which—

(A) For an unmarried borrower, or a married borrower who certifies that he or she is either separated or cannot reasonably access his or her spouse's income, 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 elected the REPAYE plan, exceeds 10 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(B) For a married borrower, except one who certifies that he or she is either separated or cannot reasonably access his or her spouse's income, 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 elected the REPAYE plan, exceeds 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; and”

Revise §685.209(c)(2)(ii) as follows:

“(2) *Terms of the Revised Pay As You Earn repayment plan.* (i) The aggregate monthly loan payments of a borrower who selects the REPAYE plan are limited to no more than 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, unless the borrower’s monthly payment amount is adjusted in accordance with paragraph (c)(4)(vii)(E) of this section.

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

(A) Except for borrowers provided for in paragraph (c)(2)(ii)(B) of this section, the borrower’s eligible loans are not solely 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;

(1) For purposes (A), a borrower includes a married borrower who certifies that he or she is separated from his or her spouse or who is unable to reasonably access his or her spouse’s income information.

(B) Both the borrower and borrower’s spouse have eligible loans, in which case the Secretary determines—

(1) Each borrower’s percentage of the couple’s total eligible loan debt;

(2) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (c)(2)(ii)(B)(1) of this section; and

(3) 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 (c)(2)(ii)(B)(2) of this section by the percentage of the total outstanding principal amount of the borrower’s eligible loans that are Direct Loans;”

8. ANNUAL RENEWAL NOTICE CONTENT

34 CFR §685.209(c)(4)(iii)

Comment: The “annual renewal notice” outlined in §685.209(c)(4)(iii) should explain to the borrower that failure to provide income documentation timely will result in outstanding accrued interest being capitalized. For comparison, see the parallel PAYE provision in §685.209(a)(5)(iii)(B).

Recommendation: Revise §685.209(c)(4)(iii)(B) as follows:

“(B) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, as described in paragraphs (c)(2)(iv)(A)(2), (c)(4)(vi) and (vii) of this section.”

9. STRUCTURE OF REGULATION PERTAINING TO CONSEQUENCES FOR FAILING TO PROVIDE INCOME DOCUMENTATION TIMELY

34 CFR §685.209(c)(4)(vii)

Comment: For clarity, we strongly recommend that the Department revise §685.209(c)(4)(vii) such that the provisions contained in subparagraphs (vii)(D)-(G), which explain the impact of returning to the REPAYE plan after being placed on the alternative repayment plan or changing to another IDR plan, are separate and distinct from the lead-in paragraph of (vii).

Due to the current structure of (c)(4)(vii), cross-references in other provisions within §685.209(c) are confusing. For example, consider §685.209(c)(4)(ii)(C). A literal read of this provision indicates that the notice sent to the borrower at the time he or she is placed on the REPAYE plan (i.e., the “REPAYE payment amount notice”) must include, in part, an explanation of the following if the borrower does not provide income documentation timely in subsequent years:

- The borrower will receive a written notice that he or she has been placed on the alternative repayment plan [i.e., (c)(4)(vii)(A)];
- The alternative repayment plan payment amount and how this amount was calculated [i.e., (c)(4)(vii)(B)];
- The fact that the borrower may change to another repayment plan after being placed on the alternative repayment plan [i.e., (c)(4)(vii)(C)];
- The borrower may return to the REPAYE plan by providing income documentation for the period of time the borrower would be on the alternative repayment plan [i.e., (c)(4)(vii)(D)];
- The “catch-up payment” concept [i.e., (c)(4)(vii)(E)];
- Payments made during the alternative repayment plan would count towards IBR, ICR, PAYE, and REPAYE forgiveness [i.e., (c)(4)(vii)(F)]; and
- Payments made during the alternative repayment plan would not count towards PSFL forgiveness [i.e., (c)(4)(vii)(G)]

We do not believe it is the Department’s intent that the “REPAYE payment amount notice” contained in §685.209(c)(4)(ii)(C) should contain all of the information in (vii), especially (vii)(A) through (C).

Similarly, the cross-reference to (c)(4)(vii) in §685.209(c)(4)(iii)(B) is confusing due to the current structure of (vii). The provision in (c)(4)(iii)(B) outlines the content of the “renewal notice” sent to the borrower prior to the end of the annual payment period. We do not believe it is the Department’s intent that the renewal notice should contain all of the information in (vii), specifically (vii)(A) through (C).

An additional issue is the structure of (c)(4)(vii)(D). With the lead-in paragraph of (vii), it is our understanding that the Department’s intent is for the notice sent to the borrower at the time he or she is placed on the alternative repayment plan include an explanation that the borrower may return to the REPAYE plan at any time by providing income documentation for the period of time he or she was on the alternative repayment plan. However, this same paragraph also includes reference to the situation of a borrower who has voluntarily chosen to leave the REPAYE plan, even though the lead-in paragraph is addressing the scenario of a borrower who has been taken out of the REPAYE plan for failing to act timely.

Recommendation: Revise §685.209(c)(4)(vii) such that existing subparagraphs (D) through (G) are stand-alone provisions within §685.209(c)(4). Revise §685.209(c)(4)(vii) to include cross-references, as applicable, to the newly-renumbered paragraphs [i.e., the “old” subparagraphs (D) through (G)] in addition to the existing subparagraphs (A) through (C). Update the cross-references in §685.209(c)(4)(ii)(C) and §685.209(c)(4)(iii)(B) to the newly-renumbered paragraphs [i.e., the “old” subparagraphs (D) through (G)] accordingly.

10. NOTICE OF ALTERNATIVE PAYMENT AMOUNT

34 CFR §685.209(c)(4)(vii)(B)

Comment: The provisions under §685.209(c)(4)(vii) outline the content of the notice provided to the borrower when he or she has been placed on the alternative repayment plan. The language in (vii)(B) implies, but does not clearly state, the payment amount is to be provided. For comparison, the proposed language under §685.209(c)(4)(ii)(A), which outlines the content of the notice provided to the borrower upon being placed on the REPAYE plan, lists the “scheduled monthly payment amount” as one element of that notice.

Recommendation: Revise §685.209(c)(4)(vii) as follows:

“(vii) If the Secretary places the borrower on an alternative repayment plan in accordance with paragraph (c)(4)(vi) of this section, the Secretary provides the monthly payment amount to the borrower with~~sends the borrower~~ a written notification informing the borrower that –”

11. FORGIVENESS PERIOD FOR DIRECT LOAN BORROWER WITH FFELP GRADUATE LOANS

34 CFR 685.209(c)(5)(ii)

Comment: We are uncertain about the applicable forgiveness period (i.e., 20 or 25 years) if a borrower has FFELP Loans obtained for graduate study and Direct Loans obtained for undergraduate study. If the borrower selects the REPAYE plan for the Direct Loans, are the Direct Loans eligible for loan forgiveness after 20 or 25 years? If the borrower were to consolidate the FFELP Loans obtained for graduate study into a Direct Consolidation Loan and request the REPAYE plan, is the Direct Consolidation Loan eligible for loan forgiveness after 20 or 25 years?

Recommendation: Clarify in the preamble to the Final Rule how a borrower’s FFELP loans obtained for graduate study affect the repayment period for REPAYE, including instances when the FFELP loans obtained for graduate study are consolidated into a Direct Consolidation Loan and the borrower does not have any Direct Loans obtained for graduate study.

12. ECONOMIC HARDSHIP DEFERMENT AND QUALIFYING PAYMENTS

34 CFR §685.209(c)(5)(iv)(D)

Comment: For purposes of qualifying payments for loan forgiveness under the REPAYE plan, proposed §685.209(c)(5)(iv)(D) includes a month during which the borrower was not required to make a payment due to receiving an economic hardship deferment on his or her eligible Direct Loans. There is no date restriction on the economic hardship deferment in this REPAYE provision, as is currently the case in both the ICR and PAYE regulations. For purposes of qualifying payments, both the ICR and PAYE regulations limit the period of economic hardship deferment to periods after October 1, 2007. See §685.209(a)(6)(iii)(B)(2) and §685.209(b)(3)(iii)(B)(8)

Recommendation: If the date restriction for periods of economic hardship deferment extends to REPAYE, revise §685.209(c)(5)(iv)(D) as follows:

“(D) A month during which the borrower was not required to make a payment due to receiving an economic hardship deferment on his or her eligible Direct Loans after October 1, 2007.”

REPAYE TECHNICAL CORRECTIONS

13. Technical Correction – No Cap on REPAYE Payment Amount

Preamble p. 39618, Column 3, Paragraph 1

Comment: Under the “Proposed Regulations” paragraph in the preamble, there is an incorrect cross-reference to §685.209(c)(2)(i)(A). There is no “(A).” The correct cross-reference is §685.209(c)(2)(i).

Recommendation: To the extent the Department discusses this provision in the preamble to the Final Rule, the correct cross-reference should be utilized.

14. Technical Correction – Failure to Provide Income Documentation & Interest Capitalization

Preamble p. 39620, Column 1, End of Paragraph from p. 39619

Comment: This paragraph explains the use of administrative forbearance under the PAYE plan when the borrower does not provide income documentation timely. The intent is to explain the contrast as to how the same situation is handled under the REPAYE plan. The preamble paragraph incorrectly states interest that accrues during the forbearance period that occurred prior to the end of the prior annual payment period is not capitalized. Actually, it’s the interest that accrues during the forbearance period that occurred after the end of the prior annual payment period that is not capitalized.

Recommendation: To the extent the Department discusses in the preamble to the Final Rule the use of administrative forbearance and interest capitalization in the PAYE plan to explain the contrast to the REPAYE plan, the preamble language should properly state that interest which accrues during the portion of the forbearance period that occurred after the end of the borrower’s prior annual payment period is not capitalized.

15. Technical Correction – Definition of “Eligible New Borrower” in PAYE

Cite: §685.209(a)(1)(iii)(A)

Comment: The second instance of the word “loan” in the phrase “Direct Loan Program Loan” should not be capitalized to be consistent with similar language in this part.

Recommendation: Revise §685.209(a)(1)(iii)(A) as follows:

“(A) Has no outstanding balance on a Direct Loan Program loan ~~Loan~~ or a FFEL Program loan as of October 1, 2007, or who has no outstanding balance on such a loan on the date he or she receives a new loan after October 1, 2007; and”

16. Technical Correction – Alternative Payments Counting Towards PAYE Forgiveness

Cite: §685.209(a)(6)(i)(F)

Comment: This provision outlines that fact that payments made under the alternative repayment plan after the borrower has been removed from REPAYE count towards forgiveness if the borrower subsequently qualifies for the PAYE plan. The alternative repayment plan is outlined in (c)(4)(vi). Paragraph (c)(4)(vii) is about the notice to be sent after the borrower has been placed in the alternative repayment plan. There is no need to cross-reference the paragraph about the notice when listing the qualifying payments for PAYE loan forgiveness.

Recommendation: Revise §685.209(a)(6)(i)(F) as follows:

“(F) Made monthly payments under the alternative repayment plan described in § 685.209(c)(4)(vi) ~~and (vii)~~ prior to changing to a repayment plan described under § 685.209 or § 685.221;”

17. Technical Correction – Alternative Payments Counting Towards ICR Forgiveness

Cite: §685.209(b)(3)(iii)(B)(4)

Comment: This provision outlines that fact that payments made under the alternative repayment plan after the borrower has been removed from REPAYE count towards forgiveness if the borrower subsequently enters the ICR plan. The alternative repayment plan is outlined in (c)(4)(vi). Paragraph (c)(4)(vii) is about the notice to be sent after the borrower has been placed in the alternative repayment plan. There is no need to cross-reference the paragraph about the notice when listing the qualifying payments for ICR loan forgiveness.

Recommendation: Revise §685.209(b)(3)(iii)(B)(4) as follows:

“(4) Periods in which the borrower made monthly payments under the alternative repayment plan described in § 685.209(c)(4)(vi) ~~and (vii)~~ prior to changing to a repayment plan described under § 685.209 or § 685.221;”

18. Technical Correction – Re-designation of Subsequent Paragraphs under §685.209(b)(3)(iii)

Cite: §685.209(b)(3)(iii)(B)(4)

Comment: The NPRM provides an instruction to add a new paragraph (b)(3)(iii)(B)(4); however, it does not provide an instruction to re-designate existing paragraphs (b)(3)(iii)(B)(4) through (8) as paragraphs (b)(3)(iii)(B)(5) through (9).

Recommendation: Ensure the Final Rule contains an instruction to properly re-designate existing paragraphs (b)(3)(iii)(B)(4) through (8).

19. Technical Correction – Definition of Partial Financial Hardship

Cite: §685.209(c)(1)(iv); Preamble p. 39619, Column 2, Paragraph 4

Comment: For consistency with the PAYE and IBR regulations under §685.209(a)(1)(v) and §685.221(a)(5), respectively, any preamble language in the Final Rule and the REPAYE regulatory language should use the term “elects” instead of “elected.”

Recommendation: Revise §685.209(c)(1)(iv)(A) and (B) as follows:

“(A) For an unmarried borrower, the annual amount due...at the time the borrower initially entered repayment or at the time the borrower elects ~~elected~~ the REPAYE plan, exceeds 10 percent....”

(B) For a married borrower, the annual amount due...at the time the loans initially entered repayment or at the time the borrower or spouse elects ~~elected~~ the REPAYE plan, exceeds 10 percent....”

20. Technical Correction – Three-Year Interest Subsidy Period

Cite: §685.209(c)(2)(iii)(C)(3)

Comment: The period of time any underlying loans were repaid under REPAYE should factor into the three-year interest subsidy limit for a Direct Consolidation loan being repaid under REPAYE.

Recommendation: Revise §685.209(c)(2)(iii)(C)(3) as follows:

“(3) For a Direct Consolidation Loan, includes any period in which the underlying loans were repaid under the income-based repayment plan, ~~or the Pay As You Earn repayment plan,~~ or the REPAYE plan.”

21. Technical Correction – Determination of Partial Financial Hardship

Cite: §685.209(c)(4)(i)(A)

Comment: Change “each subsequent year” to “every year.” Whether a borrower has a partial financial hardship has to be determined the initial year the borrower requests the REPAYE plan and each subsequent year the borrower remains on the plan.

Recommendation: Revise §685.209(c)(4)(i)(A) as follows:

“(4) Eligibility documentation, verification, and notifications. (i)(A) For the year the borrower initially selects the REPAYE plan and for each subsequent year that the borrower remains on the plan, the Secretary determines the borrower’s monthly payment amount for that year. For ~~each subsequent~~ every year that the borrower remains on the plan, the Secretary ~~also~~ determines whether the borrower has a partial financial hardship. To make these determinations, the Secretary requires the borrower to provide documentation, acceptable to the Secretary, of the borrower's AGI.”

22. Technical Correction – Timeframe for Submitting Income Documentation

Cite: §685.209(c)(4)(vi)

Comment: A borrower should submit income documentation within 10 days after the annual deadline date to avoid being placed on the alternative repayment plan. The proposed

regulatory language uses the phrase “within 10 days of the annual deadline date.” The word “of” can mean before or after. For accuracy and consistency with §685.209(c)(4)(iii)(B), use “following.” For language consistency across the PAYE, ICR and IBR regulations, the same change should be made to §685.209(a)(5)(vii), §685.209(b)(3)(vi)(D), and §685.221(e)(7).

Recommendation: Revise §685.209(a)(5)(vii) as follows:

“(vii) The Secretary designates the repayment plan option...but the Secretary does not receive the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section within 10 days ~~of following~~ the specified annual deadline, ...”

Revise §685.209(b)(3)(vi)(D) as follows:

“(D) If, during a subsequent year that a borrower remains on the ICR plan, the Secretary does not receive the documentation described in paragraph (b)(3)(vii)(A) of this section within 10 days ~~of following~~ the specified annual deadline, the Secretary recalculates....”

Revise §685.209(c)(4)(vi) as follows:

“(vi) Except as provided in paragraph (c)(4)(viii)...within 10 days ~~of following~~ the specified annual deadline, the Secretary removes the borrower from the REPAYE plan and.....”

Revise §685.221(e)(7) as follows:

“(7) The Secretary designates the repayment option described in paragraph (d)(1) of this section...but the Secretary does not receive the information described in paragraphs (e)(1)(i) through (e)(1)(ii) of this section within 10 days ~~of following~~ the specified annual deadline, unless....”

23. Technical Correction – Use of Plural vs. Singular “Paragraph”

Cite: §685.209(c)(4)(vii)(D)

Comment: The instances of the word “paragraphs” should be revised to the singular “paragraph” since the conjunction “or” is used.

Recommendation: Revise §685.209(c)(4)(vii)(D) as follows:

“(D) A borrower who has been removed from the REPAYE plan in accordance with paragraph (c)(4)(vi) of this section or changes to another repayment plan in accordance with paragraphs (c)(2)(vi) or (c)(4)(vi)(C) of this section may return to the REPAYE plan if he or she provides the documentation, as described in paragraphs (c)(4)(i)(A) or (B) of this section, necessary for the Secretary to calculate the borrower’s current REPAYE plan monthly payment amount and the monthly amount the borrower would have been required to pay under the REPAYE plan during the period when the borrower was on the alternative repayment plan or any other repayment plan;”

24. Technical Correction - Alternative Payments Counting Towards REPAYE Forgiveness

Cite: §685.209(c)(5)(iv)(C)(2)

Comment: This provision outlines that fact that payments made under the alternative repayment plan after the borrower has been removed from REPAYE count towards forgiveness if the borrower subsequently returns to the REPAYE plan. The alternative repayment plan is outlined in (c)(4)(vi). Paragraph (c)(4)(vii) is about the notice to be sent after the borrower has been placed in the alternative repayment plan. There is no need to cross-reference the paragraph about the notice when listing the qualifying payments for REPAYE loan forgiveness. Also, change “paragraphs” to “paragraph.”

Recommendation: Revise §685.209(c)(5)(iv)(C)(2) as follows:

“(2) The alternative repayment plan described in paragraphs (c)(4)(vi) ~~and (vii)~~ of this section prior to changing to a repayment plan described in paragraph (a), (b), or (c) of this section or § 685.221;”

25. Technical Correction – Determination of Begin Date for Repayment Period

Cite: §685.209(c)(5)(v)

Comment: Since a borrower does not have to have a partial financial hardship to repay his or her loan under the REPAYE plan, remove reference to “qualifying” for the REPAYE plan.

Recommendation: Revise §685.209(c)(5)(v) and (v)(B) as follows:

“(v) For a borrower who participates in ~~qualifies for~~ REPAYE plan, the beginning date for the 20-year or 25-year repayment period is--

*
*
*

(B) If the borrower did not make payments under the Pay As You Earn repayment plan described paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221-

(1) For a borrower who has an eligible Direct Consolidation Loan, the date the borrower made a qualifying monthly payment on the consolidation loan, before the date the borrower ~~qualified for~~ entered the REPAYE plan;

(2) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a qualifying monthly payment on that loan, before the date the ~~borrower~~ qualified for entered the REPAYE plan;”

26. Technical Correction – Repayment Period if Borrower Changes Repayment Plans

Cite: §685.210(b)(2)(ii)

Comment: This provision outlines how the repayment period for a Direct loan is determined if the borrower changes to a different repayment plan. The provision needs to be expanded to include the REPAYE plan.

Recommendation: Revise §685.210(b)(2)(ii) as follows:

“(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 under §685.209(a), the income-contingent repayment plan under § 685.209(b), the income-contingent repayment plan under § 685.209(c), or the income-based repayment plan under § 685.221, the repayment period is calculated as described in §685.209(a)(6)(iii), § 685.209(b)(3)(iii), §685.209(c)(5)(v), or § 685.221(f)(3), respectively.”

27. Technical Correction - Alternative Payments Counting Towards IBR Forgiveness

Cite: §685.221(f)(1)(vi)

Comment: This provision outlines that fact that payments made under the alternative repayment plan after the borrower has been removed from REPAYE count towards forgiveness if the borrower subsequently enters the IBR plan. The alternative repayment plan is outlined in §685.209(c)(4)(vi). Paragraph §685.209(c)(4)(vii) is about the notice to be sent after the borrower has been placed in the alternative repayment plan. There is no need to cross-reference the paragraph about the notice when listing the qualifying payments for IBR loan forgiveness.

Recommendation: Revise §685.221(f)(1)(vi) as follows:

“(vi) Made monthly payments under the alternative repayment plan described in § 685.209(c)(4)(vi) ~~and (vii)~~ prior to changing to a repayment plan described under § 685.209 or § 685.221;”