

DRAFT Proposed Modifications to Existing Regulations

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Issue Paper 1: Establishing a New Pay As You Earn (PAYE) Repayment Plan

Session 3: April 28 - 30, 2015

Statutory cites: §§455(d)(1)(D) and 455(e) of the Higher Education Act of 1965, as amended

Regulatory cites: §§685.208(k), 685.209, and 685.219(c)

Summary of Change: Adds a new income-contingent repayment plan, called the Revised Pay As You Earn (REPAYE) plan, to §685.209 of the Direct Loan Regulations. The REPAYE plan is modeled on the Pay as You Earn (PAYE) repayment plan, and would be available to all Direct Loan student borrowers ~~who have a partial financial hardship (PFH) at the time they select the REPAYE plan,~~ regardless of when the student borrowers received their Direct Loans.

To target the plan to the neediest borrowers, the REPAYE plan has several new features not in the PAYE plan:

- For married borrowers filing separately, the AGI of both the borrower and the spouse are used ~~to determine whether the borrower has a PFH and to determine whether the borrower has to a PFH and~~ to calculate the monthly payment amount. A borrower who is separated from his or her spouse or is unable to reasonably access their spouse's income, is not required to provide their spouse's AGI.
- For subsidized loans, if a borrower's monthly payment is not sufficient to pay the accrued interest (negative amortization), the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the repayment start date under the REPAYE plan, the same as under the PAYE plan. Following this three-year period, under the REPAYE plan, the Secretary charges 50 percent of the remaining accrued interest on subsidized loans during periods of negative amortization.
- For unsubsidized loans (including Direct PLUS Loans made to graduate students), and for subsidized loans for which the borrower has become responsible for accruing interest due in accordance with Section 685.200(f) of the Direct Loan regulations, the Secretary charges 50 percent of the remaining accrued interest during periods of negative amortization.
- If the combined outstanding balance of a borrower's loans being repaid under the REPAYE plan is \$57,500 or less at the time the borrower initially enters the REPAYE plan, the repayment period is 20 years.
- If the combined outstanding balance of a borrower's loans being repaid under the REPAYE plan is greater than \$57,500 at the time the borrower initially enters the REPAYE plan, the repayment period is 25 years.

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- After 20 or 25 years of qualifying repayment, as applicable, the remaining balance of the borrower's loans that have been repaid under the REPAYE plan is forgiven.
- For each year a borrower is in the REPAYE plan, the borrower's monthly payment amount is recalculated based on income and family size information provided by the borrower (If a process becomes available in the future that allows borrowers to give consent to access their income and family size from the Internal Revenue Service or another Federal source, the proposed regulations would accommodate use of such a process for recalculating a borrower's monthly payment amount). There is no cap on the monthly payment amount.
- For each subsequent year after a borrower's is in initial year on the REPAYE plan, the Secretary redetermines whether the borrower has a Partial Financial Hardship (PFH), using the same PFH formula used to determine initial eligibility for REPAYE. If the borrower does not have a PFH, accrued interest is capitalized.
- If the borrower does not provide the income or family size information needed to recalculate the monthly repayment amount, the borrower is removed from REPAYE and placed in an alternative repayment plan. The monthly payment amount under the alternative repayment plan equals the amount required to pay off the loan within 10 years from the date the borrower begins repayment under the alternative repayment plan, or by the end date of the 20- or 25-year REPAYE repayment period, whichever is earlier.
- The borrower may return to the REPAYE plan if the borrower provides the income and family size information for the period that the borrower was on the alternative repayment plan. If the payments the borrower was required to make under the alternative repayment plan are less than the payments the borrower would have been required to make under the REPAYE plan, the monthly REPAYE payment amount is adjusted to ensure that the excess amount owed by the borrower is paid in full by the end of the REPAYE repayment period.
- Payments made under the alternative repayment plan do not count toward Public Service Loan Forgiveness, but may count for forgiveness under the REPAYE plan or another income-driven repayment plan if the borrower returns to the REPAYE plan or changes to another income-driven repayment plan.

In addition, we've made conforming changes to §685.208 (Repayment plans); §685.209(a) (Pay As You Earn repayment plan); §685.209(b) (Income-contingent repayment plan); and §685.221 (Income-based repayment plan); and §685.219 (Public Service Loan Forgiveness Program).

Changes: See attached regulatory text.

§685.208 Repayment plans.

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(a) *General*—(1) *Borrowers who entered repayment before July 1, 2006.* (i) A Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan may be repaid under—

- (A) The standard repayment plan in accordance with paragraph (b) of this section;
- (B) The extended repayment plan in accordance with paragraph (d) of this section;
- (C) The graduated repayment plan in accordance with paragraph (f) of this section;
- (D) The income-contingent repayment plans in accordance with paragraphs (k)(2) or (k)(3) of this section;
or
- (E) The income-based repayment plan in accordance with paragraph (m) of this section.

(ii) A Direct PLUS Loan or a Direct PLUS Consolidation Loan may be repaid under—

- (A) The standard repayment plan in accordance with paragraph (b) of this section;
- (B) The extended repayment plan in accordance with paragraph (d) of this section; or
- (C) The graduated repayment plan in accordance with paragraph (f) of this section.

(2) *Borrowers entering repayment on or after July 1, 2006.* (i) A Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan that was made to a graduate or professional student borrower may be repaid under—

- (A) The standard repayment plan in accordance with paragraph (b) of this section;
- (B) The extended repayment plan in accordance with paragraph (e) of this section;
- (C) The graduated repayment plan in accordance with paragraph (g) of this section;
- (D) The income-contingent repayment plans in accordance with paragraph (k) of this section; or
- (E) The income-based repayment plan in accordance with paragraph (m) of this section.

(ii) A Direct PLUS Loan that was made to a parent borrower may be repaid under—

- (A) The standard repayment plan in accordance with paragraph (b) of this section;
- (B) The extended repayment plan in accordance with paragraph (e) of this section; or
- (C) The graduated repayment plan in accordance with paragraph (g) of this section.

(iii) A Direct Consolidation Loan that did not repay a parent Direct PLUS Loan or a parent Federal PLUS Loan may be repaid under—

- (A) The standard repayment plan in accordance with paragraph (c) of this section;
- (B) The extended repayment plan in accordance with paragraph (e) of this section;
- (C) The graduated repayment plan in accordance with paragraph (h) of this section;

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- (D) The income-contingent repayment plans in accordance with paragraph (k) of this section; or
- (E) The income-based repayment plan in accordance with paragraph (m) of this section.
- (iv) A Direct Consolidation Loan that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan may be repaid under—
- (A) The standard repayment plan in accordance with paragraph (c) of this section;
- (B) The extended repayment plan in accordance with paragraph (e) of this section;
- (C) The graduated repayment plan in accordance with paragraph (h) of this section; or
- (D) The income-contingent repayment plan in accordance with paragraph (k)(2) of this section.
- (v) No scheduled payment may be less than the amount of interest accrued on the loan between monthly payments, except under the income-contingent repayment plans, the income-based repayment plan, or an alternative repayment plan.
- (3) The Secretary may provide an alternative repayment plan in accordance with paragraph (l) of this section.
- (4) All Direct Loans obtained by one borrower must be repaid together under the same repayment plan, except that—
- (i) A borrower of a Direct PLUS Loan or a Direct Consolidation Loan that is not eligible for repayment under ~~the an~~ income-contingent repayment plan or the income-based repayment plan may repay the Direct PLUS Loan or Direct Consolidation Loan separately from other Direct Loans obtained by the borrower; and
- (ii) A borrower of a Direct PLUS Consolidation Loan that entered repayment before July 1, 2006, may repay the Direct PLUS Consolidation Loan separately from other Direct Loans obtained by that borrower.
- (5) Except as provided in §685.209 and §685.221 for the income-contingent repayment plans ~~or and the~~ income-based repayment plan, the repayment period for any of the repayment plans described in this section does not include periods of authorized deferment or forbearance.

[* * *]

(k) *Income-contingent repayment plans.* (1) Under the income-contingent repayment plan described in §685.209(a), the required monthly payment for a borrower who has a partial financial hardship is 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. The Secretary determines annually whether the borrower continues to qualify for this reduced monthly payment based on the amount of the borrower's eligible loans, AGI, and poverty guideline.

(2) Under the income-contingent repayment plan described in §685.209(b), a borrower's monthly repayment amount is generally based on the total amount of the borrower's Direct Loans, family size, and AGI reported by the borrower for the most recent year for which the Secretary has obtained income information.

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~~(3)~~ Under the income-contingent repayment plan described in §685.209(c), a borrower's required monthly payment is 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 §685.209(c)(4)(vii)(E).

~~(3)(4)~~ For the income-contingent repayment plan described in §685.209(b), the regulations in effect at the time a borrower enters repayment and selects the income-contingent repayment plan or changes into the income-contingent repayment plan from another plan govern the method for determining the borrower's monthly repayment amount for all of the borrower's Direct Loans, unless—

(i) The Secretary amends the regulations relating to a borrower's monthly repayment amount under the income-contingent repayment plan; and

(ii) The borrower submits a written request that the amended regulations apply to the repayment of the borrower's Direct Loans.

~~(4)(5)~~ Provisions governing the income-contingent repayment plans are in §685.209.

[* * *]

§685.209 Income-contingent repayment plans.

(a) *Pay As You Earn repayment plan*: The Pay As You Earn repayment plan is an income-contingent repayment plan for eligible new borrowers.

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

(2) * * *

(iii) 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 Pay As You Earn repayment plan. Any period during which the Secretary has previously not charged the borrower accrued interest on an eligible loan under the income-based repayment plan or the Revised Pay As You Earn repayment plan counts toward the maximum three years of subsidy a borrower is eligible to receive under the Pay As You Earn 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.

(3) * * *

(4) * * *

(5) * * *

(6) *Loan forgiveness* (i) To qualify for loan forgiveness after 20 years, a borrower must have participated in the Pay As You Earn repayment plan and satisfied at least one of the following conditions during that period:

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* * *

(E) Made monthly payments under the income-contingent repayment plan described in paragraph (b) of this section, the Revised Pay As You Earn repayment plan described in paragraph (c) of this section, or the income-based repayment plan described in §685.221, including a calculated monthly payment amount of \$0.00.

~~(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;~~

~~(FG)~~ Received an economic hardship deferment on eligible Direct Loans

(ii) * * *

(iii) For a borrower who qualifies for the Pay As You Earn repayment plan, the beginning date for the 20-year period is—

(A) If the borrower made payments under the income-contingent repayment plan described in paragraph (b) of this section, the Revised Pay As You Earn repayment plan described in paragraph (c) of this section, or the income-based repayment plan described in §685.221, the earliest date the borrower made a payment on the loan under one of those plans at any time after October 1, 2007; or

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

[* * *]

(b) *Income-contingent repayment plan*: The income-contingent repayment (ICR) plan is an income-contingent repayment plan under which a borrower's monthly payment amount is generally based on the total amount of the borrower's Direct Loans, family size, and AGI.

(1) * * *

(2) * * *

(3) *Other features of the ICR plan*—(i)

[* * *]

(iii) *Repayment period*. (A) The maximum repayment period under the ICR plan is 25 years.

(B) The repayment period includes—

(1) Periods in which the borrower makes payments under the ICR plan on loans that are not in default;

(2) Periods in which the borrower makes reduced monthly payments under the income-based repayment plan or a recalculated reduced monthly payment after the borrower no longer has a partial financial hardship or stops making income-based payments, as provided in §685.221(d)(1)(i);

(3) Periods in which the borrower made monthly payments under the Pay As You Earn repayment plan or the Revised Pay As You Earn repayment plan;

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(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;

[Note: Although all of the proposed regulatory language for the Revised Pay As You Earn (REPAYE) repayment plan is new, most of it will replicate the reg language for current PAYE. To make it easier to distinguish the differences between the two plans, only REPAYE language that deviates from current PAYE language is shown in redline.]

(c) Revised Pay As You Earn repayment plan: The Revised Pay As You Earn (REPAYE) repayment plan (REPAYE plan) is an income-contingent repayment plan for eligible new borrowers under which a borrower's monthly payment amount is based on the borrower's AGI and family size.

(1) Definitions. As used in this section paragraph (c) of this section—

(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 spouse's income and is used to calculate the monthly payment amount. For a married borrower filing separately, the AGI includes only the borrower's income for both each spouse is used 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.

(ii) Eligible loan means any outstanding loan made to a borrower under the Direct Loan Program or the FFEL Program except for a defaulted loan, a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower, or a Direct Consolidation Loan or Federal Consolidation Loan that repaid a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower;

(iii) Eligible new borrower means an individual who—

(A) Has no outstanding balance on a Direct Loan Program 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

(B)(1) Receives a disbursement of a Direct Subsidized Loan, Direct Unsubsidized Loan, or student Direct PLUS Loan on or after October 1, 2011; or

(2) Receives a Direct Consolidation Loan based on an application received on or after October 1, 2011, except that a borrower is not considered an eligible new borrower if the Direct Consolidation Loan repays a loan that would otherwise make the borrower ineligible under paragraph (a)(1)(iii)(A) of this section;

(iv)(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 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—

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(A) Live with the borrower; and

(B) 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;

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

(A) 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 electeds the REPAYE ~~Pay As You Earn~~ repayment 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 ~~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 electeds the REPAYE ~~Pay As You Earn~~ repayment 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

~~(vi)(v)~~ *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.

(2) *Terms of the Revised Pay As You Earn repayment plan.* (i) ~~A borrower may select the Pay As You Earn repayment plan only if the borrower has a partial financial hardship. The borrower's 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 upward 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 ~~(a)(c)(2)(ii)(B)~~ of this section, the total amount of 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;

(B) Both the borrower and borrower's spouse have eligible loans ~~and filed a joint Federal tax return,~~ 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 ~~(a)(c)(2)(ii)(B)(1)~~ of this section; and

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(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 (a)(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;

(C) The calculated amount under paragraph (a)(c)(2)(i), (a)(c)(2)(ii)(A), or (a)(c)(2)(ii)(B) of this section is less than \$5.00, in which case the borrower's monthly payment is \$0.00; or

(D) The calculated amount under paragraph (a)(c)(2)(i), (a)(c)(2)(ii)(A), or (a)(c)(2)(ii)(B) 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.

(iii) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's loan—

(A) Except as provided in paragraph (c)(2)(iii)(B) of this section, for a 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 Pay As You Earn repayment REPAYE plan. Following this three-year period, the Secretary charges the borrower 50 percent of the remaining accrued interest on the Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan. Any period during which the Secretary has previously not charged the borrower accrued interest on an eligible loan under the income-based repayment plan counts toward the maximum three years of subsidy a borrower is eligible to receive under the Pay As You Earn 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.

(B) For a Direct Unsubsidized Loan, a Direct PLUS Loan made to a graduate or professional student, or the unsubsidized portion of a Direct Consolidation Loan, or for a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan for which the borrower has become responsible for accruing interest in accordance with §685.200(f)(3), the Secretary charges the borrower 50 percent of the remaining accrued interest.

(C) The three-year period described in paragraph (c)(2)(iii)(A) of this section--

(1) Does not include any period during which the borrower receives an economic hardship deferment;

(2) Includes any prior period of repayment under the income-based repayment plan or the Pay As You Earn repayment plan; and

(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 Your Earn repayment plan.

(iv)(A) Except as provided in paragraph (a)(c)(2)(iii) of this section, accrued interest is capitalized—

(1) When the Secretary determines that a borrower does not have a partial financial hardship; or

(2) At the time a borrower chooses to leave the Pay As You Earn REPAYE repayment plan.

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(B)(1) The amount of accrued interest capitalized under paragraph ~~(a)(c)(2)(iv)(A)(1)~~ of this section is limited to 10 percent of the original principal balance at the time the borrower entered repayment under the ~~Pay As You Earn~~ REPAYE plan.

(2) After the amount of accrued interest reaches the limit described in paragraph ~~(a)(c)(2)(iv)(B)(1)~~ of this section, interest continues to accrue, but is not capitalized while the borrower remains on the ~~Pay As You Earn~~ REPAYE plan.

(v) 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 ~~Pay As You Earn~~ REPAYE repayment plan or ~~no longer~~ the Secretary determines the borrower does not have a partial financial hardship.

(vi) ~~The repayment period for a borrower under the Pay as You Earn repayment plan may be greater than 10 years. A borrower who no longer wishes to repay under the REPAYE plan may change to a different repayment plan in accordance with §685.210(b).~~

(3) *Payment application and prepayment.* (i) The Secretary applies any payment made under the ~~Pay As You Earn~~ REPAYE repayment plan in the following order:

(A) Accrued interest.

(B) Collection costs.

(C) Late charges.

(D) Loan principal.

(ii) The borrower may prepay all or part of a loan at any time without penalty, as provided under §685.211(a)(2).

(iii) 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 Secretary applies the prepayment consistent with the requirements of §685.211(a)(3).

(iv) If the prepayment amount exceeds a monthly payment amount of \$0.00 under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of paragraph ~~(a)(c)(3)(i)~~ of this section.

~~(4) *Changes in the payment amount.* (i) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the Pay As You Earn 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-contingent payments. In either case, as a result of the recalculation—~~

~~(A) 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 was outstanding at the time the borrower began repayment on the loans under the Pay As You Earn repayment plan; and~~

~~(B) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.~~

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~~(ii) A borrower who no longer wishes to repay under the Pay As You Earn repayment plan may change to a different repayment plan in accordance with §685.210(b).~~

~~(5)(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 whether a borrower has a partial financial hardship to qualify for the Pay As You Earn REPAYE repayment plan for the year the borrower selects the plan and for each subsequent year that the borrower remains on the plan and determines the borrower's monthly payment amount for that year. For each subsequent 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.~~

(B) If the borrower's AGI is not available, or if the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the borrower must provide other documentation to verify income.

(C) ~~Unless otherwise directed by the Secretary, the~~ borrower must 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.

~~(ii) After making the determinations described in paragraph (c)(4)(i)(A) of this section for the initial year that the borrower selects the REPAYE plan and for each subsequent year that the borrower remains on the plan a determination that a borrower has a partial financial hardship to qualify for the REPAYE Pay As You Earn repayment plan for the year the borrower initially selects the plan and for each subsequent year that the borrower has a partial financial hardship, the Secretary sends the borrower a written notification that provides the borrower with—~~

(A) The borrower's scheduled monthly payment amount, as calculated under paragraph ~~(a)(c)(2)~~ of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(B) Information about the requirement for the borrower to annually provide the information described in paragraph ~~(a)(5)(c)(4)(i)~~ of this section, if the borrower chooses to remain on the Pay As You Earn REPAYE repayment plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(C) An explanation of the consequences, as described in paragraphs ~~(a)(5)(c)(4)(i)(C), (c)(4)(vi), and (a)(5)(c)(4)(vii)~~ of this section, if the borrower does not provide the required information; and

(D) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described in paragraphs ~~(a)(c)(54)(ii)(A) through (a)(5)(c)(4)(ii)(D)~~ of this section.

~~(iii) For each subsequent year that a borrower who currently has a partial financial hardship remains on the Pay As You Earn REPAYE repayment plan, the Secretary notifies the borrower in writing of the requirements in paragraph (a)(5)(c)(4)(i) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (a)(5)(c)(4)(iii)(A) of this section. The notification provides the borrower with—~~

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(A) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the documentation described in paragraph (a)(5)(c)(4)(i) of this section (annual deadline); and

(B) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (a)(4)(i) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized at the end of the borrower's current annual payment period in accordance with paragraph (a)(2)(iv) of this section as described in paragraphs (c)(4)(vi) and (c)(4)(vii) of this section.

(iv) Each time the Secretary makes a determination that a borrower ~~no longer has~~ does not have a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the Secretary sends the borrower a written notification that ~~provides the borrower with—~~

(A) The borrower's recalculated monthly payment amount, as determined in accordance with paragraph (a)(4)(i) of this section;

(B) An explanation that unpaid interest will be capitalized in accordance with paragraph (a)(c)(2)(iv) of this section; and

(C) Information about the borrower's option to request, at any time, that the Secretary redetermine whether the borrower has a partial financial hardship, if the borrower's financial circumstances have changed and the income amount used to determine that the borrower no longer has a partial financial hardship does not reflect the borrower's current income, and an explanation that the borrower will be notified annually of this option. If the Secretary determines that the borrower again has a partial financial hardship, the Secretary recalculates the borrower's monthly payment in accordance with paragraph (a)(2)(i) of this section and sends the borrower a written notification that includes the information described in paragraphs (a)(5)(ii)(A) through (a)(5)(ii)(D) of this section.

(v) For each subsequent year that a borrower who does not currently have a partial financial hardship remains on the Pay As You Earn repayment plan, the Secretary sends the borrower a written notification that includes the information described in paragraph (a)(5)(iv)(C) of this section.

(vi)(v) If a borrower who is currently repaying under another repayment plan selects the Pay As You Earn REPAYE repayment plan but does not provide the documentation described in paragraphs (a)(5)(c)(4)(i)(A) or (a)(5)(c)(4)(i)(B) of this section, or if the Secretary determines that the borrower does not have a partial financial hardship, the borrower remains on his or her current repayment plan.

(vii)(vi) The Secretary designates the repayment option described in paragraph (a)(4)(i) of this section Except as provided in paragraph (c)(4)(viii) of this section, if a borrower who is currently repaying under the Pay As You Earn REPAYE repayment plan remains on the plan for a subsequent year but the Secretary does not receive the documentation described in paragraphs (a)(5)(c)(4)(i)(A) and/or (a)(5)(c)(4)(i)(B) of this section within 10 days of the specified annual deadline, the Secretary removes the borrower from the REPAYE plan and places the borrower on an alternative repayment plan under which the borrower's required monthly payment is the amount necessary to repay the borrower's loan in full within the earlier of—

(A) 10 Ten years from the date the borrower begins repayment under the alternative repayment plan; or, unless the Secretary is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

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(B) The ending date of the 20- or 25-year period as described in paragraphs (c)(5)(i) and (c)(5)(ii) of this section.

(vii) If the Secretary places the borrower on an alternative repayment plan in accordance with paragraph (c)(4)(vi) of this section, the Secretary sends the borrower a written notification that informs the borrower that—

(A) The borrower has been placed on an alternative repayment plan;

(B) The borrower's monthly payment amount has been recalculated in accordance with paragraph (c)(4)(vi) of this section;

(C) The borrower may change to another repayment plan in accordance with §685.210(b);

(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 (c)(4)(i)(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;

-(E) If the Secretary determines that the total amount of the payments the borrower was required to make while on the alternative repayment plan or any other repayment plan are less than the total amount the borrower would have been required to make under the REPAYE plan during that period, the Secretary will adjust the borrower's monthly REPAYE plan payment amount to ensure that the difference between the two amounts is paid in full by the end of the 20- or 25-year period described in paragraphs (c)(5)(i) and (c)(5)(ii) of this section;

(F) If the borrower returns to the REPAYE plan or changes to the Pay As Your Earn Repayment plan under §685.209(a); the income-contingent repayment plan under §685.209(b); or the the income-based repayment plan under §685.221, any payments that the borrower made under the alternative repayment plan after the borrower was removed from the REPAYE plan will count towards forgiveness under the REPAYE plan or the other repayment plans under §685.209(a), §685.209(b), or §685.221; and

(G) Payments made under the alternative repayment plan described in paragraph (c)(4)(vi) of this section will not count towards Public Service Loan Forgiveness under §685.219.

(vii) The Secretary does not take the action described in paragraph (c)(4)(vi) of this section if the Secretary receives the documentation described in paragraphs (c)(4)(i)(A) and/or (c)(4)(i)(B) of this section more than 10 days after the specified annual deadline, but is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

(viii)(ix)-If the Secretary receives the documentation described in paragraphs (a)(5)(c)(4)(i)(A) or and (a)(5)(c)(4)(i)(B) of this section within 10 days of the specified annual deadline—

(A) The Secretary promptly determines the borrower's new scheduled monthly payment amount and maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined.

(1) If the new monthly payment amount is less than the borrower's previously calculated Pay As You Earn REPAYE repayment plan monthly payment amount, and the borrower made payments at the previously

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calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of §685.211(a)(3), unless the borrower requests otherwise, the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of §685.209(a)(c)(3)(i).

(2) If the new monthly payment amount is equal to or greater than the borrower's previously calculated ~~Pay As You Earn~~ REPAYE repayment plan monthly payment amount, and the borrower made payments at the previously calculated payment amount after the end of the most recent annual payment period, the Secretary does not make any adjustment to the borrower's account.

(3) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of §685.219, provided that the payments otherwise meet the requirements described in §685.219(c)(1).

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

~~(ix)(A) If the Secretary receives the documentation described in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (a)(4)(i) of this section, the Secretary grants forbearance with respect to payments that are overdue or would be due at the time the new calculated Pay As You Earn repayment plan monthly payment amount is determined, if the new monthly payment amount is \$0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized.~~

~~(B) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of §685.219, provided that the payments otherwise meet the requirements described in §685.219(c)(1).~~

(65) Loan forgiveness. (i) A borrower who meets the requirements specified in paragraph (c)(65)(iii) of this section may qualify for loan forgiveness after 20 or 25 years, as determined in accordance with paragraph (c)(65)(ii) of this section.

(ii)(A) A borrower whose whose total outstanding balance on loans being repaid under the REPAYE plan was \$57,500 or less at the time the borrower initially entered the plan include only loans the borrower received as an undergraduate student or a consolidation loan that repaid only loans the borrower received as an undergraduate student may qualify for forgiveness after 20 years.

(B) A borrower whose total outstanding balance on loans being repaid under the REPAYE plan was more than \$57,500 at the time the borrower initially entered the plan include a loan the borrower received as a graduate or professional student, or a consolidation loan that repaid a loan received as a graduate or professional student may qualify for forgiveness after 25 years.

(C) If the borrower obtains another loan, the forgiveness period is based on the outstanding balance of the loans when the last loan enters repayment under the REPAYE plan.

(iii) To qualify for loan forgiveness after 20 years, a borrower must have participated in the Pay As You Earn repayment plan and satisfied at least one of the following conditions during: The Secretary cancels any remaining outstanding balance of principal and accrued interest on a borrower's Direct Loans that a

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(A) The borrower has made the equivalent of 240 or 300, as applicable, qualifying monthly payments as defined in paragraph (c)(65)(v) of this section; and

(B) Twenty or 25 years, as applicable, have elapsed, beginning on the date determined in accordance with paragraph (c)(65)(v) of this section.

(iv) For the purpose of paragraph (c)(65)(iii)(A) of this section, a qualifying monthly payment is—

~~(A) Made reduced~~A monthly payments under a partial financial hardship as provided in paragraph (a)(2)(i) or (a)(2)(ii) of this section~~the REPAYE plan, including a monthly payment amount of \$0.00, as provided under paragraph (a)(c)(2)(ii)(C) of this section;~~

~~(B) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-contingent payments as provided in paragraph (a)(4)(i) of this section.~~

~~(C)(B) A monthly payment under the Pay As You Earn rRepayment plan described in 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, including a calculated~~monthly payment amount of \$0.00; 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) with a 10-year repayment period.

~~(D) (C) Made~~A monthly payments 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 borrower first selected the Pay As You Earn repayment plan;

~~(E)(DC) A monthly payment made under—~~

(1) The Direct Loan standard repayment plan described in §685.208(b);

(2) The alternative repayment plan described in paragraphs §685.209~~paragraphs (c)(4)(vi) and (vii) of this section prior to changing to a repayment plan described under §685.209 or §685.221;~~

(3) monthly payment under a~~Any other Direct Loan repayment plan, if the amount of the payment was not less than the amount required under the Direct Loan standard repayment plan described in §685.208(b); or Made monthly payments under the income-contingent repayment plan described in paragraph (b) of this section or the income-based repayment plan described in §685.221, including a calculated monthly payment amount of \$0.00.~~

~~(F)(ED) A month during which the borrower Received~~was not required to make a payment due to receiving an economic hardship deferment on his or her eligible Direct Loans.

~~(ii) As provided under paragraph (a)(6)(v) 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—~~

~~(A) The borrower made monthly payments under one or more of the repayment plans described in paragraph (a)(6)(i) of this section, including a monthly payment amount of \$0.00, as provided under paragraph (a)(2)(ii)(C) of this section; and~~

~~(B)(1) The borrower made those monthly payments each year for a 20-year period; or~~

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~~(2) Through a combination of monthly payments and economic hardship deferrals, the borrower has made the equivalent of 20 years of payments.~~

~~(iii)(v) For a borrower who qualifies for the Pay As You Earn REPAYE repayment plan, the beginning date for the 20-year or 25-year repayment period is—~~

~~(A) If the borrower made payments under the Pay As You Earn rRepayment plan described in 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, the earliest date the borrower made a payment on the loan under one of those plans at any time after October 1, 2007; or~~

~~(B) If the borrower did not make payments under the Pay As You Earn rRepayment plan described in 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 or received an economic hardship deferral on that loan on the consolidation loan, before the date the borrower qualified for the Pay As You Earn REPAYE repayment plan; The beginning date is the date the borrower made the payment or received the deferral after October 1, 2007;~~

~~(2) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a qualifying monthly payment or received an economic hardship deferral on that loan, before the date the borrower qualified for the REPAYE plan; The beginning date is the date the borrower made that payment or received the deferral on that loan after October 1, 2007;~~

~~(3) For a borrower who did not make a qualifying monthly payment or receive an economic hardship deferral on the loan under paragraph (a)(c)(65)(iii)(v)(B)(1) or (a)(c)(65)(iii)(v)(B)(2) of this section, the date the borrower made a payment on the loan under the Pay As You Earn REPAYE repayment plan;~~

~~(4) If the borrower consolidates his or her eligible loans, the date the borrower made a qualifying monthly payment on the Direct Consolidation Loan that met the requirements of paragraph (a)(6)(i) of this section; or~~

~~(5) If the borrower did not make a qualifying monthly payment or receive an economic hardship deferral on the loan under paragraph (a)(c)(65)(iii)(v)(A) or (a)(c)(65)(iii)(v)(B) of this section, the date the borrower made a payment on the loan under the Pay As You Earn REPAYE repayment plan.~~

~~(iv)(vi) Any payments made on a defaulted loan are not made under a qualifying repayment plan monthly payments and are not counted toward the 20-year or 25-year forgiveness period.~~

~~(v)(vii)(A) When the Secretary determines that a borrower has satisfied the loan forgiveness requirements under paragraph (a)(c)(65) of this section on an eligible loan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than six months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notice that includes—~~

~~(1) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;~~

~~(2) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and~~

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(3) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(B) The Secretary determines when a borrower has met the loan forgiveness requirements in paragraph (a)(c)(65) of this section and does not require the borrower to submit a request for loan forgiveness.

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

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

(2) Provides the borrower with the information described in paragraph (a)(c)(65)(v)(vii)(A)(3) of this section; and

(3) Returns to the sender any payment received on a loan after loan forgiveness has been granted.

[* * *]

§685.221 Income-based repayment plan.

[* * *]

(b) *Terms of the repayment plan.* (1)

[* * *]

(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. Any period during which the Secretary has previously not charged the borrower accrued interest on an eligible loan under the Pay As You Earn repayment plan or the Revised Pay As You Earn repayment plan counts toward the maximum three years of subsidy a borrower is eligible to receive 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.

[* * *]

(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 the applicable loan forgiveness period:

[* * *]

(v) Made monthly payments under athe Direct Loan income-contingent repayment plan, the Pay As You Earn repayment plan, or the Revised Pay As You Earn repayment plan, including a calculated monthly payment amount of \$0.00.

(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;

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

[* * *]

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

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

(ii) If the borrower did not make payments under ~~the income-contingent repayment plan~~ one of the repayment plans described in paragraph (f)(3)(i) of this section--

[* * *]

§685.219 Public Service Loan Forgiveness Program.

[* * *]

(c) *Borrower eligibility.* (1) A borrower may obtain loan forgiveness under this program if he or she—

[* * *]

(iv) Makes the required 120 monthly payments under one or more of the following repayment plans—

(A) Except for a parent PLUS borrower, an income-based repayment plan, as determined in accordance with §685.221;

(B) Except for a parent PLUS borrower, an income-contingent repayment plan, as determined in accordance with §685.209;

(C) A standard repayment plan, as determined in accordance with §685.208(b); or

(D) Except for an alternative repayment plan, Any other repayment plan if the monthly payment amount paid is not less than what would have been paid under the Direct Loan standard repayment plan described in §685.208(b).
