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Issue Paper 1
Session 2: March 31 – April 2, 2015

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

Statutory cites: §§455(d)(1)(D) and 455(e)

Regulatory cites: §§685.208(k) and 685.209

Summary of Change: Added 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 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 calculate the monthly payment amount.
- 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), 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.
- After 20 or 25 years of qualifying repayment, as applicable, the remaining balance of loans 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

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becomes available in the future that allows borrowers to give consent to access their income and family size from the Internal Revenue Service or other 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 year a borrower is in the REPAYE plan, the Secretary redetermines whether the borrower has a 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.

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).

Changes: See attached regulatory text.

§685.208 Repayment plans.

(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;

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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.

(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;

(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 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

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(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 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.

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(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.

(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.

(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.

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

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§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.

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(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

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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.

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(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.

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(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—

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(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.

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

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

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(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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(c) *Revised Pay As You Earn repayment plan*: The Revised Pay As You Earn (REPAYE) repayment plan is an income-contingent repayment plan 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—

(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, the combined AGI of both the borrower and the borrower's spouse is used to calculate the monthly payment amount. For a married borrower filing separately, the AGI for both spouses is used to calculate the monthly payment amount, unless the borrower is separated from 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) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(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;

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

(A) For an unmarried borrower the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the 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, 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

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repayment or at the time the borrower or spouse elects 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

(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 REPAYE plan only if the borrower has a partial financial hardship. The borrower's aggregate monthly loan payments 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.

(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;

(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;

(C) The calculated amount under paragraph (c)(2)(i), (c)(2)(ii)(A), or (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 (c)(2)(i), (c)(2)(ii)(A), or (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) 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 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..

(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, the Secretary charges the borrower 50 percent of the remaining accrued interest.

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(C) The three-year period described in paragraph (c)(2)(iii) 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 (c)(2)(iii) of this section, accrued interest is capitalized--

(1) When a borrower is determined to no longer have a partial financial hardship; or

(2) At the time a borrower chooses to leave the REPAYE plan

(B)(1) The amount of accrued interest capitalized under paragraph (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 REPAYE plan.

(2) After the amount of accrued interest reaches the limit described in paragraph (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 repayment 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 leaves the REPAYE plan or no longer has a partial financial hardship.

(vi) 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 REPAYE 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 (c)(3)(i) of this section.

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(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 and determines the borrower's monthly payment amount for that year. 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, 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 (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 (c)(4)(i) of this section, if the borrower chooses to remain on the REPAYE 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 (c)(4)(i)(C) and (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 (c)(5)(ii)(A) through (c)(4)(ii)(D) of this section.

(iii) For each subsequent year that a borrower remains on the REPAYE plan, the Secretary notifies the borrower in writing of the requirements in paragraph (c)(4)(i) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (c)(4)(iii)(A) of this section. The notification provides the borrower with—

(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 (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, as specified in paragraph (c)(4)(vi) of this section.

(iv) Each time the Secretary makes a determination that a borrower no longer has a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the Secretary sends the

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borrower a written notification that unpaid interest will be capitalized in accordance with paragraph (c)(2)(iv) of this section.

(v) If a borrower who is currently repaying under another repayment plan selects the REPAYE plan but does not provide the documentation described in paragraphs (c)(4)(i)(A) or (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.

(vi) If a borrower who is currently repaying under the REPAYE plan remains on the plan for a subsequent year but the Secretary does not receive the documentation described in paragraphs (c)(4)(i)(A) and (c)(4)(i)(B) of this section within 10 days of the specified annual deadline. . .

[TOPIC FOR DISCUSSION]

(vii) If the Secretary receives the documentation described in paragraphs (c)(4)(i)(A) and (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 REPAYE plan monthly payment amount, and the borrower made payments at the previously 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(c)(3)(i).

(2) If the new monthly payment amount is equal to or greater than the borrower's previously calculated REPAYE 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.

(6) *Loan forgiveness.* (i) A borrower who meets the requirements specified in paragraph (c)(6)(iii) of this section may qualify for loan forgiveness after 20 or 25 years, as determined in accordance with paragraph (c)(6)(ii) of this section.

(ii)(A) A borrower 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 may qualify for forgiveness after 20 years.

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(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 may qualify for forgiveness after 25 years.

(iii) The Secretary cancels any remaining outstanding balance of principal and accrued interest on a borrower's Direct Loans that are being repaid under the REPAYE plan after—

(A) The borrower has made the equivalent of 240 or 300, as applicable, qualifying monthly payments as defined in paragraph (c)(6)(v) of this section; and

(B) Twenty or 25 years, as applicable, have elapsed, beginning on the date determined in accordance with paragraph (c)(6)(v) of this section.

(iv) For the purpose of paragraph (c)(6)(iii)(A) of this section, a qualifying monthly payment is—

(A) A monthly payment under the REPAYE plan, including a monthly payment amount of \$0.00, as provided under paragraph (c)(2)(ii)(C) of this section;

(B) A monthly payment under the Pay As You Earn Repayment 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 payment amount of \$0.00; .

(C) A monthly payment 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 REPAYE plan;

(D) A monthly payment under 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

(E) A month during which the borrower received an economic hardship deferment on his or her eligible Direct Loans.

(v) For a borrower who qualifies for the REPAYE 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 Repayment 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; or

(B) If the borrower did not make payments under the Pay As You Earn Repayment 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 on the consolidation loan, before the date the borrower qualified for 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 the REPAYE plan;

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(3) For a borrower who did not make a qualifying monthly payment on the loan under paragraph (c)(6)(v)(B)(1) or (c)(6)(v)(B)(2) of this section, the date the borrower made a payment on the loan under the REPAYE 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; or

(5) If the borrower did not make a qualifying monthly payment on the loan under paragraph (c)(6)(v)(A) or (c)(6)(v)(B) of this section, the date the borrower made a payment on the loan under the REPAYE plan.

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

(vii)(A) When the Secretary determines that a borrower has satisfied the loan forgiveness requirements under paragraph (c)(6) 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

(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 (c)(6) 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 (c)(6)(vii)(A)(3) of this section; and

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

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§685.221 Income-based repayment plan.

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(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

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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 the Direct Loan income-contingent repayment plan, Pay As You Earn repayment plan, or Revised Pay As You Earn repayment plan, including a calculated monthly payment amount of \$0.00.

[* * *]

(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 one of the repayment plans described in paragraph (f)(3)(i) of this section—

* * * * *

