
Session 2: November 1-5, 2021

§ 685.209 Income-driven repayment plans.

The Department’s proposed text appears in black and suggested edits appear in blue.

(i) Procedures.

(1) To enter any IDR plan, and except as provided under TK, the borrower must complete an application on a form approved by the Secretary;

(2) As part of the process of completing a Master Promissory Note or a Loan Consolidation Promissory Note, the borrower must consent to the disclosure of applicable tax information under §§ 455(e)(8) and 493C(c)(2) of the Act; and may opt into automatic enrollment into an income-driven repayment plan if the borrower becomes significantly delinquent on the borrower’s loans, defined as missing 80 days’ worth of payments. At this point, the borrower may choose a specific income-driven repayment plan into which to be automatically enrolled. [Note: This number was chosen to help borrowers avoid the first instance of negative credit reporting, which occurs after approximately three months’ worth of missed payments.]

(3) As part of the application for an IDR plan, and if the borrower has not already done so, the borrower must consent to the disclosure of applicable tax information under §§ 455(e)(8) and 493C(c)(2) of the Act unless the borrower has opted into automatic enrollment into an income-driven repayment plan and becomes significantly delinquent on the borrower’s loans, as outlined in paragraph (2);

(4) The Secretary uses the borrower’s consent under paragraphs (2) or (3) to obtain the borrower’s income and family size from the Internal Revenue Service;

(5) If the Secretary cannot obtain the borrower’s income and family size from the Internal Revenue Service, the Secretary requires the borrower and spouse, as applicable, to provide documentation of applicable income and family size information;

(6) After the Secretary obtains sufficient information from the borrower or otherwise to calculate the borrower’s monthly payment amount, the Secretary calculates the borrower’s payment and establishes the 12 monthly repayment obligations for which the borrower will be obligated to make a payment in that amount;
(7) The Secretary then sends to the borrower a repayment disclosure outlining the borrower’s payment amount, explains in general terms how the payment is calculated, informs the borrower of the procedures that will be followed under this subsection, and requests that the borrower contact the Secretary if the payment amount disclosed to the borrower is unaffordable to the borrower;

(8) If the borrower contacts the Secretary and indicates the payment amount is not reflective of the borrower's income or family size, the Secretary allows the borrower to submit alternative documentation of income or family size not based on tax information to account for circumstances such as a decrease in income since filing a tax return, separation from a spouse following filing taxes jointly with that spouse, the birth or impending birth of a child, or other comparable circumstances;

(9) If the borrower provides alternative documentation under paragraph (8) or the Secretary must obtain documentation from the borrower or spouse under paragraph (5), the Secretary places the borrower’s loans into an administrative forbearance under § 685.205(b)(9) to promptly process the borrower’s application and information;

(10) On an annual basis the Secretary follows the procedures in paragraphs (4) through (9) once the borrower only has 3 monthly payments remaining under the 12-month period specified under paragraph (6).

(11) If the Secretary requires information from the borrower under paragraph (5) to recalculate the borrower’s monthly repayment amount under paragraph (10), and the borrower does not provide the necessary documentation to the Secretary by the time the last payment is due under the 12-month period specified under paragraph (6), then:

(A) For the IBR and PAYE plans, the borrower’s monthly payment amount is the amount under paragraph (f)(2)(B) or (f)(3)(B);
(B) For the ICR Plan, the borrower’s monthly payment amount is the amount the borrower would have paid under a 10-year standard repayment plan based on the loan balance and interest rate that existed for the loan when the borrower entered ICR;
(C) For the REPAYE Plan, the borrower is removed from the REPAYE plan and placed into an alternative repayment plan under § 685.208(j) with fixed payments that are amortized over a period of time that is equal to the lesser of:
   (i) 10 years; or
   (ii) The remaining period of time that the borrower would have needed to repay loans under the REPAYE plan to receive forgiveness under subsection (j);
(D) For the EICR Plan TK.

(12) At any point during the 12-month period specified under paragraph (6), the borrower may request that the Secretary recalculate the borrower’s payment earlier than would have otherwise been the case to account for a self-reported change in the borrower’s circumstances; in such cases, the 12-month period specified under paragraph (6) is reset based on the borrower’s new information.
(13) If the borrower has opted into automatic enrollment in an income-driven plan, as outlined in paragraph (2), and subsequently becomes 60 days delinquent on the borrower’s loans, the Secretary provides the borrower with the following:

   (A) Notification that the borrower is at least 60 days delinquent
   (B) A repayment disclosure outlining the borrower’s payment amounts if the borrower were to enroll in available income-driven repayment plans, based on information available to the Secretary
   (C) An explanation that the Secretary shall enroll the borrower into an income-driven plan, as outlined in paragraph (2), if the borrower becomes 80 days delinquent unless the borrower contacts the Secretary to opt out.

(14) If the borrower has opted into automatic enrollment in an income-driven plan, as outlined in paragraph (2), and subsequently becomes 80 days delinquent on the borrower’s loans, and if the borrower has not chosen a specific income-driven repayment plan, the Secretary shall:

   (A) Enroll the borrower into the income-driven repayment plan that requires the lowest monthly payment amount
   (B) If more than one income-driven repayment plan would offer the borrower the same lowest monthly payment amount, enroll the borrower into the income-driven repayment plan that has the most favorable terms for the borrower

(15) The Secretary tracks a borrower’s progress towards eligibility for forgiveness under subsection (k) automatically and forgives loans that meet the criteria under subsection (k) without the need for an application or documentation from the borrower.