

§ 682.211 Forbearance.

(a)(1) The Secretary encourages a lender to grant forbearance for the benefit of a borrower or endorser in order to prevent the borrower or endorser from defaulting on the borrower's or endorser's repayment obligation, or to permit the borrower or endorser to resume honoring that obligation after default. *Forbearance* means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously were scheduled.

(2) Subject to paragraph (g) of this section, a lender may grant forbearance of payments of principal and interest under paragraphs (b), (c), and (d) of this section only if—

(i) The lender reasonably believes, and documents in the borrower's file, that the borrower or endorser intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 682.210 and the Secretary does not pay interest benefits on behalf of the borrower under § 682.301.

(3) If two individuals are jointly liable for repayment of a PLUS loan or a Consolidation loan, the lender may grant forbearance on repayment of the loan only if the ability of both individuals to make scheduled payments has been impaired based on the same or differing conditions.

(4) Except as provided in paragraph (f)(10) of this section, if payments of interest are forborne, they may be capitalized as provided in § 682.202(b).

(b) A lender may grant forbearance if—

(1) The lender and the borrower or endorser agree to the terms of the forbearance and, unless the agreement was in writing, the lender sends, within 30 days, a notice to the borrower or endorser confirming the terms of the forbearance and records the terms of the forbearance in the borrower's file; or

(2) In the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree to the terms of the forbearance. If the lender and the borrower or endorser agree to the terms orally, the lender must notify the borrower or endorser of the terms within 30 days of that agreement.

(d) A guaranty agency may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after default but prior to claim payment. The terms of the forbearance agreement in this situation must include a new signed agreement to repay the debt.

(e)(1) At the time of granting a borrower or endorser a forbearance, the lender must provide the borrower or endorser with information to assist the borrower or endorser in understanding the impact of capitalization of interest on the loan principal and total interest to be paid over the life of the loan; and

(2) At least once every 180 days during the period of forbearance, the lender must contact the borrower or endorser to inform the borrower or endorser of—

(i) The outstanding obligation to repay;

(ii) The amount of the unpaid principal balance and any unpaid interest that has accrued on the loan since the last notice provided to the borrower or endorser under this paragraph;

(iii) The fact that interest will accrue on the loan for the full term of the forbearance;

(iv) The amount of interest that will be capitalized, as of the date of the notice, and the date capitalization will occur;

(v) The option of the borrower or endorser to pay the interest that has accrued before the interest is capitalized; and

(vi) The borrower's or endorser's option to discontinue the forbearance at any time.

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

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

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

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

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

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

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

(7) For a period not to exceed an additional 60 days after the lender has suspended collection activity for the initial 60-day period required pursuant to § 682.211(i)(6) and § 682.402(b)(3), when the lender receives reliable information that the borrower (or student on whose behalf a parent has borrowed a PLUS Loan) has died;

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

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

(10) For a period of delinquency that may remain after a borrower ends a pe-

riod of deferment or mandatory forbearance until the next due date, which can be no later than 60 days after the period ends;

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

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

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

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

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

(g) In granting a forbearance under this section, except for a forbearance under paragraph (i)(5) of this section, a lender shall grant a temporary cessation of payments, unless the borrower chooses another form of forbearance subject to paragraph (a)(1) of this section.

(h) *Mandatory forbearance—(1) Medical or dental interns or residents.* Upon receipt of a request and sufficient supporting documentation, as described in § 682.210(n), from a borrower serving in

a medical or dental internship or residency program, a lender shall grant forbearance to the borrower in yearly increments (or a lesser period equal to the actual period during which the borrower is eligible) if the borrower has exhausted his or her eligibility for a deferment under § 682.210(n), or the borrower's promissory note does not provide for such a deferment—

(i) For the length of time remaining in the borrower's medical or dental internship or residency that must be successfully completed before the borrower may begin professional practice or service; or

(ii) For the length of time that the borrower is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

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

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

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

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

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

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

(B) Is performing the type of service that would qualify the borrower for a partial repayment of his or her loan

under the Student Loan Repayment Programs administered by the Department of Defense under 10 U.S.C. 2171; or

(C) Is performing the type of service that would qualify the borrower for loan forgiveness and associated forbearance under the requirements of the teacher loan forgiveness program in § 682.215; and

(iii) In yearly increments (or a lesser period equal to the actual period for which the borrower is eligible) when a member of the National Guard who qualifies for a post-active duty student deferment, but does not qualify for a military service deferment or other deferment, is engaged in active State duty as defined in § 682.210(u)(2)(i) and (ii) for a period of more than 30 consecutive days, beginning—

(A) On the day after the grace period expires for a Stafford loan that has not entered repayment; or

(B) On the day after the borrower ceases at least half-time enrollment, for a FFEL loan in repayment.

(3) *Forbearance agreement.* After the lender determines the borrower's or endorser's eligibility, and the lender and the borrower or endorser agree to the terms of the forbearance granted under this section, the lender sends, within 30 days, a notice to the borrower or endorser confirming the terms of the forbearance and records the terms of the forbearance in the borrower's file.

(4) *Documentation.* (i) Before granting a forbearance to a borrower or endorser under paragraph (h)(2)(i) of this section, the lender shall require the borrower or endorser to submit at least the following documentation:

(A) Evidence showing the amount of the most recent total monthly gross income received by the borrower or endorser from employment and from other sources; and

(B) Evidence showing the amount of the monthly payments owed by the borrower or endorser to other entities for the most recent month for the borrower's or endorser's Title IV loans.

(ii) Before granting a forbearance to a borrower or endorser under paragraph (h)(2)(ii)(B) of this section, the lender shall require the borrower or endorser to submit documentation showing the beginning and ending dates

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that the Department of Defense considers the borrower to be eligible for a partial repayment of his or her loan under the Student Loan Repayment Programs.

(iii) Before granting a forbearance to a borrower under paragraph (h)(2)(ii)(C) of this section, the lender must require the borrower to—

(A) Submit documentation for the period of the annual forbearance request showing the beginning and anticipated ending dates that the borrower is expected to perform, for that year, the type of service described in § 682.215(c); and

(B) Certify the borrower's intent to satisfy the requirements of § 682.215(c).

(i) *Mandatory administrative forbearance.* (1) The lender shall grant a mandatory administrative forbearance for the periods specified in paragraph (i)(2) of this section until the lender is notified by the Secretary or a guaranty agency that the forbearance period no longer applies. The lender may not require a borrower who is eligible for a forbearance under paragraph (i)(2)(ii) of this section to submit a request or supporting documentation, but shall require a borrower (or endorser, if applicable) who requests forbearance because of a military mobilization to provide documentation showing that he or she is subject to a military mobilization as described in paragraph (i)(4) of this section.

(2) The lender is not required to notify the borrower (or endorser, if applicable) at the time the forbearance is granted, but shall grant a forbearance to a borrower or endorser during a period, and the 30 days following the period, when the lender is notified by the Secretary that—

(i) Exceptional circumstances exist, such as a local or national emergency or military mobilization; or

(ii) The geographical area in which the borrower or endorser resides has been designated a disaster area by the president of the United States or Mexico, the Prime Minister of Canada, or by a Governor of a State.

(3) As soon as feasible, or by the date specified by the Secretary, the lender shall notify the borrower (or endorser, if applicable) that the lender has granted a forbearance and the date that pay-

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ments should resume. The lender's notification shall state that the borrower or endorser—

(i) May decline the forbearance and continue to be obligated to make scheduled payments; or

(ii) Consents to making payments in accordance with the lender's notification if the forbearance is not declined.

(4) For purposes of paragraph (i)(2)(i) of this section, the term "military mobilization" shall mean a situation in which the Department of Defense orders members of the National Guard or Reserves to active duty under sections 688, 12301(a), 12301(g), 12302, 12304, and 12306 of title 10, United States Code. This term also includes the assignment of other members of the Armed Forces to duty stations at locations other than the locations at which they were normally assigned, only if the military mobilization involved the activation of the National Guard or Reserves.

(5) The lender shall grant a mandatory administrative forbearance to a borrower (or endorser, if applicable) during a period when the borrower (or endorser, if applicable) is making payments for a period of—

(i) Up to 3 years of payments in cases where the effect of a variable interest rate on a standard or graduated repayment schedule would result in a loan not being repaid within the maximum repayment term; or

(ii) Up to 5 years of payments in cases where the effect of decreased installment amounts paid under an income-sensitive repayment schedule would result in the loan not being repaid within the maximum repayment term.

(6) The lender shall grant a mandatory administrative forbearance to a borrower for a period not to exceed 60 days after the lender receives reliable information indicating that the borrower (or student in the case of a PLUS loan) has died, until the lender receives documentation of death pursuant to § 682.402(b)(3).

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1080, 1082)

[57 FR 60323, Dec. 18, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 682.211, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 682.212 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

- (1) Secure funds for making loans; or
- (2) Induce a lender to make loans to either the students or the parents of students of a particular school or particular category of students or their parents.

(b) The following are examples of transactions that, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

- (1) Cash payments by or on behalf of a school made to a lender or other party.
- (2) The maintaining of a compensating balance by or on behalf of a school with a lender.
- (3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.
- (4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.
- (5) Purchase by or on behalf of a school of stock of the lender.
- (6) Payments ostensibly made for other purposes.

(c) Except when purchased by an agency of any State functioning as a secondary market or in any other circumstances approved by the Secretary, notes, or any interest in notes, may not be sold or otherwise transferred at discount if the underlying loans were made—

- (1) By a school; or
- (2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or lender (with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with that lender), may not use a loan made under the

FFEL programs as collateral for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the most recently prescribed special allowance under § 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school, lender, or other party that would participate in a proscribed transaction.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the loan seller a warranty that—

- (1) Covers future reductions by the Secretary or a guaranty agency in computing the amount of loss payable on default claims filed on the loans, if the reductions are attributable to an act, or failure to act, on the part of the seller or previous holder; and
- (2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a FFEL loan shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than one year, or both.

(h) A school may, at its option, make available a list of recommended or suggested lenders, in print or any other medium or form, for use by the school's students or their parents provided that such list complies with the requirements in 34 CFR 601.10 and 668.14(a)(28).

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1097)

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§ 682.213 Prohibition against the use of the Rule of 78s.

For purposes of the calculations required by this part, a lender may not use the Rule of 78s to calculate the outstanding principal balance of a loan, except for a loan made to a borrower who entered repayment before June 26,