

To: RISE Rulemaking Committee
From: Ashley Naporlee and Tamar Hoffman
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Memo: Proposal to streamline IDR enrollment after a borrower exits default

During the first session of negotiations, the Department expressed interest in streamlining borrowers' enrollment in IDR once they exit default, but was concerned that there must first be consent to data-sharing from borrowers. This proposal addresses that concern.

We propose amending the rehabilitation regulation, § 685.211(f), so that borrowers can consent to sharing their tax information when entering a rehabilitation agreement and to inform borrowers that if they provide consent, they will be opted into the IDR plan with the lowest payment unless they decline IDR enrollment.

We also propose making corresponding amendments to the IDR regulation, § 685.209, to make clear that borrowers exiting default that have provided their consent to share tax information and have either requested IDR or declined to opt-out of IDR will be enrolled in the IDR plan with the lowest payment. We propose that those corresponding amendments could either be accomplished by amending existing language regarding automatic IDR enrollment at (m) or removal from default at (n), or by adding a new subsection, (p).

Addition to § 685.211(f)(1)(iv) [rehab]:

(f) *Rehabilitation of defaulted loans.*

[...]

(iv) Within 15 business days of the Secretary's determination of the borrower's loan rehabilitation payment amount, the Secretary provides the borrower with a written rehabilitation agreement which includes the borrower's reasonable and affordable payment amount, a prominent statement that the borrower may object orally or in writing to the reasonable and affordable payment amount with the method and timeframe for raising such an objection, a statement that the rehabilitation is null and void if the borrower does not provide the documentation required to calculate the reasonable and affordable payment amount, and an explanation of any other terms and conditions applicable to the required series of payments that must be made. To accept the agreement, the borrower must sign and return the agreement or accept the agreement electronically under a process provided by the Secretary. The Secretary does not impose any other conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement. The written rehabilitation agreement informs the borrower of the effects of having the loans rehabilitated (e.g., removal of the record of default from the borrower's credit history and return to normal repayment). [When the Secretary provides the borrower with a written rehabilitation agreement, the Secretary will provide the borrower with the opportunity to approve disclosure of their tax information under § 685.209\(l\)\(1\). The](#)

Secretary will inform the borrower that if they approve data-sharing, they will be automatically enrolled in the IDR plan under 685.209 that results in the lowest monthly payment upon successful completion of their rehabilitation agreement unless they decline such enrollment.

[...]

Options for corresponding amendments to § 685.209[auto-enrollment in IDR]:

Corresponding amendment to 685.209(m):

(m) Automatic enrollment in an IDR plan.

(i) The Secretary places a borrower on the IDR plan under this section that results in the lowest monthly payment based on the borrower's income and family size, **or based on the borrower's income and the number of dependents for the Repayment Assistance Plan**, if—

- (1) The borrower is otherwise eligible for the plan;
- (2) The borrower has approved the disclosure of tax information under paragraph (l)(1) of this section;
- (3) The borrower has not made a scheduled payment on the loan for at least 75 days, ~~or~~ is in default on the loan and is not subject to a Federal offset, administrative wage garnishment under section 488A of the Act, or to a judgment secured through litigation, **has consolidated their loan out of default and requested IDR in their consolidation application, or has completed a rehabilitation agreement and has not declined enrollment in IDR;** and
- (4) The Secretary determines that the borrower's payment under the IDR plan would be lower than or equal to the payment on the plan in which the borrower is enrolled.

OR a corresponding amendment to 685.209(n):

(n) Removal from default.

(1) The Secretary will no longer consider a borrower in default on a loan if—

~~(A)~~ The borrower provides information necessary to calculate a payment under paragraph (f) of this section;

~~(B)~~ The payment calculated pursuant to paragraph (f) of this section is \$0; and

~~(C)~~ The income information used to calculate the payment under paragraph (f) of this section includes the point at which the loan defaulted; **or**

(2) The Secretary will place the borrower on an IDR plan under this section that results in the lowest monthly payment based on the borrower's income and family size, or based on the borrower's income and the number of dependents for the Repayment Assistance Plan, if the borrower has

- (i) completed a rehabilitation agreement or consolidated their loan out of default;
- (ii) approved disclosure of their tax information under § 685.211(f)(1)(iv) or § 685.209(l)(1); and
- (iii) not declined enrollment in IDR.

OR, if the Department would prefer not to amend 685.209(m) or (n) due to concerns about the impact of the SAVE litigation, the Department could instead add a new letter to 685.209 to corresponds to changes in 685.211(f):

Proposed § 685.209(p):

(p) Repayment after default: The Secretary will place the borrower on an IDR plan under this section that results in the lowest monthly payment based on the borrower's income and family size, or based on the borrower's income and the number of dependents for the Repayment Assistance Plan, if the borrower has

- (i) completed a rehabilitation agreement or consolidated their loan out of default;
- (ii) approved disclosure of their tax information under § 685.211(f)(1)(iv) or § 685.209(l)(1); and
- (iii) not declined enrollment in IDR.