

payment requirement, with the lender authorized to waive the requirement based on documented exceptional circumstances if the borrower demonstrates a willingness and ability to repay the Consolidation loan. Some commenters supported the provision as proposed in order to maintain parity between the FFEL and Direct Loan programs, but some of those commenters questioned how the holder of the loan would know or be able to verify that a borrower has agreed to repay the loan under an income-sensitive repayment plan.

Discussion: The Secretary acknowledges the commenters' concerns regarding providing this option to borrowers already in default on an FFEL program loan. However, the Secretary believes that a significant number of borrowers in the past have defaulted because they could not afford to make required loan payments. When a borrower consolidates a defaulted loan or loans under an income-sensitive repayment plan (or, in the Direct Loan program, under an income-contingent repayment plan) the amount the borrower will be required to repay will be one the borrower can afford. The Secretary believes that an income-sensitive payment amount coupled with the extended repayment period generally available in the FFEL Consolidation loan program, significantly lessens the risk that the borrower will default again. The Secretary also does not believe that three consecutive monthly "reasonable and affordable" payments from the borrower, which could be as low, for example, as \$2 per month, necessarily is a more significant indicator of whether a borrower will default on the new Consolidation loan. It is correct that borrowers paying off defaulted loans through loan consolidation regain immediate eligibility for additional Title IV student assistance and perhaps represent a slightly greater risk of default on an even larger debt load. However, this risk was created when Congress amended the HEA to allow borrowers to repay defaulted loans through a Consolidation loan. The Secretary's decision to allow defaulted borrowers to receive a Consolidation loan by agreeing to repay the loan through an income-sensitive repayment arrangement does not significantly increase that risk, and in fact, is likely to reduce defaults. The Secretary believes that borrowers consolidating their defaulted loans and regaining eligibility for Title IV student assistance in order to obtain additional education or training are worth the risk if this

second chance leads to gainful employment that will ultimately translate into greater returns to the FFEL program and the federal taxpayers.

Mindful of the unease with which many in the student aid community view this conforming change in FFEL regulations, the Secretary is committed to monitoring the repayment records of these borrowers through the use of the National Student Loan Data System over the next few years. If the repayment patterns of such borrowers in the FFEL and Direct Loan programs reach an unacceptable level of repeat defaults by these borrowers, the Secretary will reconsider this policy in the FFEL and Direct Loan programs.

With regard to the question about how a loan holder asked to provide a certification to the consolidating lender is to know or verify that the borrower has agreed to an income-sensitive repayment plan option, the Secretary notes that it is the obligation of the consolidating lender to determine if the borrower qualifies for the consolidation loan. The consolidating lender will have to determine whether the borrower has chosen an income-sensitive repayment plan or needs to make the required monthly payments to the holder of the defaulted loan. The Secretary also wishes to remind those commenters who expressed concern about this approach that lenders in the FFEL program always have the option not to make an FFEL Consolidation loan.

Changes: None.

Section 682.207 Due Diligence in Disbursing a Loan

Section 682.207(c)(4)

Comments: All of the commenters agreed with the proposal to codify into the FFEL regulations the existing policy that allows a lender to include more than one disbursement of a multiply-disbursed loan in the same installment scheduled to be sent to the school if the midpoint of the loan period has expired when the first disbursement is scheduled to be made. Several commenters, however, asked that the provision be revised to reflect the exception provided in the law for term-based schools that allows a second or subsequent disbursement to be made prior to the mid-point of the loan period if that is necessary to coincide with the school's next scheduled term. The commenters pointed out that the proposed rule would prevent a term-based school from receiving two disbursements in a single installment if the start of the next scheduled term was before the mid-point of the loan period. Another commenter asked that the

phrase "for which the loan was made" be inserted after the phrase "loan period" to clarify what the midpoint is based on.

Discussion: The Secretary agrees with the commenters that these revisions to the proposed provision are warranted.

Changes: Section 682.207(c)(4) has been revised to provide that such a single installment can be made on the earlier of the mid-point of the loan period for which the loan was made or the beginning of the school's next scheduled term.

Section 682.207(d)(4)

Comments: All the commenters endorsed the clarifying changes made to the late disbursement provisions in section 682.207(d)(4) and corresponding changes made in section 682.604. One commenter suggested an additional change to section 682.207(d)(2)(iii) to clarify that a lender is not required to wait for notification from the school but may presume that exceptional circumstances exist when making a disbursement from the 61st day through the 90th day after the date the student ceased enrollment on at least a half-time basis or the expiration date of the period of enrollment for which the loan was intended. Upon receipt of the disbursement, the school would be required to determine and document in the student's file that exceptional circumstances existed and deliver the loan proceeds or return the disbursement to the lender.

Discussion: The Secretary agrees that this further clarification is useful. The Secretary believes these procedures for lender and school handling of a late disbursement during this period will be simple and efficient for both the lender and school.

Changes: Section 682.207(d)(2)(iii) has been revised to reflect the respective lender and school responsibilities and processes for handling late disbursements during the last 30 days of the 90-day period during which late disbursements may be made.

Section 682.209(b) Payment Application and Prepayment

Comments: One commenter recommended an additional change to section 682.209(b)(1) to clarify that a lender has the option to apply any payment to late charges, collection costs, outstanding interest, and outstanding principal in whatever order the lender chooses. The commenter believes that the provision, as currently written, requires application of payments first to late charges and collection costs, then to outstanding interest, and finally to outstanding