

section. If the borrower obtains another Direct Loan, the amount the borrower would repay is based on the combined amounts of the loans when the last loan enters repayment. If the borrower and the borrower's spouse repay the loans jointly, the amount the borrowers would repay is based on both borrowers' Direct Loan debts at the time they enter joint repayment.

(2) The annual amount payable under the income contingent repayment plan by a borrower is the lesser of—

- (i) The amount the borrower would repay annually over 12 years using standard amortization multiplied by an income percentage factor that corresponds to the borrower's adjusted gross income (AGI) as shown in the income percentage factor table in Appendix A to this part; or
- (ii) 20 percent of discretionary income.

(3) For purposes of this section, discretionary income is defined as a borrower's AGI minus the amount of the "HHS Poverty Guidelines for all States (except Alaska and Hawaii) and the District of Columbia" as published by the United States Department of Health and Human Services on an annual basis.¹ For residents of Alaska and Hawaii, discretionary income is defined as a borrower's AGI minus the amounts in the "HHS Poverty Guidelines for Alaska" and the "HHS Poverty Guidelines for Hawaii" respectively. If a borrower provides documentation acceptable to the Secretary that the borrower has more than one person in the borrower's family, the Secretary applies the HHS Poverty Guidelines for the borrower's family size.

(4) For exact incomes not shown in the income percentage factor table in Appendix A, an income percentage factor is calculated, based upon the intervals between the incomes and income percentage factors shown on the table.

(5) Each year, the Secretary recalculates the borrower's annual payment amount based on changes in the borrower's AGI, the variable interest rate, the income percentage factors in the table in Appendix A, and updated HHS Poverty Guidelines (if applicable).

(6) For purposes of the annual recalculation described in paragraph (a)(5) of this section, after periods in which a borrower makes payments that are less than interest accrued on the loan, the payment amount is

recalculated based upon unpaid accrued interest and the highest outstanding principal loan amount (including amount capitalized) calculated for that borrower while paying under the income contingent repayment plan.

(7) For each calendar year after calendar year 1996, the Secretary publishes in the Federal Register a revised income percentage factor table reflecting changes based on inflation. This revised table is developed by changing each of the dollar amounts contained in the table by a percentage equal to the estimated percentage changes in the Consumer Price Index (as determined by the Secretary) between December 1995 and the December next preceding the beginning of such calendar year.

(8) Examples of the calculation of monthly repayment amounts and tables that show monthly repayment amounts for borrowers at various income and debt levels are included in Appendix A to this part.

(b) Treatment of married borrowers.

(1) A married borrower who wishes to repay under the income contingent repayment plan and who has filed an income tax return separately from his or her spouse must provide his or her spouse's written consent to the disclosure of certain tax return information under paragraph (c)(5) of this section (unless the borrower is separated from his or her spouse). The AGI for both spouses is used to calculate the monthly repayment amount.

(2) Married borrowers may repay their loans jointly. The outstanding balances on the loans of each borrower are added together to determine the borrowers' payback rate under (a)(1) of this section.

(3) The amount of the payment applied to each borrower's debt is the proportion of the payments that equals the same proportion as that borrower's debt to the total outstanding balance, except that the payment is credited toward outstanding interest on any loan before any payment is credited toward principal.

*(c) * * **

(2) *First and second year borrowers.* The Secretary requires alternative documentation of income from borrowers in their first and second years of repayment, when in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income.

(3) *Adjustments to repayment obligations.* The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower's spouse,

warrant an adjustment to the borrower's repayment obligations.

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3. Appendix A to part 685 is revised to read as follows:

Appendix A to Part 685—Income Contingent Repayment

Examples of the Calculation of Monthly Repayment Amounts

Example 1. A single borrower with \$12,500 of Direct Loans, 8.25 percent interest, and an AGI of \$25,000.

Step 1: Determine annual payments based on what the borrower would pay over 12 years using standard amortization. To do this, multiply the principal balance by the constant multiplier for 8.25% interest (0.1315452). The constant multiplier is a factor used to calculate amortized payments at a given interest rate over a fixed period of time. (See the constant multiplier chart below to determine the constant multiplier you should use for the interest rate on the loan. If the exact interest rate is not listed, choose the next highest rate for estimation purposes.)

■ $0.1315452 \times 12,500 = 1,644.315$

Step 2: Multiply the result by the income percentage factor shown in the income percentage factor table that corresponds to the borrower's income (if the income is not listed, you can calculate the applicable income percentage factor by following the instructions under the interpolation heading below):

■ $85.55\% (0.8555) \times 1,644.315 = 1,406.7115$

Step 3: Determine 20 percent of discretionary income. To do this, subtract the lowest income for single borrowers shown in the income percentage factor table (HHS poverty level for a family of one) from the borrower's income and multiply the result by 20%:

■ $\$25,000 - \$7,470 = \$17,530$

■ $\$17,530 \times 0.20 = \$3,506$

Step 4: Compare the amount from step 2 with the amount from step 3. The lower of the two will be the borrower's annual payment amount. This borrower will be paying the amount calculated under step 2. To determine the monthly repayment amount, divide the annual amount by 12.

■ $1,406.7115 \div 12 = \$117.23$

Example 2. Married borrowers both repaying under the income contingent repayment plan with a combined Adjusted Gross Income (AGI) of \$30,000. The husband has a Direct Loan balance of \$5,000, and the wife has a Direct Loan balance of \$15,000. This couple has no children.

Step 1: Add the Direct Loan balances of the husband and wife together to determine the aggregate loan balance.

■ $\$5,000 + \$15,000 = \$20,000$

Step 2: Determine the annual payments based on what the couple would pay over 12 years using standard amortization. To do this, multiply the aggregate principal balance by the constant multiplier for 8.25% interest (0.1315452). (See the constant multiplier chart to determine the constant multiplier you should use for the interest rate on the

¹ The HHS Poverty Guidelines are available from the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services (HHS), Room 438F, Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201