

Title 8 NYCRR Volume B
Chapter XX – Higher Education Services Corporation

**New Subchapter D/Part 2200-a – The New York Higher Education Loan Program
(NYHELPS)**

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§2200-a.1 Definitions.

The following definitions apply to this subchapter:

- (a) “Academic degree” shall mean an associate degree, a bachelor’s degree, master’s degree or a doctoral degree, as described in section 3.54 of the Rules of the Board of Regents.
- (b) “Academic year” shall mean the regular school year beginning July 1st and ending June 30th.
- (c) “Agency” shall mean the State of New York Mortgage Agency.
- (d) “Borrower” shall mean an eligible borrower as defined in this section.
- (e) “Citizen” or “citizenship” shall mean, with respect to an individual, a person who, at the time of commencement of the academic period for which a Program loan is requested, is either:
 - (i) a citizen of the United States;

- (ii) a permanent resident alien holding an I-151 alien registration card; or
 - (iii) a conditional entrant or a member of a group of refugees paroled by the Attorney General of the United States. Individuals holding diplomatic, student or temporary visas do not constitute permanent resident alien status.
- (f) “Commissioner” shall mean the New York State Commissioner of Education.
- (g) “Consummate” shall mean disburse.
- (h) “Corporation” shall mean the New York State Higher Education Services Corporation.
- (i) “Cost of attendance” shall mean the cost of attendance as determined by the eligible college for purposes of section 472 of Title IV of the Higher Education Act of 1965, as amended.
- (j) “Education loan” shall mean any loan that is made under this Program to finance or refinance higher education expenses at an eligible college.
- (k) “Eligible borrower” shall mean:
- (i) a student who is a citizen and a New York State resident attending or accepted for enrollment in an eligible program at an eligible college and applies for an Education loan from a lender to pay for or finance the student’s higher education expenses under this Program; or
 - (ii) a parent, legal guardian, or sponsor as defined in this section, of a student attending or accepted for enrollment in an eligible program at an eligible college and such parent, legal guardian, or sponsor is a citizen and a New York State

resident and applies for an Education loan from a lender to pay for or finance the student's higher education expenses under this Program.

- (l) "Eligible college" shall mean a postsecondary institution, with its headquarters and main campus located within New York State, that is eligible for funds under Title IV of the Higher Education Act of 1965, as amended, offering an academic degree, professional degree granting or professional certificate program.
- (m) "Eligible co-signer" shall mean a parent, legal guardian or other individual over twenty-one years of age who satisfies applicable credit criteria approved by the Corporation and is a citizen and a New York State resident. A co-signer shall be eligible to co-sign for no more than three separate Program loans for each academic year unless there exists a parental relationship for each additional Program loan.
- (n) "Eligible program" shall mean a program of study in a postsecondary institution approved by the Commissioner leading to an academic degree or professional certificate.
- (o) "Graduate degree" shall mean a program of study leading to a master's or doctoral degree, as described in section 3.54 of the Rules of the Board of Regents.
- (p) "Graduate or professional student" shall mean a student, as defined herein, who is enrolled, or accepted for enrollment, at least half-time as defined by the Commissioner and:
 - (i) is enrolled in a program or course of study above the baccalaureate level or enrolled in a program leading to a graduate degree, to a professional degree, or to a professional certificate at an eligible college; or

- (ii) has completed the equivalent of three years of undergraduate studies and is enrolled in a program that allows an individual to complete an undergraduate degree and any of a graduate degree, a professional degree, or a professional certificate within the same program and is not receiving Title IV aid as an undergraduate student for the same period of enrollment.
- (q) “Half-time” shall mean “part-time study” as defined in 8 NYCRR Subpart 145-2.1(a)(1).
- (r) “Higher education expenses” shall mean the cost of attendance at an eligible college and shall include tuition and fees, books, room and board and other educationally related expenses, as defined in this section.
- (s) “Holder” shall mean with respect to an Education loan:
 - (i) a lender described in section 2200-a.4;
 - (ii) a public benefit corporation authorized to finance the purchase or making of Education loans pursuant to the Public Authorities Law; or
 - (iii) any assignee of such lender or public benefit corporation for financing purposes.
- (t) “Legal guardian” shall mean an individual appointed by a court to act as the legal custodian of an individual under twenty-one years of age.
- (u) “New York State resident” shall mean an individual who has been a legal resident of New York State for at least twelve continuous months immediately preceding the commencement of the Program loan period. Military personnel on active duty may be exempt from the residency requirement as determined by the Corporation. Military personnel shall provide documentation to verify active duty status.

- (v) “Non-student borrower” shall mean a parent, legal guardian, or sponsor, as defined in this section, eligible to receive a Program loan.
- (x) “Other educationally related expenses” shall mean all related allowances as contained in section 472 of the Higher Education Act of 1965, as amended.
- (y) “Parent” shall mean a birth parent, stepparent, adoptive parent or the spouse of an adoptive parent.
- (z) “Program” shall mean the New York Higher Education Loan Program (NYHELPS) established by Article 14 of New York State Education Law.
- (aa) “Program loan” shall mean an Education loan as defined in this section.
- (bb) “Professional certificate program” shall mean a program of study registered by the New York State Education Department in a degree-granting postsecondary institution that leads to a certificate as defined in section 50.1 of the Regulations of the Commissioner of Education.
- (cc) “Professional degree” shall mean a degree conferred on a person who has completed the program of study requirements requisite to such a degree by a postsecondary institution authorized by the Commissioner to confer such degrees, in accordance with the requirements set forth in section 3.47 of the Rules of the Board of Regents.
- (dd) “Public benefit corporation” shall mean the Agency and any other entity as defined in subdivision 1 of section 51 of the Public Authorities Law.
- (ee) “School” shall mean an eligible college as defined in this section.
- (ff) “Sponsor” shall mean an individual who, is over twenty-one years of age and meets applicable credit criteria, is applying for an Education loan as the borrower for the benefit of an eligible student, and is not a parent or legal guardian of the student.

- (gg) “Student” shall mean any individual who is a citizen and is enrolled, or accepted for enrollment, at least half-time, as defined herein, in an eligible program at an eligible college located within New York State. A student shall submit a completed Free Application for Federal Student Aid (FAFSA) and shall first exhaust all annual eligibility for all New York State aid, Title IV aid (excluding federal PLUS loans), other federal aid, and institutional aid as certified by the eligible college.
- (hh) “Total and permanent disability” shall mean with respect to an enrolled student, a condition that occurred after disbursement of a Program loan or that, if in existence at the time of disbursement, has deteriorated substantially and in either case, leaves an enrolled student unable to work and earn money, as such phrase is defined for purposes of Title IV of the Higher Education Act of 1965, as amended, because the injury or illness is expected to continue indefinitely or result in death.
- (ii) “Undergraduate degree” shall mean an associate or bachelor degree conferred by a postsecondary institution on a person who has completed the program of study requisite to such a degree, as described in section 3.47 of the Rules of the Board of Regents.
- (jj) “Undergraduate student” shall mean a student, as defined herein, who is enrolled, or accepted for enrollment, at least half-time as defined by the Commissioner in a program leading to an undergraduate degree.

§2200-a.2 Borrower Eligibility Requirements.

- (a) *Student borrower.* To be eligible for a Program loan, a student borrower shall:

- (i) provide all information requested on an application form prescribed by the Corporation;
- (ii) apply for a Program loan with an eligible co-signer as defined in section 2200-a.1;
- (iii) be enrolled or accepted for enrollment in an eligible program at an eligible college on at least a half-time basis, as defined by the Commissioner, and otherwise meet the requirements of a student and a borrower as each term is defined in section 2200-a.1;
- (iv) successfully complete the Program's Web-based financial literacy course, completion of which will be tracked and confirmed by the Corporation; and
- (v) meet the requirements concerning adverse credit, defaults and overpayments, and all other eligibility requirements as set forth in the Program's Underwriting Manual and subdivisions (d), (e) and (f) of this section.

(b) *Non-student borrower.* To be eligible for a Program loan, a non-student borrower shall:

- (i) be a parent, legal guardian or sponsor, as defined in section 2200-a.1;
- (ii) apply for a Program loan for the higher education expenses of a student as defined in section 2200-a.1;
- (iii) provide all information requested on an application form prescribed by the Corporation;

- (iv) be a New York State resident, and otherwise meet the requirements of a borrower, as defined in section 2200-a.1;
- (v) meet the requirements pertaining to citizenship as defined in section 2200-a.1;
- (vi) meet the requirements concerning adverse credit, defaults and overpayments, and all other eligibility requirements as set forth in the Program's Underwriting Manual and subdivisions (d), (e) and (f) of this section; and
- (vii) successfully complete the Program's Web-based financial literacy course, completion of which will be tracked and confirmed by the Corporation.

(c) *Aggregate Program loan limits.* Program loans on behalf of a student, in aggregate, shall not exceed the annual loan limit for any academic year in which such loans are made.

(d) *Sponsor Program loan limits.* A non-student borrower may sponsor one student for whom no family relation exists in any academic year, and up to three students who are members of such sponsor's family, as defined in subdivision (6) of section 695-b of the Education Law.

(e) *Adverse credit.* A borrower shall not be eligible for a Program loan if such borrower or any co-signer, if applicable, has an adverse credit history as defined in the Program's Underwriting Manual.

(f) *Renewed eligibility.* A borrower or co-signer in default of a Title IV loan, a Program loan, any other educational loan, or who has failed upon demand to make a refund of

an overpayment of a State or federal grant or award, or otherwise fail to meet the requirements of a state or federal award, shall be ineligible for a Program loan.

Notwithstanding, a borrower or co-signer who has made satisfactory repayment arrangements consistent with 8 NYCRR section 2008.1 may be granted renewed eligibility by the Corporation for a Program loan, except such renewed eligibility shall only be granted once.

(g) *Other eligibility criteria.*

(i) To qualify to receive a Program loan, a borrower shall meet all other eligibility requirements as set forth in the Program's Underwriting Manual.

(ii) No borrower shall qualify to receive a Program loan unless the borrower, or an eligible co-signer, satisfies applicable credit criteria approved by the Corporation, and with respect to Education loans that are otherwise eligible for purchase by a public benefit corporation approved by such public benefit corporation, on at least an annual basis with respect to Education loans to be made for the applicable academic year, or portion thereof, after taking into account applicable financial market conditions.

§2200-a.3 School Eligibility Requirements.

(a) To be eligible to participate in the Program, an institution shall:

(i) meet the definition of an eligible college as defined in section 2200-a.1(1);

(ii) certify each participating student's Program loan eligibility in a format prescribed by the Corporation;

- (iii) enter into an agreement with the Corporation to participate in and administer the Program according to the rules and regulations of the Corporation; and
 - (iv) contribute a fee of one percent of the original principal amount of each Program loan, which shall not be assessed to the student or eligible borrower.
- (b) The Corporation shall adopt criteria and procedures for the temporary or permanent disqualification of schools from participation in the Program for just cause. Just cause warranting disqualification under certain circumstances shall include, but not be limited to, an excessive cohort default rate as established by the Corporation. Such procedures shall be consistent with 8 NYCRR Part 2004.

§2200-a.4 Lender Eligibility Requirements.

- (a) To be eligible to participate in the Program, a lender or its assignee shall:
 - (i) be one of the financial institutions, as defined in the Federal Deposit Insurance Act (12 U.S.C. §1813), that solicits, makes, or extends private and/or federal educational loans; a federal credit union, as defined in the Federal Credit Union Act (12 U.S.C. §1752), that solicits, makes, or extends private education financing; and/or any other regulated entity, approved by the Corporation;
 - (ii) enter into a participation agreement with the Corporation and with the Agency, in connection with any loans intended to be sold by the lender to the Agency, to make Education loans in accordance with the rules and regulations governing the Program;

- (iii) not be subject to a limitation, suspension, or termination proceeding initiated by the U.S. Secretary of Education, or other appropriate entity with oversight authority; and
 - (iv) have advised the Corporation of its proposed arrangements for servicing Program loans and agreed to give the Corporation notice prior to any change of such arrangements. Such arrangements shall be satisfactory to the Corporation.
- (b) No lender participating in the Program shall discriminate against a borrower or co-signer based on the individual's race, sex, color, sexual preference, religion (creed), national origin, mental or physical disability, age, marital status, veteran status or criminal record.
- (c) The Corporation shall adopt criteria and procedures for the temporary or permanent disqualification of lenders or their assignees from participation in the Program for just cause. Just cause warranting disqualification, under certain circumstances shall include, but not be limited to violations of the participation agreement or other Program requirements. Such procedures shall be consistent with 8 NYCRR Part 2004.
- (d) Each of the Corporation and any public benefit corporation described in section 2200-a.1(r) may participate in the Program as a lender and, in such case, all references in this subchapter to the lender shall be deemed applicable to the Corporation or such public benefit corporation, as applicable, in such capacity, except to the extent that the Corporation or such public benefit corporation would be required thereby to provide information to or enter into a contractual arrangement with itself.

§2200-a.5 Due Diligence In Originating, Disbursing, and Servicing Program Loans.

(a) *Due diligence in originating a Program loan.* The Corporation shall notify a lender that a potential borrower has selected the lender for a Program loan. The lender shall:

- (i) in the absence of contrary information, rely in good faith upon statements of the borrower, the student (if not the borrower), the co-signer, the eligible college and the Corporation made in the Program loan application process provided, that such reliance shall not cause an Education loan that is later determined to be ineligible for payment from a default reserve fund to become eligible for any payment;
- (ii) determine that all required forms have been completed, if applicable, by the borrower, any co-signer, student and eligible college before disbursing the Program loan;
- (iii) ensure each Program loan contains a legally enforceable promissory note; and
- (iv) confirm that all underwriting criteria have been met, including but not limited to, income verification, school verification, approved financial literacy completion and absence of disqualifying defaults.

(b) *Due diligence in disbursing a Program loan.* A lender shall perform the following due diligence in disbursing a Program loan:

- (i) verify the Program loan's initial eligibility for payment from the applicable default reserve fund;
- (ii) disburse funds in at least two but no greater than four equal installments within any full academic year, unless the student is in attendance for one term during the academic year;

- (iii) disburse by means of Electronic Funds Transfer (EFT) through the Corporation;
- (iv) make the initial disbursement of the proceeds of the Program loan no earlier than ten days before the beginning of the academic period of the Program loan;
- (v) allow one disbursement for any loan period that is equivalent to one semester, trimester or summer term; and
- (vi) with respect to Program loans eligible for sale to a public benefit corporation, have entered into a contract with such public benefit corporation establishing the terms of sale for such Program loans, the eligibility requirements for the applicable default reserve fund, and such other terms as the public benefit corporation may prescribe.

(c) *Delayed disbursement.* On or after February 14, 2010, no disbursement shall be made with respect to a Program loan until the end of the three day period described in section 2200-a.17(e).

(d) *Due diligence in servicing a loan.* The holder, or other entity servicing the Program loan on behalf of the holder, shall:

- (i) report to all national consumer reporting agencies, within ninety days of each Program loan disbursement: the repayment status no less frequently than every ninety days or quarterly after a change in that status from current to delinquent; the outstanding balance of the Program loan; any change in the Program loan; the date the Program

- (ii) make available a toll-free telephone number for borrowers to inquire about their Program loan(s) and provide appropriate staff to respond to such inquiries in a timely fashion; and
- (iii) upon receipt of a request for discharge based on the death or total and permanent disability of the student for which a Program loan was taken:
 - (a) suspend collection activity for sixty days against the individual in question;
 - (b) request documentation to validate the death or total and permanent disability of the student;
 - (c) comply with procedures in the Program's Default Avoidance and Claim Manual for submitting claims to the Corporation;
 - (d) upon approval of a claim by the Corporation, return any payments made by, or on behalf of, the borrower or co-signer after the date of death or determination of total and permanent disability to the borrower or co-signer; and
 - (e) upon denial of a claim by the Corporation, apply forbearance for the period of time used to determine eligibility for Program loan discharge and resume any collection activity.

(e) *Enrollment status.*

- (i) If a holder, or the entity servicing the Program loan, is made aware that a student is no longer enrolled at an eligible college on at least a half-time basis, the holder, or the entity servicing the Program loan, must, within forty-five days, contact the student borrower and establish a repayment schedule.
- (ii) A holder, or entity servicing the Program loan, must notify the Corporation upon receiving notification that a student is no longer enrolled at an eligible college on at least a half-time basis.

(f) *Application of payments.*

- (i) Payments made by, or on behalf of, a borrower on a Program loan shall first be applied to any outstanding fees, then to any interest, and then to principal.
- (ii) Payments made above the amount due shall be applied to outstanding principal, unless the borrower requests otherwise.
- (iii) Borrowers may prepay on their Program loan balance without penalty.

(g) *Sale or transfer of education loans.*

- (i) An Education loan may be sold or transferred to another holder described in paragraphs (i) or (ii) of the definition of such term in section 2200-a.1(r) or a holder as described in paragraph (iii) of such subdivision who is acting as a fiduciary for a holder described in such paragraphs (i) or (ii) after the Program loan has been fully disbursed. Any sale to the Agency or to another public benefit corporation authorized to finance the purchase or making of Education loans under the Public Authorities Law, shall be subject to an agreement between the holder and such public benefit corporation and to the availability to such public

benefit corporation of the proceeds of bonds issued to fund such purchase. In connection with such sale, the holder may receive an origination fee to be determined annually by the public benefit corporation. Holders selling Education loans shall notify the Corporation of the name and business address of the buyer.

(ii) The Agency shall use the proceeds of its bond issuance to fund the purchase of fixed rate Program loans from holders. On or after the issuance of bonds by the Agency to fund the Education loan purchases, the Corporation shall notify holders of the availability of proceeds for the sale of Education loans to the Agency, and the interest rate on the Education loans. Holders opting to sell fixed rate Education loans to a public benefit corporation shall initiate the sale within sixty days of the last disbursement of the Education loan or at such other time and subject to such other terms as may be provided by the agreement between the holder and the public benefit corporation, subject to the availability of the proceeds of bonds issued to fund such purchase and in compliance with the terms of the agreement.

(iii) Each holder of fixed rate Education loans shall inform the Corporation and the Agency prior to the date provided by the agreement between the holder and the Agency for each academic year of its intent to sell fixed rate Education loans made during that academic year to the Agency and, if so, must enter into an agreement with the Agency for such purpose. No fixed rate Education loan offers shall be made by a lender until such lender has informed the Corporation and the Agency of its intent to sell or hold the Program loans. A lender shall notify the

Corporation and the Agency of its intent to make and sell any remaining fixed rate Education loans available in an academic year.

(iv) Any unsold fixed rate Education loans or variable rate Education loan(s) may only be sold or transferred:

(a) to the Agency, its trustee, or a credit or liquidity provider, at the option of the Agency;

(b) to another holder, if the current holder of the Education loan ceases business operations due a merger, insolvency or receivership; or

(c) for securitization purposes.

(v) Loans may be transferred where there is only a change in the identity of the entity servicing the Program loan on behalf of the holder.

(vi) The current holder and new holder, or new entity servicing a Program loan, shall each notify the borrower, within forty-five days of the sale or transfer, of the name, address, and telephone number(s) of the new holder and/or servicer and the address of the entity to whom subsequent payment or communication must be sent.

(h) *Compliance with applicable laws related to Program loans.* All holders shall comply with all applicable laws and regulations relating to originating or servicing of private educational loans.

(i) As a condition of the sale of any Education loan to a public benefit corporation, a holder shall also enter into and comply with all provisions, terms and conditions of a valid contract with the public benefit corporation.

(j) A holder's failure to perform the required due diligence in originating, disbursing and servicing a Program loan may result in the holder's ineligibility to receive reimbursement from the applicable default reserve fund.

(k) Program loans not eligible for reimbursement from the applicable default reserve fund shall be serviced according to Program requirements.

§2200-a.6 Application Content.

On and after February 14, 2010, a lender shall clearly and conspicuously disclose on any application or solicitation for a Program loan, as part of the lender's compliance with section 2200-a.5(h), the following:

- (a) the potential range of interest rates applicable to the Program loan;
- (b) whether the interest rate is fixed or variable;
- (c) whether or not there are any limitations on the frequency and amount of interest rate adjustments;
- (d) borrower and co-signer requirements;
- (e) potential finance charges, late fees, penalties, and adjustments to principal, as a result of Program loan defaults or late payments by the borrower;
- (f) any Program loan fees or range of fees;
- (g) the maximum repayment terms under this Program;
- (h) whether interest will accrue while the student is enrolled at an eligible school;
- (i) options for deferring payment on the Program loan;
- (j) general Program loan eligibility criteria;

(k) an example of the total cost to the borrower over the life of the Program loan, which shall be calculated:

- (i) using the principal amount and the maximum amount of interest that may be applicable; and
- (ii) both with and without interest capitalization if an option exists for postponing interest payments.

(l) that an eligible school may have specific Program loan benefits and terms not specified on the disclosure form;

(m) that the borrower may also qualify for federal assistance under Title IV of the Higher Education Act of 1965, as amended, and the interest rates available in connection with such federal financial assistance;

(n) that the borrower may qualify for non-federal loans, other than Program loans;

(o) that the borrower shall have the right to accept the terms of the Program loan and complete the transaction at any time within a minimum of thirty calendar days following the date on which the application for the Program loan is approved and the borrower receives the disclosure documents required under this section for the Program loan.

Except for changes based on the index used for a Program loan, the rates and terms of the Program loan may not be changed by the lender during this thirty day period;

(p) that the applicant may obtain information regarding federal student financial assistance from their eligible school or at the U.S. Department of Education Web site;

(q) that the student, if eligible, shall exhaust all annual eligibility for all New York State aid, Title IV aid (excluding federal PLUS loans), other federal aid, and institutional aid as certified by the eligible college prior to college certification for a Program loan, and that

the amount of the Program loan approved, if otherwise eligible, shall be determined on the basis of an assumption that such aid has been obtained;

(r) that the borrower shall obtain from the student's institution the self-certification form and complete, sign, and return such form to the lender before a Program loan can be consummated; and

(s) any other disclosure required of the lender by state or federal law.

§2200-a.7 Fixed Rate Program Loans.

(a) The interest rate or rates for fixed rate Program loans expected to be sold to the Agency, or to another public benefit corporation, shall be based on the interest rate payable on the bonds issued by the Agency, or other public benefit corporation, to fund the loan purchases. The interest rate or rates on fixed rate Program loans shall be determined by the Corporation, and with respect to Education loans that are otherwise eligible for purchase by a public benefit corporation shall be determined by such public benefit corporation, on at least an annual basis with respect to Education loans to be made for the following academic year, or portion thereof, after taking into account applicable financial market conditions.

(b) The Corporation shall notify lenders and schools after the establishment of the new rate. Such notification shall include publication on the Corporation's Web site. The requirements set forth in Section 2200-a.5(g) shall be satisfied prior to the sale of any fixed rate Program loan to the Agency.

(c) *Allocation of fixed rate Program loans.*

(i) *Available amounts.* The Corporation, in consultation with the Agency, shall determine, on an annual basis, the amount of funding that will be available for fixed rate Program loans eligible for sale to the Agency based on the Agency's determination as to available bond proceeds and based on projected statewide demand for fixed rate Program loans. Such amount shall be publicly available on the Corporation's Web site.

(ii) *Funding pools.* Upon the determination of the available amounts of fixed rate Program loans as set forth above, the Corporation shall establish multiple fixed rate Program loan funding pools to promote equitable distribution of fixed rate Program loan funds to students throughout the state (region-based pools) and to ensure the availability of fixed rate Program loan funds to students demonstrating financial need (income-based pool).

(a) In establishing the income-based pool for the initial academic year, the Corporation shall project demand for fixed rate Program loans using tuition assistance program (TAP) data from the prior academic year and other available data that would reasonably demonstrate financial need.

(b) For subsequent academic years, the Corporation shall project demand for the income-based pool using actual Program loan experience and any other available data that would reasonably demonstrate financial need.

- (c) The available amounts of funding, based on projected demand, for the income-based pool shall be subtracted from the total available amounts of fixed rate Program loan funding for the academic year.
- (d) The remainder of available amounts of funding for the region-based pool shall be allocated based on a formula to be determined by the Corporation, in consultation with the Agency. Such allocation shall ensure, to the extent practicable, distribution among students statewide based on factors including college type and level of study. The Corporation may consider other factors as necessary to ensure equitable distribution of fixed rate Program loans.
- (e) During each application period, the Corporation may adjust initial pool allocations based on fixed rate Program loan application approvals within the region-based and income-based pools as necessary to maximize the use of total available amounts for fixed rate Program loans for the academic year. Otherwise qualifying borrowers demonstrating financial need, as defined by the Corporation in subdivision (c), shall receive fixed rate Program loans from the income-based pool. If actual demand for loans from the income-based pool exceeds the allocated amount, such otherwise qualifying borrowers shall be eligible to receive fixed rate Program loans from any remaining available funds in the borrower's region-based pool. A borrower's eligibility for available amounts from a region-based pool shall be based on the borrower's place of residence within New York

State. If actual demand for fixed rate Program loans from the income-based pool is less than the available amounts allocated to or for such pool, the Corporation may reallocate fixed rate Program loan funds for the academic year to one or more region-based pools to maximize the use of total funds available for fixed rate Program loans. If actual demand for fixed rate Program loans in a region-based pool is less than the available amounts allocated for that region, the Corporation may reallocate fixed rate Program loan funds for the academic year to the income-based pool or another region-based pool to maximize the use of total funds available for fixed rate Program loans.

§2200-a.8 Variable Rate Program Loans.

(a) The Corporation shall, on an annual basis, determine whether variable rate Program loans shall be offered for the upcoming academic period. For each academic period in which new variable rate Program loans are offered, the Corporation shall establish lender terms. Such variable rate Program loan terms shall be set forth in the Program Underwriting Manual and publicized on the Corporation's Web site.

(b) Lenders shall make variable rate loans based on a borrower's credit score formula consistent with the Program Underwriting Manual.

(c) Variable rate Program loan rates shall be calculated using an index to be determined by the Corporation on at least an annual basis with respect to Education loans to be made for the following academic year plus an amount determined by the Corporation and set forth in the Program's Underwriting Manual. The index established shall be publicized.

Lenders shall be required to use the index established, as part of the interest calculation, at the time of disbursement to determine the variable rate.

(d) Lenders may limit lending to certain borrowers based on their credit score consistent with the Program Underwriting Manual.

(e) Lenders who elect to limit lending must be consistent with all borrowers having the same credit score criteria, school, and member eligibility.

§2200-a.9 Minimum/Maximum Program Loan Limits.

(a) Maximum Program loan amounts available to eligible borrowers shall be as follows:

(i) \$10,000 annually;

(ii) \$20,000 aggregate for undergraduates attending a two year institution;

(iii) \$50,000 aggregate for undergraduates attending a four year institution; and

(iv) \$70,000 aggregate total for undergraduate and graduate study.

(b) The amount of the Program loan shall not exceed the difference between the cost of attendance less all other New York State aid, Title IV aid (excluding federal PLUS loans), other federal aid, institutional aid, and private aid, as certified by the eligible college.

(c) The minimum original principal amount of an Education loan shall be determined by the Corporation, and with respect to Education loans that are otherwise eligible for purchase by a public benefit corporation, shall be subject to approval by such public benefit corporation, on at least an annual basis with respect to Education loans to be made for the applicable academic year, or portion thereof, after taking into account applicable financial market conditions.

(d) The maximum interest rate under this Program shall not exceed sixteen and one-half (16.5) percent per annum, or its equivalent rate for a longer or shorter period.

§2200-a.10 Default Fees.

(a) *School default fees.*

(i) A default fee associated with a Program loan shall be assessed to each school on loans made to or on behalf of students attending such school during an academic year in an amount equal to one percent of the original principal amount of the Program loans originated on behalf of students. The Corporation and the Agency shall determine the mechanism for collecting the assessed fee no less frequently than annually, as prescribed in section 692 of the Education Law.

(ii) The Corporation's electronic funds transfer process will proportionately reduce the amount of the borrower's disbursement(s) to reflect payment of the school's default fees. Schools shall, if applicable, credit the student's account to reflect reimbursement of the school default fee. The Corporation's EFT process will reflect the amount of the borrowers' disbursements including the college's default fees. The college's default fees will be deducted from the amount deposited in the College's bank account. The College shall ensure that the Program loan proceeds were credited to the student's accounts within ten business days from receipt.

(iii) Any entity other than a student or a borrower shall be permitted to pay the school default fee on behalf of a school consistent with applicable laws.

(b) *Borrower default fees.*

(i) A borrower fee shall be deducted proportionately from each disbursement made on a Program loan through the Corporation's electronic funds transfer process. This fee may be included in the calculation of the student's cost of attendance. Any entity may pay or subsidize all or a portion of the borrower's default fee on behalf of the borrower as approved by the Corporation consistent with applicable laws.

(ii) The Corporation shall determine the amount of the fee to be deducted, subject to approval by the Agency, as prescribed in section 692 of the Education Law.

(iii) Fees collected by the Corporation shall be deposited upon receipt into a separate Corporation account, held solely for the purposes of this Program, for timely deposit into the applicable default reserve fund.

§2200-a.11 Program Loan Verification Requirements.

(a) All eligible borrowers and eligible co-signers shall provide employment and income information as requested by the lender for verification purposes.

(b) All verification requirements for lenders shall be outlined in the Program's Underwriting Manual.

§2200-a.12 Prohibited Transactions.

Lenders and schools shall comply with all state and federal laws and regulations pertaining to any unfair or deceptive lending practices for educational loans, any conflicts of interest detrimental to the student, and any other prohibited conduct in connection with student lending.

§2200-a.13 School Certification Requirements.

(a) A school shall certify that the information it provides in connection with a Program loan is complete and accurate. The school shall rely in good faith on information provided by the student and/or borrower in the absence of contrary information.

(b) When certifying a borrower for a Program loan, a school shall certify to the best of its knowledge that:

- (i) the borrower is an eligible borrower applying for a Program loan to finance the education costs of an eligible student;
- (ii) the student for whom the Program loan is being made has an unmet need for a Program loan to pay for higher education expenses, which includes all allowances contained in section 472 of the Higher Education Act of 1965, as amended, based on the student's cost of attendance, less all available aid, within the meaning of section 2200-a.9(b); and
- (iii) on or after February 14, 2010, the borrower has been provided with a self-certification form on private educational loans to be returned to the lender unless the Corporation has agreed to verify that the borrower has been provided with the self-certification form regarding his or her private education loan debt to be returned to the lender or holder or the holder's servicer of the Program loan on behalf of the college.

(c) The eligible college shall provide the following information to the lender in relation to a Program loan:

- (i) student's grade level and enrollment status;
- (ii) student's anticipated date of graduation;

- (iii) student's school name and branch code;
- (iv) maximum Program loan approval amount;
- (v) Program loan disbursement dates (maximum of four dates);
- (vi) academic period of the Program loan; and
- (vii) certification of student eligibility by the college certifying officer.

§2200-a.14 Processing Program Loan Proceeds.

- (a) Schools shall request the disbursement of Program loan proceeds through the Corporation's electronic funds transfer process.
- (b)
 - (i) Program loans shall be disbursed in equal disbursements based on the student's program length and shall be delivered to the borrower or credited to the student's account within three business days of receipt by the school of the proceeds of any Program loan disbursement.
 - (ii) A school shall, within ten business days, deliver or credit the Program loan funds to the student's account or return the funds to the lender, through the Corporation electronic funds transfer (EFT) refund process.
- (c) Schools may apply Program loan funds to unpaid higher education expenses charged to the student in the prior academic year provided these charges have been included by the school as part of the enrolled student's cost of attendance for the academic year for which the Program loan is to be made. The availability of funding for prior year costs shall be determined by the Corporation, and with respect to Education loans that are otherwise eligible for purchase by a public benefit corporation shall be subject to approval by such public benefit corporation, on at least an annual basis with

respect to Education loans to be made for the applicable academic year, or portion thereof.

(d) Where the one percent school default fee is deducted from a student's Program loan, the school shall ensure that such default fee is credited to the student's account within ten business days from receipt of the Program loan proceeds. The school is prohibited from charging interest to the student during this ten day period.

§2200-a.15 Processing Program Loan Refunds.

(a) Refunds of Program loan proceeds shall be processed in accordance with the school's refund policy, including the allocation of such refunds.

(b) If a Program loan refund is made by the school prior to the forty-sixth day after disbursement, there will be a proportionate refund of fees that were collected from the borrower and school.

(c) No fees shall be refunded on or after the forty-fifth day after disbursement except in extenuating circumstances, where a full refund of a Program loan was made beyond the forty-fifth day, borrower fees and school fees may also be returned as determined by the Corporation and, if applicable, the Agency.

(d) Refunds shall be returned to the holder, through the Corporation electronic funds transfer (EFT) refund process within thirty days of the school's determination that the borrower is no longer eligible for such funds.

§2200-a.16 Disclosure Requirements for Participating Schools.

As part of entrance and exit counseling, a school or the Corporation, if agreed to in advance, shall inform a student borrower of the total amount of Program loan debt incurred and the interest rate calculations of the Program loans received. The school or the Corporation shall also provide a student borrower with a reminder that these Program loans must be repaid and the consequences of defaulting on these Program loans. The Corporation shall perform the requirements of entrance counseling through the Program's financial literacy modules and disclosures used in the application process. Exit counseling requirements shall be performed by either the Corporation or holder of the Program loan.

§2200-a.17 Disclosure Requirements for Participating Lenders.

The disclosure requirements set forth in this section shall occur on or after February 14, 2010. Lenders must comply with all disclosure requirements required by applicable state and federal law and regulation.

(a) *Program loan disclosures at time of Program loan approval.*

(i) At the time of approval of a Program loan application, and before Program loan consummation, the lender shall clearly and conspicuously disclose to the borrower:

(a) the Program loan interest rate on the date of approval;

(b) the estimated Annual Percentage Rate;

(c) whether the interest rate is fixed or variable;

- (d) whether or not there are any limitations on the frequency and amount of interest rate adjustments;
- (e) the initial approved principal amount;
- (f) any applicable finance charges, late fees, penalties, and adjustments to principal, as a result of Program loan defaults or late payments by the borrower;
- (g) any Program loan fees or range of fees;
- (h) the maximum repayment terms under this Program;
- (i) an estimate of the total amount for repayment of the Program loan, using the interest rate in effect at the time of approval and at the maximum interest rate offered by the lender applicable to the borrower, to the extent that a maximum rate may be determined, or a good faith estimate;
- (j) any principal and/or interest payments that may be required while the student is enrolled at an eligible college and, if applicable, unpaid interest that will accrue during enrollment (accrued interest may be capitalized, meaning added to the borrower's principal balance);
- (k) options for deferring payment on the Program loan, if applicable;
- (l) the right of the borrower to accept or decline the terms of the Program loan and complete the transaction within a minimum of thirty calendar days following the date that the application is approved and disclosure documents required under this section are received by the borrower. The rates and terms of the Program loan

may not be changed by the lender during this period except for changes based on adjustment to the index used for the loan;

(m) that the borrower:

(i) may qualify for federal assistance under Title IV of the Higher Education Act of 1965, as amended, instead of or in addition to a non-federal source;

(ii) may obtain information regarding federal student financial assistance from their eligible school or at the U. S. Department of Education Web site.

(n) the interest rates currently available for loans under Title IV of the Higher Education Act of 1965, as amended;

(o) the maximum monthly payment using the interest rate in effect at the time of approval and, the maximum interest rate applicable to the Program loan offered by the lender for a particular borrower, to the extent that a maximum rate can be determined, or a good faith estimate;

(p) any other disclosure required of the lender by state or federal law.

(b) *Self-certification form.*

(i) The lender shall obtain from the borrower the signed self-certification form, in written or electronic format, for private educational loans before the lender may consummate a Program loan.

(ii) The lender shall collect and maintain a copy of the self-certification form.

(c) *Disclosures at the time of Program loan consummation.* The lender, at the time of disbursement of a Program loan, shall disclose to the borrower the required disclosures described in subdivision (a), paragraph (i), subparagraphs (b) through (k) and (m) through (p) and subdivision (e) of this section with regard to the right to cancel. These disclosures may be adjusted as necessary to reflect the interest rate at the time of consummation.

(d) *Program loan disclosure format.*

(i) For private educational loans, the Federal Reserve Board and Secretary of Education shall provide a model disclosure form that may be used by the lender to disclose the information required by this section.

(ii) *Safe harbor.* A lender may choose to use its own disclosure form provided such form is compliant with federal requirements and provides information in accordance with this section.

(iii) A lender's failure to perform all disclosure requirements may result in the lender's ineligibility to receive reimbursement from the applicable default reserve fund for any Program loan in which the lender failed to make such disclosure.

(e) *Right to cancel.*

(i) A borrower may cancel a Program loan, without penalty, within three business days from the date which the loan is scheduled for disbursement, and the lender shall disclose this right to the borrower in accordance with subdivision (c).

(ii) If the lender determines prior to any disbursement that the borrower is no longer eligible for a Program loan, the lender shall first notify the borrower and cancel any remaining disbursements.

(f) *Delayed disbursement.* No disbursement shall be made with respect to a Program loan until the end of the three day period described in subdivision (e) of this section.

(g) Borrowers may make prepayments on their Program loan balance without penalty.

§2200-a.18 Reporting Requirements for Participating Schools.

(a) Whenever a school determines a student has dropped to less than half-time attendance, the school must report such information to the National Student Loan Clearinghouse. A school that does not use the Clearinghouse shall report in a manner that has been approved by the Corporation.

(b) Whenever a school receives information which would make the borrower or co-signer ineligible to receive Program loans due to a default or failure as described in section 2200-a.2(f), the school must report such information to the Corporation.

§2200-a.19 Reporting/Retention Requirements for Participating Holders.

A holder, or an entity servicing a Program loan, shall maintain current, complete, and accurate records of each Program loan made and held.

- (a) The holder or servicing entity shall keep:
 - (i) a copy of the Program loan application and all credit information used to determine borrower eligibility and any other credit-related information submitted by the school;
 - (ii) a copy of the signed promissory note;
 - (iii) the repayment schedule;
 - (iv) a record of each disbursement;

- (v) the student enrollment status;
 - (vi) the student change of address;
 - (vii) information on deferment and forbearance eligibility;
 - (viii) the payment history;
 - (ix) the collection history; and,
 - (x) any other records that verify the validity of a claim.
- (b) Such records shall be maintained for not less than three years after the Program loan is paid in full, or a claim is paid by the Corporation on the Program loan, or a sale of the Program loan to another entity. Such records shall be made available for inspection by the Corporation, or its agents and, if eligible for purchase by a public benefit corporation, by such public benefit corporation or its agents.
- (c) Records, including the promissory note, may be stored in any electronic format but must be retrievable in a coherent format, or as copies of original documents. The application and signed promissory note shall be maintained as originals in either paper or electronic format.
- (d) Holders, or an entity servicing the Program loan, shall respond promptly to any other requests for information by the Corporation with regard to its administration of the Program and with respect to Program loans sold by such holders to the Agency.
- (e) The holder shall maintain and file the report as set forth in the Program's Underwriting Manual with the Corporation on a quarterly basis.

§2200-a.20 Program Loan Repayment.

(a) *Repayment.* For any Program loan made, the repayment period shall begin sixty days after the date the last disbursement is made on the Program loan. Interest shall begin to accrue starting the day of disbursement by the lender to the Corporation.

(i) *In-school.*

(a) A student borrower's loan principal may be deferred during the in-school period. Subject to subparagraph (b), student borrowers shall be required to either pay interest or have the accrued interest capitalized at the end of the in-school deferment or the end of any applicable grace period.

(b) The terms and availability of interest deferment capitalization shall be determined by the Corporation, and with respect to Education loans that are otherwise eligible for purchase by a public benefit corporation shall be subject to approval by such public benefit corporation, on at least an annual basis with respect to Education loans to be made for the applicable academic year, or portion thereof, after taking into account applicable financial market conditions.

(c) Non-student borrowers shall pay principal and interest while the student is in school.

(ii) *Grace Period.*

(a) The grace period for a student borrower whose principal was deferred during the in-school period shall extend for six months after the last date of attendance at an eligible college or the last date in which the student attended on at least a half-

time basis. A student borrower's loan principal shall be deferred during the grace period. Subject to section 2200-a.20(a)(i)(b), a student borrower shall be required to either pay interest or have the accrued interest capitalized at the end of the grace period.

(b) Non-student borrowers shall pay principal and interest while the student on behalf of whom a Program loan was made is in a grace period.

(iii) *Return to school.* Student borrowers who have entered repayment after their grace period and who subsequently return to school at least half-time may have, on previously disbursed Program loans, their Program loan principal payments suspended, as determined by the Corporation and a public benefit corporation. Such student borrowers may also be eligible for the deferral of interest payments for all or a portion of the period in which the student is in attendance at least half-time, subject to the approval of the Corporation and the public benefit corporation. Interest shall continue to accrue during the suspension of principal and interest payments.

Principal and interest payments on such previously disbursed Program loans shall be immediately due and owing upon the last day of attendance or upon attendance on less than a half-time basis. The suspension of payments shall not extend the repayment requirements of the previously disbursed Program loans.

(iv) *Repayment terms.* The borrower shall be subject to all Program requirements regarding the repayment of any Education loan received. Each Education loan shall be repaid within the applicable repayment period, which shall be determined by the Corporation and set forth in the Program's Underwriting Manual, and with respect to Education loans that are otherwise eligible for purchase by a public benefit

corporation shall be subject to approval by such public benefit corporation, on at least an annual basis with respect to Education loans to be made for the applicable academic year, or portion thereof, after taking into account applicable financial market conditions.

(v) *Minimum payment.* The minimum monthly payment a borrower may be assessed is \$50.00, except for a borrower making interest only payments that are less.

(vi) *Income sensitive repayment for delinquent Program loans.* During any period in which the Corporation and the public benefit corporation determine that income sensitive payments may be offered, after taking into account applicable financial market conditions, a borrower who is delinquent but not yet in default on the repayment of a Program loan(s) may be eligible for an income sensitive repayment in accordance with criteria set forth in the Program's Default Avoidance and Claim Manual. This repayment option shall not extend the original repayment terms of the previously disbursed Program loans.

(b) *Forbearance.*

(i) Subject to paragraph (vi), a holder or the Corporation may grant a borrower forbearance on a Program loan, at three month intervals not to exceed one year, upon receiving supporting documentation that the borrower is intent upon repaying the Program loan.

(ii) Administrative forbearance shall be granted for up to sixty days prior to the processing of a deferment, and re-establishment of a repayment due date for the borrower.

(iii) Forbearances shall be agreed upon by the holder and borrower either verbally or in writing, which may include use of electronic notification provided such notification can be documented. If agreed to verbally, the holder must notify the borrower and co-signer in writing of the forbearance terms within thirty days of the verbal agreement.

(iv) Borrowers who are delinquent but not yet in default and who are unable to make payments because of a change in their financial status may apply to the Corporation for a forbearance due to economic hardship in accordance with criteria set forth in the Program's Default Avoidance and Claim Manual. This forbearance shall not extend the original repayment terms of the previously disbursed Program loans.

(v) A borrower shall be required to either pay interest or to have the accrued interest capitalized at the end of the forbearance.

(vi) The terms and availability of forbearance shall be determined by the Corporation, and with respect to Education loans that are otherwise eligible for purchase by a public benefit corporation shall be subject to approval by such public benefit corporation, on at least an annual basis with respect to all or a portion of the Education loans to be made for the applicable academic year after taking into account applicable financial market conditions.

(c) Deferment.

(i) In accordance with paragraph (a)(i)(a) of this section, a student borrower in attendance at least half-time may be granted a deferral on principal and/or interest payments as follows: up to a total of twelve semesters or eighteen trimesters for undergraduate study, including, for purposes of determining remaining available

periods of deferment, any previously completed periods of study which shall count toward the total; up to a total of sixteen semesters or twenty-four trimesters for both undergraduate and graduate study, including, for purposes of determining remaining available periods of deferment, any previously completed periods of study which shall count toward the total; and one year for an approved professional residency or internship program as approved by the Commissioner. In no instance shall the total deferral period exceed nine academic years. The terms and availability of interest payment deferment shall be determined by the Corporation, and with respect to Education loans that are otherwise eligible for purchase by a public benefit corporation, shall be subject to approval by such public benefit corporation on at least an annual basis with respect to Education loans to be made for the applicable academic year, or portion thereof, after taking into account applicable financial market conditions. The Corporation shall inform holders and schools of, and publish on its Web site, the terms of the interest payment deferment for Program loans to be issued for the applicable academic year. Interest owed during deferment will be required to be paid, or if allowed to accrue, will be capitalized at the end of the deferment.

(ii) A deferment for military service shall be unlimited for student borrowers who are members of the military and in active duty status. The Corporation shall request and receive documentation to verify active duty status in order to qualify a student borrower for this deferment. A borrower's continued eligibility for the military service deferment shall be annually reviewed by the holder, servicer or Corporation as applicable.

(iii) A holder shall not be precluded from offering additional deferments to a borrower, as determined by the holder, and approved by the Corporation; however any increase in the Program loan balance as a result of the deferment shall not be eligible for claim payment by the Corporation in the event of default. Holders offering any approved additional deferments shall notify the borrower of the continued availability of the benefit upon the sale of the Program loan to the new holder. The new holder of a Program loan who fails to provide all additional benefits offered to a borrower by a prior holder shall not be eligible to receive reimbursement from the Corporation in the event of default.

(d) Fees for forbearance or deferment are prohibited..

(e) *Loan discharge.*

(i) A borrower's or co-signer's obligation to repay a Program loan may be discharged based on the death of the student or the total and permanent disability of the student for whom the Program loan was taken, while the student was enrolled or accepted for enrollment at least half-time at the time of either occurrence.

(ii) A borrower's, and his or her co-signer's, obligation to repay a Program loan may be discharged based on the death of the borrower while on active military duty.

(iii) A certified death certificate, or other documentation acceptable to the Corporation, shall be sufficient proof of a student's death.

(iv) An application for a loan discharge based upon the total and permanent disability of a student shall be submitted by a borrower or co-signer and approved by the Corporation.

- (v) Program loans that are discharged shall be eligible for payment from the applicable default reserve fund.
- (f) *Loan interest rate reduction.* In any period in which loan interest reductions are offered, a borrower making pre-authorized (auto-debit) payments may receive an interest rate reduction in an amount determined by the Corporation in consultation with the Agency.
- (g) *Co-signer release.*
 - (i) The terms and availability of co-signer release shall be determined by the Corporation, and with respect to Education loans that are otherwise eligible for purchase by a public benefit corporation shall be subject to approval by such public benefit corporation on at least an annual basis with respect to Education loans to be made for the applicable academic year, or portion thereof, after taking into account applicable financial market conditions.
 - (ii) If available, a co-signer may be released from his/her responsibility if a borrower:
 - (a) makes consecutive on-time payments of interest, or principal and interest, commencing with the first billing cycle while the student is in school and grace that are equal to or greater than the interest charged on the Program loan;
 - (b) makes forty-eight consecutive, monthly, on-time payments of principal and interest upon entering into repayment; and
 - (c) is determined to individually satisfy credit criteria that would be applicable to a borrower without a co-signer in connection with a similar

Program loan at the time of the co-signer release, as set forth in the Program Underwriting Manual.

(iii) On-time payments shall mean payments received within fifteen days of the due date.

§2200-a.21 Due Diligence for Program Loan Delinquency.

(a) Holders, or entities servicing Program loans, shall perform required due diligence activities against a borrower and co-signer by the fifteenth day of either Program loan payment delinquency or interest only delinquency. Due diligence activities shall include, the sending of at least one written notice to, and one diligent effort to contact, the borrower and co-signer. The holder, or an entity servicing Program loans, shall notify the Corporation no later than the 31st day of delinquency.

(b) When a borrower is 16-150 days delinquent, holders, or entities servicing Program loans, shall make at least four diligent efforts to contact the borrower and co-signer by telephone, and send at least four collection letters about repayment. At least one diligent effort must occur between the 16th and 30th day of delinquency and at least another prior to the 90th day of delinquency. The language of each successive collection letter shall be more forceful than the previous collection letter. Collection letters shall also include information about available Program loan deferments or forbearances for which the borrower may be eligible. On the 181st day of delinquency, the borrower shall be deemed to be in default.

(c) At least two of the collection letters shall warn the borrower and co-signer that, if the Program loan is not paid, the holder will sell the Program loan to the Corporation. The

Corporation shall then institute collection activities against both the borrower and co-signer which may include the offset of their state tax refunds, administrative wage garnishment and any other actions needed to collect the debt.

(d) A holder, or an entity servicing Program loans, shall send a final demand letter to the borrower and co-signer between 151 and 180 days of delinquency.

(e) The holder, or an entity servicing Program loans, must file a default claim with the Corporation between 181 – 240 days of delinquency and shall continue to engage in collection efforts until submission of the claim. These efforts shall urge the borrower and co-signer to make the required payments on the Program loan. At a minimum, these efforts shall provide the borrower and co-signer with options to avoid default and advise the borrower and co-signer of the consequences of defaulting on a Program loan. The collection efforts must continue until the date the holder, or an entity servicing Program loans, mails the final demand letter. However, any collection effort performed after the date the final demand letter is mailed shall be consistent with the final demand letter.

The holder, or an entity servicing Program loans, shall allow the borrower thirty days after the final demand letter is sent to respond to the holder before filing a default claim.

(f) No gap of greater than forty-five days shall occur between collection activities. Violations shall result in a partial or total loss of reimbursement to the holder or entity servicing the Program loan.

(g) Holders, or entities servicing Program loans, shall comply with the procedures in the Program's Default Avoidance and Claim Manual regarding the filing of claims.

- (h) If a holder, or an entity servicing Program loans, is unable to make contact with the borrower or co-signer, the holder or servicing entity shall follow the procedures for skip tracing set forth in the Program's Default Avoidance and Claim Manual.
- (i) Unless requested by the borrower, payments made in excess of the amount due shall be applied to the principal balance unless there are outstanding fees and/or interest owed by the borrower, upon which the payment in excess shall first be applied to any outstanding fees then to any outstanding interest then to the principal balance.
- (j) Holders, or entities servicing Program loans, may use electronic means, including but not limited to electronic mail, to satisfy due diligence letter requirements provided the holder can adequately document receipt by the borrower, such as a return receipt or other such confirmation.
- (k) In the event one delivery method is unsuccessful, the holder or servicing entity shall use another delivery method.

§2200-a.22 Default Claims.

- (a) A borrower shall be in default on a Program loan on the one hundred eighty-first day of delinquency on the Program loan.
- (b) The holder, or an entity servicing Program loans, shall submit a claim to the Corporation for reimbursement within sixty days of default.
- (c) The holder, or an entity servicing Program loans, shall submit a record of all payment and collection activities on the Program loan along with all other required documents noted on the Program claim form.

(d) All claims deemed acceptable by the Corporation based on the Program's Default Avoidance and Claim Manual shall be reimbursed at one hundred percent of the principal, and interest through the claim payment date based on the availability of funds in the applicable default reserve fund.

(e) If a claim is returned to the holder, or an entity servicing Program loans, for any reason, the holder shall be allowed one thirty day resubmission period.

(f) Claims not acceptable after the thirty day resubmission period for the error(s) identified shall lose their eligibility for payment by the Corporation.

(g) Holders shall receive payment of only the outstanding Program loan principal and interest up to claim payment date on a resubmitted claim.

(h) Upon payment of a claim, the borrower shall be deemed ineligible for any Program loan benefits, except as provided in section 2200-a.2(f).

§2200-a.23 Loan Collection Efforts.

Collection activities shall be set forth in the Program's Default Avoidance and Claim Manual. The Program's Default Avoidance and Claim Manual shall be reviewed periodically for revisions.

§2200-a.24 Administrative Wage Garnishment.

(a) The Corporation may garnish the disposable pay of a borrower who is not making payments on a Program loan held by the Corporation in accordance with this section.

(i) At least thirty days before the initiation of garnishment proceedings, the Corporation shall mail to the borrower's last known address, a written notice of

the nature and amount of the debt, the intention of the Corporation to initiate proceedings to collect the debt through deductions from pay, and an explanation of the borrower's rights.

(ii) The Corporation shall offer the borrower an opportunity to inspect and copy Corporation records related to the debt. Upon receipt of a written request, the Corporation will, within five business days, either mail, fax, e-mail or otherwise send the documents to the borrower. If the borrower's written request so states, the borrower may visit the Corporation to inspect the documents during regular business hours at the Corporation's headquarters. Upon written request of the borrower, the Corporation shall provide one copy of records in the possession of the Corporation related to the debt at no charge to the borrower.

(iii) The Corporation shall offer the borrower an opportunity to enter into a written repayment agreement with the Corporation under terms agreeable to the Corporation.

(iv) The Corporation shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and, in the case of a borrower whose proposed repayment schedule under the garnishment order is established other than by a written agreement, the terms of the repayment schedule.

(v) The Corporation may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least twelve months.

(vi) Unless the Corporation receives information that the Corporation believes justifies a delay or cancellation of the withholding order, it shall send a

withholding order to the employer within twenty days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within twenty days after a final decision is made by the Corporation to proceed with garnishment.

(vii) The Corporation shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for a hearing on the existence or amount of the debt or the terms of the repayment schedule. The time and location of the hearing shall be established by the Corporation. An oral hearing may, at the borrower's option, be conducted either in-person or by telephone conference. All telephonic charges must be the responsibility of the Corporation.

(viii) If the borrower's written request is received by the Corporation on or before the fifteenth day following the borrower's receipt of the notice the Corporation may not issue a withholding order until the borrower has been provided the requested hearing. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice five days after it was mailed by the Corporation. The Corporation shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the Corporation may prescribe, to be rendered within sixty days.

(ix) If the borrower's written request is received by the Corporation after the fifteenth day following the borrower's receipt of the notice the Corporation shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the Corporation may prescribe, may be rendered within

sixty days, but may not delay issuance of a withholding order unless the Corporation determines that the delay in filing the request was caused by factors over which the borrower had no control, or the Corporation receives information that the Corporation believes justifies a delay or cancellation of the withholding order. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice five days after it was mailed by the Corporation.

(x) The hearing official appointed by the Corporation to conduct the hearing may be any qualified individual, as approved by the Corporation, including an administrative law judge, or other qualified individual as approved by the Corporation, not under the supervision or control of the head of the Corporation.

(xi) The hearing official shall issue a final written decision at the earliest practicable date, but not later than sixty days after the Corporation's receipt of the borrower's hearing request.

(b) (i) The notice given to the employer must contain only the information as may be necessary for the employer to comply with the withholding order.

(ii) The employer shall deduct and pay to the Corporation from a borrower's wages an amount that does not exceed the lesser of fifteen percent of the borrower's disposable pay for each pay period or the amount by which a debtor's disposable pay exceeds an amount equal to thirty (30) times the minimum wage as specified in 15 U.S.C. 1673(a)(2) or the amount permitted by the Program, unless the borrower provides the agency with written consent to deduct a greater amount. For this purpose, the term "disposable pay" means that part of the

borrower's compensation from an employer remaining after the deduction of any amounts required by law to be withheld.

(iii) The Corporation may sue any employer for any amount that the employer, after receipt of the garnishment notice provided by the Corporation fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle.

(c) The borrower may seek judicial relief, including punitive damages, if the employer discharges, refuses to employ, or takes disciplinary action against the borrower due to the issuance of a withholding order.

(d) *Receipt of notices from the Corporation by the borrower.* Notices sent by the Corporation to the borrower under this Program shall be sent by first class U.S. mail and shall be deemed to be served upon and received by the borrower on the fifth day after the date it was mailed by the Corporation. This includes Notices of Wage Withholding and Notices of Hearings.

(e) *Hearing request timeframes.* In order to hold a hearing before a wage garnishment is implemented, the borrower's request for a hearing must be received by the Corporation within twenty days of the date the Notice of Wage Withholding was mailed by the Corporation.

(f) *Percentage of withholding.* In determining the percentage of disposable income to be withheld, the hearing officer shall consider all documents submitted as evidence and shall look to the borrower's documented specific financial circumstances, including the overall circumstances of the borrower's household, when deciding the amount of a wage garnishment. At a minimum, a borrower must submit copies of two recent paystubs and

a monthly budget for the hearing officer to consider. If a borrower fails to provide the required paystubs and monthly budget for the hearing officer to consider, the hearing officer shall garnish the full fifteen percent of the borrower's disposable pay.

(g) *Order of withholding.* Within twenty days of receipt by the Corporation of a decision from a hearing officer ordering or authorizing a wage garnishment under this Program, the Corporation will generate an order of withholding and deliver it to the borrower's employer.

(h) References to "the borrower" in this section shall include any co-signer on the Program loan.

§2200-a.25 Bankruptcy.

Holders, or entities servicing Program loans, shall follow the procedures outlined in the Program's Default Avoidance and Claim Manual for any borrower filing bankruptcy on a Program loan. Program loans shall be non-dischargeable pursuant to section 523(a)(8) of the U.S. Bankruptcy Code.

§2200-a.26 Program Loan Consolidation.

The Corporation shall annually determine the availability of Program loan consolidation. In any year in which Program loan consolidation is available the Corporation shall determine the terms of such Program loan consolidation for the academic year and with respect to Education loans that are otherwise eligible for purchase by a public benefit corporation, shall be subject to the approval of such public benefit corporation, based on market conditions.

§2200-a.27 Program Audits.

The Corporation shall regularly provide for audits to be performed on lenders, servicers, holders and eligible schools for Program compliance.

§2200-a.28 Incorporation by Reference.

For purposes of this Part, the following manuals referred to throughout are hereby incorporated by reference: Program's Default Avoidance and Claim Manual version number 1, dated October 20, 2009; and the Program's Underwriting Manual version number 1, dated October 20, 2009.