

#	Subject	Summary of Change to Common Manual	Type of Update	Effective Date
1282	Income-Based Repayment – Married Borrowers Filing Jointly <i>This policy proposal originally appeared in Batch 191</i>	10.8.D Income-Based Repayment Schedule Provides clarification for the PFH eligibility calculation and PFH payment amount calculation under IBR for married borrowers who file federal income taxes jointly. Also provides some unique requirements for married borrowers who file separately and live in a community property state.	Federal	Income-based repayment (IBR) plan requests or renewals processing by the lender on or after July 1, 2010.

Batch 193 (Approved)

COMMON MANUAL – FEDERAL POLICY PROPOSAL

Date: March 21, 2013

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	with no changes	Mar 21

SUBJECT: Income-Based Repayment – Married Borrowers Filing Jointly

AFFECTED SECTIONS: 10.8.D Income-Based Repayment Schedule

POLICY INFORMATION: 1282/Batch 193 (originally distributed in Batch 191)

EFFECTIVE DATE/TRIGGER EVENT: Income-based repayment (IBR) plan requests or renewals processed by the lender on or after July 1, 2010.

BASIS:

§682.215(a)(1), (a)(4)(ii), and (b)(ii); Final Rules published in the *Federal Register* dated October 29, 2009, p.55982; Final Rules published in the *Federal Register* dated November 1, 2012, p. 66112.

CURRENT POLICY:

Current policy provides the partial financial hardship (PFH) eligibility calculation and PFH payment amount calculation under IBR for individual borrowers only and does not reference any unique requirements for married borrowers who file federal income taxes separately and live in a community property state.

REVISED POLICY:

Revised policy provides clarification for the PFH eligibility calculation and PFH payment amount calculation under IBR for married borrowers who file federal income taxes jointly. Revised policy also provides some unique requirements for married borrowers who file separately and live in a community property state.

REASON FOR CHANGE:

This policy is necessary to clarify eligibility for PFH and the PFH payment amount calculation for Income-Based Repayment.

PROPOSED LANGUAGE - COMMON MANUAL:

Revise Subsection 10.8.D, page 18, column 1, paragraph 2, as follows:

For a married borrowers filing federal income taxes separately, AGI includes only the borrower's income. Married borrowers who file separately are not required to include their spouse's income and may not include their spouse's eligible debt when determining eligibility for PFH under the Income-Based Repayment plan. However, married borrowers who reside in community property states and file separately must divide all community income equally between each other when filing federal income taxes. As a result, such borrowers may state that their reported AGI does not reasonably reflect their own current income. In these cases, the Department encourages loan holders to request and use alternative documentation to determine the borrower's eligibility for PFH and the PFH payment amount.
[Final Rules published in the *Federal Register* dated November 1, 2012, p. 66112]

For a married borrower filing taxes jointly, AGI includes both the borrower's and spouse's income. A married borrower who files a joint tax return may include with his or her eligible loans any eligible loans owed by the borrower's spouse for purposes of determining PFH eligibility. In this situation, the lender must:

Revise Subsection 10.8.D, page 18, column 2, paragraph 1, introductory sentence to Steps, as follows:

A borrower has an AGI of \$50,000, a family size of 5, total loans of \$25,000 when initially entered repayment and \$23,000 at the time of the IBR request, and is a resident of Virginia.

Revise Subsection 10.8.D, page 18, column 2, paragraph 1, Step 1, as follows:

Step 1: Obtain the DHHS poverty guideline for the family size and state. For this example, the applicable DHSS poverty guideline is \$25,790, based on the 2010 DHHS poverty guideline.

Revise Subsection 10.8.D, page 18, column 2, paragraph 1, Step 5, as follows:

Step 5: Determine the annual payment amount on the higher total of the borrower's loan based on a standard 10-year repayment schedule and the applicable interest rate. In this example, the borrower's higher total loan amount is \$25,000 when he initially entered repayment at an interest rate of 6.8% which results in an annual payment amount of \$3,452.40. (Note: For married borrowers who file federal income taxes jointly, if the spouse also has IBR-eligible loans, this calculation on the higher amount must be performed on the spouse's loans as well, and the higher annual payment amounts of each spouse must be added together. This total must then be used to determine each spouse's eligibility for partial financial hardship.)

Revise Subsection 10.8.D, page 18, column 2, paragraph 1, Step 7, as follows:

Step 7: To calculate the borrower's monthly payment amount, divide the result of Step 4 by 12 or $\$1,697.25/12 = \141.44 . (Note: For married borrowers who file federal income taxes jointly, the partial financial hardship payment amount would be allocated between both spouses' loans based on the percentage of the total eligible loan debt attributable to each individual borrower before any allocation between multiple loan holders.)

Revise Subsection 10.8.D, page 19, column 1, top of column, as follows:

...level, then the borrower's monthly PFH payment amount is \$0. If the result of the calculation is equal to or greater than \$5.00 but less than \$10.00 at the lender level, then the borrower's monthly PFH payment amount is \$10.00.
[\$682.215(b)(1), §685.221(b)(2)]

Revise Subsection 10.8.D, page 19, column 1, paragraph 3, as follows:

To recalculate the borrower's monthly payment amount under either of the two preceding bullets, a lender uses a standard repayment schedule for a 10-year repayment period based on the borrower's outstanding loan balance at the time that the borrower began repayment under the IBR plan. This monthly payment amount (a.k.a. *permanent-standard*) may result in a repayment period that exceeds 10 years.
[\$682.215(d)(1), §685.221(d)(1)]

Revise Subsection 10.8.D, page 19, column 1, paragraph 4, as follows:

If a borrower chooses to leave IBR, a lender recalculates the borrower's monthly payment amount by using a standard repayment schedule for the time remaining on a 10-year repayment period based on the borrower's outstanding loan balance at the time the borrower elects to leave IBR (a.k.a. *expedited-standard*). For a Consolidation loan, the monthly payment amount is recalculated, based on the time remaining up to a maximum of 30 years. (See Subsection 15.5.C for information on applicable repayment periods.)
[\$682.215(d)(2), §685.221(d)(2)]

PROPOSED LANGUAGE - COMMON BULLETIN:

Income-Based Repayment - Married Borrowers Filing Jointly

The *Common Manual* is updated to clarify that, for eligible married borrowers who file federal income tax jointly, the annual payment must be calculated on each borrower individually, with these totals added together to determine eligibility for PFH under the Income-Based Repayment plan. In addition, the PFH payment amount must be allocated between the two borrowers based on the percentage of the total eligible loan debt attributable to each individual borrower.

For a-married borrowers filing federal income taxes separately, AGI includes only the borrower's income. Married borrowers who file separately are not required to include their spouse's income and may not include their spouse's eligible debt when determining eligibility for PFH under the Income-Based Repayment plan. However, married borrowers who reside in community property states and file separately must divide all community income equally between each other when filing federal income taxes. As a result, such borrowers

may state that their reported AGI does not reasonably reflect their own current income. In these cases, the Department encourages loan holders to request and use alternative documentation to determine the borrower's eligibility for PFH and the PFH payment amount.
[Final Rules published in the *Federal Register* dated November 1, 2012, p. 66112]

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

A borrower will need to consider this clarification in determining eligibility for Income-Based Repayment.

School:

A school will need to provide students with the correct Income-Based Repayment qualification criteria.

Lender/Servicer:

A lender/servicer will need to review current Income-Based Repayment qualifying criteria.

Guarantor:

None.

U.S. Department of Education:

None.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:

CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:

June 3, 2010

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

March 14, 2013

PROPOSAL DISTRIBUTED TO:

CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received From (Original distribution in Batch 191) :

AES/PHEAA, ASA, College Assist, Great Lakes, MGA, NCHER, NELA, NSLP, OCAP, PPSV, SCSL, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments

Most of the commenters supported this proposal as written. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:

One commenter recommended adding language in the Common Bulletin to explain how married borrowers' incomes are reviewed if they reside in community property states.

Response:

The Committee agrees, but also believes this language should be inserted in Subsection 10.8.D, page 18, column 1, paragraph 2.

Change:

The following language has been added to Subsection 10.8.D, page 18, column 1, paragraph 2 and the Common Bulletin:

Subsection 10.8.D, page 18, column 1, paragraph 2:

For a married borrower filing taxes separately, AGI includes only the borrower's income. Married borrowers who file separately are not required to include the borrower's spouse's income or eligible debt when determining eligibility for PFH under the Income-Based Repayment plan – except when borrowers reside in community property states. Married borrowers in these states who file separately must split all community income equally between the two when filing federal income taxes. In these cases, the Department encourages loan holders to use alternative documentation to determine eligibility for PFH and the PFH payment amount because the borrower's AGI may not reasonably reflect the borrower's current income. [Final Rules published in the *Federal Register* dated November 1, 2012, p. 66112]

Common Bulletin:

Married borrowers who file separately are not required to include the borrower's spouse's income or eligible debt when determining eligibility for PFH under the Income-Based Repayment plan – except when borrowers reside in community property states. Married borrowers in these states who file separately must split all community income equally between the two when filing federal income taxes. In these cases, the Department encourages loan holders to use alternative documentation to determine eligibility for PFH and the PFH payment amount because the borrower's AGI may not reasonably reflect the borrower's current income.

COMMENT:

One commenter recommended utilizing specific examples for married borrowers filing jointly would be more beneficial.

Response:

The Committee recognizes more information regarding married borrowers filing federal taxes jointly would be helpful, and many of the other suggested changes meet that objective. The Committee believes the information provided in Subsection 10.8.D, page 18, column 1 is sufficiently clear.

COMMENT:

Some commenters recommended revising Subsection 10.8.D, page 18, column 2, paragraph 1, introductory sentence to the Steps, by adding the words “when initially entered repayment and \$23,000 at the time of the IBR request,” to account for the changes that were effective July 1, 2010 and allow for different amounts between origination of the loans and the request for IBR.

Response:

The Committee agrees.

Change:

Subsection 10.8.D, page 18, column 2, paragraph 1, introductory sentence to the Steps has been revised, as follows:

A borrower has an AGI of \$50,000, a family size of 5, total loans of \$25,000 when initially entered repayment and \$23,000 at the time of the IBR request, and is a resident of Virginia.

COMMENT:

Some commenters recommended revising Subsection 10.8.D, page 18, column 2, paragraph 1, Step 1, by adding the words “Based on the 2010 guidelines” to make clear the poverty guidelines used were those in effect for 2010.

Response:

The Committee agrees.

Change:

Subsection 10.8.D, page 18, column 2, paragraph 1, Step 1 has been revised, as follows:

Step 1: Obtain the DHHS poverty guideline for the family size and state. For this example, the applicable DHSS poverty guideline is \$25,790, based on the 2010 DHHS poverty guideline.

COMMENT:

Some commenters recommended revising Subsection 10.8.D, page 18, column 2, paragraph 1, Step 5, by

adding clarifying language to indicate each spouse's higher total loan amount is determined first, and then the annual payment amounts are added together.

Response:

The Committee agrees.

Change:

Subsection 10.8.D, page 18, column 2, paragraph 1, Step 5 has been revised, as follows:

Step 5: Determine the annual payment amount on the higher total of the borrower's loan based on a standard 10-year repayment schedule and the applicable interest rate. In this example, the borrower's higher total loan amount is \$25,000 when he initially entered repayment at an interest rate of 6.8% which results in an annual payment amount of \$3,452.40. (Note: For married borrowers who file federal income taxes jointly, if the spouse also has IBR-eligible loans, this calculation on the higher amount must be performed on the spouse's loans as well, and the higher annual payment amounts of each spouse must be added together. This total must then be used to determine each spouse's eligibility for partial financial hardship.)

COMMENT:

Some commenters recommended revising Subsection 10.8.D, page 18, column 2, paragraph 1, Step 7, by adding the words "before any allocation between multiple loan holders" at the end of the paragraph to clarify the allocation between each borrower's loans takes place prior to allocation between loan holders.

Response:

The Committee agrees.

Change:

Subsection 10.8.D, page 18, column 2, paragraph 1, Step 7 has been revised, as follows:

Step 7: To calculate the borrower's monthly payment amount, divide the result of Step 4 by 12 or $\$1,697.25/12 = \141.44 . (Note: For married borrowers who file federal income taxes jointly, the partial financial hardship payment amount would be allocated between both spouses' loans based on the percentage of the total eligible loan debt attributable to each individual borrower before any allocation between multiple loan holders.)

COMMENT:

One commenter recommended revising Subsection 10.8.D by adding the words "Note: For a married borrower who files taxes jointly, AGI includes both the borrower's and spouse's income."

Response:

While the Committee appreciates this suggestion, it believes other changes being made as a result of previous change statements above address the intent of this suggestion.

Change:

None.

COMMENT:

One commenter recommended adding citations to Subsection 10.8.D, page 19, column 1.

Response:

The Committee agrees.

Change:

Revised Subsection 10.8.D, page 19, column 1, top of column, as follows:

...level, then the borrower's monthly PFH payment amount is \$0. If the result of the calculation is equal to or greater than \$5.00 but less than \$10.00 at the lender level, then the borrower's monthly PFH payment amount is \$10.00

[\$682.215(b)(1), §685.221(b)(1)]

Revised Subsection 10.8.D, page 19, column 1, paragraph 3, as follows:

To recalculate the borrower's monthly payment amount under either of the two preceding bullets, a lender uses a standard repayment schedule for a 10-year repayment period based on the borrower's outstanding loan balance at the time that the borrower began repayment under the IBR plan. This monthly payment amount (a.k.a. *permanent-standard*) may result in a repayment period that exceeds 10 years.
[§682.215(d)(1), §685.221(d)(1)]

Revised Subsection 10.8.D, page 19, column 1, paragraph 4, as follows:

If a borrower chooses to leave IBR, a lender recalculates the borrower's monthly payment amount by using a standard repayment schedule for the time remaining on a 10-year repayment period based on the borrower's outstanding loan balance at the time the borrower elects to leave IBR (a.k.a. *expedited-standard*). For a Consolidation loan, the monthly payment amount is recalculated, based on the time remaining up to a maximum of 30 years. (See Subsection 15.5.C for information on applicable repayment periods.)
[§682.215(d)(2), §685.221(d)(2)]

Comments Received From (Original distribution in Batch 191):

AES/PHEAA, ASA, College Assist, FAME, Great Lakes, HESC(NY), MGA, NASFAA, NCHER, NELA, OCAP, PPSV, SCSLC, SLSA, TG, TSAC, UHEAA, and USA Funds.

Responses to Comments

Most of the commenters supported this proposal as written. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:

Several commenters recommended revising Subsection 10.8.D, page 18, column 1, paragraph 2, by clarifying that the taxes being filed are federal income taxes and making the information concerning borrowers living in community property states more clear, and offered suggestions on wording changes.

Response:

The Committee agrees and has incorporated these suggestions.

Change:

Revised Subsection 10.8.D, page 18, column 1, paragraph 2, as follows:

For a married borrowers filing federal income taxes separately, AGI includes only the borrower's income. Married borrowers who file separately are not required to include their spouse's income and may not include their spouse's eligible debt when determining eligibility for PFH under the Income-Based Repayment plan. However, married borrowers who reside in community property states and file separately must divide all community income equally between each other when filing federal income taxes. As a result, such borrowers may state that their reported AGI does not reasonably reflect their own current income. In these cases, the Department encourages loan holders to request and use alternative documentation to determine the borrower's eligibility for PFH and the PFH payment amount.
[Final Rules published in the *Federal Register* dated November 1, 2012, p. 66112]

COMMENT:

Several commenters recommended revising the Common Bulletin language by incorporating changes made to Subsection 10.8.D, page 18, column 1, paragraph 2, and offered suggestions on wording changes.

Response:

The Committee agrees and has incorporated these changes.

Change:

Revised the Common Bulletin language as follows:

For a married borrowers filing federal income taxes separately, AGI includes only the borrower's income. Married borrowers who file separately are not required to include their spouse's income and may not include their spouse's eligible debt when determining eligibility for PFH under the Income-Based Repayment plan. However, married borrowers who reside in community property states and file separately must divide all community income equally between each other when filing federal income taxes. As a result, such borrowers may state that their reported AGI does not reasonably reflect their own current income. In these cases, the Department encourages loan holders to request and use alternative documentation to determine the

borrower's eligibility for PFH and the PFH payment amount.
[Final Rules published in the *Federal Register* dated November 1, 2012, p. 66112]

COMMENT:

Several commenters recommended revising the Current Policy and Revised Policy statements to include information on married borrowers filing federal taxes separately and living in a community property state, and offered suggestions on wording changes.

Response:

The Committee agrees and has incorporated these changes.

Change:

Revised the Current Policy and Revised Policy statements as follows:

CURRENT POLICY:

Current policy provides the partial financial hardship (PFH) eligibility calculation and PFH payment amount calculation under IBR for individual borrowers only and does not reference any unique requirements for married borrowers who file federal income taxes separately and live in a community property state.

REVISED POLICY:

Revised policy provides clarification for the PFH eligibility calculation and PFH payment amount calculation under IBR for married borrowers who file federal income taxes jointly. Revised policy also provides some unique requirements for married borrowers who file separately and live in a community property state.

COMMENT:

Several commenters recommended revising Subsection 10.8.D, page 19, column 1, top of column, to reflect the correct citation.

Response:

The Committee agrees.

Change:

Revised Subsection 10.8.D, page 19, column 1, top of column, as follows:

...level, then the borrower's monthly PFH payment amount is \$0. If the result of the calculation is equal to or greater than \$5.00 but less than \$10.00 at the lender level, then the borrower's monthly PFH payment amount is \$10.00.

[\$682.215(b)(1), §685.221(b)(2)]

jd/edited- tmh