

Education

PART 2213
THE NEW YORK HIGHER EDUCATION
LOAN PROGRAM (NYHELPS)

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Education

Section 2213.1 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 on or after July 1st.
- (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 loan period for which a Program loan is requested, is either:
- (1) a citizen of the United States;
 - (2) a permanent resident alien holding an I-151 alien registration card; or
 - (3) 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:
- (1) 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
 - (2) 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 degree granting 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, a professional degree, or a professional certificate.
- (m) "Eligible cosigner" shall mean a parent, legal guardian or other individual who satisfies applicable credit criteria approved by the corporation and is a citizen and a New York State resident. A cosigner shall be eligible to cosign for no more than three separate borrowers for each academic year unless there exists a parental relationship for each additional borrower. To the extent permitted by statute, this definition shall not apply to a second cosigner as more fully described in the program's underwriting.
- (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 halftime as defined in this section and:

(1) 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

(2) 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) "Halftime" shall mean "part-time study" as defined in section 145-2.1(a)(1) of this Title for undergraduate students and shall mean enrollment in at least 6 credits, or the equivalent, for graduate students, except as otherwise required by statute.

(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:

(1) a lender described in section 2213.4;

(2) a public benefit corporation authorized to finance the purchase or making of education loans pursuant to the Public Authorities Law; or

(3) 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 21 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 12 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.

(w) Reserved

(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.

(ab) "Professional certificate" shall mean a certificate conferred on a person who has completed 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 this Title.

(ac) "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.

(ad) "Public benefit corporation" shall mean the Agency and any other entity as defined in subdivision 1 of section 51 of the Public Authorities Law.

(ae) "School" shall mean an eligible college as defined in this section.

(af) "Sponsor" shall mean an individual who 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.

(ag) "Student" shall mean any individual who is a citizen and is enrolled, or accepted for enrollment, at least halftime, as defined herein, in an eligible program at an eligible college located within New York State. A student must be certified by the college as meeting the requirements concerning satisfactory academic progress in accordance with 34 C.F.R. 668. 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.

(ah) "Total and permanent disability" shall mean a condition that occurred while the student was enrolled and after disbursement of a program loan or that, if in existence at the time of disbursement, has deteriorated substantially and in either case, leaves such 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, or, to the extent permitted by statute, unable to attend college because the injury or illness is expected to continue indefinitely or result in death.

(ai) "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.

(aj) "Undergraduate student" shall mean a student, as defined herein, who is enrolled, or accepted for enrollment, at least halftime as defined herein in a program leading to an undergraduate degree.

(ak) "Loan period" shall mean a period of time for which a loan is certified.

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2213.2 Borrower eligibility requirements.

(a) Student borrower. To be eligible for a program loan, a student borrower shall:

(1) provide all information requested on an application form prescribed by the corporation;

(2) apply for a program loan with an eligible cosigner as defined in section 2213.1 of this Part;

(3) be enrolled or accepted for enrollment in an eligible program at an eligible college on at least a halftime basis, as defined herein, and otherwise meet the requirements of a student and a borrower as each term is defined in section 2213.1 of this Part;

(4) successfully complete the program's web-based financial literacy course, completion of which will be tracked and confirmed by the corporation; and

(5) 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 (e), (f) and (g) of this section.

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

(1) be a parent, legal guardian or sponsor, as defined in section 2213.1 of this Part;

(2) apply for a program loan for the higher education expenses of a student as defined in section 2213.1 of this Part;

(3) provide all information requested on an application form prescribed by the corporation;

(4) be a New York State resident, and otherwise meet the requirements of a borrower, as defined in section 2213.1 of this Part;

(5) meet the requirements pertaining to citizenship as defined in section 2213.1 of this Part;

(6) 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 (e), (f) and (g) of this section; and

(7) 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 cosigner, if applicable, has an adverse credit history as defined in the program's underwriting manual.

(f) Renewed eligibility. To the extent permitted by statute, and with respect to program loans that are otherwise eligible for purchase by a public benefit corporation, subject to approval by such public benefit corporation, on at least an annual basis with respect to program loans to be made for the applicable academic year, or portion thereof, after taking into account applicable financial market conditions:

(1) Title IV funds. A borrower or cosigner in default of a loan made under title IV of the Higher Education Act of 1965, as amended, shall be ineligible for a program loan. Notwithstanding, if a borrower or cosigner establishes renewed eligibility for title IV loans in accordance

with Federal regulations then such borrower or cosigner shall be eligible for a program loan. Such renewed eligibility shall only be granted once. The borrower or cosigner must provide satisfactory documentation evidencing his or her renewed eligibility for title IV loans in order to be granted renewed eligibility for a program loan. Upon establishing renewed eligibility, a borrower must reapply for a program loan unless otherwise directed by the corporation.

(2) State funds. A borrower or cosigner in default on a program loan, or who has failed upon demand to make a refund of an overpayment of a State grant or award, or otherwise failed to meet the requirements of a State award, shall be ineligible for a program loan. In addition, a borrower or cosigner who is in default on an education loan made under this program shall be ineligible for any other State student aid while in default on a program loan. Notwithstanding, a borrower or cosigner who has made satisfactory repayment arrangements consistent with 8 NYCRR section 2008.1 of this Title may be granted renewed eligibility by the corporation for a program loan, except such renewed eligibility shall only be granted once. Upon establishing renewed eligibility, a borrower must re-apply for a program loan unless otherwise directed by the corporation.

(g) Other eligibility criteria. (1) To qualify to receive a program loan, a borrower shall meet all other eligibility requirements as set forth in the program's underwriting manual.

(2) No borrower shall qualify to receive a program loan unless the borrower, or an eligible cosigner, 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.

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2213.3 College eligibility requirements.

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

(1) meet the definition of an eligible college as defined in section 2213.1(1) of this Part;

(2) certify each participating student's program loan eligibility in a format prescribed by the corporation;

(3) enter into an agreement with the corporation to participate in and administer the program according to the rules and regulations of the Corporation; and

(4) contribute a college default fee as determined by the corporation on an annual basis, subject to the approval of the agency, or other public benefit corporation authorized to issue bonds under the public authorities law for purposes of this program, with respect to loans that are expected to be financed by such entity to the extent permitted by statute, which shall not be assessed to the student or eligible borrower. An entity other than the student or borrower may be permitted to pay the college default fee on behalf of a college consistent with applicable laws.

(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 Part 2004 of this Title.

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2213.4 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 2213.1(ad) 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.

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2213.5 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:

(1) in the absence of contrary information, rely in good faith upon statements of the borrower, the student (if not the borrower), the cosigner, 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;

(2) determine that all required forms have been completed, if applicable, by the borrower, any cosigner, student and eligible college before disbursing the program loan;

(3) ensure each program loan contains a legally enforceable promissory note; and

(4) confirm that all underwriting criteria have been met, including but not limited to, income verification, college 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:

(1) verify the program loan's initial eligibility for payment from the applicable default reserve fund;

(2) disburse funds in at least two but no greater than four installments within any full academic year, unless the student is in attendance for one term during the academic year;

(3) disburse by means of electronic funds transfer (EFT) through the corporation;

(4) make the initial disbursement of the proceeds of the program loan no earlier than 10 days before the beginning of the loan period of the program loan and no later than 180 days after the end of the loan period;

(5) allow one disbursement for any loan period that is equivalent to one semester, trimester or summer term; and

(6) 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 2213.17(e) of this Part.

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

(1) report information in accordance with industry standards at least monthly to all national consumer reporting agencies, or as otherwise directed by the corporation;

(2) 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

(3) 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 while a student or of a request for discharge or deferment based on the death of the borrower while on active military duty:

(i) suspend collection activity for 60 days against the individual in question;

(ii) request documentation to validate the death or total and permanent disability of the student while a student or the death of the borrower while on active military duty;

(iii) comply with procedures in the program's default avoidance and claim manual for submitting claims to the corporation;

(iv) upon approval of a claim by the corporation, return any payments made by, or on behalf of, the borrower or cosigner after the date of death or determination of total and permanent disability of the student while a student or the date of death of the borrower while on active military duty to the borrower or cosigner; and

(v) upon denial of a claim by the corporation, apply administrative forbearance for the period of time used to determine eligibility for program loan discharge and resume any collection activity.

(e) Enrollment status. (1) If a holder, or the entity servicing the program loan, is made aware that a student is no longer enrolled at a Title IV eligible college on at least a half time basis, the holder, or the entity servicing the program loan, must, within 45 days, contact the student borrower and establish a repayment schedule.

(2) 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 halftime basis.

(f) Application of payments. (1) 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.

(2) Payments made in excess of outstanding fees and interest shall be applied to the principal balance, unless application to subsequent monthly payments has been requested by the payor prior to the reduction of the principal balance.

(3) Borrowers may prepay on their program loan balance without penalty.

(g) Sale or transfer of program loans. (1) A program loan may be sold or transferred to another holder described in paragraphs (1) or (2) of the definition of such term in section 2213.1(s) or a holder as described in paragraph (3) of such subdivision who is acting as a fiduciary for a holder described in such paragraphs (1) or (2) 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 program 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 program loans shall notify the corporation of the name and business address of the buyer.

(2) 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 program loan purchases, the corporation shall notify holders of the availability of proceeds for the sale of program loans to the agency, and the interest rate on the program loans. Holders opting to sell fixed-rate program loans to a public benefit corporation shall initiate the sale within 60 days of the last disbursement of the program 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.

(3) Each holder of fixed-rate program 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 program 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 program 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 program loans available in an academic year.

(4) Any unsold program loan(s) may only be sold or transferred:

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

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

(iii) for securitization purposes.

(5) 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.

(6) The current holder and new holder, or new entity servicing a program loan, shall notify the borrower, within 45 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 program 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.

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2213.6 Application content.

On and after February 14, 2010, a lender, or its servicer, or the corporation acting on behalf of the eligible lender, shall clearly and conspicuously disclose on, or with, any application or solicitation for a program loan, as part of the lender's compliance with section 2213.5(h) of this Part, all of the applicable disclosure requirements contained in the Federal Truth In Lending Act (Regulation Z) as set forth in 12 C.F.R. Part 226, Subpart F. Lenders must also comply with all other requirements required by applicable New York State and Federal law and regulation (as well as any applicable law and regulation in the state in which the lender is located).

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2213.7 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.

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2213.8 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.

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2213.9 Minimum/Maximum program loan limits.

(a) The minimum and maximum individual program loan amounts available to eligible borrowers on an annual basis shall be approved by the corporation, and with respect to program loans that are otherwise eligible for purchase by a public benefit corporation, shall be subject to further approval by such public benefit corporation, on at least an annual basis with respect to program loans to be made for the applicable academic year, or portion thereof, after taking into account applicable financial and/or other relevant market conditions. Such amounts shall be published on the corporation's web site.

(b) The maximum aggregate program loan amounts available to eligible borrowers shall be as follows:

(1) \$20,000 aggregate for undergraduates attending a two year institution;

(2) \$50,000 aggregate for undergraduates attending a four year institution; and

(3) \$70,000 aggregate total for undergraduate and graduate study.

(c) 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.

(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.

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2213.10 Default fees.

(a) College default fees. (1) A default fee associated with a program loan shall be assessed to each college on loans made to or on behalf of students attending such college 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.

(2) An entity other than a student or borrower may be permitted to pay the college default fee on behalf of a college consistent with applicable laws. The corporation shall determine how such funds will be transferred, subject to the approval of the agency, or other public benefit corporation authorized to issue bonds under the public authorities law for purpose of this program, with respect to loans that are expected to be financed by such entity.

(3) If the college pays the default fee, the corporation's electronic funds transfer (EFT) process will proportionately reduce the amount of the borrower's disbursement(s) to reflect payment of the college's default fees. Colleges shall, if applicable, credit the student's account to reflect reimbursement of the college 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.

(b) Borrower default fees. (1) A borrower fee may be included in the calculation of the student's cost of attendance. This fee shall be deducted proportionately from each disbursement made on a program loan through the corporation's electronic funds transfer process to be deposited into the appropriate default reserve fund. 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.

(2) 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.

(3) Fees shall be deposited into a separate account, held solely for the purposes of this program, for timely deposit into the applicable default reserve fund.

Education

2213.11 Program loan verification requirements.

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

(b) Verification requirements for lenders shall be outlined in the program's underwriting manual. Notwithstanding, lenders shall also perform all verification requirements as directed by the corporation in accordance with the policies and procedures established by the corporation.

Education

2213.12 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.

Education

2213.13 College certification requirements.

(a) A college shall certify that the information it provides in connection with a program loan is complete and accurate. The college 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 college shall certify to the best of its knowledge that:

(1) the borrower is an eligible borrower applying for a program loan to finance the education costs of an eligible student;

(2) 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 2213.9(b) of this Part; and

(3) 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, or its servicer, 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:

(1) student's grade level and enrollment status;

(2) student's anticipated date of graduation;

(3) student's college name and branch code;

(4) maximum program loan approval amount;

(5) program loan disbursement dates (maximum of four dates);

(6) academic period of the program loan;

(7) certification by the college certifying officer of student eligibility and that the student meets the requirements regarding satisfactory academic progress in accordance with 34 C.F.R. 668; and

(8) certification by the college certifying officer that the program loan does not exceed the student's unmet need for the academic period and is within the prescribed annual loan limits; and

(9) certification by the college certifying officer that a program loan for a prior academic term does not: (i) exceed the unmet need for such prior term and is within the prescribed annual loan limits; or (ii) supplant or reimburse institutional aid.

Education

2213.14 Processing program loan proceeds.

(a) Colleges shall request the disbursement of program loan proceeds through the corporation's electronic funds transfer (EFT) process.

(b) (1) program loans may be disbursed in unequal 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 college of the proceeds of any program loan disbursement.

(2) A college shall, within ten additional business days, deliver or credit the program loan funds to the student's account or return the funds to the lender, through the corporation's EFT refund process.

(c) A borrower may receive a program loan in a given academic year to be applied by the college to unpaid higher education expenses charged to the student in the immediate preceding academic term of the prior academic year provided these charges have been included by the college as part of the enrolled student's cost of attendance for that prior academic term and the college certifies that the program loan does not: (1) exceed the unmet need for such prior term and is within the prescribed annual loan limits; or (2) supplant or reimburse institutional aid. The availability of funding for prior term costs shall be determined by the corporation, and with respect to program 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 program loans to be made for the applicable academic year, or portion thereof.

(d) If the college default fee is deducted from a student's program loan, the college 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 college is prohibited from charging interest to the student during this ten day period.

(e) Loan applications received up to 120 days after the end of the loan period will be processed, but must also be disbursed within 180 days of the end of the loan period and are subject to compliance with subsection (c).

Education

2213.15 Processing program loan refunds.

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

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

(c) No fees shall be refunded on or after the forty-fifth day after disbursement except in extenuating circumstances as determined by the corporation and, if applicable, the agency. Where a full refund of a program loan disbursement was made beyond the forty-fifth day, borrower fees and college 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's electronic funds transfer (EFT) refund process within thirty days of the college's determination that the borrower is no longer eligible for such funds.

Education

2213.16 Disclosure requirements for participating colleges.

(a) Entrance counseling. For purposes of the program, the corporation shall perform entrance counseling, on behalf of participating colleges, through the program's financial literacy modules and disclosures used in the application process.

(b) Exit Counseling. For purposes of the program, the corporation shall perform exit counseling, on behalf of participating colleges. As part of exit counseling, the corporation shall provide information on how to obtain the total program loan debt incurred, a reminder that these program loans must be repaid, and the consequences of defaulting on these program loans. Exit counseling shall be performed by the corporation, on behalf of participating colleges, through contact with student borrowers whose principal or principal and interest payments have been deferred during their in-school period, within a reasonable time after the corporation receives notice of the student's graduation, withdrawal, less than half time enrollment, or transfer to a non-title IV eligible college.

Education

2213.17 Disclosure requirements for participating lenders.

The disclosure requirements set forth in this section shall occur on or after February 14, 2010. Lenders must also comply with all other disclosure requirements required by applicable New York State and federal law and regulation (as well as any applicable law and regulation in the state in which the lender is located).

(a) Program loan disclosures at time of program loan approval. At the time of approval of a program loan application, and before program loan consummation, the lender, or its servicer (acting on behalf of the lender), shall clearly and conspicuously disclose to the borrower all of the applicable disclosure requirements contained in the Federal Truth In Lending Act (Regulation Z) as set forth in 12 C.F.R. Part 226, Subpart F.

(b) Self-certification form. (1) The lender, or its servicer (acting on behalf of the lender), shall obtain from the borrower the signed self-certification form as prescribed by the Federal Truth In Lending Act (Regulation Z) as set forth in 12 C.F.R. Part 226, Subpart F, as amended from time to time, in written or electronic format, for private educational loans before the lender may consummate a program loan.

(2) The lender, or its servicer (acting on behalf of the lender), shall collect and maintain a copy of the self-certification form.

(c) Final disclosures. After the borrower has accepted the program loan and returned the self-certification form, the lender, or its servicer (acting on behalf of the lender), shall disclose to the borrower the required disclosures described in the Federal Truth in Lending Act (Regulation Z) as set forth in 12 C.F.R. Part 226, Subpart F, as amended from time to time.

(d) Penalties. 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. A borrower may cancel a program loan, without penalty, until midnight of the third business day following the date on which the borrower receives the disclosures required by subdivision (c) of this section. No funds may be disbursed for a program loan until the three-business day period has expired.

(f) Prepayment. Borrowers may make prepayments on their program loan balance without penalty.

Education

2213.18 Reporting requirements for participating colleges.

(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 college receives information which would make the borrower or cosigner ineligible to receive program loans due to a default or failure as described in section 2213.2(f), the college must report such information to the corporation.

Education

2213.19 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:

(1) the Program loan application data and all credit information used to determine borrower eligibility and any other credit-related information submitted by the school;

(2) a copy of the signed promissory note;

(3) the repayment schedule;

(4) any record of disbursements;

(5) the borrower's and cosigner's enrollment status;

(6) the borrower's and cosigner's change of address;

(7) information on deferment and forbearance eligibility;

(8) the payment history;

(9) any collection history; and,

(10) any other records that verify the validity of a claim.

(b) Such records shall be maintained for not less than seven 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 or its servicer shall maintain and file reports as directed by the corporation.

Education

2213.20 Program loan repayment.

(a) Repayment. For any program loan made, the repayment period shall begin 60 days after the date the last disbursement is made on the program loan or within one monthly billing cycle thereafter. Interest shall begin to accrue starting the day of disbursement by the lender to the corporation. Repayment options shall be determined by the corporation and set forth in the program's underwriting manual as well as published on the corporation's web site. With respect to program loans that are otherwise eligible for purchase by a public benefit corporation, such determinations shall be subject to approval by such public benefit corporation, on at least an annual basis with respect to program loans to be made for the applicable academic year, or portion thereof, after taking into account applicable financial market conditions.

(1) In-school period. (i) A student borrower's loan principal payment may be deferred during the in-school period. Subject to subparagraph (ii) of this paragraph, student borrowers shall be required to either pay interest or have the accrued interest capitalized at the end of the in-school deferment, set forth in paragraph (c)(1) of this section, or the end of any applicable grace period, set forth in paragraph (2) of this subdivision.

(ii) The availability of interest payment deferment during the in-school period shall be determined by the corporation, and with respect to program 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 program 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 colleges of, and publish on its web site, the availability of the interest payment deferment for program loans to be issued for the applicable academic year.

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

(2) Grace period. (i) The grace period for a student borrower whose principal, or whose principle and interest, payment was deferred during the in-school period shall extend for six months following graduation, withdrawal, less than half time enrollment, or transfer to a non-title IV eligible college. Subject to subparagraph (1)(ii) of this section, a student borrower shall be required to either pay interest or have the accrued interest capitalized at the end of the grace period.

(ii) 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.

(3) Return to college. (i) Student borrowers who have entered repayment after their grace period and who subsequently return to college at least half time at a title IV eligible college may have, on previously disbursed program loans, their program loan principal payments suspended, as determined by the corporation and, with respect to program loans that are otherwise eligible for purchase by a public benefit corporation, such 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 at a title IV eligible college, 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 resume upon graduation, withdrawal, less than half time enrollment, or transfer to a non-title IV eligible college. The suspension of payments shall not extend the repayment requirements of the

previously disbursed program loans.

(ii) Student borrowers who subsequently return to college at least half time at a title IV eligible college during their grace period and have suspended their program loan principal, or principal and interest, payments in accordance with subparagraph (i) of this paragraph shall be eligible for a new grace period following graduation, withdrawal, less than half time enrollment, or transfer to a non-title IV eligible college.

(4) Repayment terms. The borrower shall be subject to all program requirements regarding the repayment of any program loan received. Each program 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 program 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 program loans to be made for the applicable academic year, or portion thereof, after taking into account applicable financial market conditions.

(5) Minimum payment. The minimum monthly payment a borrower may be assessed is \$50.00, except for a borrower making (i) interest only payments that are less, or (ii) payments in accordance with an approved modified payment plan.

(6) Modified payment plan. During any period in which the corporation and, with respect to program loans that are otherwise eligible for purchase by a public benefit corporation, such public benefit corporation determine that modified payment plans may be offered, after taking into account applicable financial market conditions, a borrower who is not in default on the repayment of a program loan(s) may be eligible for a modified payment plan 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. (1) Administrative forbearance. Subject to paragraph 5 of this subdivision, an administrative forbearance may be granted for the period of prior delinquency, if any, and up to an additional 60 days due to extenuating circumstances of the borrower and/or cosigner(s), or in connection with the processing of a program loan, a deferment, a re-establishment of a repayment due date for the borrower, a discharge, a modified payment plan, or an economic hardship forbearance, as determined by the corporation. An administrative forbearance shall only be granted once for each incident resulting in a request for a discharge, modified payment plan, or economic hardship forbearance. If subsequent applications are based on the continuation of the same incident, an administrative forbearance shall not be granted. An administrative forbearance shall not extend the length of the original repayment terms of the previously disbursed program loans.

(2) Economic hardship forbearance. Subject to paragraph (5) of this subdivision, a borrower who is not in default on the repayment of a program loan(s) and who is unable to make payments because of a temporary change in financial circumstances 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. Economic hardship forbearance shall not extend the original repayment terms of the previously disbursed program loans.

(3) Forbearances shall be agreed upon by the holder and borrower either verbally or in writing, as directed by the corporation.

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

(5) The terms and availability of administrative and economic hardship forbearance shall be determined by the corporation, and with respect to program 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 program loans to be made for the applicable academic year after taking into account applicable financial market conditions.

(6) Disaster relief. In a federally declared major disaster, as defined by 42 U.S.C. section 5122(2), the corporation may grant certain relief for borrowers and cosigners within a federally declared disaster area, including the cessation of due diligence and collection activities for up to three months and suspension of required payments under certain repayment plans. Prior to granting any relief under this paragraph, the corporation shall perform an impact assessment and with respect to program loans that are otherwise eligible for purchase by a public benefit corporation shall be subject to approval by such public benefit corporation.

(c) Deferment. (1) In-school deferment. In accordance with paragraphs (a)(1) and (a)(2) of this section, a student borrower in attendance at least halftime at a title IV eligible college may be granted a deferral of principal or principal and interest payments as follows: up to a total of 12 semesters or 18 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 16 semesters or 24 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.

(2) Military service deferment. (i) A deferment for military service shall be unlimited for borrowers who are members of the military and in active duty status, and shall be limited to the period of a student borrower's in-school and grace period for cosigners who are members of the military and in active duty status. Such deferment for borrowers who are members of the military and in active duty status may extend the term of the loan, however, such deferment for cosigners who are members of the military and in active duty status shall not extend the term of the loan. The corporation shall request and receive documentation to verify active duty status in order to qualify the borrower, or cosigner, for this deferment. The borrower's, or cosigner's, continued eligibility for the military service deferment shall be reviewed by the holder, servicer or corporation as applicable, prior to the expiration date specified in the borrower's, or cosigner's, military orders or other government documentation.

(ii) A program loan may be eligible for a deferment if the borrower dies while on active military duty. The terms and availability of this type of deferment shall be determined by the corporation, and with respect to program 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 program loans to be made for the applicable academic year after taking into account applicable financial market conditions.

(3) Additional deferments. 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 offer-

ing 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. Fees for forbearance or deferment are prohibited.

(e) Loan discharge. (1) Student death and disability discharge. A borrower's and cosigner'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 halftime at the time of either occurrence. The terms and availability of such discharge shall be determined by the corporation, and with respect to program 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 program loans to be made for the applicable academic year after taking into account applicable financial market conditions.

(2) Military service discharge. A borrower's, and his or her cosigner's, obligation to repay a program loan may be discharged based on the death of the borrower while on active military duty. The terms and availability of such discharge shall be determined by the corporation, and with respect to program 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 program loans to be made for the applicable academic year after taking into account applicable financial market conditions.

(3) A certified death certificate, or other documentation acceptable to the corporation, shall be sufficient proof of death.

(4) An application for a loan discharge shall be submitted by a borrower or cosigner and approved by the corporation.

(5) 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) Cosigner release. (1) The terms and availability of cosigner release shall be determined by the corporation, and with respect to program 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 program loans to be made for the applicable academic year, or portion thereof, after taking into account applicable financial market conditions.

(2) If available, a cosigner may be released from his/her responsibility if a borrower:

(i) makes 48, or with respect to loans made for loan periods beginning on or after July 1, 2012, no less than 24 consecutive, monthly, on-time payments of principal and interest upon entering into repayment after the end of any applicable grace period following graduation, withdrawal, less than half time enrollment, or transfer to a non-title IV eligible college, or such other longer period of time to be determined by the corporation on an annual basis, and with respect to program loans that are otherwise eligible for purchase by a public benefit corporation

subject to approval by such public benefit corporation, and such period of time shall be published on the corporation's web site; and

(ii) is determined to individually satisfy credit criteria that would

be applicable to a borrower without a cosigner in connection with a similar program loan at the time of the cosigner release, as set forth in the program underwriting manual.

(3) On-time payments shall mean payments received within 15 days of the due date.

(4) Payments must be made by the borrower directly, not a third party on the borrower's behalf, in order to be eligible for cosigner release.

Education

2213.21 Due Diligence for program loan delinquency.

(a) Holders, or entities servicing program loans, shall perform required due diligence activities against a borrower and cosigner as determined by the corporation and set forth in the program's default avoidance and claim manual, and with respect to program loans that are otherwise eligible for purchase by a public benefit corporation as approved by such public benefit corporation.

Education

2213.22 Default claims.

(a) A borrower shall be in default on a program loan on the 181st 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 60 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, as directed by the corporation or as otherwise 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 100 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 30 day resubmission period.

(f) Claims not acceptable after the 30 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 default, the corporation will purchase the loan from the holder and will advise the borrower that his or her loan has been, or is subject to being, purchased and is now in default. Notwithstanding, the borrower is in default on a program loan on the 181st day of delinquency on the program loan. The borrower shall be deemed ineligible for any program loan benefits, except as provided in section 2213.2(f) of this Part.

Education

2213.23 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.

Education

2213.24 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.

Education

2213.25 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.

Education

2213.26 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.

Education

2213.27 Program Audits.

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

Education

2213.28 Incorporation by reference.

For purposes of this Part, the following manuals referred to throughout are hereby incorporated by reference and are available at www.hesc.ny.gov/NYHELPS_Regulations:

(a) from and including October 20, 2009, until superseded, the 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; and

(b) from and including August 25, 2010, until superseded, the program's default avoidance and claim manual version number 2, dated August 25, 2010; and the program's underwriting manual version number 2, dated August 25, 2010; and

(c) from and including January 26, 2011, until superseded, the program's default avoidance and claim manual version number 3, dated January 26, 2011, and the program's underwriting manual version number 3, dated January 26, 2011; and

(d) from and including February 27, 2013, until superseded, the program's default avoidance and claim manual version number 4, dated February 27, 2013, and the program's underwriting manual version number 4, dated February 27, 2013; and

(e) from and including March 6, 2013, until superseded, the program's default avoidance and claim manual version number 5, dated March 6, 2013, and the program's underwriting manual version number 5, dated March 6, 2013; and

(f) from and including October 2, 2013, until superseded, the program's default avoidance and claim manual version number 6, dated October 2, 2013.