§ 693. Repayment of loans. 1. Terms of repayment. The terms of repayment of education loans made under this program shall be established in rules and regulations promulgated by the corporation subject to the approval of the state of New York mortgage 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.

2. Grace period. The terms of any grace period for education loans made under this program shall be established in rules and regulations promulgated by the corporation subject to the approval of the state of New York mortgage 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. Notwithstanding, the grace period established shall be no less than six months.

3. Forbearance and deferments. Education loans made under this program shall be eligible for in-school and military deferments pursuant to rules and regulations promulgated by the corporation, or pursuant to such additional deferments and/or forbearance as offered by an eligible lender, in each case, subject to the approval of the state of New York mortgage agency, or other authorized 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. Upon the assignment of a defaulted education loan made under this program for collection as described in subdivision five of this section, the borrower shall no longer be eligible for any forbearance or deferments while such loan remains in default.

4. Delinquency. A borrower shall be considered delinquent on an education loan under this program after thirty days of non-payment. The holder shall notify the corporation promptly after the first day of delinquency and the corporation shall undertake actions to return the borrower to repayment pursuant to rules and regulations established by the corporation. Such actions shall include, but not be limited to, attempts at: (i) locating and contacting the borrower and/or co-signer,

as applicable, regarding the delinquent status of their loan; (ii) explaining the account history and clarifying any discrepancies; (iii) counseling the borrower and/or co-signer, as applicable, regarding all available repayment options, inducing deferments, and any public assistance available to them; (iv) providing the borrower and/or co-signer, as applicable, with documentation in connection with their loan or loans; (v) informing the borrower and/or co-signer, as applicable, of the consequences of default; and (vi) any other assistance that would prevent a default by a borrower.

5. Default. Any education loan under this program that is delinquent for one hundred eighty days shall be deemed in default. Upon default, the holder shall file a claim with the corporation and, if applicable, the state of New York mortgage agency, for payment from the New York education loan program variable rate default reserve fund, the New York education loan program fixed rate default reserve fund, or the state of New York mortgage agency New York education loan program default reserve fund, as described in subdivision seven of section six hundred ninety two of the education law, as applicable, pursuant to regulations promulgated by the corporation. Upon receipt of a claim, the corporation shall notify the borrower that their loan is being assigned to the corporation for collection. The lender, or holder shall be paid one hundred percent of the outstanding principal, and of the capitalized and unpaid accrued interest. Upon such payment, this amount shall be the principal owed by the borrower.

All collection payments received by the corporation from a borrower, or on behalf of borrowers, in default on loans made under this program, except collection fees shall be deposited into a designated account within the New York higher education loan program variable rate default reserve fund, New York higher education loan program fixed rate default reserve fund, or the state of New York mortgage agency New York higher education loan program default reserve fund, as applicable.

6. Collection fee. The corporation shall assess a collection fee, in an amount to be determined by the corporation at least annually, on all defaulted education loans under this program. This fee shall be retained

by the corporation for the administration of the program. The aggregate annual revenue generated by such fee shall not exceed the actual costs incurred by the corporation, in the preceding year, in collecting a defaulted loan under this program on which the corporation has paid a claim, except in the initial year for which such fee shall not exceed the fee charged by the corporation for the collection of defaulted loans under the federal family education loan program. Any amounts in excess of actual cost shall be used to reduce the fee charged in the subsequent year.

7. Administrative wage garnishment. (a) Notwithstanding any provision of law to the contrary, the corporation shall be entitled to garnish the disposable pay of an individual to collect the amount owed by the individual, if such individual fails to make required voluntary payments under a repayment agreement with the corporation, provided that:

(i) The amount deducted for any pay period does not exceed fifteen percent of disposable pay. However, the amount deducted for any period may exceed fifteen percent with the written consent of the individual;

(ii) Prior to garnishment the individual shall have been given thirty days written notice to the individual's last known address advising such individual of the nature of the obligation, amount of the loan obligation, the corporation's intent to garnish and an explanation of the individual's rights under this section including the right to inspect and copy records relating to the debt;

(iii) The individual shall have been given an opportunity within the aforementioned thirty days to enter into a written repayment agreement with the corporation to avoid garnishment of wages;

(iv) The individual shall have been provided an opportunity for a hearing pursuant to the requirements of paragraph (f) of this subdivision.

(b) The individual's employer shall pay to the corporation amounts as directed in the withholding order and shall be liable for failure to comply with said order. The corporation may sue an employer in a court of competent jurisdiction to recover from such employer the amount the employer fails to withhold from the individual's wages following receipt of the order of withholding with interest thereon plus attorneys' fees and costs;

(c) The notice of withholding served upon the employer shall contain only such information as is necessary for the employer to comply with the withholding order.

(d) No amount may be deducted from the wages of an individual who has been involuntarily separated from employment and has not been continuously employed for twelve months. An individual must prove that separation from employment was involuntary. Separation due to incarceration shall not qualify as involuntary separation.

(e) An employer may not discharge from employment, take disciplinary action against or refuse to employ an individual by reason of the fact that such individual's wages are subject to an order of withholding. Such individual may take action against said employer in a court of competent jurisdiction for reinstatement, back pay or such further relief as may be just and necessary.

(f) A hearing as described in subparagraph (iv) of paragraph (a) of this subdivision shall be provided prior to an order of withholding if the individual submits a written request for a hearing on or before the fifteenth day following the notice described in subparagraph (ii) of paragraph (a) of this subdivision in accordance with procedures set forth by the corporation. If an individual fails to submit a written request in the time frame provided, the corporation shall still provide a hearing upon receipt of a written request, but such hearing need not be provided prior to an order of withholding being issued to the employer. The hearing shall not be conducted by a party under the supervision or control of the corporation except that nothing shall prohibit the corporation from appointing an administrative law judge. A hearing decision shall be issued no later than sixty days after the filing of the petition requesting the hearing.

(g) For purposes of this section "disposable pay" shall mean that part of the compensation of any individual from an employer remaining after deduction of amounts required to be withheld by law.

(h) All funds received through administrative wage garnishment shall be deposited into a designated account within the New York higher education loan program variable rate default reserve fund, the New York higher education loan program fixed rate default reserve fund, or the state of New York mortgage agency New York higher education loan program default reserve fund, as applicable.

8. New York state tax offset. The corporation shall be entitled to receive credits of New York state tax overpayments pursuant to section one hundred seventy-one-d and paragraph three of subdivision (e) of section six hundred ninety-seven of the tax law with respect to defaulted education loans under this program. All funds, or credits, received through such tax offsets shall be deposited into a designated account within the New York higher education loan program variable rate default reserve fund, the New York higher education loan program fixed rate default reserve fund, or the state of New York mortgage agency New York higher education loan program default reserve fund, as applicable.

9. Data share. The corporation shall be entitled to receive data from the New York state department of taxation and finance pursuant to section one hundred seventy-one-a and paragraph three of subdivision (e) of section six hundred ninety-seven of the tax law with respect to defaulted education loans under this program.

10. Statute of limitation. Notwithstanding any provision of law to the contrary, there shall be no statute of limitations to bring suit or otherwise collect an education loan under this program. Judgments in favor of the corporation under this program shall not expire and there shall be no statute of limitations upon which to enforce or collect said judgment.

11. Capacity of minors. Any person otherwise qualifying for an education loan under this program shall not be disqualified by reason of his or her being under the age of eighteen years and for the purposes of applying for, receiving and repaying such a loan, any such person shall be deemed to have full legal capacity to act. The corporation, in collecting education loans under this program, shall not be subject to a defense raised by any borrower based on a claim of infancy.

12. Usury. Notwithstanding any provision of law to the contrary the rate or amount of interest or fees payable on education loans made under this program shall not exceed twenty-five per centum per annum or its equivalent rate for a longer or shorter period.

13. Death and disability discharge. Upon the death of a student, for the funding of whose higher education expenses an education loan was made, the education loan made under this program shall be deemed discharged. If such a student becomes totally and permanently disabled, the education loan under this program shall be deemed discharged. A total or permanent disability shall mean a condition of an individual who is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death. The holder of such discharged education loans shall be paid the outstanding principal, capitalized and unpaid accrued interest due from the New York higher education loan program variable rate default reserve fund, the New York higher education loan program fixed rate default reserve fund, or the state of New York mortgage agency New York higher education loan program default reserve fund, as applicable.

14. Bankruptcy. Education loans under this program shall be considered non-dischargeable pursuant to section 523(a)(8) of the U.S. Bankruptcy Code.

15. Notwithstanding any other provision of law, other than section one thousand six hundred eighty two and section two thousand four hundred five-a of the public authorities law, a security interest in education loans shall be perfected only by the filing of a financing statement in the manner provided under section 9-310 of the uniform commercial code, and shall attach and be assigned priority in the manner provided under the uniform commercial code with respect to security interests perfected by such a filing, and a description of collateral consisting of education loans in any financing statement shall be conclusively deemed to be legally sufficient if it refers to records identifying such loans retained by the corporation, provided that any such security interest shall be subject to any applicable lien under section two thousand four hundred five-a of the public authorities law. The owner of any education loan shall advise the corporation of any sale or assignment of such loan at the time and in the manner required by the corporation.

16. Notwithstanding any other provision of law, any eligible public

college or public career education institution is hereby authorized to enter into one or more agreements with the corporation and any entity authorized to finance education loans pursuant to the public authorities law providing for the participation of such college or career education institution in the program and to perform or contract the performance of its obligations under any such agreement. Such obligations may include without limitation the payment obligations described in this title.