

proposal may include trade secrets and privileged or confidential commercial or financial information, which the proposer does not want disclosed to the public or used by the Government for any purposes other than proposal evaluation. Procedures for handling and protecting such data and information are discussed at 927.402-3(d)(2). Insert the solicitation provision at 952.215-71 or 952.215-72 as appropriate.

(d) *Subcontractor solicitation provisions.* Insert the notice at 952.215-70 in solicitations if the resulting contract will contain any of the clauses referenced therein.

PART 952—[AMENDED]

5. The authority citation for Part 952 continues to read as follows:

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

6. Part 952 is amended by adding new subsections 952.215-71 and 952.215-72 to read as follows:

§ 952.215-71 Simplified representations and certifications—negotiated acquisition.

As prescribed at section 915.406-5 insert the following provision in solicitations:

Simplified Representations and Certifications—Negotiated Acquisitions (AUG 1985)

In order to reduce repetitious paperwork related to various representations and

certifications which must be obtained prior to the award of Federal government contracts, DOE has developed a simplified process for their submission. They have been separated into three categories:

Part I—Simplified Representations and Certifications;

Part II—Recurrent Representations and Certifications; and

Part III—Additional Representations and Certifications.

Part I is a one-page form containing a minimum amount of information which is to be submitted with every proposal. It provides the basic information necessary to process the bid or proposal. Part II contains the recurrent representations and certifications needed for all contracts. It will be requested only of successful competitors selected for award. Failure to submit Part II, upon request, will render a proposal ineligible for award. Once on record, the recurrent representations and certifications need not be completed again for a period of three years unless there is a change in one or more of the representations. Part III contains additional representations and certifications which are only when they apply to a particular acquisition. If these circumstances exist, Section K of the solicitation will contain instructions on which of these to complete. Failure to submit Part III, if requested, may render a proposal ineligible for award.

§ 952.215-72 Simplified representations and certifications—sealed bid.

As prescribed at section 915.406-5 insert the following provision in solicitations:

Simplified Representations and Certification—Sealed Bid (AUG 1985)

In order to reduce repetitious paperwork related to various representations and certifications which must be obtained prior to the award of Federal government contracts, DOE has developed a simplified process for their submission. They have been separated into three categories:

Part I—Simplified Representations and Certifications;

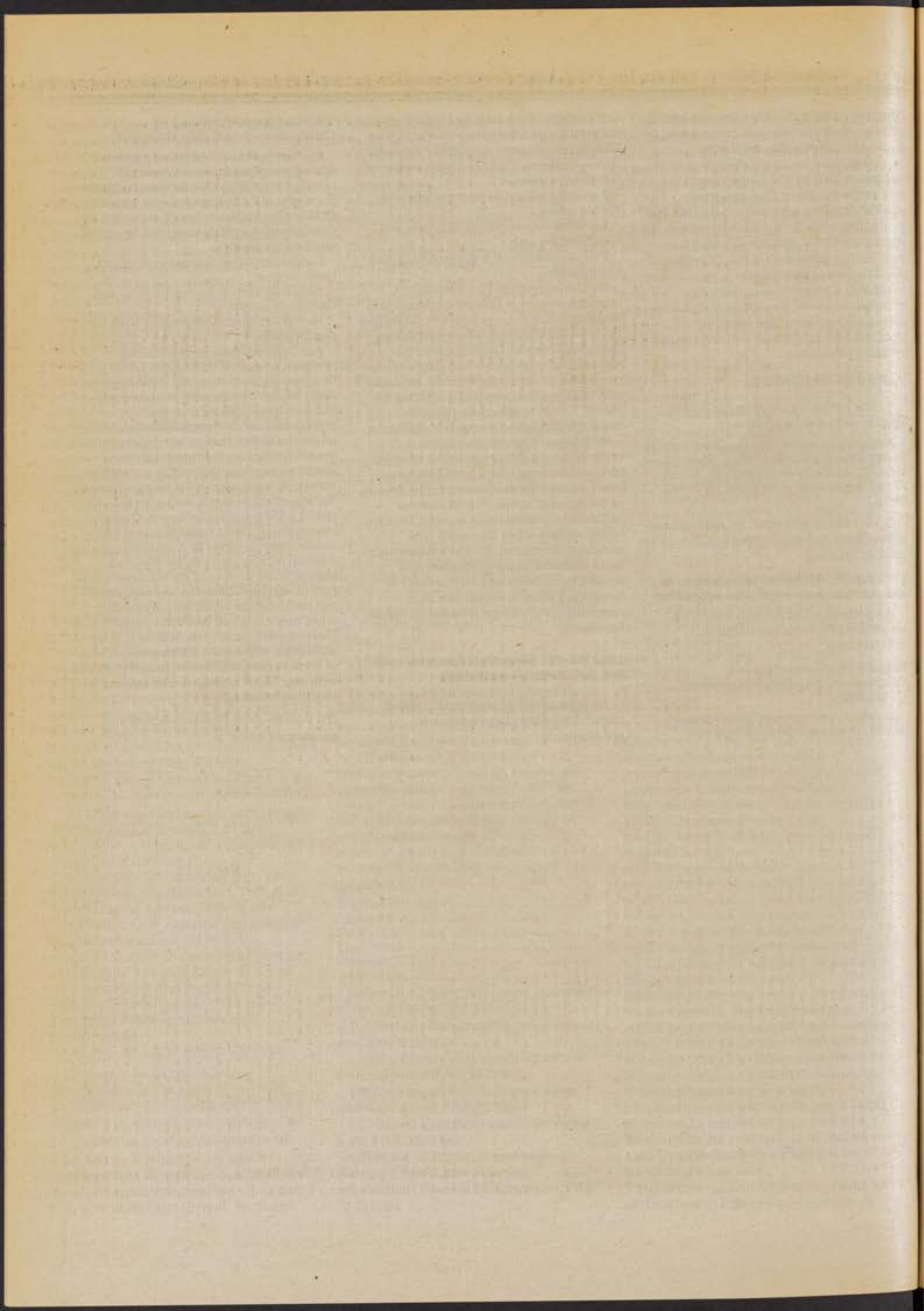
Part II—Recurrent Representations and Certifications; and,

Part III—Additional Representations and Certifications.

Part I is a one-page form containing a minimum amount of information which is to be submitted with every bid. It provides the basic information necessary to process the bid. Part II contains the recurrent representations and certifications needed for all contracts. Part II must be submitted with your bid unless one has previously been placed on record with the DOE contracting activity to which your bid is being submitted. Failure to submit Part II, with your bid, will render a bid ineligible for award. Once on record, the recurrent representations and certifications need not be completed again for a period of three years unless there is a change in one or more of the representations. Part III contains additional representations and certifications which are only needed when they apply to a particular acquisition. If these circumstances exist, Section K of the solicitation will contain instructions on which of these to complete. Failure to submit Part III with your bid, if requested, may render a bid ineligible for award.

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Federal Register

Wednesday
September 4, 1985

Part IV

Department of Education

34 CFR Parts 682 and 683
Guaranteed Student Loan and PLUS
Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 683

Guaranteed Student Loan and PLUS Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Guaranteed Student Loan Program (GSLP) and the PLUS Program. The proposed regulations cover the administration of the GSLP and PLUS Programs administered by State and private nonprofit guarantee agencies, the Federal Insured Student Loan Program (FISLP), and the Federal PLUS Program. The proposed regulations incorporate recent statutory changes and implement various policy initiatives intended to prevent loan defaults and to effect repayment of loans once default has occurred. Currently, the GSLP and PLUS Programs are covered by separate, though similar, regulations. The Secretary proposes to consolidate regulations of the two programs into one part.

These proposed regulations would clarify and simplify the requirements governing the GSLP and PLUS Programs, effect regulatory relief, including the reduction of paperwork and compliance burdens, provide for the improved administration of the programs, and reduce waste, fraud and abuse.

DATES: Comments must be received on or before November 4, 1985.

ADDRESSES: Comments should be addressed to Mr. Larry Oxendine, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Office of Student Financial Assistance, P.O. Box 23442, L'Enfant Plaza Station, Washington, D.C. 20026.

FOR FURTHER INFORMATION CONTACT: Cheryl Leibovitz or Larry Oxendine, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, Room 4310, ROB-3, 7th and D Streets, SW, Washington, D.C. 20202, telephone number (202) 245-2475.

SUPPLEMENTARY INFORMATION:**Background**

These proposed regulations would revise and streamline the existing regulations in several ways. These proposed rules would consolidate 34 CFR Part 682 (GSLP regulations) and 34 CFR Part 683 (PLUS Program regulations) into one part (34 CFR Part 682). The proposed rules would comply

with the provisions of Executive Order 12291 by reducing burdens where possible, eliminating unnecessary duplication and clarifying the intent of existing rules. Recent statutory changes would also be incorporated into the program regulations. In order to reduce further the unnecessary duplication of regulations that apply to all title IV student assistance programs, the proposed rules would delete a number of definitions and existing rules and replace them with cross-references to the Student Assistance General Provisions Regulations (34 CFR Part 668). Provisions common to the FISLP and guarantee agency programs are in this notice included in the sections covering the FISLP program, with references thereto in the guarantee agency sections. The final rules will reverse this with provisions detailed in the guarantee agency sections and referenced in the FISLP sections in recognition of the change in level of activity in the two programs.

The proposed regulations would also make a number of changes designed to reduce defaults and to increase collections on loans that, nevertheless, go into default. The Secretary is concerned that the magnitude of the default problem in the GSL Program has not been properly appreciated and believes that aggressive steps are necessary to address that problem. Indeed, the January budget estimate of the cost of new guarantee agency program defaults in 1985—\$800 million—now appears to significantly understate the problem. The Secretary now expects the cost of new defaults to exceed \$1 billion in 1985, and in each subsequent year, under current law.

One reason the default problem has not been adequately addressed in the past stems from the way the GSLP "net default rate" has historically been measured. This rate has been calculated as the ratio of cumulative net defaults to all loans that have entered repayment, with net defaults measured as gross defaults less collections on those defaults, less defaults referred to litigation, and less defaults written off by guarantee agencies as uncollectable. The latter two exclusions—loans in litigation and loans considered to be uncollectable—distort the default rate calculation because they exclude real defaults from the final figure.

In order to ensure that the net GSLP default rate properly expresses the magnitude of the default problem, the Secretary will now calculate this rate as cumulative gross defaults less cumulative collections, divided by matured paper. Using this simpler and conceptually more correct measure

helps to make the seriousness of the GSLP default problem clear:

Net default rate	Fiscal year					
	1981	1982	1983	1984	1985	1986
Old definition	3.7	3.2	3.1	3.3	4.1	4.5
New definition	8.2	7.3	7.2	7.4	8.3	9.5

* Estimates based on current law.

As the chart illustrates, the GSLP default problem as properly measured is quite severe. Indeed, the GSLP default rate is significantly above that for unsecured consumer loans in general. Furthermore, the net GSLP default rate as properly measured, which had been declining in recent years, is now expected to worsen substantially in the near future. It is, therefore, vital to the future viability of this program that serious steps be taken immediately to address this problem.

Important Statutory Changes Included in the Regulations

One of the major purposes of these regulations is to incorporate recent statutory amendments. The legislative amendments and their major provisions are as follows:

(1) *Education Amendments of 1980 (Pub. L. 96-374) and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35).*

The Education Amendments of 1980 created the PLUS Program and made significant changes in the GSLP. The Postsecondary Student Assistance Amendments of 1981, contained in the Omnibus Budget Reconciliation Act of 1981, also made major changes in the GSLP and the PLUS Program.

Interest Rates. The proposed regulations reflect the current statutory provisions governing applicable interest rates for GSLP loans, which were established in Pub. L. 96-374. GSLP loans made to new borrowers for periods of instruction beginning on or after January 1, 1981, and through September 12, 1983, have an applicable interest rate of 9 percent. GSLP loans to new borrowers, for periods of instruction beginning on or after September 13, 1983, have an applicable interest rate of 8 percent. Any borrower with an outstanding GSLP loan has the same applicable interest rate on subsequent loans that he or she has on the initial loan.

Six-Month Grace Period on 9 Percent Loans. Pub. L. 96-374 provided that the grace period is 6 months for GSLP loans subject to an 8 or 9 percent interest rate. Seven percent loans still carry the 9 to 12 month grace period.

Post-Deferment Grace Period. Pub. L. 96-374 provided that GSLP borrowers are entitled to a six-month grace period following the completion of any authorized deferment period. Pub. L. 97-35 repealed this provision for all loans disbursed on or after October 1, 1981. Borrowers with loans made prior to October 1, 1981, are still entitled to receive the post-deferment grace period on those loans.

Minimum Annual Repayment. Pub. L. 97-35, affecting all loans disbursed on or after October 1, 1981, increased the GSLP borrower's minimum annual repayment to \$600.

Loan Origination Fee. Pub. L. 97-35 authorized lenders to charge a GSLP borrower an origination fee of 5 percent of the principal amount of the loan, and allowed the lender to deduct this origination fee from the loan proceeds. ED deducts the 5 percent fee from the total amount of interest and special allowance payable to the lender, whether or not the lender deducts the fee from the loan proceeds paid to the borrower.

New Special Allowance Formula. Pub. L. 97-35 established a new formula for determining the special allowance rate for GSLP and PLUS Program loans made on or after October 1, 1981. The new formula is essentially the same as the previous formula except that it does not require rounding up to the nearest one-eighth of one percent.

Elimination of School Administrative Cost Allowance. Pub. L. 97-35 repealed the provision authorizing the Secretary to pay schools a \$10 administrative cost allowance for each GSLP recipient enrolled. The proposed regulations would revoke the existing provisions in § 682.606 concerning this payment.

New Definition of "Estimated cost of attendance" and "Estimated financial assistance." Pub. L. 97-35 amended the definitions of "estimated cost of attendance" and "estimated financial assistance." The Secretary published these definitions as part of the PLUS Program regulations on April 21, 1982 (47 FR 17200) and amended the GSLP regulations on June 1, 1983 (48 FR 24584).

Special Allowance Payments. The statute has never prohibited lenders from making GSLP loans that do not qualify for payment of Federal interest benefits. However, Pub. L. 97-35 redefined the term "eligible loan" for purposes of determining which loans qualify for special allowance payments. Only the following loans now qualify for special allowance payments:

- loans that qualify for Federal interest benefits;
- loans made under the PLUS Program;

- loans made under the loan consolidation program of the Student Loan Marketing Association (Sallie Mae); and

- loans that were made prior to October 1, 1981.

As a result, while lenders may make loans that do not qualify for Federal interest benefits, any such GSLP loans made on or after October 1, 1981, do not qualify for payment of the special allowance.

(2) *The Department of Defense Authorization Act, 1983 (Pub. L. 97-252).*

Pub. L. 97-252 amended the Military Selective Service Act. These amendments mandated that, beginning with the 1983-84 academic year, any student who is required to be registered with the Selective Service and fails to do so is ineligible to receive the benefits of any title IV student assistance program. Final regulations implementing this requirement were published on April 11, 1983 (48 FR 15578), modified on June 28, 1985 (50 FR 26950), and are found in 34 CFR Part 668 (the Student Assistance General Provisions Regulations). Section 682.515 of these proposed regulations would establish procedures that a lender must follow when informed by a school that a student has failed to meet the loan eligibility requirements, including those pertaining to Selective Service registration in 34 CFR 668.24.

(3) *The Student Loan Consolidation and Technical Amendments Act of 1983 (Pub. L. 98-79).*

Disclosure of Information to Student Borrowers. Pub. L. 98-79 eliminated disclosure requirements which had been in effect since the Student Financial Assistance Technical Amendments Act of 1982 (Pub. L. 97-301) and established new disclosure requirements. These requirements are identified in the proposed § 682.507.

Non-Discrimination. This provision specifies that no lender may deny benefits of the GSLP or PLUS Program on the basis of race, national origin, religion, sex, marital status, age or handicapped status.

Repayment Status. Prior to Pub. L. 98-79, repayment of GSLP loans began 6 months following the date a student ceased to be enrolled as at least a half-time student at an eligible institution. Since it is often difficult for schools to establish the specific date on which a student ceased to be enrolled, many lenders had difficulty in complying with the "date specific" provision. Pub. L. 98-79 makes it easier for the lender to determine when the repayment period starts by specifying that the repayment period begins 6 months following the

month in which the student ceased at least half-time enrollment.

Elimination of Deferments for Parent Borrowers Under the PLUS Program. Pub. L. 98-79 eliminated deferments for parent borrowers under the PLUS Program for all loans disbursed on or after August 15, 1983.

The Secretary's Pending Proposals for Changes to the GSLP and PLUS Program Statute. The Secretary has proposed a number of programmatic changes in connection with the 1986 Budget request for the GSLP and the PLUS Program. These proposals include a family income eligibility limit for participation in the GSLP or FISL Program, an overall dollar limit on all Title IV aid awards (excluding PLUS), a student self-help requirement of \$800, a tightened definition of independent student, a requirement of a high school degree or GED equivalent for aid eligibility, extension of need analysis to families with less than \$30,000 in income, the tying of GSLP and PLUS Program borrower interest rates to market rates, the conversion of the GSLP special allowance to a flat percentage of loan principal, the elimination of special allowance on PLUS loans, and the establishment of a 1-percent PLUS guarantee fee to cover PLUS default costs, a reduction in the initial reinsurance percentage available to guarantee agencies from 100 per cent to 90 per cent with a revised trigger rate, the elimination of future administrative cost allowances and advances to guarantee agencies, the repayment to ED by guarantee agencies of outstanding advances, and a requirement that lenders disburse all GSLP loans in multiple installments while receiving interest benefits and special allowance payments only on amounts actually disbursed. The Secretary believes that changes such as these, which improve targeting of aid on needy students and reduce unnecessary and excessive subsidies, are important for the future viability of these programs and that they should be enacted by the Congress as a part of the 1986 Budget. It is the Secretary's practice, however, to promulgate program regulations based on existing statutory provisions. These proposed regulations reflect current law only, and may require substantial revisions to conform with statutory changes resulting from the Secretary's legislative proposals.

Other Regulatory Changes

Terminology

The proposed regulations would substitute "guarantee" for "insurance," "guarantor" for "insurer," etc., in many

places throughout the regulations, in order to reflect more accurately the relationship between the guarantor, the lender, and the borrower on a GSLP or PLUS Program loan. As a number of recent Federal court decisions have made clear, it is imprecise to speak of the Secretary or a guarantee agency as "insuring" a loan, because the "insurance" is provided at the borrower's behest. See, e.g., *U.S. v. Tillerias*, 709 F.2d 1088 (6th Cir. 1983); *U.S. v. Frisk*, 675 F.2d 1079 (9th Cir. 1982); *U.S. v. Ballard*, 674 F.2d 330 (5th Cir. 1982). This consensual relationship between a borrower and the Secretary or a guarantee agency typifies a common law guarantee relationship. The proposed regulations, in deference to long-standing usage, would retain the term "insurance premium," notwithstanding the fact that a GSLP or PLUS Program insurance premium is incident to a guarantee transaction and does not currently begin to cover the costs and risks to the guarantor of its guarantee obligation.

Scope of Judicial Review Provisions

It is sometimes asserted that a court must exercise *de novo* review of certain decisions of the Secretary under the GSLP and PLUS Program because of the use of various agreements therein. The proposed regulations would include finality clauses as terms of such agreements and contracts with respect to each decision of the Secretary as to which *de novo* review might arguably apply. These clauses provide that certain decisions by the Secretary are conclusive and binding on affected parties. A finality clause in a contract with the United States does not preclude judicial review of a decision covered by the clause. Rather, it brings judicial review of such a decision within the provisions of the Wunderlich Act, 41 U.S.C. 321-322, which provides for substantially the same standards of review as those found in the Administrative Procedure Act. See 5 U.S.C. 706. Thus, the proposed regulations would clarify that the standard of review that would ordinarily be expected to apply to the Secretary's actions does in fact apply, and would preclude application of a *de novo* review standard.

Proposed Deletion of Current 34 CFR 682.518 and 683.67

The proposed regulations would delete the current provisions governing the Secretary's collection efforts after payment of a default claim on a FISLP or Federal PLUS Program loan, found at 34 CFR 682.518 and 683.67, respectively. The Secretary will continue aggressively

to collect loans on which such claims are paid, in accordance with applicable laws. The current provisions, which contain broad rules as to when the Secretary will refrain from collecting a loan in default, inappropriately restrict the Secretary's discretion in such matters. By omitting these rules, the proposed regulations would permit the Secretary to exercise the full discretion accorded by 20 U.S.C. 1082(a)(5) and (a)(6) to decide, on a case-by-case basis, whether the interests of the United States are served by refraining from collection on all or part of a defaulted loan.

Subpart B—General Provisions

(1) Section 682.200 Definitions.

Many definitions contained in this section would be replaced by cross-references to 34 CFR Part 668, *Student Assistance General Provisions*, revisions of which will soon be published in the Federal Register.

"Enrolled". The proposed regulations would modify this definition to require that a student attend classes in order to be considered enrolled. This proposed change would preclude the possibility of a student registering for classes and receiving the proceeds of the loan check, but never attending class. This change would also conform this definition to definitions in other Title IV programs.

"Graduate or professional student". This definition would be revised to preclude a student's being considered as a graduate or professional student for GSLP purposes and an undergraduate student for other Title IV purposes. In order to be considered a graduate or professional student a borrower must be enrolled in courses above the baccalaureate level. Graduate or professional students would include borrowers who enter a professional school after completing at least three years of an undergraduate program. Borrowers in the fourth or fifth year of an undergraduate program that culminates in a baccalaureate degree would not be considered graduate or professional students.

"Totally and permanently disabled". The proposed regulations would adopt the definition of "totally and permanently disabled" currently used by the National Direct Student Loan (NDSL) Program. The NDSL Program definition is clearer and more precise than that found in current GSLP and PLUS Program regulations.

(2) Section 682.201 Eligible borrowers.

This section would be revised to require permanent residents and those who are in the United States for other than a temporary purpose to provide

evidence of such permanent residency, or of the intent to become a permanent resident. The Secretary is proposing this requirement in response to a recommendation by the General Accounting Office and to ensure that only eligible borrowers receive loans.

This section would also be revised to make any individual in default on a GSLP, PLUS or National Direct Student Loan Program loan ineligible for a GSL or PLUS loan regardless of which school the borrower attended with the proceeds of the prior loan. This change would effect no major change in existing practice respecting prior GSLP and PLUS defaults by prospective borrowers, since current practice at most guarantee agencies already precludes new loans to such borrowers.

(3) Section 682.202 Permissible charges by lenders to borrowers.

This section would be revised to require that the lender return the origination fee to the borrower, through a credit to the borrower's account, if the loan check is uncashed or if the loan is repaid in full within 60 days of disbursement.

(4) Section 682.206 Prohibition against the use of the Rule of 78's.

Proposed § 682.206 would prohibit lenders from using the "Rule of 78's" in their various calculations. Some lenders use this method for computing the rebate of unearned interest to borrowers who prepay their loan, or for determining the outstanding principal balance and earned interest for purposes of special allowance and Federal interest benefits. This change is proposed because of the often dramatic differences between the results obtained by the use of Rule of 78's and those obtained by the use of an actuarial method.

Subpart C—Federal Payments of Interest and Special Allowance

(1) Section 682.300 Payment of interest benefits on a GSLP loan.

Proposed § 682.300(b) would limit to 90 days the period in which interest benefits are paid on a loan as to which the check is not cashed. A corresponding change is proposed in § 682.302(d) with respect to special allowance payments. ED has found that some lenders have been billing for interest and special allowance on loans for which the checks have remained uncashed for extended periods of time.

(2) Section 682.301 and Appendix B are reserved for the GSL Family Contribution Schedule. The 1985-86 Family Contribution Schedule (FCS) published on April 8, 1985, at 50 FR 13916, is found in current regulations in

§ 682.301 (Eligibility for Interest Benefits on a GSLP loan) and Appendix B to Part 682 (Guaranteed Student Loan Program Tables for Determination of Expected Family Contribution for 1985-86). Since the provisions of the 1985-86 and 1986-87 GSL Family Contribution Schedules are mandated by statute (the Student Financial Assistance Technical Amendments Act of 1982, Pub. L. 97-301), as amended by Section 4(b) of the Student Loan Consolidation and Technical Amendment Act of 1983 (Pub. L. 98-79) and the Education Amendments of 1984 (Pub. L. 98-511), the Secretary expects to republish the applicable FCS, when these proposed rules are promulgated as final regulations.

(3) *Section 682.302 Payments of special allowance on a GSLP or PLUS Program loan.*

This section would be revised to incorporate the Department's long-standing view that the Secretary's obligation to pay special allowance terminates when a loan ceases to be guaranteed.

(4) *Section 682.303 Methods for computing interest benefits and special allowance.*

This section would be revised to discontinue lender's use of the average quarterly balance method for computing interest benefits and special allowance. This change is proposed to assure that the amount of interest benefits and special allowance paid by the Secretary accurately reflects the number of days a loan is outstanding and held by the lender. In addition, elimination of the average quarterly balance method would preclude the Secretary's payment of more interest benefits and special allowance on loans that are transferred between two lenders than on loans that are never transferred. Under the current system, this can occur when one party to the transfer uses the average quarterly balance method and the other does not. The remaining methods—average daily balance and actual accrual—produce the same results with respect to the amount of interest benefits and special allowance payable by the Secretary. Both methods are included for the convenience of lenders with different approaches to portfolio administration.

(5) *Section 682.304 Procedure for payment of interest benefits and special allowance.*

This section would discontinue the use of semi-annual and annual billings by lenders for interest benefits and special allowance, since very few lenders bill for interest benefits and special allowance on other than a quarterly basis. Lenders report on each

billing the amount of loans made during the billing period, so that the loan origination fee can be calculated and deducted from any amount due the lender.

The Secretary considers it important to the fiscal integrity of the GSLP and PLUS Program that lenders submit billings for interest benefits and special allowance in a timely manner. Proposed § 682.304(c) would define a timely billing as one received by the Secretary within 90 days following the end of a quarter.

Subpart D—Guarantee Agency Programs

(1) *Section 682.401 Basic program agreement.*

(a) Proposed § 682.401(b)(5) would conform loan disbursement procedures for guarantee agency loans to those under the FISLP and the Federal PLUS Program. This change is designed to facilitate lender participation by establishing uniform loan check procedures.

(b) Similarly, proposed § 682.401(b)(10)(ii) would conform disclosure requirements, forbearance policies, and the consequences of a borrower's failure to establish eligibility for guarantee agency loans to the FISLP and the Federal PLUS Program.

(c) Proposed § 682.401(b)(11) would require each guarantee agency to establish and utilize a system for monitoring the enrollment status of student borrowers and to report any relevant status changes, as reported by a school, to the lender within 60 days.

(2) *Section 682.402 Death, disability, and bankruptcy payments.*

(a) Proposed § 682.402(c), *Claim procedures for a loan held by a lender*, would conform the documentation and timely filing requirements for death, disability and bankruptcy claims under guarantee agency programs to those under the FISLP and the Federal PLUS Program.

(b) Proposed § 682.402(d) would revise the treatment of bankruptcy claims by guarantee agencies. GSLP and PLUS loans may not be discharged in bankruptcy during the first five years of repayment, unless the borrower petitions the bankruptcy court and is granted a hardship waiver. After a lender has submitted a bankruptcy claim to the guarantee agency, the agency would pay the lender the amount owed and hold the loan until it is determined that the loan is, or is not, discharged by the bankruptcy court. If the loan is discharged, the agency would submit a bankruptcy claim to the Secretary for reimbursement. If the loan is not discharged, the guarantee agency may elect to hold and service the loan

as the lender or have the lender which submitted the claim repurchase the loan.

(3) *Section 682.404 Federal reinsurance agreement.*

(a) Proposed § 682.404(a)(2) would clarify that the Secretary's reimbursement of "losses" incurred by a guarantee agency include only the amount of unpaid principal and accrued interest that the agency has paid to a lender on a default claim.

(b) Proposed § 682.404(e)(5) would require the agency to refund to the Secretary a portion of the proceeds derived from the sale of an asset which was purchased, in whole or in part, with funds retained from collections. A corresponding proposal is found in § 682.407(b)(3) with respect to assets purchased with administrative cost allowance payments.

(4) *Section 682.405 Supplemental Federal reinsurance.*

This proposed section would amend the formula for determining a guarantee agency's reinsurance percentage to exclude from the formula claims filed under a guarantee agency policy either required by § 682.401(b)(10)(ii)(F) or consistent with § 682.516(a)(1). These claims include any claims filed because it was determined, after the loan was made, that the borrower was enrolled in an ineligible program, failed to meet citizenship or residency requirements, or did not qualify for Federal interest benefits, or that the borrower's school closed during the academic period covered by the loan. The Secretary is proposing this change to prevent guarantee agencies from being penalized for paying claims to its lenders on loans that do not involve ordinary defaults.

(5) *Section 682.408 GSLP loan disbursement through a guarantee agency escrow agent.*

The Education Amendments of 1980 (Pub. L. 96-374) authorized guarantee agencies to establish an escrow system under which the guarantee agency, or its agent, would receive GSLP loan disbursement from certain lenders and would transmit those funds to borrowers in multiple installments. These proposed regulations would allow disbursements to the escrow agent (*i.e.*, the guarantee agency or its agent) to be made in bulk, by electronic transfer, or in any form upon which the escrow agent and lender agree. The escrow agent would transmit loan funds directly to the school by means of a check made payable to the borrower and the school. The check transmitted from the escrow agent to the school would contain, or be accompanied by, a notification to the school that it is part of a multiple disbursement. The escrow agent would

be required to make at least two disbursements during the loan period, according to a schedule that the escrow agent would give to the borrower at the time of the first disbursement. The promissory note would include a reference to the schedule of disbursements.

The escrow system is designed to preserve the student's access to GSLP loan funds as educational costs are incurred, while reducing the Secretary's potential liability in the event that the student ceases attendance at the school. In such cases, loan funds remaining in escrow would be sent directly from the escrow agent to the lender and credited as a prepayment to the student's outstanding loan balance.

The Secretary does not favor the guarantee agency escrow mechanism as a means of reducing defaults involving students who drop out, because it unfairly permits the guarantee agency to reap the benefit of the "float" on loan funds it holds in escrow, rather than the borrower or the Federal taxpayers. Current multiple disbursement procedures are similarly unfair to the taxpayers, because they permit lenders to bill the Federal government for interest benefits and special allowance payments on undisbursed loan amounts. The fairest and least costly means for expanding the use of multiple disbursement of loans is simply to require lenders to disburse all loans in multiple installments, as the Secretary has proposed in connection with the 1986 Budget request, with interest benefits and special allowance payments made only on funds actually disbursed. If this proposal is enacted into law, of course, the guarantee agency escrow mechanism will be unnecessary, since it pertains only to loans not already disbursed in multiple installments by lenders. These proposed regulations would provide needed controls on the guarantee agency escrow mechanism in the event that the Congress declines to enact the Secretary's proposal.

(6) The Secretary requests comment about regulating the management practices and structure of State lenders or State secondary markets that are closely affiliated with guarantee agencies, often under identical management. Although such an arrangement may be cost-effective, since the two organizations can share certain equipment and support services, it raises serious concerns about the independence of decisions made by each organization, one serving as a lender or holder of student loans, and the other as the guarantor of those same

loans. In such a situation the potential for conflicts of interest is great, especially when the guarantee agency is responsible for reviewing the program participation of the lender to determine compliance with applicable laws and regulations. The Secretary is therefore seriously considering, and requests comments on, including in the final rule the following requirements concerning the management structure and practices of State lenders, secondary markets, and servicers and affiliated guarantee agencies:

(a) Separation of decision-making authority for policy and procedures (e.g., separate boards of directors);

(b) Diligent oversight by the guarantee agency of the affiliated lender, secondary market, or servicer to ensure the latter's compliance with applicable laws, regulations and policies;

(c) Separation of personnel in areas of activity that involve potential conflicts of interest;

(d) Complete separation of files and filing systems;

(e) Separate deposit arrangement and accounting for all revenues and costs; and

(f) Separation of all operational activities that cannot be combined without creating a potential conflict of interest, such as guarantee issuance and lending decisions, and due diligence activities and claims review activities.

(7) A number of additions to, and revision of, existing regulations are proposed to ensure the administrative and fiscal integrity of the GSLP and the PLUS Program and to ensure that the Secretary is not exposed to unreasonable risks of loss.

(a) The proposed regulations would delete current § 682.403, *Federal advances for reserve funds*, since no additional advances have been authorized under section 422(a) of the act since 1968. The proposed regulations would, however, establish requirements for the maintenance and use of an agency's reserve fund in § 682.410(s). Except for restrictions on the use of loan insurance premiums, current regulations governing the reserve fund apply only as long as the agency retains Federal advance funds. The reserve fund requirements of proposed § 682.410(a) would apply to all guarantee agencies. The proposed content and uses of the reserve fund are essentially the same as the requirements in existing regulations, except that administrative cost allowance payments from the Secretary would now be deposited in the agency's reserve fund. The guarantee agency could then use those payments to defray future administrative costs.

Proposed section 682.410(b)(3) would establish specific procedures for guarantee agencies to follow regarding the exercise of due diligence in collecting loans they hold. One proposed provision, section 682.410(b)(3)(vii), would require a guarantee agency to sue every borrower who defaults on a loan held by the agency, if the agency's collection efforts are unsuccessful. A related provision, section 682.410(b)(3)(x), would require agencies to adhere to criteria and procedures approved by the Secretary for "writing off" loans on which its collection efforts have been unsuccessful. The Secretary is developing a model set of write-off criteria and procedures, based on the Federal Claims Collection Standards, to aid agencies in formulating their write-off policies, and to use as a guide in reviewing proposed agency policies in this area. The Secretary emphasizes that the write-offs at issue do not entail excusing the borrower from repayment of the loan; they are not Federal write-offs. Rather, they involve merely the cessation of collection activity by the agency on the loan.

A number of issues in this area are still under discussion. The Secretary is therefore particularly interested in comments regarding guarantee agency write-off criteria and procedures.

(b) Proposed § 682.412 would retain existing provisions on remedial actions available to the Secretary against a guarantee agency that violates program requirements. Proposed §§ 682.406 and 682.412 would also specify the circumstances under which a lender or guarantee agency is not entitled to, and therefore must repay, interest benefits, special allowance, or reinsurance payments on a GSLP or PLUS Program loan, in the absence of a waiver by the Secretary of the right to refuse to make, or require reimbursement of, such payments. A guarantee agency would continue to be required to demonstrate its compliance with Federal rules, including proposed §§ 682.406 and 682.411, in the event an audit or program review questions its right to payments by the Secretary under this part. The program statute, and current regulations, permit the Secretary to recover, or refuse to make, certain interest benefits and special allowance payments to a lender, and reinsurance payments to a guarantee agency, on a loan as to which the lender is in violation of a guarantee agency rule that affects guarantee coverage. Current regulations also permit the Secretary to recover, or refuse to make, reinsurance payments to an agency that makes an incomplete or incorrect statement in connection with

any agreement entered into under the GSLP or PLUS Program. Proposed §§ 682.406 and 682.412 would provide greater clarity regarding the Secretary's rights in these areas, and thus, it is believed, greater compliance with guarantee agency and federal rules.

Proposed sections 682.412 (a)(2) and (b)(2) refer to policies and procedures which a guarantee agency may establish, allowing for the reinstatement of guarantee coverage on a loan as to which the lender has violated a condition of guarantee coverage set by the agency. These policies and procedures would require the approval of the Secretary. The Secretary intends to use the FISLP "cure" policies set forth in Bulletin L-77a (Appendix C to these proposed rules) as a guide in reviewing proposed guarantee agency policies in this area.

While the program statute and current regulations require a guarantee agency to exercise due diligence in the collection of loans and to protect the United States from unreasonable risks of loss, they do not set forth a specific time period within which a guarantee agency must act on a default claim submitted by a lender. The Secretary has interpreted the statute and regulations as requiring an agency to act on a default claim within 90 days of receipt by the agency. Proposed §§ 682.406(b) and 682.412(b)(3) would incorporate the 90-day period into the regulations and provide that an agency may not receive reinsurance reimbursement for interest accruing on a loan after the end of this period.

Similarly, while the statute and current § 682.405(f)(1)(ii) prohibit a lender from neglecting collection on a loan for substantial periods of time, they do not set forth a specific deadline by which a lender must file a claim with the guarantee agency after default. Instead, current regulations require that the agency establish rules for the timely filing of claims by its lenders. A number of agencies have been slow in doing so, however. In addition, the administrative burden on the Secretary of reviewing and approving agencies' timely filing and other rules unduly taxes the Secretary's available resources. Thus, proposed § 682.406(a)(4) would establish a uniform filing deadline for default claims of 90 days from default, and would further specify that the Secretary does not make a reinsurance payment on a default claim that is filed later than 90 days after default.

(c) *Section 682.409 Assignment by guarantee agencies of defaulted loans to the Secretary.*

The Secretary proposes procedures to implement the statutory authority of

section 428(c)(9) of the Act concerning the assignment to the Secretary by guarantee agencies of defaulted loans on which the Secretary has paid reinsurance claims. The Secretary intends to use this authority wherever appropriate to reduce the disturbingly high amount of loans on which agencies have been unsuccessful in collection after payment of default claims to lenders.

Proposed § 682.409 would establish general assignment procedures and the basic documentation that would be required for loans that the Secretary selects for assignment. It would be extremely difficult, if not impossible, to establish a single set of specific standards for selecting loans for assignment that would take into consideration the unique circumstances of each loan and each guarantee agency. The proposed regulations, therefore, do not include such a set of standards. Instead, the decision will be made on a case-by-case basis as to which loans, or categories of loans, will be selected for assignment. The Secretary may consider factors such as the adequacy of the guarantee agency's collection system, the agency's default rate, the total dollar amount in default, and any trends in those areas, in deciding whether a particular agency's loan portfolio should be closely examined for purposes of requiring the agency to assign loans to the Secretary. In the event such an examination is conducted of an agency's portfolio, the Secretary may require assignment of the entire portfolio, or of only certain types of loans within it, such as loans made to Federal employees, loans barred or soon to be barred by the statute of limitations, loans written off by the agency, or loans as to which the agency's collection efforts have been completed without success. The Secretary may also require assignment from all agencies of all loans of a particular type, such as loans to Federal employees or loans as to which the exercise of offsets against Federal income tax refunds due the borrowers is appropriate. The Secretary does not plan, at this time, to require the assignment of a loan as to which the agency's collection efforts are successful in inducing the borrower to honor the repayment obligation. The Secretary requests comments on this approach, on the proposed loan categories set out above, and on any other approaches, factors, or loan categories relevant to this issue.

(d) *Section 682.411 Due diligence by lenders in the collection of guarantee agency loans.*

This proposed section would establish minimum collection requirements for

lenders administering guarantee agency loans. These standards, which were developed in consultation with the National Council of Higher Education Loan Programs, would help to protect the Secretary from unreasonable risks of loss and improve the collection of loans nationwide.

(e) *Section 682.412 Remedial actions.*

Current § 682.405(f)(1)(ii) requires, as a term and condition of the reinsurance agreement, that a guarantee agency assure the Secretary that, as to each reinsurance claim it files, the lender has made all reasonable efforts to collect the underlying loan. Current § 682.400(c) sets forth the Secretary's remedies when on agency gives a warranty, under § 682.405(f)(1)(ii), on a loan as to which the lender has not exercised due diligence in collection. Under proposed § 682.412, these remedies would similarly be available for a violation of proposed § 682.411.

Subpart E—Federal Insured Student Loan Program and Federal PLUS Program

(1) *Section 682.501—Extent of Federal guarantee under the FISLP and Federal PLUS Program.*

This proposed section would amend the formula for determining a State lender's guarantee percentage to exclude from the formula claims filed under §§ 682.515 and 682.516. These claims include, but are not limited to, any claims filed because it was determined, after the loan was made, that the borrower was enrolled in an ineligible program, failed to meet citizenship or residency requirements, or did not qualify for Federal interest benefits, or that the borrower's school closed during the academic period covered by the loan. The Secretary is proposing this change to prevent lenders from being penalized for filing claims that do not involve ordinary defaults.

(2) *Section 682.508 Due diligence in making and disbursing a loan.*

This proposed section would require that the lender make the loan check (except in the case of a PLUS Program parent borrower or a borrower attending a foreign school) co-payable to the borrower and the school and that the lender send the check to the school. This change is designed to assure that the school is made aware of when a loan is made and the amount of that loan, to give the school greater control over student loan proceeds, and to assure that the loan proceeds are used for educational expenses.

Loan checks for parent borrowers would be excluded from this provision

because, unlike a student borrower enrolled at the school for which the loan was intended, a parent borrower will not be at the school to receive the check. Processing a check through the school in these circumstances would be a cumbersome and administratively burdensome process for both the parents and the school. The Secretary proposed that loan checks for student borrowers attending foreign school would be exempt from these provisions. The Secretary, however, requests comment on this proposed exception.

(3) *Section 682.510 Repayment of loans.*

The Secretary proposes the elimination of the provision that lenders currently are permitted to add to the promissory note requiring the borrower to execute a repayment schedule not less than 120 days before the end of the grace period. The 120-day provision was originally authorized when the Secretary did not guarantee interest and was designed to allow lenders to file a default claim as soon as possible, if necessary, thereby minimizing the loss of interest income. Since interest is now guaranteed, and since most GSLP loans now have a six-month grace period instead of a nine- to twelve-month grace period, this procedure is no longer necessary or practical. Holders of outstanding loans that carry the 120-day clause in the promissory note and that have not yet entered the repayment period may, without penalty, decide not to enforce this provision in the note.

(4) *Section 682.511 Deferment.*

(a) This proposed section would establish that an authorized deferment period begins on the earlier of the date the lender approves the borrower's request for deferment or the date the deferment began, not to exceed 60 days prior to the lender's approval. Current regulations specify that an authorized deferment period begins when the condition entitling the borrower to a deferment first exists.

(b) The requirements for an authorized deferment of repayment for volunteer service in the Peace Corps or ACTION programs would be modified to require full-time service for a minimum of one year. This provision would be revised since the Peace Corps and ACTION programs are now allowing volunteers to have service periods for as little as a few months. The intent of these deferments is to accommodate borrowers serving as volunteers for an extended period of time. This change would be consistent with the minimum one year of service that is required for a deferment for volunteer service, comparable to that in the Peace Corps or

ACTION programs, with a tax-exempt organization.

(c) The Secretary proposes to codify as criteria, in § 682.511(g), the factors that have generally been considered in determining if a borrower is serving in an eligible internship program.

(5) *Section 682.513 Due diligence in collecting a loan.*

In cases where the borrower enters the repayment period without the lender's knowledge, the Secretary proposes to allow the lender 30 days from the date it learns of this situation to establish the repayment terms and obtain a payment or otherwise determine that the borrower intends to honor the repayment obligation before sending the borrower a notice as required in § 682.513(b).

(6) *Section 682.521 Procedures for receipt or retention of payments where the lender has violated program requirements for FISLP loans.*

The Secretary proposes to establish procedures for curing violations of the due diligence in collection and timely filing of claims requirements by republishing, as Appendix C to Part 682, Bulletin #L-77a (January 7, 1983). References in the Appendix to §§ 682.511 and 682.516 should be understood to refer to §§ 682.513 and 682.518, respectively, of these proposed rules. If Appendix C is included in the final rule, all regulatory citations will be revised to reflect the section numbers adopted in the final rule.

Subpart F—Requirements, Standards, and Payments for Participating Schools

(1) *Section 682.605 The borrower's loan check.*

This proposed section would require that almost all GSLP loan checks be made jointly payable to the student and the school and that they be sent directly to the school. A school would be required to verify that the student is maintaining satisfactory academic progress and is enrolled, or has maintained enrollment, on at least a half-time basis before releasing any funds. Presently, a school is required only to verify that the student is enrolled, and has maintained enrollment, on at least a half-time basis before releasing any funds. Other Title IV programs require that the school also verify satisfactory progress before releasing funds.

The Secretary has decided not to propose establishing regulatory authority for schools to maintain escrow systems for disbursing to borrowers loan proceeds received from lenders. Such systems, which would be similar to the guarantee agency escrow systems discussed above, would unfairly permit

schools, rather than borrowers, to reap the "float" on loan funds disbursed in advance of need. As noted above, the Secretary believes that his proposal to amend the statute to require lenders to disburse all GSLP loans in multiple installments, with interest benefits and special allowance payments made only on funds actually disbursed, is the best way to handle the "float" question—in effect, giving it to the Federal taxpayers—and would also greatly reduce default costs associated with mid-year, mid-program dropouts.

(2) *Section 682.606 Determining the date of a student's withdrawal.*

This proposed section would delete the current provision that allows a borrower to take more than one leave of absence. Given the single leave of absence that may still be granted by the school, the six-month grace period provides an adequate period of time to make arrangements to return to school. If a student returns to school on at least a half-time basis before the expiration of the six-month grace period, the student is entitled to the full six-month grace period after later dropping below half-time attendance.

(3) *Section 682.608 Payment of a refund to a lender.*

Under proposed § 682.605, *The borrower's loan check*, if, after receiving a loan check for a student, the school determines that the student has not enrolled as expected, the school would have to return the check to the lender within 30 days of this determination. This proposed section would reduce from 40 days to 30 days after the determination that a refund is due the time within which a school must return the refund to the lender. This change is proposed so that the two sections will be consistent.

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility Under the Guaranteed Student Loan Program and the PLUS Program

Regulation governing the limitation, suspension, or termination of lender eligibility currently apply only to lenders under the FISLP (Subpart G of 34 CFR Part 682) and the Federal PLUS Program (Subpart F of 34 CFR Part 683). Subpart G of these proposed regulations is essentially the same as current regulations. The Secretary is, however, proposing to make this Subpart applicable to lenders that participate in guarantee agency programs.

Subpart H—[Reserved]

On February 10, 1984, the Secretary published at 49 FR 5330 proposed regulations to govern the approval of the

Plan for Doing Business submitted to the Department of Education by Authorities that issue tax-exempt obligations in order to secure funds to make, purchase, or provide financing for loans under the GSLP and the PLUS Program. On February 8, 1985 the Secretary published final regulations at 50 FR 5506 under *Subpart H—Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations*, and will republish those regulations when these proposed rules are promulgated as final regulations.

Appendix A—[Reserved]

No changes to Appendix A of 34 CFR Part 682 and 34 CFR Part 683 (Standards for Acceptable Refund Policies by Participating Schools) are included in these proposed regulations. Therefore, the Secretary is not publishing Appendix A as part of this notice of proposed rulemaking, but will republish it as part of the final regulation.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Many provisions of the regulations repeat statutory requirements. Certain reporting, recordkeeping, and compliance requirements are imposed on guarantee agencies, lenders and schools by the regulations. These regulations, however, are modeled on existing GSLP and PLUS Program regulations and will not have a significant economic impact on these institutions. Participating guarantee agencies are reimbursed for their costs.

Invitation To Comment.

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before the 60th day after publication of this document will be considered before the Secretary issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in ROB-3,

Room 4310, 7th and D Streets SW, Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

It has not yet been determined if public hearings will be held. In the event they are, the public will be advised—through a notice published in the *Federal Register*—of the specific times and locations for each meeting.

It would be extremely helpful if comments are identified by specific sections of the NPRM and are made sequentially.

To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Paperwork Reduction Act

Sections 682.304, 682.305, 682.401, 682.402, 682.407, 682.408, 682.409, 682.411, 682.413, 682.507, 682.511, 682.513, 682.518, 682.522, 682.601, 682.602, 682.603, 682.604, and 682.610 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Although preparation of this NPRM resulted in extensive consideration of the imposition of information collection and recordkeeping requirements, the Department is particularly interested in comments on ways to further reduce the paperwork burden imposed in this program. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Joseph F. Lackey, Jr.

All comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administration practice and procedure, Colleges and universities, Education, Loan programs—education, Student aid, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: August 29, 1985.

William J. Bennett,
Secretary of Education.

PART 683—[REMOVED]

The Secretary proposes to remove Part 683 and to revise Part 682 of Title 34 of the Code of Federal Regulations to read as follows:

PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

Subpart A—Purpose and Scope

- Sec.
- 682.100 The Guaranteed Student Loan and PLUS Programs.
 - 682.101 Participation in the Guaranteed Student Loan and PLUS Programs.
 - 682.102 Obtaining and repaying a loan.
 - 682.103 Applicability of subparts.

Subpart B—General Provisions

- 682.200 Definitions.
- 682.201 Eligible borrowers.
- 682.202 Permissible charges by lenders to borrowers.
- 682.203 Statement of educational purpose.
- 682.204 Treatment of refunds by lenders.
- 682.205 Prohibited transactions.
- 682.206 Prohibition against the use of the Rule of 78's.

Subpart C—Federal Payments of Interest and Special Allowance

- 682.300 Payment of interest benefits on a GSLP loan.
- 682.301 [Reserved].
- 682.302 Payments of special allowance on a GSLP or PLUS Program loan.
- 682.303 Methods for computing interest-benefits and special allowance.
- 682.304 Procedure for payment of interest benefits and special allowance.
- 682.305 Payment of interest benefits and special allowance to a lender making multiple installment loans.

Subpart D—Guarantee Agency Programs

- 682.400 Agreements between a guarantee agency and the Secretary.
- 682.401 Basic program agreement.
- 682.402 Death, disability, and bankruptcy payments.
- 682.403 Federal advances for claim payments.
- 682.404 Federal reinsurance agreement.

- Sec.
 682.405 Supplemental Federal reinsurance.
 682.406 Conditions of reinsurance coverage.
 682.407 Administrative cost allowances for guarantee agencies.
 682.408 GSLP loan disbursement through a guarantee agency escrow agent.
 682.409 Assignment by guarantee agencies of defaulted loans to the Secretary.
 682.410 Fiscal, administrative, and enforcement requirements.
 682.411 Due diligence by lenders in the collection of guarantee agency loans.
 682.412 Remedial actions.
 682.413 Records, reports, and inspection requirements for guarantee agency programs.

Subpart E—Federal Insured Student Loan Program and Federal PLUS Program

- 682.500 Circumstances under which loans may be guaranteed by the Secretary.
 682.501 Extent of Federal guarantee under the FISLP and the Federal PLUS Program.
 682.502 The application to be a lender.
 682.503 The guarantee contract.
 682.504 Issuance of Federal loan guarantees.
 682.505 Insurance premium.
 682.506 Limitations on maximum loan amounts.
 682.507 Disclosure requirements.
 682.508 Due diligence in making and disbursing a loan.
 682.509 Due diligence in servicing a loan.
 682.510 Repayment of loans.
 682.511 Deferment.
 682.512 Forbearance.
 682.513 Due diligence in collecting a loan.
 682.514 Assignment of a loan.
 682.515 Consequences of failure of a borrower or student to establish eligibility.
 682.516 Special conditions for filing a claim.
 682.517 Death, disability, and bankruptcy.
 682.518 Procedures for filing a claim.
 682.519 Determination of amount of loss on a claim.
 682.520 Factors affecting coverage of a loan under the loan guarantee.
 682.521 Procedures for receipt or retention of payments where the lender has violated program requirements for FISLP loans.
 682.522 Records, reports, and inspection requirements for program lenders.
- #### Subpart F—Requirements, Standards, and Payments for Participating Schools
- 682.600 Agreement between an eligible school and the Secretary for participation in the Guaranteed Student Loan and PLUS Programs.
 682.601 Agreement between the Secretary and a school that makes or originates loans.
 682.602 Providing employment data to prospective students.
 682.603 Correspondence school schedule requirements.
 682.604 Certification by a participating school in connection with a loan application.
 682.605 The borrower's loan check.
 682.606 Determining the date of a student's withdrawal.
 682.607 Refund policy.
 682.608 Payment of a refund to a lender.

- Sec.
 682.609 Termination of a school's lending eligibility.
 682.610 Records, reports, and inspection requirements for participating schools.

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility Under the Guaranteed Student Loan Program and the PLUS Program

- 682.700 Purpose and scope.
 682.701 Definitions of terms used in this subpart.
 682.702 Effect on participation.
 682.703 Informal compliance procedure.
 682.704 Emergency action.
 682.705 Suspension proceedings.
 682.706 Limitation or termination proceedings.
 682.707 Appeals in a limitation or termination proceeding.
 682.708 Evidence of mailing and receipt dates.
 682.709 Reimbursements, refunds, and offsets.
 682.710 Removal of limitation.
 682.711 Reinstatement after termination.

Subpart H—[Reserved]

Appendix A—[Reserved]

Appendix B—[Reserved]

Appendix C—Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L-77a].

Authority: Title IV, Part B, of the Higher Education Act of 1965, as amended (20 U.S.C. 1071-1087-2), unless otherwise noted.

Subpart A—Purpose and Scope

§ 682.100 The Guaranteed Student Loan and PLUS Programs.

(a) This part governs two programs in which lenders use their own funds to make loans to enable students to pay the costs of attending postsecondary schools:

(1) The *Guaranteed Student Loan Program (GSLP)*, which encourages the making of loans to undergraduate, graduate, and professional students.

(2) The *PLUS Program*, which encourages the making of loans to independent undergraduate students, graduate and professional students, and parents of dependent undergraduate students to help pay for the student's costs of education.

(b)(1) A guarantee agency guarantees lenders against losses due to default by the borrower on GSLP and PLUS Program loans. If the guarantee agency meets certain Federal requirements, the guarantee agency is reimbursed by the Secretary for all or part of the default claims it pays.

(2) The Secretary guarantees lenders against losses, within the GSLP, on Federal Insured Student Loan Program (FISLP) loans and, within the PLUS

Program, on Federal PLUS Program loans. The FISLP and the Federal PLUS Program are authorized to operate in States not served by a guarantee agency program. In addition, the FISLP is authorized, under limited circumstances, to operate in States in which a guarantee agency program does not serve all eligible students.

(20 U.S.C. 1071 to 1087-2)

§ 682.101 Participation in the Guaranteed Student Loan and PLUS Programs.

(a) Banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State agencies may be lenders.

(b) Educational institutions, including most colleges, universities, graduate and professional schools, and many vocational, technical, and correspondence schools, are eligible to participate as schools for which a student or parent may obtain a loan to pay for the student's cost of education at that institution.

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the GSLP and PLUS Program. Parents of eligible dependent undergraduate students may borrow under the PLUS Program.

(20 U.S.C. 1071 to 1087-2)

§ 682.102 Obtaining and repaying a loan.

(a) *GSLP application.* To obtain a GSLP loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the student submits the application to a participating lender. If the lender agrees to make the loan, the lender sends the application to a guarantee agency or to the Secretary for approval.

(b) *PLUS Program application.* To obtain a PLUS Program loan a student completes an application and submits it to the school for certification. If the loan is to be made to the student's parent(s), both the student and the parent(s) must complete the application before submitting it to the school. After the school certifies the application, the student or parent(s) submits the application to a participating lender. If the lender agrees to make the loan, the lender sends the application to a guarantee agency or to the Secretary for approval.

(c) *Repaying a loan.*—(1) *General.* The borrower is obligated to repay the full amount of the loan plus any interest not payable by the Secretary. The borrower's obligation to repay is cancelled if the borrower dies, becomes

totally and permanently disabled, or has the loan discharged in bankruptcy.

(2) **GSLP repayment.** Generally, a borrower is not required to make any payments during the time the borrower is in school. In most cases the Secretary pays the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no payments are required. At the end of the grace period, the repayment period begins. During the repayment period the borrower pays both the principal and the interest accruing on the loan.

(3) **PLUS repayment.** The Secretary does not pay the interest on a PLUS Program loan on behalf of the borrower. The first payment is due on a PLUS Program loan within 60 days after the loan is disbursed.

(4) **Default.** If a borrower defaults on a loan, the guarantee agency or the Secretary reimburses the lender for the amount of its loss. The guarantee agency or the Secretary then collects this amount from the borrower.

(20 U.S.C. 1071 to 1087-2)

§ 682.103 Applicability of subparts.

(a) Subpart B contains general provisions that are applicable to all GSLP and PLUS Program participants.

(b) Guarantee agency programs are subject to Subparts C, D, F, G and H.

(c) The FISLP and the Federal PLUS Program are subject to Subparts C, E, F, G, and H.

(d) Schools are specifically addressed in Subpart F.

(20 U.S.C. 1071, 1087-2)

Subpart B—General Provisions

§ 682.200 Definitions.

(a) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR Part 668:

Academic year
Act
Campus-based Programs
Clock hour
College Work-Study Program
Dependent student
Guaranteed Student Loan Program
Independent student
Institution of higher education
National Direct Student Loan Program
Pell Grant Program
PLUS Program
Secretary
State
State Student Incentive Grant Program
Supplemental Educational Opportunity Grant Program
Vocational school

(b) Other definitions used in this part are:

Actual interest rate: The annual interest rate a lender charges on a loan, which may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate: The maximum annual interest rate that a lender may charge under the Act on a loan, except that the applicable interest rate is seven percent for any loan made for a period of instruction that began before January 1, 1981.

Borrower: A student or parent to whom a GSLP or PLUS Program loan is made.

Co-maker: One of two individuals who are joint borrowers on a PLUS Program loan and who are equally liable for repayment of the loan.

Default: The failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the Secretary or guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for—

(1) 120 days for a loan repayable in monthly installments; or

(2) 180 days for a loan repayable in less frequent installments.

Disbursement: The making of a loan by a lender to a borrower by means of issuing a check or draft payable to the order of the borrower and requiring the borrower's personal endorsement.

Endorser: An individual who is secondarily liable for a loan obligation.

Enrolled: The status of a student who has—

(1) Completed the registration requirements at the school he or she is attending, except for the payment of tuition and fees, and has attended classes; or

(2) Been admitted into a correspondence study program and submitted one lesson, completed by the student after acceptance for enrollment and without the assistance of a representative of the school.

Escrow agent: An entity that receives, on behalf of student borrowers, the proceeds of GSLP loans disbursed by eligible lenders for the purpose of reimbursing such proceeds to the borrowers.

Estimated cost of attendance: (1) Except as provided in paragraph (2) of this definition, the tuition and fees applicable to a student, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period for which the loan is sought. These expenses may include, but are not limited to: reasonable transportation and commuting costs; costs for room, board, books, and supplies; the insurance premium for the loan; the

interest on previous GSLP and PLUS Program loans received by the student; and, if applicable, the origination fee for the loan. These expenses may not include the purchase of an automobile.

(2) For a student enrolled in a correspondence study program, only the contract price of the program, the insurance premium for the loan, the interest on previous GSLP and PLUS Program loans received by the student, and, if applicable, the origination fee for the loan. However, other costs described in paragraph (1) of this definition incurred by the student in fulfilling a required period of residential training in connection with the correspondence study program may also be included in the estimated cost of attendance.

Estimated financial assistance: The estimated amount of assistance that a student has been or will be awarded during the period for which the loan is sought from Federal, State, institutional or other scholarship, grant, work, or loan programs, including but not limited to—

(1) Any Social Security benefits paid to, or on account of, the student which would not be paid if he or she were not a student;

(2) Veterans educational benefits paid under chapters 32, 34, and 35 of title 38 of the United States Code;

(3) The estimated amount of other Federal student financial aid, including but not limited to Pell Grants and campus-based aid, which the student would be expected to receive if he applied, whether or not the student has applied for such aid; and

(4) GSLP and PLUS loan proceeds withheld by the lender and applied towards an origination fee or insurance premium, if these costs are included in computing the borrower's estimated cost of attendance.

Foreign school: A school not located in a State, as "State" is defined in the Act.

Full-time student: (1) A student enrolled in an institution of higher education (other than a student enrolled in a program of study by correspondence) who is carrying a full-time academic workload as determined by the school under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work, research or special studies, whether or not for credit that the school considers sufficient to classify the student as a full-time student; or

(2) A student enrolled in a vocational school (other than a student enrolled in a program of study by correspondence)

who is carrying a workload of not less than 24 clock hours per week or 12 semester or quarter hours of instruction, or its equivalent.

Grace period: The period that begins on the day on which a GSLP borrower ceases to be enrolled as at least a half-time student (or a full-time student, if so required by the applicable guarantee agency) at a participating school and ends on the day that the repayment period begins. See also "Post-deferment grace period."

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not concurrently receiving Title IV aid as an undergraduate student.

Guarantee agency: A State or private nonprofit organization that administers a loan guarantee program under Title IV, Part B of the Act.

Half-time student: A student who is enrolled in a participating school, is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

Holder: An eligible lender in possession of a GSLP or PLUS Program loan.

Legal guardian: An individual appointed by a court to be a "guardian" of a person and specifically required by the court to use his or her financial resources for the support of that person.

Lender: (1) The term "eligible lender" is defined in section 435(g) of the Act.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, or a credit union—

(i) The term "subject to examination and supervision" shall be understood to mean "subject to examination and supervision in its capacity as a lender;" and

(ii) The term "consumer credit function" includes home mortgages.

National of the United States: (1) A citizen of the United States; or

(2) As defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

Origination: A special relationship between a school and a lender, in which the lender delegates to the school substantial functions or responsibilities normally performed by lenders before making loans. In this situation, the school is considered to have "originated" a loan made by the lender. The Secretary determines that "origination" exists if—

(1) A school determines who will receive a loan and the amount of the loan; or

(2) The lender has the school verify the identity of the borrower or complete forms normally completed by the lender.

Origination fee: A fee which a lender is allowed to charge a GSLP borrower under section 438 of the Act.

Parent: A student's mother, father, or legal guardian. A parent by adoption is considered to be a student's mother or father.

Participating school: A school that has entered into an agreement with the Secretary under § 682.600.

Post-deferment grace period: For a loan made prior to October 1, 1981, a period of six consecutive months beginning on the date when an authorized deferment period ends.

School: (1) An educational institution that is—

(i) An institution of higher education or a vocational school, as those terms are defined in 34 CFR Part 668; or

(ii) With respect to students who are nationals of the United States, a school outside the United States that is comparable to an institution of higher education or to a vocational school and that has been approved by the Secretary for purposes of the GSLP and the PLUS Program.

(2) The term includes only those individual units or programs within a school that have been determined by the Secretary to meet all the requirements for school eligibility.

(3) A school that employs or uses commissioned salespersons to promote the availability of the GSLP or the PLUS Program is not eligible to participate in those programs. For this purpose—

(i) A "commissioned salesperson" is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student enrollments, or student acceptances for enrollment; and

(ii) "Promote the availability" means provide prospective or enrolled students with application forms, names of eligible lenders, or other information designed to encourage persons to finance their education with a GSLP or PLUS Program loan. This term does not include providing general financial aid

information to prospective or enrolled students.

School lender: A school, other than a correspondence school, that has been approved as a lender and has entered into a contract of guarantee under this part with the Secretary or a similar agreement with a guarantee agency.

State lender: In any State, a single State agency or private nonprofit agency designated by the State that has been approved as a lender and has entered into a contract of guarantee under this part with the Secretary or a similar agreement with a guarantee agency.

Totally and permanently disabled: The inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

Undergraduate student: A student who—

(1) Is enrolled in an undergraduate course or courses at an institution of higher education; or

(2) Is in an undergraduate course of study that usually does not exceed four academic years, or is enrolled in a four to five academic year program designed to lead to a first degree. A student enrolled in any other length program is considered an undergraduate student for only the first four academic years.

(8 U.S.C. 1101; 29 U.S.C. 1071 to 1087-2, 1088-1098, 1141)

§ 682.201 Eligible borrowers.

(a) **Student borrower.** A student is eligible to receive a GSLP loan, and an independent undergraduate student or a graduate or professional student is eligible to receive a PLUS Program loan, if the student—

(1) Is enrolled or accepted for enrollment on at least a half-time basis at a participating school, and meets the requirements of paragraph (c) of this section;

(2) Authorizes the school in writing to pay directly to the lender that portion of any refund of school charges that is allocable to the loan, in accordance with 34 CFR Part 668;

(3) Meets the qualifications pertaining to citizenship and residency status, set forth in paragraph (d) of this section;

(4) Meets the qualifications concerning defaults and overpayments, set forth in paragraphs (e) and (f) of this section;

(5) Complies with the requirements pertaining to registration with the Selective Service, set forth in 34 CFR Part 668; and

(6) Complies with the requirements for submission of a Statement of Educational Purpose, set forth in § 682.203.

(b) *Parent borrower.* A parent is eligible to receive a PLUS Program loan if the parent—

(1) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets all of the qualifications in paragraphs (a)(1) through (5) of this section.

(2) Meets the qualifications pertaining to citizenship and residency status, set forth in paragraph (d) of this section;

(3) Meets the qualifications concerning defaults and overpayments, set forth in paragraphs (e) and (f) of this section; and

(4) Complies with the requirements for submission of a Statement of Educational Purpose, set forth in § 682.203.

(c) *Enrollment status.* To be eligible as a student or a borrower under the GSLP or the PLUS Program, a student must—

(1) If currently enrolled, be maintaining satisfactory progress, as determined by the school;

(2) If enrolled or accepted for enrollment in a foreign school, be a national of the United States; and

(3) If enrolled in a flight school program at a vocational school or an institution of higher education, meet the additional requirements in paragraph (g) of this section.

(d) *Citizenship and residency status.*

Each borrower, and each student for whom a parent is borrowing, must be—

(1) A citizen of the United States;

(2) A national of the United States;

(3) A permanent resident of the United States and must provide evidence from the Immigration and Naturalization Service of such status;

(4) In the United States for other than a temporary purpose and must provide evidence from the Immigration and Naturalization Service of intent to become a permanent resident; or

(5) A permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands.

(e) *Effect of default on eligibility.* (1) Except as provided in paragraph (e)(2) of this section, a person is ineligible to be a borrower under the GSLP or PLUS Program if that person, or the student for whom a parent is borrowing, is in default on any loan made under any Title IV student financial assistance program identified in 34 CFR Part 668.

(2) If a borrower, or student for whom a parent is borrowing, is in default, as set forth in paragraph (e)(1) of this section, the borrower may receive a GSLP or PLUS Program loan only if the person who is in default has made satisfactory arrangements with the holder of the loan to repay the defaulted loan.

(3) The school may rely on the borrower's or student's written statement that he or she is not in default, unless the school has information to the contrary.

(4) The Secretary does not consider a loan that is discharged in bankruptcy to be in default for the purpose of this section.

(f) *Effect of overpayment of a grant on eligibility.* (1) Except as provided in paragraph (f)(2) of this section, a person is ineligible to be a borrower under the GSLP or PLUS Program if that person, or the student for whom a parent is borrowing, is liable for an overpayment on any grant made under any Title IV student assistance program identified in 34 CFR Part 668.

(2) If a borrower, or student for whom a parent is borrowing, is liable for an overpayment on a grant, as set forth in paragraph (f)(1) of this section, the borrower may receive a GSLP or PLUS Program loan only if the person who is liable for the overpayment meets the following conditions:

(i) *Overpayment of a Pell Grant.* If the borrower, or student for whom a parent is borrowing, has been overpaid on a Pell Grant, the borrower may still be eligible under the GSLP or PLUS Program if—

(A) The borrower, or student for whom a parent is borrowing, is otherwise eligible; and

(B) The overpayment can be eliminated in the award year (as defined in 34 CFR Part 690) in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(ii) *Overpayment of a Pell Grant due to a school error.* If the borrower, or student for whom a parent is borrowing, has been overpaid as a result of a school error, and the overpayment cannot be eliminated by adjusting subsequent Pell Grant payments in the award year, the borrower may still be eligible under the GSLP or PLUS Program if—

(A) The borrower, or student for whom a parent is borrowing, is otherwise eligible; and

(B) The person who received the overpayment acknowledges in writing the amount of the Pell Grant overpayment and agrees to repay it within six months from the date of the acknowledgment.

(iii) *Overpayment on a Supplemental Educational Opportunity Grant.* If the borrower, or student for whom a parent is borrowing, is overpaid on a Supplemental Educational Opportunity Grant, the borrower may still be eligible under the GSLP or PLUS Program if—

(A) The borrower, or student for whom a parent is borrowing, is otherwise eligible; and

(B) An adjustment in subsequent financial aid payments (other than Pell Grants) eliminates the overpayment in the same award year (as defined in 34 CFR Part 676) in which it occurred.

(g) *Additional eligibility requirements for a student attending flight school.* To be eligible as a student or a borrower under the GSLP or the PLUS Program for enrollment in a flight school program at a vocational school or an institution of higher education, a student must—

(1) Plan to pursue or be pursuing a full-time program leading to commercial flight ratings;

(2) Have completed ground school training or be taking it concurrently with flight training;

(3) Hold a private pilot's certificate or have sufficient flight hours to qualify for such a certificate; and

(4) Hold at least a Class II medical certificate.

(20 U.S.C. 1077, 1078, 1082, 1085, 1091)

§ 682.202 Permissible charges by lenders to borrowers.

The charges that lenders may impose on borrowers, either directly or indirectly, are limited to the following:

(a) *Interest.* (1) Applicable interest rates under the GSLP:

(i) The applicable interest rate on a GSLP loan for a borrower who, on the date the promissory note is signed, does not have an outstanding balance on a previous GSLP loan is—

(A) Seven percent for a loan covering a period of instruction beginning before January 1, 1981;

(B) Nine percent for a loan covering a period of instruction beginning on or after January 1, 1981, but before September 13, 1983; or

(C) Eight percent for a loan covering a period of instruction beginning on or after September 13, 1983.

(ii) The applicable interest rate on a GSLP loan for a borrower who, on the date the promissory note evidencing the loan is signed, has an outstanding balance on a previous GSLP loan is the applicable interest rate on the previous loan.

(2) Applicable interest rates under the PLUS Programs:

(i) The applicable interest rate on a PLUS Program loan is—

(A) Nine percent for a loan made on or after January 1, 1981, but before October 1, 1983;

(B) Fourteen percent for a loan made on or after October 1, 1981, but before November 1, 1982; or

(C) Twelve percent for a loan made on or after November 1, 1982.

(3) Under both the GSLP and the PLUS Program a lender may charge a

borrower an actual rate of interest that is less than the applicable interest rate specified in paragraphs (a)(1) or (a)(2) of this section.

(b) *Capitalization.* (1) Under a guarantee agency program, a lender may add accrued interest and unpaid insurance premiums on a loan to the borrower's unpaid principal balance if so authorized by the guarantee agency. This increase in the principal balance of a loan is called "capitalization." A guarantee agency's policy, with respect to capitalization, may not permit capitalization that is not permitted under paragraphs (b)(2) and (b)(3) of this section.

(2) Under the FISLP and the Federal PLUS Program, a lender may capitalize interest that has accrued—

(i) During the in-school period or grace period, if capitalization is expressly authorized by the promissory note;

(ii) During a period of authorized deferment;

(iii) During a period of forbearance, as permitted under § 682.512; or

(iv) During the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under paragraphs (b)(2) (i) through (iii) of this section no more frequently than once a year, except that capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accrued interest under paragraph (b)(2)(iv) of this section only on the date repayment of principal actually begins.

(c) *Origination fee for a GSLP loan.* Under the GSLP a lender—

(1) May charge a borrower an origination fee of five percent of the principal amount of the loan;

(2) May deduct the origination fee from the proceeds of the loan;

(3) May, in the case of a loan disbursed in multiple installments, either deduct the entire origination fee from the first disbursement or deduct a *pro rata* portion of the fee from each disbursement;

(4) Shall refund the portion of the origination fee previously deducted from the loan or multiply-disbursed portion by a credit to the borrower's account if the check for the loan or multiply-disbursed portion is returned uncashed to the lender;

(5) Shall refund the entire origination fee previously charged to the borrower, if the loan is repaid in full within 60 days of disbursement; and

(6) Shall refund a *pro rata* portion of the origination fee by a credit to the borrower's account if, on a multiply-disbursed loan, the lender deducted the

entire origination fee from the first disbursement, and subsequent disbursements are not made.

(d) *Insurance premium.* The insurance premium is a charge made by the guarantee agency or the Secretary to the lender incident to the guarantee the lender receives against default by the borrower. If the insurance premium is provided for in a borrower's promissory note, a lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor.

(e) *Late charges.* (1) If authorized by the borrower's promissory note, the lender may require the borrower to pay a late charge under the circumstances described in paragraph (e)(2) of this section. The charge may not exceed six cents for each dollar of each late installment.

(2) The lender may require the borrower to pay a late charge if the borrower—

(i) Fails to pay all or a portion of a required installment payment within 10 days after it is due; or

(ii) Fails to provide written evidence that verifies the borrower's eligibility for an authorized deferment of the payment.

(f) *Collection charges.* (1) If provided for in the borrower's promissory note, the lender may require that the borrower pay costs incurred by the lender or its agent in collecting installments not paid when due, including, but not limited to—

(i) Attorney's fees;

(ii) Court costs;

(iii) Telegrams; and

(iv) Long distance telephone calls.

(2) The costs referred to in paragraph (f)(1) of this section may not include normal collection costs associated with preparing letters or notices or with making personal contacts with the borrower (e.g., local telephone calls).

(20 U.S.C. 1077, 1078, 1079, 1082, 1087-1)

§ 682.203 Statement of educational purpose.

No loan may be made under this Part until the borrower submits to the lender a written Statement of Educational Purpose, on a form approved by the Secretary, stating that the loan proceeds will be used solely for costs of attendance at the school that the borrower, or the student on whose behalf a parent is borrowing, is or will be attending.

(20 U.S.C. 1082, 1091)

§ 682.204 Treatment of refunds by lenders.

(a) A lender shall treat a payment of a borrower's refund received from a school as a credit against the amount owed by the borrower on the GSLP or PLUS loan.

(b) (1) If a lender receives from a school a refund payment on a loan that is no longer held by that lender, the lender shall promptly transmit the amount of the refund payment to the holder to whom it assigned the loan, with an explanation of the source of the payment.

(2) Upon receipt of the refund transmitted under paragraph (b)(1) of this section, the holder of the loan shall promptly provide written notice to the borrower that a payment has been received from the previous holder.

(20 U.S.C. 1082)

§ 682.205 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(1) Secure funds for making loans, or

(2) Induce a lender to make loans to either the students or the parents of students of a particular school or a particular category of students or their parents.

(b) The following are examples of transactions which, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

(1) Cash payments by or on behalf of a school made to a lender or other party.

(2) The maintaining of a compensating balance by or on behalf of a school with a lender.

(3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(5) Purchase by or on behalf of a school of stock of the lender.

(6) Payments ostensibly made for other purposes.

(c) Except when purchased by the Student Loan Marketing Association, an agency of any State functioning as a secondary market, or in other circumstances approved by the Secretary, notes, or any interest in notes, shall not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or a lender, with respect to a loan made to a student, or a

parent of a student, attending a school having common ownership with the lender, may not pledge a loan made under the GSLP or PLUS Program as security for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the then most recently prescribed special allowance prescribed under § 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school or lender which would be a party to the proscribed transactions.

(f) **Warranty:** This section does not preclude a buyer of loans made by a school from obtaining from the seller of those loans, a warranty that—

(1) Covers future reductions by the Secretary or a guarantee agency in computing the amount of loss payable on default claims filed on the loans where the reductions are attributable to an act or failure to act on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a loan guaranteed under the GSLP or PLUS Program shall, upon conviction thereof, be fined not more than \$1,000 or imprisoned not more than one year, or both.

(20 U.S.C. 1082, 1097)

§ 682.206 Prohibition against the use of the Rule of 78's.

For purposes of the calculations required by this part, a lender shall not use the Rule of 78's to calculate the outstanding principal balance of a loan.

(20 U.S.C. 1082)

Subpart C—Federal Payments of Interest and Special Allowance

§ 682.300 Payment of interest benefits on a GSLP loan.

(a) **General.** The Secretary pays a lender a portion of the interest on a GSLP loan on behalf of a borrower who qualifies under § 682.301. This payment is known as interest benefits.

(b) **Covered interest.** (1) The Secretary pays interest benefits on an eligible GSLP loan for interest accruing—

(i) During all periods prior to the beginning of the repayment period;

(ii) During any period when the borrower has an authorized deferment, or, if applicable, a post-deferment grace period; and

(iii) During the repayment period for loans described in paragraph (c)(2) of this section.

(2) The Secretary's obligation to pay interest benefits on an otherwise eligible loan terminates on—

(i) The date of default by the borrower;

(ii) The date the borrower's loan is discharged by a bankruptcy court;

(iii) The date the lender determines that the borrower has died or has become totally and permanently disabled; or

(iv) The 90th day after the date of disbursement, if the loan check has not been cashed.

(3) Section 682.412(a) sets forth the circumstances under which a lender may be required to repay interest benefits received on a loan guaranteed by a guarantee agency.

(c) **Rate.** (1) Except as provided in paragraph (c)(2) of this section, the Secretary pays the lender the actual interest rate on an eligible GSLP loan, provided that the actual interest rate does not exceed the applicable interest rate.

(2) For a loan disbursed prior to December 15, 1968, or subject to a binding commitment made prior to that date, the Secretary pays an amount during the repayment period equivalent to three percent per year of the unpaid principal amount of the loan.

(d) **Interest not covered.** Interest benefits do not cover—

(1) Interest on interest added to principal, except for interest capitalized in accordance with § 682.202(b);

(2) Interest for which the borrower is not otherwise liable; or

(3) Interest paid on behalf of the borrower by a guarantee agency.

(20 U.S.C. 1078, 1082)

§ 682.301 [Reserved]

§ 682.302 Payments of special allowance on a GSLP or PLUS Program loan.

(a) **General.** The Secretary pays a special allowance to a lender on an eligible GSLP or PLUS Program loan. The special allowance is a percentage of the average unpaid principal balance, including interest capitalized in accordance with § 682.202(b), computed in accordance with paragraph (c) of this section.

(b) **Eligible loans.** All GSLP and PLUS loans otherwise meeting program requirements are eligible for special allowance payments, except for GSLP loans disbursed on or after October 1, 1981 that do not qualify for interest benefits under § 682.301.

(c) **Rate.** (1) Except as provided in paragraph (c)(2) of this section, the

special allowance rate for an eligible loan during a three-month period is calculated by—

(i) Determining the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the three-month period;

(ii) Subtracting the applicable interest rate for the loan;

(iii) Adding three and one-half percent;

(iv) For a loan made prior to October 1, 1981, rounding the result upward to the nearest one-eighth of one percent; and

(v) Dividing the resulting percentage by four.

(2)(i) The special allowance rate payable for a three-month period on an eligible loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained from the issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954, is one-half the rate determined under paragraph (c)(1) of this section, but not less than—

(A) Two and one-half percent per year on eligible loans for which the applicable interest rate is seven percent;

(B) One and one-half percent per year on eligible loans for which the applicable interest rate is eight percent; or

(C) One and one-half percent per year on eligible loans for which the applicable interest rate is nine percent.

(ii) The rate established in paragraph (c)(2)(i) of this section also applies to a loan made or purchased with funds obtained from—

(A) Collections or default reimbursements on, or interest or other income pertaining to, a loan described in paragraph (c)(2)(i) section; or

(B) The investment of the funds described in paragraph (c)(2)(ii)(A) of this section.

(d) **Termination of special allowance payments on a loan.** (1) The Secretary's obligation to pay special allowance on a loan terminates on the earliest of the date—

(i) The borrower repays the loan;

(ii) The lender receives payment on a claim for loss on the loan;

(iii) The loan ceases to be guaranteed under this part, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(iv) 90 days after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor prior to such 90th day; or

(v) 90 days after the date of disbursement, if the loan check has not been cashed.

(2) Section 682.412(a) of this part sets forth the circumstances under which a lender may be required to repay special allowance received on a loan guaranteed by a guarantee agency.

(20 U.S.C. 1082, 1087-1)

§ 682.303 Methods for computing interest benefits and special allowance.

(a) *General.* The Secretary pays a lender interest and special allowance on eligible loans on a quarterly basis. These calendar quarters end on March 31, June 30, September 30, and December 31 of each year. A lender may use either the average daily balance method or the actual accrual method to determine the amount of interest benefits payable on its loans. A lender shall use the average daily balance method to determine the balance on which the Secretary computes the amount of special allowance payable on its loans.

(b) *Average daily balance method for interest benefits.* (1) Under this method, the lender adds the unpaid principal balance outstanding on all loans qualifying for interest benefits at each actual interest rate for each day of the quarter, and divides the sum by the number of days in the quarter. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The lender computes the interest benefits due on all qualified loans at each actual interest rate by multiplying the average daily balance thereof by the actual interest rate, multiplying this result by the number of days in the quarter, and then dividing this result by 365 (366 in a leap year).

(c) *Actual accrual method for interest benefits.* (1) Under this method, the lender computes the total unpaid principal balance outstanding on all qualified loans at each actual interest rate on each day of the quarter, multiplies this result by the actual interest rate, and divides this result by 365 (366 in a leap year).

(2) The interest benefits due for a quarter is the sum of the daily interest benefits due, computed under paragraph (c)(1) of this section, for each day of the quarter.

(d) *Average daily balance method for special allowance.* (1) To compute the average daily balance outstanding for special allowance purposes, the lender adds the unpaid principal balance outstanding on all qualified loans at each applicable interest rate for each day of the quarter and divides this sum by the number of days in the quarter. The resulting figure is the average daily balance for the quarter.

(2) The Secretary computes the special allowance payable to a lender

based upon the average daily balance computed by the lender under paragraph (d)(1) of this section.

(20 U.S.C. 1078, 1082, 1087-1)

§ 682.304 Procedure for payment of interest benefits and special allowance.

(a) *General:* (1) To receive payments of interest benefits and special allowance, a lender must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary.

(2) The Secretary reduces the amount of interest benefits and special allowance payable to the lender by the amount of origination fees the lender was authorized to collect during the quarter under § 682.202(c), whether or not the lender actually collected that amount. The Secretary increases the amount of interest benefits and special allowance payable to the lender by the amount of such fees refunded to borrowers during the quarter under § 682.202(c).

(3) The lender shall report, on the quarterly report required by paragraph (a)(1) of this section, the amount of origination fees it was authorized to collect, and the amount of such fees refunded to borrowers, during the quarter covered by the report.

(4) If a lender sells or otherwise transfers a loan within the calendar quarter in which the loan is disbursed, either the lender making the loan or the new holder may report the amount of the origination fee to the Secretary. In either case, the lender making the loan and any subsequent holder are jointly and severally liable for payment of the origination fee to the Secretary.

(b) *Penalty interest:* (1) If the Secretary does not authorize the Treasury Department to pay interest benefits or special allowance within 30 days after the Secretary receives an accurate, timely, and complete request for payment from a lender, the Secretary pays the lender penalty interest.

(2) Penalty interest is an amount that accrues daily on interest benefits and special allowance due to the lender. The penalty interest is computed at the daily rate of the sum of—

(i) The interest rate applicable to the eligible loans on which payment is requested; and

(ii) The special allowance rate on those loans computed under § 682.302(c) for the quarter for which payment is requested.

(3) The Secretary pays penalty interest from the later of—

(i) The 31st day after the final day of the quarter covered by the request for payment; or

(ii) the 31st day after the Secretary's receipt of an accurate, timely, and complete request for payment from the lender.

(4) Penalty interest continues to accrue through the day the Secretary authorizes payment on the request by the Treasury Department.

(c) A request for interest benefits and special allowance is considered timely only if it is received by the Secretary within 90 days following the end of the quarter to which the request pertains.

(20 U.S.C. 1078, 1082, 1087-1)

§ 682.305 Payment of interest benefits and special allowance to a lender making multiple installment loans.

(a) The Secretary pays a lender that meets the criteria in paragraph (b) of this section interest benefits and special allowance on the entire approved amount of a GSLP loan, even though only a portion of the loan has been paid to a borrower. For the purposes of this payment, interest benefits and special allowance begin to accrue on the date of disbursement of the first installment of the loan.

(b) A lender is eligible to receive interest benefits and special allowance on a multiple installment loan even though only a portion of the loan has been paid to the borrower, if the lender—

(1) Is not a school or State agency;

(2) Has made a binding commitment to make the entire amount of the loan; and

(3) Is approved to receive these payments by the Secretary in accordance with paragraph (c) of this section.

(c) To be approved by the Secretary, a lender must—

(1) Submit an application on a form provided or approved by the Secretary;

(2) Agree to disburse the loan in installments as prescribed in paragraph (d) of this section;

(3) Have been making GSLP loans for at least six months;

(4) Not have had its lending status limited, suspended, or terminated by the Secretary or a guarantee agency during the three-year period immediately prior to the date of its application; and

(5) Have made, or expect to make within a 12-month period, GSLP loans qualifying for interest benefits amounting to at least one-fourth of one percent of its total assets or \$100,000, whichever is less. The 12-month period must include the date on which the lender makes application for approval.

(d) A lender shall disburse multiple installment loans in accordance with the following requirements:

(1) Disbursement shall be in two or more installments.

(2) No installment may exceed one-half of the loan.

(3) The interval between the first and second installment must be at least one-third of the enrollment period for which the loan is made. However, if the lender determines that the student needs the second installment sooner for the cost of attendance, the lender may disburse the second installment sooner. The lender shall document in its records the reason for making an earlier disbursement. For the purpose of this subparagraph, the period of enrollment may not exceed 12 months.

(4) Each disbursement check shall be accompanied by a notice to the school indicating that it is part of a multiple disbursement. The notice accompanying the first disbursement must specify the expected timing and amounts of subsequent disbursements.

(e) The Secretary's obligation to pay interest benefits and special allowance on the undisbursed portion of a multiple installment loan terminates on the date the lender determines that the borrower—

(1) Is no longer enrolled at least half-time at a participating school; or

(2) No longer desires undisbursed loan funds.

(f) If the Secretary determines that a lender making multiple installment loans under this section is not properly administering the disbursement of the loans, the Secretary withdraws approval for the lender to receive the special payments of interest benefits and special allowance under this section.

(20 U.S.C. 1078, 1082)

Subpart D—Guarantee Agency Programs

§ 682.400 Agreements between a guarantee agency and the Secretary.

(a) The Secretary enters into agreements with a guarantee agency whose loan guarantee program meets the requirements of this subpart. The agreements enable the guarantee agency to participate in the GSLP and PLUS Program and to receive the various payments and benefits incident to such participation.

(b) There are five agreements:

(1) *Basic program agreement.* In order to participate in the GSLP and the PLUS Program a guarantee agency must have a basic agreement. Under this agreement—

(i) Borrowers whose GSLP loans are guaranteed may qualify for interest benefits that are paid to the lender on the borrower's behalf;

(ii) Lenders under the guarantee agency program may receive special allowance payments from the Secretary, and have death, disability, and bankruptcy claims paid by the Secretary through the guarantee agency; and

(iii) The guarantee agency may apply for the primary administrative cost allowance, and for the other agreements described in this section.

(2) *Federal advances for claim payments agreement.* A guarantee agency must have this agreement to receive and use Federal advances to pay default claims.

(3) *Reinsurance agreement.* A guarantee agency must have this agreement to receive reimbursement from the Secretary for at least 80 percent of its losses on default claims.

(4) *Supplemental reinsurance agreement.* A guarantee agency must have this agreement to receive reimbursement from the Secretary for up to 100 percent of its losses on default claims.

(5) *Secondary administrative cost allowance agreement.* A guarantee agency must have this agreement to receive the secondary administrative cost allowance.

(c) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(d) All of the agreements are subject to subsequent changes in the Act or regulations.

(20 U.S.C. 1072, 1078-1, 1078-2, 1082, 1087, 1087-1)

§ 682.401 Basic program agreement.

(a) In order to participate in the GSLP and PLUS Program, a guarantee agency must enter into a basic agreement with the Secretary.

(b) Program requirements: In the basic agreement, the guarantee agency agrees to ensure that its loan guarantee program meets the following requirements at all times:

(1) *Aggregate loan limits.* The aggregate guaranteed unpaid principal amount for all GSLP and PLUS Program loans made to a borrower may not exceed the amounts set forth in § 682.506 (c) and (e).

(2) *Annual amounts.* (i) The annual loan amount authorized for an academic year must be at least \$1,000, but may not exceed the amounts set forth in § 682.506 (b) and (d).

(ii) If the program guarantees loans to an eligible half-time student borrower or to a parent borrower on behalf of an eligible half-time student, the annual loan amount authorized for an academic year must be at least \$500.

(iii) A guarantee agency may make the loan amounts authorized under paragraph (b)(2)(i) and (ii) of this section applicable for either—

(A) A period that does not exceed 12 months; or

(B) A period in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example from freshman to sophomore or, in the case of schools using clock hours, completion of at least 900 clock hours).

(iv) In no case may the amount of the loan exceed the student's estimated cost of attendance for the academic period for which the loan is intended, less estimated financial assistance.

(3) *Duration of borrower eligibility.* (i) A student borrowing under the GSLP or PLUS Program, and a parent borrowing on behalf of a student under the PLUS Program, must be eligible to borrow for any year of the student's study at a participating school; and

(ii) Loans must be available to or on behalf of any student for at least six academic years of study or the equivalent.

(4) *Borrower responsibilities.* (i) The guarantee agency shall require that the borrower promptly notify the lender of any change of name or address.

(ii) The borrower shall give to the lender, as part of the loan application process—

(A) A statement, described in § 682.203, that the loan will be used for the cost of the student's attendance;

(B) Information that provides a basis for determining that the borrower is eligible for the loan;

(C) Information concerning the borrower's outstanding GSLP, PLUS Program and NDSL (National Direct Student Loan Program) loans and, if the borrower is a parent, information on the outstanding GSLP, PLUS Program and NDSL loans made to or on behalf of the student;

(D) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records.)

(E) Information from the school that provides a basis for determining that the student qualifies as an eligible student and the maximum amount that may be borrowed by or on behalf of the student.

(5) *Loan disbursement.* The guarantee agency shall require, as a condition for a

loan guarantee, that a lender disburse loan funds as required in § 682.508(f) and (g) with the following modifications:

(i) References to the Secretary shall be understood to mean the guarantee agency.

(ii) The notification to the school required by § 682.508(f)(1)(v) may be made by either the lender or the guarantee agency.

(6) *Insurance premiums.* (i) The guarantee agency may charge an insurance premium to the lender on each loan. The guarantee agency may use the proceeds of this charge only to guarantee loans and to cover costs incurred by the guarantee agency in the administration of its loan guarantee program. The lender may deduct this charge from the borrower's loan proceeds. The guarantee agency may not use the proceeds of this charge to make incentive payments to lenders or to increase yields to lenders.

(ii) The amount of the insurance premium may not exceed one percent per year of the unpaid principal balance of the loan, excluding interest or other charges the lender may have added to the principal balance.

(iii) Under the GSLP the length of time for which the insurance premium is charged determines whether the lender must refund all or part of that charge to the borrower:

(A) If the insurance premium is charged for a period extending no longer than one year after the borrower's anticipated graduation date, the premium need not be refunded to the borrower even if the borrower graduates or withdraws from school, defaults, dies, becomes totally and permanently disabled, or has the loan discharged in bankruptcy prior to the anticipated graduation date.

(B) If the insurance premium is charged for a period extending beyond one year after the anticipated graduation date, the insurance premium must be refunded to the borrower in accordance with paragraph (b)(6)(iv) of this section.

(iv)(A) If a borrower graduates or withdraws from school before the anticipated graduation date, the amount of any insurance premium on a GSLP loan attributable to the repayment period must be recomputed to take into account the declining principal balance of the loan. Any refund due the borrower as a result of this computation must be treated as a prepayment of the insurance premium for a later period, if a premium will be required for that period, or as a repayment of principal.

(B) If a borrower defaults, the amount of any insurance premium attributable to subsequent periods must be credited

first to accrued interest and then to the principal balance of the loan.

(C) If a borrower prepays the entire unpaid balance of the loan, the amount of any insurance premium attributable to a period following the date of prepayment by two or more years must be refunded to the borrower.

(v) The insurance premium for a PLUS Program loan need not be refunded under any circumstances.

(7) *Guarantee liability.* The guarantee agency shall guarantee at least 80 percent of the unpaid principal balance of each loan guaranteed.

(8) *Guarantee agency administration.* In the case of a State loan guarantee program, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, "supervision" includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(9) *Loan assignment.* (i) The guarantee agency shall allow a loan to be assigned only to—

(A) An eligible lender;

(B) The guarantee agency, in the case of a borrower's default, death, total and permanent disability, or filing of a bankruptcy petition; or

(C) The Secretary.

(ii) For the purpose of this paragraph "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(10) *Standards and procedures.* (i) The guarantee agency shall establish, disseminate to concerned parties, and enforce standards and procedures for—

(A) Ensuring that all lenders in its program meet the definition of "eligible lender" in section 435(g)(1) of the Act;

(B) School and lender participation in its program;

(C) Limitation, suspension, or termination of school and lender participation;

(D) Approval of forbearance;

(E) The exercise of due diligence by lenders in making, servicing, and collecting loans; and

(F) The timely filing by lenders of default, death, disability, and bankruptcy claims.

(ii) The guarantee agency shall ensure that its program at all times meets the requirements for—

(A) Disclosure of loan information to borrowers as set forth in § 682.507;

(B) Due diligence by lenders in servicing loans as set forth in § 682.509;

(C) Repayment of loans as set forth in § 682.510, except that references to the FISLP and Federal PLUS program shall

be understood to mean the guarantee agency program;

(D) Deferrals as set forth in § 682.511;

(E) Forbearance in § 682.512; and

(F) Consequences of failure of a borrower or student to establish eligibility as set forth in § 682.515.

(11) The guarantee agency shall establish and follow a system and procedures for monitoring the enrollment status of a student borrower that include, at a minimum—

(i) Transmitting a student status confirmation form to the school for completion at least semi-annually; and

(ii) Reporting to the current holder of the loan, within 60 days of receipt of the completed form from the school, any change in the student's enrollment status that triggers—

(A) The commencement of the borrower's grace period; or

(B) The commencement or resumption of the borrower's immediate obligation to make scheduled payments.

(12) The guarantee agency shall submit, or require its lenders to submit, upon the Secretary's request, information the Secretary deems necessary for determining the amount of interest benefits and special allowance payable on the agency's guaranteed loans.

(13) The guarantee agency shall require lenders to submit to the agency the information necessary for the agency to complete the reports required by § 682.413(b).

(c) The agency shall submit to the Secretary, prior to their adoption, its application forms, promissory notes, regulations, and statements of procedures and standards (including standards for due diligence and timely claims filing) as well as other materials that substantially affect the operation of the agency's program, whenever requested to do so by the Secretary and whenever changes or new materials are proposed. The Secretary reviews these materials for administrative and fiscal sufficiency and for conformance to statutory and regulatory provisions. The agency shall not use these materials until the Secretary approves them.

(20 U.S.C. 1078, 1078-2, 1082)

§ 682.402 Death, disability, and bankruptcy payments.

(a)(1) *Death and disability.* (i) If a borrower who received a loan covered by a reinsurance agreement prior to December 15, 1968 dies or becomes totally and permanently disabled, the Secretary reimburses the guarantee agency under the provisions of the reinsurance agreement. The agency is

not required to recover the amount of its loss from the borrower or the borrower's estate.

(ii) If a borrower who individually received a loan after December 14, 1968 dies or becomes totally and permanently disabled, the Secretary cancels the borrower's repayment obligation by paying the lender, through the guarantee agency, the amount owed. However, if a PLUS Program loan was obtained by two parents as co-makers, and only one of the co-makers dies or becomes totally and permanently disabled, the other co-maker remains obligated to repay the loan.

(iii) Further references in this section to death and disability claims relate only to loans made after December 14, 1968.

(2) *Bankruptcy.* If an individual borrower's loan is discharged in bankruptcy, the Secretary pays the lender the amount owed. However, if a PLUS Program loan was obtained by two parents as co-makers, and only one borrower's repayment obligation is discharged in bankruptcy, the other borrower remains obligated to repay the loan.

(3) *Determination of the borrower's death, total and permanent disability, or bankruptcy.* The procedures in § 682.517 for determining whether a borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, apply to guarantee agency programs with the following modifications:

(i) References to the Secretary in § 682.517(a)(2) and (c)(3) shall be understood to mean the guarantee agency, if the loan is held by a lender.

(ii) References to the lender shall be understood to mean the guarantee agency, if the loan is held by a guarantee agency.

(iii) References to the lender shall be understood to mean a lender under a guarantee agency program, if the loan is held by a lender.

(b) The Secretary does not pay a death, disability, or bankruptcy claim if a default claim for the loan previously has been disapproved by the guarantee agency, or the loan would not qualify either for repayment of a default claim or for reinsurance payments.

(c) Claim procedures for a loan held by a lender:

(1)(i) A lender shall provide the guarantee agency with the documentation required in § 682.518 (b)(1), (b)(2), and (d)(2)-(4) when filing a death, disability, or bankruptcy claim under a guarantee agency program. The agency shall return to the lender any submission that is not timely, accurately and complete.

(ii) The claim filing deadlines in § 682.518(e)(2)-(4) apply to guarantee agency programs.

(iii) For purposes of paragraphs (c)(1)(i) and (ii) of this section, the following modifications apply to §§ 682.518(d)(2)-(4) and 682.518(e)(2)-(4):

(A) References to the lender in §§ 682.518(d)(2)-(4), and 682.518(e)(2)-(4), shall be understood to mean a lender under a guarantee agency program.

(B) References to the Secretary in § 682.518(e)(2)-(4) shall be understood to mean the guarantee agency program.

(2) After determining that a death, disability, or bankruptcy claim is valid, the guarantee agency shall pay the lender the amount authorized by paragraph (c)(3) of this section.

(3) The amount of loss to be paid on a valid claim is determined according to § 682.519(a)(2)(ii), (a)(3), and (b), with the following modifications:

(i) References to the lender in § 682.519(b)(2) shall be understood to mean a lender under a guarantee agency program.

(ii) References in § 682.519(b)(2) and (3) to the Secretary shall be understood to mean the guarantee agency:

(d) Treatment of bankruptcy by the guarantee agency.

(1) After payment of a bankruptcy claim to a lender, the guarantee agency shall diligently contest the discharge of the loan by the bankruptcy court. Once the dischargeability of the loan has been decided in a bankruptcy action, the guarantee agency shall—

(i) Treat the loan as if forbearance had been exercised as to repayment of principal and interest from the date of filing of the bankruptcy petition until the date the court held the loan non-dischargeable, if the court so held; or

(ii) Submit the bankruptcy claim to the Secretary for reimbursement, if the loan is discharged.

(2) In the case of a claim submitted under paragraph (d)(1)(ii) of this section, the Secretary pays the guarantee agency the amount of loss that the guarantee agency paid the lender on the bankruptcy claim, plus interest that accrues through the earlier of—

(i) The date the Secretary authorizes payment to the guarantee agency; or

(ii) 60 days after the date of discharge.

(e) Claim procedures for loans held by a guarantee agency: (1) The Secretary pays a death, disability, or bankruptcy claim on a loan held by a guarantee agency after the agency has paid a default claim to the lender thereon only in the following circumstances:

(i)(A) In the case of a PLUS Program loan, the borrower (or each of the co-makers) dies, or becomes totally and

permanently disabled, or has the repayment obligation discharged in bankruptcy, within 10 years of the date the loan was made, exclusive of periods of deferment or periods of forbearance granted by the lender that extend the 10-year maximum repayment period; or

(B) In the case of a GSLP loan, the borrower dies, becomes totally and permanently disabled, or has the loan discharged in bankruptcy, within 15 years of the date the loan was made, exclusive of periods of deferment or periods of forbearance granted by the lender that extend the 15-year maximum repayment period;

(ii) The guarantee agency has not written off the loan as uncollectible in accordance with the procedures established by the agency pursuant to § 682.410(b)(2)(iv);

(iii) The guarantee agency has exercised due diligence in the collection of the loan, in accordance with the procedures established by the agency pursuant to § 682.410(b)(2), until the borrower (or each of the co-makers) died, became totally and permanently disabled, or had the loan discharged in bankruptcy.

(2) The Secretary pays the guarantee agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. Interest includes interest which accrues during the lesser of—

(i) The period from the date the guarantee agency determines that the borrower died, became totally and permanently disabled, or had the loan discharged in bankruptcy, until the Secretary authorizes payment; or

(ii) 60 days.

(f) If the guarantee agency receives any payments from or on behalf of the borrower on a loan on which the Secretary previously paid a bankruptcy claim, the guarantee agency shall remit 100 percent of these payments to the Secretary.

(20 U.S.C. 1078-2, 1082, 1087)

§ 682.403 Federal advances for claim payments.

(a) To the extent that funds are appropriated by Congress for this purpose, the Secretary makes an advance to a guarantee agency that has a reinsurance agreement. The advance may be used only to pay guarantee claims. The Secretary makes an advance to—

(1) A State guarantee agency; or

(2) One or more private nonprofit guarantee agencies in a State if, during a fiscal year—

(i) The State does not have a guarantee agency program;

(ii) The Secretary consults the chief executive officer of the State and finds it unlikely that the State will have such a program for that year; and

(iii) Each private nonprofit guarantee agency—

(A) Agrees to establish at least one office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agrees to encourage maximum commercial lender participation within the State, and to conduct periodic visits to at least the major lenders within the State;

(C) Agrees that the benefit of its loan guarantees will not be denied to students because of their choice of schools or lack of need; and

(D) Certifies that it is not an eligible educational institution, and that it does not have substantial affiliation with any eligible educational institution.

(b) Application: A guarantee agency must apply in order to receive an initial advance. The application must be submitted as prescribed by the Secretary.

(c) Number of payments: (1)(i) An advance may be made to an established guarantee agency for each of three consecutive calendar years. An established agency is an agency that was actively carrying on a loan guarantee program for which it executed a basic agreement before October 12, 1976.

(ii) An advance may be made to a new guarantee agency for each of five consecutive calendar years. A new agency is an agency that entered into a basic agreement on or after October 12, 1976, or that was not actively carrying on a loan guarantee program on or before October 12, 1976.

(2)(i) A guarantee agency may request that the initial advance be made on a specified date. The Secretary pays subsequent advances on the same day of succeeding years that the initial advance was made.

(ii) An additional advance may be made to a private nonprofit guarantee agency only if the agency continues to qualify under paragraph (a) of this section.

(d) The Secretary makes an advance on terms and conditions specified in an agreement between the Secretary and the guarantee agency.

(e) In the case of a private nonprofit guarantee agency, the "outstanding insurance obligation," referred to in section 422(c)(4) of the Act, is determined separately for each State for

which the agency has received an advance under this section.

(20 U.S.C. 1072, 1082)

§ 682.404 Federal reinsurance agreement.

(a)(1) The Secretary may enter into a reinsurance agreement with a guarantee agency that has a basic program agreement. Under a reinsurance agreement, the Secretary reimburses the guarantee agency for 80 percent of its losses on default claim payments to lenders. This agreement is a prerequisite for the supplemental reinsurance agreement, under which the Secretary reimburses the guarantee agency for up to 100 percent of such losses.

(2) For the purpose of this section and § 682.405 of this part, "losses" means the amount of unpaid principal and accrued interest the agency pays on a default claim filed by a lender on a reinsured loan, minus payments made by, or on behalf of, the borrower after the lender's claim is paid and before the Secretary reimburses the agency.

(3) Death and disability claims on loans made after December 14, 1968, are not covered by the reinsurance agreement. Claims on loans to borrowers who have had their loans discharged in bankruptcy also are not covered. The Secretary's payments on death, disability, and bankruptcy claims are addressed in § 682.402 of this part.

(4) A guarantee agency's loss on a loan that was outstanding when a reinsurance agreement was executed is covered by the reinsurance agreement only if the default on the loan occurs after the effective date of the agreement.

(b) In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has been terminated, whether to enter into a new agreement, the Secretary considers the adequacy of—

(1) Efforts by the guarantee agency and the lenders to which it provides guarantees to collect outstanding loans;

(2) Efforts by the guarantee agency to make GSLP and PLUS Program loans available to all eligible borrowers; and

(3) Other relevant aspects of the guarantee agency's program operations.

(c) The reinsurance agreement contains such terms and conditions as the Secretary finds necessary to promote the purposes of the GSLP and the PLUS Program and to protect the United States from unreasonable risks of loss.

(d) A reinsurance agreement provides that payments made by a borrower must first be applied to the payment of all accrued interest, then to repayment of principal and then to payment of other charges.

(e)(1) If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall pay to the Secretary the Secretary's equitable share of those payments.

(2) For the purpose of this section and § 682.405, "the Secretary's equitable share" means that portion of borrower payments, attributable to principal and interest, which remains after the agency has deducted—

(i) An amount equal to the complement of the reinsurance percentage which was in effect when the reinsurance payment was made by the Secretary; and

(ii) An amount, not exceeding 30 percent of borrower payments, expended by the agency for the administrative costs of collection of loans, the administrative costs of preclaim assistance for default prevention, and the administrative costs of monitoring the enrollment status of students and repayment status of borrowers.

(3)(i) The terms "administrative costs of collection of loans" and "administrative costs of preclaim assistance for default prevention," as used in this paragraph, are defined in section 428(c)(6) of the Act. The term "administrative costs of monitoring the enrollment status of students and repayment status of borrowers," as used in this paragraph, has the same meaning as "administrative costs of monitoring the enrollment and repayment status of students," as defined in section 428(c)(6) of the Act, except that the reference to repayment status, in cases where the borrower is a parent, shall be understood to refer to that of the parent borrower.

(ii) The term "overhead costs" used in those definitions includes space and utilities costs.

(4) Unless the Secretary approves otherwise, the guarantee agency shall submit the Secretary's equitable share of borrower payments within 60 days of its receipt of the payments.

(5) If a guarantee agency, in determining the Secretary's equitable share of borrower payments, includes as an administrative cost a portion of the price of an asset it buys, and the agency subsequently sells that asset, the agency shall repay to the Secretary a percentage of the sale proceeds equal to the percentage of the original purchase price of the asset paid to the agency by the Secretary.

(20 U.S.C. 1078, 1078-2, 1082)

§ 682.405 Supplemental Federal reinsurance.

(a) Amount of supplemental reinsurance payments: (1) The Secretary may enter into a supplemental reinsurance agreement with a guarantee agency that has a reinsurance agreement and that meets the requirements of this section. Under a supplemental reinsurance agreement, the Secretary reimburses the guarantee agency for up to 100 percent of its losses, with the following exceptions:

(i) When the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year reaches five percent of the "amount of loans in repayment" at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guarantee agency during that fiscal year equals 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) When the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year reaches nine percent of the "amount of loans in repayment" at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guarantee agency during that fiscal year is 80 percent of the amount of the unpaid principal balance plus accrued interest.

(2) For purposes of this paragraph, the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year does not include amounts paid on claims by the guarantee agency under policy, established by the agency, that is—

(i) Required by § 682.401(b)(10)(ii)(F); or

(ii) Consistent with § 682.516(a)(1).

(3) Notwithstanding paragraph (a)(1) of this section, for a guarantee agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976, the Secretary pays 100 percent of its losses under a supplemental reinsurance agreement during five consecutive fiscal years beginning with the first year of its operation. The Secretary monitors programs of this type and, if an agency does not prudently administer its program, the Secretary may determine that it does not continue to qualify for this exception.

(b) Definitions: (1) "Losses" is defined in § 682.404(a).

(2) For purposes of this section, the "amount of loans in repayment" means the original principal amount of all loans guaranteed by the agency minus—

(i) The original principal amount of loans on which—

(A) The borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the agency for guarantee claims on loans, exclusive of claims paid under a policy established by the guarantee agency that is—

(A) Required by § 682.401(b)(10)(ii)(F); or

(B) Consistent with § 682.516(a)(1).

(3) "The Secretary's equitable share" is defined in § 682.404(e).

(c)(1) If a guarantee agency enters into a supplemental reinsurance agreement for both the GSLP and the PLUS Program, the agency must include its loans under both programs in calculating the Secretary's reinsurance payment percentage and the "amount of loans in repayment," as defined in paragraph (b) of this section.

(2) If a guarantee agency that has a reinsurance agreement for PLUS loans and GSLP loans under § 682.404 enters into a supplemental reinsurance agreement for one, but not both, of the programs, the guarantee agency must maintain separate records for each program sufficient to enable the Secretary to determine—

(i) The reinsurance percentage payable by the Secretary on reinsurance claims filed by the agency under each program; and

(ii) The Secretary's equitable share of borrower payments, as defined in § 682.404(e), received after payment by the Secretary of reinsurance claims under each program.

(d)(1) The supplemental reinsurance agreement requires that—

(i) The agency shall ensure that the program requirements of paragraph (e) of this section are continuously met;

(ii) An agreement may be renewed only if the agency's program complies with all the terms of the agreement and all pertinent provisions of the Act and regulations; and

(iii) Before the Secretary pays a supplemental reinsurance claim, the guarantee agency must submit to the Secretary the quarterly report required by the Secretary for the quarter ending September 30, containing complete and accurate data, in order for the Secretary to calculate the "amount of loans in repayment" at the end of the preceding fiscal year as that term is defined in paragraph (b)(2) of this section.

(2) The supplemental reinsurance agreement contains such other

requirements as the Secretary may find necessary.

(e) Program requirements: (1) *GSLP loan maximums.* (i) The maximum annual amount of a GSLP loan that a guarantee agency guarantees for an eligible student who is carrying at least a half-time workload for an academic year or its equivalent must be—

(A) \$2,500, in the case of an undergraduate student, but not more than the maximum loan amounts specified in § 682.506(b)(1); and

(B) \$5,000, in the case of a graduate or professional student; and

(ii) The agency must guarantee a maximum aggregate unpaid principal amount of—

(A) \$12,500, in the case of an undergraduate student; and

(B) \$25,000, in the case of a graduate or professional student, including loans made to the borrower prior to the borrower's becoming a graduate or professional student.

(2) *PLUS Program loan maximums.* (i) The maximum annual amount, attributable to one or more PLUS Program loans, that the agency guarantees for or on behalf of an eligible student who is carrying at least a half-time workload for an academic year or its equivalent must be—

(A) \$2,500, including any amounts borrowed under the GSLP, in the case of an independent undergraduate student;

(B) \$3,000, in the case of a graduate or professional student; and

(C) At least \$2,500 but not more than \$3,000, in the case of a parent borrower on behalf of each eligible student.

(ii) The agency must guarantee a maximum aggregate unpaid principal amount of—

(A) \$12,500, including any amount borrowed under the GSLP, in the case of an independent undergraduate student;

(B) \$15,000, in the case of a graduate or professional student; and

(C) At least \$12,500 but not more than \$15,000, in the case of a parent borrower on behalf of each eligible student.

(3) *Guarantee liability.* The guarantee agency shall guarantee 100 percent of the unpaid principal of each loan guaranteed.

(4) *School eligibility.* Except in the case of correspondence schools, a guarantee agency's eligibility criteria for the participation of schools in its program may not be more stringent than those for the FISLP and the Federal PLUS program. However, the agency may exclude a school from its program if—

(i) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR Part 668, or by

the agency under standards and procedures approved by the Secretary; or

(ii) There is a State constitutional prohibition affecting the school's eligibility.

(5) *School lender provisions.* (i) The agency shall provide that a school may be a lender in its program under reasonable criteria unless—

(A) The school's lending eligibility has been limited, suspended, or terminated by the Secretary under § 682.609 or Subpart G of this part, or by the agency under standards and procedures approved by the Secretary; or

(B) There is a State constitutional prohibition affecting the school's lending eligibility.

(ii) The agency may not guarantee a loan made by a school lender that is not located in the geographic area that the agency serves.

(6) *Out-of-State schools.* The agency shall guarantee GSLP or PLUS loans for eligible borrowers who are legal residents of the State where the agency operates, but who attend participating schools out of the State, or, in the case of parent borrowers, are legal residents of the State where the agency operates, but are borrowing on behalf of students attending participating schools out of the State. In guaranteeing these loans, the agency must not impose any restrictions not applicable to borrowers who are legal residents of the State attending in-State schools, or to parent borrowers who are legal residents of the State and are borrowing for students attending in-State schools.

(20 U.S.C. 1078, 1078-1, 1078-2, 1082)

§ 682.406 Conditions of reinsurance coverage.

(a) The Secretary makes a reinsurance payment on a loan to a guarantee agency only if—

(1) The lender exercised due diligence in making and servicing the loan, as prescribed by rules of the agency;

(2) The lender exercised due diligence in collecting the loan through collection efforts meeting the requirements of § 682.411;

(3) The loan was in default before the agency paid a default claim filed thereon;

(4) The lender filed a default claim thereon with the guarantee agency within 90 days of default;

(5) The agency paid a default claim filed by the lender thereon with the agency within 90 days of the date the lender filed the claim;

(6) The agency submitted a request for such payment in such form, and accompanied by such documentation as the Secretary prescribes; and

(7) The agency and lender complied with all other Federal requirements with respect to the loan.

(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make a reinsurance payment when, in the Secretary's judgment, the best interests of the United States so require.

(20 U.S.C. 1078, 1078-1, 1078-2, 1082)

§ 682.407 Administrative cost allowances for guarantee agencies.

(a)(1) To the extent that Congress appropriates funds for this purpose, the Secretary pays to a guarantee agency having a basic program agreement a primary administrative cost allowance and, to an agency having a reinsurance agreement, a secondary administrative cost allowance.

(2)(i) Payments of allowances to a guarantee agency for any fiscal year under paragraphs (b)(1) and (b)(2) of this section do not exceed, for each administrative cost allowance, one-half of one percent of the total principal amount of loans guaranteed by the agency during that fiscal year.

(ii) If the amount appropriated for any fiscal year is insufficient to pay all guarantee agencies the full amounts for which they would otherwise be eligible, payments to all agencies are proportionately reduced.

(iii) In the event of such an insufficiency, if additional funds become available for making payments for that fiscal year, additional payments are distributed on the same basis as they were reduced.

(3) *Application:* The guarantee agency must submit an application for each allowance to the Secretary by January 1 of the fiscal year for which it is requesting the allowance. In addition to other information and assurances that the Secretary may reasonably require, the application must contain—

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs that will be eligible for payments under this section;

(iii) Assurances that sufficient administrative and fiscal procedures, including an independent audit, conducted in accordance with § 682.410(b)(1), will be used to ensure that administrative allowances are used in accordance with the provisions of this section;

(iv) A report of the most recent audit, conducted in accordance with § 682.410(b)(1), submitted in a format prescribed by the Secretary;

(v) Assurances that the guarantee agency will furnish any further information, including estimates, that the Secretary may reasonably require to carry out the provisions of this section;

(vi) For the primary allowance only, an estimate of the total amount of new loan volume expected to be guaranteed during the fiscal year; and

(vii) For the secondary allowance only, assurances that the agency's program—

(A) Meets and will continue to meet all the requirements contained in § 682.405(e) for a supplemental reinsurance agreement;

(B) Guarantees GSLP or PLUS loans for eligible students who are not legal residents of the State where the agency operates, but who attend participating schools in the State, other than correspondence schools, without imposing any restrictions not imposed on legal residents of the State who attend schools in the State other than correspondence schools; and

(C) Guarantees PLUS loans to parent borrowers who are not legal residents of the State where the agency operates, but who are borrowing for students attending participating schools in the State, other than correspondence schools, without imposing any restrictions not imposed on residents of the State who borrow for students attending schools in the State, other than correspondence schools.

(4) The Secretary's payment of the secondary allowance establishes an agreement between the Secretary and the guarantee agency with respect to—

(b) *Use of funds:* (1) A guarantee agency may use the administrative cost allowances only to meet administrative costs related to the GSLP and PLUS Program.

(2) A guarantee agency may not use the administrative cost allowances to meet costs—

(i) Taken into account by the agency under the formula for determining the "Secretary's equitable share" of borrowers payments made after the Secretary has paid reinsurance claims to the agency under § 682.404(e); or

(ii) For which the agency has been, or will be, reimbursed from a source other than the payment provided by this section.

(3) If a guarantee agency uses the allowances paid under this section to pay for a portion of the price of an asset it buys, and the agency subsequently sells that asset, the agency shall repay to the Secretary a percentage of the sale proceeds equal to the percentage of the original purchase price of the asset paid for with the allowances.

(20 U.S.C. 1078, 1078-1, 1078-2, 1082)

§ 682.408 GSLP loan disbursement through a guarantee agency escrow agent.

(a) *General.* (1) A guarantee agency may act as an escrow agent for the purpose of receiving GSLP loan proceeds disbursed by an eligible lender, other than a school or State lender, and transmitting those proceeds to borrowers in multiple installments if the lender and guarantee agency have entered into an agreement for this purpose.

(2) In its capacity as escrow agent, the guarantee agency may—

(i) Commingle the proceeds of the GSLP loans paid to it pursuant to an escrow agreement;

(ii) Invest the GSLP loan proceeds in obligations of the Federal Government or obligations that are insured or guaranteed by the Federal Government; and

(iii) Retain for its own use interest or other earnings on those investments.

(b) *Disbursement by the lender.* The lender shall disburse the loan funds to the escrow agent in any manner agreed to by the escrow agent and the lender, and shall simultaneously give written notice of the disbursement to the borrower.

(c) *Transmittal of loan proceeds to schools by the escrow agent.* (1) The escrow agent shall, in accordance with paragraph (c)(2) of this section, transmit to the school the loan proceeds received under paragraph (b) of this section by means of a check, that—

(i) Is copyable to the borrower and the school identified on the borrower's loan application;

(ii) Requires the personal endorsement of the borrower; and

(iii) Is sent directly to the school.

(2) The escrow agent shall—

(i) No later than 30 days after the beginning of each academic period in the period of attendance for which the loan is made, transmit to the school the lesser of—

(A) The remaining balance of the borrower's GSLP loan proceeds; or

(B) An amount equal to X/N , where X equals the GSLP loan proceeds that were sent to the escrow agent, and N equals the number of academic periods in the period of attendance for which the loan is made. For a school not using a semester, trimester or quarter system, the number of academic periods in the period of attendance for which the loan is made, for purposes of this section, may be established by the escrow agent, but must be at least two;

(ii) Promptly notify the school receiving the proceeds that the check is part of a multiple transmittal. The

escrow agent may include a separate notice to this effect with the check or may include this notice on the face of the check; and

(iii) At the time of the first transmittal, give the student a schedule of the estimated amount and dates of all future transmittals.

(3) The escrow agent shall transmit all proceeds of the loan to the school at least 60 days before the end of the period of attendance for which the loan is made.

(d) *Return of untransmitted proceeds.* The escrow agent shall return any untransmitted proceeds of a loan to the lender within 15 working days after learning that the student has not enrolled, or has ceased to be enrolled, on at least a half-time basis during the period of attendance for which the loan was intended.

(20 U.S.C. 1078, 1082)

§ 682.409 Assignment by guarantee agencies of defaulted loans to the Secretary.

(a) When the Secretary determines that such action is necessary to protect the Federal fiscal interest, the Secretary may direct a guarantee agency to assign to the Secretary for collection a defaulted loan on which the Secretary has made a payment under §§ 682.404 or 682.405. In making this determination, the Secretary considers all relevant information available to the Secretary, including any information and documentation submitted by the guarantee agency.

(b)(1) When a guarantee agency assigns a defaulted loan to the Secretary, the agency releases all rights and title to that loan. The agency does not share in any amounts collected from the borrower by the Secretary on a loan assigned under this section, regardless of the reinsurance percentage paid on the loan.

(2) The Secretary does not pay the guarantee agency any compensation for a loan assigned under this section.

(c)(1) A guarantee agency shall assign a loan to the Secretary at such time, in such a manner, and with such documentation as the Secretary may require.

(2) The documents that the assignor agency shall submit with a loan assigned under this section include, but are not limited to—

(i) The loan application;

(ii) The promissory note; and

(iii) The payment and collection histories for the loan.

(3) The guarantee agency shall execute an assignment to the United States of America of all right, title, and interest in the promissory note

evidencing a loan assigned under this section.

(d) Assignment of a loan does not affect calculation of any default rate under this Part. However, the Secretary accounts, in calculations of default rates, for any collections achieved by the Secretary on loans assigned by an agency.

(20 U.S.C. 1078, 1978-2, 1082)

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) *Fiscal requirements.* The fiscal procedures a guarantee agency establishes shall include, at a minimum, the following:

(1) The guarantee agency shall establish and maintain a reserve fund to which the guarantee agency shall credit—

(i) Federal advances obtained under, and matching funds required by, section 422(a) of the Act;

(ii) Funds appropriated by a State for the agency's loan guarantee program;

(iii) Federal advances obtained under § 682.403;

(iv) Funds received by the guarantee agency as loan insurance premiums;

(v) Administrative cost allowances received by the guarantee agency under § 682.407;

(vi) Funds received by the guarantee agency for the agency's loan guarantee program from gift, grant, or other sources;

(vii) Funds collected on defaulted loans;

(viii) Death, disability, bankruptcy, and reinsurance payments received from the Secretary; and

(ix) Funds earned from investments under paragraph (a)(5) of this section;

(2) Except as provided in paragraphs (a)(3) and (a)(4) of this section, a guarantee agency may use the assets of the reserve fund established under paragraph (a)(1) of this section only to—

(i) Guarantee loans under the guarantee agency's loan guarantee program;

(ii) Pay default claims;

(iii) Pay death, disability, and bankruptcy claims;

(iv) Refund overpayments of insurance premiums;

(v) Pay to the Secretary the Secretary's equitable share of borrower payments; and

(vi) Repay advances made by the Secretary;

(3) Except as provided in paragraph (a)(4) of this section, a guarantee agency may also use loan insurance premiums, administrative cost allowances, and interest or investment earnings for payments necessary for the proper

administration of the guarantee agency's loan guarantee program;

(4)(i) The guarantee agency may use the amount of Federal advances identified in paragraph (a)(1)(iii) of this section, and interest or other earnings on those advances, only to pay default claims.

(ii) The guarantee agency shall account separately for the funds described in paragraph (a)(4)(i) of this section; and

(5) The guarantee agency may invest the assets of the reserve fund described in paragraph (a)(1) of this section only in low-risk securities, such as obligations issued or guaranteed by the United States or a State, and shall exercise the level of care in such investment required of a fiduciary charged with the duty of investing the money of others.

(b) *Administrative requirements.* The administrative procedures a guarantee agency establishes shall include, at a minimum, the following:

(1) The guarantee agency must arrange for an independent biennial financial and compliance audit of the agency's guaranteed loan program that meets each of the following requirements:

(i) The audit must examine the agency's compliance with the Act, applicable regulations, and agreements entered into under this part.

(ii) The audit must examine the agency's financial management of its loan guarantee program.

(iii) The audit must be conducted in accordance with the general standards and the standards for financial and compliance audits of the United States General Accounting Office's (GAO) *Standards for Audit of Governmental Organizations, Programs, Activities and Functions*. Procedures for audits are contained in audit guides developed by, and available from, the Office of the Inspector General of the Department. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations, and GAO's *Standards*.

(iv) The audit must be conducted not less frequently than once every two years, and must be submitted to the Secretary within six months of the end of the audit period. The first audit must cover the agency's activities for a period beginning no later than the effective date of this requirement. Each subsequent audit must cover the agency's activities for the entire period since the preceding audit.

(v) With regard to a guarantee agency that is an agency of a State government, an audit conducted in accordance with 31 U.S.C. 7502 satisfies the requirements

of this paragraph for the period covered by the audit.

(2) The guarantee agency shall charge interest on each loan for which the Secretary has paid a reinsurance claim, at a rate that is the greater of—

(i) The rate established by the terms of the original promissory note; or

(ii) The rate provided for by State law.

(3)(i) The guarantee agency shall engage in at least the collection efforts described in paragraphs (3)(iii)–(ix) of this subsection on a loan on which it pays a default claim filed by a lender.

(ii) The periods of time set forth in paragraphs (3)(iii)–(vi) of this subsection refer to the number of days that elapse from the date the agency pays a default claim on a loan. In the case of a borrower who commences repayment of the loan after the agency pays a default claim thereon, the periods of time set forth in paragraphs (3)(iii)–(v) of this subsection refer to the number of days that elapse from the date that is 40 days following the agency's receipt of the most recent payment. However, nothing in this paragraph (3) requires an agency to report a default to a credit bureau more than once. References to the "borrower" include all endorsers on a loan.

(iii) One–45 days: During this period, the agency shall—

(A) Send a written notice to the borrower stating that the agency has paid a default claim filed by the lender on the loan, and has taken assignment of the loan. In addition, the notice must forcefully demand that the borrower immediately commence repayment of the loan, and must warn the borrower that, if he fails to do so, the agency will report the default to a cognizant credit bureau, thereby damaging the borrower's credit rating, and will institute a civil suit against the borrower to compel repayment of the loan; and

(B) Diligently attempt to contact the borrower by telephone to demand repayment of the loan.

(iv) 46–90 days: During this period the agency shall—

(A) Diligently attempt to contact the borrower by telephone to demand repayment of the loan;

(B) Report the default to a cognizant credit bureau; and

(C) Send a written notice to the borrower demanding that the borrower immediately commence repayment of the loan, and informing the borrower that the default has been reported to a credit bureau and that the borrower's credit rating has thereby been damaged.

(v) 91–135 days: During this period, the agency shall—

(A) Diligently attempt to contact the borrower by telephone to demand repayment of the loan; and

(B) Send one additional collection letter at least as forceful as the notice described in paragraph (iii)(A) of this subsection.

(vi) 136–180 days: During this period, the agency shall send a written notice to the borrower forcefully demanding repayment in full on the loan, and indicating that it is the final notice the borrower will receive before the agency institutes a civil suit to compel repayment of the loan;

(vii) 181–225 days: During this period, but not sooner than 30 days after sending the notice described in paragraph (vi), the agency shall institute a civil suit against the borrower for repayment of the loan.

(viii) Not later than 10 days after its receipt of information indicating that it does not know the borrower's current address, or the 60th day after its payment of a default claim on a loan, whichever is later, the agency shall diligently attempt to locate the borrower through the use of all available skip-tracing techniques, including, but not limited to, any skip-tracing assistance available from the Internal Revenue Service, credit bureaus, and State motor vehicle departments.

(ix) (A) The agency shall diligently attempt to enforce a judgment obtained against a borrower respecting a loan. If, after doing so, the agency is unable to obtain full satisfaction of the judgment because the borrower lacks the means to pay, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired the means to satisfy the remainder of the judgment.

(B) If the agency determines that the borrower has acquired the means to satisfy the remainder of the judgment, the agency shall, not later than 60 days thereafter, notify the borrower in writing of its intention to resume enforcement efforts on the judgment unless the borrower makes payment *in full* on all outstanding amounts.

(C) If the borrower does not make payment in full within 30 days of the date the agency sends the notice described in the preceding paragraph, the agency shall, within 30 days thereafter, institute civil proceedings to enforce the remainder of the judgment.

(x) The agency may discontinue conducting the semi-annual inquiries concerning a borrower's means required by paragraph (3)(ix) of this subsection only in accordance with write-off criteria and procedures approved by the Secretary.

(c) **Enforcement requirements.** A guarantee agency shall take such measures, and establish such controls, as are necessary to ensure its vigorous enforcement of all Federal, State, and guarantee agency requirements applicable to its loan guarantee program, including, at a minimum, the following:

(1) Conducting comprehensive biennial on-site program reviews of at least—

(i) Each participating lender whose guaranteed loan volume in the preceding year equaled or exceeded two percent of the total of all loans guaranteed in that year by the agency; and

(ii) Each participating school in the agency's geographic area whose students received, or benefited from, loans, the total amount of which equaled or exceeded two percent of the total of all loans guaranteed in the preceding year by the agency.

(2) Seeking prompt recovery of all funds found in such reviews to have been improperly retained by the participants, and monitoring the implementation by participants of corrective action as a result of such reviews.

(3) Adopting procedures for identifying fraudulent loan applications.

(4) Undertaking, or arranging with State or local law enforcement agencies for, the prompt and thorough investigation of all allegations and indications of criminal or other programmatic misconduct by its program participants.

(5) Promptly reporting all such allegations and indications having a substantial basis in fact, and the scope, progress, and results of the agency's investigations thereof, to the Secretary.

(6) Referring appropriate cases to State or local authorities for criminal prosecution or civil litigation.

(7) Cooperating with all program reviews, investigations, and audits conducted by the Secretary relating to the agency's loan guarantee program.

(20 U.S.C. 1078, 1078-1, 1082, 1087)

§ 682.411 Due diligence by lenders in the collection of guarantee agency loans.

(a) In the event of delinquency on a loan guaranteed by a guarantee agency, the lender shall engage in at least the collection efforts described in paragraphs (c)-(h) of this section.

(b) For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment not later made, or 30 days after the day the lender discovers that the borrower has entered the repayment period, whichever is later. If a payment is made late, the first day of delinquency

is the due date of the next missed payment not later made.

(c) **One-30 days delinquent:** During this period, the lender shall send at least two written notices or collection letters to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency.

(d) **31-60 days delinquent:** During this period, the lender shall make diligent efforts to contact the borrower by telephone. If the lender is unable, despite such efforts, to reach the borrower by telephone, the lender shall send at least two forceful collection letters to the borrower urging the borrower to cure the delinquency. The letters shall also warn the borrower that, if the delinquency is not cured, the lender will assign the loan to the guarantee agency which in turn will report the default to a credit bureau, thereby damaging the borrower's credit rating, and will bring suit against the borrower to compel repayment of the loan.

(e) **61-90 days delinquent:** During this period, the lender shall again make diligent efforts to contact the borrower by telephone. If the lender is unable, despite such efforts, to reach the borrower by telephone, the lender shall send at least one more collection letter no less forceful than those described in paragraph (d).

(f) **91-120 days delinquent:** During this period, the lender shall send a final demand letter to the borrower, unless the borrower's address is unknown, requiring repayment of the loan in full. The lender shall allow the borrower at least 30 days to respond to the final demand letter before filing a default claim on the loan.

(g) Within 10 days of its receipt of information indicating it does not know the borrower's current address, the lender shall diligently attempt to locate the borrower, through the use of normal commercial skip-tracing techniques. These efforts shall include, but are not limited to, contacting the endorser, relatives, references, and any other individuals and entities identified in the borrower's loan file.

(h) If the agency that guaranteed the loan offers preclaims assistance, the lender shall request such assistance prior to the 90th day of delinquency, or as soon as the assistance is available, whichever is later.

(20 U.S.C. 1078, 1078-1, 1082, 1087-1)

§ 682.412 Remedial actions.

(a) The Secretary requires a lender to repay interest benefits and special allowance on a loan guaranteed by a guarantee agency—

(1) For any period beginning on the date of a failure by the lender, with respect to the loan, to comply with paragraphs (a)(1)-(a)(4), or (a)(7) of § 682.406;

(2) For any period beginning on the date of the lender's failure, with respect to the loan, to meet a condition of guarantee coverage established by the guarantee agency, to the date, if any, on which the guarantee agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency and approved by the Secretary;

(3) For any period as to which the lender, with respect to the loan, violates the requirements of Subpart C of this part;

(4) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under § 682.302(d).

(b) The Secretary requires a guarantee agency to repay reinsurance payments on a loan—

(1) If the lender or the agency failed to meet the requirements of paragraphs (a)(1)-(a)(4), or (a)(6) of § 682.406;

(2) If the lender failed to meet a condition of guarantee coverage set by the agency, unless the agency reinstated guarantee coverage on the loan pursuant to policies and procedures established by the agency and approved by the Secretary;

(3) If the agency failed to exercise due diligence in collection of the loan in accordance with procedures established under § 682.410(b)(3).

(c)(1) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guarantee agency that makes an incomplete or incorrect statement in connection with any agreement entered into under this part, or violates any applicable Federal requirement:

(i) Require the repayment by the agency of payments made to the agency.

(ii) Withhold payments to the agency.

(iii) Limit the terms and conditions of the agency's continued participation in the GSLP or PLUS Program.

(iv) Suspend or terminate agreements with the agency.

(v) Require repayment from the agency of any related payments which the Secretary has become obligated to make to others.

(2) The Secretary's decision to require repayment of funds by an agency, to withhold funds, or to limit, suspend, or terminate an agency's GSLP or PLUS Program participation, does not become final until the Secretary provides the

agency with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend an agreement prior to giving notice and an opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(d) Notwithstanding paragraphs (a) through (c) of this section, the Secretary may waive the right to recover a payment when, in the Secretary's judgment, the best interests of the United States so require.

(e) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against a guarantee agency or lender under this section is conclusive and binding on the agency or lender.

(Note.—A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.)

(20 U.S.C. 1078, 1078-1, 1078-2, 1082, 1087-1, 1087)

§ 682.413 Records, reports, and inspection requirements for guarantee agency programs.

(a) *Records.* (1) A guarantee agency shall keep the records required by this section and such other records as are necessary to document fully the accuracy of reports required by this subpart and the right of the agency to receive or retain payments made by the Secretary under this part.

(2) The guarantee agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible in accordance with the agency's write-off procedures. For the purposes of this section, the term "paid in full" includes loans paid by the Secretary on account of the borrower's death or permanent and total disability, or discharge of the loan in bankruptcy.

(3) The guarantee agency shall require participating lenders to keep the records described in § 682.522(a).

(4) A guarantee agency or lender may store records on microfilm or computer format. However, a lender or guarantee agency holding a promissory note shall retain the original note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guarantee agency shall either return the original note to the borrower or notify the borrower, under a procedure that is alternatively acceptable under State law, that the loan is paid in full, and retain a copy for the prescribed period.

(b) *Reports.* A guarantee agency shall submit to the Secretary the following reports:

(1) A report concerning the status of the agency's reserve fund and the operation of the agency's loan guarantee program, at such time and in the manner that the Secretary may reasonably require. The Secretary does not pay the agency amounts that are dependent upon data contained in the report until a complete and accurate report is received.

(2) Annually, for each State in which it operates, a report of the total guaranteed loan volume, default volume, and default rate for each of the following categories or originating lenders on all loans guaranteed after December 31, 1980:

(i) Schools.
(ii) State or private nonprofit lenders.
(iii) Commercial financial institutions (banks, savings and loan associations, and credit unions.)

(iv) All other types of lenders.
(3) For a guarantee agency with a supplemental reinsurance agreement, by July 1 of each year, a report on—

(i) Its eligibility criteria for school lenders;
(ii) Its procedures for the limitation, suspension, and termination of schools and lenders;

(iii) A list of all schools that applied for lender eligibility in the preceding 12 months and a summary of the action taken on those applications;

(iv) A list of all school lenders participating in the agency's program;
(v) A description of any actions taken in the preceding 12 months to limit, suspend, or terminate the participation of a school or lender in the agency's program; and

(vi) The steps the agency has taken to ensure its compliance with § 682.410(c)(2) through (6), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

(4) Any other information concerning the loan insurance program, at such frequency as determined by the Secretary.

(c) *Inspection requirements.* (1) A guarantee agency shall give the Secretary or the Secretary's designee access to its records in order to verify the correctness of the reports described in paragraph (b) of this section, or the right of the agency to receive or retain payments made by the Secretary under this part.

(2) A guarantee agency shall require in its agreement with a lender, or in its published rules or procedures, that the lender, or its agent, give the Secretary or the Secretary's designee and the guarantee agency access to the lender's records in order to verify the accuracy of the information provided by the

lender pursuant to § 682.401(b) (12) and (13), and the right of the lender to receive or retain payments made under this part.

(20 U.S.C. 1078, 1078-1, 1078-2, 1082, 1087-1)

Subpart E—Federal Insured Student Loan Program and Federal PLUS Program

§ 682.500 Circumstances under which loans may be guaranteed by the Secretary.

(a) The Secretary may guarantee all—
(1) FISLP and Federal PLUS Program loans made by lenders located in a State in which no State or private nonprofit guarantee agency has in effect an agreement with the Secretary under § 682.401 to serve as guarantor in that State;

(2) Federal PLUS Program loans made by lenders located in a State in which a State or private nonprofit guarantee agency has in effect an agreement with the Secretary under § 682.401 but does not provide a loan guarantee program for PLUS borrowers; and

(3) FISLP loans made by lenders located in a State in which a guarantee agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Secretary may guarantee FISLP loans made by a lender located in a State where a guarantee agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only for—

(1) A student who does not meet the agency's residency requirements;

(2) A lender who is not able to obtain a guarantee from the guarantee agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements;

(3) With the approval of the guarantee agency, a student who has previously received from the same lender a FISLP loan that has not been repaid; or

(4) All students at a school, if the Secretary finds that—

(i) No single guarantee agency program is reasonably accessible to students at that school, as compared to students at other schools during a comparable period of time; and

(ii) Guaranteeing loans made in the State to students attending that school would significantly increase the access of students at that school to GSLP loans if—

(A) The guarantee agency does not recognize the school as being eligible, but the school is eligible under the FISLP; or

(B) A majority of the persons enrolled at the school meet the conditions of student eligibility for FISLP loans, but are not recognized as eligible under the guarantee agency program.

(c) For purposes of paragraphs (a) and (b) of this section, a lender is considered to be located in the same State as a school if the lender—

(1) Has a relationship with the school such that the school will be considered to have originated loans made to students at that school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for guaranteeing loans under the FISLP, the Secretary may require the lender to submit evidence of circumstances that would justify loan guarantees under the provisions of this section.

(e) With regard to a school lender which has entered into an agreement with the Secretary under § 682.601, the Secretary denies loan guarantees on the basis of this section only if the Secretary first determines that all eligible students at that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies and surveys which the Secretary considers satisfactory.

(20 U.S.C. 1071, 1073, 1078-2, 1082)

§ 682.501 Extent of Federal guarantee under the FISLP and the Federal PLUS Program.

(a) *General.* Except as provided in paragraph (b) of this section, the Secretary's guarantee liability on any FISLP loan or Federal PLUS Program loan is 100 percent of the unpaid principal balance and, to the extent permitted under § 682.519, accrued interest.

(b) *Special provisions for State lenders.* (1) Except as described in paragraph (b)(2) of this section, the Secretary's guarantee liability is less than 100 percent under the following conditions:

(i) When the total of default claims under the FISLP and the Federal PLUS Program paid by the Secretary to a State lender during any fiscal year reaches five percent of the amount of the FISLP and Federal PLUS Program loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 90 percent of

the amount of the unpaid principal balance plus accrued interest.

(ii) When the total of default claims under the FISLP and Federal PLUS Program paid by the Secretary to a State lender during any fiscal year reaches nine percent of the "amount of the FISLP and Federal PLUS Program loans in repayment" at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 80 percent of the amount of the unpaid principal balance plus accrued interest.

(iii) For purposes of this paragraph, the total default claims paid by the Secretary during any fiscal year does not include claims paid under the provisions of §§ 682.515 or 682.516.

(2) The potential reduction in guarantee liability does not apply to a State lender during the first Federal fiscal year of its operation as a lender under either the FISLP or the Federal PLUS Program, and during each of the four succeeding fiscal years.

(3) For the purposes of this section, the "amount of the FISLP and Federal PLUS Program loans in repayment" means the original principal amount of all FISLP and Federal PLUS Program loans guaranteed by the Secretary less—

(i) The original principal amount of loans on which—

(A) Under the FISLP, the borrower has not yet reached the repayment period;

(B) Payment in full has been by the borrower; or

(C) The borrower was in deferment status at the time repayment of principal was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the Secretary for default claims on loans, exclusive of claims paid under the provisions of §§ 682.515 or 682.516.

(4) For the purposes of this paragraph, payments by the Secretary on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(5) State lenders shall consolidate FISLP and Federal PLUS Program loans for the purpose of calculating the amount of the Secretary's guarantee liability under this section.

(20 U.S.C. 1075, 1078-2, 1082)

§ 682.502 The application to be a lender.

(a) In order to be considered for participation in the FISLP and the Federal PLUS Program, a lender must submit an application to the Secretary.

(b) In determining whether to enter into a guarantee contract with an applicant, and, if so, what the terms of the contract will be, the Secretary considers—

(1) Whether the applicant is an eligible lender according to the definition contained in section 435(g)(1) of the Act;

(2) Whether the applicant is capable of complying with the regulations in this part as they apply to lenders;

(3) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting loans;

(4) Whether the applicant has had prior experience with a similar Federal, State, or private nonprofit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;

(5) The financial resources of the applicant; and

(6) In the case of a school that is seeking approval as a lender, its accreditation status (with the preferred condition being accredited).

(c) The Secretary may require an applicant to submit sufficient materials with its application so that the Secretary may fairly evaluate it in accordance with the above criteria.

(d) Denial of participation: (1) If the Secretary decides not to approve the application for an insurance contract, the reason for the decision is included in the Secretary's response.

(2) The Secretary provides an opportunity for the lender to meet with a designated Department official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial, or grant the lender an opportunity to appeal, if the lender submits its application within 6 months of a previous denial.

(20 U.S.C. 1078-2, 1079, 1082)

§ 682.503 The guarantee contract.

(a)(1) To participate in the FISLP and Federal PLUS Program, a lender must hold a guarantee contract with the Secretary. No loan is guaranteed unless it is covered by such an agreement.

(2) In general, under a guarantee contract, the lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender in the FISLP and the Federal PLUS Program. In return the Secretary agrees to guarantee each eligible FISLP and Federal PLUS Program loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary may include in a contract a limit on the duration of the contract and the number or amount of

FISLP or Federal PLUS Program loans the lender may make or hold.

(b)(1) Except as otherwise approved by the Secretary, a guarantee contract with a school lender shall limit the FISLP and Federal PLUS Program loans made by that school lender that will be covered by the Federal guarantee to those loans made to students, or to parents borrowing on behalf of students, who are—

- (i) In attendance at that school;
- (ii) In attendance at other schools under the same ownership as that school; or
- (iii) Employees or dependents of employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the Secretary considers appropriate for loan guarantees.

(2) A limit imposed under paragraph (b)(1) of this section on a school lender that makes loans to students, or to parents of students, in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees of those other schools, may be imposed on a school-by-school basis.

(20 U.S.C. 1078-2, 1079, 1082)

§ 682.504 Issuance of Federal loan guarantees.

(a) A lender having a guarantee contract shall submit an application to the Secretary for a Federal loan guarantee on each intended loan that the lender determines to be eligible for a guarantee. The application must be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan can be guaranteed and the amount of the guarantee. No disbursement on a loan made prior to the Secretary's approval of that loan is covered by the guarantee.

(b) The secretary issues a guarantee on a FISLP or Federal PLUS Program loan in reliance on the implied representations of the lender that all requirements for the initial eligibility of the loan for guarantee coverage have been met. As described in § 682.520, the continuance of the guarantee is conditioned upon compliance by all holders of the loan with these regulations. The delegation of functions to a servicing agency or another party does not relieve the lender of its responsibilities in the making, servicing, and collecting of a FISLP or Federal PLUS Program loan.

(20 U.S.C. 1078-2, 1079, 1082)

§ 682.505 Insurance premium.

(a) *General.* The Secretary charges the lender an insurance premium for each loan that is guaranteed.

(b) *Rate.* The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

(c) *FISLP loans—insurance premium calculations.* (1) The insurance premium for FISLP loans is calculated by—

(i) Counting the number of months beginning with the month following the month in which the loan is to be disbursed and ending 12 months after the borrower's anticipated graduation from the school for attendance at which the loan is sought;

(ii) Dividing one-fourth of one percent of the principal amount of the loan by 12; and

(iii) Multiplying the result obtained in paragraph (c)(i) of this section by that obtained in paragraph (c)(ii) of this section.

(2) In cases where the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement from the month following the month that the disbursement is made.

(d) *PLUS loans insurance premium calculation.* The insurance premium for a Federal PLUS Program loan is calculated by—

(1) Using the actual repayment period as a base;

(2) Amortizing the loan in monthly installments over the repayment period;

(3) Determining one-fourth of one percent of each monthly declining principal balance; and

(4) Totalling the monthly amounts derived in paragraph (d)(3) of this section.

(e) *Collection from lenders.* (1) The Secretary may bill the lender for the insurance premium or may require the lender to pay the insurance premium to the Secretary at the time of disbursement of the loan. At the Secretary's discretion, the Secretary may alternatively collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) The Secretary's guarantee on a loan ceases to be effective when the lender fails to pay the insurance premium within 60 days of the date payment is due. The Secretary may, however, excuse late payment of an insurance premium, and reinstate the guarantee coverage on a loan, if the Secretary is satisfied that—

(i) The loan is not in default and the borrower is not delinquent in making installment payments; or

(ii) The loan is in default, or the borrower is delinquent, under circumstances where the borrower has entered the repayment period without the lender's knowledge.

(f) *Collection from borrowers.* The lender may pass along the cost of the insurance premium to the borrower in the form of a one-time charge. If it does so, it shall clearly indicate to the borrower the amount of the insurance premium and the method of calculation.

(g) *Refund provisions.* The insurance premium is not refundable by the Secretary, and need not be refunded by the lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or files a petition in bankruptcy.

(20 U.S.C. 1077, 1078-2, 1079, 1082)

§ 682.506 Limitations on maximum loan amounts.

(a) *General.* The Secretary does not guarantee a FISLP or Federal PLUS Program loan in an amount that would—

(1) Result in an annual loan amount in excess of the student's estimated cost of attendance for the academic period for which the loan is intended less the estimated financial assistance awarded for that period; or

(2) Result in an annual or aggregate loan amount in excess of the permissible annual and aggregate loan limits described in paragraphs (b) through (e) of this section.

(b) *FISLP annual limits.* The total amount a student may borrow in any academic year of study under the FISLP, including the FISLP, may not exceed—

(1) \$2,500 in the case of an undergraduate student, but not more than—

(i) The lesser of \$2,500 or half the estimated cost of attendance, for a loan made by a State lender or made or originated by a school to a student who—

(A) Is enrolled in the first academic year of undergraduate study; and

(B) Was not previously enrolled in an undergraduate program; or

(ii) \$1,500, for a loan made or originated by a school to a student who is enrolled in the first academic year of undergraduate study and was not previously enrolled in an undergraduate program, unless the loan is to be disbursed in two or more installments. None of the installments may exceed one-half of the loan, and the interval between the first and second installments shall be at least one-third

of the academic period for which the loan is intended. However, a loan that is to be made to cover the expenses of a single academic period of less than five months, or an academic period of more than five months where no disbursement is to be made until the last one-third of the academic period, is not subject to these requirements. For purposes of this paragraph, all loans made within a period of 90 days will be considered a single loan; or

(2) \$5,000 in the case of a graduate or professional student.

(c) *FISLP aggregate limits.* The Secretary does not guarantee an FISLP loan in an amount that, together with the unpaid principal amount of all other FISLP loans to the student, would result in an aggregate amount in excess of—

(1) \$12,500, in the case of an undergraduate student, including any amounts borrowed under the PLUS Program in the case of an independent undergraduate student; or

(2) \$25,000, in the case of any graduate or professional student, including loans for undergraduate study.

(d) *Federal PLUS Program annual limits.* The total principal amount of all PLUS Program loans made to, or for the benefit of, an eligible student for any academic year of study may not exceed—

(1) \$2,500, including any amounts borrowed by the student under the FISLP, in the case of an independent undergraduate student;

(2) \$3,000, in the case of a graduate or professional student; and

(3) \$3,000, in the case of a parent borrower.

(e) *Federal PLUS Program aggregate limits.* The total aggregate principal amount of all Federal PLUS Program loans made to or for the benefit of an eligible student may not exceed—

(1) \$12,500, including any amounts borrowed by the student under the FISLP, in the case of an independent undergraduate student;

(2) \$15,000, in the case of a graduate or professional student; and

(3) \$15,000, in the case of a parent borrower.

(20 U.S.C. 1075, 1078-2, 1079, 1082, 1089)

§ 682.507 Disclosure requirements.

(a) A lender shall disclose the following information to a borrower either before or at the time it disburses a loan. Disclosures identified with an asterisk (*) shall be made in the promissory note:

* (1) The lender's name, and the address to which correspondence with the lender and payments should be sent;

* (2) The principal amount of the loan;

* (3) The amount of any charges, including the origination fee and the insurance premium, collected by the lender at the time of or before disbursement of the loan, and an indication of whether those charges are deducted from the proceeds of the loan or paid separately by the borrower;

* (4) The actual interest rate;

(5) The annual and aggregate maximum amounts that may be borrowed;

* (6) An explanation of when repayment of the loan is required and when the borrower is required to pay the interest that accrues on the loan;

* (7) The minimum and maximum number of years in which the loan must be repaid and the minimum amount of required annual payments;

(8) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

* (9) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;

* (10) A statement describing the circumstances under which repayment of the loan or interest that accrues on the loan may be deferred;

(11) A statement of availability of the Department of Defense program for repayment of loans on the basis of military service, as provided for in 10 U.S.C. 2141, note;

* (12) The definition of "default" found in § 682.200 of this part, and the consequences to the borrower of a default, including a statement concerning likely litigation and a statement that the default will be reported to a credit bureau or a credit reporting agency;

(13) An explanation of the possible effects of accepting the loan on the eligibility of the student for other forms of student financial assistance; and

* (14) An explanation of any costs the borrower may incur in the making or collection of the loan.

(b) The lender shall also disclose the information listed in this paragraph in a written statement provided to the borrower at or prior to the beginning of the repayment period. The lender shall make the disclosures during the grace period, in the case of an FISLP loan. Should the borrower enter the repayment period without the lender's knowledge, the lender shall provide the required disclosures to the borrower immediately upon discovering that the borrower has entered the repayment period. The lender shall disclose—

(1) The lender's name, and the address to which correspondence with the lender and payments should be sent;

(2) The scheduled date upon which the repayment period is to begin;

(3) The estimated balance owed by the borrower as of the date upon which the repayment period is disclosed, including the estimated amount of interest to be capitalized;

(4) The actual interest rate on the loan;

(5) An explanation of any fees which may accrue or be charged to the borrower during the repayment period;

(6) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments;

(7) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(8) The estimated total amount of interest to be paid on the loan, assuming that payments are made in accordance with the repayment schedule; and

(9) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty.

(c) The lender shall provide the information required to be disclosed by paragraphs (a) and (b) of this section at no cost to the borrower.

(20 U.S.C. 1078-2, 1082, 1083a)

§ 682.508 Due diligence in making and disbursing a loan.

(a) *General.* (1) The loan-making process includes processing the loan application and other required forms, approving the borrower for a loan, determining the loan amount, explaining to the borrower his or her responsibilities under the loan, completing and having the borrower sign the promissory note, and disbursing the loan proceeds.

(2) Except as may be authorized by the Secretary, a lender may not delegate its loan-making functions except to a school with whom the lender has an origination relationship. If such a relationship exists, the lender may rely in good faith upon statements of the borrower contained in the loan application, but may not rely upon statements made by the school in the application. A non-school lender that does not have an origination relationship with a school may rely in good faith upon statements of both the borrower and the school that are contained in the application. Except as provided in part 688 subpart E, a school lender may rely in good faith upon statements made by the borrower in the loan application.

(b) *Processing forms.* Before disbursing a loan, a lender must determine that all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender may not ask the

borrower to sign any form before all information requested from the borrower on that form has been supplied.

(c) *Approval of borrower and determination of loan amount.* (1) A lender may make a loan only to an eligible borrower. To the extent authorized by paragraph (a)(2) of this section, the lender may determine the borrower's eligibility based on the information provided on the application by the school, the borrower, and, if the borrower is a parent, the student on whose behalf the loan is sought.

(2) In determining the amount of the loan to be made, within the limitations of § 682.503, the lender shall review the data on the student's cost of attendance and estimated financial assistance that is provided on the application form. In no case may the loan amount exceed the student's estimated cost of attendance for the academic period for which the loan is intended, less estimated financial assistance.

(d) *Promissory note.* (1) The lender shall obtain from the borrower an executed promissory note for each loan as proof of the borrower's indebtedness.

(2) The Secretary periodically makes a promissory note form available to lenders. A lender may not add any clauses to, or modify any provisions of, the most current promissory note provided by the Secretary without the Secretary's prior approval.

(3) The lender shall give the borrower a copy of each executed note.

(e) *Security, endorsement, and co-makers.* (1) A FISLP of Federal PLUS Program loan shall be made without security.

(2) Except as provided in paragraph (e)(4) of this section, a FISLP or Federal PLUS Program loan shall be made without endorsement or other secondary liability on the note.

(3) A Federal PLUS Program loan may be made to two eligible parents who agree to be jointly liable for repayment of the loan as co-makers.

(4) A lender may require an endorsement by another person on the borrower's FISLP or Federal PLUS Program loan note if the borrower is a minor and cannot, under applicable State law, create a legally binding obligation by his or her own signature. For purposes of this paragraph "endorsement" means a signature of any party, other than the borrower, who is to assume secondary liability for repayment of the loan.

(f) *Loan disbursement.* (1) In disbursing a loan, a lender—

(i) May not disburse a loan prior to the issuance of the guarantee commitment for the loan by the

Secretary, except with the Secretary's prior approval;

(ii) Shall disburse loan proceeds by means of a check that—

(A) Except as provided in paragraph (f)(1)(v) of this section, is made co-payable to the borrower and the school identified on the loan application; and

(B) Requires the personal endorsement of the borrower; and

(iii) In the case of a check that is part of a multiple disbursement, shall provide—

(A) A notice to the school indicating that it is part of a multiple disbursement. The lender may include a separate notice to this effect with the check or may include this notice on the face of the check.

(B) At the time of the first disbursement, a schedule of the estimated amount and dates of all future disbursements to the student.

(iv) Except as provided in paragraph (f)(1)(v) of this section, shall send the loan check directly to the school not earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is made, and in no case, without the Secretary's prior approval, earlier than 30 days prior to the date on which the student is scheduled to enroll; and

(v) Shall make the check payable to the borrower and shall send the check directly to the borrower if the borrower is attending a foreign school, or if the borrower is a parent borrowing on behalf of an eligible student, and shall notify the school of the amount of the loan within 30 days of the date on which the check is sent.

(2) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a disbursement check on behalf of a borrower. A borrower may not authorize anyone else to endorse a check on his or her behalf.

(g) *Late disbursements.* (1) Under certain circumstances, a lender, with the prior approval of the Secretary, may disburse a loan after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the guarantee commitment.

(2) The Secretary approves a lender's request to make a disbursement under these circumstances only if the Secretary is satisfied that the loan proceeds will be used for the student's cost of attendance for the period of enrollment for which the loan was intended and during which the student was actually enrolled.

(3) If the lender, after receiving the Secretary's prior approval, makes a late disbursement, the lender shall give notice of that approval to the school at

the time the lender sends the loan check to the school.

(20 U.S.C. 1077, 1078-2, 1079, 1080, 1082, 1083, 1085)

§ 682.509 Due diligence in servicing a loan.

(a) *General:* The loan servicing process includes responding to borrower inquiries and establishing the terms of repayment.

(b) (1) A lender shall respond on a timely basis to written inquiries and other communications from a borrower and any endorser of a loan.

(2) When a lender learns that a FISLP borrower is no longer enrolled at a participating school on at least a half-time basis the lender shall promptly contact the borrower in order to establish the terms of repayment.

(20 U.S.C. 1077, 1078, 1078-2, 1079, 1082, 1085)

§ 682.510 Repayment of loans.

(a) *Conversion of a loan to repayment status.* (1) For a Federal PLUS Program loan, the repayment period begins on the day the loan is disbursed. The first payment is due within 60 days after the date of disbursement.

(2) Except as provided in paragraphs (a)(3) and (4) of this section, for a FISLP loan the repayment period begins—

(i) For a borrower with a loan for which the applicable interest rate is seven percent per year, not less than nine nor more than twelve consecutive months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school. The length of this grace period is determined by the lender for loans made under the FISLP.

(ii) For a borrower with a loan for which the applicable interest rate is eight or nine percent per year, six consecutive months following the month in which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

(3) For a borrower of a FISLP loan who is a correspondence student, the grace period specified in paragraph (a)(2) of this section begins on the earlier of the date—

(i) The borrower completes the program;

(ii) The borrower falls 60 days behind the due date for submission of a scheduled assignment, according to the schedule required in § 682.603. However, the school may permit one restoration to in-school status for a student who falls 60 days behind the due date for submission of a particular assignment if the student states in writing an intention to continue in the program and an

understanding that the required lessons must be submitted on time; or

(iii) That is 60 days following the latest allowable date established by the school for completing the program in the schedule required under § 682.603.

(4) For a FISLP loan, the repayment period begins prior to the end of the grace period, if the borrower requests and is granted a repayment schedule that so provides. In this event, a borrower may not further utilize the grace period.

(5) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period. If a graduated repayment schedule is established, it may not provide for any single installment that is more than three times greater than any other installment.

(6)(i) Subject to paragraphs (a)(6)(ii) through (iv) of this section, a lender shall allow a borrower at least five years, but not more than ten years, to repay a FISLP or Federal PLUS Program loan, calculated from the beginning of the repayment period. The lender shall, however, require a borrower to fully repay a FISLP loan within 15 years after it is made.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in §§ 682.511 and 682.512 respectively, the periods of deferment or forbearance are excluded from determinations of the 5, 10, and 15-year periods.

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than five years, the borrower is not entitled to the full 5-year period.

(iv) Prior to the beginning of the repayment period the borrower may request and be granted by the lender a repayment period of less than five years. At any time, subject to paragraph (a)(6)(iii), and without the lender's consent, the borrower may subsequently have the total repayment period extended to a minimum of five years.

(b) *Prepayment.* The borrower may prepay the whole or any part of a loan at any time without penalty. Unless the borrower requests that the lender credit the prepayment to future installments, the lender shall credit the entire prepayment to unpaid principal.

(c) *Minimum annual payment.* (1)(i) Subject to paragraphs (c)(1)(ii) and (iii) of this section, during each year of the repayment period, a borrower's total payments to all holders of the borrower's GSLP or PLUS Program loans must total at least \$600 or the unpaid

balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the lender agree, the amount paid may be less.

(iii) If the borrower and the borrower's spouse have one or more GSLP or PLUS Program loans, their combined annual payment must meet the requirement of paragraph (c)(1)(i) of this section.

(2) The provisions of paragraph (c)(1)(i) and (ii) of this section may not result in an extension of the 10 or 15-year repayment period maximums unless forbearance, as described in § 682.512, has been approved.

(d) *Supplemental repayment schedule.*

(1) In the case of a loan made by a school lender, the lender and the borrower may agree on a supplemental repayment schedule, with the prior approval of the Secretary, that would supplement the regular repayment schedule described in paragraph (c) of § 682.509.

(2) The supplemental repayment schedule may be based on other than equal or graduated payments. For example, the supplemental repayment schedule may base the amount of the borrower's payment on the borrower's income.

(3) The borrower may not insist upon the establishment of a supplemental repayment schedule. The lender may not insist upon the establishment of a supplemental repayment schedule unless the lender obtained the borrower's written consent to enter into one at the time the loan was made.

(e) *School refunds.* (1) A lender shall treat a payment of a refund received by the lender from the school as a credit against the amount owed by the borrower on the borrower's loan.

(2) If a lender receives a refund payment from a school on a loan that is no longer held by that lender,—

(i) The lender shall transmit the amount of the refund payment from the school to the holder to whom it assigned the loan, with an explanation of the payment's source; and

(ii) The holder of the loan shall provide prompt written notice to the borrower that the payment has been received.

(20 U.S.C. 1077, 1078, 1078-2, 1079, 1082, 1085)

§ 682.511 Deferment.

(a) *Borrower eligibility.* (1) Except in the case of a loan received by a parent borrower under the PLUS Program on or after August 15, 1983, a borrower is entitled to have periodic installment payments of principal deferred during authorized periods after the beginning of the repayment period.

(2) For a loan made before October 1, 1981, the borrower is also entitled to have periodic installment payments of principal deferred during the six month period (post-deferment grace period) that commences after the completion of each deferment period or combination of such periods.

(3) Interest accrues and is paid by the borrower during the deferment period, and the post-deferment grace period, if applicable, unless, in the case of a FISLP loan, the loan was determined to be eligible for interest benefits under § 682.301 when the loan was made.

(4) In order to receive a deferment, the borrower must request the deferment and provide the lender with all documentation required to establish eligibility for a specific type of deferment.

(5) An authorized deferment period begins on the date the condition entitling the borrower to a deferment first exists, but not more than 60 days before the date the lender receives the request and documentation required under paragraph (a)(4) of this section.

(6) An authorized deferment period ends on the earlier of—

(i) The date the condition establishing the borrower's eligibility for the deferment ends; or

(ii) The date when the condition entitling the borrower to a deferment has continued to exist for the maximum amount of the time allowed for a specific deferment.

(7) A lender may not deny a deferment to which the borrower is entitled, even though the borrower may be delinquent, but not in default, in making required installment payments. The 120 or 180-day period required to establish a default does not run during the deferment and post-deferment grace periods. When the deferment or, if applicable, post-deferment grace period expires, a borrower resumes any delinquent status that existed when the deferment period began.

(8) A borrower whose loan is in default is not eligible for a deferment until the borrower brings the account current with the lender.

(9) The borrower must inform the lender when the condition entitling the borrower to a deferment no longer exists.

(b) *Authorized deferments.* Deferment is authorized during periods when a borrower is engaged in—

(1)(i) Full-time study at a participating school, unless the borrower is not a national of the United States and is pursuing a course of study at a foreign school; or

(ii) Full-time study at a school which meets the definition of an institution of higher education or a vocational school and is operated by an agency of the Federal Government (e.g., the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a foreign school;

(2) Study under an eligible graduate fellowship program, as described in paragraph (c) of this section;

(3) Up to three years of active duty status in the United States Armed Forces or service as an officer in the Commissioned Corps of the United States Public Health Service;

(4) Up to three years of service under the Peace Corps Act (if the borrower has agreed to serve for a term of at least one year);

(5) Up to three years of service as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs) (if the borrower has agreed to serve for a term of at least one year);

(6) Up to three years of full-time volunteer service which the Secretary has determined is comparable to service referred to in paragraph (b)(4) and (b)(5) of this section for a tax-exempt organization, as described in paragraph (d) of this section;

(7) Conscientiously seeking, but unable to find full-time employment in the United States over a single period of up to 12 months, as described in paragraph (e) of this section;

(8) Pursuing a rehabilitation training program for disabled individuals, as described in paragraph (f) of this section;

(9) Up to two years of service as an intern, as described in paragraph (g) of this section; or

(10) Up to three years during which the borrower is temporarily totally disabled, as described in paragraph (h) of this section, or during which the borrower is unable to secure employment because the borrower is caring for a spouse who is temporarily totally disabled, as described in paragraph (i) of this section.

(c) *Graduate fellowship deferment.* To qualify for a deferment for study under a graduate fellowship program, a borrower must provide the lender with a statement from an official of the borrower's fellowship program certifying that—

(1) The fellowship program—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires a written statement from each applicant explaining the

applicant's objectives before the award of that financial support; and

(iii) Requires a graduate fellow to submit periodic reports, projects, or other evidence of the fellow's progress; and

(2) The borrower—

(i) Holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) Is engaged in full-time study, which may be independent of an educational or cultural institution, in an academic or professional subject area for which the borrower has shown an interest and ability; and

(iii) Has been recommended by an institution of higher education for acceptance into the graduate fellowship program.

(d) *Full-time volunteer service for a tax-exempt organization deferment.*—To qualify for a deferment for full-time volunteer service, for a tax-exempt organization, comparable to volunteer service in the Peace Corps or full-time volunteer service in a program administered by the ACTION agency, a borrower must provide the lender with a statement from an official of the borrower's volunteer program certifying that—

(1) The borrower serves in an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954;

(2) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(3) The borrower's compensation (including a subsistence allowance) does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency;

(4) The borrower, as part of his or her duties, does not give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fundraising to support religious activities; and

(5) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(e) *Unemployment deferment.* (1) To qualify for an unemployment deferment, a borrower must provide the lender with a written request for the deferment. To continue the deferment for more than three months, the borrower must provide an additional request before the end of each three month period. Each request must be signed by the borrower and dated, and must contain—

(i) A statement from the borrower describing the borrower's conscientious

search for full-time employment, including for at least three attempts to secure employment during that three-month period—

(A) The name of the firm contacted;

(B) The name of the person contacted; and

(C) The firm's address and phone number.

(ii) The borrower's latest permanent home address and, if applicable, the borrower's latest temporary address;

(iii) Certification from the borrower that the borrower has registered with a public or private employment agency, if one is accessible, specifying its name and address and the date of registration therewith; and

(iv) The borrower's agreement to notify the lender promptly when full-time employment is obtained.

(2) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(3) For purposes of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(4) An unemployment deferment is not justified if the borrower has sought employment only in kinds of positions or at salary and responsibility levels for which the borrower feels qualified by virtue of education or previous experience.

(f) *Rehabilitation training program deferment.* To qualify for a rehabilitation training deferment, the borrower must be receiving, or be scheduled to receive, services under a program designed to rehabilitate disabled individuals, and must provide the lender with the following documentation:

(1) A certification from the rehabilitation agency that the borrower is either receiving or scheduled to receive rehabilitation training services from the agency.

(2) A certification from the rehabilitation agency that the rehabilitation program—

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Veterans Administration; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purposes of this paragraph, full-time employment involves at least 30 hours of work per week.

(g) *Internship deferment.* (1) An eligible internship program is a supervised training program that is required in order for the borrower to begin professional practice or service, e.g., medical residency.

(2) An eligible internship program is a program—

(i) That requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(ii) That a State licensing agency requires completion of before certifying the individual for professional practice or service.

(3) To qualify for an internship deferment, the borrower must provide to the lender the following certifications:

(i) A statement from an official of the appropriate State licensing agency that the internship program meets the provisions of paragraph (g)(2) of this section.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) The acceptance of the borrower into its internship program; and

(B) The anticipated dates on which the borrower will begin and complete the program.

(h) *Temporary total disability deferment.* (1) To qualify for a

temporary total disability deferment, a borrower must give the lender a certification from a licensed doctor of medicine or osteopathy, stating that the borrower is temporarily totally disabled.

(2) For purposes of this section, a borrower who is "temporarily totally disabled" is one who, by reason of injury or illness, cannot be expected to be able to attend school or to be gainfully employed during an extended period of time needed to recover from the injury or illness.

(i) *Spouse's temporary total disability deferment.* (1) To qualify for a deferment given to a borrower whose spouse is temporarily totally disabled, a borrower must give the lender—

(i) A certification of a licensed doctor of medicine or osteopathy, stating that the borrower's spouse is temporarily totally disabled; and

(ii) A statement from the borrower certifying that the borrower is unable to secure employment because the borrower is providing continuous nursing or similar services for the borrower's spouse.

(2) For the purposes of this section, a spouse who is "temporarily totally disabled" is one who, by reason of injury or illness, cannot be expected to be gainfully employed during an extended period of time needed to recover from the injury or illness, and who, during that special period, requires continuous nursing or similar services.

(20 U.S.C. 1077, 1078, 1078-2, 1082, 1085)

§ 682.512 Forbearance.

(a) General: (1) The Secretary encourages a lender to grant forbearance for the benefit of a borrower in order to prevent the borrower from defaulting on the borrower's repayment obligation. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or accepting smaller payments than were previously scheduled.

(2) A lender may grant forbearance of payments of principal and interest under paragraph (b) of this section whenever—

(i) Poor health or other personal problems affect the ability of the borrower to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 682.511 and the Secretary does not pay interest benefits on behalf of the borrower under § 682.301.

(3) If two borrowers are liable for repayment of a Federal PLUS Program loan as co-makers, the lender shall grant forbearance only when the ability of both borrowers to make scheduled payments has been impaired.

(4) If payments of interest are forborne, they may be capitalized as provided in § 682.202(b).

(b) A lender may grant forbearance on terms that are consistent with the minimum annual payment requirement and the 10- and 15-year limitations on length of repayment if the lender and borrower agree to the new terms, or, in the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time

the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time on terms that are inconsistent with the minimum annual repayment and the 10- and 15-year limitations on length of repayment if—

(1) The lender reasonably believes that the borrower intends to repay the loan but is currently unable to make payments in accordance with the terms of the loan note, and the lender states the basis for its belief in writing and maintains that statement in its loan file on that borrower;

(2) Both the borrower and an authorized official of the lender agree to the forbearance; and

(3) Where the forbearance involves the postponement of all payments, the lender contacts the borrower at least every three months during the period of forbearance in order to remind the borrower of the outstanding obligation to repay.

(d) The lender shall maintain evidence in the borrower's loan file that the forbearance has been agreed to.

(20 U.S.C. 1078-2, 1080, 1082)

§ 682.513 Due diligence in collecting a loan.

(a) General: (1) lender shall exercise due diligence in the collection of a loan with respect to both a borrower and an endorser. In order to exercise due diligence, a lender shall implement the procedures described in this section when a borrower fails to make an installment payment when due.

(2) If two borrowers are liable for repayment of a Federal PLUS Program loan as co-makers, the lender shall follow these procedures with respect to both borrowers.

(3) For purposes of this section, the borrower's delinquency begins on the day after the due date of an installment payment not paid when due, except that if the borrower entered the repayment period without the lender's knowledge, the delinquency begins 30 days after the day the lender discovers that the borrower has entered the repayment period.

(b) *Initial delinquency.* When a borrower is delinquent in making a payment, the lender shall remind the borrower within 15 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender shall attempt to contact the borrower at least three more times at regular intervals during the remainder of the four-month

period that started on the due date of the delinquent payment.

(c) *Skip-tracing assistance.* (1) Whenever a lender does not know the borrower's current address, the lender shall promptly attempt to locate the borrower through normal commercial collection techniques, including contacting all individuals and entities named in the borrower's loan application. If these efforts are unsuccessful, the lender shall promptly attempt to learn the borrower's current address through use of the Department of Education's skip-tracing assistance.

(2) If the lender does not know the borrower's address when a borrower is first delinquent in making a payment, but subsequently obtains the borrower's address prior to the date on which the loan goes into default, the lender shall attempt to contact the borrower in accordance with paragraph (b) of this section, with the first contact occurring within 15 days of the date the lender obtained knowledge of the borrower's address, and shall attempt to contact the borrower at least once during each succeeding 30-day period until default.

(d) *Preclaims assistance.* When the borrower is 60 days delinquent in making a payment, the lender shall request preclaim assistance from the Department of Education. This preclaim assistance consists of sending a series of letters to the borrower, urging the borrower to contact the lender and begin or resume payments.

(e) *Final demand letter.* A lender shall send a final demand letter to the borrower at least 30 days before the lender files a default claim. The lender shall allow the borrower at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower whose address is unknown.

(f) *Litigation.* (1) If the borrower's loan is in default and the lender determines that the borrower has the ability to repay the loan, the lender may, prior to the deadline for filing a default claim, bring suit against the borrower to recover the amount of the unpaid principal and interest together with reasonable attorney's fees, in accordance with the procedures set forth in this paragraph.

(2) The lender must first notify the borrower that, unless the borrower makes payments sufficient to bring the account current, the lender will seek a judgment under which the borrower will be liable for payment of reasonable attorneys' fees and court costs in addition to the unpaid principal and interest. The lender shall mail the notice to the borrower by certified mail, return receipt requested.

(3) The lender may bring suit if the borrower does not meet the terms of the lender's demand for payment as described in paragraph (f)(2) of this section within ten days following the date of delivery of the notice to the borrower indicated on the receipt.

(4) A lender may first apply the proceeds of any judgment against its reasonable attorneys' fees and court costs, whether or not the judgment provides for these fees and costs.

(20 U.S.C. 1078-2, 1079, 1080, 1081, 1082, 1085)

§ 682.514 Assignment of loan.

(a) *General.* A FISLP or Federal PLUS Program note may not be assigned except to another eligible lender. In this section, "seller" means any kind of assignor, "buyer" means any kind of assignee, and "assignment" means any kind of transfer, including assignment as security.

(b) *Procedure.* (1) A note assigned from one lender to another shall be made subject to a blanket endorsement together with other notes being assigned or shall individually bear effective words of assignment. Either the blanket endorsement or the note shall be signed and dated by an authorized official of the seller.

(2) The buyer shall—

(i) Notify the Secretary of the assignment if the right to receive special allowance has been assigned; and

(ii) Ensure that the borrower is notified promptly if the assignment results in the borrower being required to make installment payments, or to direct other matters connected with the loan, to a party other than the party with whom the borrower dealt before the assignment. The buyer shall include in the notice to the borrower a clear statement of all the borrower's rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller or any prior holder of the loan, subsequent to receipt of the notice.

(c) *Risk assumed by the buyer.* (1) Upon acquiring a note, a new holder assumes responsibility for the consequences of any previous violation of applicable status or regulations or the terms of the note. Neither a FISLP note nor a Federal PLUS Program note is a negotiable instrument, and a subsequent holder of such a note is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the original holder, the borrower can also assert the defense against the new holder. If the new holder files a default claim on a loan, the Secretary denies the default claim if there was a

legal defect affecting the initial validity or guarantee eligibility of the loan and to the extent of the borrower's legal defenses. When a new holder files a claim on a loan, it shall provide the Secretary with the same documentation that would be required of the original lender.

(2) Special additional rules for assignment of loans made or originated by a school: The buyer of a loan is not entitled to rely on statements made by a school that made or originated the loan. In addition, the Secretary considers any unpaid tuition refund that was due to the student under § 682.607, before the first assignment of a loan that was made or originated by a school, as having been paid to the subsequent holder on the borrower's behalf.

(d) *The Secretary's approval.* The approval of the Secretary is required prior to the assignment of a note to an eligible lender that has not entered into a contract of insurance with the Secretary under § 682.503.

(e) *Trustee responsibility.* A lender to whom a loan is assigned in its capacity as a trustee assumes responsibility for complying with all applicable statutory and regulatory requirements imposed on any other holder of a loan.

(f) *Warranty.* (1) Nothing in this section precludes the buyer of a loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of guaranteed loss, if any, on a claim filed on the loan.

(2) The warranty may only cover reductions which are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters the buyer is responsible for under the requirements in this part.

(20 U.S.C. 1078-2, 1079, 1080, 1082)

§ 682.515 Consequences of failure of a borrower or student to establish eligibility.

(a) The lender shall immediately send a final demand letter to the borrower, as required by § 682.513(e), when it learns that the borrower or, if applicable, the student on whose behalf a parent has borrowed—

(1) Did not qualify for all or a portion of a loan made under this part; or

(2) Has received a GSLP loan subject to payment of Federal interest benefits as provided under § 682.301, but is in fact ineligible for such interest benefits.

(b) The lender shall neither bill the Secretary nor be entitled to interest benefits on a loan after it learns that one of the conditions described in paragraph (a) of this section exists with respect to the loan.

(c) In the final demand letter, transmitted under paragraph (a) of this section, the lender shall demand that, within 30 days, the borrower repay in full the principal amount of the ineligible portion of the loan, accrued interest thereon, and all interest benefits paid by the Secretary thereon.

(d) If the borrower repays the amounts described in paragraph (c) of this section within the 30-day period, the lender shall, on its next quarterly interest billing submitted under § 682.304, refund to the Secretary the interest benefits repaid by the borrower, and all other interest benefits previously billed to the Secretary on the ineligible portion of the loan.

(e) If the borrower repays to the lender the principal amount of the ineligible portion of the loan, the lender shall treat that payment as a prepayment on the loan.

(f) If a borrower fails to comply with the terms of a final demand letter described in paragraph (a) of this section, the loan shall be considered in default, and the lender shall file a default claim thereon with the Secretary for the entire unpaid balance of principal and accrued interest within the time specified in § 682.518(e)(1).

(20 U.S.C. 1077, 1078, 1078-2, 1082)

§ 682.516 Special conditions for filing a claim.

(a) A lender shall cease collection activity on a loan and file a claim with the Secretary within the time specified in § 682.518(e)(2), when—

(1) The lender learns that the school, in which the student on whose behalf the loan was made enrolled, terminated its teaching activities involving that student during the academic period covered by the loan; or

(2) The Secretary directs that the claim be filed.

(b) A lender may not, as a result of a claim filed with the Secretary under this section, make a report to any credit bureau or other third party concerning the borrower's failure to repay the loan.

(20 U.S.C. 1078-2, 1080, 1082)

§ 682.517 Death, disability, and bankruptcy.

(a) *Death.* (1) If an individual borrower dies, the borrower's obligation to make any further payments of principal and interest on the loan is cancelled. However, if a Federal PLUS Program loan was obtained by two parents as co-makers, and only one of the parents dies, the surviving parent remains obligated to repay the loan.

(2) The lender may determine that a borrower has died on the basis of a death certificate or other proof of death

that is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan is cancelled only upon a determination by the Secretary on the basis of other evidence that the Secretary finds conclusive.

(3) Once the lender has determined that the borrower has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(4) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's death.

(b) *Total and permanent disability.* (1) If the lender determines that an individual borrower is totally and permanently disabled, the borrower's obligation to make any further payments of principal and interest on a loan is cancelled. However, if a Federal PLUS Program loan was obtained by two parent borrowers as co-makers, and only one of the borrowers becomes totally and permanently disabled, the other borrower remains obligated to repay the loan. A borrower is not considered totally and permanently disabled on the basis of a condition that existed before he or she applied for the loan, unless the borrower's condition has substantially deteriorated since he or she submitted the loan application.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender shall promptly request that the borrower or the borrower's representative obtain a certification from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, on a form provided by the Secretary, that the borrower is totally and permanently disabled. The lender shall continue collection until it receives the certification or receives a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled. After receiving the physician's certification or letter, the lender may not attempt to collect from the borrower or any endorser.

(3) After receiving the physician's certification described in paragraph (b)(2) of this section, the lender shall return any payments that it received from or on behalf of the borrower after the date the borrower or the borrower's representative notified the lender of the borrower's claim described in paragraph (b)(2) of this section.

(4) If the lender determines that a loan owned by a borrower who claims to be totally and permanently disabled is not eligible for cancellation for that reason, or if the lender has not received the physician's certification, described in paragraph (b)(2) of this section, within 60 days of the receipt of the physician's letter described in paragraph (b)(2) of this section, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender received the physician's letter described in paragraph (b)(2) of this section, and any interest payments forborne may be capitalized in accordance with § 682.202.

(c) *Bankruptcy.* (1) If an individual borrower's repayment obligation on a loan is discharged in bankruptcy, the Secretary will assume the borrower's liability for unpaid principal and interest on the loan. However, if a Federal PLUS Program loan was obtained by two parent borrowers as co-makers and only one of the borrowers has his or her loan obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan and the Secretary does not assume liability for unpaid principal and interest.

(2) The lender shall determine that a borrower has filed a bankruptcy petition on the basis of a notice of the first meeting of creditors received from the bankruptcy court.

(3) Once a lender determines that a borrower has filed a bankruptcy petition, the lender may not attempt to collect on the loan and shall file a bankruptcy claim with the Secretary.

(4) If the loan obligation is not ultimately discharged in the bankruptcy proceeding, the lender is not required to repurchase the loan.

(20 U.S.C. 1078-2, 1082, 1087)

§ 682.518 Procedures for filing a claim.

(a) *Filing a claim application.* (1) A lender may file a claim against the Secretary's guarantee on a FISLP or Federal PLUS Program loan for any of the following reasons:

(i) The loan is in default, as defined in § 682.200.

(ii) Any of the conditions exist for filing a claim without collection efforts, as set forth in § 682.515 or § 682.516.

(iii) The borrower has died.

(iv) The borrower is totally and permanently disabled.

(v) The borrower has filed a bankruptcy petition.

(2) If a PLUS Program loan was obtained by two eligible parents as co-makers, the reason for filing a claim thereon must hold true for both parents.

(3) A lender shall file a claim against the Secretary's guarantee on a form provided by the Secretary. The lender shall attach to the claim all documents required by the Secretary. If the lender fails to submit all required documents, the Secretary denies the claim.

(b) *Documentation required for all claims.* The Secretary requires the following documentation for all claims:

(1) The original promissory note.
(2) The loan application.
(3) The repayment instrument, in the case of a FISLP loan.

(4) A payment history, as described in § 682.522(a)(2)(ix), if any payments have been made.

(5) A collection history, as described in § 682.522(a)(2)(x).

(6) A copy of the final demand letter, if required by § 682.513(e).

(7) The original or a copy of all correspondence addressed to, from, or on behalf of the borrower that is relevant to the loan owned by the borrower, whether that correspondence involved the original lender, a subsequent holder, or a servicing agent.

(8) If applicable, evidence of the lender's requests to the Department of Education for skip-tracing assistance under § 682.513(c), and for preclaims assistance under § 682.513(d).

(9) Any additional documentation that the Secretary deems relevant to a claim.

(c) *Assignment of note.* The Secretary's payment of a claim is contingent upon receipt from the lender of an assignment to the United States of America of all rights, title, and interest of the lender in the note underlying the claim. The lender shall also agree to reimburse the Secretary for any overpayments of interest benefits or special allowance that the Secretary may have made respecting the loan.

(d) *Additional documentation required for specific categories of claims.*—(1) *Default claims.* (i) In the case of a claim filed on a loan made by a school lender, whether or not the claim is filed by the school, the lender shall file with its claim a statement from the school indicating whether the borrower enrolled on at least a half-time basis at the school for the academic period for which the loan was intended. If the student traveled to the school but decided not to enroll, the school shall state the amount of the loan that was reasonably necessary for the student's travel from the student's residence to the school.

(ii) If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the proceeding of the borrower in bankruptcy, the lender shall promptly forward that notice to the Department of

Education. Under these circumstances the lender shall not file a proof of claim with the bankruptcy court.

(2) *Death claims.* The lender shall submit with a death claim those documents that formed the basis for its determination of death.

(3) *Disability claims.* The lender shall submit with a disability claim a copy of the certification of disability described in § 682.516(b)(2) of this part.

(4) *Bankruptcy claims.* In the case of a bankruptcy claim, in addition to the documentation required for all claims, the lender shall submit—

(i) Evidence that a bankruptcy petition has been filed, and all pertinent documents sent to or received from the bankruptcy court by the lender; and

(ii) A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy, and all documents supporting those facts.

(e) *Claim filing deadlines.* As a condition for obtaining payment, a lender shall comply with the following requirements for filing default, death, disability, and bankruptcy claims:

(1) *Default claims.* Unless the lender has already filed suit against the borrower in accordance with § 682.513(f), it must file a default claim on a loan with the Secretary within 90 days after default. For a claim filed pursuant to § 682.515, the lender shall file a claim within 90 days following transmission of the final demand letter sent pursuant to § 682.515(c), if the borrower failed to comply with the terms thereof within 30 days of such transmission.

(2) *Special condition claims.* In the case of a special condition claim filed pursuant to § 682.516, the lender must file a claim with the Secretary within 90 days of the date the lender determines that the conditions set forth in § 682.516(a)(1) exist, or the date the Secretary directs that the claim be filed pursuant to § 682.516(a)(2).

(3) *Death and disability claims.* A lender must file a death or disability claim with the Secretary within 60 days after the lender determines that a borrower has died or is totally and permanently disabled, in accordance with the procedures in § 682.517.

(4) *Bankruptcy claims.* A lender must file a bankruptcy claim with the Secretary within 30 days after the lender receives notice of the first meeting of creditors in a borrower's bankruptcy proceeding.

(20 U.S.C. 1078-2, 1080, 1082, 1087)

§ 682.519 Determination of amount of loss on a claim.

(a)(1) *Default claims.* The amount of loss to be paid on a default claim depends upon the date the Secretary received the application for a guarantee commitment on the loan. If the application was received—

(i) Prior to July 1, 1972, or between August 19, 1972, and February 28, 1973, the amount of loss to be paid on the claim is equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) Between July 1 and August 18, 1972, or after February 28, 1973, the amount of the loss to be paid on the claim is equal to the unpaid balance of the principal and interest. The unpaid principal amount of the loan may include capitalized interest to the extent authorized by § 682.202.

(2) *Death and total and permanent disability claims.* The amount of loss to be paid on a death or disability claim depends upon the date the loan was disbursed. If the loan was disbursed—

(i) Prior to December 15, 1968, the amount of loss to be paid on the claim is equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) After December 14, 1968, the amount of loss to be paid is equal to the unpaid balance of the principal and interest that accrues before the determination that the borrower is either deceased or totally and permanently disabled. The unpaid principal amount may include capitalized interest to the extent authorized by § 682.202.

(3) *Bankruptcy claims.* The amount of loss to be paid on a bankruptcy claim is equal to the balance of the principal and interest. The unpaid principal amount may include capitalized interest to the extent authorized in § 682.202.

(b) *Payment of additional interest:* When the guarantee covers unpaid interest, the payment of an approved claim covers the unpaid interest that accrues during the following periods:

(1) During the period before the claim is filed, not to exceed the period provided for in § 682.516(e) for filing the claim.

(2) During a period not to exceed 30 days following the return of the claim to the lender by the Secretary for additional documentation necessary for the claim to be approved by the Secretary.

(3) During the period required by the Secretary to approve the claim and to authorize payment.

(c) *Special rules for a loan acquired by assignment:* Except as provided in

paragraph (d)(2) of this section, if a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. For example, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(d) Special rules for loans made by a school lender: (1) If the loan for which a claim is filed was made by a school and the claim is filed by that school, the Secretary deducts from the claim—

(i) An amount equal to any unpaid refund that the school owes the student to whom or on whose behalf the loan was made under § 682.607; or

(ii) An amount which bears the same ratio to the total amount of the claim as the amount of educational services that the student was unable to complete, because the school terminated its teaching activities during the period for which the loan was obtained, bears to the total educational services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activity.

(2) If the loan for which a claim is filed was originally made by a school, but the claim is filed by another lender that obtained the note by assignment, the Secretary deducts from the claim the amount determined—

(i) Under paragraph (d)(1)(i) of this section that was due the student prior to the assignment of the loan; or

(ii) Under paragraph (d)(1)(ii) of this section.

(e) Special rule for loans originated by a school: A loan that is originated by a school is treated, for purposes of subsection (d) of this section, as if it were a loan made and still held by the school.

[20 U.S.C. 1078-2, 1080, 1082]

§ 682.520 Factors affecting coverage of a loan under the loan guarantee.

(a)(1) In determining whether to approve for payment a claim against the Secretary's guarantee, the Secretary considers matters affecting the enforceability of the loan obligation, and whether the loan was made and administered in accordance with the Act and applicable regulations.

(2) The Secretary deducts from a claim any amount that is not a legally enforceable obligation of the borrower,

except to the extent that the defense of infancy applies.

(3) Except as provided in § 682.521 the Secretary does not pay a claim unless—

(i) All holders of the loan have complied with the requirements of this part, including, but not limited to, those concerning due diligence in the making, servicing, and collecting of a loan;

(ii) The current holder has complied with the deadlines for filing a claim established in § 682.518(e); and

(iii) The current holder complies with the requirements for submitting documents with a claim as established in § 682.518 (b) and (d).

(b) Except as provided in § 682.521, the Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary.

(c) The Secretary's determination of the amount of loss payable on a default claim under this section, once final, is conclusive and binding on the lender that filed the claim.

(Note.—A determination of the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322)

[20 U.S.C. 1078-2, 1079, 1080, 1082]

§ 682.521 Procedures for receipt or retention of payments where the lender has violated program requirements for FISLP loans.

(a) The Secretary may waive the right to recover or refuse to make an interest benefits, special allowance or claim payment, or may permit a lender to cure certain defects in a specified manner when, in the Secretary's judgment, the best interests of the United States so require.

(b) In order for a lender to receive payment on a default claim or to resume eligibility to receive interest benefits and special allowance on a loan as to which the lender has committed a violation of the requirements of this part regarding due diligence in collection or timely filing of claims, it must meet the conditions described in Bulletin L-77a, set forth as Appendix C to this Part.

[20 U.S.C. 1078-2, 1080, 1082]

§ 682.522 Records, reports, and inspection requirements for program lenders.

(a)(1) A lender shall keep complete and accurate records of each loan that it holds. The records shall be organized in such a way as to permit ready identification of the current status of each loan.

(2) The lender shall keep—

(i) The loan application;

(ii) The original promissory note,

including the repayment instruments, until the loan is fully repaid, after which a copy is required;

(iii) The repayment schedule;

(iv) A record of each disbursement of loan proceeds;

(v) Notices of changes in a borrower's address and status as at least a half-time student;

(vi) Evidence of the borrower's eligibility for a deferment;

(vii) The documents required for the exercise of forbearance;

(viii) Documentation of the assignment of the loan;

(ix) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment attributable to principal and interest;

(x) A collection history, showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan and each effort to locate a borrower whose address was unknown at any time; and

(xi) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted under this part.

(3)(i) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(ii) The lender may store records on microfilm or computer format. However, the holder of the promissory note shall retain the original note and repayment instrument until the loan is fully repaid. At that time the lender shall return the original note and repayment instrument to the borrower, and retain copies for the prescribed period.

(b) Reports: A lender shall submit reports to the Secretary at the time and in the manner that the Secretary may reasonably require.

(c) Inspections: Upon request, a lender or its agent shall afford the Secretary, the Comptroller General of the United States, and any of their authorized representatives, access to its records in order to verify the accuracy of its reports or the lender's compliance with the Act and applicable regulations.

[20 U.S.C. 1077, 1078, 1078-2, 1079, 1080, 1082]

Subpart F—Requirements, Standards, and Payments for Participating Schools

§ 682.600 Agreement between an eligible school and the Secretary for participation in the Guaranteed Student Loan and PLUS Programs.

(a) *General.* Participation of a school in the GSLP and the PLUS Program means that the school's students are eligible to receive GSLP and PLUS Program loans. To participate in the GSLP and the PLUS Program under either the FISLP, the Federal PLUS Program or a guarantee agency program, a school must—

(1) Establish its basic eligibility as an institution of higher education or a vocational school as defined in 34 CFR Part 668 through certification by the Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, Department of Education; and

(2) Enter into a written program participation agreement with the Secretary that is signed by an appropriate official of the school on a form approved by the Secretary.

(b) *Program participation agreement.* The school, in this agreement, promises to comply with the applicable provisions of—

(1) The Act and the regulations in this part; and

(2) The Student Assistance General Provisions, 34 CFR Part 668.

(c) *Appeal of denial or limitations.* (1) If the Secretary denies a request for an agreement or approves only limited participation in the GSLP or the PLUS Program by a school—

(i) The reason for the decision is included in the Secretary's response to the request; and

(ii) The Secretary provides an opportunity for the school to meet with a designated Department official to appeal that decision.

(2) The Secretary does not, however, grant an opportunity for appeal, or give reasons for denying the participation or approving only the limited participation of a school, if the school submits its request within six months of a previous denial or limited approval.

(d) *Foreign schools.* A foreign school shall be required to comply with the provisions of these regulations to the extent determined by the Secretary.

(20 U.S.C. 1078-2, 1082, 1094)

§ 682.601 Agreement between the Secretary and a school that makes or originates loans.

(a) *General.* A school must have an agreement with the Secretary in order to

make or originate loans under either the GSLP or the PLUS Program.

(b) *Contents of the agreement.* An agreement to allow a school either to make or to originate loans contains the following terms:

(1) The school will not make or originate loans which would be outstanding to more than 50 percent of its undergraduates in attendance at that school on at least a half-time basis, unless the Secretary waives this rule pursuant to paragraph (d) of this section.

(2) The school will inform any undergraduate student, who has not previously obtained a loan that was made or originated by the school and who seeks to obtain such a loan, that he or she must first make a good faith effort to obtain a loan from a commercial lender.

(3)(i) The school will not make or originate a loan for an academic period to a student described in paragraph (b)(2) of this section until the student provides the school with evidence under paragraph (c) of this section of denial of a loan by a commercial lender for the same academic period.

(ii) In determining whether a school has complied with the requirement set forth in paragraph (b)(3)(i) of this section, the Secretary may take into consideration any patterns reflected by the letters of denial or the students' sworn statements referred to in paragraph (c) of this section that indicate that the school has not given sufficient counseling to students to first seek loans from a commercial lender. An example of an unacceptable pattern would be if all denials of loans to a school's students were made by a small number of lenders.

(4) The school will not make originate a loan for an academic year in excess of the lesser of \$2,500 or half the estimated cost of attendance to a student who—

(i) Is in the first academic year of study as undergraduate; and

(ii) Was not previously enrolled in an undergraduate program.

(5) Loans that the school makes or originates shall be disbursed in multiple installments in accordance with the disbursement requirements in § 682.506(b)(1)(ii) if—

(i) The loan amount exceeds \$1,500 for the academic year;

(ii) The borrower is in the first academic year of study as an undergraduate; and

(iii) The borrower was not previously enrolled in an undergraduate program.

(c) *Establishing a loan denial by a commercial lender.* (1) To verify that a borrower has sought and been denied a loan from a commercial lender, pursuant

to paragraph (b)(3) of this section, the school shall obtain from the borrower—

(i) A written statement from a commercial lender indicating that the lender denied the borrower a loan for that academic period; or

(ii) The borrower's sworn statement, indicating both the refusal of a loan by a commercial lender and the lender's refusal to provide a written statement of the denial.

(2) If the borrower's statement is used to establish the denial of a loan, the statement must include—

(i) The name of the lender that denied the loan;

(ii) The approximate date on which the loan was denied;

(iii) The name of the official who communicated the denial to the borrower; and

(iv) The borrower's signature.

(3) If the school determines that the denial of a loan to an eligible borrower by a commercial lender is based upon the lender's refusal to lend more than a part of the amount requested by the borrower, the school may either—

(i) Make or originate a loan to that borrower for the entire amount; or

(ii) Supplement the loan that the commercial lender is willing to make with a second loan to the borrower.

(d) *Waiver of the 50 percent lending limit.* A school may request the Secretary to waive the 50 percent lending limit described in paragraph (b)(1) of this section if adherence to that limit would create a substantial hardship to the school's present or prospective students. The Secretary determines whether to grant the school a waiver after considering—

(1) The extent to which the school provides, and expects to continue providing, educational opportunities to economically disadvantaged students, as measured by the percentage of those students enrolled at the school who—

(i) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll, or continue their enrollment, at that school without GSLP or PLUS Program loans made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school;

(2) The extent to which the school offers academic programs that—

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit; and

(3) The quality of the school's—

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(20 U.S.C. 1075, 1078, 1078-2, 1082, 1083)

§ 682.602 Providing employment data to prospective students.

(a) In addition to the specific requirements of Subpart C (Student Consumer Information Services) of 34 CFR Part 668, a school that offers programs or courses of study designed to prepare students for a particular vocational, trade, or career field—

(1) Shall provide a prospective student in that program or course with a written statement regarding the percentage of previously enrolled students who entered positions of employment directly related to their course of study at the school and data regarding the average starting salaries of those students; or

(2) Shall provide the prospective student with the most recent comparable regional or national statistical student employment data in lieu of the information about the school's own students if—

(i) After a reasonable effort the school cannot obtain meaningful data on the employment of its own students; or

(ii) The data the school possesses regarding its own students is more than three years old and cannot, after a reasonable effort, be updated.

(b) To the extent that information is available, the school shall provide a prospective student with information regarding the long-range prospects for employment in the particular vocational, trade, or career field that the student intends to prepare for at the school.

(20 U.S.C. 1078-2, 1082, 1085, 1094)

§ 682.603 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students, which must be given to a prospective student prior to that student's enrollment.

(b) The school shall include in its schedule—

(1) The number of lessons in the course;

(2) The intervals at which lessons are to be submitted;

(3) The date by which the course is to be completed; and

(4) The period of time within which any resident training must be completed.

(c) The school's schedule shall conform to the requirements set forth in paragraph (b) of the definition of "vocational school" in 34 CFR 668.6.

(20 U.S.C. 1078-2, 1082)

§ 682.604 Certification by a participating school in connection with a loan application.

(a) A school shall accurately and completely fill out the portion of a loan application to be completed by the school. Except as provided in Part 663 Subpart E, a school may rely in good faith upon statements made on the application by the student.

(b) The information to be certified by the school pertains to—

(1) The borrower's eligibility for a loan as determined in accordance with § 682.201;

(2) The student's estimated cost of attendance for the period for which the loan is sought;

(3) The student's estimated financial assistance for the period for which the loan is sought; and

(4) For a GSLP loan, the student's eligibility for interest benefits, as determined in accordance with § 682.301.

(20 U.S.C. 1077, 1078, 1078-2, 1082, 1085, 1094)

§ 682.605 The borrower's loan check.

(a) *Purpose.* This section establishes rules governing a school's processing of a borrower's loan check. The school shall also comply with any rules for processing a loan check contained in 34 CFR Part 668. The rules in this section do not apply to a loan made by a school lender if the student is attending that school.

(b) *General.* (1) Except in the case of a PLUS Program loan to a parent borrower or a loan to a student attending a foreign school, a GSLP or PLUS Program loan check is made jointly payable to the borrower and the school and is sent directly to the school by the lender.

(2) Except in the case of a late disbursement under paragraph (e) of this section, a school may release the proceeds of a loan made under this part only to a student who has maintained eligibility in accordance with the provisions of § 682.201.

(c) *Processing of the check by the school.* When a school receives a loan check, it shall hold the check until the student enrolls, and then either—

(1) Endorse the check on its own behalf and promptly deliver it to the student; or

(2) Obtain the student's endorsement, endorse the check on its own behalf, apply to its own account the portion of the loan proceeds that the student currently owes the school for costs of attendance, as described in paragraph (d) of this section, and promptly deliver the remaining loan proceeds to the student.

(d) *Applying the loan proceeds.* When a school receives a loan check, it may

only apply to its own account those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students have been billed. If the school determines that the student has not enrolled as expected, the school shall return the check to the lender within 30 days of this determination.

(e) *Processing a late disbursement check.* (1) For the purposes of this paragraph, a loan check is considered a late disbursement check if the school receives the student's loan check from the lender either—

(i) After the end of the period of attendance for which the loan was made (*i.e.*, the expiration date of the guarantee commitment); or

(ii) Before the end of the academic period for which the loan was made, but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) If a late disbursement check is accompanied by a notice from the lender that the late disbursement has been approved by the Secretary under § 682.508(g), or the appropriate guarantee agency, the school shall follow the procedure described in paragraph (c)(2) of this section.

(3) If a late disbursement check is not accompanied by the notice described in paragraph (e)(2) of this section, the school shall—

(i) Return the check to the lender within 30 days of its determination that one of the conditions described in paragraph (e)(1) of this section exists;

(ii) Send with the check—

(A) A notice that one of the conditions described in paragraph (e)(1) of this section exists; and

(B) If applicable, information concerning the student's date of withdrawal and costs of attendance owed the school for the period in which the student was enrolled on at least a half-time basis; and

(iii) Advise the student that the lender may, in accordance with the procedures in § 682.508(g) or similar procedures established by the guarantee agency, reimburse funds for the student's costs of attendance incurred before the existence of one of the conditions described in paragraph (e)(1) of this section.

(20 U.S.C. 1078, 1078-2, 1082)

§ 682.606 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school shall determine the date (to include day, month, and year) on which a student to whom or on whose behalf a loan has been made

under this part withdraws from the school, for the purpose of calculating the amount of a refund due the student from the school and reporting to the lender that the student has withdrawn.

(b) *The withdrawal date.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of the student's withdrawal; or

(ii) The date the school determines that the student has withdrawn.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the date of the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is normally 60 days after the due date of a required lesson that the student failed to submit in accordance with the schedule for lessons established under § 682.603. However, if the student establishes in writing, within the 60-day period, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school shall not grant the student more than one restoration to in-school status on this basis.

(c) *Leaves of absence.* A student who has been absent from school and has been granted a leave of absence by the school, in accordance with this paragraph, is not considered to have withdrawn from school for purposes of this section. A school may grant no more than a single leave of absence to a student, provided that—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed—

(i) Sixty days; or

(ii) Six months, under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a recommendation from a physician for a leave of absence longer than 60 days.

(20 U.S.C. 1078-2, 1082, 1094)

§ 682.607 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which the school shall make a refund of unearned tuition, fees, and room and board charges to a student who received a GSLP or PLUS Program loan, or whose parent received a PLUS Program loan on behalf of the student, if the student—

(i) Does not enroll for the period of attendance for which the loan was intended; or

(ii) Does not complete the period of attendance for which the loan was made.

(2) The school shall provide a written statement containing its refund policy to a prospective student prior to the student's acceptance for initial enrollment, and shall make its policy known to currently enrolled students. The school shall include in its statement the procedures that a student must follow to obtain a refund. If the school changes its refund policy, it shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if that policy conforms with—

(1) The requirements of applicable State law; and

(2)(i) Specific refund standards established by the school's nationally recognized accrediting agency and approved by the Secretary; or
(ii) If no such standards exist, the specific refund policy standards contained in Appendix A to this part, or the refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary.

(20 U.S.C. 1078-2, 1082, 1094)

§ 682.608 Payment of a refund to a lender.

(a) *General.* By applying for a GSLP or PLUS Program loan, a borrower authorizes the school to pay directly to the lender that portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to a GSLP or PLUS Program loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity; and

(2) Shall provide simultaneous written notice to the borrower and, if the borrower is a parent, to the student on whose behalf the loan was made, when the school pays a refund to a lender on behalf of that student.

(b) *Allocation of refund.* In determining what portion of a student's

refund for an academic period is allocable to a loan received by the borrower for the same academic period, the school shall follow the procedures established in 34 CFR 688.

(c) *Timely payment.* A school shall pay each refund that is due—

(1) Within 30 days after the date of the student's withdrawal from the school, as determined in accordance with § 682.606; or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 682.606(c), within 30 days after the last day of that leave of absence.

(d) *Transition requirements.* In the event of a school's closure, termination, suspension of operations, or change in ownership, the school or its successors shall make provisions for compliance with the requirements of this section with regard to students who obtained, or on whose behalf parents obtained, loans for periods of attendance at the school that began prior to the school's change in status.

(20 U.S.C. 1078-2, 1082, 1094)

§ 682.609 Termination of a school's lending eligibility.

(a) *General.* The Secretary terminates a school's eligibility to make loans under this part, if the school reaches the 15 percent limit on loan defaults described in paragraph (b) of this section.

(b) *The 15 percent limit.* (1) The Secretary terminates a school's eligibility to make loans if, during each of the two most recent consecutive one-year periods for which data is available, the total amount of loans described in paragraph (b)(1)(i) of this section is equal to or greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section.

(i) The original principal amount of all loans the school has ever made that went into default during that period.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination under this section, the Secretary considers the status of all GSLP and PLUS Program loans made by the school, whether the loans are held by the school or by a subsequent holder.

(c) *Exception based on hardship.* The Secretary does not terminate a school's lending eligibility under paragraphs (a) and (b) of this section if the Secretary

determines that the termination would result in a hardship for the school or its students. The Secretary makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will cause the school's loan delinquency rate to improve within the next year. Examples of these improvements include—

(i) Adopting more efficient collection procedures; or

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students or their parents based on—

(i) The extent to which the school provides, and expects to continue to provide, educational opportunities to economically disadvantaged students, as measured by the percentage of students enrolled at the school who—

(A) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll, or continue their enrollment, at that school without a loan from the school; and

(C) Would not be able to obtain a comparable education at another school;

(ii) The extent to which the school offers academic programs that—

(A) Are unique in the geographical area that the school serves; and

(B) Would not be available to some students if they or their parents could not obtain loans from the school; and

(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) *Termination procedures.* (1) The Secretary does not terminate the lending eligibility of a school under this section until the school has been notified of the impending action and has had an opportunity for a hearing.

(2) The Secretary or a Department of Education official designated by the Secretary begins a termination action by sending a notice to the school. The notice is sent by certified mail with return receipt requested. The notice—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed effective date of the termination as the following October 1; and

(iii) Informs the school that it has 15 days to—

(A) Submit any written material it wants considered in determining

whether its lending eligibility should be terminated under paragraphs (a) and (b) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request a hearing to show why the school's lending eligibility should not be terminated.

(3) If the school does not request a hearing but submits written material, the Secretary or the designated official considers that material and notifies the school as to whether the termination action will be taken.

(4) The Secretary or the designated official (presiding officer) schedules the date and place of a hearing for a school that has requested a hearing. The date of the hearing is at least 15 days from the date of receipt of the request. A presiding officer—

(i) Conducts the hearing;

(ii) Considers all written material presented before the hearing and any other material presented during the hearing; and

(iii) Determines if termination of the school's lending eligibility is warranted.

(5) The decision of the presiding officer, or of the designated official, in the event that the school has submitted written material but has not requested a hearing, is subject to review by the Secretary.

(e) *Effects of termination.* A school that has its lending eligibility terminated under this section may not—

(1) Make further loans under this part unless it has entered into a new lending agreement with the Secretary under § 682.601; or

(2) Enter into a new guarantee agreement with the Secretary until at least one year after the school's lending eligibility has been terminated under this section.

(f) *Schools under the same ownership.* If a school makes a loan to students or parents of students in attendance at other schools under the same ownership, the Secretary may make the determinations required by this section by—

(1) Treating all of the schools as one school; or

(2) Treating each school on an individual basis.

(20 U.S.C. 1078-2, 1082, 1085)

§ 682.610 Records, reports, and inspection requirements for participating schools.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in these regulations and in 34 CFR Part 668 in order to—

(i) Protect the rights of students and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with any specific requirements in these regulations and in 34 CFR Part 668.

(2) Submit all reports required by this part and 34 CFR Part 668 to the Secretary.

(b) *Loan record requirements.* In addition to records required by 34 CFR Part 668, for each loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application and a record of—

(1) The name of the lender;

(2) The address of the lender;

(3) The amount of the loan and the period of attendance for which the loan was intended;

(4) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(5) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(6) In the case of a GSLP loan for which the borrower applies for interest benefits under § 682.301, the data used to determine the student's adjusted gross family income and the student's expected family contribution, and the corresponding certification by the school to the lender;

(7) In the case of a GSLP loan—

(i) The date the school received each loan check;

(ii) The date the school endorsed each loan check; and

(iii) The date or dates of transmittal of the loan proceeds to the student; and

(8) A record of the student's job placement, if known.

(c) *Student status reports.* A school shall—

(1) Upon receipt of a student confirmation report form from the Secretary or a similar status confirmation report form from any guarantee agency, complete and return, within 30 days of receipt, that report to the Secretary or the guarantee agency, as appropriate; and

(2) Promptly notify the lender—

(i) When the school discovers that a student who has received a GSLP loan has ceased to be enrolled on at least a half-time basis and it does not expect to submit, within the next 60 days, its next student confirmation report to the Secretary or the guarantee agency;

(ii) When the school discovers that a PLUS Program loan has been made to or on behalf of a student who has been

accepted for enrollment at that school but who fails to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) When the school discovers that a full-time student to whom a PLUS Program loan was made has ceased to be enrolled on a full-time basis.

(d) *Record retention requirements.* Unless otherwise directed by the Secretary, the school or its successors—

(1) Shall keep all records required under these regulations for five years following the last day of the period for which the loan was intended;

(2) Shall keep for five years after their completion, copies of reports and other forms used by the school and relating to the GSLP or the PLUS Program;

(3) Shall provide, in the event of the school's closure, termination, suspension, or change of ownership, for the retention of the records and reports required by these regulations and for access by the Secretary or his authorized representatives to those records and reports; and

(4) May keep records and copies of reports on microfilm or in computer format.

(e) *Inspection requirements.* Upon request, a school shall afford the Secretary, a guarantee agency and any of their authorized representatives, access to its records in order to verify the accuracy of its reports or the school's compliance with the Act and applicable regulations.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility Under the Guaranteed Student Loan Program and the PLUS Program

§ 682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination of the eligibility of an otherwise eligible lender to participate in the GSLP and the PLUS Program. These regulations apply to a lender that violates any statutory provision governing the GSLP or the PLUS Program or any regulations, special arrangements, agreements, or limitations prescribed under the GSLP or the PLUS Program. These regulations apply to lenders that participate in a guarantee agency program as well as lenders that participate in the FISLP or the Federal PLUS Program.

(b) This subpart does not apply—

(1) To a determination that an organization fails to meet the definition of "eligible lender" in § 435(g)(1) of the Act;

(2) To a school's loss of lending eligibility under § 682.609; or

(3) To administrative action by the Department of Education based on any alleged violation of—

(i) The Family Educational Rights and Privacy Act of 1974 (Section 438 of the General Education Provisions Act), which is governed by 34 CFR Part 99;

(ii) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR Parts 100 and 101;

(iii) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap), which is governed by 34 CFR Part 104; or

(iv) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR Part 106.

(c) This subpart does not supplant any rights or remedies that the Secretary may have against participating lenders under other authorities.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.701 Definitions of terms used in this subpart.

The following definitions are used in this subpart:

Designated Departmental official: An official of the Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing limitation, suspension, or termination proceedings.

Limitation: The continuation of a lender's eligibility subject to compliance with special conditions established by the Secretary as the result of a limitation or termination proceeding.

Suspension: The removal of a lender's eligibility for a specified period of time or until the lender fulfills certain requirements.

Termination: The removal of a lender's eligibility for an indefinite period of time.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.702 Effect on participation.

(a) Limitation, suspension, or termination proceedings do not affect a lender's responsibilities, or rights to benefits and claim payments, that are based on the lender's prior participation in the program, except as provided in paragraph (c) of this section and in § 682.709.

(b) Effect of limitation: A limitation imposes on a lender—

(1) A limit on the number of total amount of GSLP or PLUS Program loans that a lender may make, purchase, or hold;

(2) A limit on the number or total amount of GSLP or PLUS Program loans a lender may make to, or on behalf of, students at a particular school; or

(3) Other reasonable requirements or conditions, including those described in § 682.709.

(c) Effect of termination: After the effective date of the termination of a lender's eligibility, the Secretary does not guarantee new loans made by that lender or pay interest benefits, special allowance, or reinsurance on new loans guaranteed by a guarantee agency after such date. The Secretary may also prohibit the lender from making further disbursements on a loan for which a guarantee commitment has already been issued.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section when the Secretary receives a complaint or other reliable information indicating that a lender may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) Under the informal compliance procedure, the Secretary gives the lender a reasonable opportunity to—

(1) Respond to the complaint or information;

(2) Show that the violation has been corrected; or

(3) Submit an acceptable plan for correcting the violation and preventing its recurrence.

(c) The Secretary does not delay limitation, suspension, or termination procedures during the informal compliance procedure if—

(1) The delay would harm the GSLP or the PLUS Program; or

(2) The informal compliance procedure will not result in correction of the alleged violation.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.704 Emergency action.

(a) The Secretary, or a designated Department official, may take emergency action to stop issuing guarantee commitments to a lender if the Secretary—

(1) Receives reliable information that the lender is in violation of applicable laws, regulations, special arrangements, agreements, or limitations;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, parents, or students; and

(3) Determines that the likelihood of loss exceeds the importance of following the procedures for limitation, suspension, or termination.

(b) The Secretary begins an emergency action by notifying the lender, by certified mail with return

receipt requested, of the action and the basis for the action.

(c) The effective date of the action is the date the notice is mailed to the lender.

(d)(1) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that time expires.

(2) If a limitation, suspension, or termination proceeding is begun before the expiration of the 30-day period—

(i) The emergency action may be extended until completion of the proceeding, including any appeal to the Secretary; and

(ii) The Secretary provides, upon the request of the lender, an opportunity for the lender to demonstrate that the emergency action is unwarranted.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.705 Suspension proceedings.

(a) *Scope.* (1) A suspension removes a lender's eligibility under the GSLP and the PLUS Program, and the Secretary does not guarantee a new loan made by the lender for a period not to exceed 60 days from the effective date of the suspension, unless—

(i) The lender and the Secretary agree to an extension of the suspension period, if the lender has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) *Notice.* (1) The Secretary, or a designated Department official, begins a suspension proceeding by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to suspend the lender's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender that the suspension will not take effect on the proposed effective date if the Secretary receives, at least five days prior to that date, a request for a hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender to voluntarily correct any alleged violations.

(c) *Hearing.* (1) If the lender does not request a hearing but submits written material, the Secretary, or a designated Department official, considers the material and—

(i) Dismisses the proposed suspension; or

(ii) Notifies the lender of the effective date of the suspension.

(2) If the lender requests a hearing within the time specified in paragraph (b)(2)(v) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed suspension takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues a decision, based on findings of fact and conclusions of law, that may suspend the lender's eligibility only if the presiding officer is persuaded that the suspension is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence considered at or before the hearing and matters given official notice.

(6) The initial decision of the presiding officer is mailed to the lender.

(7) The Secretary reviews the decision of the presiding officer. The Secretary affirms a decision of the presiding officer imposing a suspension unless it is clearly unsupported by the evidence. The Secretary affirms a decision declining to impose a suspension if the Secretary believes suspension is not warranted by the evidence. The Secretary notifies the lender of the Secretary's decision by mail.

(8) A suspension takes effect on either the date that the notice of a decision imposing the suspension is mailed to the lender, or on the original proposed effective date stated in the notice sent under paragraph (b) of this section, whichever is later.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.706 Limitation or termination proceedings.

(a) *Notice.* (1) The Secretary, or a designated Department official, begins a limitation or termination proceeding, whether or not a suspension proceeding has begun, by sending the lender a

notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to limit or terminate the lender's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv) States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender that the limitation or termination will not take effect on the proposed effective date if the Secretary receives, at least five days prior to that date, a request for a hearing or written material showing why the limitation or termination should not take effect; and

(vii) Asks the lender to voluntarily correct any alleged violations.

(b) *Hearing.* (1) If the lender does not request a hearing but submits written material, the Secretary, or a designated Department official, considers the material and—

(i) Dismisses the proposed limitation or termination; or

(ii) Notifies the lender of the effective date of the limitation or termination.

(2) If the lender requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence

considered at the hearing and matters given official notice.

(6) If a termination action is brought against a lender, and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating the lender's eligibility.

(7) The initial decision of the presiding officer is mailed to the lender.

(8) Any time schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender and the Secretary or designated Department official.

(9) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued, unless the lender or designated Department official appeals the decision to the Secretary within this period.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender or designated Department official appeals the initial decision of the presiding officer in accordance with § 682.706(b)(9), the Secretary—

(1) Sets a time period for the appealing party to submit additional written material, including exceptions to the initial decision, proposed findings, and conclusions, and supporting briefs and statements;

(2) Sets a time by which the opposing party must respond; and

(3) Issues a final decision affirming, modifying, or reversing the initial decision, including a statement of the reasons for the Secretary's decision.

(b) Any party submitting material to the Secretary must provide a copy to each party that participated in the hearing.

(c) If the presiding officer's initial decision would limit or terminate the lender's eligibility, it does not take effect pending the appeal, unless the Secretary determines that a stay of the effective date would seriously and adversely affect the GSLP, the PLUS Program, students, or parents.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.708 Evidence of mailing and receipt dates.

(a) All mailing dates and receipt dates referred to in this subpart are evidenced by the original receipts from the U.S. Postal Service.

(b) If a lender refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender refuses to accept the notice.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Department official, may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender improperly received, withheld, disbursed, or caused to be disbursed.

(c) If a final decision requires a lender to reimburse or make any payment to the Secretary, the Secretary may offset the amount due against any interest benefits, special allowance, or other payments due to the lender.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.710 Removal of limitation.

(a) A lender may request removal of a limitation imposed in accordance with these regulations at any time more than 12 months after the effective date of the limitation.

(b) The request must be in writing and must show that the lender has corrected any violations on which the limitation was based.

(c) Within 60 days after receiving the request, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d)(1) If the Secretary denies the request or establishes other limitations, the lender, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender may continue to participate in the GSLP and the PLUS Program, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.711 Reinstatement after termination.

(a) A lender whose eligibility has been terminated by the Secretary in accordance with these regulations may request reinstatement of its eligibility at any time more than 18 months after the effective date of the termination.

(b) The request must be in writing and must show that—

(1) The lender has corrected any violations on which the termination was based; and

(2) The lender meets all requirements for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR Part 688, Student Assistance General Provisions, may not be considered for reinstatement as a GSLP or PLUS Program lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) Within 60 days after receiving a request for reinstatement, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e)(1) If the Secretary denies the lender's request, or allow reinstatement subject to limitations, the lender, upon request, is given an opportunity to show why its eligibility should be reinstated and all limitations removed.

(2) A lender, whose eligibility to participate in the GSLP and the PLUS Program is reinstated subject to limitations imposed by the Secretary pursuant to paragraph (d)(3) of this section, may participate in those programs, subject to those limitations, pending a decision by the Secretary on a request under paragraph (e)(1) of this section.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

Subpart H—[Reserved]

Appendix A—[Reserved]

Appendix B—[Reserved]

Appendix C—Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L-77a]

Introduction

This bulletin prescribes procedures for lenders to use (1) to cure violations of the requirements for due diligence in collection ("the diligence") and timely filing of claims under the Federal Insured Student Loan Program (FISLP), and (2) to repay interest and special allowance overbillings made on loans evidencing such violations. See 34 CFR 682.511, 682.516 (1981).¹ These procedures allow for the reinstatement of a lender's eligibility for interest and special allowance and claim payments on loans evidencing such violations, under specified circumstances. These procedures apply to loans for which

¹ All references to the program regulations are to Part 682 of Title 34 of the Code of Federal Regulations (34 CFR Part 682), which was formerly 45 CFR Part 177.

the first day of the 120-day or 180-day default period (set out in 34 CFR 682.200) occurred on or after October 21, 1979 (the effective date of the September 17, 1979, regulations), whether or not the loans have previously been submitted as claims to the Secretary.

The due diligence and timely filing requirements governing the FISLP were established in response to requests from some lenders for more detailed regulatory guidance on the proper handling of FISLP loans. Despite the promulgation of these provisions, a number of lenders have failed to exercise the requisite care in their treatment of these loans, thereby increasing the risk of default thereon and, in many cases, prejudicing the Secretary's ability to collect from the borrowers. At the time the current due diligence and timely filing rules were issued, the Secretary anticipated that violations of these rules would be so infrequent as to permit requests for cures to be handled individually. See 44 FR 53916 (September 17, 1979). However, the unexpectedly high incidence of violations of these rules has made continued case-by-case treatment of all cure requests administratively unmanageable. After carefully considering the views of lenders and other program participants, the Secretary has decided to exercise his authority under 20 U.S.C. 1082(a) (5), (6), and 34 CFR 682.517(g), and institute uniform procedures by which lenders with loans involving violations of the due diligence or timely filing requirements may cure these violations.

Due Diligence

Except as provided in 34 CFR 682.509(e)(3), collection activity is required to begin immediately upon delinquency by the borrower in honoring the repayment obligation. This holds true whether or not the borrower received a repayment schedule or signed a repayment agreement. Under 34 CFR 682.200, default on a FISLP loan occurs when a borrower fails to make a payment when due, provided this failure persists for 120 days for loans payable in monthly installments, or for 180 days for loans payable in less frequent installments. If, however, the lender has added the optional provision to the promissory note requiring the borrower to execute a repayment agreement not later than 120 days prior to the expiration of the grace period (see 34 CFR 682.509(e)(3)), the lender sends the agreement to the borrower 150 days or more before the end of the grace period, and the agreement is not executed before the end of the grace period, default occurs at that time. See 34 CFR 682.510(b)(ii). One exception to this rule is as follows: if the holder of the loan is not the lender that made the loan, the holder may choose to forego enforcement of the optional 120-day provision in the note.

The 120/180 day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the default period begins on February 1st, with the first

delinquency, and ends on August 1st, when the April 1st payment becomes 120 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time. Note: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. See 34 CFR 682.512. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

Timely Filing

The 90-day filing period applicable to FISLP default claims is set forth in 34 CFR 682.516(e)(1). The 90-day filing period begins at the end of the 120/180 day default period. The lender must file a default claim on a loan in default by the end of the filing period, unless the borrower brings the account current before the end of the filing period. In such a case, the lender may choose not to file a claim on the loan at that time.

In addition, for any loan less than 210 days delinquent on the date of this bulletin, the lender need not file a claim on that loan before the 210th day of delinquency (120-day default period plus 90-day filing period) if the borrower brings the account less than 120 days delinquent before such 210th day. Thus, in the above example, if the borrower makes the April 1st payment on August 2nd, the 90-day filing period continues to run from August 1st, unless the loan was less than 210 days delinquent on the date of this bulletin. If the loan was less than 210 days delinquent on the date of this bulletin, then the August 2nd payment makes the loan 91 days delinquent, and the lender may, but need not file a default claim on the loan at that time. If, however, that loan again becomes 120 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 120 days delinquent prior to the end of that 90 day period). In other words, for any loan less than 210 days delinquent on the date of this bulletin, the Secretary will permit a lender to treat payments made during the filing period as "curing" the default if such payments are sufficient to make the loan less than 120 days delinquent.

If a lender fails to comply with either the due diligence or timely filing requirements, the affected loan ceases to be insured; that is, the lender loses its right to receive interest benefits, special allowance and claim payments thereon. Some examples of violations of the due diligence requirements are set out in section I.C. below.

I. Cure Procedures

A. Definitions

The following definitions apply to terms used throughout Section I of this bulletin.

"Full payment" means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an

amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of \$30 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay \$15 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be \$30, or two \$15 payments in accordance with the original repayment schedule or agreement.)

"Reinstatement" with respect to insurance coverage means the reinstatement of the lender's right to receive default, death, disability, or bankruptcy claim payments for the unpaid principal balance of the loan and for unpaid interest accruing on the loan after the date of reinstatement. Upon reinstatement of insurance, the borrower regains the right to receive forbearance or deferments, as appropriate. For purposes of this bulletin, "reinstatement" with respect to insurance on a loan does not include reinstatement of the lender's right to receive interest and special allowance payments on that loan. Reinstatement of the lender's rights to receive interest and special allowance payments is addressed in Section I.B.1. below.

B. General

1. *Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations.* For any loan on which a cure is attempted under this bulletin, the lender may resume billing for interest and special allowance on the loan only for periods following the earlier of (1) its receipt of the equivalent of three full payments thereon, after the date of this bulletin or the date of the violation, whichever is later, or (2) receipt by the borrower of an authorized deferment, after reinstatement of insurance coverage.

2. *Reservation of the Secretary's Right to Strict Enforcement.* While this bulletin allows cures to be attempted for particular violations in specified ways, the Secretary retains the option of refusing to permit or recognize cures in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of the due diligence or timely filing rules, and in cases where the best interests of the program otherwise require strict enforcement of these requirements. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. *Interest and Special Allowance Repayment and Certification Required as a Condition for the Secretary's Recognition of a Cure.* The Secretary has commenced a concerted effort to recoup all excess interest and special allowance payments made on loans involving due diligence or timely filing violations. Accordingly, the Secretary will not recognize cures for such violations until the lender has filed an executed Interest and Special Allowance Certification Form (Attachment A) with the Division of

Certification and Program Review of the regional office responsible for the State in which the lender maintains its principal place of business. Additionally, the lender must enclose a photocopy of the certification with each "cured" claim it files.

4. *Applicability of the Cure Procedures to Particular Classes of Loans.* The cure procedures outlined in this bulletin apply only to a loan for which the first day of the 120/180 day default period that ended with default by the borrower occurred on or after October 21, 1979, and which involve violations *only* of the due diligence and/or timely filing requirements.

The cure procedures applicable to loans involving due diligence violations also apply to loans involving violations of both the timely filing and due diligence requirements.

5. *Excusal of Certain Due Diligence Violations.* A lender whose claim was previously denied *solely* for violation of the timely filing rule, and who is permitted to cure that violation under the procedures set out in this bulletin, will not be required to utilize the procedures for curing due diligence violations, or to repay interest and special allowance improperly received from the Secretary as a result of a due diligence violation for periods prior to the timely filing violation. This applies even if, upon submission of the "cured" claim, the Secretary discovers that evidence of due diligence violations appeared in the file of the previously rejected claim.

The Secretary will also excuse a due diligence violation by a lender if the account was brought current by the borrower (or another, other than the lender, on the borrower's behalf) prior to the 120th/180th day of the delinquency period during which the violation occurred.

6. *Treatment of Accrued Interest on "Cured" Claims.*—a. *Due Diligence Violations.* For any default claim involving "cured" violations of the due diligence rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the first day of the 120/180 day period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any loan involving "cured" due diligence violations, the lender may capitalize unpaid interest accruing on the loan from the commencement of the 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim on that loan, the lender must deduct this capitalized interest from the amount of the claim. This deduction must be reflected in Column 15 on the OE Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

b. *Timely Filing Violations.* For any default claim involving "cured" violations of the timely filing rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the end of the 120/180 day default period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any default claim involving a "cured" timely filing violation, if insurance coverage is later reinstated, the lender may capitalize

unpaid interest accruing on the loan from the commencement of the original 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim on that loan, the lender must deduct this capitalized interest from the amount of the claim, except that the lender need not deduct from the claim unpaid interest that accrued on the loan during the original 120/180 day default period. This deduction must be reflected in Column 15 of the OE Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan filed with the claim evidencing the cure.

Some timely filing cures will not reinstate insurance coverage. For treatment of accrued interest in such cases, see Section I.D.1.c.

7. *Documents to be Submitted with "Cured" Claims.* The Secretary requests that any lender submitting a claim on a loan involving "cured" violations identify the claim as such with a note in the claim file stapled to the new OE Form 1207.

For all "cured" claims, the lender must submit:

- For loans on which a claim was previously rejected, all documents sent by the regional office with the original claim (when the claim was rejected and returned to the lender), including without limitation, the original OE Form 1207 and all documents showing the reason(s) for the original rejection;
- All documents ordinarily required in connection with the submission of a default claim, including, without limitation, the promissory note, which must bear a valid assignment to the United States of America;
- A new OE Form 1207;
- All documents showing that the lender has complied with the applicable cure procedures and requirements; and
- A copy of the Interest and Special Allowance Certification form (Attachment A).

C. Cures for Violations of the Due Diligence in Collection Requirements (34 CFR 682.511)

A violation of the due diligence in collection rules occurs when a lender fails to meet requirements found in 34 CFR 682.511. For example, a violation occurs if the lender fails to:

- Remind the borrower of the date a missed payment was due within 15 days of delinquency;
- Attempt to contact the borrower and any endorser at least 3 times at regular intervals during the rest of the 120/180 day default period;
- Request pre-claims assistance from the Department of Education;
- Request skip-tracing assistance from the Secretary, if required; or
- Send a final demand letter to the borrower exercising the option to accelerate the due date for the outstanding balance of the loan, unless the lender does not know the borrower's address as of the 90th day of delinquency.

1. *Reinstatement of Insurance Coverage.* In the case of a due diligence violation, the lender may utilize either of the two procedures described below for obtaining reinstatement of insurance coverage on the

loan. After the date of this bulletin, or after the date of the violation, whichever is later.

(a) the lender obtains a new repayment agreement signed by the borrower which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.507(b); or

(b) the lender obtains 3 full payments. If the borrower later defaults, the lender must submit evidence of these payments (e.g. copies of the checks) with the claim.

2. *Borrower Deemed Current As of Date of Cure.* On the date the lender receives a signed copy of the new repayment agreement, or receives the third (curing) payment, insurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection procedures set out in 34 CFR 682.511, and the timely filing requirements set out in 34 CFR 682.516.

D. Cures for Violations of the Timely Filing Requirements (34 CFR 682.516)

1. *Default Claims.*—a. *Reinstatement of Insurance Coverage.* In order to obtain reinstatement of insurance coverage on a loan in the case of a timely filing violation, the lender must first locate the borrower after the date of this bulletin, or after the date of the violation, whichever is later (see page 8 for description of acceptable evidence of location). Then, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.507, along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 30 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 working days thereafter, send the borrower a copy of the attached "8-Hour" collection letter, on the lender's letterhead. (See Attachment B).

b. *Borrower Deemed Current Under Certain Circumstances.* If, within 45 days after the lender sends the new repayment agreement to the borrower for signature, the borrower makes a full payment or signs and returns the new repayment agreement, insurance coverage on the loan is reinstated. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection steps set out in 34 CFR 682.511, and the timely filing requirements set out in 34 CFR 682.516.

c. *Borrower Deemed in Default Under Certain Circumstances.* If the borrower does not make a full payment, or sign and return the new repayment agreement, within 45 days after the lender sends the new repayment agreement, the lender shall deem

the borrower to be in default. The lender shall then file a default claim on the loan accompanied by acceptable evidence of location (see I.D.1.d below), within 30 days after the end of such 45-day period. Although insurance coverage is not reinstated on loans involving these circumstances, the Secretary will honor default claims submitted in accordance with this paragraph, on the outstanding principal balance of such loans, and on unpaid interest accruing on the loan during the 120/180 day default period.

d. *Acceptable Evidence of Location.* Only the following documentation is acceptable as evidence that the lender has located the borrower:

(i) Postal receipt signed by the borrower not more than 25 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; or

(ii) A completed "Certification of Borrower Location" form (Attachment C).

2. *Death, Disability, and Bankruptcy Claims.* Lenders may immediately resubmit any death or disability claim which was rejected solely for failure to meet the 60 day timely filing requirement (see 34 CFR 682.516 (e)(2)(3)). However, the Secretary will not pay any such claim if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the due diligence or timely filing requirements applicable to default claims with respect to that loan. Interest that accrued on the loan after the expiration of the 60-day filing period remains uninsured by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to *bankruptcy* claims causes irreparable harm to the Secretary's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to permit cures for violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy. In that case, the lender shall treat the loan as in default. The Secretary will honor a default claim later filed on such a loan only if the lender has met the cure requirements set out in Section I.C. above for due diligence violations.

II. Repayment of Interest and Special Allowance on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

A. General Rule

It has always been the Secretary's interpretation of the FISLP statute and regulations that a lender's right to receive interest and special allowance payments on a FISLP loan terminates immediately following the lender's violation of the due diligence or timely filing requirements. This applies whether or not the lender has filed a claim on

the loan. In other words, lenders may receive interest and special allowance only on loans which are insured by the Secretary. Since these violations result in the termination of insurance, they also result in the termination of FISLP benefits.

B. Cessation of Billing on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

Any lender currently billing the Secretary for interest and special allowance on a loan that the lender *knows* involves a due diligence or timely filing violation must cease doing so immediately. However, except in connection with the certification described below, lenders are not required at this time to review their loan portfolios for due diligence and timely filing violations.

C. Determination of Amounts of Interest and Special Allowance That Must Be Repaid

1. *Due Diligence Violations.* In the case of due diligence violations, it is often difficult to ascertain the precise date on which a violation occurred. For the administrative ease of the Secretary and lenders, the Secretary has decided to waive his right to recoup interest and special allowance payments made to a lender for periods between the date of a due diligence violation and the end of the 120/180 day default period. However, any lender that has received interest and/or special allowance payments from the Secretary for periods after the end of the 120/180 day default period on a loan that the lender *knows* involves a due diligence violation must promptly repay those amounts.

2. *Timely Filing Violations.* In the case of timely filing violations, the lender loses its right to receive interest and special allowance payments as of the expiration of the applicable timely filing period. Therefore, any lender that has received interest and/or special allowance payments from the Secretary for periods following the end of the applicable timely filing period on a loan that the lender *knows* involves a timely filing violation must repay those amounts.

3. *Situations in Which a Lender May Have Received Interest Benefits for Periods During Which a Loan Was Uninsured.* Because most due diligence violations, and all timely filing violations, occur after termination of the grace period, interest payments are ordinarily not affected by such violations. However, there are three types of situations in which a lender may have received interest payments from the Secretary to which it was not entitled due to a due diligence or timely filing violation.

a. *Promissory notes that include a requirement that the borrower sign a repayment agreement no later than 120 days prior to the expiration of the grace period.* In such cases, a due diligence violation may occur during the grace period, when the lender may otherwise have been eligible to receive interest benefits. However the lender need not repay that interest to the Secretary. See II.C.1 above.

b. *Deferment Periods.* A due diligence violation may occur prior to a deferment period when the lender would otherwise have been eligible to receive interest benefits.

c. *Loans Made Prior to December 15, 1968.* A loan disbursed prior to December 15, 1968,

and which qualified for payment of Federal interest benefits at the time the loan was disbursed, qualifies for payment of a 3 percent interest subsidy on the unpaid principal balance during the entire repayment period, provided the loan remains insured. In the case of such a loan, a due diligence or timely filing violation terminates the lender's eligibility for the 3 percent payments.

D. Procedures for Repayment of Federal Interest Benefits and Special Allowance Received by a Lender for Periods During Which a Loan Was Uninsured

A Lender must make the repayments of interest and/or special allowance discussed in II.C. above, by way of an adjustment during the two quarters immediately following the discovery of the violation. These adjustments must be reported in a format similar to that in Attachment D, and must not be reported on the normal Lender's Request for Interest and Special Allowance (ED Form 799) submission. Lenders are requested not to send a check with the adjustment; the overpaid amount will be deducted by the Secretary from the lender's next regular interest and special allowance payment. The adjustment must state the quarters for which the adjustment is being made, and the total dollar amounts of all loans involved in the adjustment. In addition, for five years after any loan for which an adjustment is made is repaid in full, the lender shall retain a record of the basis for the adjustment showing the amount(s) of the overbilling(s) repaid, the violation(s) giving rise to the overbilling(s), and the date it used for cessation of interest and/or special allowance eligibility in calculating the overbilled amount. See 34 CFR 682.519(a)(2)(i). Completed adjustment forms should be sent to the following address: Student Loan Processing Center, P.O. Box 2640, Norfolk, Virginia 23501.

Attachments.

Attachment A—Interest and Special Allowance Certification Form

I, (name) _____, as a duly authorized official of (lender name and address) _____, hereby certify on behalf of this institution as follows:

(1) After consulting with all appropriate employees, agents, and servicers of this institution responsible for the collection of, and the filing of claims on, FISLP loans, I have determined that this institution has not knowingly delayed filing claims on FISLP loans evidencing violations of the due diligence, timely filing or other requirements for the purpose of continuing to bill the Secretary of Education or his predecessors for interest benefits or special allowance thereon, nor will this institution do so in the future.

(2) This institution will thoroughly review all FISLP loans for which claims were denied for violation of the due diligence in collection or timely filing regulations promulgated in 1979, 34 CFR 682.511 and .516, respectively. The purpose of this review will be to determine how much interest and special allowance the Secretary has paid this institution on these loans for the period(s)

during which they were uninsured due to these violations. This institution will repay any and all such amounts so determined by way of an adjustment to one of the next two quarterly interest and special allowance billings (ED Form 799).

(3) This institution will retain all records and upon request will provide the Secretary of Education with all information required by Bulletin L-77a in connection with repayment of interest and special allowance overbillings.

Signature of Employee _____

Date _____

Lender Identification Number _____

BILLING CODE 4000-01-M

Attachment B

NOTICE

Date

TO:

Social Security Number

You have previously been notified that you are severely delinquent in repaying your Guaranteed Student Loan. This notice is our final effort to remedy this delinquency. You must contact us at _____ within

48 HOURS

Failure to act upon this notice will result in transfer of your account to the Federal Government.

Official of Lender

Title

Attachment C Certification of Borrower Location

As an employee or agent of _____
Name and Address of Lender

I hereby certify as follows:

1. On _____, I spoke with or received written communication
Date
from (copy attached):
(circle a or b)
(a) the borrower on the loan underlying this default claim; or
(b) a parent, spouse, or sibling of the borrower.
2. The borrower, parent, spouse, or sibling represented to me that the
borrower's address and telephone number are -- _____

Address and Telephone Number

3. Within 15 days thereafter, this institution sent the borrower a new
repayment agreement along with a collection letter of the type
described in section I.D.1.a.ii of Bulletin L-77a, dated January 7, 1983,
to the address set out in '2)' above.
4. (Applicable only if 1(b), above, is used) The letter and agreement
referenced in 3, above, has not been returned undelivered.

Name of Borrower

Signature of Employee or Agent

Borrower's SSN

Typed Name of Employee or Agent

Title of Employee or Agent

Date

Lender Identification Number

CURE PROCEDURE

Attachment D Repayment of Interest Benefits and Special Allowance

NAME OF LENDER, I.D. NUMBER, ADDRESS (STREET, CITY, STATE, ZIP CODE):

(1) BILLING PERIOD
(CHECK ONE)

- 1 ☐ ANNUAL
2 ☐ SEMIANNUAL
3 ☐ QUARTERLY

(2) BILLING PERIOD
ENDING (CHECK ONE)

- 1 ☐ MARCH 31
2 ☐ JUNE 30
3 ☐ SEPTEMBER 30
4 ☐ DECEMBER 31

YEAR

19

(3) METHOD
(CHECK ONE)

- 1 ☐ ACTUAL
ACCURAL
2 ☐ AVERAGE DAILY BALANCE
3 ☐ AVERAGE QUARTERLY BALANCE

EMPLOYER IDENTIFICATION NUMBER:

LENDER'S TELEPHONE NUMBER: ()

INTEREST ADJUSTMENTS (Enter only those Adjustments occurring as a result of
Lender Bulletin #77a)☒ DECREASED \$

SPECIAL ALLOWANCE ADJUSTMENTS

Loans made before October 1, 1981:

QTR. ENDING MM/DD/YY	%	AVERAGE PRINCIPAL BALANCE	
		BALANCE PREVIOUSLY REPORTED	SHOULD HAVE BEEN REPORTED
/ /	9%		
	7%		
/ /	9%		
	7%		
/ /	9%		
	7%		
/ /	9%		
	7%		
/ /	9%		
	7%		
/ /	9%		
	7%		

Loans made on or after October 1, 1981:

/ /	14%		
	12%		
	9%		
	8%		
	7%		
/ /	14%		
	12%		
	9%		
	8%		
	7%		

NOTE: Do not submit this form concurrent with the submission of ED Form 799, "Lender's Request for Interest and Special Allowance. Lenders are required to maintain a copy of this form for their records.

GPO 896-420

The first part of the report is a general description of the project. It includes the title, the author's name, and the date of the report. It also includes a brief summary of the project's objectives and the methods used to collect and analyze the data.

The second part of the report is a detailed description of the project's results. It includes a discussion of the data collected, a comparison of the results to the project's objectives, and a discussion of the project's conclusions.

Table 1: Summary of Data Collected	
Year	1998
Month	January
Day	15
Time	10:00 AM
Location	100 Main St.
Weather	Sunny
Temperature	75°F
Humidity	60%
Wind Speed	10 mph
Wind Direction	SE
Cloud Cover	10%
Visibility	10 miles
Barometric Pressure	30.0 in.
Relative Humidity	60%
Dew Point	60°F
Heat Index	75°F
UV Index	5
Air Quality Index	50
Water Quality Index	50
Soil Quality Index	50
Plant Quality Index	50
Animal Quality Index	50
Human Quality Index	50
Overall Quality Index	50

Table 2: Summary of Data Collected	
Year	1998
Month	February
Day	15
Time	10:00 AM
Location	100 Main St.
Weather	Sunny
Temperature	75°F
Humidity	60%
Wind Speed	10 mph
Wind Direction	SE
Cloud Cover	10%
Visibility	10 miles
Barometric Pressure	30.0 in.
Relative Humidity	60%
Dew Point	60°F
Heat Index	75°F
UV Index	5
Air Quality Index	50
Water Quality Index	50
Soil Quality Index	50
Plant Quality Index	50
Animal Quality Index	50
Human Quality Index	50
Overall Quality Index	50

The third part of the report is a discussion of the project's results. It includes a discussion of the data collected, a comparison of the results to the project's objectives, and a discussion of the project's conclusions.

Registered Federal Reporter

Wednesday
September 4, 1985

Part V

Federal Emergency Management Agency

44 CFR Parts 59, 60, 61, 64, 66, 70, 72,
and 75

National Flood Insurance Program; Final
Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 60, 61, 64, 66, 70, 72,
and 75

[Docket No. FEMA-FIA]

National Flood Insurance Program

AGENCY: Federal Insurance
Administration (FIA), Federal
Emergency Management Agency
(FEMA).

ACTION: Final rule.

SUMMARY: This final rule revises the National Flood Insurance Program (NFIP) regulations dealing with flood plain management standards, risk premium rate zone designations, reimbursement for FEMA engineering review, flood insurance coverage, the Standard Flood Insurance Policy terms and provisions, and the sale of flood insurance.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT:
Charles M. Plaxico, Federal Emergency
Management Agency, Federal Insurance
Administration, 500 C Street SW.,
Washington, D.C. 20472; telephone
number (202) 646-3422.

SUPPLEMENTARY INFORMATION: On April 15, 1985, FEMA published for comment in the Federal Register (Vol. 50, Page 14904) a proposed rule containing revisions to the National Flood Insurance Program (NFIP) which were the result of a continuing reappraisal of the NFIP from the standpoint of maintaining a business-like approach to the administration of the NFIP by emulating successful property insurance programs in the private sector while, at the same time, supporting the major FEMA goals of achieving greater administrative and fiscal effectiveness in the operation of the NFIP and encouraging sound flood plain management so that reductions in loss to life and property and in disaster expenditures can be realized. This reappraisal includes, in addition to the claims, coverage, rating, and sale of insurance component, the loss reduction (i.e., flood plain management) and risk assessment (i.e., mapping of flood hazard areas and flood-risk zones) components of the NFIP.

Probation

The proposed rule established in § 59.24 a probation procedure for participating communities that fail to adequately enforce flood plain management measures adopted to meet NFIP criteria. This procedure would provide FEMA with a means of formally

notifying these communities that their flood plain management programs are regarded as not compliant. The proposed rule provided for an additional premium of \$50.00 to be paid on all new or renewal policies issued for a year after the community is placed on probation and for successive one-year periods if the community remains on probation. Public comment was solicited on whether the proposed flat charge of \$50 per policy or a percentage increase per policy would be more appropriate.

Twenty-seven comments specifically addressed probation. Sixteen of these comments clearly supported the concept of probation with a surcharge on grounds that this would help achieve community compliance with Program regulations and provide FEMA with enforcement options short of suspension of a community's eligibility. Six comments opposed probation with a surcharge for a variety of reasons. The other five comments were on some aspect of probation, but did not clearly indicate either support or opposition to the concept of probation.

Although there was strong overall support for probation with a surcharge, the comments varied as to the type of surcharge favored and the mechanics of imposing probation on a community. Six comments expressed the belief that communities needed more than the 30 days allotted in the proposed rule to correct deficiencies in their flood plain management programs and to remedy violations of their ordinances. Suggestions of appropriate time periods ranged from 45 to 180 days. Six comments suggested that FEMA notify each policyholder in the community prior to imposing the probation surcharge. Four comments suggested that a press release be issued to local media or that a legal notice be published. The overall concern expressed by these comments is that FEMA ensure that a community and its policyholders are fully aware of the impacts of probation and that the community has an opportunity to take the actions necessary to avoid probation.

FEMA's intent is to delegate the authority to impose probation to the ten FEMA Regional Directors. FEMA internal guidelines on community compliance and imposing probation (without a surcharge) already require that FEMA Regional staff visit a community, meet with local officials, and formally notify the community of the deficiencies in its program and of apparent violations. The Regional Office can proceed to probation only after its efforts to provide technical assistance and to consult with the community have

failed to obtain compliance. The impending probation should be no surprise to those few communities that continue to be noncompliant at that point.

However, in order to meet more fully some of the concerns expressed in the comments, a number of revisions have been made in the final rule. The 30-day notice of impending probation has been lengthened to a 90-day compliance period, during which the community would have the opportunity to avoid probation by demonstrating compliance with Program requirements, or by correcting Program deficiencies and remedying all violations to the maximum extent possible. The addition of language on correcting Program deficiencies and remedying all violations to the maximum extent possible was added to clarify what is to be expected of communities. A Program deficiency is a defect in a community's flood plain management regulations or administrative procedures that impairs effective implementation of those flood plain management regulations. This language has also been incorporated elsewhere in § 59.24 (b) and (c) where appropriate. A requirement has been added that a press release be issued to local media explaining the probation. A change has been made to delay the effective date of the surcharge until October 1, 1986. This delay will enable FEMA to develop the procedures and contractual arrangements required to implement the surcharge in cooperation with its servicing contractor and also with the approximately 200 Write-Your-Own companies that are authorized to market NFIP flood insurance. FEMA will use the probation procedure without the surcharge in the interim. The surcharge will only apply in communities that are placed on probation on or after October 1, 1986. A final rule also provides that when the probation is to begin on or after October 1, 1986, all policyholders will be advised of the impending probation and the additional premium that will be charged on policies sold or renewed in the community during the period of probation. If at the end of the 90 days, the community has not demonstrated compliance or corrected Program deficiencies and remedied violations to the maximum extent possible, the probation will go in effect. The final rule also makes it clear that FEMA will proceed to suspension while a community is on probation if the community does not meet compliance deadlines that are established.

The proposed rule solicited public comments to ascertain which was the appropriate method of imposing the

additional premium during probation, the proposed \$50 flat charge per policy or the alternative of a percentage increase in the premium of each policy. Twelve comments addressed this issue. Two of the comments supported the \$50 surcharge. Comments that expressed general support of the probation concept and the proposed rule could also be regarded as supporting the \$50 surcharge. Two comments suggested a lower surcharge on the grounds that \$50 was excessive for low-income persons and tenants who generally have minimum premium policies. Seven comments, all from State agencies, suggested that a 25% surcharge would be fairer and more effective in obtaining compliance by communities. A number of these comments felt that the \$50 surcharge would be too high for low-income persons, but too low to affect large-premium policyholders who generally are more influential in local government affairs. Two of these comments suggested that a 25% surcharge be combined with a \$200 cap to ensure that there would be no exceptional hardships. One comment suggested a \$50 floor to maximize pressure by policyholders on local officials.

Although many of these suggestions have merit, FEMA continues to believe that the flat surcharge is the best of the available alternatives. Because probation results from a community-wide problem, the beneficiaries of the NFIP in a particular community (i.e., all policyholders) should share equally in paying the additional premium during probation. Actions or inactions by local officials are ultimately the responsibility of all citizens in the community. The flat surcharge distributes the burden equally among the policyholder citizens. Furthermore, the intent of the surcharge is not punitive. It is intended rather to focus the attention of policyholders on the community's noncompliance and, by doing so, avoid suspension with its serious adverse impacts on those policyholders. It is also intended in part to compensate the NFIP for a portion of the increased liability that results from the community's noncompliance. Since it is not feasible to allocate this increased liability on a structure-by-structure basis, a flat rate is more appropriate. Also, a percentage charge would be more costly and difficult to administer, particularly in a systemic sense and would, therefore, add to the complexity and expense of the Program, to the detriment of the general taxpayer who subsidizes the Program.

In regard to the amount of the surcharge, FEMA agrees with those

comments that argued that a \$50 surcharge would be too high for some policyholders. As a result, the amount of the surcharge has been reduced to \$25. FIA believes that a surcharge of this size will still be effective in drawing the attention of the policyholders to a community's noncompliance and obtaining their support for actions to avoid suspension.

Several comments suggested a different length of time for applying the additional premium charge, but FEMA believes the principle already referred to of having all the policyholders in a community share equally in the increased premium applies to the duration of the surcharges as well. Therefore, the final rule still provides for applying the charge in complete one-year periods. One comment opposed a probation procedure and a premium surcharge for policyholders until a community rating system, using positive and negative incentives, is established. FEMA is studying such a community rating system, and will continue to explore alternatives for implementing such a system, but believes the probation procedure in the proposed rule represents a first step in that direction and should not be delayed. In addition, FEMA believes that a community rating system will be of only limited effectiveness in obtaining compliance from those few communities that are candidates for probation. The main benefit of a community rating system would be to provide incentives that reward communities with exemplary flood plain management programs.

A number of other comments opposed the imposition of any type of surcharge in communities placed on probation. One community opposed the surcharge because it feared it lacked the authority to enforce its flood plain management regulations. FEMA believes that all eligible communities have the authority required to adopt and enforce regulations that meet NFIP criteria. The NFIP has a Community Assistance Program which is available to assist a community with various problems, including enforcement ones. Two comments opposed the surcharge because it would apply to compliant structures and existing structures as well as violations. As indicated above, FEMA believes that the surcharge should be applied to all who benefit from the NFIP in a community. Finally, one community thought that it was FEMA's responsibility to enforce NFIP criteria and that FEMA should not "pass the buck off on innocent citizens." The National Flood Insurance Act of 1968

clearly states that the community itself must adopt and enforce flood plain management measures as a condition of participation in the NFIP. FEMA's role is simply to monitor the community's compliance with that requirement. No community that adequately enforces its regulations will be placed on probation.

Biennial Report

The proposed rule contained a change to § 59.22(b)(2) which would require communities to submit a biennial rather than an annual report to FEMA regarding their NFIP participation. This proposed change was intended to revise NFIP criteria to reflect a decision that was made in 1981 to reduce the frequency of the report from annual to biennial. The reduced frequency would meet the objectives of the Paperwork Reduction Act by reducing burden hours for participating communities and also reflect the limited staff resources that were available at FEMA to process the reports. Three comments supported the change and four opposed it. Two of the comments that opposed the change were from States which felt that the reports were a valuable source of information on community flood plain development activities and should be conducted on an annual basis. One State recommended an annual report for large communities and a biennial report for small communities.

FIA uses this report to allocate resources and to identify and establish community priorities. The actual monitoring of community flood plain development is accomplished through other mechanisms. As a result, FEMA believes that a biennial report is sufficient given the resources available and the purposes to be achieved and will continue to require the report on a biennial cycle. However, FEMA is persuaded that, at some point in the future, circumstances may warrant the return to an annual cycle. As a result, this final rule allows FEMA to require the reports on either an annual or biennial cycle. A parallel change has been made to §§ 60.2(f) and 60.6(a)(6)(ii), which also refer to the annual report.

Elevated Building Definition

One commentator suggested that the first sentence of the definition of elevated building should be broken up into multiple sentences. Since breaking up the sentence into multiple sentences would necessitate repeating the substance of the definition for each category of zones along with the unique portion of the definition for each category, FEMA believes the sentence structure in the proposed rule is a better

editorial approach, but a change has been made in the sentence to improve the clarity.

This commentator also indicated that the meaning of "adequately anchored so as not to impair the structural integrity of the building" was unclear. The intent of the anchoring requirement in the NFIP Regulations has always been that whatever anchoring system is used must be sufficient to prevent damage to that anchoring system or to the building's support system and the elevated building itself. It has always been implied, though not stated, that the requirement extended only to floods of up to the magnitude of the base flood (the 100-year flood), which is consistent with the other requirements of the program, and this is reflected in the definition in this final rule.

Another commentator was concerned that the inclusion of Zones, B, C, X, and D, which are not special flood hazard zones, in the definition of elevated building might mean that there was an elevation requirement in those zones.

That is incorrect. The reason for including those zones in the definition was to provide a better basis for collecting loss data on elevated buildings in those zones so that FEMA could at some future time consider reducing rates for elevated buildings in those zones. Requiring the elevation of buildings in those zones is not contemplated; such elevation would be strictly voluntary.

Elevation Information

The proposed rule contained revisions to §§ 60.3(b)(5) and 60.3(e)(2) that make it clear that communities are to require building elevation information on all structures as evidence of flood plain management compliance, not merely for insurance purposes. Two comments strongly supported the change since it provided additional support for communities in requiring submission of elevation information by property owners. One comment supported the change but felt that the elevation certificate form that is distributed for the NFIP is overly complicated and time-consuming to complete. FEMA encourages communities to use the NFIP Elevation Certificate since the form also can be used for insurance rating. Other forms may not provide sufficient insurance information resulting in delays in the issuance of a policy and added expense to individual property owners. FEMA is in the process of revising the NFIP Elevation Certificate, and the revised form should address some of the concerns that were raised in this comment.

Floodproofing Certification

The proposed rule contained revisions to § 60.3(c)(4) which requires that, for floodproofed nonresidential structures, a registered engineer or architect certify that the design and methods of construction are in accordance with accepted practice for meeting the floodproofing standards in NFIP criteria. This provision was revised for clarity and for consistency with the new wording of § 60.3(e)(4), which requires a similar certification for structures built in V-zones.

One comment suggested that the engineer or architect certify that the completed structure was adequately floodproofed. The engineer or architect would have to make frequent on-site inspections of the structure during construction to make such a certification. FEMA believes that this would be necessarily burdensome in most instances. However, a community can adapt a requirement of this type if local circumstances warrant it, since it would be more restrictive than NFIP criteria.

The proposed rule also deleted § 60.3(c)(4)(ii) which allowed a community to submit a certified copy of a local regulation containing detailed floodproofing specifications in lieu of requiring certification by a registered engineer or architect. No community has received approval of such a regulation. One comment suggested retaining this option for use in large flat areas behind levees that have internal drainage problems but are not designated as special flood hazard areas. FEMA believes that the retention of the provision is unnecessary since NFIP criteria need not apply in areas not designated by FEMA as special flood hazard areas.

Changes to V-Zone Requirements

The proposed rule contained revisions to the requirement in § 60.3(e)(4) that a registered engineer or architect certify the design of all structures in V-zones (coastal high hazard areas). Three comments specifically addressed this change. One community believed that the requirement would impose an economic burden on the construction of low-income housing. However, this certification is not a new requirement and has been contained in NFIP criteria since 1976. The revision in the proposed rule should make the certifications more readily attainable since a registered engineer or architect must review and certify only the design and methods of construction of the structure. Another comment wished to exempt certain low-cost accessory structures from the

certification requirement. Again, the basic certification requirement is in the existing regulations, so this comment is not relevant to the proposed rule. However, FEMA will review this requirement to determine if there are feasible options for these small, low-cost structures. Finally, one comment believed that the certification language was unclear and needed clarification but provided no suggestion or further details. FEMA has revised this provision to be consistent with the revisions to § 60.3(e)(5) which clarify wind and water loads associated with the base flood. This change may meet some of the concerns in this comment. Otherwise, FEMA believes that the language is sufficiently clear.

The proposed rule also contained more specific performance standards regarding the design and construction of breakaway walls built to enclose areas below the base flood elevation in V-zones. FEMA had received a number of requests over a several year period for these more definitive standards. The proposed rule allowed for the use of (1) open wood lattice work, (2) insect screening, or (3) breakaway walls of non-masonry construction that have a loading resistance of not less than 10 and no more than 20 pounds per square foot. Breakaway walls with a loading resistance of greater than 20 pounds per square foot would have to be certified by a registered engineer or architect. Finally, such enclosed space was not to be a "finished area," which was defined in § 59.1.

Of the five comments received on the breakaway wall provision, two supported the change without modification and three generally supported the change, but with modifications. One of the comments suggested that FEMA place an upper limit of 20 pounds per square foot on breakaway walls on the grounds that this requirement would be easier to administer. FEMA does not believe that imposing an upper limit of this type can be technically justified. Stronger breakaway walls can be built which will fail and not result in damage to the rest of the structure, particularly in the case of larger, more substantial structures. In addition, some building codes may not permit walls that will collapse under loads of less than 20 pounds per square foot. If a particular community wishes to place an upper limit on the strength of breakaway walls (such as 20 pounds per square foot), it is not precluded from doing so.

Another comment suggested that FEMA clarify the phrase "wind and water loads associated with the base

flood" by relating wind loads to established code requirements for wind hazards. In response to this comment, the final rule specifies that the wind load values to be used shall have a one percent chance of being equalled or exceeded in a given year (100-year mean recurrence interval). Winds of this frequency are commonly used as a design standard in building codes, and are the basis for building designs contained in FEMA's guidance document for coastal construction, "Coastal Construction Manual."

The last comment expressed concern that some building codes, particularly those based on American National Standards Institute (NSI) wind standards and including the North Carolina State Building Code, would require construction of walls with minimum strengths in excess of 20 pounds per square foot. It was believed that, in effect, this requirement would prohibit the use of breakaway walls in such situations. In response to these comments, FEMA consulted representatives of two major building code groups, a number of technical experts, and performed additional internal review and research on the breakaway wall requirement. Based on that review, FIA does not believe that further changes are warranted in response to this comment. The proposed and final rule rules do not prohibit the use of breakaway walls with design strengths greater than 20 pounds per square foot. However, buildings which utilize breakaway walls with such strength capacities will require additional care in designing the building's structural system to minimize the risk of building collapse or displacement. Accordingly, use of such wall strengths will require that the building design be certified by a registered professional engineer or architect.

In the final rule, the provision that all masonry breakaway walls be certified by a registered engineer or architect has been deleted. Additional research has shown that there are insufficient technical grounds for distinguishing masonry from non-masonry breakaway walls. In addition, for clarification, an upper limit is placed on the strength of all breakaway walls. These walls must collapse from water loads less than that of the base flood. The requirement has also been clarified to specify the types of damages from which the structure must be protected. These damages include collapse or displacement of the structure and other structural damage resulting from the effect of wind and water loads acting simultaneously on

the building's components. These changes were also made to a similar provision in § 60.3(e)(4) which contains the basic elevation requirement for V-zone structures as well as the requirement that they be certified by a registered engineer or architect.

The proposed rule also required that spaces enclosed by breakaway walls not be a "finished area," which was defined in the proposed rule in § 59.1. FEMA's further review of the proposed rule identified a potential inconsistency between this definition of "finished area" and the definition of "lowest floor" in the existing regulations regarding what uses are permitted within such enclosures. To avoid this inconsistency, the definition of "finished area" has not been included in the final rule. Section 60.3(e)(5) has been revised in the final rule to state that spaces enclosed by breakaway walls are to be used solely for the parking of vehicles, building access, and storage. This is consistent with the definition of "lowest floor" in § 59.1. In addition the provisions of § 60.3(a)(4)(ii) would apply to such enclosed spaces.

All of paragraph (e) of § 60.3 was reprinted in the proposed rule due to adding V and VE zones. However, the only provisions of § 60.3 that were otherwise changed were paragraphs (e)(2), (e)(4), and (e)(5), which have been discussed above. Therefore, the comments on other provisions such as requirements that structures be located landward of the reach of mean high tide, the prohibition of new mobile homes except in existing mobile home parks and subdivisions, and the provision regarding the alteration of sand dunes and mangroves are not relevant to the proposed rule. However, FEMA has noted these suggestions and will consider them in its continual review of NFIP policies and regulations.

Flood Plain Management Provisions on Mobile Homes

The proposed rule contained a number of changes to the requirements for the placement and anchoring of mobile homes. The anchoring requirements in § 60.3(b)(8) would be revised to delete the specific performance standards related to over-the-top and frame ties and substitute a more general performance standard that requires that the mobile home be elevated and anchored to resist flotation, collapse and lateral movement. Provisions in § 60.3(c)(5) and (6) were revised to require that the lowest floor of the mobile home be elevated to or above the base flood level, but do not specify the elevation technique to be used. There were

fourteen comments that addressed the mobile home changes. Twelve of the comments fully supported the proposed changes, mostly on the grounds that the more general performance standards eliminated conflicts with manufacturer's specifications and State and local codes. A number of the comments noted that publication of the FEMA manual "Manufactured Home Installation in Flood Hazard Areas" this fall should provide sufficient guidance on elevation and anchoring techniques. Thus, there was widespread support for the change, and no revisions have been made in the language in the proposed rule. One comment recommended an addition to § 60.1(d) that would permit States or communities to accept designs for specific structures at specific sites if certified by an registered engineer or architect. FEMA regards this suggestion as unnecessary since the general performance standards for mobile home anchoring and placement should provide sufficient flexibility to address the State's concern. One comment recommended the NFIP criteria require that the mobile home pads be elevated to or above the base flood level to provide access to the mobile home during a flood. FEMA regards this suggestion as desirable, but not feasible on a national scale due to the flood depths encountered in large numbers of communities. Allowance will continue to be made for other elevation techniques. However, any State or community is permitted by § 60.1(d) to adopt regulations that are more restrictive than NFIP criteria.

There were a number of suggestions in the comments for changes to NFIP mobile home requirements. Several comments argued that the prohibition of placement of mobile homes in V-zones except in existing mobile home parks and subdivisions was discriminatory and not justified. Several comments suggested that the provisions that "grandfather" existing mobile home parks and subdivisions be eliminated and all newly installed mobile homes be elevated to or above the base flood elevation. None of these changes were included or discussed in the proposed rule, so these comments are not relevant to the proposed rule. However, as indicated in the Supplemental Information in the proposed rule, these changes are being reviewed for possible inclusion in proposed rulemaking for FY 86.

Adoption by Communities

Two communities requested information on requirements and procedures for the adoption of

provisions in the final rule by NFIP communities. In accordance with § 60.7 of NFIP criteria, communities have six months from the effective date of any new regulation to revise their flood plain management ordinances to comply with those new regulations. Since the effective date of this final rule is January 1, 1986, local ordinances will have to be revised by July 1, 1986. NFIP regulations require that communities adopt regulations that meet NFIP minimum criteria as a condition of Program eligibility. Communities can also comply with Program requirements by adopting regulations that exceed these criteria. Most of the changes that are included in the final rule are less restrictive than or substantially the same as current requirements. As a result, communities, other than those which have V-zones, may already comply or require only minor changes to their ordinances to remain compliant. FEMA will mail copies of the final rule and additional instructions regarding adoption to all participating communities. FEMA Regional Offices will be available to provide assistance to communities in revising their ordinances.

Flood Risk Zones

Seven commentators responded to that portion of the proposed rule that addressed the mapping of flood hazard areas and flood risk zones. Four of these commentators either supported the replacement designations or stated they had no objection to their implementation.

One commentator suggested that Zones A, AO, and AH be added to the definitions of "Special Flood Hazard Area" and "Area of Special Flood Hazard." Since Zones A, AO, and AH are already in the definitions in § 59.1 of "Area of special flood hazard" and "Special hazard area," the suggested change is not needed.

One commentator observed that the floodway and the 500-year flood plain are valuable sources of information to communities as they pursue flood plain management activities and must not be left undelineated. FEMA will continue to delineate these items, as appropriate, when it prepares mapping of flood hazard areas and flood-risk zones. The 500-year flood plain will be delineated as the shaded portion of Zone X, and the floodway will be given greater visual emphasis by shading the crossing-hatching.

One commentator opposed the use of Zone X as a replacement designation for Zones B and C and stated that it is important to map users to be able to continue to distinguish between Zones B and C. Zone X will be both shaded and

unshaded on the map. The shaded portion of Zone X will correspond to the former Zone B designation and the unshaded portion to the former Zone C. Therefore, it is not necessary to amend the Zone X designation since the distinction desired by this commentator will be obvious for all map users.

This final rule makes the following mapping changes, all of which were in the proposed rule. It makes a change in the flood-risk zone designations of Flood Insurance Rate Maps for consistency with a change in the tables made effective October 1, 1983, that collapsed the rates for Zones A1-30 to treat them as one zone for rating purposes and likewise collapsed the rates for Zones V1-30 to treat them as one zone for rating purposes. Similarly, the rates for Zones B and C were collapsed to treat them as one zone for rating purposes. This final rule gives Zone AE as a replacement designation for Zones A1-30, Zone VE as a replacement for Zones V1-30, and Zone X as a replacement for Zones B and C.

The new maps will continue to delineate the 500-year flood plain (shaded portion of Zone X) and the floodway. The replacement designations will be used on new maps, thus gradually replacing the current designations. This final rule also provides for Zone V, which is a zone designating a coastal high hazard area without water surface elevations.

Standard Flood Insurance Policy

The Standard Flood Insurance Policy (SFIP) of the NFIP currently distinguishes between a "mobile home" and a "doublewide mobile home", with mobile homes having to meet certain requirements in special flood hazard areas and in coastal high hazard areas to be eligible for flood insurance and not being eligible for replacement cost coverage. The proposed rule revised the definition of "doublewide mobile home" by adding quantitative criteria relating to the structure's dimensions.

Several comments on this proposed revision to the definition in the SFIP of the term "doublewide mobile home" suggested using a different term. As indicated in the Supplementary Information of the proposed rule, changes in mobile home terminology are being considered for possible proposed rulemaking in FY 1986. One comment suggested different quantitative criteria from those proposed. However, neither of the two trade associations commenting on this matter objected to the quantitative criteria proposed, and this final rule has the same doublewide mobile home definition as the proposed rule.

This final rule has the change that the proposed rule had in the flood plain management requirements for anchoring mobile homes. This change dropped the over-the-top and frame ties requirement in favor of a more general performance standard. The proposed rule did not contain a corresponding change in the SFIP provisions requiring over-the-top and frame ties or requiring that the placement of the mobile home otherwise met the community's flood plain management requirements as a condition for insuring mobile homes in Special Flood Hazard Areas unless the mobile home is one on a foundation continuously insured by the NFIP at the same site since September 30, 1982, although an editorial change was proposed to that provision. In the interest of better coordinating the treatment of mobile home anchoring by the flood plain management provisions and the insurance provisions of the NFIP, a change has been made in this final rule in the SFIP provisions to allow several options for mobile home anchoring.

In recognition of certain leases where a private individual leases land from the Federal Government with the lease holding the Federal Government harmless for flood damage it causes, the proposed rule provided for not covering such losses since the individual knowingly assumed that flooding risk. The only comment on this provision was one generally favoring it. It remains the same in this final rule as it was in the proposed rule.

The proposed rule provided the basis for insuring more than one building on a policy using a form approved by the Administrator. That provision has been clarified by referring to a form or a format.

Also, to clarify the intent of the NFIP not to cover bailees' goods, the Contents paragraph of the Property Covered section of the SFIP General Property Form (Appendix A(2) of Part 61) was revised in the proposed rule to make it clear that bailees' goods are not covered. A recent court decision held that bailees' goods were covered, so this revision would carry out the intent of the NFIP not to cover them. There were no objections to this provision, and it is the same in the final rule as it was in the proposed rule.

When a limitation of coverage for finished basements (and their contents) and for enclosures (and contents) beneath the lowest floor of elevated buildings was placed in effect on October 1, 1983, coverage was continued for certain equipment and other machinery vital to a building's intended

use. While oil tanks and well-water tanks were specified as being covered, there was no mention of the oil in an oil tank or the pump for a well-water tank. The proposed rule clarified that there is coverage for these items. It also specified that there is coverage for cisterns (and the water in them) despite this basement/elevated building limitation, inasmuch as cisterns are integral parts of the building in certain communities, particularly in the Virgin Islands, and often provide the only source of water for the building. One commentator suggested that the similar items of natural gas tanks and also pumps and/or tanks used in conjunction with solar energy systems be specified as covered in such areas. FEMA agrees that this is appropriate, and those items have been added in this final rule as covered in such areas.

In furtherance of loss prevention, as an insurance concept, and of hazard mitigation, which is one of the major goals of FEMA, an October 1, 1984, change in the SFIP made coverage available for sandbags under certain conditions. The proposed rule extended that development by also providing coverage for fill for temporary levees, pumps, and wood under the same conditions except that, for both sandbags and the new items proposed, the provision referring to the purpose of preserving the building at the premises after a flood loss was deleted. There were no comments on this provision, and it is the same in the final rule as it was in the proposed rule.

Another change in the SFIP effective October 1, 1984, was the addition of a provision for building coverage and one for contents coverage to make it clear that dwelling units in condominium buildings can only be covered, along with the policyholder's insurable tenant in common interest in property covered under any condominium association flood insurance coverage provided under the National Flood Insurance Act of 1968, or any Acts amendatory thereof, up to the statutorily permissible limits of coverage available for the insuring of single-family dwelling owners under the Act. The proposed rule added a provision making the same clarification for contents coverage involving non-residential units in a condominium building. There were no comments on this provision, and it is the same in this final rule as it was in the proposed rule.

A private sector insurer participating in the Write-Your-Own Program, under which the Standard Flood Insurance Policy may be issued by private sector insurers signatory to an Arrangement with the Federal Insurance

Administrator, suggested that the specific amount of the probation additional premium charge not be stated in the policy so that if the amount should ever be changed in the future, the policy form would not have to be amended. FEMA agrees with this commentator that this change could avoid administrative costs so this final rule makes the change. As an extension of this approach of not stating dollar amounts in the SFIP, a change has also been made in this final rule to refer to "the minimum premium set forth in 44 CFR 61.10" instead of stating the dollar amount itself.

Fees for Conditional Approval of Map Changes

FEMA receives a large number of requests to review proposed projects to determine if they would qualify for map amendments and revisions upon their completion. Such proposed projects include flood plan fills, stream channelizations, levee construction, or other flood control projects. This service has led to the issuance of conditional Letters of Map Amendment (LOMAs) and conditional Letters of Map Revision (LOMRs) that provide FEMA assurance to individuals, developers, and communities that their projects would be accepted for map revision upon completion. The conditional LOMA and conditional LOMR are often needed by developers to obtain construction loans and building permits and attract prospective buyers. It should be noted that conditional LOMAs and LOMRs are not based on any limitations or deficiencies in the FEMA maps; rather they have come about in response to requests from individuals, developers, and communities for FEMA review and comment on proposed projects. Thus, to reduce expenses to the general taxpayer, FEMA developed the reimbursement procedure set forth in the proposed rule to allow for the recovery of costs associated with these actions. Under the procedure, an initial fee, the amount determined by the type of project, will be required to those seeking a conditional LOMA or conditional LOMR before any review commences. The initial fee represents the minimum cost required to review that type of project. FEMA will then determine the actual cost associated with the review of a particular project and the requestor will be billed for any additional costs incurred. In this way FEMA proposes to recover the entire cost associated with the review and processing of conditional LOMAs and conditional LOMRs.

FEMA determined that the costs associated with the technical review and administrative processing of a

conditional LOMA or conditional LOMR request vary in proportion to the number of submittals required of an appellant to accurately show the effects of his proposed project, as well as with the type of project involved. An incomplete submittal, or one with significant problems in the technical analyses, takes significantly longer to process since it must be reviewed, an additional data request letter prepared and sent, and the new submittal re-reviewed. While administrative processing time varies between conditional LOMAs and conditional LOMRs, it does not differ significantly within each category of project. It was also determined that for each category of project, there are certain minimum review and processing elements common to all requests. These minimum review and processing costs were used to develop the initial fees for the various projects.

The conditional LOMAs were first categorized by the type of project. Each category was then examined and minimum review and processing times were determined for engineering review, engineering administration, word processing and quality control. This basic processing common to each type of project was then converted to a dollar amount using direct labor rates, overhead, and fee, which FEMA pays for each services.

The determination of review and processing time for conditional LOMAs was simplified in that there is a distinct difference between single-lot and multi-lot/subdivision requests. Administrative processing was the same for each, but engineering review time for multi-lot/subdivision requests was approximately double that for single-lot determinations. The range of processing times for each type of LOMA was also narrower. The minimum times determined for each type were then converted to a dollar amount as described above.

The proposed rule was erroneously interpreted by several commentators to mean that FEMA will require reimbursement for all LOMAs and LOMRs. The fee applies only to conditional LOMAs and conditional LOMRs that are requested based on a proposed flood plain modification that could affect established flood mapping. Map appeals based on conditions existing at the time of the appeal will continue to be reviewed at no cost to the appellant.

Several commentators addressed the "open-endedness" of both the fees and the time frame for review and processing of a particular request. This final rule establishes a fee cap of \$500 for conditional LOMAs and \$1,500 for

conditional LOMRs that will not be exceeded without written authorization from the requestor. Requestors will be notified in writing when it is anticipated that a particular case would exceed the cap. Processing would be suspended pending receipt by FEMA of written authorization to proceed. Similarly, this final rule establishes time frames for a response from FEMA regarding the adequacy of the data submitted in support of a request and for comment by FEMA regarding the particular request.

Two comments dealt with the data requirements for conditional LOMA and conditional LOMR requests. FEMA has several documents, entitled *Conditions and Criteria*, that explain in general the information required in support of a request for a LOMA, LOMR, floodway revision, or map revision. With the exception of "as-built" plans of a completed project, the data requirements for conditional LOMAs and LOMRs and actual amendments and revisions are essentially the same and are covered by the various *Conditions and Criteria* documents. It is not possible to list detailed submission requirements for each type of project in these documents due to the unique engineering factors involved in different installations. FEMA does intend to expand its general submission requirements under 44 CFR Parts 65 and 70 in Fiscal Year 1986.

One commentator requested clarification on the information a community must submit to obtain an exemption from the fee. As addressed in § 72.5 of the proposed rule, exemptions apply to those Federal, State, and local government projects designed primarily to benefit the general public. A certification will be required from the Federal, State, or local government or agency that the particular project is for the public benefit and primarily intended for flood loss reduction to existing development in flood areas as opposed to planned flood plain development.

One commentator expressed concern that the proposed rule was not clear in defining payment responsibility. FEMA will bill the entity that prepares the original request. Communities involved in their own review and eventual transmittal of the request to FEMA would not be billed simply because they were the agency transmitting the request.

Two commentators felt the cost for a single-lot conditional LOMA was too high and along with others felt the initial fees in general were excessive. As already explained, the fees were determined through an analysis of the minimum processing and review times

for the various types of requests and converted to dollar amounts using direct labor rates, overhead, and fee, which FEMA pays for these services.

Other commentators expressed concern that the rule could have the effect of discouraging development because of the fee requirements. It is not the intent of the rule to either discourage development or discourage the submittal of proposed projects for review. Because requestors need FEMA comment on their proposed projects to satisfy other requirements, and only they will benefit from this service, FEMA developed the reimbursement procedure. In this way, the general taxpayer is not paying for FEMA review of a project initiated by a private entity.

The final rule contains the following changes in regard to fees for conditional LOMA and LOMR review from the proposed rule of April 15, 1985:

1. Section 72.1 clarifies that there is no fee requirement for final LOMAs and LOMRs that correct errors in the original FIS and FIRM or are otherwise requested on the basis of existing flood plain conditions.

2. Section 72.4 clarifies the group to be billed and establishes a fee cap for conditional LOMAs and conditional LOMRs that would not be exceeded without written authorization from the requestor. Section 72.4 has also been modified to address the time frame for response by FEMA to a conditional LOMA or conditional LOMR request.

3. Section 72.5 clarifies the conditions by which a Federal, State, or local government or agency would be exempt from the fees.

In addition to the changes discussed above that this final rule made to the proposed rule, a few changes of an editorial nature were also made.

FEMA has determined, based upon Environmental Assessments, that this rule does not have significant impact upon the quality of the human environment. As a result, an Environment Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Two comments questioned the finding that the proposed rule would not have a significant economic impact on a substantial number of small entities. One comment from a State felt that the provisions on probation with a surcharge would have a significant impact on a very great number of communities in that State. One

community felt that the proposed rule and, in particular, the probation provision, would have a severe effect on that community, which is a small entity. This community also commented on existing NFIP provisions that were not changed in the proposed rule and, as a result, have no impact for the purposes of this rule. In regard to probation, FEMA's experience has been that most communities are substantially compliant with NFIP criteria. During a typical year, FEMA staff will visit and review the actions of approximately 1,000 of the NFIP's 17,600 participating communities. Generally, less than 10% of these communities will have serious compliance problems and the majority of these problems will be resolved through the provision of technical assistance and through consultation with local officials. It is likely that only a very small number of communities will be on probation at any given time. No community that fulfills its commitment to enforce its flood plain management regulations will be placed on probation. In addition, the NFIP remains a voluntary program. Any community that does not wish to adopt and enforce adequate flood plain management measures as required by the National Flood Insurance Act of 1968 has the option to withdraw from the NFIP. Thus, this rule does not have a significant economic impact on a substantial number of small entities and has not undergone regulatory flexibility analysis.

This rule is not a "major rule" as defined in Executive Order 12291, dated February 1981, and, hence, no regulatory analysis has been prepared.

The collection of information requirements contained in this rule were submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 59, 60, 61, 64, 66, 70, 72, and 75

Flood insurance, Flood plains, Intergovernmental relations.

Accordingly, 44 CFR Chapter 1, Subchapter B is amended as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for Part 59 is revised as set forth below and the authority citations following all the sections in Part 59 are removed.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 59.1 [Amended]

2. Section 59.1 is amended in the following particulars:

a. By removing the phrase "A1-99" and adding in its place the phrase "A1-30, AE, A99" in the definitions of "Area of special flood hazard" and "Special hazard area".

b. By removing the phrase "or VI-V30" and adding in its place the phrase "V1-30, VE, or V" in the definition of "Area of special flood hazard".

c. By adding after the phrase "V1-30" the phrase ", VE, or V" in the definition of "Coastal high hazard area".

d. By removing the phrase "VI-30," and adding in its place the phrase "V1-30, VE, V," in the definition of "Special hazard area".

e. By adding, alphabetically, a definition of "Breakaway wall" to read as follows:

"Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building of supporting foundation system.

f. By revising the definition of "Elevated Building" to read as follows:

"Elevated building" means a non-basement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, A0, AH, B, C, X, or D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, A0, AH, B, C, X, or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building", even though the lower area is enclosed by means of breakaway walls if the breakaway walls meet the standards of § 60.3(e)(5).

g. In the definition of "Flood" or "Flooding", paragraph (a)(3) is amended

by removing "or precipitated by accumulations of water on or under the ground." and adding in its place the phrase "by flooding as defined in paragraph (a)(2) above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current."

h. By removing the phrase "or under" in the first sentence of the definition of "Mudslide".

§ 59.22 [Amended]

3. Section 59.22 is amended by revising paragraph (b)(2) to read as follows:

(b) * * *

(2) Designate the official responsible to submit a report to the Administrator concerning the community participation in the Program, including, but not limited to the development and implementation of flood plain management regulations. This report shall be submitted annually or biennially as determined by the Administrator.

4. Section 59.24 is amended by removing paragraphs (b) and (c) and by adding paragraphs (b) through (g) to read as follows:

§ 59.24 Suspension of community eligibility.

(b) A community eligible for the sale of flood insurance which fails to adequately enforce flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be subject to probation. Probation shall represent formal notification to the community that the Administrator regards the community's flood plain management program as not compliant with NFIP criteria. Prior to imposing probation, the Administrator (1) shall inform the community upon 90 days prior written notice of the impending probation and of the specific program deficiencies and violations relative to the failure to enforce, (2) shall, at least 60 days before probation is to begin, issue a press release to local media explaining the reasons for and the effects of probation, and (3) when the probation is to begin on or after October 1, 1986, shall, at least 90 days before probation is to begin, advise all policyholders in the community of the impending probation and the additional premium that will be charged, as provided in this paragraph, on policies sold or renewed during the period of probation. During this 90-day period the community shall have the

opportunity to avoid probation by demonstrating compliance with Program requirements, or by correcting Program deficiencies and remedying all violations to the maximum extent possible. If, at the end of the 90-day period, the Administrator determines that the community has failed to do so, the probation shall go into effect. Probation may be continued for up to one year after the community corrects all Program deficiencies and remedies all violations to the maximum extent possible. Flood insurance may be sold or renewed in the community while it is on probation. Where a policy covers property located in a community placed on probation on or after October 1, 1986, an additional premium of \$25.00 shall be charged on each such policy initially issued, based upon the submission by the applicant of an application for flood insurance, or renewed, based upon the policyholder's response to a turn-around renewal premium notice or policyholder application notice, during the one-year period beginning on the date the community is placed on probation and during any successive one year periods during which the community remains on probation for any part thereof.

(c) A community eligible for the sale of flood insurance which fails to adequately enforce its flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 and does not correct its Program deficiencies and remedy all violations to the maximum extent possible in accordance with compliance deadlines established during a period of probation shall be subject to suspension of its Program eligibility. Under such circumstances, the Administrator shall grant the community 30 days in which to show cause why it should not be suspended. The Administrator may conduct a hearing, written or oral, before commencing suspensive action. If a community is to be suspended, the Administrator shall inform it upon 30 days prior written notice and upon publication in the *Federal Register* under Part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. In the event of impending suspension, the Administrator shall issue a press release to the local media explaining the reasons and effects of the suspension. The community's eligibility shall only be reinstated by the Administrator upon his receipt of a local legislative or executive measure reaffirming the community's formal intent to adequately enforce the flood plain management requirements of this subpart, together with evidence of action taken by the community to

correct Program deficiencies and remedy to the maximum extent possible those violations which caused the suspension. In certain cases, the Administrator, in order to evaluate the community's performance under the terms of its submission, may withhold reinstatement for a period not to exceed one year from the date of his receipt of the satisfactory submission or place the community on probation as provided for in paragraph (b) of this section.

(d) A community eligible for the sale of flood insurance which repeals its flood plain management regulations, allows its regulations to lapse, or amends its regulations so that they no longer meet the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be suspended from the Program. If a community is to be suspended, the Administrator shall inform it upon 30 days prior written notice and upon publication in the Federal Register under Part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. The community eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Administrator.

(e) A community eligible for the sale of flood insurance may withdraw from the Program by submitting to the Administrator a copy of a legislative action that explicitly states its desire to withdraw from the National Flood Insurance Program. Upon receipt of a certified copy of a final legislative action, the Administrator shall withdraw the community from the Program and publish in the Federal Register under Part 64 of this subchapter its loss of eligibility for the sale of flood insurance. A community that has withdrawn from the Program may be reinstated if it submits the application materials specified in § 59.22(a).

(f) If during a period of ineligibility under paragraphs (a), (d), or (e) of this section, a community has permitted actions to take place that have aggravated existing flood plain, mudslide (i.e., mudflow) and/or flood related erosion hazards, the Administrator may withhold reinstatement until the community submits evidence that it has taken action to remedy to the maximum extent possible the increased hazards. The Administrator may also place the reinstated community on probation as provided for in paragraph (b) of this section.

(g) The Administrator shall promptly notify the servicing company and any insurers issuing flood insurance pursuant to an arrangement with the Administrator of those communities

whose eligibility has been suspended or which have withdrawn from the program. Flood insurance shall not be sold or renewed in those communities. Policies sold or renewed within a community during a period of ineligibility are deemed to be voidable by the Administrator whether or not the parties to sale or renewal had actual notice of the ineligibility.

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

5. The authority citation for Part 60 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 60.2 [Amended]

6. Section 60.2 is amended by adding in paragraph (f) after the word "annual" both times it appears the phrase "or biennial".

§ 60.3 [Amended]

7. Section 60.3 is amended in the following particulars:

a. By adding after "FHBM" the phrase "or FIRM" in the following paragraphs: (b) introductory text, (b)(1), (b)(2), (b)(5), and (b)(9).

b. By removing in paragraph (b)(5) the words "For the purpose of the determination of applicable flood insurance risk premium rates within" and adding in their place the word "within".

c. By revising paragraph (b)(8) to read as follows:

(b)
(8) Require that all mobile homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, mobile homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
* * * * *

d. By removing in paragraph (c)(1) the word "unnumbered" and adding in its place the phrase ", AE zones,".

e. By adding after the phrase "A1-30" the phrase ", AE" in the following paragraphs: (c)(2) and (c)(3).

f. By revising paragraphs (c)(4), (c)(5), and (c)(6) to read as follows:

(c)
(4) Provide that where a non-residential structure is intended to be

made watertight below the base flood level, (i) a registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of (c)(3)(ii) or (c)(8)(ii) of this section, and (ii) a record of such certificates which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained with the official designated by the community under § 59.22(a)(9)(iii);

(5) Require that all mobile homes to be placed within Zones A1-30 and AE on the community's FIRM in new mobile home parks and mobile home subdivisions, in expansions to existing mobile home parks and mobile home subdivisions, and in existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50% of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced, have the lowest floor of the mobile home elevated to or above the base flood level.

(6) Require that all mobile homes to be placed within Zones A1-30 and AE on the community's FIRM, which are not to be placed into a mobile home park or mobile home subdivision, have the lowest floor of the mobile home elevated to or above the base flood level.
* * * * *

g. By adding after the phrase "A1-30" the phrase "and AE" in paragraph (c)(10).

h. In paragraph (d) by adding after the phrase "A1-30" the phrase "and/or AE" and by removing the phrase "A99 zones and unnumbered" and adding in its place the phrase ", AH zones, A99 zones, and".

i. By removing the phrase "(c)(9)" and adding in its place the phrase "(c)(11)" in paragraph (d)(1).

j. By revising paragraph (e) to read as follows:
* * * * *

(e) When the Administrator has provided a notice of final base flood elevations within Zones A1-30 and/or AE on the community's FIRM and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's FIRM, and has identified on the community's FIRM coastal high hazard areas by designating

Zones V1-30, VE, and/or V, the community shall:

(1) Meet the requirements of paragraphs (c)(1) through (c)(11) of this section;

(2) Within Zones V1-30, VE, and V on a community's FIRM, (i) obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures, and whether or not such structures contain a basement; and (ii) maintain a record of all such information with the official designated by the community under § 59.22(a)(9)(iii);

(3) Provide that all new construction within Zones V1-30, VE, and V on the community's FIRM is located landward of the reach of mean high tide;

(4) Provide that all new construction and substantial improvements in Zones V1-30 and VE, and also Zone V if base flood elevation data is available, on the community's FIRM, are elevated on pilings and columns so that (i) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level; and (ii) the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equalled or exceeded in any given year (100-year mean recurrence interval). A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of (i) and (ii) of this paragraph.

(5) Provide that all new construction and substantial improvements within Zones V1-30, VE, and V on the community's FIRM have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per

square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

(i) breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and,

(ii) the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Maximum wind and water loading values to be used in this determination shall each have one percent chance of being equalled or exceeded in any given year (100-year mean recurrence interval).

Such enclosed space shall be useable solely for parking of vehicles, building access, or storage.

(6) Prohibit the use of fill for structural support of buildings within Zones V1-30, VE, and V on the community's FIRM;

(7) Prohibit the placement of mobile homes, except in existing mobile homes parks and mobile home subdivisions, within Zones V1-30, VE, and V on the community's FIRM;

(8) Prohibit man-made alteration of sand dunes and mangrove stands within Zones V1-30, VE, and V on the community's FIRM which would increase potential flood damage.

§ 60.6 [Amended]

8. Section 60.6 is amended by adding in (a)(6)(ii) after the word "annual" the phrase "or biennial".

§ 60.22 [Amended]

9. Section 60.22 is amended by adding after the phrase "V1-30" the phrase ", VE, and V" in paragraph (c)(14) and by removing the phrase "and V1-30" and adding in its place the phrase ", AE, V1-30, and VE" in paragraph (c)(15).

PART 61—INSURANCE COVERAGE AND RATES

10. The authority citation for Part 61 is revised as set forth below and the authority citations following all the sections in Part 61 are removed.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 61.3 [Amended]

11. Section 61.3 is amended by adding to the end of the third sentence the

phrase " , unless application to cover more than one building is made on a form or in a format approved for that purpose by the Administrator".

§ 61.4 [Amended]

12. Section 61.4 is amended by adding paragraph (e) to read as follows:

(e) The policy does not cover loss to any building or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government, where the lease expressly holds the Federal Government harmless, under flood insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

§ 61.5 [Amended]

13. Section 61.5 is amended in the following particulars:

a. By revising paragraph (f)(8) to read as follows:

(f) . . .
(8) A mobile home located or placed within a FEMA designated Special Flood Hazard Area that is not anchored and affixed to a permanent site to resist flotation, collapse, or lateral movement (i) by over-the-top or frame ties to ground anchors or (ii) in accordance with manufacturer's specifications or (iii) in compliance with the community's flood plain management requirements, unless it is a mobile home on a foundation continuously insured by the National Flood Insurance Program at the same site at least since September 30, 1982.

b. By removing from paragraph (f)(9) the phrase "V1-V30" and adding in its place the phrase "V1-30, VE, and V".

c. By removing from paragraph (f)(10) the phrase "oil tanks," and adding in its place the phrase "well-water tank pumps, oil tanks and the oil in them, cisterns and the water in them, natural gas tanks, pumps and/or tanks used in conjunction with solar energy systems,".

d. By removing in paragraph (h)(1)(v) the amount "\$50.00" and adding in its place the phrase "the minimum premium set forth in § 61.10".

§ 61.6 [Amended]

14. Section 61.6 is amended by revising the chart in paragraph (a) to read as follows:

(a) . . .

	Regular Program		
	Emergency Program 1		
	First layer	Second layer	Total amount available
Single family residential			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands....	35,000	150,000	185,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands.....	50,000	2 150,000	185,000
Other residential			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands....	100,000	150,000	250,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands.....	150,000	3 150,000	250,000
Small business.....	100,000	150,000	250,000
Churches and other properties.....	100,000	100,000	200,000
Contents			
Residential.....	10,000	50,000	60,000
Small business.....	100,000	200,000	300,000
Churches, other properties (per unit).....	100,000	100,000	200,000

1 NOTE: Only first layer available under Emergency Program.

2 NOTE: Add to 35,000.

3 NOTE: Add to 100,000.

§ 61.11 [Amended]

15. Section 61.11 is amended by adding in paragraph (c) after the words "new policy" the words "or added coverage or increase in the amount of coverage".

§ 61.16 [Added]

16. Section 61.16 is added to Part 61 to read as follows:

§ 61.16 Probation additional premium.

The additional premium charged pursuant to § 59.24(b) on each policy sold or renewed within a community that has been placed on probation on or after October 1, 1986, is \$25.00.

Appendix A(1) of Part 61—[Amended]

17. Appendix A(1) of Part 61, referenced at § 61.13, Standard Flood Insurance Policy, is amended in the following particulars:

a. In Article II—Definitions, the definition of "Building" is amended by adding to the end of the last sentence the phrase ", unless application to cover more than one building is made on a form or in a format approved for that purpose by the Administrator".

b. In Article II—Definitions, the definition of "Doublewide Mobile Home" is amended by adding after the words "permanent building" and before the semi-colon the words "and which when so assembled is at least 16 feet wide with an area within its perimeter walls of at least 600 square feet".

c. In Article II—Definitions, the definition of "Policy" is amended by adding to the end of the last sentence the phrase ", unless application to cover more than one building is made on a form or in a format approved for that purpose by the Administrator".

d. In Article II—Definitions, a definition of "Probation additional premium" is added, alphabetically, to read as follows:

"Probation additional premium" means a flat charge per policy term paid by the insured on all new and renewal policies issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24 on or after October 1, 1986.

e. In Article III—Losses Not Covered, the opening clause beginning "We only . . ." is amended by adding after the word "by" and before the word "flood" the phrase "or from".

f. In Article III—Losses Not Covered, paragraph A.2 is revised to read as follows:

2. Loss caused (i) by rain, snow, sleet, hail or water spray; or (ii) by freezing, thawing, the pressure or weight of ice or water, sewer backup or seepage of water unless your insured property has been, at the same time, damaged by a flood.

g. In Article III—Losses Not Covered, paragraph A.3 is amended by removing the word "or" between the words "Water" and "moisture" and adding a comma in its place and by adding the

phrase "or mudslide (i.e., mudflow)" after the word "moisture".

h. In Article III—Losses Not Covered, paragraph B.1 is amended by adding between the word "of" and the word "sandbags" the phrase "(i)"; by adding between the phrase "with them," and the phrase "for the purpose" the following: "(ii) fill for temporary levees, (iii) pumps, and (iv) wood, all"; by removing the phrase "and preserving the building at the premises after a flood loss"; and by adding between the phrase "loss in an" and the word "amount" the word "aggregate".

i. In Article III—Losses Not Covered, paragraph B is amended by adding paragraphs 6 and 7 to the end thereof to read as follows:

6. Loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the insured property is located, caused by the peril insured against.

7. Loss to any building or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government, where the lease expressly holds the Federal Government harmless, under flood insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

j. In Article IV—Property Covered, the heading is amended by adding "(Subject to 'Property Not Covered' Provisions)" as a second line of heading.

k. In Article IV—Property Covered, paragraph C is amended by removing the comma between the word "art" and the word "glass" and by adding a closing parenthesis between the phrase "antique silver" and the following comma.

1. In Article V—Property Not Covered, paragraph B is revised to read as follows:

B. A building, and its contents, located seaward of mean high tide, or entirely in, on, or over water, if the building was newly constructed or substantially improved on or after October 1, 1982;

m. In Article V—Property Not Covered, paragraph F is amended by removing the phrase "oil tanks," and adding in its place the phrase "well-water tank pumps, oil tanks and the oil in them, cisterns and the water in them, natural gas tanks, pumps and/or tanks used in conjunction with solar energy systems,".

n. In Article V—Property Not Covered, paragraph H is revised to read as follows:

H. A mobile home located or placed within a FEMA designated Special Flood Hazard Area that is not anchored and affixed to a permanent site to resist flotation, collapse, or lateral movement (i) by over-the-top or frame ties to ground anchors or (ii) in accordance with manufacturer's specifications or (iii) in compliance with the community's flood plain management requirements, unless it is a mobile home on a foundation continuously insured by the National Flood Insurance Program at the same site at least since September 30, 1982.

o. In Article V—Property Not Covered, paragraph J is amended by removing the phrase "V1-V30" and adding in its place the phrase "V1-30, VE, and V".

p. In Article VII—Replacement Cost Provisions, paragraph I is added to read as follows:

1. If the community in which your property is located has been converted from the Emergency Program to the Regular during the current policy term, then these Replacement Cost Provisions shall be applied based on the maximum amount of insurance available under the National Flood Insurance Program at the beginning of the current policy term instead of at the time of loss.

q. In Article VIII—General Conditions and Provisions, paragraph C is amended by adding at the end of the first sentence a sentence to read as follows:

*** In other words, if you obtain additional flood insurance to cover the structure insured by this policy beyond that obtained under the authority of the National Flood Insurance Act of 1968, as amended, then you must acquire the maximum amount of available flood insurance under said Act in order to avoid the imposition of proration as described in the preceding sentence.

r. In Article VIII—General Conditions and Provisions, paragraph F.1.e. is revised by removing the amount "\$50.00" and adding in its place the phrase "the minimum premium set forth in 44 CFR 61.10".

s. In Article VIII—General Conditions and Provisions, paragraph F.2.(ii)a is amended by removing in the last sentence the comma after the word "year" and adding in its place a closing parenthesis, by removing the closing parenthesis before the semi-colon, and by adding the word "or" after the semi-colon.

t. In Article VIII—General Conditions and Provisions, paragraph O is amended by removing the word "Mortgagee" in the heading and adding in its place the word "Mortgage".

Appendix A(2) of Part 61—[Amended]

18. Appendix A(2) of Part 61, referenced at § 61.13, Standard Flood

Insurance Policy, is amended in the following particulars:

a. That part of the heading of Appendix A(2) that is enclosed in brackets is revised to read as follows:

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof, and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter BJ]

b. In the DEFINITIONS section, the definition of "Building" is amended by adding to the end of the last sentence the phrase ", unless application to cover more than one building is made on a form or in a format approved for that purpose by the Administrator".

c. In the DEFINITIONS section, the definition of "Doublewide Mobile Home" is amended by removing the word "an" and adding in its place the word "and" and by adding after the words "permanent building" and before the semi-colon the words "and which when so assembled is at least 16 feet wide with an area within its perimeter walls of at least 600 square feet".

d. In the DEFINITIONS section, the definition of "Policy" is amended by adding to the end of the last sentence the phrase ", unless application to cover more than one building is made on a form or in a format approved for that purpose by the Administrator".

e. In the DEFINITIONS section, a definition of "Probation additional premium" is added, alphabetically, to read as follows:

"Probation additional premium" means a flat charge per policy term paid by the Insured on all new and renewal policies issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24 on or after October 1, 1986.

f. In the PERILS EXCLUDED section, paragraph A is amended by adding a comma between the word "water" and the word "moisture" in item (3).

g. In the PERILS EXCLUDED section, paragraph F is amended by removing the phrase "purpose of sandbags" and adding in its place the phrase "purchase of (i) sandbags"; by adding between the phrase "with them," and the phrase "for the purpose of saving" the following: "(ii) fill for temporary levees, (iii) pumps, and (iv) wood, all"; by removing the phrase "and preserving the building at the premises after a flood loss"; and by adding between the phrase "loss in an" and the word "amount" the word "aggregate".

h. In the PERILS EXCLUDED section, paragraph K is added to read as follows:

k. To any building or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government, where the lease expressly holds the Federal Government harmless, under flood insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

i. In the PROPERTY COVERED section, the heading is amended by adding "(Subject to 'Property Not Covered' Provisions)" as a second line of heading.

j. In the PROPERTY COVERED section, paragraph B.1 is amended by removing the semi-colon between the word "description" and the word "furniture" and adding in its place a comma and by adding to the end of paragraph B.1 the following sentence: "Bailees' goods are specifically excluded from coverage under this policy."

k. In the PROPERTY COVERED section, paragraph B is amended by adding paragraph 5 to read as follows:

5. In the case of contents owned by the Insured in a condominium building, as a condominium unit owner, as well as in common with other condominium unit owners, should the amount of insurance collectible under this policy for a loss, when combined with any recovery available to the Insured as a tenant in common under any condominium association flood insurance coverage provided under the Act for the same loss, exceed the statutorily permissible limits of contents coverage available under the Act for the insuring of risks of the class (residential, nonresidential, or small business) of the Insured, then the limits of contents coverage under this policy shall be reduced in regard to that loss by the amount of such excess.

l. In the PROPERTY NOT COVERED section, paragraph B is revised to read as follows:

B. A building, and its contents, located seaward of mean high tide, or entirely in, on, or over water, if the building was newly constructed or substantially improved on or after October 1, 1982.

m. In the PROPERTY NOT COVERED section, paragraph E is amended by removing the phrase "equipment; and business property," and adding in its place the phrase "equipment."

n. In the PROPERTY NOT COVERED section, paragraph F is amended by removing the phrase "oil tanks,

furnaces", and adding in its place the phrase "well-water tank pumps, oil tanks and the oil in them, cisterns and the water in them, natural gas tanks, pumps and/or tanks used in conjunction with solar energy systems, furnaces, hot water heaters, clothes washers and dryers, food freezers, air conditioners,".

o. In the PROPERTY NOT COVERED section, paragraph H is revised to read as follows:

A mobile home located or placed within a FEMA designated Special Flood Hazard Area that is not anchored and affixed to a permanent site to resist flotation, collapse, or lateral movement (i) by over-the-top or frame ties to ground anchors or (ii) in accordance with manufacturer's specifications or (iii) in compliance with the community's flood plain management requirements, unless it is a mobile home on a foundation continuously insured by the National Flood Insurance Program at the same site at least since September 30, 1982.

p. In the PROPERTY NOT COVERED section, paragraph J is amended by removing the phrase "V1-V30" and adding in its place the phrase "V1-30, VE, and V".

q. In the General Conditions and Provisions section, paragraph C is amended by removing "Insured" in the first sentence and adding in its place "Insurer" and by adding at the end of the first sentence a sentence to read as follows:

In other words, if the Insured obtains additional flood insurance to cover the structure insured by this policy beyond that obtained under the authority of the National Flood Insurance Act of 1968, as amended, then the Insured must acquire the maximum amount of available flood insurance under said Act in order to avoid the imposition of proration as described in the preceding sentence.

r. In the General Conditions and Provisions section, paragraph E.1.e. is revised by removing the amount "\$50.00" and adding in its place the phrase "the minimum premium set forth in 44 CFR 61.10".

s. In the General Conditions and Provisions section, paragraph M is amended by removing the word "Mortgagee" in the heading and adding in its place the word "Mortgage".

t. The IN WITNESS WHEREOF clause and the signature lines appearing after paragraph V of the GENERAL CONDITIONS AND PROVISIONS section and before Endorsement 1 are revised to read as follows:

IN WITNESS WHEREOF, the Insurer has executed and attested these presents.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

19. The authority citation for Part 64 continues to read as set forth below and the authority citations following all the sections in Part 64 are removed.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 64.3 [Amended]

20. Section 64.3 is amended in the following particulars:

a. In the chart in paragraph (a)(1) by removing the phrase "A1-99" and adding in its place the phrase "A1-30, AE" and by adding after this amended entry in the chart the following entry:

A99..... Area of special flood hazard where enough progress has been made on a protective system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes.

b. In the chart in paragraph (a)(1) by adding after the "AH" entry the following entry:

V..... Area of special flood hazards without water surface elevations determined, and with velocity, that is inundated by tidal floods (coastal high hazard area).

c. In the chart in paragraph (a)(1) by adding after the phrase "V1-30" the phrase ", VE" and by adding in this entry in the chart after "flood hazards," the words "with water surface elevations determined and".

d. In the chart in paragraph (a)(1) by adding both after the phrase "B" and after the phrase "C" the phrase ", X".

e. In paragraph (b), by removing the phrase "A1-99" and adding in its place the phrase "A1-30, AE, A99" and by adding after the phrase "V1-30," the phrase "VE, V,".

PART 66—CONSULTATION WITH LOCAL OFFICIALS

21. The authority citation for Part 66 is revised as set forth below and the authority citations following all the sections in Part 66 are removed.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 66.1 [Amended]

22. Section 66.1 is amended by removing the phrase "A1-99 and" and adding in its place the phrase "A1-30, AE, AH, AO" and by adding after the phrase "V1-30" the phrase ", and VE".

PART 70—PROCEDURE FOR MAP CORRECTION

23. The authority citation for Part 70 is revised as set forth below and the authority citations following all the sections in Part 70 are removed.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§§ 70.1, 70.3, 70.4, and 70.5 [Amended]

24. Part 70 is amended by removing the phrase "A1-99" and adding in its place the phrase "A1-30, AE, AH, A99" in the following sections: §§ 70.1, 70.3(a), 70.4(a), 70.4(b), and 70.5(c).

25. Part 70 is amended by removing the phrase "and V1-30" and adding in its place the phrase ", V1-30, VE, and V" in the following sections: §§ 70.1 and 70.3(a).

26. Part 70 is amended by removing the phrase "or V1-30" and adding in its place the phrase ", V1-30, VE, or V" in the following sections: §§ 70.4(a), 70.4(b), and 70.5(c).

27. Part 72 is added to 44 CFR Chapter 1, Subchapter B to read as follows:

PART 72—PROCEDURE AND FEES FOR OBTAINING CONDITIONAL APPROVAL OF MAP CHANGES

Sec.

- 72.1 Purpose of part.
- 72.2 Definitions.
- 72.3 Initial fee schedule.
- 72.4 Submittal/payment procedures and FEMA response.
- 72.5 Exemptions.
- 72.6 Unfavorable response.
- 72.7 Resubmittals.

Authority: 31 U.S.C. 9701; 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 72.1 Purpose of part.

The purpose of this part is to provide administrative and cost recovery procedures for engineering review and processing associated with the issuance of Conditional Letters of Map Amendment (conditional LOMAs) and Conditional Letters of Map Revision (conditional LOMRs). Final LOMAs and LOMRs granted to correct map deficiencies are not subject to this reimbursement procedure.

§ 72.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in Part

59 of this subchapter are applicable to this part.

(b) For the purpose of this part, a Conditional Letter of Map Amendment (conditional LOMA) is FEMA's comment on a proposed project to be located in and affecting only that portion of the area of special flood hazard outside the regulatory floodway and having no impact on the existing regulatory floodway or effective base flood elevations.

(c) For the purpose of this part, a Conditional Letter of Map Revision (conditional LOMR) will be FEMA's comment on a proposed project that would affect the hydrologic and/or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway or effective base flood elevations.

§ 72.3 Initial fee schedule.

(a) For conditional Letters of Map Amendment, the initial fee shall be paid by the requestor in the following amounts:

- (1) Single-lot.....\$125
- (2) Multi-lot/subdivision.....\$175

(b) For conditional Letters of Map Revision, the initial fee shall be paid by the requestor in the following amounts:

- (1) New bridge or culvert (no channelization).....\$350
- (2) Channel modifications only.....\$400
- (3) Channel modification and new bridge or culvert.....\$525
- (4) Levees, berms, or other structural measures.....\$675

(c) For projects involving combinations of the above actions which are not separately identified, the initial fee shall be that charged for the most expensive of the actions comprising the combination.

§ 72.4 Submittal/payment procedures and FEMA response.

(a) Initial fees shall be submitted with the request for FEMA review and processing of conditional LOMAs and conditional LOMRs.

(b) Initial fees must be received by FEMA before the review can be initiated for any conditional LOMA or conditional LOMR request.

(c) Following completion of FEMA review for any conditional LOMA or

conditional LOMR, the requestor will be billed at the prevailing private sector labor rate (currently \$25.00 per hour) for any actual costs exceeding the initial fee incurred during the review.

(1) Requestors of conditional LOMAs will be notified of the anticipated total cost if the total cost of processing their request will exceed \$500.

(2) Requestors of conditional LOMRs will be notified of the anticipated total cost if the total cost of processing their request will exceed \$1,500.

(3) In the event that processing costs exceed the limits defined in (c)(1) and (2) of this section, processing of the request will be suspended pending FEMA receipt of written approval from the requestor to proceed.

(d) The entity that applies to FEMA through the local community for review will be billed for the cost of the review. The local community incurs no financial obligation under the reimbursement procedure set forth in this part as a result of transmitting the submittal to FEMA.

(e) Payment of both the initial fee and final cost shall be by check or money order payable to the United States Treasury and must be received by FEMA before the conditional LOMA or conditional LOMR will be issued.

(f) For conditional LOMA requests, FEMA shall:

(1) Notify the requestor within 30 days as to the adequacy of the submittal, and

(2) Within 30 days of receipt of adequate information, provide comment to the requestor on the proposed project.

(g) For conditional LOMR requests, FEMA shall:

(1) Notify the requestor within 60 days as to the adequacy of the submittal, and

(2) Within 90 days of receipt of adequate information, provide comment to the requestor on the proposed project.

§ 72.5 Exemptions.

Federal, state, and local governments and their agencies shall be exempt from fees for projects they sponsor if the requestor certifies that the particular project is for public benefit and primarily intended for flood loss reduction to existing development in identified flood hazard areas, as opposed to planned flood plain development.

§ 72.6 Unfavorable response.

A conditional LOMA or conditional LOMR may be denied or may contain specific comments, concerns, or conditions regarding a proposed project or design and its impacts on flood hazards in a community. A requestor is not entitled to any refund if the letter contains such comments, concerns, or conditions, or if the letter is denied. A requestor is not entitled to any refund if the requestor is unable to obtain required authorizations, permits, financing, etc., for which the letter was sought.

§ 72.7 Resubmittals.

Any resubmittal of a request more than 90 days after FEMA notification that a request has been denied or after a review has been terminated due to insufficient information or other reasons will be treated as an original submission and subject to all submittal/payment procedures as described in § 72.4, including the initial fee. The procedure of § 72.4 including the initial fee, will also apply if the project has been significantly altered in design or scope other than that necessary to respond to previously issued comments, concerns, or conditions by FEMA.

PART 75—EXEMPTION OF STATE-OWNED PROPERTIES UNDER SELF-INSURANCE PLAN

28. The authority citation for Part 75 is revised as set forth below and the authority citations following all the sections in Part 75 are removed.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§§ 75.1, 75.10, 75.11, and 75.13 [Amended]

29. Part 75 is amended by removing the phrase "M, V, VO" and inserting in its place the phrase "AH, A1-30, AE, A99, M, V, VO, V1-30, VE" in the following sections: §§ 75.1, 75.10, 75.11(a)(4)(twice), 75.11(a)(5), 75.11(a)(7), and 75.13(c).

Dated: August 29, 1985.

Jeffrey S. Bragg,

Federal Insurance Administrator.

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