

Sunshine Act Meetings

Federal Register

Vol. 55, No. 224

Tuesday, November 20, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board;
Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the December 4, 1990, regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Thursday, December 13, 1990, starting at 10 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT:

Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia, 22102-5090.

Dated: November 15, 1990.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 27429 Filed 11-16-90; 2:22 pm]

BILLING CODE 6705-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11 a.m., Monday, November 26, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item originally announced for a closed meeting on October 29, 1990.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27465 Filed 11-16-90; 3:40 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 19, 26, December 3, and 10, 1990.

PLACE: Commissioners' Conference room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 19

Wednesday, November 21

8:30 a.m.

Litigation Matters: Discussion of Options (Closed—Ex. 10)

9:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of November 26—Tentative

There are no meetings scheduled for the Week of November 26

Week of December 3—Tentative

Friday, December 7

10 a.m.

Briefing on Level of Design Detail for part 52 (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 10—Tentative

Thursday, December 13

9 a.m.

Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

10:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION:

William Hill (301) 492-1661.

Dated: November 15, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90-27446 Filed 11-16-90; 8:45 am]

BILLING CODE 7590-01-M

Corrections

Federal Register

Vol. 55, No. 224

Tuesday, November 20, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of

the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Revision of Fees For Sanitation Inspections of Cruise Ships

Correction

Notice document 90-25880 beginning on page 46102 in the issue of Thursday, November 1, 1990, was inaccurately

printed. The correct text is set forth below.

SUMMARY: Revised fees for vessel sanitation inspections are presented to become effective January 1, 1991.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Anderson, Chief, Special Programs Group, Center for Environmental Health and Injury

Control (F29), CDC, Atlanta, Georgia, 30333. Telephone: FTS: 236-4595, Commercial: (404) 488-4595.

SUPPLEMENTARY INFORMATION:

Purpose and Background

CDC began collecting fees for sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program (VSP), on March 1, 1988; the fee schedule was first published in the **Federal Register** on Tuesday, November 24, 1987, (52 FR 45019).

The formula used to determine the fees is as follows:

$$\text{Average cost per inspection} = \frac{\text{Total Cost of VSP}}{\text{Weighted No. of Annual Inspections}}$$

The average cost per inspection is multiplied by a size/cost factor to determine the fee for vessels in each size category. The size/cost factor was established in the proposed fee schedule published in the **Federal Register** on Friday, July 17, 1987, (52 FR 27060) and revised in a schedule published in the **Federal Register** on Tuesday, November 28, 1989, (54 FR 48942) and is as follows:

	Average cost X
Extra Small (<3,001 GRT ¹).....	0.25
Small (3,001-15,000 GRT).....	0.5
Medium (15,001-30,000 GRT).....	1.0
Large (30,001-60,000 GRT).....	1.5
Extra Large (>60,000 GRT).....	2.0

¹ GRT-Gross Register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

Fees

The following fee schedule will be effective January 1, 1991, through December 31, 1991. However, should there be a substantial increase in the cost of air transportation, it may be necessary to re-adjust the fees prior to December 31, 1991, since travel constitutes a sizable portion of the costs of this Program. If such a re-adjustment in the fee schedule is necessary, a notice will be published in the **Federal Register** 30 days prior to the effective date.

Vessel sizes	Fee
Extra Small Ship (<3,001 GRT).....	\$693
Small Ship (3,001-15,001 GRT).....	1,386
Medium Ship (15,001-30,000 GRT).....	2,772

Vessel sizes	Fee
Large Ship (30,001-60,000 GRT).....	4,158
Extra Large Ship (>60,000 GRT).....	5,544

Inspections and reinspections involve the same procedure, require the same amount of time and will therefore be charged at the same rate.

Applicability

The fees will be applicable to all passenger cruise vessels for which sanitation inspections are conducted as part of the Vessel Sanitation Program, CDC.

Dated: October 25, 1990.

BILLING CODE 1505-01-D

Federal Register

Tuesday
November 20, 1990

Part II

Department of Education

34 CFR Part 682

Guaranteed Student Loan Programs;
Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840-AA96

Guaranteed Student Loan Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Guaranteed Student Loan (GSL) and PLUS Programs. The new GSL programs regulations will govern the Stafford Loan Program (formerly the Guaranteed Student Loan Program), the Supplemental Loans for Students (SLS) Program, the PLUS Program, and the Consolidation Program, collectively referred to as the Guaranteed Student Loan (GSL) programs. The proposed regulations address the administration of the GSL programs by schools, lenders, State and private nonprofit guarantee agencies, and the Department of Education. The proposed regulations would incorporate statutory changes made by the Consolidated Omnibus Budget Reconciliation Act of 1985 (enacted April 7, 1986) (COBRA), the Higher Education Amendments of 1986 (enacted October 17, 1986) (1986 Amendments), the Higher Education Technical Amendments Act of 1987 (enacted June 3, 1987) (Technical Amendments), Public Law 100-297 (enacted April 28, 1988), and Public Law 100-369 (enacted July 18, 1988). The proposed regulations would also implement various policy initiatives intended to improve program administration, prevent loan defaults, and generate repayment on a loan once default has occurred. The proposed regulations do not incorporate the provisions of the Omnibus Budget Reconciliation Act of 1989 (enacted December 19, 1989) (Pub. L. 101-239). Regulations covering these provisions will be issued soon.

DATES: Comments must be received on or before February 19, 1991.

ADDRESSES: Comments should be addressed to Patricia Newcombe, Acting Chief, 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, DC 20202-5449.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of the preamble.

FOR FURTHER INFORMATION CONTACT:

Contact Lloyd Robertson or Patricia Beavan, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, room 4310, Mail Stop 5345, ROB-3, 7th & D Streets SW., Washington, DC 20202-5449, Telephone Number (202) 708-8242.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1986, the GSL and PLUS Program regulations governing the participation of lenders, guarantee agencies, and educational institutions in the GSL programs, as authorized by title IV of the Higher Education Act of 1965, as amended (the Act), were published in the *Federal Register*. Those regulations did not reflect changes to the authorizing legislation for the GSL programs made by the 1986 Amendments and the Technical Amendments Act of 1987 (Pub. L. 100-50). These proposed regulations would implement the changes brought about by these statutes and by Public Law 100-297 and Public Law 100-369, and would implement various policy initiatives designed to reduce defaults and increase collections on loans that do go into default. They also include the revisions to part 682 included in the Secretary's Default Reduction Initiative. See 54 FR 24114 (June 5, 1989) (final regulations). This Notice of Proposed Rulemaking (NPRM) is not soliciting comments on the final regulations implementing the Default Reduction Initiative published on June 5, 1989 or on the NPRM published that same day. When final regulations based on the June 5, 1989 NPRM are published, those regulations will be included in the final regulation based on this NPRM. See 54 FR 24128 (June 5, 1989) (NPRM). This NPRM does not incorporate the final regulations implementing the targeted teacher deferment See 55 FR 35006 (August 27, 1990) (final regulations). Those regulations will be included in the final regulations based on this NPRM.

Important Statutory Changes Included in the Regulations

A major purpose of these regulations is to incorporate recent statutory amendments. These statutory amendments include the following important changes to the GSL programs. The section(s) of the proposed regulations principally affected by each change is indicated in parentheses for each change.

Terminology (Sections 682.100-682.712)

The proposed regulations would substitute "SLS borrower" for "student

PLUS borrower" where appropriate, due to the statutory change restricting PLUS loans to parent borrowers and creating the SLS Program as successor to the student PLUS Program.

The term "Stafford Loan Program," would be used throughout, in place of "Guaranteed Student Loan Program" due to the statutory change in Public Law 100-297 renaming the GSL Program. The term "Guaranteed Student Loan" would be used throughout the regulations in referring to the Stafford Loan, SLS, PLUS, and Consolidation programs as a group.

PLUS/SLS (Sections 682.200-682.204)

The 1986 Amendments created the SLS Program. Graduate and professional students, independent undergraduate students, and, under certain circumstances, dependent undergraduate students are eligible to borrow funds under this program. Under the 1986 Amendments, PLUS program eligibility is limited to parent borrowers. A PLUS loan and an SLS loan must be repaid beginning 60 days after disbursement, unless the borrower is entitled to a deferment of repayment.

Estimated Cost of Attendance (Section 682.200)

The 1986 Amendments revised the definition of cost of attendance. Under the statute, a school may include only the allowance and other allowable charges applicable to the student in determining the cost of attendance for that student.

Loan Consolidation (Sections 682.200-682.204)

The COBRA authorized the Student Loan Marketing Association (SLMA) and most eligible lenders to enter into agreements with the Secretary or a guarantee agency for the purpose of consolidating Stafford, PLUS, and Perkins (formerly National Direct Student Loan) loans of eligible student borrowers under the Consolidation Loan Program. All eligible lenders except guarantee agencies and Rural Rehabilitation Corporations are authorized to enter into agreements with the Secretary or a guarantee agency for the purpose of consolidating loans made to students under the Stafford Loan, Perkins Loan, PLUS, SLS, and Health Professions Student Loan (HPSL) programs. PLUS loans made to parents and loans more than 90 days delinquent may not be consolidated. Any nonprofit private agency functioning in any State as a secondary market is considered an eligible lender for the purpose of loan consolidation.

New Definition of "School" (Section 682.200)

The Technical Amendments changed the definition of "institution of higher education" for purposes of the CSL programs regarding the types of educational programs offered. The proposed regulations would incorporate this change by revising the definition of the term "school" to include a hospital or health care facility offering at least a one-year training program leading to a degree or certificate for graduates of accredited health professions programs. Previously, the definition required that the institution offer either a bachelor's degree or a two-year program acceptable for full credit toward a bachelor's degree.

Disqualification of Lenders (Section 682.200)

The 1986 Amendments allow for the disqualification of a lender for use of certain incentives, conducting unsolicited mailings of loan applications to certain students, or engaging in misleading or fraudulent advertising.

Financial Need Requirements for a Stafford Loan (Section 682.201)

The 1986 Amendments require all Stafford loan applicants to show financial need to qualify for a federally subsidized Stafford loan based on an expected family contribution (EFC) calculated under a need analysis system approved by the Secretary for use in the Perkins Loan, Supplemental Educational Opportunity Grant, and College Work-Study programs, whether or not the institution participates in these programs. This change in statute repeals the application of the Stafford loan needs test tables formerly used to determine an EFC.

Restrictions on SLS Eligibility (Section 682.201)

Public Law 100-369 restricts the eligibility of dependent undergraduate students for SLS loans to those students for whom the financial aid administrator determines that "exceptional" circumstances would likely preclude the student's parents from borrowing under the PLUS program to cover the expected family contribution and that the student's family is otherwise unable to provide the expected family contribution. Documentation of the school's determination of exceptional circumstances must be retained in the school's files. These "exceptional" circumstances may include, but are not limited to, a serious illness in the family, sudden loss of employment of a family's principal wage earner, or the family's

dependence on fixed incomes or public assistance. The Secretary particularly solicits comments on whether a regulatory definition of "exceptional circumstances" is feasible and, if so, what the definition should include.

Determination of Pell Grant and Stafford Loan Eligibility for SLS Applicants (Section 682.201)

Public Law 100-369 requires all undergraduate SLS applicants to have a determination of eligibility or ineligibility for a Pell Grant made for the enrollment period for which the applicant wishes to borrow, and if determined to be eligible, have filed an application for a Pell Grant prior to the certification of an SLS application for a borrower. Further, Public Law 100-369 requires all SLS applicants to also receive a determination of eligibility or ineligibility for a Stafford loan, and, if determined to be eligible, have applied for a Stafford loan prior to certification of an SLS application for the borrower.

Determination of SLS Loan Amounts (Section 682.201)

Public Law 100-369 requires the amount of an SLS applicant's Stafford Loan eligibility and other financial aid to be subtracted from the student's cost of attendance in determining the student's SLS loan amount.

Interest Rates (Section 682.202)

The 1986 Amendments changed the Stafford loan interest rate for new borrowers who obtain loans made for periods of enrollment beginning on or after July 1, 1988. The interest rate for these borrowers is 8 percent through the fourth year of repayment, and 10 percent thereafter.

The 1986 Amendments also established a variable interest rate for SLS and PLUS loans made for a period of enrollment beginning on or after July 1, 1987. The Technical Amendments changed this provision to apply the variable interest rate for the PLUS and SLS programs to loans for which the first disbursement is made on or after July 1, 1987. The variable rate is established annually on June 1, and for any July 1 through June 30 period, equals the bond equivalent rate of 52-week Treasury Bills auctioned at the final auction held prior to June 1, plus 3.25 percent.

Under the 1986 Amendments, a borrower may refinance prior fixed rate SLS and PLUS loans to secure a variable interest rate.

New Loan Limits (Section 682.204)

The 1986 Amendments increased the annual Stafford Loan limits. Under the

Act, an undergraduate student attending on at least a half-time basis for periods of enrollment beginning on or after January 1, 1987, who has not successfully completed the first or second year of an undergraduate program, may borrow up to \$2,625 per academic year. A student who has successfully completed the first and second year of an undergraduate program may borrow up to \$4,000 per academic year. Graduate and professional students may borrow up to \$7,500 per academic year. A student may borrow an aggregate maximum of \$17,250 for undergraduate study and \$54,750 for graduate and professional study, including undergraduate borrowing.

PLUS borrowing limits were also increased from \$3,000 to \$4,000 for each eligible student, with an aggregate loan maximum of \$20,000 per eligible student. SLS loan limits are the same as PLUS limits. SLS limits do not include amounts borrowed under the Stafford Loan Program or amounts borrowed by parents under the PLUS Program.

Multiple Disbursement of SLS Loans (Section 682.207)

Public Law 100-369 requires SLS loans to be multiply disbursed in the same manner as Stafford Loans.

The 15-year Repayment Rule (Section 682.209)

The 1986 Amendments eliminated the requirement that loans insured under guarantee agency program must be repaid within 15 years from the date the promissory note was signed. Although COBRA eliminated this requirement for all new Federal Insured Student Loan (FISL) Program loans made on or after the effective date of COBRA, the Secretary plans to waive any liability that may be incurred on other FISL loans by borrowers or lenders for violations of the 15-year repayment rule.

Refinancing of SLS and PLUS Loans (Section 682.209)

The 1986 Amendments made refinancing options available to SLS, PLUS student, and PLUS parent borrowers to secure a variable interest rate on an outstanding fixed-rate SLS or PLUS loan, or to discharge a previous loan held by the original lender who denies the borrower the option of refinancing to secure a variable interest rate. That statute also provides borrowers with the option of a combined repayment schedule of SLS and PLUS loans held by a lender.

New Deferment Provisions (Section 682.210)

The 1986 Amendments include new deferment provisions for Stafford, SLS, and PLUS loan borrowers. The Technical Amendments extended those provisions to include all parent PLUS borrowers. The majority of these provisions apply to a borrower who, on the date the promissory note is signed, has no outstanding loan balance. Public Law 100-369 further amended provisions governing internship deferments for borrowers completing internships or residencies at institutions of higher education, hospitals, or health care facilities.

Forbearance (Section 682.211)

The proposed regulations would allow for forbearance after default, as permitted by the 1986 Amendments, provided the terms of the forbearance agreement include a new repayment schedule. Forbearance in this instance must be consistent with the minimum annual payment requirements and the ten-year maximum repayment period.

Prohibited Inducements (Sections 682.212 and 682.401)

Under the 1986 Amendments, guarantee agencies and lenders are prohibited from offering inducements to secure loan applicants, and lenders are prohibited from offering loans as an inducement for the purchase of insurance.

Payment of Special Allowance on GSL Loans Made With Tax-Exempt Funds (Sections 682.302 and 682.800)

Under the 1986 Amendments, the special allowance rate was reduced by one quarter of one percent, except for loans made with tax-exempt funds and certain loans made by Maine Educational Loan Marketing Corporation and South Carolina Student Loan Corporation.

The 1986 amendments made two changes to the requirements regarding the Plan for Doing Business that must be adopted by student loan authorities using tax-exempt financing: First, the Governor of the State in which the authority operates, rather than the Secretary, approves the Plan of the authority, in consultation with the principal guaranty agency in that State; second, the requirement that the Plan include a provision that the authority will not issue obligations in excess of the reasonable needs for student loan credit in its service area, was removed.

Basic Program Agreement (Section 682.401)

The 1986 Amendments abolished the Supplemental Reinsurance Agreement and incorporated the provisions of the Supplemental Reinsurance Agreement into the Basic (section 428(b)) Agreement.

Insurance Premiums (Section 682.401)

Under the 1986 Amendments, the maximum insurance premium an agency may charge on a loan was changed from 1 percent per year of the unpaid principal amount of the loan to 3 percent of the principal amount of the loan. The insurance premium must be deducted proportionately from each disbursement of a multiply-disbursed loan.

Reinsurance Fee (Section 682.404)

The 1986 Amendments require a guarantee agency to pay the Secretary, during each fiscal year, a reinsurance fee equal to 0.25 percent of the total principal amount of loans guaranteed by that agency during that fiscal year, or 0.5 percent for any fiscal year during which the guarantee agency reaches the five percent reinsurance "trigger" (i.e., if reinsurance claims paid during a fiscal year exceed five percent of the loans in repayment at the end of the preceding fiscal year as defined in section 428(c)(1)(C) of the Act). For an agency that reaches the five percent insurance trigger, the 0.5 percent reinsurance fee is charged on the agency's total loan guarantees for that fiscal year including those guarantees already covered at the lower rate. The fee is charged on all GSL loans except Consolidation loans and refinanced PLUS and SLS loans.

Administrative Wage Garnishment (Section 682.404)

The Technical Amendments clarified previous legislation that allowed a guarantee agency to retain 35 percent of the amount recovered from a borrower in a State that enacts a qualifying garnishment law by requiring the State to enforce the law in the collection of a GSL loan. A guarantee agency must qualify for this higher retention amount on a loan-by-loan basis, but the agency should be eligible to retain the full 35% of subsequent recoveries on that loan made after it sends a notice to a borrower who has not made payments for at least 90 days, formally warning the borrower of the commencement of a wage garnishment proceeding.

Administrative Fee for Supplemental Preclaims Assistance (Section 682.404)

The Technical Amendments permit the holder of a loan to charge the cost of

supplemental preclaims assistance to a borrower who begins or resumes payment, as a result of that assistance, up to 2 percent of the outstanding principal, or \$100, whichever is less.

[Reserved] (Section 682.405)

The proposed regulations would delete current § 685.405—Supplemental Federal Reinsurance, since the 1986 amendments incorporated the provisions of the Supplemental Reinsurance agreement with guarantee agencies into the Basic Agreement (section 682.401).

Circumstances Under Which Loans may be Guaranteed by the Secretary (Section 682.500)

Under the 1986 Amendments, the Secretary may guarantee a Consolidation loan under certain conditions, if guarantee coverage has been denied by a guarantee agency.

A School That Makes or Originates Loans (Section 682.601)

The 1986 Amendments repealed the restrictions regarding the origination of loans by school lenders, thereby making school lenders subject to the same loan origination requirements as other eligible lenders. The Technical Amendments then reinstated the prohibitions against a school making loans to more than 50 percent of the undergraduate students enrolled at the school, or making a loan, other than to a graduate or professional student, except to a borrower who has previously received a GSL programs loan from the school, or has been denied a loan by an eligible lender other than a school lender. In addition, to be eligible to make or originate loans, the school must employ at least one person whose full-time responsibilities are limited to the administration of the financial aid programs, and the school may not be a correspondence school. However, schools are no longer required to enter into a separate agreement with the Secretary for the purpose of originating loans.

Student Address Change (Section 682.610)

Under the 1986 Amendments, a school must promptly notify the holder of a loan when it discovers that a student has changed his or her permanent address.

Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guarantee Agencies Against Lenders and Schools (Sections 682.712 and 682.713)

Under the 1986 Amendments, the Secretary may disqualify a lender or school from the GSL programs on the basis of limitation, suspension or termination action taken by a guarantee agency.

Major Regulatory Changes

In addition to the regulatory changes needed to incorporate the statutory revisions listed above, the Secretary proposes the following major changes to the regulations. The sections of the proposed regulations affected by the changes are indicated in parentheses.

Capitalization (Section 682.202)

The proposed regulations would permit lenders to capitalize accrued interest with the written consent of the borrower during the in-school period or grace period, even if capitalization has not been authorized by the promissory note. This provision is intended to assist those borrowers who might otherwise default on their entire loans due solely to an inability to make interest payments during those periods.

Security, Endorsement, and Co-makers (Section 682.206)

The proposed regulation would provide that a guarantee agency may not implement a policy to require a lender to obtain security or endorsement for a Stafford or SLS loan. These programs are intended to provide the opportunity to obtain credit to finance education for those students who are unable to obtain credit elsewhere.

Prepayment (Section 682.209)

The proposed regulations would permit a lender to apply prepayment amounts that equal three or more full payments to future installments, in the absence of a contrary indication from the borrower. The lender would have to notify the borrower that the payment has been so applied and also contact the borrower no less frequently than quarterly to remind the borrower of the repayment obligation. This change would recognize that a borrower who makes a prepayment in this large an amount typically intends that the prepayment be applied to future installments.

Deferments (Section 682.210)

For the deferment for volunteers serving in tax-exempt organizations, the Secretary would require that volunteers must earn a wage that does not equal or

exceed the Federal minimum wage. This would be a change from existing regulations that restrict these borrowers to compensation equivalent to that received by full-time ACTION and VISTA volunteers.

Forbearance (Section 682.211)

The proposed regulations reflect the provision in the 1986 Amendments that permits forbearance after default, and would require that the agreement for a post-default forbearance include a new repayment schedule.

The proposed regulations would also permit the lender to grant forbearance to a borrower, upon notice to the borrower and subject to certain limits, when the lender determines that a previously granted deferment period is invalid. Further, the proposed regulations would permit the lender to grant forbearance to a delinquent borrower for the period from the first day of delinquency to the commencement date of a deferment. These provisions would assist in the handling of delinquencies that result when a deferment is invalidated or when a borrower who is delinquent at the time he or she applies for a deferment leaves deferment status.

Defenses to a Borrower's Liability to Repay a GSL Loan (Section 682.215)

The Secretary is proposing to codify his longstanding view regarding the defenses to a borrower's liability for repayment of a GSL loan. Generally, a student who borrows under the GSL Program from a third-party lender remains legally responsible for repaying the loan, even if the school fails to provide the student with the services purchased by the student. However, if an origination relationship exists between the lender and the school, the school's failure to deliver those services provides the student with a defense against the obligation to repay the lender all or part of the loan, absent a disclaimer by the lender as discussed below.

The Secretary solicits comments on how the definition of "origination" could be more precisely crafted to reflect the common law of agency, and to give a lender better notice of the circumstances under which the enforceability of a loan it holds may be jeopardized by a school's failure to comply with its educational responsibilities.

The proposed regulation would clarify that the Secretary's imposition of a requirement on a school, lender, or guarantee agency under these regulations does not mean that a violation of that requirement constitutes a defense to the borrower's obligation to repay a GSL loan.

The proposed regulations would also allow a lender that is not a corporate affiliate of a school to protect itself from defenses otherwise created by a school's failure to comply with its educational obligations by formally disclaiming responsibility for these matters to the borrower at the time of disbursement and commencement of repayment of the loan.

Members of Religious Orders (Section 682.301)

Interest benefits are paid on behalf of borrowers who have shown need as determined under an approved need analysis system. The Secretary believes that, as in the other title IV programs, members of a religious order, who are pursuing a course of study at a school and are supported by the order or are required to forego monetary compensation, do not have need for interest benefits on a Stafford loan. Therefore, the proposed regulations provide that these individuals are not eligible for interest benefits.

Termination of Special Allowance Payments (Section 682.302)

The Secretary proposes to terminate a lender's right to receive special allowance payments on a loan if it fails to file a default claim thereon, together with all required documentation, by the 45th day after default.

Annual Loan Limits (Section 682.401)

The Secretary proposes in this section to establish a minimum time period that an agency may use in applying the annual maximum loan amounts. The Secretary believes this is needed to restore the integrity of the maximum loan amount rules. Those rules are currently being circumvented by some schools that define their periods of academic progression to be as short as three months in order to qualify their students for three loans, each for the annual maximum amount, for a nine-month period of enrollment.

Student Status Confirmation Report (Section 682.401)

The Secretary proposes that guarantee agencies be required to use a standardized format approved by the Secretary for monitoring the enrollment status of student borrowers. The use of the format and data elements included in appendix B is considered to be approved for this purpose. The Secretary believes that the use of a standardized format by all guarantee agencies will enhance the development of electronic data transmission, and create uniformity throughout the

administration of the guarantee agency programs. Additionally, a national reporting system will reduce the administrative burden encountered by lenders and financial aid administrators now faced with a variety of reporting systems.

The Secretary is particularly interested in receiving public comment as to which loans and information should be covered by a guarantee agency's student status confirmation report system.

The Secretary is also considering whether to require guarantee agencies to use standardized loan applications and/or promissory notes. The Secretary believes such uniformity would significantly accelerate application processing and reduce the administrative burden on lenders, and is soliciting public comment on this issue.

The Secretary wishes to minimize the burden on students and their families of applying for loan assistance under the GSL programs. To this end, § 682.401(d) provides that the GSL programs loan application required under section 483(a)(1) of the Act may not ask for information already provided by students and their parents on the common financial aid form also required by section 483(a)(1), other than basic identifiers such as name, address, and Social Security number.

The Secretary understands that this restriction may force lenders and guarantors to use other means to secure information needed to process the student's loan application. The Secretary therefore solicits comment on both (1) possible alternative methods for securing this information and (2) the appropriate Federal role, if any, in the orderly development of these alternatives.

Equitable Share of Borrower Payments (Section 682.404)

The Secretary proposes to reduce from 60 days to 30 days the number of days a guarantee agency has to pay the Secretary's equitable share of borrower payments to the Secretary. The Secretary believes that 30 days is a sufficient period of time for agencies to return these amounts. In addition, a 30-day period is consistent with the Department's own obligations. The Act requires the Secretary to authorize payments for interest and special allowance obligations within 30 days. More generally, the Prompt Payment Act requires Federal agencies to pay bills and claims within 30 days.

Application of Borrower Payments (Section 682.404)

In response to a recent recommendation of the General Accounting Office, proposed § 682.404 would permit a guarantee agency to apply borrower payments it receives on a defaulted loan first to defray its collection costs, rather than to accrued interest and principal as required by current regulation.

Conditions of Reinsurance Coverage (Section 682.406)

The Secretary proposes to reduce the period of time in which a guarantee agency must pay a claim to the lender, in order for all interest accruing on the loan thereafter to be reinsurable by the Secretary. The Secretary believes that 45 days provides ample time for this process.

Program Reviews of Secondary Markets (Section 682.410)

The Secretary proposes to require each guarantee agency to perform a biennial program review of each State or private nonprofit secondary market located in its State, using statistically valid techniques to calculate any liabilities that may be owed to the Secretary. Because of its status as a Federal Consolidation Program lender, SLMA would be reviewed by the Secretary, and, at the option of each guarantee agency, by the agency.

Collection Efforts on Defaulted Loans (Section 682.410)

Current § 682.410(b)(6) requires guarantee agencies to perform specific due diligence steps to collect defaulted loans. The Secretary recognizes that there may be other effective methods available to guarantee agencies to maximize recoveries on defaulted loans, most notably the use of collection contractors. For this reason, the proposed regulations substantially restructure the rules governing agencies' collection efforts to facilitate the use of some of these additional methods. The Secretary specifically solicits comments on the extension of time for a guarantee agency to litigate against a defaulted borrower that was published as a final rule on August 27, 1990 and is included in this NPRM at § 682.410(b)(6)(vii).

The proposed regulations would provide an agency with two alternative procedures for collecting a loan. Under the first alternative, the agency would follow essentially the same procedures as those required under current regulations. The provisions setting forth these procedures have been revised to replace most of the 45-day time periods

in current rules with a 60-day "gap" standard. The Secretary intends that this approach result in an agency engaging in a collection effort at least as intensive as that required by current regulations, while reducing the opportunities for an agency to commit violations that do not affect loan collectibility.

Under the second alternative procedure, an agency would be subject to less stringent requirements during the initial 180 days of collection, but would be required thereafter to refer the debt to a contingency fee-based collection contractor for further collection. The agency would be required to retain at least two contractors, periodically compare the performance of the contractors, and adjust the volume of debts referred to each contractor so as to reward the best performers with increased volume. The Secretary believes that the use of commercial collection contractors, working in a competitive environment with incentives and sanctions based on recovery results, will be an effective way to maximize the collection of defaulted loans.

The proposed second alternative procedure allows the guarantee agency a period of up to six (6) months after claim payment, or the period required for completion of the IRS tax refund offset "cycle," whichever is greater, to effect collection on a loan. If, at the end of that period, the guarantee agency has been unsuccessful in securing repayment from the borrower, the guarantee agency would refer the debt to a collection contractor. The guarantee agency could also elect to refer the debt to the collection contractor at any earlier time. If the collection contractor is unable to secure payment, the agency must initiate litigation against the borrower no later than 90 days after the loan is returned by the contractor, or 365 days after referral to the contractor, whichever occurs first. The proposed regulations assume a 90-day window for a guarantee agency to initiate litigation after a loan is returned from a collection firm. By requiring litigation within 365 days after referral, the effect is to limit collection contractors to 275 days (365 minus 90) for collecting a loan.

The Secretary would require a guarantee agency using the second alternative procedure to contract with a minimum of two (2) collection contractors who would then compete for the right to receive a larger volume of debts from the agency on the basis of performance. The Secretary expects that guarantee agencies will select collection contractors using sound and prudent business practices, including selecting

contractors with successful student loan experience, checking references, and requiring bonding and financial stability. Contractor performance should be evaluated solely on objective factors established by the guarantee agency as indicative of successful collection efforts, and the volume of referrals to each contractor adjusted accordingly. For example, a guarantee agency using three collection contractors could refer 50% of total placements to the contractor with the best performance record in the prior year, 30% to the second-best performer, and 20% to the poorest performer.

Due Diligence by Lenders in the Collection of Guarantee Agency Loans (Section 682.411)

This section of the regulations, published in November 1986, established minimum due diligence procedures that a lender must follow in order for a guarantee agency to receive reinsurance on a loan. The proposed revision of this section would replace most of the 30-day time periods in current regulations with a 45-day "gap" standard. This standard is one with which many lenders are familiar in connection with their application of the "cure" procedures explained in the Department's Bulletin 88-G-138. The Secretary intends that this approach result in a lender engaging in collection efforts at least as intensive as that required by current regulations, while reducing the opportunities for a lender to commit violations that do not affect loan collectibility.

The Secretary also proposes to reduce the current 30-day time period in which the lender must send the first collection notice to a borrower to require that the first notice be sent no later than the 10th day of delinquency. This change is based on standards contained in the Collections Handbook, published by the American Banker's Association, and the Secretary's understanding of current consumer credit practice.

The Secretary proposes to clarify that telephone contacts at a time when the lender knows the borrower will not be at the number called are not considered "diligent efforts".

Default Reduction Initiative (Sections 682.603-682.606)

The Default Reduction Initiative final regulations and notice of proposed rulemaking have made or proposed a number of changes to part 682 and to the Student Assistance General Provisions Regulations (34 CFR part 668) to implement the Secretary's Default Reduction Initiative. The provisions of those documents are repeated in these

proposed regulations. When final regulations based on this NPRM are published, they will include the language from final regulations based on the default reduction NPRM which will be published separately. The Secretary is not soliciting comments on the regulations included in the June 5, 1989 final rule or the proposed regulations also published on that date in connection with this regulation.

Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax exempt Obligations (Sections 682.800-682.840)

These sections of the regulations have been revised to delete provisions no longer needed and to incorporate some of those sections under former § 682.302.

Policy for Waiving the Secretary's Rights to Recover or Refuse to Pay Benefits on Guaranteed Student Loans Involving Due Diligence or Timely Filing Violations (Appendix D)

A bulletin (88-G-138) dated March 11, 1988 was sent to Guarantee Agency Directors setting forth the Secretary's policy for waiving the Secretary's rights to recover, or refuse to pay, interest benefits, special allowance, and reinsurance on GSL loans involving lenders' violations of Federal regulations pertaining to due diligence in collection or timely filing of claims. That bulletin, with technical corrections, is published in appendix D.

Other Regulatory Changes

The following is a subpart-by-subpart summary of other proposed changes to specific provisions of the regulations. In light of past experience, the Secretary also solicits comments on the effective date for new proposed requirements that are not statutorily mandated.

Subpart A—Purpose and Scope

This subpart would be revised to describe the SLS Program and the Consolidation Program, and to reflect the revised scope of the PLUS Program. SLS loans are available to eligible independent undergraduate students and all graduate or professional students who attend an eligible institution on at least a half-time basis. Dependent undergraduate students may also be eligible if the institution's financial aid administrator determines that exceptional circumstances will likely preclude the student's parents from borrowing under the PLUS program and the student's family will be unable to provide its expected family contribution. Consolidation loans are available to eligible borrowers for the purpose of consolidating eligible student

loans made under the Stafford, SLS, PLUS, Perkins, and HPSL programs. PLUS loans made to parent borrowers may not be consolidated.

Subpart B—General Provisions

Section 682.200 Definitions.

The Secretary proposes to revise several definitions in this section:

National of the United States—The regulation would delete this definition since it is covered in § S668.2 ("U.S. citizen or national").

Estimated financial assistance—The regulations would be revised to provide that, in determining estimated financial assistance for a Stafford Loan or SLS borrower, or for the student for whom a parent borrows under the PLUS program, a school would not count Perkins Loan or College Work-Study (CWS) Program funds for which the borrower would qualify but that the borrower refuses, if the student provides a valid reason for not accepting those funds. For example, a student's need to care for a dependent or a student's heavy academic courseload or academic difficulties may not permit the student to accept a CWS job. In the case of a Perkins Loan, a student may wish to reject a small Perkins Loan that reduces the student's Stafford Loan eligibility rather than incur two sources of indebtedness and increase the possibility of default upon repayment.

Lender—The proposed regulations would replace the current provision that prohibits a lender from making loans that total over one-half of the lender's consumer credit volume, with a standard that is based on net income realized by the lender from GSL program activities. This change is proposed because the former approach fails to recognize that a lender's loan origination volume can be large even though its GSL activities generate only a small portion of the bank's consumer credit income.

This section would also be revised to reflect the statutory rule that renders ineligible any lender who offers inducements to secure GSL loan applicants, conducts certain unsolicited mailings of student loan application forms, or engages in fraudulent or misleading advertising.

The proposed regulations would also reflect the addition to part 682 of the following definitions: Act, Authority, Federal GSL programs and Temporarily totally disabled.

Section 682.201 Eligible Borrowers

Eligible student—Under the 1986 Amendments, student eligibility under

the Stafford, SLS, and PLUS programs has been limited for periods of enrollment beginning on or after July 1, 1987. To be eligible, a student must be enrolled or accepted for enrollment, on at least a half-time basis, in a degree or certificate program. A student may be enrolled for one period not to exceed 12 consecutive months in a course of study determined by the school to be necessary for the student to enroll in a degree or certificate program. A student may not be simultaneously enrolled in either an elementary or secondary school and be eligible for GSL program loans. The definition of an eligible student borrower has been amended further by Public Law 100-369 to allow a student to be eligible for a loan provided the otherwise eligible student is enrolled or accepted for enrollment at an eligible institution in a program which leads to a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State.

The proposed regulation would provide that in order for a borrower to be eligible to borrow a GSL loan that the borrower must reaffirm any GSL debt that was previously cancelled due to the borrower's total and permanent disability or discharged in bankruptcy. Such a borrower would also be required to obtain a physician's certification that his or her condition has improved and that he or she has the ability to engage in substantial gainful activity or attend school. Further, the borrower would be required to sign a statement that he or she is aware that the loan could not be cancelled in the future on the basis of any present impairment unless that condition substantially deteriorates to the extent that the definition of total and permanent disability is met. The Secretary believes that while such borrowers should not be denied loan eligibility because of prior debts, that in order to obtain further GSL loans, the borrower must be willing to repay the current loan and prior loans still owed.

Incarcerated student—The proposed regulations would restrict GSL loan eligibility to only those incarcerated students who are expected to be unconditionally released by the end of the grace period, as calculated based on the student's anticipated graduation date at the time the loan is made. The Secretary believes that a lender that makes a loan to an incarcerated student who is not expected to be unconditionally released at or before the time the borrower enters repayment has not exercised due diligence in making the loan, because the borrower will, in

all likelihood, not be able to repay the loan.

Consolidation program—The proposed regulations reflect the statutory change permitting the making of Consolidation loans. To be eligible, a borrower must (1) Have an outstanding indebtedness of not less than \$5,000 on loans eligible for consolidation, and (2) be in repayment, or in a grace period preceding repayment and not be delinquent by more than 90 days, on each of the loans to be consolidated.

PLUS program—The proposed regulations would reflect the statutory change limiting PLUS loans to parent borrowers. Prior to the 1986 Amendments, parents were permitted to borrow under the PLUS program on behalf of an eligible dependent undergraduate, and an independent undergraduate, graduate, or professional student could borrow on his or her own behalf. Effective October 17, 1986, the Act limits PLUS loan eligibility to a parent borrowing on behalf of a dependent undergraduate, graduate, or professional student.

SLS program—The proposed regulations would reflect that, as part of the 1986 Amendments, the SLS Program was made available to independent undergraduate, and graduate and professional students and that Public Law 100-369 extended eligibility for SLS loans, on the basis of documented exceptional circumstances, to dependent undergraduate students.

Section 682.202 Permissible Charges by Lenders to Borrowers

Interest rates—The proposed regulations reflect the following changes to interest rate provisions made by the 1986 Amendments and the Technical Amendments:

(1) The interest rate for Stafford loan borrowers who obtain loans to cover periods of enrollment beginning on or after July 1, 1988, is eight percent until four years after the repayment period begins, and ten percent thereafter.

(2) For PLUS and SLS loans disbursed before July 1, 1987, the interest rate is twelve percent. The applicable rate for PLUS and SLS loans disbursed on or after July 1, 1987, and for PLUS and SLS refinancing loans obtained to secure a variable rate, is a variable rate not to exceed 12 percent. (3) The interest rate on Consolidation loans is the greater of (a) the weighted average of the interest rates on the loans being consolidated, rounded to the nearest whole percent, or (b) nine percent.

Administrative charge for a refinanced SLS or PLUS loan—The proposed regulations would provide that a lender may charge a borrower up to

\$100 as a fee for the administrative costs of making a refinanced SLS or PLUS loan to secure a variable interest rate. The fee may be assessed only once per borrower.

Capitalization—The proposed regulations would provide that accrued interest may be capitalized by the lender during periods for which payments of principal are deferred on PLUS and SLS loans, if agreed to by the borrower and the lender. The accrued interest may be paid monthly or quarterly during periods of deferment, or capitalized on a quarterly basis by the lender.

The proposed regulations would permit lenders to capitalize accrued interest quarterly, rather than annually, for interest accruing during the in-school period, grace period, and during an authorized period of deferment and forbearance.

Collection charges—The proposed regulations would revise current regulations to reflect other costs that a lender may charge a borrower in collecting a loan.

Section 682.203 Responsible Parties

The proposed regulations would delete current § 682.203—Statement of Educational Purpose since the provisions of that section now appear in 34 CFR 688.7. Proposed § 682.203 would clarify that a school, lender, or guarantee agency may delegate or contract the performance of functions to a servicing agency, but that the lender, school or guarantee agency would still be held responsible for complying with the Act and regulations. This provision would also apply to a lender that holds a loan in its capacity as a trustee.

Section 682.204 Maximum Loan Amounts

This section would be revised to reflect the increased annual and aggregate Stafford Loan, SLS, and PLUS loan limits discussed above.

Section 682.205 Disclosure Requirements for Lenders

The Secretary is proposing that, as part of the lender disclosure requirements, the lender disclose to the borrower, in a separate statement, that the borrower will generally be required to repay the loan even if the borrower believes that he or she did not receive the quality of education, potential employment, or other services for which the loan was intended. The proposed regulations would also apply this disclosure requirement to any loan made or originated by a school lender.

The proposed regulations would revise current credit bureau reporting requirements for lenders to require that those reports be made to national credit bureaus. This change would recognize that long distance lending is now commonplace in the GSL programs, and that credit bureau reporting on a GSL loan should therefore encompass more than a single State or region of the country.

Section 682.206 Due Diligence in Making a Loan

The proposed regulations provide that prior to disbursement of a Consolidation loan, a lender shall obtain a certification from the current holders of the outstanding loans that those loans comply with the requirements for inclusion in consolidation. The consolidating lender may rely in good faith on these certifications, which the holders must provide within 10 days of a request by the consolidating lender. Under proposed § 682.413, if the certification is inaccurate, the Secretary may require the holder of the paid-off loan to repay interest benefits, special allowance, and reinsurance paid on Consolidation loan amounts attributed to the paid-off loan.

The proposed regulations would also prohibit a guarantee agency from requiring security or endorsement for a Stafford or SLS loan. In the Secretary's view, a major purpose of the Stafford and SLS programs is to provide educational credit for those who cannot obtain it elsewhere. This purpose is frustrated if only those borrowers who can obtain a co-signer or endorser are permitted to borrow. However, this proposal would not preclude a lender from obtaining security or endorsement on a GSL loan if it so chooses.

Section 682.207 Due Diligence in Disbursing a Loan

The Secretary proposes to revise the regulations governing loan disbursements to reflect new statutory requirements for multiple-disbursed loans. In addition, a proposed change would provide for the direct delivery of loan funds to students attending foreign schools, as permitted by statute. The Secretary also proposes to establish a standardized late disbursement policy to be used by all lenders, under which, among other things, a lender would be allowed to make a disbursement on a loan up to 60 days after the borrower leaves school without a case-by-case approval by the guarantee agency, if the disbursement is to cover outstanding institutional charges actually incurred prior to the date the borrower left school.

Section 682.208 Due Diligence in Servicing a Loan

The Secretary proposes to revise the regulations to reflect provisions of the 1986 Amendments governing the types of information that a lender must report to a credit bureau. Specifically, that information would include the total amount and remaining balance of the borrower's loan, and information concerning the date of default and collection of the loan, such as the repayment status of a defaulted loan for which the Secretary or guarantee agency has paid a claim and the date of cancellation of the note.

The Secretary also proposes to allow a guarantee agency, lender, or subsequent holder 90 days to report the required loan information to credit bureaus, to ensure that those reports are made within a reasonable time.

The Secretary proposes to amend § 682.208 to require the assignee of any loan to notify the borrower, in writing, of the assignment, if the transaction results in a change in the party to whom the borrower must make payments. A similar requirement has been in effect in the FISL Program since 1970. See 34 CFR 682.508(b)(2)(ii).

Section 682.209 Repayment of a Loan

Several proposed changes to §§ 682.208, 682.209, and 682.211 would encourage the use of graduated repayment schedules to assist borrowers in repaying their loans for the purpose of preventing defaults. As proposed, a lender would be encouraged to establish an original, or, with the consent of the borrower, a revised repayment schedule, that provides for graduated or income-sensitive installment payments for a period covering not more than the first 5 years of repayment, provided that no installment is scheduled to be more than three times greater than any other installment, and the amount scheduled to be repaid complies with the maximum repayment period and minimum annual payment prescribed by § 682.209(c). The Secretary proposes that the borrower's graduated repayment schedule be required to provide for level payments to begin not later than the sixth year of repayment.

Section 682.210 Deferment

New deferment provisions included in the 1986 Amendments and the Technical Amendments are implemented by the proposed regulations.

The proposed regulations would clarify that for purposes of obtaining a student deferment, a borrower is eligible if he or she is attending an institution

that meets the definition of eligible institution found in section 435 of the Act. This change reflects the Secretary's current view that students are eligible for deferment as long as they are attending schools that are eligible to participate in the HEA title IV programs, regardless of whether those schools are actually participating.

Under the parental leave deferment involving care for an adopted child, deferment would be allowed for the borrower while caring for the child following the placement of the child through the adoption process. For the deferment for care of pre-school age children of a working mother, pre-school age children would be defined as children who have not yet entered first grade.

Changes would also be made to other existing deferments. The maximum unemployment deferment period was extended by statute from 12 to 24 months. The proposed regulations would also extend the period covered by a single certification of unemployment from three to six months. The Secretary proposes to require that to qualify for an unemployment deferment, a borrower may not unreasonably limit his or her search for employment by not seeking or accepting employment in kinds of positions or at salary and responsibility levels for which the borrower may feel overly qualified.

The Secretary proposes to codify his view on borrower eligibility for deferment for active duty status in the U.S. Armed Forces by specifying in the regulations that a member of the National Guard or the reserves does not qualify for this deferment, unless the borrower is serving on a full-time basis in active duty status for at least one year, as evidenced by official military orders.

The Secretary would also specify what constitutes sufficient documentation to establish eligibility for each deferment, and, in some instances, the frequency of recertification required to continue that eligibility.

The proposed regulations would provide that a deferment may have retroactive effect from the date the lender receives a substantially complete deferment request. A request would not be considered substantially complete if the documentation does not contain the signature of the official identified as the authorized certifying official. If the lender grants a deferment to a borrower based upon substantially complete documentation that nevertheless does not include some of the required information, the proposed regulations would require the lender to diligently

attempt to obtain the missing information from the borrower.

The proposed regulations would treat a certified SLS application as sufficient documentation for a student deferment for an SLS loan up through the student's anticipated graduation date indicated on the application, and for a Stafford loan guaranteed by a guarantee agency whose student status confirmation report system includes a mechanism for the school's confirmation of the borrowers' student deferment status.

Section 682.212 Prohibited Transactions

The Secretary intends to clarify that a loan sold or otherwise transferred at discount by a school may only be done on a case-by-case basis with the Secretary's explicit approval.

Section 682.214 Compliance With Equal Credit Opportunity Requirements

The Secretary proposes to revise the regulations by including a provision requiring a lender making a Stafford loan to comply with the equal credit opportunity requirement of regulation B, 12 CFR part 202, as applicable to credit assistance programs authorized by law for the benefit of an economically disadvantaged class of persons.

Subpart C—Federal Payment of Interest and Special Allowance

These sections have been renumbered to accommodate changes.

Section 682.301 Eligibility of Borrowers for Interest Benefits on Stafford Loans

A substantial amount of this section would be deleted, because, under the 1986 Amendments, need, and therefore eligibility for interest benefits, is determined through a need analysis system approved for use in the campus-based programs. Need must be determined for every applicant; therefore, the \$30,000 adjusted gross income provision would be eliminated.

In addition, this subpart would be revised to reflect the Secretary's position described above with respect to interest benefits on Stafford loans made to members of a religious order.

Section 682.302 Payment of Special Allowance on GSL Loans

Proposed § 682.302(e) would be revised to refer to § 682.800, and those provisions governing special allowance payments for loans financed by tax-exempt obligations would be incorporated in § 682.800.

Section 682.303 [Reserved]

The proposed regulation would move the provisions of § 682.303 *Prohibition*

against discrimination as a condition for receiving special allowance payments to § 682.840.

Section 682.305 Procedures for Payment of Interest Benefits and Special Allowance

The proposed regulations would provide that the Secretary does not consider a request for interest benefits and special allowance to be accurate if the request is not provided on a form prescribed by the Secretary, does not contain all the information required by the Secretary, or includes conflicting information.

The proposed regulations would require that a lender whose outstanding GSL loan portfolio during any fiscal year exceeds \$10 million must have an annual independent financial and compliance audit of its billings for interest benefits and special allowance payments. The Secretary believes that an annual audit of such large volume lenders would reduce lender billing errors, and thus reduce the cost to the Federal Government of these payments. This change is being proposed in response to a recommendation by the General Accounting Office (GAO Report HRD 88-72).

Subpart D—Guarantee Agency Programs

Section 682.401 Basic Program Agreement

The Secretary proposes to revise this section to require that a guarantee agency require a borrower to notify the school of any change in the borrower's employer or the employer's address, to assist the holder in locating the borrower if he or she "skips", and to facilitate wage garnishment in the event of default.

Administrative fee for Consolidation loans. The Secretary proposes to limit to \$50 the fee a guarantee agency may charge a lender to defray the agency's administrative costs incurred in guaranteeing a Consolidation loan.

Section 682.402 Death, Disability, and Bankruptcy Payments

The Secretary proposes to amend the regulations to address more specifically the treatment of bankruptcy petitions filed under chapters 11 and 12 of the Bankruptcy Code. In addition, a guarantee agency would be provided with the flexibility to establish a time frame, not to exceed 30 days, for lenders to file a bankruptcy claim with the agency. Proposed § 682.402(d)(2) would also expand the forms of documentation a lender may use to determine that a borrower has filed a bankruptcy petition

to include other appropriate documents, e.g., written notices from the debtor's attorney, in lieu of the notice of the first meeting of creditors.

The Secretary also proposes to allow a guarantee agency to submit a chapter 13 bankruptcy claim to the Secretary for reimbursement after it has paid the claim to the lender. Guarantee agencies would no longer be required to hold chapter 13 loans until a general order of discharge is entered, which can often occur up to five years after the agency pays the lender on the claim.

The proposed regulations would revise § 682.402(g) regarding the actions required of guarantee agencies in bankruptcy proceedings on loans acquired by the guarantee agencies through payment of bankruptcy claims. The proposed regulations would require the agency in a chapter 7 proceeding, if it determines that repayment would not constitute an undue hardship for the debtor, to determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, and if it does not, to oppose the petition, and to seek a judgment if the borrower has defaulted on the loan.

Payment of death, disability, and bankruptcy claims by the guarantee agency. The Secretary proposes to reduce from 90 to 45 days the period within which a guarantee agency is required to pay a death, disability, and bankruptcy claim to a lender. The proposed regulations would also clarify a guarantee agency's responsibility to diligently oppose the discharge of a GSL loan in bankruptcy.

Section 682.404 Federal Reinsurance Agreement

The Secretary proposes to clarify that an agency is prohibited from double charging the Secretary for costs of supplemental preclaims assistance if those costs have already been reimbursed under the 30% retention of collection.

The Secretary proposes to revise the regulations to implement the provisions of the 1986 Amendments allowing a guarantee agency to transfer a loan guarantee issued by that agency to another guarantee agency with the approval of the receiving agency and the holder of the loan. The quarterly report (ED Form 1130) would be revised to provide for the reporting of these transfers. Therefore, in proposed § 682.404(b)(5), the definition of the "amount of loans in repayment" would be revised to include the original principal amount of all loan guarantee transfers received from other agencies,

and to exclude the original principal of loan guarantees that were transferred to another agency.

The Secretary proposes to revise the regulations to require that, as a condition for receiving a reinsurance payment from the Secretary, a guarantee agency would have to ensure that a lender provided evidence that due diligence was exercised in collecting a loan. The Secretary would consider a detailed collection history and payment history to satisfy this requirement.

The proposed regulation would require a guarantee agency to remit reinsurance fees within the earlier of 90 days after the end of a quarter or within 30 days after receiving written notice from the Secretary that the fees are due. The Secretary believes this requirement would allow the agency ample time to pay those fees, and would clarify the Secretary's ability to charge interest on fees not paid in a timely manner.

Section 682.407 Administrative Cost Allowance for Guarantee Agencies

In the 1986 Amendments, the primary and secondary administrative cost allowances were combined into a single administrative cost allowance. A guarantee agency is now eligible to receive administrative cost allowance payments equal to 1 percent of the principal amount of loans insured during any fiscal year.

Proposed § 682.407(d) would clarify that, for a loan for which an agency transfers its loan guarantee to another guarantee agency, the Secretary pays an administrative cost allowance on the loan only to the original guarantor of the loan.

Section 682.408 Stafford and SLS Loan Disbursement Through an Escrow Agent

The proposed regulations would implement the provision in the Technical Amendments that reduces from 45 days to 21 days the period within which an escrow agent must transmit loan proceeds to the school for delivery to the borrower.

Section 682.410 Fiscal, Administrative, and Enforcement Requirements

The Secretary is proposing that guarantee agencies report to the Secretary (1) Each action brought against a lender or school by the agency, an accrediting agency, or a State licensing agency, (2) each action the agency takes affecting the eligibility of the lender or school, and (3) with some exceptions, each court proceeding relating to the enforceability of a GSL loan.

The proposed regulations would require a guarantee agency to charge a

borrower reasonable collection charges. The Secretary believes that reasonable costs should equal the amount a guarantee agency would charge for its collection costs, as calculated under 34 CFR 30.60. However, these charges should not exceed the amount the same borrower would be charged for the cost of collection if the loan was held by the Secretary.

The proposed regulations would allow an agency to use the pre-credit bureau reporting notice under § 682.410(b)(5)(ii)(A) as the delinquency notice under § 682.410(b)(6) and (b)(7).

The Secretary proposes to add § 682.410(b)(5)(v) to eliminate bias from the administrative review process in response to a borrower's request for review of the legal enforceability or past due status of the loan(s). Proposed § 682.410(b)(5)(vi) has been added to prescribe the information that a guarantee agency must communicate to the debtor after the agency has paid a default claim.

The proposed regulations also clarify the role of a guarantee agency in the treatment of a special condition claim under proposed § 682.410(b)(8). Specifically, the Secretary proposes certain servicing and collection activities to be performed by a guarantee agency for special condition claims. The Secretary notes that the guarantee agency may not report as a default to a credit bureau a loan on which it acquires through payment of a special condition claim, unless the borrower in fact defaults on the loan.

The Secretary is interested in receiving comments on ways the burden of due diligence procedures might be further reduced, particularly for lenders and guarantee agencies which have low default rates. Any proposed means of relieving this burden should not reduce the access of needy students to the programs.

The Secretary proposes that guarantee agencies be required to review lenders which make or hold in excess of \$10 million in student loans in the most recent fiscal year. In addition, the Secretary proposes to allow guarantee agencies to review schools and lenders selected under an alternative selection methodology approved by the Secretary.

The Secretary recognizes concerns recently raised about whether current regulations (§§ 682.410(b) and 682.411) prescribing actions that lenders must take to exercise due diligence in collecting delinquent GSL obligations preempt inconsistent State law.

The Secretary has recently clarified his intention to preempt inconsistent State laws in promulgating these

regulatory provisions in 1986. In response to these concerns, these proposed regulations state this preemptive effect in the text of the rule itself: § 682.410(b) (2), (5), (6), and (7) preempt State laws that would prohibit or restrict lenders or guarantee agencies from performing the steps required in those sections. This preemptive regulation is proposed for the same reasons that prompted adoption of the current preemptive regulations, as explained in the recently-published Notice of Interpretation. See 55 FR 40120 (October 1, 1990) (Interpretation): To ensure that holders of GSLP loans in all States can engage in collection activity on these loans that meets a minimum, national standard, and thereby protect the public interest in recovering on these Federally-financed loans.

While the Secretary's interpretation applies only to the preemption of State law by § 682.410(b) (2), (5), (6), (7) and 682.411, the Secretary notes that the Act itself preempts State law affecting performance of other collection activities: By expressly requiring holders of GSLP loans to make reports to credit bureaus, by making borrowers liable for all reasonable collection costs incurred to enforce those loans, and by abrogating the defense of infancy on all GSLP loans, the Act itself preempts any conflicting or inconsistent State law. The Secretary also does not mean to imply that other provisions of these proposed rules would not preempt State laws where those laws created a direct conflict between meeting the requirements.

Section 682.414 Records, Reports, and Inspection Requirements for Guarantee Agency Programs

The proposed regulations would clarify that the guarantee agency must maintain required records in a system that allow ready identification of each loan's current status, and would require that the status be updated at least once every 10 business days.

The Secretary is proposing to revise this section to include specific reference to the annual "tape dump" report now required of agencies, and to note that each agency's "tape dump" must contain accurate data, and be provided in the format prescribed in the Stafford Loan, SLS, and PLUS Tape Dump Procedures (ED Form 1070).

Subpart E—Federal Guaranteed Student Loan Programs

Section 682.505 Insurance Premium

There has been some confusion as to how the calculation of the insurance

premium under § 682.505(c)(1) is consistent with section 429(c) of the Act. The Secretary is providing the following

example to resolve this confusion:
Assumptions:
\$1000 loan, singly disbursed Disbursement

date—September 12 Anticipated graduation
date—May 15

§ 682.505(c)(1)

$$(i) = 20 \text{ months}$$

$$(ii) = \frac{(.0025)(1000)}{12} = .208\bar{3}$$

$$(iii) = (.2083)(20) = 4.1\bar{6}$$

Section 429(c)

$$(.25)(.01) = .0025$$

$$(.0025)(1000) = 2.50$$

$$(2.50)\left(\frac{20}{12}\right) = 4.1\bar{6}$$

Section 682.506 Limitations on Maximum Loan Amounts

The Secretary proposes to revise the regulations to clarify that a FISL loan amount may not exceed the student's cost of attendance, minus the student's estimated financial assistance and expected family contribution.

Assignment of a Loan (§ 682.508). The proposed regulation would delete the current provision regarding risks assumed by the buyer of a FISL loan (§ 682.508(c)). This provision is covered under § 682.513 which references § 682.215.

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

Section 682.603 Certification by a Participating School in Connection with a Loan

The Secretary proposes to revise § 682.603 to clarify that a school may not certify an application for a loan in excess of the maximum annual loan amount. If a school certifies more than one application for a student for the enrollment period, the total amount certified for those applications cannot exceed the lesser of (1) the student's cost of education, minus the student's estimated financial aid, for the enrollment period, if applicable, or (2) the annual maximum loan amount. In addition, this proposed section would be revised to reflect the statutory requirement that a school must certify loan applications for any eligible lender.

The proposed regulations would prohibit a lender or a school from charging a borrower a fee for processing a loan application.

The proposed regulations would also codify the Secretary's interpretation of

current law as allowing a school to certify an application only for (1) An academic year, (2) the length of the program for a program of less than two academic years, or (3) an academic period of less than one academic year (as determined by the school) that is used by the school to bill substantially all of its students for institutional charges.

Section 682.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

The Secretary proposes to clarify that, for a student attending a foreign school, the loan funds are to be delivered directly to the student rather than to the school.

The Secretary also proposes to revise the current regulation that provides that a school may transmit loan proceeds only to a student who has maintained his or her eligibility, including enrollment on at least a half-time basis at a participating school.

Specifically, the proposed regulations would provide that, if a student notifies the school on or before the first day of classes that he or she will delay attending school for a short period and if the student thereafter commences attendance within 30 days after the date of that notification, the school may consider that student to have maintained eligibility for the loan since the first day of the period of enrollment for which the loan is intended, and may transmit the loan proceeds to the student in accordance with this section.

After a school loses its eligibility to participate in the Title IV programs, either because it no longer meets the statutory requirements for eligibility or because the Secretary has terminated

the school's eligibility, that school is no longer a participating school. Under current regulations, the school may not deliver Stafford or SLS loan proceeds to a borrower after the school's loss of eligibility. Under the proposed change, in the case of a loan on which the first disbursement of loan proceeds is delivered to a student or credited to a student's account prior to the school's loss of eligibility, the school could deliver the proceeds of a second or subsequent disbursement on the loan to the borrower even after the school loses its eligibility. This change would enable the borrower to complete the period of enrollment, thus reducing the likelihood of default on the loan.

The Secretary also proposes to clarify that a school may retain the borrower's loan proceeds prior to delivery to the borrower for not more than 45 days.

The Secretary also proposes to revise the regulations to provide for the treatment of an "overaward" of a Stafford or SLS loan. If, after a school certifies a loan application, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which a GSL loan was made that exceeds the student's estimated cost of attendance, or in the case of a Stafford loan subject to payment of interest benefits, the student's financial need, the school would, if no loan proceeds have been credited to the student's account or delivered to the student, immediately return to the lender any proceeds in its possession. The school would also provide the lender with a written statement describing the reason for the return of funds, and setting forth the student's revised cost of attendance or

financial need. If any proceeds of the first disbursement of a multiply-disbursed loan had been credited to the student's account or delivered to the student prior to the school's learning of the excess aid, the school would promptly provide the lender with a written statement setting forth the student's revised cost of attendance or financial need, and directing the lender to reduce the second disbursement by the amount of the excess. If the entire loan proceeds had been credited to the student's account or delivered to the student, the school would attempt to eliminate the excess by reducing the amount of other financial aid, if any, that is to be delivered to the student, or had been or is to be credited to the student's account. If all efforts were made to eliminate the excess proceeds, the school would not be required to take any further action. This approach would be consistent with the treatment of overawards in other title IV programs, as well as produce a savings to the Federal Government by reducing the costs of defaults and interest benefits and special allowance payments to lenders.

The proposed regulations would revise the requirements applicable to a school concerning the treatment of a late disbursement. Unless otherwise informed by the lender, and subject to certain requirements, a school would be allowed to process a borrower's loan proceeds received within 90 days after the borrower ceased to be enrolled on at least a half-time basis, or received within 90 days after the end of the period of enrollment for which the loan was made.

The proposed regulations would eliminate the provision in current § 682.604(c) that requires schools to obtain the student's written authorization for release of funds disbursed by electronic funds transfer, if the initial counseling requirements in § 682.604(f) are provided to the student in-person or by videotape.

Section 682.605 Determining the Date of a Student's Withdrawal

The proposed regulations would revise the withdrawal date for a student enrolled in a program of study by correspondence to be the date of the last lesson submitted.

Section 682.606 Refund Policy

The proposed regulations would establish an amount not to exceed \$100 for a reasonable administrative fee that a school may deduct in calculating a *pro rata* refund. This change would eliminate the current "5 percent" rule that can operate to require a school to

pay refunds in very small amounts. In those cases, the purpose of the rule (discouraging enrollment of likely dropouts) is not served by requiring payment of a *pro rata* refund.

The proposed regulations would reflect a change in the calculation of a *pro rata* refund to provide that the applicable *pro rata* percentage should be rounded downward to the nearest 10 percent, but to never less than 10 percent. This change represents a technical correction to the June 5, 1989 default reduction regulations published in the September 7, 1989 Federal Register to conform the regulatory language to the original intent.

Section 682.609 Remedial Actions

The proposed regulations would clarify the Secretary's authority to make schools purchase loans that are unenforceable in whole or in part, or that include loan amounts for which the borrower was ineligible or for which the borrower was ineligible for interest benefits contrary to the school's certification. Guarantee agencies currently have this authority if provided for in their program regulations.

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility and Disqualification of Lenders and Schools

Section 682.706 Limitation or Termination Proceedings

The Secretary proposes to amend § 682.706 to provide that a lender's, or a lender's owner's or officer's conviction of, or *nolo contendere* plea or guilty plea to, a crime involving the unlawful acquisition, use, or expenditure of GSL program funds, constitutes automatic grounds for termination of a lender's eligibility to participate in the GSL programs. The fact that a conviction is being appealed would not affect the termination.

Section 682.712 Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guarantee Agencies Against Lenders

Section 682.713 Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guarantee Agencies Against a School

These sections would be added to reflect the provisions in the 1986 Amendments under which the Secretary reviews limitation, suspension, and termination actions taken by a guarantee agency against a lender or a school in order to determine whether to disqualify the lender or school from participation in the loan guarantee program of all other guarantee agencies.

The proposed rule would codify the Secretary's interpretation that the scope of the review of the action by the guarantee agency is appropriately a limited one. The Secretary considers only whether the agency took action on the basis of substantive agency requirements regarding either initial or continuing eligibility that were not more onerous than those in effect for participating in the FISLP as of January 1, 1990, and whether the agency took that action in accordance with procedures that were substantially the same as those that govern the limitation, suspension or termination of a lender or school, as applicable, from the FISLP, as those Federal procedures may be amended from time to time. The Secretary considers whether the substantive and procedural rules actually applied to that school or lender by the agency in the particular adverse action being reviewed met these requirements, and the school or lender may introduce evidence and argument relating only to these two issues. If the Secretary determines that the requirements applied by the agency to disqualify the school or lender were not more onerous than FISLP rules, and the procedure used to adjudicate those determinations was comparable to that available under the FISLP, the Secretary regards the findings as conclusively determined against the school or lender. The school or lender is thereafter precluded from disputing those findings under traditional principles of collateral estoppel.

The proceeding under §§ 682.712 and 682.713 is thus limited to determining whether the conditions on which collateral estoppel rests are established in the case on appeal: Whether the issues were substantially similar to the issues that would be raised in a FISLP limitation, suspension, or termination proceeding, and whether the agency procedures used to adjudicate those issues were comparable to FISLP so as to provide the school or lender a comparable opportunity to dispute the charges and to provide the Secretary a comparable assurance of reliability of the decisionmaking process. Therefore, if both these conditions are met, the school or lender may not relitigate before the Department the substantive merit of the agency charges. If these conditions are not met, the Secretary also does not reexamine the merits of the agency's determination, but simply declines to extend that disqualification to the programs of all other guarantee agencies.

Subpart H—Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations

Section 682.801 Provisions Required in Plan

Because of the provisions in the 1986 Amendments transferring to Governors the power to review and approve Plans for Doing Business, and deleting the requirement that a Plan provide for assessing unmet need for student loan credit in the service area of the Authority, substantial revisions have been proposed for subpart H. The changes in law apply only with regard to Plans submitted and obligations issued after November 16, 1986, the effective date of the 1986 Amendments. For purposes of entitlement to special allowance payments on loans acquired with the proceeds of tax-exempt instruments issued before November 16, 1986, Authorities remain subject to the requirements of the current regulations regarding Plan approval by the Secretary and the assessment of unmet need under subpart H. These proposed regulations will revise § 682.800 in subpart H, to differentiate between loans acquired under the new requirements and those subject to the pre-amendment requirements.

Section 682.801 as revised would reflect that, consistent with the legislative intent underlying the transfer of Plan approval authority from the Secretary to the Governors of the respective States, each Governor, rather than the Secretary, is to establish standards for determining whether proposed tax-exempt borrowing exceeds the unmet need for student loan credit in the State. The Secretary believes that the Governor's authority in this area is already implicit in the Governor's power to determine the proper allocation of tax-exempt borrowing under the Internal Revenue Code of 1986. Consistent with Congressional intent, the Secretary proposes to delete §§ 682.810—682.822 in current regulations that provide detailed methods of measuring unmet need. Those regulations would continue to apply to obligations issued prior to the effective date of the 1986 Amendments.

Sections 682.802, 682.803 Submission for Plan Approval—Required Documentation and Amendments to Plan

These sections would be revised to reflect that the Governor, rather than the Secretary, is charged with reviewing and approving or rejecting Plans and amendments to Plans. Because the substantive requirements for Plans

remain the same, the revised regulation would continue to require the Authority to submit supporting documentation to accompany its proposed Plan.

Sections 682.804, 682.805 Failure to Comply With Plan and Sanctions for Material Misrepresentation

These sections would continue to effect the requirements of current regulations regarding the consequences of non-compliance with an approved Plan, or misrepresentations made to secure that approval or the approval of the issuance of a particular tax exempt obligation. The revised regulations also would reflect the fact that entitlement to special allowance payments for loans acquired under Plans approved either by a Governor or by the Secretary is conditioned on compliance with the requirements of the Plan and applicable regulations under which the Plan, or a particular obligation, was approved.

Section 682.830 Audit Standards

This section would be revised to require the Authority to provide a copy of the report of its required annual audit to the Governor of the State that approved its Plan as well as to the Department. The audit report must continue to examine and articulate conclusions regarding the authority's compliance with the specific provisions in its Plan. Simple, audited financial statements alone do not meet the requirements of the statute or the regulations, and remain unacceptable as substitutes for the required Plan audit. In addition, the audit must contain an analysis of the operation and expenditures by the Authority using cost categories that permit the Department to conduct its mandated study of the need for tax-exempt financing, and this section would continue to require such analysis according to the commonly-used standards set forth in OMB Circulars A-87 (See 46 FR 9548, January 28, 1981) and A-122 (original publication in the *Federal Register* on July 8, 1980, at 45 FR 46022, with corrections published on March 17, 1981, at 46 FR 17185 and amendments published on April 27, 1984, at 49 FR 18260, with corrections published on May 8, 1984, at 49 FR 19588).

Section 682.840 Prohibition Against Discrimination as a Condition for Receiving Special Allowance Payments

This section would implement the statutory requirement that Authorities may not discriminate in their loan financing policies and practices on the basis set forth in section 438(d)(3) of the Act. The regulation would require the Authority to take into account, and

make accommodations to alleviate, the effect of practices of guaranty agencies that affect its service area that would be violations of the statute if implemented by the authority itself. This regulation, and the companion provision of section 438(d)(2)(D) of the Act, would not prevent the Authority from exercising its discretion, consistent with its obligation to use due diligence in making, servicing, and collecting loans, from refusing to make or purchase a student loan on grounds other than those prescribed here.

Appendix B

Existing appendix B (Guaranteed Student Loan Program Tables for Determination of Expected Family Contribution 1986-87) would be removed in accordance with the 1986 Amendments.

The Secretary is proposing to publish as a new appendix B a reprint of the Student Status Confirmation Report (ED Form 1072) to be used as a guide by a guarantee agency to establish and follow a system and procedures for monitoring the status of a student borrower. By using the format and data elements of this standardized form, a guarantee agency would be in compliance with proposed § 682.401(b)(17).

Appendix D

The Secretary is proposing to include (with technical corrections), as appendix D, Dear Guarantee Agency Director Letter 88-G-138, issued March 11, 1988, setting forth the Secretary's policy for waiving the Secretary's right to recover, or refuse to pay, interest benefits, special allowance, and reinsurance on GSL loans involving lenders' violations of the rules governing due diligence in collection and timely filing of claims. This policy was developed after extensive consultation with lender and guarantee agency representatives.

As was suggested by these groups, the waiver policy includes gradations in the Secretary's exercise of waiver authority corresponding to the seriousness of the violations at issue. In addition, the waiver policy provides more lenient treatment of past violations than for most future violations, in recognition of the fact that some lenders and guarantee agencies did not fully understand the effect a due diligence or timely filing violation has on the right of the lender or guarantee agency to receive program payments. The Bulletin also explains the application of these regulations to a number of specific situations raised by lender and guarantee agency

representatives in the course of discussions on the waiver policy.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

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

Many provisions of the proposed 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 Stafford Loan and PLUS Program regulations and would not have significant impact on these institutions. Participating guarantee agencies are reimbursed for their costs.

Paperwork Reduction Act of 1980

Sections 682.205, 682.206, 682.208, 682.209, 682.210, 682.211, 682.214, 682.301, 682.305, 682.401, 682.402, 682.404, 682.406, 682.407, 682.409, 682.410, 682.411, 682.412, 682.414, 682.507, 682.508, 682.511, 682.515, 682.601, 682.602, 682.603, 682.604, 682.605, 682.606, 682.610, and 682.711 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 or enhance the utility of information that is collected 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, DC 20503; Attention: Dan Chenok.

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 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, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To expedite the Department's review and response, comments should be identified by specific sections of the NPRM and presented sequentially.

To assist the Department in complying with the specific requirements of Executive Order 12291, the Paperwork Reduction Act of 1980, and the overall requirement of reducing regulatory burden, the Secretary invites public comment on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

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 proposed 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

Administrative practice or procedure, colleges and universities, Education, Loan programs—education, Student aid, Vocational education.

Dated: November 5, 1990.

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

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to revise part 682 of title 34 of the Code of Federal Regulations to read as follows:

PART 682—GUARANTEED STUDENT LOAN (GSL) PROGRAMS

Subpart A—Purpose and Scope

Sec.

682.100 The Guaranteed Student Loan programs.

682.101 Participation in the GSL 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 Responsible parties.

682.204 Maximum loan amounts.

682.205 Disclosure requirements for lenders.

682.206 Due diligence in making a loan.

682.207 Due diligence in disbursing a loan.

682.208 Due diligence in servicing a loan.

682.209 Repayment of a loan.

682.210 Deferment.

682.211 Forbearance.

682.212 Prohibited transactions.

682.213 Prohibition against the use of the Rule of 78's.

682.214 Compliance with equal credit opportunity requirements.

682.215 Defenses to the borrower's obligation to repay a GSL loan.

Subpart C—Federal Payments of Interest and Special Allowance

682.300 Payment of interest benefits on Stafford loans.

682.301 Eligibility of borrowers for interest benefits on Stafford loans.

682.302 Payment of special allowance on GSL loans.

682.303 [Reserved]

682.304 Methods for computing interest benefits and special allowance.

682.305 Procedures for payment of interest benefits and special allowance.

Subpart D—Administration of the Guaranteed Student Loan Programs by a Guarantee Agency

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.

682.405 [Reserved]

682.406 Conditions of reinsurance coverage.

682.407 Administrative cost allowance for guarantee agencies.

682.408 Stafford and SLS loan disbursement through an escrow agent.

682.409 Mandatory 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 Consequences of the failure of a borrower or student to establish eligibility.

682.413 Remedial actions.

682.414 Records, reports, and inspection requirements for guarantee agency programs.

Subpart E—Federal Guaranteed Student Loan Programs

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

682.501 Extent of Federal guarantee under the Federal GSL programs.

682.502 The application to be a lender.

682.503 The guarantee agreement.

682.504 Issuance of Federal loan guarantees.

682.505 Insurance premium.

- 682.506 Limitations on maximum loan amounts.
- 682.507 Due diligence in collecting a loan.
- 682.508 Assignment of a loan.
- 682.509 Special conditions for filing a claim.
- 682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.
- 682.511 Procedures for filing a claim.
- 682.512 Determination of amount payable on a claim.
- 682.513 Factors affecting coverage of a loan under the loan guarantee.
- 682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for Federal GSL loans.
- 682.515 Records, reports, and inspection requirements for Federal GSL 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 GSL programs.
- 682.601 Rules for a school that makes or originates loans.
- 682.602 Correspondence school schedule requirements.
- 682.603 Certification by a participating school in connection with a loan application.
- 682.604 Processing the borrower's loan proceeds and counseling borrowers.
- 682.605 Determining the date of a student's withdrawal.
- 682.606 Refund policy.
- 682.607 Payment of a refund to a lender.
- 682.608 Termination of a school's lending eligibility.
- 682.609 Remedial actions.
- 682.610 Administrative and fiscal requirements for participating schools.

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility and Disqualification of Lenders and Schools

- 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.
- 682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.
- 682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school.

Subpart H—Special Allowance Payments on Loans Made or Purchased with Proceeds of Tax-Exempt Obligations

- 682.800 Special allowance payments for loans financed by proceeds of tax-exempt obligations.
- 682.801 Provisions required in Plan.
- 682.802 Submission for Plan for approval—required documentation.
- 682.803 Amendments to Plan.
- 682.804 Failure to comply with Plan.
- 682.805 Sanctions for material misrepresentation.
- 682.806–682.829 [Reserved]
- 682.830 Audit standards.
- 682.831–682.839 [Reserved]
- 682.840 Prohibition against discrimination as a condition for receiving special allowance payments.

Appendix A—Standards for Acceptable Refund Policies by Participating Schools

Appendix B—Student Status Confirmation Report

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

Appendix D—Policy for Waiving the Secretary's Right to Recover or Refuse to Pay, Interests Benefits, Special Allowance, and Reinsurance on Guaranteed Student Loan, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Dear Guarantee Agency Director Letter 88-G-138]

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

Subpart A—Purpose and Scope

§ 682.100 The Guaranteed Student Loan programs.

(a) This part governs the following four programs, collectively referred to in these regulations as "the Guaranteed Student Loan (GSL) programs", in which lenders use their own funds to make loans to enable students or their parents to pay the costs of the student's attendance at postsecondary schools:

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

(2) The Supplemental Loans for Students (SLS) Program, which encourages the making of loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(3) The PLUS Program, which encourages the making of loans to parents of dependent students. Prior to October 17, 1986, the PLUS Program also provided for the making of loans to

graduate, professional, and independent undergraduate students.

(4) The Consolidation Program, which encourages the making of loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received by those borrowers while they were students, under the Stafford Loan, SLS, PLUS (as in effect prior to October 17, 1986), and Perkins Loan programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of title VII of the Public Health Service Act.

(b)(1) Except for the loans guaranteed directly by the Secretary described in paragraph (b)(2) of this section, a guarantee agency guarantees a lender against losses due to default by the borrower on a GSL loan. If the guarantee agency meets certain Federal requirements, the guarantee agency is reimbursed by the Secretary for all or part of the amount of default claims it pays to lenders.

(2)(i) The Secretary guarantees lenders against losses—

(A) Within the Stafford Loan Program, on loans made under the Federal Insured Student Loan (FISL) Program;

(B) Within the PLUS Program, on loans made under the Federal PLUS Program;

(C) Within the SLS Program, on loans made under the Federal SLS Program; and,

(D) Within the Consolidation Program, on loans made under the Federal Consolidation Program.

(ii) The loan programs listed in paragraph (b)(2)(i) of this section are collectively referred to in these regulations as the "Federal GSL programs".

(iii) The Federal GSL programs are authorized to operate in States not served by a guarantee agency program. In addition, the FISL and Federal SLS programs are authorized, under limited circumstances, to operate in States in which a guarantee agency program does not serve all eligible students.

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

§ 682.101 Participation in the GSL programs.

(a) Eligible banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State and private nonprofit agencies may make loans.

(b) Eligible educational institutions, including most colleges, universities, graduate and professional schools, and many vocational, technical, and correspondence schools may participate as schools, enabling an eligible student

or his or her parent to obtain a loan to pay for the student's cost of education.

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the Stafford Loan and SLS programs. Parents of eligible dependent students may borrow under the PLUS Program. Student borrowers who have at least \$5,000 outstanding in Stafford, FISL, Perkins, HPSL, or student PLUS loans may borrow under the Consolidation Program.

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

§ 682.102 Obtaining and repaying a loan.

(a) *Stafford loan application.* Generally, to obtain a Stafford loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(b) *SLS loan application.* Generally, to obtain an SLS loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(c) *PLUS loan application.* Generally, to obtain a PLUS loan, both the student and the parent complete an application before submitting it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(d) *Consolidation loan application.* Generally, to obtain a Consolidation loan, a borrower completes the application and submits it to a lender holding at least one of the borrower's loans to be consolidated. If all the holders of loans selected for consolidation by the borrower refuse to make a Consolidation loan, the borrower may submit the application to any other lender participating in the Consolidation Program. If a lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(e) *Repaying a loan—(1) General.* Generally, the borrower is obligated to repay the full amount of the loan, late fees, collection costs chargeable to the borrower, and 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 that obligation discharged in bankruptcy.

(2) *Stafford loan repayment.* Generally, a borrower is not required to make any principal payments on a Stafford loan 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 principal payments are required, and the Secretary continues to make interest payments on the borrower's behalf. 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) *SLS loan repayment.* Generally, the repayment period for an SLS loan begins immediately upon disbursement of the loan by the lender. The first payment of principal and interest on an SLS loan is due from the borrower within 60 days after the loan is fully disbursed.

(4) *PLUS loan repayment.* Generally, the repayment period for a PLUS loan begins immediately upon disbursement of the loan by the lender. The first payment of principal and interest on a PLUS loan is due from the borrower within 60 days after the loan is disbursed.

(5) *Consolidated loan repayment.* Generally, the first payment of principal and interest on a Consolidation loan is due from the borrower within 60 days after the borrower's liability on all loans being consolidated has been discharged.

(6) *Deferment of repayment.* Repayment of principal on a GSL programs loan may be deferred under the circumstances described in § 682.210 of this part.

(7) *Default.* If a borrower defaults on a loan, the guarantor reimburses the lender for the amount of its loss. The guarantor then collects the amount owed from the borrower.

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

§ 682.103 Applicability of subparts.

(a) Subpart B of this part contains general provisions that are applicable to all participants in the GSL programs.

(b) The administration of the GSL programs by a guarantee agency is subject to subparts C, D, F, and G of this part.

(c) The Federal GSL programs are subject to subparts C, E, F, and G of this part.

(d) Certain requirements applicable to schools under all the GSL programs are set forth in subpart F of this part.

(Authority: 20 U.S.C. 1071 to 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
Campus-based Programs
Clock hour
College Work-Study Program
Dependent student
Eligible program
Eligible student
Enrolled
Federal Insured Student Loan Program
Independent student
Institution of higher education
National of the United States
Pell Grant Program
Perkins Loan Program (formerly National Direct Student Loan Program)
PLUS Program
Secretary
State
State Student Incentive Grant Program
Supplemental Educational Opportunity Grant Program
Supplemental Loans for Students Program
Vocational school

(b) The following definitions also apply to this part:

Act. The Higher Education Act of 1965, as amended, 20 U.S.C. 1001 *et seq.*

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.

Authority. Any private non-profit or public entity that may issue tax-exempt obligations to obtain funds to be used for the making or purchasing of GSL loans. The term *Authority* also includes any agency, including a State postsecondary institution or any other instrumentality of a State or local governmental unit, regardless of the designation or primary purpose of that agency, that may issue tax-exempt obligations, any party authorized to issue those obligations on behalf of a governmental agency, and any non-profit organization authorized by law to issue tax-exempt obligations.

Borrower. An individual to whom a GSL loan is made.

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

Default. The failure of a borrower and endorser, if any, to make an installment

payment when due, or to meet other terms of the promissory note, if the Secretary or guarantee agency finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

- (1) 180 days for a loan repayable in monthly installments; or
- (2) 240 days for a loan repayable in less frequent installments.

Disbursement. The transfer of loan proceeds by a lender to a borrower, a school, or an escrow agent by issuance of a check or by electronic funds transfer.

Endorser. An individual who signs a promissory note and agrees to repay the loan in the event that the borrower does not.

Escrow agent. A party that receives the proceeds of a Stafford or SLS loan as an agent of an eligible lender for the purpose of transmitting those proceeds to the borrower or the borrower's school.

Estimated cost of attendance. The tuition and fees normally assessed to a student carrying the same academic workload as the student to whom or on whose behalf a GSL loan is sought, as determined by the school, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses may not include the purchase of a motor vehicle. They may include, but are not limited to—

- (1) The costs for rental or purchase of any equipment, materials, or supplies required of all students in the student's course of study, except with regard to a student receiving all or part of his or her instruction by means of telecommunications technology, for the cost of rental or purchase of that equipment;

- (2) For a student attending the institution on at least a half-time basis, an allowance for books, supplies, transportation, and miscellaneous personal expenses;

- (3) If applicable, the insurance premium for the loan;

- (4) If applicable, the origination fee for the loan;

- (5) An allowance, as determined by the school, for room and board costs incurred by the student that includes—

- (i) For a student without dependents residing at home with parents, an allowance of at least \$1,500;

- (ii) For a student without dependents residing in institutionally owned or operated housing, a standard allowance based on the amount normally assessed most of the school's residents for room and board; and

- (iii) For all other students, an allowance of not less than \$2,500 for expenses reasonably incurred by those students for room and board;

- (6) For a student enrolled in a correspondence study program, only the tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

- (7) For a student enrolled in an academic program that normally includes a formal program of study abroad, reasonable costs associated with that study;

- (8) For a student with one or more dependents, an allowance based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

- (9) For a handicapped student, an allowance for those expenses related to his or her handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided by other assisting agencies.

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

- (1) Benefits paid under section 156 of title 42 of the United States Code (formerly Social Security Benefits);

- (2) Veterans' educational benefits paid under chapters 30, 31, 32, 34, and 35 of title 38 of the United States Code;

- (3) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

- (4) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

- (5) The estimated amount of other Federal student financial aid, including, but not limited to, a Stafford loan for which interest benefits are payable under this part, Pell Grants and campus-based aid, that the student would be expected to receive if the student applied, whether or not the student has applied for that aid, but excluding Stafford loan amounts for which the interest benefits are not payable, SLS and PLUS loan amounts, and Perkins loan and College Work-Study funds that the school determines the student has declined for an acceptable reason; and

- (6) If applying for a loan to cover expenses incurred within the same

enrollment period as that for which a prior GSL loan was received, the amount of Stafford, SLS and PLUS loan proceeds withheld by the lender on the prior loan to cover the origination fee or insurance premium, if those costs were included in computing the borrower's estimated cost of attendance for the prior loan.

Federal GSL programs. The Federal Insured Student Loan Program, the Federal Supplemental Loans for Students Program, the Federal PLUS Program, and the Federal Consolidation Program.

Foreign school. A school not located in a State.

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 Stafford loan borrower ceases to be enrolled as at least a half-time student 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, for a period of enrollment—

- (1) Is enrolled in a program 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 receiving aid under title IV of the Act as an undergraduate student for the same period of enrollment.

Guarantee agency. A State or private nonprofit organization that has an agreement with the Secretary under which it will administer a loan guarantee program under 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 (as defined in 34 CFR part 668) of study by correspondence is considered a half-time student.

Holder. A party who is in possession of a GSL loan note that is payable to, or has been assigned to, that party.

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(d) of the Act, and in paragraphs (2)-(4) of this definition.

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

(i) The phrase "subject to examination and supervision" in section 435(d) means "subject to examination and supervision in its capacity as a lender"; and

(ii) The phrase "does not have as its primary consumer credit function the making or holding of loans made to students under this part" in section 435(d) means that the lender does not, or, in the case of a bank holding company, the company's wholly-owned subsidiaries as a group do not—

(A) At any time, hold GSL loans that total more than one-half of the lender's or subsidiaries' combined consumer credit loan portfolio, including home mortgages that the lender or subsidiaries own or service; and

(B) In any 12-month period, derive more than one-half of the lender's or subsidiaries' combined net income from consumer credit activities from the lender's or subsidiaries' activities as a lender under the GSL programs;

(3) The corporate parent or other owner of a school that qualifies as an eligible lender under section 435(d) of the Act is not an eligible lender unless the corporate parent or owner itself qualifies as an eligible lender under section 435(d) of the Act.

(4) The term *eligible lender* does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has—

(i) Offered, directly or indirectly, points, premiums, payments, or other inducements, to any educational

institution or other party to secure applicants for GSL loans;

(ii) Conducted unsolicited mailings to a student or a student's parents of GSL loan application forms, except to a student who has previously received a GSL loan from the lender or to a student's parent who has previously received a GSL loan from the lender;

(iii) Offered, directly or indirectly, a GSL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

(iv) Engaged in fraudulent or misleading advertising.

National credit bureau. A credit bureau with a service area that encompasses more than a single State or region of the country.

Origination. A relationship between a school and a lender in which the lender delegates to the school, or to an entity or individual affiliated with the school, substantial functions or responsibilities normally performed by lenders before making GSL loans. In this situation, the school is considered to have "originated" a loan made by the lender.

Origination fee. A fee that a lender is allowed to charge a Stafford Loan borrower at the time the loan is made to help defray the Secretary's costs of subsidizing the loan.

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

Participating school. A school that has in effect a current 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 day following the last day of an authorized deferment period.

School. (1) As used in this part, the term school includes—

(i) A "public or private nonprofit institution of higher education", or a "vocational school", as those terms are defined in 34 CFR part 600;

(ii) A hospital or health care facility that satisfies the definition of "a public or private nonprofit institution of higher education" in 34 CFR part 600, except that the facility need not satisfy § 600.4(a)(4), and that provides training of not less than one year for graduates of accredited health professions programs, leading to a degree or certificate upon completion of such training; or

(iii) 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 GSL programs.

(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, including the definition of "eligible program" in 34 CFR part 600.

(3) The term does not include any educational institution that employs or uses commissioned salespersons to promote the availability of Stafford, SLS or PLUS loans for attendance at the institution. 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—

(A) Provide a prospective student with GSL loan application forms, or names of eligible lenders;

(B) Provide other information relating to the GSL programs to a prospective student in order to encourage the student to finance his or her education with a GSL loan; or

(C) Otherwise use the availability of GSL loans as a recruiting tool.

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

Temporarily totally disabled. The condition of an individual who, though not totally and permanently disabled, is unable to work and earn money or attend school, during a period of at least 90 days needed to recover from injury or illness. With regard to a disabled dependent of a borrower, this term means a spouse or other dependent who, during a period of injury or illness, requires continuous nursing or similar services from the borrower for a period of at least 90 days.

Totally and permanently disabled. The condition of an individual who is unable to work and earn money or attend school because of an injury or illness that is expected to continue indefinitely or result in death.

Undergraduate student. A student who is enrolled at a school in a program of study, at or below the baccalaureate level, that usually does not exceed four academic years, or is up to five

academic years in length and is 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.

(Authority: 8 U.S.C. 1101; 20 U.S.C. 1070 to 1087-2, 1088-1098, 1141)

§ 682.201 Eligible borrowers.

(a) *Student borrower.* Except for a refinanced SLS/PLUS loan made under § 682.209 (e) or (f), a student is eligible to receive a Stafford loan, and an independent undergraduate student, a graduate or professional student, or, subject to paragraph (a)(3) of this section, a dependent undergraduate student, is eligible to receive an SLS loan, if the student meets the requirements for an eligible student under 34 CFR part 668, and—

(1) In the case of an undergraduate student who seeks a Stafford loan or SLS loan for the cost of attendance at a school that participates in the Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Pell Grant, a preliminary determination, from the school of the student's eligibility or ineligibility for a Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(2) In the case of an incarcerated student, is scheduled for unconditional release prior to the end of the grace period, as calculated based on the student's anticipated graduation date at the time the loan is made;

(3) In the case of any student who seeks an SLS loan for the cost of attendance at a school that participates in the Stafford Loan Program, has received a determination of need for a Stafford loan, and if determined to have need, has filed an application with a lender for a Stafford loan;

(4) For purposes of a dependent undergraduate student's eligibility for an SLS loan, is a dependent undergraduate student for whom the financial aid administrator determines and documents in the institution's files, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents will likely be precluded by exceptional circumstances from borrowing under the PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution;

(5) Reaffirms any GSL loan debt that was previously cancelled due to the student's total and permanent disability or was discharged in bankruptcy; and

(6)(i) In the case of a student whose previous loan was cancelled due to total and permanent disability, obtains a certification from a physician that the student's condition has improved and that the student is able to engage in substantial gainful activity; and

(ii) Signs a statement acknowledging that any new GSL loan the student receives cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates.

(b) *Parent borrower.* A parent is eligible to receive a PLUS Program loan, other than a loan made under § 682.209 (e) or (f), if the parent—

(1) Is borrowing to pay for the educational costs of a dependent student who meets the requirements set forth in 34 CFR part 668;

(2) Provides his or her social security number;

(3) Meets the requirements set forth in 34 CFR part 668; and

(4) Meets the requirement of paragraphs (a)(5) and (a)(6) of this section.

(c) *Consolidation Program borrower.* An individual is eligible to receive a Consolidation loan if, at the time of application for a Consolidation loan, the individual—

(1) Has an outstanding indebtedness of not less than \$5,000 on loans eligible for consolidation under this part; and

(2) Is in a grace period preceding repayment, or is in repayment and is not delinquent by more than 90 days, on each of the loans selected for consolidation.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 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 Stafford Loan Program.*

(i) Subject to paragraph (a)(1)(ii) of this section, the applicable interest rate on a Stafford loan for a borrower who, on the date the promissory note is signed, does not have an outstanding balance on any loan under this part 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;

(C) Eight percent for a loan covering a period of instruction beginning on or after September 13, 1983, but before July 1, 1988; or

(D) For a loan covering a period of instruction beginning on or after July 1, 1988, eight percent until 48 months after the repayment period begins, and ten percent thereafter.

(ii)(A) Except as provided in paragraph (a)(1)(ii)(B) of this section, the applicable interest rate on a Stafford loan for a borrower who, on the date the promissory note evidencing the loan is signed, has an outstanding balance on a previous Stafford loan, is the applicable interest rate on the previous loan.

(B) The applicable interest rate on a Stafford loan for a borrower who, on the date the promissory note evidencing the loan is signed, has an outstanding balance on any loan under this part for which the interest rate was determined under paragraph (a)(1)(i)(D) of this section, is eight percent until 48 months after the repayment period begins, and ten percent thereafter.

(2) *Applicable interest rates under the PLUS Program.* The applicable interest rate on a PLUS loan is—

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

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

(iii) Except as provided in paragraphs (a)(2) (iv) and (v) of this section, twelve percent for a loan made on or after November 1, 1982;

(iv) For a loan disbursed on or after July 1, 1987, and for any loan made under § 682.209 (e) or (f) of this part, a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.25 percent; or

(B) Twelve percent; and

(v) For a combined repayment schedule under § 682.209(d), the rate that is the weighted average of the rates of all loans included under that schedule.

(3) *Applicable interest rates under the SLS Program.* The applicable interest rate on an SLS Program loan is—

(i) Twelve percent for a loan covering a period of enrollment beginning on or after October 17, 1986, but before July 1, 1987;

(ii) For a loan disbursed on or after July 1, 1987, and for any loan made under § 682.209 (e) or (f) of this part, a variable rate, applicable to each July 1-June 30 period, that equals the bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately

preceding that July 1-June 30 period, plus 3.25 percent; and

(iii) For a combined repayment schedule under § 682.209(d), the rate that is the weighted average of the rates of all loans included under that schedule.

(4) *Actual interest rates under the Consolidation Program.* A Consolidation Program loan bears interest at the rate that is the greater of—

(i) The weighted average of interest rates on the loans consolidated, rounded to the nearest whole percent; or

(ii) Nine percent.

(5) *Actual interest rates under the Stafford Loan, SLS, and PLUS Programs.* A lender may charge a borrower an actual rate of interest that is less than the applicable interest rate specified in paragraphs (a) (1)–(3) of this section.

(b) *Capitalization.* (1) A lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance in accordance with paragraph (b)(2) of this section. This increase in the principal balance of a loan is called "capitalization."

(2) 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, (or with the written consent of the borrower;)

(ii) During a period of authorized deferment;

(iii) During a period of authorized forbearance; 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 quarterly, 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 is scheduled to begin.

(4) Under the SLS and PLUS programs, the lender shall require the borrower to pay on a monthly or quarterly basis, or with the borrower's written consent, capitalize on a quarterly basis, interest that has accrued during periods in which the borrower—

(i) Is pursuing a full-time course of study at an eligible institution;

(ii) Is pursuing at least a half-time course of study (as determined by the institution) during an enrollment period for which the student has obtained a GSL loan;

(iii) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(iv) Is pursuing a rehabilitation training program for disabled individuals that is approved by the Secretary.

(c) *Origination fee for a Stafford loan.* Except in the case of a Stafford loan on which the borrower does not qualify for interest benefits under § 682.301, a lender—

(1) May charge a borrower an origination fee on a Stafford loan not to exceed the maximum rate specified by Federal statute;

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

(3) Shall, in the case of a loan disbursed in multiple installments, deduct a *pro rata* portion of the fee from each disbursement; and

(4) Shall refund by a credit against the borrower's loan balance the portion of the origination fee previously deducted from the loan or multiply-disbursed portion thereof attributable to the portion of the loan the proceeds of which are—

(i) Returned by the school to the lender;

(ii) Repaid within 120 days of disbursement; or

(iii) Not delivered to the borrower within 120 days of disbursement.

(d) *Insurance premium.* A lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor up to three percent of the principal amount of the loan, if that charge is provided for in the borrower's promissory note.

(e) *Administrative charge for a refinanced PLUS or SLS Loan.* A lender may charge a borrower up to \$100 to cover the administrative costs of making a loan to a borrower under § 682.209(e) of this part for the purpose of refinancing a PLUS or SLS loan to secure a variable interest rate.

(f) *Late charge.* (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 (f)(2) of this section. This 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; and

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

(g) *Collection charges.* If provided for in the borrower's promissory note, and notwithstanding any provisions of State law, the lender may require that the borrower pay costs incurred by the

lender in collecting installments not paid when due, including, but not limited to—

(1) Attorney's fees;

(2) Court costs;

(3) Telegrams;

(4) Local and long distance telephone calls;

(5) Skip-tracing costs;

(6) Credit bureau reporting costs;

(7) Costs associated with preparing letters or notices; and

(8) Collection firm charges.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1082, 1087–1, 1091–a)

§ 682.203 Responsible parties.

(a) *Delegation of functions.* A school, lender, or guarantee agency may contract or otherwise delegate the performance of its functions under the Act and this part to a servicing agency or other party. This contracting or other delegation of functions does not relieve the school, lender, or guarantee agency of its duty to comply with the requirements of the Act and this part.

(b) *Trustee responsibility.* A lender that holds a loan in its capacity as a trustee assumes responsibility for complying with all statutory and regulatory requirements imposed on any other holders of a loan.

(Authority: 20 U.S.C. 1082)

§ 682.204 Maximum loan amounts.

(a) *Stafford Loan Program annual limits.* The total amount a student may borrow for any academic year of study under the Stafford Loan Program, including the FISL Program, may not exceed—

(1) \$2,625, in the case of an undergraduate student who has not successfully completed the first and second years of an undergraduate program;

(2) \$4,000, in the case of an undergraduate student who has successfully completed the first and second years of an undergraduate program; and

(3) \$7,500, in the case of a graduate or professional student.

(b) *Stafford Loan Program aggregate limits.* The aggregate guaranteed unpaid principal amount of all Stafford loans made to a student may not exceed—

(1) \$17,250, in the case of an undergraduate student; and

(2) \$54,750, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *PLUS Program annual limit.* The total amount of all PLUS loans that a parent may borrow on behalf of a dependent student for any academic year of study may not exceed \$4,000.

(d) *PLUS Program aggregate limit.* The total guaranteed unpaid principal amount of PLUS Program loans made on behalf of a dependent student may not exceed \$20,000.

(e) *SLS Program annual limit.* The total amount of all SLS loans that a student may borrow for any academic year of study may not exceed \$4,000.

(f) *SLS Program aggregate limit.* The total guaranteed unpaid principal amount of SLS Program loans made to a student may not exceed \$20,000.

(g) *Treatment of consolidation loans for purposes of determining loan limits.* The percentage of the outstanding balance on a Consolidation loan counted against a borrower's aggregate loan limits under the Stafford Loan, SLS, PLUS, or Perkins Loan program shall equal the percentage of the original amount of the Consolidation loan attributable to loans made to the borrower under that program.

(h) In no case may a Stafford, PLUS, or SLS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Stafford loan that is eligible for interest benefits.

(Authority: 20 U.S.C. 1075, 1078, 1078-1, 1078-2, 1078-3, 1079, 1082, 1089)

§ 682.205 Disclosure requirements for lenders.

(a) *Initial disclosure statement.* (1) Except in the case of a Consolidation loan, a lender shall disclose the information described in paragraph (a)(2) of this section to a borrower in writing and the borrower shall acknowledge receipt and understanding thereof by signing the lender's copy of the disclosure either before or at the time of the first disbursement on a GSL loan.

(2) The lender shall provide the borrower with—

(i) The lender's name, the address to which correspondence with the lender and payments should be sent, and a statement that the lender may sell the loan to another party, in which case the address and identity of the party to which correspondence and payments should be sent may change;

(ii) The principal amount of the loan;

(iii) The amount of any charges, including the origination fee and the insurance premium, to be collected by the lender before or at the time of the first disbursement on the loan, and an explanation of whether those charges are to be deducted from the proceeds of

the loan or paid separately by the borrower;

(iv) The actual interest rate;

(v) The annual and aggregate maximum amounts that may be borrowed;

(vi) A statement that information concerning the loan, including the date of disbursement and the amount of the loan, will be reported to a national credit bureau;

(vii) 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;

(viii) The minimum and maximum number of years in which the loan must be repaid and the minimum amount of required annual payments;

(ix) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(x) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;

(xi) A statement describing the circumstances under which repayment of the loan or interest that accrues on the loan may be deferred;

(xii) 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. 2171, note;

(xiii) The definition of "default" found in § 682.200, and the consequences to the borrower of a default, including a statement concerning likely litigation, a statement that the default will be reported to a national credit bureau, and statements that the borrower will be liable for substantial collection costs, that the borrower's Federal and State income tax refund may be withheld to pay the debt, that in certain cases the borrower's wages will be garnished or offset, and that the borrower will be ineligible for additional Federal student financial aid, as well as for assistance under most Federal benefit programs.

(xiv) An explanation of the possible effects of accepting the loan on the eligibility of the student for other forms of student financial assistance;

(xv) An explanation of any costs the borrower may incur in the making or collection of the loan; and

(xvi) In the case of a Stafford or SLS loan, other than an SLS loan made under § 682.209 (e) or (f), a statement that the loan proceeds will be transmitted to the school for delivery to the borrower; and

(xvii) A statement of the total cumulative balance, including the loan applied for, owed to that lender, and an estimate of the projected monthly payment amount based on that cumulative outstanding balance.

(b) *Separate statement of borrower rights and responsibilities.* In addition to the disclosures required by paragraph (a) of this section, the lender shall provide the borrower, at the time of the first disbursement, with a separate statement that—

(1) Summarizes the rights and responsibilities of the borrower with respect to the loan;

(2) Indicates the consequences to the borrower of defaulting on the loan described in paragraph (a)(2)(xiii) of this section; and

(3) Indicates that, except for a loan made by a school lender or a lender with an origination relationship with the school, the borrower must repay the loan, even if the student does not receive the services or equipment purchased from the school with the loan proceeds, the services or equipment provided are inadequate, the school fails to pay a refund it owes to the borrower, or the student fails to obtain employment upon graduation.

(c)(1) The lender shall disclose the information described in paragraph (c)(2) of this section 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 a FISL loan. If the borrower enters the repayment period without the lender's knowledge, the lender shall provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period.

(2) The lender shall provide the borrower with—

(i) The lender's name, and the address to which correspondence with the lender and payments should be sent;

(ii) The scheduled date upon which the repayment period is to begin;

(iii) The estimated balance, including the estimated amount of interest to be capitalized, owed by the borrower as of the date upon which the repayment period is to begin, or the date of the disclosure, whichever is later;

(iv) The actual interest rate on the loan;

(v) An explanation of any fees that may accrue or be charged to the borrower during the repayment period;

(vi) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments;

(vii) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(viii) The estimated total amount of interest to be paid on the loan, assuming

that payments are made in accordance with the repayment schedule; and

(ix) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1083(a))

§ 682.206 Due diligence in making a loan.

(a) *General.* (1) Loan-making duties include 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 rights and responsibilities under the loan, and completing and having the borrower sign the promissory note.

(2) A lender that delegates substantial loan-making duties to a school on a loan thereby enters into a loan origination relationship with the school respecting that loan. If that relationship exists, the lender may rely in good faith upon statements of the borrower made in the loan application process, but may not rely upon statements made by the school in that process. A non-school lender that does not have an origination relationship with a school with respect to a loan may rely in good faith upon statements of both the borrower and the school in the loan application process. Except as provided in 34 CFR part 668, subpart E, a school lender may rely in good faith upon statements made by the borrower in the loan application process.

(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 the borrower has provided on the form all information requested from the borrower.

(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 rely upon 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, in determining the borrower's eligibility for a loan.

(2) In determining the amount of the loan to be made, within the limitations of § 682.204, 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 less the sum of—

(i) The student's estimated financial assistance for the period of enrollment for which the loan is intended; and

(ii) In the case of a Stafford loan that is eligible for interest benefits, the borrower's expected family contribution for that period.

(d) *Promissory note.* (1) The lender shall obtain from the borrower an executed legally enforceable promissory note for each loan as proof of the borrower's indebtedness.

(2) Without the guarantor's prior approval, a lender may not add any clauses to, or modify any provisions of, the most current promissory note provided by the guarantor.

(3) The lender shall give the borrower a copy of each executed note.

(e) *Security, endorsement, and co-makers.* (1) A FISL or Federal PLUS loan shall be made without security or endorsement.

(2) 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.

(3) A guarantee agency shall not require a lender to obtain security or endorsement for a Stafford or SLS loan.

(f) *Additional requirement for Consolidation loans.* (1) Prior to disbursement of a Consolidation loan, the lender shall obtain from the holder of each loan to be consolidated a certification with respect to the loan held by the holder that—

(i) The loan is a legal, valid, and binding obligation of the borrower;

(ii) The loan was made and serviced in compliance with applicable laws and regulations; and

(iii) In the case of a GSL loan, that the guarantee on the loan is in full force and effect.

(2) The Consolidation loan lender may rely in good faith on the certification provided under paragraph (f)(1) of this section by the holder of a loan to be consolidated.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1080, 1082, 1083, 1085)

§ 682.207 Due diligence in disbursing a loan.

(a)(1) This section prescribes procedures for lenders to follow in disbursing Stafford, SLS and PLUS loans, other than a refinancing SLS or PLUS Program loan made under § 682.209 (e) or (f). With respect to FISL, Federal SLS, and Federal PLUS loans, references to the "guarantee agency" in this section shall be understood to refer to the "Secretary."

(2) The requirements of paragraphs (b)(1) (ii) and (v) of this section must be satisfied either by the lender or by an escrow agent with which the lender has

an agreement pursuant to § 682.406. The lender shall comply with paragraph (b)(1)(iii) of this section whether or not it disburses to an escrow agent.

(b)(1) In disbursing a loan, a lender—

(i) May not disburse loan proceeds prior to the issuance of the guarantee commitment for the loan by the guarantee agency, except with the agency's prior approval;

(ii) Shall disburse loan proceeds by—

(A) A check that is made payable to the borrower, or, if required by the guarantor, is made co-payable to the borrower and the school identified on the loan application, and requires the personal endorsement of the borrower in order to be cashed; or

(B) If authorized by the guarantor, electronic funds transfer to a separate account maintained by the school as trustee for the lender, the guarantee agency, the Secretary, and the borrower, that requires the written approval of the borrower for the release of those funds from the account;

(iii) Shall not disburse loan proceeds 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, disburse loan proceeds earlier than 30 days prior to the date on which the student is scheduled to enroll;

(iv) Shall require an escrow agent to disburse loan proceeds no later than 21 days after the agent receives the proceeds from the lender; and

(v) Shall disburse—

(A) Directly to the school, in the case of a student borrower attending a school located in a State; or

(B) Directly to the borrower, in the case of a parent borrowing on behalf of an eligible student or a student attending a school not located in a State, and shall notify the school of the amount of the loan within 30 days of the date on which the first disbursement on the loan is made.

(2) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse or otherwise approve the cashing of a loan check or the release of funds disbursed by electronic funds transfer, nor may a borrower provide this power of attorney or authorization to anyone else. However, the school may present the loan check to a financial institution for deposit in an account of the borrower.

(c)(1) Except for a loan made to a student attending a foreign school, a lender shall disburse a Stafford or SLS loan in multiple installments if—

(i) The amount of the loan is \$1,000 or more; and

(ii) On the date of the first disbursement, the time remaining in the period of enrollment for which the loan is made is greater than six months, or 180 days, whichever is less.

(2) In multiply disbursing a loan, a lender shall disburse as follows:

(i) Disbursement must be in two or more installments.

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

(iii) At least one-third of the period of enrollment for which the loan is made must elapse before the second installment is disbursed, except as necessary to permit the second installment to be disbursed on or after the first day of the next semester, quarter, or similar division of the period of enrollment.

(3) For purposes of paragraph (c) of this section, a lender shall consider all loans made for the same period of enrollment as a single loan.

(d)(1) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the guarantee commitment, in accordance with paragraphs (d) (2) and (3) of this section.

(2) A disbursement described in paragraph (d)(1) of this section may be made—

(i) Only if the loan proceeds will be used to cover the student's outstanding institutional charges for a period of enrollment for which the loan was intended and during which the student was actually enrolled on at least a half-time basis;

(ii) Within 30 days after the date the student ceases to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was made, whichever is earlier;

(iii) Within 31–60 days after the date the student ceased to be enrolled on at least a half-time basis or after the expiration of the period of enrollment for which the loan was made, whichever is earlier, if the lender receives a written certification from the school after that date, but prior to making the disbursement, setting forth—

(A) The beginning and ending dates during the loan period that the student was enrolled at the school as an eligible student on at least a half-time basis; and

(B) The student's outstanding institutional charges for the loan for that period of actual enrollment; and

(iv) With the guarantee agency's approval, provided on a case-by-case basis, within 61–90 days after the date the student ceased to be enrolled on at least a half-time basis or after the

expiration date of the guarantee commitment, whichever is earlier.

(3) The lender shall give notice to the school that the loan proceeds have been disbursed in accordance with paragraph (d)(2) of this section at the time the lender sends the loan proceeds to the school.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1085)

§ 682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to national credit bureaus, responding to borrower inquiries, and establishing the terms of repayment.

(b) An eligible lender or subsequent holder of a GSL loan shall report to at least one national credit bureau—

(1) The total amount of GSL loans the lender has made to the borrower, and the outstanding balance of the loans, within 90 days of each disbursement;

(2) Information concerning repayment of a loan, within 90 days after a change in that status from current to delinquent;

(3) The date the loan is fully repaid by, or on behalf of, the borrower, or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability, within 90 days after that date;

(4) The date of default by the borrower on the loan, not earlier than 30 days nor later than 90 days after that date, unless the borrower makes payments prior to that 30th day sufficient to bring the loan to less than 150 days delinquent; and

(5) Other information required by law to be reported.

(c)(1) A lender shall respond within 30 days after receipt to any inquiries from a borrower or any endorser on a loan.

(2) When a lender learns that a Stafford loan 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.

(d) Subject to the rules regarding maximum duration of a repayment period and minimum annual payment described in § 682.209(a)(7), (c), and (h), nothing in this part is intended to limit a lender's discretion in establishing, or, with the borrower's consent, revising a borrower's repayment schedule to provide for graduated or income-sensitive repayment terms. The Secretary strongly encourages lenders to provide a graduated or income-sensitive repayment schedule to a borrower providing for at least the payment of interest charges, unless the borrower requests otherwise, in order to make the borrower's repayment burden

commensurate with his or her projected ability to pay. The schedule may provide for graduated or income-sensitive payments for a period covering not more than the first 5 years of repayment, and equal payments must begin not later than the sixth year of repayment.

(e) If the assignment of a GSL, PLUS, or SLS loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignee of the loan shall, prior to or simultaneously with its receipt of a legal interest in the assigned loan, provide notice to the borrower of the assignment, the identity of the assignee, and the name and address of the party to whom subsequent payments must be sent. For purposes of this paragraph, the term "assigned" is defined in § 682.401(b)(15)(ii).

(f)(1) A lender shall follow the procedures in § 682.412 whenever it learns that, for any reason of which the borrower, but not the school or the lender, knew or should have known when the loan or a portion thereof was made, the borrower, or, if applicable, the student on whose behalf a parent has borrowed—

(i) Did not qualify for all or a portion of a loan made under this part;

(ii) Has received a Stafford loan subject to payment of Federal interest benefits as provided under § 682.301, but is in fact ineligible for some or all of those interest benefits; or

(iii) Has received loan proceeds and has not paid those amounts to the school or repaid them to the lender if the student was a registered student who—

(A) The school notifies the lender under § 682.604(d)(4) has withdrawn or been expelled prior to the first day of classes for the period of enrollment for which the loan was intended; or

(B) Failed to attend school during that period.

(2) For purposes of this section, the term "guarantee agency" in § 682.412(e) refers to the Secretary in the case of a Federal GSL loan.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1085)

§ 682.209 Repayment of a loan.

(a) *Conversion of a loan to repayment status.* (1) For a PLUS or Consolidation loan, the repayment period begins on the date the loan is disbursed. The first payment is due within 60 days after the date of disbursement.

(2) For an SLS loan, the repayment period begins on the date of the first disbursement made on the loan. The first payment is due within 60 days after the date of the final disbursement made on the loan.

(3)(i) Except as provided in paragraphs (a) (4) and (5) of this section, for a Stafford loan the repayment period begins—

(A) 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 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 FISL Program, and by the guarantee agency for loans guaranteed by the agency; and

(B) For a borrower with a loan for which the applicable interest rate is eight or nine percent per year, six months following the month in which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

(ii) The first payment on a Stafford loan is due on a date established by the lender that is no more than 45 days following the first day of the month in which the repayment period begins.

(4) For a borrower of a Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3) of this section begins on the earliest 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 § 682.602. However, the school may excuse a borrower's first failure to submit a lesson within this 60-day period after the due date for submission of a particular assignment if, within the 60-day period, the borrower declares, 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 under the schedule required under § 682.602.

(5) For a Stafford 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 waives the remainder of the grace period.

(6) 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 or income-sensitive repayment schedule is established, it may not provide for any single installment that is more than

three times greater than any other installment.

(7)(i) Subject to paragraphs (a)(7) (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 Stafford, SLS, or PLUS loan, calculated from the beginning of the repayment period. Except in the case of a FISL loan for a period of enrollment beginning on or after July 1, 1986, the lender shall require a borrower to fully repay a FISL loan within 15 years after it is made.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in § 682.210 or § 682.211, 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) The borrower may, prior to the beginning of the repayment period, request and be granted by the lender a repayment period of less than five years. Subject to paragraph (a)(6)(iii) of this section, a borrower who makes such a request may, by written notice to the lender at any time during the repayment period, extend the repayment period to a minimum of five years.

(8) If, with respect to the aggregate of all loans held by a lender, the total payment made by a borrower for a monthly or similar payment period would not otherwise be a multiple of five dollars, the lender may round that periodic payment to the next highest whole dollar amount that is a multiple of five dollars.

(b) *Prepayment.* (1) The borrower may prepay the whole or any part of a loan at any time without penalty. Except as provided in paragraph (b)(2) of this section, unless the borrower requests that the lender credit the prepayment to future installments, the lender shall credit the entire prepayment to unpaid principal.

(2) If the prepayment amount equals or exceeds three full payments under the repayment schedule established for the loan, the lender may apply the prepayment to future installments, without the prior request of the borrower. If the lender does so, it shall notify the borrower that the payments have been so applied, and no less frequently than quarterly thereafter to remind the borrower of the repayment obligation and the due date of the next scheduled payment, until the next payment is made.

(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 GSL 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 GSL loans, only their combined annual payment must meet the requirement of paragraph (c)(1)(i) of this section.

(2) The provisions of paragraphs (c)(1) (i) and (ii) of this section may not result in an extension of the 10-year maximum repayment period unless forbearance, as described in § 682.211, has been approved.

(d) *Combined repayment of a borrower's PLUS and SLS loans held by a lender.* (1) A lender may, at the request of a borrower, combine the borrower's PLUS and SLS loans under a single repayment schedule.

(2) The repayment period on the loans included in the combined repayment schedule must be calculated based on the commencement of repayment of the most recent included loan.

(3) The interest rate on the loans included in the new combined repayment schedule must be the weighted average of the rates of all included loans.

(e) *Refinancing a fixed-rate PLUS or SLS Program loan to secure a variable interest rate.* (1) Subject to paragraph (g) of this section, a lender may, at the request of a borrower, refinance a PLUS or SLS loan with a fixed interest rate in order to permit the borrower to obtain a variable interest rate.

(2) A loan made under paragraph (e)(1) of this section—

(i) Must bear interest at the variable rate described in § 682.202(a)(2)(iv); and

(ii) May not extend the repayment period provided for in paragraph (a)(7)(i) of this section.

(3) The lender may not charge an additional insurance premium on the loan, but may charge the borrower an administrative fee pursuant to § 682.202(e).

(f) *Refinancing of a fixed-rate PLUS or SLS Program loan to secure a variable interest rate by discharge of previous loan.* (1) Subject to paragraph (g) of this section, a borrower who has applied for, but been denied, a refinanced loan authorized under paragraph (e) of this section by the holder of the borrower's fixed-rate PLUS or SLS loan, may obtain a loan from

another lender for the purpose of discharging the fixed-rate loan and obtaining a variable interest rate.

(2) A loan made under paragraph (f)(1) of this section—

(i) Must bear interest at the variable interest rate described in § 682.202(a)(2)(iv);

(ii) May not operate to extend the repayment period provided for in paragraph (a)(7)(i) of this section; and

(iii) Must be disbursed to the holder of the fixed-rate loan to discharge the borrower's obligation thereon.

(3) Upon receipt of the proceeds of a loan made under paragraph (f)(1) of this section, the holder of the fixed-rate loan shall, within three business days thereafter, apply the proceeds to fully discharge the borrower's obligation on the fixed-rate loan, and mail to, or otherwise provide the refinancing lender with—

(i) The original promissory note evidencing the fixed-rate loan; or

(ii) The holder's written certification that the borrower's obligation on the fixed-rate loan has been fully discharged.

(4) The refinancing lender may charge the borrower an insurance premium on a loan made under paragraph (f)(1) of this section, but may not charge a fee to cover administrative costs.

(5) For purposes of deferments under § 682.210, the refinancing loan—

(i) Is considered a PLUS loan if any of the included loans is a PLUS loan made to a parent; or

(ii) An SLS loan if the combined loan does not include a PLUS loan made to a parent.

(g) *Conditions for refinancing certain loans.* (1) A lender may not refinance a loan under paragraph (e) or (f) of this section if that loan is in default, involves a violation of a condition of reinsurance described in § 682.406, or, in the case of a Federal SLS or PLUS loan, is uninsured by the Secretary.

(2)(i) Prior to refinancing a fixed-rate loan under paragraph (f) of this section, the lender shall obtain a written statement from the holder of the loan certifying that—

(A) The holder has refused to refinance the fixed-rate loan under paragraph (e) of this section; and

(B) The fixed-rate loan is eligible for reinsurance under paragraph (g)(1) of this section.

(ii) The holder of the fixed-rate loan shall, within 10 days of receiving a lender's written request to provide a certification under paragraph (g)(2)(i) of this section, provide the lender with that certification, or provide the lender and the guarantor on the loan with a written explanation of the reasons for its

inability to provide the certification to the requesting lender.

(iii) The refinancing lender may rely in good faith on the certification provided by the holder of the fixed-rate loan under paragraph (g)(2)(ii) of this section.

(h) *Consolidation loans.* (1) For a Consolidation loan, the repayment period begins on the day of disbursement, with the first payment due within sixty days thereafter.

(2) If the sum of the amount of the Consolidation loan and the unpaid balance on other student loans to the applicant—

(i) Is equal to or greater than \$5,000 but less than \$7,500, the borrower shall repay the Consolidation loan in not more than 10 years;

(ii) Is equal to or greater than \$7,500 but less than \$10,000, the borrower shall repay the Consolidation loan in not more than 12 years;

(iii) Is equal to or greater than \$10,000 but less than \$20,000, the borrower shall repay the Consolidation loan in not more than 15 years;

(iv) Is equal to or greater than \$20,000 but less than \$45,000, the borrower shall repay the Consolidation loan in not more than 20 years; or

(v) Is equal to or greater than \$45,000, the borrower shall repay the Consolidation loan in not more than 25 years.

(3) For the purpose of paragraph (h)(2) of this section—

(i) The unpaid balance on other student loans may not exceed the amount of the Consolidation loan; and

(ii) Does not include the unpaid balance on any loan on which the borrower is in default, unless the borrower has made satisfactory arrangements with the holder to repay that loan.

(4) A repayment schedule for a Consolidation loan—

(i) Shall be established by the lender; and

(ii) Must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

(i) *Treatment by a lender of borrowers' refunds received from schools.* (1) A lender shall treat a payment of a borrower's refund of tuition or other institutional charges received by the lender from a school as a credit against the principal amount owed by the borrower on the borrower's loan.

(2)(i) If a lender receives a refund payment from a school on a loan that is no longer held by that lender, or that has been discharged by another lender by refinancing under § 682.209(f) or by a Consolidation loan, the lender shall

transmit the amount of the refund payment to the lender to whom it assigned the loan within 30 days of receipt, or who so discharged the prior loan, with an explanation of the source of the payment.

(ii) Upon receipt of a refund transmitted under paragraph (i)(2)(i) of this section, the holder of the loan shall promptly provide written notice to the borrower that the holder has received the refund.

(j) *Certification on loans to be repaid through consolidation.* Within 10 days after receiving a written request for a certification from a lender under § 682.206(f), a holder shall either provide the requesting lender the certification or, if it is unable to certify to the matters described in that paragraph, provide the requesting lender and the guarantor on the loan at issue with a written explanation of the reasons for its inability to provide the certification.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1082, 1085)

§ 682.210 Deferment.

(a) *General.* (1) A borrower is entitled to have periodic installment payments of principal deferred during authorized periods after the beginning of the repayment period, pursuant to paragraph (b) of this section.

(2)(i) For a loan made before October 1, 1981, the borrower is also entitled to have periodic installments of principal deferred during the six-month period (post-deferment grace period) that commences after the completion of each deferment period or combination of those periods, except as provided in paragraph (a)(2)(ii) of this section.

(ii) Once a borrower receives a post-deferment grace period following an unemployment deferment, as described in paragraph (b)(1)(v) of this section, the borrower does not qualify for additional post-deferment grace periods following subsequent unemployment deferments.

(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 Stafford loan, the loan was determined to be eligible for interest benefits under § 682.301 when the loan was made.

(4)(i) As a condition for receiving a deferment, the borrower shall request the deferment in writing, and provide the lender with all information and documents required to establish eligibility for a specific type of deferment.

(ii) A lender may grant a borrower a deferment based on substantially complete documentation that nevertheless does not include some

required information. If the lender does so, the lender shall diligently attempt to obtain the missing information from the borrower. If the lender is unable to obtain that information, it may grant forbearance in accordance with § 682.211(f).

(5) An authorized deferment period begins on the date the condition entitling the borrower to the deferment first exists, but not more than six months before the date the lender receives a request for the deferment and substantially complete documentation, including, without limitation, the signature of the authorized certifying official, required for the deferment under this section.

(6) An authorized deferment period ends on the earlier of—

(i) The date when the condition establishing the borrower's eligibility for the deferment ends;

(ii) Except as provided in paragraph (a)(6)(iv) of this section, the date on which, as certified by an authorized official, the borrower's eligibility for the deferment is expected to end;

(iii) Except as provided in paragraph (a)(6)(iv) of this section, the expiration date of the period covered by any certification required by this section to be obtained for the deferment;

(iv) In the case of an in-school deferment for a Stafford loan guaranteed by a guarantee agency whose student status confirmation report system includes student status reports for each borrower with a student deferment, and in the case of an SLS loan to a borrower received for a period of enrollment that commences at the same time as the deferment, the student's anticipated graduation date as indicated on the loan application, and as updated by notice to the lender from the school or guarantee agency; or

(v) The date when the condition providing the basis for the borrower's eligibility for the deferment has continued to exist for the maximum amount of time allowed for that type of deferment.

(7) A lender may not deny a borrower 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 180- or 240-day period required to establish default does not run during the deferment and post-deferment grace periods. When the deferment and, if applicable, the post-deferment grace period expire, a borrower resumes any delinquency status that existed when the deferment period began.

(8) A borrower whose loan is in default is not eligible for a deferment as to that loan, unless, in the case of a loan

held by a lender, the borrower has made satisfactory repayment arrangements with the holder of the loan.

(9) The borrower must promptly inform the lender when the condition entitling the borrower to a deferment no longer exists.

(10) Authorized deferments are described in paragraph (b) of this section. Specific requirements for each deferment are set forth in paragraphs (c)–(r) of this section.

(b) *Authorized deferments.* (1) Deferment is authorized for a GSL borrower during any period when the borrower is—

(i) Engaged in full-time study at a school, or at a school that is operated by 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 school not located in a State;

(ii) Engaged in a course of study under an eligible graduate fellowship program;

(iii) Engaged in a rehabilitation training program for disabled individuals;

(iv) Temporarily totally disabled, or unable to secure employment because the borrower is caring for a spouse or other dependent who is temporarily totally disabled, for up to three years; or

(v) Conscientiously seeking, but unable to find, full-time employment in the United States, for up to two years.

(2) For a borrower of a Stafford or SLS loan, and for a parent borrower of a PLUS loan made before August 15, 1983, deferment is authorized during any period when the borrower is—

(i) On active duty status in the United States Armed Forces, or an officer in the Commissioned Corps of the United States Public Health Service, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(i) of this section);

(ii) A full-time volunteer under the Peace Corps Act, for up to three years;

(iii) A full-time volunteer under title I of the Domestic Volunteer Service Act of 1973 (ACTION programs), for up to three years;

(iv) A full-time volunteer for a tax-exempt organization, for up to three years; or

(v) An intern, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(iii) of this section).

(3) For a borrower of a Stafford or SLS loan who has been enrolled on at least a half-time basis at an eligible institution during the six months preceding the commencement of this deferment, deferment is authorized during a period

of up to six months during which the borrower is—

(i) Pregnant, caring for his or her newborn child, or caring for his or her adopted child immediately following adoption; and

(ii) Not attending a school or gainfully employed.

(4) For a "new" borrower, as defined in paragraph (b)(7) of this section, of a Stafford, SLS, or PLUS loan, deferment is authorized during periods when the borrower is engaged in at least half-time study at a school for a period of enrollment for which the borrower received a Stafford or SLS loan, or at a school that 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 school not located in a State.

(5) For a new borrower, as defined in paragraph (b)(7) of this section, of a Stafford or SLS loan, deferment is authorized during any period when the borrower is—

(i) On active duty status in the National Oceanic and Atmospheric Administration Corps, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(i) of this section);

(ii) [Reserved]; or

(iii) Engaged in an internship or residency program, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(v) of this section); or

(iv) A mother who has preschool-age children and who is earning not more than \$1.00 per hour above the Federal minimum wage, for up to 12 months of employment, and who began that employment within one year of entering or re-entering the work force on a full-time basis.

(6) For a parent borrower of a PLUS loan, deferment is authorized during any period when the student on whose behalf the parent borrower received the loan—

(i) Is dependent; and

(ii) Meets the conditions and provides the required documentation, for any of the deferments described in paragraphs (b)(1)(i)–(iii) and (b)(4) of this section.

(7) For purposes of this section, a "new borrower" with respect to a loan is a borrower who, on the date he or she signs the promissory note, has no outstanding balance on—

(i) A GSL, SLS, or PLUS loan made prior to July 1, 1987, for a period of enrollment beginning prior to July 1, 1987; or

(ii) A Consolidation loan made prior to July 1, 1987.

(c) *Student deferment.* (1) Except as provided in paragraph (c)(3) of this section, to qualify for a deferment for full-time study or half-time study at a school, the borrower shall provide the lender with—

(i) A statement from an authorized official of the school certifying that the borrower is enrolled on a full-time basis, or, in the case of a deferment described in paragraph (b)(4) of this section, on at least a halftime basis; and

(ii) In the case of a deferment described in paragraph (b)(4) of this section for a borrower who is at least half-time but less than full-time, a statement from the financial aid administrator of the school that the borrower has received, or will receive, a Stafford or SLS loan for the period of enrollment for which the deferment is sought; and

(iii) A completed deferment application, as prescribed by the guarantee agency.

(2) Except as provided in paragraph (c)(3) of this section, the period of enrollment covered in a single certification under paragraph (c)(1) of this section may not exceed one academic year.

(3) An SLS loan application certified by the school for the period of enrollment commencing at the same time as the deferment constitutes sufficient documentation for a student deferment for that SLS loan, and for any outstanding SLS loan previously made to that borrower that is held by the lender receiving the application. The lender may treat the loan application as certifying a deferment period lasting until the anticipated graduation date appearing on the application, unless and until it receives notice that the borrower has ceased the level of study (*i.e.*, full-time or half-time) required for the deferment.

(d) *Graduate fellowship deferment.* (1) To qualify for a deferment for study in a graduate fellowship program, a borrower shall provide the lender with a statement from an authorized official of the borrower's fellowship program certifying—

(i) That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) That the borrower has been accepted or recommended by an institution of higher education for acceptance into an eligible graduate fellowship program requiring full-time study in an academic or professional subject area; and

(iii) The borrower's anticipated completion date in the program.

(2) For purposes of paragraph (d)(1) of this section, an eligible graduate fellowship program is a fellowship program that—

(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;

(iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and

(iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

(e) *Rehabilitation training program deferment.* (1) To qualify for a rehabilitation training program deferment, a borrower shall provide the lender with a statement from an authorized official of the borrowers' rehabilitation training program certifying that the borrower is either receiving, or is scheduled to receive, services under an eligible rehabilitation training program for disabled individuals.

(2) For purposes of paragraph (e)(1) of this section, an eligible rehabilitation training program for disabled individuals is a program that—

(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 program;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; 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 purpose of this paragraph, full-time employment

involves at least 30 hours of work per week and is expected to last at least three months.

(f) *Temporary total disability deferment.* (1) To qualify for a temporary total disability deferment, a borrower shall provide the lender with a statement from a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower is temporarily totally disabled.

(2) A borrower is not considered temporarily totally disabled on the basis of a condition that existed before he or she applied for the loan, unless the condition substantially deteriorated, as established by the statement required under paragraph (f)(1) of this section, since he or she submitted the loan application so as to render the borrower temporarily totally disabled.

(3) A lender may not grant a deferment based on a single certification under paragraph (f)(1) of this section beyond the date that is six months after the date of certification.

(g) *Dependent's temporary total disability deferment.* (1) To qualify for a deferment given to a borrower whose spouse or other dependent is temporarily totally disabled, the borrower shall provide the lender with a statement—

(i) From a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower's spouse or dependent—

(A) Is temporarily totally disabled; and

(B) Requires continuous nursing or similar services; and

(ii) From the borrower, certifying that the borrower is unable to secure full-time employment because he or she is providing nursing or similar services to the borrower's spouse or other dependent who is temporarily totally disabled. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(2) A lender may not grant a deferment based on a single certification under paragraph (g)(1) of this section beyond the date that is six months after the date of the certification.

(h) *Unemployment deferment.* (1) To qualify for an unemployment deferment, a borrower shall provide the lender with a written certification—

(i) Describing the borrower's conscientious search for full-time employment, including, for each of at least six attempts to secure employment during the period covered by the certification—

(A) The name of the employer contacted;

(B) The employer's address and phone number;

(C) The name or title of the person contacted; and

(ii) Setting forth the borrower's latest permanent home address and, if applicable, the borrower's latest temporary address; and

(iii) Affirming that the borrower has registered with a public or private employment agency, if one is accessible, specifying the agency's name and address and the date of registration.

(2) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(3) An unemployment deferment is not justified if the borrower refuses to seek or accept employment for which the borrower feels overly qualified by virtue of education or previous experience.

(4) For the purpose of this paragraph, full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(5) A lender may not grant a deferment based on a single certification under paragraph (h)(1) of this section beyond the date that is six months after the date of the certification.

(i) *Military deferment.* (1) To qualify for a military deferment, a borrower shall provide the lender with a statement from the borrower's commanding or personnel officer certifying—

(i) That the borrower is on active duty in the Armed Forces of the United States; and

(ii) The date on which the borrower's service is expected to end.

(2) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps and the Coast Guard.

(3) A borrower enlisted in a reserve component of the Armed Forces may qualify for a military deferment only for service on a full-time basis for a period of at least one year in length, as evidenced by official military orders.

(4) A borrower enlisted in the National Guard qualifies for a military deferment only while the borrower is on active duty status as a member of the U.S. Army or Air Force Reserves, and meets the requirements of paragraph (i)(3) of this section.

(j) *Public Health Service deferment.* To qualify for a Public Health Service deferment, the borrower shall provide the lender with a statement from an authorized official of the United States Public Health Service (USPHS) certifying—

(1) That the borrower is engaged in full-time service as an officer in the Commissioned Corps of the USPHS; and
(2) The date on which the borrower's service is expected to end.

(k) *Peace Corps deferment.* To qualify for a deferment for service under the Peace Corps Act, the borrower shall provide the lender with a statement from an authorized official of the Peace Corps certifying—

(1) That the borrower has agreed to serve for a term of at least one year; and

(2) The date on which the borrower's service is expected to end.

(l) *Full-time volunteer service in the ACTION programs.* To qualify for a deferment as a full-time paid volunteer in an ACTION program, the borrower shall provide the lender with a statement from an authorized official of the program certifying—

(1) That the borrower has agreed to serve for a term of at least one year; and

(2) The date on which the borrower's service is expected to end.

(m) *Deferment for full-time volunteer service for a tax-exempt organization.* To qualify for a deferment as a full-time paid volunteer for a tax-exempt organization, a borrower shall provide the lender with a statement from an authorized official of the volunteer program certifying—

(1) That the borrower—

(i) Serves in an organization that has obtained an exemption from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(iii) Does not receive compensation that equals or exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization;

(iv) Does not, as part of his or her duties, give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fund-raising to support religious activities; and

(v) Has agreed to serve on a full-time basis for a term of at least one year; and

(2) The date on which the borrower's service is expected to end.

(n) *Internship or residency deferment.*

(1) To qualify for an internship or residency deferment under paragraph (b)(2)(v) or (b)(5)(iii) of this section, the

borrower shall provide the lender with a statement from an authorized official of the organization with which the borrower is undertaking the internship or residency program certifying—

(i) That the internship or residency program is a supervised training program that requires the borrower to hold at least a baccalaureate degree prior to acceptance into the program;

(ii) That, except for a borrower that provides the statement from a State official described in paragraph (n)(2) of this section, the internship or residency program leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(iii) That the borrower has been accepted into the internship or residency program;

(iv) That the borrower holds at least a baccalaureate degree; and

(v) The anticipated dates on which the borrower will begin and complete the internship or residency program, or, in the case of a borrower providing the statement described in paragraph (n)(2) of this section, the anticipated date on which the borrower will begin and complete the minimum period of participation in the internship program that the State requires be completed before an individual may be certified for professional practice or service.

(2) For a borrower who does not provide a statement certifying to the matters set forth in paragraph (n)(1)(ii) of this section to qualify for an internship deferment under paragraph (b)(2)(v) of this section, the borrower shall also provide the lender with a statement from an official of the appropriate State licensing agency certifying that the internship or residency program, or a portion thereof, is required to be completed before the borrower may be certified for professional practice or service.

(o) *Parental leave deferment.* (1) To qualify for the parental leave deferment described in paragraph (b)(3) of this section, the borrower shall provide the lender with—

(i) A statement from an authorized official of a participating school certifying that the borrower was enrolled on at least a half-time basis during the six months preceding the beginning of the deferment period;

(ii) A statement from the borrower certifying that the borrower—

(A) Is pregnant (or the borrower's spouse is pregnant), caring for his or her newborn child, or caring for his or her adopted child immediately following placement of the child through the adoption process;

(B) Is not, and will not be, attending school during the deferment period; and
(C) Is not, and will not be, engaged in full-time employment during the deferment period; and

(iii) A physician's statement, birth certificate, or adoption certificate demonstrating the existence of the pregnancy, birth, or adoption.

(2) For purposes of paragraph (c)(1)(ii)(C) of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(p) *NOAA deferment.* To qualify for a National Oceanic and Atmospheric Administration (NOAA) deferment, the borrower shall provide the lender with a statement from an authorized official of the NOAA corps, certifying—

(1) That the borrower is on active duty service in the NOAA corps; and

(2) The date on which the borrower's service is expected to end.

(q) *Targeted teacher deferment.* [Reserved]

(r) *Working mother deferment.* (1) To qualify for the working mother deferment described in paragraph (b)(5)(iv) of this section, the borrower shall provide the lender with a statement certifying that she—

(i) Is the mother of a preschool-age child;

(ii) Entered or reentered the workforce not more than one year before the commencement of the period for which the deferment is being sought;

(iii) Is currently engaged in full-time employment; and

(iv) Does not receive compensation that exceeds \$1.00 per hour above the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage).

(2) In addition to the certification required under paragraph (r)(1) of this section, the borrower shall provide to the lender documents demonstrating the age of the child (e.g., a birth certificate) and the rate of her compensation (e.g., a pay stub showing her hourly rate of pay).

(3) For purposes of this paragraph—

(i) A preschool-age child is one who has not yet enrolled in first grade or a higher grade in elementary school; and

(ii) Full-time employment involves at least 30 hours of work a week and is expected to last at least 3 months.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1085)

§ 682.211 Forbearance.

(a)(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, or to

permit the borrower to resume honoring that obligation after default.

"Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than were previously scheduled.

(2) A lender may grant forbearance of payments of principal and interest under paragraphs (b) and (c) of this section only if—

(i) The lender reasonably believes, and documents in the borrower's file, that the borrower intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 682.210 and the Secretary does not pay interest benefits on behalf of the borrower under § 682.301.

(3) If two individuals are liable for repayment of a PLUS Program loan as co-makers, the lender may grant forbearance only if the ability of both individuals 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-year maximum repayment period if the lender and borrower agree in writing to the terms of the forbearance, 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-year maximum repayment period only if both the borrower and an authorized official of the lender agree in writing to the forbearance.

(d) A lender may grant forbearance to permit a borrower to resume honoring the repayment obligation after default consistent with the minimum annual payment requirements and the 10-year maximum repayment period. The terms of the forbearance agreement in this situation must include a new repayment schedule.

(e) Except in the case of forbearance of interest payments during a deferment period, if a forbearance involves the postponement of all payments, the lender must contact the borrower at least once every three months during the period of forbearance and remind the

borrower of the outstanding obligation to repay.

(f) A lender may grant forbearance, upon notice to the borrower, with respect to payments of interest and principal that are overdue—

(1) For a properly granted period of deferment for which the lender learns the borrower did not qualify, plus up to 30 days for processing of the forbearance by the lender;

(2) Upon the commencement of an authorized deferment period; or

(3) If a lender is unable to obtain missing information from a borrower under § 682.210(a)(4)(ii) within 30 days of receiving substantially complete deferment documentation, for the previously granted deferment period, plus up to 30 days for processing of the forbearance by the lender.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1080, 1082)

§ 682.212 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 particular category of students or their parents.

(b) The following are examples of transactions that, 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 lender (with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with that lender), may not use a loan made under the GSL programs as collateral 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 under § 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school, lender, or other party that would participate in a proscribed transaction.

(f) 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 GSL loan shall, upon conviction thereof, be fined not more than \$1,000 or imprisoned not more than one year, or both.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1097)

§ 682.213 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.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082)

§ 682.214 Compliance with equal credit opportunity requirements.

In making a Stafford loan, a lender shall comply with the equal credit opportunity requirements of regulation B (12 CFR part 202). With regard to regulation B, the Secretary considers the Stafford loan program to be a credit

assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, under 12 CFR 202.8(d), the lender may request a loan applicant to disclose his or her marital status, income from alimony, child support, and separate maintenance income, and the spouse's financial resources.

(Authority: 20 U.S.C. 1071-1087-2)

§ 682.215 Defenses to the borrower's obligation to repay a GSL loan.

(a) Except as provided in paragraph (b) of this section, a borrower may not assert as a defense to repayment of any portion of a GSL loan the failure of the school attended by the student to or for whom the loan was made to—

(1) Provide the student with a particular amount or quality of educational services for the period of enrollment for which the GSL loan is made;

(2) Make a refund of institutional charges for that period on account of the withdrawal of the student;

(3) Otherwise perform in accordance with representations made to the student regarding its services or the employment prospects in the fields for which it purports to prepare its students; or

(4) Comply with the requirements of—

(i) Accrediting agency standards; or
(ii) Applicable Federal, State, or local law.

(b) Subject to paragraph (d) of this section, a borrower may assert a defense to repayment of a GSL loan made or originated by a school due to a failure by the school described in paragraphs (a)(1) through (4) of this section—

(1) Only to the extent that the failure entitles the student to a refund of some portion of the tuition and fees paid to the school and the refund is allocable to the GSL loan under the policy adopted by the school in accordance with 34 CFR part 668; and

(2) In the case of a loan originated by a school, unless the lender or subsequent holder notifies the borrower in writing of the matters described in paragraph (c) of this section, prior to or at the time of the first disbursement on the loan, and, in the case of a Stafford loan, within 60 days prior to the beginning of the repayment period.

(c) The notice described in paragraph (b)(2) of this section shall inform the borrower that—

(1) The borrower's loan was made, and, if the loan has been sold, is held, by a lender that is not affiliated with the school attended by the borrower by

common ownership, control, or management;

(2) The borrower's loan repayment obligation is therefore separate and distinct from the school's obligations to the borrower, and

(3) A failure by the school described in paragraph (a) of this section cannot excuse any portion of the borrower's obligation to repay the loan.

(d)(1) Neither the guarantee agency nor the Secretary is subject to a defense otherwise available under this section or other applicable law unless the agency had actual notice of facts establishing the defense at the time the agency paid a default claim on the loan.

(2) The Secretary is not subject to a defense otherwise available under this section or other applicable law on a Federal GSL loan unless the Secretary had actual notice of facts establishing the defense at the time that the Secretary paid a default claim on the loan.

(3) For purposes of this paragraph, the guarantor (*i.e.*, the guarantee agency or, in the case of a Federal GSL loan, the Secretary) does not have notice of a fact unless—

(i) The documents presented to the guarantor by the holder of the loan to support a claim for payment upon default on the loan demonstrate the existence of the fact;

(ii) Findings contained in a report of an audit or program review performed by the guarantor of the school attended by the student or the lender that made the loan establish the existence of the fact; or

(iii) An official of the guarantor with authority to approve default claims, or to initiate or approve an action to limit, suspend or terminate the school or lender, has actual knowledge of the existence of the fact.

(e) Upon acquiring a GSL loan, a new holder assumes responsibility for the consequences of any previous violation of applicable statutes or regulations or the terms of the loan. A GSL loan note is not 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, unless the new holder is a guarantee agency or the Secretary and is not subject to the defense by operation of paragraph (d) of this section.

(f) The inclusion in this part of a requirement applicable to a school, lender, or guarantee agency does not mean that a violation of that requirement constitutes a defense to the

borrower's obligation to repay a GSL loan. This includes, but is not limited to, a lender's duty to engage in the due diligence activities specified in §§ 682.207, 682.208, and 682.411, and a guarantee agency's duty to engage in the due diligence activities specified in § 682.410(b).

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082)

Subpart C—Federal Payments of Interest and Special Allowance

§ 682.300 Payment of interest benefits on Stafford loans.

(a) *General.* The Secretary pays a lender a portion of the interest on a Stafford 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 a lender the interest that accrues on an eligible Stafford loan—

(i) During all periods prior to the beginning of the repayment period, except as provided in paragraph (b)(2) of this section;

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

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

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

(i) The date the borrower's loan is repaid;

(ii) With respect to the portion of a loan represented by a single disbursement of loan proceeds—

(A) The date the check for the disbursement is returned uncashed to the lender; or

(B) The 120th day after the date of that disbursement, if—

(1) The check for the disbursement has not been cashed on or before that date; or

(2) The proceeds of the disbursement made by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date;

(iii) The date of default by the borrower;

(iv) The date that the lender receives payment of a claim for loss on the loan;

(v) The date the borrower's loan is discharged in bankruptcy;

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

(vii) The date the loan ceases to be guaranteed or ceases to be eligible for

reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor.

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

(c) *Interest not covered.* The Secretary does not pay—

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

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

(d) *Rate.* (1) Except as provided in paragraph (d)(2) of this section, the Secretary pays the lender at the actual interest rate on a 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.

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

§ 682.301 Eligibility of borrowers for interest benefits on Stafford loans.

(a) *General.* (1) A borrower must demonstrate financial need in accordance with part F of the Act to qualify for interest benefits on a Stafford loan.

(2) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(i) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(ii) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(A) Directs the member to pursue the course of study; or

(B) Provides subsistence support to its members.

(b) *Application for interest benefits.*

To apply for interest benefits, the student shall submit a loan application to the lender. The application must include a certification from the student's school of the following information:

(1) The estimated cost of attendance for the student for the academic period for which the loan is intended.

(2) The estimated financial assistance for the student for the academic period for which the loan is intended.

(3) The student's expected family contribution, as determined pursuant to

part F of the Act, under a need analysis system approved by the Secretary.

(4) The amount of the student's need for a loan, as determined pursuant to part F of the Act, under a need analysis system approved by the Secretary.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of a SLS, PLUS, or non-subsidized Stafford loan obtained for a period of enrollment to replace the expected family contribution determined under paragraph (b)(3) of this section for that period of enrollment.

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

§ 682.302 Payment of special allowance on GSL loans.

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

(b) *Eligible loans.* (1) Except for Stafford loans disbursed on or after October 1, 1981 that do not qualify for interest benefits under § 682.301, or as provided in paragraph (b)(2) or (e) of this section, GSL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the SLS or PLUS Program on or after July 1, 1987 or made under § 682.209 (e) or (f) no special allowance is paid for any period for which the interest rate determined under § 682.202(a)(2)(iv)(A) for that loan does not exceed 12 percent.

(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 that loan;

(iii) Adding—

(A) Three and one-quarter percent to the resulting percentage, for a loan made on or after November 16, 1986;

(B) Three and one-quarter percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning on or after November 16, 1986;

(C) Three and one-half percent to the resulting percentage, for a loan made prior to October 17, 1986, or for a loan described in paragraph (c)(2) of this section; or

(D) Three and one-half percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning prior to November 16, 1986;

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

(v) Dividing the resulting percentage by four.

(2) The special allowance rate determined under paragraph (c)(1)(iii)(C) of this section applies to loans made or purchased from funds obtained from the issuance of an obligation of the—

(i) Maine Educational Loan Marketing Corporation to the Student Loan Marketing Association pursuant to an agreement entered into on January 31, 1984; or

(ii) South Carolina Student Loan Corporation to the South Carolina National Bank pursuant to an agreement entered into on July 30, 1986.

(3)(i) Subject to paragraph (c)(3)(ii) of this section, the special allowance rate is one-half the rate calculated under paragraph (c)(1)(iii)(C) of this section for a loan made or guaranteed on or after October 1, 1980, that was made or purchased with funds obtained by the holder from—

(A) The issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1986;

(B) Collections or payments by a guarantor on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(C) Interest benefits or special allowance payments on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(D) The sale of a loan that was made or purchased with funds obtained by the holders from obligations described in paragraph (c)(3)(i)(A) of this section; or

(E) The investment of the proceeds of obligations described in paragraph (c)(3)(i)(A) of this section.

(ii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section may not be 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-half of one percent per year on eligible loans for which the applicable rate is nine percent.

(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's loan is repaid;

(ii) The borrower's loan check is returned uncashed to the lender;

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

(iv) The loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(v) Forty-five days after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to that 45th day; or

(vi) The 120th day after the date of disbursement, if—

(A) The loan check has not been cashed on or before that date; or

(B) The loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date; or

(vii) The date the guarantee agency returns a claim for loss on the loan to the lender for additional documentation.

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

(e) *Special allowance payments for loans financed by proceeds of a tax-exempt obligations.* (1) The Secretary pays a special allowance on a loan described in paragraph (c)(3)(i) of this section that is held by or on behalf of an Authority only if the loan meets the requirements of § 682.800.

(2) The Secretary pays a special allowance to an Authority at the rate prescribed in paragraph (c)(1) of this section on a loan described in paragraph (c)(3)(i) of this section—

(i) After the loan is pledged or otherwise transferred in consideration of funds derived from sources other than those described in paragraph (c)(3)(i) of this section and—

(ii) If the authority retains a legal or equitable interest in the loan—

(A) The prior tax-exempt obligation is retired; or

(B) The prior tax-exempt obligation is rendered null and void by means of obligations that the Authority certifies in writing to the Secretary bear a yield that does not exceed the yield permitted under Internal Revenue Service

regulations, 26 CFR 1.103-14, with regard to investments of proceeds of a tax-exempt refunding obligation.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

§ 682.303 [Reserved]

§ 682.304 Methods for computing interest benefits and special allowance.

(a) *General.* The Secretary pays a lender interest benefits 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 a lender's 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 and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The Secretary 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 the actual number of days in the 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 the actual number of days in the year, or alternatively, 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(2) The interest benefits due for a quarter equal 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 and rounds the result to the nearest whole dollar. 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.

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

§ 682.305 Procedures 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 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 those fees refunded to borrowers, during the quarter covered by the report.

(3) 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 origination fees refunded to borrowers during the quarter under § 682.202(c).

(4)(i) 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.

(ii) A lender that makes a loan and any subsequent holder are jointly and severally liable for payment of the origination fee on the loan to the Secretary.

(b) *Penalty interest.* (1)(i) If the Secretary does not 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.

(ii) The payment of interest benefits or special allowance is deemed to occur, for purposes of this paragraph, when the Secretary—

(A) Authorizes the Treasury Department to pay the lender;

(B) Credits the payment due the lender against a debt that the Secretary

determines is owed the Secretary by the lender; or

(C) Authorizes the Treasury Department to pay the amount due the lender to another Federal agency for credit against a debt that the agency has determined is owed it by the lender.

(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 applicable to loans made on or after November 16, 1988 under § 682.302(c)(1)(iii) (A), 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 pays the interest benefits and special allowance at issue, in accordance with paragraph (b)(1)(ii) of this section.

(5) 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.

(6) A request for interest benefits and special allowance is not considered accurate and complete if it—

(i) Requests payments to which the lender is not entitled under § 682.300-§ 682.302;

(ii) Includes loans that the Secretary has directed the lender in writing to exclude from the request;

(iii) Does not contain all information required by the Secretary or contains conflicting information; or

(iv) Is not provided and certified on the form and in the manner prescribed by the Secretary.

(c) *Independent audits.* (1) A lender that originates in excess of or whose outstanding GSL loan volume during any fiscal year exceeds \$10 million shall arrange for an independent financial and compliance audit of the lender's billings for interest benefits and special allowance payments.

(2) The audit required under paragraph (c)(1) of this section must—

(i) Examine the lender's compliance with the Act and applicable regulations.

(ii) Examine the lender's financial management of its GSL program activities.

(iii) Be conducted in accordance with the general 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 standards.

(iv) Be conducted annually and must be submitted to the Secretary within 90 days of the end of the Federal fiscal year. The first audit must cover the lender's interest and special allowance billings for the Federal fiscal year that ended September 30, 1989. Each subsequent audit must cover each fiscal year thereafter.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

Subpart D—Administration of the Guaranteed Student Loan Programs by a Guarantee Agency

§ 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 GSL programs and to receive the various payments and benefits incident to that participation.

(b) There are three agreements:

(1) *Basic program agreement.* In order to participate in the GSL programs a guarantee agency must have a basic program agreement. Under this agreement—

(i) Borrowers whose Stafford loans are guaranteed by the agency 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 administrative cost allowance, and for the other agreements described in this section.

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

(3) *Reinsurance agreement.* A guarantee agency must have a

reinsurance agreement to receive reimbursement from the Secretary for its losses on default claims.

(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, in other applicable Federal statutes, and in regulations that apply to the GSL programs.

(Authority: 20 U.S.C. 1072, 1078-1, 1078-2, 1078-3, 1082, 1087, 1087-1)

§ 682.401 Basic program agreement.

(a) *General.* In order to participate in the GSL programs, a guarantee agency shall enter into a basic agreement with the Secretary.

(b) *Terms of agreement.* In the basic agreement, the guarantee agency shall agree 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 Stafford, SLS, and PLUS loans made to a borrower may not exceed the amounts set forth in § 682.204 (b), (d), and (f).

(2) *Annual loan limits.* (i) The annual loan maximum amount for a borrower that may be guaranteed for an academic year may not exceed the amounts set forth in § 682.204 (a), (c), and (e).

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

(A) A period of not less than seven nor more than 12 months; or

(B) A period of not less than seven months 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.

(iii) The amount of a loan guaranteed may not exceed the student's estimated cost of attendance for the academic period for which the loan is intended, less the estimated financial assistance.

(3) *Duration of borrower eligibility.* (i) A student borrower under the Stafford Loan Program or the SLS Program, and a parent borrower under the PLUS Program, is eligible to receive a guaranteed loan 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.

(4) *Borrower responsibilities.* (i) The borrower shall indicate his or her preferred lender on the loan application, if he or she has such a preference.

(ii) The borrower shall give the lender, as part of the application process for a Stafford, SLS, or PLUS loan—

(A) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(B) Information demonstrating that the borrower is eligible for the loan;

(C) Information concerning the outstanding GSL loans of the borrower and, for a parent borrower, of the student, including the portion of any Consolidation loan used to discharge a Stafford, SLS, or PLUS loan.

(D) A statement of the sources and amount of the student's estimated financial assistance, as defined in § 682.200, for the period of enrollment for which the loan is intended;

(E) 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); and

(F) Information from the school demonstrating that the student qualifies as an eligible student and providing the maximum amount that may be borrowed by or on behalf of the student.

(iii) The borrower shall give the lender, as part of the application process for a Consolidation loan—

(A) Information demonstrating that the borrower is eligible for the loan under § 682.201(c); and

(B) A statement that the borrower does not currently have another application for a consolidation loan pending.

(iv) The borrower shall promptly notify—

(A) The lender or the guarantee agency of any change of name, address, or student status to less than half-time; and

(B) The school of any change in local address, employer, or employer's address.

(5) *School eligibility.* A school that has in effect a program participation agreement with the Secretary under § 682.600 is eligible to participate in the program of the agency except to the extent that—

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

and procedures that are substantially the same as those in 34 CFR part 668;

(ii) The school is disqualified by the Secretary under section 432(h)(3) of the Act;

(iii) There is a State constitutional prohibition affecting the school's eligibility; or

(iv) The school's programs consist of study solely by correspondence.

(6) *Lender eligibility.* (i) An eligible lender may participate in the program of the agency under reasonable criteria established by the guarantee agency except to the extent that—

(A) The lender's eligibility has been limited, suspended, or terminated by the Secretary under subpart G of this part, or by the agency under standards and procedures that are substantially the same as those in subpart G of this part or in section 432(h)(2) of the Act; or

(B) The lender is disqualified by the Secretary under section 432(h)(1) of the Act and § 682.712; or

(C) There is a State constitutional prohibition affecting the lender's eligibility.

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

(iii) The guarantee agency may refuse to guarantee loans made by a school on behalf of students not attending that school.

(7) *Out-of-State schools.* The agency shall guarantee Stafford, SLS, and PLUS loans for students who are legal residents of any State served by the agency under § 682.404(i)(2), but who attend schools out of that State, and for parents who are legal residents of that State and are borrowing on behalf of students attending schools out of that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply 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.

(8) *Out-of-State residents.* The agency shall guarantee Stafford, SLS, and PLUS loans for students who are not legal residents of any State served by the agency under § 682.404(i)(2), but who attend schools in that State, and for parents who are not legal residents of that State and who are borrowing on behalf of students attending schools in that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply 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 who are borrowing for students attending in-State schools.

(9) *Insurance premiums.* (i) Except for a SLS or PLUS loan refinanced under § 682.209(f), the guarantee agency may charge the lender an insurance premium on each Stafford, SLS, or PLUS loan it guarantees.

(ii) 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.

(iii) The lender may deduct the amount of the premium from the borrower's loan proceeds. For a multiple-disbursed loan, the insurance premium must be deducted proportionately from each disbursement of the loan proceeds.

(iv) The amount of the insurance premium may not exceed three percent of the principal balance of the loan, excluding interest or other charges the lender may have added to the principal balance.

(v) The lender shall refund to the borrower, by a credit against the borrower's loan balance, all or a part of the insurance premium paid by the borrower on a loan under the following circumstances:

(A) The premium, or the portion attributable to a portion of a multiple disbursed loan, must be refunded if the loan check is returned uncashed to the lender.

(B) The premium must be refunded if, within 120 days of disbursement—

- (i) The loan is repaid in full;
- (ii) The loan check has not been cashed; or

(iii) The loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school.

(10) *Payments for lender referral service.* (i) The guarantee agency may not use insurance premiums to pay incentive fees to lenders, except to those lenders who agree to participate in, and make GSL loans (other than Stafford loans that do not qualify for interest benefits) to all eligible students referred under, a qualified lender referral service.

(ii) For purposes of this paragraph, the term "qualified lender referral service" means a lender referral service offered by a guarantee agency under which the agency refers to a participating lender each eligible student applying for the service who is either a resident of the State in which the agency is the designated guarantee agency or attending a school in that State, and

who has sought and been unable to find a lender willing to make a GSL loan (other than a Stafford loan that does not qualify for interest benefits) to the student.

(11) *Administrative fee for Consolidation loans.* The guarantee agency may charge a lender a fee, not to exceed \$50, reasonably calculated to cover the agency's cost of increased or extended liability incurred in guaranteeing a Consolidation loan. The lender may not pass the fee on to the borrower. If it charges the fee, the agency must charge it for all loans made under the agency's Consolidation program.

(12) *Administrative fee for refinancing fixed-rate PLUS or SLS loans.* The guarantee agency may require a lender to pay to the guarantee agency up to 50 percent of the fee the lender charges a borrower under § 682.202(e) for the purpose of defraying the agency's administrative costs incident to the guarantee of a lender's reissuance of a fixed-rate PLUS or SLS loan at a variable interest rate.

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

(14) *Guarantee agency administration.* In the case of a State loan guarantee program administered by a State government, 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.

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

- (A) An eligible lender;
- (B) A guarantee agency, in the case of a borrower's default, death, total and permanent disability, or filing of a bankruptcy petition or for other circumstances approved by the Secretary, such as a loan made for attendance at a school that closes;
- (C) An educational institution, whether or not it is an eligible lender, in connection with the institution's repayment to the agency or to the Secretary of guarantee or reinsurance claim payments made on a loan that was ineligible for those payments; or
- (D) 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.

(16) *Transfer of guarantees.* The guarantee agency may transfer its guarantee obligation on a loan to another guarantee agency, but only with the approval of the transferee agency and the holder of the loan.

(17) *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(d) of the Act;

(B) School and lender participation in its program;

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

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

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

(ii) The guarantee agency shall ensure that its program, and all participants in its program, at all times meet the requirements of subparts B, C, D and F of this part.

(18) *Student status confirmation.* The guarantee agency shall use a form containing data elements and report format approved by the Secretary for monitoring the enrollment status of a student borrower that includes, at a minimum—

(i) Transmitting to the school, for attendance at which the student received a GSL loan, a student status confirmation report for completion at least semi-annually in accordance with a schedule established by the agency;

(ii) Reporting to the current holder of the loan, within 60 days of the receipt of the completed report from the school, any change in the student's enrollment status reported by the school 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; and

(iii) The use of the data elements and report format provided in appendix B to this part.

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

(20) *Submission of information for reports.* The guarantee agency shall require lenders to submit to the agency

the information necessary for the agency to complete the reports required by § 682.414(b).

(21) *Guarantee agency transfer of information.* (i) A guarantee agency from which another guarantee agency requests information regarding Stafford and SLS loans made after January 1, 1987, to students who are residents of the State for which the requesting agency is the principal guarantee agency as defined in § 682.800(d), shall provide—

(A) The name and social security number of the student; and

(B) The amount borrowed under the loan and the cumulative amount borrowed by the student in loans under the Stafford and SLS programs guaranteed by the responding agency.

(ii) The reasonable costs incurred by an agency in fulfilling a request for information made under paragraph (b)(21)(i) of this section must be paid by the guarantee agency making the request.

(c)(1) *Lender of last resort.* The guarantee agency shall ensure that it, or an eligible lender described in section 435(d)(1)(D) of the Act, serves as a lender of last resort in the State in which it is the principal guarantee agency, as defined in § 682.800(d).

(2) The lender of last resort shall make a Stafford loan to any eligible student who—

(A) Qualifies for interest benefits, pursuant to § 682.301, for a loan amount of at least \$200; and

(B) Has been otherwise unable, after conscientious efforts, to obtain a loan from another eligible lender for the same period of enrollment.

(3) The guarantee agency, or an eligible lender described in 435(d)(1)(D) of the Act, may arrange for a loan required to be made by this paragraph to be made by another eligible lender.

(d) *Review of forms and procedures.*

(1) The guarantee agency shall submit to the Secretary its application forms, promissory notes, write-off criteria and procedures. The agency may not use these materials until the Secretary approves them. The agency's application form may request the student's and the student's parents' names, addresses, and social security numbers. However, the Secretary will not approve any application form that requests any other information from a student or the student's parents that the student or the student's parents have already provided for on the common financial aid form required by section 483(a)(1) of the Act.

(2) The guarantee agency shall promptly submit to the Secretary its regulations, statements of procedures and standards, and other materials that

substantially affect the operation of the agency's program, and any proposed changes to those materials. Except as provided in paragraph (d)(1) of this section, the agency may use these materials unless and until the Secretary disapproves them.

(3) The guarantee agency shall ensure that all program materials meet the requirements of Federal and State law, including, but not limited to, the Act and the regulations in this part and part 668.

(e) *Prohibited inducements.* A guarantee agency shall not—

(1) Offer, directly or indirectly, any premium, payment, or other inducement to an employee or student of a school, or an entity or individual affiliated with a school, to secure applicants for GSL loans;

(2) Conduct unsolicited mailings of student loan application forms to students enrolled in secondary school;

(3) Conduct fraudulent or misleading advertising concerning loan availability.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

§ 682.402 Death, disability, and bankruptcy payments.

(a) *General.* (1) Rules governing the cancellation of loans due to death, total and permanent disability, or discharge in bankruptcy are set forth in paragraphs (a)(2), (b), (c), and (d) of this section.

(2)(i) If a PLUS loan was obtained by two parents as co-makers and only one of the borrowers dies, becomes totally and permanently disabled, or has his or her loan obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan.

(ii) If the borrower dies or becomes totally and permanently disabled, the obligation of the borrower and any endorser to make further payments on the loan is cancelled.

(3) The Secretary does not pay a death, disability, or bankruptcy claim if the loan would not qualify either for payment of a default claim or for reinsurance payments, in the event of default.

(b) *Death.* (1) If an individual borrower dies, the obligation of the borrower and any endorser to make any further payments on the loan is cancelled.

(2) In determining that a borrower has died, the lender may rely on 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 can be cancelled only if the guarantee agency determines that other evidence establishes that the borrower has died.

(3) After receiving information indicating that the borrower has died, the lender shall, if it believes the information to be reliable, suspend any collection activity against the borrower and promptly request that the borrower's representative provide the documentation described in paragraph (b)(2) of this section. During the suspension of collection activity, which shall not exceed 30 days, the lender shall diligently attempt to obtain documentation from the borrower's representative. If, despite the lender's diligent attempts, the borrower's representative fails to provide the documentation within 30 days, the lender shall resume collection activity from the point that it had been discontinued, and is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

(4) Once the lender has determined, under paragraph (b)(2) of this section, that the borrower has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(5) 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.

(c) *Total and permanent disability.* (1) If the lender determines that an individual borrower is totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is cancelled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed at the time he or she applied for the loan, unless the borrower's condition has substantially deteriorated later, so as to render the borrower totally and permanently disabled.

(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 submit, on a form provided or approved by the Secretary, a certification by a physician who is a doctor of medicine or osteopathy and legally authorized to practice in a State, that the borrower is totally and permanently disabled. The lender shall continue collection until it receives either the certification of total disability or 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. Except as provided in paragraph (c)(4) of this

section, 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 (c)(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 of total disability.

(4) If the lender determines that a borrower who claims to be totally and permanently disabled is not in fact disabled, or if the lender does not receive the physician's certification of total disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(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 requesting additional time and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(d) *Bankruptcy*—(1) *General*. If a borrower files a petition for relief under the Bankruptcy Code, the Secretary reimburses the holder of the loan for unpaid principal and interest on the loan in accordance with paragraphs (d) through (i) of this section.

(2) *Notice of bankruptcy filing*. 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, other documents showing a petition has been filed, or written notice from the debtor's attorney of the filing date of the petition.

(3) *Suspension of collection activity*. If a lender receives notice that a borrower has filed a petition for relief in bankruptcy, the lender shall immediately suspend any collection efforts outside the bankruptcy proceeding—

(i) Against the borrower, and

(ii) If the borrower has filed for relief under chapter 13, against any co-maker or endorser.

(4) *Proof of claim*. The lender shall file a proof of claim with the bankruptcy court within 30 days after the lender receives a notice of first meeting of creditors unless, in the case of a proceeding under chapter 7, the notice states that the borrower has no assets.

(5) *Filing of bankruptcy claim with the guarantee agency*. (i) The lender shall file a bankruptcy claim on the loan with the guarantee agency, in accordance with paragraph (e) of this section, if—

(A) The borrower has filed a petition for relief under chapter 13 of the Bankruptcy Code; or

(B) The borrower has filed a petition for relief under chapters 7, 11, or 12, and—

(1) The loan has been in repayment for more than five years (exclusive of any applicable suspension of the repayment period) from the date of the filing of the petition for relief;

(2) The loan has been in repayment for less than 5 years (exclusive of any applicable suspension of the repayment period) from the date of the filing of the petition for relief, and the borrower has commenced an action to have the loan obligation determined to be dischargeable on grounds of undue hardship.

(ii) If the loan has been in repayment for less than 5 years, (exclusive of any applicable suspension of the repayment period) from the date of the filing of the petition for relief, but the borrower has not commenced an action to have the loan obligation determined to be dischargeable on grounds of undue hardship, the lender shall continue to hold the loan notwithstanding the bankruptcy proceeding. Once the bankruptcy proceeding is completed or dismissed, the lender shall treat the loan as if the lender had exercised forbearance as to repayment of principal and interest accrued from the date of the borrower's filing of the bankruptcy petition until the date the lender is notified that the bankruptcy proceeding is completed or dismissed.

(e) *Claim procedures for a loan held by a lender*—(1) *Documentation*. A lender shall provide the guarantee agency with the following documentation when filing a death, disability, or bankruptcy claim:

(i) The original promissory note.

(ii) The loan application.

(iii) In the case of a death claim, those documents that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the certification of disability described in paragraph (c)(2) of this section.

(v) In the case of a bankruptcy claim—

(A) Evidence that a bankruptcy petition has been filed, all pertinent documents sent to or received from the bankruptcy court by the lender, and, except in the case of a proceeding under chapter 7 in which the notice states that the borrower has no assets, an assignment to the guarantee agency of the lender's proof of claim; and

(B) 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.

(2) *Filing deadlines*. A lender shall file a death, disability, or bankruptcy claim within the following periods:

(i) A lender shall file a death or disability claim within 60 days of the date on which the lender determines that a borrower has died or is totally and permanently disabled.

(ii) As a condition for obtaining payment, a lender shall file a bankruptcy claim with the guarantee agency within the timeframe established by the guarantee agency as required to provide the agency sufficient time to oppose discharge of the loan, but in no case more than—

(A) Thirty days after the date the lender receives the notice of the first meeting of creditors, or other information described in paragraph (d)(2) of this section, in a proceeding under chapter 13 of the Bankruptcy Code;

(B) In a proceeding under chapters 7, 11, or 12 of the Bankruptcy Code, 30 days after the date the lender receives notice of the first meeting of creditors, or other information described in paragraph (d)(2) of this section, if the loan has been in repayment for more than 5 years on the date the petition for relief in bankruptcy was filed (exclusive of any applicable suspension of the repayment period); or

(C) In a proceeding under chapters 7, 11, or 12 of the Bankruptcy Code, 10 days after the holder is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship if the loan has been in repayment for less than 5 years on the date the petition for relief in bankruptcy was filed (exclusive of any applicable suspension of the repayment period), unless the holder, before filing the claim, secures an extension of time within which an answer may be filed and submits the claim not less than 25 days prior to the date on which the answer must be filed.

(f) *Payment of death, disability, and bankruptcy claims by the guarantee agency*—(1) *General*. (i) The guarantee agency shall review a death, disability, or bankruptcy claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with this paragraph, not later than 45 days after the claim was filed by the lender; and

(ii) In the case of a bankruptcy claim, the guarantee agency shall, upon receipt of the claim from the lender, immediately oppose the discharge of the loan by the bankruptcy court in

accordance with paragraph (g) of this section.

(2) *Amount of loss to be paid on a claim.* (i) The amount of loss payable on a death, disability, or bankruptcy claim is equal to the unpaid balance of principal and interest determined in accordance with paragraph (f)(3) of this section.

(ii) The unpaid balance of principal may include interest capitalized in accordance with § 682.202(b).

(3) *Payment of interest.* If the guarantee covers unpaid interest, the amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (e)(2) of this section for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the guarantee agency for additional documentation necessary for the claim to be approved by the guarantee agency.

(iii) During the period required by the guarantee agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation.

(g) *Guarantee agency participation in bankruptcy proceedings on loans acquired by the guarantee agency through payment of bankruptcy claims in chapters 7, 11, and 12 cases.*—(1) *Undue hardship claims.* (i) In response to a petition by the borrower for discharge under 11 U.S.C. 523(a)(8)(B) on the grounds of undue hardship, the guarantee agency shall determine on the basis of reasonably available information—

(A) Whether the first payment on the loan was due less than five years (exclusive of any applicable suspension of the repayment period) before the filing of the petition for relief commencing the bankruptcy case; and

(B) Whether repayment under either the current repayment schedule or any adjusted schedule authorized under this part would impose an undue hardship on the borrower and his or her dependents.

(ii) If the agency determines that repayment would not constitute an undue hardship, the agency shall then determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, including principal, interest, late charges, and collection costs.

(iii) If the expected costs of opposing the discharge petition do not exceed one-third of the total amount owed on the loan, the agency shall—

(A) Oppose the borrower's petition for a determination of dischargeability; and

(B) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(iv) In opposing a petition for a determination of dischargeability on the ground of undue hardship, a guarantee agency may agree to discharge a portion of the amount owed on a loan if it reasonably determines that the agreement is necessary in order to obtain a judgment on the remainder of the loan.

(2) *Mandatory repurchase by lender.* The lender shall repurchase the loan from the guarantee agency if—

(i) A judgment is entered that the loan is not dischargeable; or

(ii) A discharge is denied to the borrower on any ground.

(3) *Claim for reimbursement from the Secretary.* The guarantee agency may submit a claim to the Secretary for reimbursement—

(i) In the case of a loan in repayment more than five years (exclusive of applicable suspensions of the repayment period) before the filing of the petition for relief commencing the bankruptcy case, but after entry of a general discharge order; or

(ii) In any other case, only after the court determines that all or part of a loan is dischargeable by reason of undue hardship.

(h) *Responding to a proposed chapter 13 repayment plan.* (1) The guarantee agency shall follow the procedures in this paragraph in responding to a repayment plan proposed by a borrower who has filed for relief under chapter 13 of the Bankruptcy Code.

(2) The agency is not required to respond to a proposed repayment plan, if—

(i) The borrower proposes under the repayment plan to repay all principal, interest, late charges and collection costs on the loan; or

(ii) The repayment plan makes no provision with regard either to the loan obligation or to general unsecured claims.

(3)(i) If the borrower proposes under the repayment plan to repay less than the total amount owed on the loan, the agency shall determine from its own records and court documents—

(A) The amount of the loan obligation dischargeable under the plan by deducting the total payments on the loan proposed under the plan from the total amount owed;

(B) Whether the plan or the classification of the loan obligation under the proposed plan meets the requirements of section 1325 of the Bankruptcy Code; and

(C) Whether grounds exist under 11 U.S.C. 1307 to move for conversion or dismissal of the chapter 13 case.

(ii) Unless the agency reasonably concludes that the costs of the appropriate actions will exceed one-third of the dischargeable loan debt, the agency shall—

(A) Object to confirmation of a proposed plan that does not meet the requirements of 11 U.S.C. 1325; and

(B) If grounds can be established under 11 U.S.C. 1307, either—

(1) Move to dismiss the case; or

(2) Move to convert to a case under chapter 7 of the Code a case involving a loan on which less than 5 years of the repayment period (excluding any applicable suspension of that period) had passed before the borrower filed the petition for relief in bankruptcy.

(4)(i) The agency shall monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the debtor does not make the payments required under the plan, or files a request for a "hardship discharge" under 11 U.S.C. 1328(b), the agency shall determine from its own records and any documents on file with the court—

(A) Whether grounds exist under 11 U.S.C. 1307 to convert or dismiss the case; and

(B) Whether the borrower has demonstrated entitlement to the "hardship discharge" by meeting the requirements of 11 U.S.C. 1328(b).

(ii) Unless the agency reasonably concludes that the costs of the appropriate actions, when added to the costs already incurred in taking actions authorized under this section, will exceed one-third of the dischargeable loan debt, the agency shall—

(A) If grounds can be established under 11 U.S.C. 1307—

(1) Move to dismiss the case; or

(2) Move to convert to a case under chapter 7 of the Code a case involving a loan on which less than 5 years of the repayment period (excluding any applicable suspension of that period) had passed before the borrower filed the petition for relief in bankruptcy; and

(B) Oppose the requested discharge where the debtor has not demonstrated that the requirements of 11 U.S.C. 1328(b) are met.

(iii) The agency shall follow the procedures in paragraph (g)(1) of this section if a borrower who seeks a hardship discharge under 11 U.S.C. 1328(b) also commences an action to have the loan obligation determined to be dischargeable on grounds of undue hardship.

(5) *Mandatory repurchase by lender.* The lender shall repurchase the loan from the guarantee agency if—

(i) A judgment is entered that the loan is not dischargeable; or

(ii) A discharge is denied to the borrower on any ground.

(6) *Claim for reimbursement from the Secretary.* The guarantee agency may submit a claim to the Secretary for reimbursement upon payment of a bankruptcy claim to the lender. The guarantee agency shall refund the amount of reimbursement paid by the Secretary if the lender repurchases the loan.

(i) *Claim procedures for loans acquired by a guarantee agency through payment of default claims.* (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 and received payment under its reinsurance agreement with the Secretary only if—

(i) The guarantee agency determines that the borrower has died, become totally and permanently disabled since applying for the loan, or has filed for relief in bankruptcy, in accordance with the procedures set forth in paragraphs (b) through (d) of this section. For purposes of this paragraph, references to the "lender" and "guarantee agency" in paragraphs (b) through (d) of this section mean the guarantee agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the guarantee agency determines that the borrower (or, in the case of a PLUS Program loan, each of the co-makers) has died, become totally and permanently disabled since applying for the loan or filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period;

(iii) In the case of a Consolidation loan, the guarantee agency determines that the borrower has died, become totally and permanently disabled since applying for the Consolidation loan, or filed the petition for relief in bankruptcy within the maximum repayment period described in § 682.209(h)(2), exclusive of periods of deferment or periods of forbearance granted by the lender that extended the maximum repayment period;

(iv) The guarantee agency has not written off the loan in accordance with the procedures established by the agency pursuant to § 682.410(b)(6)(x); and

(v) 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)(6)(x), until the borrower (or, in the case of a PLUS loan, each of the co-makers) died, became totally and permanently disabled, filed a chapter 12 or 13 petition, or had the loan discharged in bankruptcy; and

(vi) In the case of a bankruptcy claim, the guarantee agency has complied with the requirements of paragraph (g) or (h) of this section, as applicable.

(2)(i) 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. This interest includes interest that accrues during the shorter of—

(A) The period from the date the guarantee agency determines that the borrower (or each of the co-makers) died, became totally and permanently disabled, filed a Chapter 13 bankruptcy petition or had the loan discharged in bankruptcy, until the Secretary authorizes payment; or

(B) Sixty days.

(ii) In addition, the Secretary pays the guarantee agency for any unpaid interest that the agency paid as part of the default claim and for which the agency was not previously reimbursed by the Secretary.

(j) *Payments received after the Secretary's payment of a death, disability, or bankruptcy claim.* If the guarantee agency receives any payments from or on behalf of the borrower on or attributable to a loan on which the Secretary previously paid a bankruptcy claim, the guarantee agency shall remit 100 percent of these payments to the Secretary.

(k) *Applicable suspension of the repayment period.* For purposes of this section, the term "applicable suspension of the repayment period" means any period of time during which the lender, pursuant to a request from the borrower, did not require the borrower to make payments (e.g., periods of deferment or forbearance).

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082, 1087)

§ 682.403 Federal advances for claim payments.

(a) 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 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 any substantial affiliation with an eligible educational institution.

(b) A guarantee agency shall apply to the Secretary in order to receive an initial advance.

(c)(1) 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 that the initial advance was made for each of the four succeeding calendar years.

(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 a Federal advances for claim payments agreement between the Secretary and the guarantee agency.

(e) In the case of a private nonprofit guarantee agency, the repayment of advances is determined separately for each State for which the agency has received an advance under this section, in accordance with section 422(c)(4).

(f) A guarantee agency shall return advances provided under this section in accordance with the provisions of sections 422 (c), (d), and (e) of the Act.

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

§ 682.404 Federal reinsurance agreement.

(a) *General.* (1) The Secretary may enter into a reinsurance agreement with a guarantee agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement, the Secretary reimburses the guarantee agency for 100 percent of its losses on default claim payments to lenders.

(2) For purposes of this section—

(i) *Losses* means the amount of unpaid principal and accrued interest the agency paid 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 was paid but before the Secretary reimburses the agency, and an amount, not to exceed the lesser of \$100 or two percent of the amount of unpaid principal the agency pays on a default claim, expended by the agency for the administrative costs of supplemental preclaims assistance for default prevention with regard to the loan, to the extent the agency has not been reimbursed for those costs under paragraph (g)(2)(ii) of this section or under § 682.407.

(ii) *Preclaims assistance* means collection assistance provided to the lender by the guarantee agency that involves the initiation by the agency of at least three collection activities, including at least one letter to the borrower designed to encourage the borrower to begin or resume payment.

(iii) *Administrative costs of supplemental preclaims assistance* means any administrative costs, excluding overhead costs, that are—

(A) Incurred by a guarantee agency in connection with a loan on which the guarantor has provided preclaims assistance to the lender, and on which the borrower is at least 120 days delinquent in making payments;

(B) Directly related to providing collection assistance to the lender on the loan prior to a claim being filed with the agency, including that portion of compensation of appropriate personnel that is properly allocable to the performance of collection assistance, fees paid to locate the borrower, postage, equipment, supplies, telephone, and similar charges;

(C) Directly related to collection assistance that is clearly supplemental to the preclaims assistance provided to the lender by the agency on the loan;

(D) Incurred for collection assistance that begins no earlier than 60 days following the date preclaims assistance began;

(E) Incurred for services provided by the guarantee agency directly or by another organization or entity that does not—

(1) Hold or service the loan;

(2) Own, control, or share common ownership with the holder or servicer of the loan; or

(3) Hold a contract with the agency to perform collection services on the loan in the event of default;

(F) Not in excess of 2 percent of the outstanding principal balance of the claim amount, or \$100, whichever is less;

(G) Charged for a borrower for whom no previous such charges have been reimbursed by the Secretary; and

(H) Not charged to a borrower more than once.

(3) If supplemental preclaims assistance results in the borrower beginning or resuming payments—

(i) The guarantee agency may charge the lender for the costs of providing the assistance; and

(ii) The lender may charge the borrower the costs of supplemental preclaims assistance assessed against it by the guarantee agency.

(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) *Reinsurance rate.* (1) If 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 its losses.

(2) If the total of reinsurance claims paid during a fiscal year by the Secretary to a guarantee agency 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 its losses.

(3) For purposes of this section, 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—

(i) On loans considered in default under § 682.412(e);

(ii) Under a policy established by the agency that is consistent with § 682.509(a)(1); or

(iii) That were filed by lenders at the direction of the Secretary.

(4) Notwithstanding paragraphs (b) (1) and (2) 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 during five consecutive fiscal years beginning with the first year of its operation. The Secretary monitors these programs and, if an agency does not prudently administer its program, the Secretary may determine that it does not continue to qualify for this exception.

(5) For purposes of this section, *amount of loans in repayment* means—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was cancelled;

(B) The loan guarantee was transferred to another agency;

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

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

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

(F) The amount paid by the agency for guarantee claims on loans, excluding the amount of all loans in which—

(1) The agency paid a claim under § 682.412(e);

(2) The agency paid a claim under a policy established by the agency that is consistent with § 682.509(a)(1); or

(3) The agency paid a claim filed by a lender at the direction of the Secretary.

(c) *Submission of reinsurance rate base data.* The guarantee agency shall submit to the Secretary the quarterly report required by the Secretary for the previous 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. The Secretary does not pay a reinsurance claim to the guarantee agency after the date the quarterly report is due until the guarantee agency submits a complete and accurate report.

(d) *Reinsurance fee.* (1) Except for loans made under § 682.209 (e), (f) and (h), a guarantee agency shall pay to the Secretary during each fiscal year in quarterly installments, a reinsurance fee equal to—

(i) 0.25 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year; or

(ii) 0.5 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year, if the agency's reinsurance claims paid reach the amount described in paragraph (b)(1) of this section at any time during that fiscal year.

(2) The agency that is the original guarantor of a loan shall pay the reinsurance fee to the Secretary even if the guarantee agency transfers its guarantee obligation on the loan to another guarantee agency.

(3) The guarantee agency shall pay the reinsurance fee required by paragraph (d)(1) of this section, due the Secretary for each calendar quarter ending March 31, June 30, September 30 and December 31, within 90 days after the end of the applicable quarter, or within 30 days after receiving written notice from the Secretary that the fees are due, whichever is earlier.

(e) *Initiation or extension of agreements.* 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 as required by § 682.410(b) (6) or (7), and § 682.411;

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

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

(f) *Application of borrower payments.* Payments made to a guarantee agency by a borrower may, at the agency's option, be applied first to the payment of reinsured interest owed, or to defray the agency's collection costs on the loan. The borrower's payments may be applied to other charges, such as late charges, only after the repayment of all principal and interest.

(g) *Federal share of borrower payments.* (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 purposes of this section, "the Secretary's equitable share" means that portion of borrower payments that remains after the agency has deducted—

(i) An amount equal to the complement of the reinsurance percentage that was in effect when the

reinsurance payment was made by the Secretary; and

(ii) (A) 30 percent of borrower payments; or

(B) If the agency satisfies the requirements of paragraph (h) of this section, 35 percent of borrower payments on a loan that are received—

(1) Prior to the agency's commencement of a civil suit on the loan; and

(2) After the agency sends a notice of intent to initiate a garnishment proceeding, as described in paragraph (h)(1)(ii) of this section, against a borrower who has made no payments on the loan for at least 90 consecutive days.

(3) Unless the Secretary approves otherwise, the guarantee agency shall pay to the Secretary the Secretary's equitable share of borrower payments within 30 days of its receipt of the payments.

(h) *Administrative wage garnishment.*

(1) For an agency to be eligible to retain 35 percent of payments it receives from a borrower on a loan under paragraph (g)(2)(ii)(B) of this section, the statute, regulations, and other provisions of law under which the agency would initiate the proceeding must provide—

(i) That the employer shall deduct and pay to the agency, from a borrower's pay, an amount that does not exceed 10 percent of disposable pay for a pay period, unless the borrower provides the agency or the employer with written consent to deduct a greater amount.

(ii) That the guarantee agency must provide the borrower, at least 30 days prior to initiation of garnishment proceedings, with written notice of the nature and amount of the indebtedness, the intention of the guarantee agency to initiate proceedings to collect the debt through deductions from pay, and an explanation of the borrower's rights under applicable law;

(iii) That the guarantee agency must offer the borrower an opportunity to inspect and copy records of the guarantee agency related to the debt;

(iv) That the guarantee agency must afford the borrower an opportunity to enter into a written agreement with the guarantee agency, under terms agreeable to the agency, to establish a schedule for the repayment of the debt;

(v) That the guarantee agency must afford the borrower an opportunity for a hearing in accordance with paragraph (h)(3) of this section, concerning the existence or the amount of the debt, and, in the case of a borrower whose repayment schedule is established other than by a written agreement under paragraph (h)(1)(iv) of this section,

concerning the terms of the repayment schedule;

(vi) For no mandatory administrative or judicial procedure, other than those described in paragraphs (h)(1)(ii) through (v) of this section, that would delay collection of the debt by garnishment (such as reduction of the debt to a judgment);

(vii) That the employer will be liable to the guarantee agency for any amount that the employer, after receipt of the garnishment notice provided by the agency under paragraph (h)(2) of this section, fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle; and

(viii) For the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against any borrower subject to wage withholding required by the garnishment law because of the withholding or any obligations it imposes upon the employer.

(2)(i) A guarantee agency shall send a notice of withholding order to the employer within 20 days after the borrower fails to timely request a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after the final decision is made after the hearing to proceed with garnishment.

(ii) The notice given to the employer pursuant to paragraph (h)(2)(i) of this section shall contain only such information as may be necessary for the employer to comply with the withholding order.

(3)(i) If the borrower requests a hearing on the existence or amount of the debt or the terms of the repayment schedule on or before the 15th day following the borrower's receipt of the notice described in paragraph (h)(1)(ii) of this section, the guarantee agency shall provide a hearing to the borrower within 60 days after the date of the filing of the request in accordance with such procedures as the agency may prescribe.

(ii) The timely filing of a petition for a hearing stays the commencement of wage withholding by the employer.

(iii) The guarantee agency shall provide a hearing to a borrower pursuant to an untimely request for a hearing, but shall not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the borrower had no control.

(iv) A hearing may not be conducted by an individual under the supervision or control of the agency, except that an

agency may appoint an administrative law judge to conduct the hearing.

(v) The hearing official shall issue a final written decision at the earliest practicable date, but not later than 60 days after the filing of the petition request for the hearing.

(4) For the purpose of this paragraph, the term "disposable pay" means that part of the pay of any individual remaining after the deduction of any amounts required by law to be withheld.

(i) *Non-discrimination.* (1) A guarantee agency may not engage in any pattern or practice that results in a denial of a borrower's access to GSL loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular school within any State served by the guarantee agency, length of the borrower's educational program, or the borrower's academic year in school.

(2) For purposes of this section a guarantee agency is deemed to be serving a State if it guarantees a loan that is—

(i) Made by a lender located in a State not served by the agency;

(ii) Made to a borrower who is a resident of a State not served by the agency; and

(iii) Made for attendance at a school located in the State.

(j) *Other terms.* The reinsurance agreement contains other terms and conditions that the Secretary finds necessary to—

(1) Promote the purposes of the GSL programs and to protect the United States from unreasonable risks of loss;

(2) Ensure proper and efficient administration of the loan guarantee program; and

(3) Ensure that due diligence will be exercised in the collection of loans.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

§ 682.405 [Reserved]

§ 682.406 Conditions of reinsurance coverage.

(a) A guarantee agency is entitled to reinsurance payments on a loan only if—

(1) With respect to the reinsurance payment on the portion of a loan represented by a single disbursement of loan proceeds—

(i) The check for the disbursement was cashed within 120 days after disbursement; or

(ii) The proceeds of the disbursement made by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the

school within 120 days after disbursement;

(2) The lender provided an accurate collection history and an accurate payment history to the guarantee agency with the default claim filed on the loan showing that 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 lender resubmitted a properly documented default claim to the guarantee agency not later than 30 days from the date the agency had rejected that claim due solely to inadequate documentation.

(6) The lender satisfied all conditions of guarantee coverage set by the agency, unless the agency reinstated guarantee coverage on the loan following the lender's failure to satisfy such a condition, pursuant to written policies and procedures established by the agency;

(7) The agency paid, or returned to the lender for additional documentation a default claim thereon filed by the lender with the agency within 90 days of the date the lender filed the claim or, if applicable, the additional documentation, except that interest accruing beyond the 45th day after the date the lender filed the claim, together with all required documentation, is not reinsured;

(8) The agency submitted a request for the payment on a form required by the Secretary no earlier than 90 days following default, in the case of a loan payable in monthly installments, no earlier than 30 days following default, in the case of a loan payable in less frequent installments;

(9) The loan was legally enforceable by the lender when the agency paid a claim on the loan to the lender;

(10) The agency exercised due diligence in collection of the loan in accordance with § 682.410(b) (6) or (7).

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

(12) The agency assigns the loan to the Secretary, if so directed, in accordance with the requirements of § 682.409.

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

for violations of paragraph (a)(3) or (a)(6) of this section is set forth in appendix D to this part.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

§ 682.407 Administrative cost allowance for guarantee agencies.

(a)(1) The Secretary pays an administrative cost allowance to a guarantee agency having a basic program agreement.

(2) The administrative cost allowance paid to a guarantee agency for any fiscal year equals one percent of the total principal amount of loans guaranteed by the agency during that fiscal year, other than Consolidation loans.

(b)(1) To receive an administrative cost allowance payment, the guarantee agency shall submit an application to the Secretary by January 1 of the fiscal year for which it is requesting the allowance.

(2) 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 to be incurred in that fiscal year that will be eligible for payments under this section;

(iii) Assurances that the agency will use sufficient administrative and fiscal procedures, including an independent audit conducted in accordance with § 682.410(b)(1), to ensure that administrative cost 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 satisfactory to 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) An estimate of the total amount of new GSL program loans, other than Consolidation loans, expected to be guaranteed during the fiscal year; and

(vii) Assurances that the agency's program meets and will continue to meet all the requirements contained in § 682.401(b).

(4) The application for an administrative cost allowance by a guarantee agency and the Secretary's payment of that allowance establishes an agreement between the Secretary and the guarantee agency with respect

to the assurances contained in the application.

(c)(1) A guarantee agency may use the administrative cost allowance only to meet administrative costs related to the GSL programs.

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

(i) For which the agency has been or will be reimbursed from the 30 or 35 percent retention of collections permitted under § 682.404(g)(2)(ii); or

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

(d) The Secretary pays an administrative cost allowance on a loan only to the guarantee agency that originally guaranteed the loan, even if the guarantee agency transfers its guarantee obligation on the loan to another guarantee agency.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

§ 682.403 Stafford and SLS loan disbursement through an escrow agent.

(a) *General.* (1) A guarantee agency or an eligible lender may act as an escrow agent for the purpose of receiving Stafford or SLS loan proceeds disbursed by an eligible lender other than a school or State lender, and transmitting those proceeds to the borrower's school, if the lender and the escrow agent have entered into a written agreement for this purpose.

(2) The agreement must provide that—

(i) The lender may make payments into an escrow account that is administered by the escrow agent in accordance with the requirements of paragraph (c) of this section and § 682.207(b)(1)(iv);

(ii) The lender shall promptly notify the borrower's school when funds are escrowed for the borrower; and

(iii) The escrow agent is authorized to—

(A) Transmit the proceeds according to the note evidencing the loan;

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

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

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

(b) *Disbursement by the lender.* Subject to § 682.207(b)(1)(iii), the lender may disburse the loan proceeds to the escrow agent using any method agreed to by the escrow agent and the lender.

(c) *Transmittal of loan proceeds to a school by the escrow agent.* The escrow agent shall transmit loan proceeds received from a lender under this section to a school in accordance with the requirements of § 682.207(b)(1)(ii) and (iv) not later than 21 days after the agent receives the funds from the lender.

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

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

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

(a) If 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 any loan held by the agency on which the agency seeks or has received payment under §§ 682.402(d), 682.402(i), or 682.404. In making this determination, the Secretary considers all relevant information available to the Secretary, including any information and documentation submitted by the agency. The Secretary may identify particular loans to be assigned, or may require assignment of particular categories of loans that share characteristics that the Secretary determines make those loans appropriate for assignment.

(b)(1) A guarantee agency that assigns a defaulted loan to the Secretary under this section thereby releases all rights and title to that loan. The Secretary does not pay the guarantee agency any compensation for a loan assigned under this section.

(2) The agency does not share in any amounts received by the Secretary on a loan assigned under this section, regardless of the reinsurance percentage paid on the loan or the agency's previous collection costs.

(c)(1) A guarantee agency shall assign a loan to the Secretary under this section at the time, in the manner, and with the information and documentation that the Secretary requires. The agency shall submit this information and documentation in the form (e.g., computer tape) and in the format specified by the Secretary.

(2) The guarantee agency shall execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section.

(3) If the agency does not provide the required information and documentation in the form and format required by the Secretary, the Secretary may, at his option—

(i) Allow the agency to revise the agency's submission to include the required information and documentation in the specified form and format;

(ii) In the case of an improperly formatted computer tape, reformat the tape and assess the cost of that activity against the agency;

(iii) Reorganize the material submitted and assess the cost of that activity against the agency; or

(iv) Obtain from other agency records and add to the agency's submission any information from the original submission, and assess the cost of that activity against the agency.

(4) For each loan assigned, the agency shall submit to the Secretary the following documents associated for each loan, assembled in the order listed below:

(i) The promissory note.

(ii) Any documentation of a judgment entered on the loan.

(iii) A written assignment of the loan or judgment, unless this assignment is affixed to the promissory note.

(iv) The loan application.

(v) A payment history for the loan, as described in § 682.414(a)(1)(C).

(vi) A collection history for the loan, as described in § 682.414(a)(1)(D).

(5) The agency may submit certified copies of required documents in lieu of originals when no originals exist.

(d)(1) If the Secretary determines that the agency has not submitted a document or record required by paragraph (c) of this section, and the Secretary decides to allow the agency an additional opportunity to submit the omitted document under paragraph (c)(3)(i) of this section, the Secretary notifies the agency and provides a reasonable period of time for the agency to submit the omitted record or document.

(2) If the omitted document is not submitted within the time specified by the Secretary, the Secretary determines whether that omission impairs the Secretary's ability to collect the loan.

(3) The Secretary assesses against the agency that portion of the amount paid to the agency under the reinsurance agreement, and interest at the rate applicable to the borrower under § 682.410(b)(3) accrued thereon from that payment date, equal to the amount of a loan assigned by the agency the collectibility of which the Secretary determines under paragraph (d)(2) of this section to be impaired due to the

failure of the agency to submit a document required by the Secretary.

(4) The Secretary reassigns to the agency that portion of the loan determined to be unenforceable by the Department.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) *Fiscal requirements*—(1) *Reserve fund assets.* The guarantee agency shall establish and maintain a reserve fund to which the guarantee agency shall credit—

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

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

(iii) Federal advances obtained under section 422(c) of the Act;

(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 GSL loans;

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

(ix) Investment earnings on the reserve fund.

(2) *Uses of reserve fund assets.* Except as provided in paragraphs (a)(3) through (a)(5) 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) Pay default claims;

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

(iii) Refund overpayments of insurance premiums;

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

(v) Repay advances and excess reserves to the Secretary; and

(vi) Make payments to lenders that participate in the loan referral service under section 428(e) of the Act.

(3) *Special rules for uses of certain reserve fund assets.* (i) Except as provided in paragraph (a)(4) of this section, a guarantee agency may also use funds received as insurance premiums, administrative cost allowances, interest or investment earnings, and receipts described in paragraph (a)(1)(vi) of this section for payments necessary for the proper administration of the guarantee agency's GSL loan guarantee activities.

(ii) The guarantee agency shall use funds received as Federal advances received under section 422(c) of the Act, and interest or other earnings on those advances, only to pay default claims.

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

(iv) The guarantee agency shall use the borrower payments it retains under § 682.404(g)(2)(i) of this part only for the administrative costs of collection of loans, the administrative costs of preclaims assistance for default prevention, the administrative costs of supplemental preclaims assistance for default prevention, and the administrative costs of monitoring the enrollment status of students and repayment status of borrowers, to the extent the agency has not been reimbursed for these costs under § 682.404(a)(2) or § 682.407.

(v) The terms *administrative costs of collection of loans*, *administrative costs of preclaims assistance for default prevention*, *administrative costs of supplemental preclaims 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)(B)(iii) of the Act, except that the reference to repayment status, if the borrower is a parent, refers to that of the parent borrower.

(vi) The term *overhead costs* used in those definitions includes space and utilities costs.

(4) 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 that investment required of a fiduciary charged with the duty of investing the money of others.

(5) If the guarantee agency uses any funds required to be credited to the reserve fund under paragraph (a)(1) of this section to develop or purchase an asset of any kind—

(i) If the agency subsequently sells or otherwise derives revenue from uses of the asset that are unrelated to GSL program guarantee activities, the agency shall promptly deposit into the reserve fund described in paragraph (a)(1) of this section, a percentage of the sale proceeds or revenue equal to the percentage of the original development

cost or purchase price of the asset paid with the reserve fund monies;

(ii) If the agency subsequently converts the asset, in whole or in part, to a use unrelated to its GSL loan guarantee activities, the agency shall promptly deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the fair market value or, in the case of a temporary conversion, the rental value of the portion of the asset employed for the unrelated use, equal to the percentage of the original development cost or purchase price paid with the reserve fund monies.

(b) *Administrative requirements*—(1) *Independent biennial audits.* The guarantee agency shall arrange for an independent financial and compliance audit of the agency's GSL Program activities 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 GSL Program activities.

(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 at least 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 December 26, 1986. Each subsequent audit must cover the agency's activities for a period beginning no later than the end of the period covered by 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 and 34 CFR part 80, appendix G, satisfies the requirements of this paragraph for the period covered by the audit.

(2) *Collection charges.* Whether or not provided for in the borrower's promissory note, the guarantee agency shall charge a borrower an amount equal to reasonable costs incurred by

the agency in collecting a loan on which the agency has paid a default or bankruptcy claim. These costs may include, but are not limited to, all attorneys' fees, collection agency charges, and court costs. The amount charged a borrower shall equal the lesser of—

(i) The amount that would be charged for the costs of collection by a guarantee agency under 34 CFR 30.60; or

(ii) The amount the same borrower would be charged for the cost of collection if the loan was held by the U.S. Department of Education.

(3) *Interest charged by guarantee agencies.* The guarantee agency shall charge the borrower interest on the amount for which the Secretary has paid a reinsurance claim to the guarantee agency, at a rate that is the greater of—

(i) The rate established by the terms of the borrower's original promissory note;

(ii) In the case of a loan for which a judgment has been obtained, the rate provided for by State law.

(4) *Capitalization of unpaid amounts.* The guarantee agency shall capitalize any unpaid charges due the lender from the borrower at the time the agency pays a default claim to the lender.

(5) *Credit bureau reports.* (i) After completion of the procedures set forth in paragraph (b)(5)(ii) of this section, the guarantee agency shall report promptly, and on a regular basis, to all national credit bureaus—

(A) The total amount of loans made to the borrower and the remaining balance of those loans;

(B) The date of default;

(C) Information concerning collection of the loan, including the repayment status of the loan;

(D) Any changes or corrections in the information reported by the agency that result from information received after the initial report; and

(E) The date the loan is fully repaid by or on behalf of the borrower or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability.

(ii) The guarantee agency shall ensure that, promptly after it pays a default claim on a loan but before it reports the default to a credit bureau or assesses collection costs against a borrower, it provides the borrower with—

(A) Written notice that meets the requirements of paragraph (b)(5)(vi) of this section regarding the proposed actions;

(B) An opportunity to inspect and copy agency records pertaining to the loan obligation;

(C) An opportunity for an administrative review of the legal

enforceability or past-due status of the loan obligation; and

(D) An opportunity to enter into a repayment agreement on terms satisfactory to the agency.

(iii) The procedures set forth in § 682.404(h) (administrative wage garnishment), and the procedures set forth in 34 CFR 30.20 through 30.33 (administrative offset), satisfy the requirements of paragraph (b)(5)(ii) of this section.

(iv)(A) In response to a request for access to records, an administrative review, or an opportunity to enter into a repayment agreement, submitted by a borrower after the deadlines established under agency rules, the agency shall provide the requested relief but may continue reporting the debt to credit bureaus until it determines that the borrower has demonstrated that the loan obligation is not legally enforceable or that alternative repayment arrangements satisfactory to the agency have been made with the borrower.

(B) The deadline established by the agency for requesting administrative review under paragraph (b)(5)(ii)(C) of this section must allow the borrower at least 60 days from the date the notice described in paragraph (b)(5)(ii)(A) of this section is sent, to request that review.

(v) An agency may not permit an employee, official, or agent to conduct the administrative review required under this paragraph if that individual is—

(A) Employed in an organizational component of the agency or its agent that is charged with collection of loan obligations; or

(B) Compensated on the basis of collections on loan obligations.

(vi) The notice sent by the agency under paragraph (b)(5)(ii)(A) of this section must—

(A) Advise the borrower that the agency has paid a default claim filed by the lender, and has taken assignment of the loan;

(B) Identify the lender that made the loan and the school for attendance at which the loan was made;

(C) State the outstanding principal, accrued interest, and any other charges then owing on the loan;

(D) Demand that the borrower immediately commence repayment of the loan;

(E) Explain the rate of interest that will accrue on the loan, that all costs incurred to collect the loan will be charged to the borrower, the authority for assessing these costs, and the manner in which the agency will calculate the amount of these costs;

(F) Notify the borrower that the agency will report the default to all national credit bureaus to the detriment of the borrower's credit rating;

(G) Explain the opportunities available to the borrower under agency rules for access to agency records on the loan, for an administrative review of the legal enforceability or past-due status of the loan obligation, and for reaching agreement on repayment terms satisfactory to the agency in order to avoid the reporting of the loan as defaulted to credit bureaus, and describe the deadlines for requesting this relief and the manner in which the borrower must request relief;

(H) Unless the agency uses a separate notice to advise the borrower regarding other proposed enforcement actions, describe specifically any other enforcement action, such as offset against State income tax refund or wage garnishment that the agency intends to use to collect the debt, and explain the procedures available to the borrower prior to those other enforcement actions for access to records, an administrative review, or agreement to alternative repayment terms;

(I) Describe the grounds on which the borrower may object that the loan obligation as stated in the notice is not a legally enforceable debt owed by the borrower;

(J) Describe any appeal rights available to the borrower from an adverse decision on administrative review of the loan obligation;

(K) Describe any right to judicial review of an adverse decision by the agency regarding the legal enforceability or past-due status of the loan obligation; and

(L) Describe the collection actions that the agency may take in the future if those presently proposed do not result in repayment of the loan obligation, including the filing of a lawsuit against the borrower by the agency and assignment of the loan to the Secretary for collection by offset against Federal income tax refunds or the filing of a lawsuit against the borrower by the Federal Government.

(6) *Collection efforts on defaulted loans.* (i) The guarantee agency shall engage in at least the collection activities described in paragraphs (b)(6)(iii) through (xii) of this section on a loan on which it pays a default claim filed by a lender, except that the agency may engage in the collection activities described in paragraphs (b)(7) of this section in lieu of the activities described in paragraphs (b)(6)(iii) through (vi) of this section.

(ii)(A) The periods of time set forth in paragraphs (b)(6) (iii) through (xii) and (b)(7) of this section refer to the number of days that elapse from the date the agency pays a default claim on a loan, or, in the case of a borrower whom the agency locates through the use of skip-tracing under paragraph (b)(6)(xii)(A) of this section, the number of days that elapse from the date the agency obtains the borrower's correct address. These periods of time do not include any periods during which the agency is engaged in the activities related to administrative wage garnishment described in § 682.404(h) or receiving a payment through garnishment at least once every 60 days, or during which the agency is engaged in an administrative review of the borrower's indebtedness on the loan pursuant to a request by the borrower under paragraph (b)(iv) of this section. References to the "borrower" in this paragraph and paragraph (b)(7) of this section include all endorsers on a loan.

(B) The agency may institute a civil suit against the borrower earlier than the first day of the period described in paragraph (b)(6)(vii) of this section. Upon instituting suit, the agency is not required thereafter to follow the procedures in paragraph (b)(6)(iii) or (b)(7) of this section.

(C) Upon receipt of a payment from a borrower during a period described in paragraph (b)(6) (iii) or (iv) of this section, the agency is not required to follow the specific collection efforts described in paragraphs (b)(6) (iii) through (vii), but shall diligently attempt to collect the loan for 60 days following receipt of the payment. If the agency receives no payments during the 60-day period, the agency shall resume its use of the collection efforts described in paragraphs (b)(6) (iv) through (ix) of this section, treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(6)(iv) of this section.

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

(A) Send to the borrower the written notice described in paragraph (b)(vi) of this section, or a written notice stating—

(1) That the agency has paid a default claim filed by the lender on the loan, and has taken assignment of the loan;

(2) That the borrower must immediately commence repayment of the loan;

(3) That all costs incurred to collect the loan will be charged to the borrower;

(4) That the agency will report the default to all national credit bureaus, to the detriment of the borrower's credit rating;

(5) That the agency may bring suit against the borrower to compel repayment of the loan;

(6) That the agency may assign the debt to the U.S. Department of Education for collection by offset against Federal income tax refunds due the borrower, or by other means; and

(7) That the agency may collect the loan by offset against State tax refunds and/or by wage garnishment, if these steps are available to the agency; and

(B) Diligently attempt to contact the borrower by telephone, as defined in § 682.411(1) (with references to "the lender" understood to mean "the agency"), to demand repayment of the loan.

(iv) Forty-six—180 days: During this period the agency shall—

(A) Engage in at least two diligent attempts to contact the borrower by telephone, as defined in § 682.411(1) (with references to "the lender" understood to mean "the agency"), to demand repayment of the loan; and

(B) Send at least three written notices to the borrower forcefully demanding that the borrower immediately commence repayment of the loan, and informing the borrower that the default has been reported to all national credit bureaus, if that is the case, and that the borrower's credit rating may thereby have been damaged. The final notice must also indicate that it is the final notice the borrower will receive before the agency will take more forceful action, including the possibility of instituting a civil suit, to compel repayment of the loan; and

(v) At no point during the periods described in paragraphs (b)(6) (iii) and (iv) of this section may the agency permit the occurrence of a gap in collection activity of more than 60 days.

(vi) For purposes of paragraph (b)(6)(v) of this section, the term "gap in collection activity" means, with respect to a loan, any period—

(A) Beginning on the date that is the day after—

(1) The date the agency paid a default claim to the lender thereon;

(2) The day on which the agency receives the correct address for a borrower who has made no payment in the preceding 60 days; or

(3) The day on which the agency completes a collection activity, as defined in § 682.411(k) (1) through (3) (with references to "the lender" therein understood to mean "the agency"); and

(B) Ending on the date of the earliest of—

(1) The day on which the agency receives the first subsequent payment;

(2) The day on which the agency commences the first subsequent

collection activity, as defined in § 682.411(k) (1) through (3) (with references to the lender therein understood to mean "the agency"); or

(3) The last day of the period described in paragraph (b)(6)(iv) of this section.

(vii) One hundred eighty-one—545 days:

(A) Except as provided in paragraphs (b)(6)(vii) (B), (C), and (D) of this section, during this period, but not sooner than 30 days after sending the borrower a notice of the agency's intent to do so, the agency shall institute a civil suit against the borrower for repayment of the loan.

(B) Except as provided in paragraph (b)(6)(vii)(C) of this section, in the case of a loan that was assigned to the Secretary prior to the 545th day and returned to the agency less than 180 days prior to the 545th day, the agency has 180 days from the date it receives the returned loan to institute the civil suit.

(C) Except as provided in paragraph (b)(6)(vii)(D) of this section, in the case of a loan not assigned to the Secretary, during this period, but not sooner than 30 days after sending the final notice described in paragraph (b)(6)(iv) of this section, the agency shall institute a civil suit against the borrower by the 225th day, unless that loan is subsequently assigned to the Secretary by the deadline for the next available opportunity to collect by Internal Revenue Service (IRS) tax refund offset, or a payment is received from the borrower less than 120 days before the deadline for the next available opportunity to collect by IRS tax refund offset.

(D) The agency need not file suit if the agency determines and documents in the borrower's file that—

(1) The cost of litigation would exceed the judgment amount likely to be obtained if litigation were commenced; or

(2) The borrower does not have the means to satisfy a judgment on the debt or a substantial portion thereof, based on the agency's review of the debtor's file, and of a credit report obtained by the agency from a credit bureau serving the geographic area where the debtor resides, or if the debtor's current address is unknown, a credit bureau serving the geographic area that includes the debtor's last known address.

(viii)(A) If, as a result of a determination made pursuant to paragraph (b)(6)(vii)(C)(2) of this section, the agency does not institute a civil suit against the borrower for

repayment of the loan, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired the means to satisfy a judgment on the debt, or a substantial portion thereof.

(B) If the agency determines that the borrower has acquired the means to satisfy at least a substantial portion of the debt, and that the cost of litigation would not exceed the amount likely to be obtained if litigation were commenced, then, if subsequent collection efforts are not successful, the agency shall, no later than 60 days after the determination and before the applicable limitations period under section 484A of the Act expires, institute a civil suit against the borrower for repayment of the loan.

(C) The guarantee agency shall document in the borrower's file determinations made pursuant to this paragraph.

(ix)(A) The agency shall diligently attempt to enforce a judgment obtained against a borrower on a loan and shall ensure that the judgment is renewed as permitted by applicable law. If, despite diligent attempts, the agency cannot recover the full amount of the judgment because the borrower lacks sufficient assets or income attachable under applicable law to fully satisfy the judgment, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired sufficient attachable assets or income to satisfy the remainder of the judgment.

(B) If the agency determines that the borrower has acquired sufficient attachable assets or income to satisfy the remainder of the judgment and that the cost of enforcing the judgment would not exceed the likely recovery, 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 of 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 paragraph (b)(6)(ix)(B) of this section, the agency shall, within 30 days thereafter, proceed to enforce the remainder of the judgment.

(x) The agency may discontinue conducting the semi-annual inquiries concerning a borrower's means required by paragraphs (b)(6)(viii) and (ix) of this section before the expiration of the applicable statute of limitations only in accordance with criteria and procedures approved by the Secretary.

(xi) Notwithstanding paragraphs (b)(6)(vii) through (x) of this section, the

agency shall file a civil suit against the borrower for repayment of the loan, and shall enforce a judgment obtained thereon, prior to the date on which the applicable statute of limitations lapses, unless the agency—

(A) Determines, and documents in the borrower's file, that the cost of litigation would exceed the judgment amount likely to be obtained if litigation were commenced, or, in the case of a proceeding to enforce a judgment, that the cost of such a proceeding would exceed the likely recovery from the debtor; or

(B) Has previously discontinued semi-annual inquiries on the debt in accordance with paragraph (b)(6)(viii) or (ix) of this section.

(xii) Not later than 10 days after its receipt of information indicating that it does not know the current address of a borrower on a loan on which the agency has neither declined to sue under paragraph (b)(6)(vii)(C)(1) of this section nor discontinued semi-annual inquiries under paragraph (b)(6)(x) of this section, or the 60th day after its payment of a default claim on the 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.

(7) *Alternative collection procedures for defaulted loans.* (i) A guarantee agency may engage in the following collection activities in lieu of the activities described in paragraphs (b)(6)(iii) through (vi) of this section. The rules in paragraphs (b)(6)(ii)(A) and (B) of this section apply to the periods of time set forth in paragraphs (b)(7)(iii) through (v) of this section.

(ii) Upon receipt of a payment from a borrower, the agency is not required to follow the specific collection efforts described in paragraphs (b)(7)(iii) through (vi) of this section, but shall diligently attempt to collect the loan for 60 days following receipt of the payment. If the agency receives no payments during the 60-day period, the agency shall resume its use of the collection efforts described in paragraph (b)(7)(iii) through (vi) of this section, treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(7)(iv) of this section.

(iii) One—30 days: During this period the agency shall send to the borrower a written notice stating—

(A) The information listed described in paragraph (b)(5)(vi) of this section; or

(B) The information set forth in paragraphs (b)(6)(iii)(A) (1) through (7) of this section.

(iv)(A) Thirty-one—180 days: During this period the guarantee agency shall diligently attempt to collect the loan using such collection tools and activities as it deems appropriate, provided, however, that the agency must make at least one diligent effort to contact the borrower by telephone, as defined in § 682.411(l) [with references to "the lender" understood to mean "the agency"], and send at least two forceful collection letters to the borrower.

(B) By the end of this period, or the 30th day after the Secretary's return of the loan to the agency upon completion of the first Federal tax refund offset process available for that loan, whichever is later, the agency shall refer the loan to a collection contractor in accordance with paragraph (b)(7)(iv)(C) of this section.

(C) The collection contractor to whom the agency refers a loan under paragraph (b)(7)(iv)(B) of this section must—

(1) Be compensated for its services on all GSL loans referred by the agency solely on a contingency fee basis;

(2) Be one of at least two collection contractors simultaneously providing collection services to the agency on GSL loans under a competitive system established by the agency that provides for periodic assessment by the agency of the performance of the competing contractors, and for periodic adjustments in the volume of loans referred by the agency to each competing contractor based on those assessments; and

(3) Not receive referral of more than 70% of the agency's referred loans in any calendar year.

(v) Notwithstanding the deadline for instituting a civil suit set forth in paragraph (b)(6)(vii) of this section, an agency that uses the procedures in paragraphs (b)(7)(i) through (iv) of this section shall institute a civil suit required by that paragraph prior to the earliest of—

(A) The 90th day following the collection contractor's return of the loan to the agency; or

(B) The 365th day following the later of the agency's referral of the loan to the collection contractor, or the contractor's receipt of a payment on the loan.

(8) *Special conditions for agency payment of a claim.* (i) A guarantee agency may adopt a policy under which it pays a claim to a lender on a loan under the conditions described in § 682.509(a)(1).

(ii) Upon the payment of a claim under a policy described in paragraph (b)(8)(i) of this section, the guarantee agency shall—

(A) Perform the loan servicing functions required of a lender under § 682.208, except that the agency is not required to follow the credit bureau reporting requirements of that section;

(B) Perform the functions of the lender during the repayment period of the loan, as required under § 682.209;

(C) If the borrower is delinquent in repaying the loan at the time the agency pays a claim thereon to the lender, or becomes delinquent while the agency holds the loan, exercise due diligence in attempting to collect the loan from the borrower and any endorser or co-maker; and

(D) After the date of default on the loan, if any, comply with paragraph (b)(6)(i) of this section with respect to collection activities on the loan, with the date of default treated as the claim payment date for purposes of those paragraphs.

(9) *Preemption of State law.* The provisions of paragraphs (b) (2), (5), (6) and (7) of this section preempt any State law, including State statutes, regulations or rules, that would conflict with the requirements of these provisions.

(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, including agreements, applicable to its loan guarantee program, including, at a minimum, the following:

(1) Conducting comprehensive biennial on-site program reviews, using statistically valid techniques to calculate liabilities to the Secretary that each review indicates may exist, of at least—

(i)(A) Each participating lender whose dollar volume of GSL loans made or purchased by the lender and guaranteed by the agency in the preceding year—

(1) Equalled or exceeded two percent of the total of all loans guaranteed in that year by the agency;

(2) Was one of the ten largest lenders whose loans were guaranteed in that year by the agency; or

(3) Equalled or exceeded \$10 million in the most recent fiscal year;

(B) Each lender described in section 435(d)(1)(D), or (J) of the Act, that is located in any State in which the agency is the principal guarantor, as defined in § 682.302(e)(3)(ii), and, at the option of each guarantee agency, the Student Loan Marketing Association; and

(C) Each participating school, located in a State for which the guarantee

agency is the principal guarantee agency, that has a fiscal year default rate, as defined in 34 CFR 668.15, for either of the two immediately preceding fiscal years, as defined in § 668.15, that exceeds 20 percent, unless the school is under a mandate from the Secretary under § 668.15 to take specific default reduction measures, or if the total dollar amount of loans entering repayment in each fiscal year on which the default rate over 20 percent is based does not exceed \$100,000; or

(ii) The schools and lenders selected by the agency as an alternative to the reviews required by paragraphs (c)(1) (i) through (iii) of this section, if the Secretary approves the agency's proposed alternative selection methodology.

(2) Demanding prompt repayment by the responsible parties to lenders, borrowers, the agency, or the Secretary, as appropriate, of all funds found in those reviews to be owed by the participants with regard to loans guaranteed by the agency, whether or not the agency holds the loans, and monitoring the implementation by participants of corrective actions, including these repayments, required by the agency as a result of those reviews.

(3) Referring to the Secretary for further enforcement action any instance in which repayment of funds to the Secretary is not made in full within 60 days of the date of the agency's written demand to the school, lender, or other party for payment, together with all supporting documentation and any correspondence and other documentation submitted by that party regarding the repayment.

(4) Adopting procedures for identifying fraudulent loan applications.

(5) 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, including violations of Federal law or regulations.

(6) Promptly referring to appropriate State and local regulatory agencies and to accrediting agencies for investigation information received by the guarantee agency that may affect the retention or renewal of the license or accreditation of a program participant.

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

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

(9) Promptly notifying the Secretary of—

(i) Any action it takes affecting the GSL program eligibility of a participating lender or school;

(ii) Information it receives regarding an action affecting the GSL program eligibility of a participating lender or school taken by an accrediting agency or a State licensing agency;

(iii) Any judicial or administrative proceeding relating to the enforceability of GSL loans guaranteed by the agency or in which tuition obligations of a school's students are directly at issue, other than a proceeding relating to a single borrower or student; and

(iv) Any petition for relief in bankruptcy, application for receivership, or corporate dissolution proceeding brought by or against a school or lender participating in its loan guarantee program.

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

(11) Taking prompt and appropriate action to protect the rights of borrowers and the Federal fiscal interest respecting loans the agency has guaranteed when the agency learns that a participating school or holder of loans is experiencing problems that threaten the solvency of the school or holder, including—

(i) Conducting on-site program reviews;

(ii) Providing appropriate training and technical assistance;

(iii) Upon written request of a lender or school, acting as the escrow agent for the purpose of transmitting to borrowers proceeds of loans made for attendance at a school experiencing problems that threaten its solvency;

(iv) Filing a proof of claim with a bankruptcy court for recovery of any funds due the agency, and any refunds due the agency or other holders on GSL loans that it has guaranteed, when the agency learns that a school has filed a bankruptcy petition;

(v) Promptly notifying the Secretary that the agency has determined that a school or holder of loans is experiencing potential solvency problems; and

(vi) Promptly notifying the Secretary of the results of any actions taken by the agency to protect Federal funds involving such a school or holder.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1080a, 1082, 1091a, 1099)

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

(a) *General.* In the event of delinquency on a GSL loan that is guaranteed by a guarantee agency, the

lender shall engage in at least the collection efforts described in paragraphs (c) through (l) of this section, except that, in the case of a loan made to an incarcerated borrower or to a borrower residing outside the United States, the lender may send a forceful collection letter in lieu of each telephone effort required by this section. References to the "borrower" throughout this section include all endorsers and co-makers on a loan, except that the lender is not required to attempt collection on a loan from a co-maker or endorser prior to the 90th day of delinquency.

(b) *Delinquency.* For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment more than half of which is not later made. The due date of the first payment is established by the lender, but must occur no later than 45 days following the end of the grace period, or, if the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the day the lender so learns. If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment more than half of which is not later made.

(c) *One—10 days delinquent:* Except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan, during this period the lender shall send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency.

(d) *Eleven—180 days delinquent (11—240 days delinquent for a loan repayable in installments less frequent than monthly).* (1) Except as provided in paragraphs (a), (d)(3), and (f) of this section, during this period the lender shall engage in at least four diligent efforts to contact the borrower by telephone.

(2) For each instance in which its required diligent effort at telephone contact is unsuccessful, for each diligent effort that the lender is excused from making under paragraph (a) or (f) of this section, and for each successful effort to contact the borrower by telephone that occurs within 10 days of another successful effort, the lender shall send the borrower at least one forceful collection letter urging the borrower to cure the delinquency. The letter shall also warn the borrower that, if the delinquency is not cured, the lender will

assign the loan to the guarantee agency that in turn will report the default to all national credit bureaus, and that the agency may bring suit against the borrower to compel repayment of the loan.

(3) Notwithstanding paragraph (d)(1) of this section, following the lender's receipt of a payment on the loan or a correct address for the borrower, the lender's receipt from the drawee of a dishonored check received as a payment on the loan, or the expiration of an authorized deferment or forbearance period, the lender—

(i) Is only required to engage in two diligent efforts to contact the borrower by telephone during this period, if the loan is delinquent by one—90 days (one—120 days for a loan repayable in installments less frequent than monthly) upon receipt of the payment, correct address, or returned check, or expiration of the deferment or forbearance; or

(ii) Is not required to engage in any efforts to contact the borrower by telephone during this period, if the loan is delinquent by more than 90 days (120 days for a loan repayable in installments less frequent than monthly) upon that receipt or expiration.

(4) At no point during this period may the lender permit the occurrence of a gap in collection activity, as defined in paragraph (i) of this section, of more than 45 days (60 days in the case of a transfer).

(e) *Final demand.* After completion of the collection steps described in paragraph (d) of this section, the lender shall send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. After default, the lender shall allow the borrower until at least the thirtieth day after the date of default to make payments sufficient to bring the loan to less than 150 days delinquent before filing a default claim on the loan (unless the agency returns the default claim to the lender thereafter because the borrower has made those payments) or reporting that default to a credit bureau.

(f) *Collection procedures when borrower's telephone number is not available.* Upon completion of a diligent but unsuccessful effort to ascertain the correct telephone number of a borrower, as required by paragraph (d) of this section, the lender is excused from any further efforts to contact the borrower by telephone during the delinquency period in which the unsuccessful effort was made.

(g) *Skip-tracing.* (1) Within 10 days of its receipt, during the periods described in paragraphs (c) and (d) of this section,

of information indicating that 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 must include, but are not limited to, contacting the endorser, relatives, references, and any other individuals and entities identified in the borrower's loan file.

(2) Upon receipt of information indicating that it does not know the borrower's current address, the lender shall discontinue the collection efforts described in paragraphs (c) through (e) of this section.

(3) If the lender is unable to ascertain the borrower's current address, despite its performance of the activities described in paragraph (g)(1) of this section, the lender is excused thereafter from performance of the collection activities described in paragraphs (c) through (e), and (k) of this section until it receives a payment or other communication from the borrower.

(h) *Preclaims assistance.* If the agency that guaranteed the loan offers preclaims assistance, the lender shall request that assistance within 10 days of the date established by the agency that assistance is first available from the agency, and shall, not later than 30 days after sending that request unless the loan has been brought current prior to that thirtieth day, notify the school for attendance at which the loan was made of the request by providing the school with a copy of that request, or by other means.

(i) *Gap in collection activity.* For purposes of this section, the term *gap in collection activity* means, with respect to a loan, any period—

(1) Beginning on the date that is the day after—

(i) The first day of delinquency, unless the lender does not know the borrower's address on that date;

(ii) The day on which the lender receives a payment on a loan that remains delinquent notwithstanding the payment;

(iii) The day on which the lender receives the correct address for a delinquent borrower;

(iv) The day on which the lender completes a collection activity;

(v) The day on which the lender receives from the drawee a dishonored check submitted as a payment on the loan; or

(vi) The expiration of an authorized deferment or forbearance period on a delinquent loan; and

(2) Ending on the date of the earliest of—

(i) The day on which the lender receives the first subsequent payment or properly completed deferment request or forbearance agreement;

(ii) The day on which the lender commences the first subsequent collection activity; or

(iii) Default.

(j) *Transfer*. For purposes of this section, the term *transfer* with respect to a loan means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

(k) *Collection activity*. For purposes of this section, the term *collection activity* with respect to a loan means—

(1) Mailing or otherwise transmitting to the borrower, at an address that the lender reasonably believes to be the borrower's current address, a collection letter or final demand letter that satisfies the timing and content requirements of paragraph (c) or (d) of this section;

(2) Making a diligent effort to contact the borrower by telephone to urge the borrower to commence or resume repayment;

(3) Undertaking skip-tracing efforts, in accordance with paragraph (f) of this section, to locate a borrower whose correct address is unknown to the lender; or

(4) Mailing or otherwise transmitting to the guarantee agency a request for preclaims assistance available from the agency on the loan at the time the request is transmitted.

(l) *Diligent effort for telephone contact*. For purposes of this section, the term *diligent effort* with respect to telephone contact with a borrower means—

(1) A successful effort to contact the borrower by telephone;

(2) At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower's correct telephone number and at a time the lender reasonably expects the borrower to be at home; or

(3) An unsuccessful effort to ascertain the correct telephone number of a borrower, including, but not limited to, a directory assistance inquiry as to the borrower's telephone number, and an attempt to contact each reference, relative, and individual identified in the most recent loan application for that borrower held by the lender.

(m) *Preemption of State law*. The provisions of this section preempt any State law, including State statutes, regulations or rules, that would conflict with the requirements of this section.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1080a, 1082, 1087-1)

§ 682.412 Consequences of the failure of a borrower or student to establish eligibility.

(a) The lender shall immediately send to the borrower a final demand letter meeting the requirements of § 682.411(e) when it learns that, due to facts of which the borrower or student on whose behalf a parent has borrowed, but neither the school nor the lender, was or should have been aware when the loan was made, the borrower or student—

(1) Did not qualify to receive or benefit from all or a portion of a GSL loan;

(2) Has received a Stafford loan subject to payment of Federal interest benefits as provided under § 682.301, but is in fact ineligible for some or all of those interest benefits; or

(3) Has withdrawn or been expelled prior to the first day of classes for the period of enrollment for which the loan was intended, or failed to attend school during that period, but received loan proceeds and has not paid those funds to the school or repaid them to the lender.

(b) The lender shall neither bill the Secretary for, 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 special allowance 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—

(1) On its next quarterly interest billing submitted under § 682.305, refund to the Secretary the interest benefits and special allowance repaid by the borrower, and all other interest benefits and special allowance previously paid by the Secretary on the ineligible portion of the loan; and

(2) Treat that payment of the principal amount of the ineligible portion of the loan as a prepayment of principal.

(e) If a borrower fails to comply with the terms of a final demand letter described in paragraph (a) of this section, the lender shall treat the entire loan as in default, and—

(1) With its next quarterly interest billing submitted under § 682.305, refund to the Secretary the amount of the interest benefits received from the Secretary on the ineligible portion of the

loan, whether or not repaid by the borrower; and

(2) Within the time specified in § 682.406(a)(4), file a default claim thereon with the guarantee agency for the entire unpaid balance of principal and accrued interest.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

§ 682.413 Remedial actions.

(a) The Secretary requires a lender to repay interest benefits and special allowance received 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 any of the requirements set forth in § 682.406(a)(1) through (a)(5) and (a)(9);

(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;

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

(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 received on a loan if the lender or the agency failed to meet the requirements of § 682.406(a).

(c) 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:

(1) Require the agency to return payments made to the agency.

(2) Withhold payments to the agency.

(3) Limit the terms and conditions of the agency's continued participation in the GSL programs.

(4) Suspend or terminate agreements with the agency.

(5) Impose a fine on the agency.

(6) Require repayment from the agency of interest, special allowance, and reinsurance paid on Consolidation loan amounts attributed to Consolidation loans that violate § 682.206(f)(1)(i) through (iii).

(7) Require repayment from the agency of any related payments that the Secretary became obligated to make to others as a result of the incomplete or incorrect statement or violation of applicable Federal requirement.

(d)(1) The Secretary follows the procedures described in 34 CFR part 668, subpart G, applicable to fine proceedings against schools, in imposing a fine against a lender or guarantee agency. Reference to "the institution" in those regulations should be understood to mean the lender or guarantee agency as applicable, for this purpose.

(2) The Secretary also follows the provisions of section 432(g) of the Act in imposing a fine against a guarantee agency.

(e)(1) The Secretary's decision to require repayment of funds, withhold funds, or to limit, suspend, or terminate a lender or agency from participation in the GSL programs does not become final until the Secretary provides the lender or agency with written notice of the intended action and an opportunity to be heard thereon, at a time and in a manner the Secretary determines to be appropriate to the resolution of the issues on which the guarantee agency requests an opportunity to be heard.

(2)(i) The Secretary may withhold payments from an agency or suspend an agreement with an agency, prior to giving notice and an opportunity to be heard, if the Secretary finds that emergency action is necessary to prevent substantial harm to Federal interests.

(ii) The Secretary follows the notice and show cause procedures described in § 682.704 applicable to emergency actions against lenders in taking an emergency action against a guarantee agency or lender.

(3) The Secretary follows the procedures in 34 CFR 30.20 through 30.32 in collecting a debt by offset against payments otherwise due a guarantee agency or lender.

(f) Notwithstanding paragraphs (a) through (e) of this section, the Secretary may waive the right to require repayment of funds by a lender or agency if, in the Secretary's judgment, the best interests of the United States so require. The Secretary's waiver policy for violations of § 682.406(a)(3) or (a)(5) is set forth in appendix D to this part.

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

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.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1, 1097)

682.414 Records, reports, and inspection requirements for guarantee agency programs.

(a) *Records.* (1)(i) The guarantee agency shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(1)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every 10 business days.

(ii) The agency shall maintain—

(A) All documentation supporting the claim filed by the lender;

(B) Notices of changes in a borrower's address.

(C) 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 that was attributed to principal, accrued interest, preclaims assistance, and collection costs;

(D) A collection history, showing the date and subject of each communication between the agency and the borrower or endorser relating to collection of a defaulted loan, each communication between the agency and a credit bureau regarding the loan, each effort to locate a borrower whose address was unknown at any time, and each request by the lender for supplemental preclaims assistance on the loan;

(E) Documentation regarding any wage garnishment actions initiated by the agency on the loan;

(F) Documentation of any matters relating to the collection of the loan by tax-refund offset;

(G) Any additional records that are necessary to document its right to receive or retain payments made by the Secretary under this part and the accuracy of reports it submits to the Secretary.

(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 due to the borrower's death or permanent and total disability, or discharge of the loan in bankruptcy.

(3)(i) The guarantee agency shall require a participating lender to maintain current, complete, and accurate records of each loan that it holds, including but not limited to, the records described in paragraph (a)(3)(ii) of this section. The records must be

maintained in a system that allows ready identification of each loan's current status.

(ii) The lender shall keep—

(A) A copy of the loan application;

(B) A copy of the signed promissory note, including the repayment instrument;

(C) The repayment schedule;

(D) A record of each disbursement of loan proceeds;

(E) Notices of changes in a borrower's address and status as at least a half-time student;

(F) Evidence of the borrower's eligibility for a deferment;

(G) The documents required for the exercise of forbearance;

(H) Documentation of the assignment of the loan;

(I) 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 that was attributed to principal, interest, late charges, and other costs;

(J) 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, each communication other than regular reports by the lender showing that an account is current, between the lender and a credit bureau regarding the loan, each effort to locate a borrower whose address is unknown at any time and each request by the lender for preclaims assistance on the loan; and

(K) 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.

(iii) 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 or the guarantee agency may require the retention of records beyond this minimum period.

(4)(i) A guarantee agency or lender may store the records specified in paragraphs (a)(3)(ii) (C) through (K) of this section on microfilm or computer format.

(ii) 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 an alternate procedure that is acceptable

under State law, that the loan is paid in full, and retain a copy for the prescribed period.

(iii) Either the lender or guarantee agency shall retain the original loan application and, until the loan is fully repaid, the promissory note.

(b) *Reports.* A guarantee agency shall accurately complete and 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 the time and in the manner that the Secretary may reasonably require. The Secretary will not pay the agency any funds, the amount of which are determined by reference to data 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 of 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) By July 1 of each year, a report on—
- (i) Its eligibility criteria for schools and lenders;
 - (ii) Its procedures for the limitation, suspension, and termination of schools and lenders;
 - (iii) 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
 - (iv) The steps the agency has taken to ensure its compliance with § 682.410(c), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

(4) Information consisting of those extracts from its computer data base, and supplied in the medium and the format, prescribed in the Stafford, SLS, and PLUS Loan Tape Dump Procedures (ED Forms 1070 and 1071).

(5) Any other information concerning its loan insurance program requested by the Secretary.

(c) *Inspection requirements.* (1) A guarantee agency shall cooperate with the Secretary, the Department of Education's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records required by applicable regulations and to any other pertinent books, documents, papers, and records; and

(2) Providing reasonable access to the agency's personnel associated with the agency's administration of its loan insurance program for the purpose of obtaining relevant information.

Examples of restrictions that would not result in reasonable access to personnel include the following:

- (i) Limiting the extent or type of relevant information to be supplied.
- (ii) Requiring the presence of agency representatives during personnel interviews.
- (iii) Requiring that personnel interviews be recorded, for the records of the agency.

(3) 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 for inspection and copying in order to verify the accuracy of the information provided by the lender pursuant to § 682.401(b) (18), (19), and (20), and the right of the lender to receive or retain payments made under this part, or to permit the Secretary or the agency to enforce any right acquired by the Secretary or the agency under this part.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

Subpart E—Federal Guaranteed Student Loan Programs

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

(a) The Secretary may guarantee all—

(1) FISL, Federal SLS, and Federal PLUS 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 Consolidation loans made by the Student Loan Marketing Association, and Federal Consolidation loans made by any other lender that has applied for and been denied guarantee coverage on Consolidation loans by the guarantee agency that guarantees the largest dollar volume of GSL loans made by the lender; and

(3) FISL, Federal SLS, Federal PLUS, and Federal Consolidation 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 FISL, Federal SLS, Federal PLUS and Federal Consolidation 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 FISL loan that has not been repaid; or

(4) All students at a school located in the State, 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 GSL Program loans. The Secretary may guarantee loans made to those students by a lender in that State if—

(A) The guarantee agency does not recognize the school as being eligible, but the school is eligible under the FISL program; or

(B) A majority of the persons enrolled at the school meet the conditions of student eligibility for FISL loans, but are not recognized as eligible under the guarantee agency program.

(c) For purposes of paragraph (b) of this section, a lender is considered to be located in the same State as a school if the lender—

(1) Has an origination relationship with the 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 Federal GSL programs, 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 that has entered into an agreement with the Secretary under § 682.600, 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 that the Secretary considers satisfactory.

(Authority: 20 U.S.C. 1071, 1073, 1078-1, 1078-2, 1078-3, 1082)

§ 682.501 Extent of Federal guarantee under the Federal GSL programs.

(a) *General.* Except as provided in paragraph (b) of this section, the Secretary's guarantee liability on any Federal GSL loan is 100 percent of the unpaid principal balance and, to the extent permitted under § 682.512, 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) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any fiscal year reaches five percent of the amount of the Federal GSL 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) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any fiscal year reaches nine percent of the amount of the Federal GSL 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 do not include paid claims filed by the lender under the provisions of § 682.208(f) or § 682.509.

(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 Federal GSL Program lender and during each of the four succeeding fiscal years.

(3) For the purposes of this section, the term "amount of the Federal GSL loans in repayment" means the original principal amount of all loans guaranteed by the Secretary less—

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

(A) Under the FISL program, the borrower has not yet reached the repayment period;

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

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

(D) The amount paid by the Secretary on a claim filed under section 437 of the Act; and

(ii) The amount paid by the Secretary for default claims on loans, exclusive of paid claims filed by the lender under § 682.208(f) or § 682.509.

(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 Federal GSL loans for the purpose of calculating the amount of the Secretary's guarantee liability under this section.

(Authority: 20 U.S.C. 1077, 1078-1, 1078-2, 1078-3, 1082)

§ 682.502 The application to be a lender.

(a) To be considered for participation in the Federal GSL programs, a lender shall submit an application to the Secretary.

(b) In determining whether to enter into a guarantee agreement with an applicant, and, if so, what the terms of the agreement will be, the Secretary considers—

(1) Whether the applicant meets the definition of an "eligible lender" in section 435(d)(1) of the Act and the definition of "lender" in § 682.200;

(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.

(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 criteria in this section.

(d)(1) If the Secretary decides not to approve the application for a guarantee

agreement, the Secretary's response includes the reason for the decision.

(2) The Secretary provides the lender 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 six months of a previous denial.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1082)

§ 682.503 The guarantee agreement.

(a)(1) To participate in the Federal GSL programs, a lender must have a guarantee agreement with the Secretary. The Secretary does not guarantee a loan unless it is covered by such an agreement.

(2) In general, under a guarantee agreement, the lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender in the Federal GSL programs. In return, the Secretary agrees to guarantee each eligible Federal GSL loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary may include in an agreement a limit on the duration of the contract and the number or amount of Federal GSL loans the lender may make or hold.

(b)(1) Except as otherwise approved by the Secretary, a guarantee agreement with a school lender limits the Federal GSL 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) The Secretary may, on a school-by-school basis, impose limits under paragraph (b)(1)(iii) 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.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1082)

§ 682.504 Issuance of Federal loan guarantees.

(a) A lender having a guarantee agreement 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 will 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 Federal GSL 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 § 682.513, the continuance of the guarantee is conditioned upon compliance by all holders of the loan with the regulations in this part.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1082)

§ 682.505 Insurance premium.

(a) *General.* The Secretary charges the lender an insurance premium for each Federal GSL Program loan that is guaranteed, except that no insurance premium is charged on a Federal Consolidation loan, or on a Federal SLS or Federal PLUS loan made under § 682.209(f).

(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) *FISL loans—insurance premium calculation.* (1) The insurance premium for FISL loans is calculated by—

(i) Counting the number of months beginning with the month following the month in which each disbursement on the loan is to be made 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)(1)(i) of this section by that obtained in paragraph (c)(1)(ii) of this section.

(2) If 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 and SLS loans—insurance premium calculation.* The insurance premium for a Federal PLUS or SLS loan is calculated by—

(1) Using the projected repayment period as a base;

(2) Amortizing the loan in equal monthly installments over the repayment period;

(3) Determining one-fourth of one percent of each monthly declining principal balance; and

(4) Computing the total of monthly amounts calculated under 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 if 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 at the time the premium is paid—

(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. If it does so, the insurance premium must be deducted from each disbursement of the loan in an amount proportionate to that disbursement's contribution to the premium amount.

(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.

(Authority: 20 U.S.C. 1077, 1078-1, 1078-2, 1078-3, 1079, 1082)

§ 682.506 Limitations on maximum loan amounts.

(a) The Secretary does not guarantee a FISL, Federal SLS, or Federal PLUS 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 period of enrollment for which the loan is intended less—

(i) The student's estimated financial assistance; and

(ii) The student's expected family contribution for that period, in the case of a FISL loan; or

(2) Result in an annual or aggregate loan amount in excess of the permissible annual and aggregate loan limits described in § 682.204.

(b) The Secretary does not guarantee a Federal Consolidation loan in an amount greater than that required to discharge loans eligible for consolidation under § 682.100(a)(4).

(Authority: 20 U.S.C. 1075, 1077, 1078-1, 1078-2, 1079, 1082, 1089)

§ 682.507 Due diligence in collecting a loan.

(a) *General.* (1) Except as provided in paragraph (4) of this section, a 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 if a borrower fails to make an installment payment when due.

(2) If two borrowers are liable for repayment of a Federal PLUS 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 receives notice that the borrower has entered the repayment period.

(4) In lieu of the procedures described in this section, a lender may use the due diligence procedures in § 682.411 in collecting a Federal Consolidation loan.

(b) *Initial delinquency.* If a borrower is delinquent in making a payment, the lender shall remind the borrower within 10 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—

(1) At least six more times at regular intervals during the remainder of the six-month period that started on the due date of the delinquent payment, for loans repayable in monthly installments; or

(2) At least eight more times during the remainder of the eight-month period

that started on the due date of the delinquent payment, for loans repayable in installments less frequent than monthly.

(c) *Skip-tracing assistance.* (1) If a lender does not know the borrower's current address, the lender shall promptly attempt to locate the borrower through normal commercial collection activities, 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 preclaims assistance from the Department of Education. This preclaims 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 to the lender.

(f) *Litigation.* (1) If a loan is in default and the lender determines that the borrower or an endorser has the ability to repay the loan, the lender may bring suit against the borrower or the endorser to recover the amount of the unpaid principal and interest, together with reasonable attorneys' fees, late charges, and court costs.

(2) Prior to bringing suit the lender shall—

(i) Obtain the Secretary's approval; and

(ii) Notify the borrower or endorser in writing that it has received the Secretary's approval to bring suit on the loan, and that, unless the borrower or endorser makes payments sufficient to bring the account out of default, the lender will seek a judgment under which

the borrower or endorser will be liable for payment of late charges, attorneys' fees, collection agency charges, court costs, and other reasonable collection costs, in addition to the unpaid principal and interest on the loan. The lender shall mail the notice to the borrower or endorser by certified mail, return receipt requested.

(3) The lender may bring suit if the borrower or endorser does not make payments sufficient to bring the account out of default within 10 days following the date of delivery of the notice described in paragraph (f)(2)(ii) of this section to the borrower or endorser indicated on the receipt.

(4) A lender may first apply the proceeds of any judgment against its attorneys' fees, court costs, collection agency charges and other reasonable collection costs, whether or not the judgment provides for these fees and costs.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1080, 1081, 1082, 1085)

§ 682.508 Assignment of a loan.

(a) *General.* A Federal GSL loan 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 loan assigned from one lender to another must be made subject to a blanket endorsement together with other loans being assigned, or must individually bear effective words of assignment. Either the blanket endorsement or the loan note must 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 that 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) *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.

(d) *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 that 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 regulations in this part.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1080, 1082)

§ 682.509 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 § 682.511(e)(3), if—

(1) In the case of a loan that was not made or originated by the school, the lender learns that, while the student was enrolled at the school, the school terminated its teaching activities for 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, report a borrower's loan as in default to any credit bureau or other third party.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1080, 1082)

§ 682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.

(a) The procedures in § 682.402(a) through (d) for determining whether a borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, apply to the Federal GSL programs.

(b) For purposes of this section, references to the "guarantee agency" in § 682.402 (b)(2) and (d)(5) shall be understood to refer to the Secretary.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1082, 1087)

§ 682.511 Procedures for filing a claim.

(a) *Filing a claim application.* (1) A lender may file a claim against the Secretary's guarantee on a Federal GSL 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 § 682.208(f) or § 682.509.

(iii) The borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, as determined by the lender in accordance with § 682.510.

(2) If a Federal PLUS loan was obtained by two eligible parents as co-makers, the reason for filing a claim must hold true for both parents.

(3) A lender may file a claim against the Secretary's guarantee only 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 do so, the Secretary denies the claim.

(b) *Documentation required for claims.* (1) The Secretary requires a lender to submit the following documentation with all claims:

(i) The original promissory note.

(ii) The loan application.

(iii) The repayment instrument, in the case of a FISL loan.

(iv) A payment history, as described in § 682.414(a)(3)(ii)(I), if any payments have been made.

(v) A collection history, as described in § 682.414(a)(3)(ii)(J).

(vi) A copy of the final demand letter, if required by § 682.507(e).

(vii) The original or a copy of all correspondence addressed to, from, or on behalf of the borrower that is relevant to the loan, whether that correspondence involved the original lender, a subsequent holder, or a servicing agent.

(viii) If applicable, evidence of the lender's requests to the Department of Education for skip-tracing assistance under § 682.507(c), and for preclaims assistance under § 682.507(d).

(ix) Any additional documentation that the Secretary determines is relevant to a claim.

(2) The documentation requirements for death, total and permanent disability, or bankruptcy claims in § 682.402(e)(1) apply to the Federal GSL programs. For purposes of this section, references to the "guarantee agency" in § 682.402(e)(1) mean the Secretary.

(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.

(d) *Bankruptcy subsequent to default.* 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.

(e) *Claim filing deadlines.* To obtain payment of a claim, a lender shall comply with the following deadlines:

(1) *Default claims.* Unless the lender has already filed suit against the borrower in accordance with § 682.507(f), it shall file a default claim on a loan with the Secretary within 90 days after a default has occurred on the loan. For a claim filed pursuant to § 682.208, the lender shall file a claim within 90 days following transmission of the final demand letter sent pursuant to § 682.411(e), if the borrower failed to comply with the terms of the letter within 30 days of the transmission.

(2) *Death, total and permanent disability, or bankruptcy claims.* The claim filing deadlines in § 682.402(e)(2) apply to the Federal GSL programs. For purposes of this section, references to the "guarantee agency" in § 682.402(e)(2) mean the Secretary.

(3) *Special condition claims.* In the case of a special condition claim filed pursuant to § 682.509, the lender shall file a claim with the Secretary within 45 days of the date the lender determines that the conditions set forth in § 682.509(a)(1) exist, or the date the Secretary directs that the claim be filed pursuant to § 682.509(a)(2).

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1080, 1082, 1087)

§ 682.512 Determination of amount payable on a claim.

(a) *Default claims.*—(1) *Amount payable.* 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 from August 19, 1972 through February 28, 1973, the amount payable on a valid claim is equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) From July 1 through August 18, 1972, or after February 28, 1973, the amount payable on a valid claim is equal to the unpaid balance of the principal and interest in accordance with paragraph (a)(2) of this section. The unpaid principal amount of the loan may include capitalized interest to the extent authorized by § 682.202(b).

(2) *Payment of interest.* If the guarantee covers unpaid interest, the payment of a valid claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period

provided for in § 682.511(e) for filing the claim.

(ii) 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.

(iii) During the period, after the claim is filed, that is required by the Secretary to approve the claim and to authorize payment or to return the claim to the lender for additional documentation.

(3) *Recovery of outstanding debts.* The Secretary may reduce the amount of loss due to the lender on a claim by the amount the Secretary determines is owed to the Secretary by the lender.

(b) *Death, total and permanent disability, or bankruptcy claim.* (1) In the case of a death or disability claim, the amount to be paid on a valid claim—

(i) Is equal to the unpaid balance of the original principal loan amount disbursed, if the loan was disbursed prior to December 15, 1968; or

(ii) Is calculated in accordance with § 682.402 (f)(2) and (f)(3) if the loan was disbursed after December 14, 1968.

(2) In the case of a bankruptcy claim, the amount of loss is calculated in accordance with § 682.402 (f)(2) and (f)(3).

(3) For purposes of this section, references to the "guarantee agency" in § 682.402(f)(3) mean the Secretary.

(c) *Special rules for a loan acquired by assignment.* 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.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1080, 1082, 1087)

§ 682.513 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 under § 682.215, 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 § 682.509 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 § 682.511(e); and

(iii) The current holder complies with the requirements for submitting documents with a claim as established in § 682.511(b).

(b) Except as provided in § 682.509, 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 or if it would not be payable as a default claim by the Secretary.

(c) The Secretary's determination of the amount of loss payable on a default claim under this part, 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.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1080, 1082)

§ 682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for Federal GSL loans.

(a) The Secretary may waive the right to recover or refuse to make an interest benefit, special allowance, or claim payment, or may permit a lender to cure certain defects in a specified manner if, in the Secretary's judgment, the best interests of the United States so require.

(b) To receive payment on a default claim or to resume eligibility to receive interest benefits and special allowance on a loan as to which a lender has committed a violation of the requirements of this part regarding due diligence in collection or timely filing of claims, the lender shall meet the conditions described in appendix C to this part.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1080, 1082)

§ 682.515 Records, reports, and inspection requirements for Federal GSL program lenders.

(a) *Records.* (1) A lender shall maintain current, complete, and accurate records of each loan that it holds, including but not limited to the records described in § 682.414(a)(3)(ii). The records must be maintained in a system that allows ready identification of each loan's current status.

(2) 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.

(3)(i) The lender may store the records specified in § 682.414(a)(3)(ii) (C) through (K) on microfilm or computer format.

(ii) The holder of the promissory note shall retain the original note and repayment instrument until the loan is fully repaid. At that time the holder shall return the original note and repayment instrument to the borrower, and retain copies for the prescribed period.

(iii) The lender shall retain the original or a copy of the loan application.

(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 cooperate with the Secretary, the Department of Education's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records required by applicable regulations and to any other pertinent books, documents, papers, and records; and

(2) Providing reasonable access to lender personnel associated with the lender's administration of the loan insurance programs for the purpose of obtaining relevant information. Examples of restrictions that would not result in reasonable access to personnel include the following:

(i) Limiting the extent or type of relevant information to be supplied.

(ii) Requiring the presence of lender representatives during personnel interviews.

(iii) Requiring that personnel interviews be recorded, for the records of the lender.

(Authority: 20 U.S.C. 1077, 1078-1, 1078-2, 1078-3, 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 GSL programs.

(a) *General.* Participation of a school in the GSL programs means that the school's students are eligible to receive

GSL loans. To participate in the GSL programs, a school must—

(1) Demonstrate to the satisfaction of the Secretary that it meets the elements of basic eligibility as an institution of higher education or a vocational school as defined in 34 CFR part 600 through certification by the Secretary; and

(2) Enter into a written program participation agreement with the Secretary that is signed by a duly authorized official of the school on a form approved by the Secretary.

(b) *Program participation agreement.* The school, in the program participation agreement, shall promise to comply with the applicable provisions of—

(1) The Act and the regulations in this part;

(2) The Student Assistance General Provisions, 34 CFR part 668; and

(3) The Institutional Eligibility regulations, 34 CFR part 600.

(c) *Appeal of denial or limitations.* (1) If the Secretary denies a request for an agreement or approves only limited participation in the GSL programs by a school, the Secretary's response includes the reason for the decision. The Secretary also provides the school with an opportunity 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 is required to comply with the provisions of the regulations except only to the extent that the Secretary has stated in these regulations or in other official publications or documents that such schools do not have to so comply.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1094)

§ 682.601 Rules for a school that makes or originates loans.

(a) *General.* To make or originate loans under the GSL programs:

(1) The school shall employ full-time at least one person whose responsibilities are limited to the administration of financial aid programs for students attending the school.

(2) The school must not be a correspondence school.

(3) The school shall not make or originate loans that would be outstanding to or on behalf of more than 50 percent of the undergraduates in attendance at that school on at least a half-time basis, unless the Secretary

waives this rule pursuant to paragraph (b) of this section.

(4) The school shall 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.

(b) *Waiver of the 50 percent lending limit.* A school may request the Secretary to waive the 50 percent lending limit described in paragraph (a)(3) of this section if adherence to that limit would create a substantial hardship for the school's present or prospective students. The Secretary determines whether to grant the school a waiver after considering, among other factors—

(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 Stafford, SLS, or PLUS 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.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1085)

§ 682.602 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, and provide it to a prospective student prior to the student's enrollment.

(b) The school shall include in its schedule—

(1) A due date for each lesson in the course;

(2) A description of the options, if any, available to the student for altering the sequence of lesson submissions from the sequence in which they are otherwise required to be submitted;

(3) The date by which the course is to be completed; and

(4) The date by which any resident training must commence, and the period of time within which that resident training must be completed.

(c) The school's schedule must conform to the requirements set forth in the definition of "vocational school" in 34 CFR part 600.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1085)

§ 682.603 Certification by a participating school in connection with a loan application.

(a) A school shall certify that the information it provides in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made on the application by the student.

(b) The information to be provided by the school about the borrower making application for the loan 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 Stafford loan, the student's eligibility for interest benefits, as determined in accordance with § 682.301.

(c) Beginning not later than 60 days after a school receives notice from the Secretary that its fiscal year default rate, as defined in 34 CFR part 668, exceeded 30 percent for any fiscal year after fiscal year 1986, and continuing until the school is notified by the Secretary that its rate was equal to or less than 30 percent for a subsequent fiscal year, a school shall delay certification of the loan application of any student applying for his or her first Stafford or SLS loan for attendance at the school, so that, in compliance with § 682.604, the school ensures the student's endorsement of the check for (or written approval for the release of funds disbursed by electronic funds transfer representing) the first disbursement of the loan, the delivery of any loan proceeds to such a borrower, and the crediting of any proceeds to the borrower's account, do not occur until the borrower has attended the institution for at least 30 days during the period of enrollment for which the loan was made.

(d) A school may not certify a Stafford, PLUS, or SLS loan application,

or combination of loan applications, for a loan amount that—

(1) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts set forth in § 682.204; or

(2) Exceeds the student's estimated cost of attendance, less—

(i) The student's estimated financial assistance for that period, and

(ii) In the case of a Stafford loan that is eligible for interest benefits, the borrower's expected family contribution for that period;

(e) Subject to paragraph (c) of this section, a school may not refuse to certify an application on behalf of an eligible borrower for a loan from a lender that participates in the GSL programs.

(f) A school may certify an application for a loan only for a period of enrollment corresponding to—

(1) An academic year, as defined in 34 CFR part 668;

(2) The length of the program for a program of less than two academic years in length; or

(3) An academic period of less than one academic year established by the school (such as a semester, trimester or quarter), that is used by the school as the basis for billing all of its students for institutional charges.

(g) A school may not assess the borrower a fee for the completion or certification of any GSL loan application.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1085, 1094)

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

(a) *Purpose.* This section establishes rules governing a school's processing of a borrower's Stafford or SLS loan proceeds, and for counseling borrowers. The school shall also comply with any rules for processing a loan contained in 34 CFR part 668.

(b) *General.* (1) Except in the case of a PLUS Program loan to a parent borrower, or a Stafford or SLS loan to a student attending a school not located in a State, the proceeds of a Stafford or SLS loan must be sent directly to the school by the lender.

(2)(i) Except in the case of a late disbursement under paragraph (e) of this section or as provided in paragraph (b)(2)(iii) or (iv) of this section, a school may release the proceeds of any disbursement of a loan only to a student whom the school determines, after the school receives those proceeds from the lender, has continuously maintained eligibility in accordance with the provisions of § 682.201, from the

beginning of the loan period certified by the school on the student's loan application.

(ii) In the event a student notifies the school on or before the first day of classes that he or she will be delaying attending school for a period of time and commences attendance less than 30 days after the date the student first so notifies the school, the school may consider that student to have maintained eligibility for the loan from the first day of the period of enrollment for which the loan is intended.

(iii) If, after the proceeds of the first disbursement are transmitted to the student, the student becomes ineligible due solely to the school's loss of eligibility to participate in the Title IV programs, the school may transmit the proceeds of the second or subsequent disbursement to the borrower as permitted by 34 CFR part 668.

(iv) If, prior to the transmittal of the proceeds of a disbursement to the student, the student temporarily ceases to be enrolled on at least a half-time basis, the school may transmit the proceeds of that disbursement and any subsequent disbursement to the student if the school subsequently determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(c) *Processing of the loan proceeds by the school.* (1) Except as provided in paragraph (c)(3) of this section, if a school receives a borrower's loan proceeds, it shall hold the funds until the student has registered for classes for the period of enrollment for which the loan is intended, and then follow the procedures in paragraph (c)(2) of this section.

(2)(i) After the student has registered, if the loan proceeds are disbursed by means of a check that requires the endorsement only of the student, the school shall deliver the check to the student, subject to paragraph (d)(2) of this section, within 45 days of the school's receipt of the check.

(ii) If the loan proceeds are disbursed by means of a check that requires the endorsement of both the student and the school, the school shall—

(A) In the case of the initial disbursement on a loan, endorse the check on its own behalf and, after the student has registered, deliver it to the student, subject to paragraph (d)(2) of

this section within 45 days of the school's receipt of the check; or

(B) Obtain the student's endorsement on the check, endorse the check on its own behalf and, after the student has registered, credit the student's account, in accordance with paragraph (d)(1) of this section, and deliver the remaining loan proceeds to the student, subject to paragraph (d)(2) of this section, within 45 days of receipt.

(3) If the loan proceeds are disbursed by electronic transfer to an account of the school on behalf of a borrower in accordance with § 682.207(b)(1)(ii)(B), the school shall, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended except for a student who receives the initial counseling described in paragraph (f) of this section in person or by videotape, obtain the student's written authorization for the release of the funds, and, after the student has registered, either—

(i) Deliver the proceeds to the student subject to paragraph (d)(2) of this section not later than 45 days after the student's registration; or

(ii) Credit the student's account in accordance with paragraph (d)(1) of this section, notify the student in writing that it has so credited that account, and deliver the remaining loan proceeds to the student, subject to paragraph (d)(2) of this section, not later than 45 days after the student's registration.

(4) A school shall not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in § 682.605(c).

(d) *Applying the loan proceeds.* (1)(i) For purposes of paragraphs (c)(2)(ii)(B) and (c)(3)(ii) of this section, a school may not credit a registered student's account earlier than three weeks before the first day of classes of the period of enrollment for which the loan is intended.

(ii)(A) The school may credit a registered student's account with only those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students incurring those costs have been billed.

(B) The school, as a fiduciary for the benefit of the guarantee agency, the Secretary, and the student, shall hold any additional loan proceeds that the student requests in writing that the school retain in order to assist the student in managing his or her loan funds for the remainder of the academic year. The school shall deposit these funds in a designated trust account and may not commingle them with other funds or use them for any other purpose.

(2)(i) For purposes of paragraphs (c)(2)(i), (c)(2)(ii), and (c)(3) of this section, an institution may not deliver loan proceeds to a registered student earlier than 10 days before the first day of classes of the period of enrollment for which the loan is intended.

(ii) Notwithstanding the 45-day deadlines set forth in paragraph (c)(2) of this section, in the case of a second or subsequent disbursement on a multiply disbursed loan, the school may hold the loan proceeds until the beginning of the next scheduled semester, trimester, quarter, or similar division in the academic period within the period of enrollment for which the loan is intended, or, in the case of a school that does not use semesters, trimesters, quarters, or similar divisions, until the beginning of the second half of the period of enrollment for which the loan was intended, whereupon the school shall transmit the loan proceeds to the student and, if applicable, the student's account, within 30 days thereafter.

(3) If a student does not register for the period of enrollment for which the loan was made, the school shall return the loan proceeds to the lender by the latter of—

(i) Thirty days after the first day of that period of enrollment; or

(ii) In the case of a student that provides timely notice to the school of intent to register late in accordance with § 682.604(b)(2)(ii), 60 days after the date of that notice.

(4) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is intended, or fails to attend school during that period, or the school is unable for any other reason to document that the student attended school during that period, the school shall, within 30 days of the period described in § 682.607(c) of this part, notify the lender of the student's withdrawal, expulsion, or failure to attend school, if applicable, and return to the lender—

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) The amount of payments made directly by the student to the school, to the extent that they do not exceed the amount of any loan proceeds delivered by the school to the student.

(e) *Processing a late disbursement.* (1) For the purpose of this paragraph, a disbursement is late if the lender disburses the student's loan proceeds either—

(i) After the end of the period of enrollment for which the loan was made; or

(ii) Before the end of the period of enrollment 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) A school shall follow the procedures described in paragraphs (e)(3)–(6) of this section in processing a late disbursement, except that, notwithstanding those provisions, a school may not—

(i) Deliver the proceeds of a late disbursement to a student borrower whose last recorded day of attendance is earlier than the 30th day of the period of enrollment for which the loan is intended, if the loan was subject to delayed certification under § 682.603(c); or

(ii) Deliver to a borrower any portion of the proceeds of a late disbursement that, under 34 CFR part 668, is considered to be awarded for a payment period in which the student was not enrolled on at least a half-time basis at the school.

(3) If a lender makes a disbursement after the earlier of the dates set forth in paragraph (e)(1) of this section, and the lender has informed the school that its late disbursement policy prohibits a late disbursement described in § 682.207(d)(2), the school shall return the loan proceeds to the lender within 30 days after its determination that one of the conditions described in paragraph (e)(1) of this section exists. The school shall send a notice to the lender with the loan proceeds informing the lender as to which of the conditions described in paragraph (e)(1) of this section exists.

(4) If a disbursement is received by the school within 30 days after the earlier of the dates described in paragraph (e)(1) of this section, the lender has not informed the school that the lender's policy prohibits a late disbursement under § 682.207(d)(2)(i), and the total amount of the disbursement and all prior disbursements on the loan does not exceed that portion of the student's cost of attendance for the period of enrollment completed by the student before the earlier of the dates described in paragraph (e)(1) of this section, the school shall deliver the borrower's loan proceeds to the borrower in accordance with this section. If the total amount of the late disbursement and all prior disbursements is greater than that portion of the borrower's cost of attendance, the school shall—

(i) Return the borrower's loan proceeds to the lender with a notice certifying—

(A) The beginning and ending dates of the period during which the borrower

was enrolled at the school as an eligible student during the loan period; and

(B) The borrower's correct financial need for the loan for that period of enrollment; and

(ii) Advise the borrower that the lender may redispurse funds for the borrower's cost of attendance incurred before the earlier of the dates described in paragraph (e)(1) of this section.

(5)(i) If a late disbursement is received by the school within 31–60 days after the earlier of the dates described in paragraph (e)(1) of this section, the lender has not informed the school that its late disbursement policy prohibits a late disbursement described in § 682.207(d)(2)(iii), and the total amount of the late disbursement and all prior disbursements does not exceed the student's cost of attendance for the period of enrollment completed by the student before the earlier of the dates described in paragraph (e)(1) of this section, the school shall deliver the borrower's loan proceeds in accordance with this section after it certifies in writing to the lender the information in paragraph (e)(4)(i) of this section.

(ii) If the total amount of a late disbursement described in paragraph (e)(5)(i) of this section and all prior disbursements exceeds the borrower's cost of attendance incurred before that date, the school shall follow the procedures described in paragraphs (e)(4)(i) and (ii) of this section.

(6)(i) If a late disbursement is received by the school within 61–90 days after the earlier of dates described in paragraph (e)(1) of this section, the lender has not informed the school that its late disbursement policy prohibits a late disbursement described in § 682.207(d)(2)(iv) and the total amount of the late disbursement and all prior disbursements does not exceed the borrower's cost of attendance incurred before that date, the school shall—

(A) Send a notice to the lender certifying the information in paragraph (e)(4)(i) of this section;

(B) Advise the borrower that the lender may choose to permit a late disbursement, if the guarantee agency, after reviewing the documentation described in paragraph (e)(4)(i) of this section, approves a late disbursement; and

(C) Upon receiving notice from the lender that the late disbursement has been approved by the guarantor, deliver the borrower's loan proceeds in accordance with this section.

(ii) If the total amount of a late disbursement described in paragraph (e)(6)(i) of this section and all prior disbursements exceeds the borrower's cost of attendance incurred before the

earlier of the dates described in paragraph (e)(1) of this section, the school shall—

(A) Return the loan proceeds to the lender with a notice certifying the information in paragraphs (e)(4)(i) (A) and (B) of this section; and

(B) Advise the borrower of the matters described in paragraph (e)(6)(i)(B) of this section.

(iii) If the redispursed loan funds are accompanied by a notice from the lender that the redispursed late disbursement has been approved by the guarantor, deliver the borrower's loan proceeds in accordance with this section.

(f) *Initial counseling.* (1) Except in the case of a correspondence school, a school shall conduct counseling with each Stafford and SLS borrower, either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to its release of the first disbursement of the proceeds of the first Stafford or SLS loan made to the borrower for attendance at the school, and shall ensure that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. A correspondence school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iii) In the case of a student borrower of a Stafford or SLS loan (other than a loan made or originated by the school), emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(g) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each Stafford and SLS borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge, or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling the school must—

(i) Provide the borrower with general information with respect to the average indebtedness of the students who have obtained Stafford or SLS program loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (e.g., loan consolidation, refinancing);

(iv) Suggest to the borrower debt management strategies that the school determines would best facilitate repayment by the borrower; and

(v) Include the matters described in paragraph (f)(2) of this section.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (f) through (g) of this section as to that borrower.

(h) *Treatment of excess loan proceeds.* If, after a school certifies a loan application, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which a GSL loan was made that exceeds the student's estimated cost of attendance, or in the case of a Stafford loan subject to payment of interest benefits under § 682.301, the student's financial need, the school shall—

(1) If no loan proceeds have been credited to the student's account or delivered to the student, immediately return to the lender any proceeds in its possession and provide the lender with a written statement describing the reason for the return of funds, if any, and setting forth the student's revised cost of attendance or financial need.

(2) If any proceeds of the first disbursement of a multiply-disbursed

loan have been credited to the student's account or delivered to the student prior to the school's learning of the excess aid, promptly provide the lender with a written statement setting forth the student's revised cost of attendance or financial need, and directing the lender to reduce the second disbursement by the amount of the excess;

(3) If the entire loan proceeds have been credited to the student's account or delivered to the student, attempt to eliminate the excess by reducing the amount of other financial aid, if any, that—

(i) Is to be delivered to the student; or

(ii) Has been or is to be credited to the student's account.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1082, 1085, 1092, 1094)

§ 682.605 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part for the purpose of reporting to the lender the date that the student has withdrawn from the school, and for determining when a refund must be paid under § 682.606 of this part.

(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 the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal, as determined by the school.

(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 the date of the last lesson submitted. However, if the student establishes in writing, within 60 days of the date of the last lesson submitted, 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 may not grant the student more than one restoration to in-school status on this basis.

(4) For the purpose of a school's reporting to a lender, a student's withdrawal date is the month and year of the withdrawal date determined

under paragraphs (b)(1) through (b)(3) of this section.

(c) *Leaves of absence.* A student who has been absent from school and has been granted a leave of absence by a school, in accordance with this paragraph, is not considered to have withdrawn from school for purposes of paragraph (a) of this section. In any twelve-month period, 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 leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a written recommendation from a physician for a leave of absence longer than 60 days.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1094)

§ 682.606 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, room and board and other charges, to a student who received a Stafford or SLS Program loan, or whose parent received a PLUS Program loan on behalf of the student, if the student—

(i) Does not register for a period of enrollment for which the loan was intended; or

(ii) Withdraws or otherwise fails to complete a period of enrollment for which the loan was made.

(2) The school shall provide a written statement containing its refund policy, together with examples of the application of this policy, to a prospective student prior to the student's 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, but the school shall pay to the lender the portion of a refund allocable to the student's Stafford, SLS, or PLUS

program loans under 34 CFR part 668 whether or not the student follows those procedures. 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—

(1) That policy provides for a refund of at least the larger of the amount provided under—

(i) The requirements of applicable State law; or

(ii)(A) The specific refund standards established by the school's nationally recognized accrediting agency and approved by the Secretary; or

(B) 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; and

(2) Within 60 days after the school's receipt of notice from the Secretary that its fiscal year default rate, as defined in 34 CFR part 668, exceeded 30 percent for any fiscal year after 1986, and continuing until the Secretary notifies the school that its rate was equal to or less than 30 percent for a subsequent fiscal year, the school's policy conforms with the *pro rata* refund calculation described in paragraph (c) of this section or the requirements of paragraph (b)(1) of this section, whichever results in the larger refund amount. However, the provisions of paragraph (b)(2) of this section do not apply to the school's refund policy for any student whose last recorded day of attendance is after the earlier of—

(i) The halfway point (in time) for the student's program of study; or

(ii) Six months after the commencement of the student's program.

(c) (1) "*Pro rata* refund," as used in this section, means a refund by the school of not less than that portion of the tuition, fees, room and board, and other charges assessed the student by the school equal to the portion of the period of enrollment for which the student has been charged that remains on the last recorded day of attendance by the student, rounded downward to the nearest 10 percent but never less than 10 percent, of that period, less any unpaid charges owed by the student for the period of enrollment for which the student has been charged, and less—

(i) A reasonable administrative fee not to exceed the lesser of 5 percent of the tuition, fees, room and board, and other charges assessed the student, or \$100; and

(ii) Charges authorized by paragraph (c)(5) of this section.

(2) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in credit hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of weeks comprising the period of enrollment for which the student has been charged into the number of week remaining in that period as of the last recorded day of attendance by the student.

(3) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in clock hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student.

(4) For purposes of paragraph (c)(1) of this section, in the case of a correspondence program, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the total number of such lessons not submitted by the student.

(5) A school may require that equipment issued to the student by the school that the school would reissue to another student be returned by a student once the school determines that the student has withdrawn, if the school makes a written request for that return that is received by the student within 10 days of the date of that determination. If the school notified the student in writing prior to enrollment that return of the specific equipment involved would be required if the student withdrew, the school may deduct from the refund owed under this section the documented cost to the school of that equipment if the student fails to return it within 10 days of the date of the student's receipt of the request from the school. However, the school may not delay its payment of a refund to a lender under § 682.607 by reason of this process.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082, 1094)

§ 682.607 Payment of a refund to a lender.

(a) *General.* By applying for a GSL 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 GSL 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, if the school pays a refund to a lender on behalf of that student.

(b) *Allocation of refund.* In determining the portion of a student's refund for an academic period that is allocable to a GSL loan received by the borrower for that academic period, the school shall follow the procedures established in 34 CFR part 668 for allocating a refund that is payable.

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days after the earliest of the—

(i) Student's withdrawal as determined under § 682.605 (b)(1)(i) or (b)(3);

(ii) Expiration of the academic term (e.g., semester, quarter, or trimester) in which the student withdrew, as determined under § 682.605(b)(1)(ii);

(iii) Expiration of the period of enrollment for which the loan was made; or

(iv) The date on which the school makes a determination that the student has withdrawn under § 682.605(b)(1)(ii); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 682.605(c), within 30 days after the last day of that leave of absence.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1094)

§ 682.608 Termination of a school's lending eligibility.

(a) *General.* The Secretary may terminate 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 may terminate a school's eligibility to make loans if, at the end of each of the two most recent consecutive Federal fiscal years for which data are 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 GSL 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 reduce the school's loan default rate significantly 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 notifies the school of the proposed termination and provides an

opportunity for a hearing before the Secretary terminates the lending eligibility of a school under this section.

(2) The Secretary or his designee 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; 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 an oral hearing to show why the school's lending eligibility should not be terminated.

(3) If the school does not request an oral 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 an oral 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 designated official 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 until it has entered into a new guarantee agreement with the Secretary; 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 determination required by this section by—

(1) Treating all of the schools as one school; or

(2) Treating each school on an individual basis.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1085)

§ 682.609 Remedial actions.

(a) The Secretary may require a school to repay funds paid to other program participants by the Secretary. The Secretary may also require a school to purchase from the holder of a GSL loan that portion of the loan that is unenforceable, that the borrower was ineligible to receive, or for which the borrower was ineligible to receive interest benefits contrary to the school's certification, and to make arrangements acceptable to the Secretary for reimbursement of the amounts the Secretary will be obligated to pay to program participants respecting that loan in the future. The repayment of funds and purchase of loans may be required if the Secretary determines that the payment to program participants, the unenforceability of the loan, or the disbursement of loan amounts for which the borrower was ineligible or for which the borrower was ineligible for interest benefits, resulted, in whole or in part, from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to another party, or to purchase loans from a holder in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds or repurchase of loans by a school, if, in the Secretary's judgment, the best interest of the United States so requires.

(d) The Secretary may impose a fine or take an emergency action against a school, or limit, suspend, or terminate a school's participation in the GSL programs, in accordance with 34 CFR part 668, subpart G.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1094)

§ 682.610 Administrative and fiscal 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 the regulations in this part and in 34 CFR part 668 in order to—

(i) Protect the rights of student and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with specific requirements in those regulations; and

(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 Stafford, SLS, and PLUS 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 sources and amounts of financial assistance available to the student that the school used in determining the student's estimated financial assistance for the loan period, in accordance with § 682.200.

(6) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(7) The amount and basis of its calculation of any refund paid to or on behalf of a student;

(8) In the case of a Stafford loan for which the borrower applies for interest benefits under § 682.301, the data used to determine the student's expected family contribution, and the corresponding certification by the school to the lender;

(9) In the case of a Stafford or SLS loan—

(i) The date the school received each loan disbursement and the amount of that disbursement;

(ii) The date the school endorsed each loan check; and

(iii) The date or dates of transmittal of the loan proceeds by the school to the student;

(10) The student's job placement, if known; and

(11) Any other matter a record of which is required for the school to be able to document its compliance with applicable requirements with respect to the loan.

(c) *Student status confirmation reports.* A school shall—

(1) Upon receipt of a student status confirmation report form from the Secretary or a similar student status confirmation report form from any

guarantee agency, complete and return that report, within 30 days of receipt, to the Secretary or the guarantee agency, as appropriate; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary or the guarantee agency within the next 60 days, notify the lender within 30 days—

(i) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who enrolled at that school, but who has ceased to be enrolled on at least a half-time basis;

(ii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who has been accepted for enrollment at that school, but who failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a full-time student who 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 the regulations in this part for five years following the last day of the period for which the loan was intended;

(2) Shall keep for five years after completion, copies of reports and other forms used by the school relating to the Stafford, SLS, or PLUS programs;

(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 the regulations in this part and for access by the Secretary or the Secretary's authorized representatives to those records and reports for inspection and copying; and

(4) May keep records and copies of reports on microfilm or in computer format.

(e) *Inspection requirements.* Upon request, a school or its agent shall cooperate with the Secretary, any guarantee agency, the Department of Education's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records required by the applicable regulations and to any other pertinent books, documents, papers and records; and

(2) Providing reasonable access to institutional personnel associated with the institution's administration of the title IV, HEA programs for the purpose of obtaining relevant information.

Examples of restrictions that would not result in reasonable access to personnel include the following:

(i) Limiting the extent or type of relevant information to be supplied.

(ii) Requiring the presence of institutional representatives during personnel interviews.

(iii) Requiring that personnel interviews be recorded, for the records of the institution.

(f) *Information sharing.* (1) Upon request of the Secretary, a lender, or a guarantee agency, a school shall promptly provide a lender or guarantee agency with any information the school has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(2) If the school discovers that a student who has received a Stafford or SLS loan has changed his or her permanent address, the school shall notify the holder of the loan within 30 days thereafter, either directly or through the guarantee agency.

(g) *Reports to the Secretary.* With respect to each program for which a disclosure to a prospective student is required by 34 CFR 668.44 to be made using a form set forth in appendix A, part 668, a school shall, between October 1 and December 31 of each year, transmit to the Secretary—

(1) A completed copy of that form containing the most recent data required by part 668 to be included on the form; and

(2) Information showing the total amount of charges for tuition, fees, equipment, books, and supplies for the program.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082, 1094)

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility and Disqualification of Lenders and Schools

§ 682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination by the Secretary of the eligibility of an otherwise eligible lender to participate in the GSL programs. The regulations in this subpart apply to a lender that violates any statutory provision governing the GSL programs or any regulations, special arrangements, agreements, or limitations prescribed under those programs. These regulations apply to lenders that participate only in a guarantee agency program as well as to lenders that participate in the Federal GSL programs. These regulations also govern the disqualification of a lender or

school from participation in the GSL programs under sections 432(h)(2) and (h)(3) of the Act.

(b) This subpart does not apply—

(1) To a determination that an organization fails to meet the definition of "eligible lender" in section 435(d)(1) of the Act or the definition of "lender" in § 682.200, for any reason other than a violation of the prohibitions set forth in section 435(d)(5) of the Act;

(2) To a school's loss of lending eligibility under § 682.608; or

(3) To an 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 or schools under other authorities.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.701 Definitions of terms used in this subpart.

The following definitions apply to terms 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 disqualification or limitation, suspension, or termination proceedings.

Disqualification. The removal of a lender's or school's eligibility for an indefinite period of time by the Secretary on review of limitation, suspension, or termination action taken against the lender or school by a guarantee agency.

Limitation. The continuation of a lender's eligibility subject to compliance with special conditions established by agreement with the Secretary or a guarantee agency, or imposed 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—

(a) By a guarantee agency; or

(b) By the Secretary, based on an action taken by the Secretary, or a designated Departmental official under § 682.706.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.702 Effect on participation.

(a) Limitation, suspension, or termination proceedings by the Secretary 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) A limitation imposes on a lender—

(1) A limit on the number or total amount of loans that a lender may make, purchase, or hold under the GSL programs;

(2) A limit on the number or total amount of loans a lender may make to, or on behalf of, students at a particular school under the GSL programs; or

(3) Other reasonable requirements or conditions, including those described in § 682.709.

(c) 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 that date. The Secretary may also prohibit the lender from making further disbursements on a loan for which a guarantee commitment has already been issued.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section if 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; and

(2) Show that the violation has been corrected or 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 GSL programs; or

(2) The informal compliance procedure will not result in correction of the alleged violation.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.704 Emergency action.

(a) The Secretary, or a designated Departmental official, may take emergency action to stop the issuance of guarantee commitments by the Secretary and guarantee agencies, and to withhold payment of interest benefits and special allowance 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, parent borrowers, 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, 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) Upon the written request of the lender, the Secretary may provide the lender with an opportunity to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.705 Suspension proceedings.

(a) **Scope.** (1) A suspension by the Secretary removes a lender's eligibility under the GSL programs, and the Secretary does not guarantee or reinsure a new loan made by the lender during 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 Departmental 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 an oral hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender to correct voluntarily any alleged violations.

(c) *Hearing.* (1) If the lender does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed suspension; or

(ii) Determines that the proposed suspension should be implemented and notifies the lender of the effective date of the suspension.

(2) If the lender requests an oral 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 oral 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 automatically reviews the initial decision of the presiding officer. The Secretary notifies the lender of the 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.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.706 Limitation or termination proceedings.

(a) *Notice.* (1) The Secretary, or a designated Departmental 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 an oral hearing or written material showing why the limitation or termination should not take effect;

(vii) Asks the lender to correct voluntarily any alleged violations; and

(viii) Notifies the lender that the Secretary may collect any amount owed by means of offset against amounts owed to the lender by the Department and other Federal agencies.

(b) *Hearing.* (1) If the lender does not request an oral hearing but submits written material, the Secretary, or a designated Departmental 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 presented at or before 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.

(c) Notwithstanding the other provisions of this section, if a lender or a lender's owner or officer is convicted of, or pled *nolo contendere* or guilty to, a crime involving the unlawful acquisition, use, or expenditure of GSL funds, that conviction or guilty plea is automatic grounds for terminating the lender's eligibility to participate in the GSL programs.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender or designated Departmental official appeals the initial decision of the presiding officer in accordance with § 682.706(b)(9)—

(1) An appeal is made to the Secretary by the submission to the Secretary and the opposing party within 15 days of the date of the appealing party's receipt of the presiding officer's decision, of a brief or other written material explaining why the decision of the presiding officer should be overturned or modified; and

(2) The opposing party shall submit its brief or other written material to the Secretary and the appealing party within 15 days of its receipt of the brief or written material of the appealing party.

(b) The Secretary issues a final decision affirming, modifying, or reversing the initial decision, including a statement of the reasons for the Secretary's decision.

(c) Any party submitting material to the Secretary shall provide a copy to each party that participates in the hearing.

(d) 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 GSL programs, students, or parents.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.708 Evidence of mailing and receipt dates.

(a) All mailing dates and receipt dates referred to in this subpart must be 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.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental 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, without further notice or opportunity for a hearing, proceed to offset or arrange for another Federal agency to offset the amount due against any interest

benefits, special allowance, or other payments due to the lender.

(Authority: 20 U.S.C. 1080, 1082, 1094)

§ 682.710 Removal of limitation.

(a) A lender may request removal of a limitation imposed by the Secretary in accordance with the regulations in this subpart 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 GSL programs, 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.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.711 Reinstatement after termination.

(a) A lender whose eligibility has been terminated by the Secretary in accordance with the regulations in this subpart 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 668 may not be considered for reinstatement as a 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 allows 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 GSL programs 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.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guarantee agency against a lender participating in the GSL programs. Upon completion of the Secretary's review, the Secretary notifies the guarantee agency and the lender of the decision by mail.

(b) The Secretary disqualifies a lender from participation in the GSL programs if—

(1) The lender waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(U) of the Act.

(c) (1) Disqualification by the Secretary continues until the Secretary is satisfied that—

(i) The lender has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the lender will comply with the requirements of the GSL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guarantee agency shall refer a limitation, suspension, or termination action that it takes against a lender to the Secretary within 30 days of its final decision to limit, suspend, or terminate the lender's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a lender's eligibility only when the guarantee agency's action is final, *i.e.*, the lender is not entitled to any further appeals within the guarantee agency. A subsequent court challenge to an agency's action does not, by itself, affect the timing of the Secretary's review.

(f) The guarantee agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guarantee agency's letter initiating the action.

(2) The lender's response.

(3) The transcript of the agency's hearing.

(4) The decision of the agency's hearing officer.

(5) The decision of the agency on appeal from the hearing officer's decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or lender review report that led to the action.

(8) All other documents relevant to the action.

(g) The guarantee agency's referral notice to the Secretary regarding a limitation or suspension action must include—

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h) (1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(U) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(U) of the Act and, if applicable, one or more of the circumstances described in paragraph (j) of this section exists, the Secretary notifies the lender that the Secretary will review the guarantee agency's action to determine whether to disqualify the lender from further participation in the GSL programs, and affords the lender an opportunity—

(i) To waive the review and be disqualified immediately; or

(ii) To request a hearing on the record.

(i) The Secretary's review of the guarantee agency's action is limited to—

(1) Whether the agency action was taken in reliance on—

(A) Agency requirements that were no more onerous than requirements for

initial and continuing participation in the Federal Insured Student Loan Program in effect on January 1, 1985; or

(B) A State constitutional prohibition affecting the eligibility of the lender; and

(2) Whether the agency action was taken in accordance with procedures that were substantially the same as procedures applicable to the limitation, suspension, termination of eligibility of a lender under the Federal Insured Student Loan Program.

(j) In the case of an action by an agency that limits or suspends a lender's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The lender has not corrected the violation. A violation is corrected if, among other things, the lender has fully satisfied all liabilities incurred by the lender as a result of the violation, including its liability to the Secretary, or the lender has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The lender has not provided assurances satisfactory to the agency of future compliance with program requirements; or

(3) The guarantee agency determines that special circumstances warrant disqualification of the lender from the GSL programs for a significant period, notwithstanding the agency's decision not to terminate the lender's eligibility to participate in the agency's program.

(Authority: 20 U.S.C. 1082)

§ 682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guarantee agency against a school participating in the GSL programs. Upon completion of the Secretary's review, the Secretary notifies the guarantee agency and the school of the decision by mail.

(b) The Secretary disqualifies a school from participation in the GSL programs if—

(1) The school waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(T) of the Act.

(c) (1) Disqualification by the Secretary continues until the Secretary is satisfied that—

(i) The school has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the school will comply with the requirements of the GSL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guarantee agency shall refer a limitation, suspension, or termination action that it takes against a school to the Secretary within 30 days of its final decision to limit, suspend, or terminate the school's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a school's eligibility only when the guarantee agency's action is final, *i.e.*, the institution is not entitled to any further appeals within the guarantee agency. A subsequent court challenge to an agency's action does not, by itself, affect the timing of the Secretary's review.

(f) The guarantee agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guarantee agency's letter initiating the action.

(2) The school's response.

(3) The transcript of the agency's hearing.

(4) The decision of the agency's hearing officer.

(5) The decision of the agency on appeal from the hearing officer's decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or program review report that led to the action.

(8) All other documents relevant to the action.

(g) The guarantee agency's referral notice to the Secretary regarding a limitation or suspension action must include—

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h) (1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(T) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(T) of the Act, and, if applicable, one or more of the circumstances described in paragraph (j) of this section exists, the Secretary notifies the school that the Secretary will review the guarantee agency's action to determine whether to disqualify the school from further participation in the GSL programs, and affords the school an opportunity—

(i) To waive the review and be disqualified immediately; or

(ii) To request a hearing on the record.

(i) The Secretary's review of the guarantee agency's action is limited to—

(1) Whether the agency action was taken in reliance on—

(i) Agency requirements that were no more onerous than requirements for initial and continuing participation in the Federal Insured Student Loan Program in effect on January 1, 1985; or

(ii) A State constitutional prohibition affecting the eligibility of the school; and

(2) Whether the agency action was taken in accordance with procedures that were substantially the same as procedures applicable to the limitation, suspension, or termination of eligibility of a school under the Federal Insured Student Loan Program.

(j) In the case of an action by an agency that limits or suspends a school's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The school has not corrected the violation. A violation is corrected if, among other things, the school has fully satisfied all liabilities incurred by the school as a result of the violation, including its liability to the Secretary, or the school has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The school has not provided assurances satisfactory to the agency of future compliance with program requirements; or

(3) The guarantee agency determines that special circumstances warrant disqualification of the school from the GSL programs for a significant period, notwithstanding the agency's decision not to terminate the school's eligibility to participate in the agency's program.

(Authority: 20 U.S.C. 1082, 1085, 1094)

Subpart H—Special Allowance Payments on Loans Made or Purchased with Proceeds of Tax-Exempt Obligations

§ 682.800 Special allowance payments for loans financed by proceeds of tax-exempt obligations.

(a) The Secretary pays a special allowance on a loan that was made or acquired with the proceeds of an obligation exempt from taxation under section 103 of the Internal Revenue Code of 1986 and is held by or on behalf of an Authority if—

(1) For loans financed by an obligation issued after December 31, 1980 and before November 16, 1986, the Secretary approved—

(A) The Plan for Doing Business of the Authority that issued the obligation; and

(B) The justification of need for the obligation, if the obligation was issued after August 14, 1983; or

(2) For loans financed by an obligation issued after November 16, 1986, the Governor of the State from which the Authority received or will seek an allocation under section 103(n) of the Internal Revenue Code of 1986 after consultation with the principal guarantee agency for the State, has approved the Plan for Doing Business of the Authority that issued the obligations.

(b) The Secretary pays a special allowance—

(a)(1) of this section, from the latest of—

(i) The date the Secretary approved the Plan for Doing Business of the Authority;

(ii) The date the Secretary approved the justification of need for the obligation, if issued after August 14, 1983; or

(iii) The date the loan was made or acquired by or on behalf of the Authority with proceeds of a tax-exempt obligation.

(2) For a loan described in paragraph (a)(2) of this section, from the latest of—

(i) The date the Governor approved the Plan for Doing Business of the Authority;

(ii) The date the loan was made or acquired by or on behalf of the Authority with proceeds of a tax-exempt obligation; or

(iii) November 16, 1986, if the loan was made or acquired with the proceeds of a tax-exempt obligation issued before that date by an Authority that did not receive before that date approval from the Secretary for its Plan for Doing Business, and, if applicable, its justification of need.

(c) The Authority shall submit a copy of the Plan for Doing Business to the

Secretary under paragraph (a)(2) of this section within 60 days after receiving the Governor's approval.

(d) As used in this paragraph, the term "principal guarantee agency" means—

(1) The guarantee agency in the State with which the Secretary has signed a Basic Program Agreement under § 682.401; or

(2) If the Secretary has signed agreements with more than one agency in the State, the agency that has issued the majority of loan guarantees for students who are attending school in the State during the most recently ended Federal fiscal year.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

§ 682.801 Provisions required in Plan.

Each Plan submitted for the approval of the Governor must contain provisions necessary to ensure that—

(a) If an Authority acts as a secondary market for student loans, it shall exclude no eligible lender in the service area from participation in its program, and shall permit all eligible lenders to participate in its program on the same terms and conditions;

(b) No director, officer, or staff member of the Authority who receives compensation from the Authority may own stock in, or receive compensation of any kind from, any agency or organization that contracts to service and collect the loans in which the Authority has a legal or equitable interest;

(c) The Authority shall not purchase student loans at a premium or discount amounting to more than one percent of the unpaid principal amount borrowed plus interest accrued to the date of acquisition;

(d) The Authority shall not pay transfer fees in excess of the costs of transferring a loan portfolio or a portion of it from the lender to the Authority;

(e) The Authority shall, within the limits of funds available and subject to applicable State and Federal law, make loans to, or purchase loans made to, all eligible borrowers who are residents of, or who seek loans for a student to attend a school within, the service area of the Authority;

(f) The Authority has a plan under which the Authority shall pursue both the recruitment of new lenders to participate in a continuing program of benefits to students under the GSL, SLS, and PLUS programs and the maintenance of existing lender commitments to the program;

(g) The Authority shall secure an annual audit of its loan program operations by a certified public

accounting firm which will include a review performed in accordance with the audit standards found in § 682.830; and

(h) The Authority shall not issue tax-exempt obligations for amounts in excess of the unmet need for student loan credit in its service area.

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

§ 682.802 Submission of Plan for approval—required documentation.

An Authority shall submit with, or include in, each Plan submitted for the approval of the Governor the following:

(a) If the Authority is a secondary market, a description of the procedures used to inform eligible lenders of the program of the Authority, samples of announcements to lenders regarding the program, and a listing of the types of lenders and numbers of each type so informed.

(b) If the Authority contracts with an agent to service or collect loans in which the Authority as a legal or equitable interest, a sample of the form signed by all directors, officers, and staff of the Authority who receive compensation from the Authority certifying that these persons do not own stock in or receive compensation of any kind from that agent and a list of the persons who have signed the form.

(c) If the Authority is a secondary market, a schedule of the amount of loan transfer fees paid or to be paid by the Authority to parties from whom it purchases loans and, if the amount of a loan transfer fee is based on an estimate, an explanation of how that estimated amount was determined.

(d) A copy of any Federal or State law that the Authority believes limits its ability to make or purchase loans made to any eligible borrowers who are residents of, or who obtained loans for a student to attend a school located within, its service area.

(e) A copy of the plan under which the Authority pursues both the recruitment of new lenders to participate in a continuing program of benefits to students under each of the GSL programs and the maintenance of existing lender commitments to the programs.

(f) A copy of the most recent independent audit of the Authority performed in accordance with the audit standards found in § 682.830.

(g) A copy of any survey instrument or written inquiry form to be used to solicit from schools, lenders, and secondary markets information by which the Authority measures unmet need for student loan credit.

(h) A certification that the Authority is in compliance with section 438(d)(2) of

the Act (regarding patterns or practices resulting in denial of access to student loan credit for certain borrowers).

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

§ 682.803 Amendments to Plan.

(a) After a Plan is approved, an Authority shall submit to the Governor or the Secretary amendments to the Plan or such documentation as may be needed to reflect accurately the policy and practice of the Authority within 30 days of the date that—

(1) An Authority amends any provision of a Plan which had previously been approved by that Governor or the Secretary; or

(2) Any documentation or representation previously submitted pursuant to § 682.802 has been revised or rendered inaccurate in any material aspect.

(b) An Authority shall promptly amend its Plan to comply with changes in applicable statutes and regulations.

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

§ 682.804 Failure to comply with Plan.

(a) If the Secretary finds that an Authority has failed to comply with any requirement of its Plan or of this subpart, the Secretary takes actions necessary to protect the interests of the United States. These actions may include the following:

(1) Withholding payment of special allowances.

(2) Suspending or revoking approval of the Plan.

(3) Determining that loans made or purchased with the proceeds of a tax-exempt obligation by the Authority or any entity acting for the Authority after the date of suspension or revocation are ineligible for payments of special allowances.

(4) Requiring reimbursement from the Authority of special allowances paid on loans made or purchased by the Authority or any entity acting for the Authority.

(b) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to suspend or revoke approval of a Plan does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(c) Once final, the Secretary's decision to require a repayment of funds or to

take other remedial action against an Authority under this section is conclusive and binding on the Authority.

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

§ 682.805 Sanctions for material misrepresentation.

(a) If at any time the Secretary determines that the submission for approval of a tax-exempt obligation or a Plan for Doing Business contains or contained a material misrepresentation, the Secretary may to the extent provided in paragraph (b) of this section—

(1) Require reimbursement from the Authority of special allowance payments to the Authority or to any other party on loans made or purchased with the proceeds of the issue with respect to which the misrepresentation was made; and

(2) Determine to be ineligible for special allowance payments any loans to be made or purchased by the Authority or any entity acting for the Authority with the unexpended proceeds of the issue with respect to which the misrepresentation was made.

(b) If an Authority uses funds from sources other than a tax-exempt obligation to retire an issue with respect to which the Secretary has determined that a material misrepresentation was made, the Secretary takes the adverse actions described in paragraph (a) of this section only with regard to those special allowance payments which accrued earlier than ninety days before that issue was retired.

(c) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to take any of the actions in § 682.804 does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(d) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

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

§§ 682.806-682.829 [Reserved]

§ 682.830 Audit standards.

(a) The Authority shall have an annual financial and compliance audit by an independent certified public

accounting firm of its loan and loan purchasing program or both. The audit must be conducted in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office (GAO) publication, *Standards for Audit of Governmental Organizations, Programs, Activities and Functions*. The Authority shall submit a copy of the audit report within 30 days after the completion of the report to its regional office of the Department of Education's Office of the Inspector General, to the Governor who approved the Plan for Doing Business, and to the principal guarantee agency consulted by that Governor in the approval of that Plan.

(b) The audit must examine the activities of the Authority for compliance with the provisions of the Plan, and must specifically articulate, with appropriate substantiation, its conclusions regarding compliance with each of the provisions of § 682.801 and with the Plan of the Authority.

(c) The audit must also examine the expenditures of the Authority using the cost principles in OMB Circular A-87 if the Authority is an agency or instrumentality of a State or local government, or, if the Authority is a non-profit corporation, in OMB Circular A-122, as follows:

(1) The GSL, SLS, and PLUS loan programs of the Authority are treated as the Federal grant or contract with regard to which costs are allocated.

(2) All costs incurred by the Authority are attributed to a cost category identified pursuant to the appropriate Circular.

(3) Each cost is examined to determine whether it is reasonable and allocable to the GSL, SLS, and PLUS loan programs of the Authority.

(4) Although costs must be attributed, where warranted, to categories of costs otherwise characterized as unallowable, no determination is to be made that a cost is disallowed merely because that cost was one for which the Circular requires advance approval by the Secretary or because the Circular classifies that cost as unallowable.

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

§§ 682.831-682.839 [Reserved]

§ 682.840 Prohibition against discrimination as a condition for receiving special allowance payments.

(a) In order for an Authority to receive special allowance payments on loans made or acquired with the proceeds of a tax-exempt obligation, the Authority or its agent may not engage in any pattern or practice that results in a denial of a borrower's access to loans under the

GSL programs because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular institution within the area served by the Authority, length of the borrower's education program, or the borrower's academic year in school.

(b) The Secretary considers an Authority that makes or acquires loans guaranteed by an agency or organization that discriminates on one or more grounds listed in paragraph (a) of this section to have adopted a practice of denying access to loans on that ground unless the Authority makes provision for loan guarantees from other sources necessary to serve the borrowers excluded by that discriminatory policy.

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

Appendix A—Standards for Acceptable Refund Policies by Participating Schools

For purposes of § 682.606(b), the Secretary considers guidelines VI, VII, and VIII of the following document to be acceptable elements of a fair and equitable school refund policy. The document, which is reproduced in its entirety for the convenience of the reader, was developed by the National Association of College and University Business Officers. The document does not affect a school's obligation to comply with other Department of Education regulations.

Policy Guidelines for Refund of Student Charges

(I) *The governing board of the institution should review and approve the schedule of all institutional charges and refund policies applicable to students.* The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies should receive board attention and approval.

(II) *Institutions should seek consumer views in the process of establishing and amending charge and refund structures.* Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is a desirable approach for assessing student needs and creating public awareness of institutional requirements.

(III) *Institutions should publish a current schedule of all student charges, a statement of the purpose for such charges, and related refund policies, and have them readily available free of charge to current and prospective students.* Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment to the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) *Institutions should clearly designate all optional charges as "optional" in all*

published schedules and related materials. Clearly, charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials. Also, the institution should state clearly in its schedule if a charge is optional for some students but required for others. Statements accompanying the schedule may include institutional endorsements of the optional program or service.

(V) *Institutions should clearly identify charges and deposits that are nonrefundable as "nonrefundable" on all published schedules.* Institutions determine on an individual basis which of their charges are refundable or non-refundable. In general, admissions fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions, and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (e.g., tuition deposits). Others are refundable according to the terms of the deposit agreement (e.g., deposits for breakage).

(VI) *Institutions should refund housing rental charges, less a deposit, so long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students.* Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) *Institutions should refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract.* Subsequent board charges should be refunded on a pro rata basis less a withdrawal fee. It is reasonable to make a refund for those goods and services not consumed. The withdrawal charge should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) *The institutional tuition refund policy for an academic period should include the following minimum guidelines:*

A. *The institution should refund 100 percent of the tuition charges, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.*

B. *The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the*

first 25 percent of the academic period. It is reasonable to refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless State law imposes a more restrictive refund policy.

(IX) *The institution should assess no penalty charges where the institution, as opposed to the student, is in error. The institution has assessed charges in error.* Penalty charges, such as those involving late registration fees, change of schedule fees, late payment fees, should not be assessed if it is determined that the student is not responsible for the action causing the charge to be levied.

(X) *Institutions should advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institution officer.* A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that such request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) *Institutions should pay or credit refunds due on a timely basis.* The definition of "timely basis" should include the time required to process a formal student request for refund, to process a check if required, and to allow for mail delivery, when necessary. If an institution has a policy that a refund of an inconsequential amount will not be made, this policy should be published in part of all materials related to refund policies.

(XII) *Institutions should publicize, as a part of their dissemination of information on charges and refunds, that an appeal process exists for students or parents who feel that individual circumstances warrant exceptions from published policy.* The informational materials should include the name, title, and address of the official responsible. Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

Appendix B—Student Status Confirmation Report

This Appendix sets forth model format and data elements for guarantee agencies to use in implementing a Student Status Confirmation Report system as required by § 682.401(b)(17).

Student Status Confirmation Report

Date: MM/DD/YY Guarantor/Institution Code: (must accommodate eight numeric characters)

Guarantor/Institution Name: _____

Social Security Number _____

Name _____

*Status _____

Effective Date _____

*The valid enrollment status codes are as follows:

F=Full-time

H=Half-time or more but less than full time.

L=Less than half-time. This code is used to specify students enrolled less than half-time.

X=Never attended the institution. This code is to specify those individuals on whose behalf a Stafford, SLS, or PLUS loan was made who enrolled in school but never attended classes.

Z=No record found. A thorough search of the institution's enrolled records revealed no information for this individual.

D=Deceased

A=Approved leave of absence

G=Graduated

W=Withdrawn

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

Note: The following is a reprint of Bulletin L-77a, issued on January 7, 1983, with minor modifications made to reflect changes in the program regulations since that date. All references to "the date of this bulletin" refer to that date. All references made to the Federal Insured Student Loan Program (FISLP) shall be understood to include the Federal PLUS Program. The bulletin includes references to the 120- and 180-day default periods that used to apply to GSLP and PLUS Program loans. Public Law 99-272 established new default periods of 180 and 240 days (as set out in 34 CFR 682.200 of these regulations) for all new loans and many existing ones. Although the discussion in this Appendix C refers to the 120- and 180-day default periods, it is equally applicable to the new 180- and 240-day default periods.

Introduction

This bulletin prescribes procedures for lenders to use (1) to cure violations of the requirements for due diligence in collection ("due 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 682.507, 682.511.¹ 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 the first day of the 120-day or 180-day default period 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. 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 institute uniform procedures by which lenders with loans involving violations of the due diligence or timely filing requirements may cure these violations.

Due Diligence

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, the loan entered repayment prior to September 4, 1985 (See 50 FR 35970), 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. 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 682.211. 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 682.511(e) (1) and (3). 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 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 right 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 regulations.

3. *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.

4. *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.

5. *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 ED 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 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 ED 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.

6. *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 ED 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 ED 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 ED Form 1207; and
- All documents showing that the lender has complied with the applicable cure procedures and requirements.

C. Cures for Violations of the Due Diligence in Collection Requirements (34 CFR 682.507)

A violation of the due diligence in collection rules occurs when a lender fails to meet requirements found in 34 CFR 682.507. 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 preclaims 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 682.209(a)(7); 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's 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 682.507, and the timely filing requirements set out in 34 CFR 682.511.

D. Cures for Violations of the Timely Filing Requirements (34 CFR 682.511)

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 section I.D.1.d. 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 682.209(a)(7), 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 "48-Hour" collection letter, on the lender's letterhead. (See Attachment A.)

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 682.507 and the timely filing requirements set out in 34 CFR 682.511.

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 B).

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 requirements (see 34 CFR 685.511(e)(2)). 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 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, 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 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 on the normal Lender's Interest and Special Allowance Request and Report (ED Form 799). 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. 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), and the date it used for cessation of interest and/or special allowance eligibility in calculating the overbilled amount. See 34 CFR 682.515(a)(2).

Attachments

Note: All references to the program regulations are to part 682 of title 34 of the Code of Federal Regulations (34 CFR part 682).

Attachment A NOTICE

Date _____

Social Security Number _____

TO:

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 B

Certification of Borrower Location

As an employee or agent of _____

Name and Address of Lender _____

I hereby certify as follows:

1. On _____

Date _____

I spoke with or received written communication from (copy attached):

(circle a or b)

(a) the borrower on the loan underlying the 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 _____

Borrower's SSN _____

Signature of Employee or Agent _____

Typed Name of Employee or Agent _____

Title of Employee or Agent _____

Date _____

Lender Identification Number _____

Appendix D—Policy for Waiving the Secretary's Right to Recover or Refuse to Pay, Interest Benefits, Special Allowance, and Reinsurance on Guaranteed Student Loan, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Dear Guarantee Agency Director Letter 88-G-138]

Note: The following is a reprint of Bulletin 88-G-138, issued on March 11, 1988, with minor modifications made to reflect proposed changes in the program regulations.

Introduction

This letter sets forth the circumstances under which the Secretary, pursuant to sections 432(a) (5) and (6) of the Higher Education Act of 1965 and 34 CFR 682.406(b) and 682.413(f), will waive certain of his rights and claims with respect to Stafford Loans, PLUS, Supplemental Loans for Students (SLS), and Consolidation Program loans made under a guarantee agency program that involve violations of Federal regulations pertaining to due diligence in collection or timely filing. (These programs are collectively referred to in this letter as the GSL Programs.) This policy applies to due diligence violations on loans for which the first day of delinquency occurred on or after March 10, 1987 (the effective date of the November 10, 1986 due diligence regulations) and to timely filing violations occurring on or after December 26, 1986, whether or not the affected loans have been submitted as claims to the guarantee agency.

The Secretary has been implementing a variety of regulatory and administrative actions to minimize defaults in the GSL Programs. As a part of this effort, the Secretary published final regulations on November 10, 1986 requiring lenders and guarantee agencies to undertake specific due diligence activities to collect delinquent and defaulted loans, and establishing deadlines for the filing of claims by lenders with guarantee agencies. In recognition of the time required for agencies and lenders to modify their internal procedures, the Secretary delayed for four months the date by which lenders were required to comply with the new due diligence requirements. Thus, § 682.411 of the regulations, which established minimum due diligence procedures that a lender must follow in order for a guarantee agency to receive reinsurance on a loan, became effective for loans for which the first day of delinquency occurred on or after March 10, 1987. The regulations make clear that compliance with these minimum requirements, and with the new timely filing deadlines, is a condition for an agency's receiving or retaining reinsurance

payments made by the Secretary on a loan. See 34 CFR 682.406 (a)(2), (a)(4), 682.413(b)(1). The regulations also specify that a lender must comply with § 682.411 and with the applicable filing deadline, as a condition for its right to receive or retain interest benefits and special allowance on a loan for certain periods. See 34 CFR 682.300(b)(2)(vi), 682.413(a)(1).

The Department has received inquiries regarding the procedures by which a lender may "cure" a violation of § 682.411 regarding diligent loan collection, or of the 45-day deadline for the filing of default claims found in § 682.406(a)(4), in order to reinstate the agency's right to reinsurance, and the lender's right to interest benefits and special allowance. Preliminarily, please note that, absent an exercise of the Secretary's waiver authority, a guarantee agency may not receive or retain reinsurance payments on a loan on which the lender has violated the Federal due diligence or timely filing requirements, even if the lender has followed a cure procedure established by the agency. Under §§ 682.406(b) and 682.413(f), the Secretary—not the guarantee agency—decides whether to reinstate reinsurance coverage on a loan involving such a violation, or any other violation of Federal regulations. A lender's violation of a guarantee agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. See §§ 682.406(a)(5); 682.413(b). As §§ 682.406(a)(6) and 682.413(b) make clear, a guarantee agency's cure procedures are relevant to reinsurance coverage *only* insofar as they allow for cure of violations of requirements established by the agency affecting the loan insurance it provides to lenders. In addition, all such requirements must be submitted to the Secretary for review and approval, under 34 CFR 682.401(d).

References throughout this letter to "due diligence and timely filing" rules, requirements, and violations should be understood to mean only the Federal rules cited above, unless the context clearly requires otherwise.

A. Scope

This letter outlines the Secretary's waiver policy regarding certain violations of Federal due diligence or timely filing requirements on a loan insured by a guarantee agency. Unless your agency receives notification to the contrary, or the lender's violation involves fraud or other intentional misconduct, you may treat as reinsured any otherwise reinsured loan involving such a violation that has been cured in accordance with this letter.

B. Duty of a Guarantee Agency to Enforce Its Standards

As noted above, a lender's violation of a guarantee agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. Thus, as a general rule, an agency that fails to enforce such a requirement and pays a default claim involving a violation is not eligible to receive reinsurance on the underlying loan. However, in light of the waiver policy outlined below, which provides more stringent cure procedures for violations occurring on or after May 1, 1988 than for pre-May 1, 1988

violations, some guarantee agencies with more stringent policies than the policy outlined below for the pre-May 1 violations have indicated that they wish to relax their own policies for violations of agency rules during that period. While the Secretary does not encourage any agency to do so, the Secretary will permit an agency to take either of the following approaches to its enforcement of its own due diligence and timely filing rules for violations occurring before May 1, 1988.

(1) The agency may continue to enforce its rules, even if they result in the denial of guarantee coverage by the agency on otherwise reinsurable loans; or

(2) The agency may decline to enforce its rules as to any loan that would be reinsured under the retrospective waiver policy outlined below.

In other words, for violations of a guarantee agency's due diligence and timely filing rules occurring before May 1, 1988, a guarantee agency is authorized, but not required, to retroactively revise its own due diligence and timely filing standards to treat as guaranteed any loan amount that is reinsured under the retrospective enforcement policy outlined in section I.C.1., below. However, for any violation of an agency's due diligence or timely filing rules occurring on or after May 1, 1988, the agency must resume enforcing those rules in accordance with their terms, in order to receive reinsurance payments on the underlying loan. For these post-April 30 violations, and for any other violation of an agency's rule affecting its guarantee coverage, the Secretary will treat as reinsured all loans on which the agency has engaged in, and documented, a case-by-case exercise of reasonable discretion allowing for guarantee coverage to be continued or reinstated notwithstanding the violation. But any agency that otherwise fails, or refuses, to enforce such a rule does so without the benefit of reinsurance coverage on the affected loans, and the lenders continue to be ineligible for interest benefits and special allowance thereon.

C. Due Diligence

Under 34 CFR 682.200, default on a GSL Program loan occurs when a borrower fails to make a payment when due, provided this failure persists for 180 days for loans payable in monthly installments, or for 240 days for loans payable in less frequent installments.

The 180/240-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 delinquency period begins on February 2nd, with the first delinquency, and default occurs on September 29th, when the April payment becomes 180 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 682.211. 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.

D. Timely Filing

The 45-day filing period applicable to GSL Program default claims is set forth in 34 CFR 682.406(a)(4). The 45-day filing period begins at the end of the 180/240-day default period. The lender ordinarily must file a default claim on a loan in default by the end of the filing period. However, the lender may, but need not, file a claim on that loan before the 225th day of delinquency (180-day default period plus 45-day filing period) if the borrower brings the account less than 180 days delinquent before such 225th day. Thus, in the above example, if the borrower makes the April 1st payment on September 30th, that payment makes the loan 151 days delinquent, and the lender may, but need not, file a default claim on the loan at that time. If, however, the loan again becomes 180 days delinquent, the lender must file a default claim within 45 days thereafter (unless the loan is again brought to less than 180 days delinquent prior to the end of that 45-day period). In other words, 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 180 days delinquent.

Section I of this letter outlines the Secretary's waiver policy for due diligence and timely filing violations. As noted above, to the extent that it results in the imposition of a lesser sanction than that available to the Secretary by statute or regulation, this policy reflects the exercise of the Secretary's authority to waive the Secretary's rights and claims in this area. Section II discusses the issue of the due date of the first payment on a loan, and the application of the waiver policy to that issue. Section III provides guidance on several issues related to due diligence and timely filing as to which clarification has been requested by some program participants.

I. Waiver Policy

A. Definitions

The following definitions apply to terms used throughout this letter:

"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 \$50 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay \$25 per month for a specified time, and the borrower

defaulted in making the reduced payments, a "full payment" would be \$50, or two \$25 payments in accordance with the original repayment schedule or agreement.) In the case of a payment made by cash, money order, or other means that do not identify the payor that is received by a lender after the date of this letter, that payment may constitute a "full payment" only if a senior officer of the lender or servicing agent certifies that the payment was not made by or on behalf of the lender or servicing agent.

"Reinstatement" with respect to reinsurance coverage means the reinstatement of the guarantee agency's right to receive reinsurance payments on the loan after the date of reinstatement. Upon reinstatement of reinsurance, the borrower regains the right to receive forbearance or deferments, as appropriate. "Reinstatement" with respect to reinsurance on a loan also includes reinstatement of the lender's right to receive interest and special allowance payments on that loan.

"Gap" in collection activity on a loan means:

- (a) The period between the initial delinquency and the first collection activity;
- (b) The period between collection activities (a request for preclaims assistance is considered a collection activity);
- (c) The period between the last collection activity and default; or
- (d) The period between the date a lender discovers a borrower has "skipped" and the lender's first skip-tracing activity.

[Note: the concept of "gap" is used herein simply as one measure of collection activity. Not all gaps are violations of the due diligence rules.]

"Violation" with respect to the due diligence requirements in § 682.411 means the failure to timely complete a required diligent phone contact effort, the failure to timely send a required letter (including a request for preclaim assistance), or the failure to timely engage in a required skip-tracing activity.

"Transfer" means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Violations

For any loan on which a cure is required under this letter in order for the agency to receive any reinsurance payment, the lender may resume billing for interest and special allowance on the loan only for periods following its completion of the required cure procedure.

2. Reservation of the Secretary's Right to Strict Enforcement

While this letter describes the Secretary's general waiver policy, the Secretary retains the option of refusing to permit or recognize cures, or of insisting on strict enforcement of the remedies established by statute or regulation, in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of due diligence or timely filing rules, and in cases

where the best interests of the United States otherwise require such strict enforcement. 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, Special Allowance, and Reinsurance Repayment Required as a Condition for Exercise of the Secretary's Waiver Authority

The Secretary's waiver of the right to recover or refuse to pay reinsurance, interest benefits, or special allowance payments, and recognition of cures for due diligence and timely filing violations, are conditioned on the following:

(1) The guarantee agency and lender shall ensure that the lender repays all interest benefits and special allowance received on loans involving violations occurring prior to May 1, 1988, for which the lender is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., below, or under the waiver policy for timely filing violations described in section I.E.1., below, by an adjustment to one of the next three quarterly billings for interest benefits and special allowance submitted by the lender in a timely manner after May 1, 1988. The guarantee agency's responsibility in this regard is satisfied by receipt of a certification from the lender that this repayment has been made in full.

(2) The guarantee agency, on or before October 1, 1988, shall repay all reinsurance received on loans involving violations occurring prior to May 1, 1988, for which the agency is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., below, or under the waiver policy for timely filing violations described in section I.E.1., below.

Pending completion of the repayment described above, a lender or guarantee agency may submit billings to the Secretary on loans that are eligible for reinsurance under the waiver policy in this letter until it learns that repayment in full will not be made, or until the deadline for a repayment has passed without it being made, whichever is earlier.

Of course, a lender or guarantee agency is prohibited from billing the Secretary for program payments on any loan amount that is not eligible for reinsurance under the waiver policy outlined in this letter. In addition to the repayments required above, any amounts received in the future in violation of this prohibition must immediately be repaid to the Secretary.

4. Applicability of the Waiver Policy to Particular Classes of Loans

The policy outlined in this letter applies only to a loan for which the first day of the 180/240-day default period that ended with default by the borrower occurred on or after March 10, 1987, or, in the case of a timely filing violation, December 26, 1986, and that involves violations only of the due diligence and/or timely filing requirements.

5. Excuse of Certain Due Diligence Violations

In examining due diligence, the Secretary looks only at the most recent 180 days prior

to default on a loan, except as noted in Section II.

6. Excuse of Timely Filing Violations Due to Performance of a Guarantee Agency's Cure Procedures

If, prior to May 1, 1988, and prior to the filing deadline, a lender commenced the performance of collection activities specifically required by the guarantee agency to cure a due diligence violation on a loan, the Secretary will excuse the lender's timely filing violation if the lender completes the additional activities within the time period permitted by the guarantee agency, and files a default claim on the loan not more than 45 days after completing the additional activities.

7. Treatment of Accrued Interest on "Cured" Claims

For any loan involving any violation of the due diligence or timely filing rules for which a "cure" is required under section I.C. or I.E., below, for the agency to receive a reinsurance payment, the Secretary will not reimburse the guarantee agency for any unpaid interest accruing after the date of the earliest unexcused violation occurring after the last payment received before the cure is accomplished, and prior to the date of reinstatement of reinsurance coverage. The lender may capitalize unpaid interest accruing on the loan from the date of the earliest unexcused violation occurring after the last payment received before the loan is accomplished, to the date of the reinstatement of reinsurance coverage. However, if the agency later files a claim for reinsurance on that loan, the agency must deduct this capitalized interest from the amount of the claim.

Some cures will not reinstate coverage. For treatment of accrued interest in such cases, see section I.E.1.c., below.

C. Waiver Policy for Violations of the Federal Due Diligence in Collection Requirements (34 CFR 682.411)

A violation of the due diligence in collection rules occurs when a lender fails to meet the requirements found in 34 CFR 682.411. However, if a lender makes all required calls and sends all required letters during any of the delinquency periods described in that section, the lender is considered to be in compliance with that section for that period, even if the letters were sent before the calls were made.

The special provisions for transfers set forth below apply whenever the violation(s) and, if applicable, the gap, were due to a transfer, as defined in section I.A., above.

1. Retrospective Period

For one or more due diligence violations occurring during the period March 10, 1987–April 30, 1988—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guarantee agency if no gap of 46 days or more (61 days or more for a transfer) exists.

b. If a gap of 46–60 days (61–75 days for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the

Secretary for the delinquency period are limited to amounts accruing through the date of default.

c. If a gap of 61 days or more (76 days or more for a transfer) exists, the borrower must be located after the gap, either by the agency or the lender, in order for reinsurance on the loan to be reinstated. (See section I.E.1.d., below, for a description of acceptable evidence of location.) In addition, if the loan is held by the lender on or after March 15, 1988, the lender must follow the steps described in section I.E.1., or receive a full payment or a new signed repayment agreement, in order for the loan to again be eligible for reinsurance. The lender must repay all interest benefits and special allowance received for the period beginning with its earliest unexcused violation, occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

2. Prospective Period

For due diligence violations occurring on or after May 1, 1988—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guarantee agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer.)

b. If there exist not more than 2 violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default.

However, the lender must complete all required activities before the claim filing deadline, except that a preclaims assistance request must be made before the 215th day of delinquency. If the lender fails to make this request by the 215th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 180 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exist 3 violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1., or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exists more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the

requirement outlined in I.D.1., for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

D. Reinstatement of Reinsurance Coverage for Certain Egregious Due Diligence Violations

1. Cures

In the case of a loan involving violations described in section I.C.2.d., above, the lender may utilize either of the two procedures described below for obtaining reinstatement of reinsurance coverage on the loan.

a. After the violations occur, the lender obtains a new repayment agreement signed by the borrower. The repayment agreement must comply with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7); or

b. After the violations occur, the lender obtains one full payment. If the borrower later defaults, the guarantee agency must obtain evidence of this payment (e.g., a copy of the check) from the lender.

2. Borrower Deemed Current As of Date of Cure

On the date the lender receives a new signed repayment agreement or the curing payment under section I.D.1., above, reinsurance 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 borrowers who are not in default. The lender shall then follow the collection and timely filing requirements applicable to the loan.

E. Cures for Timely Filing Violations and Certain Due Diligence Violations

1. Default Claims

a. *Reinstatement of Insurance Coverage.* Except as noted in section I.B.6., in order to obtain reinstatement of reinsurance coverage on a loan in the case of a timely filing violation, a due diligence violation described in section I.C.2.c., or a due diligence violation described in section I.C.1.c. where the lender holds the loan on or after March 15, 1988, the lender must first locate the borrower after the gap, or after the date of the last violation, as applicable. (See section I.E.1.d. for description of acceptable evidence of location.) Within 15 days thereafter, 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, that complies with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7), 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 15 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 days thereafter, diligently attempt to

contact the borrower by telephone. Within 5-10 days after completing these efforts, the lender shall again diligently attempt to contact the borrower by telephone. Finally, within 5-10 days after completing these efforts, the lender shall send a forceful collection letter indicating that the entire unpaid balance of the loan is due and payable, and that, unless the borrower immediately contacts the lender to arrange repayment, the lender will be filing a default claim with the guarantee agency.

b. *Borrower Deemed Current Under Certain Circumstances.* If, at any time on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., above, or the 180th day of delinquency, whichever is later, the lender receives a full payment or a new signed repayment agreement, reinsurance coverage on the loan is reinstated on the date the lender receives the full payment or new agreement. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default.

In the case of a timely filing violation on a loan for which the borrower is deemed current under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation to the date of reinstatement of reinsurance coverage on the loan.

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, on or before the 30th day after the lender completes the additional collection efforts described in I.E.1.a., above, or the 180th day of delinquency, whichever is later, 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 section I.E.1.d., below), within 30 days after the end of such 30-day period. Reinsurance coverage, and therefore the lender's right to receive interest benefits and special allowance, is not reinstated on a loan involving these circumstances. However, unless a statute of limitations bars suit on the loan by the guarantee agency at the time the reinsurance claim is filed by the agency, the Secretary will honor reinsurance claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, on unpaid interest as provided in section I.B.7., above, and for reimbursement of eligible supplemental preclaims assistance costs.

In the case of a timely filing violation on a loan for which the borrower is deemed in default under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation.

d. *Acceptable Evidence of Location.* Only the following documentation is acceptable as evidence that the lender has located the borrower:

(1) A postal receipt signed by the borrower not more than 15 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

(2) Documentation submitted by the lender showing—

(i) The name, identification number, and address of the lender;

(ii) The name and Social Security number of the borrower; and

(iii) A signed certification by an employee or agent of the lender that—

(A) On a specified date, he or she spoke with or received written communication (attached to the certification) from the borrower on the loan underlying the default claim, or a parent, spouse, sibling, roommate, or neighbor of the borrower;

(B) The address and, if available, telephone number of the borrower were provided to the lender in the telephone or written communication; and

(C) In the case of a borrower whose address or telephone number was provided to the lender by someone other than the borrower, the new repayment agreement and the letter sent by the lender pursuant to section I.E.1.a., above, had not been returned undelivered as of 20 days after the date those items were sent, for due diligence violations described in section I.C.1.c. where the lender holds the loan on the date of this letter, and as of the date the lender filed a default claim on the cured loan, for all other violations.

2. Death, Disability, and Bankruptcy Claims

The Secretary will honor a death or disability claim on an otherwise eligible loan notwithstanding the lender's failure to meet the 60-day timely filing requirement (*see* 34 CFR 682.402(e)(2)(i)). However, the Secretary will not reimburse the guarantee agency if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the Federal due diligence or timely filing requirements applicable to that loan, except in accordance with the waiver policy described above. Interest that accrued on the loan after the expiration of the 60-day filing period remains ineligible for reimbursement 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 (§ 682.402(e)(2)(ii)) causes irreparable harm to the guarantee agency'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 excuse 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, or, if previously discharged, has been the subject of a reversal of the discharge. In that case, the lender shall treat the loan as in default. The Secretary will not reimburse the guarantee agency for interest accruing beyond the 30-day filing deadline for the bankruptcy claim.

II. Due Date of First Payment

Section 682.411(b) refers to the "due date of the first missed payment not later made" as one way to determine the first day of delinquency on a loan. Section 682.209(a)(3) states that, generally, the repayment period on a GSLP loan begins some number of months after the month in which the borrower ceases at least half-time study. Where the borrower enters the repayment period with the lender's knowledge, the first payment due date may be set by the lender, provided it falls within a reasonable time after the first day of the month in which the repayment period begins. In this situation, the Secretary generally permits a lender to allow the borrower up to 45 days from the first day of repayment to make the first payment.

In cases where the lender learns that the borrower has entered the repayment period after the fact, current § 682.411 treats the 30th day after the lender receives this information as the first day of delinquency. In the course of discussion with lenders, the Secretary has learned that many lenders have not been using the 30th day after receipt of notice that the repayment period has begun ("the notice") as the first payment due date. In recognition of this apparently widespread practice, the Secretary has decided that, both retrospectively and prospectively, a lender should be allowed to establish a first payment due date within 60 days after receipt of the notice, to capitalize interest accruing up to the first payment due date, and to exercise forbearance with respect to the period during which the borrower was in the repayment period but made no payment. In effect, this means that, if the lender sends the borrower a coupon book, billing notice, or other correspondence establishing a new first payment due date, on or before the 60th day after receipt of the notice, the lender is deemed to have exercised forbearance up to the new first payment due date. The new first payment due date must fall no later than 75 days after receipt of the notice. In keeping with the 5-day tolerance permitted under section I.C.2.a., for the "prospective period", a lender that sends the above-described material on or before the 65th day after receipt of the notice will be held harmless. However, a lender that does so on the 66th day will have failed by more than 5 days to send both of the collection letters required by § 682.411(c) to be sent within the first 20 days of delinquency, and will thus have committed two violations of more than five days of that rule.

If the lender fails to send the material establishing a new first payment due date on or before the 65th day after receipt of the notice, it may thereafter send material establishing a new first payment due date falling not more than 45 days after the materials are sent, and will be deemed to have exercised forbearance up to the new first payment due date. However, all violations and gaps occurring prior to the date on which the material is sent are subject to the waiver policies described in section I for violations falling in either the retrospective or prospective periods. This is an exception to the general policy set forth in section I.B.5., above, that only violations occurring during the most recent 180 days of

the delinquency period on a loan are relevant to the Secretary's examination of due diligence.

III. Questions and Answers

The waiver policy outlined in this letter was developed after extensive discussion and consultation with participating lenders and guarantee agencies. In the course of these discussions, lenders and agencies raised a number of questions regarding the due diligence rules as applied to various circumstances. The Secretary's responses to these questions are set forth below.

Q: Section 682.411 of the program regulations requires the lender to make "diligent efforts to contact the borrower by telephone" during each 30-day period of delinquency beginning after the 30th day of delinquency. What must a lender do to comply with this requirement?

A: Generally speaking, one actual telephone contact with the borrower, or two attempts to make such contact on different days and at different times, will satisfy the "diligent efforts" requirement for any of the 30-day delinquency periods described in the rule. However, the "diligent efforts" requirement is intended to be a flexible one, requiring the lender to act on information it receives in the course of attempting telephone contact regarding the borrower's actual telephone number, the best time to call to reach the borrower, *etc.* For instance, if the lender is told during its second telephone contact attempt that the borrower can be reached at another number or at a different time of day, the lender must then attempt to reach the borrower by telephone at that number or that time of day.

Q: What must a lender do when it receives conflicting information regarding the date a borrower ceased at least half-time study?

A: A lender must promptly attempt to reconcile conflicting information regarding a borrower's in-school status by making inquiries of appropriate parties, including the borrower's school. Pending reconciliation, the lender may rely on the most recent credible information it has.

Q: If a loan is transferred from one lender to another, is the transferee held responsible for information regarding the borrower's status that is received by the transferor but is not passed on to the transferee?

A: No. A lender is responsible only for information received by its agents and employees. However, if the transferee has reason to believe that the transferor has received additional information regarding the loan, the transferee must make a reasonable inquiry of the transferor as to the nature and substance of that information.

Q: What are a lender's due diligence responsibilities where a check received on a loan is dishonored by the bank on which it was drawn?

A: Upon receiving notice that a check has been dishonored, the lender shall treat the payment as having never been made for purposes of determining the number of days delinquent that the borrower is at that time. The lender must then begin (or resume) attempting collection on the loan in accordance with § 682.411, commencing with

the first 30-day delinquency period described in § 682.411 that begins after the 30-day delinquency period in which the notice of dishonor is received. The same result obtains when the lender successfully obtains a delinquent borrower's correct address through skip-tracing, or when a delinquent borrower leaves deferment or forbearance status.

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Final Report

Tuesday
November 20, 1990

Part III

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for
Hazardous Air Pollutants; Asbestos
NESHAP Revision; Final Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 61**

[AD-FRL-3814-7]

RIN 2060-AC57

National Emission Standards for Hazardous Air Pollutants; Asbestos NESHAP Revision**AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

SUMMARY: This Federal Register notice promulgates rules under section 112 of the Clean Air Act (CAA) for asbestos emissions and is based on the Administrator's determination that asbestos presents a significant risk to human health as a result of air emissions from one or more source categories and is therefore a hazardous air pollutant (*see* 36 FR 3031, March 31, 1971). The purpose of the revisions promulgated today is to enhance enforcement and promote compliance with the current standard without altering the stringency of existing controls. On January 10, 1989 the Environmental Protection Agency (EPA or the Agency) proposed amendments to the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) that would require control device and fugitive emission monitoring, recordkeeping, and reporting for asbestos milling, manufacturing, and fabricating operations. For planned demolitions and renovations, revisions to the notification requirements were proposed, and safety was added as a reason for exemption from the use of wet removal methods. Recordkeeping requirements were proposed for asbestos waste disposal. Clarifying revisions to several definitions and provisions were also proposed. Numerous comments were received on the proposed revisions, and today's notice responds to those comments, and incorporates changes as a result of those comments.

EFFECTIVE DATE: November 20, 1990. Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 Days of today's publication of these rules. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: Background information document. The background information document (BID) for the promulgated revisions may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina, 27711, telephone no. (919) 541-2777. Please refer to "Background Information for Promulgated Asbestos NESHAP Revisions," (Publication No. EPA 450/3-90/017). The BID contains a summary of all the public comments made on the proposed revisions and the Administrator's responses to the comments.

Dockets. Docket No. A-88-28 contains supporting information used in developing the final revisions to the asbestos NESHAP and is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket (LE-131), Room M-1500, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

For further information and official interpretations of applicability, compliance requirements, and reporting aspects of the promulgated revisions, contact the appropriate Regional, State or local office contact as listed in 40 CFR 61.04. For further information on the background of the regulatory decisions in the promulgated revisions, contact Mr. Sims Roy, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone no. (919) 541-5263. For further information on the technical aspects of the promulgated revisions, contact Mr. Ronald Myers, Industrial Studies Branch, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone no. (919) 541-5407.

SUPPLEMENTARY INFORMATION:**I. The Standards**

The promulgated revisions implement section 112 of the Clean Air Act (CAA) and are based on the Administrator's determination that asbestos presents a significant risk to human health as a result of air emissions from one or more source categories and is therefore a hazardous air pollutant (*see* 36 FR 3031 (March 31, 1971)). The revisions promulgated today amend the asbestos NESHAP to enhance enforcement and promote compliance with the current standard without altering the stringency of existing controls.

Milling, Manufacturing and Fabricating

The revisions to the standards require asbestos milling, manufacturing and fabricating sources to conduct daily monitoring for visible emissions. While the absence of visible emissions does not mean there are no asbestos fibers being emitted, the presence of visible emissions does indicate a serious control device malfunction. Because visible emissions monitoring is intended primarily to detect serious control device malfunctions, weekly inspections of air cleaning devices are also required. In addition, the revisions promulgated require these sources to maintain records of the results of visible emissions monitoring and control device inspections, and to submit quarterly a copy of visible emissions monitoring records of visible emissions occurred during the quarter. The revision requires owners or operators who install fabric filters after the effective date of this rule to provide for easy inspection of the bags.

Demolition and Renovation

The revisions require the owner or operator of a demolition or renovation activity to provide additional information in notifications, and to notify EPA if the start date of a demolition or renovation changes from that given in the original notification. Another revision requires owners or operators to give a 10-day notice for renovations. A person trained in the provisions of this rule and the means of complying with them is required to be on site when asbestos-containing material (ACM) is stripped, removed or disturbed. When wetting is suspended due to freezing temperatures, owners or operators are required to measure air temperature in the work area three times during the workday and keep daily temperature records for at least 2 years. The revisions also clarify EPA's position regarding the handling and treatment of nonfriable asbestos materials such as resilient floor covering, including vinyl asbestos floor tile, and roofing material.

Waste Disposal

The revisions require vehicles used to transport asbestos-containing waste material to be marked with the sign prescribed by the Occupational Safety and Health Administration during loading and unloading to warn people of the presence of asbestos. For all asbestos-containing waste material transported offsite, the revisions require that a waste shipment record (WSR) be provided to the waste site owner or operator at the time that the waste is

delivered to the waste disposal site. If a copy of the WSR signed by the waste site owner or operator is not received within 35 days of the date the waste was accepted by the initial transporter, the revisions direct the waste generator to contact the transporter and/or disposal site owner or operator to determine the status of the waste shipment. The revisions further direct the waste generator to submit an exception report to EPA if a signed copy of the WSR is not received within 45 days of the date the waste was accepted by the initial transporter. Labels are required on containers of asbestos-containing waste material from manufacturing, fabricating, demolition and renovation activities indicating the name of the waste generator and the location where the waste was generated.

Inactive Waste Disposal Sites

The revisions require the owner or operator of an inactive waste disposal site for a milling, manufacturing or fabricating operation to notify the Administrator in writing prior to excavating or otherwise disturbing asbestos-containing waste material that has been deposited at the disposal site and to record on the deed to the property a notation that will inform future purchasers of the property that it has been used for the disposal of asbestos-containing waste material and that the survey plot and record of the location and quantity of such waste material are on file with the Administrator.

Active Waste Disposal Sites

The revisions require the owner or operator of an active waste disposal site to maintain WSRs and report in writing the receipt of a significant amount of improperly enclosed or uncovered waste to EPA by the following working day. The owner or operator of an active waste disposal site is required by the revisions promulgated today to send a signed copy of the WSR back to the waste generator no more than 30 days after receipt of the waste, to attempt to reconcile any discrepancy between the quantity given on the WSR and the quantity actually received and, failing to do so within 15 days after receiving the waste, to report the discrepancy and any attempts to reconcile it to the Administrator. The revisions promulgated today also require the owner or operator of an active disposal site to maintain records of the location, depth and area, and volume of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area. Upon closure, the owner or operator must comply with all the

rules promulgated for inactive waste disposal sites. A revision requires the owner or operator of an active waste disposal site to notify the Administrator in writing prior to excavating or otherwise disturbing asbestos-containing waste material that has been deposited at the disposal site and covered.

Asbestos Conversion Processes

A section is promulgated to clarify that operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material are covered by the NESHAP. The provisions promulgated require the owner or operator of such an operation to obtain prior written approval of the Administrator to construct the facility, and conduct a start-up performance test using specified analytical methods and procedures. Requirements for continuous monitoring during and after the initial 90 days of operation, emissions control, maintenance of records of test results on site, and reports to the Administrator are also promulgated today.

II. Environmental, Energy and Economic Impacts

The environmental, energy, and economic impacts of the revisions for demolition and renovation, including waste disposal, were estimated from two baselines. One is full compliance with the NESHAP, and the other is current use of engineering controls and work practices. Enforcement experience indicates that many asbestos removal operations related to demolition and the subsequent waste disposal operations are performed out of compliance with the NESHAP. The lack of compliance with the NESHAP removal provisions leads to the improper disposal of some waste, especially demolition waste, with the result that emissions from the disposal of demolition waste greatly exceed other emissions, including process emissions from milling, manufacturing, and fabricating. Liability and other considerations generally lead the owners of buildings being renovated to follow or even exceed the requirements of the NESHAP. Thus, the appropriate baseline for demolition is current use of work practices rather than full compliance. At asbestos milling, manufacturing, and fabricating facilities, the required air pollution control devices are generally in place. Thus, for milling, manufacturing, and fabricating, full compliance with the NESHAP, including the waste disposal requirements, is assumed for the baseline.

Few emission measurement data exist for asbestos sources. Thus, emissions were estimated using engineering methods and assumptions, which resulted in substantial uncertainty. A detailed description of the approaches used to estimate emissions is found in "Asbestos Emission Estimates for Milling, Manufacturing, Fabricating, Demolition, Renovation, and Waste Disposal," which is contained in Docket A-88-28. Estimated process emissions under the current NESHAP at full compliance for milling, manufacturing, and fabricating are approximately 7,400 kg/yr. Based on current practices, estimated emissions from the removal activities associated with demolition and renovation are approximately 1,300 kg/yr and estimated waste disposal emissions from all sources are 227,000 kg/yr. If demolition and renovation were in full compliance, estimated emissions from asbestos removal activities associated with demolition and renovation would be about 700 kg/yr. Estimated emissions from waste disposal, assuming full compliance with the NESHAP by all sources, would be about 600 kg/yr.

The costs of the revisions are expected to be small relative to normal operating costs for these industries. The revisions are intended to promote compliance and enhance enforceability. Small additional costs are associated with the recordkeeping and reporting requirements of the revisions. Economic impacts of the promulgated alternatives are expected to be minimal. Adverse impacts of the promulgated revisions on water, noise, and energy were considered. Due to the nature of the revisions, no significant adverse impacts on water, noise, or energy are anticipated.

III. Public Participation

The revisions were proposed and published in the Federal Register on January 10, 1989 (54 FR 912). The preamble to the proposed standards revisions noted the availability in the docket of the supporting information used in developing the proposed revisions. Public comments were solicited at the time of proposal.

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed revisions, a public hearing was held on February 8, 1989, at Research Triangle Park, North Carolina. The hearing was open to the public, and 6 persons presented comments.

The public comment period specified in the Federal Register notice was from January 10, 1989 to March 7, 1989. One

hundred comment letters were received in response to the **Federal Register** proposal. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made to the proposed revisions.

IV. Significant Comments and Changes to the Proposed Revisions

Comments on the proposed revisions were received from industry, trade associations and regulatory agencies. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the ADDRESSES section of this preamble. The comments and responses summarized in the BID serve as the basis for the changes that have been made to the revisions between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. Significant comments have been divided into the following areas: demolition and renovation, and waste disposal.

Demolition and Renovation

Nonfriable ACM

Comment: Several commenters argued that the rule should be modified to clarify that certain products are nonfriable and, therefore, not regulated. Asbestos cement (A/C) products, including transite and exterior shingles, should be included among nonfriable products according to commenters IV-D-49, IV-D-72, and IV-D-93. Asbestos-containing flooring products, such as tile and sheet vinyl flooring, were considered by several commenters (IV-D-15, IV-D-47, IV-D-48, IV-D-55, IV-D-84, and IV-D-95) to always be nonfriable and exempt from the rule, with the exception of flooring that was being sanded (IV-D-47, IV-D-48). Another commenter, IV-D-48, in reference to asbestos roofing products, argued that there is no basis in the record for saying that severely weathered asphaltic material could become brittle. Commenters IV-D-21, IV-D-31, IV-D-48, IV-D-49, and IV-D-93 recommended that the rule be clarified to exempt all nonfriable materials as the rule is currently understood. Commenter IV-D-93 argued that in present day ACM, the asbestos fibers are locked in cement or bituminous or resinous binders and that the materials can be removed and disposed of without any significant release to the environment.

Response: In 1973 when the asbestos NESHAP rules were first promulgated for the demolition of buildings, EPA's

intention was to distinguish between materials that would readily release asbestos fibers when damaged or disturbed and those materials that were unlikely to result in the release of significant amounts of asbestos fibers. To accomplish this, EPA labeled as "friable" those materials that were likely to readily release fibers. Friable materials, when dry, could easily be crumbled, pulverized, or reduced to powder using hand pressure. The term "reduced to powder" is readily understood to mean that the affected material is changed to a dust or powder that can become airborne. "Pulverized" indicates that the resulting material will include dust as well as a large number of small pieces of the original material. The term "crumbled" indicates that the affected material is easily (i.e., using hand pressure) broken into a large number of small pieces. Although dust is likely to be produced as a result of crumbling, it is possible that there are some types of materials that can be crumbled without producing dust. It is also understood that crumbling refers to an action that occurs essentially in one effort and not to repeated attempts to crumble the material. For example, floor tile in good condition can be broken by hand into a few large pieces, but it is not easily broken in one effort into many small pieces. On the other hand, floor tile that has lost its structural matrix is in poor condition and can be broken into many small pieces in one effort.

Later, EPA realized that, in some instances, nonfriable materials that were subjected to intense forces, such as the intense mechanical forces encountered during demolition, could be crumbled, pulverized, or reduced to powder. In these instances, certain materials which had been considered nonfriable appeared capable of releasing significant amounts of asbestos fibers to the atmosphere. Examples of practices that were observed by EPA to reduce otherwise nonfriable asbestos material to dust capable of becoming airborne included the breaking of nonfriable insulation from steel beams by repeatedly running over the beams with a crawler tractor. In view of the damage done to these otherwise nonfriable materials and the resulting increased potential for fiber release, these and other similar practices involving nonfriable asbestos material were considered to render nonfriable ACM into dust capable of becoming airborne.

As a result, EPA issued a policy determination in 1985 regarding the removal of nonfriable asbestos material that was consistent with EPA's intent to

distinguish between material that could release significant amounts of asbestos fibers during demolition and renovation operations and those that would not. This policy determination stated in essence that any ACM, whether originally friable or nonfriable that become (or are likely to become) crumbled, pulverized, or reduced to powder are covered by the NESHAP. Specifically, the determination stated that

*** even though the regulations address only material that is presently friable, it does not limit itself to material that is friable at the time of notification. Rather, if at any point during the renovation or demolition, additional friable asbestos material is *** created from nonfriable forms, then this additional friable material becomes subject to the regulations from the time of creation ***

The issuance of this determination did not alter the intent of the NESHAP, but was consistent with the intent of the standard that was written to prevent significant emissions of asbestos fibers. The intent of the policy determination was that it apply narrowly to specific instances where otherwise nonfriable materials would be damaged during demolition or renovation to the extent that significant amounts of asbestos fibers would be released to the atmosphere. A statement in the determination to the effect that some nonfriable materials may remain nonfriable throughout demolition and renovation is evidence that this determination was intended to be narrowly interpreted and not used to require removal of all nonfriable materials. For example, materials such as resilient floor covering, asphalt roofing products, packings, and gaskets would rarely, if ever, need to be removed because, even when broken or damaged, they would not release significant amounts of asbestos fibers. But, just as it is important to recognize that some nonfriable materials do not have to be removed prior to demolition, it is also important to recognize that some nonfriable materials should be removed prior to demolition if, as a result of the forces of demolition, nonfriable material is likely to become crumbled, pulverized, or otherwise reduced to powder. For example, the A/C siding on a building that is to be demolished using a wrecking ball is very likely to be crumbled or pulverized with increased potential for the release of significant levels of asbestos fibers. Such material in this instance should be removed prior to demolition.

Since this policy determination was made, there has been some confusion in

its application. As a result, contractors operating in more than one enforcement jurisdiction have encountered different interpretations for similar demolition operations. For example, there have been instances in which contractors are required, prior to demolition, to remove floor tile in one enforcement jurisdiction but not in another. Contractors and/or building owners and operators are unsure as to what materials must be removed and what materials can be left in place and are often hesitant to proceed without a ruling from EPA, which can involve significant delays.

As a consequence, EPA received a number of requests from State and regional enforcement agencies to clarify what is required under the NESHAP in dealing with nonfriable materials since the 1985 policy determination was issued. In response to these requests, a clarification of the nonfriable issue was included in the revisions proposed on January 10, 1989. These revisions were intended to clarify the intent of the original rule. Basically, EPA stated in the January 10, 1989, Federal Register notice that certain nonfriable materials, such as floor tile, roofing products, and packings and gaskets that are in good condition, can be left in buildings being demolished because fiber release from these materials, even if the materials are damaged, is relatively small compared to the fiber release from friable materials. Other nonfriable products such as A/C products have a greater potential to release asbestos fibers when heavily damaged and may have to be removed prior to demolition.

In response to the revisions proposed on January 10, 1989, numerous comments were submitted to EPA. Many of the commenters argued that EPA was attempting to regulate nonfriable materials, which were explicitly exempted in previous asbestos NESHAP rulemakings. Many comments stated that the proposed revisions did not help to clarify EPA's position on nonfriable material and may have made matters more confusing.

In responding to the comments, a literature survey was conducted to determine if it was possible to quantify the fiber release potential of nonfriable materials when they are damaged during demolition. All of the available data on fiber release from floor tile, roofing products, gaskets, packings, and A/C products was reviewed. In some instances, the fiber release data were measured during actual removal operations, while other data were from simulated removal activities in laboratory settings. For the materials evaluated, the potential for fiber release

appeared minimal and substantially lower than for friable materials. These findings, while uncertain, support EPA's original argument that there is a basis for making a distinction between materials that readily release fibers and those that do not.

As a result of the comments received on this issue and the additional information gathered in response to comments, EPA has been able to compile a list of nonfriable ACM that, under normal conditions, do not have to be removed prior to demolition operations. These ACM are not expected to release significant amounts of asbestos fibers to the outside air during demolition and, consistent with the intent of the existing standards, are not being regulated. A definition of "category I nonfriable ACM" is added to the final rule, which lists resilient floor covering, roofing products, gaskets, and packings. However, if these materials are in poor condition and are friable or they are subjected to sanding, grinding, cutting, or abrading, they are to be treated as friable asbestos material. Category I nonfriable ACM that is in poor condition, but is not friable and will not be subjected to sanding, grinding, cutting, or abrading, is not subject to the NESHAP. "In poor condition" has been defined to mean that the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material. Other nonfriable materials are identified as Category II nonfriable ACM and have to be evaluated on a case-by-case basis. Category II materials that become crumbled, pulverized, or reduced to powder during removal or during demolition are covered by the NESHAP.

Broken ACM

Comment: Commenters IV-D-47, IV-D-89, IV-D-93, and IV-D-95 explained that use of the term "broken" to describe materials that are subject to the rule is inconsistent with the current NESHAP and expands coverage of the NESHAP. These commenters stated that merely breaking nonfriable material does not equate to fiber release. One commenter, IV-D-89, noted that noncompliance may increase where nonfriable material is broken during demolition or renovation, but is not controlled or reported according to the NESHAP.

Response: After considering this issue, EPA agrees with commenters that retaining the word "broken" could be interpreted as substantially increasing the scope of the standard and, therefore, has removed it from the definition. Most nonfriable materials can be broken without releasing significant quantities

of airborne asbestos fibers. It is only when the material is extensively damaged, i.e., crumbled, pulverized, or reduced to powder, that the potential for significant fiber release is greatly increased. Also, in the definitions of "asbestos-containing waste material," "friable asbestos material," and elsewhere, the word "broken" is deleted. The EPA is planning to issue additional information in the future on this and other aspects of the NESHAP to help enforcement officials and the regulated community interpret and apply the NESHAP provisions.

Inspections

Comment: Three commenters argued that EPA should include mandatory asbestos surveys in the rule. Commenter IV-D-4 stated that EPA should require surveys for all buildings prior to and separate from any demolition or renovation activity. Commenter IV-D-4 stated that such building surveys could become part of a public record, making the absence of a survey a violation. Commenter IV-D-4 noted that, if the survey indicated that a structure was asbestos free, all notification and enforcement costs would be eliminated. Also, commenter IV-D-4 explained that a demolition without proper notification could be easily established later.

Commenters IV-D-57 and IV-D-84 stated that EPA's requirement to survey buildings prior to demolition and renovation is implicit and should be made explicit and require that surveys be performed by an accredited asbestos inspector. Commenter IV-D-57 also noted that OSHA requires a building survey by a competent person and stated that EPA should similarly require a site-specific survey before demolition, with details on how the building will be demolished and how the asbestos will be controlled.

Response: The EPA currently requires that a facility be inspected for asbestos prior to demolition or renovation. As a result of the survey, information on the asbestos material present, the nature of the demolition or renovation, and measures that will be taken to control emissions of asbestos must be reported to EPA. Commenters IV-D-57 and IV-D-84 are correct in saying that it is an implicit requirement and that it is not stated explicitly in the rule. The final rule expressly requires a facility survey for asbestos prior to demolition or renovation. Although previously implied, this revision clarifies EPA's position on the requirement to perform building surveys.

The EPA also considered the suggestion to require that surveys be

performed by an "accredited" inspector or by a "competent" person as required by OSHA. OSHA's requirement to have a competent person perform an engineering survey prior to demolition (29 CFR 1926.850) is to ensure that the structural integrity of a structure is sufficient to prevent worker injury caused by the unplanned collapse of any portion of the structure; a search for asbestos is not required. An accredited inspector or competent person can perform the survey although using such individuals is not required. Using an accredited inspector and following the AHERA requirements for building inspections would help ensure a thorough inspection of the facility as required by the NESHAP. However, EPA has not had this requirement before and did not propose such a requirement. The EPA will consider a requirement to use accredited inspectors in future amendments to the rule.

Commenter IV-D-4's suggestion to require the survey of all buildings in advance of demolition or renovation would increase the stringency of the regulation by requiring all owners and operators to survey their facilities for asbestos even when no demolition or renovation operations were planned. The revisions proposed on January 10, 1989, are intended to clarify the rule and promote compliance. The need for a revision that would affect stringency may be considered at a later date. However, such a requirement would require a substantial commitment of resources to perform surveys of all existing buildings. In addition, it is not clear that it would always negate the need for pre-demolition inspections in the future.

Friable Asbestos Material—Analytical Method

Comment: Commenters IV-D-17, IV-D-35, and IV-D-70 supported the proposed changes to the definition of "friable asbestos material," specifically the change to percent by area. Commenter IV-D-69 argued that to go from percent weight to percent area may have a major impact on coverage because there may be wide discrepancies in the results reported by the two methods. Commenter IV-D-69 provided an example of this, stating that a cement-based fireproofing that contained 30 percent asbestos by area contained less than 1 percent by weight. Commenter IV-D-70 felt that the definition of "friable asbestos material" was appropriate; however, the method referenced should not be limited to point counting in view of 47 FR 1982, p. 38535, which clarifies the acceptability of "an equivalent estimation method."

Commenter IV-D-78 stated that the definition would require asbestos content to be determined by transmission electron microscopy (TEM) analysis, and that the high cost of TEM should be considered. Commenter IV-D-78 recommended that the current method continue to be accepted with TEM specified over other methods.

Response: The revisions to the asbestos NESHAP proposed on January 10, 1989 would have changed the definition of "friable asbestos material" from "greater than 1 percent weight" to "greater than 1 percent area" and referenced a method for the analysis. Because the method referenced actually contains two analytical methods—polarized light microscopy (PLM) which currently measures area, and x-ray diffraction (XRD) which measures weight—EPA has modified the definition to specify the PLM method to avoid possible confusion as to which method is referenced. Because the PLM point counting method measures percent area, the phrase "by area" is not necessary and has been taken out of the definition. The difference between percent area and percent weight depends on the density and volume of materials in the sample. These relationships are described in Asbestos Content in Bulk Insulation Samples: Visual Estimates and Weight Composition (EPA-560/5-88-011, September 1988). However, the fact remains that the PLM procedure used to determine the amount of asbestos in building materials (Interim Method for the Determination of Asbestos in Bulk Insulation Samples (EPA-600/M4-82-020, December 1982) measures percent area and not percent weight. PLM laboratories polled at meetings of the National Asbestos Council admitted that percent area is what they measure and report. Accordingly, there should be no impact on the standard from the proposed change.

Point counting is not required for the PLM procedure. An equivalent visual estimation technique may be used. Visual estimation may be made during macroscopic examination with a stereobinocular microscope, resulting in a volumetric estimation of components. For most samples, quantitation by macroscopic examination is preferred. Visual estimation may also be made during polarized light microscopy (PLM) examination, resulting in a projected area estimation of components. However, if the asbestos content is estimated to be less than 10 percent by a method other than point counting, such as visual estimation, EPA has revised the definition to require that the

determination be repeated using the point counting technique with PLM. Point counting, a systematic technique for estimating concentration, may also be useful in quality assurance activities, especially in establishing a relationship between point counts and visual estimation procedures.

The accuracy of quantitative data from either technique of estimation is dependent upon several factors, including: sample homogeneity, asbestos content, asbestos fiber size, the presence of interfering matrix/binder material, and the skill of the microscopist. It is suggested that the quantitation skill of the microscopist may be improved and concurrently verified through the use of calibration standards. These standards may include well-characterized bulk materials or in-house calibration standards formulated by mixing known weights of commonly available fibrous (asbestos, cellulose, glass, etc.) and nonfibrous (plaster, clay, vermiculite, calcium carbonate, etc.) materials.

For some materials, experience has shown that gravimetry (gravimetric sample reduction) is a viable technique to aid in the determination of asbestos content. The technique involves the systematic removal (and determination of the resulting weight loss) of interfering components, and the concentration of asbestos in a residue, the components of which are identified by PLM. EPA is currently conducting research to develop procedures that will help determine the appropriate analytical procedure to use based on the type of material, the level of asbestos present in the material, as well as other factors.

TEM is not recommended for routine analysis of bulk samples. TEM may be useful in the analysis of special materials containing finely divided asbestos particles. The EPA is currently reviewing procedures for analyzing bulk samples for asbestos. Under investigation are procedures that would determine what analytical techniques are appropriate for bulk samples of different materials and different asbestos contents. For example, a simple visual estimation technique may be appropriate for the initial screening of bulk samples of friable material. If the visual estimation technique indicates that the asbestos content is less than 10 percent, additional quantitation by point counting would be required. If the material to be analyzed contains asbestos fibers below the limit of resolution for PLM, which is often true of floor tile, then analysis by TEM is appropriate.

Method of Notification

Comment: Several comments were received on the requirement to use certified mail for notifying EPA. Most of the commenters objected to the use of certified mail to the exclusion of other methods.

Commenters IV-D-23, IV-D-24, IV-D-25, IV-D-42, IV-D-78, IV-D-59, and IV-D-65 considered the certified mail requirement to be unnecessary for EPA to achieve the intended purpose of the notification process. It was stated that certified mail would require a trip to a post office, which is a deterrent to timely notification. Commenters IV-D-23, IV-D-24, IV-D-41, and IV-D-78 argued that notification by telefax machine may be more practical than certified mail. Commenters IV-D-25, IV-D-65, and IV-D-83 suggested that notification by telephone or telefax be allowed, followed by a written notification. Commenters IV-D-24, IV-D-25, IV-D-42, and IV-D-65 observed that regular mailing of notices works satisfactorily and should be allowed. Commenters IV-D-28 and IV-D-66 favored allowing the use of overnight mail.

Commenter IV-D-59 argued that, if a State agency has jurisdiction, the method of notification should be left up to the State agency.

Commenter IV-D-32 argued that all notifications should be in writing because telephone notification does not result in a legally enforceable written record. Also, commenter IV-D-32 stated that allowing the use of telephones would promote schedule changes for minor reasons that would not otherwise be considered.

Response: Several of the commenters objected to the required use of certified mail even though EPA proposed the use of certified mail as a way of ensuring that owners/operators had proof of notification. In view of the negative comments and after reconsidering the issue, the EPA has decided not to require certified mail although its use would be allowed. The use of the regular mail system, *i.e.*, U.S. Postal Service, has worked satisfactorily in the past and will continue to be allowed. Also, because the rule specifies postmark " * * * or deliver * * *," private overnight mail delivery is permitted.

Regarding the use of telephone facsimile (fax) machines to transmit notices, EPA does not consider these systems to be sufficiently reliable, at this time, to allow their use. Often, it is difficult to know whether a transmission was successful. Disadvantages associated with their use include occasional incomplete transmissions

and transmissions of poor quality requiring faxed messages to be followed by telephone contact to confirm proper transmission. More than one transmission may be required. In some instances, quality cannot be improved. Also, because of competing messages, it often requires a long time before a fax can be properly transmitted and verified. The EPA may consider the use of facsimile machines in the future when their reliability has been improved.

The EPA does not consider it necessary to allow the use of the telephone for the original notification of a demolition or renovation activity covered by this standard. The notification must be in writing.

Where States or local authorities enforce their own asbestos regulations, they may choose the notification procedures. But if a State is delegated authority for enforcing the NESHAP, then they must adhere to the NESHAP's requirements.

The EPA is in agreement with the commenter who favors written notifications over telephone notifications and the final rule continues to require the former.

It should be noted that OSHA has recently proposed notification requirements (55 FR 29712, July 20, 1990) similar to those in the NESHAP. The EPA is coordinating with OSHA during their rulemaking to determine the most efficient mechanism to avoid duplication and ensure that both EPA and OSHA receive adequate notice without unduly burdening industry.

Renotification

Comment: Numerous comments were received on the proposed renotification requirements. Although a few favored the requirements as proposed and a few thought the requirements should be more stringent, most of the commenters favored the use of telephone renotification. The comments were as follows:

Commenter IV-D-28 disagreed with the NADC comment in the proposal preamble that renotification by telephone should be allowed; commenter IV-D-28 recommended a 10-day written notice for all projects.

Commenter IV-D-21 suggested that the renotification provisions be made more flexible by allowing the actual start date to vary by a couple of days for projects lasting longer than 5 days before requiring the owner/operator to renotify.

Commenters IV-D-21, IV-D-25, IV-D-26, IV-D-36, IV-D-37, IV-D-41, IV-D-42, IV-D-45, IV-D-46, IV-D-49, IV-D-50, IV-D-58, IV-D-59, IV-D-60, IV-D-61, IV-D-62, IV-D-65, IV-D-69, IV-D-

71, IV-D-73, IV-D-74, IV-D-76, IV-D-87, IV-D-88, and IV-D-94 suggested that EPA allow the use of some other means besides certified mail for renotification, such as same day telephone or telefax messages, when a 5-day written notice would further delay the project. This would be simpler and less time-consuming. Commenter IV-D-41 also suggested that, when it is feasible to provide a 5-day written notice, *i.e.*, delays are known at least 5 days in advance, then such notice would be provided. Also, as commenters IV-D-46, IV-D-49, IV-D-50, IV-D-58, IV-D-60, IV-D-62, IV-D-69, and IV-D-73 suggested, a telephone notice could be followed by a written notice.

According to commenters IV-D-23, IV-D-24, IV-D-36, IV-D-37, IV-D-41, IV-D-42, IV-D-43, IV-D-45, IV-D-46, IV-D-49, IV-D-50, IV-D-51, IV-D-58, IV-D-59, IV-D-63, IV-D-64, IV-D-73, IV-D-75, IV-D-76, IV-D-78, IV-D-87, IV-D-88, and IV-D-94, there are numerous unforeseen factors, such as equipment mobilization problems, personnel availability, weather, or other project difficulties, that can cause a removal project to start on a date other than the one submitted in the original notification. These commenters explained that the proposed renotification requirements, with their additional waiting requirements, could result in unreasonable project delays and significantly increased project costs. Several of these commenters and commenter IV-D-84 suggested that EPA allow a project to start within some reasonable period of time, such as a couple of days, of the original start date without having to renotify EPA in writing. The EPA should provide for some flexibility in predicting the exact start date. In the experience of one of the commenters, jobs usually start within a day or two of the scheduled date.

Response: The EPA agrees that a 10-day advance notice is appropriate for demolitions and renovations that can be planned for and scheduled. In some situations, however, such as emergency renovations or government-ordered demolition of buildings that are in danger of imminent collapse, EPA considers shorter notification periods appropriate. For renotification, a 10-day additional waiting period would be excessively burdensome.

The EPA has considered the suggestion that telephone renotification be permitted and has determined that providing for the use of the telephone, followed by a written notice, would provide the necessary flexibility and would be in the best interests of both

the regulated community and EPA. The EPA does not want to interfere with commerce by requiring a 5-day waiting period for a written renotification when a telephone call followed by a written renotification would suffice. Nor does EPA wish to make useless visits to jobs that have been rescheduled because a written renotification of a change in start date was not received in time.

Emergency Renovation

Comment: Commenters IV-D-9, IV-D-14, IV-D-41, IV-D-42, and IV-D-49 stated that the scope of the term "emergency renovation operation" should not be limited to events resulting in "unsafe conditions," but should include events such as fires, ruptured pipes, boiler failures, and other situations that could present potential public health or safety hazards if not immediately attended to. Commenter IV-D-18 asked if the definition would include the release of asbestos into the air. Commenter IV-D-63 recommended that the definition include operations necessary to protect equipment from significant damage.

Response: Events that would necessitate an emergency renovation include those that may produce immediately unsafe conditions as well as those that, if not quickly remedied, could reasonably be foreseen to result in an unsafe or detrimental effect on health. For example, a boiler in an apartment building that suddenly malfunctions during the winter would need to be repaired immediately. To protect equipment from significant damage and to avoid imposing an unreasonable financial burden by requiring sources that experience a sudden unexpected equipment failure to wait 10 days, the final rule includes equipment damage and financial burden as additional reasons for emergency renovations, and the definition of emergency renovation is revised accordingly.

Definition of Facility

Comment: Several commenters argued that the exclusion of residential facilities having four or fewer dwelling units should be eliminated. Commenter IV-D-89 asserted that residential demolition and renovation and associated waste disposal involve significant quantities of asbestos and should be regulated. Commenter IV-D-54 argued that residential buildings having four or fewer units should not be exempt from the work practices provisions even if they are exempt from the notification requirements. Commenter IV-D-94 recommended that only facilities with one dwelling unit be

excluded because renters of apartments are frequently exposed as a result of asbestos work performed by untrained workers.

Response: The recommendation to remove the exemption for residential facilities having four or fewer dwelling units would expand the scope of the rule. Revisions that alter stringency may be considered during a later rulemaking. However, EPA does not consider residential structures that are demolished or renovated as part of a commercial or public project to be exempt from this rule. For example, the demolition of one or more houses as part of an urban renewal project, a highway construction project, or a project to develop a shopping mall, industrial facility, or other private development, would be subject to the NESHAP. Nor would the conversion of a hotel or large apartment building to a condominium, a cooperative, or a loft exempt the structure from the NESHAP. To clarify that condominiums, cooperatives, and lofts which exceed four dwelling units are subject to the NESHAP, the definition of facility has been modified accordingly. The owner of a home that renovates his house or demolishes it to construct another house is not to be subject to the NESHAP.

Definition of Installation

Comment: Commenter IV-D-83 argued that the definition of "installation" needs clarification and asks whether a group of residential buildings would be excluded. The commenter argued that a group of residential buildings at one location being demolished or renovated by one developer should be covered.

Response: A group of residential buildings under the control of the same owner or operator is considered an installation according to the definition of "installation" and is, therefore, covered by the rule. As an example, several houses located on highway right-of-way that are all demolished as part of the same highway project would be considered an "installation," even when the houses are not proximate to each other. In this example, the houses are under the control of the same owner or operator, i.e., the highway agency responsible for the highway project.

Training

Comment: Commenters IV-D-18 and IV-D-66 recommended that a refresher course be attended every 2 years.

Response: Regarding the commenters who recommended that refresher courses be taken every 2 years, EPA agrees and has modified the rule to require refresher courses. The EPA

considers such additional training important to maintain familiarity with the NESHAP as well as to keep abreast of any changes in the standards.

Sanding, Grinding, or Abrading Nonfriable ACM

Comment: Commenters IV-D-15, IV-D-47, IV-D-48, IV-D-55, IV-D-84, and IV-D-95 considered asbestos-containing flooring products, such as tile and sheet vinyl flooring, to always be nonfriable and exempt from the rule, with the exception of flooring that was being sanded (Commenters IV-D-47 and IV-D-48.)

Response: The EPA considers the deliberate sanding, grinding, or abrading (including drilling, cutting, and chipping) of all nonfriable materials, including resilient floor covering, asphalt roofing material, packings, and gaskets to be sources of asbestos emissions and the revisions require otherwise nonfriable ACM to be treated as if it were friable when it is sanded, ground or abraded.

Also, a definition of "grinding" is added to clarify the types of activities, especially those involving nonfriable asbestos materials, that are subject to the regulation. For example, typical floor tile removal methods, such as mechanical chipping, result in the floor tile being broken up into numerous small fragments. This removal method is subject to the NESHAP provisions. Other floor tile removal methods are available that do not result in the material being so severely damaged. Such methods include the use of heat from heat guns or electric heat machines, the use of infrared machines, flooding with water or amended water, and the use of dry ice or liquid nitrogen. These methods when properly utilized allow the tiles to be removed with a minimum of damage to the tiles and would not be subject to the NESHAP.

Definition of Nonfriable Asbestos Material

Comment: Commenters IV-D-15 and IV-D-69 asserted that the meaning of "nonfriable" is unclear because it was not defined in the revisions proposed on January 10, 1989. A problem may result if it is considered the opposite of friable. Commenter IV-D-39 also argued for a definition of "nonfriable" and asserted that, like "friable," the threshold of at least 1 percent by area should apply.

Response: The EPA agrees that the meaning of "nonfriable" needs to be clarified. A definition of "nonfriable asbestos material" has been added to the final rule. The EPA considers nonfriable asbestos material to be material containing more than 1 percent

asbestos by area that cannot be crumbled, pulverized, or reduced to power by hand pressure. However, some nonfriable asbestos materials can be crumbled, pulverized, etc., in the course of demolition/renovation operations leading to asbestos emissions and are, therefore, subject to control under the NESHAP.

Waste Disposal

Marking

Comment: Commenters IV-D-61 and IV-D-98 asserted that the term "placard" is inappropriate because it has a specific application under DOT regulations for hazardous waste transport, and that the proposal should be revised to maintain the distinction between "marking" and "placarding" as was done in RCRA and TSCA rulemakings.

Response: The EPA has modified the final rule to replace the term "placard," a term used by the DOT in its regulation of the transportation of hazardous materials, with the term "mark" as suggested by the commenters. This should help avoid confusing DOT requirements with requirements under the NESHAP.

Labeling

Comment: Commenters IV-D-18, IV-D-28, IV-D-41, and IV-D-84 recommended that EPA in Section 61.150, and perhaps elsewhere, cite only OSHA labels and delete references to other labels because OSHA requires the use of their labels in all cases.

Response: The EPA agrees with the commenters who suggest that only OSHA labels be required on containers and has revised the final rule accordingly.

Offsite Disposal

Comment: Two commenters were concerned with placarding and other requirements of § 61.149(d). Commenter IV-D-22 stated that his company moves tailings from the mill by dump truck or earth-moving equipment to a disposal site on company property and would like the requirements for placards, etc., in § 61.149(d) changed so that they would apply only to transport to an offsite disposal facility.

Commenter IV-D-93 also suggested that the requirements of § 61.149(d) should apply only to vehicles transferring waste offsite.

Response: Although company personnel may not require a warning that asbestos waste is being transported, others who are on site and who are not company employees, e.g., vendor and construction personnel,

clearly do. Further, OSHA requires that workers be informed of hazards to which they are exposed. Accordingly, EPA believes the provisions of § 61.149(d) are appropriate as proposed and should not be changed as suggested.

EPA Identification Number

Comment: Several comments addressed the proposal to assign identification numbers to generators of asbestos waste. Most of the commenters found the requirement confusing. Commenters IV-D-9 and IV-D-49 stated that the system of using EPA identification numbers is confusing and misleading and should be subject to public comment rather than tacked onto the final version of the amendments. Commenter IV-D-25 wondered how the system is to operate and whether they would use the number they already have for hazardous waste. Commenter IV-D-26 was unclear as to who the generator would be and suggested that the abatement contractor be considered the generator. Commenter IV-D-28 thought that this requirement would generate a list of one-time generators, and that it should be deferred for further study. Commenter IV-D-41 asked if RCRA hazardous waste identification numbers were going to be assigned to asbestos waste generators. As explained by commenter IV-D-61, not all generators will have an EPA identification number as required in § 61.150(d) (1)(i) and (4)(i). Commenters IV-D-62 and IV-D-63 expressed confusion over the proposed identification number and urged that a single number be assigned to an entire company, rather than to each building or facility. Commenter IV-D-18 asked how the identification numbers are to be determined and assigned; is it to be done now; and, if the program is delegated to a State or local program, would this require a State identification number?

Response: Because of the confusion expressed by all the commenters over how a system of assigning identification numbers to asbestos waste generators would work, EPA has reconsidered this revision and has decided to delete the requirement for an identification number. The EPA is confident that, even without such a unique numbering system, it will be possible to track waste shipments for the purpose of pursuing enforcement actions.

Semiannual Reports

Comment: Commenter IV-D-4 opposed semiannual reporting by generators or disposal sites but recommended exception reporting by both. Commenter IV-D-9 noted that semiannual reporting is also redundant

in view of the Superfund Amendments and Reauthorization Act (SARA) Title III regulations. Commenters IV-D-28, IV-D-39, IV-D-41, IV-D-75, and IV-D-83 asserted that EPA should delete the semiannual reporting requirement in § 61.150(d)(4) because it is redundant since the information is also provided on the waste tracking form and will just add more paperwork. Commenter IV-D-94 was concerned that small, rural landfills will use the proposed recordkeeping requirements as an excuse to refuse to accept asbestos waste, which could increase illegal dumping. Commenter IV-D-94 stated that the regulation in effect prior to the January 10, 1989, proposal should be retained.

Commenters IV-D-24, IV-D-61, and IV-D-62 noted that most waste shipment reporting now occurs on an annual basis and that they preferred annual to semiannual reporting. Commenter IV-D-41 recommended that EPA adopt the biennial reporting used by EPA's Office of Solid Waste (OSW). Commenter IV-D-65 stated that, if necessary, EPA should supplement the existing biennial RCRA report.

Commenter IV-D-63 asserted that it is unnecessary for the generator to submit semiannual waste disposal reports. Commenter IV-D-81 stated that the proposal imposes redundant reporting requirements on owners/operators due to § 61.150(c)(4).

Commenter IV-D-51 argued that industrial landfills on site that are subject to RCRA and State statutes should be exempt from the reporting and recordkeeping requirements of § 61.150(d). Commenter IV-D-55 stated that § 61.150(d) does not define adequately who keeps disposal records and who submits semiannual reports. Commenter IV-D-55 felt that building owners are unfamiliar with the report called for in § 61.150(d)(4).

Response: Upon additional consideration of this provision, EPA has decided to omit the requirement for semiannual reporting from today's rule. This decision is based in part on several comments opposing semiannual reporting as unnecessary. In addition, because of the large commitment of enforcement resources that would be required for such a system to properly function, EPA believes that the proposal is overly ambitious at this time. The EPA believes, however, that enforcement can use the available information and adequately identify violators by comparing the waste records that are required to be kept by waste generators and waste disposal sites. At this time, a more workable

solution will be to require disposal sites to report to EPA whenever there is a discrepancy between the amount of waste received and the amount reported on the waste shipment papers. The discrepancy report should be submitted to the same agency that was notified of the demolition or renovation and, if different, to the agency responsible for administering the NESHAP program for the disposal site. In addition, new and existing disposal sites will be required to comply with the general reporting provisions of 40 CFR part 61.

Specifically, new disposal sites will be required to comply with the requirement to apply for approval to construct (§ 61.07), and the requirements to notify EPA of startup dates (§ 61.09). Existing disposal sites that will accept asbestos waste after the effective date of the rule will be required to supply EPA with certain information concerning their operations (§ 61.10). This information will assist enforcement in tracking asbestos waste.

Excepted Waste Shipment Report

The proposed revisions included a requirement for waste generators to indicate, as part of a semiannual report to the Administrator, waste shipments for which 35 days or more have elapsed since the waste was shipped without the waste generator having received a copy of the WSR signed and dated by the disposal site owner or operator. While EPA has determined that semiannual reports are not necessary, it considers this requirement a vital part of the asbestos waste tracking system and a provision for excepted waste shipment reports is included in the final rule.

Waste Conversion Processes

Comment: Commenter IV-D-21 asked that procedures for sample preparation for TEM be clarified; that comminution size of particle reduction be specified; that the standard or interim method of analysis that is acceptable be identified; and that laboratory qualifications meeting requirements of the National Institute of Standards and Technology (NIST) and AHERA be identified.

Response: Currently EPA has no protocol for TEM analysis of output materials. The final rule requires the owner or operator of waste conversion processes to submit a protocol for sampling and analysis by TEM for approval by EPA.

V. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to

allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated revisions and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

The effective date of this regulation is November 20, 1990. Section 112 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation except that in the case of an existing source, the standard shall not apply until 90 days after its effective date.

As prescribed by section 112, the promulgation of these standards was preceded by the Administrator's determination that asbestos presents a significant risk to human health as a result of air emissions from one or more source categories and is therefore a hazardous air pollutant (36 FR 3031, dated March 31, 1971). In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new standard promulgated under section 112 of the Act. Since the costs of the revision will be small, an economic impact assessment was not considered necessary for this regulation.

Information collection requirements associated with this regulation (those included in 40 CFR part 60, subpart A and subpart XXX) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number (2060-0101).

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act

specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Asbestos, Beryllium, Benzene, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride, Blast furnaces, Steel mills.

Dated: October 29, 1990.

William K. Reilly,
Administrator.

40 CFR part 61 is amended as follows:

PART 61—[AMENDED]

1. The authority citation for 40 CFR part 61, subpart M, is revised to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2.-3. Section 61.140 is revised to read as follows:

§ 61.140 Applicability.

The provisions of this subpart are applicable to those sources specified in § 61.142 through 61.151, 61.154, and 61.155.

4. In § 61.141, the following definitions are revised: "Asbestos-containing waste materials," "Commercial asbestos," "Demolition," "Emergency renovation operation," "Fabricating," "Facility," "Facility component," "Friable asbestos materials," "Inactive waste disposal site," "Manufacturing," "Outside air," "Particulate asbestos material," "Planned renovation operation," "Remove," "Renovation," "Roadways," "Strip," and "Visible emissions."

The following definitions are added: "Adequately wet," "Category I nonfriable ACM," "Cutting," "Category II nonfriable ACM," "Fugitive sources," "Glove bag," "Grinding," "In poor condition," "Installation," "Leak-tight," "Malfunction," "Natural barrier," "Nonfriable asbestos-containing material," "Nonscheduled renovation operation," "Owner or operator of a demolition or a renovation activity," "Regulated asbestos-containing material," "Resilient floor covering," "Waste generator," "Waste shipment record," and "Working day."

The definitions, "Adequately wetted" and "Asbestos material," are removed.

§ 61.141 Definitions.

* * * * *

Adequately wet means sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

* * * * *

Asbestos-containing waste materials means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this subpart. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovations operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

* * * * *

Category I nonfriable asbestos-containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy.

Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Commercial asbestos means any material containing asbestos that is extracted from ore and has value because of its asbestos content.

Cutting means to penetrate with a sharp-edged instrument and includes sawing, but does not include shearing, slicing, or punching.

Demolition means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

Emergency renovation operation means a renovation operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial

burden. This term includes operations necessitated by nonroutine failures of equipment.

Fabricating means any processing (e.g., cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.

Facility means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

Facility component means any part of a facility including equipment.

Friable asbestos material means any material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763 section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

Fugitive source means any source of emissions not controlled by an air pollution control device.

Glove bag means a sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. properly installed and used, glove bags provide a small work area enclosure typically used for small-scale asbestos stripping operations. Information on glove-bag installation, equipment and supplies, and work practices is contained in the Occupational Safety and Health Administration's (OSHA's) final rule on occupational exposure to asbestos (appendix G to 29 CFR 1926.58).

Grinding means to reduce to powder or small fragments and includes mechanical chipping or drilling.

In poor condition means the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.

Inactive waste disposal site means any disposal site or portion of it where additional asbestos-containing waste material has not been deposited within the past year.

Installation means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

Leak-tight means that solids or liquids cannot escape or spill out. It also means dust-tight.

Malfunction means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner so that emissions of asbestos are increased. Failures of equipment shall not be considered malfunctions if they are caused in any way by poor maintenance, careless operation, or any other preventable upset conditions, equipment breakdown, or process failure.

Manufacturing means the combining of commercial asbestos—or, in the case of woven friction products, the combining of textiles containing commercial asbestos—with any other material(s), including commercial asbestos, and the processing of this combination into a product. Chlorine production is considered a part of manufacturing.

Natural barrier means a natural object that effectively precludes or deters access. Natural barriers include physical obstacles such as cliffs, lakes or other large bodies of water, deep and wide ravines, and mountains. Remoteness by itself is not a natural barrier.

Nonfriable asbestos-containing material means any material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Nonscheduled renovation operation means a renovation operation necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.

Outside air means the air outside buildings and structures, including, but

not limited to, the air under a bridge or in an open air ferry dock.

Owner or operator of a demolition or renovation activity means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

Particulate asbestos material means finely divided particles of asbestos or material containing asbestos.

Planned renovation operations means a renovation operation, or a number of such operations, in which some RACM will be removed or stripped within a given period of time and that can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.

Regulated asbestos-containing material (RACM) means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

Remove means to take out RACM or facility components that contain or are covered with RACM from any facility.

Renovation means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

Resilient floor covering means asbestos-containing floor tile, including asphalt and vinyl floor tile, and sheet vinyl floor covering containing more than 1 percent asbestos as determined using polarized light microscopy according to the method specified in appendix A, subpart F, 40 CFR part 763, Section 1, Polarized Light Microscopy.

Roadways means surfaces on which vehicles travel. This term includes public and private highways, roads, streets, parking areas, and driveways.

Strip means to take off RACM from any part of a facility or facility components.

* * * * *

Visible emissions means any emissions, which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operation. This does not include condensed, uncombined water vapor.

Waste generator means any owner or operator of a source covered by this subpart whose act or process produces asbestos-containing waste material.

Waste shipment record means the shipping document, required to be originated and signed by the waste generator, used to track and substantiate the disposition of asbestos-containing waste material.

Working day means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

5. Section 61.142 is revised to read as follows:

§ 61.142 Standard for asbestos mills.

(a) Each owner or operator of an asbestos mill shall either discharge no visible emissions to the outside air from that asbestos mill, including fugitive sources, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(b) Each owner or operator of an asbestos mill shall meet the following requirements:

(1) Monitor each potential source of asbestos emissions from any part of the mill facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring shall be by visual

observation of at least 15 seconds duration per source of emissions.

(2) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

- (i) Maintenance schedule.
- (ii) Recordkeeping plan.

(3) Maintain records of the results of visible emissions monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

- (i) Date and time of each inspection.
- (ii) Presence or absence of visible emissions.
- (iii) Condition of fabric filters, including presence of any tears, holes, and abrasions.
- (iv) Presence of dust deposits on clean side of fabric filters.
- (v) Brief description of corrective actions taken, including date and time.
- (vi) Daily hours of operation for each air cleaning device.

(4) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Administrator, all records required under this section.

(5) Retain a copy of all monitoring and inspection records for at least 2 years.

(6) Submit quarterly a copy of visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

Date of inspection (mo/day/yr)	Time of inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emissions observed (yes/no), corrective action taken	Daily operating hours	Inspector's initials

Figure 1. Record of Visible Emission Monitoring

1.	Air cleaning device designation or number	_____	_____	_____	_____
2.	Date of inspection	_____	_____	_____	_____
3.	Time of inspection	_____	_____	_____	_____
4.	Is air cleaning device operating properly (yes/no)	_____	_____	_____	_____
5.	Tears, holes, or abrasions in fabric filter (yes/no)	_____	_____	_____	_____
6.	Dust on clean side of fabric filters (yes/no)	_____	_____	_____	_____
7.	Other signs of malfunctions or potential malfunctions (yes/no)	_____	_____	_____	_____
8.	Describe other malfunctions or signs of potential malfunctions.	_____ _____ _____			
9.	Describe corrective action(s) taken.	_____ _____ _____			
10.	Date and time corrective action taken	_____	_____	_____	_____
11.	Inspected by	_____			
	(Print/Type Name)	(Title)	(Signature)	(Date)	
	_____	_____	_____	_____	
	(Print/Type Name)	(Title)	(Signature)	(Date)	
	_____	_____	_____	_____	

Figure 2. Air Cleaning Device Inspection Checklist

6. Section 61.143 is revised to read as follows:

§ 61.143 Standard for roadways.

No person may construct or maintain a roadway with asbestos tailings or asbestos-containing waste material on that roadway, unless, for asbestos tailings.

(a) It is a temporary roadway on an area of asbestos ore deposits (asbestos mine): or

(b) It is a temporary roadway at an active asbestos mill site and is encapsulated with a resinous or bituminous binder. The encapsulated road surface must be maintained at a minimum frequency of one per year to prevent dust emissions; or

(c) It is encapsulated in asphalt concrete meeting the specifications contained in section 401 of Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-85, 1985, or their equivalent.

7. In § 61.144, paragraph (a)(9) and paragraphs (b) (1) and (2) are revised, and paragraphs (b)(3) through (b)(8) are added to read as follows:

§ 61.144 Standards for manufacturing.

(a) * * *

(9) The manufacture of chlorine utilizing asbestos diaphragm technology.

* * * * *

(b) * * *

(1) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted or from any other fugitive sources; or

(2) Use the methods specified by § 61.152 to clean emissions from these operations containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be visual observation of at least 15 seconds duration per source of emissions.

(4) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according

to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(i) Maintenance schedule.

(ii) Recordkeeping plan.

(5) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following.

(i) Date and time of each inspection.

(ii) Presence or absence of visible emissions.

(iii) Condition of fabric filters, including presence of any tears, holes and abrasions.

(iv) Presence of dust deposits on clean side of fabric filters.

(v) Brief description of corrective actions taken, including date and time.

(vi) Daily hours of operation for each air cleaning device.

(6) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Administrator, all records required under this section.

(7) Retain a copy of all monitoring and inspection records for at least 2 years.

(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

8. Sections 61.146 and 61.147 are removed, and § 61.145 is revised to read as follows:

§ 61.145 Standard for demolition and renovation.

(a) *Applicability.* To determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

(1) In a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section, if the combined amount of RACM is

(i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square

meters (160 square feet) on other facility components, or

(ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

(2) In a facility being demolished, only the notification requirements of paragraphs (b)(1), (2), (3)(i) and (iv), and (4)(i) through (vii) and (4)(ix) and (xvi) of this section apply, if the combined amount of RACM is

(i) Less than 80 linear meters (260 linear feet) on pipes less than 15 square meters (160 square feet) on other facility components, and

(ii) Less than one cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously or there is no asbestos.

(3) If the facility is being demolished under an order of a State or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements of paragraphs (b)(1), (b)(2), (b)(3)(iii), (b)(4) (except (b)(4)(viii)), (b)(5), and (c)(4) through (c)(9) of this section apply.

(4) In a facility being renovated, including any individual nonscheduled renovation operation, all the requirements of paragraphs (b) and (c) of this section apply if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is

(i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or

(ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

(iii) To determine whether paragraph (a)(4) of this section applies to planned renovation operations involving individual nonscheduled operations, predict the combined additive amount of RACM to be removed or stripped during a calendar year of January 1 through December 31.

(iv) To determine whether paragraph (a)(4) of this section applies to emergency renovation operations, estimate the combined amount of RACM to be removed or stripped as a result of the sudden, unexpected event that necessitated the renovation.

(5) Owners or operators of demolition and renovation operations are exempt from the requirements of §§ 61.05(a), 61.07, and 61.09.

(b) *Notification requirements.* Each owner or operator of a demolition or

renovation activity to which this section applies shall:

(1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(2) Update notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent.

(3) Postmark or deliver the notice as follows:

(i) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (a) (1) and (4) (except (a)(4)(iii) and (a)(4)(iv)) of this section. If the operation is as described in paragraph (a)(2) of this section, notification is required 10 working days before demolition begins.

(ii) At least 10 working days before the end of the calendar year preceding the year for which notice is being given for renovations described in paragraph (a)(4)(iii) of this section.

(iii) As early as possible before, but not later than, the following working day if the operation is a demolition ordered according to paragraph (a)(3) of this section or, if the operation is a renovation described in paragraph (a)(4)(iv) of this section.

(iv) For asbestos stripping or removal work in a demolition or renovation operation, described in paragraphs (a) (1) and (4) (except (a)(4)(iii) and (a)(4)(iv)) of this section, and for a demolition described in paragraph (a)(2) of this section, that will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator as follows:

(A) When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin after the date contained in the notice,

(1) Notify the Administrator of the new start date by telephone as soon as possible before the original start date, and

(2) Provide the Administrator with a written notice of the new start date as soon as possible before, and no later than, the original start date. Delivery of the updated notice by the U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(B) When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin on a date earlier than the original start date,

(1) Provide the Administrator with a written notice of the new start date at least 10 working days before asbestos stripping or removal work begins.

(2) For demolitions covered by paragraph (a)(2) of this section, provide the Administrator written notice of a new start date at least 10 working days before commencement of demolition. Delivery of updated notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(C) In no event shall an operation covered by this paragraph begin on a date other than the date contained in the written notice of the new start date.

(4) Include the following in the notice:

(i) An indication of whether the notice is the original or a revised notification.

(ii) Name, address, and telephone number of both the facility owner and operator and the asbestos removal contractor owner or operator.

(iii) Type of operation: demolition or renovation.

(iv) Description of the facility or affected part of the facility including the size (square meters [square feet] and number of floors), age, and present and prior use of the facility.

(v) Procedure, including analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM.

(vi) Estimate of the approximate amount of RACM to be removed from the facility in terms of length of pipe in linear meters (linear feet), surface area in square meters (square feet) on other facility components, or volume in cubic meters (cubic feet) if off the facility components. Also, estimate the approximate amount of Category I and Category II nonfriable ACM in the affected part of the facility that will not be removed before demolition.

(vii) Location and street address (including building number or name and floor or room number, if appropriate), city, county, and state, of the facility being demolished or renovated.

(viii) Scheduled starting and completion dates of asbestos removal work (or any other activity, such as site preparation that would break up, dislodge, or similarly disturb asbestos material) in a demolition or renovation; planned renovation operations involving individual nonscheduled operations shall only include the beginning and ending dates of the report period as described in paragraph (a)(4)(iii) of this section.

(ix) Scheduled starting and completion dates of demolition or renovation.

(x) Description of planned demolition or renovation work to be performed and method(s) to be employed, including

demolition or renovation techniques to be used and description of affected facility components.

(xi) Description of work practices and engineering controls to be used to comply with the requirements of this subpart, including asbestos removal and waste-handling emission control procedures.

(xii) Name and location of the waste disposal site where the asbestos-containing waste material will be deposited.

(xiii) A certification that at least one person trained as required by paragraph (c)(8) of this section will supervise the stripping and removal described by this notification. This requirement shall become effective 1 year after promulgation of this regulation.

(xiv) For facilities described in paragraph (a)(3) of this section, the name, title, and authority of the State or local government representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin. A copy of the order shall be attached to the notification.

(xv) For emergency renovations described in paragraph (a)(4)(iv) of this section, the date and hour that the emergency occurred, a description of the sudden, unexpected event, and an explanation of how the event caused an unsafe condition, or would cause equipment damage or an unreasonable financial burden.

(xvi) Description of procedures to be followed in the event that unexpected RACM is found or Category II nonfriable ACM becomes crumbled, pulverized, or reduced to powder.

(xvii) Name, address, and telephone number of the waste transporter.

(5) The information required in paragraph (b)(4) of this section must be reported using a form similar to that shown in Figure 3.

(c) *Procedures for asbestos emission control.* Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

(1) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. RACM need not be removed before demolition if:

(i) It is Category I nonfriable ACM that is not in poor condition and is not friable.

(ii) It is on a facility component that is encased in concrete or other similarly

hard material and is adequately wet whenever exposed during demolition; or

(iii) It was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed. If not removed for safety reasons, the exposed RACM and any asbestos-contaminated debris must be treated as asbestos-containing waste material and adequately wet at all times until disposed of.

(iv) They are Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.

(2) When a facility component that contains, is covered with, or is coated with RACM is being taken out of the facility as a unit or in sections:

(i) Adequately wet all RACM exposed during cutting or disjoining operations; and

(ii) Carefully lower each unit or section to the floor and to ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the RACM.

(3) When RACM is stripped from a facility component while it remains in place in the facility, adequately wet the RACM during the stripping operation.

(i) In renovation operations, wetting is not required if:

(A) The owner or operator has obtained prior written approval from the Administrator based on a written application that wetting to comply with this paragraph would unavoidably damage equipment or present a safety hazard; and

(B) The owner or operator uses of the following emission control methods:

(1) A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the asbestos materials. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.152.

(2) A glove-bag system designed and operated to contain the particulate asbestos material produced by the stripping of the asbestos materials.

(3) Leak-tight wrapping to contain all RACM prior to dismantlement.

(ii) In renovation operations where wetting would result in equipment damage or a safety hazard, and the methods allowed in paragraph (c)(3)(i) of this section cannot be used, another method may be used after obtaining written approval from the Administrator

based upon a determination that it is equivalent to wetting in controlling emissions or to the methods allowed in paragraph (c)(3)(i) of this section.

(iii) A copy of the Administrator's written approval shall be kept at the worksite and made available for inspection.

(4) After a facility component covered with, coated with, or containing RACM has been taken out of the facility as a unit or in sections pursuant to paragraph (c)(2) of this section, it shall be stripped or contained in leak-tight wrapping, except as described in paragraph (c)(5) of this section. If stripped, either:

(i) Adequately wet the RACM during stripping; or

(ii) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.152.

(5) For large facility components such as reactor vessels, large tanks, and steam generators, but not beams (which must be handled in accordance with paragraphs (c)(2), (3), and (4) of this section), the RACM is not required to be stripped if the following requirements are met:

(i) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the RACM.

(ii) The component is encased in a leak-tight wrapping.

(iii) The leak-tight wrapping is labeled according to § 61.149(d)(1)(i), (ii), and (iii) during all loading and unloading operations and during storage.

(6) For all RACM, including material that has been removed or stripped:

(i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with § 61.150; and

(ii) Carefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.

(iii) Transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections.

(iv) RACM contained in leak-tight wrapping that has been removed in accordance with paragraphs (c)(4) and (c)(3)(i)(B)(3) of this section need not be wetted.

(7) When the temperature at the point of wetting is below 0 °C (32 °F):

(i) The owner or operator need not comply with paragraph (c)(2)(i) and the wetting provisions of paragraph (c)(3) of this section.

(ii) The owner or operator shall remove facility components containing, coated with, or covered with RACM as units or in sections to the maximum extent possible.

(iii) During periods when wetting operations are suspended due to freezing temperatures, the owner or operator must record the temperature in the area containing the facility components at the beginning, middle, and end of each workday and keep daily temperature records available for inspection by the Administrator during normal business hours at the demolition or renovation site. The owner or operator shall retain the temperature records for at least 2 years.

(8) Effective 1 year after promulgation of this regulation, no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. Every 2 years, the trained on-site individual shall receive refresher training in the provisions of this regulation. The required training shall include as a minimum: applicability; notifications; material identification; control procedures for removals including, at least, wetting, local exhaust ventilation, negative pressure enclosures, glove-bag procedures, and High Efficiency Particulate Air (HEPA) filters; waste disposal work practices; reporting and recordkeeping; and asbestos hazards and worker protection. Evidence that the required training has been completed shall be posted and made available for inspection by the Administrator at the demolition or renovation site.

(9) For facilities described in paragraph (a)(3) of this section, adequately wet the portion of the facility that contains RACM during the wrecking operation.

(10) If a facility is demolished by intentional burning, all RACM including Category I and Category II nonfriable ACM must be removed in accordance with the NESHAP before burning.

BILLING CODE 6560-50-M

NOTIFICATION OF DEMOLITION AND RENOVATION

Operator Project #	Postmark	Date Received	Notification #	
I. TYPE OF NOTIFICATION (O=Original R=Revised C=Cancelled):				
II. FACILITY INFORMATION (Identify owner, removal contractor, and other operator)				
OWNER NAME:				
Address:				
City:	State:	Zip:		
Contact:	Tel:			
REMOVAL CONTRACTOR:				
Address:				
City:	State:	Zip:		
Contact:	Tel:			
OTHER OPERATOR:				
Address:				
City:	State:	Zip:		
Contact:	Tel:			
III. TYPE OF OPERATION (D=Demo O=Ordered Demo R=Renovation E=Emer.Renovation):				
IV. IS ASBESTOS PRESENT? (Yes/No)				
V. FACILITY DESCRIPTION (Include building name, number and floor or room number)				
Bldg Name:				
Address:				
City:	State:	County:		
Site Location:				
Building Size:	# of Floors:	Age in Years:		
Present Use:		Prior Use:		
VI. PROCEDURE, INCLUDING ANALYTICAL METHOD, IF APPROPRIATE, USED TO DETECT THE PRESENCE OF ASBESTOS MATERIAL:				
VII. APPROXIMATE AMOUNT OF ASBESTOS, INCLUDING:				
1. Regulated ACM to be removed	RACM To Be Removed	Nonfriable Asbestos Material Not To Be Removed		Indicate Unit of Measurement Below
2. Category I ACM Not Removed		Cat I	Cat II	UNIT
3. Category II ACM Not Removed				
Pipes				Ln Ft: Ln m:
Surface Area				Sq Ft: Sq m:
Vol RACM Off Facility Component				Cu Ft: Cu m:
VIII. SCHEDULED DATES ASBESTOS REMOVAL (MM/DD/YY) Start:				Complete:
IX. SCHEDULED DATES DEMO/RENOVATION (MM/DD/YY) Start:				Complete:

Continued on page two

Figure 3. Notification of Demolition and Renovation

NOTIFICATION OF DEMOLITION AND RENOVATION (continued)

X. DESCRIPTION OF PLANNED DEMOLITION OR RENOVATION WORK, AND METHOD(S) TO BE USED:		
XI. DESCRIPTION OF WORK PRACTICES AND ENGINEERING CONTROLS TO BE USED TO PREVENT EMISSIONS OF ASBESTOS AT THE DEMOLITION AND RENOVATION SITE:		
XII. WASTE TRANSPORTER #1		
Name:		
Address:		
City:	State:	Zip:
Contact Person:	Telephone:	
WASTE TRANSPORTER #2		
Name:		
Address:		
City:	State:	Zip:
Contact Person:	Telephone:	
XIII. WASTE DISPOSAL SITE		
Name:		
Location:		
City:	State:	Zip:
Telephone:		
XIV. IF DEMOLITION ORDERED BY A GOVERNMENT AGENCY, PLEASE IDENTIFY THE AGENCY BELOW:		
Name:	Title:	
Authority:		
Date of Order (MM/DD/YY):	Date Ordered to Begin (MM/DD/YY):	
XV. FOR EMERGENCY RENOVATIONS		
Date and Hour of Emergency (MM/DD/YY):		
Description of the Sudden, Unexpected Event:		
Explanation of how the event caused unsafe conditions or would cause equipment damage or an unreasonable financial burden:		
XVI. DESCRIPTION OF PROCEDURES TO BE FOLLOWED IN THE EVENT THAT UNEXPECTED ASBESTOS IS FOUND OR PREVIOUSLY NONFRIABLE ASBESTOS MATERIAL BECOMES CRUMBLED, PULVERIZED, OR REDUCED TO POWDER.		
XVI. I CERTIFY THAT AN INDIVIDUAL TRAINED IN THE PROVISIONS OF THIS REGULATION (40 CFR PART 61, SUBPART M) WILL BE ON-SITE DURING THE DEMOLITION OR RENOVATION AND EVIDENCE THAT THE REQUIRED TRAINING HAS BEEN ACCOMPLISHED BY THIS PERSON WILL BE AVAILABLE FOR INSPECTION DURING NORMAL BUSINESS HOURS. (Required 1 year after promulgation)		
(Signature of Owner/Operator)		(Date)
XVII. I CERTIFY THAT THE ABOVE INFORMATION IS CORRECT.		
(Signature of Owner/Operator)		(Date)

Figure 3. Notification of Demolition and Renovation

9. Section 61.148 is redesignated as § 61.146 and is amended by revising paragraphs (a), the introductory text of (b), paragraph (b)(2), and paragraph (d) to read as follows:

§ 61.146 Standard for spraying.

(a) For spray-on application on buildings, structures, pipes, and conduits, do not use material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy, except as provided in paragraph (c) of this section.

(b) For spray-on application of materials that contain more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy, on equipment and machinery, except as provided in paragraph (c) of this section:

(2) Discharge no visible emissions to the outside air from spray-on application of the asbestos-containing material or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(d) Owners or operators of sources subject to this paragraph are exempt from the requirements of §§ 61.05(a), 61.07 and 61.09.

10. Section 61.149 is redesignated as § 61.147, paragraphs (b) (1) and (2) are revised, and paragraphs (b)(3) through (b)(8) are added to read as follows:

§ 61.147 Standard for fabricating.

(b) * * *

(1) Discharge no visible emissions to the outside air from any of the operations or from any building or structure in which they are conducted or from any other fugitive sources; or

(2) Use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) Monitor each potential source of asbestos emissions from any part of the fabricating facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring shall be by visual

observation of at least 15 seconds duration per source of emissions.

(4) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(i) Maintenance schedule.

(ii) Recordkeeping plan.

(5) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

(i) Date and time of each inspection.

(ii) Presence or absence of visible emissions.

(iii) Condition of fabric filters, including presence of any tears, holes, and abrasions.

(iv) Presence of dust deposits on clean side of fabric filters.

(v) Brief description of corrective actions taken, including date and time.

(vi) Daily hours of operation for each air cleaning device.

(6) Furnish upon request and make available at the affected facility during normal business hours for inspection by the Administrator, all records required under this section.

(7) Retain a copy of all monitoring and inspection records for at least 2 years.

(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

11. Section 61.150 is redesignated as § 61.148 and revised to read as follows:

§ 61.148 Standard for insulating materials.

No owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this section do not apply to spray-applied insulating materials regulated under § 61.146.

12. Section 61.151 is redesignated as § 61.149 and is amended by revising paragraphs (a), (b), introductory text of (c), (c)(1) (ii) and (iii), and (c)(2), and

adding new paragraphs (d) through (f) to read as follows:

§ 61.149 Standard for waste disposal for asbestos mills.

(a) Deposit all asbestos-containing waste material at a waste disposal site operated in accordance with the provisions of § 61.154; and

(b) Discharge no visible emissions to the outside air from the transfer of control device asbestos waste to the tailings conveyor, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air. Dispose of the asbestos waste from control devices in accordance with § 61.150(a) or paragraph (c) of this section; and

(c) Discharge no visible emissions to the outside air during the collection, processing, packaging, or on-site transporting of any asbestos-containing waste material, or use one of the disposal methods specified in paragraphs (c) (1) or (2) of this section, as follows:

(1) * * *

(ii) Discharge no visible emissions to the outside air from the wetting operation or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(iii) Wetting may be suspended when the ambient temperature at the waste disposal site is less than -9.5°C (15°F), as determined by an appropriate measurement method with an accuracy of $\pm 1^{\circ}\text{C}$ ($\pm 2^{\circ}\text{F}$). During periods when wetting operations are suspended, the temperature must be recorded at least at hourly intervals, and records must be retained for at least 2 years in a form suitable for inspection.

(2) Use an alternative emission control and waste treatment method that has received prior written approval by the Administrator. To obtain approval for an alternative method, a written application must be submitted to the Administrator demonstrating that the following criteria are met:

(i) The alternative method will control asbestos emissions equivalent to currently required methods.

(ii) The suitability of the alternative method for the intended application.

(iii) The alternative method will not violate other regulations.

(iv) The alternative method will not result in increased water pollution, land pollution, or occupational hazards.

(d) When waste is transported by vehicle to a disposal site:

(1) Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of the waste so that the signs are visible. The markings must:

(i) Be displayed in such a manner and location that a person can easily read the legend.

(ii) Conform to the requirements for 51 cm x 36 cm (20 in x 14 in) upright format signs specified in 29 CFR 1910.145(d)(4) and this paragraph; and

(iii) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend
DANGER
ASBESTOS DUST HAZARD
CANCER AND LUNG DISEASE HAZARD
Authorized Personnel Only
Notation
2.5 cm (1 inch) Sans Serif, Gothic or Block
2.5 cm (1 inch) Sans Serif, Gothic or Block
1.9 cm (¾ inch) Sans Serif, Gothic or Block
14 Point Gothic

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

(2) For off-site disposal, provide a copy of the waste shipment record, described in paragraph (e)(1) of this section, to the disposal site owner or operator at the same time as the

asbestos-containing waste material is delivered to the disposal site.

(e) For all asbestos-containing waste material transported off the facility site:

(1) Maintain asbestos waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, address, and telephone number of the waste generator.

(ii) The name and address of the local, State, or EPA Regional agency responsible for administering the asbestos NESHAP program.

(iii) The quantity of the asbestos-containing waste material in cubic meters (cubic yards).

(iv) The name and telephone number of the disposal site operator.

(v) The name and physical site location of the disposal site.

(vi) The date transported.

(vii) The name, address, and telephone number of the transporter(s).

(viii) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

(2) For waste shipments where a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received by the

waste generator within 35 days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the designated disposal site to determine the status of the waste shipment.

(3) Report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter. Include in the report the following information:

(i) A copy of the waste shipment record for which a confirmation of delivery was not received, and

(ii) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(4) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(f) Furnish upon request, and make available for inspection by the Administrator, all records required under this section.

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Generator	1. Work site name and mailing address		Owner's name	Owner's telephone no.
	2. Operator's name and address			Operator's telephone no.
	3. Waste disposal site (WDS) name, mailing address, and physical site location			WDS phone no.
	4. Name, and address of responsible agency			
	5. Description of materials		6. Containers No. Type	7. Total quantity m ³ (yd ³)
	8. Special handling instructions and additional information			
	9. OPERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.			
	Printed/typed name & title		Signature	Month Day Year
	10. Transporter 1 (Acknowledgment of receipt of materials)			
Transporter	Printed/typed name & title		Signature	Month Day Year
	Address and telephone no.			
	11. Transporter 2 (Acknowledgment of receipt of materials)			
	Printed/typed name & title		Signature	Month Day Year
Disposal Site	Address and telephone no.			
	12. Discrepancy indication space			
	13. Waste disposal site owner or operator: Certification of receipt of asbestos materials covered by this manifest except as noted in item 12.			
	Printed/typed name & title		Signature	Month Day Year

(Continued)

Figure 4. Waste Shipment Record

INSTRUCTIONS

Waste Generator Section (Items 1-9)

1. Enter the name of the facility at which asbestos waste is generated and the address where the facility is located. In the appropriate spaces, also enter the name of the owner of the facility and the owner's phone number.
2. If a demolition or renovation, enter the name and address of the company and authorized agent responsible for performing the asbestos removal. In the appropriate spaces, also enter the phone number of the operator.
3. Enter the name, address, and physical site location of the waste disposal site (WDS) that will be receiving the asbestos materials. In the appropriate spaces, also enter the phone number of the WDS. Enter "on-site" if the waste will be disposed of on the generator's property.
4. Provide the name and address of the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program.
5. Indicate the types of asbestos waste materials generated. If from a demolition or renovation, indicate the amount of asbestos that is
 - Friable asbestos material
 - Nonfriable asbestos material
6. Enter the number of containers used to transport the asbestos materials listed in item 5. Also enter one of the following container codes used in transporting each type of asbestos material (specify any other type of container used if not listed below):
 - DM - Metal drums, barrels
 - DP - Plastic drums, barrels
 - BA - 6 mil plastic bags or wrapping
7. Enter the quantities of each type of asbestos material removed in units of cubic meters (cubic yards).
8. Use this space to indicate special transportation, treatment, storage or disposal or Bill of Lading information. If an alternate waste disposal site is designated, note it here. Emergency response telephone numbers or similar information may be included here.
9. The authorized agent of the waste generator must read and then sign and date this certification. The date is the date of receipt by transporter.

NOTE: The waste generator must retain a copy of this form.

(continued)

Figure 4. Waste Shipment Record

Transporter Section (Items 10 & 11)

10. & 11. Enter name, address, and telephone number of each transporter used, if applicable. Print or type the full name and title of person accepting responsibility and acknowledging receipt of materials as listed on this waste shipment record for transport. Enter date of receipt and signature.

NOTE: The transporter must retain a copy of this form.

Disposal Site Section (Items 12 & 13)

12. The authorized representative of the WDS must note in this space any discrepancy between waste described on this manifest and waste actually received as well as any improperly enclosed or contained waste. Any rejected materials should be listed and destination of those materials provided. A site that converts asbestos-containing waste material to nonasbestos material is considered a WDS.
13. The signature (by hand) of the authorized WDS agent indicates acceptance and agreement with statements on this manifest except as noted in item 12. The date is the date of signature and receipt of shipment.

NOTE: The WDS must retain a completed copy of this form. The WDS must also send a completed copy to the operator listed in item 2.

Figure 4. Waste Shipment Record

13. Section 61.152 is redesignated as § 61.150 and is revised to read as follows:

§ 61.150 Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.

Each owner or operator of any source covered under the provisions of §§ 61.144, 61.145, 61.146, and 61.147 shall comply with the following provisions:

(a) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in paragraphs (a) (1) through (4) of this section.

(1) Adequately wet asbestos-containing waste material as follows:

(i) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and

(ii) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and

(iii) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and

(iv) Label the containers or wrapped materials specified in paragraph (a)(1)(iii) of this section using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(j)(2) or 1926.58(k)(2)(iii). The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.

(v) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(2) Process asbestos-containing waste material into nonfriable forms as follows:

(i) Form all asbestos-containing waste material into nonfriable pellets or other shapes;

(ii) Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified by § 61.152 to clean emissions containing particulate asbestos material

before they escape to, or are vented to, the outside air.

(3) For facilities demolished where the RACM is not removed prior to demolition according to §§ 61.145(c)(1) (i), (ii), (iii), and (iv) or for facilities demolished according to § 61.145(c)(9), adequately wet asbestos-containing waste material at all times after demolition and keep wet during handling and loading for transport to a disposal site. Asbestos-containing waste materials covered by this paragraph do not have to be sealed in leak-tight containers or wrapping but may be transported and disposed of in bulk.

(4) Use an alternative emission control and waste treatment method that has received prior approval by the Administrator according to the procedure described in § 61.149(c)(2).

(5) As applied to demolition and renovation, the requirements of paragraph (a) of this section do not apply to Category I nonfriable ACM waste and Category II nonfriable ACM waste that did not become crumbled, pulverized, or reduced to powder.

(b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

(1) A waste disposal site operated in accordance with the provisions of § 61.154, or

(2) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of § 61.155.

(3) The requirements of paragraph (b) of this section do not apply to Category I nonfriable ACM that is not RACM.

(c) Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The markings must conform to the requirements of §§ 61.149(d)(1) (i), (ii), and (iii).

(d) For all asbestos-containing waste material transported off the facility site:

(1) Maintain waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, address, and telephone number of the waste generator.

(ii) The name and address of the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program.

(iii) The approximate quantity in cubic meters (cubic yards).

(iv) The name and telephone number of the disposal site operator.

(v) The name and physical site location of the disposal site.

(vi) The date transported.

(vii) The name, address, and telephone number of the transporter(s).

(viii) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

(2) Provide a copy of the waste shipment record, described in paragraph (d)(1) of this section, to the disposal site owners or operators at the same time as the asbestos-containing waste material is delivered to the disposal site.

(3) For waste shipments where a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received by the waste generator within 35 days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the designated disposal site to determine the status of the waste shipment.

(4) Report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter. Include in the report the following information:

(i) A copy of the waste shipment record for which a confirmation of delivery was not received, and

(ii) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(5) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(e) Furnish upon request, and make available for inspection by the Administrator, all records required under this section.

14. Section 61.153 is redesignated as § 61.151 and is amended by revising the introductory text, paragraphs (a)(2), (a)(4), and (b)(3), and adding paragraphs (d) and (e) to read as follows:

§ 61.151 Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.

Each owner or operator of any inactive waste disposal site that was operated by sources covered under

§§ 61.142, 61.144, or 61.147 and received deposits of asbestos-containing waste material generated by the sources, shall:

(a) * * *

(2) Cover the asbestos-containing waste material with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, and grow and maintain a cover of vegetation on the area adequate to prevent exposure of the asbestos-containing waste material. In desert areas where vegetation would be difficult to maintain, at least 8 additional centimeters (3 inches) of well-graded, nonasbestos crushed rock may be placed on top of the final cover instead of vegetation and maintained to prevent emissions; or

* * *

(4) For inactive waste disposal sites for asbestos tailings, a resinous or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions may be used instead of the methods in paragraphs (a) (1), (2), and (3) of this section. Use the agent in the manner and frequency recommended for the particular asbestos tailings by the manufacturer of the dust suppression agent to achieve and maintain dust control. Obtain prior written approval of the Administrator to use other equally effective dust suppression agents. For purposes of this paragraph, any used, spent, or other waste oil is not considered a dust suppression agent.

(b) * * *

(3) When requesting a determination on whether a natural barrier adequately deters public access, supply information enabling the Administrator to determine whether a fence or a natural barrier adequately deters access by the general public.

* * *

(d) Notify the Administrator in writing at least 45 days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site under this section, and follow the procedures specified in the notification. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator at least 10 working days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

(1) Scheduled starting and completion dates.

(2) Reason for disturbing the waste.

(3) Procedures to be used to control emissions during the excavation,

storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the Administrator may require changes in the emission control procedures to be used.

(4) Location of any temporary storage site and the final disposal site.

(e) Within 60 days of a site becoming inactive and after the effective date of this subpart, record, in accordance with State law, a notation on the deed to the facility property and on any other instrument that would normally be examined during a title search; this notation will in perpetuity notify any potential purchaser of the property that:

(1) The land has been used for the disposal of asbestos-containing waste material;

(2) The survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required in § 61.154(f) have been filed with the Administrator; and

(3) The site is subject to 40 CFR part 61, subpart M.

15. Section 61.154 is redesignated as § 61.152 and amended by removing paragraph (a)(1)(i), redesignating paragraphs (a)(1)(ii)-(iv) as paragraphs (a)(1)(i)-(iii), redesignating paragraph (b)(2) as paragraph (b)(3), revising the introductory text of paragraph (a) and paragraphs (b)(1) and (b)(3), and adding paragraphs (a)(3) and (b)(2) to read as follows:

§ 61.152 Air cleaning.

(a) The owner or operator who uses air cleaning, as specified in §§ 61.142(a), 61.144(b)(2), 61.145(c)(3)(i)(B)(1), 61.145(c)(4)(ii), 61.145(c)(11)(i), 61.146(b)(2), 61.147(b)(2), 61.149(b), 61.149(c)(1)(ii), 61.150(a)(1)(ii), 61.150(a)(2)(ii), and 61.155(e) shall:

(3) For fabric filter collection devices installed after January 10, 1989, provide for easy inspection for faulty bags.

(b) * * *

(1) After January 10, 1989, if the use of fabric creates a fire or explosion hazard, or the Administrator determines that a fabric filter is not feasible, the Administrator may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals (40 inches water gage pressure).

(2) Use a HEPA filter that is certified to be at least 99.97 percent efficient for 0.3 micron particles.

(3) The Administrator may authorize the use of filtering equipment other than described in paragraphs (a)(1) and (b)(1) and (2) of this section if the owner or operator demonstrates to the

Administrator's satisfaction that it is equivalent to the described equipment in filtering particulate asbestos material.

16. Section 61.155 is redesignated as § 61.153 and amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively, revising the introductory text of paragraphs (a), (a)(4), and (a)(5) and revising paragraphs (a)(2), (a)(4)(ii) and (iii), and (b), and adding paragraph (a)(3) to read as follows:

§ 61.153 Reporting.

(a) Any new source to which this subpart applies (with the exception of sources subject to §§ 61.143, 61.146, and 61.148), which has an initial startup date preceding the effective date of this revision, shall provide the following information to the Administrator postmarked or delivered within 90 days of the effective date. In the case of a new source that does not have an initial startup date preceding the effective date, the information shall be provided, postmarked or delivered, within 90 days of the initial startup date. Any owner or operator of an existing source shall provide the following information to the Administrator within 90 days of the effective date of this subpart unless the owner or operator of the existing source has previously provided this information to the Administrator. Any changes in the information provided by any existing source shall be provided to the Administrator, postmarked or delivered, within 30 days after the change.

* * *

(2) If a fabric filter device is used to control emissions,

(i) The airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ ($\text{ft}^3/\text{min}/\text{ft}^2$) if the fabric filter device uses a woven fabric, and, if the fabric is synthetic, whether the fill yarn is spun or not spun; and

(ii) If the fabric filter device uses a felted fabric, the density in g/m^2 (oz/yd^2), the minimum thickness in millimeters (inches), and the airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ ($\text{ft}^3/\text{min}/\text{ft}^2$).

(3) If a HEPA filter is used to control emissions, the certified efficiency.

(4) For sources subject to §§ 61.149 and 61.150:

* * *

(ii) The average volume of asbestos-containing waste material disposed of, measured in m^3/day (yd^3/day); and

(iii) The emission control methods used in all stages of waste disposal; and

* * *

(5) For sources subject to §§ 61.151 and 61.154:

* * *

(b) The information required by paragraph (a) of this section must accompany the information required by § 61.10. Active waste disposal sites subject to § 61.154 shall also comply with this provision. Roadways, demolition and renovation, spraying, and insulating materials are exempted from the requirements of § 61.10(a). The information described in this section must be reported using the format of Appendix A of this part as a guide.

17. Section 61.156 is redesignated as § 61.154 and amended by revising the introductory text of § 61.154, paragraphs (c) and (d), and adding paragraphs (e) through (j) to read as follows:

§ 61.154 Standard for active waste disposal sites.

Each owner or operator of an active waste disposal site that receives asbestos-containing waste material from a source covered under §§ 61.149, 61.150, or 61.155 shall meet the requirements of this section:

(c) Rather than meet the no visible emission requirement of paragraph (a) of this section, at the end of each operating day, or at least once every 24-hour period while the site is in continuous operation, the asbestos-containing waste material that has been deposited at the site during the operating day or previous 24-hour period shall:

(1) Be covered with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, or

(2) Be covered with a resinous or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. Such an agent shall be used in the manner and frequency recommended for the particular dust by the dust suppression agent manufacturer to achieve and maintain dust control. Other equally effective dust suppression agents may be used upon prior approval by the Administrator. For purposes of this paragraph, any used, spent, or other waste oil is not considered a dust suppression agent.

(d) Rather than meet the no visible emission requirement of paragraph (a) of this section, use an alternative emissions control method that has received prior written approval by the Administrator according to the procedures described in § 61.149(c)(2).

(e) For all asbestos-containing waste material received, the owner or operator of the active waste disposal site shall:

(1) Maintain waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, address, and telephone number of the waste generator.

(ii) The name, address, and telephone number of the transporter(s).

(iii) The quantity of the asbestos-containing waste material in cubic meters (cubic yards).

(iv) The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in lead-tight containers. Report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator (identified in the waste shipment record), and, if different, the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the disposal site, by the following working day, the presence of a significant amount of improperly enclosed or uncovered waste. Submit a copy of the waste shipment record along with the report.

(v) The date of the receipt.

(2) As soon as possible and no longer than 30 days after receipt of the waste, send a copy of the signed waste shipment record to the waste generator.

(3) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within 15 days after receiving the waste, immediately report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator (identified in the waste shipment record), and, if different, the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the disposal site. Describe the discrepancy and attempts to reconcile it, and submit a copy of the waste shipment record along with the report.

(4) Retain a copy of all records and reports required by this paragraph for at least 2 years.

(f) Maintain, until closure, records of the location, depth and area, and quantity in cubic meters (cubic yards) of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

(g) Upon closure, comply with all the provisions of § 61.151.

(h) Submit to the Administrator, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.

(i) Furnish upon request, and make available during normal business hours for inspection by the Administrator, all records required under this section.

(j) Notify the Administrator in writing at least 45 days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site and is covered. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator at least 10 working days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

(1) Scheduled starting and completion dates.

(2) Reason for disturbing the waste.

(3) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the Administrator may require changes in the emission control procedures to be used.

(4) Location of any temporary storage site and the final disposal site.

18. Section 61.155 is added to subpart M to read as follows:

§ 61.155 Standard for operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.

Each owner or operator of an operation that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material shall:

(a) Obtain the prior written approval of the Administrator to construct the facility. To obtain approval, the owner or operator shall provide the Administrator with the following information:

(1) Application to construct pursuant to § 61.07.

(2) In addition to the information requirements of § 61.07(b)(3), a

(i) Description of waste feed handling and temporary storage.

(ii) Description of process operating conditions.

(iii) Description of the handling and temporary storage of the end product.

(iv) Description of the protocol to be followed when analyzing output materials by transmission electron microscopy.

(3) Performance test protocol, including provisions for obtaining information required under paragraph (b) of this section.

(4) The Administrator may require that a demonstration of the process be performed prior to approval of the application to construct.

(b) Conduct a start-up performance test. Test results shall include:

(1) A detailed description of the types and quantities of nonasbestos material, RACM, and asbestos-containing waste material processed, *e.g.*, asbestos cement products, friable asbestos insulation, plaster, wood, plastic, wire, etc. Test feed is to include the full range of materials that will be encountered in actual operation of the process.

(2) Results of analyses, using polarized light microscopy, that document the asbestos content of the wastes processed.

(3) Results of analyses, using transmission electron microscopy, that document that the output materials are free of asbestos. Samples for analysis are to be collected as 8-hour composite samples (one 200-gram (7-ounce) sample per hour), beginning with the initial introduction of RACM or asbestos-containing waste material and continuing until the end of the performance test.

(4) A description of operating parameters, such as temperature and residence time, defining the full range over which the process is expected to operate to produce nonasbestos (asbestos-free) materials. Specify the limits for each operating parameter within which the process will produce nonasbestos (asbestos-free) materials.

(5) The length of the test.

(c) During the initial 90 days of operation,

(1) Continuously monitor and log the operating parameters identified during start-up performance tests that are intended to ensure the production of nonasbestos (asbestos-free) output material.

(2) Monitor input materials to ensure that they are consistent with the test feed materials described during start-up performance tests in paragraph (b)(1) of this section.

(3) Collect and analyze samples, taken as 10-day composite samples (one 200-gram (7-ounce) sample collected every 8 hours of operation) of all output material for the presence of asbestos. Composite samples may be for fewer than 10 days. Transmission electron microscopy (TEM) shall be used to analyze the output material for the presence of asbestos. During the initial 90-day period, all output materials must be stored on-site until analysis shows the material to be asbestos-free or disposed

of as asbestos-containing waste material according to § 61.150.

(d) After the initial 90 days of operation,

(1) Continuously monitor and record the operating parameters identified during start-up performance testing and any subsequent performance testing. Any output produced during a period of deviation from the range of operating conditions established to ensure the production of nonasbestos (asbestos-free) output materials shall be:

(i) Disposed of as asbestos-containing waste material according to § 61.150, or

(ii) Recycled as waste feed during process operation within the established range of operating conditions, or

(iii) Stored temporarily on-site in a leak-tight container until analyzed for asbestos content. Any product material that is not asbestos-free shall be either disposed of as asbestos-containing waste material or recycled as waste feed to the process.

(2) Collect and analyze monthly composite samples (one 200-gram (7-ounce) sample collected every 8 hours of operation) of the output material. Transmission electron microscopy shall be used to analyze the output material for the presence of asbestos.

(e) Discharge no visible emissions to the outside air from any part of the operation, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(f) Maintain records on-site and include the following information:

(1) Results of start-up performance testing and all subsequent performance testing, including operating parameters, feed characteristic, and analyses of output materials.

(2) Results of the composite analyses required during the initial 90 days of operation under § 61.155(c).

(3) Results of the monthly composite analyses required under § 61.155(d).

(4) Results of continuous monitoring and logs of process operating parameters required under § 61.155 (c) and (d).

(5) The information on waste shipments received as required in § 61.154(e).

(6) For output materials where no analyses were performed to determine the presence of asbestos, record the

name and location of the purchaser or disposal site to which the output materials were sold or deposited, and the date of sale or disposal.

(7) Retain records required by paragraph (f) of this section for at least 2 years.

(g) Submit the following reports to the Administrator:

(1) A report for each analysis of product composite samples performed during the initial 90 days of operation.

(2) A quarterly report, including the following information concerning activities during each consecutive 3-month period:

(i) Results of analyses of monthly product composite samples.

(ii) A description of any deviation from the operating parameters established during performance testing the duration of the deviation, and steps taken to correct the deviation.

(iii) Disposition of any product produced during a period of deviation, including whether it was recycled, disposed of as asbestos-containing waste material, or stored temporarily on-site until analyzed for asbestos content.

(iv) The information on waste disposal activities as required in § 61.154(f).

(h) Nonasbestos (asbestos-free) output material is not subject to any of the provisions of this subpart. Output materials in which asbestos is detected, or output materials produced when the operating parameters deviated from those established during the start-up performance testing, unless shown by TEM analysis to be asbestos-free, shall be considered to be asbestos-containing waste and shall be handled and disposed of according to §§ 61.150 and 61.154 or reprocessed while all of the established operating parameters are being met.

19. Section 61.156 is added to subpart M to read as follows:

§ 61.156 Cross-reference to other asbestos regulations.

In addition to this subpart, the regulations referenced in Table 1 also apply to asbestos and may be applicable to those sources specified in §§ 61.142 through 61.151, 61.154, and 61.155 of this subpart. These cross-references are presented for the reader's information and to promote compliance with the cited regulations.

20. Section 61.157 is added to subpart M to read as follows:

§ 61.157 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities

contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States:

(1) Section 61.149(c)(2)

(2) Section 61.150(a)(4)

(3) Section 61.151(c)

(4) Section 61.152(b)(3)

(5) Section 61.154(d)

(6) Section 61.155(a).

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TABLE 1.—CROSS-REFERENCE TO OTHER ASBESTOS REGULATIONS

Agency	CFR citation	Comment
EPA	40 CFR 763, Subpart E, F.....	Requires schools to inspect for asbestos and implement response actions and submit asbestos management plans to States. Specifies use of accredited inspectors, air sampling methods, and waste disposal procedures.
	40 CFR 427.....	Effluent standards for asbestos manufacturing source categories.
	40 CFR 763, Subpart G.....	Protects public employees performing asbestos abatement work in States not covered by OSHA asbestos standard.
OSHA	29 CFR 1910.1001.....	Worker protection measures—engineering controls, worker training, labeling, respiratory protection, bagging of waste, 0.2 f/cc permissible exposure level.
	29 CFR 1926.58.....	Worker protection measures for all construction work involving asbestos, including demolition and renovation—work practices, worker training, bagging of waste, 0.2 f/cc permissible exposure level.
MSHA	30 CFR 56, Subpart D.....	Specifies exposure limits, engineering controls, and respiratory protection measures for workers in surface mines.
	30 CFR 57, Subpart D.....	Specifies exposure limits, engineering controls, and respiratory protection measures for workers in underground mines.
DOT	49 CFR 171 and 172.....	Regulates the transportation of asbestos-containing waste material. Requires waste containment and shipping papers.