

Sunshine Act Meetings

Federal Register

Vol. 57, No. 244

Friday, December 18, 1992

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).

COMMODITY FUTURES TRADING COMMISSION
"FEDERAL REGISTER" CITATION OF
PREVIOUS ANNOUNCEMENT: 57 F.R. 57864.
PREVIOUSLY ANNOUNCED TIME AND DATE OF
MEETING: 10:00 a.m., Tuesday, December 29, 1992.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has cancelled the meeting previously announced to discuss a Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION:
 Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-30863 Filed 12-16-92; 3:53 pm]

BILLING CODE 6351-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: (Times listed below),
 Tuesday, December 22, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

10:00 a.m.

1. *Pride in Public Service*

The Commission will present the Pride in Public Service Award to December's recipient.

2. *Election of Vice Chairman*

The Commission will elect a Vice Chairman for a term ending on December 31, 1993.

3. *ANPR on Sleepwear*

The Commission will consider an Advance Notice of Proposed Rulemaking (ANPR) to amend the standards for flammability of children's sleepwear to exempt close fitting garments and garments intended for infants.

4. *Charcoal Container Labeling, Petition HP 91-1*

The Commission will consider petition HP 91-1 from Barbara Muak requesting changes to the labeling requirements for containers of charcoal.

2:00 p.m.

5. *Voluntary Standards/International Affairs*

The staff will brief the Commission on voluntary standards and international affairs

activities carried out by staff during the fourth quarter of fiscal year 1992.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504-0800.

Dated: December 15, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92-30867 Filed 12-16-92; 3:54 pm]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:04 a.m. on Tuesday, December 15, 1992, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in my Acting Chairman Andrew C. Hove, Jr., and Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting on less than seven days' notice to the public, of the following matter:

Report on the status of pending regulations to be issued pursuant to the Federal Deposit Insurance Corporation Improvement Act of 1991.

By the same majority vote, the Board further determined that no notice earlier than December 11, 1992, of this change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: December 15, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-30847 Filed 12-16-92; 10:42 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 11:39 a.m. on Tuesday, December 15, 1992, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., and Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Matters relating to an assistance agreement with an insured institution.

Recommendation concerning certain financial institutions.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 15, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-30848 Filed 12-16-92; 10:42 am]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF
PREVIOUS ANNOUNCEMENT: 57 FR 58858,
 Friday, December 11, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF
THE MEETING: 9:30 a.m. Wednesday,
 December 16, 1992.

CHANGES IN THE MEETING: Deletion of the following open item(s) from the agenda:

Implementation of section 7(e)(7) of the International Banking Act: Guidelines for Foreign Banks.

CONTACT PERSON FOR MORE INFORMATION:
Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: December 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-30835 Filed 12-15-92; 5:04 pm]

BILLING CODE 8210-01-M

Corrections

Federal Register

Vol. 57, No. 244

Friday, December 18, 1992

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 ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93-143-000, et al.]

Consolidated Edison Company of New York, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 92-28743 beginning on page 56331 in the issue of Friday, November 27, 1992 make the following correction:

On page 56333, in the first column, under item 11., the docket number is corrected to read as follows:

[Docket No. ER92-835-000]

BILLING CODE 1505-01-0

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-234-AD; Amdt. 39-8357; AD 92-18-12]

Airworthiness Directives; Boeing 747 Series Airplanes

Correction

Due to errors in the original publication of rule document 92-24750 beginning on page 46769 in the issue of Tuesday, October 13, 1992, the airworthiness directive beginning on page 46770 is republished in its entirety as follows:

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8011 (56 FR 51232, October 11, 1991), and by adding a new airworthiness directive (AD), amendment 39-8357, to read as follows:

92-18-12 Boeing: Amendment 39-8357. Docket No. 91-NM-234-AD. Supersedes AD 91-18-08, Amendment 39-8011.

Applicability: Model 747 series airplanes, equipped with brake part numbers (P/N) identified in paragraphs (a) and (b) of this AD, certificated in any category.

Compliance required as indicated, unless previously accomplished.

To prevent loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after November 12, 1991 (the effective date of Amendment 39-8011, AD 91-18-08), incorporate the maximum brake wear limits, shown below, into the FAA-approved maintenance inspection program:

Brake mfr.	Brake P/N	Boeing P/N	Maximum wear limit (inches)
Bendix	2603703-13	60B10014-9	1.55
Bendix	2603703-14	60B10014-11	1.55
Bendix	2605662-1	60B10014-15	2.50
Bendix	2605662-3	60B10014-23	2.70
BFGoodrich	2-1515-1	60B10062-11	2.00
BFGoodrich	2-1515-2	60B10062-12	2.00

(b) Within 180 days after the effective date of this AD, accomplish the requirements specified in paragraph (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), or (b)(6) of this AD, as applicable:

(1) For airplanes equipped with Bendix Part Numbers (P/N) 2602012-2, -3, -4, and -5, (Boeing P/N 60B00150-5, -6, -8, and -12):

(i) Inspect each brake to ensure it is not worn more than 1.75 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with a Bendix Brake P/N 2602012-30, -40, or -50, (Boeing P/N 60B00150-21, -22, and -23), as applicable, built in accordance with Bendix Service Bulletin 2602012-32-001, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N's 2602012-30, -40, and -50 to the FAA-approved Airplane Flight Manual (AFM), Section 4, "Maximum Brake Energy Limit Speed," Category "B," and remove Bendix brake P/N's 2602012-2, -3, -4, and -5 from the AFM.

(iii) Intermix of the P/N 2602012-2, -3, -4, and -5 brakes with the P/N 2602012-30, -40 and -50 brakes is allowed for 360 days after the effective date of this AD. Delay removal of the P/N 2602012-2, -3, -4, and -5 brakes from the AFM, as required by paragraph (b)(1)(ii) of this AD, until intermix is ended.

(iv) Change all references of Bendix Brake P/N's 2602012-2, -3, -4, and -5 to Category "B" on the Maximum Brake Energy Chart in section 4 of the AFM.

(v) Incorporate a 1.75-inch maximum allowable brake wear limit for Bendix brake P/N's 2602012-30, -40 and -50 into the FAA-approved maintenance inspection program.

(2) For airplanes equipped with Bendix Brake P/N's 2601902-1, -2, and -5, (Boeing P/N's 60B00150-4, -9, and -13): Incorporate a 2.38-inch maximum allowable brake wear limit into the FAA-approved maintenance inspection program.

(3) For airplanes equipped with Bendix Brake P/N's 2601902-3, -4, and -6, (Boeing P/N's 60B00150-10, -11, and -14):

(i) Inspect each brake to ensure it is not worn more than 1.73 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with a Bendix Brake P/N 2601902-30, -40, or -60, (Boeing P/N's 60B00150-24, -25, and -26), as applicable, built in accordance with Bendix Service Bulletin 2601902-32-001, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N's 2601902-30, -40, and -60 to the AFM, Section 4, "Maximum Brake Energy Limit Speed," Category "C."

(iii) Intermix of the P/N 2601902-3, -4, and -6 brakes with the P/N 2601902-30, -40, and -60 brakes is allowed for 360 days after the effective date of this AD when a 1.73-inch maximum allowable brake wear limit removal criteria is used for these brakes.

(iv) Move Bendix Brake P/N's 2601902-3, -4, and -6 from Category "C" to Category "B" in the AFM, Section 4, "Maximum Brake Energy Limit Speed." If intermixing is used, delay movement of these brakes to Category "B" until intermixing is ended.

(v) Change all references of Bendix P/N's 2601902-3, -4, and -6 to Category "C" on the Maximum Brake Energy Chart in section 4 of the AFM.

(vi) Incorporate a 2.38-inch maximum allowable brake wear limit for Bendix Brake P/N's 2601902-3, -4, and -6, and a 1.73-inch maximum allowable brake wear limit for P/N's 2601902-30, -40, and -60, into the FAA-approved maintenance inspection program.

(4) For airplanes equipped with Bendix Brake P/N 2605662-2, (Boeing P/N 60B10014-14):

(i) Inspect each brake to ensure that it is not worn more than 1.73 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with Bendix Brake P/N

2605662-20, (Boeing P/N 60B10014-30), built in accordance with Bendix Service Bulletin 2605662-32-028, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N 2605662-20 to the AFM, Section 4, "Maximum Brake Energy Limit Speed," Category "C."

(iii) Intermix of the P/N 2605662-2 brakes with the P/N 2605662-20 brakes is allowed for 360 days after the effective date of this AD when a 1.73-inch maximum allowable wear limit removal criteria is used for these brakes.

(iv) Move Bendix Brake P/N 2605662-2 from Category "C" to Category "B" in the AFM, Section 4, "Maximum Brake Energy Limit Speed." If intermixing is used, delay movement of these brakes to Category "B" until intermix is ended.

(v) Change all references of Bendix P/N 2605662-2 to Category "C" on the Maximum Brake Energy Chart in section 4 of the AFM.

(vi) Incorporate a 2.38-inch maximum allowable brake wear limit for Bendix Brake P/N 2605662-2, and a 1.73-inch maximum allowable brake wear limit for P/N 2605662-20, into the FAA-approved maintenance inspection program.

(5) For airplanes equipped with Bendix Brake P/N 2605155-1, (Boeing P/N 60B10014-10):

(i) Inspect each brake to ensure that it is not worn more than 2.50 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with Bendix Brake P/N 2605155-2, (Boeing P/N 60B10014-31), built in accordance with Bendix Service Bulletin 2605155-32-001, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N 2605155-2 to the Airplane Flight Manual (AFM), Section 4, "Maximum Brake Energy Limit Speed," Category "C."

(iii) Intermix of the P/N 2605155-1 brakes with the P/N 2605155-2 brakes is allowed for 360 days after the effective date of this AD when a 2.50-inch maximum allowable wear limit removal criteria is used for these brakes.

(iv) Move Bendix Brake P/N 2605155-1 from Category "C" to Category "B" in the AFM, Section 4, "Maximum Brake Energy Limit Speed." If intermixing is used, delay

movement of this brake to Category "B" until intermixing is ended.

(v) Change all references of Bendix P/N 2605155-1 to Category "C" on the Maximum Brake Energy Chart in section 4 of the AFM.

(vi) Incorporate a 3.20-inch maximum allowable brake wear limit for Bendix Brake P/N 2605155-1, and a 2.50-inch maximum allowable brake wear limit for P/N 2605155-2, into the FAA-approved maintenance inspection program.

(6) For airplanes equipped with Bendix Brake P/N 2605392-1, (Boeing P/N 60B10035-2): Incorporate a 1.90-inch maximum allowable brake wear limit into the FAA-approved maintenance inspection program.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) Brakes shall be built in accordance with Bendix Service Bulletin 2601902-32-001, Revision 2, dated October 10, 1991; Bendix Service Bulletin 2602012-32-001, Revision 2, dated October 10, 1991; Bendix Service Bulletin 2605155-32-001, Revision 2, dated October 10, 1991; or Bendix Service Bulletin 2605662-32-028, Revision 2, dated October 10, 1991; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allied-Signal Aerospace Company, Bendix Wheels and Brakes Division, South Bend, Indiana 46628. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue,

SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 17, 1992.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[IA-20-02]

RIN 1545-AQ57

Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries Before the Internal Revenue Service

Correction

In proposed rule document 92-24347 beginning on page 46356 in the issue of Thursday, October 8, 1992, make the following corrections:

§ 10.3 [Corrected]

1. On page 46358, in the third column, in § 10.3(f), in the third line, "any" should read "an".

§ 10.7 [Corrected]

2. On page 46359, in the first column, in § 10.7(b), "ruleaking" should read "rulemaking".

3. On the same page, in the same column, in § 10.7(c), in the 10th line, "this" should read "his".

§ 10.53A [Corrected]

4. On page 46360, in the second column, in § 10.53A(b)(2), "on" should read "of".

BILLING CODE 1505-01-D

Estimote

Friday
December 18, 1992

Part II

**Department of
Education**

**34 CFR Part 682
Federal Family Education Loan Programs;
Final Regulations**

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840-AA96

Federal Family Education Loan Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Federal Family Education Loan (FFEL) programs. The new FFEL regulations will govern the Federal Stafford Loan Program (formerly the Guaranteed Student Loan Program), the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan programs. The Federal Stafford Loan, the Federal SLS, the Federal PLUS and the Federal Consolidation Loan programs are hereinafter referred to as the Stafford, SLS, PLUS and Consolidation programs. These programs complement key components of American 2000, the President's education strategy. The final regulations incorporate statutory changes made by the Consolidated Omnibus Budget Reconciliation Act of 1985 (enacted April 7, 1986) (COBRA) (Pub. L. 99-272), the Higher Education Amendments of 1986 (enacted October 17, 1986) (1986 Amendments) (Pub. L. 99-498), the Higher Education Technical Amendments Act of 1987 (enacted June 3, 1987) (Technical Amendments) (Pub. L. 100-50), Public Law 100-297 (enacted April 28, 1988), Public Law 100-369 (enacted July 18, 1988), the Omnibus Budget Reconciliation Act of 1989 (enacted December 19, 1989) (Pub. L. 101-239), the Omnibus Budget Reconciliation Act of 1990 (enacted November 5, 1990) (Pub. L. 101-508), the National and Community Service Act of 1990 (enacted November 16, 1990) (Pub. L. 101-610), the Higher Education Technical Amendments of 1991 (enacted April 9, 1991) (Pub. L. 102-26), one technical change required by the Emergency Unemployment Compensation Act of 1991 (enacted November 14, 1991) (Pub. L. 102-164), and changes to reflect self-implementing provisions of the Higher Education Amendments of 1992 (1992 Amendments) (enacted July 23, 1992) (Pub. L. 102-325). To the extent these regulations may be inconsistent with the 1992 Amendments, the 1992 Amendments supersede the regulations. The remainder of the provisions enacted as part of the 1992 Amendments will be

addressed in separate proposed and final regulations developed under the requirements of negotiated rulemaking. The final regulations also establish various policy initiatives intended to improve program administration, prevent loan defaults, and generate repayment of defaulted loans.

EFFECTIVE DATE: Except as otherwise specified below, these regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments, with the exception of §§ 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, 682.711, 682.712, 682.713, 682.802, 682.803, and appendix B. These sections will become effective after the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Subject to approval under the Paperwork Reduction Act, if applicable, the following effective dates also apply to certain provisions of these regulations.

Section 682.302(d)(1)(v), which requires lenders to file default claims within 60 days after the date of default to retain eligibility for special allowance payments from the Secretary, is effective for loans on which the first day of delinquency is on or after 120 days of following the date of publication.

Section 682.302(d)(1)(vii), which requires a lender to resubmit within 30 days a default claim that has been returned to the lender by the guaranty agency due solely to inadequate documentation to maintain eligibility for special allowance, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

Section 682.401(d)(3), which requires a guaranty agency to use common forms approved by the Secretary is, with the exception of the common application form and promissory note, effective 360 days following the date of publication. Under the 1992 Amendments, the Secretary must approve a common application form and promissory note within 360 days after the enactment of that law.

Section 682.401(b)(17), which requires a guaranty agency to have a written agreement with each lender in

its program, is effective 120 days following the date of publication.

Section 682.401(b)(18)(ii), which requires guaranty agencies to use the data elements and report format provided in appendix B for monitoring the enrollment status of student borrowers, is effective 120 days following the approval of this provision by OMB under the Paperwork Reduction Act of 1980.

Section 682.406(a)(3), which requires a lender to provide an accurate collection history and payment history to the guaranty agency with each default claim, is effective for loans that enter repayment on or after the effective date of these regulations.

Section 682.406(a)(6), which requires a lender to resubmit within 30 days a default claim that has been returned by the guaranty agency due solely to inadequate documentation for interest accruing beyond the 30th day to be reinsured, or to resubmit the claim within 60 days to maintain reinsurance on the loan, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

Section 682.406(a)(8), which requires that guaranty agencies must pay or reject a claim by the 60th day after a default claim is received for the interest accruing after the 60th day to be reinsured, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

Section 682.410(b)(4), which requires guaranty agencies to capitalize any interest due to the lender from the borrower at the time the guaranty agency pays the default claim, is effective for claims paid by the agency on or after 120 days following the date of publication.

Section 682.411, which defines the minimum due diligence requirements for lenders in the collection of guaranty agency loans, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Patricia Beavan or Pamela Moran, U.S. Department of Education, 400 Maryland Avenue, SW., room 4310, ROB 3, Washington, DC 20202-5449. Telephone: (202) 708-8242. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at

1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Stafford, SLS, and PLUS programs provide loans to eligible student or parent borrowers who might otherwise be unable to finance the costs of postsecondary education. The Consolidation Loan Program gives borrowers an opportunity to consolidate loans made under the Stafford loan, Perkins loan (formerly National Direct Student Loan), PLUS (for loans made to students prior to 1986), SLS, and Health Professions Student Loan programs.

On November 20, 1990, the Secretary published a notice of proposed rulemaking (NPRM) for the GSL programs in the *Federal Register* (55 FR 48324). Those proposed regulations did not reflect changes to the Higher Education Act of 1965, as amended, (the Act) authorizing legislation for the FFEL programs made after the enactment of Public Law 100-369 (July 18, 1988). These final regulations, however, now reflect the statutory changes made to the programs by the laws identified in the Summary, which include provisions that—

- Provide that an individual serving in a medical internship or residency program, except for an internship in dentistry, is ineligible to receive a Stafford or SLS loan (§ 682.201(a)(8));

- Prohibit a borrower who is serving in a medical internship or residency program, except for an internship in dentistry, from receiving or continuing a deferment of repayment on a Stafford or SLS loan based on the borrower's full-time or half-time study at a school (§ 682.210(c)(4));

- Require a lender to grant forbearance to a borrower who is serving in a medical internship or residency program and who already has received the maximum two-year internship deferment (§ 682.211(g));

- Provide that a student who does not have a high school diploma or recognized equivalent is ineligible to borrow an SLS loan (§ 682.201(a)(3)(ii));

- Provide that the proceeds of any Stafford or SLS loan must be disbursed in two or more installments regardless of the amount of the loan or the length of the period of enrollment for which the loan is made (§ 682.207(c)(1));

- Prohibit a lender or escrow agent from disbursing the second or any subsequent disbursement of a Stafford or SLS loan after it is informed by the student or institution that the student has ceased to be enrolled at the institution (§ 682.207(b)(1)(vi));

- Require an institution to withhold from the student and promptly return to

the lender or escrow agent any Stafford or SLS disbursement not yet delivered to the student that exceeds the amount of assistance for which the student is eligible, taking into account other financial aid obtained by the student (§ 682.604(h));

- Require the student to provide the lender with a statement from the institution setting forth a disbursement schedule for the proceeds of a Stafford or SLS loan in installments (§ 682.207(b)(1)(B));

- Require that, for a student to be eligible to receive financial assistance authorized by Title IV of the Higher Education Act of 1965, as amended (the Act), a student who does not have a high school diploma or a recognized equivalent must pass an independently administered examination approved by the Secretary (§ 682.201(a)(7));

- Require guaranty agencies, upon request of a lender, to provide preclaims assistance on accounts that are less than 120 days delinquent and supplemental preclaims assistance on accounts that are delinquent at least 120 days (§ 682.411(h));

- Require guaranty agencies, upon the request of an eligible institution, to furnish information to the institution on borrowers who were enrolled at the institution and who have defaulted on their FFEL loans (§ 682.401(b)(22));

- Establish a minimum period for annual SLS loan eligibility that is the greater of the length of the institution's academic year or seven consecutive months (§ 682.204(e)(2));

- Prohibit an institution from delivering for endorsement the first installment of a Stafford or SLS loan to any student who is entering the first year of a program of undergraduate education at an institution, and who has not previously received a Stafford or SLS loan, until 30 days after the first day of the student's program of study (§ 682.604(c)(5));

- Extend the provision prohibiting the discharge of certain student loans to borrowers who file for relief under Chapter 13 of the Bankruptcy Code;

- Extend the 5-year period under which a Title IV loan generally may not be discharged in bankruptcy to 7 years (§ 682.402(d)(5)(B));

- Permit an institution to refuse to certify an otherwise eligible borrower's FFEL application, or to certify a loan for an amount that is less than what the student would be otherwise eligible for, as long as the reason for that action is documented and given to the student in writing (§ 682.603(e));

- Require an institution to review with the borrower during exit counseling the conditions under which

the borrower may defer repayment of a loan because of service under the Peace Corps Act, the Domestic Volunteer Service Act of 1973, or for comparable full-time service as a volunteer in a tax-exempt organization (§ 682.604(g)(2)(vi));

- Eliminate any statutes of limitation that previously applied to enforcement action to collect FFEL loans;

- Prohibit a guaranty agency for retaining 35 percent of collections from defaulted borrowers obtained through a wage garnishment law that complied with section 428E of the Act, which was repealed by section 605(b)(1) of Pub. L. 102-164;

- Provide a reduced annual limit on SLS loans for a student in a program of study that is less than a full academic year in length (§ 682.204(e)(1));

- Prohibit an incarcerated student from borrowing under the FFEL program;

- Require an annual independent compliance audit of each lender conducted by an independent organization or person (§ 682.305(c));

- Require a guaranty agency to submit a request for payment of reinsurance no later than 45 days after the guaranty agency has paid a claim to the lender on a loan (§ 682.406(a)(9));

- Require a guaranty agency, upon the request of a school, to provide information to the school about a borrower who received an FFEL loan for attendance at the school if the borrower's lender submitted a request for preclaims assistance (§ 682.404(a)(5));

- Require the lender prior to or at the time the loan is disbursed to provide the borrower with a clear and concise statement, in bold print and prominently and clearly displayed, that the borrower is receiving a loan that must be repaid (§ 682.205(a)(1));

- Require the lender to disclose certain information regarding repayment to Stafford and SLS borrowers not less than 60 days nor more than 240 days before the first payment on the borrower's loan becomes due (§ 682.205(c)(1));

- Eliminate the requirement for a lender to disclose the projected total of interest charges to SLS, PLUS, or unsubsidized Stafford loan borrowers if the lender provides the borrower with sample projections of monthly repayment amounts (§ 682.205(d));

- Provide that the lender must charge an SLS or PLUS loan borrower an origination fee of five percent of the principal amount of the loan (§ 682.202(c));

- Change the definition of eligible institution by repealing the definitions

of "institution of higher education" and "vocational school" previously found in section 435(b) of the Act (§ 682.200). For purposes of an in-school deferment, an eligible institution includes an institution of higher education whether or not it participates in any Title IV program or has lost its eligibility to participate in the FFEL programs because of a high default rate;

- Define when a repayment period begins for loans made under each of the FFEL programs (§ 682.200);

- Provide a variable interest rate for new Stafford loan borrowers (§ 682.202(a)(1));

- Establish new maximum variable rates for SLS and PLUS loans (§ 682.202(a)(2) and (a)(3));

- Establish a reduced annual loan limit for Stafford loan borrowers who have not completed the first year of an undergraduate program (§ 682.204(a));

- Require a lender to disburse a PLUS loan by means of a co-payable check or by electronic funds transfer (EFT) to the school (§ 682.207(b));

- Require a lender to disburse loan proceeds, at the borrower's request, directly to a borrower enrolled in a study-abroad program approved for credit at the home institution or, at the borrower's request, to the home institution for the endorsement or EFT authorization by an individual provided power-of-attorney by the borrower (§ 682.207(b)(10)(v));

- Require that if a loan is sold, transferred, or assigned to another holder and there will be a change in the identity of the party to whom the borrower must send subsequent payments or direct communications, both the assignor and assignee must provide separate notices to the borrower regarding the sale or transfer (§§ 682.208(e) and 682.508);

- Provide that an SLS borrower who has not yet entered repayment on a Stafford loan may postpone payment until expiration of the borrower's grace period on the borrower's Stafford loan (§ 682.209(a)(2)(iii));

- Make PLUS borrowers eligible to borrow under the Consolidation Loan program if the PLUS loans were obtained after October 17, 1986 (§ 682.100);

- Extend eligibility for Consolidation loans to delinquent and defaulted borrowers who will re-enter repayment through loan consolidation (§ 682.201(c)(1)(ii)(C)(1));

- Allow a Consolidation loan borrower to add additional loans received prior to the date of the Consolidation loan during the 180-day period following the making of the Consolidation loan (§ 682.209(h)(4));

- Provide that interest will be paid by the Secretary on behalf of a Consolidation loan borrower during authorized deferment periods (§ 682.210(a)(3));

- Allow married couples to consolidate their loans jointly (§ 682.201(c)(2));

- Provide for longer repayment periods for Consolidation loan borrowers and require lenders to offer these borrowers repayment schedules that provide for graduated or income-sensitive repayment (§ 682.209(h));

- Provide that when a lender grants forbearance to a borrower, it must be a total cessation of payments unless the borrower requests an extension of time for making payments or a temporary acceptance of smaller payments than previously were scheduled (§ 682.211(h));

- Increase the amount of a fine from \$1,000 to \$10,000 for any person who knowingly and willfully makes an unlawful inducement to an eligible lender (§ 682.212(g));

- Require a guaranty agency to have an independent financial and compliance audit annually (§ 682.410(b)(1));

- Require the Secretary to prescribe a common application form and promissory note and other common forms developed in cooperation with FFEL program participants (§ 682.401(d));

- Repeal the prior 1 percent limitation on the amount of discount at which a tax-exempt authority may purchase student loans from lenders;

- Eliminate a lender or school's opportunity to request a hearing on the record as governed by the Administrative Procedure Act in the Secretary's review of a guarantee agency's disqualification action against the lender or school (§§ 682.712 and 682.713).

The regulations established various policy initiatives designed to reduce defaults and increase collections on loans that go into default. They also include the revisions to part 682 made in the following final regulations that recently were published: regulations implementing the targeted teacher deferment, see 55 FR 35002 (August 27, 1990); regulations relating to appeals from the loss of FFEL program eligibility for high default rate schools, see 56 FR 33332 (July 19, 1991); and regulations requiring the lender to notify the borrower of a loan assignment, see 56 FR 48990 (September 26, 1991).

To reduce unnecessary duplication of regulations that apply to all Title IV student assistance programs, these regulations delete a number of

definitions and existing rules and replace them with cross-references to the Student Assistance General Provisions regulations (34 CFR part 668) and the Institutional Eligibility Regulations (34 CFR part 600).

These regulations seek to improve the efficiency of Federal student aid programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the President's America 2000 strategy to move the nation toward achieving the National Education Goals. The student aid programs also enable both current and future workers to have the opportunity to acquire both basic and technologically advanced skills needed for today's and tomorrow's workplace. They provide the financial means for an increasing number of Americans to receive an education that will prepare them to think critically, communicate effectively, and solve problems efficiently, as called for in the National Education Goals.

Substantive Revisions to the Notice of Proposed Rulemaking

Subpart B—General Provisions

Section 682.200 Definitions

- The Secretary has incorporated into the regulations a definition of "expected family contribution" for the FFEL programs that is consistent with the existing definition used in the Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs.

- The Secretary has revised the definition of "holder" to include a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

- The Secretary has changed the definition of "lender" contained in proposed § 682.200. The NPRM would have allowed mortgage loans serviced, but not held by the lender, to be included in the calculation of the lender's total consumer credit portfolio. The final regulations provide that only loans held by the lender may be included in this calculation. The final regulations also delete the proposal to use a net income standard to determine a lender's primary consumer credit function since events beyond the lender's control, such as an increase in interest rates or defaults on non-student loans, may result in student loans representing the majority of a lender's profits.

• The Secretary has modified the definition of "Stafford Loan Program" to indicate that an unsubsidized Stafford loan is an insured Stafford loan that does not qualify for interest benefits.

Section 682.201 Eligible Borrowers

• The Secretary has revised the provisions of § 682.201(a)(5) to require borrowers to reaffirm any written-off FFEL programs debt before the borrower can receive additional aid under the FFEL programs.

Section 682.202 Permissible Charges by Lenders to Borrowers

• The Secretary has revised § 682.202(a) of the regulations to include the provisions of section 427A of the Act that require a rebate to be given to a borrower with a Stafford loan with an interest rate of 10 percent in the event that Treasury bill rates decline below a certain level.

• Section 682.202(f)(2)(ii) of the proposed regulations has been dropped to be consistent with changes made in § 682.201(a)(4).

• The Secretary has deleted from § 682.202(g) of the proposed regulations, which identifies the costs that a lender may pass on to the borrower in the collection of a FFEL loan, the cost of local and long-distance telephone calls, skip-tracing costs, credit bureau reporting costs, costs of preparing letters or notices, and collection firm charges.

Section 682.205 Disclosure Requirements

• The Secretary has deleted the requirement in proposed § 682.205(a)(1) that would have required a lender to secure the borrower's signed acknowledgement of the initial disclosure statement before disbursing loan funds. Current regulatory language, without the requirement of a signed statement, has been reinstated.

• Proposed § 682.205(b)(3) has been deleted in light of the deletion of § 682.215 resulting from the Secretary's decision not to prescribe in regulations a uniform Federal rule regarding borrower defenses.

Section 682.207 Due Diligence in Disbursing a Loan

• The Secretary has revised § 682.207(d)(2) of the proposed regulations to allow a lender to make a late disbursement within 60 days after 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 intended unless the guaranty agency prohibits late disbursements. The regulations also have been revised to

allow a late disbursement to cover a student's documented educational expenses for costs normally included in a borrower's cost of attendance under section 472 of the Act rather than only outstanding institutional charges as proposed in the NPRM.

Section 682.208 Due Diligence in Servicing a Loan

• The Secretary has deleted the requirement in § 682.208(b) of the proposed regulations that would have required a lender to report the borrower's date of default to at least one national credit bureau as provided in section 430A(a)(2) of the Act. This task has been, and will continue to be, performed by the guaranty agency that pays the default claim.

• The Secretary has deleted the requirement in § 682.208(d) that required lenders offering graduated repayment to restrict to the first five years of repayment the period during which the lender may provide for graduated or income-sensitive payments.

Section 682.210 Deferment

• The Secretary has deleted the proposal contained in proposed § 682.210(a)(4)(ii) that permitted a lender to grant a borrower a deferment based on substantially complete documentation pertaining to the borrower's eligibility for a deferment. The final regulations permit a lender to grant a deferment based only on complete information and documentation that establishes the borrower's deferment eligibility.

• The Secretary has changed proposed § 682.210(h)(1)(iii), which specifies the requirements for an unemployment deferment, to define the circumstances under which a public or private employment agency's location is accessible. The Secretary has determined that such an agency is accessible to an unemployed borrower if the agency is located within a 50-mile radius of the borrower's permanent or temporary address.

• The Secretary has modified proposed § 682.210(m)(1)(iii) to permit a borrower to qualify for a deferment as a full-time paid volunteer for a tax-exempt organization as long as the borrower does not receive compensation that exceeds the Federal minimum wage. The proposed regulations would have required the borrower to earn less than the Federal minimum wage to qualify for this deferment.

Section 682.211 Forbearance

• The Secretary has revised the proposed section to permit lenders to

grant forbearances to endorser as well as to the student or parent borrower. Historically, the Secretary has encouraged lenders to extend forbearance to borrowers to prevent defaults. The Secretary believes that extending the forbearance provisions to an endorser who has agreed to make scheduled payments on behalf of the borrower but who temporarily is unable to do so because of personal circumstances will be equally effective in preventing defaults.

• The Secretary has added § 682.211(g) of the regulations to provide that a lender must grant forbearance of interest and principal to borrowers serving in medical internships or residencies whose eligibility for deferment under § 682.210(n) has expired. This revision implements section 428(C)(3)(A) of the Act as added by Public Law 101-239.

Section 682.215 Defenses to the Borrower's Obligation to Repay a FFEL Loan

• The Secretary proposed in § 682.215 to restrict sharply the instances in which borrowers could raise school-related defenses to repayment of a loan made by a bank or other third party. After considering the comments on this proposal and the Department's experience with litigation regarding this matter, the Secretary has determined that it is not desirable at this time to prescribe by regulation a uniform Federal rule regarding borrower defenses that would preempt State law otherwise applicable to FFEL program loans. In the Department's view, whether a defense to repayment of a FFEL program loan is available under State law depends on whether application of State law would frustrate accomplishment of the Federal objectives of the FFEL programs. This requires a case-by-case assessment of individual State laws.

In litigation, the Department has identified four kinds of State laws whose application would not frustrate the accomplishment of FFEL program policies; those State laws are, therefore, not preempted by Federal law. These are State laws that would make a lender subject to school-related defenses if—

(1) The lender had notice (actual or imputed) of substantial prior unresolved complaints about the school prior to making the loan at issue;

(2) The lender had delegated substantial loan-making functions to the school ("an origination relationship" under FFEL program regulations);

(3) The lender and school are corporate affiliates or are otherwise commonly controlled; or

(4) The lender paid a finder's fee or referral fee to the school with regard to the loan.

The Secretary recognizes that whether particular State laws are preempted ultimately must be decided by the courts and that Congress may enact a uniform Federal rule in the future. The Secretary considers the issuance of preemptive Federal regulations to be unwarranted at this time.

Subpart D—Guaranty Agency Programs

Section 682.401 Basic Program Agreement

- The Secretary has revised the proposed regulations to require a borrower to notify the holder of his or her loan, rather than the school, whenever there is a change in the borrower's employer or employer's address.

- The Secretary has revised the proposed regulations to allow a guaranty agency to consider a lender's prior experience in similar Federal, State, or private student loan programs in determining whether to permit the lender to participate in the guaranty agency's program.

- The Secretary has revised the proposed regulations to codify his policy that any transfer of loan guarantees between guaranty agencies may be done only with this approval unless it is a transfer sought by a borrower to secure a single guarantor for all of the borrower's FFEL program loans. The Secretary takes this position in light of the reinsurance implications for the affected agencies and the potential financial liabilities to the Department if such a transfer occurs.

- The Secretary has revised § 682.401(b)(15) to require that a loan may be assigned only if it is fully disbursed and to clarify to which entities a guaranty agency shall permit a loan to be assigned.

- The Secretary has revised the regulations to require that a guaranty agency must have a written agreement with each eligible lender in its program. As part of the President's initiative to reduce the Federal government's regulatory burden on the private sector, the Secretary and student loan industry representatives are participating in a task force sponsored by the Department of Treasury's Financial Management Service to develop a standardized lender agreement for use in the FFEL programs.

- The Secretary has revised the regulations to delete the requirement that a guaranty agency must submit forms to the Secretary for pre-approval prior to their use. Under the 1992

Amendments, the secretary is required to work with FFEL program participants to develop a common application form and promissory note and other common forms. Guaranty agencies will be required to use these forms when they are developed.

- The Secretary has revised the regulations to require that a guaranty agency must develop and implement appropriate procedures that provide for granting a student deferment as specified in § 682.210(a)(6)(iv) and § 682.210(c) (2) and (3). The Secretary expects agencies to require lenders to use these procedures.

Section 682.404 Federal Reinsurance Agreement

- The proposed regulations have been revised to incorporate provisions of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) that require the Secretary to pay guaranty agencies \$50 for each account on which the agency performs supplemental preclaims assistance and for which a default claim is not filed by the 150th day after the loan becomes 120 days delinquent.

- The proposed regulations have been revised to require that the Secretary's equitable share of amounts collected on defaulted loans by guaranty agencies be forwarded to the Secretary within 45 days after the payment is received by the guaranty agency, or a collection agency acting on behalf of the guaranty agency, rather than within 30 days as proposed in the NPRM. These amounts normally are offset (subtracted) from amounts owed by the Secretary to guaranty agencies for reinsurance. Because reinsurance claims are processed monthly, the Secretary believes that it would be virtually impossible, using a 30-day deadline, for amounts received at the end of the month to be included on that month's reinsurance-claims submission.

Section 682.406 Conditions of Reinsurance Coverage

- The Secretary has reinstated the requirement in § 682.406(a) of the Department's current regulations that a lender's exercise of due diligence in making, disbursing, and servicing a loan is a condition of reinsurance. The Secretary did not intend to delete this requirement.

Subpart E—Federal Guaranteed Student Loan Programs

Section 682.515 Records, Reports, and Inspection Requirements for Federal Guaranteed Student Loan (GSL) Programs Lenders

- The Secretary has revised § 682.515(c), which governs lender

inspections, to correspond to similar inspection requirements for guaranty agencies in § 682.414(c).

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

Section 682.603 Certification by a Participating School in Connection With a Loan Application

- The Secretary has revised the regulations to require a school, if it becomes aware that a loan applicant is a member of a religious order, group, community, society, agency, or other organization, to determine if the organization meets the conditions of § 682.301(a)(2), which would make the applicant ineligible for Federal interest benefits on a Stafford loan. The school may rely on information provided by the applicant.

- The proposed regulations have been amended to reflect the Department's previous policy guidance establishing the minimum and maximum periods of enrollment for which a school may certify a FFEL program loan application.

- The regulations have been revised to specify that a school may not certify an SLS loan application for an undergraduate student after the school receives a notice from the Secretary, pursuant to § 668.15(i), that its cohort default rate for the most recent fiscal year is equal to or greater than 30 percent. This restriction does not apply to a student who is seeking an SLS loan to complete a program of study for which he or she previously received an SLS loan. A school may not extend the duration of a program of study to evade the consequences of this restriction.

- The regulations have been amended to prohibit a school from engaging in discriminatory practices when refusing to certify a FFEL program loan application.

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

- The Secretary has deleted the reference in § 682.604(b)(ii) to a student notifying the school on or before the first day of classes that he or she will be delaying attendance. The Secretary has changed the regulations to allow the school to consider any student who begins attendance after the first day of the period of enrollment for which the loan is intended to have maintained eligibility for the loan from the first day of the period of enrollment. The Secretary has also deleted the 30-day time limit for the student to commence delayed attendance, but has modified § 682.604(d)(3) to provide that a school must return loan proceeds to the lender

no later than 30 days after the first day of the period of enrollment if the students does not register for the period of enrollment or does not begin attendance on a delayed basis prior to that date.

- The Secretary has revised § 682.604(d)(1)(ii)(B) of the proposed regulations to permit but not require a school to hold additional loan proceeds on behalf of a student to help the student manage his or her loan funds, if the student requests that help in writing.

- The Secretary has revised proposed § 682.604(d) (3) and (4) to provide that the school must return the loan proceeds to the lender no later than 30 days after the first day of the period of enrollment if the student fails to register or does not begin attendance. The NPRM would have provided the school with 60 days to return the loan proceeds.

- The proposed regulations have been revised to incorporate new section 428G(b)(1) of the Act (as added by Pub. L. 101-508) that provides that a school may not present the proceeds of the first installment of a loan made to any student who is a first-year, first-time FFEL borrower for endorsement until 30 days after the first day of the student's program of study.

- The regulations have been revised to provide that a school may not deliver a second or subsequent disbursement to a borrower who has ceased to be enrolled on at least a half-time basis unless the borrower has graduated or successfully has completed the period of enrollment for which the loan was intended.

- The regulations have been revised to allow a school to deliver to the borrower a Stafford or SLS disbursement issued in accordance with § 682.207(e). The school will be allowed to deliver a late disbursement, within 60 days after the earlier of (1) the end of the period of enrollment, or (2) 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, unless the lender or guaranty agency has informed the school that a late disbursement is not permitted.

- The regulations have been revised to provide that a PLUS loan, Consolidation loan, or a loan to a student attending a foreign school is not subject to the overaward provisions in § 682.604(h).

Section 682.605 Determining the Date of a Student's Withdrawal

- The Secretary has revised § 682.605(b) of the regulations, which

establishes rules for determining the date of a student's withdrawal. If the student drops out without notifying the school, the school must determine the student's date of withdrawal no later than (1) 45 days after the expiration date of the academic term for a school with standard academic terms and (2) no later than 25 days after a student's last date of attendance for a school using clock hours or credit hours without standard academic terms.

Section 682.606 Refund Policy

- Section 682.606(c)(1)(i) of the regulations governing *pro rata* refunds has not been revised to include a change discussed in the preamble of the NPRM but inadvertently not included in the proposed regulations. The proposed change provided that the reasonable administrative fee a school could subtract from the *pro rata* refund could not exceed \$100. However, this change will not be made because the 1992 Amendments include a definition of *pro rata* refund that permits the school to subtract the lesser of \$100 or 5 percent of tuition, fees, room and board, and other charges assessed the student.

Section 682.607 Payment of a Refund to a Lender

- The Secretary has revised § 682.607(c) of the regulations, which specifies the deadlines for schools to make timely payments of refunds to lenders on behalf of borrowers, to conform to changes made in § 682.605(b) for determining the date of a student's withdrawal.

Appendix B—Student Status Confirmation Report

- The Secretary has modified appendix B to define the types of data mandated for use on the report to ensure standardized reporting of data.

Appendix D—Policy for Waiving the Secretary's Right To Recover or Refuse To Pay, Interest Benefits, Special Allowance, and Reinsurance on Stafford, 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 Guaranty Agency Director Letter 88-G-138]

- The Secretary has modified Appendix D to impose a 3-year limit on a lender's option to cure due diligence violations on loans that have lost reinsurance coverage.

- The Secretary has modified Appendix D so that if a loan subject to § 682.411 has a gap of more than 45 days in collection activities, the due

diligence violation may be cured by the receipt of a full payment or a signed repayment obligation from the borrower.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 313 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues and significant technical changes are discussed under the section of the regulations to which they pertain.

Section 682.200 Definitions

Endorser

Comment: Many commenters believed that the inclusion of the definition of "endorser" indicates that an endorser is "co-liable" or jointly liable and suggested that the term endorser be deleted.

Discussion: The definition of "endorser" is not intended to imply that an endorser is jointly liable on the borrower's FFEL. As indicated in the definition, the endorser agrees to repay the loan in the event the borrower fails to do so. In the event the endorser refuses to repay the loan, the endorser is in default at the end of the 180th day of delinquency.

Changes: None.

Comment: A number of commenters stated that the proposed definition of "endorser" makes an endorser a co-maker.

Discussion: The definition of "endorser" in current regulations states that the endorser is secondarily liable for the repayment of the loan. The definition was revised in the NPRM to state more clearly that the endorser is liable only in the event that the borrower does not repay the loan. The Secretary does not believe that this definition suggests that the endorser is a co-maker; the endorser is not a co-maker.

Changes: None.

Escrow Agent

Comment: Many commenters suggested that the Secretary change the proposed definition of "escrow agent." Some commenters suggested that the Secretary revise the proposed definition to include PLUS loans. Other commenters indicated that the Secretary's proposed definition was not specific and appeared to exceed the statutory provision providing that only guaranty agencies and eligible lenders may act as an escrow agent to transmit FFEL funds to the borrower or the borrower's school.

Discussion: The Secretary agrees with the commenters that the proposed definition should include PLUS loans among the types of loans that may be transmitted through an escrow agent. The Secretary also agrees that the definition of "escrow agent" should be clarified to indicate that only a guaranty agency or another eligible lender may act as an escrow agent.

Changes: A change has been made. In the final regulations, the Secretary has revised the definition of "escrow agent" to specify that only eligible lenders or guaranty agencies may act as an escrow agent and that these entities may transmit the proceeds of any FFEL program loan to the borrower or the borrower's school.

Estimated Financial Assistance

Comment: Several commenters noted that, to avoid double-counting, estimated financial assistance should not include veterans' educational benefit payments that are included in the need analysis as part of the student contribution. They also noted that, in addition to SLS and PLUS loans, the definition should be expanded to clarify that private and State-sponsored loans and unsubsidized Stafford loans may be used to substitute for the expected family contribution (EFC).

Discussion: The 1992 Amendments have revised the definition of "estimated financial assistance" to include all veterans' benefits paid because of enrollment in an institution of higher education as well as veterans' education benefits as defined in section 480(c) of the Act. In the loan certification process, institutions currently are required to include as estimated financial assistance those veterans' benefits not included in the need analysis formula. The Secretary has decided that, because the changes made by the 1992 Amendments to exclude veterans benefits from the needs analysis formula do not become effective until July 1, 1993, veterans' benefits should not be included as "estimated financial assistance" until these changes are effective. In light of this change in the law, the Secretary does not believe it is appropriate to change the treatment of veteran's educational benefits as recommended by the commenters. This provision of the 1992 Amendments will be reflected in separate proposed and final regulations developed under the requirements of negotiated rulemaking. The Secretary agrees, however, that the definition should be revised to discuss private and State-sponsored loans and unsubsidized Stafford loans.

Changes: The definition has been revised to incorporate the statutory provision in section 428(e)(2)(E) of the Act that allows amounts received by a student from private and State-sponsored loans to substitute for the EFC and to reflect current policy that allows unsubsidized Stafford loans to be used in the same manner.

Comment: A few commenters disagreed with the proposed change to the definition of "estimated financial assistance" that would require schools to include as estimated financial assistance, Perkins loan or College Work-Study (CWS) awards that were offered to a student and declined, unless an award was declined for an acceptable reason. The commenters believe that the aid administrator should not be required to determine whether the student's declination is for an acceptable reason and that declined awards should not be included in the amount of estimated financial assistance.

Discussion: Current regulations require that the amount of assistance that has been or will be awarded to the student must be considered in determining estimated financial assistance. This amount includes all awards offered, even if declined by the student, regardless of the reason. In proposing the definition included in the NPRM, the Secretary acknowledged that there are certain limited circumstances in which a student should be allowed to decline a Perkins loan or CWS award and not have the amount included in the amount of estimated financial assistance used to determine the student's FFEL eligibility. The Secretary believes that these circumstances include, but are not limited to the following: A student declines a CWS award because he or she (1) is unable to work because of family responsibilities such as caring for an elderly parent or dependent child; (2) is carrying a heavy academic workload (perhaps as part of an accelerated program) or is at academic risk and therefore requires special tutoring or other remedial work; or (3) is already employed at a higher paying or an academically or a career-related job. In the case of a Perkins loan, the student may decline a small Perkins loan award to increase the student's eligibility for a Stafford loan and allow the student to avoid simultaneous repayment to multiple sources following completion of his or her program of study. The Secretary believes that excluding all awards declined by the student, as suggested by the commenters, would frustrate the goal of ensuring that students apply for all forms of assistance. Accordingly, the

Secretary is adopting the NPRM proposal in the final regulations.

Change: None.

Full-Time Student

Comment: Several commenters suggested that the Secretary revise the proposed definition of "full-time student" to include a student enrolled at more than one school under a consortium agreement or under similar contractual arrangements.

Discussion: The Secretary wishes to clarify that a student who is enrolled in more than one school under a consortium agreement or similar contractual arrangement may be considered a full-time student based on the student's combined enrollment. The determination that the student is full-time must be made by the school from which the student is seeking a degree or certificate and must be made according to standards applicable to all students enrolled in the student's program of study. The Secretary does not believe, however, that a change in the definition of "full-time student" is necessary.

Change: None.

Grace Period

Comment: Several commenters suggested that the definition of "grace period" should be changed to define that term as the period that begins on the day after a Stafford loan borrower ceases to be enrolled on at least a half-time basis and end on the day before the repayment period begins. The commenters also suggested that using the term "participating school" in the definition rather than the term "eligible institution" would mean that a borrower who transfers to an otherwise eligible institution that has elected not to participate in the FFEL programs will use up his or her grace period even though pursuing a postsecondary education.

Discussion: The Secretary agrees that the commenters' suggested change to the definition more appropriately describes the length of the grace period. The Secretary also agrees with the commenters that requiring a student to be enrolled at a participating school rather than at an otherwise eligible institution could unnecessarily penalize the student by prematurely starting the grace period while he or she is still pursuing a postsecondary education.

Changes: The Secretary has revised the definition of "grace period" in the regulations to be the period that begins on the day after a Stafford loan borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins.

Half-Time Student

Comment: Several commenters recommended that the Secretary revise the definition of "half-time student" to permit a student enrolled in an eligible institution but not at a school participating in the FFEL programs to qualify for a student deferment. The commenters argued that requiring enrollment in a participating school penalizes a student who enrolls in an otherwise eligible institution that elects not to participate in the FFEL programs. They pointed out that such a student would be required to use his or her grace period and begin repayment on a FFEL program loan while still pursuing a postsecondary education.

Discussion: The Secretary understands the commenters' concerns. However, the Secretary notes that at least half-time enrollment is only one criterion for a "new" borrower, as defined in § 682.210(b)(7), to qualify for a student deferment. The other criterion is that the borrower has received a Stafford or SLS loan for the period of enrollment for which the deferment is sought. Therefore, a borrower enrolled on less than a full-time basis may not qualify for a student deferment unless the school is participating in the FFEL programs.

Changes: None.

Comment: Several commenters suggested that the definition specify that a student attending more than one school during an academic term under a consortium agreement or similar contractual arrangement may be considered to be a half-time student based on the student's combined enrollment.

Discussion: The Secretary wishes to clarify that a student may be considered to be enrolled half-time based on the student's combined enrollment at more than one institution under a consortium agreement or similar contractual arrangement. However, the Secretary does not believe that a change in the definition of "half-time student" is necessary.

Changes: None.

Holder

Comment: Many commenters suggested that the Secretary should revise the definition of "holder" to specify which entities may be holders of FFEL loans.

Discussion: The Secretary agrees with the commenters that the definition of "holder" should identify the entities authorized to hold FFEL loans.

Changes: A change has been made. The regulations have been changed to state that a holder is an eligible lender

in possession of an FFEL loan note that is payable to, or has been assigned to, the lender, including a Federal or State agency or an organization or corporation acting on behalf of the agency and acting as a conservator, liquidator, or receiver of an eligible lender.

Lender

Comment: One commenter stated that the Act prohibits a lender from mailing unsolicited applications only to students and proposed that the prohibition against mailing unsolicited applications to a student's parents should be deleted. The commenter believes that the restriction should not apply to mailings to parents because it is not provided for in the statute and parents require less protection than students.

Discussion: The Secretary believes that an application that is sent to a student's parents is actually sent to the parents on behalf of the student and, therefore, the same protective measures provided for the student are also necessary for the parents. A lack of any restriction on unsolicited mailings to parents would create a loophole in the explicit statutory restriction on unsolicited mailings to students.

Changes: None.

Comment: Many commenters opposed the provision within the definition of "eligible lender" that would allow a lender to include home mortgages that it serviced, but did not hold, in the calculation of the lender's consumer-credit loan portfolio. The commenters indicated that a loan that is serviced, but not held by a bank, is not considered an asset of the bank for other purposes and, therefore, should not be considered an asset for FFEL program purposes.

Discussion: The Secretary has decided that mortgage loans that a lender services, but does not hold, should not be included in the calculation of a lender's primary consumer-credit function because they do not give a true indication of the receivables due the lender.

Changes: A change has been made. The definition of "eligible lender" has been revised to prohibit the inclusion of home mortgages that only are serviced by the lender in the lender's consumer-credit portfolio in determining whether FFEL loans exceed 50 percent of that portfolio.

Comment: Many commenters objected to the proposal in the definition of "eligible lender" that would examine a lender's net income to determine if FFEL program loans constituted the primary consumer-credit function of the lender. The commenters pointed out

that using a net-income standard to determine if a lender's primary function is student loans could result in a lender inadvertently violating the standard due to events beyond the lender's control. These events might include a precipitous rise in interest rates or defaults in non-student loan areas that result in student loans representing the majority of the lender's profits.

Discussion: The Secretary agrees that using a net-income standard could result in the kind of inadvertent technical violations the commenters cite.

Changes: A change has been made. The use of the net-income standard to determine the lender's primary consumer-credit function has been deleted from the definition.

National Credit Bureau

Comment: Many commenters indicated that a credit bureau that operates in more than one State but only in a single region is not considered to be a national credit bureau under present reporting standards.

Discussion: The Secretary believes that the national credit bureau reporting requirements will be frustrated if reporting is restricted to a single region of the country. The Secretary agrees with the commenters that to satisfy the statute's intent, the definition must specify that a credit bureau operating in only one region is not a national credit bureau for FFEL program purposes.

Changes: A change has been made. The Secretary has changed the definition of "national credit bureau" in the final regulations to define a national credit bureau as one that operates in more than one region.

Origination Fee

Comment: A number of commenters suggested that the definition of "origination fee" should be modified to reflect the fact that lenders must pay this fee to the Secretary even if the fee is not charged to borrowers.

Discussion: Section 438 of the Act requires that the origination fee be paid by the lender regardless of whether the fee is assessed against the borrower.

Changes: A change has been made. The definition has been modified to reflect the requirement that lenders must pay the origination fee to the Secretary and may assess the fee against the borrower.

Parent

Comment: Many commenters recommended that the proposed definition be expanded to include a stepparent. These commenters believe that it is unfair to expect a stepparent to

contribute financially to a student's education and yet prohibit the stepparent from borrowing a PLUS loan on behalf of the student.

Discussion: "Parent" is defined in 34 CFR 668.2 as a student's natural or adoptive mother or father and, under limited circumstances, the student's legal guardian; this includes the legal definition of a stepparent. The Secretary believes the definition of "parent" for the PLUS program should be consistent with this definition.

Changes: A change has been made. The term "parent" is defined in 34 CFR 668.2 for title IV program purposes. Therefore, the definition has been deleted in the final FFEL program regulations.

Period of Enrollment

Comment: Several commenters recommended that this term be defined to codify current policy. The commenters argued that it is necessary to define this term in regulations because guaranty agencies do not define the term consistently. The commenters indicated that schools need guidance to correctly certify FFEL program loan applications.

Discussion: The Secretary agrees with the commenters.

Changes: The Secretary has revised the final regulations to define the term "period of enrollment" as the period for which a Stafford, SLS, or PLUS loan is intended. The period of enrollment must coincide with a *bona fide* academic term established by the school for which institutional charges are normally assessed.

Post-Deferment Grace Period

Comment: One commenter recommended that the proposed definition be expanded to specify that the borrower is eligible for only one post-deferment grace period regardless of the number of times the borrower qualifies for an unemployment deferment.

Discussion: The Secretary believes this change is unnecessary.

Changes: No change has been made to the definition. However, the Secretary has revised § 682.210(a)(2)(ii) to include the restriction.

Repayment Period

Comment: One commenter suggested that the term "repayment period" be defined clearly as the term is used frequently throughout the regulations.

Discussion: The Secretary agrees with the commenter that it would be helpful to include a definition of this term that is consistent with § 682.209(a). Moreover, the 1992 amendments have

defined when the repayment period begins in each of the FFEL programs.

Changes: The final regulations have been revised to reflect the change made to the Act by the 1992 Amendments. The repayment period for a Stafford loan is now defined as the period beginning the day following the expiration date of the grace period and ending no later than 10 years from that date. For an SLS loan, the repayment period is defined as the period that begins on the date of the last disbursement of the loan and ends no later than 10 years from that date. For a PLUS loan, the repayment period begins on the date the loan is disbursed and ends no later than 10 years from the beginning date of the repayment period. For a Consolidation loan, the repayment begins on the date the loan is disbursed and ends no later than 12, 15, 20, 25, or 30 years from the beginning date of the repayment period, depending upon the sum of the amount of the Consolidation loan and the unpaid balance on other student loans. Corresponding changes have been made in § 682.209(a). Any period of deferment or forbearance is not included in the statutory maximum repayment period.

School

Comment: One commenter suggested deleting the phrase "public or private nonprofit" from the definition. The commenter pointed out that this phrase was unnecessary because the definition of institution of higher education contained in 34 CFR part 600 contained this element.

Discussion: The Secretary agrees with the commenter that it is unnecessary to include this phrase.

Change: The phrase "public or private nonprofit" has been deleted from the definition.

Comment: One commenter objected to including a hospital or health care facility in the definition of "school." The commenter believes that attendance in a program of study at such a facility is approved only for deferment purposes.

Discussion: The 1992 Amendments repealed the definitions of "institution of higher education" and "vocation school" in sections 435 (b) and (c) of the Act. The definition of "institution of higher education" is now in section 481 of the Act and does not include hospital and health care facilities. Therefore, the Secretary now agrees with the commenter that the reference to hospitals and health care facilities should be deleted.

Changes: The reference to a hospital or health care facility has been deleted from the definition of "school."

Comment: Many commenters suggested that the Secretary revise the proposed definition of "promote the availability" as it relates to the definition of "school" as a way to prevent commissioned salespersons from providing application forms or other FFEL loan information to enrolled students as well as to prospective students.

Discussion: The Secretary agrees that enrolled students should receive the same protection from commissioned salespersons promoting the availability of FFEL loans that prospective students receive.

Changes: A change has been made. The Secretary has revised the final regulations to prevent a commissioned salesperson from promoting the availability of FFEL loans to enrolled students.

Comment: A few commenters objected to the proposed expansion of the prohibition on activities of commissioned salespersons. The commenters argued that the proposed language would prevent commissioned salespersons from providing a school catalog to a prospective student because the catalog contains information on student financial aid, including the FFEL programs.

Discussion: The Secretary does not intend to prevent commissioned salespersons, as part of their recruitment activities, from distributing school catalogs that may contain general information regarding student financial aid. The Secretary believes, however, that the proposed language is needed to restrict commissioned salespersons from activities such as providing individuals with financial aid applications, assisting them with the completion of the applications, and assisting them with other aspects of the aid application process.

Change: None.

Temporarily Totally Disabled

Comment: Many commenters suggested that the 90-day time period for which a borrower must be unable to work, earn money, or attend school resulting from an injury or illness was unreasonably long. The commenters suggested that a 30-day time period was more equitable.

Discussion: The Secretary agrees that the proposed minimum 90-day period that a borrower must be totally disabled to satisfy the definition of "temporarily totally disabled" may be too long. The Secretary proposed this standard to be consistent with the 90-day period, required by section 435(g)(2) of the Act, to qualify for a deferment based on the disability of a dependent. The Secretary

agrees that the impact of a borrower's totally disabling condition on his or her ability to repay a FFEL program loan might be much more immediate than the financial impact of a borrower's dependent's disability. However, the Secretary believes that 30 days is too short a period of time, because the borrower would not have yet missed a payment by the close of a 30-day period.

Changes: A change has been made. The Secretary has reduced from 90 days to 60 days the minimum time period that a borrower must be temporarily totally disabled to qualify for the temporarily totally disabled deferment.

Comment: A number of commenters suggested that the phrase "but not for a period of more than three years" be added at the end of the definition of "temporarily totally disabled". The commenters said this should be done to provide a limit to the temporarily totally disabled deferment that was consistent with the statutory deferment provisions.

Discussion: The Secretary does not agree that the three-year maximum should be included with the definition. That limitation is codified in 34 CFR 682.210(b)(1)(iv). In addition, because the criteria for a borrower to be considered temporarily totally disabled differs from the criteria necessary for the borrower to receive a deferment based on the condition of the borrower's spouse or dependent, to include the three-year maximum in the definition could cause unnecessary confusion. For example, the period for which a borrower may receive a deferment based on his or her own total temporary disability, is limited to a reasonable period to recover from an injury or illness up to 3 years. However, a total temporary disability deferment based on a spouse's or dependent's condition is contingent only upon whether the condition is such that the spouse or dependent "during a period of injury or illness of not less than 3 months, requires continuous nursing or similar services." See section 435(g)(2) of the Act.

Changes: None.

Totally and Permanently Disabled

Comment: Many commenters objected to the Secretary further restricting the conditions under which a borrower may receive a loan repayment cancellation by incorporating the phrase "or attend school" in the definition of "totally and permanently disabled."

Discussion: The Secretary does not believe that the phrase "or attend school" further restricts the conditions to receive a loan repayment cancellation for a borrower who is totally and permanently disabled. The Secretary

notes that section 435(g) of the Act defines "temporarily and totally disabled" as an individual who is unable to work or attend school. The Secretary does not believe it was the intent of Congress to allow loan cancellations to be based on less restrictive requirements than those required by statute to receive such a deferment.

Changes: None.

Undergraduate Student

Comment: A few commenters recommended that the Secretary redefine the term "undergraduate student." The commenters recommended deleting the phrase "designed to lead to a first degree" because they believe it might be misinterpreted. They pointed out that a baccalaureate degree could be a second degree for a student who previously received an associate's degree and that a student seeking a second baccalaureate degree is still considered to be an undergraduate student. Another commenter objected to considering a student in "any other length program" as an undergraduate student only for the first four academic years. The commenter was concerned that students enrolled in short-term vocational programs would be considered graduate students if they were enrolled for more than four of the school's academic years. The commenter also pointed out that a student who took longer than four years to complete a baccalaureate degree would be considered a graduate student after the fourth year.

Discussion: The Secretary agrees with the commenters that the proposed definition may be misinterpreted. The Secretary did not intend that a student enrolled in a succession of short-term vocational programs that extend beyond four of the school's academic years be considered a graduate student. The Secretary also did not intend that a program of study at or below the baccalaureate level that is designed to lead to a degree or certificate at or below the baccalaureate level could be considered a graduate program. The Secretary also agrees that the language "leads to a first degree" also lends itself to differing interpretations. The Secretary intends that a student enrolled in a second baccalaureate degree program or in a first baccalaureate degree program following completion of a certificate, diploma, or associate's degree program be considered an undergraduate student.

Changes: The definition of "undergraduate student" has been revised to include a student who is enrolled at a school in a program of

study at or below the baccalaureate level that is designed to lead to a degree or certificate at or below the baccalaureate level and that normally is completed in four academic years or less.

Section 682.201 Eligible Borrowers

Section 682.201(a)

Comment: Many commenters believed that since proposed § 682.201(a) did not expressly state that a borrower must provide his or her social security number as a condition for Stafford or SLS loan eligibility, a social security number no longer was required. The commenters indicated that without a social security number, their skip-tracing, credit-bureau reporting, and other collection activities would be impaired significantly.

Discussion: Although proposed § 682.201(a) does not expressly require a borrower to provide his or her social security number as an eligibility requirement for a Stafford or an SLS loan, it does require that the borrower meet the eligibility requirements contained in 34 CFR part 668. The provisions of 34 CFR 668.32(a)(1) require the borrower to report his or her social security number to the lender on the statement of educational purpose. The Secretary does not believe that it is necessary to repeat this requirement in the FFEL program regulations as it is required in the regulations governing all the student financial assistance programs authorized under title IV of the Act.

Changes: None.

Section 682.201(a)(2)

Comment: Many commenters objected to including incarcerated students in § 682.201(a) as eligible borrowers. The commenters argued that due to the difficulty involved in working with correctional institutions to acquire an "unconditional release date," all of those students should be ineligible until they no longer are incarcerated. Several commenters also noted that incarcerated borrowers are likely to encounter difficulty locating employment, thus making it unwise, and not in the best interest of the FFEL programs, to make loans to those students.

Discussion: The 1992 Amendments now prohibit incarcerated students from receiving title IV student loans.

Changes: The provision providing for the eligibility of incarcerated students has been deleted.

Section 682.201(a)(3)

Comment: Several commenters suggested that the Secretary amend the requirement that a borrower have his or her need for a Stafford loan determined,

and if determined to have need file an application for a Stafford loan, before being determined eligible for an SLS loan. The commenters recommended that the Secretary codify policy guidance provided in Dear Colleague Letter GEN-88-34 that exempted from this requirement borrowers who have need of less than \$200.

Discussion: The Secretary agrees with the commenters that an applicant for an SLS loan should not be required to file an application for a Stafford loan if the borrower has need of less than \$200. The Secretary believes this exemption is consistent with section 428(j) of the Act, which provides that a lender of last resort is not required to make a Stafford loan to a borrower who has need of less than \$200.

Changes: A change has been made in what now appears as § 682.201(a)(2) of the regulations. The Secretary has revised the definition of "eligible borrower" to provide that a borrower who has need of less than \$200 is not required to file an application for a Stafford loan before applying for an SLS loan.

Section 682.201(a)(4)

Comment: Many commenters suggested that the Secretary define or itemize the exceptional circumstances under which a dependent undergraduate student's parents are likely to be precluded from borrowing under the PLUS program as a way to determine whether the student is eligible for an SLS loan.

Discussion: The Secretary believes that a restrictive list of the criteria for determining a dependent undergraduate student's eligibility for an SLS loan should not be included in the regulations because exceptional circumstances might arise that are not covered by the regulations. The Secretary believes that the most equitable way to administer this provision is by providing examples of exceptional circumstances in the regulations while giving the financial aid administrator the discretion to determine, on a case-by-case basis, if other equally acceptable exceptional circumstances exist. Examples of exceptional circumstances include, but are not limited to (1) situations in which the parent is denied a PLUS loan because the parent receives public assistance; (2) the parent is totally and permanently disabled and receives only disability benefits as income; (3) the parent is incarcerated; or (4) the parent is unable to borrow because his or her whereabouts are unknown. Under no circumstances may a financial aid administrator certify a dependent

undergraduate student for an SLS loan if the student's parents refuse to borrow a PLUS loan and no exceptional circumstances exist.

Changes: A change has been made in what now appears in § 682.201(a)(3) of the regulations. The Secretary has revised the regulations to incorporate examples of exceptional circumstances that may be used to determine a dependent undergraduate student's eligibility for an SLS loan.

Section 682.201(a)(5)

Comment: Several commenters objected to the proposal to require, as a condition to receive additional FFEL program loans, that a borrower reaffirm a FFEL debt that previously was canceled due to the borrower's total and permanent disability or was discharged in bankruptcy. These commenters suggested that a person who had become disabled may need additional training to be able to secure gainful employment. They also believe the policy was inconsistent with the "fresh start" principle of consumer bankruptcy and the reaffirmation procedures in section 524 of the Bankruptcy Code. The commenters suggested that a borrower who had his or her loan discharged in bankruptcy on grounds of hardship may need to return to school to acquire the skills necessary to secure gainful employment and that forcing the individual to reaffirm prior debts would be a disincentive to returning to school.

Discussion: The Secretary believes that the requirement that a borrower reaffirm a FFEL debt previously canceled is consistent with the principles underlying 34 CFR 668.7(a)(7) regarding the eligibility of defaulted borrowers—e.g., that a borrower who has not satisfied a previous FFEL debt, for whatever reason, should not receive new loans. Furthermore, the Secretary believes that a borrower who has benefitted from having all or part of a loan unilaterally written-off by the Secretary or a guaranty agency should be required to reaffirm the written-off debt before receiving additional Title IV loans.

Changes: A change has been made in what now appears in § 682.201(a)(4) of the regulations. The regulations have been revised to include a provision to require a borrower to reaffirm any FFEL program debt previously written off before receiving additional FFELs.

Section 682.201(c)

Comment: One commenter suggested that the Secretary revise the criteria under which a loan may be consolidated in a Consolidation loan. The commenter suggested that a borrower be allowed to

consolidate a loan that is more than 90-days delinquent at the time the Consolidation loan is made rather than requiring that a loan not be more than 90-days delinquent at the time of application for the Consolidation loan. Another commenter recommended that the Secretary permit a borrower who is more than 90-days delinquent on a loan to borrow under the Consolidation loan program to prevent default. The commenter suggested offering this option to borrowers as part of the supplemental preclaims assistance (SPA) effort.

Discussion: The Secretary's proposed regulations governing Consolidation loan eligibility in § 682.201(c) were consistent with former section 428C(a)(3)(A)(ii) of the Act, which stipulated that, to be eligible for loan consolidation, a borrower may not be more than 90-days delinquent on a loan to be consolidated at the time the borrower submits an application for a Consolidation loan. However, the 1992 Amendments changed section 428C(a)(3)(A)(ii) of the Act to delete the "90-day delinquent" provision and provide for the eligibility of a delinquent or defaulted borrower who will re-enter repayment through loan consolidation.

Changes: The regulations have been revised to reflect the change in the definition of eligible borrower for Consolidation loans made by the 1992 Amendments.

Section 682.202—Permissible Charges by Lenders to Borrowers

Comment: One commenter suggested that the Secretary eliminate the words "by lenders" in the title because interest may be charged. Interest may be capitalized, and late charges or collection charges or both may be assessed by a guaranty agency after it pays a default claim on a loan. The commenter stated that it would be useful to make the agency's authority to assess these charges explicit in the title of this section.

Discussion: The Secretary does not agree that the title of this section of the regulations should be revised so as to clarify a guaranty agency's authority to assess a borrower these charges because not all the costs listed in the regulations (i.e., origination fees and refinancing fees) are charged by guaranty agencies. The Secretary also believes that an agency's authority to assess collection charges and capitalize interest are adequately addressed elsewhere in the regulations.

Changes: None.

Section 682.202(a)

Comment: Many commenters suggested that the interest rate on a Stafford loan with an 8 percent interest rate should increase to 10 percent under proposed § 682.202(a)(1)(i)(D) if a default claim is paid on the loan after the repayment period begins but before the 4-year period elapses that dictates when the interest rate changes to 10 percent.

Discussion: Section 427A(d) of the Act only authorizes a change in the interest rate at the end of four years after the beginning of repayment, even if a default claim has been paid on the loan.

Changes: None.

Comment: Many commenters suggested that § 682.202(a)(5) of the NPRM should be modified to reflect that lenders may charge an actual interest rate on a Consolidation loan that is lower than the interest rate calculated under section 428C of the Act.

Discussion: The NPRM appears to prohibit a lender from charging a lesser interest rate than the interest rate calculated under section 428C of the Act. However, section 427A(f) of the Act clearly states that a lender may charge a lesser rate than the one specified in section 428C of the Act.

Changes: A change has been made. The regulations have been revised to clarify that a lender may charge a lower interest rate on a Consolidated loan than the rate specified in section 428C of the Act.

Comment: Many commenters suggested that a provision should be added to the regulations for variable interest rate loans that are based on the 91-day Treasury bill rate plus 3.25 percent that changes each January 1.

Discussion: A number of variable interest rate PLUS and SLS loans made after the enactment of the 1986 Amendments but before the enactment of the Technical Amendments remain subject to a calendar-year adjustment of the variable interest rate based on the 91-day Treasury bill method that existed in section 427A(c)(4) of the Act during this period. Such a loan remains subject to this variable-rate adjustment, as stated in the borrower's promissory note, for the life of the loan unless the borrower chooses to refinance under the current interest rate provisions. If a borrower whose interest rate changes each January 1 refinances his or her loan, that loan may not revert back to the interest rate provisions applied to the borrower's original loan.

Changes: A change has been made. The final regulations have been revised to reflect the interest rate provisions for those borrowers whose interest rates change each January 1.

Comment: A number of commenters noted that the 12 percent ceiling on variable interest rate PLUS and SLS loans was not mentioned in the proposed regulations.

Discussion: The Secretary agrees with the commenters that the provisions of section 427A(c)(4) of the Act related to the variable interest rate ceiling for PLUS and SLS loans should be included in the regulations.

Changes: A change has been made. The final regulations will clarify that a 12 percent ceiling applies to variable-rate PLUS and SLS loans. The Secretary has also amended the regulations to reflect the new variable interest rate ceilings of 10 percent for PLUS loans disbursed on or after October 1, 1992 and 11 percent for SLS loans disbursed on or after October 1, 1992, resulting from the 1992 amendments.

Section 682.202(b)

Comment: Many commenters suggested that the regulations should be modified to provide for the capitalization of interest from the beginning of the repayment period until the first payment due date when the lender receives late notification that the borrower has dropped below half-time enrollment. The commenters also suggested that the regulations permit capitalization of interest accruing on SLS loans during periods of student deferment and on nonsubsidized Stafford loans during periods of student deferment and during the grace period if the borrower agreed to make payments but (1) failed to do so, and (2) failed to respond to a notice of delinquency stating that the lender plans to capitalize the interest accruing during the remainder of the deferment period.

Discussion: Previous guidance from the Department in Dear Guaranty Agency Director Letter 88-G-138 and Dear Colleague Letter 90-G-175 allowed lenders to capitalize interest in these instances. Many program participants have adopted these practices. While the Secretary remains concerned about the effects of capitalization on borrowers, the Secretary agrees that a borrower's failure to honor his or her obligation to make a promised payment or to respond to a delinquency notice sent by the lender warrants this approach.

Changes: A change has been made. Section 682.202(b) has been modified to reflect the Department's decision to permit lenders to capitalize interest under these circumstances.

Section 682.202(c)(4)

Comment: Many commenters suggested that the phrase "the portion of

loan proceeds which are" be deleted and replaced with the phrase "any full disbursement". The commenters argued that the proposal does not agree with earlier guidance provided by the Department in a Dear Colleague letter. They believe the suggested change will ensure that only full disbursements returned to the lender or not delivered to the borrower will trigger a refund of origination fees.

Discussion: The Secretary agrees with the commenters. Guidance provided by the Department in Dear Colleague Letter Gen-90-93, Q&A 78, stated that if an institution negotiated the original loan check because the student was eligible for a portion of the original disbursement, the lender was not required to refund the amount of the origination fee attributable to the portion of the loan returned to the lender for which the student is no longer eligible. If the student is ineligible for the entire amount disbursed or the institution otherwise chooses to return the original loan check and request a revised check, the lender must refund the amount of the insurance premium and origination fee that is attributable to the amount of the loan for which the student is no longer eligible to the student's account.

Changes: A change has been made in the final regulations in what is now § 682.202(c)(5) to reflect the guidance provided in Dear Colleague Letter Gen-90-93, Q&A 78.

Section 682.202(e)

Comment: A few commenters suggested changing "a lender" to "any lender" to prevent misinterpretation of the one-time refinancing fee. The commenters believe this clarification is necessary because there may be more than one lender involved in refinancing.

Discussion: The Secretary does not believe that the regulations preclude a lender, or more than one lender, from charging a borrower a \$100 fee for separate refinancing transactions. For example, if a borrower refinances different loans through the same lender over a period of years, the lender may charge the borrower a fee for each refinancing transaction. Similarly, if a borrower refinances different loans through different lenders, each lender refinancing a loan for the borrower may assess the borrower the \$100 fee. The regulations permit only the lender refinancing the loan to charge the borrower the fee.

Changes: None.

Section 682.202(g)

Comment: Several commenters objected to proposed § 682.202(g),

which would permit lenders to require borrowers to pay the costs normally associated with routine collection activities.

Discussion: The Secretary agrees with the commenters. The Secretary expects lenders to cover the routine collection costs associated with preparing letters and notices or with making local and long-distance telephone contact with the borrower through earnings made on the loans. The Secretary will allow only extraordinary costs, such as telegrams, attorney's fees, and court costs to be passed along to the borrower.

Changes: A change has been made. The final regulations have been revised to contain the same language as current regulations except for the addition of a reference to long-distance telephone calls, which the Secretary believes are routine collection costs.

Section 682.204 Maximum Loan Amounts

Comment: Several commenters asked the Secretary to clarify that annual loan amounts for a Stafford loan borrower are based on the borrower's academic standing in the program in which he or she currently is enrolled.

Discussion: The Secretary agrees with the commenters. If a borrower has received a baccalaureate degree and then subsequently enrolls in a second baccalaureate program, that borrower is eligible only for \$2,625 annually until he or she is considered a third-year student in the second program.

Changes: The regulations have been revised to reflect that the Stafford loan annual amounts are based on the borrower's academic standing in the program in which he or she is currently enrolled.

Comment: A few commenters recommended that "a borrower" should be revised to "each borrower" in § 682.204(c) to clarify that the PLUS annual loan limit does not restrict a parent from borrowing for more than one dependent.

Discussion: The Secretary agrees with the commenters' recommendation. The Secretary also notes that the 1992 Amendments repealed the annual and aggregate limits on the amount a parent may borrow in the PLUS programs, for loans on which the first disbursement is made on or after July 1, 1993.

Changes: The regulations have been revised to clarify that a parent may borrow up to \$4,000 for each dependent student in the family for any academic year and up to a total of \$20,000 for each dependent student.

Comment: A number of commenters recommended deleting the provision to attribute Consolidation loan amounts to

the borrower's Stafford, SLS, and PLUS loan maximums in proportion to the amounts of the underlying loans consolidated. They indicated that neither lenders nor guarantors could be expected to track this data. They argued that it is unreasonable to expect borrowers to keep track of the information and report it to subsequent FFEL lenders. Furthermore, they believe no enforcement mechanisms exist for carrying out this provision.

Discussion: The Secretary disagrees. The Secretary believes that lenders are able, through the certified statement provided by other lenders during the consolidation process, to determine the amounts of underlying loans that have been consolidated. Guaranty agencies must require their lenders to submit data that allows the agency to track a borrower's aggregate loan amounts, in accordance with section 428C(a)(3)(B)(ii) of the Act and these regulations. A guaranty agency's ED form 1130 report submissions will be subject to review by the Secretary to ensure compliance with this provision.

Changes: None.

Section 682.205 Disclosure Requirements for Lenders

Comment: Some commenters suggested that this section be modified to prohibit lenders from charging the borrower for the costs incurred in making required disclosures concerning the loan.

Discussion: Lenders are required to make certain disclosures to borrowers before they enter repayment. However, the cost of making these disclosures is considered a normal cost of doing business and may not be charged to the borrower under § 682.202 and is prohibited under § 682.205(d).

Changes: None.

Section 682.205(a)(1)

Comment: Commenters overwhelmingly objected to the requirement that a borrower must provide the lender with a written acknowledgement of his or her receipt and understanding of the disclosure information that the lender is required to provide the borrower before the lender may disburse the loan. The commenters believe that imposing this additional step after the lender provides the required disclosure information and before the loan disbursement is made will be extremely burdensome for the school, the lender, and the borrower. They argued (1) that the requirement would impose another item for lenders to monitor; (2) that borrowers' signed acknowledgements would not be received in a timely fashion, which

would result in the expiration of loan guarantees and requiring borrowers to reapply; and (3) that students' and schools' receipt of loans would be delayed significantly. School commenters noted that the terms and conditions and other information related to the loan are reviewed with new borrowers during the required initial counseling prior to delivery of the loan proceeds and that this provides the borrower with an opportunity to cancel the loan.

Discussion: The Secretary understands that requiring a signed acknowledgement of the initial disclosure prior to loan disbursement could seriously impede the delivery of student loans and frustrate the goal of electronic funds transfer, which the Secretary supports. The Secretary also agrees that confirmation of a borrower's understanding of the terms and conditions of the loan prior to the borrower incurring the debt can be handled successfully during required initial counseling.

Changes: The Secretary has deleted the proposal to require the borrower to provide the lender with a signed acknowledgement of the initial disclosure.

Section 682.205(a)(2)(xvii)

Comment: Some commenters suggested that paragraph (a)(2)(xvii) should specify that the use of a reference table of estimated repayment amounts in disclosing an estimate of a borrower's projected monthly payment is acceptable as stated previously by ED.

Discussion: The Secretary agrees with the commenters that this paragraph should codify existing policy guidance provided in Dear Colleague Letter 86-G-97 that allows a table to be used in disclosing a borrower's estimated cumulative monthly payment.

Changes: A change has been made. The regulations have been revised to adopt this suggestion.

Section 682.205(b)(3)

Comment: A number of commenters suggested that the language of this provision regarding the statement of borrower's rights and responsibilities is misleading and could be construed to imply that borrowers need not repay loans made by school lenders.

Discussion: The Secretary agrees with the commenters.

Changes: The Secretary has deleted that language to prevent any potential misunderstanding regarding the repayment obligation of borrowers.

Section 682.205(d)

Comment: One commenter recommended retaining the language from current § 682.205(c) that requires the lender to provide the information that is required to be disclosed by this section at no cost to the borrower.

Discussion: The Secretary agrees with the commenter that this information should be provided to the borrower without charge.

Changes: Current § 682.205(c) has been restored to the regulations as § 682.205(d).

Section 682.206 Due Diligence in Making a Loan**Section 682.206(a)(1)**

Comment: Some commenters suggested that § 682.206(a)(1) assumes that there must be a separate application or promissory note or both for each period of enrollment for which FFEL program loan funds are sought. They believe this approach would preclude the possible use of a single, open-ended promissory note for a borrower's entire undergraduate and graduate loan maximum, the use of the Application for Federal Student Aid (AFSA) and other approved aid applications, and the use of electronically submitted application data to guarantee and disburse loans. The commenters objected to any regulatory restrictions that would prevent establishing new processing procedures to reduce the administrative burden on applicants, schools, lenders, and guarantors.

Discussion: The Secretary does not believe that this section precludes the possible use of a single application or promissory note or both or the use of electronically transmitted data. The Secretary actively encourages examination of the use of any approach that may streamline and improve the student aid delivery system. In working with the community in the development of common forms, the Secretary will examine the use of electronically submitted data, as well as other concepts.

Changes: None.

Section 682.206(b)

Comment: One commenter suggested adding a new provision prohibiting a lender, school, or guaranty agency from obtaining a borrower's power of attorney to complete a FFEL loan application on behalf of the borrower. The commenter argued that it is unreasonable to expect a student to understand the rights and obligations of a borrower of a FFEL program loan if the school or another party completes the application or promissory note.

Discussion: The regulations prohibit the use of a power of attorney to endorse a loan check or to approve the transfer of loan proceeds to the borrower's account using electronic funds transfer unless the borrower is enrolled in a study-abroad program approved for credit at the home institution at which the student is enrolled. See § 682.207(b)(2). The Secretary believes that this restriction provides sufficient protection for the borrower. The Secretary also believes that the use of power of attorney to complete an application or promissory note is useful for the student in some circumstances and should not be totally precluded. For example, power of attorney was used extensively for completing applications by borrowers serving in Operation Desert Shield or Operation Desert Storm.

Changes: None.

Section 682.206(c)

Comment: Several commenters recommended that § 682.206(c) of the regulations be revised to specify that in determining a borrower's eligibility for a loan amount, the lender may not approve a loan for more than the borrower requests or shows financial need, for, or the annual loan maximum. The commenters cited many instances of borrower requests for loans less than the annual loan maximum being ignored. They also believe that it should be emphasized that the lender is responsible for monitoring the borrower's approved loan amount based on the borrower's remaining financial need and annual loan maximums. The commenters believe this is particularly critical in processing multiple applications for a borrower during a given academic year and in light of the format of many loan applications.

Discussion: The Secretary agrees that a lender must follow the borrower's instructions regarding the loan amount as requested. The Secretary believes that, although it is the school's primary responsibility as part of the certification process to monitor a borrower's eligibility based on annual and aggregate loan maximums, the lender also has a responsibility in making a loan to ensure that a borrower does not receive loan proceeds in excess of the annual and aggregate maximums.

Changes: A new section has been added to the regulations to specify that a lender may not approve a loan amount that is more than the borrower requests or qualifies for based on unmet financial need or annual loan maximums.

Comment: One commenter stated that this section assumes that all schools certify Cost of Attendance and

Estimated Financial Assistance on a paper application form that is submitted to the lender. The commenter pointed out that in a number of automated application processes already in place, the data information is transmitted electronically by the school. The commenter recommended that the first sentence of the section be revised to require the lender to review data on the student's cost of attendance and estimated financial assistance provided by the school. Another commenter noted that in many application processing systems the guaranty agency, rather than the lender, receives the data via paper application or electronic transmission. The guaranty agency is the party that reviews the data to determine the loan amount based on annual and aggregate loan limits before issuing a guarantee and notifying the lender. The commenters recommended revising this provision of the regulations to allow the lender or guaranty agency to fulfill this function.

Discussion: The Secretary agrees with the commenter that the regulations should reflect the use of electronic data transmission in the application process. The Secretary also understands that in some application-processing systems the guaranty agency reviews the data before issuing a guarantee. The Secretary does not intend, through the regulations, to preclude a guaranty agency from operating in this manner on behalf of lenders. However, the lender is responsible for reviewing the application and determining the loan amount pursuant to § 682.206 of the regulations. In the situation described by the commenters, the guaranty agency acts as the agent of the lender in its receipt and review of application data and its determination of borrower eligibility. Therefore, the Secretary does not believe that the regulations should be changed to refer to guaranty agencies specifically.

Changes: The regulations have been changed to clarify that applicant and loan certification data may be provided electronically.

Section 682.206(e)

Comment: Many commenters opposed the requirement in the proposed regulations that prohibited a guaranty agency from requiring cosigners for a Stafford or SLS loan. The commenters noted that nothing in the Act supported such a prohibition.

Discussion: The Secretary agrees with the commenters.

Changes: The prohibition against a guaranty agency requiring a lender to obtain security or endorsement on a

Stafford or SLS loan has been deleted from the final regulations.

Section 682.207 Due Diligence in Disbursing a Loan

Section 682.207(b)(1)(i)(B)

Comment: A commenter suggested that regulations governing loan disbursement should require the lender to comply with the disbursement schedule provided by the school or with the recommended disbursement dates provided by the school for a particular borrower on the loan application.

Discussion: Under section 428(c)(1) of the Act, the lender must follow the disbursement schedule provided by the school under section 428(a)(1)(A)(i)(III).

Changes: The regulations have been revised to provide that a lender must disburse a Stafford or SLS loan in accordance with a disbursement schedule provided by the school.

Section 682.207(b)(1)(ii)(A)

Comment: One commenter suggested that all FFEL checks should be co-payable, including PLUS. The commenter believes that the school should have the opportunity to verify the eligibility of the student on whose behalf a parent is borrowing a PLUS loan before the parent receives the loan proceeds.

Discussion: As a result of the 1992 Amendments, section 428B(c) of the Act now requires that PLUS checks be made co-payable to the borrower and the school. However, in regard to the other FFEL programs, section 428(b)(1)(N) of the Act prohibits the Secretary from requiring co-payable checks.

Changes: The regulations have been revised to require PLUS checks to be made co-payable to the borrower and the school.

Comment: Many commenters supported the Secretary's deletion of the phrase "other written approval" from the regulations because they believe it is ambiguous. One commenter supported the deletion of the phrase and also noted that this paragraph allows co-payable checks only if the guarantor requires co-payable checks. The commenter recommended that since many lenders make loans guaranteed by more than one guarantor, it may be more appropriate to allow the co-payable decision to be made by the lender rather than the guaranty agency. Several other commenters asked whether the deletion of "or other written approval" would prevent delivery of the borrower's loan process through the use of direct deposit of a borrower's loan funds.

Discussion: The Secretary notes that the deletion of the phrase "or other

written approval" would prevent the delivery of loan proceeds through the use of direct deposit into a borrower's account at a financial institution because the borrower's signature on a direct deposit form does not constitute a personal endorsement. Because the Secretary believes that the use of the direct-deposit delivery mechanism is important for borrowers who are attending classes at another institution under an agreement with the borrower's home institution, he has decided to revise the regulations to include the phrase "or other written certification." This phrase, which is consistent with the language of section 428(b)(1)(N) of the Act, is intended to permit the use of direct deposit based on the borrower's written certification on a direct deposit form. The Secretary agrees that a lender of a Stafford or SLS loan should be allowed to establish a policy of making Stafford or SLS loan checks co-payable if co-payable checks are not required by the guaranty agency and the guaranty agency has no objection to the lender adopting such a policy.

Changes: The regulations have been revised to include the phrase "or other written certification" to provide for the use of direct deposit of a borrower's funds into his or her account at a financial institution. The regulations also have been revised to allow a lender to establish a policy of making Stafford or SLS checks co-payable if this is not required by the guaranty agency.

Section 681.207(b)(1)(ii)(B)

Comments: Several commenters supported the Department's proposed requirement that the borrower approve the release of loan proceeds by electronic funds transfer to an account that requires written approval by the borrower for the release of those funds from the account. However, the commenters did not agree with the requirement of a separate "written" approval statement from the borrower. The commenters suggested that the term "written" be deleted and that the phrase "negotiated in accordance with § 682.604(c)(3)(ii)" be added at the end of the provision. They believe that the additional language would clarify that the school is required to document the receipt and application of the funds to the borrower's account with the school. They recommended that the requirement that the borrower approve the release of loan proceeds by electronic funds transfer be moved from § 682.207 to § 682.604 to clarify that the responsibility for obtaining the borrower's authorization to release funds and maintaining evidence of the authorization rests with the school.

Discussion: The Secretary believes that the requirement that the borrower give written approval for release of the loan proceeds is consistent with the statutory requirement that funds be disbursed in a manner that requires "the endorsement or other certification by the student." See section 428(b)(1)(N) of the Act. The Secretary has clarified the school's responsibility to secure and retain the borrower's written authorization in § 682.610(b)(9)(iv).

Changes: None.

Comment: A number of commenters objected to the proposed requirement that funds disbursed by electronic funds transfer be disbursed to a restricted account maintained by the school from which funds cannot be released without the borrower's written approval.

Discussion: Section 428(b)(1)(N) of the Act requires that funds are to be disbursed to students by a means that "requires the endorsement or other certification by such student." The Secretary has decided that a single written approval for each type of loan (e.g., Stafford or SLS) is sufficient for all disbursements. This written approval to release loan proceeds from the school's restricted account must be a separate statement and may not be incorporated into the loan application.

Changes: None.

Section 682.207(b)(1)(v)(B)

Comments: A few commenters expressed concern about the proposed requirement governing loan disbursement to a borrower enrolled at a foreign institution as part of a program of study at a school located in the United States. Under these circumstances, the loan check must be disbursed to the school in the United States and the borrower's endorsement on the loan check must be secured before the loan proceeds can be applied to the borrower's account with the school. The commenters understand that, under current regulations, the school has the option of directly depositing the check into the borrower's account at a financial institution. The borrower then pays the school from that account. The commenter recommended that the proposed regulations be revised to allow the school to secure the borrower's approval for the use of direct deposit earlier than 30 days before the date the borrower is scheduled to enroll because most students involved in these programs generally have left the country and are in school by the time loan funds are disbursed.

Discussion: The 1992 Amendments changed section 428(b)(1)(N) of the Act to provide that in the case of a student in a study-abroad program approved for

credit at the home institution at which the student is enrolled, the lender must, at the borrower's request, disburse the loan directly to the borrower. Alternatively, at the borrower's request, the lender shall disburse the loan proceeds to the borrower's home institution if the borrower provides his or her power-of-attorney to an individual not affiliated with the institution to endorse the borrower's check or complete an EFT authorization. The endorsement of the loan checks or completion of an EFT authorization by an individual under a power-of-attorney must be done according to the requirements contained in § 682.604(c)(2) and (3). The Secretary believes that these changes to the disbursement and delivery provisions for students studying abroad under the auspices of the home institution do not prohibit the use of the option of directly depositing the borrower's loan proceeds into the borrower's account at a financial institution as previously authorized. For borrowers who are not first-time borrowers subject to delayed delivery of Stafford and SLS loan proceeds, nothing contained in § 682.604(c)(2) prevents the school from securing a borrower's approval for direct deposit of a loan check into the borrower's account at a financial institution earlier than 30 days before the first day of classes in the period of enrollment, provided the borrower is registered as a student. The actual delivery of the loan proceeds, however, must be made pursuant to § 682.604(d) of the regulations.

Changes: None.

Section 682.207(d)(2)

Comment: Many commenters objected strenuously to the proposal to limit the amount of a late disbursement only to the amount needed to cover a student's outstanding charges at the institution. The commenters argued that this creates an unfair economic burden on the student because the student's demonstrated financial need for the period of enrollment for which the loan is intended is based on institutional and non-institutional charges and is not reduced after the last day of classes. The commenters argued that the proposed regulations are not consistent with the disbursement of late awards in the other Title IV programs and do not recognize that a student may have other outstanding debts that resulted from the student borrowing to finance his or her attendance at the school (e.g., paying tuition with a credit card, using private loans for living expenses, etc.).

Discussion: The Secretary agrees with the commenters that a lender making a

late disbursement of FFEL loan proceeds should be allowed to recognize more than outstanding institutional charges if the borrower can document additional educational costs he or she incurred that are included normally in a borrower's cost of attendance under section 472 of the Act. The school would be expected to collect and retain documentation from the student supporting the amount of the late disbursement delivered to the borrower. Excess loan proceeds must be refunded by the school to the lender.

Changes: The regulations have been revised to allow a lender to make a late disbursement based on the borrower's documented educational expenses for the period of enrollment if those expenses include costs that are normally included in a borrower's cost of attendance under section 472 of the Act.

Comment: A number of commenters agree with the Secretary that the late disbursement policy needs to be standardized. However, they believe the language of the NPRM is unnecessarily complex and should be simplified. They recommended that lenders be allowed to disburse funds up to 60 days after the student has ceased to be enrolled on at least a half-time basis without express guaranty agency approval. Other commenters believe that guaranty agencies should be allowed to establish procedures for requesting and approving late disbursements according to the needs of their program participants and systems.

Discussion: The Secretary agrees with the commenters that the late disbursement policy needs to be simplified and that the guaranty agency should have the option of allowing lenders to make late disbursements. The Secretary believes that, if a guaranty agency does not prohibit late disbursements, a lender should be allowed to make a late disbursement within 60 days after 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 intended without prior approval of the agency. The Secretary also believes that if the guaranty agency and lender have informed the school that late disbursements are permitted, a school should be able to deliver the loan proceeds to the borrower without obtaining the guaranty agency's or lender's approval on a case-by-case basis.

Changes: The regulations have been revised to provide that if the guaranty agency does not prohibit late disbursements, the lender may disburse loan proceeds within 60 days after the student has ceased 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 intended. The Secretary has also revised § 682.604(e) to correspond with the changes made to § 682.208(d) by allowing a school to deliver loan proceeds received within 60 days of the earlier of the dates specified in § 682.604(e)(1) unless the guaranty agency or lender have informed the school that late disbursements are prohibited.

Section 682.208 Due Diligence in Servicing a Loan

Comment: One commenter recommended that the Secretary regulate servicers as many loans are serviced by third-party servicers.

Discussion: The 1992 Amendments specifically authorized the Secretary to regulate third-party servicers. The Secretary intends to develop these regulations through the negotiated rulemaking process for rules implementing the 1992 Amendments.

Changes: None.

Section 682.208(b)

Comment: Several commenters recommended changing the time period required for credit bureau reporting from 90 days to 150 days of a disbursement. They stated that making credit bureau reporting consistent with the 120-day cancellation rule will prevent many instances of unnecessary reporting in which information submitted to meet the 90-day reporting deadline must be corrected because a loan is subsequently canceled by the 120th day.

Discussion: While it is true that a loan is canceled if the amount disbursed is repaid or the check is not cashed within 120 days, the Secretary believes that 150 days is too long and that the 90-day period is late enough in the disbursement process to prevent the unnecessary reporting of most canceled disbursements.

Changes: None.

Comment: Several commenters indicated that reporting a borrower's delinquency before the 90th day of delinquency substantially increases the unnecessary reporting of borrowers who are in the process of remitting payment or securing the documentation to support a deferment or forbearance. They recommended that reporting the extent of the borrower's delinquency should occur at or after the 90th day of delinquency.

Discussion: The Secretary believes that it would be inconsistent with the intent of Congress and the purpose of credit bureau reporting if only

borrowers who are delinquent on their loans by 90 days or more are reported to credit bureaus. The fact that a borrower consistently is late in remitting payments is relevant information to those entities that use credit bureau information. In addition, although the Secretary understands that there might be a delay in the submission of documentation supporting a borrower's eligibility for a forbearance or deferment, he nevertheless believes that the borrower remains responsible for making payments if he or she is unable to submit supporting documentation promptly.

Changes: None.

Section 682.208(c)(1)

Comment: Several commenters suggested that this section be revised to require that a lender respond to any inquiries about a loan from a borrower or endorser within a reasonable time period rather than within the proposed 30 days. They believe that in many cases 30 days is not enough time to research properly a borrower's account, especially if the research involves the originating lender, system transfers, and several subsequent holders. They also believe that in some cases, such as deferment processing, 30 days may be too much time. They recommended that the regulations provide that responses be made within a reasonable time, thus allowing guaranty agencies the flexibility to establish reasonable response times depending on the nature of the inquiry.

Discussion: The Secretary wishes to clarify that the lender's response to a borrower's inquiry by the 30-day deadline may be in the form of a written interim response. The Secretary recognizes that a lender may need more time to research some cases, but believes that it is reasonable to expect some form of response be given to the borrower within this time period.

Changes: None.

Section 682.208(d)

Comment: Many commenters opposed the Secretary's effort in the NPRM to encourage lenders to offer graduated or income-sensitive repayment schedules, citing the increased costs the borrower incurs over time with those schedules. On the other hand, many other commenters applauded the Secretary's efforts, saying that such an initiative shows sensitivity to the fact that a borrower's income and ability to repay is generally less at the beginning of the repayment period than at the end.

Discussion: The Secretary recognizes that a borrower will pay less over the life of a loan with a level repayment

schedule than with a graduated repayment schedule. However, the Secretary also believes that it is critical to establish a repayment habit with borrowers. A repayment schedule that the borrower views as unrealistic might impede that effort and might, in fact, precipitate a default. Therefore, the Secretary will continue to strongly encourage the use of graduated repayment schedules for old borrowers. The 1992 Amendments amended section 428(b)(1)(E)(i) of the Act to require lenders to offer a graduated or income-sensitive repayment schedule to new borrowers after July 1, 1993.

Changes: None.

Section 682.208(f)

Comment: Several commenters objected to the proposed requirement that a lender make what they believe is a highly subjective evaluation of whether the borrower "knew" or "should have known" that information used to support his or her eligibility was incorrect. The commenters recommended that the regulations be revised to permit a lender to use "substantial facts" to determine whether a borrower has established eligibility for all or part of the loan.

Discussion: The Secretary notes that the proposed requirement that the lender determine whether the borrower "knew" or "should have known" was intended to clarify that the procedures of § 682.412 should be applied only to: (1) Borrowers who provided false or erroneous information to support their eligibility for insurance coverage and the payment of Federal interest benefits on their behalf, and (2) borrowers who received loan proceeds for which they subsequently were determined to be ineligible because they did not attend school for the period of enrollment for which the loans were intended. The Secretary wishes to distinguish these borrowers from those whose ineligibility resulted from an error made by the school in determining borrower eligibility and certifying the loan application or by the lender in making the loan. In clarifying the application of § 682.412, however, the Secretary did not intend to require the lender to take action unless it received information about a borrower that could be substantiated by the lender directly or by the school.

Changes: The regulations have been revised to provide that a lender shall follow the procedures in § 682.412 if it receives information that can be substantiated that the borrower, or, if applicable, the student on whose behalf a parent borrowed, provided false or erroneous data to support his or her

loan eligibility or that the borrower received loan proceeds for which he or she became ineligible due to nonattendance.

Section 682.209 Repayment of a Loan

Comment: A commenter suggested there should be a section in this area that addresses combining Stafford loans to allow one payment by the borrower. The commenter also questioned whether loans can be combined in one payment if the loans enter repayment at different times.

Discussion: Nothing in this section prevents a lender from establishing a single repayment schedule for a borrower with multiple FFEL loans. If the lender establishes such a schedule, it must ensure that payments are applied so that each loan is repaid within the 10-year maximum repayment period.

Changes: The Secretary has added language in § 682.208(d) to clarify that a lender may establish a single repayment schedule for all the FFEL loans that the lender holds for a particular borrower.

Section 682.209(a)(3)

Comment: One commenter stated that there is a great deal of confusion surrounding the establishment of the payment due date following a period of authorized deferment or forbearance and recommended that the Secretary provide clarification in this area.

Discussion: The Secretary has decided that a lender may use the 45-day standard in the regulations for establishing a first payment due date for a borrower completing a deferment or forbearance period.

Changes: A change has been made in the regulations to require the lender to establish a first payment due date that is no more than 45 days following the expiration of the borrower's deferment or forbearance period.

Section 682.209(a)(3)(ii)

Comment: Several commenters noted that the regulations state that 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. The commenters noted that this requirement would not be feasible for lenders that have day-specific servicing systems.

Discussion: The Secretary understands that some lenders use day-specific servicing systems and that the 9- and 12-month grace period is calculated on a day-specific basis. For lenders with day-specific systems or with loans that have a 9- to 12-month

grace period, the requirement that the first payment due date be no more than 45 days after the first day of the month in which the repayment period begins could result in that date being considerably sooner than 45 days after the end of the grace period.

Changes: The regulations have been revised to specify that a first payment due date established by the lender must be within 45 days of the end of the grace period or, if the lender learns, after the fact, that the borrower has entered the repayment period, no later than 75 days after the lender learns that the borrower has entered the repayment period.

Section 682.209(a)(4)

Comment: One commenter suggested adding a restriction in the last sentence of § 682.605(b)(3) of the regulations because he felt that the phrase "first failure to submit a lesson" was unclear and subject to misinterpretation.

Discussion: The Secretary agrees with the commenter that the reference to "first failure to submit a lesson" in § 682.209(a)(4) is unclear and might be interpreted to mean that the school may grant more than one restoration to in-school status. Under § 682.605(b)(3), a school may not grant a correspondence student more than one restoration to in-school status after the student fails to submit lessons in accordance with the established schedule.

Changes: The regulations have been changed to reflect that a school may provide a borrower with a one-time restoration to in-school status following the borrower's failure to submit a lesson within the 60-day period after the due date for submission.

Section 682.209(a)(6)

Comments: Many commenters suggested deleting the provision limiting the terms of graduated or income-sensitive repayment schedules. The commenters believe that the Secretary should not prescribe the terms of graduated or income-sensitive repayment schedules because this will limit lenders' use of this optional default management tool.

Discussion: The Secretary believes that the terms imposed on graduated or income-sensitive repayment schedules in § 682.209(a)(6) merely reflect long-standing Departmental policy prohibiting a schedule that includes large balloon payments. The Secretary believes that assisting a borrower in avoiding default early in the repayment period is meaningless if a graduated repayment schedule with unrealistically large payments precipitates a default later in the repayment cycle.

Changes: None.

Section 682.209(a)(7)(i)

Comment: Several commenters recommended deleting the last sentence regarding the 15-year repayment rule for Federally Insured Student Loans (FISLs) made for periods of enrollment before July 1, 1986. They believe this deletion is necessary because the Secretary indicated in the preamble of the NPRM his intention to waive violations of this rule for pre-1986 FISLs.

Discussion: The Secretary wishes to reiterate that the provision still applies and lenders must comply with it. Through his discussion in the preamble of the NPRM, the Secretary simply intended to clarify that he would waive any violation of this provision of the regulations.

Changes: None.

Section 682.209(b)

Comment: Several commenters questioned the Secretary's proposed rule on how a borrower's prepayment of a FFEL program loan should be applied. The commenters recommended that the lender should be allowed to apply the prepayment to unpaid accrued interest before it is applied to unpaid principal. Several other commenters argued that not allowing the lender to apply the prepayment to late charges the borrower may have been assessed conflicted with standard banking practice.

Discussion: The Secretary understands that a borrower making a prepayment might have overdue accrued interest or late charges that have been assessed. The Secretary agrees that a lender receiving a prepayment should have the flexibility to apply the prepayment to cover outstanding interest or late charges before applying it to unpaid principal.

Changes: The final regulations have been amended to clarify that the lender may credit the prepayment first to late charges or collection costs, then to outstanding interest, and then to unpaid principal, unless the borrower otherwise specifies that the prepayment be applied to future installments or as a prepayment of principal.

Comment: Many commenters applauded the proposal that would allow a lender to credit prepayment that equal or exceed three full payments against future installment payments. Several commenters felt that lenders should be able to apply any amount received in excess of a full payment against future installments. Still other commenters favored retention of the existing requirement that lenders apply payments in excess of the amount due to reduce outstanding principal because of the financial benefit to the borrower.

Discussion: The Secretary recognizes the financial benefit to the borrower of having outstanding principal on the loan reduced as quickly as possible. The Secretary also believes, however, that a borrower who makes a large payment generally intends it to be used to satisfy future loan repayment installments. The Secretary believes that these regulations identify a realistic payment-amount-threshold that allows a lender to interpret the borrower's intent for a payment to be applied to future repayment installments. The Secretary also has decided that when a borrower makes such a large payment, without specifying how it should be applied, the lender should have the option to apply the payment either to future installments or as a prepayment of principal.

Changes: A change has been made to § 682.209(b)(2) to allow the lender, in the absence of direction from the borrower, to apply a payment amount that equals or exceeds three full payments under the repayment schedule either to future installments or as a prepayment of principal.

Section 682.209(c)(1)

Comment: Several commenters recommended that language be included in the regulations to distinguish between loans that have the \$360 minimum annual repayment and loans that have the \$600 minimum annual repayment. Several commenters suggested including the applicable dates these minimum annual repayment amounts became effective in the regulations to make the distinction.

Discussion: The minimum annual repayment was increased from \$360 to \$600 by the Postsecondary Student Assistance Amendments of 1981 (sections 531-540 of Pub. L. 97-35). The Secretary believes that it is unnecessary to include in the final regulations the \$360 minimum annual repayment provision as no new loans are affected. All loans to which the \$360 minimum annual repayment provision applies include the minimum annual repayment amount as a term of the promissory note.

Changes: None.

Section 682.209(f)(3)

Comment: Many commenters objected to the requirement that the promissory note be sent to the refinancing lender because consumer-banking laws dictate that the paid-in-full note be returned to the borrower. Other commenters objected to the requirement that lenders mail a certification statement to the refinancing lender within three days following receipt of a payment-in-full

due to refinancing. They believe this proposal would require that a separate payment system be developed to identify a refinanced payment. They indicated that these payments generally are processed through a lockbox. Therefore, most lenders are unable to identify a payment as a refinancing payment and would not be able to comply with the requirement.

Discussion: The Secretary proposed that the lender send the borrower's original promissory note to the refinancing lender as an alternate method of certifying that a borrower's fixed-rate loan had been discharged as provided for in section 428A(d)(4) and section 428B(d)(4) of the Act. However, the Secretary understands that the practice of forwarding an original paid-in-full promissory note to a party other than the borrower is contrary to consumer-banking laws and agrees that the use of this proposed option rather than a certification statement might result in the inadvertent loss of the borrower's promissory note. Therefore, the Secretary has decided to allow the use of a copy of the borrower's original promissory note evidencing the loan as the certification statement. The Secretary believes that the refinancing lender must receive timely notification that a borrower's original loan has been discharged. However, he agrees that three business days might be insufficient time for the original lender to apply the loan proceeds to discharge the original loan and mail the refinancing lender a certification to that effect. Although the Secretary recognizes that payments are generally processed through a lockbox system, and that this might make it more difficult to identify a refinancing payment, he believes that lenders must make the system changes necessary to post the payment and provide the required certification statement to the refinancing lender within the specified time limit.

Changes: Proposed § 682.209(f)(3)(i) has been deleted. However, lenders are still required to provide either a copy of the borrower's original promissory note evidencing the loan or a statement to the refinancing lender certifying the discharge of the original loan. See sections 428A(d)(4) and 428B(d)(4) of the Act. The regulations also have been revised to provide lenders with five business days to post a refinancing payment and provide the certification statement to the refinancing lender.

Section 682.209(h)

Comments: Several commenters noted that the regulations did not reflect section 428C(c)(2)(B) of the Act, which

provides that unless a Consolidation loan is being used to discharge at least \$5,000 of FFEL programs loans, the Consolidation loan must be repaid in not more than 10 years.

Discussion: The Secretary agrees; this provision of the statute inadvertently was not included in the NPRM. Moreover, the 1992 Amendments have changed this section of the statute to require that such a Consolidation loan must be repaid in not more than 12 years.

Changes: The regulations have been revised to include this statutory provision.

Section 682.209(i)(1)

Comment: A number of commenters objected to the proposal that a refund received by a lender from a school should be used to reduce the borrower's outstanding principal. The commenters stated that general accounting principles, as well as their own system requirements, would require that any outstanding interest be satisfied first. Other commenters felt that this requirement should apply only to Stafford loans because interest would have accrued on nonsubsidized Stafford, PLUS, and SLS loans.

Discussion: The Secretary wishes to note that interest accrues on all loans, but the Department pays the interest for certain periods on subsidized Stafford loans. The Secretary views refunds as "unused loan proceeds" that should be credited against the principal of the loan to create the maximum benefit for the borrower.

Changes: None.

Section 682.209(j)

Comment: A few commenters recommended that the 10-day time period for responding to a certification statement in connection with a Consolidation loan should be changed to 10 business days to allow for adequate auditing of all loan and payment records before issuing the certification.

Discussion: The Secretary agrees with the commenters.

Changes: The regulations have been changed to provide the lender 10 business days to provide the certification.

Section 682.210 Deferment

Comment: One commenter requested that the Secretary clarify why a 6-month certification limitation applies to some deferments (e.g., temporary total disability, dependent's temporary total disability, and unemployment) but not to others.

Discussion: The Secretary strongly believes that a deferment based on a condition that temporarily affects a borrower's ability to repay should be recertified periodically to assure the Secretary that the condition continues. He does not believe that the deferment should be granted automatically for the maximum statutory period as the borrower's situation might no longer warrant the deferment.

Changes: None.

Section 682.210(a)(4)(i)

Comment: The majority of commenters recommended permitting oral requests for deferments provided the lender is required to document these requests in the borrower's file. Many commenters felt that requiring a borrower to request a deferment in writing would delay significantly the time it takes to process a deferment.

Discussion: The Secretary agrees with the commenters that it is appropriate to allow the lender to accept the borrower's verbal request for a deferment since the lender may not grant the deferment until the borrower has submitted complete documentation supporting his or her eligibility for the deferment.

Changes: A change has been made. The Secretary has deleted "in writing" from § 682.210(a)(4).

Section 682.210(a)(4)(ii)

Comment: Many commenters supported the concept of allowing lenders to grant deferments based on substantially complete documentation. However, they did not agree with the NPRM proposal and recommended significant changes. Many commenters recommended that the Secretary define the term "substantially complete" because they felt it was overly ambiguous and would lead to inconsistent treatment of borrowers by different lenders. Many commenters objected to the operational difficulties they believe would be associated with retroactively canceling a 60-day "conditional" deferment and repaying interest to the Secretary if the borrower does not complete the deferment process. The commenters indicated that few lenders would choose to use this option because of these operational problems. They recommended instead that the 60-day conditional deferment period be retained even if the borrower does not provide the missing information; the borrower would be expected to resume repayment at the close of the 60-day period. A few commenters recommended that the lender be allowed to grant forbearance to the borrower until the borrower

submits the missing information rather than granting a 60-day deferment period that they might have to cancel.

Discussion: The Secretary agrees with the commenters that the term "substantially complete" is somewhat vague. However, the Secretary declined to be more prescriptive in the NPRM expressly to provide lenders flexibility in administering this provision. Further, he does not believe that the term can be defined effectively to address the many situations to which it may apply. The Secretary understands that the lender performs additional work if a borrower fails to provide missing information by the close of the 60-day conditional deferment period and the lender is required to cancel the deferment and repay interest payments paid to the lender by the Secretary. However, the Secretary does not believe that it is in the fiscal interest of the FFEL programs to allow the 60-day deferment period to stand if the borrower does not complete the deferment process. Further, the Secretary is persuaded by the commenters that few lenders will use this option as currently written. Therefore, the Secretary has decided to delete this provision from the regulations. Lenders are reminded that they may grant forbearance until the borrower submits the missing documentation. Once the lender receives complete documentation establishing the borrower's eligibility, a deferment can be granted based on the date the condition entitling the borrower to the deferment first existed in accordance with § 682.210(a)(5).

Changes: A change has been made. The proposal to allow lenders to grant a deferment based upon substantially complete information submitted by the borrower has been deleted from the regulations.

Section 682.210(a)(6)(iv)

Comment: Several commenters requested clarification of an apparent conflict between proposed § 682.210(a)(6)(iv) and § 682.210(c)(2) regarding the use of the anticipated graduation date (AGD) as the ending date of a Stafford and SLS student deferment. Additional comments included concerns that requiring a separate certification statement for the half-time student deferment represents unnecessary duplication since a condition for receipt of that deferment is that the borrower is also receiving a loan for the intended deferment period and, therefore, a loan application is required. Several commenters supported the proposal to treat a certified loan application as sufficient documentation for a student deferment up through the

student's anticipated graduation date for (a) any SLS loan, and (b) a Stafford loan if the guaranty agency's student status confirmation report (SSCR) system includes a mechanism for the school's confirmation of the borrower's student deferment status. A number of commenters supported the concept of a yearly recertification for the student deferment if the guaranty agency does not have an SSCR system that includes a borrower's student-deferment status and emphasized that a yearly recertification of eligibility for the student deferment by the school would represent unnecessary work for schools, lenders, and guaranty agencies, and be a duplication of SSCR enrollment-verification data.

Discussion: The Secretary agrees with the commenters that the use of the loan application to request a student deferment, the use of the school's certification on the loan application to document the borrower's eligibility, and the use of the borrower's anticipated graduation date as the end date of the deferment represents an efficient and reasonably accurate method for granting a student deferment in the Stafford and SLS programs, provided the guaranty agency's student status confirmation report system provides status reports for each borrower with a student deferment. Further, the Secretary has decided that, in the interest of standardizing procedures and reducing the administrative burden associated with student deferments, this same approach should be extended to the PLUS program. The Secretary also agrees with commenters that proposed §§ 682.210(a)(6)(iv) and 682.210(c)(2) are inconsistent in describing the end date of a student deferment.

Changes: A change has been made to § 682.210(a)(6)(iv) to provide that the AGD date also should generally be considered the end date of a student deferment for a PLUS borrower. In addition, the language of proposed § 682.210(c)(2) that would have restricted the period of enrollment that may be certified in a single deferment certification to one academic year has been deleted from the regulations and § 682.210(c) has been revised to provide for the use of the loan application to request and document eligibility for a student deferment in the Stafford, SLS, and PLUS loan programs.

Section 682.210(b)(1)

Comment: A few commenters suggested that the regulations include a complete description of the eligibility requirements for what is popularly referred to as the "summer bridge" student deferment for continuously

enrolled borrowers who do not attend classes during the summer months.

Discussion: The Secretary considers the summer months part of the in-school period for borrowers who are maintaining either an in-school status or a student deferment status and who plan to return to school in the fall. For borrowers in a student deferment status, particularly SLS borrowers, the Department has recommended that lenders collect a statement-of-intent-to-reenroll from the borrower to support the lender's continued cessation of collection activity otherwise required under the due diligence regulations during the summer months. The lender should continue to bill the Department for interest on Stafford loans during this period. If a borrower does not submit documentation supporting continued eligibility for a student deferment within 30 days of the start of the fall term, the lender is required to convert the borrower to repayment. Under these circumstances, the borrower is considered to have ceased enrollment on the last day of the previous spring term. However, the lender is allowed to treat the borrower as entering repayment without the lender's knowledge so that the borrower is not considered retroactively delinquent for a period during which he or she neither has been billed nor has an opportunity to pay. The lender is required to repay ED the interest paid on behalf of the borrower for the summer period. The interest may be capitalized pursuant to the regulations.

Changes: None.

Section 682.210(b)(1)(i)

Comment: Some commenters suggested replacing the term "school" with "eligible institution of higher education," and specifying that this includes vocational school and foreign schools. The commenters stated that they believed this would result in consistency between the requirements for a full-time student deferment and the definition of full-time student in § 682.200.

Discussion: The Secretary does not agree with the commenters. The definition of "school" found in § 682.200 properly reflects the statutory definition of "institution of higher education" in section 481 of the Act resulting from the 1992 Amendments.

Changes: None.

Section 682.210(b)(1)(v)

Comment: Some commenters suggested that the Secretary define "United States" for purposes of the unemployment deferment so that

lenders clearly understand which geographic areas are included.

Discussion: The Secretary believes it is unnecessary to define this term in the regulations. For purposes of this deferment, the Secretary clarifies that, consistent with the definition of State in 34 CFR 668.2, the United States includes borrowers residing in and seeking employment in any State of the Union, the Commonwealth of Puerto Rico, the District of Columbia, American Samoa, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

Additionally, a U.S. military base or U.S. embassy compound in a foreign country is considered as "in the United States" for purposes of this deferment. A borrower who resides on a U.S. military base or U.S. embassy compound in a foreign country because his or her spouse is stationed there, and who is seeking employment, would be required to provide documentation roughly equivalent to that required in § 682.210(h)(1)(i). The "name of the firm" could be the "U.S. Military Base employment office" or "U.S. Embassy Personnel Office." The Secretary does not require those borrowers to comply with the requirement that they make six attempts to secure employment during the period of certification.

Changes: None.

Section 682.210(b)(4)

Comment: Some commenters suggested deleting the language referring to a borrower's attendance at a school that is operated by an agency of the Federal Government. The commenters recommended this change because students in the service academies do not qualify for FFEL program loans and are, therefore, ineligible for student deferments based on half-time enrollment.

Discussion: The Secretary recognizes that a condition of receiving a student deferment for half-time enrollment is that the borrower simultaneously be receiving a FFEL program loan. Since students attending the service academies, (and other federally-operated schools that do not participate in the FFEL programs) may not receive loans because these schools do not participate in the FFEL programs, they cannot qualify for this deferment.

Changes: The regulations have been revised. The language referencing schools operated by an agency of the Federal government has been deleted.

Section 682.210(b)(5)(iv)

Comment: One commenter suggested revising the rules dealing with the working-mother deferment. The

commenter believes the regulations go beyond the statutory language by limiting eligibility for the deferment to only those individuals who apply for the deferment within one year of entering or re-entering the work force.

Discussion: The Secretary disagrees with the commenter. The statute clearly states that the deferment is "for mothers with pre-school age children who are just entering or re-entering the work force" (Emphasis added.) See section 428(b)(1)(M)(xi) of the Act. The Secretary believes that it is appropriate to define "just entering or re-entering" as within one year of entering or re-entering the work force on a full-time basis.

Changes: The Secretary is not revising the rules dealing with the working-mother deferment. However, the regulations are being revised to reflect that full-time employment involves at least 30 hours of work a week and is expected to last at least three months. This standard is consistent with the standard used in regard to the unemployment deferment.

Section 682.210(c)(1)(ii)

Comment: Many commenters stated that the proposed language would require both the registrar's and financial aid officer's signatures for half-time student deferments. They suggested that this places an unreasonable administrative burden on the borrower, school, and lender.

Discussion: The Secretary notes that for a new borrower applying for a student deferment, two conditions must be met. The borrower must obtain documentation from an authorized official of the school certifying at least half-time enrollment and a statement, or other documentation, from the financial aid administrator, indicating that the borrower has received or will receive a Stafford or SLS loan for the same period of enrollment for which the deferment is requested. Nothing in the regulations precludes the financial aid administrator, as an authorized official of the school, from certifying the student's half-time enrollment, based on information provided by the registrar. The borrower may provide other information, i.e., a copy of the certified loan application, promissory note, or notice-of-loan guarantee as evidence that the borrower has or will be receiving a loan for the same period.

Changes: The Secretary has revised § 682.210(c)(1)(ii) to permit the borrower to provide other documentation evidencing that the borrower has received or will be receiving a Stafford or SLS loan for the

same period for which the deferment is requested.

Comment: Several commenters suggested that the borrower be allowed to provide the necessary proof that he or she has obtained a new loan for the period covered by the student deferment.

Discussion: The Secretary agrees with the commenters that allowing the borrower who applies for a student deferment to provide proof that he or she has obtained a new loan for the same period would lessen the administrative burden. The Secretary believes that a copy of the lender's notice-of-loan-guarantee or a copy of the application containing the school's certification would be acceptable documentation that the borrower has received or will receive a Stafford or SLS loan for the period of enrollment for which the deferment is sought.

Changes: The Secretary has revised the regulations, as noted earlier, to permit a borrower to document eligibility for a student deferment by submitting evidence that a loan has been received.

Section 682.210(c)(1)(iii)

Comment: One commenter recommended that the Department's current policy that deferment applications be prescribed by the guaranty agency be changed. The commenter asked that the Department prescribe the use of standard deferment forms. The commenter believes that the Department is in the best position to develop a standard format for all deferment forms and that standardization would ease the administrative burden on schools. The commenter also believes that the use of standard deferment forms prescribed by the Secretary would contribute to the goal of greater automation in the administration of the FFEL programs and to the development of the National Student Loan Data Base.

Discussion: The Secretary understands the commenter's preference for the standardization of various FFEL program documents, especially as they relate to the Department's move toward enhanced methods of electronic processing and the development of the National Student Loan Data Base. As a result of a change made in section 432(m)(2) of the Act by the 1992 Amendments, the Secretary is required to work with representatives of guaranty agencies, institutions of higher education, and lenders to develop and prescribe a common deferment reporting form.

Changes: Section 682.401(d)(3) of the regulations have been revised to specify

that guaranty agencies must use common forms, including common deferment forms, approved by the Secretary.

Section 682.210(f)(2)

Comment: Some comments suggested that the Secretary clarify that pregnancy is not considered a disabling condition unless extraordinary circumstances are certified by the physician.

Discussion: The Secretary restates his prior guidance that "temporarily totally disabled" is defined in section 435(g) of the Act as referring to a borrower " * * * who, by reason of injury or illness, cannot be expected to be able to attend an eligible institution or to be gainfully employed during a reasonable period of recovery from such injury or illness not to exceed 3 years."

(Emphasis added.) Since the statute specifically uses the term "by reason of injury illness," this deferment does not include all medical conditions. A healthy pregnancy is neither an injury nor illness and does not satisfy the requirements for a deferment.

The Secretary recognizes that during pregnancy there may be a period of time during which the borrower is unable to continue to attend school. The Secretary encourages lenders and guaranty agencies to grant forbearance to borrowers in these circumstances.

Changes: None.

Section 682.210(h)(1)(i)

Comment: Several commenters recommended deleting the requirement that a borrower seeking an unemployment deferment provide the names or titles of the people contacted as part of the borrower's conscientious search for employment. The commenters believe this requirement is burdensome and of little or no benefit to the borrower.

Discussion: The Secretary strongly disagrees. The Secretary expects an unemployed borrower to make a truly conscientious effort to secure employment. The Secretary believes that this involves making personal contact, either by phone or in person, with key personnel of potential employers, not just submitting resumes or job applications to those employers. The Secretary believes that if a borrower is not required to provide this information there is no evidence that a contact was made. However, the Secretary has decided to amend the regulations to provide that a lender may also accept, as evidence of employer contacts, documentation the borrower has provided to meet the requirements of the Unemployment Insurance Service if the documentation shows the same

number of contacts and contains the same information that the borrower would be required to provide under the Department's regulations.

Changes: The regulations have been revised to provide that a lender may accept alternative documentation of employer contacts made to meet the requirements of the Unemployment Insurance Service.

Comment: Several commenters recommended inserting "during the preceding six months, except in the case of the initial period of unemployment" after "conscientious search for full-time employment." They suggested that this change clarifies that the borrower is to identify employers whom they already have contacted as opposed to listing potential future contacts. The commenters believe this avoids requiring that the deferment always be back-dated.

Discussion: The Secretary agrees that the attempts to secure employment for a given certification period should reflect contacts already made rather than potential contacts.

Changes: The Secretary has revised the regulations to adopt the recommended language.

Section 682.210(h)(1)(iii)

Comment: Several commenters suggested that the Secretary define what is considered an "accessible" public or private employment agency because they did not believe it was reasonable to expect an unemployed borrower to travel to the nearest public or private employment agency regardless of the distance involved. Some commenters recommended using a 50-mile radius as a reasonable distance to expect an unemployed borrower to travel.

Discussion: The Secretary believes that it is reasonable to expect a borrower to make a good-faith effort to register with a public or private employment agency as part of his or her employment search. However, the Secretary agrees with the commenters that for an unemployed borrower this requirement is reasonable only if the borrower does not have to travel long distances to register with an agency. Further, the Secretary believes that employment opportunities listed by an agency a significant distance from the borrower's home may not be realistic prospects if getting to work sites involves significant travel.

Changes: The Secretary has revised the regulations to reflect that a borrower must register with such an agency if one is within a 50-mile radius of the borrower's permanent or latest temporary address.

Section 682.210(h)(3)

Comment: One commenter recommended that the Secretary reinstate language found in current regulations in this section that provides that an unemployment deferment is not justified if a borrower refuses to seek or accept employment "in kinds of positions or at salary and responsibility levels for which the borrower feels overly qualified by virtue of education or previous experience." The commenter stated that this wording had been helpful in the administration of this provision. Other commenters supported the concept that an unemployed borrower should not be overly restrictive in his or her search for employment, but also felt that a borrower should be allowed to take certain professional considerations into account in that search. They believe that someone trained for, or who has been employed in, a specific professional area should be able to pursue employment in that career.

Discussion: The Secretary agrees that the language deleted from this provision in the NPRM is intended to establish a requirement that a borrower cannot refuse work based on certain preferences. The Secretary does not agree with those commenters who believe that an unemployed borrower should be allowed to take into account professional preferences in his or her job search. The Secretary believes that a borrower is responsible for repayment of a FFEL program loan and should not expect the Secretary to subsidize the borrower's search for the best professional opportunity. The Secretary understands that this may require a borrower to accept temporary or less desirable employment in order to make payments on the loan while continuing a long-term search for a better job opportunity.

Changes: The Secretary has revised the regulations to include the phrase deleted from the NPRM.

Section 682.210(i)

Comment: Numerous commenters recommended that borrowers attempting to qualify for a military deferment should be allowed to provide the lender with a copy of his or her official military orders in lieu of a "written" statement from the borrower's commanding or personnel officer.

Discussion: The Secretary agrees that a lender should be able to use information from the borrower's military orders to document that the borrower is eligible for a military deferment.

Changes: The Secretary has revised the regulations to allow a borrower to

document eligibility for a military deferment by providing either a "written" statement from the commanding or personnel officer or a copy of his or her official military orders and official military identification.

Comment: Several commenters recommended that proposed § 682.210(i)(3) be revised to provide that under certain circumstances military reservists serving on active duty for less than one year would be eligible for a military deferment. The commenters noted that many reservists that were called to active duty in Operation Desert Shield or Operation Desert Storm would not qualify for a military deferment based on the proposed regulations. The commenters recommended that the Secretary provide for flexibility in the regulations to address these types of situations.

Discussion: The Secretary agrees with the commenters that the regulations should be revised to give lenders the ability to react in a timely fashion to circumstances in which the normal one-year requirement for active duty might not be appropriate.

Changes: The language of § 682.210(i)(3) has been revised to specify that a reservist called to active duty would be expected to serve on a full-time basis for at least one year unless an order for national mobilization of reservists is issued.

Section 682.210(m)

Comment: Some commenters objected to the limitation on the compensation rate for full-time volunteers serving with tax-exempt organizations to qualify for a deferment as proposed in § 682.210(m)(1)(iii) of the regulations. The commenters stated that restricting the compensation rate to one that does not equal or exceed the Federal minimum wage was inconsistent with the statutory intent that these volunteers be treated as performing service comparable to service performed by volunteers in the Peace Corps and ACTION programs because volunteers in those programs are compensated at a rate consistent with the Federal minimum wage. Another commenter indicated that this restriction was in conflict with the President's active support of volunteerism. Still another commenter indicated that many individuals working for tax-exempt organizations would be ineligible for the deferment if the organizations' by-laws required that individuals serving with the organizations be paid the Federal minimum wage.

Discussion: Sections 427(a)(2)(C) and 428(b)(1)(M) of the Act were amended by the 1992 Amendments to reduce the

different types of deferments available to FFEL borrowers. In particular, the new law provides new borrowers, whose first disbursement is made on or after July 1, 1993, with the following types of deferment: (1) Student deferment, (2) graduate fellowship deferment, (3) rehabilitation training program deferment, (4) unemployment deferment, and (5) economic hardship deferment. For purposes of these deferments, a new borrower is one who, on the date of application, has no outstanding balance of interest or principal on a Stafford, SLS, or PLUS loan or, in the case of a Consolidation loan applicant, has no outstanding balance on any other FFEL program loan obtained prior to July 1, 1993. The term economic hardship is defined in the statute as circumstances under which a borrower is working full-time and is earning an amount that does not exceed the greater of the minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938 or an amount equal to 100 percent of the poverty line for a family of two as determined in accordance with section 673(2) of the Community Service Block Grant Act, or under other criteria identified by the Secretary in regulations. Because this definition provides for a compensation rate that is at least the Federal minimum wage and new borrowers serving as volunteers in tax-exempt organizations may be eligible for this deferment based on this criteria, the Secretary believes that the same standard of compensation should apply to borrowers subject to the previous deferment provisions.

Changes: The phrase "or equals" has been deleted from § 682.210(m)(1)(iii).

Section 682.210(n)

Comment: One commenter suggested clarifying the definition of "internship or residency." The commenter indicated that these terms can refer to any profession and believe it is necessary to specify which professions satisfy the requirements for this deferment.

Discussion: The Secretary does not believe that it is necessary to define these terms. An internship or residency deferment may be provided to borrowers in any profession that meets the regulatory requirements.

Changes: None.

Section 682.210(o)(1)

Comment: A few commenters suggested revising the eligibility criteria for a parental-leave deferment so that a Stafford loan borrower may qualify for the deferment without being required to forego a portion of his or her grace period. A Stafford loan borrower does not enter repayment until his or her six-

month grace period has elapsed. At that time, the borrower would not have been enrolled at an eligible institution during the preceding six months, as required for the deferment. The commenters believe that by relaxing this criterion the Department will ease the lender's task of securing a borrower's authorization to waive voluntarily a portion of his or her grace period so the deferment can be processed.

Discussion: Section 435(h)(3) of the Act clearly requires that to qualify for a parental-leave deferment the borrower has to be enrolled at least half-time at an eligible institution during the preceding six months. The Secretary cannot waive these statutory requirements. The Secretary previously has issued guidance to lenders indicating that they may advise a borrower that he or she voluntarily may waive a portion of the grace period to qualify for the deferment.

Changes: None.

Comment: Several commenters recommended that the phrase "or the borrower's spouse is pregnant * * *" be deleted from the eligibility criteria for the parental-leave deferment. The commenters stated that the pregnancy of a borrower's spouse did not appear to be covered by section 435(h) of the Act.

Discussion: The Secretary agrees with the commenters that the Act does not extend to cover the pregnancy of a borrower's spouse.

Changes: The phrase has been deleted from the regulations.

Comment: One commenter noted that in many adoption cases the child is placed in the home before the completion of the adoption process. The commenter recommended that the regulations be revised to ensure that a borrower on leave as part of a preadoption placement is eligible for the parental-leave deferment.

Discussion: The Secretary believes that a borrower who takes leave from employment in conjunction with the adoption process should be eligible for the parental-leave deferment regardless of whether the leave occurs before or immediately following the official adoption date.

Changes: The regulations have been revised to permit a borrower to qualify for the parental-leave deferment during the period the borrower cares for a child immediately following placement of the child with the borrower in connection with an adoption.

Section 682.210(r)(2)

Comment: Many commenters objected to the documentation required to support a borrower's eligibility for the working-mother deferment. They

believe it represents a significant burden on the borrower and that the documents cannot be obtained easily. The commenters suggested that the borrower be allowed to self-certify the information necessary to qualify for the deferment.

Discussion: The Secretary notes that a borrower is required under § 682.210 "to provide the lender with all information and documents required to establish eligibility for a specific type of deferment." The Secretary believes that allowing a borrower to self-certify eligibility for the working-mother deferment fails to meet this requirement. The Secretary considers that the documents the borrower is required to submit to support eligibility (e.g., a photocopy of child's birth certificate documenting the child's age and a pay stub or similar document showing her pay rate) represent minimal requirements and are obtained easily.

Changes: None.

Comment: One commenter suggested that the benefits of the working-mother deferment should be extended to single fathers who also meet the eligibility criteria for the deferment.

Discussion: The provisions of section 428(b)(1)(M)(xi) of the Act clearly restrict the working-mother deferment to mothers.

Changes: None.

Section 682.211 Forbearance

Section 682.211(a)(2)(i)

Comment: A few commenters recommended the deletion of the requirement that the lender document that the borrower intends to repay the loan as a condition for granting forbearance. The commenters believe this affirmation by the borrower serves no purpose. They believe it adds no further creditability to the information submitted by the borrower to support the forbearance.

Discussion: The Secretary believes that forbearance should be granted only to borrowers who are willing to repay their loans but temporarily are unable to make payments due to medical or other acceptable circumstances. The proposed additional documentation requirement forces the lender to ensure that the borrower states his or her intention to repay the loan as well as providing a record of the factors that support the lender's decision to grant the forbearance. The lender is being required simply to document the borrower's willingness to repay.

Changes: None.

Section 682.211(b), (c), and (d)

Comment: Many commenters opposed the proposal to treat a forbearance

granted after default differently from other types of forbearance, i.e., a post-default forbearance would not extend the 10-year repayment period and the minimum annual repayment provisions would apply. The commenters indicated that this would require the lender to develop a separate tracking system for borrowers granted forbearance after default. Several other commenters questioned the need for specifying that a lender must grant a forbearance on terms that are "consistent with" or "inconsistent with" the 10-year repayment and the minimum annual repayment provisions and requested that the Secretary simplify the forbearance provisions. Still other commenters recommended that the Secretary specify that a lender does not have to sign a forbearance agreement with a borrower in offering the borrower a graduated repayment schedule that provides for payments that total less than the minimum annual payment amount. The commenters believe that requiring a signed forbearance agreement would discourage lenders from offering the graduated repayment option to borrowers.

Discussion: The Secretary agrees that developing and maintaining separate tracking systems for different types of forbearances would be administratively burdensome and complicate significantly the use of forbearance to assist a borrower in avoiding default. The Secretary also agrees that a lender should be able to offer a borrower a graduated repayment schedule that provides for payment of less than the minimum annual repayment amount without executing a forbearance agreement with the borrower.

Changes: The Secretary has deleted all reference to repayment terms that are consistent or inconsistent with the minimum annual payment requirement and the 10-year maximum repayment period in § 682.211(b), § 682.211(c), and § 682.211(d) of the regulations. Section 682.209(a)(6)(ii) of the regulations has also been revised to provide that a lender may offer a borrower a graduated repayment schedule without completing an agreement as specified in § 682.209(c)(1)(ii).

Comment: Several commenters recommended that the regulations be revised specifically to provide that, upon notice to a borrower, a lender may grant forbearance in circumstances similar to the Operation Desert Shield or Operation Desert Storm action in which contact with a borrower might be impossible.

Discussion: The Secretary agrees that specific guidance should be incorporated into the regulations to

ensure that lenders react in a timely manner to situations such as Operation Desert Shield or Operation Desert Storm in the future.

Changes: The regulations have been revised in § 682.211(f) to provide that, upon notice to a borrower, forbearance may be granted by a lender in the event of a national military mobilization or other national emergency for a period authorized by the Secretary.

Section 682.211(f)

Comment: Several commenters recommended that a lender be allowed to grant forbearance for the period prior to the borrower filing a bankruptcy petition. The commenters noted that, without this change, lenders would only be able to approve forbearance from the date the borrower files the bankruptcy petition when the borrower might already be severely delinquent.

Discussion: The Secretary agrees that lenders should be provided with the option of offering forbearance to a borrower to cover this period. The Secretary believes this would assist in the handling of delinquencies for borrowers who, after a significant period of time, emerge from a stay of collections associated with the bankruptcy process and are again subject to collection.

Changes: A new provision has been added to § 682.211(f) to permit a lender to grant a forbearance for a period prior to the borrower filing a bankruptcy petition.

Section 682.213 Prohibition Against the Use of the Rule of 78s

Comment: Some commenters recommended that this section be expanded to include guidance on loans previously approved using the Rule of 78s to calculate the outstanding principal balance of the loan.

Discussion: The Secretary continues to receive questions on this issue and agrees that the regulations should recognize loans on which the principal balance was previously calculated using the Rule of 78s.

Changes: The regulations have been revised to recognize that the Rule of 78s still might apply to loans that entered repayment before June 26, 1987 that had the principal balance calculated using the Rule of 78s. The Rule of 78s would be used for the life of the loan.

Section 682.214 Compliance With Equal Credit Opportunity Requirements

Comment: A number of commenters recommended that this section be modified to include all the FFEL programs, rather than having it apply just to the Stafford Loan Program.

Discussion: The Secretary has been advised by the Federal Reserve Board that the regulations as currently written comply with Regulation B, 12 CFR part 202. The PLUS program does not meet any of the criteria of 12 CFR 202.8, and neither PLUS nor SLS meet the criteria of 12 CFR 202.8(d) of Regulation B.

Changes: None.

Section 682.215 Defenses to the Borrower's Obligation To Repay a GSL Loan

Comment: Many commenters indicated that they believed that lenders must have a clearly protected right to repayment by borrowers even if the borrower's school violates its obligations to its students. The commenters recommended that the regulations be modified to state that lenders would be subject to a borrower's defense against repayment of a loan based on school misconduct only if a written origination contract existed between the school and lender, or the school, with the consent of the lender, completes the lender's section of the loan application on behalf of the lender. These same commenters supported the proposed use of a disclaimer to inform borrowers that lenders are generally not responsible for school misconduct. They recommended that the definition of "origination" in 34 CFR 682.200 be modified to delete reference to a "special" relationship and the examples provided in the definition because the regulations would specify the circumstances under which a defense would apply. Several other commenters recommended defining what does not constitute an "origination relationship" rather than what does. Many other commenters stated that they agreed that the quality of a school's performance and the employability of its graduates should not provide a borrower with a defense to repayment of a loan. However, these commenters indicated that the proposed regulations still held borrowers financially responsible for most cases of school fraud and recommended that the Secretary take direct responsibility in the final regulations for borrowers harmed by school fraud or school closings. Several commenters indicated that they believed that the regulations provided insufficient protection to borrowers from a school's failure to comply with Title IV refund requirements. Two other commenters strongly objected to the proposed section, saying that it did not provide adequate consumer protection for borrowers and recommended deletion of the section. The commenters stated that the use of the disclaimer notice by the lender made it virtually

impossible for a borrower to ever raise such a defense and thereby rendered the borrower's rights illusory.

Discussion: After considering the comments on this proposed section and the Department's experience in this area, the Secretary has decided that it is not desirable at this time to prescribe in regulations a uniform Federal rule regarding borrower defenses that would preempt State law otherwise applicable to the FFEL programs. The Department believes that the determination of whether a defense under State law is available to a borrower requires a case-by-case assessment of whether individual State laws would frustrate accomplishment of the Federal objectives of the FFEL program. The Department, as a result of its litigation experience, has identified four kinds of State laws whose application would not frustrate FFEL program policies and are therefore not preempted by Federal law. These are State laws that would make a lender subject to school-related defenses against the repayment of the loan if: (1) The lender has notice (actual or imputed) of substantial prior unresolved complaints about the school prior to making the loan; (2) the lender has delegated substantial loan making functions to the school (an "origination relationship"); (3) the lender and the school are corporate affiliates or are otherwise commonly controlled; and (4) the lender paid a finder's fee or referral fee to the school with regard to the loan. Consistent with this approach, the term "origination" in proposed § 682.200 has been revised to be "origination relationship." The Secretary has also decided to describe an "origination relationship" as a special business relationship between a school and a lender so as to distinguish it from the relationship that exists between these parties as part of the normal loan processing and delivery system. In addition, the Secretary notes that the 1992 Amendments have amended the Act to provide for the discharge of loans for a student who received a loan on or after January 1, 1986 and who was unable to complete a program of study in which he or she was enrolled due to the school's closure or if the student's eligibility for a loan was falsely certified by the school. These provisions will be reflected in future regulations developed as a result of the 1992 Amendments.

Changes: The Secretary has deleted the provisions of § 682.215. The term "origination" in proposed § 682.200 has been revised to "origination relationship." Further, the regulations have been revised to describe an

"origination relationship" as a special business relationship.

Section 682.300 Payment of Interest Benefits on Stafford Loans

Section 682.300(b)(2)

Comment: Several commenters suggested that the Secretary modify the proposed regulatory provision requiring interest on loan proceeds transferred electronically to cease on the 120th day if the school has not released the funds from the school's restricted account. The commenters argued that the lender would have no way of knowing if funds are released and might incur a violation based on an event controlled by the school and not by the lender. The commenters suggested defining the date that interest benefits cease as the date funds are returned to the lender. Other commenters suggested that processing time is needed after loan proceeds are returned to the lender and recommended that 10 business days be provided for that purpose.

Discussion: The Secretary believes that 120 days is sufficient time for a school to return funds from its restricted account to the lender and for the lender to complete any required processing. Lenders must have a system in place to monitor the release of loan proceeds to ensure that funds are not delivered after 120 days.

Changes: None.

Comment: One commenter stated that § 682.300(b)(2)(iii) and § 682.300(b)(2)(iv) are confusing. The commenter indicated that the event causing the claim to be filed, i.e., default, always would be earlier than the date the lender receives payment on a claim for loss on the loan. Thus, the Secretary's obligation to pay interest benefits always would cease on the date of default.

Discussion: There are special conditions, such as school closings, in which default claims must be filed with the guaranty agency. In these cases, the loan is in default only for the purpose of allowing the lender to receive an insurance payment. The borrower is not considered to be in default as defined in section 435(1) of the Act, and a lender may not report to any credit bureau or other third party that the borrower is in default on the loan.

Changes: None.

Section 682.301 Eligibility of Borrowers for Interest Benefits on Stafford Loans

Comment: One commenter suggested that the Secretary clarify that it is the school's responsibility to determine whether a borrower is a member of a

religious order and, if so, to notify the lender that the borrower is ineligible to receive interest benefits. Another commenter asked whether this determination would have to be made for every applicant that indicates a religious affiliation on a school application or other form.

Discussion: The Secretary wishes to clarify that these regulatory provisions are intended to mirror similar provisions that have existed in other Title IV programs for a number of years. See §§ 673.22(a)(5), 674.9(c), 675.9(c) and 676.9(c). They are not intended to apply to every applicant that responds to a question on religious affiliation. In determining an applicant's eligibility for interest benefits, if the school has received information indicating that the applicant is a member of a religious order, group, community, society, agency, or other similar organization, it is required to document whether the conditions detailed in in § 682.301(a)(2) apply to the applicant. In the Secretary's view, service in such an order generally reflects that the individual is supported fully by the order and does not have financial need for FFEL purposes. A school is not expected to make a determination unless it has reason to know that an applicant is a member of such an order and meets the criteria specified in § 682.301(a)(2). The school must document its determination and place it in the student's file.

Changes: None.

Section 682.301(b)

Comment: One commenter argued that § 682.301(b) seems to require the student to submit the loan application directly to the lender and, therefore, unduly restricts the use of automated application processing. The commenter urged the Secretary to clarify that a school may submit a loan application directly to the lender at the borrower's request.

Discussion: The Secretary did not intend in § 682.301(b) to require a borrower to submit a loan application directly to a lender.

Changes: A change has been made. The Secretary has modified § 682.301(b) to clearly state that a school may transmit a loan application to an eligible lender at the direction of the borrower.

Section 682.301(c)

Comment: One commenter suggested that § 682.301(c), concerning use of loan proceeds to replace EFC, should also clearly indicate that borrowers may use aid from private and State-sponsored programs.

Discussion: The Secretary agrees with the commenter. Section 428(a)(2)(E) of

the Act provides for the EFC to be offset by loans made under the SLS, PLUS, State-sponsored, or private loan programs.

Changes: A change has been made. The Secretary has revised § 682.301(c) to reflect the requirements of section 428(a)(2)(E) of the Act. In addition, the Secretary is codifying current policy that allows the use of a nonsubsidized Stafford loan to replace the student's EFC.

Section 682.302 Payment of Special Allowance on FFEL Loans

Section 682.302(d)

Comment: Many commenters opposed the Secretary's proposal to terminate a lender's eligibility for special allowance payments 45 days after the borrower's default on the loan unless the lender had filed a default claim with the guaranty agency by the 45th day. The commenters felt that 45 days would not provide sufficient time for a lender to compile all the required documents for a default claim, particularly given the new requirement that a payment and collection history be part of the default claim filed with the guaranty agency. The commenters felt that the current 90-day standard with full interest and special allowance benefits should be retained.

Discussion: The Secretary notes that a lender may continue to file a default claim with the guaranty agency within 90 days of default under the provisions of § 682.406(a)(5). The Secretary intended, through this proposal, to restrict the payment of special allowance to the lender to 45 days after the borrower's default on the loan if the lender did not submit the default claim to the guaranty agency by the 45th day. However, the Secretary agrees with the commenters that the 45-day deadline for submission of a default claim package for the lender to retain special allowance after the 45th day may not provide sufficient time to prepare and submit a default claim package in light of the new documentation requirements for claim submissions. Therefore, the Secretary has decided to change the 45-day deadline to a 60-day deadline. The regulations will now restrict the payment of special allowance to the lender to 60 days after the borrower's default on the loan if the lender does not submit the default claim package to the guaranty agency by the 60th day. Additionally, to provide lenders with extra time to adjust to this provision, the Secretary has decided to delay the effective date of the provision. The provision will become effective for loans for which the first day of

delinquency is on or after 120 days following the date of publication of the regulations.

Changes: The Secretary has amended the regulations to allow a lender to maintain eligibility for special allowance payments if the lender submits a claim to the guaranty agency within 60 days of the date of default.

Comment: Several commenters disagreed with the Secretary's proposal to terminate special allowance on the date the guaranty agency returns a claim to a lender for additional documentation. These commenters felt that eligibility for special allowance should continue until the claim is paid.

Discussion: The Secretary agrees with the commenters and has decided to revise the regulations so as not to penalize a lender by terminating special allowance on an otherwise eligible loan if it is returned by the guaranty agency due to inadequate documentation. If the loan had not been submitted by the lender by the 60th day after default, it already would have lost eligibility for special allowance and being returned because of inadequate documentation would not re-establish eligibility for special allowance. If a loan is rejected by the guaranty agency because of a due diligence or timely filing violation, eligibility for special allowance already would have been lost as of the date of the violation.

Changes: The regulations have been revised to reflect that an otherwise eligible loan may continue to receive special allowance if it is resubmitted by the 30th day after the loan was returned to the lender by the guaranty agency solely because of inadequate documentation. If the loan is submitted after the 30th day, but by the 60th day, the loan is reinsured but special allowance is limited to the 30th day after the loan is returned by the guaranty agency due solely to inadequate documentation. If an otherwise eligible loan is not resubmitted by the 60th day after being returned to the lender by the guaranty agency, the timely filing violation must be cured by the lender using the procedures in Bulletin 88-G-138 (appendix D).

Comment: One commenter stated that the provisions of § 682.302(d)(vii) conflicted with § 682.406(a)(7). These two sections reflect that special allowance terminates on returned claims at a different time than the period during which interest is paid.

Discussion: The Secretary disagrees with the commenter. Section 682.302(d)(vii) specifies one of the conditions under which special allowance payments will terminate.

Section 682.406(a)(7) outlines the conditions of reinsurance coverage and specifies the maximum length of time the Secretary will pay interest on a reinsured claim.

Changes: None.

Section 682.304 Methods for Computing Interest Benefits and Special Allowance

Section 682.304(b)

Comment: One commenter noted that § 682.304(b)(2) is inconsistent with § 682.304(c). The commenter suggested that the 365.25-day calculation method should be used in the average daily balance method as well as in the actual accrual method.

Discussion: Section 682.304(b)(2) prescribes the calculation method that the Secretary will use to determine the average daily balance for interest benefits unless the lender chooses to use the actual accrual method. A lender chooses the average daily balance method by not completing ED Form 799, part III, Column E, entitled "Interest benefits." Completion of this part of the form is optional. If the lender chooses to complete the interest section, it may use the 365.25-day calculation method. If the lender chooses not to complete the interest section, the Secretary will use the calculation method prescribed in 34 CFR 682.304(b)(2) to compute interest benefits.

Changes: None.

Section 682.304(d)

Comment: One commenter suggested that the Secretary should clarify that the calculation in § 682.304(d)(1) represents the average daily balance for the quarter for qualifying loans at each applicable interest rate.

Discussion: The Secretary agrees with the commenter's suggestion.

Changes: A change has been made. Section 682.304(d)(1) has been revised to clarify that the average daily balance calculation for the quarter represents qualifying loans at each applicable interest rate.

Section 682.305 Procedures for Payment of Interest Benefits and Special Allowance

Section 682.305(a)(4)(ii)

Comment: Many commenters were opposed to the Secretary's proposal to make the buyer and the seller jointly and severally liable for payment of origination fees. The commenters argued that the buyer paid the seller for outstanding origination fees at the time of the sale and that the buyer should be liable only if the loans were bought in

the same quarter in which they were originated.

Discussion: The proposed regulations codify the Secretary's long-standing view that if a loan is assigned the assignee and assignor have equal responsibility to ensure that origination fees are paid to the Secretary. Bulletin 91-L-142, dated October 1991, reiterated this requirement, reminding chief executive officers of entities that make, sell, and buy Stafford loans that origination fees should be paid in a timely manner. For operational purposes, the regulations allow either the buyer or the seller to report the amount of the origination fee to the Secretary if the loan is originated and sold within the same quarter. It is assumed that if a loan is sold in a quarter after the one in which it was originated, the originating lender would already have reported the amount of the origination fee to the Secretary.

Changes: The Secretary has modified § 682.406(a)(12) to specify that the payment of origination fees is a condition of reinsurance. However, the Secretary will apply this sanction only if the purchasing lender refuses to pay outstanding origination fees on loans it has purchased.

Section 682.305(b)(1)(ii)

Comment: Several commenters argued that § 682.305(b)(1)(ii) should be revised to clarify that, for penalty interest purposes, the payment of interest benefits begins on the date on which payment actually is made by the Treasury Department rather than the date on which the Secretary authorizes the Treasury Department to pay the lender.

Discussion: Section 682.305(b)(1)(ii) is based on section 438(b)(4) of the Act, which provides that the calculation of the time period ends on the date the Secretary authorizes payment.

Changes: None.

Comment: Several commenters argued that penalty interest should not be limited to the special allowance rate applicable to loans made on or after November 16, 1986, i.e., Treasury bills plus 3.25 percent. The commenters suggested that the Secretary reimburse the lender for the actual special allowance factor as authorized by the Act.

Discussion: The Secretary agrees that the penalty interest calculation should be based on the actual interest and special allowance rates. He also believes that it is necessary to clarify how reductions to interest and special allowance payments (e.g., reductions for origination fees or other debts owed to the Federal government) will be

accommodated in penalty interest calculations.

Changes: The Secretary has modified the regulations to base penalty interest calculations on actual interest and special allowance rates.

Section 682.305(b)(6)(iv)

Comment: A few commenters suggested that the Secretary include the phrase "unless the Secretary authorizes an exception in writing" at the end of § 682.305(b)(6)(iv).

Discussion: Proposed § 682.305(b)(6), which is now § 682.306(b)(5), specifically identifies the circumstances in which the Secretary considers a request from a lender for payment of interest and special allowance to be inaccurate and incomplete. The Secretary does not anticipate permitting any exceptions to these requirements.

Changes: None.

Section 682.305(c)

Comment: Many commenters objected to the Secretary requiring an independent audit of a lender's loan portfolio if the lender originates in excess of, or its loan volume exceeds, \$10 million. The commenters stated that large lenders are audited extensively by their own auditors, guaranty agencies, and the Federal government, and this requirement only would produce unnecessary financial expense and burden for lenders. Other commenters stated that an audit every two or three years is sufficient. Several commenters objected to the proposed requirement that the audit report be submitted within 90 days of the end of the Federal fiscal year. The commenters did not believe that this was sufficient time to conduct an audit of this scope and complete and submit the required audit report to the Secretary.

Discussion: The 1992 Amendments require that each lender participating in the FFEL programs have an annual independent compliance audit conducted by a qualified independent organization or person. The regulations have been changed to reflect this new requirement. In addition, the Secretary agrees with the commenters that 90 days after the end of the Federal fiscal year may not be sufficient for conducting the audit and completing and submitting the audit report. The Secretary has decided to require that the audit report be submitted within six months following the end of the audit period. However, the Secretary will monitor the implementation of this requirement closely to determine if this period can be reduced in the future.

Changes: A change has been made. The Secretary has revised § 682.305(c)

to require all lenders to conduct an annual compliance audit by a qualified independent organization or person. The audit must be submitted to the Secretary within six months following the end of the audit period. The Secretary also is requiring that the first audit cover the lender's first fiscal year that begins after July 23, 1992.

Comment: A number of commenters opposed the requirement that the independent financial and compliance audit period be based on the Federal fiscal year.

Discussion: The Secretary understands that this requirement would represent a significant administrative burden for lenders that do not use the Federal fiscal year and are required to conduct audits to comply with other Federal or State requirements. To prevent having to conduct more than one audit, the lender would be required to conduct one audit to cover all program operations occurring within the three months overlapping separate audit periods.

Changes: The Secretary has revised the regulations to allow lenders to use an alternative audit period to the Federal fiscal year to conduct the annual compliance audit.

Comment: A few commenters noted that nonprofit and State government lenders are subject to the provisions of Office of Management and Budget (OMB) Circular No. A-133 that provides that a single audit of the entity's participation in all Federal programs satisfies the audit requirement of all of those programs. The commenters suggested that nonprofit and State lenders be exempt from the proposed audit requirement in § 682.305(c).

Discussion: The Secretary agrees with the commenters. An additional independent audit of nonprofit and State government lenders' administration of the FFEL programs would create an additional financial burden if the lenders are subject to the single Federal audit requirement.

Changes: A change has been made. The Secretary has revised 34 CFR 682.305(c)(2) to exempt nonprofit and State government lenders from the audit requirement if an audit, in accordance with 31 U.S.C. 7502 and OMB Circular A-133, has been conducted.

Section 682.401 Basic Program Agreement

Section 682.401(b)(4)

Comment: Many commenters opposed the proposed requirement that borrowers notify the school of any change in employer or employer's address. The commenters indicated that

borrowers are unlikely to report this information to their schools and that although this information is useful to lenders if a borrower becomes delinquent, it is not useful to schools. The commenters recommended that the requirement be deleted or modified to require that borrowers notify lenders of those changes. Other commenters recommended that the borrower be required to notify the current holder of the loan of these changes rather than the lender; this was based on the likelihood that the loan would be sold.

Discussion: The Secretary agrees that it is unusual for a school to know when a borrower changes employers and that the information should be reported to the lender to assist the lender in collecting the loan if the borrower becomes delinquent. The Secretary also agrees that changes of student status or employer should be reported to the current holder of the loan to ensure that the information is provided to the party to which it will prove most useful. The Secretary believes that Congress also contemplated that this information would be most useful to the lender when it required in section 485(b) of the Act that information collected from the borrower during the exit interview regarding the borrower's expected future employment be forwarded to the holder of the borrower's loan.

Changes: The Secretary has amended the regulations to require a borrower to notify the current holder of any change of name, address, student status to less than half-time, employer, or employer's address.

Section 682.401(b)(8)

Comment: Some commenters requested that the Secretary clarify whether any service or fee restrictions can be imposed on students (or parents borrowing on behalf of those students) who are not residents of the State served by a guaranty agency but who are attending school in that State. The commenters questioned whether a variable fee structure for out-of-state borrowers would be prohibited by this provision.

Discussion: A guaranty agency is prohibited from imposing any additional restrictions on out-of-state students who are attending a school in a State served by the guaranty agency. A fee structure that discriminates against out-of-state borrowers attending an in-state school would violate the non-discrimination provisions in section 428(b)(1)(S) of the Act. However, a variable fee structure imposed by the agency on both in-state and out-of-state students would not be considered such a restriction.

Changes: None.

Section 682.401(b)(9)

Comment: One commenter suggested deleting the phrase "excluding interest or other charges the lender may have added to the principal balance" from § 682.401(b)(9)(iv), which describes how much the guaranty agency may charge as an insurance premium.

Discussion: Because the insurance premium is deducted from the proceeds of a loan when it is made, it is not possible for interest or other charges to have been added to the loan before the insurance premium is deducted.

Changes: The regulations have been revised to remove the phrase regarding interest and other charges from the description of how much a guaranty agency can charge for an insurance premium.

Comment: A number of commenters objected to requirements in § 682.401(b)(9) and § 682.406(a)(1) that, if funds are disbursed by means of electronic funds transfer and the funds are not released within 120 days from the school's restricted account, the insurance premium must be refunded and the loan loses reinsurance. The commenters stated that a lender would have no way of knowing if or when the funds were released from the restricted account.

Discussion: If loan proceeds are disbursed by means of electronic funds transfer, the lender must have a system in place to determine that the funds were released from the school's restricted account within 120 days of disbursement. The system developed to monitor and document that the funds have been released is a matter between the lender and the school. If these funds are released after the 120th day, the loan loses reinsurance, and the origination fee and any insurance premium assessed against the borrower must be refunded.

Changes: None.

Section 682.401(b)(12)

Comment: Some commenters asked the Secretary to clarify that if a guaranty agency charges its lenders a fee to refinance fixed-rate PLUS and SLS loans, the agency must not charge different fees to different lenders. Other commenters asked how this fee may be assessed, i.e., is it to be a flat dollar fee or may a percentage of the refinanced amount be used?

Discussion: Guaranty agencies are permitted to charge lenders a fee for refinancing fixed-rate PLUS and SLS loans. See § 682.401(b)(12). If an agency charges a fee, it must charge that fee consistently to all lenders who refinance

fixed-rate PLUS and SLS loans. A guaranty agency may not discriminate against participating lenders. See section 428(b)(1)(u) of the Act. This fee may be either a flat dollar amount or a percentage of the fee charged to the borrower.

Changes: The regulations have been amended to clarify that if an agency charges a fee, it must charge that fee to all lenders.

Section 682.401(b)(18)

Comment: Some commenters questioned what lenders and guaranty agencies would be permitted to do with information learned through a student status confirmation report. Other commenters questioned what procedures should be followed if information on a student status confirmation report conflicts with information held by the lender or guaranty agency.

Discussion: A holder of a FFEL program loan is required to act on any information received from the student status confirmation report. As noted in Section III of Dear Guaranty Agency Director Letter 88-G-138, "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."

Changes: None.

Comment: A number of commenters suggested that rather than requiring guaranty agencies to use the report format specified in appendix B for the student status confirmation report, the Secretary should specify only the data elements that must be included and let the format be developed by guaranty agencies and other program participants. Many commenters wholeheartedly supported the establishment of a uniform system for monitoring student enrollment status.

Discussion: In the "Comments and Responses" to the final FFEL regulations published on November 10, 1986, the Secretary noted his concern "with the administrative burden that might be imposed on schools if each agency adopts a different monitoring system." See 51 FR 40941. No uniform system for monitoring student-enrollment status has been established voluntarily in the intervening years. Therefore, the Secretary, in response to continuing requests from schools to establish such a system, is mandating that guaranty agencies use the form specified in appendix B of these regulations, unless the Secretary notifies

the guaranty agency that other data elements or a revised format may be used.

Changes: The regulations have been revised to require the guaranty agency to use appendix B, unless notified by the Secretary that other data elements or a revised format may be used. The Secretary has also revised appendix B to provide definitions that apply to the data elements.

Section 682.401(d)(1)

Comment: Many commenters asked the Secretary to include a provision in the regulations that requires the school or a Multiple Data Entry (MDE) service to provide, without cost, the items on the common financial aid form that could not be included in the loan application.

Discussion: The Secretary does not believe a regulatory change is necessary and will ensure that a guaranty agency has access without cost to the data that is needed by the guaranty agency but that may not be included on the loan application.

Changes: None.

Section 682.401(e)

Comment: A number of commenters asked that Dear Colleague Letter 89-G-157, which dealt with inducements by lenders and guaranty agencies, be incorporated into the regulations.

Discussion: Dear Colleague Letter 89-G-157, issued in February 1989, described a number of scenarios that the Secretary would consider improper inducements and a number of scenarios that he would not consider to be inducements. Nothing in these regulations invalidates that guidance. The Secretary declines, however, to incorporate the contents of the letter into the regulations.

Changes: None.

Section 682.402 Death, Disability and Bankruptcy Payments

Section 682.402(a)(3)

Comment: Many commenters suggested that the Secretary should reinsure a death, disability, or bankruptcy claim even if the loan would not qualify for payment as a default claim. They suggested the lender's activity or inactivity has no relation to the borrower's present condition.

Discussion: The Secretary agrees that the lender's actions had no bearing on the condition that would otherwise qualify the borrower for cancellation. The same cannot be said about the effect of the lender's failure to service the loan properly on the repayment status of the loan before the cancellation. Therefore, the Secretary continues to believe that a

claim that is not otherwise eligible for a default claim before cancellation should not be paid simply as a result of an unrelated condition of the borrower.

Changes: None.

Section 682.402(b)(3)

Comment: Several commenters requested that the Secretary increase the period for suspension of collection activities pending receipt of documentation verifying a borrower's death to 60 days from the proposed 30 days. They argued that the proposed rule provided lenders with insufficient time to secure the required documentation and placed them in the position of having to resume collection activities with the borrower's bereaved family.

Discussion: The Secretary understands the commenters' reluctance to resume collection activities under these circumstances. However, the Secretary believes that 30 days is a sufficient period to secure documentation of a borrower's death in light of the fact that, in addition to a death certificate, a lender may accept "other proof of death that is acceptable under applicable State law" or, if that is not available, "other evidence" that the guaranty agency believes establishes that the borrower has died. The Secretary believes that in many States the borrower's obituary notice is sufficient to document the borrower's death. "Other evidence" may also include, but is not limited to, a published account of a borrower's death in a newspaper or other published report or a letter from a member of the clergy or funeral home director in a position to verify the death.

Changes: None.

Section 682.402(d)(2)

Comment: Several commenters requested that the Secretary revise § 682.402(d)(2) to provide that if a lender receives notification of a borrower's bankruptcy filing in the form of a written notice from the borrower's attorney, the notice must specify the name and address of the court in which the bankruptcy petition was filed and the case number. The commenters believe this additional information is necessary because written notices sometimes reflect a borrower's intention to file rather than an actual filing.

Discussion: The Secretary understands that written notices can sometimes be misleading. However, he believes that being overly prescriptive in detailing the contents of the written notice will result in a lack of lender response to notices that do not contain exactly the information prescribed in

the regulations. The Secretary expects the lender to follow up with the attorney or the borrower if it receives a written notice that does not include all the information necessary to conclude that a bankruptcy petition has been filed.

Changes: None.

Section 682.402(d)(4)

Comment: A number of commenters noted that there was no mention in the regulations as to what procedures a lender should follow if it receives notice that a bankruptcy court has converted a "no asset" case to an "asset" case. The commenters suggested that the lender should be required to file a proof of claim with the bankruptcy court within 30 days after receiving such a notice from the court.

Discussion: The Secretary agrees with the commenters. It is not uncommon for a bankruptcy court to decide that the borrower does have assets even though the original bankruptcy petition stated that no assets were available.

Changes: The Secretary has added a provision to the regulation to require a lender to file a proof of claim with the bankruptcy court within 30 days after receiving notice that a "no asset" case has been converted to an "asset" case.

Section 682.402(d)(5)

Comment: Several commenters requested that the Secretary clarify that, in the case of a Consolidation loan, the seven-year period in which a Title IV student loan cannot be discharged in bankruptcy begins when the Consolidation loan enters repayment rather than when the loans that were consolidated entered repayment.

Discussion: Section 682.402(d)(5) of the regulations, which addresses the circumstances under which a lender must file a bankruptcy claim with the guaranty agency, specifies that "the loan has been in repayment for more than seven years * * * from the due date of the first payment until the date of the filing of the petition for relief * * *." The Secretary notes that "the loan" as used in the regulations includes a Consolidation loan and that the seven-year period of nondischargeability commences from the due date of the first payment on the Consolidation loan rather than from the due date of the first payment on the underlying loans paid off by the Consolidation loan.

Changes: None.

Comment: A number of commenters felt the language in the regulations requiring a lender to file a bankruptcy claim if the borrower "has begun an action" to have the loan discharged was unnecessarily vague. The commenters

believed that the language concerning the lender learning of a bankruptcy action should refer to the lender receiving a "summons and complaint" to determine dischargeability based on undue hardship.

Discussion: The term "summons and complaint" is the correct technical term for what the lender should receive if the dischargeability of a loan is going to be addressed to a bankruptcy court. However, the Secretary also recognizes that a lender might learn of a bankruptcy petition or action filed by the borrower through other means. The general language of the regulations requires the lender to take action to protect the loan from being discharged on the basis of information that might not necessarily come as a formal "summons and complaint" from the bankruptcy court.

Changes: None.

Section 682.402(d)(5)(ii)

Comment: Several commenters requested that the regulations be revised to allow a lender, after a bankruptcy proceeding has been completed or dismissed, to treat the loan as having been in forbearance from the date of the borrower's delinquency preceding the filing of the bankruptcy petition rather than from the date of the borrower's filing of the petition as proposed. The commenters believe that this will improve the lender's chances of averting a default by a borrower who might have been severely delinquent prior to filing a bankruptcy petition and who will continue to have difficulty making payments on a FFEL loan after the stay on collections is lifted.

Discussion: The Secretary understands the commenter's concerns and agrees that lenders should have greater flexibility in assisting borrowers in these circumstances to avoid default. However, the Secretary has decided to provide for this treatment by revising § 682.211 of the regulations rather than making a change to § 682.402.

Changes: None.

Section 682.402(e)(2)(ii)

Comments: Several commenters recommended revisions to the filing deadlines for a lender to file a bankruptcy claim with the guaranty agency. One commenter stated that the deadline for submission of a bankruptcy claim should never be less than 30 days and recommended that the Secretary allow a guaranty agency to provide a longer filing period if it believes this will not in any way hamper its ability to oppose the discharge of the loan. The commenter indicated that he knew of no instance where a 30-day period

prevented an agency from opposing a discharge. Other commenters objected to the 10 (calendar) day standard included in § 682.402(e)(2)(ii)(C) because they believe this is an insufficient period for claim filing. These commenters recommended that the provision be revised to 10 business days or 15 days.

Discussion: The Secretary believes that bankruptcy claims must be handled as expeditiously as possible to provide guaranty agencies with sufficient time to successfully oppose the discharge of the loan. The Secretary does not agree that 30 days is always sufficient time. The Secretary also believes that, given the increased number of bankruptcy filings nationwide, standard filing deadlines are important. Therefore, the Secretary declines to allow a guaranty agency to establish its own filing deadlines. The Secretary agrees that 10 calendar days might be insufficient time for claim filing if it includes a holiday period. Therefore, the regulations have been revised to provide 15 days.

Changes: Section 682.402(e)(2)(ii)(B) has been revised to provide the lender with 15 days to file a claim with the guaranty agency after the lender is served with a complaint or motion to have a loan determined to be dischargeable on the grounds of undue hardship.

Section 682.402(h)(5)

Comment: Several commenters objected to the proposed requirement that a lender repurchase a loan if a judgment is entered that the loan is non-dischargeable in bankruptcy or a discharge is denied to the borrower on any ground. The commenters stated that it is possible that the lender required to repurchase the claim might no longer participate in the FFEL program and that these repurchases will result in borrower confusion. They also stated that a borrower who has filed a bankruptcy petition is unlikely to be able to repay the loan and is likely to default on the loan. Therefore, they recommended that the borrower be required to make payments to the guaranty agency sufficient for the borrower to rehabilitate the loan.

Discussion: The Secretary believes that a loan subject to repurchase under these provisions should be handled like all other loans subject to pre-default collection and that the lender is the party best equipped to deal with these loans. If the guaranty agency should find that a lender that would be expected to repurchase a loan has withdrawn from the program, the Secretary would expect the agency to arrange a repurchase by another eligible

lender in its program. The Secretary also believes, contrary to the commenter's view, that a borrower who has filed a bankruptcy petition and has discharged other debts might be in a better position to repay his or her FFEL loan than prior to the bankruptcy filing. Finally, the Secretary is requiring the repurchase of loans that were not in default at the time the bankruptcy petition was filed. Loans that were in default prior to the borrower's filing of the bankruptcy petition would remain with the guaranty agency and loan rehabilitation and repurchase would be an option available to the borrower.

Changes: None.

Section 682.402(i)

Comment: Many commenters strongly supported the proposed change in the treatment of chapter 13 bankruptcy claims that provides that the Secretary would reimburse the guaranty agency for its losses after it pays those claims to lenders. Several commenters requested that the Secretary clarify that this treatment would apply to chapter 13 bankruptcy claims paid to lenders prior to the date these regulations become effective and held currently by the guaranty agency.

Discussion: The Secretary agrees that it is necessary to clarify that the provisions contained in § 682.402(i) apply to chapter 13 claims paid to lenders prior to the date these regulations become effective and held currently by the guaranty agencies, in addition to any claims paid subsequent to the date the regulations become effective. However, the Secretary does not believe a revision to the regulations is necessary.

Changes: None.

Section 682.404 Federal Reinsurance Agreement

Section 682.404(a)(2)

Comment: Some commenters objected to the definition of preclaims assistance as at least three collection activities by the guaranty agency. If preclaims assistance is available only at the 90th day of delinquency, the commenters believe that there will not be enough time for the agency to comply with the statutory requirement that supplemental preclaims assistance be performed.

Discussion: While there is a requirement that supplemental preclaims assistance be performed on or after the 120th day of delinquency, there is no similar requirement regarding the timing of preclaims assistance. If a guaranty agency offering preclaims assistance only at the 90th day of delinquency feels that it is incapable of

performing three collection activities in 30 days before beginning supplemental preclaims assistance at day 120, it should consider making preclaims assistance available to its lenders earlier (e.g., at the 60th day of delinquency).

Changes: None.

Section 682.404(g)(2)

Comment: A number of commenters stated that the Secretary's equitable share of payments received on defaulted loans should not apply to collection costs guaranty agencies charge on those loans. These commenters believe that section 428(c)(2)(D) of the Act limits the Secretary's equitable share only to payments made to reduce outstanding principal and interest owed by the borrower. The commenters also believe that since the Secretary does not provide reinsurance for collection costs it is inappropriate to deduct the Secretary's equitable share from these costs.

Discussion: Section 428(c)(2)(D) of the Act specifies that an agreement between the Secretary and a guaranty agency "shall provide that if * * * any payments are made in discharge of the obligation incurred by the borrower * * * (including any payment of interest accruing on such loan * * *), there shall be paid over to the Secretary * * * (a) proportion of the amounts of such payments * * *". Thus, this provision clearly states that a portion of all payments made by a borrower on a defaulted loan held by a guaranty agency goes to the Secretary. The debtor's obligation includes principal, interest, and collection costs under section 484A(b)(1) of the Act. An agency receives reimbursement for its cost of collecting a defaulted loan through the portion of the collected amounts it is allowed to keep. By assessing and collecting these costs (even though it may only keep a portion of the collection), an agency receives more than if it had never assessed collection costs.

Changes: None.

Section 682.404(g)(3)

Comment: A number of commenters objected to the proposal that the Secretary's equitable share of payments made on defaulted loans be forwarded to the Secretary within 30 days of receipt of those payments because this would conflict with the contracts many guaranty agencies have with their collection contractors. The commenters also argued that it would be difficult to reflect end-of-the-month collections on the monthly reports to the Secretary.

Discussion: Many guaranty agencies use outside collection contractors. In

fact, the alternative collection procedure for defaulted loans in § 682.410(b) requires an agency to use outside collection contractors if the guaranty agency's own efforts to bring the borrower into repayment are unsuccessful. The Secretary recognizes that as payments to the Department are made once a month, it would be unlikely that a payment made at the end of the month would be included in that month's payment to the Secretary.

Changes: The regulations have been amended to allow guaranty agencies 45 days from receipt of payments made on defaulted loans to send the Secretary's equitable share of those payments to the Secretary.

Section 682.406 Conditions of Reinsurance Coverage

Section 682.406(a)(2)

Comment: Many commenters opposed the proposal that the lender provide a payment history and a collection history to the guaranty agency with a default claim. Several commenters believe that the collection history should be required only on the most recent 180 days before the borrower defaulted on the loan.

Discussion: One of the greatest areas of dispute with borrowers is how loan payments have been applied. Without a payment history in the file, it is impossible for the guaranty agency to determine if payments have been applied properly. If a loan is transferred to another servicing system, a print-out of the payment history should be maintained in the borrower's file to meet this requirement. While it is true that in reviewing the due diligence performed on a loan the Secretary is concerned with the 180-day delinquency period that preceded the default, an examination of the activity that occurred on the account before it became delinquent is equally important. A report on this activity is used to verify the repayment status of the borrower at the beginning of the delinquency period.

Changes: None.

Section 682.406(a)(5)

Comment: Many commenters objected to the proposal that would require, as a condition of reinsurance, that a claim returned to the lender due to inadequate documentation be resubmitted to the guaranty agency within 30 days. Many commenters felt that 60 or 90 days should be permitted, while other commenters stated that lenders should be allowed a "reasonable" time to resubmit such a claim. One commenter stated that an interest limitation on

resubmitted claims would better ensure that returned claims are resubmitted in a timely manner rather than having resubmission of the claim required within a given number of days as a condition of reinsurance.

Discussion: The Secretary is concerned that loans eligible for default claim payments be processed quickly to allow the guaranty agency to begin its collection efforts against the borrower at the earliest possible time. The Secretary also is concerned that a lender not file a claim it knows is incomplete and will be rejected solely to avoid missing the timely filing deadline or to extend the period for which the lender may receive interest and special allowance payments. The Secretary also recognizes that there are occasions when a claim submitted to the guaranty agency does not initially satisfy the requirements for claim payment but can do so with additional documentation or explanation.

Changes: The Secretary has changed the regulations to provide that a lender may receive full reimbursement for outstanding principal, accrued interest, and special allowance if an otherwise eligible claim that has been returned solely because of inadequate documentation is resubmitted within 30 days after the date the agency returned the claim. If the lender resubmits the claim by the 60th day after the claim was returned by the guaranty agency, principal is reinsured but interest payments will be limited to the 30th day after the claim is returned. The timely filing violation on otherwise eligible claims not resubmitted by the 60th day after being returned by the guaranty agency must be cured using the procedures set forth in Bulletin 88-G-139 (appendix D).

Section 682.406(a)(7)

Comment: Many commenters strenuously opposed the proposed requirement that a guaranty agency pay or return a default claim to a lender within 45 days of the date the lender filed the claim in order for interest accruing beyond the 45th day to be reinsured. The commenters felt that the increased administrative burden to review claims quickly would outweigh any costs realized by the reduction in time allowed guaranty agencies to pay, or return claims. Many commenters believed that 45 days would not provide sufficient time for a guaranty agency to adequately review a claim. Other commenters noted that some guaranty agencies begin collection activity when a claim is submitted and that it was not uncommon for this collection activity to be instrumental in causing the borrower

to reduce the delinquency status sufficient to bring the loan out of default. Many commenters suggested that the proposed rule might actually increase defaults because a borrower would no longer have the benefit of this additional collection activity.

Discussion: The Secretary believes that it is necessary for the default claim to be reviewed and paid promptly to reduce the amount of the default claim and to allow the guaranty agency to begin collection activity against the defaulted borrower. If an agency is able to bring a borrower into repayment so quickly after the lender has failed to collect on the loan, the Secretary believes it calls into question the lender's collection efforts. However, the Secretary recognizes that in some circumstances (e.g., an unusually large volume of default claims), it might be difficult for a guaranty agency to adequately review a claim within 45 days and, therefore, he has extended to 60 days the deadline by which a guaranty agency must pay a default claim to receive reinsurance on all otherwise eligible accrued interest. The Secretary wishes to clarify that if a claim is paid after the 60th day, and the guaranty agency's agreement with the lender covers accrued interest, the guaranty agency is required to pay the interest accruing after the 60th day to the lender even though this interest is not eligible for reinsurance. In consideration of commenters' concerns regarding the change in procedures required by this provision, the Secretary is delaying the date this requirement becomes effective.

Changes: The Secretary has extended to 60 days the deadline by which a guaranty agency must pay a default claim to receive reinsurance on all otherwise eligible accrued interest.

Section 682.406(a)(9)

Comment: Some commenters objected to the proposal establishing, as a condition of reinsurance, the requirement that a loan be legally enforceable when the agency pays the claim. The commenters argued that a number of events relevant to the enforceability of the loan may have occurred without the guaranty agency's or lender's knowledge.

Discussion: The Secretary notes that it has always been the Department's policy that a loan be legally enforceable if it is to be insured or reinsured by the Secretary. This provision, which is now contained in § 682.406(a)(10), is not new and merely codifies within the regulations a long-standing policy that has been part of the FISL and the FFEL programs since their inception.

Discussion: A guaranty agency may use the assets of its reserve fund only as permitted by § 682.410(a). Paragraph (a)(3) of that section permits a guaranty agency to use a specific portion of its reserve funds " * * * only for payments necessary to perform functions directly related to the guaranty agency's agreement with the Secretary and for proper administration of the guaranty agency's FFEL loan guarantee activities." The costs of operating a loan servicer for loans that have not yet defaulted clearly are unrelated to the expenses incurred by a guaranty agency in providing loan guarantees to lenders and are, therefore, not permissible.

This policy applied to all agencies as of December 26, 1986, the date the final regulations published by the Department on November 10, 1986 went into effect. The Secretary believes that the use of any reserve funds for for-profit enterprises is not permitted because of the risk to funds dedicated to the FFEL program.

Changes: None.

Section 682.410(a)(3)

Comment: Several commenters objected to the proposed restrictions on the use of borrower payments by guaranty agencies contained in § 682.410(a)(3)(iv). The commenters believed that these restrictions conflict with section 428(c)(6) of the Act, which allows guaranty agencies to use the percentage it retains of borrower payments "for costs related to the student loan insurance program, including the administrative costs of collection * * *".

Discussion: The Secretary agrees with the commenters that the proposed restrictions represent a narrow interpretation of the intent of the statute and that agencies should be allowed to use borrower payments for activities supporting the proper administration of the guaranty agency's loan guarantee activities.

Changes: Section 682.410(a)(3)(iv) has been deleted and "amounts collected on FFEL loans" has been added to the other items specified in § 682.410(a)(3)(i) that can be used to support the agency's administration of its loan guarantee activities.

Section 682.410(b)(2)

Comment: Many commenters objected to the requirement that a guaranty agency must assess collection charges against the borrower. Other commenters stated that if collection charges had to be assessed, a flat rate should be used by each guaranty agency.

Discussion: The statute clearly specifies that, notwithstanding any

provision of State law to the contrary, collection charges must be assessed against the borrower. See section 484A(b) of the Act. The formula referenced in § 682.410(b)(2) specifies that the amount charged will be the lesser of the costs of collection under the formula in 34 CFR 30.60, or the amount the borrower would be charged if the loan was held by the Department. This amount will be a percentage of the principal and interest outstanding, may be calculated annually, and would be a flat rate assessed against all borrowers with defaulted loans held by that agency.

Changes: None.

Section 682.410(b)(4)

Comment: Some commenters questioned what charges a guaranty agency may capitalize after a default claim has been paid.

Discussion: A guaranty agency is required to capitalize any interest owed on the loan by the borrower. This may include interest that was not paid to the lender by the guaranty agency and interest paid by the guaranty agency that will not be reimbursed by the Secretary.

Changes: This provision of the regulations has been amended to clarify that all interest, rather than "unpaid charges" owed by the borrower, must be capitalized by the guaranty agency.

Section 682.410(b)(5)

Comment: Many commenters vigorously opposed the provision that requires a guaranty agency to grant a borrower an opportunity for an administrative review of the legal enforceability or past-due status of the loan obligation before reporting the default to a credit bureau or assessing collection costs against the borrower. The commenters stated that a defaulted borrower had already had ample opportunity throughout the repayment period to protest the debt and that the administrative review would result in a substantial administrative burden for an agency and would delay any recovery of the debt. In addition, the commenters felt that section 430A of the Act set the parameters of credit bureau reporting for the FFEL programs and that an opportunity for an administrative review was inconsistent with congressional intent.

Discussion: Federal law requires notice and opportunity to contest a debt before a default is reported to a credit bureau. See 31 U.S.C. 3711(f). Moreover, in light of the serious consequences of credit bureau reporting for a borrower, the Secretary believes it reasonable and appropriate for a borrower to have an opportunity to contest the default. The

Secretary believes that a guaranty agency should not have difficulty implementing this requirement as it already provides an opportunity for review when it assigns a loan to the Secretary for participation in the Internal Revenue Service (IRS) offset process. The statute authorizing Federal agencies to collect debts by administrative offset also requires the agency to provide a debtor with notice of a proposed IRS offset and at least 60 days in which to present evidence regarding the debt. See 31 U.S.C. 3720A. In the FFEL program, the Secretary provides this opportunity to a debtor by a review and an initial determination by the guaranty agency that held the debtor's loan and maintains records of that loan account. At this time, virtually all guaranty agencies participate in the IRS offset procedures. When a guaranty agency submits loans to the Department for collection through IRS tax-offset, it certifies that the affected borrowers have been granted an opportunity for an administrative review. Both 31 U.S.C. 3711(f) and 31 U.S.C. 3720A require a 60-day notice period and an opportunity for an administrative review of the debt. The administrative review procedures outlined in the regulations meet the credit bureau reporting requirements and the requirements for participation in the IRS offset process. Once the opportunity for an administrative review has been offered to the borrower, the guaranty agency is not required to offer it again. The Secretary expects the volume of requests for administrative reviews received by a guaranty agency to be manageable.

Changes: The Secretary has retained the requirement that borrowers be given an opportunity for an administrative review before a guaranty agency reports the debt to a credit bureau. However, to reduce both the administrative burden for agencies and possible confusion for borrowers, the Secretary has modified § 682.410(b)(6) to provide that the initial notices sent to borrowers in the administrative review process shall also serve as the initial collection activities for purposes of collecting the loan under § 682.410(b)(6).

Section 682.410(b)(7)

Comment: Some commenters objected to the proposed requirement in the alternative due diligence collection procedures for guaranty agencies that a guaranty agency refer all loans to one or more collection contractors if its collection efforts are unsuccessful. The commenters believe the agency should be allowed to retain some loans to compete with the collection contractors.

Discussion: A major underlying premise of the proposed alternative due diligence collection procedures is that a guaranty agency will do everything possible within the 180 days during which it attempts to collect to bring the borrower into repayment. If the borrower does not begin repayment, the amount the agency is allowed to retain after paying the Secretary's equitable share and the contingency fee to the collection contractor is much smaller than the amount it would retain if it brought the borrower into repayment through its own efforts. The Secretary believes that there would be little incentive for the guaranty agency to vigorously pursue repayment within the allotted 180-day period if the guaranty agency were allowed to continue to collect on loans after that period.

Changes: None.

Section 682.410(c)(11)

Comment: Many commenters opposed the provision that would require a guaranty agency to provide training and technical assistance or to act as an escrow agent for a school that is experiencing financial difficulty. These commenters felt that a guaranty agency should not "prop-up" a school that is experiencing financial difficulty.

Discussion: The Secretary agrees that it is not always in the best interest of the FFEL program to prolong the existence of schools that are in financial difficulty.

Changes: The Secretary has amended the regulations to require a guaranty agency to provide training and technical assistance, if appropriate, to a school or holder experiencing financial problems and has deleted the provision that would have required a guaranty agency to act as an escrow agent.

Section 682.411 Due Diligence by Lenders in the Collection of Guaranty Agency Loans

Comment: The Department received many comments regarding the due diligence requirements for lenders collecting loans guaranteed by a guaranty agency. Virtually all the commenters commended the Department's willingness to be more accommodating to lenders' concerns and to reduce the opportunity for a loan to lose reinsurance because of incidental violations of the due diligence collection requirements. While some commenters approved of the proposed procedures with minor modifications, others felt that a complete reworking of the procedures focusing on performance-based standards related to the lender's default rate or compliance with a given standard would better

achieve the goals of reducing default and minimizing the lender's risk of losing reinsurance on a loan. A number of other commenters felt that retaining the standards set forth in the Department's current regulations and cure procedures would be preferable to adopting another standard. Other commenters felt the previous standards should be maintained but that the cure procedures for loans that have lost reinsurance should be relaxed.

Discussion: The Secretary is sympathetic to the commenters' concerns that a lender should not face an undue risk of loss of reinsurance because of technical violations of a collection standard. However, the Secretary is also convinced that the level and intensity of effort expended in the collection of a student loan relates directly to the likelihood of its default. One commenter, in supporting the Secretary's development of performance-based collection standards, noted that stringent standards are necessary for some lenders but are inappropriate for others because of the care and diligence with which those lenders exercise their fiduciary obligations. The Secretary believes that, while performance standards for lenders might be attractive, establishing an acceptable standard of performance is not possible because the make-up of lenders' portfolios differs greatly, e.g., by type of school and region of the country, etc. Compliance with a given performance standard also presents difficulties because an audit using a statistically valid sample of a lender's entire student loan portfolio, not just claims submitted, would have to be used to determine an acceptable level of compliance. Changes that occur subsequent to the audit that affect compliance, e.g., loan volume, personnel or computer changes, etc., could not be accounted for or even anticipated by the audit. Finally, given the serious and detrimental effect of a defaulted loan to the borrower, the Secretary is strongly opposed to the idea that a default claim could be paid by a guaranty agency without a review by the agency to ensure that the borrower was given the opportunity to respond to a diligent collection effort on the loan. Establishing different standards for different lenders would make that review extremely difficult and time-consuming. The commenters who generally supported the proposed § 682.411 felt that some modifications would be necessary for lenders to be able to continue to use the collection systems designed to meet the standards in the current FFEL program

regulations. It has always been the Secretary's intent that lenders and servicers that made substantial investments in systems to meet the existing collection requirements should be able to meet the new requirements without making substantial modifications to their systems.

The cure procedures that were issued in March 1988 and published as appendix D of the NPRM will not be relaxed. They were developed after extensive discussion and consultation with representatives of the lender and guaranty agency community and the Secretary continues to believe that they adequately address good-faith violations of the regulatory requirements.

Changes: After carefully reviewing the comments received on § 682.411 and meeting with various representatives of the industry, the Secretary has decided to adopt, with some modifications, the standards proposed in the NPRM. The Secretary has amended the regulations so that no required collection activity during a borrower's delinquency is contingent upon the timing, success, or failure of another collection activity. In addition, the Secretary has changed the due diligence requirements to ensure telephone collection efforts will be used throughout the delinquency cycle, rather than only at the beginning or end, as the Secretary believes that telephone collection activity is most effective if used at regular intervals throughout the delinquency.

Section 682.411(a)

Comment: Many commenters indicated that the language in the NPRM concerning the due diligence requirements for endorser was unclear. Other commenters opposed the Secretary's proposal to regulate due diligence for endorser and felt it only would discourage the use of endorser. Other commenters noted that some State laws prohibit collection efforts against an endorser until after default. Many commenters were also concerned about the consequences of failing to complete the collection activities required of endorser.

Discussion: The Secretary believes that the use of endorser can be an effective means of reducing defaults. However, the value of having an endorser on a loan is eliminated if the endorser is not subject to collection activity when the loan becomes delinquent. The Secretary believes that the collection activities undertaken for an endorser should differ from those applied to the borrower and generally should not begin until the borrower is significantly delinquent. Any State law that normally would prohibit collection

activity against an endorser from occurring before default occurs is preempted by § 682.411(n).

Changes: Section 682.411(m) has been added to the regulations to clarify that an endorser on a loan must receive at least two collection letters in addition to a final demand letter and at least one diligent effort for telephone contact. If during the delinquency cycle, but prior to the sending of the final demand letter, the lender receives information indicating it does not know the address of the endorser, the lender must attempt to locate the endorser through the use of normal skip-tracing techniques, which must include at least an inquiry to directory assistance. In addition, § 682.406(a)(3) has been revised to state explicitly that due diligence against an endorser is a condition of reinsurance. If a lender fails to perform all, or any portion of, the required due diligence with an endorser, the loan will not be eligible for reinsurance until the missing activities have been performed. The lender may perform the collection activities late, but the timely-filing deadlines and associated penalties still apply. Missed due diligence activities with an endorser will not be counted as violations but must be performed.

Comment: Several commenters noted that the term "outside the United States" would exclude telephone efforts against borrowers residing in Puerto Rico, Canada, and Mexico who are easily accessible by telephone.

Discussion: The Secretary agrees with the commenters that diligent telephone efforts to contact borrowers residing in these areas should not be excluded.

Changes: The regulations have been revised to provide that the lender must make telephone calls to borrowers who reside in a State (as that term is defined in § 668.2), Canada, and Mexico.

Section 682.411(b)

Comment: A number of commenters were concerned about how violations would be counted if the first payment due date was not established in a timely manner.

Discussion: Section II of appendix D discusses the requirements for establishment of the first payment due date. The deadlines and penalties outlined in that discussion are based on the current regulations under which a violation could not occur until the 31st day of delinquency. The penalties increase depending upon how late the first payment due date is established. Under the new standards contained in § 682.411, a violation occurs if the first payment due date does not occur by the deadline contained in § 682.411(b). The Secretary has decided that in

determining the penalties to be associated with the failure to establish a first payment due date on a timely basis, the Secretary will look at the period between when the first payment due date should have been established according to § 682.411(b) and the date of the actual first payment due date. If this period is more than 45 days, reinsurance is lost, any special allowance received for the period that begins 31 days after the date the first payment due date should have been established according to § 682.411(b) must be returned, and the lender must receive a full payment or signed repayment agreement in order for reinsurance to be reinstated. If this period is more than 35 days, but not more than 45 days, a single violation will be assessed against the lender.

Changes: None.

Comment: Several commenters opposed the inclusion of the phrase "more than half of which" payment is later made. The commenters believed that this wording would require a major change to the collection systems of many lenders. They believed that lenders should not be required to count one half of a payment as advancing the due date and curing delinquency for that month. Many commenters believed that the language should be revised to allow a guaranty agency to determine a reasonable payment-shortfall tolerance if a full payment is not received before the date the lender must consider the borrower delinquent.

Discussion: The Secretary recognizes that the language as written might create substantial administrative burden associated with half payments. The Secretary agrees that a reasonable payment-shortfall tolerance amount needs to be established under which a lender need not initiate collection activities if the lender's system allows for such a tolerance. The Secretary also believes that such a tolerance must be standardized across the FFEL program and not vary by guaranty agency.

Changes: The regulations have been revised to provide that a payment that is within \$5 of the amount required to advance the due date may advance the due date if the lender's procedures allow for that advancement.

Section 682.411(c)

Comment: Many commenters objected to the proposal that the first collection notice be sent by the 10th day of delinquency. Some commenters submitted data showing that many borrowers who do not meet the payment due date make a payment shortly afterward. Commenters believe that sending a delinquency notice to a

borrower so soon after the payment due date was missed is counterproductive and will increase costs to the lender without any commensurate benefit to the FFEL programs. Commenters also pointed out that to provide themselves sufficient lead time to comply with this requirement, lenders would have to reprogram their computer systems to generate the late notices no later than the seventh day of delinquency.

Discussion: The Secretary believes that a notice sent very early in a borrower's delinquency impresses upon the borrower the seriousness of the delinquency status and provides greater incentive to the borrower to make a payment to bring the loan current and avoid further delinquency and default. The Secretary does not believe that lenders will incur significantly greater costs by sending the initial collection notice by the 10th day of delinquency rather than at a slightly later date.

Changes: None.

Section 682.411(d)

Comment: A number of commenters objected to the proposed requirement in the NPRM that each collection letter sent to a borrower must include the consequences of default, including the possibility that litigation may be initiated against the borrower by the guaranty agency. The commenters felt that collection letters sent during the delinquency cycle should be progressively more forceful to be most effective.

Discussion: The Secretary agrees that sending an extremely forceful collection letter early in the delinquency cycle may needlessly alienate a borrower who, for any number of reasons, is experiencing a short-term delinquency. The Secretary also agrees that a series of progressively more forceful collection letters is likely to be more effective than a series of identical letters.

Changes: The regulations have been amended to require that only two of the four letters that lenders are required to send to delinquent borrowers outline the consequences of default. Although the timing of these letters is left to the discretion of the lender, the Secretary intends that the two most forceful letters should be sent late in the delinquency cycle, when they are likely to have the greatest effect on the borrower.

Comment: A number of commenters observed that the language in the NPRM required the final demand letter to be sent after the 180th day of delinquency. The commenters felt that the lender should be able to send the final demand letter earlier than the 180th day of delinquency in order to have more time

to prepare and file the claim with the guaranty agency.

Discussion: The Secretary agrees with the commenters. The lender is required to wait 30 days after sending the final demand letter before filing a default claim to give the borrower a chance to respond before a claim is filed with the guaranty agency. The Secretary understands that the proposed rule would have left the lender with only a short time period to file a timely claim.

Changes: The regulations have been amended to allow the lender to send the final demand letter on or after the 151st day of delinquency.

Section 682.411(e)

Comment: A number of commenters objected to the provision that would have required a borrower, after the final demand letter had been sent, to avert default only by making payments sufficient to bring the loan current. The commenters felt that lenders should have the option of not filing a default claim if the borrower could make payments sufficient to bring the loan out of default or sign a forbearance agreement to cover all or some portion of the delinquency.

Discussion: The Secretary agrees with the commenters that there might be circumstances where the borrower might be able to reduce the extent of the delinquency, and thus avoid default, but still not be able to repay the loan in full.

Changes: The Secretary has revised the regulations to allow the lender to permit a borrower who is more than 180 days delinquent to avert default by bringing his or her account less than 180 days delinquent. The requirement that the borrower accomplish this by making payments has been deleted.

Section 682.411(g)

Comment: A commenter requested that the Secretary clarify whether skip-tracing may be undertaken on a borrower prior to the skip-tracing of a delinquent borrower required under § 682.411(g) and, if it is undertaken but unsuccessful, whether skip-tracing activities must be repeated when the borrower becomes delinquent. The commenter stated his belief that skip-tracing should be undertaken as soon as the lender receives information indicating the address of the borrower is unknown, even if this takes place in the grace period prior to the borrower entering repayment.

Discussion: The Secretary agrees with the commenter that a lender should have the flexibility to undertake skip-tracing activities as soon as the address of a borrower becomes unknown. Furthermore, he strongly supports this

approach to loan collection. The Secretary believes that a lender should not be required, if the skip-tracing activities are unsuccessful, to repeat those activities later in the borrower's delinquency cycle unless the lender receives a payment or some other communication from the borrower indicating the borrower's address.

Changes: The Secretary has added a new paragraph (g) to § 682.208 specifying that a lender may undertake the skip-tracing activities specified in § 682.411(g) when a borrower is not delinquent if the lender receives information indicating that the borrower's address is unknown.

Comment: Many commenters felt that the skip-tracing requirements were unclear and were particularly concerned about what penalties a lender would incur if some or all of the skip-tracing was not performed.

Discussion: The Secretary believes that skip-tracing should begin soon after the lender learns the borrower's address is unknown and continue until all possible sources of information available to the lender regarding the borrower's address have been exhausted. Once these efforts have been concluded, or the final demand letter has been sent, the Secretary does not believe that there is any point in requiring further activity until the loan is eligible for claim payment.

Changes: The Secretary has revised the regulation so that a lender may be considered to have met the requirement to diligently attempt to locate the borrower if it attempts to contact, by the date of default, each individual and entity identified in the borrower's file and if there is no gap of more than 45 days between attempts to contact those individuals or entities. If the lender does not contact one or more of the individuals or entities identified in the borrower's loan file and the borrower's address remains unknown, a single due diligence violation will have occurred. If the guaranty agency requires that the lender request preclaims assistance in the event the borrower's address becomes unknown, and the lender does not request the preclaims assistance within 10 days of when it receives information indicating it does not know the borrower's current address, another violation will be considered to have occurred. If a lender performs no skip-tracing on a borrower whose address is unknown, up to three violations would be considered to have occurred. However, under the definition of "Gap in collection activity" in § 682.411(i), a gap begins the day after a lender receives information indicating the lender does not know the borrower's

current address. A gap is also defined as the period between collection activities. Any attempt to contact an individual or entity in the borrower's loan file is a collection activity. A gap of more than 45 days (60 for a transfer), necessitates a cure via the lender's receipt of a signed repayment obligation or a full payment. See appendix D. If a lender does not contact each individual or entity in the borrower's loan file by the date of default, but no gap of more than 45 days exists, the lender must satisfy the requirements outlined in I.E.1. of appendix D, or receive a full payment, or a new signed repayment agreement for reinsurance to be reinstated.

Section 682.412 Consequences of the Failure of a Borrower or Student to Establish Eligibility

Section 682.412(a)

Comment: Some commenters expressed concern about subjecting borrowers who receive loan proceeds but do not attend classes to the provisions of § 682.412. The commenters recommended that these borrowers be allowed to receive a grace period and begin normal repayment on the loan.

Discussion: Federal student financial assistance is intended to assist students and their parents to meet the costs of postsecondary education. If a student receives a FFEL program loan but does not attend school, that student has no costs of attendance. Therefore, the borrower must repay immediately the funds for which he or she is now ineligible. The Secretary believes that an individual who borrows and does not matriculate should not receive FFEL program benefits such as the grace period or the 10-year repayment period normally provided to student borrowers.

Changes: None.

Comment: Several commenters objected to the subjective evaluation that a lender would be required to make regarding a borrower's intentions under proposed § 682.412. The proposed rules specify that the lender would exercise the provisions of § 682.412 against a borrower if it determined that a borrower's initial eligibility for a FFEL program loan resulted from information that the borrower knew or should have known was incorrect. The commenters stated these such actions should be taken only on the basis of substantiated fact.

Discussion: The Secretary agrees that subjective determinations cannot be made effectively by lenders and that they should only undertake these actions based on information they can substantiate. The Secretary believes

these actions should be taken when the lender can substantiate that a borrower, or a student on whose behalf a parent is borrowing, provided false or erroneous information to support his or her eligibility. These situations are to be distinguished from borrower ineligibility resulting from school certification error or lender error in making the loan where the Secretary does not intend the provisions of § 682.412 to apply.

Changes: The regulations have been revised, consistent with the changes made to similar provisions in § 682.208(f) of the regulations, to require a lender to exercise the provisions of § 682.412 when it receives substantiated information supporting the fact that a borrower, or a student on whose behalf a parent is borrowing, provided false or erroneous information upon which his or her eligibility was based or took other actions leading to a borrower's ineligibility. The provisions also apply to borrowers who receive loan proceeds but do not attend classes.

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

Section 682.414(a)(3)

Comment: Many commenters stated that they believed lenders should be able to keep a copy of a signed repayment obligation or an affidavit of the borrower's debt in lieu of the original application and promissory note.

Discussion: The Secretary continues to feel strongly that any standard of due diligence that lenders are required to exercise should require that the lender maintain a copy of the original documents that are the basis of the debt. While a signed repayment obligation or affidavit may reflect the borrower's affirmation of the debt's existence, the Secretary believes it would be inconsistent with his responsibilities to allow these types of documents to be retained in lieu of the original application and promissory note.

Changes: None.

Section 682.414(c)

Comment: Many commenters questioned the Secretary's authority in § 682.414(c)(2) to prohibit a guaranty agency from requiring the presence of an agency representative during interviews conducted with personnel during a review of the agency. The commenters believe this prohibition denies the agency due process.

Discussion: The Secretary feels that it is imperative that the Department's representatives have complete access to

guaranty agency personnel and records during reviews of the agency's administration of the FFEL programs. The Secretary further believes, and prior experience indicates, that the presence of agency representatives during interviews with personnel or recording the interviews results in less than a candid flow of information among the reviewers and the agency's personnel. The Secretary believes that an agency receives sufficient due process related to findings that might result from a review and that the restriction on attendance at interviews does not deny due process.

Changes: None.

Section 682.502 The Application To Be a Lender

Section 682.502(b)(4)

Comment: In determining whether to enter into an agreement with an applicant to become a participating lender in the Federal GSL programs, one commenter suggested that the Secretary consider the applicant's default track record under the Title IV loan programs.

Discussion: The Secretary believes that § 682.502(b)(4) provides him with sufficient authority to examine a lender's prior default experience to determine whether to enter into an agreement with the lender. This is because it provides that the Secretary will consider "whether the applicant has had prior experience with a similar Federal, State, or private, nonprofit student loan program * * *." The Secretary believes that this allows him to examine all aspects of a lender's previous performance with Title IV and other programs, including the lender's default rates.

Changes: None.

Section 682.505 Insurance Premium

Section 682.505(c)

Comment: One commenter argued that there is no basis for the FISL insurance premium calculation to be any different from the insurance premium calculation required by statute for guaranty agencies.

Discussion: The statute provides for a separate insurance premium calculation for FISL loans. See section 429(c) of the Act.

Changes: None.

Section 682.507 Due Diligence in Collecting a Loan

Section 682.507(a)(1)

Comment: Several commenters stated that § 682.507(a)(1) should allow for the release of endorsers or, if not, the lender should be directed to use the due diligence collection procedures in § 682.411 with cosigners and endorsers.

Some commenters argued that the use of endorsers is not allowed in the FISL program and questioned why they are mentioned in the regulations.

Discussion: Section 427(a)(2)(A) of the Act provides, in part, that a loan is insurable by the Secretary if the promissory note or other written agreement is made without security and without endorsement, except endorsement may be required if the borrower is a minor and his or her signature would not create a binding obligation under applicable State law. Clarification regarding the release of endorsers under the FISL program was provided to lenders in Bulletin L-35, dated June 27, 1978. This Bulletin stated that the Secretary would not pay a default claim on a loan made on or after September 30, 1977 that contained an unauthorized endorsement. However, it allowed a lender to release an unauthorized endorser before the loan became delinquent without jeopardizing Federal insurance. The Bulletin stated further that if the borrower was a minor (and could not legally have entered into a contract) at the time the promissory note was executed, the authorized endorser could not be released.

Although due diligence steps with respect to authorized endorsers in the FISL program are not specified, the collection activities required for endorsers in § 682.411 are acceptable to the Secretary.

Changes: The Secretary has revised the regulations to reflect that a lender should exercise due diligence in collecting a loan with regard to an authorized endorser.

Comment: Many commenters suggested that the collection procedures for FISL loans should parallel the due diligence collection procedures required of lenders in the guaranty agency program in § 682.411.

Discussion: The Secretary does not believe it is necessary, at this time, to change the FISL due diligence procedures for lenders because loans no longer are being made under the FISL program. However, as there are only minor differences between the requirements of § 682.411 and § 682.507, the Secretary believes lenders should be allowed to use the due diligence procedures in § 682.411 in lieu of the requirements of § 682.507.

Changes: The regulations have been revised to state specifically that a lender may use the due diligence procedures in § 682.411 in lieu of the requirements in § 682.507.

Section 682.508 Assignment of a Loan

Comment: Two commenters suggested that 45 days be inserted in place of the

word "promptly" for notifying borrowers of the purchase or assignment of their loans. They believe this will require lenders holding FISLs and FFELs to service them consistently.

Discussion: The Secretary agrees with the commenters that, if possible, consistent servicing of FISL and guaranteed loans is desirable.

Changes: The regulations have been revised to conform to § 682.208(e)(1) and include the 45-day notice requirement suggested by the commenters.

Section 682.513 Factors Affecting Coverage of a Loan Under the Loan Guarantee

Comment: Several commenters recommended that the phrase " * * * or if it would not be payable on a default claim by the Secretary * * *" be removed from § 682.513(b). The commenters argued that a lender should not be at risk for principal on any bankruptcy, death, or disability claim if no action or inaction by the lender affected whether the claim is collectable.

Discussion: The Secretary believes that a due diligence violation affecting the insurability of a loan before the lender's filing of a death, disability, or bankruptcy claim is sufficient grounds to reject payment of a claim. A death, disability, or bankruptcy should not be an assurance to the lender that the claim will be paid. The Secretary believes a lender's assurance for claim payment must be based on its total due diligence performance in making, disbursing, servicing, and collecting the loan.

Changes: None.

Section 682.515 Records, Reports, and Inspection Requirements for Federal GSL Programs Lenders

Section 682.515(a)(3)

Comment: One commenter suggested that this section be modified to allow documents to be retained on optical-disk media.

Discussion: The Secretary agrees with the commenter that other methods for storing and retrieving data should be recognized.

Changes: A change has been made. The Secretary is revising § 682.515(a)(3)(i) to include optical-disk media or other machine readable formats as an optional method for storing and retrieving data. This change has also been made in § 682.414(a)(4)(i).

Section 682.600 Agreement Between an Eligible School and the Secretary for Participation in the FFEL Programs.

Section 682.600(a)(1)

Comment: Several commenters stated that the Secretary should include proprietary institutions and postsecondary vocational institutions in § 682.600(a)(1) because 34 CFR 600.2 defines four types of schools as eligible institutions. The commenters believe that these two regulatory provisions should be consistent to prevent any confusion surrounding the types of institutions that are eligible to participate in the FFEL programs.

Discussion: The Secretary shares the commenters' concern regarding the need to clarify what constitutes an eligible institution. For purposes of the FFEL programs, section 435(a) of the Act and 34 CFR 682.200 specify two types of eligible institutions: institutions of higher education and vocational schools. A school that meets the definition of a vocational school may also meet the definition of proprietary institution or postsecondary vocational institution in 34 CFR 600.2. The school types listed in 34 CFR 600.2 are not mutually exclusive.

Changes: None.

Section 682.600(a)(2)

Comment: One commenter recommended that the Secretary modify proposed § 682.600(a)(2) to permit only the owner or the institution's Chief Executive Officer to sign the written program participation agreement on behalf of the institution. The commenter recommended this because he felt it was the only way to ensure that the institution's most senior management official understood the administrative and fiduciary responsibilities required of a participating school. The commenter did not believe it was in the best interest of the FFEL programs to delegate this responsibility to another authorized official of the school.

Discussion: The Secretary agrees with the commenter that this change is necessary to protect the integrity of the FFEL programs. Further, the program participation agreement form used by the Department allows only for the signature of the Chief Executive Officer of the institution.

Changes: A change has been made. The Secretary has revised the regulations to specify that the Chief Executive Officer of the institution must sign the program participation agreement with the Secretary.

Section 682.601 Rules for a School That Makes or Originates Loans

Section 682.601(a)

Comment: One commenter stated that § 682.601(a)(3) should be modified to stipulate that an eligible school lender may not make loans to more than 25 percent of the undergraduate students at the school.

Discussion: Section 435(d) of the Act specifies that an eligible school lender may make loans to 50 percent of its undergraduate students. The Secretary has no authority to change this statutory provision.

Changes: None.

Comment: A number of commenters recommended that the Secretary retain the paragraph in current regulations that allows the Secretary to consider any evidence that suggests that a school lender may not have provided sufficient counseling to students to seek loans from a commercial lender before the school makes a loan to a student. Any pattern of denial letters or students' sworn statements may reveal that a school lender did not make a good-faith effort to counsel students to obtain loans from a commercial lender.

Discussion: The Secretary agrees with the commenters.

Changes: The paragraph detailing what the Secretary may consider in deciding whether a school has given sufficient counseling to students to seek loans from commercial lenders first has been reinstated.

Section 682.601(b)

Comment: Many commenters stated their objection to the proposed elimination of the requirement that the student have documented evidence that he or she has been denied a loan from a commercial lender before obtaining a loan from a school lender.

Discussion: The Secretary agrees with the commenters that documentation is necessary to implement section 435(d)(2)(D) of the Act. This provision of the Act specifies that, to be an eligible lender of a FFEL loan, a school may not make a loan to an undergraduate student unless the student previously has received a loan from the school or has been denied a loan by an eligible lender.

Changes: A change has been made. The Secretary has revised the regulations to require the student to provide a written statement of denial for a FFEL loan from an eligible commercial lender before applying to the school for a FFEL program loan. Consequently, the written documentation requirement previously contained in § 682.601(c) of the Department's current regulations has

been reinstated in these final regulations.

Section 682.601(c)

Comment: One commenter expressed concern that a school might use the factors listed in § 682.601(c) (1), (2), and (3) of the NPRM when requesting a waiver of the 50 percent school lending limit to circumvent the requirements contained in § 682.601(a). The commenter believes that a school should be required to prove that economically disadvantaged students would be better off for having received the training offered by the school when requesting such a waiver. Further, the commenter does not believe "uniqueness" is a valid reason to permit a school to take advantage of a student who may not be a well-informed consumer.

Discussion: The Secretary does not agree. Section 682.601(c) contains some, but not all, of the factors the Secretary uses to evaluate a school's request to waive the 50 percent lending limit because imposing that limit would create substantial hardships for the school's present or prospective students. The Secretary believes that these factors represent reasonable criteria to use in determining whether a waiver will provide access to FFEL program loans to students who otherwise would not have access.

Changes: None.

Section 682.602 Correspondence School Schedule Requirements

Section 682.602(b)

Comment: One commenter objected to the requirement that a correspondence school establish and provide a schedule for lesson submission to a prospective student before the student actually makes a commitment to enroll in a course of study by correspondence. The commenter argued that each schedule is individualized and that the actual lesson due dates for each lesson that makes up the course schedule are contingent upon the student's actual program start date.

Discussion: The Secretary does not agree with the commenter. The Secretary believes that it is essential to provide a prospective student who is considering a program of study by correspondence with a schedule containing sufficient information to help the student make a good decision about undertaking the course of study. The Secretary understands that a course schedule provided before the student enrolls is a tentative schedule that might require later modification. However, the Secretary believes that information

provided to a prospective student on the content of lessons in the program and the sequence of those lessons would greatly assist the student in determining whether a course of study meets his or her individual needs and lifestyle. Finally, the Secretary believes that a prospective student who receives this kind of information is more likely to complete the program successfully.

Changes: None.

Comment: One commenter recommended that the schedule required of correspondence schools also should contain information about the location of any residential training required by the program.

Discussion: The Secretary agrees that the location of residential training is often an important factor in whether a student is able to complete a course of study by correspondence and, therefore, a prospective student should have this information before he or she makes a commitment to a course of study.

Changes: A change has been made. The school is required now to provide the exact location of any required residential training as part of the course schedule given to prospective students.

Section 682.603 Certification by a Participating School in Connection With a Loan Application

Comment: Several commenters recommended the deletion of § 682.603(c), which requires that a school delay loan certification for first time Stafford and SLS borrowers entering the first year of an undergraduate program of study. The commenters stated that this provision is no longer necessary because section 428G(b)(1) of the Act now requires delayed delivery of loan proceeds to the same category of borrowers until 30 days after the borrower begins a course of study.

Discussion: The Secretary agrees with the commenters.

Changes: Section 682.603(c) of the regulations has been deleted.

Section 682.603(d)

Comment: Several commenters suggested that the school should not be required to monitor annual loan limits in certifying an application for a loan. The commenters believe that the school's sole responsibility in the loan certification process should be to determine the applicant's unmet need for loan eligibility.

Discussion: A school's responsibility for monitoring a student's annual loan limits and aggregate maximum loan limits is mandated by section 484(g) of the Act. Also, 34 CFR 668.19(a)(4)(ii) stipulates that a school must return to

the lender any Stafford or SLS proceeds that, according to a financial aid transcript, would cause the student to exceed a loan limit under the Stafford or SLS programs. A school is held responsible for information relating to an applicant's annual and aggregate loan limits to the extent that the school's records contain such information.

Changes: None.

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

Section 682.604(b)(2)

Comments: Many commenters disagreed with the requirement of § 682.604(b)(2)(ii) that bases the school's ability to deliver loan proceeds to a student who delays attendance on whether the student notifies the school of his or her plans. Commenters believe that a school should be able to consider any student who begins attendance no later than 30 days after the first day of classes to have maintained eligibility for the loan.

Discussion: The Secretary agrees that the school should be allowed to consider such a borrower to have maintained eligibility and deliver the loan proceeds even if the student does not notify the school of his or her intentions. However, the school also must comply with the change made in § 682.604(d)(3), which requires that if the student fails to register or begins attendance on a delayed basis, the school must return the check to the lender no later than 30 days after the first day of the period of enrollment. To comply with this requirement, the school must develop a system to monitor whether students begin attendance on a delayed basis in sufficient time to prevent having to return the check to the lender by the 30th day.

Changes: A change has been made. A school may consider a student to have maintained eligibility from the first day of the period of enrollment if the student delays attendance.

Comments: Many commenters objected to the proposal that a school could deliver FFEL loan proceeds to a student after the school receives notice of its loss of institutional eligibility if the first disbursement of the loan had been delivered to the student before the institution's receipt of the notice. The commenters believe that the student only will have incurred increased debt for a program of questionable quality and that this provision is not in the best interests of the FFEL programs.

Discussion: The Secretary notes that 34 CFR 668.25(c) authorizes a school to

deliver loan proceeds under these circumstances. See 56 FR 33332, 33341 (July 19, 1991). The Secretary believes it is important to provide the second disbursement of a FFEL program loan to a student who has received the first disbursement of the loan, and who has completed a significant portion of his or her program of study. The Secretary believes that a loss of access to loan funds will present serious obstacles to the student's completion of the program and will, as a result, precipitate a default. Although the Secretary shares the commenters' concern that the borrower has incurred increased debt, the Secretary believes the borrower is better served by having the opportunity to complete his or her program of study and secure employment.

Changes: None.

Section 682.604(c)(3)

Comment: Many commenters objected to the exception provided in proposed § 682.604(c)(3) that would permit delivery of loan proceeds through EFT to borrowers attending an initial loan-counseling session without written authorization. The commenters stated that it was unclear whether the Secretary intended to exempt these borrowers from providing written authorization for the release of loan funds or from the 30-day time frame provided for securing written authorization. Many commenters questioned the relationship between attending an initial loan-counseling session and providing written authorization.

Discussion: The Secretary agrees with the commenters that the purpose of the exception is unclear. The Secretary also believes that the proposed exception would be contrary to the Secretary's long-standing view that the borrower's written authorization for the release of loans by EFT is a vital measure to protect students in the FFEL programs.

Changes: The exception has been deleted from § 682.604(c)(3).

Section 682.604(d)

Comments: A number of commenters objected to the proposed requirement under § 682.604(d)(1)(ii)(B) that if a student asks the school to help manage his or her loan funds for the academic year, the school must establish a separate trust account. Many commenters believe that the requirement is both administratively burdensome and costly to a school. The commenters also indicated that such a student service should be optional rather than required.

Discussion: The Secretary has decided to permit, but not require, schools to

provide this service to help students budget loan proceeds. If a school chooses to offer this student service, all of the excess loan proceeds that students request the school to hold in its account must be maintained in a separate account. The Secretary does not intend to require that a separate account be maintained for each borrower. However, consistent with provisions in the Campus-Based program regulations, these may not be commingled with other accounts of the school. The account may be an interest-bearing account. The Secretary considers the interest earned by the school on this account to be an administrative allowance for providing this student service.

Change: A change has been made. The regulations have been changed to provide that if the student requests, in writing, that the school hold loan funds to assist the student in budgeting those funds, a school may, but is not required to do so.

Section 682.604(f)

Comment: A number of commenters suggested that the requirement that the initial counseling required by § 682.604(f) be conducted either in person or by videotape presentation is not a reasonable expectation for a student who is enrolled in foreign study abroad under the auspices of a school in the United States.

Discussion: The Secretary agrees with the commenters.

Change: The regulations have been revised to provide that the initial counseling requirement for students enrolled in a program of study abroad approved for credit by the home institution will be the same as that for students enrolled in a correspondence program.

Section 682.605 Determining the Date of a Student's Withdrawal.

Section 682.605(b)(1)

Comment: Several commenters argued that the regulations should impose a limit on the period in which a school has to determine that a student has withdrawn if the student does not formally withdraw. They believe that a time limit is essential because such a determination directly affects a student's right to a refund and the timely payment of a refund to a lender on behalf of the student.

Discussion: The Secretary agrees that there should be a maximum time period for a school to determine a student's date of withdrawal under § 682.605(b)(1)(ii). The Secretary believes that the lack of a specific time

period exacerbates the problem of unpaid and untimely refunds.

Changes: A change has been made. The Secretary has revised the regulations to provide that if the student drops out without notifying the school, the school must determine the student's date of withdrawal no later than 45 days after the expiration date of the academic term for a school with standard terms, and no later than 25 days after a student's last date of attendance for a school using clock hours or credit hours without standard terms. The Secretary believes the time frames established in these regulations are reasonable given the different methods used for determining progress at various schools.

Section 682.605(b)(2)

Comment: One commenter objected to the proposed rule requiring a school to determine the withdrawal date for a student who was granted a leave of absence, approved under paragraph (c) of this section, and who fails to return to school at the expiration of the leave of absence, to be the date of the first day of the leave of absence. The commenter argued that this requirement conflicts with the requirement of § 682.607(c)(2) that requires a school to pay a refund to a lender within 30 days after the last day of a student's approved leave of absence should the student not resume his or her program of study.

Discussion: The Secretary disagrees with the commenter. The Secretary notes that § 682.605(b)(2) establishes a procedure for a school to determine the withdrawal date for a student who fails to return to school after a leave of absence has expired. This date is determined for the purpose of a school reporting to the lender the date the student has withdrawn from the school and for determining when a refund must be paid under § 682.606. The Secretary also notes that § 682.607(c)(2) requires that a school must make a refund, if applicable, within 30 days after the last day of a leave of absence, not 30 days after the withdrawal date.

Changes: None.

Section 682.609 Remedial Actions

Section 682.609(a)

Comment: Many commenters stated that a borrower whose eligibility has been affected by a school's error in determining financial need or in certifying the loan application should not lose the rights and benefits afforded other eligible FFEL program loan borrowers if the school is required to purchase all or a portion of the loan. The commenters believed that the

school should absorb any losses on interest benefits or special allowance payments resulting from such a situation.

Discussion: The Secretary does not believe that a change to the regulations is necessary. It has been the Secretary's longstanding view that a student who becomes ineligible for a loan due to a school error does not lose his or her rights. The school, like any other holder of a FFEL program loan, is bound by the terms of the promissory note. The school is also responsible for payment to the Secretary of any interest and special allowance paid by the Secretary on the ineligible portion of the loan.

Changes: None.

Section 682.610 Administrative and Fiscal Requirements for Participating Schools

Section 682.610(b)

Comment: Several commenters recommended that § 682.610(b) of the regulations be revised to allow a school to keep a copy of the loan certification data electronically transmitted by the school to the lender or guaranty agency in lieu of a copy of a paper application form. The commenters believe it is important for the regulations to reflect the electronic application processing now in place at many schools.

Discussion: The Secretary agrees that the regulations should reflect electronic application processing and schools should be allowed to comply with the record-retention requirements by maintaining this data in a computer or optical-disk medium. The Secretary expects, however, that a school, upon request, will be able to produce a hard copy of the loan certification data.

Changes: The regulations have been revised to allow a school to retain the data electronically transmitted as part of the loan certification process to satisfy the record-retention requirements.

Section 682.610(d)

Comment: Several commenters expressed concern that the 5-year record-retention requirement under § 682.610(d)(1) is not long enough. The commenters believe the information contained in a school's record on a borrower is useful when the borrower enters the repayment period or when a default claim is filed, which may be after 5 years.

Discussion: The Secretary agrees with the commenters. In addition, the Secretary recognizes that there may be instances when it is necessary for schools to retain records to respond to on-going audits.

Changes: The regulations have been revised to require the school to retain

records for 5 years after the borrower's last day of attendance and to retain records involved in any loan, claim, or expenditure questioned by a Federal audit until the audit questions have been resolved.

Comment: A number of commenters suggested that the inspection requirements in § 682.610(e)(2) deny a school due process and are unreasonable.

Discussion: The Secretary believes that it is imperative that the Department's representatives have complete access to a school's records during an investigation of the school's administration of the Title IV programs. Further, the Secretary believes, and his experience has shown, that allowing the presence of a school representative during an interview with school personnel or allowing the school to record the interview would result in less than a candid exchange of information among investigators and the personnel interviewed. The Secretary believes the school receives sufficient due process related to findings that might result from such an inspection and does not believe that a prohibition on attendance at interviews by school representatives violates due process.

Changes: None.

Section 682.610(f)

Comment: Several commenters argued that § 682.610(f)(2), which requires the school to notify the holder of a borrower's loan within 30 days of receiving information on the borrower's change of permanent address, is an administrative burden for the school because the provision places no limits on the reporting requirement. The commenters noted that as written the requirement applies to all borrowers who ever attended the school for the life of their loans, the duration of which the school is unlikely to even know. The commenters also indicated that they believe the requirement is not feasible since loan transfers are now commonplace and schools do not always know the current holder of a borrower's loan.

Discussion: The Secretary understands that a school might not always know the current holder of a borrower's loan. However, in light of the increasing volume of loan defaults, the Secretary believes that schools have a particular responsibility to share any information they have on a borrower's whereabouts. The Secretary agrees with the commenters that a requirement that the school provide information within 30 days of the school's receipt of the information throughout the life of the borrower's loan, without regard to the

lender's need for the information, might be overly burdensome.

Changes: The regulations have been revised to require the school to notify the current holder of the loan of a borrower's change of permanent address only while the borrower is enrolled at the school. Section 682.610(f)(1) continues to require the school to provide this information upon request of the Secretary, guaranty agency, or lender.

Section 682.700 Purpose and Scope

Section 682.700

Comment: Several commenters asked the Secretary to clarify whether subpart G, which governs fine, limitation, suspension, and termination proceedings, applies directly to actions taken by guaranty agencies or whether policies of the guaranty agency must be consistent with, but not the same as, subpart G.

Discussion: The Secretary specifies in § 682.401(b)(6)(i)(A) that lender's eligibility may be subject to a limitation, suspension, or termination action by a guaranty agency under standards and procedures that are substantially the same as subpart G.

Changes: None.

Section 682.701 Definitions of Terms Used in This Subpart

Section 682.701 Disqualification

Comment: A commenter expressed concern that the NPRM would revise current policy regarding the Department's review of guaranty agency Limitation, Suspension, and Termination (L, S, & T) actions to allow disqualifications based on a guaranty agency's termination to last indefinitely rather than the 18 months specified in current Department bulletins. The commenter believes that a guaranty agency should not be able to trigger indefinite disqualification of a lender or school from the FFEL programs. Accordingly, the commenter urged the Secretary to incorporate the current 18-month limitation in the final regulations.

Discussion: Sections 682.710 and 682.711 of the regulations allow a lender to request removal of a limitation 12 months after it is imposed and reinstatement of its eligibility 18 months after termination. However, section 432(h)(2)(C) of the Act specifies that the Secretary shall not lift a disqualification until the Secretary is satisfied that the lender has corrected the failures that led to the limitation, suspension, or termination action by the guaranty agency and there are assurances that, in the future, the lender will comply with

all program requirements. Because the Secretary is required to apply qualitative standards in deciding whether to lift sanctions, he does not believe it is appropriate to impose a time limit such as the commenter suggests.

Changes: None.

Section 682.702 Effect on Participation

Section 682.702(c)

Comment: Many commenters suggested that the Secretary prohibit a lender that is subject to an L, S, & T proceeding from making a second or subsequent disbursement on a loan for which a guarantee commitment has been issued.

Discussion: The Secretary believes that it is important to provide a student who has received the first disbursement of a FFEL program loan access to subsequent disbursements of the loan. The Secretary believes that a loss of access for such a student will present serious obstacles to the student's completion of the program and will, as a result, precipitate a default.

Changes: None.

Section 682.704 Emergency Action

Section 682.704(c)

Comment: Many commenters suggested that the Secretary revise the date an emergency action becomes effective from the date the notification of the action is mailed to the lender to the date the lender actually receives the notification. The commenters believe that such a change is necessary to ensure that an emergency action does not become effective before the lender receives notification of that action.

Discussion: The Secretary does not agree. The Secretary believes that the date an emergency action against a lender becomes effective should be consistent with the date an emergency action taken against an institution becomes effective, which, pursuant to section 487(c)(1)(E) of the Act, is the date on which the notification is mailed. The regulations also specify that the notice must be sent by certified mail, return receipt requested.

Changes: None.

Section 682.705 Suspension Proceedings

Section 682.705(b)(2)

Comment: Many commenters suggested that the Secretary revise the date a lender's suspension becomes effective from the date the notification of the suspension is mailed to the lender to the date the lender receives the notification. The commenters believe that such a change is necessary to

ensure that the suspension does not become effective before the lender receives the notification of the suspension.

Discussion: Unlike the emergency actions, which are intended to have immediate effect, suspensions do not take effect until after an opportunity is provided for a hearing. Therefore, the Secretary has revised the regulations to give a lender notice of an impending suspension.

Changes: A change has been made. The Secretary has revised the regulations to provide that a lender's suspension will become effective on a proposed date that is at least 20 days after the date the Secretary's notice is mailed to the lender.

Section 682.706 Limitation or Termination Proceedings

Section 682.706(c)

Comment: One commenter suggested that, in the event the lender's owner or an officer is convicted of, or pleads nolo contendere or guilty to, a crime involving FFEL program administration, the provision that a lender be subject to automatic termination is too severe a penalty to impose on a lender that is discovered to have one dishonest officer or employee. The commenter suggested that the discretionary authority afforded the Secretary in § 682.712(c) should specify that an automatic termination under this section may be waived.

Discussion: The language in the regulations provides that such a criminal conviction is grounds for the Secretary to terminate a lender's eligibility. It does not, however, automatically terminate the lender's eligibility. The Secretary will make this determination on a case-by-case basis.

Changes: None.

Section 682.709 Reimbursements, Refunds, and Offsets

Comment: A number of commenters requested that the Secretary clarify the authority of a guaranty agency to require a school to repay FFEL funds owed to borrowers and lenders. The commenters stated that this authority should be explicitly spelled out in the regulations because guaranty agencies generally identify school error that results in liability or the repurchase of FFEL loans by the school.

Discussion: The Secretary agrees that this authority should be explicit in regulations and also believes that the agency's general enforcement authority should be clarified. However, he does not believe that these regulatory changes should be contained in § 682.709.

Changes: Section 682.809 of the regulations has been revised to contain

a new paragraph (e) that specifies that a guaranty agency may take an emergency action against a school or limit, suspend, or terminate the school's participation in the agency's loan guarantee program and may require the school to repay funds to another party or to purchase loans.

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

Section 682.712

Comment: One commenter recommended that if the Secretary upholds an agency's termination of a lender, the Secretary also should rely upon the agency's determination that the lender's failures have been corrected. The commenter suggested adding "guaranty agency" after "Disqualification by the Secretary."

Discussion: Section 432(h)(2)(B) of the Act requires the Secretary, before lifting any limitation, suspension, or termination sanction imposed on a lender, to make an independent determination that the lender has corrected the failures that led to the sanction. The Secretary notes, however, that nothing in the regulations prevents a guaranty agency from continuing a limitation or termination sanction even if the Secretary removes a national disqualification. The Secretary notes that the 1992 Amendments deleted the term "disqualification" as it was previously used to refer to the steps by which a guaranty agency's sanction against a lender or school received national effect. This change is a change in terminology and not in substance. However, the Secretary has not made that change to this regulation. The Secretary will issue new regulations to conform to the new statute at a later date.

Changes: None.

Sections 682.712 and 682.713

Comment: One commenter suggested that the Secretary revise the final regulations to provide for an evidentiary hearing by the Department for an institution or lender that has an L, S, or T action taken against it by a guaranty agency. The commenter argued that section 432(h) (2) and (3) of the Act provides that a lender or an institution that has an L, S, or T action taken against it by a guaranty agency is entitled to a trial-type evidentiary hearing.

Discussion: The Secretary does not agree with the commenter. The regulations do not preclude the use of an evidentiary hearing in a

disqualification proceeding if the presiding officer determines that such a hearing is necessary. However, the Secretary believes that evidentiary proceedings in disqualification cases will be very rare. The only issues are whether the guaranty agency used the proper standards and procedures. Moreover, under the 1992 Amendments, the Department's review is limited to a review of the written record of the proceedings and the agency's procedures. Thus, the issues in a proceeding under §§ 682.712 and 682.713 should not present any questions requiring an evidentiary hearing.

Changes: A change has been made in §§ 682.712 and 682.713 of the regulations to delete references to a hearing on the record.

Section 682.800 Special Allowance Payments for Loans Financed by Proceeds of Tax-Exempt Obligations

Section 682.800(a)(2)

Comment: Several commenters recommended that the regulations be revised to clarify that an Authority whose Plan for Doing Business was subsequently approved by the Governor is eligible to receive special allowance on obligations issued before the November 16, 1986, date established by the 1986 Amendments.

Discussion: The Secretary agrees with the commenters that this section as currently written does not address special allowance payments for this category of loans.

Changes: A change has been made. The Secretary has revised § 682.800(a)(2) to provide for special allowance payments on obligations issued before November 16, 1986 on the basis of a Plan approved by the Governor after that date.

Section 682.801 Provisions Required in Plan

Section 682.801(h)

Comment: A number of commenters felt that § 682.801(h), which proposed to prohibit an Authority from issuing tax-exempt obligations in excess of the unmet need for student loan credit in its service area, should be deleted because it is not one of the criteria listed in section 438(d)(2) of the Act.

Discussion: The Secretary agrees with the commenters that a demonstration of the need for tax-exempt financing is not required as part of the Plan. In addition, the Department of Treasury regulations governing caps on tax-exempt financing prevent the excessive use of tax-exempt financing.

Changes: Section 682.801(h) has been deleted from the regulations. The Secretary has also deleted the corresponding provision in § 682.802(g).

Sections 682.802 682.805

Comment: Several commenters recommended deleting these sections as the authority for the approval of the Plan for Doing Business was shifted to the Governor of the State in the 1986 Amendments. The commenters questioned the Secretary's authority to (1) regulate the required documentation submitted with the Plan; (2) enforce, suspend, or revoke a Plan that previously was approved by a Governor for the Authority's failure to comply with the Plan; or (3) impose sanctions for material misrepresentations.

Discussion: The Secretary believes that the fact that he does not directly approve the Plan does not prohibit him from enforcing program requirements. Clearly, in revising section 438(d) of the Act to provide the authority to the Governor to approve the Authority's Plan for Doing Business, Congress did not intend for the Secretary to permit non-compliance with the law.

Changes: None.

Section 682.830 Audit Standards

Section 682.830(a)

Comment: Some commenters felt the audit required by § 682.830 should be limited to a financial audit and the requirement that the audit also should cover the Authority's compliance with its Plan for Doing Business should be deleted. The commenters believe that the guaranty agency's program review required under § 682.410(c) addresses the issues normally covered by a compliance audit and that requiring an outside auditor to examine compliance is duplicative. Other commenters argued that if an Authority received a financial and compliance audit from an independent auditor, it should be exempted from review by the guaranty agency.

Discussion: The Secretary does not agree that a guaranty agency's review would duplicate the compliance audit required by § 682.830. Guaranty agency reviews often focus on a single area, e.g., due diligence. The Secretary believes that the familiarity of guaranty agency officials with the FFEL programs provides for a more focused review than the compliance audit would require. Additionally, a determination of the Authority's compliance with its Plan for Doing Business generally is not covered by a guaranty agency program review. The Secretary believes, therefore, that exempting an Authority that has

undergone an independent audit from a guaranty agency review would run counter to the best interests of the FFEL programs, even if the review and the audit overlap in some areas.

Changes: None.

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

Comment: Several commenters recommended the deletion of § 682.840(b), which prohibits an Authority from receiving special allowance payments on loans guaranteed by an agency or organization that discriminates against borrowers. The commenters believe that an Authority should not be held responsible for the practices of another entity over which the Authority has no direct control. The commenters also noted that section 439(e) of the Act has a similar provision for the Student Loan Marketing Association ("Sallie Mae"), but that no similar provision jeopardizing the special allowance on loans held by Sallie Mae has ever been proposed. Some commenters said that this requirement unfairly penalizes an Authority in a State where the guaranty agency is prohibited by State law from guaranteeing loans to students attending a particular eligible institution.

Discussion: Under section 438(d)(3) of the Act, an Authority may not engage in any pattern or practice that results in a denial of a borrower's access to loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular eligible institution within the area served by the Authority, the length of the borrower's educational program, or the borrower's academic year in school. The Secretary considers an Authority "to have adopted a practice of denying access to loans" if it does business with an entity (e.g., a guaranty agency) that denies access to loans to eligible students in violation of similar restrictions on the guaranty agency contained in section 428(c)(2)(F) of the Act. Section 438(d)(3) also requires the Secretary to deny special allowance payments to holders of loans that were made or purchased with funds obtained from the Authority if the Authority discriminates. Therefore, the Secretary believes his authority to withhold special allowance payments applies to the Authority and to any holder acting as trustee for the Authority. The Secretary also notes that the Department is specifically prohibited from regulating the activities of Sallie Mae. Nonetheless, Sallie Mae is

required to comply with the requirements of section 439(e) of the Act.

Changes: None.

Waiver of Proposed Rulemaking

In addition to the changes made to part 682 based on public comment on the notice of proposed rulemaking, the Secretary has revised the regulations to include technical amendments made by certain legislation enacted subsequent to publication of the notice of proposed rulemaking.

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553. However, since these changes merely incorporate statutory changes into the regulations and do not implement substantive policy, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C.(b)(B) that public comment on the regulations is unnecessary and contrary to the public interest.

Executive Order 12291

These 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.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not 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 and procedure, colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: December 4, 1992.

Lamar Alexander,
Secretary of Education.

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

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

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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Sec.

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682.101 Participation in the FFEL
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Subpart F—Requirements, Standards, and Payments for Participating Schools

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682.800 Special allowance payments for
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682.801 Provisions required in Plan.

682.802 Submission of Plan for approval—
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682.806–682.829 [Reserved]

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682.840 Prohibition against discrimination
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Appendix A—Standards for Acceptable Refund Policies by Participating Schools

Appendix B—Students 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, Interest Benefits, Special Allowance, and Reinsurance on Stafford, 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 [Bulletin 88-G-138]

Authority: 20 U.S.C. 1071 to 1097-2,
unless otherwise noted.

Subpart A—Purpose and Scope**§ 682.100 The Federal Family Education Loan programs.**

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

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

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

(3) The Federal PLUS (PLUS) Program, which encourages making loans to parents of dependent students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students.

(4) The Federal Consolidation Loan (Consolidation) Program, which encourages making loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received while they were students, under the Federal Insured Student Loan (FISL), Stafford loan, SLS, PLUS (as in effect before 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 and for parent PLUS borrowers whose loans were made after October 17, 1986.

(b)(1) Except for the loans guaranteed directly by the Secretary described in paragraph (b)(2) of this section, a guaranty agency guarantees a lender against losses due to default by the borrower on a FFEL loan. If the guaranty agency meets certain Federal requirements, the guaranty 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 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 Loan Program, on loans made under the Federal Consolidation Loan Program.

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

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

(Authority: 20 U.S.C. 1701 to 1087-2)

§ 682.101 Participation in the FFEL 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 parents 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. Students borrowers who have at least \$7,500 outstanding in Stafford, SLS, FISL, Perkins, HPSL, student PLUS loans or Parent PLUS loans borrowed after October 16, 1986 may borrow under the Consolidation Loan 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 guaranty 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 guaranty agency or the Secretary.

(c) *PLUS loan application.* Generally, to obtain a PLUS loan, both the student

and the parent complete an application and submit 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 guaranty agency or the Secretary.

(d) *Consolidation loan application.*

Generally, to obtain a Consolidation loan, a borrower completes an 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 Loan Program. If a lender decides to make the loan, the lender obtains a loan guarantee from a guaranty 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 on the day of the last disbursement of the loan proceeds 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 unless a borrower who is also a Stafford loan borrower requests that commencement of repayment on the SLS loan be deferred until the borrower's grace period on the Stafford loan expires.

(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 fully disbursed.

(5) **Consolidation 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 FFEL program loan may be deferred under the circumstances described in § 682.210.

(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 FFEL programs.

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

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

(d) Certain requirements applicable to schools under all the FFEL 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)(1)(i) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Campus-based programs
College Work-Study (CWS) Program
Consolidation Loan Program
Dependent student
Eligible program
Eligible student
Enrolled
Guaranteed Student Loan (GSL) Program
Independent student
National of the United States (Referred to as U.S. Citizen or National in 34 CFR 668.2)
Pell Grant Program
Perkins Loan Program
PLUS Program
State
State Student Incentive Grant (SSIG) Program
Supplemental Educational Opportunity Grant (SEOG) Program
Supplemental Loans for Students (SLS) Program

(ii) The following definitions are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited

Clock hour
Educational program
Eligible institution
Institution of higher education (§ 600.4)
Nationally recognized accrediting agency or association
Preaccredited
Program of study by correspondence
Secretary
Vocational school

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

Act. The Higher Education Act of 1965, as amended, 20 U.S.C. 1071 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 FFEL 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 FFEL loan is made.

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

Default. The failure of a borrower and endorser, if any, or joint borrowers on a PLUS loan, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary or guaranty 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. Any guaranty agency or other eligible lender that receives the

proceeds of a FFEL program 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 a student carrying the same academic workload as the student to whom or on whose behalf a FFEL program 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 for the cost of rental or purchase of telecommunications equipment for a student receiving all or part of his or her instruction by means of that telecommunications technology;

(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 program of study by correspondence, 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 educational 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 student with a disability, an allowance for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that reasonably are incurred and not provided by other assisting agencies.

Estimated financial assistance. (1) 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—

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

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

(iii) Educational benefits paid under Chapters 106 and 107 of Title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iv) 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;

(v) 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; and

(vi) If the student is applying for a loan to cover expenses incurred within the same enrollment period as that for which a prior FFEL 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.

(2) The estimated amount of assistance does not include those amounts used to replace the expected family contribution, including—

(i) Stafford loan amounts for which interest benefits are not payable;

(ii) SLS and PLUS loan amounts;

(iii) Private and state-sponsored loan programs; and

(iv) Perkins loan and College Work-Study funds that the school determines the student has declined for an acceptable reason.

Expected family contribution. The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

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

Federal Insured Student Loan Program. The loan program authorized by Title IV-B of the Act under which the Secretary directly insures lenders against losses.

Foreign school. A school not located in a State.

Full-time student. (1) A student enrolled in an eligible institution (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 per semester or quarter, respectively, of instruction, or its equivalent.

Grace period. The period that begins on the day after a Stafford loan borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before 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 academic years of full-time study at an institution of higher education, either before 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.

Guaranty 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 and is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as

determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence as defined in 34 CFR 668.8 is considered a half-time student.

Holder. An eligible lender in possession of a FFEL program loan note that is payable to, or has been assigned to the lender, including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

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) of the Act 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) of the Act 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 at any time, hold FFEL program loans that total more than one-half of the lender's or subsidiaries' combined consumer credit loan portfolio, including home mortgages held by the lender or its subsidiaries.

(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 FFEL loans;

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

student's parent who previously has received a FFEL loan from the lender;

(iii) Offered, directly or indirectly, a FFEL 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 with respect to its FFEL program loan activities.

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

Origination relationship. A special business 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 FFEL program loans. In this situation, the school is considered to have "originated" a loan made by the lender.

Origination fee. A fee that the lender is required to pay the Secretary to help defray the Secretary's costs of subsidizing the loan. The lender may pass this fee on to the Stafford loan borrower.

Participating school. A school that has in effect a current agreement with the Secretary under § 682.600.

Period of enrollment. The period for which a Stafford, SLS, or PLUS loan is intended. The period of enrollment must coincide with a *bona fide* academic term established by the school for which institutional charges are normally assessed. The period of enrollment is also referred to as the loan period.

Post-deferment grace period. For a loan made prior to October 1, 1981, a single period of six consecutive months beginning on the day following the last day of an authorized deferment period.

Repayment period. (1) For a Stafford loan, the period beginning on the date following the expiration of the grace period and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(2)(i) For a PLUS loan disbursed in more than one installment, the period that begins on the date the first disbursement is made for a loan and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance; for a PLUS loan disbursed in a single installment, the period that begins on the date the loan is disbursed and ending no later than 10 years from that date exclusive of any period of deferment or forbearance.

(ii) For an SLS loan, the repayment period begins on the date of the last

disbursement of the loan and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(3) For a Consolidation loan, the period that begins on the date the loan is disbursed and ends no later than 12, 15, 20, 25 or 30 years from that date depending upon the sum of the amount of the Consolidation loan, and the unpaid balance on other student loans, exclusive of any period of deferment or forbearance.

School. (1) An "institution of higher education" as that term is defined in section 481 of the Act.

(2) The term includes only those individual units or programs within a school that satisfy the definition of "eligible program" in 34 CFR part 668.

(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 acceptances for enrollment, student enrollments, or student retention; and

(ii) *Promote the availability* means—

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

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

(C) Otherwise use the availability of FFEL loans as a recruiting or retention tool.

(4) The term does not include any educational institution that has a default rate in excess of the threshold rates established under section 435(a)(2) of the Act.

(5) For purposes of an in-school deferment, the term includes an eligible institution, whether or not it participates in any Title IV program or has lost its eligibility to participate in the FFEL program because of a high default rate.

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 guaranty agency.

Stafford Loan Program. The loan program authorized by Title IV-B of the Act which encourages the making of loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs. An unsubsidized Stafford

loan is a loan that does not qualify for interest benefits under § 682.301(b).

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 guaranty 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 60 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 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 degree or certificate at or below the baccalaureate level.

(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)(i) 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 in excess of \$200, has filed an application with a lender for a Stafford loan; and

(ii) In the case of a student who seeks an SLS loan for the cost of attendance at any school that participates in the FFEL programs, the student must have received a certification of graduation from a school providing secondary education or the recognized equivalent;

(3) 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 school's file, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents likely will be precluded by exceptional circumstances (e.g., the student's parent receives only public assistance or disability benefits, is incarcerated, or his or her whereabouts are unknown) from borrowing under the PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. A parent's refusal to borrow a PLUS loan does not constitute an exceptional circumstance;

(4)(i) Reaffirms any FFEL loan amount that previously was cancelled due to the borrower's total and permanent disability; or that was discharged in bankruptcy or that was written off.

(ii) For purposes of this paragraph, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(A) Signing a new promissory note or repayment schedule; or

(B) Making a payment on the loan.

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

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

(6) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such certificate, has passed an independently administered examination approved by the Secretary; and

(7) Is not serving in a medical internship or residency program, except for an internship in dentistry.

(b) *Parent borrower.* A parent is eligible to receive a PLUS Program loan, other than a loan made under

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

(2) Provides his or her and the student's social security number;

(3) Meets the requirements pertaining to citizenship and residency that apply to the student in 34 CFR 668.7;

(4) Meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.7;

(5) Except for the completion of a Statement of Selective Service Registration Status, complies with the requirements for submission of a Statement of Educational Purpose that apply to the student in 34 CFR part 668; and

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

(c) *Consolidation Program borrower.*

(1) An individual is eligible to receive a Consolidation loan if, at the time of application for a Consolidation loan, the individual—

(i) Has an outstanding indebtedness of not less than \$7,500 on loans eligible for consolidation under this part; and

(ii)(A) Is in a grace period preceding repayment;

(B) Is in repayment status; or

(C)(1) Is delinquent or has made satisfactory repayment arrangements on a defaulted loan; and

(2) Will reenter repayment through consolidation.

(2) A married couple is eligible to receive a Consolidation loan in accordance with this section if each—

(i) Agrees to be held jointly and severally liable for the repayment of the total amount of the Consolidation loan;

(ii) Agrees to repay the debt regardless of any change in marital status; and

(iii) Certifies that no other application for a Consolidation loan is pending and agrees to notify the holder of any change in address.

(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 is—

(A) 7 percent for a loan covering a period of instruction beginning before January 1, 1981;

(B) 9 percent for a loan covering a period of instruction beginning on or after January 1, 1981, but before September 13, 1983;

(C) 8 percent for a loan covering a period of instruction beginning on or after September 13, 1983;

(D) For a loan covering a period of instruction beginning on or after July 1, 1988, 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter;

(E) Subject to paragraph (a)(1)(vi) of this section, for a loan for which the first disbursement is made on or after October 1, 1992, a variable rate not to exceed 9 percent; or

(F) Subject to paragraph (a)(1)(v) of this section, for a loan for which the first disbursement is made on or after October 1, 1992, 8 percent.

(ii) If the borrower, on the date the promissory note evidencing the loan is signed, has an outstanding balance on a previous Stafford loan the applicable interest rate is the rate charged on that previous Stafford loan.

(iii) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988 or on a Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988 the applicable interest rate is the rate provided in paragraph (a)(1)(i)(C) of this section.

(iv) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford, PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988, the applicable interest rate is the rate provided in paragraph (a)(1)(i)(D) of this section.

(v) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on an SLS, PLUS, or Consolidation loan, for a Stafford loan for which the first disbursement is made on or after October 1, 1992, the applicable interest rate is the rate provided in paragraph (a)(1)(i)(C) of this section.

(vi) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance of principal or interest on any FFEL Program loan, the applicable rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held prior to June 1, plus 3.10 percent; or

(B) 9 percent.

(vii) For a loan with an interest rate of 10 percent, if at the end of any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.25 percent, is less than 10 percent, the lender shall—

(A) Calculate an adjustment in an amount specified under paragraph (a)(1)(iv) of this section; and

(B) Credit the adjustment to reduce the outstanding principal balance of the loan as specified under paragraph (a)(1)(v) of this section if the borrower's account is not more than 30-days delinquent on December 31.

(viii) The amount of an adjustment for a calendar quarter is equal to—

(A) 10 percent minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.25 percent;

(B) Multiplied by the outstanding principal balance of the loan (not including unearned interest added to principal);

(C) Divided by 4.

(ix) No later than 30 calendar days after the end of the calendar year, the holder of the loan shall apply any amount computed under paragraph (a)(1)(iv) of this section to reduce the outstanding principal balance as of December 31.

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

(i) 9 percent for a loan made on or after January 1, 1981, but before October 1, 1981;

(ii) 14 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, 12 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), 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) 12 percent;

(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; and

(vi) For a loan disbursed prior to July 1, 1987, if provided for in a promissory note, a variable rate, applicable to each January 1-December 31 period, that equals the lesser of—

(A) The average of the bond equivalent rates of 91-day Treasury bills auctioned during the 12-months ending the November 30 preceding the January 1-December 31 period; plus 3.75 percent; or

(B) 12 percent.

(vii) For a loan for which the first disbursement is made on or after October 1, 1992, 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 that July 1-June 30 period, plus 3.1 percent; or

(B) 10 percent.

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

(i) 12 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), 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 that July 1-June 30 period, plus 3.25 percent; or

(B) 12 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; and

(iv) For a loan disbursed prior to July 1, 1987, if provided for in a promissory note, a variable rate, applicable to each January 1-December 31 period, that equals the lesser of—

(A) The average of the bond equivalent rates of 91-day Treasury bills auctioned during the 12-months ending the November 30 preceding the January 1-December 31 period, plus 3.75 percent; or

(B) 12 percent.

(v) For a loan for which the first disbursement is made on or after October 1, 1992, 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 that July 1-June 30 period, plus 3.1 percent; or

(B) 11 percent.

(4) *Applicable 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) 9 percent.

(5) *Actual interest rates under the Stafford loan, SLS, PLUS, and Consolidation 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)-(4) 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 payable by the borrower that has accrued—

(i) During the period from the date the first disbursement was made to the beginning date of the in-school period;

(ii) 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);

(iii) During a period of authorized deferment;

(iv) During a period of authorized forbearance; or

(v) 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)(ii) through (iv) 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) (i) and (v) 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 FFEL 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.

(5) For all borrowers who are in a period of deferment, a required medical or dental internship forbearance, or the in-school or grace period on a nonsubsidized Stafford loan and have agreed to monthly or quarterly payments of interest, the lender may capitalize past due interest after notification to the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

(c) *Origination fee for Stafford, SLS, and PLUS loans.* Except in the case of an unsubsidized Stafford loan, a lender—

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

(2) Shall charge a borrower an origination fee on an SLS or PLUS loan of 5 percent of the principal amount of the loan;

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

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

(5) Shall refund by a credit against the borrower's loan balance the portion of the origination fee previously deducted from the loan that is attributable to any portion of that loan that is—

(i) Returned by the school to the lender;

(ii) Repaid within 120 days of disbursement; or

(iii) Not delivered 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 3 percent of the principal amount of the Stafford, SLS, or PLUS 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) 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 fails to pay all or a portion of a required installment payment within 10 days after it is due.

(g) *Collection charges.* (1) If provided for in the borrower's promissory note, and notwithstanding any provisions of State law, the lender may require that the borrower or any endorser pay costs incurred by the lender or its agents in collecting installments not paid when due, including, but not limited to—

(i) Attorney's fees;

(ii) Court costs; and

(iii) Telegrams.

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

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

§ 682.203 Responsible parties.

(a) *Delegation of functions.* A school, lender, or guaranty 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 guaranty 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.* (1) Except as provided in paragraph (a)(2) of this section, 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—

(i) \$2,625, in the case of an undergraduate student who has not successfully completed the first and second years of the undergraduate program of study in which he or she is currently enrolled;

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

program of study in which he or she is currently enrolled; and

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

(2) In the case of a student who has not successfully completed the first year of a program of undergraduate education, the total amount a student may borrow may not exceed—

(i) \$2,625 for enrollment in a program of study of at least a full academic year in length;

(ii) \$1,750 for enrollment in a program of study of at least two-thirds but less than a full academic year in length; and

(iii) \$875 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(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 for programs of study at the undergraduate level; and

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

(c) *PLUS Program annual limit.* The total amount of all PLUS loans that parents may borrow on behalf of each 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 that parents may borrow on behalf of each dependent student may not exceed \$20,000.

(e) *SLS Program annual limit.* (1) The total amount of all SLS loans that a student may borrow for any academic year of study may not exceed \$4,000 or, if the student is entering or is enrolled in a program of undergraduate education that is less than one academic year in length and the student's SLS loan application is certified pursuant to § 682.603 by the school on or after January 1, 1990—

(i) \$2,500 for a student enrolled in a program of study of at least $\frac{1}{3}$ of an academic year but less than a full academic year in length;

(ii) \$1,500 for a student enrolled in a program of study less than $\frac{1}{3}$ but at least $\frac{1}{3}$ of an academic year in length; and

(iii) \$0 for a student enrolled in a program of study that is less than $\frac{1}{3}$ of an academic year in length.

(2) The minimum period for which a student may apply for an SLS loan is the greater of—

(i) The length of the institution's academic year; or

(ii) Seven consecutive months.

(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, Perkins Loan, or HPSL program must 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 before or at the time of the first disbursement on a FFEL program loan. The written information given to the borrower must prominently and clearly display, in bold print, a clear and concise statement that the borrower is receiving a loan that must be repaid.

(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 or transfer 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 if applicable, and the insurance premium, to be collected by the lender before or at the time of each 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;

(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 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 student's eligibility 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) or a loan made to a borrower attending a school that is not in a State, 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, or information that will allow the borrower to estimate, 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 with a separate

statement, written in plain English, at or prior to the time of the first disbursement, that—

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

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

(c) *Disclosure of repayment information.* (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. In the case of a Stafford or SLS loan, the disclosures required by this paragraph must be made not less than 60 days nor more than 240 days before the first payment on the loan is due from the borrower. In the case of a FISL loan, the lender shall make the disclosures during the grace period. 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 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) Except in the case of a Consolidation loan, an explanation of any special options the borrower may have for consolidating or refinancing the loan and of the availability and terms of such other options;

(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.

(d) *Exception to disclosure requirement.* In the case of an SLS or PLUS loan, the lender is not required to

provide the information in paragraph (c)(2)(viii) of this section if the lender, in lieu of that disclosure, provides the borrower with sample projections of monthly repayment amounts assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the student is in school. Sample projections must disclose the cost to the borrower of capitalizing—

- (1) Principal and interest; and
- (2) Interest only.

(e) *Borrower may not be charged for disclosures.* The lender shall provide the information required to be disclosed by paragraphs (a), (b), and (c) of this section at no cost to the borrower.

(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 in regard to 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 on the information provided on the application form or data electronically transmitted

to the lender 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, the lender shall review the data on the student's cost of attendance and estimated financial assistance that is provided by the school. 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.

(3) A lender may not approve a loan for more than the borrower requests, the student's unmet financial need, or the maximum established by § 682.204, whichever is less.

(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 and any endorser or co-maker a copy of each executed note.

(e) *Security, endorsement, and co-makers.* (1) A FISL or Federal PLUS loan must 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.

(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 FFEL 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 refinanced 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 "guaranty 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 § 682.408. 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) (A) May not disburse loan proceeds prior to the issuance of the guarantee commitment for the loan by the guaranty agency, except with the agency's prior approval; and

(B) Must disburse a Stafford or SLS loan in accordance with the disbursement schedule provided by the school;

(ii) Shall disburse loan proceeds by—

(A) A check that is made payable to the borrower, or, if required by the guarantor or lender, is made co-payable to the borrower and the school for attendance at which the loan is intended, and requires the personal endorsement or other written certification of the borrower in order to be cashed or deposited in an account of the borrower at a financial institution; or

(B) If authorized by the guarantor, electronic funds transfer to a separate account maintained by the school as trustee for the lender, the guaranty agency, the Secretary, and the borrower, that requires the written approval of the borrower that is secured and retained by the school for each FFEL program loan for which funds are released from the account;

(iii) May 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;

(v) Shall disburse—

(A) Except as provided in paragraph (b)(1)(v)(C)(1) of this section, directly to the school;

(B) In the case of a PLUS loan, a check made co-payable to the institution and the borrower or by electronic funds transfer to a separate account maintained by the school as trustee for the lender; or

(C) In the case of a student enrolled in a study-abroad program approved for credit at the home institution in which the student is enrolled, if the student requests—

(1) Directly to the student; or

(2) To the home institution if the borrower provides a power-of-attorney to an individual not affiliated with the institution to endorse the check or complete an electronic funds transfer authorization.

(vi) Except as provided in paragraph (d)(2) of this section, may not disburse a second or subsequent disbursement on a Stafford or SLS loan to a student who has ceased to be enrolled.

(2) Except as provided in paragraph (b)(1)(v)(C)(2) of this section, 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 pursuant to the borrower's written authorization under paragraph (b)(1)(ii)(A) of this section.

(c) A lender shall disburse any Stafford or SLS loan, as follows:

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

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

(3) At least one-half 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 at the beginning of the next semester, quarter, or similar division of the period of enrollment.

(d)(1) Unless prohibited by the guaranty agency, 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 period of enrollment for which the loan was intended, 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)(A) Only if the loan proceeds will be used to cover documented educational charges to the student that are normally included in a borrower's

cost of attendance under section 472 of the Act 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;

(B) Only if a student completed the first 30 days of the loan period for which the loan was intended, in the case of a first disbursement of a loan obtained by a student to attend the first year of a program of undergraduate education; or

(C) Only if the student successfully completed the period for which the loan was intended, in the case of second or subsequent disbursement; and

(ii) Within 60 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.

(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) (1) An eligible lender of a FFEL loan shall report to at least one national credit bureau—

(i) The total amount of FFEL loans the lender has made to the borrower, within 90 days of each disbursement;

(ii) The outstanding balance of the loans;

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

(iv) 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;

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

(2) An eligible lender that has acquired a FFEL loan shall report to at least one national credit bureau the information required by paragraph (b)(1)(i)-(v) of this section within 90 days of its acquisition of the loan.

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

(2) When a lender learns that a Stafford loan borrower is no longer

enrolled at an eligible 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—

(1) 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; or

(2) To provide a single repayment schedule for all FFEL program loans to the borrower held by the lender.

(e)(1) If the assignment of a Stafford, 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 assignor and the assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide separate notice to the borrower of—

(i) The assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party to whom subsequent payments must be sent; and

(iv) The telephone numbers of both the assignor and the assignee.

(2) The assignor and assignee must provide the notice required by paragraph (e)(1) of this section separately. Each notice must indicate that a corresponding notice will be sent by the other party to the assignment.

(3) For purposes of this paragraph, the term "assigned" is defined in § 682.401(b)(15)(ii).

(f) (1) Notwithstanding an error by the school or lender, a lender shall follow the procedures in § 682.412 whenever it receives information that can be substantiated that the borrower, or the student on whose behalf a parent has borrowed, provided false or erroneous information or took actions that caused the student or borrower—

(i) To be ineligible for all or a portion of a loan made under this part;

(ii) To receive a Stafford loan subject to payment of Federal interest benefits as provided under § 682.301, for which he or she was ineligible; or

(iii) To receive loan proceeds that were not paid to the school or repaid to the lender by or on behalf of 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 "guaranty agency" in § 682.412(e) refers to the Secretary in the case of a Federal GSL loan.

(g) If, during a period when the borrower is not delinquent, a lender receives information indicating it does not know the borrower's address, it may commence the skip-tracing activities specified in § 682.411(g).

(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 loan disbursed in one installment or a Consolidation loan, the repayment period begins on the date the loan is disbursed. The first payment is due within 60 days after the date the loan is fully disbursed.

(2) (i) For a PLUS loan disbursed in more than one installment, 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 the loan is fully disbursed.

(ii) For an SLS loan, the repayment period begins on the date the loan is disbursed, or, if the loan is disbursed in multiple installments, on the date of the last disbursement of the loan. Except as provided in paragraph (a)(2)(iii) of this section the first payment is due within 60 days after the date the loan is fully disbursed.

(iii) For an SLS borrower who has not yet entered repayment on a Stafford loan, the borrower may postpone payment, consistent with the grace period on the borrower's Stafford 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 7 percent per year, not less than 9 nor more than 12 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 guaranty agency for loans guaranteed by the agency; and

(B) For a borrower with a loan for which the initial applicable interest rate

is 8 or 9 percent per year, 6 months following the date on 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—

(A) 45 days following the first day that the repayment period begins;

(B) 45 days from the expiration of a deferment or forbearance period;

(C) 45 days following the end of the grace period; or

(D) If the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the date the lender learns that the borrower has entered the repayment period.

(4) For a borrower of a Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3)(i) 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, a school may grant the borrower one restoration to in-school status if the borrower fails 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 in writing and is granted a repayment schedule that so provides. In this event, a borrower waives the remainder of the grace period.

(6) (i) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period.

(ii) 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. An agreement as specified in paragraph (c)(1)(ii) of this section is not required if the schedule provides for less than the minimum annual payment amount

specified in paragraph (c)(1)(i) of this section.

(7) (i) Subject to paragraphs (a)(7) (ii) through (iv) of this section, a lender shall allow a borrower at least 5 years, but not more than 10 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 5 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 5 years. Subject to paragraph (a)(7)(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 5 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, the lender may credit the entire prepayment first to any late charges accrued or collection costs and then to any outstanding interest and then to outstanding principal, unless the borrower requests that the lender credit the prepayment to future installments or a prepayment of principal.

(2) If the prepayment amount equals or exceeds 3 full payments under the repayment schedule established for the loan, unless the borrower requests otherwise, the lender may apply the prepayment to future installments and advance the next payment due date, without the prior request of the borrower. If the lender does apply payments to future installments, it shall notify the borrower that the payments have been so applied, and remind the

borrower of the repayment obligation and the next scheduled payment due date.

(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 FFEL 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.

(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 or deferment described in § 682.210, has been approved.

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

(2) The repayment period on the loans included in the combined repayment schedule must be calculated based on the beginning 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 five business days, apply the proceeds to discharge the borrower's obligation on the fixed-rate loan, and provide the refinancing lender with either a copy of the borrower's original promissory note evidencing the fixed-rate loan or 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;

(ii) Is considered an SLS loan if the combined loan does not include a PLUS loan made to a parent; or

(iii) Is considered a loan to a "new borrower" as defined in § 682.210(b)(7), if all the loans that were refinanced were made on or after July 1, 1987, for a period of enrollment beginning on or after that date.

(g) *Conditions for refinancing certain loans.* (1) A lender may not refinance a loan under paragraphs (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 insurance or reinsurance under paragraph (g)(1) of this section.

(ii) The holder of the fixed-rate loan shall, within 10 business 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 60 days after the date of disbursement.

(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 \$7,500 but less than \$10,000, the borrower shall repay the Consolidation loan in not more than 12 years;

(ii) 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;

(iii) Is equal to or greater than \$20,000 but less than \$40,000, the borrower shall repay the Consolidation loan in not more than 20 years;

(iv) Is equal to or greater than \$40,000 but less than \$60,000, the borrower shall repay the Consolidation loan in not more than 25 years; or

(v) Is equal to or greater than \$60,000, the borrower shall repay the Consolidation loan in not more than 30 years.

(3) In order to qualify for a repayment period under paragraph (h)(2)(ii) of this section, the Consolidation loan must include at least \$5,000 in Title IV Part B loans.

(4) For the purpose of paragraph (h)(2) of this section the unpaid balance on other student loans—

(i) 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.

(iii) May include loans received prior to the date of the Consolidation loan provided that the loans are included within 180 days after the Consolidation loan is made.

(5) A repayment schedule for a Consolidation loan—

(i) Must be established by the lender;

(ii) Must provide for graduated or income-sensitive repayment; and

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

(6) Upon receipt of the proceeds of a loan made under paragraph (b)(2) of this section, the holder of the underlying loan shall promptly apply the proceeds to discharge fully the borrower's obligation on the underlying loan, and provide the consolidating lender with the holder's written certification that the borrower's obligation on the underlying loan has been fully discharged.

(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, within 30 days of its receipt, to the lender to whom it assigned the loan, or to the lender that 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 promptly shall provide written notice to the borrower that the holder has received the refund.

(j) *Certification on loans to be repaid through consolidation.* Within 10 business 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 begins 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 interest accrues and is paid by the Secretary if—

(i) 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; or

(ii) in the case of a Consolidation loan, during any period the borrower was eligible for a deferment under section 428(b)(1)(m).

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

(5) An authorized deferment period begins on the date the condition entitling the borrower to the deferment first exists, but not more than six months before the date the lender receives a request and the information and documentation required for the deferment.

(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 a student deferment for a Stafford or PLUS loan made to a borrower guaranteed by a guaranty 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 made to a borrower 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 guaranty 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. Unless the lender has granted the borrower forbearance under § 682.211, 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 the borrower has made satisfactory repayment arrangements with the holder of the loan.

(9) The borrower promptly must 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) through (r) of this section.

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

(i) Except as provided in paragraph (c)(4) of this section, 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 disabled and requires continuous nursing or similar services 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) Engaged in an internship of residency program, 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 beginning of this deferment, deferment is authorized during a period of up to six months during which the borrower is—

(i) (A) Pregnant;

(B) Caring for his or her newborn child; or

(C) Caring for a child immediately following the placement of the child with the borrower before or 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, 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) Up to three years of service as a full-time teacher in a public or non-profit private elementary or secondary school in a teacher shortage area designated by the Secretary under paragraph (q) of this section.

(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 (i.e., children who have not enrolled in first grade) and who is earning not more than \$1 per hour above the Federal minimum wage, for up to 12 months of employment, and who began that full-time employment within one year of entering or re-entering the work force. Full-time employment involves at least 30 hours of work a week and it expected to last at least 3 months.

(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 not independent as defined in section 480(d) of the Act; 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 Stafford, 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 that repaid a loan made prior to July 1, 1987 and for a period of enrollment beginning prior to July 1, 1987.

(c) *Student deferment.* (1) Except as provided in paragraph (c)(4) of this section, to document eligibility for a deferment for full-time study or half-time study at a school, the borrower shall provide the lender with—

(i) A completed deferment application or certified loan application; and

(ii) A statement, which may be on the deferment application or a loan application, completed by 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 half-time basis; and

(iii) 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 or other documentation evidencing that the borrower has received, or will receive, a Stafford or SLS loan for the period of enrollment for which the deferment is sought.

(2) The lender shall consider a deferment granted on the basis of a certified loan application to cover the

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.

(3) In the case of an SLS or PLUS borrower, the lender shall treat the certified loan application as sufficient documentation for a student deferment for any outstanding SLS or PLUS loan previously made to the borrower that is held by the lender.

(4) A borrower serving in a medical internship residency program, except for an internship in dentistry, is prohibited from receiving or continuing deferment on a Stafford or SLS loan under paragraph (c) of this section.

(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 on a full-time basis into an eligible graduate fellowship program; 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 borrower's 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 normally would 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 as defined in § 682.200(b).

(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 has substantially deteriorated so as to render the borrower temporarily totally disabled, as substantiated by the statement required under paragraph (f)(1) of this section, after the borrower submitted the loan application.

(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 disability deferment.* (1) To qualify for a deferment given to a borrower whose spouse or other dependent requires continuous nursing or similar services for a period of at least

90 days, 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 requires continuous nursing or similar services for a period of at least 90 days; and

(ii) From the borrower, certifying that the borrower is unable to secure full-time employment because he or she is providing continuous nursing or similar services to the borrower's spouse or other dependent. 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 during the preceding six months, except in the case of the initial period of unemployment, including, for each of at least six attempts to secure employment to support 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 within a 50-mile radius of the borrower's permanent or temporary address, 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 in kinds of positions or at salary and responsibility levels for which the borrower feels over 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.

(6) A lender may accept, as an alternative to the certification of employer contacts required under paragraph (h)(1)(ii) of this section, comparable documentation the borrower has used to meet the requirements of the Unemployment Insurance Service, provided it shows the same number of contacts and contains the same information the borrower would be required to provide under the Department's regulations.

(i) *Military deferment.* (1) To qualify for a military deferment, a borrower shall provide the lender with—

(i) A written statement from the borrower's commanding or personnel officer certifying—

- (A) That the borrower is on active duty in the Armed Forces of the United States;
- (B) The date on which the borrower's service began; and
- (C) The date on which the borrower's service is expected to end; or
- (ii)(A) A copy of the borrower's official military orders; and
- (B) A copy of the borrower's military identification.

(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 that is expected to last for a period of at least one year in length, as evidenced by official military orders, unless an order for national mobilization of reservists is issued.

(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;
- (2) The date on which the borrower's service began; and
- (3) 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;

(2) The date on which the borrower's service began; and

(3) 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;

(2) The date on which the borrower's service began; and

(3) 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 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;

(2) The date on which the borrower's service began; and

(3) 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 paragraphs (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; and

(iv) 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 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, caring for his or her newborn child, or caring for a child immediately following the placement of the child with the borrower in connection with an adoption;

(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 demonstrating the existence of the pregnancy, a birth certificate, or a statement from the adoption agency official evidencing a pre-adoption placement.

(2) For purposes of paragraph (o)(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;

(2) The date on which the borrower's service began; and

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

(q) *Targeted teacher deferment.* (1) To qualify for a targeted teacher deferment under paragraph (b)(5)(ii) of this section, the borrower, for each school year of service for which a deferment is requested, must provide to the lender—

(i) A statement by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the borrower is teaching, certifying that the borrower is employed as a full-time teacher; and

(ii) A certification that he or she is teaching in a teacher shortage area designated by the Secretary as provided in paragraphs (q) (5) through (7) of this section, as described in paragraph (q)(2) of this section.

(2) In order to satisfy the requirement for certification that a borrower is teaching in a teacher shortage area designated by the Secretary, a borrower must do one of the following:

(i) If the borrower is teaching in a State in which the Chief State School Officer has complied with paragraph (q)(3) of this section and provides an annual listing of designated teacher shortage areas to the State's chief administrative officers whose schools are affected by the Secretary's designations, the borrower may obtain a certification that he or she is teaching in a teacher shortage area from his or her school's chief administrative officer.

(ii) If a borrower is teaching in a State in which the Chief State School Officer has not complied with paragraph (q)(3) of this section or does not provide an annual listing of designated teacher shortage areas to the State's chief administrative officers whose schools are affected by the Secretary's designations, the borrower must obtain certification that he or she is teaching in a teacher shortage area from the Chief

State School Officer for the State in which the borrower is teaching.

(3) In the case of a State in which borrowers wish to obtain certifications as provided for in paragraph (q)(2)(i) of this section, the State's Chief State School Officer must first have notified the Secretary, by means of a one-time written assurance, that he or she provides annually to the State's chief administrative officers whose schools are affected by the Secretary's designations and the guaranty agency for that State, a listing of the teacher shortage areas designated by the Secretary as provided for in paragraphs (q) (5) through (7) of this section.

(4) If a borrower who receives a deferment continues to teach in the same teacher shortage area as that in which he or she was teaching when the deferment was originally granted, the borrower shall, at the borrower's request, continue to receive the deferment for those subsequent years, up to the three-year maximum deferment period, even if his or her position does not continue to be within an area designated by the Secretary as a teacher shortage area in those subsequent years. To continue to receive the deferment in a subsequent year under this paragraph, the borrower shall provide the lender with a statement by the chief administrative officer of the public or nonprofit private elementary or secondary school that employs the borrower, certifying that the borrower continues to be employed as a full-time teacher in the same teacher shortage area for which the deferment was received for the previous year.

(5) For purposes of this section a teacher shortage area is—

(i)(A) A geographic region of the State in which there is a shortage of elementary or secondary school teachers; or

(B) A specific grade level or academic, instructional, subject-matter, or discipline classification in which there is a statewide shortage of elementary or secondary school teachers; and

(ii) Designated by the Secretary under paragraphs (q)(6) or (q)(7) of this section.

(6)(i) In order for the Secretary to designate one or more teacher shortage areas in a State for a school year, the Chief State School Officer shall by January 1 of the calendar year in which the school year begins, and in accordance with objective written standards, propose teacher shortage areas to the Secretary for designation. With respect to private nonprofit schools included in the recommendation, the Chief State School Officer shall consult with appropriate

officials of the private nonprofit schools in the State prior to submitting the recommendation.

(ii) In identifying teacher shortage areas to propose for designation under paragraph (q)(6)(i) of this section, the Chief State School Officer shall consider data from the school year in which the recommendation is to be made, unless that data is not yet available, in which case he or she may use data from the immediately preceding school year, with respect to—

(A) Teaching positions that are unfilled;

(B) Teaching positions that are filled by teachers who are certified by irregular, provisional, temporary, or emergency certification; and

(C) Teaching positions that are filled by teachers who are certified, but who are teaching in academic subject areas other than their area of preparation.

(iii) If the total number of unduplicated full-time equivalent (FTE) elementary or secondary teaching positions identified under paragraph (q)(6)(ii) of this section in the shortage areas proposed by the State for designation does not exceed 5 percent of the total number of FTE elementary and secondary teaching positions in the State, the Secretary designates those areas as teacher shortage areas.

(iv) If the total number of unduplicated FTE elementary and secondary teaching positions identified under paragraph (q)(6)(ii) of this section in the shortage areas proposed by the State for designation exceeds 5 percent of the total number of elementary and secondary FTE teaching positions in the State, the Chief State School Officer shall submit, with the list of proposed areas, supporting documentation showing the methods used for identifying shortage areas, and an explanation of the reasons why the Secretary should nevertheless designate all of the proposed areas as teacher shortage areas. The explanation must include a ranking of the proposed shortage areas according to priority, to assist the Secretary in determining which areas should be designated. The Secretary, after considering the explanation, determines which shortage areas to designate as teacher shortage areas.

(7) A Chief State School Officer may submit to the Secretary for approval an alternative written procedure to the one described in paragraph (q)(6) of this section, for the Chief State School Officer to use to select the teacher shortage areas recommended to the Secretary for designation, and for the Secretary to use to choose the areas to be designated. If the Secretary approves

the proposed alternative procedure, in writing, that procedure, once approved, may be used instead of the procedure described in paragraph (q)(6) of this section for designation of teacher shortage areas in that State.

(8) For purposes of paragraphs (q)(1) through (7) of this section—

(i) The definition of the term *school* in § 682.200(b) does not apply;

(ii) *Elementary school* means a day or residential school that provides elementary education, as determined under State law;

(iii) *Secondary school* means a day or residential school that provides secondary education, as determined under State law. In the absence of applicable State law, the Secretary may determine, with respect to that State, whether the term "secondary school" includes education beyond the twelfth grade;

(iv) *Teacher* means a professional who provides direct and personal services to students for their educational development through classroom teaching;

(v) *Chief State School Officer* means the highest ranking educational official for elementary and secondary education for the State;

(vi) *School year* means the period from July 1 of a calendar year through June 30 of the following calendar year;

(vii) *Teacher shortage area* means an area of specific grade, subject matter, or discipline classification, or a geographic area in which the Secretary determines that there is an inadequate supply of elementary or secondary school teachers; and

(viii) *Full-time equivalent* means the standard used by a State in defining full-time employment, but not less than 30 hours per week. For purposes of counting full-time equivalent teacher positions, a teacher working part of his or her total hours in a position that is designated as a teacher shortage area is counted on a *pro rata* basis corresponding to the percentage of his or her working hours spent in such a position.

(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 beginning date 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 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 her 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 or endorser in order to prevent the borrower or endorser from defaulting on the borrower's or endorser's repayment obligation, or to permit the borrower or endorser 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 previously were scheduled.

(2) Subject to paragraph (h) of this section, a lender may grant forbearance of payments of principal and interest under paragraphs (b), (c), and (d) of this section only if—

(i) The lender reasonably believes, and documents in the borrower's file, that the borrower or endorser 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 if the lender and the borrower or endorser 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 if both the borrower or endorser and an authorized official of the lender agree in writing to the forbearance.

(d) A guaranty agency may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the repayment obligation after default. The terms of the forbearance agreement in this situation must include a new signed repayment obligation.

(e) Except in the case of forbearance of interest payments during a deferment period or a forbearance granted under paragraph (g) of this section, if a forbearance involves the postponement of all payments, the lender must contact the borrower or endorser by telephone or send a written notice to the borrower or endorser at least once every three months during the period of forbearance to remind the borrower or endorser of the outstanding obligation to repay.

(f) A lender may grant forbearance, upon notice to the borrower or if applicable, the endorser, 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;

(2) Upon the beginning of an authorized deferment period;

(3) For the period beginning when the borrower entered repayment until the first payment due date was established;

(4) For a period as authorized by the Secretary in the event of a national military mobilization or other national emergency; or

(5) For the period prior to the borrower's filing of a bankruptcy petition as provided in § 682.402(d).

(g) Upon the written request of the borrower, a lender shall grant forbearance of principal and, unless otherwise indicated by the borrower, interest, in 12-month intervals to a borrower whose deferment received under § 682.210(n) has expired until the borrower has completed the internship or residency.

(h) In granting a forbearance under this section, a lender shall grant a temporary cessation of payments, unless the borrower chooses another form of forbearance subject to paragraph (a)(1) of this section.

(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 any other circumstances approved by the Secretary, notes, or any interest in notes, may 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 FFEL 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 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 loan seller a warranty that—

(1) Covers future reductions by the Secretary or a guaranty agency in

computing the amount of loss payable on default claims filed on the loans, if 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 FFEL loan shall, upon conviction thereof, be fined not more than \$10,000 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 78s.

For purposes of the calculations required by this part, a lender may not use the Rule of 78s to calculate the outstanding principle balance of a loan, except for a loan made to a borrower who entered repayment before June 26, 1987 and who was informed in the promissory note that interest on the loan would be calculated using the Rule of 78s. For those loans, the Rule of 78s must be used for the life of the 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 on which interest benefits are to be paid, 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 spouse's financial resources.

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

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) The date the disbursement check that represents a portion of a loan is returned uncashed to the lender, or the 120th day after the date of that disbursement, if—

(A) The check for the disbursement has not been negotiated on or before that date; or

(B) 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 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 sets forth circumstances under which a lender may be required to repay interest benefits received on a loan guaranteed by a guaranty 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 guaranty 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 3 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

(iii) (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, or the school at the direction of 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 an SLS, PLUS, unsubsidized Stafford loan, State sponsored loan, or private loan program 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 FFEL loans.

(a) *General.* The Secretary pays a special allowance to a lender on an eligible FFEL 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 nonsubsidized Stafford loans disbursed on or after October 1, 1981, or as provided in paragraphs (b)(2) or (e) of this section, FFEL 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 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 3-month period is calculated by—

(i) Determining the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the 3-month period;

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

(iii) Adding—

(A) 3.25 percent to the resulting percentage, for a loan made on or after November 16, 1986;

(B) 3.25 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) 3.5 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) 3.5 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 1 percent, for a loan made prior to October 1, 1981; and

(v) Dividing the resulting percentage by 4.

(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) 2.5 percent per year on eligible loans for which the applicable interest rate is 7 percent;

(B) 1.5 percent per year on eligible loans for which the applicable interest rate is 8 percent; or

(C) One-half of 1 percent per year on eligible loans for which the applicable rate is 9 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—

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

(ii) The date a borrower's loan check is returned uncashed to the lender;

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

(iv) The date a 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) The 60th day 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 the 60th day;

(vi) The 120th day after the date of disbursement, if—

(A) The loan check has not been negotiated 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 30th day after the date the guaranty agency returns a claim for loss on the loan to the lender due solely to inadequate documentation unless the lender files a claim for loss on the loan with the guarantor, together with all required documentation, prior to the 30th day.

(2) Section 682.413 sets forth the circumstances under which a lender may be required to repay the special allowance received on a loan guaranteed by a guaranty agency.

(e) *Special allowance payments for loans financed by proceeds of 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 defeased 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 benefit 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, 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 purposes of special allowance, the lender adds the unpaid principal balance outstanding on all qualified loans at each applicable interest rate for each day of the quarter, 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 for qualifying loans at each applicable interest rate.

(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 of the loan 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 the 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 by the lender to another Federal agency for credit against a debt that the Federal agency has determined the lender owes.

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

(i) Multiplying the daily interest rate applicable to loans on which payment for interest benefits was requested, by the amount of interest benefits due on those loans for each interest rate;

(ii) Multiplying the daily special allowance rate applicable to loans on which special allowance was requested by the amount of special allowance due

on those loans for each interest rate and special allowance category;

(iii) Adding the results of paragraphs (b)(2)(i) and (ii) of this section to determine the gross penalty interest to be paid for each day that penalty interest is due;

(iv) Dividing the results of paragraph (b)(2)(iii) of this section by the gross amount of interest benefits and special allowance due to obtain the average penalty interest rate;

(v) Multiplying the rate obtained in paragraph (b)(2)(iv) of this section by the total amount of reduction to gross interest benefits and special allowance due (e.g., origination fees or other debts owed to the Federal government);

(vi) Subtracting the amount calculated in paragraph (b)(2)(v) of this section from the amount calculated under paragraph (b)(2)(iii) of this section to obtain the net amount of penalty interest due per day; and

(vii) Multiplying the amount calculated in paragraph (b)(2)(vi) of this section by the number of days calculated under paragraph (b)(3) of this section.

(3) The Secretary pays penalty interest for the period—

(i) Beginning on the later of—

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

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

(ii) Ending on the day the Secretary pays the interest benefits and the special allowance at issue, in accordance with paragraph (b)(1)(ii) of this section.

(4) 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.

(5) 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 through § 682.302;

(ii) Includes loans that the Secretary, in writing, has directed that the lender 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 shall arrange for an independent annual compliance audit conducted by a qualified independent organization or person.

(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 FFEL program activities;

(iii) Be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO's) *Government Auditing Standards*. Procedures for audits are contained in an audit guide developed by and available from the Office of the Inspector General of the Department;

(iv) Be conducted at least annually and be submitted to the Secretary within six months of the end of the audit period. The initial audit must be of the lender's first fiscal year that begins after July 23, 1992, and must be submitted within six months of the end of the audit period. Each subsequent audit must cover the lender's activities for the period beginning no later than the end of the period covered by the preceding audit;

(v) With regard to a lender that is a governmental entity, the audit required by this paragraph must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G; and

(vi) With regard to a lender that is a nonprofit organization, the audit required by this paragraph must be conducted in accordance with OMB Circular A-133, *Audit of Institutions of Higher Education and Other Nonprofit Institutions*, as incorporated in 34 CFR 74.61(h)(3). If a nonprofit lender meets the criteria in Circular A-133 for choosing the option for a program-specific audit, and so chooses, the program-specific audit must meet the requirements in paragraphs (c)(1) through (c)(2)(iv) of this section.

(vii) The Secretary may determine that a lender has met the requirements of paragraph (c) of this section if the lender has been audited in accordance with 31 U.S.C. 7502 for other purposes, the lender submits the results of the audit to the Office of Inspector General, and the Secretary determines that the audit meets the requirements of this paragraph.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

Subpart D—Administration of the Federal Family Education Loan Programs by a Guaranty Agency

§ 682.400 Agreements between a guaranty agency and the Secretary.

(a) The Secretary enters into agreements with a guaranty agency whose loan guarantee program meets the requirements of this subpart. The agreements enable the guaranty agency to participate in the GSL programs and

to receive the various payments and benefits related to that participation.

(b) There are three agreements:

(1) *Basic program agreement.* In order to participate in the FFEL programs, a guaranty 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 guaranty agency program may receive special allowance payments from the Secretary and have death, disability, and bankruptcy claims paid by the Secretary through the guaranty agency; and

(iii) The guaranty 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 guaranty 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 guaranty 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 FFEL 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 FFEL programs, a guaranty agency shall enter into a basic agreement with the Secretary.

(b) *Terms of agreement.* In the basic agreement, the guaranty 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 guaranty 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 amount set forth in § 682.204(h).

(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 are eligible to receive a guaranteed loan for any year of the student's study at a participating school.

(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 FFEL loans of the borrower and, for a parent borrower, of the student, including 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 current holder or the guaranty agency of any change of name, address, student status to less than half-time, employer, or employer's address; and

(B) The school of any change in local address during enrollment.

(5) *School eligibility.* A school that has a program participation agreement in place 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 guaranty 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 or § 682.713;

(iii) The school is ineligible under section 435(a)(3) of the Act;

(iv) There is a State constitutional prohibition affecting the school's eligibility;

(v) The school's programs consist of study solely by correspondence; or

(vi) The agency determines that the school does not satisfy the standards of administrative capability and financial responsibility as defined in 34 CFR part 668.

(6) *Lender eligibility.* (i) An eligible lender may participate in the program of the agency under reasonable criteria established by the guaranty 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

(B) The lender is disqualified by the Secretary under sections 432(h)(1), 432(h)(2), 435(d)(3), or 435(d)(5) of the Act or § 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 guaranty agency may refuse to guarantee loans made by a school on behalf of students not attending that school.

(iv) The guaranty agency may, in determining whether to enter into a guarantee agreement with a lender, consider whether the lender has had prior experience in 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.

(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 (e) or (f), the guaranty agency may charge the lender an insurance premium on each Stafford, SLS, or PLUS loan it guarantees.

(ii) The guaranty agency may use the proceeds of this charge only to guarantee loans and to cover costs incurred by the guaranty 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 loan disbursed in more than one installment, the insurance premium must be deducted proportionately from each disbursement of the loan proceeds.

(iv) The amount of the insurance premium may not exceed 3 percent of the principal balance of the loan.

(v) The guaranty agency shall refund to the lender any insurance premium received for a loan under the

circumstances specified in § 682.401(b)(9)(vi) (A) and (B).

(vi) 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 loan disbursed in more than one installment, 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—

(1) The loan is repaid in full;

(2) The loan check has not been negotiated; or

(3) 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 guaranty agency may not use insurance premiums to pay incentive fees to lenders, except to those lenders who agree to participate in and make FFEL 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 guaranty 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 principal guaranty agency or attending a school in that State and who has sought and been unable to find a lender willing to make a FFEL loan (other than a Stafford loan that does not qualify for interest benefits) to the student.

(11) *Administrative fee for Consolidation loans.* The guaranty 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 Loan program.

(12) *Administrative fee for refinancing fixed-rate PLUS or SLS loans.* The guaranty agency may require a lender to pay to the guaranty 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. If it charges the

fee, the agency must charge the same fee to all lenders that refinance under this paragraph.

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

(14) *Guaranty 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.

(15) *Loan assignment.* (i) The guaranty agency shall allow a loan to be assigned only if the loan is fully disbursed and is assigned to—

(A) An eligible lender;

(B) A guaranty 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 a guarantee or a reinsurance claim payment made on a loan that was ineligible for the payment;

(D) A Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender; or

(E) 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.* Except in the case of a transfer of guarantee requested by a borrower seeking a transfer to secure a single guarantor, the guaranty agency may transfer its guarantee obligation on a loan to another guaranty agency, only with the approval of the Secretary, the transferee agency, and the holder of the loan.

(17) *Standards and procedures.* (i) The guaranty 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 and have a written lender agreement with the agency;

(B) School and lender participation in its program;

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

(D) Emergency action against a participating school or lender;

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

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

(ii) The guaranty 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.* (i) The guaranty agency shall establish and use a system and procedures for monitoring the enrollment status of a FFEL program borrower or student on whose behalf a parent has borrowed that includes, at a minimum—

(A) Transmitting to the school, that according to the guaranty agency's records the student most recently attended, a student status confirmation report for completion at least semi-annually in accordance with a schedule established by the agency;

(B) 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—

(1) The beginning of the borrower's grace period; or

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

(ii) The agency shall use the data elements and report format provided in Appendix B to this part, unless the Secretary notifies the guaranty agency that other data elements or a revised format may be used.

(19) *Submission of interest and special allowance information.* Upon the Secretary's request, the guaranty 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 guaranty 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) *Guaranty agency transfer of information.* (i) A guaranty agency from which another guaranty 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 guaranty agency as defined in § 682.800(d) shall provide—

(A) The name and social security number of the student; and

(B) The annual loan amount 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 guaranty agency making the request.

(22) *Information of defaults.* The guaranty agency shall upon the request of an eligible institution furnish information with respect to students, including the names and addresses of such students, who were enrolled at the eligible institution and who are in default on the repayment of any loan guaranteed by that agency.

(c)(1) *Lender of last resort.* The guaranty 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 guaranty agency, as defined in § 682.800(d).

(2) The lender of last resort shall make a Stafford loan to any eligible student who satisfies the lender's eligibility requirements and—

(i) Qualifies for interest benefits, pursuant to § 682.301, for a loan amount of at least \$200; and

(ii) Has been otherwise unable after conscientious efforts to obtain a loan from another eligible lender for the same period of enrollment.

(3) The guaranty agency or an eligible lender described in section 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 guaranty agency shall submit to the Secretary its write-off criteria and procedures. The agency may not use these materials until the Secretary approves them.

(2) The guaranty agency shall promptly submit to the Secretary its regulations, statements of procedures and standards, agreements, 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 guaranty agency shall use a common application form, promissory note, and other common forms approved by the Secretary.

(4) The guaranty agency must develop and implement appropriate procedures that provide for the granting of a student deferment as specified in § 682.210(a)(6)(iv) and (c)(3) and require their lenders to use these procedures.

(5) The guaranty 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 666.

(e) *Prohibited inducements.* A guaranty agency may 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 FFEL 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) 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.

(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 canceled.

(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 canceled only if the guaranty agency determines that other evidence establishes that the borrower has died.

(3) After receiving information indicating that the borrower has died, the lender, if it believes the information to be reliable, shall 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 may not exceed 30 days, the lender shall attempt diligently to obtain documentation verifying the borrower's death. If, despite diligent attempts, the lender is not able to confirm the borrower's death 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 canceled. 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. In the case of a consolidation loan, the condition must not have existed prior to the time the borrower applied for each of the underlying loans, unless the condition substantially deteriorates, 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 promptly shall 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 is notified pursuant to paragraph (d)(2) of this section 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 Chapters 12 or 13, against any co-maker or endorser.

(4) *Proof of claim.* The lender shall file a proof of claim with the bankruptcy court within—

(i) 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; or

(ii) 30 days after the lender receives a notice from the court stating that a

Chapter 7 no-asset case has been converted to an asset case.

(5) *Filing of bankruptcy claim with the guaranty agency.* (i) The lender shall file a bankruptcy claim on the loan with the guaranty agency in accordance with paragraph (e) of this section, if—

(A) The borrower has filed a petition for relief under Chapters 12 or 13 of the Bankruptcy Code; or

(B) The borrower has filed a petition for relief under Chapters 7 or 11 of the Bankruptcy Code and the loan has been in repayment for more than seven years (exclusive of any applicable suspension of the repayment period) from the due date of the first payment until the date of the filing of the petition for relief; or

(C) The borrower has begun an action to have the loan obligation determined to be dischargeable on grounds of undue hardship.

(ii) In cases not described in paragraph (d)(5)(i) of this section, 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 by a lender—(1) Documentation.* A lender shall provide the guaranty 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 an assignment to the guaranty agency of any proof of claim filed by the lender regarding the loan; 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) A lender shall file a bankruptcy claim with the guaranty agency by the earlier of—

(A) 30 days after the date on which the lender receives notice of the first meeting of creditors or other information described in paragraph (d)(2) of this section; or

(B) 15 days after the lender is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship, or, if the lender secures an extension of time within which an answer may be filed, 25 days before the expiration of that extended period, whichever is later.

(f) *Payment of death, disability, and bankruptcy claims by the guaranty agency—(1) General.* (i) The guaranty 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 paragraph (f) of this section, not later than 45 days after the claim was filed by the lender.

(ii) In the case of a bankruptcy claim, the guaranty agency shall, upon receipt of the claim from the lender, immediately take those actions required under paragraph (g) of this section to oppose the discharge of the loan by the bankruptcy court.

(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 guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation.

(g) *Guaranty agency participation in bankruptcy proceedings—(1) Undue hardship claims.* (i) In response to a petition filed with regard to any bankruptcy proceeding by the borrower for discharge under 11 U.S.C. 523(a)(8)(B) on the grounds of undue hardship, the guaranty agency shall determine on the basis of reasonably available information—

(A) Whether the first payment on the loan was due less than 7 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 grounds of undue hardship, a guaranty agency may agree to discharge of 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) *Response by a guaranty agency to plans proposed under Chapters 11, 12, and 13 for loans in repayment more than seven years.* The guaranty agency shall take the following actions with regard to a loan that was in repayment for at least seven years (exclusive of applicable suspensions of the repayment period) when a petition for relief in bankruptcy under Chapter 11, 12, or 13 was filed:

(i) The agency is not required to respond to a proposed plan that—

(A) Provides for repayment of the full outstanding balance of the loan;

(B) Makes no provision with regard to the loan or to general unsecured claims.

(ii) In any other case, the agency shall determine, based on a review of its own

records and documents filed by the debtor in the bankruptcy proceeding—

(A) What part of the loan obligation will be discharged under the plan as proposed;

(B) Whether the plan itself or the classification of the loan under the plan meets the requirements of 11 U.S.C. 1129, 1225, or 1325, as applicable; and

(C) Whether grounds exist under 11 U.S.C. 1112, 1208, or 1307, as applicable, to move for conversion or dismissal of the case.

(iii) If the agency determines that grounds exist to challenge the proposed plan, the agency shall, as appropriate, object to the plan or move to dismiss the case, if—

(A) The costs of litigation of these actions are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan; and

(B) With respect to an objection under 11 U.S.C. 1325, the additional amount that may be recovered under the plan if an objection is successful can reasonably be expected to equal or exceed the cost of litigating the objection.

(iv) The agency shall monitor the debtor's performance under a confirmed plan. If the debtor fails to make payments required under the plan and demonstrates entitlement to discharge under 11 U.S.C. 1328(b), the agency shall oppose any requested discharge and move to dismiss the case if the costs of litigation together with the costs incurred for objections to the plan are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan.

(3) *Response by guaranty agency to plans proposed under Chapters 11, 12, and 13 for loans in repayment less than seven years.* The guaranty agency shall take the following actions with regard to a loan that was in repayment for less than seven years (exclusive of applicable suspensions of the repayment period) when a petition for relief in bankruptcy under chapter 11, 12, or 13 was filed:

(i) If the debtor proposes a plan that is expected to end less than seven years (exclusive of applicable suspensions of the repayment period) after the first payment was due on the loan, the agency shall monitor the debtor's performance under a confirmed plan. If the debtor fails to make payments required under the plan and demonstrate entitlement to discharge under 11 U.S.C. 1328(b), the agency shall oppose any requested discharge and move to dismiss the case if the costs of litigation together with the costs incurred for objections to the plan are

not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan.

(ii) If the debtor proposes a plan that is expected to end more than seven years (exclusive of applicable suspensions of the repayment period) after the first payment was due on the loan, the agency shall take the actions required under paragraph (h)(2) of this section.

(h) *Mandatory repurchase by lender.*

(1) The lender shall repurchase from the guaranty agency a loan held by the agency pursuant to a bankruptcy claim paid to that lender promptly after the earliest of the following events:

(i) The entry of an order denying or revoking discharge or dismissing a proceeding under any chapter.

(ii) A ruling in a proceeding under chapter 7 or 11 that the loan is not dischargeable under 11 U.S.C. 523(a)(8)(B) or other applicable law.

(iii) The entry of an order granting discharge under chapter 12 or 13, or confirming a plan of arrangement under chapter 11 in a proceeding begun less than 7 years (exclusive of any applicable suspension of the repayment period) after the first payment due date of the loan, unless the court determined that the loan is dischargeable under 11 U.S.C. 523(a)(8)(B) on grounds of undue hardship.

(2) The lender may capitalize past-due interest accrued on a loan repurchased under this paragraph.

(i) *Claims for reimbursement from the Secretary on loans held by guaranty agencies.* (1)(i) The Secretary reimburses the guaranty agency for its losses on bankruptcy claims paid to lenders after—

(A) A determination by the court that the loan is dischargeable under 11 U.S.C. 523(a)(8)(B) with respect to a proceeding initiated under chapter 7 or chapter 11 begun less than 7 years (exclusive of any applicable suspension of the repayment period) after the first payment due date of the loan; or

(B) With respect to any other loan, after the agency pays the claim to the lender.

(ii) The guaranty agency shall refund to the Secretary the full amount of reimbursement received from the Secretary on a loan that a lender repurchases under this section.

(2) The Secretary pays a death, disability, or bankruptcy claim in an amount determined under paragraph (i)(3) of this section on a loan held by a guaranty agency after the agency has paid a default claim to the lender thereon and received payment under its reinsurance agreement. The Secretary

reimburses the guaranty agency only if—

(i) The guaranty 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)–(d) of this section. For purposes of this paragraph, references to the "lender" and "guaranty agency" in paragraphs (b)–(d) of this section mean the guaranty agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the guaranty 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 has 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 guaranty agency determines that the borrower has died, become totally and permanently disabled since applying for the Consolidation loan, or has 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 guaranty agency has not written off the loan in accordance with the procedures established by the agency pursuant to § 682.410(b)(6)(x);

(v) The guaranty 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

(iv) In the case of a bankruptcy claim, the guaranty agency has complied with the requirements of paragraph (g) of this section.

(3)(i) The Secretary pays the guaranty 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 guaranty agency determines that the borrower (or each of the co-makers) died, became totally and permanently disabled, filed a chapter 12 or 13

bankruptcy petition, or had the loan discharged in bankruptcy until the Secretary authorizes payment; or
(B) 60 days.

(ii) In addition, the Secretary pays the guaranty 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 guaranty 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 guaranty agency shall remit 100 percent of these payments to the Secretary.

(k) *Applicable suspension of the repayment period.* For purposes of this section and 11 U.S.C. 523(a)(8)(B) with respect to loans guaranteed under the FFEL programs, an applicable suspension of the repayment period—

(1) Includes any period, including a period of deferment, during which the lender, at the request of the borrower, does not require the borrower to make payments on the loan;

(2) Begins on the date on which the borrower qualifies for the requested deferment or the lender grants the requested forbearance;

(3) Closes on the later of the date on which—

(i) The condition for which the requested deferment or forbearance was received ends; or

(ii) The lender receives notice of the end of the condition for which the requested deferment or forbearance was received, if the condition ended earlier than represented by the borrower at the time of the request and the borrower did not notify timely the lender of the date on which the condition actually ended; and

(4) Includes the period between the end of the borrower's grace period and the first payment due date established by the lender in the case of a borrower who entered repayment without the knowledge of the lender.

(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 guaranty 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 guaranty agency; or
(2) 1 or more private nonprofit guarantee agencies in a State if, during a fiscal year—

(i) The State does not have a guaranty 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 guaranty agency—

(A) Agrees to establish at least 1 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 guaranty agency shall apply to the Secretary in order to receive an initial advance.

(c)(1) An advance may be made to a new guaranty 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 guaranty 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 guaranty 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 guaranty agency.

(e) In the case of a private nonprofit guaranty agency, the repayment of advances is determined separately for each State for which the agency has received in advance under this section, in accordance with section 422(c)(4) of the Act.

(f) A guaranty agency shall return advances provided under this section in accordance with the provisions of sections 422 (c) and (d) 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 guaranty agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement the Secretary reimburses the guaranty 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 default but before the Secretary reimburses the agency;

(ii) *Preclaims assistance* means collection assistance provided to the lender by the guaranty agency that includes collection activities that are comparable in intensiveness to the level of preclaims assistance performed by the guaranty agency as of October 16, 1990, and involves the initiation by the agency of at least 3 collection activities, including at least 1 letter to the borrower designed to encourage the borrower to begin or resume repayment; and

(iii) *Supplemental preclaims assistance* means collection assistance provided to the lender by the guaranty agency that involves the initiation by the agency of at least two collection activities designed to encourage the borrower to begin or resume payment that is begun on or after the 120th day of delinquency.

(3)(i) If an account has been subject to supplemental preclaims assistance and is not submitted as a default claim by the lender to the guaranty agency by the 150th day after the loan becomes 120 days delinquent, the Secretary will pay the guaranty agency \$50.

(ii) If a guaranty agency contracts with an outside entity to perform any supplemental preclaims assistance activity, that entity may not—

(A) Hold or service the loan;

(B) Own, control, or share common ownership with the holder or servicer of the loan; or

(C) Hold a contract with the agency to perform collection services on the loan in the event of default.

(iii) For purposes of paragraph (a)(3)(i) of this section, an "account" includes 1 or more FFEL programs loans that were—

(A) Made to the same borrower;

(B) Held by the same lender;

(C) Guaranteed by the same guaranty agency;

(D) Subject to preclaims assistance by the same agency; and

(E) Covered by the same supplemental preclaims assistance request.

(4) A guaranty 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.

(5) If a lender has requested preclaims assistance as described in paragraph (a)(2)(ii) of this section, the agency shall notify the school for attendance at which the borrower received the loan of the lender's request by providing the school with a copy of that request, or by other means.

(b) *Reinsurance rate.* (1) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 5 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 guaranty 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 guaranty agency reaches 9 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 guaranty 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 guaranty agency during any fiscal year does not include amounts paid on claims by the guaranty 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 guaranty 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 may pay 100 percent of its losses during five consecutive fiscal years beginning with the first year of its operation.

(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 all 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 canceled;

(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;

(F) Reinsurance coverage has been lost and cannot be regained; and

(G) The agency paid claims, excluding the amount of those claims—

(1) Paid under § 682.412(e);

(2) Paid under a policy established by the agency that is consistent with § 682.509(a)(1); or

(3) Paid at the direction of the Secretary.

(c) *Submission of reinsurance rate base data.* The guaranty 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 guaranty agency after the date the quarterly report is due until the guaranty agency submits a complete and accurate report.

(d) *Reinsurance fee.* (1) Except for loans made under § 682.209(e), (f) and (h), a guaranty 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 guaranty agency transfers its guarantee obligation on the loan to another guaranty agency.

(3) The guaranty 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 guaranty 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 guaranty agency to make FFEL loans available to all eligible borrowers; and

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

(f) *Application of borrower payments.* Payments made to a guaranty 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) 30 percent of borrower payments.

(3) Unless the Secretary approves otherwise, the guaranty agency shall pay to the Secretary the Secretary's equitable share of borrower payments within 45 days of its receipt of the payments.

(h) *Nondiscrimination.* (1) A guaranty agency may not engage in any pattern or practice that results in a denial of a borrower's access to FFEL 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 guaranty agency, length of the borrower's educational program, or the borrower's academic year in school.

(2) For purposes of this section a guaranty 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.

(i) *Other terms.* The reinsurance agreement contains other terms and conditions that the Secretary finds necessary to—

(1) Promote the purposes of the FFEL 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 guaranty agency is entitled to reinsurance payments on a loan only if—

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

(2) 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 been released from the restricted account maintained by the school within 120 days after disbursement;

(3) The lender provided an accurate collection history and an accurate payment history to the guaranty 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, including collection efforts against each endorser;

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

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

(6) The lender resubmitted a properly documented default claim to the guaranty agency not later than 60 days from the date the agency had returned that claim due solely to inadequate documentation, except that interest accruing beyond the 30th day after the date the guaranty agency returned the claim is not reinsured unless the lender files a claim for loss on the loan with

the guarantor together with all required documentation, prior to the 30th day;

(7) 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;

(8) The agency paid or returned to the lender for additional documentation a default claim thereon filed by the lender within 90 days of the date the lender filed the claim or, if applicable, the additional documentation, except that interest accruing beyond the 60th day after the date the lender originally filed the claim is not reinsured;

(9) The agency submitted a request for the payment on a form required by the Secretary no later than 45 days following payment of a default claim to the lender, which must take place no earlier than 90 days following default in the case of a loan payable in monthly installments, or no earlier than 30 days following default, in the case of a loan payable in less frequent installments;

(10) The loan was legally enforceable by the lender when the agency paid a claim on the loan to the lender;

(11) The agency exercised due diligence in collection of the loan in accordance with § 682.410(b)(6) or (7);

(12) The agency and lender complied with all other Federal requirements with respect to the loan including the payment of origination fees; and

(13) 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 if, 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)(5) 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 guaranty agencies.

(a)(1) The Secretary pays an administrative cost allowance to a guaranty agency having a basic program agreement.

(2) The administrative cost allowance paid to a guaranty agency for any fiscal year equals 1 percent of the total principal amount of loans, other than Consolidation loans, guaranteed by the agency during that fiscal year.

(b)(1) To receive an administrative cost allowance payment, the guaranty 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) and submitted in a format and containing information required by the Secretary;

(v) Assurances that the guaranty 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 FFEL 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).

(3) The application for an administrative cost allowance by a guaranty agency and the Secretary's payment of that allowance establishes an agreement between the Secretary and the guaranty agency with respect to the assurances contained in the application.

(c)(1) A guaranty agency may use the administrative cost allowance to meet only administrative costs related to the FFEL programs.

(2) A guaranty 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 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 guaranty agency that

originally guaranteed the loan, even if the guaranty agency transfers its guarantee obligation on the loan to another guaranty agency.

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

§ 682.408 Loan disbursement through an escrow agent.

(a) *General.* (1) A guaranty agency or an eligible lender may act as an escrow agent for the purpose of receiving Stafford, SLS, and PLUS loan proceeds disbursed by an eligible lender other than a school, State lender, or a State agency or instrumentality, 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 FFEL loan proceeds by the escrow agent.* (1) The escrow agent shall transmit Stafford and SLS 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.

(2) The escrow agent shall transmit PLUS loan proceeds received from a lender under this section to a borrower 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 guaranty agencies of defaulted loans to the Secretary.

(a) If the Secretary determines that action is necessary to protect the Federal fiscal interest, the Secretary may direct a guaranty 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 guaranty 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 guaranty agency any compensation for a loan assigned under this section.

(2) The guaranty 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 guaranty 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 guaranty 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 the 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)(ii)(C).

(vi) A collection history for the loan, as described in § 682.414(a)(1)(ii)(D).

(5) The agency may submit certified copies of required documents in lieu of originals if 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) If the Secretary determines that the ability to collect the loan has been impaired under paragraph (d)(2) of this section, the Secretary assesses the agency the amount paid to the agency under the reinsurance agreement and accrued interest at the rate applicable to the borrower under § 682.410(b)(3).

(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 guaranty agency shall establish and maintain a reserve fund to be used solely for the FFEL program to

which the guaranty 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 guaranty agency as loan insurance premiums;

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

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

(vii) Funds collected on FFEL 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)–(a)(5) of this section, a guaranty 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 other funds owed 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 rule for use of certain reserve fund assets.* (i) Except as provided in paragraph (a)(4) of this section, a guaranty agency also may use funds received as insurance premiums, administrative cost allowances, amounts collected on FFEL loans, interest or investment earnings, and receipts described in paragraph (a)(1)(vi) of this section only for payments necessary to perform functions directly related to the guaranty agency's agreement with the Secretary and for the proper administration of the guaranty agency's FFEL loan guarantee activities.

(ii) The guaranty agency shall use funds received as Federal advances under section 422(c) of the Act, and interest or other earnings on those advances, only to pay default claims.

(iii) The guaranty agency shall account separately for the funds described in paragraph (a)(3)(i) of this section.

(4) The guaranty 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 guaranty 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 FFEL program guarantee activities, the agency promptly shall 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; and

(ii) If the agency subsequently converts the asset, in whole or in part, to a use unrelated to its FFEL loan guarantee activities, the agency promptly shall 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 audits.* The guaranty agency shall arrange for an independent financial and compliance audit of the agency's FFEL program as follows:

(i) With regard to a guaranty agency that is an agency of a State government, an audit must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G.

(ii) With regard to a guaranty agency that is a nonprofit organization, an audit must be conducted in accordance with OMB Circular A-133, Audits of Institutions of Higher Education and Other Nonprofit Organizations and 34 CFR 74.61(h)(3). If a nonprofit guaranty agency meets the criteria in Circular A-133 to have a program specific audit, and chooses that option, the program specific audit must meet the following requirements:

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

(B) The audit must examine the agency's financial management of its FFEL program activities.

(C) The audit must be conducted in accordance with the standards for audits

issued by the United States General Accounting Office's (GAO) Government Auditing Standards. Procedures for audits are contained in an audit guide developed by, and available from, the Office of the Inspector General of the Department.

(D) The audit must be conducted annually 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 that includes July 23, 1992, unless the agency is currently submitting audits on a biennial basis, and the second year of its biennial cycle starts on or before July 23, 1992. Under these circumstances, the agency shall submit a biennial audit that includes July 23, 1992 and submit its next audit as an annual audit.

(2) *Collection charges.* Whether or not provided for in the borrower's promissory note, the guaranty 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 attorney's 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 under the formula in 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 guaranty agencies.* The guaranty agency shall charge the borrower interest on the amount owed by the borrower after the capitalization required under paragraph (b)(4) of this section has occurred 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 interest.* The guaranty agency shall capitalize any unpaid interest due the lender from the borrower at the time the agency pays a default claim to the lender.

(5) *Credit bureau reports.* (i) After the completion of the procedures in paragraph (b)(5)(ii) of this section, the guaranty agency shall, after it has paid a default claim, report promptly, but not less than sixty days after completion of the procedures in paragraph (b)(6)(iii) of this section, 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 guaranty agency, 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, shall provide 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 34 CFR 30.20–30.33 (administrative offset) satisfy the requirements of paragraph (b)(5)(ii) of this section.

(iv)(A) In response to a request submitted by a borrower, after the deadlines established under agency rules, for access to records, an administrative review, or for an opportunity to enter into a repayment agreement, 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 begin 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 to request access to the agency's records on the loan, to request an administrative review of the legal enforceability or past-due status of the loan, and to reach an agreement on repayment terms satisfactory to the agency to prevent the agency from reporting the loan as defaulted to credit bureaus and provide deadlines and method for requesting this 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, for an administrative review, or for 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 guaranty agency shall engage in at least the collection activities described in paragraphs (b)(6)(iii)–(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 paragraph (b)(7) of this section in lieu of the activities described in paragraphs (b)(6)(iii)–(vi) of this section.

(ii)(A) The periods of time set forth in paragraphs (b)(6)(iii)–(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 on multiple loans for a borrower, 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 activities related to administrative wage garnishment, or is 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)(5)(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 paragraphs (b)(6)(iii) or (b)(7) of this section.

(C) Upon receipt of a payment from a borrower during a period described in paragraphs (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)–(vii) of this section but shall diligently attempt to collect the loan for 60-day 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)–(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) 1–45 days: During this period, the agency shall—

(A) Send to the borrower the written notice described in paragraph (b)(5)(ii) of this section; 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 payment of the loan.

(iv) 46–180 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 begin 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 also must 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.

(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 begins the first subsequent collection activity as defined in § 682.411(k) (1) through (3) (with references to the

“lender” understood to mean “the agency”); or

(3) The last day of the period described in paragraph (b)(6)(iv) of this section.

(vii) 181–545 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 notice described in paragraph (b)(5)(vi) of this section, 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 fewer 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 likely recovery if litigation was begun; or

(2) The borrower does not have the means to satisfy a judgment on the debt or a substantial portion thereof.

(viii)(A) If as a result of a determination made pursuant to paragraph (b)(6)(vii)(D)(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 begun, then, if subsequent collection efforts are not successful, the agency, no later than

60 days after the determination, shall institute a civil suit against the borrower for repayment of the loan.

(C) The guaranty agency shall document in the borrower's file determinations made pursuant to this paragraph.

(ix)(A) The agency shall attempt diligently 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, not later than 60 days thereafter, shall 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, within 30 days thereafter, shall 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 only in accordance with criteria and procedures approved by the Secretary.

(xi) Notwithstanding paragraphs (b)(6)(vii)–(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 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 begun, 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) Previously has discontinued semi-annual inquiries on the debt in accordance with paragraph (b)(6)(x) 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)(D) 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 attempt diligently 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 IRS, credit bureaus, and State motor vehicle departments.

(7) *Alternative collection procedures for defaulted loans.* (i) A guaranty agency may engage in the following collection activities in lieu of the activities described in paragraphs (b)(6)(iii)–(vi) of this section. The regulations in paragraphs (b)(6)(ii) (A) and (B) of this section apply to the periods of time set forth in paragraphs (b)(7)(iii)–(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)–(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 paragraphs (b)(7)(iii)–(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) 1–30 days: During this period the agency shall send to the borrower the written notice described in paragraph (b)(5)(ii) of this section.

(iv)(A) 31–180 days: During this period the guaranty agency shall attempt diligently 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 FFEL 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 FFEL loans under a competitive system that the agency has established and that includes the periodic assessment by the agency of the performance of the competing contractors and 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 percent 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)–(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 guaranty 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 guaranty 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 accordance with § 682.411 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 or hinder satisfaction of the requirements of these provisions.

(c) *Enforcement requirements.* A guaranty agency shall take such measures and establish such controls as are necessary to ensure its vigorous enforcement of all Federal, State, and guaranty 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 FFEL loans made or held 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 § 682.800(d), and, at the option of each guaranty agency, the Student Loan Marketing Association; and

(C) Each participating school, located in a State for which the guaranty agency is the principal guaranty agency, that has a cohort 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)(A)–(C) 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 case 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, any correspondence, and any 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 nationally recognized accrediting agencies and associations for investigation information received by the guaranty 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 FFEL program eligibility of a participating lender or school;

(ii) Information it receives regarding an action affecting the FFEL program eligibility of a participating lender or school taken by a nationally recognized accrediting agency, association, or a State licensing agency;

(iii) Any judicial or administrative proceeding relating to the enforceability of FFEL 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 action to protect the rights of borrowers and the Federal fiscal interest respecting loans that 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 training and technical assistance, if appropriate;

(iii) Filing a proof of claim with a bankruptcy court for recovery of any funds due the agency and any refunds due to borrowers on FFEL loans that it has guaranteed when the agency learns that a school has filed a bankruptcy petition;

(iv) Promptly notifying the Secretary that the agency has determined that a school or holder of loans is experiencing potential solvency problems; and

(v) 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 guaranty agency loans.

(a) *General.* In the event of delinquency on a FFEL programs loan, the lender shall engage in at least the collection efforts described in paragraphs (c)-(1) of this section, except that in the case of a loan made to a borrower who is incarcerated or to a borrower residing outside a State, Mexico, or Canada, the lender may send a forceful collection letter in lieu of each telephone effort required by this section.

(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 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 which is not later made. A payment that is within five dollars of the amount normally required to advance the due date may nevertheless advance the due date if the lender's procedures allow for that advancement.

(c) *1-10 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, the lender during this period 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) *11-180 days delinquent (11-240 days delinquent for a loan repayable in installments less frequent than monthly):* (1) Unless exempted under paragraph (d)(4) of this section, during this period the lender shall engage in at least four diligent efforts to contact the borrower by telephone and send at least four collection letters urging the borrower to make the required payments on the loan. At least one of the diligent efforts to contact the borrower by telephone must occur before and another one must occur after the 90th day of delinquency.

(2) At least two of the collection letters required under paragraph (d)(1) of this section must warn the borrower that if the loan is not paid, the lender will assign the loan to the guaranty 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) 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, the lender's receipt of a correct telephone number for the borrower, or the expiration of an authorized deferment or forbearance period, the lender is required to engage in only—

(i) Two diligent efforts to contact the borrower by telephone during this period, if the loan is less than 91 days delinquent (121 days delinquent 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) One diligent effort to contact the borrower by telephone if the loan is 91-120 days delinquent (121-180 days delinquent 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.

(4) A lender need not attempt to contact by telephone any borrower—

(i) Who is incarcerated;

(ii) Who is residing outside of a State, Mexico or Canada;

(iii) Whose telephone number is unknown;

(iv) Who is more than 120 days delinquent (180 days delinquent for a loan repayable in installments less frequent than monthly) following the lender's receipt of—

- (A) A payment on the loan;
- (B) A correct address for the borrower;
- (C) A dishonored check received from the drawee as a payment on the loan; or
- (D) The expiration of an authorized deferment or forbearance.

(5) 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.* On or after the 151st day of delinquency, (the 211th day for loans payable in less frequent installments than monthly) 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. The lender shall allow the borrower at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan.

(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 (f)(1) 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, unless the borrower's number is obtained before the 120th day of delinquency (the 150th day for loans payable repayable in installments less frequent than monthly).

(g) *Skip-tracing.* (1) Unless the letter specified under paragraph (e) of this section has already been sent, within 10 days of its receipt of information indicating that it does not know the borrower's current address, the lender shall begin to diligently attempt to locate the borrower through the use of normal commercial skip-tracing techniques. These efforts must include, but are not limited to, making a diligent effort to contact each endorser, relative, reference, and individual and entity identified in the borrower's loan file. For this purpose, a lender's contact with a school official who might reasonably be expected to know the borrower's address may be with someone other than the financial aid administrator identified on the loan application. These efforts must be completed by the date of default with no gap of more than

45 days between attempts to contact those individuals or entities.

(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)–(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)–(e) and (k) of this section unless it receives communication indicating the borrower's address before the 151st day of delinquency (the 211th day for loans payable in less frequent installments than monthly).

(4) The activities specified by paragraphs (l)(1)(A) or (B) of this section (with references to "the borrower" understood to mean endorser, reference, relative, individual or entity as appropriate) meet the requirement that the lender make a diligent effort to contact each individual identified in the borrower's loan file.

(h) *Preclaims assistance.* The lender shall request preclaims assistance from the agency that guaranteed the loan within 10 days before or after the date established by the agency that assistance is first available from the agency.

(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 due date of a payment 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 a dishonored check submitted as a payment on the loan;

- (vi) The expiration of an authorized deferment or forbearance period on a delinquent loan; or

- (vii) The day the lender receives information indicating it does not know the borrower's current address; and

(2) Ending on the date of the earliest of—

- (i) The day on which the lender receives the first subsequent payment or completed deferment request or forbearance agreement;

(ii) The day on which the lender begins 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 paragraphs (c), (d), or (e) of this section;

- (2) Making an attempt to contact the borrower by telephone to urge the borrower to begin or resume repayment;

- (3) Conducting skip-tracing efforts, in accordance with paragraph (g) of this section, to locate a borrower whose correct address is unknown to the lender;

- (4) Mailing or otherwise transmitting to the guaranty agency a request for preclaims assistance available from the agency on the loan at the time the request is transmitted; or

- (5) Any telephone discussion or personal contact with the borrower so long as the borrower is apprised of the account's past-due status.

(l) *"Diligent effort" for telephone contact.* (1) For purposes of this section, the term "diligent effort" with respect to telephone contact means—

- (i) A successful effort to contact the borrower by telephone;

- (ii) 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; or

- (iii) 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 a diligent effort to contact each reference, relative, and individual identified in the most recent loan application for that borrower held by the lender. The lender may contact a school official other than the financial aid administrator who reasonably may be expected to know the borrower's address.

(2) If the lender is unable to ascertain the borrower's correct telephone number despite its performance of the activities described in paragraph (l)(1)(iii) of this section, the lender is excused thereafter from attempting to

contact the borrower by telephone unless it receives a communication indicating the borrower's current address before the 120th day of delinquency (the 150th day for loans repayable in installments less frequent than monthly).

(3) The activities specified by paragraphs (1)(i) or (ii) of this section (with references to "the borrower" understood to mean endorser, reference, relative or individual as appropriate), meet the requirement that the lender make a diligent effort to contact each endorser or each reference, relative or individual identified on the borrower's most recent loan application.

(m) *Due diligence for endorsers.* (1) During the delinquency period the lender shall—

(i) Make a diligent effort to contact the endorser by telephone; and

(ii) Send the endorser on the loan two letters advising the endorser of the delinquent status of the loan and urging the endorser to make the required payments on the loan with at least one letter containing the information described in paragraph (d)(2) of this section (with references to "the borrower" understood to mean the endorser).

(2) On or after the 151st day of delinquency, (the 211th day for loans payable in less frequent installments than monthly) the lender shall send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to a national credit bureau. The lender shall allow the endorser at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan current before filing a default claim on the loan.

(3) Unless the letter specified under paragraph (m)(2) of this section has already been sent, upon receipt of information indicating that it does not know the endorser's current address or telephone number, the lender must diligently attempt to locate the endorser through the use of normal commercial skip-tracing techniques. This effort must include an inquiry to directory assistance.

(n) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes 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 and can substantiate that the borrower or the student on whose behalf a parent has borrowed, without the lender or school's knowledge at the time the loan was made, provided false or erroneous information or took actions that caused the student or borrower—

(1) To be ineligible for all or a portion of a loan made under this part;

(2) To receive a Stafford loan subject to payment of Federal interest benefits as provided under § 682.301 for which he or she was ineligible; or

(3) To receive loan proceeds for a period of enrollment from which he or she has withdrawn or been expelled prior to the first day of classes or during which he or she failed to attend school 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 up through the most recently ended quarter.

(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)(5), file a default claim thereon with the guaranty 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 guaranty 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)-(a)(6), (a)(9), and (a)(12);

(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 guaranty agency, to the date, if any, on which the guaranty 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 guaranty 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 guaranty 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 FFEL 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).

(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 guaranty agency. References to "the institution" in those regulations shall be understood to mean the lender or guaranty 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 guaranty agency or a lender.

(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 FFEL 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 lender or guaranty 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 guaranty agency.

(3) The Secretary follows the procedures in 34 CFR 30.20-30.32 in collecting a debt by offset against payments otherwise due a guaranty agency or lender.

(f) Notwithstanding paragraphs (a)-(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 guaranty 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 guaranty agency programs.

(a) *Records.* (1)(i) The guaranty 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 by the guaranty agency, and the amount of each payment that was attributed to principal, accrued interest, and collection costs and other charges, such as late charges;

(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 preclaims and 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; and

(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 guaranty 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 guaranty 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 guaranty agency may require the retention of records beyond this minimum period.

(4) (i) A guaranty agency or lender may store the records specified in paragraphs (a)(3)(ii)(C)-(K) of this section on microfilm, optical disk, or other machine readable format.

(ii) A lender or guaranty 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 guaranty 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 guaranty agency shall retain the original loan application and, until the loan is fully repaid, the promissory note.

(b) *Reports.* A guaranty 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 does 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.* Upon request, a guarantee agency or its agent shall cooperate with an independent auditor, the Secretary, the Department'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 authorized by law. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs 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. In providing reasonable access, the agency shall not—

- (i) Refuse to supply any relevant information;
- (ii) Refuse to permit interviews with those personnel without the presence of agency representatives; and
- (iii) Refuse to permit interviews with those personnel unless they are recorded by the agency.

(3) A guaranty 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 guaranty 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) (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 guaranty 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 guaranty agency that guarantees the largest dollar volume of FFEL 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 guaranty 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 guaranty 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 guaranty 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 guaranty 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 guaranty 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 FFEL Program loans. The Secretary may guarantee loans made to those students by a lender in that State if—

(A) The guaranty 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 guaranty 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 FFEL 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 § 682.412(e) 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 Secretary has paid 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 § 682.412(e) 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) 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: 30 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 agreement 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 of 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.

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. However, the Secretary may 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.

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 (a)(4) of this section, a lender shall exercise due diligence in the collection of a loan with respect to both a borrower and an authorized 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 GSL 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 last six more times at regular intervals during the remainder of the six-month period that started on the date of delinquency 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 date of delinquency 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 promptly shall 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 promptly shall attempt to learn the borrower's current address through use of the Department'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. 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.

(b)(1) *Procedure.* If the assignment of a FISL Program loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and the assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide separate notices to the borrower of—

- (i) The assignment;
- (ii) The identity of the assignee;
- (iii) The name and address of the party to whom subsequent payments must be sent; and
- (iv) The telephone numbers of both the assignor and the assignee.

(2) The assignor and assignee shall provide the notice required by paragraph (b)(1) of this section separately. Each notice must indicate that a corresponding notice will be sent by the other party to the assignment.

(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 cover only 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)-(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 "guaranty agency" in § 682.402(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 § 682.412(e)(2) 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.
- (iv) A payment history, as described in § 682.414(a)(3)(ii)(I).
- (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 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 "guaranty 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 by a lender pursuant to § 682.412(e)(2), as directed in § 682.208(f)(2), 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 "guaranty 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 claims.* (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 "guaranty 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 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)-(K) on microfilm, optical disk, or other machine readable 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 reasonably may require.

(c) **Inspections.** Upon request, a lender or its agent shall cooperate with the Secretary, the Department'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 (including computerized records) required by applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to lender personnel associated with the lender's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution may not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel that do not include the presence of representatives of the lender's management; and

(iii) Refuse to permit personnel interviews with those personnel that are not recorded by 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 FFEL programs.

(a) **General.** Participation of a school in the FFEL programs means that the school's students are eligible to receive FFEL loans. To participate in the FFEL programs, a school must—

(1) Demonstrate to the satisfaction of the Secretary that it meets the elements of basic eligibility 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 the Chief

Executive Officer 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 FFEL 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) However, the Secretary does not 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 to the extent that the Secretary states in these regulations or in other official publications or documents that those 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 FFEL 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 may not be a correspondence school;

(3) The school may 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 (c) 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; and

(5)(i) The school may not make or originate a loan for an academic period to a student described in paragraph

(a)(4) of this section until the student provides the school with evidence under paragraph (b) of this section of denial of a loan by a commercial lender for the same academic period.

(ii) In determining whether a school has complied with the requirement set paragraph (a)(5)(i) of this section, the Secretary may take into consideration any patterns reflected by the letters of denial or the students' sworn statements referred to in paragraph (b) of this section that indicate that the school has not given sufficient counseling to students to seek loans from a commercial lender first. An example of an unacceptable pattern would be if all denials of loans to a school's students were made by a small number of lenders.

(b) *Establishing a loan denial by a commercial lender.* (1) To verify that a borrower has sought and been denied a loan from a commercial lender pursuant to paragraph (a)(4) of this section, the school shall obtain from the borrower—

(i) A written statement from a commercial lender indicating that the lender denied the borrower a loan for that academic period; or

(ii) The borrower's sworn statement, indicating both the refusal of a loan by a commercial lender and the lender's refusal to provide a written statement of the denial.

(2) If the borrower's statement is used to establish the denial of a loan, the statement must include—

(i) The name and address of the lender that denied the loan;

(ii) The approximate date on which the loan was denied;

(iii) The name and telephone number of the official who communicated the denial to the borrower; and

(iv) The borrower's signature.

(3) If the school determines that the denial of a loan to an eligible borrower by a commercial lender is based upon the lender's refusal to lend more than a part of the amount requested by the borrower, the school may either—

(i) Make or originate a loan to the borrower for the entire amount; or

(ii) Supplement the loan that the commercial lender is willing to make with a second loan to the borrower.

(c) *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 educational 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 begin, the location of any residential training, and the period of time within which that resident training must be completed.

(c) The school's schedule must conform to the requirements 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 and § 682.401(b) (1) and (2);

(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;

(4) For a Stafford loan, the student's eligibility for interest benefits, based on information provided by the student upon which the school can rely and as determined in accordance with § 682.301;

(5) For a Stafford or SLS loan, the schedule for disbursement of the loan proceeds; and

(6) The student's SLS loan amount.

(c) Pursuant to 34 CFR 668.15(i), except for a student who has previously borrowed an SLS loan for a program of study at the school and who seeks an SLS loan to complete the program of study at the school, a school may not certify an SLS loan application for an undergraduate student after the school receives notice from the Secretary that its fiscal year default rate is 30 percent or more.

(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 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) A school may refuse to certify a Stafford, SLS, or PLUS loan application or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the student in writing, provided—

(1) The determination is made on a case-by-case basis;

(2) The documentation supporting the determination is retained in the student's file; and

(3) The school does not engage in any pattern or practice that results in a denial of a borrower's access to FFEL

loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, or selection of a particular lender or guaranty agency.

(f)(1) The minimum period of enrollment for which a school may certify a loan application is—

(i) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, a single academic term (e.g., a semester or quarter); or

(ii) At a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system, the lesser of—

(A) The length of the student's program at the school; or

(B) The academic year as defined by the school in accordance with 34 CFR 668.2. (See paragraphs (b) and (c) of the definition of "Academic year.")

(2) The maximum period for which a school may certify a loan application is generally an academic year, as defined by 34 CFR 668.2, except that a guaranty agency may allow schools to use a longer period of time, not to exceed 12 months, corresponding to the period to which the agency applies the annual loan limits under § 682.401(b)(2)(ii).

(g) A school may not assess the borrower a fee for the completion or certification of any FFEL 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, PLUS, 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 as provided in § 682.207(b)(1)(v)(C)(1), the proceeds of a Stafford, SLS or PLUS loan disbursed using electronic transfer of funds 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, continuously has 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 delays attending school for a period of time, the school may consider that student to have maintained eligibility for the loan from the first day of the period of enrollment. However, the school must comply with the requirement of paragraph (d)(3) of this section.

(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) Except as provided in § 682.207(b)(1)(v)(C)(1), after the student has registered, if the loan proceeds are disbursed by means of a check that requires the endorsement of the student only, 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 borrower'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 funds 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, obtain the student's or parent borrower's written authorization for the release of the initial and any subsequent disbursement of each FFEL program loan to be made, and after the student has registered either—

(i) Deliver the proceeds to the student borrower subject to paragraph (d)(2) of this section not later than 45 days after the school's receipt of the funds; or

(ii) Credit the student's account in accordance with paragraph (d)(1) of this section, notify the student or parent borrower in writing that it has so credited that account, and deliver to the student or parent borrower the remaining loan proceeds, subject to paragraph (d)(2) of this section not later than 45 days after the school's receipt of the funds.

(4) A school may 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).

(5) A school may not release the first installment of a Stafford or SLS loan for endorsement to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford or SLS loan until 30 days after the first day of the student's program of study.

(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 guaranty agency, the

Secretary, and the student, may 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 loan disbursed in more than one installment, 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, or does not begin attendance on a delayed basis as provided in § 682.604(b)(2)(ii), the school shall return the proceeds to the lender no later than 30 days after the first day of that period of enrollment.

(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 made or fails to attend school during that period, or if the school is unable for any other reason to document that the student attended school during that period, the school within 30 days of the period described in § 682.607(c) shall 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 school receives the borrower'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)–(4) 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 delivery under § 682.604(c)(5)(i); or

(ii) Deliver the proceeds of a late second or subsequent disbursement of a Stafford or SLS loan to a borrower who has ceased to be enrolled on at least a half-time basis unless the borrower has graduated or successfully completed the period of enrollment for which the loan was intended.

(iii) 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 or guaranty agency has informed the school that it prohibits a late disbursement as permitted by § 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 60 days after the earlier of the dates described in paragraph (e)(1) of this section, if the lender or guaranty agency has not informed the school that it prohibits a late disbursement as permitted by § 682.207(d)(2)(i), and if the total amount of the disbursement and all prior disbursements on the loan do not exceed that portion of the student's documented educational charges 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 documented educational charges, 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 redisburse funds for the borrower's documented educational charges incurred before the earlier of the dates described in paragraph (e)(1) of this section.

(f) *Initial counseling.* (1) Except in the case of a correspondence school or for a student enrolled in a study-abroad program approved for credit at the home institution, 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. In the case of a correspondence school or a student enrolled in a study-abroad program that the school approves for credit, the 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 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 shall—

(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 assist repayment by the borrower;

(v) Include the matters described in paragraph (f)(2) of this section; and

(vi) Review with the borrower the conditions under which the borrower may defer repayment of a loan for service under the Peace Corps Act, Domestic Volunteer Service Act of 1973, or for comparable full-time service as a volunteer with a tax-exempt organization.

(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)–(g) of this section as to that borrower.

(h) *Treatment of excess loan proceeds.* Except in the case of a student

attending a foreign school, if, before the delivery of any Stafford or SLS loan disbursement, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which the loan was made that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

(1) Using the student's SLS, PLUS, nonsubsidized Stafford, or State-sponsored or private loan to cover the expected family contribution, if not already done;

(2)(i) Returning the entire undelivered disbursement to the lender or escrow agent; and

(ii) Providing the lender with a written statement—

(A) Describing the reason for the return of the funds, if any;

(B) Setting forth the student's revised financial need; and

(C) Directing the lender to re-disburse a revised amount and, if necessary, revise subsequent disbursements to eliminate the overaward; or

(3) Returning to the lender only the portion of the disbursement for which the student is ineligible and providing the lender with a written statement explaining the return of the funds.

(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 § 682.607.

(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. The school must determine the student's date of withdrawal no later than—

(A) 45 days after the expiration date of the academic term in which the student was enrolled for a school that uses academic terms (e.g., semester, trimester, or quarter), except that 30 days after the first day of the next scheduled term may be used in the case of a summer break; or

(B) 25 days after a student's last date of attendance for a school that measures academic progress either in clock hours or credit hours but does not use a semester, trimester, or quarter system.

(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 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 if the student fails to submit the next scheduled lesson in accordance with the schedule of lessons established under § 682.602. 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, day, and year of the withdrawal date determined under paragraphs (b)(1)–(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 12-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) 60 days; or

(ii) 6 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 before 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 cohort 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 beginning 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 \$100 or 5 percent of tuition, fees, room and board, and other charges assessed the student; 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 that make up the period of enrollment for which the student has been charged into the number of weeks 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 those lessons not submitted by the student.

(5) A school may require that equipment issued to the student by the

school that the school could 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 the return that is received by the student within 10 days of the date of that determination. If the school notified the student in writing before 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 FFEL 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 FFEL 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 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 FFEL 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 student's withdrawal as determined under § 682.605(b)(1)–(3); 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 2 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 as follows:

(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 FFEL 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 educational 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 of its lending eligibility and provides an opportunity for a hearing before the Secretary terminates the 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 date the termination becomes effective; 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 loans 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 also may require a school to purchase from the holder of a FFEL 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 FFEL programs, in accordance with 34 CFR part 668, subpart G.

(e) A school shall comply with any emergency action, limitation, suspension, or termination imposed by

a guaranty agency in accordance with the agency's standards and procedures. A school shall repay funds to the Secretary or other party or purchase loans from a holder if a guaranty agency determines that the school improperly received or retained the funds in violation of a Federal law or regulation or a guaranty agency rule or regulation. (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 or data electronically submitted to the lender which can, upon request, produce a hard copy record of—

(1) The name of the lender;

(2) The address of the lender;

(3) The amount of the loan and the period of enrollment 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;

(iii) The date or dates of transmittal of the loan proceeds by the school to the student; and

(iv) For loans delivered by electronic funds transfer, a copy of the student's written authorization required under § 682.604(c)(3) to transfer the initial and subsequent disbursements of each FFEL program loan;

(10) The student's job placement, if known; and

(11) Any other matter for which a record would be 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 guaranty agency, complete and return that report within 30 days of receipt to the Secretary or the guaranty agency, as appropriate; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary or the guaranty agency within the next 60 days, notify the guaranty agency or 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)(i) Shall keep all records required under the regulations in this part for five years following the last day of the borrower's attendance at the school;

(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 keep all records involved in any loan, claim, or expenditure questioned by a Federal audit until resolution of any audit questions.

(4) Shall provide in the event of the school's closure, termination, suspension, or change in ownership resulting in a change of control as described in 34 CFR part 600 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

(5) May keep records and copies of reports on microfilm, optical disk, or in other machine readable format.

(e) *Inspection requirements.* Upon request, a school or its agent shall cooperate with an independent auditor, the Secretary, any guaranty agency, the Department'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 authorized by law. This cooperation must include—

(1) Providing timely access for examination and copying to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, 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. In providing reasonable access, the institution may not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel without the presence of representatives of the institution's management; and

(iii) Refuse to permit interviews with those personnel unless they are recorded by the institution.

(f) *Information sharing.* (1) Upon request of the Secretary, a lender, or a guaranty agency, a school promptly shall provide a lender or guaranty 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 is enrolled and 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 guaranty agency. (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 FFEL programs. The regulations in this subpart apply to a lender that violates any statutory provision governing the FFEL programs or any regulations, special arrangements, agreements, or limitations prescribed under those programs. These regulations apply to lenders that participate only in a guaranty agency program as well as to lenders that participate in the Federal FFEL programs. These regulations also govern the Secretary's disqualification of a lender or school from participation in the FFEL 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 guaranty agency.

Limitation: The continuation of a lender's eligibility subject to compliance with special conditions established by agreement with the Secretary or a guaranty 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 guaranty 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 FFEL 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 FFEL programs; or

(3) Other reasonable requirements or conditions, including those described in § 682.709.

(c) After the date the termination of a lender's eligibility becomes effective, 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 guaranty 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 FFEL 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 date the action becomes effective 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 FFEL 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 date the suspension becomes effective, 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 date the suspension becomes effective, 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 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 Secretary's decision by mail.

(8) A suspension takes effect on either a date that is at least 20 days after the date the notice of a decision imposing the suspension is mailed to the lender, or on the 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 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 date the limitation or termination becomes effective, 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 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 date the limitation or termination becomes effective.

(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 Departmental official.

(9) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued and received by both parties 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 FFEL funds, that conviction or guilty plea is automatic grounds for terminating the lender's eligibility to participate in the FFEL 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 submitting 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, 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 date it becomes effective would seriously and adversely affect the FFEL programs or student or parent borrowers.

(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 substantiated 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 date the limitation becomes effective.

(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 FFEL 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 date the termination becomes effective.

(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 FFEL 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 guaranty agency against a lender participating in the FFEL programs to determine if national disqualification is appropriate. Upon completion of the Secretary's review, the Secretary notifies the guaranty agency and the lender of the Secretary's decision by mail.

(b) The Secretary disqualifies a lender from participation in the FFEL 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 FFEL 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 guaranty 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 guaranty agency's action is final, e.g., the lender is not entitled to any further appeals within the guaranty agency. A subsequent court challenge to an agency's action does not by itself affect the timing of the Secretary's review.

(f) The guaranty 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 guaranty 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 or documented basis that led to the action.

(8) All other documents relevant to the action.

(g) The guaranty 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 exist, the Secretary notifies the lender that the Secretary will review the guaranty agency's action to determine whether to disqualify the lender from further participation in the FFEL programs and affords the lender an opportunity—

- (i) To waive the review and be disqualified immediately; or
- (ii) To request a review.

(i) The Secretary's review of the guaranty agency's action is limited to 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 lender under the FISL Program (34 CFR part 682, subpart G).

(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 satisfied fully 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 satisfactory assurances to the agency of future compliance with program requirements; or

(3) The guaranty agency determines that special circumstances warrant disqualification of the lender from the FFEL 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 guaranty agencies against a school.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guaranty agency against a school participating in the FFEL programs to determine if national disqualification is appropriate. Upon completion of the Secretary's review, the Secretary notifies the guaranty agency and the school of his decision by mail.

(b) The Secretary disqualifies a school from participation in the FFEL 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 FFEL 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 guaranty 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 guaranty agency's action is final, i.e., the institution is not entitled to any further appeals within the guaranty agency. A subsequent court challenge to an agency's action does not by itself affect the timing of the Secretary's review.

(f) The guaranty 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 guaranty 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 or documented basis that led to the action.

(8) All other documents relevant to the action.

(g) The guaranty 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 exist, the Secretary notifies the school that the Secretary will review the guaranty agency's action to determine whether to disqualify the school from further participation in the FFEL programs and gives the school an opportunity within 30 days from the date the notice is mailed—

(i) To waive the review and be disqualified immediately; or

(ii) To request a review.

(i) The Secretary's review of the guaranty agency's action is limited to—

(1) A review of the written record of the agency's proceedings; and

(2) Whether the agency action was taken in accordance with procedures that were substantially the same as procedures established by the Secretary in 34 CFR part 668, subpart G.

(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 guaranty agency determines that special circumstances warrant disqualification of the school from the FFEL 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—

(i) The Plan for Doing Business of the Authority that issued the obligation; and

(ii) The justification of need for the obligation if the obligation was issued after August 14, 1983; or

(2) The Plan for Doing Business of the Authority that issued the obligations has been approved by 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 guaranty agency for the State.

(b) The Secretary pays a special allowance—

(1) For loans described in paragraph (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 guaranty agency* means—

(1) The guaranty 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 pay transfer fees in excess of the costs of transferring a loan portfolio or a portion of it from the lender to the Authority;

(d) 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; and

(e) 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 FFEL, SLS, and PLUS programs and the maintenance of existing lender commitments to the program; and

(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 has 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 the 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 FFEL 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 for Doing Business.

(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 that had previously been approved by that Governor or the Secretary; or

(2) Any documentation or representation previously submitted pursuant to § 682.802 is 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 for Doing Business.

(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 that 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) An Authority that is a governmental entity must be audited regarding its lending and loan purchasing program for compliance with its Plan and the provisions of § 682.801 in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G.

(b) An Authority that is a nonprofit organization must undergo an audit of its lending and loan purchasing program for compliance with its Plan and the provisions of § 682.801—

(1) Conducted in accordance with OMB Circular A-133 and any supplementary compliance guidelines issued by OMB and the Secretary; or

(2) If the Authority qualifies to submit a program-specific audit under criteria in OMB Circular A-133 and chooses to have such an audit performed, conducted in accordance with standards issued by the General Accounting Office (GAO) publication, *Government Auditing Standards*, and by the Office of Inspector General of the Department contained in the applicable audit guide.

(c) The audit must be conducted annually and the audit report must be submitted within 30 days of the completion of the audit report but no later than six months after the close of the audit period.

(d) Audits must be submitted to the regional office of the Office of Inspector General of the Department, to the Governor who approved the Plan of the Authority, and to the principal guaranty agency consulted by the Governor in approving that Plan.

(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) 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 FFEL 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 the model format and data elements for guarantee agencies to use in implementing a manual or automated Student Status Confirmation Report system as required by § 682.401(b)(18).

Student Status Confirmation Report

DATE: MM/DD/YY GUARANTOR/
INSTITUTION CODE: (must
accommodate eight numeric characters)

GUARANTOR/INSTITUTION NAME:

SOCIAL SECURITY NUMBER NAME

PERMANENT ADDRESS

CORRECTION CORRECTION

*STATUS EFFECTIVE DATE

ANTICIPATED GRADUATION DATE

CORRECTION

*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

COMPLETED BY:

NAME

TITLE

TELEPHONE NUMBER

CERTIFICATION DATE

The following definitions apply to the SSCR data elements.

Data element	Definition
Date: MM/DD/YY	Date report is run and considered to be issued to school.
Social security number.	Valid 9-digit SSN assigned by Social Security Administration to student borrower or student on whose behalf a PLUS loan was borrowed.

Data element	Definition
Name	Last name, first name and middle initial of student borrower or student on whose behalf a PLUS loan was borrowed.
Address	Last known permanent address of student.
Anticipated graduation date.	Date recorded on agency's system. Please note any corrections to this date.
Effective date	Effective date of status reported, as follows: Full-time status, no record found and never attended—the report certification date. Half-time status—(1) the date the student dropped below full-time, or (2) if half-time status is the original enrollment status, the report certification date. Less than half-time status—the date the student dropped below half-time. Leave of absence—the date the student began a leave of absence approved in accordance with § 682.605(c). Graduated—the date the student completed the course requirements (not the date of the presentation of the diploma). Withdrawn—the date the student officially withdrew as determined by the school in accordance with § 682.605(b).
Certification date	The date the institution completed the SSCR.
Other information	Please note any corrections to SSN, name, or permanent address of which you are aware. Please note the effective date of this information to avoid replacing newer information with old.

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 FFELP 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 F 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 in 34 CFR 682.507 and the timely filing requirements 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 682.511(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 in section I.C. above for due diligence violations.

II. Repayment of Interest and Special Allowance on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

A. General Rule

It has always been the Secretary's interpretation of the FISLP statute and regulations that a lender's right to receive interest and special allowance payments on a FISLP loan terminates immediately following the lender's violation of the due diligence or timely filing requirements. This applies whether or not the lender has filed a claim on the loan. In other words, lenders may receive interest and special allowance only on loans which are insured by the Secretary. Since these violations result in the termination of insurance, they also result in the termination of FISLP benefits.

B. Cessation of Billing on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

Any lender currently billing the Secretary for interest and special allowance on a loan that the lender knows involves a due diligence or timely filing violation must cease doing so immediately. However, 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 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 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 or special allowance eligibility in calculating the overbilled amount. See 34 CFR 682.515(a)(2).

Attachments.

¹ 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

BILLING CODE 4000-01-M

NOTICE

TO:

Date

Social Security Number

You have previously been notified that you are severely delinquent in repaying your Federal Family Education 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

BILLING CODE 4000-01-C

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 Stafford, 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 [Bulletin 88-G-138].

Note: The following is a reprint of Bulletin 88-G-138, issued on March 11, 1988, with modifications made to reflect changes in the program regulations. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until three years after the default claim filing deadline.

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 guaranty 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 FFEL 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 guaranty agency.

The Secretary has been implementing a variety of regulatory and administrative actions to minimize defaults in the FFEL Programs. As a part of this effort, the Secretary published final regulations on November 10, 1986 requiring lenders and guaranty agencies to undertake specific due diligence activities to collect delinquent and defaulted loans, and establishing deadlines for the filing of claims by lenders with guaranty 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 guaranty 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 guaranty 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 guaranty 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 guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. See §§ 682.406(a)(5); and 682.413(b). As §§ 682.406(a)(6) and 682.413(b) make clear, a guaranty 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 guaranty 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 Guaranty Agency to Enforce Its Standards

As noted above, a lender's violation of a guaranty 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 guaranty 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 guaranty agency's due diligence and timely filing rules occurring before May 1, 1988, a guaranty 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 FFEL 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 90-day filing period applicable to FFEL Program default claims is set forth in 34 CFR 682.406(a)(5). The 90-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 270th day of delinquency (180-day default period plus 90-day filing period) if the borrower brings the account less than 180 days delinquent before such 270th 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 90 days thereafter (unless the loan is again brought to less than 180 days delinquent prior to the end of that 90-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 guaranty 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:

- The period between the initial delinquency and the first collection activity;
- The period between collection activities (a request for preclaims assistance is considered a collection activity);
- The period between the last collection activity and default; or
- 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.

For loans subject to the FFEL and PLUS programs regulations published on November 10, 1986, 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 preclaims assistance), or the failure to timely engage in a required skip-tracing activity. If during the delinquency period, a gap of more than 45 days occurs (more than 60 days for loans with a transfer), the lender must satisfy the requirement outlined in I.D.1. for reinsurance to be reinstated. The day after the 45-day gap (or 60 for loans with a transfer) will be considered the date that the violation occurred.

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 Filing 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 guaranty 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 guaranty 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 guaranty 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 guaranty 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 guaranty 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. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until three years after the default claim filing deadline.

5. Excuse of Certain Due Diligence Violations. Except as noted in section II, below, if a loan has due diligence violations but was later cured and brought current, those violations will not be considered in determining whether a loan was serviced in accordance with 34 CFR 682.411. In that case, the Secretary will only examine the due diligence performed in the 180 days of delinquency immediately before default. However, an examination of the activity that occurred with respect to the account before it began the 180-day delinquency period may be necessary to verify the repayment status of the loan at the beginning of the delinquency period.

6. Excuse of Timely Filing Violations Due to Performance of a Guaranty 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 guaranty 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 guaranty 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 guaranty 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 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 guaranty 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 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

guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer).

b. If there exists 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 240th day of delinquency. If the lender fails to make this request by the 240th 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 exists 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 section 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 guaranty 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 guaranty 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 section 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, 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 guaranty 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 had 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 guaranty 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 guaranty agency for interest accruing beyond the 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 FFEL programs 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.

[FR Doc. 92-30217 Filed 12-17-92; 8:45 am]

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Disposal of Federal Real Property

Friday
December 18, 1992

Part III

Department of Education

34 CFR Part 12

Disposal and Utilization of Surplus
Federal Real Property for Educational
Purposes; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 12

RIN 1880-AA27

Disposal and Utilization of Surplus Federal Real Property for Educational Purposes

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Disposal and Utilization of Surplus Federal Real Property for Educational Purposes. These amendments are needed to clarify certain provisions in the current regulations. These regulations increase the accountability of recipients of surplus Federal real property to the United States in their use of that property and clarify the requirements of the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: David B. Hakola, U.S. Department of Education, Office of the Administrator for Management Services, (room 3005, MS 4532), 400 Maryland Avenue, SW., Washington, DC 20202-4532. Tel. (202) 401-0500. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Disposal and Utilization of Surplus Federal Real Property for Educational Purposes regulations are authorized by the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 *et seq.*) (Act). The Secretary is authorized to request the Administrator of the General Services Administration (GSA) to assign surplus Federal real property to the Secretary for sale or lease to eligible entities for educational purposes. As a credit against the fair market sale or lease value of the property, the transferee or lessee may be granted up to a 100% public benefit allowance (PBA) based upon the type of educational organization it is and the proposed educational use of the surplus Federal real property. Property is conveyed as either off-site or on-site

surplus Federal real property. Off-site property is property capable of being removed from the land (e.g., improvements, small buildings, etc.) and does not include the underlying land. In contrast, on-site property generally consists of a parcel of land which is conveyed together with fixtures and other improvements thereon. The conveyance instrument used by the Secretary contains conditions, restrictions, reservations, and covenants with which the transferee or lessee must comply in order to retain title or possession of the surplus Federal real property. The Act directs the Secretary of Education to enforce compliance with the terms and conditions contained in the conveyance instrument and to take corrective action in the case of noncompliance. For on-site property, the Secretary's oversight responsibility may last up to 30 years, while for off-site property it lasts for the useful economic life of the property.

On October 31, 1990 the Secretary published a notice of proposed rulemaking (NPRM) for this program in the *Federal Register* (55 FR 45971). A discussion of the major issues was addressed in the NPRM at 55 FR 45972. Since publication of the NPRM, the only changes to the regulations were to correct editorial and technical errors in the PBA table in appendix A. These are discussed in the following section.

Analysis of Comments and Changes

In the NPRM the Secretary invited comments on the proposed regulations. The only substantive comment the Secretary received suggested a change in eligibility to include American Indian tribes. The Secretary is not legally authorized to make this change under 40 U.S.C. 484(k)(1)(A). However, the Secretary has reviewed the regulations since publication of the NPRM and has made changes as follows:

Discussion: Departmental review of the NPRM resulted in editorial and technical revisions to correct errors in the organizational allowances section of Appendix A (Public Benefit Allowance for Transfer of Surplus Federal Real Property for Educational Purposes).

Changes: The 10% allowance given for accreditation for elementary or high schools has been deleted to remove the impression of preferential treatment between public and nonprofit schools within the same category. The percent allowed for inadequacy of existing school plant facilities is to remain unchanged from the current regulations.

Executive Order 12291

These 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.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not 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 12

Disposal and utilization of surplus real property, Education, Education Department, Federal buildings and facilities, Government property, Property reporting and recordkeeping requirements, Surplus government property.

(Catalog of Federal Domestic Assistance Number 84.145 Federal Real Property Assistance Program)

Editorial Note. This document was received at the Office of the Federal Register on December 10, 1992.

Dated: August 2, 1991.

Lamar Alexander,
Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 12 to read as follows:

PART 12—DISPOSAL AND UTILIZATION OF SURPLUS FEDERAL REAL PROPERTY FOR EDUCATIONAL PURPOSES

Subpart A—General

- Sec.
- 12.1 What is the scope of this part?
 - 12.2 What definitions apply?
 - 12.3 What other regulations apply to this program?

Subpart B—Distribution of Surplus Federal Real Property

- 12.4 How does the Secretary provide notice of availability of surplus Federal real property?
- 12.5 Who may apply for surplus Federal real property?
- 12.6 What must an application for surplus Federal real property contain?
- 12.7 How is surplus Federal real property disposed of when there is more than one applicant?
- 12.8 What transfer or lease instruments does the Secretary use?
- 12.9 What warranties does the Secretary give?

12.10 How is a Public Benefit Allowance (PBA) calculated?

Subpart C—Conditions Applicable to Transfers or Leases

- 12.11 What statutory provisions and Executive Orders apply to transfers of surplus Federal real property?
- 12.12 What are the terms and conditions of transfers or leases of surplus Federal real property?
- 12.13 When is use of the transferred surplus Federal real property by entities other than the transferee or lessee permissible?

Subpart D—Enforcement

- 12.14 What are the sanctions for noncompliance with a term or condition of a transfer or lease of surplus Federal real property?

Subpart E—Abrogation

- 12.15 What are the procedures for securing an abrogation of the conditions and restrictions contained in the conveyance instrument?

Appendix A to Part 12—Public Benefit Allowance for Transfer of Surplus Federal Real Property for Educational Purposes

Authority: 40 U.S.C. 471-488; 20 U.S.C. 3401 *et seq.*; 42 U.S.C. 2000d (1) *et seq.*; 20 U.S.C. 1681 *et seq.*; 29 U.S.C. 794 *et seq.*; 42 U.S.C. 4332.

Subpart A—General

§ 12.1 What is the scope of this part?

This part is applicable to surplus Federal real property located within any State that is appropriate for assignment to, or that has been assigned to, the Secretary by the Administrator for transfer for educational purposes, as provided for in section 203(k) of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 *et seq.*).

(Authority: 40 U.S.C. 484(k))

§ 12.2 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 472 of the Act:

Administrator
Surplus property

(b) *Definitions in the Education Department General Administrative Regulations (EDGAR).* The following terms used in this part are defined in 34 CFR 77.1:

Department
Secretary
State

(c) *Other Definitions:* The following definitions also apply to this part:

Abrogation means the procedure the Secretary may use to release the transferee of surplus Federal real property from the covenants, conditions, reservations, and restrictions contained in the conveyance

instrument before the term of the instrument expires.

Act means the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 *et seq.*).

Applicant means an eligible entity as described in § 12.5 that formally applies to be a transferee or lessee of surplus Federal real property, using a public benefit allowance (PBA) under the Act.

Lessee, except as used in § 12.14(a)(5), means an entity that is given temporary possession, but not title, to surplus Federal real property by the Secretary for educational purposes.

Nonprofit institution means any institution, organization, or association, whether incorporated or unincorporated—

(1) The net earnings of which do not inure or may not lawfully inure to the benefit of any private shareholder or individual; and

(2) That has been determined by the Internal Revenue Service to be tax-exempt under section 501(c)(3) of title 26.

Off-site property means surplus buildings and improvements—including any related personal property—that are capable of being removed from the underlying land and that are transferred by the Secretary without transferring the underlying real property.

On-site property means surplus Federal real property, including any related personal property—other than off-site property.

Period of restriction means that period during which the surplus Federal real property transferred for educational purposes must be used by the transferee or lessee in accordance with covenants, conditions, and any other restrictions contained in the conveyance instrument.

Program and plan of use means the educational activities to be conducted by the transferee or lessee using the surplus Federal real property, as described in the application for that property.

Public benefit allowance ("PBA") means the credit, calculated in accordance with Appendix A to this part, given to a transferee or lessee which is applied against the fair market value of the surplus Federal real property at the time of the transfer or lease of such property in exchange for the proposed educational use of the property by the transferee or lessee.

Related personal property means any personal property—

(1) That is located on and is an integral part of, or incidental to the operation of, the surplus Federal real property; or

(2) That is determined by the Administrator to be otherwise related to the surplus Federal real property.

Surplus Federal real property means the property assigned or suitable for assignment to the Secretary by the Administrator for disposal under the Act.

Transfer means to sell and convey title to surplus Federal real property for educational purposes as described in this part.

Transferee means that entity which has purchased and acquired title to the surplus Federal real property for educational purposes pursuant to section 203(k) of the Act.

(Authority: 40 U.S.C. 472 and 20 U.S.C. 3401 *et seq.*)

§ 12.3 What other regulations apply to this program?

The following regulations apply to this program:

- (a) 34 CFR Parts 100, 104, and 106.
- (b) 41 CFR Part 101-47.
- (c) 34 CFR Part 85.

(Authority: 40 U.S.C. 484(k); 42 U.S.C. 2000d-1 *et seq.*; 29 U.S.C. 794 *et seq.*; 20 U.S.C. 1681 *et seq.*; Executive Order 12549; and 20 U.S.C. 3474)

Subpart B—Distribution of Surplus Federal Real Property

§ 12.4 How does the Secretary provide notice of availability of surplus Federal real property?

The Secretary notifies potential applicants of the availability of surplus Federal real property for transfer for educational uses in accordance with 41 CFR 101-47.308-4.

(Authority: 40 U.S.C. 484(k)(1))

§ 12.5 Who may apply for surplus Federal real property?

The following entities may apply for surplus Federal real property:

- (a) A State.
- (b) A political subdivision or instrumentality of a State.
- (c) A tax-supported institution.
- (d) A nonprofit institution.
- (e) Any combination of these entities.

(Authority: 40 U.S.C. 484(k)(1)(A))

§ 12.6 What must an application for surplus Federal real property contain?

An application for surplus Federal real property must—

- (a) Contain a program and plan of use;
- (b) Contain a certification from the applicant that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations;
- (c) Demonstrate that the proposed program and plan of use of the surplus

Federal real property is for a purpose that the applicant is authorized to carry out;

(d) Demonstrate that the applicant is able, willing, and authorized to assume immediate custody, use, care, and maintenance of the surplus Federal real property;

(e) Demonstrate that the applicant is able, willing, and authorized to pay the administrative expenses incident to the transfer or lease;

(f) Demonstrate that the applicant has the necessary funds, or the ability to obtain those funds immediately upon transfer or lease, to carry out the proposed program and plan of use for the surplus Federal real property;

(g) Demonstrate that the applicant has an immediate need and ability to use all of the surplus Federal real property for which it is applying;

(h) Demonstrate that the surplus Federal real property is needed for educational purposes at the time of application and that it is so needed for the duration of the period of restriction;

(i) Demonstrate that the surplus Federal real property is suitable or adaptable to the proposed program and plan of use; and

(j) Provide information requested by the Secretary in the notice of availability, including information of the effect of the proposed program and plan of use on the environment.

(Authority: 40 U.S.C. 484(k))

(Approved by the Office of Management and Budget under control number 1880-0524)

§ 12.7 How is surplus Federal real property disposed of when there is more than one applicant?

(a) If there is more than one applicant for the same surplus Federal real property, the Secretary transfers or leases the property to the applicant whose proposed program and plan of use the Secretary determines provides the greatest public benefit, using the criteria contained in appendix A to this part that broadly address the weight given to each type of entity applying and its proposed program and plan of use. (See example in § 12.10(d)).

(b) If, after applying the criteria described in paragraph (a) of this section, two or more applicants are rated equally, the Secretary transfers or leases the property to one of the applicants after—

(1) Determining the need for each applicant's proposed educational use at the site of the surplus Federal real property;

(2) Considering the quality of each applicant's proposed program and plan of use; and

(3) Considering each applicant's ability to carry out its proposed program and plan of use.

(c) If the Secretary determines that the surplus Federal real property is capable of serving more than one applicant, the Secretary may apportion it to fit the needs of as many applicants as is practicable.

(d)(1) The Secretary generally transfers surplus Federal real property to a selected applicant that meets the requirements of this part.

(2) Alternatively, the Secretary may lease surplus Federal real property to a selected applicant that meets the requirements of this part if the Secretary determines that a lease will promote the most effective use of the property consistent with the purposes of this part or if having a lease is otherwise in the best interest of the United States, as determined by the Secretary.

(Authority: 40 U.S.C. 484(k))

§ 12.8 What transfer or lease instruments does the Secretary use?

(a) The Secretary transfers or leases surplus Federal real property using transfer or lease instruments that the Secretary prescribes.

(b) The transfer or lease instrument contains the applicable terms and conditions described in this part and any other terms and conditions the Secretary or Administrator determines are appropriate or necessary.

(Authority: 40 U.S.C. 484(c))

§ 12.9 What warranties does the Secretary give?

The Secretary transfers or leases surplus Federal real property on an "as is, where is," basis without warranty of any kind.

(Authority: 40 U.S.C. 484(k)(1))

§ 12.10 How is a Public Benefit Allowance (PBA) calculated?

(a) The Secretary calculates a PBA in accordance with the provisions of appendix A to this part taking into account the nature of the applicant, and the need for, impact of, and type of program and plan of use for the property, as described in that appendix.

(b) The following are illustrative examples of how a PBA would be calculated and applied under Appendix A:

(1) Entity A is a specialized school that has had a building destroyed by fire, and that has existing facilities determined by the Secretary to be between 26 and 50% inadequate. It is proposing to use the surplus Federal real property to add a new physical education program. Entity A would receive a basic PBA of 70%, a 10%

hardship organization allowance, a 20% allowance for inadequacy of existing school plant facilities, and a 10% utilization allowance for introduction of new instructional programs. Entity A would have a total PBA of 110%. If Entity A is awarded the surplus Federal real property, it would not be required to pay any cash for the surplus Federal real property, since the total PBA exceeds 100%.

(2) Entity B proposes to use the surplus Federal real property for nature walks. Because this qualifies as an outdoor educational program, Entity B would receive a basic PBA of 40%. If Entity B is awarded the surplus Federal real property, it would be required to pay 60% of the fair market value of the surplus Federal real property in cash at the time of the transfer.

(3) Entity C is an accredited university, has an ROTC unit, and proposes to use the surplus Federal real property for a school health clinic and for special education of the physically handicapped. Entity C would receive a basic PBA of 50% (as a college or university), a 20% accreditation organization allowance (accredited college or university), a 10% public service training organization allowance (ROTC), a 10% student health and welfare utilization allowance (school health clinic), and a 10% service to the handicapped utilization allowance (education of the physically handicapped). Entity C would have a total PBA of 100%. If Entity C is awarded the surplus Federal real property, it would not be required to pay any cash for the surplus Federal real property, since the total PBA is 100%.

(4) Entities A, B, and C all submit applications for the same surplus Federal real property. Unless the Secretary decides to apportion it, the Secretary transfers or leases the surplus Federal real property to Entity A, since its proposed program and plan of use has the highest total PBA.

(Authority: 40 U.S.C. 484(k)(1)(c))

Subpart C—Conditions Applicable to Transfers or Leases

§ 12.11 What statutory provisions and Executive Orders apply to transfers of surplus Federal real property?

The Secretary directs the transferee or lessee to comply with applicable provisions of the following statutes and Executive Orders prior to, or immediately upon, transfer or lease, as applicable:

(a) National Environmental Policy Act of 1969, 42 U.S.C. 4332.

(b) National Historic Preservation Act of 1966, 16 U.S.C. 470.

(c) National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*

(d) Floodplain Management, Exec. Order No. 11988, 42 FR 26951 (May 25, 1977).

(e) Protection of Wetlands, Exec. Order No. 11990, 42 FR 26961 (May 25, 1977).

(f) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d)(1) *et seq.*

(g) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*

(h) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 *et seq.*

(i) Age Discrimination Act of 1975, 42 U.S.C. 1601 *et seq.*

(j) Any other applicable Federal or State laws and Executive Orders.

(Authority: 40 U.S.C. 484(k))

(Approved by the Office of Management and Budget under control number 1880-0524)

§ 12.12 What are the terms and conditions of transfers or leases of surplus Federal real property?

(a) *General terms and conditions for transfers and leases.* The following general terms and conditions apply to transfers and leases of surplus Federal real property under this part:

(1) For the period provided in the transfer or lease instrument, the transferee or lessee shall use all of the surplus Federal real property it receives solely and continuously for its approved program and plan of use, in accordance with the Act and these regulations, except that—

(i) The transferee or lessee has twelve (12) months from the date of transfer to place this surplus Federal real property into use, if the Secretary did not, at the time of transfer, approve in writing construction of major new facilities or major renovation of the property;

(ii) The transferee or lessee has thirty-six (36) months from the date of transfer to place the surplus Federal real property into use, if the transferee or lessee proposes construction of major new facilities or major renovation of the property and the Secretary approves it in writing at the time of transfer; and

(iii) The Secretary may permit use of the surplus Federal real property at any time during the period of restriction by an entity other than the transferee or lessee in accordance with § 12.13.

(2) The transferee or lessee may not modify its approved program and plan of use without the prior written consent of the Secretary.

(3) The transferee or lessee may not sell, lease or sublease, rent, mortgage, encumber, or otherwise dispose of all or a portion of the surplus Federal real property or any interest therein without the prior written consent of the Secretary.

(4) A transferee or lessee shall pay all administrative costs incidental to the transfer or lease including, but not limited to—

- (i) Transfer taxes;
- (ii) Surveys;
- (iii) Appraisals;
- (iv) Inventory costs;
- (v) Legal fees;
- (vi) Title search;
- (vii) Certificate or abstract expenses;
- (viii) Decontamination costs;
- (ix) Moving costs;
- (x) Recordation expenses;
- (xi) Other closing costs; and
- (xii) Service charges, if any, provided for by an agreement between the Secretary and the applicable State agency for Federal Property Assistance.

(5) The transferee or lessee shall protect the residual financial interest of the United States in the surplus Federal real property by insurance or such other means as the Secretary directs.

(6) The transferee or lessee shall file with the Secretary reports on its maintenance and use of the surplus Federal real property and any other reports required by the Secretary in accordance with the transfer or lease instrument.

(7) Any other term or condition that the Secretary determines appropriate or necessary.

(b) *Additional terms and conditions for on-site transfers.* The terms and conditions in the transfer, including those in paragraph (a) of this section, apply for a period not to exceed thirty (30) years.

(c) *Additional terms and conditions for off-site transfers.* (1) The terms and conditions in the transfer, including those in paragraph (a) of this section, apply for a period equivalent to the estimated economic life of the property conveyed for a transfer of off-site surplus Federal real property.

(2) In addition to the terms and conditions contained in paragraph (c) of this section, the Secretary may also require the transferee of off-site surplus Federal real property—

- (i) To post performance bonds;
- (ii) To post performance guarantee deposits; or
- (iii) To give such other assurances as may be required by the Secretary or the holding agency to ensure adequate site clearance.

(d) *Additional terms and conditions for leases.* In addition to the terms and conditions contained in paragraph (a) of this section, the Secretary requires, for leases of surplus Federal real property, that all terms and conditions apply to the initial lease agreement, and any renewal periods, unless specifically excluded in writing by the Secretary.

(Authority: 40 U.S.C. 484(k)(1))

(Approved by the Office of Management and Budget under control number 1880-0524)

§ 12.13 When is use of the transferred surplus Federal real property by entities other than the transferee or lessee permissible?

(a) *By eligible entities.* A transferee or lessee may permit the use of all or a portion of the surplus Federal real property by another eligible entity as described in § 12.5, only upon those terms and conditions the Secretary determines appropriate if—

(1) The Secretary determines that the proposed use would not substantially limit the program and plan of use by the transferee or lessee and that the use will not unduly burden the Department;

(2) The Secretary's written consent is obtained by the transferee or lessee in advance; and

(3) The Secretary approves the use instrument in advance and in writing.

(b) *By ineligible entities.* A transferee or lessee may permit the use of a portion of the surplus Federal real property by an ineligible entity, one not described in § 12.5, only upon those terms and conditions the Secretary determines appropriate if—

(1) In accordance with paragraph (a) of this section, the Secretary makes the required determination and approves both the use and the use instrument;

(2) The use is confined to a portion of the surplus Federal real property;

(3) The use does not interfere with the approved program and plan of use for which the surplus Federal real property was conveyed; and

(4) Any rental fees or other compensation for use are either remitted directly to the Secretary or are applied to purposes expressly approved in writing in advance by the Secretary.

(Authority: 40 U.S.C. 484(k)(4))

Subpart D—Enforcement

§ 12.14 What are the sanctions for noncompliance with a term or condition of a transfer or lease of surplus Federal real property?

(a) *General sanctions for noncompliance.* The Secretary imposes any or all of the following sanctions, as applicable, to all transfers or leases of surplus Federal real property:

(1) If all or a portion of, or any interest in, the transferred or leased surplus Federal real property is not used or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of the Secretary, the Secretary may require that—

(i) All revenues and the reasonable value of other benefits received by the transferee or lessee directly or indirectly from that use, as determined by the Secretary, be held in trust by the transferee or lessee for the United States subject to the direction and control of the Secretary;

(ii) Title or possession to the transferred or leased surplus Federal real property and the right to immediate possession revert to the United States;

(iii) The surplus Federal real property be transferred or leased to another eligible entity as the Secretary directs;

(iv) The transferee or lessee abrogate the conditions and restrictions in the transfer or lease instrument in accordance with the provisions of § 12.15;

(v) The transferee or lessee place the surplus Federal real property into immediate use for an approved purpose and extend the period of restriction in the transfer or lease instrument for a term equivalent to the period during which the property was not fully and solely used for an approved use; or

(vi) The transferee or lessee comply with any combination of the sanctions described in paragraph (a)(1) or (a)(3) of this section.

(2) If title or possession reverts to the United States for noncompliance or is voluntarily reconveyed, the Secretary may require the transferee or lessee—

(i) To reimburse the United States for the decrease in value of the transferred or leased surplus Federal real property not due to—

(A) Reasonable wear and tear;

(B) Acts of God; or

(C) Reasonable alterations made by the transferee or lessee to adapt the

surplus Federal real property to the approved program and plan of use for which it was transferred or leased;

(ii) To reimburse the United States for any costs incurred in reverting title or possession;

(iii) To forfeit any cash payments made by the transferee or lessee against the purchase or lease price of surplus Federal real property transferred;

(iv) To take any other action directed by the Secretary; or

(v) To comply with any combination of the provisions of paragraph (a)(3) of this section.

(3) If the transferee or lessee does not put the surplus Federal real property into use within the applicable time limitation in § 12.12(a), the Secretary may require the transferee or lessee to make cash payments to the Secretary equivalent to the current fair market rental value of the surplus Federal real property for each month during which the program and plan of use has not been implemented.

(Authority: 40 U.S.C. 484(k)(4))

(4) If the Secretary determines that a lessee of a transferee or a sublessee of a lessee is not complying with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, the Secretary may require termination of the lease.

(Authority: 40 U.S.C. 484(k)(4)(A))

(b) *Additional sanction for noncompliance with off-site transfer.* In addition to the sanctions in paragraph (a) of this section, if the Secretary determines that a transferee is not complying with a term or condition of a transfer of off-site surplus Federal real property, the Secretary may require that

the unearned PBA become immediately due and payable in cash to the United States.

(Authority: 40 U.S.C. 484(k)(4)(A))

Subpart E—Abrogation

§ 12.15 What are the procedures for securing an abrogation of the conditions and restrictions contained in the conveyance instrument?

(a) The Secretary may, in the Secretary's sole discretion, abrogate the conditions and restrictions in the transfer or lease instrument if—

(1) The transferee or lessee submits to the Secretary a written request that the Secretary abrogate the conditions and restrictions in the conveyance instrument as to all or any portion of the surplus Federal real property;

(2) The Secretary determines that the proposed abrogation is in the best interests of the United States;

(3) The Secretary determines the terms and conditions under which the Secretary will consent to the proposed abrogation; and

(4) The Secretary transmits the abrogation to the Administrator and there is no disapproval by the Administrator within thirty (30) days after notice to the Administrator.

(b) The Secretary abrogates the conditions and restrictions in the transfer or lease instrument upon a cash payment to the Secretary based on the formula contained in the transfer or lease instrument and any other terms and conditions the Secretary deems appropriate to protect the interest of the United States.

(Authority: 40 U.S.C. 484(k)(4)(A)(iii))

APPENDIX A TO PART 12.—PUBLIC BENEFIT ALLOWANCE FOR TRANSFER OF SURPLUS FEDERAL REAL PROPERTY FOR EDUCATIONAL PURPOSES¹

Classification	Percent allowed												Maximum public benefit allowance ⁴
	Basic public benefit allowance	Organization allowances							Utilization allowances				
		Accreditation	Federal Impact	Public service training	Hardship	Inadequacy of existing school plant facilities			Introduction of new instructional programs	Student health and welfare	Research	Service to handicapped	
						10-25%	26-50%	51-100%					
Elementary or high schools	70	.....	10	10	10	10	20	30	10	10	10	10	100
Colleges or Universities	50	20	.....	10	10	10	20	30	10	10	10	10	100
Specialized schools	70	.....	.....	10	10	10	20	30	10	10	10	10	100
Public libraries or educational museums	² 100	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	² 100
School outdoor education	40	.....	.....	.....	.....	.....	.....	.....	10	³ 10	10	.....	70
Central administrative and/or service centers	80	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	80
Non-profit educational research organizations	50	20	.....	10	.....	.....	.....	.....	10	10	.....	10	100

¹ This Appendix applies to transfers of both on-site and off-site surplus property.
² Applicable when this is the primary use to be made of the property. The public benefit allowance for the overall program is applicable when such facilities are conveyed as a minor component of other facilities.
³ This 10% may include an allowable recreation program which will be accessible to the public and entirely compatible with, but subordinate to, the educational program.
⁴ This column establishes the maximum discount from the fair market value for payment due from the transferee at the time of the transfer. This column does not apply for purposes of ranking applicants to determine to which applicant the property will be transferred. Competitive rankings are based on the absolute total of public benefit allowance points and are not limited to the 100% ceiling.

Description of Terms Used in This Appendix

"Elementary or High School" means an elementary school (including a kindergarten), high school, junior high school, junior-senior high school or elementary or secondary school system, that provides elementary or secondary education as determined under State law. However, it does not include a nursery school even though it may operate as part of a school system.

"College or University" means a non-profit or public university or college, including a junior college, that provides postsecondary education.

"Specialized School" means a vocational school, area trade school, school for the blind, or similar school.

"Public Library" means a public library or public library service system, not a school library or library operated by non-profit, private organizations or institutions that may be open to the general public. School libraries receive the public benefit allowance in the appropriate school classification.

"Educational Museum" means a museum that conducts courses on a continuing, not ad hoc, basis for students who receive credits from accredited postsecondary education institutions or school systems.

"School Outdoor Education" means a separate facility for outdoor education as distinguished from components of a basic school. Components of a school such as playgrounds and athletic fields receive the basic allowance applicable for that type of school. The outdoor education must be located reasonably near the school system and may be open to and used by the general public, but only if the educational program for which the property is conveyed is given priority of use. This category does not include components of the school such as playgrounds and athletic fields, that are utilized during the normal school year, and are available to all students.

"Central Administrative and/or Service Center" means administrative office space,

equipment storage areas, and similar facilities.

Description of Allowances

"Basic Public Benefit Allowance" means an allowance that is earned by an applicant that satisfies the requirements of § 12.10 of this part.

Organization Allowance

"Accreditation" means an allowance that is earned by any postsecondary educational institution, including a vocational or trade school, that is accredited by an accrediting agency recognized by the Secretary under 34 CFR part 602.

"Federal Impact" means an allowance that is earned by any local educational agency (LEA) qualifying for Federal financial assistance as the result of the impact of certain Federal activities upon a community, such as the following under Public Law 81-874 and Public Law 81-815: to any LEA charged by law with responsibility for education of children who reside on, or whose parents are employed on, Federal property, or both; to any LEA to which the Federal Government has caused a substantial and continuing financial burden as the result of the acquisition of a certain amount of Federal property since 1938; or to any LEA that urgently needs minimum school facilities due to a substantial increase in school membership as the result of new or increased Federal activities.

"Public Services Training" means an allowance that is earned if the applicant has cadet or ROTC units or other personnel training contracts for the Federal or State governments. This is given to a school system only if the particular school receiving the property furnishes that training.

"Hardship" means an allowance earned by an applicant that has suffered a significant facility loss because of fire, storm, flood, other disaster, or condemnation. This allowance is also earned if unusual

conditions exist such as isolation or economic factors that require special consideration.

"Inadequacies of Existing Facilities" means an allowance that is earned on a percentage basis depending on the degree of inadequacy considering both public and nonpublic facilities. Overall plant requirements are determined based on the relationship between the maximum enrollment accommodated in the present facilities, excluding double and night sessions and the anticipated enrollment if the facilities are transferred. Inadequacies may be computed for a component school unit such as a school farm, athletic field, facility for home economics, round-out school site, cafeteria, auditorium, teacherages, faculty housing, etc., only if the component is required to meet State standards. In that event, the State Department of Education will be required to provide a certification of the need. Component school unit inadequacies may only be related to a particular school and not to the entire school system.

Utilization Allowances

"Introduction of New Instructional Programs" means an allowance that is earned if the proposed use of the property indicates that new programs will be added at a particular school. Examples of these new programs include those for vocational education, physical education, libraries, and similar programs.

"Student Health and Welfare" means an allowance that is earned if the proposed program and plan of use of the property provides for cafeteria, clinic, infirmary, bus loading shelters, or other uses providing for the well-being and health of students and eliminating safety and health hazards.

"Research" means an allowance that is earned if the proposed use of the property will be predominantly for research by faculty or graduate students under school auspices, or other primary educational research.

"Service to Handicapped" means an allowance that is earned if the proposed program and plan of use for the property will

be for special education for the physically or mentally handicapped.

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FRIDAY DECEMBER 18, 1992

Friday
December 18, 1992

Part IV

Department of Transportation

Coast Guard

33 CFR Parts 155 and 157

46 CFR Part 30, et al.

Double Hull Standards for Vessels
Carrying Oil in Bulk; Reopening of
Comment Period; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 155 and 157; 46 CFR Parts 30, 32, 70, 90, and 172

[CGD 90-051]

RIN 2115-AD61

Double Hull Standards for Vessels Carrying Oil in Bulk

AGENCY: Coast Guard, DOT.

ACTION: Interim Final Rule; reopening of comment period.

SUMMARY: The Coast Guard is reopening the public comment period for this rulemaking which was published on August 12, 1992 (57 FR 36222). This action is being taken to provide the public the opportunity to further comment on: (1) Existing double hull vessel design requirements; and (2) double hull requirements for non-traditional tank vessels carrying oil in bulk.

DATES: Comments must be received on or before February 26, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council, (G-LRA-2/3406) [CGD 90-051]; U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Gauvin, Project Manager, Merchant Vessel Inspection and Documentation Division (G-MVI-2), telephone (202) 267-1181.

SUPPLEMENTARY INFORMATION:**Request for Comments**

The Coast Guard encourages interested persons to submit written data, views, or arguments. Persons submitting comments should include their name, address, identify this rulemaking (CGD 90-051), the specific section of the proposal or related documents to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments currently in the public

docket, including comments received after the initial comment period was closed, and all additional comments received during this comment period. The proposal may be changed in view of the comments.

The Coast Guard plans no public hearing. However, persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it is determined that the opportunity to make oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the *Federal Register*.

Background and Discussion

Section 4115 of the Oil Pollution Act of 1990 (Pub. L. 101-380) (OPA 90) added section 3703a to title 46 U.S.C. Code. Section 3703a(a) requires a double hull to be fitted on a vessel carrying oil in bulk as cargo or cargo residue. A vessel that is constructed or undergoes a major conversion under a contract placed on or after June 30, 1990, must have a double hull fitted at the time of construction or major conversion. An existing vessel that is constructed or that undergoes a major conversion under an earlier contract must be fitted with a double hull in accordance with a timetable in 46 U.S.C. 3703a(c)(3), which commences in 1995.

Section 3703a does not provide technical standards for a double hull. The Interim Final Rule (IFR) provided the shipping and shipbuilding industries with standards in order to meet the double hull requirement.

On September 21, 1990, the Coast Guard issued Navigation and Vessel Inspection Circular (NVIC) No. 2-90. This NVIC provides policy guidance on double hull construction for a vessel undergoing construction or major conversion under a contract awarded prior to the effective date of this rule. A vessel which is built to plans that have been approved in accordance with NVIC 2-90 under a contract awarded before the effective date of this rule, September 11, 1992, will satisfy the double hull requirements in the IFR. NVIC 2-90 may not be used for a vessel which undergoes construction or major conversion under a contract awarded on or after the effective date of the IFR, September 11, 1992.

On December 5, 1990, the Coast Guard published a notice of proposed rulemaking (55 FR 50192) to implement the double hull requirements of OPA 90. This proposal included standards to define the double hulls that OPA 90 requires to be fitted on all tank vessels built or converted under contracts awarded on or after June 30, 1990. OPA

90 requires tank vessels built or converted under earlier contracts to be retrofitted with double hulls according to a timetable that begins in 1995 and ends in 2015. The notice of proposed rulemaking requested comments from the public for a period which closed on April 1, 1991.

On September 6, 1991, the Coast Guard reopened the comment period for the notice of proposed rulemaking (56 FR 44051) until October 7, 1991, due to two subsequent events which had major impact upon the Coast Guard's proposal for rulemaking. These were the publishing of the National Academy of Science's study, "Tanker Spills: Prevention by Design," on February 25, 1991, and the 31st Session of the International Maritime Organization's (IMO) Marine Environment Protection Committee's (MEPC) approval of a draft Regulation 13F (MEPC 31/MP.11, Annex 2) as an amendment to Annex I of MARPOL 73/78 on July 5, 1991. The draft was then circulated to IMO's member states for consideration. Regulation 13F proposed the international standards for new construction or major conversion of vessels to double hull design. Also approved at MEPC 31, was a draft of Regulation 13G (MEPC 31/WP.11, Annex 3, paragraph 2), which proposed requirements for double hull construction or equivalence for existing vessels.

On March 6, 1992, the MEPC adopted Regulations 13F and 13G to Annex I of MARPOL 73/78 at its 32nd Session. The United States reserved its position during the adoption of Regulations 13F and 13G, due to differences with OPA 90 regarding the applicability of double hull requirements to certain categories of vessels and the allowance of the mid-deck concept as an alternative to the double hull. To assist the public in understanding the differences between the adopted international rules and the IFR, the adopted international regulations were reprinted as an appendix in the preamble of the IFR.

On April 2, 1992, the Coast Guard issued NVIC 4-92. This NVIC provides policy guidance on intact and damage stability for the construction of new tank vessels.

On August 12, 1992, the Coast Guard published the IFR on double hull standards for vessels carrying oil in bulk. This rule provided the marine industry with standards, not provided in OPA 90, for new vessels to meet the double hull requirements. The effective date of the IFR was September 11, 1992. The comment period for the IFR closed on October 13, 1992.

As a result of comments received between August 12 and October 13, the Coast Guard is reopening the comment period to allow the public to further comment on the effect double hull standards have on existing double hulled vessels, as discussed in paragraph 15 of the IFR (57 FR 36226). Paragraph 15 states that the Coast Guard concurred with comments that existing double hulled tank vessels be permitted to continue operating even if such vessels do not meet the dimensions adopted in the IFR for new tank vessels. Therefore, the Coast Guard incorporated § 157.10d(c)(1)(iii), (c)(2)(iii), and (d)(3) providing these existing vessels with double hull dimensions consistent with their existing construction. These are double hulled vessels and barges that were built before June 30, 1990, that carry oil in bulk under existing industry design standards. The Coast Guard is specifically interested in knowing how many existing double hull vessels will be effected by the vessel design

standards in § 157.10d(c)(1)(iii), (c)(2)(iii), and (d)(3).

As a note, the Coast Guard wishes to again clarify that the IFR also applies to dry or break bulk cargo, or passenger vessels, which carry oil as a secondary cargo. Subject to the exemptions in 46 U.S.C. 3702, the Oil Pollution Act of 1990 applies double hull requirements to a tank vessel, as defined in 46 U.S.C. 2101(39). Section 2101(39) provides that a tank vessel is a vessel constructed or adapted to carry, or that carries, oil or hazardous materials in bulk as cargo or cargo residue, and is a vessel of the United States; operates on the navigable waters of the United States; or transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States. Section 2101(39) includes a vessel that carries any quantity of oil in bulk as cargo, including tank barge, a tanker as defined in 47 U.S.C. 2101(38), and a vessel certified as a cargo or passenger vessel that carries limited quantities of oil in bulk.

On November 4, 1992, the Coast Guard Authorization Act of 1992, was signed into law as title V of Public Law 102-587. Section 5209 of the Coast Guard Authorization Act, titled "Tank Vessel Definition Clarification," referred to offshore supply vessel, fish tender vessel, fishing vessel and tank vessel, as defined in 46 U.S.C. 2101 and provides that offshore supply vessels are not included within the definition of "tank vessels." Additionally, fishing or fish tender vessels of not more than 750 gross tons that make transfers without charge to another vessel owned by the same person are also excluded from the definition of "tank vessels."

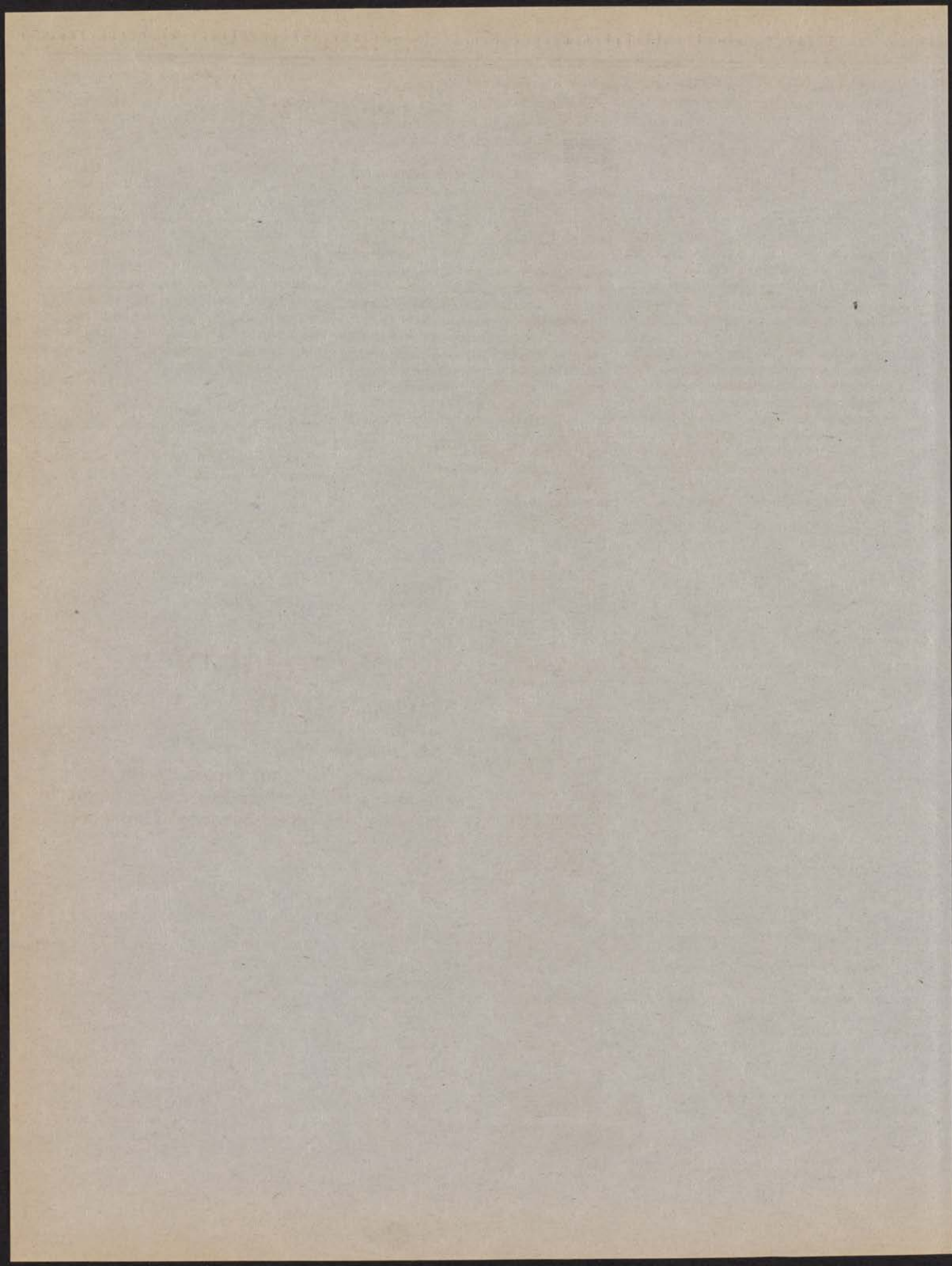
Dated: November 29, 1992.

A. E. Henn,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

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Friday
December 18, 1992

Estimated
Federal
Funding

Part V

**Department of
Education**

34 CFR Part 206

**Special Educational Programs for
Students Whose Families Are Engaged in
Migrant and Other Seasonal Farmwork;
Final Regulations**

DEPARTMENT OF EDUCATION

34 CFR Part 206

RIN 1810-AA58

Special Educational Programs for Students Whose Families Are Engaged in Migrant and Other Seasonal Farmwork—High School Equivalency Program and College Assistance Migrant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP). These regulations implement statutory changes enacted in the Higher Education Amendments of 1992 and make other technical revisions to the existing regulations. These programs support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. Specifically, National Education Goal 5 calls for Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. These programs advance this goal by helping migrant youth, through their participation in HEP and CAMP projects, to obtain the skills and competencies needed for their success in and beyond the secondary school level.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Lorraine Wise, Office of Migrant Education, Department of Education, 400 Maryland Avenue, SW, room 2149, Mail Stop 6135, Washington, DC 20202. Telephone: (202) 401-0744. Deaf and hearing impaired individuals may call (202) 401-1985 for TDD services.

SUPPLEMENTARY INFORMATION: These regulations implement changes to HEP and CAMP required by section 405 of the Higher Education Amendments of 1992 (Pub. L. 102-325), enacted July 23, 1992, and make other technical revisions to the existing regulations. There are no substantive changes made in these final regulations other than those required by the statute. Significant statutory changes include the following:

Expansion of Program Eligibility

The minimum age for participation in HEP has been lowered from 17 to 16 years of age (§ 206.3(b)). Eligible participants in both the HEP and CAMP now include persons who have participated (in the case of HEP, within the preceding two years) or are eligible to participate in programs funded under 34 CFR part 201 (Chapter 1—Migrant Education Program) or 20 CFR part 633 (Employment and Training Administration, Department of Labor—Migrant and Seasonal Farmworker Programs (§ 206.3(a)). Definitions of terms that concern eligibility on the basis of these two programs are incorporated into these regulations in § 206.5(d).

Expansion of Program Services

Grantees under CAMP now may not use more than 10 percent of their funding for follow-up services to participants who have completed their first year of college (§ 206.11).

Increase in the Project Period for Awards

The maximum project period for HEP and CAMP awards has been increased from three to five years (§ 206.20(b)).

Other Technical Revisions

These regulations also make other technical revisions to the existing regulations. They clarify, as does the statute, that only a migrant or seasonal farmworker or a farmworker's child can qualify for eligibility (§ 206.3(a)). In addition, 34 CFR parts 81, 82, 85, and 86 of the Education Department General Administrative Regulations (EDGAR), which apply on their own terms to this program, have been added as applicable regulations. Furthermore, 34 CFR part 78 has been deleted as no longer applicable (§ 206.4).

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these regulations incorporate only statutory changes and other technical revisions and public comment would have no effect on these changes. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These 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.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Department has determined that the regulations in this document do not 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 206

Colleges and universities, Education, Education of the disadvantaged, Grant programs—education, Migrant labor.

(Catalog of Federal Domestic Assistance Numbers: 84.141 Migrant Education—High School Equivalency Program; and 84.149 Migrant Education—College Assistance Migrant Program)

Dated: November 30, 1992.

Lamar Alexander,
Secretary of Education.

The Secretary amends part 206 of title 34 of the Code of Federal Regulations as follows:

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY AND COLLEGE ASSISTANCE MIGRANT PROGRAM

1. The authority citation for part 206 is revised to read as follows:

Authority: 20 U.S.C. 1070d-2, unless otherwise noted.

§ 206.1 [Amended]

2. In § 206.1, paragraphs (a) and (b) are amended by removing "students—who are engaged, or whose families are engaged, in migrant and other seasonal farmwork—" and adding, in its place, "persons who are eligible under § 206.3".

3. Section 206.3 is amended by revising paragraphs (a), (b), introductory text, and (c), to read as follows:

§ 206.3 Who is eligible to participate in a project?

(a) *General*. To be eligible to participate in a HEP or a CAMP project—

(1) A person, or his or her parent, must have spent a minimum of 75 days during the past 24 months as a migrant or seasonal farmworker; or

(2) The person must have participated (with respect to HEP within the last 24 months), or be eligible to participate, in programs under 34 CFR part 201 (Chapter 1—Migrant Education Program) or 20 CFR part 633 (Employment and Training Administration, Department of Labor—Migrant and Seasonal Farmworker Programs).

(b) *Special HEP qualifications*. To be eligible to participate in a HEP project, a person also must—

* * * * *

(3) Be 16 years of age or over, or beyond the age of compulsory school attendance in the State in which he or she resides; and

* * * * *

(c) *Special CAMP qualifications*. To be eligible to participate in a CAMP project, a person also must—

* * * * *

4. Section 206.4 is amended by revising paragraph (a) to read as follows:

§ 206.4 What regulations apply to these programs?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 81 (General Educational Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this Part 206.

* * * * *

5. Section 206.5 is amended by adding paragraph (d) to read as follows:

§ 206.5 What definitions apply to these programs?

* * * * *

(d) *Other definitions*. For purposes of determining program eligibility under § 206.3(a)(2), the definitions in 34 CFR 201.3 (Chapter 1—Migrant Education Program) and 20 CFR 633.104 (Employment and Training Administration, Department of Labor—Migrant and Seasonal Farmworker Programs) apply.

6. Section 206.10 is amended by revising paragraphs (b)(1)(i) and (b)(2)(i) to read as follows:

§ 206.10 What types of services may be provided?

* * * * *

(b) * * *

(1) * * *

(i) Recruitment services to reach persons who are eligible under § 206.3 (a) and (b).

* * * * *

(2) * * *

(i) Outreach and recruitment services to reach persons who are eligible under § 206.3 (a) and (c).

* * * * *

7. A new § 206.11 is added to subpart B to read as follows:

§ 206.11 What types of CAMP services must be provided?

(a) In addition to the services provided in § 206.10(b)(2), CAMP projects must provide follow-up services for project participants after they have completed their first year of college.

(b) Follow-up services may include—

(1) Monitoring and reporting the academic progress of students who participated in the project during their first year of college and their subsequent years in college; and

(2) Referring these students to on- or off-campus providers of counseling services, academic assistance, or financial aid.

(c) Grantees may not use more than 10 percent of funds awarded to them for follow-up services.

(Authority: 20 U.S.C. 1070d-2(c))

§ 206.20 [Amended]

8. Section 206.20(b)(1) is amended by removing the word "three", and adding, in its place, the word "five".

[FR Doc. 92-30588 Filed 12-17-92; 8:45 am]

BILLING CODE 4000-01-M