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the agency to protect Federal funds involving such a school or holder.

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§ 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)–(m) 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.* (1) 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 by the deadlines specified in § 682.209(a), 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, except as provided in § 682.209(a)(2)(v) and (a)(3)(ii)(E). 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.

(2) At no point during the periods specified in paragraphs (c) and (d) of this section 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).

(c) *1–15 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. The notice or collection letter sent during this period must include, at a minimum, a lender/servicer contact and telephone number, and a prominent statement informing the borrower that assistance may be available if he or she is experiencing difficulty in making a scheduled repayment.

(d) *16–180 days delinquent (16–240 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 phone must occur before, and another one must occur after, the 90th day of delinquency. The collection letters sent during this period must include, at a minimum, information for the borrower regarding deferment, forbearance, income-sensitive repayment and loan consolidation and other available options to avoid default.

(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 institute proceedings to offset the borrower's state and Federal income tax refunds and other payments made by the Federal Government to a borrower or to garnish the borrower's wages, or assign the loan to the Federal Government for litigation against the borrower.

(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, correct telephone number, 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, correct telephone number, or returned check, or expiration of the deferment of 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, or correct telephone number 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.

(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 (l)(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 and may be in writing or by phone calls. 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)(1) through (k)(3) and (k)(5) 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)(i) or (ii) 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;

(iii) The day on which the lender receives written communication from the borrower relating to his or her account; or

(iv) 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)(1) of this section, to locate a borrower whose correct address or telephone number 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 telephone number before the 120th day of delinquency (the 150th day for loans repayable in installments less frequent than monthly).

(3) The activities specified by paragraphs (l)(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.

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§ 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