Another prior section 1069c, Pub. L. 89–329, title III, § 347, as added Pub. L. 96–374, title III, § 301, Oct. 3, 1980, 94 Stat. 1400, and Pub. L. 98–95, § 3, Sept. 26, 1983, 97 Stat. 711; Pub. L. 98–312, § 1, June 12, 1984, 98 Stat. 233, authorized appropriations to carry out parts A to C of this subchapter, prior to the general amendment of this subchapter by Pub. L. 99–498.

A prior section 1069d, Pub. L. 89–329, title III, § 358, as added Pub. L. 99–498, title III, § 301(a), Oct. 17, 1986, 100 Stat. 1307, which related to penalties, was renumbered section 397 of Pub. L. 89–329 by Pub. L. 105–244, title III, § 301(a)(2), Oct. 7, 1998, 112 Stat. 1636, and transferred to section 1068f of this title.

A prior section 1069e, Pub. L. 89–329, title III, § 359, as added Pub. L. 99–498, title III, § 301(a), Oct. 17, 1986, 100 Stat. 1307, required application for challenge grant, prior to repeal by Pub. L. 102–325, § 2, title III, § 305(c), July 23, 1992, 106 Stat. 458, 478, effective Oct. 1, 1992.

A prior section 1069f, Pub. L. 89–329, title III, § 360, as added Pub. L. 99–498, title III, § 301(a), Oct. 17, 1986, 100 Stat. 1307, and amended, which authorized appropriations, was renumbered section 399 of Pub. L. 89–329 by Pub. L. 105–244, title III, § 301(a)(2), Oct. 7, 1998, 112 Stat. 1636, and transferred to this section.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–315 amended subsec. (a) generally. Prior to amendment, subsec. (a) related to authorizations for parts A to E for fiscal year 1999 and each of the 4 succeeding fiscal years.

1998—Subsec. (a)(1)(A). Pub. L. 105–244, § 308(h)(1)(A), substituted ''1999'' for ''1993''.

Subsec. (a)(1)(B). Pub. L. 105–244, § 308(h)(1)(B), redesignated cl. (i) as entire subpar., substituted ''$10,000,000 for fiscal year 1999'' for ''$45,000,000 for fiscal year 1993'', and struck out cl. (ii) which read as follows: ''No funds are authorized to be appropriated pursuant to clause (i) for any fiscal year unless the amount appropriated pursuant to paragraph (1)(A) for such fiscal year equals or exceeds $80,000,000.''

Subsec. (a)(1)(C). Pub. L. 105–244, § 308(h)(1)(C), added subpar. (C).

Subsec. (a)(2)(A). Pub. L. 105–244, § 308(h)(2)(A), substituted ''1999'' for ''1993''.

Subsec. (a)(2)(B). Pub. L. 105–244, § 308(h)(2)(B), substituted ''$35,000,000 for fiscal year 1999'' for ''$20,000,000 for fiscal year 1993''.

Subsec. (a)(3). Pub. L. 105–244, § 308(h)(3), substituted ''$10,000,000 for fiscal year 1999'' for ''$50,000,000 for fiscal year 1993''.

Subsec. (a)(4), (5). Pub. L. 105–244, § 308(h)(4), added pars. (4) and (5).

Subsec. (c). Pub. L. 105–244, § 308(h)(5), struck out heading and text of subsec. (c). Text read as follows: ''If the amount appropriated under subsection (a)(1) of this section for part A of this subchapter for any fiscal year beginning after September 30, 1986, equals or exceeds the amount appropriated for such part for fiscal year 1986, the Secretary shall, for such fiscal year—

''(1) allocate 25 percent of the excess (above the amount appropriated for part A of this subchapter for fiscal year 1986) among eligible institutions at which at least 60 percent of the students are African Americans, Hispanic Americans, Native Americans, Asian Americans, Native Hawaiians, or Pacific Islanders, or any combination thereof; and

''(2) allocate 75 percent of such excess among other eligible institutions.''

Subsec. (d). Pub. L. 105–244, § 308(h)(5), struck out heading and text of subsec. (d). Text read as follows: ''In any fiscal year in which the sums appropriated for part A of this subchapter are insufficient to make the reservations required by subsection (c) of this section, the Secretary shall ratably reduce the amount of the reservation.''

Subsec. (e). Pub. L. 105–244, § 308(h)(5), struck out heading and text of subsec. (e). Text read as follows: ''In any fiscal year beginning after September 30, 1992, the Secretary shall award at least 25 percent of the amount appropriated pursuant to the authority of paragraph (3) of subsection (a) of this section in each fiscal year to historically black colleges and universities that meet the requirements of part C of this subchapter, unless there are an insufficient number of quality applications or an insufficient number of applications due to the provisions in subsection (b)(2)(C) or subsection (b)(4)(B) of section 1065 of this title.''

1992—Subsec. (a). Pub. L. 102–325, § 305(e), amended subsec. (a) generally, substituting present provisions for provisions authorizing appropriations for fiscal year 1987 and the four succeeding fiscal years.

Subsec. (c). Pub. L. 102–325, § 305(f), substituted ''1986, the Secretary shall, for such fiscal year—'' for ''1986—'' in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) and (2) which read as follows:

''(1) the Secretary shall, for such fiscal year, make available for use for the purposes of part A of this subchapter to institutions that are junior or community colleges not less than $51,400,000; and

''(2) the Secretary shall, for such fiscal year—

''(A) allocate 25 percent of the excess (above the amount appropriated for part A of this subchapter for fiscal year 1986) among eligible institutions with the highest percentages of students who are Black Americans, Hispanic Americans, Native Americans, Asian Americans, Native Hawaiians, or Pacific Islanders, or any combination thereof; and

''(B) allocate 75 percent of such excess among other eligible institutions.''

Subsec. (e). Pub. L. 102–325, § 305(g), added subsec. (e).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of this title.

SUBCHAPTER IV—STUDENT ASSISTANCE

PART A—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION

CODIFICATION

Part A of title IV of the Higher Education Act of 1965, comprising this part, was originally enacted by Pub. L. 89–329, title IV, Nov. 8, 1965, 79 Stat. 1232, and amended by Pub. L. 92–318, June 23, 1972, 86 Stat. 235; Pub. L. 93–380, Aug. 21, 1974, 88 Stat. 484; Pub. L. 94–328, June 30, 1976, 90 Stat. 727; Pub. L. 94–482, Oct. 12, 1976, 90 Stat. 2081; Pub. L. 95–43, June 15, 1977, 91 Stat. 213; Pub. L. 95–336, Aug. 4, 1978, 92 Stat. 451; Pub. L. 95–566, Nov. 1, 1978, 92 Stat. 2402; Pub. L. 96–49, Aug. 13, 1979, 93 Stat. 351; Pub. L. 96–374, Oct. 3, 1980, 94 Stat. 1367; Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322; Pub. L. 97–301, Oct. 13, 1982, 96 Stat. 1400; Pub. L. 98–558, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99–145, Nov. 8, 1985, 99 Stat. 583. Such part is shown herein, however, as having been added by Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1308, without reference to such intervening amendments because of the extensive revision of part A by Pub. L. 99–498.

§ 1070. Statement of purpose; program authorization

(a) Purpose

It is the purpose of this part, to assist in making available the benefits of postsecondary education to eligible students (defined in accordance with section 1091 of this title) in institutions of higher education by—

(1) providing Federal Pell Grants to all eligible students;

(2) providing supplemental educational opportunity grants to those students who demonstrate financial need;

(3) providing for payments to the States to assist them in making financial aid available to such students;

(4) providing for special programs and projects designed (A) to identify and encourage qualified youths with financial or cultural need with a potential for postsecondary education, (B) to prepare students from low-income families for postsecondary education, and (C) to provide remedial (including remedial language study) and other services to students; and

(5) providing assistance to institutions of higher education.

(b) Secretary required to carry out purposes

The Secretary shall, in accordance with subparts 1 through 9 of this part, carry out programs to achieve the purposes of this part.

(Pub. L. 89–329, title IV, § 400, formerly § 401, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1308; renumbered § 400, Pub. L. 102–325, title IV, § 402(a)(3), July 23, 1992, 106 Stat. 482; amended Pub. L. 105–244, title IV, § 401(g)(1), Oct. 7, 1998, 112 Stat. 1652; Pub. L. 111–39, title IV, § 401(a)(1), July 1, 2009, 123 Stat. 1938.)

PRIOR PROVISIONS

A prior section 1070, Pub. L. 89–329, title IV, § 401, as added and amended Pub. L. 92–318, title I, § 131(b)(1), title X, § 1001(c)(1), (2), June 23, 1972, 86 Stat. 247, 381; Pub. L. 94–482, title I, § 125, Oct. 12, 1976, 90 Stat. 2096; Pub. L. 96–374, title IV, § 401, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1401, 1503, stated purpose of program of grants to students in attendance at institutions of higher education, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2009—Subsec. (b). Pub. L. 111–39 substituted ''1 through 9'' for ''1 through 8''.

1998—Subsec. (a)(1). Pub. L. 105–244 substituted ''Federal Pell Grants'' for ''basic educational opportunity grants''.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

HIGHER EDUCATION RELIEF OPPORTUNITIES FOR STUDENTS

Pub. L. 108–76, §§ 1–5, Aug. 18, 2003, 117 Stat. 904, formerly set out in a note under this section, was transferred to part F–1 (§ 1098aa et seq.) of this subchapter. Pub. L. 108–76, § 6, Aug. 18, 2003, 117 Stat. 908, as amended by Pub. L. 109–78, § 1, Sept. 30, 2005, 119 Stat. 2043, formerly set out in the same note under this section, which provided for termination of Pub. L. 108–76 on Sept. 30, 2007, was repealed by Pub. L. 110–93, § 2, Sept. 30, 2007, 121 Stat. 999.

Pub. L. 107–122, Jan. 15, 2002, 115 Stat. 2386, known as the Higher Education Relief Opportunities for Students Act of 2001, authorized the Secretary of Education to waive or modify statutory or regulatory provisions applicable to the student financial aid programs under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.) as deemed necessary because of a national emergency, provided sense of Congress as to tuition refunds from institutions of postsecondary education, and provided that the Act ceased to be effective Sept. 30, 2003.

COMMUNITY SCHOLARSHIP MOBILIZATION

Pub. L. 105–244, title VIII, part C, Oct. 7, 1998, 112 Stat. 1810, known as the Community Scholarship Mobilization Act, which established regional, State and community program centers to foster development of local entities in high poverty areas that promote higher education goals for low-income students with academic support and scholarship assistance for postsecondary education, was repealed by Pub. L. 110–315, title IX, § 931(2), Aug. 14, 2008, 122 Stat. 3456.

COMMUNITY SCHOOL PARTNERSHIPS

Pub. L. 103–382, title V, part B, Oct. 20, 1994, 108 Stat. 4045, which provided for grants to establish community centers giving academic support and postsecondary scholarships to poor students, was repealed by Pub. L. 105–277, div. A, § 101(f) [title VIII, § 301(a)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–410.

STUDY OF FEDERAL BENEFIT COORDINATION

Section 1405 of Pub. L. 102–325 directed Secretary of Education to conduct a study to evaluate the coordination of Federal student financial assistance programs under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq.; 42 U.S.C. 2751 et seq.] with other programs funded in whole or in part with Federal funds, with Secretary to prepare and submit to appropriate committees of Congress a report on the study not later than 3 years after July 23, 1992, together with such recommendations as the Secretary deemed appropriate, prior to repeal by Pub. L. 105–332, § 6(b)(2), Oct. 31, 1998, 112 Stat. 3128.

OLYMPIC SCHOLARSHIPS

Pub. L. 102–325, title XV, § 1543, July 23, 1992, 106 Stat. 836, as amended by Pub. L. 105–244, title VIII, § 836, Oct. 7, 1998, 112 Stat. 1820; Pub. L. 106–554, § 1(a)(1) [title III, § 319], Dec. 21, 2000, 114 Stat. 2763, 2763A–49; Pub. L. 107–116, title III, § 305(a), Jan. 10, 2002, 115 Stat. 2208; Pub. L. 110–315, title IX, § 934, Aug. 14, 2008, 122 Stat. 3460, provided that:

''(a) SCHOLARSHIPS AUTHORIZED.—

''(1) IN GENERAL.—The Secretary of Education is authorized to provide financial assistance to the United States Olympic Education Center or the United States Olympic Training Center to enable such centers to provide financial assistance to athletes who are training at such centers and are pursuing postsecondary education at institutions of higher education (as such term is defined in section 481(a) of the Higher Education Act of 1965 [20 U.S.C. 1088(a)]).

''(2) AWARD DETERMINATION.—The amount of the financial assistance provided to an athlete described in paragraph (1) shall be determined in accordance with criteria, and in amounts, specified in the application of the center under subsection (c). Such assistance shall not exceed the athlete's cost of attendance as determined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*).

''(3) INFORMATION ON DISTRIBUTION OF ASSISTANCE.—Each center providing such assistance shall annually report to the Secretary such information as the Secretary may reasonably require on the distribution of such assistance among athletes and institutions of higher education. The Secretary shall compile such reports and submit them to the Committees on Education and the Workforce and Appropriations of the House of Representatives and the Committees on Health, Education, Labor, and Pensions and Appropriations of the Senate.

''(b) ELIGIBILITY.—The Secretary of Education shall ensure that financial assistance provided under this

part [part E (§1543) of Pub. L. 102–325] is available to both full-time and part-time students who are athletes at centers described in subsection (a).

''(c) APPLICATION.—Each center desiring financial assistance under this section shall submit an application to the Secretary of Education at such time, in such manner and accompanied by such information as the Secretary may reasonably require.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years to carry out this section.

''(e) DESIGNATION.—Scholarships awarded under this section shall be known as 'B.J. Stupak Olympic Scholarships'.''

[Pub. L. 107–116, title III, §305(b), Jan. 10, 2002, 115 Stat. 2208, provided that: ''The amendments made by subsection (a) [amending section 1543 of Pub. L. 102–325, set out above] shall apply with respect to any funds appropriated pursuant to section 1543(d) of the Higher Education Amendments of 1992 [section 1543(d) of Pub. L. 102–325, set out above], including funds appropriated pursuant to that section in fiscal years 2000 and 2001, that are available for financial assistance under section 1543 on or after the date of enactment of this Act [Jan. 10, 2002].''']

PERSIAN GULF CONFLICT HIGHER EDUCATION ASSISTANCE

Pub. L. 102–26, §§4–6, Apr. 9, 1991, 105 Stat. 125–127, provided that:

''SEC. 4. OPERATION DESERT SHIELD/DESERT STORM WAIVER AUTHORITY.

''(a) PURPOSE.—It is the purpose of this section to ensure that—

''(1) the men and women serving on active duty in connection with Operation Desert Shield or Operation Desert Storm who are borrowers of Stafford Loans or Perkins Loans are not placed in a worse position financially in relation to those loans because of such service;

''(2) the administrative requirements placed on all borrowers of student loans made in accordance with title IV of the Act [20 U.S.C. 1070 et seq.; 42 U.S.C. 2751 et seq.] who are engaged in such military service are minimized to the extent possible without impairing the integrity of the student loan programs, in order to ease the burden on such borrowers, and to avoid inadvertent, technical defaults; and

''(3) the future eligibility of such an individual for Pell Grants is not reduced by the amount of such assistance awarded for a period of instruction that such individual was unable to complete, or for which the individual did not receive academic credit, because he or she was called up for such service.

''(b) WAIVER REQUIREMENT.—Notwithstanding any other provision of law, unless enacted with specific reference to this section, the Secretary of Education shall waive or modify any statutory or regulatory provision applicable to the student financial aid programs under title IV of the Act that the Secretary deems necessary to achieve the purposes stated in subsection (a), including—

''(1) the length of, and eligibility requirements for, the military deferments authorized under sections 427(a)(2)(C)(ii), 428(b)(1)(M)(ii), and 464(c)(2)(A)(ii) of the Act [20 U.S.C. 1077(a)(2)(C)(ii), 1078(b)(1)(M)(ii), 1087dd(c)(2)(A)(ii)], in order to enable the borrower of a Stafford Loan or a Perkins Loan who is or was serving on active duty in connection with Operation Desert Shield or Operation Desert Storm to obtain a military deferment, under which interest shall accrue and shall, if otherwise payable by the Secretary, be paid by the Secretary of Education, for the duration of such service;

''(2) administrative requirements placed on all borrowers of student loans made in accordance with title IV of the Act who are or were engaged in such military service;

''(3) the number of years for which individuals who are engaged in such military service may be eligible for Pell Grants under subpart 1 of part A of title IV of the Act [20 U.S.C. 1070a et seq.];

''(4) the point at which the borrower of a Stafford Loan who is or was engaged in such military service is required to resume repayment of principal and interest on such loan after the borrower completes a period of deferment under section 427(a)(2)(C)(ii) or 428(b)(1)(M)(ii) of the Act;

''(5) the point at which the borrower of a Stafford Loan who is or was engaged in such military service is required to resume repayment of principal and interest on such loan after the borrower completes a single period of deferment under section 427(a)(2)(C)(i) or 428(b)(1)(M)(i) of the Act subsequent to such service; and

''(6) the modification of the terms 'annual adjusted family income' and 'available income,' as used in the determination of need for student financial assistance under title IV of the Act for such individual (and the determination of such need for his or her spouse and dependents, if applicable), to mean the sums received in the first calendar year of the award year for which such determination is made, in order to reflect more accurately the financial condition of such individual and his or her family.

''(c) NOTICE OF WAIVER.—Notwithstanding section 431 [now 437] of the General Education Provisions Act (20 U.S.C. 1232) and section 553 of title 5, United States Code, the Secretary shall, by notice in the Federal Register, publish the waivers or modifications of statutory and regulatory provisions the Secretary deems necessary to achieve the purposes of this section. Such notice shall include the terms and conditions to be applied in lieu of such statutory and regulatory provisions. The Secretary is not required to exercise the waiver or modification authority under this section on a case-by-case basis.

''(d) DEFINITIONS.—For purposes of this Act [probably should be ''section'']—

''(1) Individuals 'serving on active duty in connection with Operation Desert Shield or Operation Desert Storm' shall include—

''(A) any Reserve of an Armed Force called to active duty under section 672(a) [now 12301(a)], 672(g) [now 12301(g)], 673 [now 12302], 673b [now 12304], 674 [now 12306], or 688 of title 10, United States Code, for service in connection with Operation Desert Shield or Operation Desert Storm, regardless of the location at which such active duty service is performed; and

''(B) for purposes of waivers of administrative requirements under subsection (b)(2) only, any other member of an Armed Force on active duty in connection with Operation Desert Shield or Operation Desert Storm, who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

''(2) The term 'active duty' has the meaning given such term in section 101(22) of title 10, United States Code, except that such term does not include active duty for training or attendance at a service school.

''SEC. 5. TUITION REFUNDS OR CREDITS.

''(a) SENSE OF CONGRESS.—It is the sense of the Congress that all institutions offering postsecondary education should provide a full refund to any member or Reserve of an Armed Force on active duty service in connection with Operation Desert Shield or Operation Desert Storm for that portion of a period of instruction such individual was unable to complete, or for which such individual did not receive academic credit, because he or she was called up for such service. For purposes of this section, a full refund includes a refund of required tuition and fees, or a credit in a comparable amount against future tuition and fees.

''(b) ENCOURAGEMENT AND REPORT.—The Secretary of Education shall encourage institutions to provide such refunds or credits, and shall report to the appropriate

committees of Congress on the actions taken in accordance with this subsection as well as information he receives regarding any institutions that are not providing such refunds or credits.

''SEC. 6. TERMINATION OF AUTHORITY.

''The provisions of sections 4 and 5 shall cease to be effective on September 30, 1997.''

Pub. L. 102–25, title III, part E (§§ 371–376), Apr. 6, 1991, 105 Stat. 93, provided that:

''SEC. 371. SHORT TITLE

''This part may be cited as the 'Persian Gulf Conflict Higher Education Assistance Act'.

''SEC. 372. [Superseded by section 4 of Pub. L. 102–26, set out above.]

''SEC. 373. [Superseded by section 5 of Pub. L. 102–26, set out above.]

''SEC. 374. [Amended section 294d of Title 42, The Public Health and Welfare.]

''SEC. 375. [Superseded by section 6 of Pub. L. 102–26, set out above.]

''SEC. 376. COORDINATION WITH OTHER LAW

''If the Higher Education Technical Amendments of 1991 [Pub. L. 102–26, see Short Title of 1991 Amendment note set out under section 1001 of this title] is enacted, the provisions of sections 4, 5, and 6 of that Act shall supersede sections 372, 373, and 375.''

SUBPART 1—FEDERAL PELL GRANTS

CODIFICATION

Pub. L. 105–244, title IV, § 401(g)(2), Oct. 7, 1998, 112 Stat. 1652, amended subpart heading generally.

§ 1070a. Federal Pell Grants: amount and determinations; applications

(a) Program authority and method of distribution

(1) For each fiscal year through fiscal year 2017, the Secretary shall pay to each eligible institution such sums as may be necessary to pay to each eligible student (defined in accordance with section 1091 of this title) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a Federal Pell Grant in the amount for which that student is eligible, as determined pursuant to subsection (b) of this section. Not less than 85 percent of such sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based upon an amount requested by the institution as needed to pay eligible students until such time as the Secretary determines and publishes in the Federal Register with an opportunity for comment, an alternative payment system that provides payments to institutions in an accurate and timely manner, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

(2) Nothing in this section shall be interpreted to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which they are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

(3) Grants made under this subpart shall be known as ''Federal Pell Grants''.

(b) Purpose and amount of grants

(1) The purpose of this subpart is to provide a Federal Pell Grant that in combination with reasonable family and student contribution and supplemented by the programs authorized under subparts 3 and 4 of this part, will meet at least 75 percent of a student's cost of attendance (as defined in section 1087*ll* of this title), unless the institution determines that a greater amount of assistance would better serve the purposes of this section.

(2)(A) The amount of the Federal Pell Grant for a student eligible under this part shall be—

(i) the maximum Federal Pell Grant, as specified in the last enacted appropriation Act applicable to that award year, plus

(ii) the amount of the increase calculated under paragraph (7)(B) for that year, less

(iii) an amount equal to the amount determined to be the expected family contribution with respect to that student for that year.

(B) In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any academic year, the amount of the Federal Pell Grant to which that student is entitled shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this division, computed in accordance with this subpart. Such schedule of reductions shall be established by regulation and published in the Federal Register in accordance with section 1089 of this title.

(3) No Federal Pell Grant under this subpart shall exceed the difference between the expected family contribution for a student and the cost of attendance (as defined in section 1087*ll* of this title) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a Federal Pell Grant plus the amount of the expected family contribution for that student exceeds the cost of attendance for that year, the amount of the Federal Pell Grant shall be reduced until the combination of expected family contribution and the amount of the Federal Pell Grant does not exceed the cost of attendance at such institution.

(4) No Federal Pell Grant shall be awarded to a student under this subpart if the amount of that grant for that student as determined under this subsection for any academic year is less than ten percent of the maximum amount of a Federal Pell Grant award determined under paragraph (2)(A) for such academic year.

(5) Notwithstanding any other provision of this subpart, the Secretary shall allow the amount of the Federal Pell Grant to be exceeded for students participating in a program of study abroad approved for credit by the institution at which the student is enrolled when the reasonable costs of such program are greater than the cost of attendance at the student's home institution, except that the amount of such Federal Pell Grant in any fiscal year shall not exceed the maximum amount of a Federal Pell Grant award determined under paragraph (2)(A), for which a student is eligible during such award year. If the preceding sentence applies, the financial aid administrator at the home institution may use the cost of the study abroad program, rather than the home institution's cost,

to determine the cost of attendance of the student.

(6) No Federal Pell Grant shall be awarded under this subpart to any individual who is incarcerated in any Federal or State penal institution or who is subject to an involuntary civil commitment upon completion of a period of incarceration for a forcible or nonforcible sexual offense (as determined in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting Program).

(7) ADDITIONAL FUNDS.—

(A) IN GENERAL.—There are authorized to be appropriated, and there are appropriated (in addition to any other amounts appropriated to carry out this section and out of any money in the Treasury not otherwise appropriated) the following amounts—

(i) $2,030,000,000 for fiscal year 2008;

(ii) $2,733,000,000 for fiscal year 2009;

(iii) to carry out subparagraph (B) of this paragraph, such sums as may be necessary for fiscal year 2010 and each subsequent fiscal year to provide the amount of increase of the maximum Federal Pell Grant required by clauses (ii) and (iii) of subparagraph (B); and

(iv) to carry out this section—

(I) $13,500,000,000 for fiscal year 2011;

(II) $13,795,000,000 for fiscal year 2012;

(III) $7,587,000,000 for fiscal year 2013;

(IV) $588,000,000 for fiscal year 2014;

(V) $0 for fiscal year 2015;

(VI) $0 for fiscal year 2016;

(VII) $1,574,000,000 for fiscal year 2017;

(VIII) $1,382,000,000 for fiscal year 2018;

(IX) $1,409,000,000 for fiscal year 2019;

(X) $1,430,000,000 for fiscal year 2020; and

(XI) $1,145,000,000 for fiscal year 2021 and each succeeding fiscal year.

(B) INCREASE IN FEDERAL PELL GRANTS.—The amounts made available pursuant to clauses (i) through (iii) of subparagraph (A) of this paragraph shall be used to increase the amount of the maximum Federal Pell Grant for which a student shall be eligible during an award year, as specified in the last enacted appropriation Act applicable to that award year, by—

(i) $490 for each of the award years 2008–2009 and 2009–2010;

(ii) $690 for each of the award years 2010–2011, 2011–2012, and 2012–2013; and

(iii) the amount determined under subparagraph (C) for each succeeding award year.

(C) ADJUSTMENT AMOUNTS.—

(i) AWARD YEAR 2013–2014.—For award year 2013–2014, the amount determined under this subparagraph for purposes of subparagraph (B)(iii) shall be equal to—

(I) $5,550 or the total maximum Federal Pell Grant for the preceding award year (as determined under clause (iv)(II)), whichever is greater, increased by a percentage equal to the annual adjustment percentage for award year 2013–2014, reduced by

(II) $4,860 or the maximum Federal Pell Grant for which a student was eligible for the preceding award year, as specified in the last enacted appropriation Act applicable to that year, whichever is greater; and

(III) rounded to the nearest $5.

(ii) AWARD YEARS 2014–2015 THROUGH 2017–2018.—For each of the award years 2014–2015 through 2017–2018, the amount determined under this subparagraph for purposes of subparagraph (B)(iii) shall be equal to—

(I) the total maximum Federal Pell Grant for the preceding award year (as determined under clause (iv)(II)), increased by a percentage equal to the annual adjustment percentage for the award year for which the amount under this subparagraph is being determined, reduced by

(II) $4,860 or the maximum Federal Pell Grant for which a student was eligible for the preceding award year, as specified in the last enacted appropriation Act applicable to that year, whichever is greater; and

(III) rounded to the nearest $5.

(iii) SUBSEQUENT AWARD YEARS.—For award year 2018–2019 and each subsequent award year, the amount determined under this subparagraph for purposes of subparagraph (B)(iii) shall be equal to the amount determined under clause (ii) for award year 2017–2018.

(iv) DEFINITIONS.—For purposes of this subparagraph—

(I) the term ''annual adjustment percentage'' as applied to an award year, is equal to the estimated percentage change in the Consumer Price Index (as determined by the Secretary, using the definition in section 1087rr(f) of this title) for the most recent calendar year ending prior to the beginning of that award year; and

(II) the term ''total maximum Federal Pell Grant'' as applied to a preceding award year, is equal to the sum of—

(aa) the maximum Federal Pell Grant for which a student is eligible during an award year, as specified in the last enacted appropriation Act applicable to that preceding award year; and

(bb) the amount of the increase in the maximum Federal Pell Grant required by this paragraph for that preceding award year.

(D) PROGRAM REQUIREMENTS AND OPERATIONS OTHERWISE UNAFFECTED.—Except as provided in subparagraphs (B) and (C), nothing in this paragraph shall be construed to alter the requirements and operations of the Federal Pell Grant Program as authorized under this section, or authorize the imposition of additional requirements or operations for the determination and allocation of Federal Pell Grants under this section.

(E) RATABLE INCREASES AND DECREASES.—The amounts specified in subparagraph (B) shall be ratably increased or decreased to the extent that funds available under subparagraph (A) exceed or are less than (respectively) the amount required to provide the amounts specified in subparagraph (B).

(F) AVAILABILITY OF FUNDS.—The amounts made available by subparagraph (A) for any

fiscal year shall be available beginning on October 1 of that fiscal year, and shall remain available through September 30 of the succeeding fiscal year.

(c) Period of eligibility for grants

(1) The period during which a student may receive Federal Pell Grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance except that any period during which the student is enrolled in a noncredit or remedial course of study as defined in paragraph (2) shall not be counted for the purpose of this paragraph.

(2) Nothing in this section shall exclude from eligibility courses of study which are noncredit or remedial in nature (including courses in English language instruction) which are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills. Nothing in this section shall exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.

(3) No student is entitled to receive Pell Grant payments concurrently from more than one institution or from the Secretary and an institution.

(4) Notwithstanding paragraph (1), the Secretary may allow, on a case-by-case basis, a student to receive a Federal Pell Grant if the student—

(A) is carrying at least one-half the normal full-time work load for the course of study the student is pursuing, as determined by the institution of higher education; and

(B) is enrolled or accepted for enrollment in a postbaccalaureate program that does not lead to a graduate degree, and in courses required by a State in order for the student to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary school or secondary school in that State,

except that this paragraph shall not apply to a student who is enrolled in an institution of higher education that offers a baccalaureate degree in education.

(5) The period during which a student may receive Federal Pell Grants shall not exceed 12 semesters, or the equivalent of 12 semesters, as determined by the Secretary by regulation. Such regulations shall provide, with respect to a student who received a Federal Pell Grant for a term but was enrolled at a fraction of full-time, that only that same fraction of such semester or equivalent shall count towards such duration limits.

(d) Applications for grants

(1) The Secretary shall from time to time set dates by which students shall file applications for Federal Pell Grants under this subpart.

(2) Each student desiring a Federal Pell Grant for any year shall file an application therefor containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the functions and responsibilities of this subpart.

(e) Distribution of grants to students

Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student's account.

(f) Calculation of eligibility

(1) Each contractor processing applications for awards under this subpart (including a central processor, if any, designated by the Secretary) shall, in a timely manner, furnish to the student financial aid administrator (at each institution of higher education which a student awarded a Federal Pell Grant under this subpart is attending), as a part of its regular output document, the expected family contribution for each such student. Each such student financial aid administrator shall—

(A) examine and assess the data used to calculate the expected family contribution of the student furnished pursuant to this subsection;

(B) recalculate the expected family contribution of the student if there has been a change in circumstances of the student or in the data submitted;

(C) make the award to the student in the correct amount; and

(D) after making such award report the corrected data to such contractor and to a central processor (if any) designated by the Secretary for a confirmation of the correct computation of amount of the expected family contribution for each such student.

(2) Whenever a student receives an award under this subpart that, due to recalculation errors by the institution of higher education, is in excess of the amount which the student is entitled to receive under this subpart, such institution of higher education shall pay to the Secretary the amount of such excess unless such excess can be resolved in a subsequent disbursement to the institution.

(3) Each contractor processing applications for awards under this subpart shall for each academic year after academic year 1986–1987 prepare and submit a report to the Secretary on the correctness of the computations of amount of the expected family contribution, and on the accuracy of the questions on the application form under this subpart for the previous academic year for which the contractor is responsible. The Secretary shall transmit the report, together with the comments and recommendations of the Secretary, to the Committee on Appropriations of the Senate, the Committee on Appropriations of the House of Representatives, and the authorizing committees.

(g) Insufficient appropriations

If, for any fiscal year, the funds appropriated for payments under this subpart are insufficient

to satisfy fully all entitlements, as calculated under subsection (b) of this section (but at the maximum grant level specified in such appropriation), the Secretary shall promptly transmit a notice of such insufficiency to each House of the Congress, and identify in such notice the additional amount that would be required to be appropriated to satisfy fully all entitlements (as so calculated at such maximum grant level).

(h) Use of excess funds

(1) If, at the end of a fiscal year, the funds available for making payments under this subpart exceed the amount necessary to make the payments required under this subpart to eligible students by 15 percent or less, then all of the excess funds shall remain available for making payments under this subpart during the next succeeding fiscal year.

(2) If, at the end of a fiscal year, the funds available for making payments under this subpart exceed the amount necessary to make the payments required under this subpart to eligible students by more than 15 percent, then all of such funds shall remain available for making such payments but payments may be made under this paragraph only with respect to entitlements for that fiscal year.

(i) Treatment of institutions and students under other laws

Any institution of higher education which enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of such agreement, a contractor maintaining a system of records to accomplish a function of the Secretary. Recipients of Pell Grants shall not be considered to be individual grantees for purposes of chapter 81 of title 41.

(j) Institutional ineligibility based on default rates

(1) In general

No institution of higher education shall be an eligible institution for purposes of this subpart if such institution of higher education is ineligible to participate in a loan program under part B or C of this subchapter as a result of a final default rate determination made by the Secretary under part B or C of this subchapter after the final publication of cohort default rates for fiscal year 1996 or a succeeding fiscal year.

(2) Sanctions subject to appeal opportunity

No institution may be subject to the terms of this subsection unless the institution has had the opportunity to appeal the institution's default rate determination under regulations issued by the Secretary for the loan program authorized under part B or C of this subchapter, as applicable. This subsection shall not apply to an institution that was not participating in the loan program authorized under part B or C of this subchapter on October 7, 1998, unless the institution subsequently participates in the loan programs.

(Pub. L. 89–329, title IV, §401, formerly §411, as added Pub. L. 99–498, title IV, §401(a), Oct. 17, 1986, 100 Stat. 1309; amended Pub. L. 100–50, §3(a), June 3, 1987, 101 Stat. 337; renumbered §401 and amended Pub. L. 102–325, title IV, §§401(a)–(h), 402(a)(3), July 23, 1992, 106 Stat. 479–482; Pub. L. 103–208, §2(b)(1)–(5), (k)(1), Dec. 20, 1993, 107 Stat. 2458, 2485; Pub. L. 103–322, title II, §20411(a), Sept. 13, 1994, 108 Stat. 1828; Pub. L. 105–244, title IV, §401(a)–(f), (g)(3), (4), Oct. 7, 1998, 112 Stat. 1650–1652; Pub. L. 110–84, title I, §§101(a), 102, Sept. 27, 2007, 121 Stat. 784; Pub. L. 110–315, title I, §103(b)(3), title IV, §401(a)(1), (b), (c)(1), Aug. 14, 2008, 122 Stat. 3088, 3188, 3189; Pub. L. 111–5, div. A, title VIII, §806, Feb. 17, 2009, 123 Stat. 190; Pub. L. 111–39, title IV, §401(a)(2), (3), July 1, 2009, 123 Stat. 1938; Pub. L. 111–152, title II, §2101(a), (b)(1), Mar. 30, 2010, 124 Stat. 1071, 1073; Pub. L. 112–10, div. B, title VIII, §1860(a), Apr. 15, 2011, 125 Stat. 169; Pub. L. 112–25, title V, §501, Aug. 2, 2011, 125 Stat. 266; Pub. L. 112–74, div. F, title III, §309(a), (f), Dec. 23, 2011, 125 Stat. 1100, 1103.)

CODIFICATION

In subsec. (i), ''chapter 81 of title 41'' substituted for ''subtitle D of title V of Public Law 100–690'' on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

PRIOR PROVISIONS

A prior section 1070a, Pub. L. 89–329, title IV, §411, as added Pub. L. 92–318, title I, §131(b)(1), June 23, 1972, 86 Stat. 248; amended Pub. L. 94–328, §2(f), June 30, 1976, 90 Stat. 727; Pub. L. 94–482, title I, §121(a), (b)(1), (c)–(i), Oct. 12, 1976, 90 Stat. 2091–2093; Pub. L. 95–43, §1(a)(5), June 15, 1977, 91 Stat. 213; Pub. L. 95–566, §2, Nov. 1, 1978, 92 Stat. 2402; Pub. L. 96–49, §5(a)(1), (2)(A), Aug. 13, 1979, 93 Stat. 351; Pub. L. 96–374, title IV, §402, title XIII, §1391(a)(1), Oct. 3, 1980, 94 Stat. 1401, 1503; Pub. L. 97–301, §8(a), Oct. 13, 1982, 96 Stat. 1402, related to basic educational opportunity grants, amount and determinations, and applications, prior to the general revision of this part by Pub. L. 99–498.

A prior section 401 of Pub. L. 89–329 was renumbered section 400 by section 402(a)(3) of Pub. L. 102–325 and is classified to section 1070 of this title.

Another prior section 401 of Pub. L. 89–329, title IV, as added and amended Pub. L. 92–318, title I, §131(b)(1), title X, §1001(c)(1), (2), June 23, 1972, 86 Stat. 247, 381; Pub. L. 94–482, title I, §125, Oct. 12, 1976, 90 Stat. 2096; Pub. L. 96–374, title IV, §401, title XIII, §1391(a)(1), Oct. 3, 1980, 94 Stat. 1401, 1503, which stated purpose of program of grants to students in attendance at institutions of higher education, was classified to section 1070 of this title, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2011—Subsec. (b)(2)(A)(ii). Pub. L. 112–10, §1860(a)(1), substituted ''paragraph (7)(B)'' for ''paragraph (8)(B)''.

Subsec. (b)(4). Pub. L. 112–74, §309(a)(1), substituted period at end for '', except that a student who is eligible for a Federal Pell Grant in an amount that is equal to or greater than five percent of such Federal Pell Grant amount but less than ten percent of such Federal Pell Grant amount shall be awarded a Federal Pell grant in the amount of ten percent of such Federal Pell Grant amount.''

Subsec. (b)(5). Pub. L. 112–10, §1860(a)(4), redesignated par. (6) as (5).

Pub. L. 112–10, §1860(a)(2), struck out par. (5) which read as follows:

''(A) The Secretary shall award a student not more than two Federal Pell Grants during a single award year to permit such student to accelerate the student's progress toward a degree or certificate if the student is enrolled—

''(i) on at least a half-time basis for a period of more than one academic year, or more than two se-

mesters or an equivalent period of time, during a single award year; and

''(ii) in a program of instruction at an institution of higher education for which the institution awards an associate or baccalaureate degree or a certificate.

''(B) In the case of a student receiving more than one Federal Pell Grant in a single award year under subparagraph (A), the total amount of Federal Pell Grants awarded to such student for the award year may exceed the maximum basic grant level specified in the appropriate appropriations Act for such award year.''

Subsec. (b)(6). Pub. L. 112–10, § 1860(a)(4), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (b)(7). Pub. L. 112–10, § 1860(a)(4), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (b)(7)(A)(iv). Pub. L. 112–74, § 309(f), amended cl. (iv) generally. Prior to amendment, cl. (iv) authorized appropriations for fiscal years 2011 to 2021 and succeeding fiscal years.

Subsec. (b)(7)(A)(iv)(II). Pub. L. 112–25, § 501(1), substituted ''$13,183,000,000'' for ''$3,183,000,000''.

Subsec. (b)(7)(A)(iv)(III). Pub. L. 112–25, § 501(2), substituted ''$7,000,000,000'' for ''$0''.

Subsec. (b)(8). Pub. L. 112–10, § 1860(a)(4), redesignated par. (8) as (7).

Subsec. (b)(8)(A)(iv). Pub. L. 112–10, § 1860(a)(3)(A), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''to carry out this section, $13,500,000,000 for fiscal year 2011.''

Subsec. (b)(8)(C)(i)(I), (ii)(I). Pub. L. 112–10, § 1860(a)(3)(B), substituted ''clause (iv)(II)'' for ''clause (v)(II)''.

Subsec. (c)(5). Pub. L. 112–74, § 309(a)(2), substituted ''12'' for ''18'' in two places and struck out at end ''The provisions of this paragraph shall apply only to a student who receives a Federal Pell Grant for the first time on or after July 1, 2008.''

2010—Subsec. (b)(2)(A). Pub. L. 111–152, § 2101(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) established grant amounts for academic years 2009–2010 to 2014–2015.

Subsec. (b)(4). Pub. L. 111–152, § 2101(b)(1)(A), substituted ''maximum amount of a Federal Pell Grant award determined under paragraph (2)(A)'' for ''maximum basic grant level specified in the appropriate appropriation Act'' and substituted ''such Federal Pell Grant amount'' for ''such level'' wherever appearing.

Subsec. (b)(6). Pub. L. 111–152, § 2101(b)(1)(B), substituted ''the maximum amount of a Federal Pell Grant award determined under paragraph (2)(A), for which a student is eligible during such award year'' for ''the grant level specified in the appropriate Appropriation Act for this subpart for such year''.

Subsec. (b)(8)(A). Pub. L. 111–152, § 2101(a)(2)(A)(i), struck out '', to carry out subparagraph (B) of this paragraph'' after ''are appropriated'' in introductory provisions.

Subsec. (b)(8)(A)(iii) to (x). Pub. L. 111–152, § 2101(a)(2)(A)(ii), added cls. (iii) and (iv) and struck out former cls. (iii) to (x), which appropriated additional funds for fiscal years 2010 to 2017.

Subsec. (b)(8)(B). Pub. L. 111–152, § 2101(a)(2)(B)(i), substituted ''clauses (i) through (iii) of subparagraph (A)'' for ''subparagraph (A)'' in introductory provisions.

Subsec. (b)(8)(B)(ii). Pub. L. 111–152, § 2101(a)(2)(B)(ii), substituted '', 2011–2012, and 2012–2013'' for ''and 2011–2012''.

Subsec. (b)(8)(B)(iii). Pub. L. 111–152, § 2101(a)(2)(B)(iii), added cl. (iii) and struck out former cl. (iii) which read as follows: ''$1,090 for award year 2012–2013.''

Subsec. (b)(8)(C). Pub. L. 111–152, § 2101(a)(2)(C), added subpar. (C) and struck out former subpar. (C). Prior to amendment, text read as follows: ''The Secretary shall only award an increased amount of a Federal Pell Grant under this section for any award year pursuant to the provisions of this paragraph to students who qualify for a Federal Pell Grant award under the maximum grant award enacted in the annual appropriation Act for such award year without regard to the provisions of this paragraph.''

2009—Subsec. (a)(1). Pub. L. 111–39, § 401(a)(2)(A), substituted ''manner,'' for ''manner,,''.

Subsec. (b)(1). Pub. L. 111–39, § 401(a)(2)(B), made technical amendment to reference in original act which appears in text as reference to this section.

Subsec. (b)(8)(A)(ii), (iii). Pub. L. 111–5, which directed amendment of par. (9)(A) by substituting ''$2,733,000,000'' for ''$2,090,000,000'' in cl. (ii) and ''$3,861,000,000'' for ''$3,030,000,000'' in cl. (iii), was executed by making the substitutions in par. (8)(A) to reflect the probable intent of Congress.

Subsec. (b)(8)(A)(vi), (viii). Pub. L. 111–39, § 401(a)(2)(C), which directed amendment of par. (9)(A) by substituting ''$258,000,000'' for ''$105,000,000'' in cl. (vi) and ''$4,452,000,000'' for ''$4,400,000,000'' in cl. (viii) effective Aug. 14, 2008, was executed by making the substitutions in par. (8)(A). Subsec. (b)(8) would have been subsec. (b)(9) on Aug. 14, 2008, but for the probable intent execution of the amendment by Pub. L. 110–84, § 101(a)(2). See 2007 Amendment note below.

Subsec. (f)(4). Pub. L. 111–39, § 401(a)(3), struck out par. (4) which attributed expected family contribution of zero to certain eligible students whose parent or guardian died as a result of performing military service in Iraq or Afghanistan after Sept. 11, 2001. See section 1070h of this title.

2008—Subsec. (b). Pub. L. 110–315, § 401(a)(1)(B), which directed amendment of subsec. (b) by designating the pars. following par. (2), in the order in which such pars. appear, as pars. (3) through (8), was a technical correction to sequence of amendments by Pub. L. 110–84 and required no change in text. See 2007 Amendment notes below.

Subsec. (b)(2)(A). Pub. L. 110–315, § 401(a)(1)(A), amended subpar. (A) generally, substituting Pell Grant amounts for academic years 2009 to 2015 for amounts for academic years 1999 to 2004.

Subsec. (b)(4). Pub. L. 110–315, § 401(a)(1)(C), substituted ''ten percent of the maximum basic grant level specified in the appropriate appropriation Act for such academic year, except that a student who is eligible for a Federal Pell Grant in an amount that is equal to or greater than five percent of such level but less than ten percent of such level shall be awarded a Federal Pell grant in the amount of ten percent of such level'' for ''$400, except that a student who is eligible for a Federal Pell Grant that is equal to or greater than $200 but less than $400 shall be awarded a Federal Pell Grant of $400''.

Subsec. (b)(5). Pub. L. 110–315, § 401(a)(1)(D), added par. (5) and struck out former par. (5) which read: ''The Secretary may allow, on a case-by-case basis, a student to receive 2 Pell grants during a single award year, if—

''(i) the student is enrolled full-time in an associate or baccalaureate degree program of study that is 2 years or longer at an eligible institution that is computed in credit hours; and

''(ii) the student completes course work toward completion of an associate or baccalaureate degree that exceeds the requirements for a full academic year as defined by the institution.

''(B) The Secretary shall promulgate regulations implementing this paragraph.''

Subsec. (b)(7). Pub. L. 110–315, § 401(a)(1)(E), inserted before period at end ''or who is subject to an involuntary civil commitment upon completion of a period of incarceration for a forcible or nonforcible sexual offense (as determined in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting Program)''.

Subsec. (b)(8)(D). Pub. L. 110–315, § 401(a)(1)(F)(i), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows:

''(D) FORMULA OTHERWISE UNAFFECTED.—Except as provided in subparagraphs (B) and (C), nothing in this paragraph shall be construed to alter the requirements of this section, or authorize the imposition of additional requirements, for the determination and allocation of Federal Pell Grants under this section.''

Subsec. (b)(8)(F). Pub. L. 110–315, § 401(a)(1)(F)(ii), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows:

''(F) USE OF FISCAL YEAR FUNDS FOR AWARD YEARS.—The amounts made available by subparagraph (A) for any fiscal year shall be available and remain available for use under subparagraph (B) for the award year that begins in such fiscal year.''

Subsec. (c)(5). Pub. L. 110–315, §401(b), added par. (5).

Subsec. (f)(3). Pub. L. 110–315, §103(b)(3), substituted ''to the Committee on Appropriations of the Senate, the Committee on Appropriations of the House of Representatives, and the authorizing committees'' for ''to the Committee on Appropriations and the Committee on Labor and Human Resources of the Senate and the Committee on Appropriations and the Committee on Education and the Workforce of the House of Representatives''.

Subsec. (f)(4). Pub. L. 110–315, §401(c)(1), added par. (4).

2007—Subsec. (a)(1). Pub. L. 110–84, §102(a), substituted ''fiscal year 2017'' for ''fiscal year 2004''.

Subsec. (b)(3) to (7). Pub. L. 110–84, §101(a), redesignated pars. (4) to (8) as (3) to (7), respectively, and struck out former par. (3) which related to the amount of a student's basic grant for any academic year for which an appropriation Act provided a maximum basic grant of more than $2,700.

Subsec. (b)(8). Pub. L. 110–84, §101(a)(2), which directed redesignation of par. (9) as (8), was executed by redesignating the par. (9) enacted by Pub. L. 110–84, §102(b), as (8) to reflect the probable intent of Congress. See below. Former par. (8) redesignated (7).

Subsec. (b)(9). Pub. L. 110–84, §102(b), added par. (9).

1998—Pub. L. 105–244, §401(g)(3)(A), substituted ''Federal Pell'' for ''Basic educational opportunity'' in section catchline.

Subsec. (a)(1). Pub. L. 105–244, §401(g)(3)(C), substituted ''Federal Pell Grant'' for ''basic grant''.

Pub. L. 105–244, §401(a), substituted ''For each fiscal year through fiscal year 2004, the Secretary shall'' for ''The Secretary shall, during the period beginning July 1, 1972, and ending September 30, 1998,'' and inserted ''until such time as the Secretary determines and publishes in the Federal Register with an opportunity for comment, an alternative payment system that provides payments to institutions in an accurate and timely manner,'' after ''pay eligible students''.

Subsec. (a)(3). Pub. L. 105–244, §401(g)(3)(B), substituted ''Grants made'' for ''Basic grants made''.

Subsec. (b)(1). Pub. L. 105–244, §401(g)(3)(C), substituted ''Federal Pell Grant'' for ''basic grant''.

Subsec. (b)(2)(A). Pub. L. 105–244, §401(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The amount of the basic grant for a student eligible under this part shall be—

''(i) $3,700 for academic year 1993–1994,

''(ii) $3,900 for academic year 1994–1995,

''(iii) $4,100 for academic year 1995–1996,

''(iv) $4,300 for academic year 1996–1997, and

''(v) $4,500 for academic year 1997–1998,

less an amount equal to the amount determined to be the expected family contribution with respect to that student for that year.''

Subsec. (b)(2)(B). Pub. L. 105–244, §401(g)(3)(C), substituted ''Federal Pell Grant'' for ''basic grant''.

Subsec. (b)(3). Pub. L. 105–244, §401(c), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(3)(A) For any academic year for which an appropriation Act provides a maximum basic grant in an amount in excess of $2,400, the amount of a student's basic grant shall equal $2,400 plus—

''(i) one-half of the amount by which such maximum basic grant exceeds $2,400; plus

''(ii) the lesser of—

''(I) the remaining one-half of such excess; or

''(II) the sum of the student's tuition and the student's allowance determined under subparagraph (B), if applicable.

''(B) For purposes of subparagraph (A)(ii)(II), a student's allowance is $750 if the student has dependent care expenses (as defined in section 1087*ll*(8) of this title) or disability related expenses (as defined in section 1087*ll*(9) of this title).''

Subsec. (b)(4), (5). Pub. L. 105–244, §401(g)(3)(C), substituted ''Federal Pell Grant'' for ''basic grant'' wherever appearing.

Subsec. (b)(6). Pub. L. 105–244, §401(d), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Subsec. (b)(7), (8). Pub. L. 105–244, §401(g)(3)(C), substituted ''Federal Pell Grant'' for ''basic grant'' wherever appearing.

Subsec. (c)(1). Pub. L. 105–244, §401(g)(3)(D), substituted ''Federal Pell Grants'' for ''basic grants''.

Subsec. (c)(4). Pub. L. 105–244, §401(g)(3)(C), substituted ''Federal Pell Grant'' for ''basic grant'' in introductory provisions.

Pub. L. 105–244, §401(e), added par. (4).

Subsec. (d)(1). Pub. L. 105–244, §401(g)(3)(D), substituted ''Federal Pell Grants'' for ''basic grants''.

Subsecs. (d)(2), (f)(1). Pub. L. 105–244, §401(g)(3)(C), substituted ''Federal Pell Grant'' for ''basic grant''.

Subsec. (f)(3). Pub. L. 105–244, §401(g)(4), substituted ''Education and the Workforce'' for ''Education and Labor''.

Subsec. (j). Pub. L. 105–244, §401(f), added subsec. (j).

1994—Subsec. (b)(8). Pub. L. 103–322 amended par. (8) generally. Prior to amendment, par. (8) read as follows:

''(8)(A) No basic grant shall be awarded to an incarcerated student under this subpart that exceeds the sum of the amount of tuition and fees normally assessed by the institution of higher education for the course of study such student is pursuing plus an allowance (determined in accordance with regulations issued by the Secretary) for books and supplies associated with such course of study, except that no basic grant shall be awarded to any incarcerated student serving under sentence of death or any life sentence without eligibility for parole or release.

''(B) Basic grants under this subpart shall only be awarded to incarcerated individuals in a State if such grants are used to supplement and not supplant the level of postsecondary education assistance provided by such State to incarcerated individuals in fiscal year 1988.''

1993—Subsec. (a)(1). Pub. L. 103–208, §2(b)(1), inserted before period at end of second sentence '', except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment''.

Subsec. (b)(2)(B). Pub. L. 103–208, §2(k)(1), amended directory language of Pub. L. 102–325, §401(d)(2)(A). See 1992 Amendment note below.

Subsec. (b)(6). Pub. L. 103–208, §2(b)(2)–(4), substituted ''single award year'' for ''single 12-month period'' in introductory provisions, ''an associate or baccalaureate'' for ''a baccalaureate'' in subpar. (A), and ''an associate or baccalaureate'' for ''a bachelor's'' in subpar. (B).

Subsec. (i). Pub. L. 103–208, §2(b)(5), substituted ''subtitle D of title V'' for ''part D of title V''.

1992—Subsec. (a)(1). Pub. L. 102–325, §401(a), substituted ''September 30, 1998'' for ''September 30, 1992'' and ''subsection (b) of this section'' for ''paragraph (2)''.

Subsec. (a)(3). Pub. L. 102–325, §401(b), substituted ''Federal Pell Grants'' for ''Pell Grants''.

Subsec. (b)(1). Pub. L. 102–325, §401(c), struck out ''(A) as determined under paragraph (2), will meet 60 percent of a student's cost of attendance (as defined in section 1070a–6 of this title); and (B)'' after ''basic grant that'' and substituted ''family and student'' for ''parental or independent student'', ''subparts 3 and 4'' for ''subparts 2 and 3'', and ''will meet at least 75 percent'' for ''will meet 75 percent''.

Subsec. (b)(2)(A)(i) to (v). Pub. L. 102–325, §401(d)(1), added cls. (i) to (v) and struck out former cls. (i) to (v) which read as follows:

''(i) $2,300 for academic year 1987–1988,

''(ii) $2,500 for academic year 1988–1989,

''(iii) $2,700 for academic year 1989–1990,

''(iv) $2,900 for academic year 1990–1991, and

''(v) $3,100 for academic year 1991–1992,''.

Subsec. (b)(2)(B). Pub. L. 102–325, §401(d)(2)(A), as amended by Pub. L. 103–208, §2(k)(1), inserted ''(includ-

ing a student who attends an institution of higher education on less than a half-time basis)'' in first sentence after ''full-time basis'' the first time appearing.

Pub. L. 102–325, § 401(d)(2)(B), inserted '', computed in accordance with this subpart'' before period at end of first sentence.

Subsec. (b)(3). Pub. L. 102–325, § 401(d)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The amount of a basic grant to which a student is entitled under this subpart for any academic year shall not exceed 60 percent of the cost of attendance (as defined in section 1070a–6 of this title) at the institution at which the student is in attendance for that year.''

Subsec. (b)(4). Pub. L. 102–325, § 401(d)(4), substituted ''section 1087*ll*'' for ''section 1070a–6''.

Subsec. (b)(5). Pub. L. 102–325, § 401(d)(5), substituted ''$400, except that a student who is eligible for a basic grant that is equal to or greater than $200 but less than $400 shall be awarded a basic grant of $400'' for ''$200''.

Subsec. (b)(6) to (8). Pub. L. 102–325, § 401(d)(6), added pars. (6) to (8) and struck out former pars. (6) and (7) which limited or prohibited basic grants from funds appropriated for fiscal years prior to 1992 to students attending on a less than half-time basis.

Subsec. (c)(1). Pub. L. 102–325, § 401(e)(1), substituted ''any period during which the student is enrolled in a noncredit or remedial course of study as defined in paragraph (2) shall not be counted for the purpose of this paragraph.'' for ''—

''(A) such period may not exceed the full-time equivalent of—

''(i) 5 academic years in the case of an undergraduate degree or certificate program normally requiring 4 years or less;

''(ii) 6 academic years in the case of an undergraduate degree or certificate program normally requiring more than 4 years;

''(B) any period during which the student is enrolled in a noncredit or remedial course of study as defined in paragraph (2) shall not be counted for the purpose of subparagraph (A); and

''(C) an institution of higher education at which the student is in attendance may waive subparagraph (A) for undue hardship based on—

''(i) the death of a relative of the student;

''(ii) the personal injury or illness of the student; or

''(iii) special circumstances as determined by the institution.''

Subsec. (c)(2). Pub. L. 102–325, § 401(e)(2), inserted at end ''Nothing in this section shall exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.''

Subsec. (f)(1). Pub. L. 102–325, § 401(f)(1), substituted '', as a part of its regular output document, the expected family contribution'' for ''an estimate of the eligibility index'' in introductory provisions and ''expected family contribution'' for ''eligibility index'' in subpars. (A), (B), and (D).

Subsec. (f)(3). Pub. L. 102–325, § 401(f)(2), substituted ''expected family contribution'' for ''eligibility index''.

Subsec. (g). Pub. L. 102–325, § 401(g), struck out ''Adjustments for'' before ''insufficient appropriations'' in heading and amended text generally. Prior to amendment, text read as follows:

''(1) If, for any fiscal year, the funds appropriated for payments under this subpart are insufficient to satisfy fully all entitlements, as calculated under subsection (b) of this section, the amount paid with respect to each entitlement shall be—

''(A) the full amount for any student whose expected family contribution is $200 or less, or

''(B) a percentage of that entitlement, as determined in accordance with a schedule of reductions established by the Secretary for this purpose, for any student whose expected family contribution is more than $200.

''(2) Any schedule established by the Secretary for the purpose of paragraph (1)(B) of this subsection shall contain a single linear reduction formula in which the percentage reduction increases uniformly as the entitlement decreases, and shall provide that if an entitlement is reduced to less than $100, no payment shall be made.''

Subsec. (i). Pub. L. 102–325, § 401(h), substituted ''Treatment of institutions and students under other laws'' for ''Noncontractor status of institutions'' in heading and inserted at end of text ''Recipients of Pell Grants shall not be considered to be individual grantees for purposes of part D of title V of Public Law 100–690.''

1987—Subsec. (g)(2). Pub. L. 100–50 substituted ''paragraph (1)(B)'' for ''paragraph (1)''.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 309(a) of Pub. L. 112–74 effective July 1, 2012, see section 309(g) of Pub. L. 112–74, set out as a note under section 1001 of this title.

Pub. L. 112–10, div. B, title VIII, § 1860(b), Apr. 15, 2011, 125 Stat. 170, provided that: ''The amendment made by subsection (a)(2) [amending this section] shall be effective with respect to the 2011–2012 award year and succeeding award years.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–152, title II, § 2101(c), Mar. 30, 2010, 124 Stat. 1073, provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 1070a–14, 1085, 1090, 1092f, and 1161y of this title] shall take effect on July 1, 2010.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, § 401(a)(2), Aug. 14, 2008, 122 Stat. 3189, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by paragraph (1) [amending this section] shall take effect on July 1, 2009.

''(B) SPECIAL RULE.—The amendments made by subparagraph (F) of paragraph (1) [amending this section] shall take effect on the date of enactment of this Act [Aug 14, 2008].''

Pub. L. 110–315, title IV, § 401(c)(2), Aug. 14, 2008, 122 Stat. 3190, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on July 1, 2009.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–84, § 1(c), Sept. 27, 2007, 121 Stat. 784, provided that: ''Except as otherwise expressly provided, the amendments made by this Act [enacting subpart 9 of this part and sections 1098e, 1098f, 1099d, 1099e, and 1141 of this title, amending this section and sections 1070a–13, 1077a, 1078, 1078–3, 1085, 1087–1, 1087e, 1087h, 1087dd, 1087ff, 1087*oo* to 1087tt, and 1087vv of this title, repealing section 1078–9 of this title, and amending provisions set out as a note under section 1078 of this title] shall be effective on October 1, 2007.''

Pub. L. 110–84, title I, § 101(b), Sept. 27, 2007, 121 Stat. 784, provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to determinations of Federal Pell Grant amounts for award years beginning on or after July 1, 2007.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 20411(b) of Pub. L. 103–322 provided that: ''The amendment made by this section [amending this sec-

tion] shall apply with respect to periods of enrollment beginning on or after the date of enactment of this Act [Sept. 13, 1994].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 2(b)(1), (3)–(5), (k)(1) of Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, and amendment by section 2(b)(2) of Pub. L. 103–208 effective on and after Dec. 20, 1993, see section 5(a), (b)(2) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 410 of Pub. L. 102–325 provided that: ''The changes made in part A of title IV of the Act [20 U.S.C. 1070 et seq.] by the amendments made by this part [part A (§§ 401–410) of title IV of Pub. L. 102–325, see Tables for classification] shall take effect on the date of enactment of this Act [July 23, 1992], except—

''(1) as otherwise provided in such part A;

''(2) that the changes made in section 411 [this section], relating to Pell Grants, shall apply to the awarding of Pell Grants for periods of enrollment beginning on or after July 1, 1993; and

''(3) that the changes in section 413C(a)(2) [20 U.S.C. 1070b–2(a)(2)], relating to the Federal share for the supplemental educational opportunity grant program, shall apply to funds provided for such program for the award years beginning on or after July 1, 1993.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub. L. 99–498, set out as a note under section 1001 of this title.

Section 401(b)(3), (4) of Pub. L. 99–498 provided that:

''(3) Section 411(c) of the Act [20 U.S.C. 1070a(c)] as amended by this section shall apply only to individuals who receive a Pell Grant for the first time for a period of enrollment beginning on or after July 1, 1987.

''(4) Section 411(f) of the Act [20 U.S.C. 1070a(f)] as amended by this section shall apply to the awarding of Pell Grants for periods of enrollment beginning on or after July 1, 1987.''

STUDY OF PELL GRANT ELIGIBILITY FOR LESS THAN HALF-TIME STUDENTS

Section 1306 of Pub. L. 99–498 directed Secretary to conduct a study and report to Congress not later than Sept. 30, 1988, on the number of less than half-time students who would be eligible for Pell grants by reason of having an expected family contribution of $0 and of $0–$200 for the appropriate academic years, prior to repeal by Pub. L. 105–332, § 6(a), Oct. 31, 1998, 112 Stat. 3127.

MAXIMUM PELL GRANTS

Provisions limiting the maximum Pell grant that a student may receive were contained in the following appropriation acts:

Pub. L. 112–74, div. F, title III, Dec. 23, 2011, 125 Stat. 1097.

Pub. L. 112–10, div. B, title VIII, § 1839(b), Apr. 15, 2011, 125 Stat. 165.

Pub. L. 111–242, § 218, as added Pub. L. 112–4, par. (2), Mar. 2, 2011, 125 Stat. 11.

Pub. L. 111–242, § 164(b), as added Pub. L. 111–322, title I, § 1(a)(2), Dec. 22, 2010, 124 Stat. 3521.

Pub. L. 111–117, div. D, title III, Dec. 16, 2009, 123 Stat. 3267.

Pub. L. 111–8, div. F, title III, Mar. 11, 2009, 123 Stat. 789.

Pub. L. 111–5, div. A, title VIII, Feb. 17, 2009, 123 Stat. 183.

Pub. L. 110–161, div. G, title III, Dec. 26, 2007, 121 Stat. 2195.

Pub. L. 109–289, div. B, title II, § 20633(b), as added by Pub. L. 110–5, § 2, Feb. 15, 2007, 121 Stat. 36.

Pub. L. 109–149, title III, Dec. 30, 2005, 119 Stat. 2868.

Pub. L. 108–447, div. F, title III, Dec. 8, 2004, 118 Stat. 3148.

Pub. L. 108–199, div. E, title III, Jan. 23, 2004, 118 Stat. 261.

Pub. L. 108–7, div. G, title III, Feb. 20, 2003, 117 Stat. 330.

Pub. L. 107–116, title III, Jan. 10, 2002, 115 Stat. 2205.

Pub. L. 106–554, § 1(a)(1) [title III], Dec. 21, 2000, 114 Stat. 2763, 2763A–37.

Pub. L. 106–113, div. B, § 1000(a)(4) [title III], Nov. 29, 1999, 113 Stat. 1535, 1501A–251.

Pub. L. 105–277, div. A, § 101(f) [title III], Oct. 21, 1998, 112 Stat. 2681–337, 2681–369.

Pub. L. 105–78, title III, Nov. 13, 1997, 111 Stat. 1501.

Pub. L. 104–208, div. A, title I, § 101(e) [title III], Sept. 30, 1996, 110 Stat. 3009–233, 3009–257.

Pub. L. 104–134, title I, § 101(d) [title III], Apr. 26, 1996, 110 Stat. 1321–211, 1321–232; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 104–99, title I, § 119, Jan. 26, 1996, 110 Stat. 30, prior to repeal by Pub. L. 104–134, title I, § 101(d) [title V, § 518], Apr. 26, 1996, 110 Stat. 1321–211, 1321–248; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 103–333, title III, Sept. 30, 1994, 108 Stat. 2564.

Pub. L. 103–112, title III, Oct. 21, 1993, 107 Stat. 1104.

Pub. L. 102–394, title III, Oct. 6, 1992, 106 Stat. 1816.

Pub. L. 102–170, title III, Nov. 26, 1991, 105 Stat. 1131.

Pub. L. 101–517, title III, Nov. 5, 1990, 104 Stat. 2212.

Pub. L. 101–166, title III, Nov. 21, 1989, 103 Stat. 1182.

Pub. L. 100–436, title III, Sept. 20, 1988, 102 Stat. 1704.

Pub. L. 100–202, § 101(h) [title III], Dec. 22, 1987, 101 Stat. 1329–256, 1329–279.

§ 1070a–1. Academic competitiveness grants

(a) Academic competitiveness grant program authorized

The Secretary shall award grants, in the amounts specified in subsection (d)(1), to eligible students to assist the eligible students in paying their college education expenses.

(b) Designation

A grant under this section—

(1) for the first or second year of a program of undergraduate education shall be known as an ''Academic Competitiveness Grant''; and

(2) for the third, fourth, or fifth year of a program of undergraduate education shall be known as a ''National Science and Mathematics Access to Retain Talent Grant'' or a ''National SMART Grant''.

(c) Definition of eligible student

In this section the term ''eligible student'' means a student who, for the award year for which the determination of eligibility is made for a grant under this section—

(1) is eligible for a Federal Pell Grant;

(2) is enrolled or accepted for enrollment in an institution of higher education on not less than a half-time basis; and

(3) in the case of a student enrolled or accepted for enrollment in—

(A) the first year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education (including a program of not less than

one year for which the institution awards a certificate)—

(i) has successfully completed, after January 1, 2006, a rigorous secondary school program of study that prepares students for college and is recognized as such by the State official designated for such recognition, or with respect to any private or home school, the school official designated for such recognition for such school, consistent with State law, which recognized program shall be reported to the Secretary; and

(ii) has not been previously enrolled in a program of undergraduate education, except as part of a secondary school program of study;

(B) the second year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education (including a program of not less than two years for which the institution awards a certificate)—

(i)(I) successfully completes, after January 1, 2005, but before July 1, 2009, a rigorous secondary school program of study established by a State or local educational agency and recognized as such by the Secretary; or

(II) successfully completes, on or after July 1, 2009, a rigorous secondary school program of study that prepares students for college—

(aa)(AA) that is recognized as such by the official designated for such recognition consistent with State law; and

(BB) about which the designated official has reported to the Secretary, at such time as the Secretary may reasonably require, in order to assist financial aid administrators to determine that the student is an eligible student under this section; or

(bb) that is recognized as such by the Secretary in regulations promulgated to carry out this section, as such regulations were in effect on May 6, 2008; and

(ii) has obtained a cumulative grade point average of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) at the end of the first year of such program of undergraduate education;

(C) the third or fourth year of a program of undergraduate education at a four-year degree-granting institution of higher education—

(i) is certified by the institution to be pursuing a major in—

(I) the physical, life, or computer sciences, mathematics, technology, or engineering (as determined by the Secretary pursuant to regulations); or

(II) a critical foreign language; and

(ii) has obtained a cumulative grade point average of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) in the coursework required for the major described in clause (i);

(D) the third or fourth year of a program of undergraduate education at an institution of higher education (as defined in section 1001(a) of this title), is attending an institution that demonstrates, to the satisfaction of the Secretary, that the institution—

(i) offers a single liberal arts curriculum leading to a baccalaureate degree, under which students are not permitted by the institution to declare a major in a particular subject area, and the student—

(I)(aa) studies, in such years, a subject described in subparagraph (C)(i) that is at least equal to the requirements for an academic major at an institution of higher education that offers a baccalaureate degree in such subject, as certified by an appropriate official from the institution; and

(bb) has obtained a cumulative grade point average of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) in the relevant coursework; or

(II) is required, as part of the student's degree program, to undertake a rigorous course of study in mathematics, biology, chemistry, and physics, which consists of at least—

(aa) 4 years of study in mathematics; and

(bb) 3 years of study in the sciences, with a laboratory component in each of those years; and

(ii) offered such curriculum prior to February 8, 2006; or

(E) the fifth year of a program of undergraduate education that requires 5 full years of coursework, as certified by the appropriate official of the degree-granting institution of higher education, for which a baccalaureate degree is awarded by a degree-granting institution of higher education—

(i) is certified by the institution of higher education to be pursuing a major in—

(I) the physical, life, or computer sciences, mathematics, technology, or engineering (as determined by the Secretary pursuant to regulations); or

(II) a critical foreign language; and

(ii) has obtained a cumulative grade point average of at least 3.0 (or the equivalent, as determined under regulations prescribed by the Secretary) in the coursework required for the major described in clause (i).

(d) Grant award

(1) Amounts

(A) In general

The Secretary shall award a grant under this section in the amount of—

(i) $750 for an eligible student under subsection (c)(3)(A);

(ii) $1,300 for an eligible student under subsection (c)(3)(B);

(iii) $4,000 for an eligible student under subparagraph (C) or (D) of subsection (c)(3), for each of the two years described in such subparagraphs; or

(iv) $4,000 for an eligible student under subsection (c)(3)(E).

(B) Limitation; ratable reduction

Notwithstanding subparagraph (A)—

(i) in any case in which a student attends an institution of higher education on less than a full-time basis, the amount of the grant that such student may receive shall be reduced in the same manner as a Federal Pell Grant is reduced under section 1070a(b)(2)(B) of this title;

(ii) the amount of such grant, in combination with the Federal Pell Grant assistance and other student financial assistance available to such student, shall not exceed the student's cost of attendance;

(iii) if the amount made available under subsection (e) for any fiscal year is less than the amount required to be provided grants to all eligible students in the amounts determined under subparagraph (A) and clause (i) of this subparagraph, then the amount of the grant to each eligible student shall be ratably reduced; and

(iv) if additional amounts are appropriated for any such fiscal year, such reduced amounts shall be increased on the same basis as they were reduced.

(2) Limitations

(A) No grants for previous credit

The Secretary may not award a grant under this section to any student for any year of a program of undergraduate education for which the student received credit before February 8, 2006.

(B) Number of grants

The Secretary may not award more than one grant to a student described in subsection (c)(3) for each year of study described in such subsection.

(3) Calculation of grant payments

An institution of higher education shall make payments of a grant awarded under this section in the same manner, using the same payment periods, as such institution makes payments for Federal Pell Grants under section 1070a of this title.

(e) Funding

(1) Authorization and appropriation of funds

There are authorized to be appropriated, and there are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Education to carry out this section—

(A) $790,000,000 for fiscal year 2006;

(B) $850,000,000 for fiscal year 2007;

(C) $920,000,000 for fiscal year 2008;

(D) $960,000,000 for fiscal year 2009; and

(E) $1,010,000,000 for fiscal year 2010.

(2) Availability of funds

Funds made available under paragraph (1) for a fiscal year shall remain available for the succeeding fiscal year.

(f) Recognition of programs of study

The Secretary shall recognize not less than one rigorous secondary school program of study in each State under subparagraphs (A) and (B) of subsection (c)(3) for the purpose of determining student eligibility under such subsection.

(g) Sunset provision

The authority to make grants under this section shall expire at the end of award year 2010–2011.

(Pub. L. 89–329, title IV, § 401A, as added Pub. L. 109–171, title VIII, § 8003, Feb. 8, 2006, 120 Stat. 155; amended Pub. L. 110–227, § 10(a), May 7, 2008, 122 Stat. 748; Pub. L. 110–315, title IV, § 402(a)(1), Aug. 14, 2008, 122 Stat. 3190.)

PRIOR PROVISIONS

A prior section 1070a–1, Pub. L. 89–329, title IV, § 411A, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1312; amended Pub. L. 100–50, § 3(b)(1), June 3, 1987, 101 Stat. 337; Pub. L. 100–369, § 7(c), July 18, 1988, 102 Stat. 837, related to family contribution schedule for Pell Grants and data elements, prior to repeal by Pub. L. 102–325, title IV, § 401(i), July 23, 1992, 106 Stat. 482.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–227, § 10(a)(1), added subsec. (a) and struck out former subsec. (a) which established Academic Competitiveness Grants and Academic Competitiveness Council and required report to Congress.

Subsec. (b)(1). Pub. L. 110–227, § 10(a)(2)(A), substituted ''year'' for ''academic year''.

Subsec. (b)(2). Pub. L. 110–227, § 10(a)(2), substituted ''third, fourth, or fifth'' for ''third or fourth'' and ''year'' for ''academic year''.

Subsec. (c). Pub. L. 110–227, § 10(a)(3)(A), in introductory provisions, struck out ''full-time'' before ''student who, for the'' and substituted ''award'' for ''academic'' and ''is made for a grant under this section'' for ''is made''.

Subsec. (c)(1), (2). Pub. L. 110–227, § 10(a)(3)(B), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) is a citizen of the United States;

''(2) is eligible for a Federal Pell Grant; and''.

Subsec. (c)(3). Pub. L. 110–227, § 10(a)(3)(C)(i), struck out ''academic'' before ''year of'' wherever appearing.

Subsec. (c)(3)(A). Pub. L. 110–227, § 10(a)(3)(C)(ii)(I), substituted, in introductory provisions, ''the first year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education (including a program of not less than one year for which the institution awards a certificate)—'' for ''the first year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education—''.

Subsec. (c)(3)(A)(i). Pub. L. 110–315, § 402(a)(1)(A)(i), added cl. (i) and struck out former cl. (i) which read as follows: ''has successfully completed, after January 1, 2006, a rigorous secondary school program of study established by a State or local educational agency and recognized as such by the Secretary; and''. See Effective Date of 2008 Amendment notes below.

Pub. L. 110–227, § 10(a)(3)(C)(ii)(II), added cl. (i) and struck out former cl. (i), as amended by Pub. L. 110–315, § 402(a)(1)(A)(i), which read as follows:

''(I) successfully completes, after January 1, 2006, but before July 1, 2009, a rigorous secondary school program of study established by a State or local educational agency and recognized as such by the Secretary; or

''(II) successfully completes, on or after July 1, 2009, a rigorous secondary school program of study that prepares students for college—

''(aa)(AA) that is recognized as such by the official designated for such recognition consistent with State law; and

''(BB) about which the designated official has reported to the Secretary, at such time as the Sec-

retary may reasonably require, in order to assist financial aid administrators to determine that the student is an eligible student under this section; or

''(bb) that is recognized as such by the Secretary in regulations promulgated to carry out this section, as such regulations were in effect on May 6, 2008; and''.

See Effective Date of 2008 Amendment notes below.

Subsec. (c)(3)(A)(ii). Pub. L. 110–227, § 10(a)(3)(C)(ii)(III), inserted '', except as part of a secondary school program of study'' before semicolon.

Subsec. (c)(3)(B). Pub. L. 110–227, § 10(a)(3)(C)(iii)(I), in introductory provisions, substituted ''year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education (including a program of not less than two years for which the institution awards a certificate)'' for ''year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education''.

Subsec. (c)(3)(B)(i). Pub. L. 110–315, § 402(a)(1)(A)(ii), added cl. (i) and struck out former cl. (i) which read as follows: ''has successfully completed, after January 1, 2005, a rigorous secondary school program of study established by a State or local educational agency and recognized as such by the Secretary; and''.

Subsec. (c)(3)(C)(i). Pub. L. 110–227, § 10(a)(3)(C)(iv)(I), inserted ''certified by the institution to be'' after ''is'' in introductory provisions.

Subsec. (c)(3)(C)(i)(II). Pub. L. 110–227, § 10(a)(3)(C)(iv)(II), added subcl. (II) and struck out former subcl. (II) which read as follows: ''a foreign language that the Secretary, in consultation with the Director of National Intelligence, determines is critical to the national security of the United States; and''.

Subsec. (c)(3)(D), (E). Pub. L. 110–227, § 10(a)(3)(C)(iii)(II), (iv)(III), (v), added subpars. (D) and (E).

Subsec. (d)(1)(A). Pub. L. 110–227, § 10(a)(4)(A)(i), inserted heading, substituted ''subparagraph (C) or (D) of subsection (c)(3), for each of the two years described in such subparagraphs; or'' for ''subsection (c)(3)(C).'' in cl. (iii), and added cl. (iv).

Subsec. (d)(1)(B). Pub. L. 110–227, § 10(a)(4)(A)(ii), inserted heading, added cl. (i), and redesignated former cls. (i) to (iii) as (ii) to (iv), respectively.

Subsec. (d)(2), (3). Pub. L. 110–227, § 10(a)(4)(B), (C), added pars. (2) and (3) and struck out former par. (2). Prior to amendment, text read as follows: ''The Secretary shall not award a grant under this section—

''(A) to any student for an academic year of a program of undergraduate education described in subparagraph (A), (B), or (C) of subsection (c)(3) for which the student received credit before February 8, 2006; or

''(B) to any student for more than—

''(i) one academic year under subsection (c)(3)(A);

''(ii) one academic year under subsection (c)(3)(B); or

''(iii) two academic years under subsection (c)(3)(C).''

Subsec. (e)(2). Pub. L. 110–315, § 402(a)(1)(B), amended par. (2) generally. Prior to amendment, text read as follows: ''If, at the end of a fiscal year, the funds available for awarding grants under this section exceed the amount necessary to make such grants in the amounts authorized by subsection (d), then all of the excess funds shall remain available for awarding grants under this section during the subsequent fiscal year.'' See Effective Date of 2008 Amendment notes below.

Pub. L. 110–227, § 10(a)(5), added par. (2) and struck out former par. (2), as amended by Pub. L. 110–315, § 402(a)(1)(B). Prior to amendment, text read as follows: ''The amounts made available by paragraph (1) for any fiscal year shall be available from October 1 of that fiscal year and remain available through September 30 of the succeeding fiscal year.'' See Effective Date of 2008 Amendment notes below.

Subsec. (f). Pub. L. 110–227, § 10(a)(6), substituted ''not less than one'' for ''at least one'' and ''subparagraphs (A) and (B) of subsection (c)(3)'' for ''subsection (c)(3)(A) and (B)''.

Subsec. (g). Pub. L. 110–227, § 10(a)(7), substituted ''award'' for ''academic''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, § 402(a)(2), Aug. 14, 2008, 122 Stat. 3191, provided that: ''The amendment made by paragraph (1)(B) [amending this section] shall take effect on October 1, 2008.''

Pub. L. 110–227, § 10(b), May 7, 2008, 122 Stat. 752, as amended by Pub. L. 110–315, title IV, § 402(a)(3), Aug. 14, 2008, 122 Stat. 3191, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on July 1, 2009.''

EFFECTIVE DATE

Section effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as an Effective Date of 2006 Amendment note under section 1002 of this title.

§§ 1070a–2 to 1070a–6. Repealed. Pub. L. 102–325, title IV, § 401(i), July 23, 1992, 106 Stat. 482

Section 1070a–2, Pub. L. 89–329, title IV, § 411B, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1313; amended Pub. L. 100–50, § 3(b)(2), (c)–(f)(1), (4), (5), (g), June 3, 1987, 101 Stat. 337, 338; Pub. L. 102–54, § 13(g)(1)(B), June 13, 1991, 105 Stat. 275, related to eligibility determination for dependent students.

Section 1070a–3, Pub. L. 89–329, title IV, § 411C, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1316; amended Pub. L. 100–50, § 3(b)(3), (c)(1), (f)(2), (4), (5), (g), (h)(2), June 3, 1987, 101 Stat. 337, 338; Pub. L. 100–369, § 7(c), July 18, 1988, 102 Stat. 837; Pub. L. 102–54, § 13(g)(1)(C), June 13, 1991, 105 Stat. 275, related to eligibility determination for independent students with dependents other than a spouse.

Section 1070a–4, Pub. L. 89–329, title IV, § 411D, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1319; amended Pub. L. 100–50, § 3(b)(4), (c)(1), (f)(3), (4), (g), June 3, 1987, 101 Stat. 337, 338; Pub. L. 100–369, § 7(c), July 18, 1988, 102 Stat. 837; Pub. L. 102–54, § 13(g)(1)(D), June 13, 1991, 105 Stat. 275, related to eligibility determination for single independent students or for married independent students without other dependents.

Section 1070a–5, Pub. L. 89–329, title IV, § 411E, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1322, related to regulations and updated tables.

Section 1070a–6, Pub. L. 89–329, title IV, § 411F, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1323; amended Pub. L. 100–50, § 3(h)(1), (i)–(m), June 3, 1987, 101 Stat. 338, 339; Pub. L. 100–369, § 7(a), (c), July 18, 1988, 102 Stat. 836, 837; Pub. L. 101–610, title I, § 185(1), (2), Nov. 16, 1990, 104 Stat. 3167, related to definitions and determinations.

SUBPART 2—FEDERAL EARLY OUTREACH AND STUDENT SERVICES PROGRAMS

CODIFICATION

Pub. L. 102–325, title IV, § 402(a)(2), (4), July 23, 1992, 106 Stat. 482, added subpart 2 and redesignated former subpart 2 comprising sections 1070b to 1070b–3 of this title as subpart 3.

Division 1—Federal TRIO Programs

§ 1070a–11. Program authority; authorization of appropriations

(a) Grants and contracts authorized

The Secretary shall, in accordance with the provisions of this division, carry out a program of making grants and contracts designed to identify qualified individuals from disadvantaged backgrounds, to prepare them for a program of postsecondary education, to provide

support services for such students who are pursuing programs of postsecondary education, to motivate and prepare students for doctoral programs, and to train individuals serving or preparing for service in programs and projects so designed.

(b) Recipients, duration, and size

(1) Recipients

For the purposes described in subsection (a) of this section, the Secretary is authorized, without regard to section 6101 of title 41, to make grants to, and contracts with, institutions of higher education, public and private agencies and organizations, including community-based organizations with experience in serving disadvantaged youth, combinations of such institutions, agencies and organizations, and, as appropriate to the purposes of the program, secondary schools, for planning, developing, or carrying out one or more of the services assisted under this division.

(2) Duration

Grants or contracts made under this division shall be awarded for a period of 5 years, except that—

(A) in order to synchronize the awarding of grants for programs under this division, the Secretary may, under such terms as are consistent with the purposes of this division, provide a one-time, limited extension of the length of such an award;

(B) grants made under section 1070a–17 of this title shall be awarded for a period of 2 years; and

(C) grants under section 1070a–18 of this title shall be awarded for a period determined by the Secretary.

(3) Minimum grants

Unless the institution or agency requests a smaller amount, an individual grant authorized under this division shall be awarded in an amount that is not less than $200,000, except that an individual grant authorized under section 1070a–17 of this title shall be awarded in an amount that is not less than $170,000.

(c) Procedures for awarding grants and contracts

(1) Application requirements

An eligible entity that desires to receive a grant or contract under this division shall submit an application to the Secretary in such manner and form, and containing such information and assurances, as the Secretary may reasonably require.

(2) Considerations

(A) Prior experience

In making grants under this division, the Secretary shall consider each applicant's prior experience of high quality service delivery, as determined under subsection (f), under the particular program for which funds are sought. The level of consideration given the factor of prior experience shall not vary from the level of consideration given such factor during fiscal years 1994 through 1997, except that grants made under section 1070a–18 of this title shall not be given prior experience consideration.

(B) Participant need

In making grants under this division, the Secretary shall consider the number, percentages, and needs of eligible participants in the area, institution of higher education, or secondary school to be served to aid such participants in preparing for, enrolling in, or succeeding in postsecondary education, as appropriate to the particular program for which the eligible entity is applying.

(3) Order of awards; program fraud

(A) Except with respect to grants made under sections 1070a–17 and 1070a–18 of this title and as provided in subparagraph (B), the Secretary shall award grants and contracts under this division in the order of the scores received by the application for such grant or contract in the peer review process required under paragraph (4) and adjusted for prior experience in accordance with paragraph (2) of this subsection.

(B) The Secretary shall not provide assistance to a program otherwise eligible for assistance under this division, if the Secretary has determined that such program has involved the fraudulent use of funds under this division.

(4) Peer review process

(A) The Secretary shall ensure that, to the extent practicable, members of groups underrepresented in higher education, including African Americans, Hispanics, Native Americans, Alaska Natives, Asian Americans, and Native American Pacific Islanders (including Native Hawaiians), are represented as readers of applications submitted under this division. The Secretary shall also ensure that persons from urban and rural backgrounds are represented as readers.

(B) The Secretary shall ensure that each application submitted under this division is read by at least three readers who are not employees of the Federal Government (other than as readers of applications).

(5) Number of applications for grants and contracts

The Secretary shall not limit the number of applications submitted by an entity under any program authorized under this division if the additional applications describe programs serving different populations or different campuses.

(6) Coordination with other programs for disadvantaged students

The Secretary shall encourage coordination of programs assisted under this division with other programs for disadvantaged students operated by the sponsoring institution or agency, regardless of the funding source of such programs. The Secretary shall not limit an entity's eligibility to receive funds under this division because such entity sponsors a program similar to the program to be assisted under this division, regardless of the funding source of such program. The Secretary shall permit the Director of a program receiving funds under this division to administer one or more additional programs for disadvantaged stu-

dents operated by the sponsoring institution or agency, regardless of the funding sources of such programs. The Secretary shall, as appropriate, require each applicant for funds under the programs authorized by this division to identify and make available services under such program, including mentoring, tutoring, and other services provided by such program, to foster care youth (including youth in foster care and youth who have left foster care after reaching age 13) or to homeless children and youths as defined in section 11434a of title 42.

(7) Application status

The Secretary shall inform each entity operating programs under this division regarding the status of their application for continued funding at least 8 months prior to the expiration of the grant or contract. The Secretary, in the case of an entity that is continuing to operate a successful program under this division, shall ensure that the start-up date for a new grant or contract for such program immediately follows the termination of the preceding grant or contract so that no interruption of funding occurs for such successful reapplicants. The Secretary shall inform each entity requesting assistance under this division for a new program regarding the status of their application at least 8 months prior to the proposed startup date of such program.

(8) Review and notification by the Secretary

(A) Guidance

Not later than 180 days after August 14, 2008, the Secretary shall issue nonregulatory guidance regarding the rights and responsibilities of applicants with respect to the application and evaluation process for programs and projects assisted under this division, including applicant access to peer review comments. The guidance shall describe the procedures for the submission, processing, and scoring of applications for grants under this division, including—

(i) the responsibility of applicants to submit materials in a timely manner and in accordance with the processes established by the Secretary under the authority of the General Education Provisions Act [20 U.S.C. 1221 et seq.];

(ii) steps the Secretary will take to ensure that the materials submitted by applicants are processed in a proper and timely manner;

(iii) steps the Secretary will take to ensure that prior experience points for high quality service delivery are awarded in an accurate and transparent manner;

(iv) steps the Secretary will take to ensure the quality and integrity of the peer review process, including assurances that peer reviewers will consider applications for grants under this division in a thorough and complete manner consistent with applicable Federal law; and

(v) steps the Secretary will take to ensure that the final score of an application, including prior experience points for high quality service delivery and points awarded through the peer review process, is determined in an accurate and transparent manner.

(B) Updated guidance

Not later than 45 days before the date of the commencement of each competition for a grant under this division that is held after the expiration of the 180-day period described in subparagraph (A), the Secretary shall update and publish the guidance described in such subparagraph.

(C) Review

(i) In general

With respect to any competition for a grant under this division, an applicant may request a review by the Secretary if the applicant—

(I) has evidence of a specific technical, administrative, or scoring error made by the Department, an agent of the Department, or a peer reviewer, with respect to the scoring or processing of a submitted application; and

(II) has otherwise met all of the requirements for submission of the application.

(ii) Technical or administrative error

In the case of evidence of a technical or administrative error listed in clause (i)(I), the Secretary shall review such evidence and provide a timely response to the applicant. If the Secretary determines that a technical or administrative error was made by the Department or an agent of the Department, the application of the applicant shall be reconsidered in the peer review process for the applicable grant competition.

(iii) Scoring error

In the case of evidence of a scoring error listed in clause (i)(I), when the error relates to either prior experience points for high quality service delivery or to the final score of an application, the Secretary shall—

(I) review such evidence and provide a timely response to the applicant; and

(II) if the Secretary determines that a scoring error was made by the Department or a peer reviewer, adjust the prior experience points or final score of the application appropriately and quickly, so as not to interfere with the timely awarding of grants for the applicable grant competition.

(iv) Error in peer review process

(I) Referral to secondary review

In the case of a peer review process error listed in clause (i)(I), if the Secretary determines that points were withheld for criteria not required in Federal statute, regulation, or guidance governing a program assisted under this division or the application for a grant for such program, or determines that information pertaining to selection criteria was wrongly determined to be missing from an application by a peer reviewer,

then the Secretary shall refer the application to a secondary review panel.

(II) Timely review; replacement score

The secondary review panel described in subclause (I) shall conduct a secondary review in a timely fashion, and the score resulting from the secondary review shall replace the score from the initial peer review.

(III) Composition of secondary review panel

The secondary review panel shall be composed of reviewers each of whom—

(aa) did not review the application in the original peer review;

(bb) is a member of the cohort of peer reviewers for the grant program that is the subject of such secondary review; and

(cc) to extent practicable, has conducted peer reviews in not less than two previous competitions for the grant program that is the subject of such secondary review.

(IV) Final score

The final peer review score of an application subject to a secondary review under this clause shall be adjusted appropriately and quickly using the score awarded by the secondary review panel, so as not to interfere with the timely awarding of grants for the applicable grant competition.

(V) Qualification for secondary review

To qualify for a secondary review under this clause, an applicant shall have evidence of a scoring error and demonstrate that—

(aa) points were withheld for criteria not required in statute, regulation, or guidance governing the Federal TRIO programs or the application for a grant for such programs; or

(bb) information pertaining to selection criteria was wrongly determined to be missing from the application.

(v) Finality

(I) In general

A determination by the Secretary under clause (i), (ii), or (iii) shall not be reviewable by any officer or employee of the Department.

(II) Scoring

The score awarded by a secondary review panel under clause (iv) shall not be reviewable by any officer or employee of the Department other than the Secretary.

(vi) Funding of applications with certain adjusted scores

To the extent feasible based on the availability of appropriations, the Secretary shall fund applications with scores that are adjusted upward under clauses (ii), (iii), and (iv) to equal or exceed the minimum cut off score for the applicable grant competition.

(d) Outreach

(1) In general

The Secretary shall conduct outreach activities to ensure that entities eligible for assistance under this division submit applications proposing programs that serve geographic areas and eligible populations which have been underserved by the programs assisted under this division.

(2) Notice

In carrying out the provisions of paragraph (1), the Secretary shall notify the entities described in subsection (b) of this section of the availability of assistance under this subsection not less than 120 days prior to the deadline for submission of applications under this division and shall consult national, State, and regional organizations about candidates for notification.

(3) Technical assistance

The Secretary shall provide technical training to applicants for projects and programs authorized under this division. The Secretary shall give priority to serving programs and projects that serve geographic areas and eligible populations which have been underserved by the programs assisted under this division. Technical training activities shall include the provision of information on authorizing legislation, goals and objectives of the program, required activities, eligibility requirements, the application process and application deadlines, and assistance in the development of program proposals and the completion of program applications. Such training shall be furnished at conferences, seminars, and workshops to be conducted at not less than 10 sites throughout the United States to ensure that all areas of the United States with large concentrations of eligible participants are served.

(4) Special rule

The Secretary may contract with eligible entities to conduct the outreach activities described in this subsection.

(e) Documentation of status as a low-income individual

(1) Except in the case of an independent student, as defined in section 1087vv(d) of this title, documentation of an individual's status pursuant to subsection (h)(4) shall be made by providing the Secretary with—

(A) a signed statement from the individual's parent or legal guardian;

(B) verification from another governmental source;

(C) a signed financial aid application; or

(D) a signed United States or Puerto Rico income tax return.

(2) In the case of an independent student, as defined in section 1087vv(d) of this title, documentation of an individual's status pursuant to subsection (h)(4) shall be made by providing the Secretary with—

(A) a signed statement from the individual;

(B) verification from another governmental source;

(C) a signed financial aid application; or

(D) a signed United States or Puerto Rico income tax return.

(3) Notwithstanding this subsection and subsection (h)(4), individuals who are foster care youth (including youth in foster care and youth who have left foster care after reaching age 13), or homeless children and youths as defined in section 11434a of title 42, shall be eligible to participate in programs under sections 1070a–12, 1070a–13, 1070a–14, and 1070a–16 of this title.

(f) Outcome criteria

(1) Use for prior experience determination

For competitions for grants under this division that begin on or after January 1, 2009, the Secretary shall determine an eligible entity's prior experience of high quality service delivery, as required under subsection (c)(2), based on the outcome criteria described in paragraphs (2) and (3).

(2) Disaggregation of relevant data

The outcome criteria under this subsection shall be disaggregated by low-income students, first generation college students, and individuals with disabilities, in the schools and institutions of higher education served by the program to be evaluated.

(3) Contents of outcome criteria

The outcome criteria under this subsection shall measure, annually and for longer periods, the quality and effectiveness of programs authorized under this division and shall include the following:

(A) For programs authorized under section 1070a–12 of this title, the extent to which the eligible entity met or exceeded the entity's objectives established in the entity's application for such program regarding—

(i) the delivery of service to a total number of students served by the program;

(ii) the continued secondary school enrollment of such students;

(iii) the graduation of such students from secondary school with a regular secondary school diploma in the standard number of years;

(iv) the completion by such students of a rigorous secondary school program of study that will make such students eligible for programs such as the Academic Competitiveness Grants Program;

(v) the enrollment of such students in an institution of higher education; and

(vi) to the extent practicable, the postsecondary education completion of such students.

(B) For programs authorized under section 1070a–13 of this title, the extent to which the eligible entity met or exceeded the entity's objectives for such program regarding—

(i) the delivery of service to a total number of students served by the program, as agreed upon by the entity and the Secretary for the period;

(ii) such students' school performance, as measured by the grade point average, or its equivalent;

(iii) such students' academic performance, as measured by standardized tests, including tests required by the students' State;

(iv) the retention in, and graduation from, secondary school of such students;

(v) the completion by such students of a rigorous secondary school program of study that will make such students eligible for programs such as the Academic Competitiveness Grants Program;

(vi) the enrollment of such students in an institution of higher education; and

(vii) to the extent practicable, the postsecondary education completion of such students.

(C) For programs authorized under section 1070a–14 of this title—

(i) the extent to which the eligible entity met or exceeded the entity's objectives regarding the retention in postsecondary education of the students served by the program;

(ii)(I) in the case of an entity that is an institution of higher education offering a baccalaureate degree, the extent to which the entity met or exceeded the entity's objectives regarding the percentage of such students' completion of the degree programs in which such students were enrolled; or

(II) in the case of an entity that is an institution of higher education that does not offer a baccalaureate degree, the extent to which such students met or exceeded the entity's objectives regarding—

(aa) the completion of a degree or certificate by such students; and

(bb) the transfer of such students to institutions of higher education that offer baccalaureate degrees;

(iii) the extent to which the entity met or exceeded the entity's objectives regarding the delivery of service to a total number of students, as agreed upon by the entity and the Secretary for the period; and

(iv) the extent to which the entity met or exceeded the entity's objectives regarding the students served under the program who remain in good academic standing.

(D) For programs authorized under section 1070a–15 of this title, the extent to which the entity met or exceeded the entity's objectives for such program regarding—

(i) the delivery of service to a total number of students served by the program, as agreed upon by the entity and the Secretary for the period;

(ii) the provision of appropriate scholarly and research activities for the students served by the program;

(iii) the acceptance and enrollment of such students in graduate programs; and

(iv) the continued enrollment of such students in graduate study and the attainment of doctoral degrees by former program participants.

(E) For programs authorized under section 1070a–16 of this title, the extent to which the entity met or exceeded the entity's objectives for such program regarding—

(i) the enrollment of students without a secondary school diploma or its recognized equivalent, who were served by the program, in programs leading to such diploma or equivalent;

(ii) the enrollment of secondary school graduates who were served by the program in programs of postsecondary education;

(iii) the delivery of service to a total number of students served by the program, as agreed upon by the entity and the Secretary for the period; and

(iv) the provision of assistance to students served by the program in completing financial aid applications and college admission applications.

(4) Measurement of progress

In order to determine the extent to which each outcome criterion described in paragraph (2) or (3) is met or exceeded, the Secretary shall compare the agreed upon target for the criterion, as established in the eligible entity's application approved by the Secretary, with the results for the criterion, measured as of the last day of the applicable time period for the determination for the outcome criterion.

(g) Authorization of appropriations

For the purpose of making grants and contracts under this division, there are authorized to be appropriated $900,000,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years. Of the amount appropriated under this division, the Secretary may use no more than ½ of 1 percent of such amount to obtain additional qualified readers and additional staff to review applications, to increase the level of oversight monitoring, to support impact studies, program assessments and reviews, and to provide technical assistance to potential applicants and current grantees. In expending these funds, the Secretary shall give priority to the additional administrative requirements provided in the Higher Education Amendments of 1992, to outreach activities, and to obtaining additional readers.

(h) Definitions

For the purpose of this division:

(1) Different campus

The term ''different campus'' means a site of an institution of higher education that—

(A) is geographically apart from the main campus of the institution;

(B) is permanent in nature; and

(C) offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

(2) Different population

The term ''different population'' means a group of individuals that an eligible entity desires to serve through an application for a grant under this division, and that—

(A) is separate and distinct from any other population that the entity has applied for a grant under this division to serve; or

(B) while sharing some of the same needs as another population that the eligible entity has applied for a grant under this division to serve, has distinct needs for specialized services.

(3) First generation college student

The term ''first generation college student'' means—

(A) an individual both of whose parents did not complete a baccalaureate degree; or

(B) in the case of any individual who regularly resided with and received support from only one parent, an individual whose only such parent did not complete a baccalaureate degree.

(4) Low-income individual

The term ''low-income individual'' means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

(5) Veteran eligibility

No veteran shall be deemed ineligible to participate in any program under this division by reason of such individual's age who—

(A) served on active duty for a period of more than 180 days and was discharged or released therefrom under conditions other than dishonorable;

(B) served on active duty and was discharged or released therefrom because of a service connected disability;

(C) was a member of a reserve component of the Armed Forces called to active duty for a period of more than 30 days; or

(D) was a member of a reserve component of the Armed Forces who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) on or after September 11, 2001.

(6) Waiver

The Secretary may waive the service requirements in subparagraph (A), (B), or (C) of paragraph (5) if the Secretary determines the application of the service requirements to a veteran will defeat the purpose of a program under this division.

(Pub. L. 89–329, title IV, § 402A, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 482; amended Pub. L. 103–208, § 2(b)(6)–(9), Dec. 20, 1993, 107 Stat. 2458; Pub. L. 105–244, title I, § 102(b)(1), title IV, § 402(a), Oct. 7, 1998, 112 Stat. 1622, 1652; Pub. L. 110–315, title IV, § 403(a), Aug. 14, 2008, 122 Stat. 3191; Pub. L. 111–39, title IV, § 401(a)(4), July 1, 2009, 123 Stat. 1938.)

REFERENCES IN TEXT

The General Education Provisions Act, referred to in subsec. (c)(8)(A)(i), is title IV of Pub. L. 90–247, Jan. 2, 1968, 81 Stat. 814, which is classified generally to chapter 31 (§ 1221 et seq.) of this title. For complete classification of this Act to the Code, see section 1221 of this title and Tables.

The Higher Education Amendments of 1992, referred to in subsec. (g), is Pub. L. 102–325, July 23, 1992, 106 Stat. 448. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 1001 of this title and Tables.

REFERENCES TO SUBPART 2, 3, OR 4 OF THIS PART DEEMED TO REFER TO SUBPART 3, 4, OR 2 OF THIS PART

Section 402(b) of Pub. L. 102–325 provided that: ''Reference in any provision of law (other than the Act [20

U.S.C. 1001 et seq.]) to subpart 2, 3, or 4 of part A of title IV of the Act shall, after the date of enactment of this Act [July 23, 1992], be deemed to refer to subpart 3 [20 U.S.C. 1070b et seq.], 4 [20 U.S.C. 1070c et seq.], or 2 [20 U.S.C. 1070a–11 et seq.] of such part, respectively.''

CODIFICATION

In subsec. (b)(1), ''section 6101 of title 41'' substituted for ''section 3709 of the Revised Statutes (41 U.S.C. 5)'' on authority of Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111–39, § 401(a)(4)(A), substituted ''organizations, including'' for ''organizations including''.

Subsec. (c)(8)(C)(iv)(I). Pub. L. 111–39, § 401(a)(4)(B), inserted ''to be'' after ''determined''.

2008—Subsec. (b)(1). Pub. L. 110–315, § 403(a)(1)(A), inserted ''including community-based organizations with experience in serving disadvantaged youth'' after ''private agencies and organizations'' and substituted '', as appropriate to the purposes of the program'' for ''in exceptional circumstances''.

Subsec. (b)(2). Pub. L. 110–315, § 403(a)(1)(B)(i), substituted ''5 years'' for ''4 years'' in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 110–315, § 403(a)(1)(B)(ii), amended subpar. (A) generally. Prior to amendment subpar. (A) read as follows: ''the Secretary shall award such grants or contracts for 5 years to applicants whose peer review scores were in the highest 10 percent of scores of all applicants receiving grants or contracts in each program competition for the same award year;''.

Subsec. (b)(3). Pub. L. 110–315, § 403(a)(1)(C), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: ''Unless the institution or agency requests a smaller amount, individual grants under this division shall be no less than—

''(A) $170,000 for programs authorized by sections 1070a–14 and 1070a–17 of this title;

''(B) $180,000 for programs authorized by sections 1070a–12 and 1070a–16 of this title; and

''(C) $190,000 for programs authorized by sections 1070a–13 and 1070a–15 of this title.''

Subsec. (c)(2). Pub. L. 110–315, § 403(a)(2)(A), inserted par. heading, designated former par. heading as subpar. (A) heading and existing provisions as subpar. (A), substituted ''high quality service delivery, as determined under subsection (f),'' for ''service delivery'', and added subpar. (B).

Subsec. (c)(3)(B). Pub. L. 110–315, § 403(a)(2)(B), substituted ''shall not'' for ''is not required to''.

Subsec. (c)(5). Pub. L. 110–315, § 403(a)(2)(C), substituted ''different campuses'' for ''campuses''.

Subsec. (c)(6). Pub. L. 110–315, § 403(a)(2)(D), inserted at end ''The Secretary shall, as appropriate, require each applicant for funds under the programs authorized by this division to identify and make available services under such program, including mentoring, tutoring, and other services provided by such program, to foster care youth (including youth in foster care and youth who have left foster care after reaching age 13) or to homeless children and youths as defined in section 11434a of title 42.''

Subsec. (c)(8). Pub. L. 110–315, § 403(a)(2)(E), added par. (8).

Subsec. (e)(1), (2). Pub. L. 110–315, § 403(a)(3)(A), substituted ''subsection (h)(4)'' for ''subsection (g)(2)'' in introductory provisions.

Subsec. (e)(3). Pub. L. 110–315, § 403(a)(3)(B), added par. (3).

Subsec. (f). Pub. L. 110–315, § 403(a)(5), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 110–315, § 403(a)(6), substituted ''$900,000,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years'' for ''$700,000,000 for fiscal year 1999, and such sums as may be necessary for each of the 4 succeeding fiscal years'' and struck out last sentence which read as follows: ''The Secretary shall report to Congress by October 1, 1994, on the use of these funds.''

Pub. L. 110–315, § 403(a)(4), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 110–315, § 403(a)(7)(A), (B), added pars. (1) and (2) and redesignated former pars. (1) to (4) as (3) to (6), respectively.

Pub. L. 110–315, § 403(a)(4), redesignated subsec. (g) as (h).

Subsec. (h)(5)(A). Pub. L. 110–315, § 403(a)(7)(C)(i), struck out '', any part of which occurred after January 31, 1955,'' after ''more than 180 days'' and ''or'' after semicolon.

Subsec. (h)(5)(B). Pub. L. 110–315, § 403(a)(7)(C)(ii), struck out ''after January 31, 1955,'' after ''active duty'' and substituted a semicolon for period at end.

Subsec. (h)(5)(C), (D). Pub. L. 110–315, § 403(a)(7)(C)(iii), added subpars. (C) and (D).

Subsec. (h)(6). Pub. L. 110–315, § 403(a)(7)(D), substituted ''subparagraph (A), (B), or (C) of paragraph (5)'' for ''subparagraph (A) or (B) of paragraph (3)''.

1998—Subsec. (b)(2)(C). Pub. L. 105–244, § 402(a)(1), added subpar. (C).

Subsec. (b)(3). Pub. L. 105–244, § 402(a)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''In any year in which the appropriations authorized under this division exceed the prior year appropriation as adjusted for inflation, the Secretary shall use 80 percent of the amount appropriated above the current services level to bring each award up to the minimum grant level or the amount requested by the institution or agency, whichever is less. The minimum grant level (A) for programs authorized under section 1070a–14 or 1070a–17 of this title, shall not be less than $170,000 for fiscal year 1993; (B) for programs authorized under section 1070a–12 or 1070a–16 of this title shall not be less than $180,000 for fiscal year 1994; and (C) for programs authorized under section 1070a–13 or 1070a–15 of this title shall not be less than $190,000 for fiscal year 1995.''

Subsec. (c). Pub. L. 105–244, § 402(a)(3), amended subsec. (c) generally, revising and restating former pars. (1) to (6), relating to procedures for awarding grants and contracts, as pars. (1) to (7).

Subsec. (c)(2). Pub. L. 105–244, § 102(b)(1), substituted ''section 1011g'' for ''section 1145d–1''.

Subsec. (f). Pub. L. 105–244, § 402(a)(4), substituted ''$700,000,000 for fiscal year 1999'' for ''$650,000,000 for fiscal year 1993''.

Subsec. (g)(4). Pub. L. 105–244, § 402(a)(5), added par. (4).

1993—Subsec. (b)(2). Pub. L. 103–208, § 2(b)(6), added par. (2) and struck out former par. (2) which read as follows: ''Grants or contracts made under this division shall be awarded for a period of 4 years, except that the Secretary shall award such grants or contracts for 5 years to applicants whose peer review scores were in the highest 10 percent of scores of all applicants receiving grants or contracts in each program competition for the same award year.''

Subsec. (c)(1). Pub. L. 103–208, § 2(b)(7), inserted before period at end of second sentence '', except that in the case of the programs authorized in sections 1070a–15 and 1070a–17 of this title, the level of consideration given to prior experience shall be the same as the level of consideration given this factor in the other programs authorized in this division''.

Subsec. (c)(2)(A). Pub. L. 103–208, § 2(b)(8), inserted ''with respect to grants made under section 1070a–17 of this title, and'' after ''Except''.

Subsec. (e). Pub. L. 103–208, § 2(b)(9), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Documentation of an individual's status pursuant to subsection (g)(2) of this section shall be made—

''(1) in the case of an individual who is eighteen years of age or younger or a dependent student by providing the Secretary with a signed statement from

the parent or legal guardian, verification from another governmental source, a signed financial aid application, or a signed United States or Puerto Rican income tax return; and

''(2) in the case of an individual who is age 18 or older or who is an independent student, by providing the Secretary with a signed statement from the individual, verification from another governmental source, a signed financial aid form, or a signed United States or Puerto Rican income tax return.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 2(b)(6), (8), (9) of Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, and amendment by section 2(b)(7) of Pub. L. 103–208 effective on and after Dec. 20, 1993, see section 5(a), (b)(2) of Pub. L. 103–208 set out as a note under section 1051 of this title.

ADVANCED PLACEMENT FEE PAYMENT PROGRAM

Pub. L. 105–244, title VIII, § 810, Oct. 7, 1998, 112 Stat. 1808, which authorized grants to States to enable States to reimburse low-income individuals to cover part or all of the cost of advanced placement test fees, required dissemination of information regarding availability of payments, set forth requirements for approval of applications and funding rules, authorized regulations, required annual report, defined terms, and authorized appropriations, was repealed by Pub. L. 107–110, title X, § 1011(2), Jan. 8, 2002, 115 Stat. 1986.

Similar provisions were contained in Pub. L. 102–325, title XV, § 1545, July 23, 1992, 106 Stat. 837, which was repealed by Pub. L. 107–110, title X, § 1011(1), Jan. 8, 2002, 115 Stat. 1986.

§ 1070a–12. Talent search

(a) Program authority

The Secretary shall carry out a program to be known as talent search which shall be designed—

(1) to identify qualified youths with potential for education at the postsecondary level and to encourage such youths to complete secondary school and to undertake a program of postsecondary education;

(2) to publicize the availability of, and facilitate the application for, student financial assistance available to persons who pursue a program of postsecondary education; and

(3) to encourage persons who have not completed programs of education at the secondary or postsecondary level to enter or reenter, and complete such programs.

(b) Required services

Any project assisted under this section shall provide—

(1) connections to high quality academic tutoring services, to enable students to complete secondary or postsecondary courses;

(2) advice and assistance in secondary course selection and, if applicable, initial postsecondary course selection;

(3) assistance in preparing for college entrance examinations and completing college admission applications;

(4)(A) information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(B) assistance in completing financial aid applications, including the Free Application for Federal Student Aid described in section 1090(a) of this title;

(5) guidance on and assistance in—

(A) secondary school reentry;

(B) alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;

(C) entry into general educational development (GED) programs; or

(D) postsecondary education; and

(6) connections to education or counseling services designed to improve the financial literacy and economic literacy of students or the students' parents, including financial planning for postsecondary education.

(c) Permissible services

Any project assisted under this section may provide services such as—

(1) academic tutoring, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;

(2) personal and career counseling or activities;

(3) information and activities designed to acquaint youth with the range of career options available to the youth;

(4) exposure to the campuses of institutions of higher education, as well as cultural events, academic programs, and other sites or activities not usually available to disadvantaged youth;

(5) workshops and counseling for families of students served;

(6) mentoring programs involving elementary or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of such persons; and

(7) programs and activities as described in subsection (b) or paragraphs (1) through (6) of this subsection that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths (as such term is defined in section 11434a of title 42), students who are in foster care or are aging out of the foster care system, or other disconnected students.

(d) Requirements for approval of applications

In approving applications for projects under this section for any fiscal year the Secretary shall—

(1) require an assurance that not less than two-thirds of the individuals participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

(2) require that such participants be persons who either have completed 5 years of elementary education or are at least 11 years of age but not more than 27 years of age, unless the imposition of any such limitation with respect to any person would defeat the purposes of this section or the purposes of section 1070a–16 of this title;

(3) require an assurance that individuals participating in the project proposed in the application do not have access to services from another project funded under this section or under section 1070a–16 of this title; and

(4) require an assurance that the project will be located in a setting accessible to the persons proposed to be served by the project.

(Pub. L. 89–329, title IV, § 402B, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 486; amended Pub. L. 105–244, title IV, § 402(b), Oct. 7, 1998, 112 Stat. 1654; Pub. L. 110–315, title IV, § 403(b), Aug. 14, 2008, 122 Stat. 3198.)

AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110–315, § 403(b)(1)(A), inserted ‘‘, and facilitate the application for,’’ after ‘‘the availability of’’.

Subsec. (a)(3). Pub. L. 110–315, § 403(b)(1)(B), substituted ‘‘to enter or reenter, and complete’’ for ‘‘, but who have the ability to complete such programs, to reenter’’.

Subsecs. (b), (c). Pub. L. 110–315, § 403(b)(3), added subsecs. (b) and (c) and struck out former subsec. (b) which related to permissible services. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110–315, § 403(b)(2), (4), redesignated subsec. (c) as (d) and substituted ‘‘projects under this section’’ for ‘‘talent search projects under this division’’ in introductory provisions.

1998—Subsec. (b)(4). Pub. L. 105–244, § 402(b)(1), added par. (4) and struck out former par. (4) which read as follows: ‘‘guidance on secondary school reentry or entry to general educational development (GED) programs or other alternative education programs for secondary school dropouts;’’.

Subsec. (b)(5). Pub. L. 105–244, § 402(b)(2), inserted before semicolon ‘‘, or activities designed to acquaint individuals from disadvantaged backgrounds with careers in which the individuals are particularly underrepresented’’.

Subsec. (b)(8). Pub. L. 105–244, § 402(b)(3), substituted ‘‘families’’ for ‘‘parents’’.

Subsec. (b)(9). Pub. L. 105–244, § 402(b)(4), inserted ‘‘or counselors’’ after ‘‘teachers’’.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

§ 1070a–13. Upward bound

(a) Program authority

The Secretary shall carry out a program to be known as upward bound which shall be designed to generate skills and motivation necessary for success in education beyond secondary school.

(b) Required services

Any project assisted under this section shall provide—

(1) academic tutoring to enable students to complete secondary or postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;

(2) advice and assistance in secondary and postsecondary course selection;

(3) assistance in preparing for college entrance examinations and completing college admission applications;

(4)(A) information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(B) assistance in completing financial aid applications, including the Free Application for Federal Student Aid described in section 1090(a) of this title;

(5) guidance on and assistance in—

(A) secondary school reentry;

(B) alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;

(C) entry into general educational development (GED) programs; or

(D) postsecondary education; and

(6) education or counseling services designed to improve the financial literacy and economic literacy of students or the students' parents, including financial planning for postsecondary education.

(c) Additional required services for multiple-year grant recipients

Any project assisted under this section which has received funding for two or more years shall include, as part of the core curriculum in the next and succeeding years, instruction in mathematics through precalculus, laboratory science, foreign language, composition, and literature.

(d) Permissible services

Any project assisted under this section may provide such services as—

(1) exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;

(2) information, activities, and instruction designed to acquaint youth participating in the project with the range of career options available to the youth;

(3) on-campus residential programs;

(4) mentoring programs involving elementary school or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of such persons;

(5) work-study positions where youth participating in the project are exposed to careers requiring a postsecondary degree;

(6) special services, including mathematics and science preparation, to enable veterans to make the transition to postsecondary education; and

(7) programs and activities as described in subsection (b), subsection (c), or paragraphs (1) through (6) of this subsection that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths (as such term is defined in section 11434a of title 42), students who are in foster care or are aging out of the foster care system, or other disconnected students.

(e) Requirements for approval of applications

In approving applications for projects under this section for any fiscal year, the Secretary shall—

(1) require an assurance that not less than two-thirds of the youths participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

(2) require an assurance that the remaining youths participating in the project proposed to be carried out under any application be low-income individuals, first generation college students, or students who have a high risk for academic failure;

(3) require that there be a determination by the institution, with respect to each participant in such project that the participant has a need for academic support in order to pursue successfully a program of education beyond secondary school;

(4) require that such participants be persons who have completed 8 years of elementary education and are at least 13 years of age but not more than 19 years of age, unless the imposition of any such limitation would defeat the purposes of this section; and

(5) require an assurance that no student will be denied participation in a project assisted under this section because the student will enter the project after the 9th grade.

(f) Maximum stipends

Youths participating in a project proposed to be carried out under any application may be paid stipends not in excess of $60 per month during the summer school recess, for a period not to exceed three months, except that youth participating in a work-study position under subsection (d)(5) of this section may be paid a stipend of $300 per month during the summer school recess, for a period not to exceed three months. Youths participating in a project proposed to be carried out under any application may be paid stipends not in excess of $40 per month during the remaining period of the year.

(g) Additional funds

(1) Authorization and appropriation

There are authorized to be appropriated, and there are appropriated to the Secretary, from funds not otherwise appropriated, $57,000,000 for each of the fiscal years 2008 through 2011 to carry out paragraph (2), except that any amounts that remain unexpended for such purpose for each of such fiscal years may be available for technical assistance and administration costs for the Upward Bound program. The authority to award grants under this subsection shall expire at the end of fiscal year 2011.

(2) Use of funds

The amounts made available by paragraph (1) shall be available to provide assistance to all Upward Bound projects that did not receive assistance in fiscal year 2007 and that have a grant score above 70. Such assistance shall be made available in the form of 4-year grants.

(h) Absolute priority prohibited in Upward Bound Program

Upon enactment of this subsection and except as otherwise expressly provided by amendment to this section, the Secretary shall not continue, implement, or enforce the absolute priority for the Upward Bound Program published by the Department of Education in the Federal Register on September 22, 2006 (71 Fed. Reg. 55447 et seq.). This subsection shall not be applied retroactively. In implementing this subsection, the Department shall allow the programs and participants chosen in the grant cycle to which the priority applies to continue their grants and participation without a further recompetition. The entities shall not be required to apply the absolute priority conditions or restrictions to future participants.

(Pub. L. 89–329, title IV, § 402C, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 487; amended Pub. L. 103–208, § 2(b)(10), Dec. 20, 1993, 107 Stat. 2459; Pub. L. 105–244, title IV, § 402(c), Oct. 7, 1998, 112 Stat. 1654; Pub. L. 110–84, title I, § 103, Sept. 27, 2007, 121 Stat. 786; Pub. L. 110–315, title IV, § 403(c), Aug. 14, 2008, 122 Stat. 3199.)

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–315, § 403(c)(1), added subsec. (b) and struck out former subsec. (b) which related to permissible services.

Subsec. (c). Pub. L. 110–315, § 403(c)(2), substituted ''Additional required services for multiple-year grant recipients'' for ''Required services'' in heading and ''project assisted under this section'' for ''upward bound project assisted under this division'' in text.

Subsec. (d). Pub. L. 110–315, § 403(c)(4), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 110–315, § 403(c)(3), (5)(A), redesignated subsec. (d) as (e) and substituted ''projects under this section'' for ''upward bound projects under this division'' in introductory provisions. Former subsec. (e) redesignated (f).

Subsec. (e)(2). Pub. L. 110–315, § 403(c)(5)(B), substituted ''low-income individuals, first generation college students, or students who have a high risk for academic failure;'' for ''either low-income individuals or first generation college students;''.

Subsec. (e)(5). Pub. L. 110–315, § 403(c)(5)(C)–(E), added par. (5).

Subsec. (f). Pub. L. 110–315, § 403(c)(3), (6), redesignated subsec. (e) as (f) and substituted ''during the summer school recess, for a period not to exceed three months'' for ''during June, July, and August'' in two places, and ''subsection (d)(5)'' for ''subsection (b)(10)''. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 110–315, § 403(c)(3), redesignated subsec. (f) as (g).

Subsec. (h). Pub. L. 110–315, § 403(c)(7), added subsec. (h).

2007—Subsec. (f). Pub. L. 110–84 added subsec. (f).

1998—Subsec. (b)(2). Pub. L. 105–244, § 402(c)(1)(A), substituted ''counseling and workshops'' for ''personal counseling''.

Subsec. (b)(9). Pub. L. 105–244, § 402(c)(1)(B), inserted ''or counselors'' after ''teachers'' and struck out ''and'' after semicolon.

Subsec. (b)(10), (11). Pub. L. 105–244, § 402(c)(1)(D), added pars. (10) and (11). Former par. (10) redesignated (12).

Subsec. (b)(12). Pub. L. 105–244, § 402(c)(1)(E), substituted ''(11)'' for ''(9)''.

Pub. L. 105–244, § 402(c)(1)(C), redesignated par. (10) as (12).

Subsec. (e). Pub. L. 105–244, § 402(c)(2), substituted ''except that youth participating in a work-study position under subsection (b)(10) of this section may be paid a stipend of $300 per month during June, July, and August. Youths participating in a project proposed to be carried out under any application may be paid stipends

not in excess of $40 per month during the remaining period of the year.'' for ''and not in excess of $40 per month during the remaining period of the year.''

1993—Subsec. (c). Pub. L. 103–208 substituted ''foreign'' for ''and foreign''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–84 effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as a note under section 1070a of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

§ 1070a–14. Student support services

(a) Program authority

The Secretary shall carry out a program to be known as student support services which shall be designed—

(1) to increase college retention and graduation rates for eligible students;

(2) to increase the transfer rates of eligible students from 2-year to 4-year institutions;

(3) to foster an institutional climate supportive of the success of students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths (as such term is defined in section 11434a of title 42), students who are in foster care or are aging out of the foster care system, or other disconnected students; and

(4) to improve the financial literacy and economic literacy of students, including—

(A) basic personal income, household money management, and financial planning skills; and

(B) basic economic decisionmaking skills.

(b) Required services

A project assisted under this section shall provide—

(1) academic tutoring, directly or through other services provided by the institution, to enable students to complete postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;

(2) advice and assistance in postsecondary course selection;

(3)(A) information on both the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(B) assistance in completing financial aid applications, including the Free Application for Federal Student Aid described in section 1090(a) of this title;

(4) education or counseling services designed to improve the financial literacy and economic literacy of students, including financial planning for postsecondary education;

(5) activities designed to assist students participating in the project in applying for admission to, and obtaining financial assistance for enrollment in, graduate and professional programs; and

(6) activities designed to assist students enrolled in two-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, a four-year program of postsecondary education.

(c) Permissible services

A project assisted under this section may provide services such as—

(1) individualized counseling for personal, career, and academic matters provided by assigned counselors;

(2) information, activities, and instruction designed to acquaint students participating in the project with the range of career options available to the students;

(3) exposure to cultural events and academic programs not usually available to disadvantaged students;

(4) mentoring programs involving faculty or upper class students, or a combination thereof;

(5) securing temporary housing during breaks in the academic year for—

(A) students who are homeless children and youths (as such term is defined in section 11434a of title 42) or were formerly homeless children and youths; and

(B) students who are in foster care or are aging out of the foster care system; and

(6) programs and activities as described in subsection (b) or paragraphs (1) through (4) of this subsection that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths (as such term is defined in section 11434a of title 42), students who are in foster care or are aging out of the foster care system, or other disconnected students.

(d) Special rule

(1) Use for student aid

A recipient of a grant that undertakes any of the permissible services identified in subsection (c) may, in addition, use such funds to provide grant aid to students. A grant provided under this paragraph shall not exceed the Federal Pell Grant amount, determined under section 1070a(b)(2)(A) of this title, for which a student is eligible, or be less than the minimum Federal Pell Grant amount described in section 1070a(b)(4) of this title, for the current academic year. In making grants to students under this subsection, an institution shall ensure that adequate consultation takes place between the student support service program office and the institution's financial aid office.

(2) Eligible students

For purposes of receiving grant aid under this subsection, eligible students shall be cur-

rent participants in the student support services program offered by the institution and be—

(A) students who are in their first 2 years of postsecondary education and who are receiving Federal Pell Grants under subpart 1 of part A of this subchapter; or

(B) students who have completed their first 2 years of postsecondary education and who are receiving Federal Pell Grants under subpart 1 of part A of this subchapter if the institution demonstrates to the satisfaction of the Secretary that—

(i) these students are at high risk of dropping out; and

(ii) it will first meet the needs of all its eligible first- and second-year students for services under this paragraph.

(3) Determination of need

A grant provided to a student under paragraph (1) shall not be considered in determining that student's need for grant or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, except that in no case shall the total amount of student financial assistance awarded to a student under this subchapter exceed that student's cost of attendance, as defined in section 1087*ll* of this title.

(4) Matching required

A recipient of a grant who uses such funds for the purpose described in paragraph (1) shall match the funds used for such purpose, in cash, from non-Federal funds, in an amount that is not less than 33 percent of the total amount of funds used for that purpose. This paragraph shall not apply to any grant recipient that is an institution of higher education eligible to receive funds under part A or B of subchapter III or subchapter V of this chapter.

(5) Reservation

In no event may a recipient use more than 20 percent of the funds received under this section for grant aid.

(6) Supplement, not supplant

Funds received by a grant recipient that are used under this subsection shall be used to supplement, and not supplant, non-Federal funds expended for student support services programs.

(e) Requirements for approval of applications

In approving applications for projects under this section for any fiscal year, the Secretary shall—

(1) require an assurance that not less than two-thirds of the persons participating in the project proposed to be carried out under any application—

(A) be individuals with disabilities; or

(B) be low-income individuals who are first generation college students;

(2) require an assurance that the remaining students participating in the project proposed to be carried out under any application be low-income individuals, first generation college students, or individuals with disabilities;

(3) require an assurance that not less than one-third of the individuals with disabilities participating in the project be low-income individuals;

(4) require that there be a determination by the institution, with respect to each participant in such project, that the participant has a need for academic support in order to pursue successfully a program of education beyond secondary school;

(5) require that such participants be enrolled or accepted for enrollment at the institution which is the recipient of the grant or contract; and

(6) consider, in addition to such other criteria as the Secretary may prescribe, the institution's effort, and where applicable past history, in—

(A) providing sufficient financial assistance to meet the full financial need of each student in the project; and

(B) maintaining the loan burden of each such student at a manageable level.

(Pub. L. 89–329, title IV, § 402D, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 488; amended Pub. L. 103–208, § 2(b)(11), Dec. 20, 1993, 107 Stat. 2459; Pub. L. 105–244, title IV, § 402(d), Oct. 7, 1998, 112 Stat. 1655; Pub. L. 106–554, § 1(a)(1) [title III, § 317(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–48; Pub. L. 110–315, title IV, § 403(d), Aug. 14, 2008, 122 Stat. 3201; Pub. L. 111–152, title II, § 2101(b)(2), Mar. 30, 2010, 124 Stat. 1073.)

AMENDMENTS

2010—Subsec. (d)(1). Pub. L. 111–152 substituted ''exceed the Federal Pell Grant amount, determined under section 1070a(b)(2)(A) of this title, for which a student is eligible, or be less than the minimum Federal Pell Grant amount described in section 1070a(b)(4) of this title, for'' for ''exceed the maximum appropriated Pell Grant or, be less than the minimum appropriated Pell Grant, for''.

2008—Subsec. (a)(3), (4). Pub. L. 110–315, § 403(d)(1), added pars. (3) and (4) and struck out former par. (3) which read as follows: ''to foster an institutional climate supportive of the success of low-income and first generation college students and individuals with disabilities.''

Subsec. (b). Pub. L. 110–315, § 403(d)(3), added subsec. (b) and struck out former subsec. (b) which related to permissible services.

Subsecs. (c), (d). Pub. L. 110–315, § 403(d)(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 110–315, § 403(d)(4), substituted ''subsection (c)'' for ''subsection (b)''.

Subsec. (e). Pub. L. 110–315, § 403(d)(2), (5), redesignated subsec. (d) as (e) and substituted ''projects under this section'' for ''student support services projects under this division'' in introductory provisions.

2000—Subsecs. (c), (d). Pub. L. 106–554 added subsec. (c) and redesignated former subsec. (c) as (d).

1998—Subsec. (c)(6). Pub. L. 105–244 amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''require an assurance from the institution which is the recipient of the grant or contract that each student enrolled in the project will be offered sufficient financial assistance to meet that student's full financial need.''

1993—Subsec. (c)(2). Pub. L. 103–208 struck out ''either'' after ''application''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–152 effective July 1, 2010, see section 2101(c) of Pub. L. 111–152, set out as a note under section 1070a of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(1) [title III, § 317(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–49, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to student support services grants awarded on or after the date of enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

§ 1070a–15. Postbaccalaureate achievement program authority

(a) Program authority

The Secretary shall carry out a program to be known as the ''Ronald E. McNair Postbaccalaureate Achievement Program'' that shall be designed to provide disadvantaged college students with effective preparation for doctoral study.

(b) Required services

A project assisted under this section shall provide—

(1) opportunities for research or other scholarly activities at the institution or at graduate centers designed to provide students with effective preparation for doctoral study;

(2) summer internships;

(3) seminars and other educational activities designed to prepare students for doctoral study;

(4) tutoring;

(5) academic counseling; and

(6) activities designed to assist students participating in the project in securing admission to and financial assistance for enrollment in graduate programs.

(c) Permissible services

A project assisted under this section may provide services such as—

(1) education or counseling services designed to improve the financial literacy and economic literacy of students, including financial planning for postsecondary education;

(2) mentoring programs involving faculty members at institutions of higher education, students, or any combination of such persons; and

(3) exposure to cultural events and academic programs not usually available to disadvantaged students.

(d) Requirements

In approving applications for projects assisted under this section for any fiscal year, the Secretary shall require—

(1) an assurance that not less than two-thirds of the individuals participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

(2) an assurance that the remaining persons participating in the project proposed to be carried out be from a group that is underrepresented in graduate education, including—

(A) Alaska Natives, as defined in section 7546 of this title;

(B) Native Hawaiians, as defined in section 7517 of this title; and

(C) Native American Pacific Islanders, as defined in section 1059g of this title;

(3) an assurance that participants be enrolled in a degree program at an eligible institution having an agreement with the Secretary in accordance with the provisions of section 1094 of this title; and

(4) an assurance that participants in summer research internships have completed their sophomore year in postsecondary education.

(e) Award considerations

In addition to such other selection criteria as may be prescribed by regulations, the Secretary shall consider in making awards to institutions under this section—

(1) the quality of research and other scholarly activities in which students will be involved;

(2) the level of faculty involvement in the project and the description of the research in which students will be involved; and

(3) the institution's plan for identifying and recruiting participants including students enrolled in projects authorized under this section.

(f) Maximum stipends

Students participating in research under a project under this section may receive an award that—

(1) shall include a stipend not to exceed $2,800 per annum; and

(2) may include, in addition, the costs of summer tuition, summer room and board, and transportation to summer programs.

(g) Funding

From amounts appropriated pursuant to the authority of section 1070a–11(g) of this title, the Secretary shall, to the extent practicable, allocate funds for projects authorized by this section in an amount which is not less than $11,000,000 for each of the fiscal years 2009 through 2014.

(Pub. L. 89–329, title IV, § 402E, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 489; amended Pub. L. 105–244, title IV, § 402(e), Oct. 7, 1998, 112 Stat. 1655; Pub. L. 110–315, title IV, § 403(e), Aug. 14, 2008, 122 Stat. 3203; Pub. L. 111–39, title IV, § 401(a)(5), July 1, 2009, 123 Stat. 1938.)

AMENDMENTS

2009—Subsec. (d)(2)(C). Pub. L. 111–39 struck out period before semicolon at end.

2008—Subsec. (b). Pub. L. 110–315, § 403(e)(1)(A), (B), inserted ''Required'' before ''services'' in heading and, in introductory provisions, substituted ''A project assisted under this section shall provide—'' for ''A postbaccalaureate achievement project assisted under this section may provide services such as—''.

Subsec. (b)(5) to (8). Pub. L. 110–315, § 403(e)(1)(C)–(E), inserted ''and'' after the semicolon in par. (5), sub-

stituted a period for the semicolon in par. (6), and struck out pars. (7) and (8) which read as follows:

''(7) mentoring programs involving faculty members at institutions of higher education, students, or any combination of such persons; and

''(8) exposure to cultural events and academic programs not usually available to disadvantaged students.''

Subsec. (c). Pub. L. 110–315, § 403(e)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110–315, § 403(e)(2), (4)(A), redesignated subsec. (c) as (d) and struck out ''postbaccalaureate achievement'' after ''applications for'' in introductory provisions. Former subsec. (d) redesignated (e).

Subsec. (d)(2). Pub. L. 110–315, § 403(e)(4)(B), inserted '', including—'' and added subpars. (A) to (C) before semicolon.

Subsec. (e). Pub. L. 110–315, § 403(e)(2), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 110–315, § 403(e)(2), (5), redesignated subsec. (e) as (f) and substituted ''project under this section'' for ''postbaccalaureate achievement project'' in introductory provisions. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 110–315, § 403(e)(2), (6), redesignated subsec. (f) as (g) and substituted ''section 1070a–11(g)'' for ''section 1070a–11(f)'' and ''2009 through 2014'' for ''1993 through 1997''.

1998—Subsec. (e)(1). Pub. L. 105–244 substituted ''$2,800'' for ''$2,400''.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

§ 1070a–16. Educational opportunity centers

(a) Program authority; services provided

The Secretary shall carry out a program to be known as educational opportunity centers which shall be designed—

(1) to provide information with respect to financial and academic assistance available for individuals desiring to pursue a program of postsecondary education;

(2) to provide assistance to such persons in applying for admission to institutions at which a program of postsecondary education is offered, including preparing necessary applications for use by admissions and financial aid officers; and

(3) to improve the financial literacy and economic literacy of students, including—

(A) basic personal income, household money management, and financial planning skills; and

(B) basic economic decisionmaking skills.

(b) Permissible services

An educational opportunity center assisted under this section may provide services such as—

(1) public information campaigns designed to inform the community regarding opportunities for postsecondary education and training;

(2) academic advice and assistance in course selection;

(3) assistance in completing college admission and financial aid applications;

(4) assistance in preparing for college entrance examinations;

(5) education or counseling services designed to improve the financial literacy and economic literacy of students;

(6) guidance on secondary school reentry or entry to a general educational development (GED) program or other alternative education programs for secondary school dropouts;

(7) individualized personal, career, and academic counseling;

(8) tutorial services;

(9) career workshops and counseling;

(10) mentoring programs involving elementary or secondary school teachers, faculty members at institutions of higher education, students, or any combination of such persons; and

(11) programs and activities as described in paragraphs (1) through (10) that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths (as such term is defined in section 11434a of title 42), students who are in foster care or are aging out of the foster care system, or other disconnected students.

(c) Requirements for approval of applications

In approving applications for educational opportunity centers under this section for any fiscal year the Secretary shall—

(1) require an assurance that not less than two-thirds of the persons participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

(2) require that such participants be persons who are at least nineteen years of age, unless the imposition of such limitation with respect to any person would defeat the purposes of this section or the purposes of section 1070a–12 of this title; and

(3) require an assurance that individuals participating in the project proposed in the application do not have access to services from another project funded under this section or under section 1070a–12 of this title.

(Pub. L. 89–329, title IV, § 402F, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 490; amended Pub. L. 110–315, title IV, § 403(f), Aug. 14, 2008, 122 Stat. 3203.)

AMENDMENTS

2008—Subsec. (a)(3). Pub. L. 110–315, § 403(f)(1), added par. (3).

Subsec. (b)(5), (6). Pub. L. 110–315, § 403(f)(2)(A), (B), added par. (5) and redesignated former par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 110–315, § 403(f)(2)(C), added par. (7) and struck out former par. (7) which read as follows: ''personal counseling;''.

Pub. L. 110–315, § 403(f)(2)(A), redesignated former par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (b)(8) to (10). Pub. L. 110–315, § 403(f)(2)(A), redesignated pars. (7) to (9) as (8) to (10), respectively. Former par. (10) redesignated (11).

Subsec. (b)(11). Pub. L. 110–315, § 403(f)(2)(D), added par. (11) and struck out former par. (11) which read as

follows: ''programs and activities as described in paragraphs (1) through (9) which are specially designed for students of limited English proficiency.''

Pub. L. 110–315, § 403(f)(2)(A), redesignated par. (10) as (11).

§ 1070a–17. Staff development activities

(a) Secretary's authority

For the purpose of improving the operation of the programs and projects authorized by this division, the Secretary is authorized to make grants to institutions of higher education and other public and private nonprofit institutions and organizations to provide training for staff and leadership personnel employed in, participating in, or preparing for employment in, such programs and projects.

(b) Contents of training programs

Such training shall include conferences, internships, seminars, workshops, and the publication of manuals designed to improve the operation of such programs and projects and shall be carried out in the various regions of the Nation in order to ensure that the training opportunities are appropriate to meet the needs in the local areas being served by such programs and projects. Such training shall be offered annually for new directors of projects funded under this division as well as annually on the following topics and other topics chosen by the Secretary:

(1) Legislative and regulatory requirements for the operation of programs funded under this division.

(2) Assisting students in receiving adequate financial aid from programs assisted under this subchapter and part C of subchapter I of chapter 34 of title 42 and other programs.

(3) The design and operation of model programs for projects funded under this division.

(4) The use of appropriate educational technology in the operation of projects assisted under this division.

(5) Strategies for recruiting and serving hard to reach populations, including students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths (as such term is defined in section 11434a of title 42), students who are in foster care or are aging out of the foster care system, or other disconnected students.

(c) Consultation

Grants for the purposes of this section shall be made only after consultation with regional and State professional associations of persons having special knowledge with respect to the needs and problems of such programs and projects.

(Pub. L. 89–329, title IV, § 402G, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 491; amended Pub. L. 105–244, title IV, § 402(f), Oct. 7, 1998, 112 Stat. 1655; Pub. L. 110–315, title IV, § 403(g), Aug. 14, 2008, 122 Stat. 3204.)

AMENDMENTS

2008—Subsec. (b)(5). Pub. L. 110–315 added par. (5).

1998—Subsec. (a). Pub. L. 105–244, § 402(f)(1), inserted ''participating in,'' after ''leadership personnel employed in,''.

Subsec. (b)(4). Pub. L. 105–244, § 402(f)(2), added par. (4).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

§ 1070a–18. Reports, evaluations, and grants for project improvement and dissemination

(a) Reports to the authorizing committees

(1) In general

The Secretary shall submit annually, to the authorizing committees, a report that documents the performance of all programs funded under this division. Such report shall—

(A) be submitted not later than 12 months after the eligible entities receiving funds under this division are required to report their performance to the Secretary;

(B) focus on the programs' performance on the relevant outcome criteria determined under section 1070a–11(f)(4) of this title;

(C) aggregate individual project performance data on the outcome criteria in order to provide national performance data for each program;

(D) include, when appropriate, descriptive data, multi-year data, and multi-cohort data; and

(E) include comparable data on the performance nationally of low-income students, first-generation students, and students with disabilities.

(2) Information

The Secretary shall provide, with each report submitted under paragraph (1), information on the impact of the secondary review process described in section 1070a–11(c)(8)(C)(iv) of this title, including the number and type of secondary reviews, the disposition of the secondary reviews, the effect on timing of awards, and any other information the Secretary determines is necessary.

(b) Evaluations

(1) In general

(A) Authorization of grants and contracts

For the purpose of improving the effectiveness of the programs and projects assisted under this division, the Secretary shall make grants to, or enter into contracts with, institutions of higher education and other public and private institutions and organizations to rigorously evaluate the effectiveness of the programs and projects assisted under this division, including a rigorous evaluation of the programs and projects assisted under section 1070a–13 of this title. The evaluation of the programs and projects assisted under section 1070a–13 of this title shall be implemented not later than June 30, 2010.

(B) Content of upward bound evaluation

The evaluation of the programs and projects assisted under section 1070a–13 of this title that is described in subparagraph (A) shall examine the characteristics of the students who benefit most from the Upward Bound program under section 1070a–13 of this

title and the characteristics of the programs and projects that most benefit students.

(C) Implementation

Each evaluation described in this paragraph shall be implemented in accordance with the requirements of this section.

(2) Practices

(A) In general

The evaluations described in paragraph (1) shall identify institutional, community, and program or project practices that are effective in—

(i) enhancing the access of low-income individuals and first-generation college students to postsecondary education;

(ii) the preparation of such individuals and students for postsecondary education; and

(iii) fostering the success of the individuals and students in postsecondary education.

(B) Primary purpose

Any evaluation conducted under this division shall have as the evaluation's primary purpose the identification of particular practices that further the achievement of the outcome criteria determined under section 1070a–11(f)(4) of this title.

(C) Dissemination and use of evaluation findings

The Secretary shall disseminate to eligible entities and make available to the public the practices identified under subparagraph (B). The practices may be used by eligible entities that receive assistance under this division after the dissemination.

(3) Special rule related to evaluation participation

The Secretary shall not require an eligible entity, as a condition for receiving, or that receives, assistance under any program or project under this division to participate in an evaluation under this section that—

(A) requires the eligible entity to recruit additional students beyond those the program or project would normally recruit; or

(B) results in the denial of services for an eligible student under the program or project.

(4) Consideration

When designing an evaluation under this subsection, the Secretary shall continue to consider—

(A) the burden placed on the program participants or the eligible entity; and

(B) whether the evaluation meets generally accepted standards of institutional review boards.

(c) Grants

The Secretary may award grants to institutions of higher education or other private and public institutions and organizations, that are carrying out a program or project assisted under this division prior to October 7, 1998, to enable the institutions and organizations to expand and leverage the success of such programs or projects by working in partnership with other institutions, community-based organizations, or combinations of such institutions and organizations, that are not receiving assistance under this division and are serving low-income students and first generation college students, in order to—

(1) disseminate and replicate best practices of programs or projects assisted under this division; and

(2) provide technical assistance regarding programs and projects assisted under this division.

(d) Results

In order to improve overall program or project effectiveness, the results of evaluations and grants described in this section shall be disseminated by the Secretary to similar programs or projects assisted under this subpart, as well as other individuals concerned with postsecondary access for and retention of low-income individuals and first-generation college students.

(Pub. L. 89–329, title IV, § 402H, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 491; amended Pub. L. 105–244, title IV, § 402(g), Oct. 7, 1998, 112 Stat. 1655; Pub. L. 110–315, title IV, § 403(h), Aug. 14, 2008, 122 Stat. 3204.)

AMENDMENTS

2008—Pub. L. 110–315, § 403(h)(1), substituted ''Reports, evaluations, and grants for project improvement and dissemination'' for ''Evaluations and grants for project improvement and dissemination partnership projects'' in section catchline.

Subsec. (a). Pub. L. 110–315, § 403(h)(3), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 110–315, § 403(h)(2), (4), redesignated subsec. (a) as (b), added pars. (1) to (4), and struck out former pars. (1) and (2) which read as follows:

''(1) IN GENERAL.—For the purpose of improving the effectiveness of the programs and projects assisted under this division, the Secretary may make grants to or enter into contracts with institutions of higher education and other public and private institutions and organizations to evaluate the effectiveness of the programs and projects assisted under this division.

''(2) PRACTICES.—The evaluations described in paragraph (1) shall identify institutional, community, and program or project practices that are particularly effective in enhancing the access of low-income individuals and first-generation college students to postsecondary education, the preparation of the individuals and students for postsecondary education, and the success of the individuals and students in postsecondary education. Such evaluations shall also investigate the effectiveness of alternative and innovative methods within Federal TRIO programs of increasing access to, and retention of, students in postsecondary education.''

Former subsec. (b) redesignated (c).

Subsecs. (c), (d). Pub. L. 110–315, § 403(h)(2), redesignated subsecs. (b) and (c) as (c) and (d), respectively.

1998—Pub. L. 105–244 amended section generally, revising and restating former subsecs. (a) to (c) relating to evaluation for project improvement.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

Division 2—Gaining Early Awareness and Readiness for Undergraduate Programs

CODIFICATION

Chapter 2 of subpart 2 of part A of title IV of the Higher Education Act of 1965, comprising this division,

was originally added to Pub. L. 89–329, title IV, by Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 492, and amended by Pub. L. 103–208, Dec. 20, 1993, 107 Stat. 2457; Pub. L. 103–382, Oct. 20, 1994, 108 Stat. 3518; Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105. Chapter 2 is shown herein, however, as having been added by Pub. L. 105–244, title IV, § 403, Oct. 7, 1998, 112 Stat. 1656, without reference to those intervening amendments because of the extensive revision of chapter 2 by Pub. L. 105–244.

§ 1070a–21. Early intervention and college awareness program authorized

(a) Program authorized

The Secretary is authorized, in accordance with the requirements of this division, to establish a program that encourages eligible entities to provide support, and maintain a commitment, to eligible low-income students, including students with disabilities, to assist the students in obtaining a secondary school diploma (or its recognized equivalent) and to prepare for and succeed in postsecondary education, by providing—

(1) financial assistance, academic support, additional counseling, mentoring, outreach, and supportive services to secondary school students, including students with disabilities, to reduce—

(A) the risk of such students dropping out of school; or

(B) the need for remedial education for such students at the postsecondary level; and

(2) information to students and their families about the advantages of obtaining a postsecondary education and, college financing options for the students and their families.

(b) Awards

(1) In general

From funds appropriated under section 1070a–28 of this title for each fiscal year, the Secretary shall make awards to eligible entities described in paragraphs (1) and (2) of subsection (c) of this section to enable the entities to carry out the program authorized under subsection (a) of this section.

(2) Award period

The Secretary may award a grant under this division to an eligible entity described in paragraphs (1) and (2) of subsection (c) for—

(A) six years; or

(B) in the case of an eligible entity that applies for a grant under this division for seven years to enable the eligible entity to provide services to a student through the student's first year of attendance at an institution of higher education, seven years.

(3) Priority

In making awards to eligible entities described in subsection (c)(1), the Secretary shall—

(A) give priority to eligible entities that—

(i) on the day before August 14, 2008, carried out successful educational opportunity programs under this division (as this division was in effect on such day); and

(ii) have a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies; and

(B) ensure that students served under this division on the day before August 14, 2008, continue to receive assistance through the completion of secondary school.

(c) "Eligible entity" defined

For the purposes of this division, the term ''eligible entity'' means—

(1) a State; or

(2) a partnership—

(A) consisting of—

(i) one or more local educational agencies; and

(ii) one or more degree granting institutions of higher education; and

(B) which may include not less than two other community organizations or entities, such as businesses, professional organizations, State agencies, institutions or agencies sponsoring programs authorized under subpart 4, or other public or private agencies or organizations.

(Pub. L. 89–329, title IV, § 404A, as added Pub. L. 105–244, title IV, § 403, Oct. 7, 1998, 112 Stat. 1656; amended Pub. L. 110–315, title IV, § 404(a), Aug. 14, 2008, 122 Stat. 3206.)

PRIOR PROVISIONS

A prior section 1070a–21, Pub. L. 89–329, title IV, § 404A, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 492; amended Pub. L. 103–208, § 2(b)(12), Dec. 20, 1993, 107 Stat. 2459, authorized establishment of early intervention program, prior to the general amendment of this division by Pub. L. 105–244.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–315, § 404(a)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: ''The Secretary is authorized, in accordance with the requirements of this division, to establish a program that—

''(1) encourages eligible entities to provide or maintain a guarantee to eligible low-income students who obtain a secondary school diploma (or its recognized equivalent), of the financial assistance necessary to permit the students to attend an institution of higher education; and

''(2) supports eligible entities in providing—

''(A) additional counseling, mentoring, academic support, outreach, and supportive services to elementary school, middle school, and secondary school students who are at risk of dropping out of school; and

''(B) information to students and their parents about the advantages of obtaining a postsecondary education and the college financing options for the students and their parents.''

Subsec. (b)(2), (3). Pub. L. 110–315, § 404(a)(2), added pars. (2) and (3) and struck out former par. (2) which related to priority in making awards to eligible entities.

Subsec. (c)(2). Pub. L. 110–315, § 404(a)(3), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: ''a partnership consisting of—

''(A) one or more local educational agencies acting on behalf of—

''(i) one or more elementary schools or secondary schools; and

''(ii) the secondary schools that students from the schools described in clause (i) would normally attend;

''(B) one or more degree granting institutions of higher education; and

''(C) at least two community organizations or entities, such as businesses, professional associations,

community-based organizations, philanthropic organizations, State agencies, institutions or agencies sponsoring programs authorized under subpart 4 of this part, or other public or private agencies or organizations.''

EFFECTIVE DATE

Division effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

EVALUATION OF TUITION GUARANTY PROGRAMS

Pub. L. 102–325, title XIV, § 1407, July 23, 1992, 106 Stat. 819, directed Secretary of Education to conduct study of effectiveness of programs for disadvantaged children that promise the child financial resources needed to pursue postsecondary education in exchange for child's commitment to achieve satisfactory elementary and secondary education, and to submit reports regarding study by June 30, 1996, and by Jan. 1, 1997, to committees of Congress, prior to repeal by Pub. L. 105–332, § 6(b)(2), Oct. 31, 1998, 112 Stat. 3128.

§ 1070a–22. Requirements

(a) Funding rules

In awarding grants from the amount appropriated under section 1070a–28 of this title for a fiscal year, the Secretary shall make available—

(1) to eligible entities described in section 1070a–21(c)(1) of this title, not less than 33 percent of such amount;

(2) to eligible entities described in section 1070a–21(c)(2) of this title, not less than 33 percent of such amount; and

(3) to eligible entities described in paragraph (1) or (2) of section 1070a–21(c) of this title, the remainder of such amount taking into consideration the number, quality, and promise of the applications for the grants, and, to the extent practicable—

(A) the geographic distribution of such grant awards; and

(B) the distribution of such grant awards between urban and rural applicants.

(b) Coordination

Each eligible entity shall ensure that the activities assisted under this division are, to the extent practicable, coordinated with, and complement and enhance—

(1) services under this division provided by other eligible entities serving the same school district or State; and

(2) related services under other Federal or non-Federal programs.

(c) Designation of fiscal agent

An eligible entity described in section 1070a–21(c)(2) of this title shall designate an institution of higher education or a local educational agency as the fiscal agent for the eligible entity.

(d) Cohort approach

(1) In general

The Secretary shall require that eligible entities described in section 1070a–21(c)(2) of this title—

(A) provide services under this division to at least one grade level of students, beginning not later than 7th grade, in a participating school that has a 7th grade and in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] (or, if an eligible entity determines that it would promote the effectiveness of a program, an entire grade level of students, beginning not later than the 7th grade, who reside in public housing as defined in section 1437a(b)(1) of title 42);

(B) ensure that the services are provided through the 12th grade to students in the participating grade level and provide the option of continued services through the student's first year of attendance at an institution of higher education to the extent the provision of such services was described in the eligible entity's application for assistance under this division; and

(C) provide services under this division to students who have received services under a previous GEAR UP grant award but have not yet completed the 12th grade.

(2) Coordination requirement

In order for the Secretary to require the cohort approach described in paragraph (1), the Secretary shall, where applicable, ensure that the cohort approach is done in coordination and collaboration with existing early intervention programs and does not duplicate the services already provided to a school or community.

(e) Supplement, not supplant

Grant funds awarded under this division shall be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to carry out activities assisted under this division.

(Pub. L. 89–329, title IV, § 404B, as added Pub. L. 105–244, title IV, § 403, Oct. 7, 1998, 112 Stat. 1657; amended Pub. L. 106–78, title VII, § 752(b)(8), Oct. 22, 1999, 113 Stat. 1169; Pub. L. 110–315, title IV, § 404(b), Aug. 14, 2008, 122 Stat. 3207.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsec. (d)(1)(A), is act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to chapter 13 (§ 1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1070a–22, Pub. L. 89–329, title IV, § 404B, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 492; amended Pub. L. 103–208, § 2(b)(13), (14), Dec. 20, 1993, 107 Stat. 2459, related to State eligibility and State plan, prior to the general amendment of this division by Pub. L. 105–244.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–315, § 404(b)(1), added subsec. (a) and struck out former subsec. (a) which related to funding rules.

Subsecs. (b), (c). Pub. L. 110–315, § 404(b)(2), (3), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b). Text read as follows: ''Each eligible entity described in section 1070a–21(c)(1) of this title, and each eligible entity described in section 1070a–21(c)(2) of this title that conducts a scholarship component under section 1070a–25 of this title,

shall use not less than 25 percent and not more than 50 percent of grant funds received under this division for the early intervention component of an eligible entity's program under this division, except that the Secretary may waive the 50 percent limitation if the eligible entity demonstrates that the eligible entity has another means of providing the students with financial assistance that is described in the plan submitted under section 1070a–23 of this title.''

Subsec. (d). Pub. L. 110–315, § 404(b)(3), redesignated subsec. (g) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1)(B), (C). Pub. L. 110–315, § 404(b)(4), inserted ''and provide the option of continued services through the student's first year of attendance at an institution of higher education to the extent the provision of such services was described in the eligible entity's application for assistance under this division'' after ''grade level'' in par. (B) and added par. (C).

Subsec. (e). Pub. L. 110–315, § 404(b)(2), (5), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: ''An eligible entity described in section 1070a–21(c)(2) of this title shall have a full-time program coordinator or a part-time program coordinator, whose primary responsibility is a project under section 1070a–23 of this title.''

Subsec. (f). Pub. L. 110–315, § 404(b)(2), struck out subsec. (f). Text read as follows: ''An eligible entity described in 1070a–21(c)(2) of this title shall ensure that the activities assisted under this division will not displace an employee or eliminate a position at a school assisted under this division, including a partial displacement such as a reduction in hours, wages or employment benefits.''

Subsec. (g). Pub. L. 110–315, § 404(b)(3), redesignated subsec. (g) as (d).

1999—Subsec. (g)(1)(A). Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act''.

§ 1070a–23. Applications

(a) Application required for eligibility

(1) In general

In order for an eligible entity to qualify for a grant under this division, the eligible entity shall submit to the Secretary an application for carrying out the program under this division.

(2) Contents

Each application submitted pursuant to paragraph (1) shall be in such form, contain or be accompanied by such information or assurances, and be submitted at such time as the Secretary may reasonably require. Each such application shall, at a minimum—

(A) describe the activities for which assistance under this division is sought, including how the eligible entity will carry out the required activities described in section 1070a–24(a) of this title;

(B) describe, in the case of an eligible entity described in section 1070a–21(c)(2) of this title that chooses to provide scholarships, or an eligible entity described in section 1070a–21(c)(1) of this title, how the eligible entity will meet the requirements of section 1070a–25 of this title;

(C) describe, in the case of an eligible entity described in section 1070a–21(c)(2) of this title that requests a reduced match percentage under subsection (b)(2), how such reduction will assist the entity to provide the scholarships described in subsection (b)(2)(A)(ii);

(D) provide assurances that adequate administrative and support staff will be responsible for coordinating the activities described in section 1070a–24 of this title;

(E) provide assurances that activities assisted under this division will not displace an employee or eliminate a position at a school assisted under this division, including a partial displacement such as a reduction in hours, wages, or employment benefits;

(F) describe, in the case of an eligible entity described in section 1070a–21(c)(1) of this title that chooses to use a cohort approach, or an eligible entity described in section 1070a–21(c)(2) of this title, how the eligible entity will define the cohorts of the students served by the eligible entity pursuant to section 1070a–22(d) of this title, and how the eligible entity will serve the cohorts through grade 12, including—

(i) how vacancies in the program under this division will be filled; and

(ii) how the eligible entity will serve students attending different secondary schools;

(G) describe how the eligible entity will coordinate programs under this division with other existing Federal, State, or local programs to avoid duplication and maximize the number of students served;

(H) provide such additional assurances as the Secretary determines necessary to ensure compliance with the requirements of this division;

(I) provide information about the activities that will be carried out by the eligible entity to support systemic changes from which future cohorts of students will benefit; and

(J) describe the sources of matching funds that will enable the eligible entity to meet the matching requirement described in subsection (b).

(b) Matching requirement

(1) In general

The Secretary shall not approve an application submitted under subsection (a) unless such application—

(A) provides that the eligible entity will provide, from State, local, institutional, or private funds, not less than 50 percent of the cost of the program, which matching funds may be provided in cash or in kind and may be accrued over the full duration of the grant award period, except that the eligible entity shall make substantial progress towards meeting the matching requirement in each year of the grant award period;

(B) specifies the methods by which matching funds will be paid; and

(C) includes provisions designed to ensure that funds provided under this division shall supplement and not supplant funds expended for existing programs.

(2) Special rule

Notwithstanding the matching requirement described in paragraph (1)(A), the Secretary may by regulation modify the percentage requirement described in paragraph (1)(A) for eligible entities described in section 1070a–21(c)(2) of this title. The Secretary may

approve an eligible entity's request for a reduced match percentage—

(A) at the time of application—

(i) if the eligible entity demonstrates significant economic hardship that precludes the eligible entity from meeting the matching requirement; or

(ii) if the eligible entity is described in section 1070a–21(c)(2) of this title and requests that contributions to the eligible entity's scholarship fund established under section 1070a–25 of this title be matched on a two to one basis; or

(B) in response to a petition by an eligible entity subsequent to a grant award under this section if the eligible entity demonstrates that the matching funds described in its application are no longer available and the eligible entity has exhausted all revenues for replacing such matching funds.

(c) Methods for complying with matching requirement

An eligible entity may count toward the matching requirement described in subsection (b)(1)(A)—

(1) the amount of the financial assistance obligated to students from State, local, institutional, or private funds under this division, including pre-existing non-Federal financial assistance programs, including—

(A) the amount contributed to a student scholarship fund established under section 1070a–25 of this title; and

(B) the amount of the costs of administering the scholarship program under section 1070a–25 of this title;

(2) the amount of tuition, fees, room or board waived or reduced for recipients of financial assistance under this division;

(3) the amount expended on documented, targeted, long-term mentoring and counseling provided by volunteers or paid staff of non-school organizations, including businesses, religious organizations, community groups, postsecondary educational institutions, non-profit and philanthropic organizations, and other organizations; and

(4) other resources recognized by the Secretary, including equipment and supplies, cash contributions from non-Federal sources, transportation expenses, in-kind or discounted program services, indirect costs, and facility usage.

(d) Peer review panels

The Secretary shall convene peer review panels to assist in making determinations regarding the awarding of grants under this division.

(Pub. L. 89–329, title IV, § 404C, as added Pub. L. 105–244, title IV, § 403, Oct. 7, 1998, 112 Stat. 1658; amended Pub. L. 110–315, title IV, § 404(c), Aug. 14, 2008, 122 Stat. 3208.)

PRIOR PROVISIONS

A prior section 1070a–23, Pub. L. 89–329, title IV, § 404C, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 493; amended Pub. L. 103–208, § 2(b)(15)–(17), Dec. 20, 1993, 107 Stat. 2459; Pub. L. 104–193, title I, § 110(h)(1), Aug. 22, 1996, 110 Stat. 2172, related to early intervention, prior to the general amendment of this division by Pub. L. 105–244. See section 1070a–24 of this title.

AMENDMENTS

2008—Pub. L. 110–315, § 404(c)(1), substituted ''Applications'' for ''Eligible entity plans'' in section catchline.

Subsec. (a). Pub. L. 110–315, § 404(c)(2)(A), substituted ''Application'' for ''Plan'' in heading.

Subsec. (a)(1). Pub. L. 110–315, § 404(c)(2)(B), substituted ''an application'' for ''a plan'' and struck out at end ''Such plan shall provide for the conduct of a scholarship component if required or undertaken pursuant to section 1070a–25 of this title and an early intervention component required pursuant to section 1070a–24 of this title.''

Subsec. (a)(2). Pub. L. 110–315, § 404(c)(2)(C), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: ''Each plan submitted pursuant to paragraph (1) shall be in such form, contain or be accompanied by such information or assurances, and be submitted at such time as the Secretary may require by regulation. Each such plan shall—

''(A) describe the activities for which assistance under this division is sought; and

''(B) provide such additional assurances as the Secretary determines necessary to ensure compliance with the requirements of this division.''

Subsec. (b)(1). Pub. L. 110–315, § 404(c)(3)(A), substituted ''an application'' for ''a plan'' and ''such application'' for ''such plan'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 110–315, § 404(c)(3)(B), which directed insertion of ''and may be accrued over the full duration of the grant award period, except that the eligible entity shall make substantial progress towards meeting the matching requirement in each year of the grant award period'' after ''in cash or in-kind'', was executed by making the insertion after ''in cash or in kind'' to reflect the probable intent of Congress.

Subsec. (b)(2). Pub. L. 110–315, § 404(c)(3)(C), inserted at end ''The Secretary may approve an eligible entity's request for a reduced match percentage—'' and subpars. (A) and (B).

Subsec. (c)(1). Pub. L. 110–315, § 404(c)(4)(A), substituted ''obligated to students from State, local, institutional, or private funds under this division, including pre-existing non-Federal financial assistance programs, including—'' and subpars. (A) and (B) for ''paid to students from State, local, institutional, or private funds under this division;''.

Subsec. (c)(4). Pub. L. 110–315, § 404(c)(4)(B)–(D), added par. (4).

§ 1070a–24. Activities

(a) Required activities

Each eligible entity receiving a grant under this division shall provide comprehensive mentoring, outreach, and supportive services to students participating in the programs under this division. Such activities shall include the following:

(1) Providing information regarding financial aid for postsecondary education to participating students in the cohort described in section 1070a–22(d)(1)(A) of this title or to priority students described in subsection (d).

(2) Encouraging student enrollment in rigorous and challenging curricula and coursework, in order to reduce the need for remedial coursework at the postsecondary level.

(3) Improving the number of participating students who—

(A) obtain a secondary school diploma; and

(B) complete applications for and enroll in a program of postsecondary education.

(4) In the case of an eligible entity described in section 1070a–21(c)(1) of this title, providing

for the scholarships described in section 1070a–25 of this title.

(b) Permissible activities for States and partnerships

An eligible entity that receives a grant under this division may use grant funds to carry out one or more of the following activities:

(1) Providing tutors and mentors, who may include adults or former participants of a program under this division, for eligible students.

(2) Conducting outreach activities to recruit priority students described in subsection (d) to participate in program activities.

(3) Providing supportive services to eligible students.

(4) Supporting the development or implementation of rigorous academic curricula, which may include college preparatory, Advanced Placement, or International Baccalaureate programs, and providing participating students access to rigorous core academic courses that reflect challenging State academic standards.

(5) Supporting dual or concurrent enrollment programs between the secondary school and institution of higher education partners of an eligible entity described in section 1070a–21(c)(2) of this title, and other activities that support participating students in—

(A) meeting challenging State academic standards;

(B) successfully applying for postsecondary education;

(C) successfully applying for student financial aid; and

(D) developing graduation and career plans.

(6) Providing special programs or tutoring in science, technology, engineering, or mathematics.

(7) In the case of an eligible entity described in section 1070a–21(c)(2) of this title, providing support for scholarships described in section 1070a–25 of this title.

(8) Introducing eligible students to institutions of higher education, through trips and school-based sessions.

(9) Providing an intensive extended school day, school year, or summer program that offers—

(A) additional academic classes; or

(B) assistance with college admission applications.

(10) Providing other activities designed to ensure secondary school completion and postsecondary education enrollment of at-risk children, such as—

(A) the identification of at-risk children;

(B) after-school and summer tutoring;

(C) assistance to at-risk children in obtaining summer jobs;

(D) academic counseling;

(E) financial literacy and economic literacy education or counseling;

(F) volunteer and parent involvement;

(G) encouraging former or current participants of a program under this division to serve as peer counselors;

(H) skills assessments;

(I) personal and family counseling, and home visits;

(J) staff development; and

(K) programs and activities described in this subsection that are specially designed for students who are limited English proficient.

(11) Enabling eligible students to enroll in Advanced Placement or International Baccalaureate courses, or college entrance examination preparation courses.

(12) Providing services to eligible students in the participating cohort described in section 1070a–22(d)(1)(A) of this title, through the first year of attendance at an institution of higher education.

(13) Fostering and improving parent and family involvement in elementary and secondary education by promoting the advantages of a college education, and emphasizing academic admission requirements and the need to take college preparation courses, through parent engagement and leadership activities.

(14) Disseminating information that promotes the importance of higher education, explains college preparation and admission requirements, and raises awareness of the resources and services provided by the eligible entities to eligible students, their families, and communities.

(15) In the event that matching funds described in the application are no longer available, engaging entities described in section 1070a–21(c)(2) of this title in a collaborative manner to provide matching resources and participate in other activities authorized under this section.

(c) Additional permissible activities for States

In addition to the required activities described in subsection (a) and the permissible activities described in subsection (b), an eligible entity described in section 1070a–21(c)(1) of this title receiving funds under this division may use grant funds to carry out one or more of the following activities:

(1) Providing technical assistance to—

(A) secondary schools that are located within the State; or

(B) partnerships described in section 1070a–21(c)(2) of this title that are located within the State.

(2) Providing professional development opportunities to individuals working with eligible cohorts of students described in section 1070a–22(d)(1)(A) of this title.

(3) Providing administrative support to help build the capacity of eligible entities described in section 1070a–21(c)(2) of this title to compete for and manage grants awarded under this division.

(4) Providing strategies and activities that align efforts in the State to prepare eligible students to attend and succeed in postsecondary education, which may include the development of graduation and career plans.

(5) Disseminating information on the use of scientifically valid research and best practices to improve services for eligible students.

(6)(A) Disseminating information on effective coursework and support services that as-

sist students in obtaining the goals described in subparagraph (B)(ii).

(B) Identifying and disseminating information on best practices with respect to—

(i) increasing parental involvement; and

(ii) preparing students, including students with disabilities and students who are limited English proficient, to succeed academically in, and prepare financially for, postsecondary education.

(7) Working to align State academic standards and curricula with the expectations of postsecondary institutions and employers.

(8) Developing alternatives to traditional secondary school that give students a head start on attaining a recognized postsecondary credential (including an industry-recognized certificate, an apprenticeship, or an associate's or a bachelor's degree), including school designs that give students early exposure to college-level courses and experiences and allow students to earn transferable college credits or an associate's degree at the same time as a secondary school diploma.

(9) Creating community college programs for drop-outs that are personalized drop-out recovery programs that allow drop-outs to complete a regular secondary school diploma and begin college-level work.

(d) Priority students

For eligible entities not using a cohort approach, the eligible entity shall treat as a priority student any student in secondary school who is—

(1) eligible to be counted under section 6333(c) of this title;

(2) eligible for assistance under a State program funded under part A or E of title IV of the Social Security Act (42 U.S.C. 601 et seq., 670 et seq.);

(3) eligible for assistance under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.); or

(4) otherwise considered by the eligible entity to be a disconnected student.

(e) Allowable providers

In the case of eligible entities described in section 1070a–21(c)(1) of this title, the activities required by this section may be provided by service providers such as community-based organizations, schools, institutions of higher education, public and private agencies, nonprofit and philanthropic organizations, businesses, institutions and agencies sponsoring programs authorized under subpart 4, and other organizations the State determines appropriate.

(Pub. L. 89–329, title IV, § 404D, as added Pub. L. 105–244, title IV, § 403, Oct. 7, 1998, 112 Stat. 1659; amended Pub. L. 106–78, title VII, § 752(b)(8), Oct. 22, 1999, 113 Stat. 1169; Pub. L. 110–315, title IV, § 404(d), Aug. 14, 2008, 122 Stat. 3210.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Parts A and E of title IV of the Act are classified generally to parts A (§ 601 et seq.) and E (§ 670 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (d)(3), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482. Subtitle B of title VII of the Act is classified generally to part B (§ 11431 et seq.) of subchapter VI of chapter 119 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1070a–24, Pub. L. 89–329, title IV, § 404D, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 495; amended Pub. L. 103–208, § 2(b)(18), (19), Dec. 20, 1993, 107 Stat. 2459, related to scholarship component, prior to the general amendment of this division by Pub. L. 105–244. See section 1070a–25 of this title.

AMENDMENTS

2008—Pub. L. 110–315 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (d) providing for services, use of funds, priority students, and allowable providers relating to early intervention.

1999—Subsec. (c)(2). Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act''.

§ 1070a–25. Scholarship component

(a) In general

(1) States

In order to receive a grant under this division, an eligible entity described in section 1070a–21(c)(1) of this title shall establish or maintain a financial assistance program that awards scholarships to students in accordance with the requirements of this section. The Secretary shall encourage the eligible entity to ensure that a scholarship provided pursuant to this section is available to an eligible student for use at any institution of higher education.

(2) Partnerships

An eligible entity described in section 1070a–21(c)(2) of this title may award scholarships to eligible students in accordance with the requirements of this section.

(b) Limitation

(1) In general

Subject to paragraph (2), each eligible entity described in section 1070a–21(c)(1) of this title that receives a grant under this division shall use not less than 25 percent and not more than 50 percent of the grant funds for activities described in section 1070a–24 of this title (except for the activity described in subsection (a)(4) of such section), with the remainder of such funds to be used for a scholarship program under this section in accordance with such subsection.

(2) Exception

Notwithstanding paragraph (1), the Secretary may allow an eligible entity to use more than 50 percent of grant funds received under this division for such activities, if the eligible entity demonstrates that the eligible entity has another means of providing the students with the financial assistance described in this section and describes such means in the application submitted under section 1070a–23 of this title.

(c) Notification of eligibility

Each eligible entity providing scholarships under this section shall provide information on the eligibility requirements for the scholarships to all participating students upon the students' entry into the programs assisted under this division.

(d) Grant amounts

The maximum amount of a scholarship that an eligible student shall be eligible to receive under this section shall be established by the eligible entity. The minimum amount of the scholarship for each fiscal year shall not be less than the minimum Federal Pell Grant award under section 1070a of this title for such award year.

(e) Portability of assistance

(1) In general

Each eligible entity described in section 1070a–21(c)(1) of this title that receives a grant under this division shall hold in reserve, for the students served by such grant as described in section 1070a–22(d)(1)(A) or 1070a–24(d) of this title, an amount that is not less than the minimum scholarship amount described in subsection (d), multiplied by the number of students the eligible entity estimates will meet the requirements of paragraph (2).

(2) Requirement for portability

Funds held in reserve under paragraph (1) shall be made available to an eligible student when the eligible student has—

(A) completed a secondary school diploma, its recognized equivalent, or another recognized alternative standard for individuals with disabilities; and

(B) enrolled in an institution of higher education.

(3) Qualified educational expenses

Funds available to an eligible student under this subsection may be used for—

(A) tuition, fees, books, supplies, and equipment required for the enrollment or attendance of the eligible student at an institution of higher education; and

(B) in the case of an eligible student with special needs, expenses for special needs services that are incurred in connection with such enrollment or attendance.

(4) Return of funds

(A) Redistribution

(i) In general

Funds held in reserve under paragraph (1) that are not used by an eligible student within six years of the student's scheduled completion of secondary school may be redistributed by the eligible entity to other eligible students.

(ii) Return of excess to the Secretary

If, after meeting the requirements of paragraph (1) and, if applicable, redistributing excess funds in accordance with clause (i) of this subparagraph, an eligible entity has funds held in reserve under paragraph (1) that remain available, the eligible entity shall return such remaining reserved funds to the Secretary for distribution to other grantees under this division in accordance with the funding rules described in section 1070a–22(a) of this title.

(B) Nonparticipating entity

Notwithstanding subparagraph (A), in the case of an eligible entity that does not receive assistance under this subpart for six fiscal years, the eligible entity shall return any funds held in reserve under paragraph (1) that are not awarded or obligated to eligible students to the Secretary for distribution to other grantees under this division.

(f) Relation to other assistance

Scholarships provided under this section shall not be considered for the purpose of awarding Federal grant assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, except that in no case shall the total amount of student financial assistance awarded to a student under this subchapter and part C of subchapter I of chapter 34 of title 42 exceed such student's total cost of attendance.

(g) Eligible students

A student eligible for assistance under this section is a student who—

(1) is less than 22 years old at time of first scholarship award under this section;

(2) receives a secondary school diploma or its recognized equivalent on or after January 1, 1993;

(3) is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education that is located within the State's boundaries, except that, at the State's option, an eligible entity may offer scholarship program portability for recipients who attend institutions of higher education outside such State; and

(4) who participated in the activities required under section 1070a–24(a) of this title.

(Pub. L. 89–329, title IV, § 404E, as added Pub. L. 105–244, title IV, § 403, Oct. 7, 1998, 112 Stat. 1661; amended Pub. L. 110–315, title IV, § 404(e), Aug. 14, 2008, 122 Stat. 3213.)

PRIOR PROVISIONS

A prior section 1070a–25, Pub. L. 89–329, title IV, § 404E, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 495; amended Pub. L. 103–208, § 2(b)(20), Dec. 20, 1993, 107 Stat. 2459, related to distribution of funds, prior to the general amendment of this division by Pub. L. 105–244.

AMENDMENTS

2008—Subsecs. (b), (c). Pub. L. 110–315, § 404(e)(3), added subsecs. (b) and (c). Former subsecs. (b) and (c) redesignated (d) and (f), respectively.

Subsec. (d). Pub. L. 110–315, § 404(e)(4), substituted "the minimum Federal Pell Grant award under section 1070a of this title for such award year" for "the lesser of—

"(1) 75 percent of the average cost of attendance for an in-State student, in a 4-year program of instruction, at public institutions of higher education in such State, as determined in accordance with regulations prescribed by the Secretary; or

"(2) the maximum Federal Pell Grant funded under section 1070a of this title for such fiscal year".

Pub. L. 110–315, § 404(e)(2), redesignated subsec. (b) as (d). Former subsec. (d) redesignated (g).

Subsec. (e). Pub. L. 110–315, § 404(e)(1), (5), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: ''The Secretary shall ensure that each eligible entity places a priority on awarding scholarships to students who will receive a Federal Pell Grant for the academic year for which the scholarship is awarded under this section.''

Subsec. (f). Pub. L. 110–315, § 404(e)(1), (2), redesignated subsec. (c) as (f) and struck out former subsec. (f). Text read as follows: ''An eligible entity may consider students who have successfully participated in programs funded under division 1 of this subpart to have met the requirements of subsection (d)(4) of this section.''

Subsec. (g). Pub. L. 110–315, § 404(e)(2), redesignated subsec. (d) as (g).

Subsec. (g)(4). Pub. L. 110–315, § 404(e)(6), substituted ''activities required under section 1070a–24(a) of this title'' for ''early intervention component required under section 1070a–24 of this title''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, § 404(i), as added by Pub. L. 111–39, title IV, § 401(c), July 1, 2009, 123 Stat. 1940, provided that:

''(1) IN GENERAL.—The amendments made by subsection (e) [amending this section] shall apply to grants made under chapter 2 of subpart 2 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a–21 et seq.) on or after the date of enactment of this Act [Aug. 14, 2008], except that a recipient of a grant under such chapter that is made prior to such date may elect to apply the requirements contained in the amendments made by subsection (e) to that grant if the grant recipient informs the Secretary of the election.

''(2) SPECIAL RULE.—A grant recipient may make the election described in paragraph (1) only if the election does not decrease the amount of the scholarship promised to an individual student under the grant.''

§ 1070a–26. 21st Century Scholar Certificates

(a) In general

An eligible entity that receives a grant under this division shall provide certificates, to be known as 21st Century Scholar Certificates, to all students served by the eligible entity who are participating in a program under this division.

(b) Information required

A 21st Century Scholar Certificate shall be personalized for each student and indicate the amount of Federal financial aid for college and the estimated amount of any scholarship provided under section 1070a–25 of this title, if applicable, that a student may be eligible to receive.

(Pub. L. 89–329, title IV, § 404F, as added Pub. L. 105–244, title IV, § 403, Oct. 7, 1998, 112 Stat. 1662; amended Pub. L. 106–78, title VII, § 752(b)(8), Oct. 22, 1999, 113 Stat. 1169; Pub. L. 110–315, title IV, § 404(f), Aug. 14, 2008, 122 Stat. 3214.)

PRIOR PROVISIONS

A prior section 1070a–26, Pub. L. 89–329, title IV, § 404F, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 496; amended Pub. L. 103–208, § 2(b)(21), (22), Dec. 20, 1993, 107 Stat. 2459, related to evaluation and report, prior to the general amendment of this division by Pub. L. 105–244. See section 1070a–27 of this title.

AMENDMENTS

2008—Pub. L. 110–315 added subsecs. (a) and (b) and struck out former subsecs. (a) and (b), which related to the provision of 21st Century Scholar Certificates and required that such Certificates be personalized for each student.

1999—Subsec. (a)(2). Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act''.

§ 1070a–27. Evaluation and report

(a) Evaluation

Each eligible entity receiving a grant under this division shall biennially evaluate the activities assisted under this division in accordance with the standards described in subsection (b) of this section and shall submit to the Secretary a copy of such evaluation. The evaluation shall permit service providers to track eligible student progress during the period such students are participating in the activities and shall be consistent with the standards developed by the Secretary pursuant to subsection (b) of this section.

(b) Evaluation standards

The Secretary shall prescribe standards for the evaluation described in subsection (a) of this section. Such standards shall—

(1) provide for input from eligible entities and service providers; and

(2) ensure that data protocols and procedures are consistent and uniform.

(c) Federal evaluation

In order to evaluate and improve the impact of the activities assisted under this division, the Secretary shall, from not more than 0.75 percent of the funds appropriated under section 1070a–28 of this title for a fiscal year, award one or more grants, contracts, or cooperative agreements to or with public and private institutions and organizations, to enable the institutions and organizations to evaluate the effectiveness of the program and, as appropriate, disseminate the results of the evaluation. Such evaluation shall include a separate analysis of—

(1) the implementation of the scholarship component described in section 1070a–25 of this title; and

(2) the use of methods for complying with matching requirements described in paragraphs (1) and (2) of section 1070a–23(c) of this title.

(d) Report

The Secretary shall biennially report to Congress regarding the activities assisted under this division and the evaluations conducted pursuant to this section.

(Pub. L. 89–329, title IV, § 404G, as added Pub. L. 105–244, title IV, § 403, Oct. 7, 1998, 112 Stat. 1662; amended Pub. L. 110–315, title IV, § 404(g), Aug. 14, 2008, 122 Stat. 3215.)

PRIOR PROVISIONS

A prior section 1070a–27, Pub. L. 89–329, title IV, § 404G, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 496; amended Pub. L. 103–208, § 2(b)(23), Dec. 20, 1993, 107 Stat. 2459; Pub. L. 103–382, title III, § 354, Oct. 20, 1994, 108 Stat. 3967, authorized appropriations for grants under this division, prior to the general amendment of this division by Pub. L. 105–244. See section 1070a–28 of this title.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–315 inserted at end ''Such evaluation shall include a separate analysis of—'' and pars. (1) and (2).

§ 1070a–28. Authorization of appropriations

There are authorized to be appropriated to carry out this division $400,000,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years.

(Pub. L. 89–329, title IV, § 404H, as added Pub. L. 105–244, title IV, § 403, Oct. 7, 1998, 112 Stat. 1663; amended Pub. L. 110–315, title IV, § 404(h), Aug. 14, 2008, 122 Stat. 3215.)

AMENDMENTS

2008—Pub. L. 110–315 substituted ''$400,000,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years'' for ''$200,000,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years''.

Division 3—[Repealed]

CODIFICATION

Chapter 3 of subpart 2 of part A of title IV of the Higher Education Act of 1965, which comprised this division, was originally added to Pub. L. 89–329, title IV, by Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 497. Chapter 3, which related to academic achievement incentive scholarships, was set out as having been added by Pub. L. 105–244, title IV, § 404, Oct. 7, 1998, 112 Stat. 1663, without reference to Pub. L. 102–325 because of the extensive revision of chapter 3 by Pub. L. 105–244.

§§ 1070a–31 to 1070a–35. Repealed. Pub. L. 110–315, title IV, § 405, Aug. 14, 2008, 122 Stat. 3215

Section 1070a–31, Pub. L. 89–329, title IV, § 406A, as added Pub. L. 105–244, title IV, § 404, Oct. 7, 1998, 112 Stat. 1663, authorized scholarships to students who graduate from secondary school after May 1, 2000.

A prior section 1070a–31, Pub. L. 89–329, title IV, § 406A, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 497, authorized award of Presidential Access Scholarships, prior to the general amendment of this division by Pub. L. 105–244.

Section 1070a–32, Pub. L. 89–329, title IV, § 406B, as added Pub. L. 105–244, title IV, § 404, Oct. 7, 1998, 112 Stat. 1663, related to scholarship program requirements.

A prior section 1070a–32, Pub. L. 89–329, title IV, § 406B, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 497, related to scholarship program requirements, prior to the general amendment of this division by Pub. L. 105–244.

Section 1070a–33, Pub. L. 89–329, title IV, § 406C, as added Pub. L. 105–244, title IV, § 404, Oct. 7, 1998, 112 Stat. 1664, related to eligibility of scholars.

A prior section 1070a–33, Pub. L. 89–329, title IV, § 406C, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 497, related to eligibility of scholars, prior to the general amendment of this division by Pub. L. 105–244.

Section 1070a–34, Pub. L. 89–329, title IV, § 406D, as added Pub. L. 105–244, title IV, § 404, Oct. 7, 1998, 112 Stat. 1664, related to student requirements.

A prior section 1070a–34, Pub. L. 89–329, title IV, § 406D, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 498, related to eligible early intervention programs, prior to the general amendment of this division by Pub. L. 105–244.

Section 1070a–35, Pub. L. 89–329, title IV, § 407E [406E], as added Pub. L. 105–244, title IV, § 404, Oct. 7, 1998, 112 Stat. 1664, authorized appropriations for fiscal year 1999 and the 4 succeeding fiscal years.

A prior section 1070a–35, Pub. L. 89–329, title IV, § 406E, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 498, related to student eligibility, prior to the general amendment of this division by Pub. L. 105–244.

Prior sections 1070a–36 and 1070a–37 were omitted in the general amendment of this division by Pub. L. 105–244.

Section 1070a–36, Pub. L. 89–329, title IV, § 406F, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 499, related to early intervention scholarship agreement.

Section 1070a–37, Pub. L. 89–329, title IV, § 406G, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 499, authorized appropriations to carry out this division.

Division 4—Model Program Community Partnership and Counseling Grants

§§ 1070a–41 to 1070a–43. Repealed. Pub. L. 105–244, title IV, § 405, Oct. 7, 1998, 112 Stat. 1664

Section 1070a–41, Pub. L. 89–329, title IV, § 408A, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 500, authorized grants to develop model programs.

Section 1070a–42, Pub. L. 89–329, title IV, § 408B, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 500, related to collection and dissemination of information about programs.

Section 1070a–43, Pub. L. 89–329, title IV, § 408C, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 501, authorized appropriations to carry out this division.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

Division 5—Public Information

§§ 1070a–51 to 1070a–53. Repealed. Pub. L. 105–244, title IV, § 405, Oct. 7, 1998, 112 Stat. 1664

Section 1070a–51, Pub. L. 89–329, title IV, § 409A, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 501; amended Pub. L. 103–208, § 2(b)(24), Dec. 20, 1993, 107 Stat. 2459, authorized contract to establish and maintain database and information line.

Section 1070a–52, Pub. L. 89–329, title IV, § 409B, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 501, related to early awareness information program.

Section 1070a–53, Pub. L. 89–329, title IV, § 409C, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 502, authorized appropriations to carry out this division.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

Division 6—National Student Savings Demonstration Program

§ 1070a–61. Repealed. Pub. L. 105–244, title IV, § 405, Oct. 7, 1998, 112 Stat. 1664

Section, Pub. L. 89–329, title IV, § 410A, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 502, related to national student savings demonstration program.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

Division 7—Preeligibility Form

§ 1070a–71. Repealed. Pub. L. 105–244, title IV, § 405, Oct. 7, 1998, 112 Stat. 1664

Section, Pub. L. 89–329, title IV, § 410B, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 503, related to information on eligibility for assistance.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

Division 8—Technical Assistance for Teachers and Counselors

§ 1070a–81. Repealed. Pub. L. 105–244, title IV, § 405, Oct. 7, 1998, 112 Stat. 1664

Section, Pub. L. 89–329, title IV, § 410C, as added Pub. L. 102–325, title IV, § 402(a)(4), July 23, 1992, 106 Stat. 504, related to technical assistance grants.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

SUBPART 3—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS

CODIFICATION

Pub. L. 102–325, title IV, §§ 402(a)(2), 403(a), July 23, 1992, 106 Stat. 482, 505, redesignated subpart 2 as 3 and inserted ''Federal'' before ''Supplemental'' in heading and redesignated former subpart 3 as 4.

§ 1070b. Purpose; appropriations authorized

(a) Purpose of subpart

It is the purpose of this subpart to provide, through institutions of higher education, supplemental grants to assist in making available the benefits of postsecondary education to qualified students who demonstrate financial need in accordance with the provisions of part E of this subchapter.

(b) Authorization of appropriations

(1) For the purpose of enabling the Secretary to make payments to institutions of higher education which have made agreements with the Secretary in accordance with section 1070b–2(a) of this title, for use by such institutions for payments to undergraduate students of supplemental grants awarded to them under this subpart, there are authorized to be appropriated such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

(2) Sums appropriated pursuant to this subsection for any fiscal year shall be available for payments to institutions until the end of the second fiscal year succeeding the fiscal year for which such sums were appropriated.

(Pub. L. 89–329, title IV, § 413A, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1328; amended Pub. L. 102–325, title IV, § 403(b), July 23, 1992, 106 Stat. 505; Pub. L. 105–244, title IV, § 406(a), Oct. 7, 1998, 112 Stat. 1664.; Pub. L. 110–315, title IV, § 406(a), Aug. 14, 2008, 122 Stat. 3215.)

PRIOR PROVISIONS

A prior section 1070b, Pub. L. 89–329, title IV, § 413A, as added Pub. L. 92–318, title I, § 131(b)(1), June 23, 1972, 86 Stat. 251; amended Pub. L. 94–482, title I, § 122(a), Oct. 12, 1976, 90 Stat. 2094; Pub. L. 96–49, § 5(a)(3), Aug. 13, 1979, 93 Stat. 352; Pub. L. 96–374, title IV, § 403(a), (b), title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1404, 1405, 1503, related to program of supplemental educational opportunity grants purpose, authorization of appropriations, and initial year payment provisions, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2008—Subsec. (b)(1). Pub. L. 110–315 substituted ''such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years'' for ''$675,000,000 for fiscal year 1999 and such sums as may be necessary for the 4 succeeding fiscal years''.

1998—Subsec. (b)(1). Pub. L. 105–244 substituted ''1999'' for ''1993''.

1992—Subsec. (b). Pub. L. 102–325 amended subsec. (b) generally, substituting present provisions for provisions authorizing appropriation of $490,000,000 for fiscal year 1987 and such sums as necessary for 4 succeeding fiscal years.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

§ 1070b–1. Amount and duration of grants

(a) Amount of grant

(1) Except as provided in paragraph (3), from the funds received by it for such purpose under this subpart, an institution which awards a supplemental grant to a student for an academic year under this subpart shall, for each year, pay to that student an amount not to exceed the lesser of (A) the amount determined by the institution, in accordance with the provisions of part E of this subchapter, to be needed by that student to enable the student to pursue a course of study at the institution or in a program of study abroad that is approved for credit by the institution at which the student is enrolled, or (B) $4,000.

(2) If the amount determined under paragraph (1) with respect to a student for any academic year is less than $100, no payment shall be made to that student for that year. For a student enrolled for less than a full academic year, the minimum payment required shall be reduced proportionately.

(3) For students participating in study abroad programs, the institution shall consider all reasonable costs associated with such study abroad when determining student eligibility. The amount of grant to be awarded in such cases may exceed the maximum amount of $4,000 by as much as $400 if reasonable study abroad costs exceed the cost of attendance at the home institution.

(b) Period for receipt of grants; continuing eligibility

(1) The period during which a student may receive supplemental grants shall be the period re-

quired for the completion of the first undergraduate baccalaureate course of study being pursued by that student.

(2) A supplemental grant awarded under this subpart shall entitle the student (to whom it is awarded) to payments pursuant to such grant only if the student meets the requirements of section 1091 of this title, except as provided in section 1070b–2(c) of this title.

(c) Distribution of grant during academic year

Nothing in this section shall be construed to prohibit an institution from making payments of varying amounts from a supplemental grant to a student during an academic year to cover costs for a period which are not applicable to other periods of such academic year.

(Pub. L. 89–329, title IV, § 413B, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1328; amended Pub. L. 102–325, title IV, § 403(c), July 23, 1992, 106 Stat. 505.)

PRIOR PROVISIONS

A prior section 1070b–1, Pub. L. 89–329, title IV, § 413B, as added Pub. L. 92–318, title I, § 131(b)(1), June 23, 1972, 86 Stat. 252; amended Pub. L. 96–374, title IV, § 403(c), Oct. 3, 1980, 94 Stat. 1405, related to amount and duration of supplemental educational opportunity grants, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–325, § 403(c)(1), substituted ''Except as provided in paragraph (3), from'' for ''From'' in introductory provisions and inserted ''or in a program of study abroad that is approved for credit by the institution at which the student is enrolled'' after ''course of study at the institution'' in subpar. (A).

Subsec. (a)(3). Pub. L. 102–325, § 403(c)(2), added par. (3).

§ 1070b–2. Agreements with institutions; selection of recipients

(a) Institutional eligibility

Assistance may be made available under this subpart only to an institution which—

(1) has, in accordance with section 1094 of this title, an agreement with the Secretary applicable to this subpart;

(2) agrees that the Federal share of awards under this subpart will not exceed 75 percent of such awards, except that the Federal share may be exceeded if the Secretary determines, pursuant to regulations establishing objective criteria for such determinations, that a larger Federal share is required to further the purpose of this subpart; and

(3) agrees that the non-Federal share of awards made under this subpart shall be made from the institution's own resources, including—

(A) institutional grants and scholarships;

(B) tuition or fee waivers;

(C) State scholarships; and

(D) foundation or other charitable organization funds.

(b) Eligibility for selection

Awards may be made under this subpart only to a student who—

(1) is an eligible student under section 1091 of this title; and

(2) makes application at a time and in a manner consistent with the requirements of the Secretary and that institution.

(c) Selection of individuals and determination of amount of awards

(1) From among individuals who are eligible for supplemental grants for each fiscal year, the institution shall, in accordance with the agreement under section 1094 of this title, and within the amount allocated to the institution for that purpose for that year under section 1070b–3 of this title, select individuals who are to be awarded such grants and determine, in accordance with section 1070b–1 of this title, the amounts to be paid to them.

(2)(A) In carrying out paragraph (1) of this subsection, each institution of higher education shall, in the agreement made under section 1094 of this title, assure that the selection procedures—

(i) will be designed to award supplemental grants under this subpart, first, to students with exceptional need, and

(ii) will give a priority for supplemental grants under this subpart to students who receive Pell Grants and meet the requirements of section 1091 of this title.

(B) For the purpose of subparagraph (A), the term ''students with exceptional need'' means students with the lowest expected family contributions at the institution.

(d) Use of funds for less-than-full-time students

If the institution's allocation under this subpart is directly or indirectly based in part on the financial need demonstrated by students who are independent students or attending the institution on less than a full-time basis, then a reasonable proportion of the allocation shall be made available to such students.

(e) Use and transfer of funds for administrative expenses

An agreement entered into pursuant to this section shall provide that funds granted to an institution of higher education may be used only to make payments to students participating in a grant program authorized under this subpart, except that an institution may use a portion of the sums allocated to it under this subpart to meet administrative expenses in accordance with section 1096 of this title.

(Pub. L. 89–329, title IV, § 413C, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1329; amended Pub. L. 102–325, title IV, § 403(d)–(f), July 23, 1992, 106 Stat. 506; Pub. L. 103–208, § 2(b)(25), Dec. 20, 1993, 107 Stat. 2459; Pub. L. 105–244, title IV, § 406(b), Oct. 7, 1998, 112 Stat. 1665.)

PRIOR PROVISIONS

A prior section 1070b–2, Pub. L. 89–329, title IV, § 413C, as added Pub. L. 92–318, title I, § 131(b)(1), June 23, 1972, 86 Stat. 253; amended Pub. L. 94–482, title I, § 122(b), Oct. 12, 1976, 90 Stat. 2094; Pub. L. 96–374, title IV, § 403(d), Oct. 3, 1980, 94 Stat. 1405, related to selection of recipients of supplemental educational opportunity grants and agreements with institutions, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105–244 amended heading and text of subsec. (d) generally. Prior to amendment,

text read as follows: ''If the institution's allocation under this subpart is directly or indirectly based in part on the financial need demonstrated by students who are independent students or attending the institution less than full time and if the total financial need of all such students attending the institution exceeds 5 percent of the total financial need of all students attending such institution, then at least 5 percent of such allotment shall be made available to such students.''

1993—Subsec. (d). Pub. L. 103–208 substituted ''and'' for '', a reasonable proportion of the institution's allocation shall be made available to such students, except that'' and ''5 percent of the total financial need'' for ''5 percent of the need''.

1992—Subsec. (a)(2). Pub. L. 102–325, § 403(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''agrees that the Federal share of awards under this subpart will not exceed—

''(A) 95 percent of such awards in fiscal year 1989,

''(B) 90 percent of such awards in fiscal year 1990, and

''(C) 85 percent of such awards in fiscal year 1991,

except that the Federal share may be exceeded if the Secretary determines, pursuant to regulations establishing objective criteria for such determinations, that a larger Federal share is required to further the purpose of this subpart; and''.

Subsec. (d). Pub. L. 102–325, § 403(e), inserted ''who are independent students or'' after ''demonstrated by students'' and inserted before period at end '', except that if the total financial need of all such students attending the institution exceeds 5 percent of the need of all students attending such institution, then at least 5 percent of such allotment shall be made available to such students''.

Subsec. (e). Pub. L. 102–325, § 403(f), struck out before period at end '', and may transfer such funds in accordance with the provisions of section 1095 of this title''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective on and after July 1, 1994, see section 5(b)(6) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective July 23, 1992, except that changes in subsec. (a)(2) of this section, relating to Federal share for supplemental educational opportunity grant program, applicable to funds provided for such program for award years beginning on or after July 1, 1993, see section 410 of Pub. L. 102–325, set out as a note under section 1070a of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub. L. 99–498, set out as a note under section 1001 of this title.

Section 401(b)(5) of Pub. L. 99–498 provided that: ''Section 413C(c)(2) of the Act [20 U.S.C. 1070b–2(c)(2)] as amended by this section shall apply to the awarding of grants under subpart 2 of part A of title IV of the Act [this subpart] for periods of enrollment beginning on or after July 1, 1987.''

§ 1070b–3. Allocation of funds

(a) Allocation based on previous allocation

(1) From the amount appropriated pursuant to section 1070b(b) of this title for each fiscal year, the Secretary shall first allocate to each eligible institution an amount equal to 100 percent of the amount such institution received under subsections (a) and (b) of this section for fiscal year 1999 (as such subsections were in effect with respect to allocations for such fiscal year).

(2)(A) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this subpart after fiscal year 1999 but is not a first or second time participant, an amount equal to the greater of—

(i) $5,000; or

(ii) 90 percent of the amount received and used under this subpart for the first year it participated in the program.

(B) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this subpart after fiscal year 1999 and is a first or second time participant, an amount equal to the greatest of—

(i) $5,000;

(ii) an amount equal to (I) 90 percent of the amount received and used under this subpart in the second preceding fiscal year by eligible institutions offering comparable programs of instruction, divided by (II) the number of students enrolled at such comparable institutions in such fiscal year, multiplied by (III) the number of students enrolled at the applicant institution in such fiscal year; or

(iii) 90 percent of the institution's allocation under this part for the preceding fiscal year.

(C) Notwithstanding subparagraphs (A) and (B) of this paragraph, the Secretary shall allocate to each eligible institution which—

(i) was a first-time participant in the program in fiscal year 2000 or any subsequent fiscal year, and

(ii) received a larger amount under this subsection in the second year of participation,

an amount equal to 90 percent of the amount it received under this subsection in its second year of participation.

(3)(A) If the amount appropriated for any fiscal year is less than the amount required to be allocated to all institutions under paragraph (1) of this subsection, then the amount of the allocation to each such institution shall be ratably reduced.

(B) If the amount appropriated for any fiscal year is more than the amount required to be allocated to all institutions under paragraph (1) but less than the amount required to be allocated to all institutions under paragraph (2), then—

(i) the Secretary shall allot the amount required to be allocated to all institutions under paragraph (1), and

(ii) the amount of the allocation to each institution under paragraph (2) shall be ratably reduced.

(C) If additional amounts are appropriated for any such fiscal year, such reduced amounts shall be increased on the same basis as they were reduced (until the amount allocated equals the amount required to be allocated under paragraphs (1) and (2) of this subsection).

(4)(A) Notwithstanding any other provision of this section, the Secretary may allocate an amount equal to not more than 10 percent of the

amount by which the amount appropriated in any fiscal year to carry out this part exceeds $700,000,000 among eligible institutions described in subparagraph (B).

(B) In order to receive an allocation pursuant to subparagraph (A) an institution shall be an eligible institution from which 50 percent or more of the Pell Grant recipients attending such eligible institution graduate from or transfer to a 4-year institution of higher education.

(b) Allocation of excess based on fair share

(1) From the remainder of the amount appropriated pursuant to section 1070b(b) of this title for each year (after making the allocations required by subsection (a) of this section), the Secretary shall allocate to each eligible institution which has an excess eligible amount an amount which bears the same ratio to such remainder as such excess eligible amount bears to the sum of the excess eligible amounts of all such eligible institutions (having such excess eligible amounts).

(2) For any eligible institution, the excess eligible amount is the amount, if any, by which—

(A)(i) the amount of that institution's need (as determined under subsection (c) of this section), divided by (ii) the sum of the need of all institutions (as so determined), multiplied by (iii) the amount appropriated pursuant to section 1070b(b) of this title of the fiscal year; exceeds

(B) the amount required to be allocated to that institution under subsection (a) of this section.

(c) Determination of institution's need

(1) The amount of an institution's need is equal to—

(A) the sum of the need of the institution's eligible undergraduate students; minus

(B) the sum of grant aid received by students under subparts 1 and 3[1] of this part.

(2) To determine the need of an institution's eligible undergraduate students, the Secretary shall—

(A) establish various income categories for dependent and independent undergraduate students;

(B) establish an expected family contribution for each income category of dependent and independent undergraduate students, determined on the basis of the average expected family contribution (computed in accordance with part E of this subchapter) of a representative sample within each income category for the second preceding fiscal year;

(C) compute 75 percent of the average cost of attendance for all undergraduate students;

(D) multiply the number of eligible dependent students in each income category by 75 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C), minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction shall not be less than zero;

(E) add the amounts determined under subparagraph (D) for each income category of dependent students;

(F) multiply the number of eligible independent students in each income category by 75 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C), minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction shall not be less than zero;

(G) add the amounts determined under subparagraph (F) for each income category of independent students; and

(H) add the amounts determined under subparagraphs (E) and (G).

(3)(A) For purposes of paragraph (2), the term ''average cost of attendance'' means the average of the attendance costs for undergraduate students, which shall include (i) tuition and fees determined in accordance with subparagraph (B), (ii) standard living expenses determined in accordance with subparagraph (C), and (iii) books and supplies determined in accordance with subparagraph (D).

(B) The average undergraduate tuition and fees described in subparagraph (A)(i) shall be computed on the basis of information reported by the institution to the Secretary, which shall include (i) total revenue received by the institution from undergraduate tuition and fees for the second year preceding the year for which it is applying for an allocation, and (ii) the institution's enrollment for such second preceding year.

(C) The standard living expense described in subparagraph (A)(ii) is equal to 150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college for a single independent student.

(D) The allowance for books and supplies described in subparagraph (A)(iii) is equal to $600.

(d) Reallocation of excess allocations

(1) If an institution returns to the Secretary any portion of the sums allocated to such institution under this section for any fiscal year the Secretary shall, in accordance with regulations, reallocate such excess to other institutions.

(2) If under paragraph (1) of this subsection an institution returns more than 10 percent of its allocation, the institution's allocation for the next fiscal year shall be reduced by the amount returned. The Secretary may waive this paragraph for a specific institution if the Secretary finds that enforcing this paragraph would be contrary to the interest of the program.

(e) Filing deadlines

The Secretary shall, from time to time, set dates before which institutions must file applications for allocations under this part.

(Pub. L. 89–329, title IV, § 413D, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1330; amended Pub. L. 100–50, § 4, June 3, 1987, 101 Stat. 340; Pub. L. 102–325, title IV, § 403(g), (h), July 23, 1992, 106 Stat. 506; Pub. L. 103–208, § 2(b)(26), Dec. 20, 1993, 107 Stat. 2459; Pub. L. 105–244, title IV, § 406(c)(1), (2), Oct. 7, 1998, 112 Stat. 1665; Pub. L. 110–315, title IV, § 406(b), (c), Aug. 14, 2008, 122 Stat. 3215.)

[1] See References in Text note below.

REFERENCES IN TEXT

Subpart 3 of this part, referred to in subsec. (c)(1)(B), was redesignated subpart 4 by Pub. L. 102–325, title IV, § 402(a)(2), July 23, 1992, 106 Stat. 482, and former subpart 2 [this subpart] was redesignated as subpart 3.

PRIOR PROVISIONS

A prior section 1070b–3, Pub. L. 89–329, title IV, § 413D, as added Pub. L. 92–318, title I, § 131(b)(1), June 23, 1972, 86 Stat. 254; amended Pub. L. 96–374, title IV, § 403(e), (f), title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1405, 1406, 1503, related to apportionment and allocation of funds for supplemental educational opportunity grants, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–315, § 406(c), substituted ''such institution received under subsections (a) and (b) of this section for fiscal year 1999 (as such subsections were in effect with respect to allocations for such fiscal year)'' for ''such institution received and used under this subpart for fiscal year 1985''.

Subsec. (c)(3)(D). Pub. L. 110–315, § 406(b), substituted ''$600'' for ''$450''.

1998—Subsec. (a)(1). Pub. L. 105–244, § 406(c)(1)(A), which directed substitution of ''received under subsections (a) and (b) of this section for fiscal year 1999 (as such subsections were in effect with respect to allocations for such fiscal year)'' for ''received and used under this part for fiscal year 1985'', could not be executed because the phrase ''received and used under this part for fiscal year 1985'' did not appear in text.

Subsec. (a)(2)(A), (B). Pub. L. 105–244, § 406(c)(1)(B)(i), substituted ''1999'' for ''1985'' in introductory provisions.

Subsec. (a)(2)(C)(i). Pub. L. 105–244, § 406(c)(1)(B)(ii), substituted ''2000'' for ''1986''.

Subsec. (b). Pub. L. 105–244, § 406(c)(2)(A), (D), redesignated subsec. (c) as (b) and struck out heading and text of former subsec. (b). Text read as follows: ''From one-quarter of the remainder of the amount appropriated pursuant to section 1070b(b) of this title for any fiscal year (after making the allocations required by subsection (a) of this section), the Secretary shall allocate to each eligible institution an amount which bears the same ratio to such one-quarter as the amount the eligible institution receives for such fiscal year under subsection (a) of this section bears to the amount all such institutions receive under such subsection (a) of this section.''

Subsec. (c). Pub. L. 105–244, § 406(c)(2)(D), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(1). Pub. L. 105–244, § 406(c)(2)(B), substituted ''the remainder'' for ''three-quarters of the remainder''.

Subsec. (c)(2)(A)(i). Pub. L. 105–244, § 406(c)(2)(C), substituted ''subsection (c)'' for ''subsection (d)''.

Subsecs. (d) to (f). Pub. L. 105–244, § 406(c)(2)(D), redesignated subsecs. (e) and (f) as (d) and (e), respectively. Former subsec. (d) redesignated (c).

1993—Subsec. (d)(3)(C). Pub. L. 103–208 substituted ''150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college'' for ''three-fourths in the Pell Grant family size offset''.

1992—Subsec. (a)(4). Pub. L. 102–325, § 403(g), added par. (4).

Subsec. (e). Pub. L. 102–325, § 403(h), designated existing provisions as par. (1) and added par. (2).

1987—Subsec. (d)(2)(D). Pub. L. 100–50, § 4(a)(1), added subpar. (D) and struck out former subpar. (D) which read as follows: ''multiply the number of eligible dependent students in each income category by the lesser of—

''(i) 75 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or

''(ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction shall not be less than zero;''.

Subsec. (d)(2)(F). Pub. L. 100–50, § 4(a)(2), added subpar. (F) and struck out former subpar. (F) which read as follows: ''multiply the number of eligible independent students in each income category by the lesser of—

''(i) 75 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or

''(ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction for any income category shall not be less than zero;''.

Subsec. (d)(3)(A). Pub. L. 100–50, § 4(b)(1), struck out ''and for graduate and professional students'' after ''undergraduate students''.

Subsec. (d)(3)(B). Pub. L. 100–50, § 4(b)(2), struck out ''and graduate and professional'' after ''average undergraduate'' and struck out ''and graduate'' after ''from undergraduate''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–244, title IV, § 406(c)(3), Oct. 7, 1998, 112 Stat. 1665, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to allocations of amounts appropriated pursuant to section 413A(b) of the Higher Education Act of 1965 [20 U.S.C. 1070b(b)] for fiscal year 2000 or any succeeding fiscal year.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section 401(b)(6) of Pub. L. 99–498, as added by Pub. L. 100–50, § 22(a)(2), June 3, 1987, 101 Stat. 361, provided that: ''The changes made in section 413D of the Act [this section] shall apply with respect to the allocation of funds for the academic year 1988–1989 and succeeding academic years.''

§ 1070b–4. Carryover and carryback authority

(a) Carryover authority

Of the sums made available to an eligible institution under this subpart for a fiscal year, not more than 10 percent may, at the discretion of the institution, remain available for expenditure during the succeeding fiscal year to carry out the program under this subpart.

(b) Carryback authority

(1) In general

Of the sums made available to an eligible institution under this subpart for a fiscal year, not more than 10 percent may, at the discretion of the institution, be used by the institution for expenditure for the fiscal year preceding the fiscal year for which the sums were appropriated.

(2) Use of carried-back funds

An eligible institution may make grants to students after the end of the academic year,

but prior to the beginning of the succeeding fiscal year, from such succeeding fiscal year's appropriations.

(Pub. L. 89–329, title IV, § 413E, as added Pub. L. 105–244, title IV, § 406(d), Oct. 7, 1998, 112 Stat. 1665.)

EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

SUBPART 4—LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

CODIFICATION

Pub. L. 105–244, title IV, § 407(a)(1), Oct. 7, 1998, 112 Stat. 1666, amended heading generally.

Pub. L. 102–325, title IV, § 402(a)(1), (2), July 23, 1992, 106 Stat. 482, redesignated former subpart 3 as 4 and repealed former subpart 4, comprising sections 1070d to 1070d–1d, which authorized special programs for students from disadvantaged backgrounds.

§ 1070c. Purpose; appropriations authorized

(a) Purpose of subpart

It is the purpose of this subpart to make incentive grants available to States to assist States in—

(1) providing grants to—

(A) eligible students attending institutions of higher education or participating in programs of study abroad that are approved for credit by institutions of higher education at which such students are enrolled; and

(B) eligible students for campus-based community service work-study; and

(2) carrying out the activities described in section 1070c–3a of this title.

(b) Authorization of appropriations; availability

(1) In general

There are authorized to be appropriated to carry out this subpart $200,000,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years.

(2) Reservation

For any fiscal year for which the amount appropriated under paragraph (1) exceeds $30,000,000, the excess amount shall be available to carry out section 1070c–3a of this title.

(3) Availability

Sums appropriated pursuant to the authority of paragraph (1) for any fiscal year shall remain available for payments to States under this subpart until the end of the fiscal year succeeding the fiscal year for which such sums were appropriated.

(Pub. L. 89–329, title IV, § 415A, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1332; amended Pub. L. 102–325, title IV, § 404(a), July 23, 1992, 106 Stat. 506; Pub. L. 105–244, title IV, § 407(b), (c)(1), Oct. 7, 1998, 112 Stat. 1666, 1667; Pub. L. 106–554, § 1(a)(1) [title III, § 316(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–47; Pub. L. 110–315, title IV, § 407(a), Aug. 14, 2008, 122 Stat. 3215.)

PRIOR PROVISIONS

A prior section 1070c, Pub. L. 89–329, title IV, § 415A, as added Pub. L. 92–318, title I § 131(b)(1), June 23, 1972, 86 Stat. 255; amended Pub. L. 94–482, title I, § 123(a), (c)(1), Oct. 12, 1976, 90 Stat. 2094; Pub. L. 95–43, § 1(b)(3), June 15, 1977, 91 Stat. 218; Pub. L. 96–49, § 5(a)(4), Aug. 13, 1979, 93 Stat. 352; Pub. L. 96–374, title IV, § 404(a), Oct. 3, 1980, 94 Stat. 1406, related to purpose and authorization of appropriations for grants to States for State student incentives, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2008—Subsec. (b)(1), (2). Pub. L. 110–315 added pars. (1) and (2) and struck out former pars. (1) and (2) which related to appropriations and reservation of funding for section 1070c–3a of this title for fiscal year 1999 and the 4 succeeding fiscal years.

2000—Subsec. (a)(2). Pub. L. 106–554, which directed amendment of section 415 of the Higher Education Act of 1965 in section 415A(a)(2) by substituting "section 1070c–3a of this title" for "section 1070c–4 of this title", was executed by making the substitution in subsec. (a)(2) of this section, which is section 415A of the Higher Education Act of 1965, to reflect the probable intent of Congress.

1998—Subsec. (a). Pub. L. 105–244, § 407(c)(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "It is the purpose of this subpart to make incentive grants available to States to assist States in providing grants to—

"(1) eligible students attending institutions of higher education or participating in programs of study abroad that are approved for credit by institutions of higher education at which such students are enrolled; and

"(2) eligible students for campus-based community service work-study."

Subsec. (b)(1). Pub. L. 105–244, § 407(b)(1), substituted "1999" for "1993".

Subsec. (b)(2), (3). Pub. L. 105–244, § 407(b)(2), (3), added par. (2) and redesignated former par. (2) as (3).

1992—Pub. L. 102–325 amended section generally. Prior to amendment, section read as follows:

"(a) PURPOSE OF SUBPART.—It is the purpose of this subpart to make incentive grants available to the States to assist them in providing grants to eligible students attending institutions of higher education and grants to eligible students for campus-based community service work learning study.

"(b) AUTHORIZATION OF APPROPRIATIONS; AVAILABILITY.—(1) There are authorized to be appropriated $85,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(2) Sums appropriated pursuant to paragraph (1) for any fiscal year shall remain available for payments to States under this subpart until the end of the fiscal year succeeding the fiscal year for which such sums were appropriated."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

§ 1070c–1. Allotment among States

(a) Allotment based on number of eligible students in attendance

(1) From the sums appropriated pursuant to section 1070c(b)(1) of this title and not reserved under section 1070c(b)(2) of this title for any fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to such sums as the number of students who are deemed eligible in such State for participation in the grant program authorized by this subpart bears to the total number of such students in all the States, except that no State shall receive less than the State received for fiscal year 1979.

(2) For the purpose of this subsection, the number of students who are deemed eligible in a State for participation in the grant program authorized by this subpart, and the number of such students in all the States, shall be determined for the most recent year for which satisfactory data are available.

(b) Reallotment

The amount of any State's allotment under subsection (a) of this section for any fiscal year which the Secretary determines will not be required for such fiscal year for the leveraging educational assistance partnership program of that State shall be available for reallotment from time to time, on such dates during such year as the Secretary may fix, to other States in proportion to the original allotments to such States under such part for such year, but with such proportionate amount for any of such States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use for such year for carrying out the State plan. The total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount reallotted to a State under this part during a year from funds appropriated pursuant to section 1070c(b)(1) of this title shall be deemed part of its allotment under subsection (a) of this section for such year.

(c) Allotments subject to continuing compliance

The Secretary shall make payments for continuing incentive grants only to States which continue to meet the requirements of section 1070c–2(b) of this title.

(Pub. L. 89–329, title IV, § 415B, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1333; amended Pub. L. 105–244, title IV, § 407(a)(2)(A), (c)(2), Oct. 7, 1998, 112 Stat. 1666, 1667.)

PRIOR PROVISIONS

A prior section 1070c–1, Pub. L. 89–329, title IV, § 415B, as added Pub. L. 92–318, title I, § 131(b)(1), June 23, 1972, 86 Stat. 256; amended Pub. L. 94–482, title I, § 123(c)(2), Oct. 12, 1976, 90 Stat. 2094; Pub. L. 96–374, title IV, § 404(b), title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1407, 1503, related to allotment among States of amounts for grants to States for State student incentives, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–244, § 407(c)(2), inserted ''and not reserved under section 1070c(b)(2) of this title'' after ''1070c(b)(1) of this title''.

Subsec. (b). Pub. L. 105–244, § 407(a)(2)(A), substituted ''leveraging educational assistance partnership'' for ''State student grant incentive''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

§ 1070c–2. Applications for leveraging educational assistance partnership programs

(a) Submission and contents of applications

A State which desires to obtain a payment under this subpart for any fiscal year shall submit annually an application therefor through the State agency administering its program under this subpart as of July 1, 1985, unless the Governor of that State so designates, in writing, a different agency to administer the program. The application shall contain such information as may be required by, or pursuant to, regulation for the purpose of enabling the Secretary to make the determinations required under this subpart.

(b) Payment of Federal share of grants made by qualified program

From a State's allotment under this subpart for any fiscal year the Secretary is authorized to make payments to such State for paying up to 50 percent of the amount of student grants pursuant to a State program which—

(1) is administered by a single State agency;

(2) provides that such grants will be in amounts not to exceed the lesser of $12,500 or the student's cost of attendance per academic year (A) for attendance on a full-time basis at an institution of higher education, and (B) for campus-based community service work learning study jobs;

(3) provides that—

(A) not more than 20 percent of the allotment to the State for each fiscal year may be used for the purpose described in paragraph (2)(B);

(B) grants for the campus-based community work learning study jobs may be made only to students who are otherwise eligible for assistance under this subpart; and

(C) grants for such jobs be made in accordance with the provisions of section 2753(b)(1) of title 42;

(4) provides for the selection of recipients of such grants or of such State work-study jobs on the basis of substantial financial need determined annually on the basis of criteria established by the State and approved by the Secretary, except that for the purpose of collecting data to make such determination of financial need, no student or parent shall be charged a fee that is payable to an entity other than such State;

(5) provides that, effective with respect to any academic year beginning on or after October 1, 1978, all nonprofit institutions of higher education in the State are eligible to participate in the State program, except in any State in which participation of nonprofit institutions of higher education is in violation of the constitution of the State or in any State in which participation of nonprofit institutions of higher education is in violation of a statute of the State which was enacted prior to October 1, 1978;

(6) provides for the payment of the non-Federal portion of such grants or of such work-study jobs from funds supplied by such State which represent an additional expenditure for such year by such State for grants or work-study jobs for students attending institutions of higher education over the amount expended by such State for such grants or work-study jobs, if any, during the second fiscal year preceding the fiscal year in which such State initially received funds under this subpart;

(7) provides that if the State's allocation under this subpart is based in part on the fi-

nancial need demonstrated by students who are independent students or attending the institution less than full time, a reasonable proportion of the State's allocation shall be made available to such students;

(8) provides for State expenditures under such program of an amount not less than the average annual aggregate expenditures for the preceding three fiscal years or the average annual expenditure per full-time equivalent student for such years;

(9) provides (A) for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the State agency under this subpart, and (B) for the making of such reports, in such form and containing such information, as may be reasonably necessary to enable the Secretary to perform his functions under this subpart;

(10) for any academic year beginning after June 30, 1987, provides the non-Federal share of the amount of student grants or work-study jobs under this subpart through State funds for the program under this subpart; and

(11) provides notification to eligible students that such grants are—

(A) Leveraging Educational Assistance Partnership Grants; and

(B) funded by the Federal Government, the State, and, where applicable, other contributing partners.

(c) Reservation and disbursement of allotments and reallotments

Upon his approval of any application for a payment under this subpart, the Secretary shall reserve from the applicable allotment (including any applicable reallotment) available therefor, the amount of such payment, which (subject to the limits of such allotment or reallotment) shall be equal to the Federal share of the cost of the students' incentive grants or work-study jobs covered by such application. The Secretary shall pay such reserved amount, in advance or by way of reimbursement, and in such installments as the Secretary may determine. The Secretary may amend the reservation of any amount under this section, either upon approval of an amendment of the application or upon revision of the estimated cost of the student grants or work-study jobs with respect to which such reservation was made. If the Secretary approves an upward revision of such estimated cost, the Secretary may reserve the Federal share of the added cost only from the applicable allotment (or reallotment) available at the time of such approval.

(Pub. L. 89–329, title IV, § 415C, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1333; amended Pub. L. 102–325, title IV, § 404(b)–(d), July 23, 1992, 106 Stat. 507; Pub. L. 103–208, § 2(b)(27), Dec. 20, 1993, 107 Stat. 2459; Pub. L. 105–244, title IV, § 407(a)(2)(B), Oct. 7, 1998, 112 Stat. 1666; Pub. L. 110–315, title IV, § 407(b), Aug. 14, 2008, 122 Stat. 3215.)

PRIOR PROVISIONS

A prior section 1070c–2, Pub. L. 89–329, title IV, § 415C, as added Pub. L. 92–318, title I, § 131(b)(1), June 23, 1972, 86 Stat. 256; amended Pub. L. 94–482, title I, § 123(b), Oct. 12, 1976, 90 Stat. 2094; Pub. L. 95–43, § 1(a)(6), June 15, 1977, 91 Stat. 213; Pub. L. 95–566, § 3, Nov. 1, 1978, 92 Stat. 2403; Pub. L. 96–374, title IV, § 404(c), title XIII, § 1391(a)(1), (2), Oct. 3, 1980, 94 Stat. 1407, 1503, related to payment of grants to States for State student incentives, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2008—Subsec. (b)(2). Pub. L. 110–315, § 407(b)(1), substituted "not to exceed the lesser of $12,500 or the student's cost of attendance per academic year" for "not in excess of $5,000 per academic year".

Subsec. (b)(9). Pub. L. 110–315, § 407(b)(2), struck out "and" after semicolon.

Subsec. (b)(10). Pub. L. 110–315, § 407(b)(3), struck out "a direct appropriation of" before "State funds" and substituted "; and" for period at end.

Subsec. (b)(11). Pub. L. 110–315, § 407(b)(4), added par. (11).

1998—Pub. L. 105–244 substituted "leveraging educational assistance partnership" for "State student incentive grant" in section catchline.

1993—Subsec. (b)(7). Pub. L. 103–208 substituted a semicolon for period at end.

1992—Subsec. (b)(2). Pub. L. 102–325, § 404(b), substituted "$5,000" for "$2,500".

Subsec. (b)(4). Pub. L. 102–325, § 404(c), inserted before semicolon at end ", except that for the purpose of collecting data to make such determination of financial need, no student or parent shall be charged a fee that is payable to an entity other than such State".

Subsec. (b)(7). Pub. L. 102–325, § 404(d), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "provides that, if the institution's allocation under this subpart is based in part on the financial need demonstrated by students attending the institution less than full time, a reasonable proportion of the institution's allocation shall be made available to such students;".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

§ 1070c–3. Administration of State programs; judicial review

(a) Disapproval of applications; suspension of eligibility

(1) The Secretary shall not finally disapprove any application for a State program submitted under section 1070c–2 of this title, or any modification thereof, without first affording the State agency submitting the program reasonable notice and opportunity for a hearing.

(2) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State agency administering a State program approved under this subpart, finds—

(A) that the State program has been so changed that it no longer complies with the provisions of this subpart, or

(B) that in the administration of the program there is a failure to comply substantially with any such provisions,

the Secretary shall notify such State agency that the State will not be regarded as eligible to

participate in the program under this subpart until he is satisfied that there is no longer any such failure to comply.

(b) Review of decisions

(1) If any State is dissatisfied with the Secretary's final action with respect to the approval of its State program submitted under this subpart or with his final action under subsection (a) of this section, such State may appeal to the United States court of appeals for the circuit in which such State is located. The summons and notice of appeal may be served at any place in the United States. The Commissioner shall forthwith certify and file in the court the transcript of the proceedings and the record on which he based his action.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the transcript and record of further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in title 28, section 1254.

(Pub. L. 89–329, title IV, § 415D, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1335.)

PRIOR PROVISIONS

A prior section 1070c–3, Pub. L. 89–329, title IV, § 415D, as added Pub. L. 92–318, title I, § 131(b)(1), June 23, 1972, 86 Stat. 257; amended Pub. L. 96–374, title XIII, § 1391(a)(1), (2), Oct. 3, 1980, 94 Stat. 1503, related to administration of State programs and judicial review, prior to the general revision of this part by Pub. L. 99–498.

§ 1070c–3a. Grants for access and persistence

(a) Purpose

It is the purpose of this section to expand college access and increase college persistence by making allotments to States to enable the States to—

(1) expand and enhance partnerships with institutions of higher education, early information and intervention, mentoring, or outreach programs, private corporations, philanthropic organizations, and other interested parties, including community-based organizations, in order to—

(A) carry out activities under this section; and

(B) provide coordination and cohesion among Federal, State, and local governmental and private efforts that provide financial assistance to help low-income students attend an institution of higher education;

(2) provide need-based grants for access and persistence to eligible low-income students;

(3) provide early notification to low-income students of the students' eligibility for financial aid; and

(4) encourage increased participation in early information and intervention, mentoring, or outreach programs.

(b) Allotments to States

(1) In general

(A) Authorization

From sums reserved under section 1070c(b)(2) of this title for each fiscal year, the Secretary shall make an allotment to each State that submits an application for an allotment in accordance with subsection (c) to enable the State to pay the Federal share, as described in paragraph (2), of the cost of carrying out the activities under subsection (d).

(B) Determination of allotment

In making allotments under subparagraph (A), the Secretary shall consider the following:

(i) Continuation of award

Except as provided in clause (ii), if a State continues to meet the specifications established in such State's application under subsection (c), the Secretary shall make an allotment to such State that is not less than the allotment made to such State for the previous fiscal year.

(ii) Special continuation and transition rule

If a State that applied for and received an allotment under this section for fiscal year 2010 pursuant to subsection (j) meets the specifications established in the State's application under subsection (c) for fiscal year 2011, then the Secretary shall make an allotment to such State for fiscal year 2011 that is not less than the allotment made pursuant to subsection (j) to such State for fiscal year 2010 under this section (as this section was in effect on the day before August 14, 2008).

(iii) Priority

The Secretary shall give priority in making allotments to States that meet the requirements described in paragraph (2)(B)(ii).

(2) Federal share

(A) In general

The Federal share of the cost of carrying out the activities under subsection (d) for any fiscal year shall not exceed 66.66 percent.

(B) Different percentages

The Federal share under this section shall be determined in accordance with the following:

(i) The Federal share of the cost of carrying out the activities under subsection (d) shall be 57 percent if a State applies for an allotment under this section in partnership with any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents less than a majority of all students attending institutions of higher education in the State, and—

(I) philanthropic organizations that are located in, or that provide funding in, the State; or

(II) private corporations that are located in, or that do business in, the State.

(ii) The Federal share of the cost of carrying out the activities under subsection (d) shall be 66.66 percent if a State applies for an allotment under this section in partnership with any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State, and—

(I) philanthropic organizations that are located in, or that provide funding in, the State; or

(II) private corporations that are located in, or that do business in, the State.

(C) Non-Federal share

(i) In general

The non-Federal share under this section may be provided in cash or in kind, fairly evaluated.

(ii) In-kind contribution

For the purpose of calculating the non-Federal share under this subparagraph, an in-kind contribution is a non-cash contribution that—

(I) has monetary value, such as the provision of—

(aa) room and board; or

(bb) transportation passes; and

(II) helps a student meet the cost of attendance at an institution of higher education.

(iii) Effect on need analysis

For the purpose of calculating a student's need in accordance with part E, an in-kind contribution described in clause (ii) shall not be considered an asset or income of the student or the student's parent.

(c) Application for allotment

(1) In general

(A) Submission

A State that desires to receive an allotment under this section on behalf of a partnership described in paragraph (3) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(B) Content

An application submitted under subparagraph (A) shall include the following:

(i) A description of the State's plan for using the allotted funds.

(ii) An assurance that the State will provide matching funds, in cash or in kind, from State, institutional, philanthropic, or private funds, of not less than 33.33 percent of the cost of carrying out the activities under subsection (d). The State shall specify the methods by which matching funds will be paid. A State that uses non-Federal funds to create or expand partnerships with entities described in subsection (a)(1), in which such entities match State funds for student scholarships, may apply such matching funds from such entities toward fulfilling the State's matching obligation under this clause.

(iii) An assurance that the State will use funds provided under this section to supplement, and not supplant, Federal and State funds available for carrying out the activities under this subchapter and part C of subchapter I of chapter 34 of title 42.

(iv) An assurance that early information and intervention, mentoring, or outreach programs exist within the State or that there is a plan to make such programs widely available.

(v) A description of the organizational structure that the State has in place to administer the activities under subsection (d), including a description of how the State will compile information on degree completion of students receiving grants under this section.

(vi) A description of the steps the State will take to ensure that students who receive grants under this section persist to degree completion.

(vii) An assurance that the State has a method in place, such as acceptance of the automatic zero expected family contribution determination described in section 1087ss(c) of this title, to identify eligible low-income students and award State grant aid to such students.

(viii) An assurance that the State will provide notification to eligible low-income students that grants under this section are—

(I) Leveraging Educational Assistance Partnership Grants; and

(II) funded by the Federal Government and the State, and, where applicable, other contributing partners.

(2) State agency

The State agency that submits an application for a State under section 1070c–2(a) of this title shall be the same State agency that submits an application under paragraph (1) for such State.

(3) Partnership

In applying for an allotment under this section, the State agency shall apply for the allotment in partnership with—

(A) not less than one public and one private degree-granting institution of higher education that are located in the State, if applicable;

(B) new or existing early information and intervention, mentoring, or outreach programs located in the State; and

(C) not less than one—

(i) philanthropic organization located in, or that provides funding in, the State; or

(ii) private corporation located in, or that does business in, the State.

(4) Roles of partners

(A) State agency

A State agency that is in a partnership receiving an allotment under this section—

(i) shall—

(I) serve as the primary administrative unit for the partnership;

(II) provide or coordinate non-Federal share funds, and coordinate activities among partners;

(III) encourage each institution of higher education in the State to participate in the partnership;

(IV) make determinations and early notifications of assistance as described under subsection (d)(2); and

(V) annually report to the Secretary on the partnership's progress in meeting the purpose of this section; and

(ii) may provide early information and intervention, mentoring, or outreach programs.

(B) Degree-granting institutions of higher education

A degree-granting institution of higher education that is in a partnership receiving an allotment under this section—

(i) shall—

(I) recruit and admit participating qualified students and provide such additional institutional grant aid to participating students as agreed to with the State agency;

(II) provide support services to students who receive grants for access and persistence under this section and are enrolled at such institution; and

(III) assist the State in the identification of eligible students and the dissemination of early notifications of assistance as agreed to with the State agency; and

(ii) may provide funding for early information and intervention, mentoring, or outreach programs or provide such services directly.

(C) Programs

An early information and intervention, mentoring, or outreach program that is in a partnership receiving an allotment under this section shall provide direct services, support, and information to participating students.

(D) Philanthropic organization or private corporation

A philanthropic organization or private corporation that is in a partnership receiving an allotment under this section shall provide funds for grants for access and persistence for participating students, or provide funds or support for early information and intervention, mentoring, or outreach programs.

(d) Authorized activities

(1) In general

(A) Establishment of partnership

Each State receiving an allotment under this section shall use the funds to establish a partnership to award grants for access and persistence to eligible low-income students in order to increase the amount of financial assistance such students receive under this subpart for undergraduate education expenses.

(B) Amount of grants

The amount of a grant for access and persistence awarded by a State to a student under this section shall be not less than—

(i) the average undergraduate tuition and mandatory fees at the public institutions of higher education in the State where the student resides that are of the same type of institution as the institution of higher education the student attends; minus

(ii) other Federal and State aid the student receives.

(C) Special rules

(i) Partnership institutions

A State receiving an allotment under this section may restrict the use of grants for access and persistence under this section by awarding the grants only to students attending institutions of higher education that are participating in the partnership.

(ii) Out-of-State institutions

If a State provides grants through another program under this subpart to students attending institutions of higher education located in another State, grants awarded under this section may be used at institutions of higher education located in another State.

(2) Early notification

(A) In general

Each State receiving an allotment under this section shall annually notify low-income students in grades seven through 12 in the State, and their families, of their potential eligibility for student financial assistance, including an access and persistence grant, to attend an institution of higher education.

(B) Content of notice

The notice under subparagraph (A)—

(i) shall include—

(I) information about early information and intervention, mentoring, or outreach programs available to the student;

(II) information that a student's eligibility for a grant for access and persistence is enhanced through participation in an early information and intervention, mentoring, or outreach program;

(III) an explanation that student and family eligibility for, and participation in, other Federal means-tested programs may indicate eligibility for a grant for access and persistence and other student aid programs;

(IV) a nonbinding estimate of the total amount of financial aid that a low-income student with a similar income level may expect to receive, including an

estimate of the amount of a grant for access and persistence and an estimate of the amount of grants, loans, and all other available types of aid from the major Federal and State financial aid programs;

(V) an explanation that in order to be eligible for a grant for access and persistence, at a minimum, a student shall—

(aa) meet the requirement under paragraph (3);

(bb) graduate from secondary school; and

(cc) enroll at an institution of higher education—

(AA) that is a partner in the partnership; or

(BB) with respect to which attendance is permitted under subsection (d)(1)(C)(ii);

(VI) information on any additional requirements (such as a student pledge detailing student responsibilities) that the State may impose for receipt of a grant for access and persistence under this section; and

(VII) instructions on how to apply for a grant for access and persistence and an explanation that a student is required to file a Free Application for Federal Student Aid authorized under section 1090(a) of this title to be eligible for such grant and assistance from other Federal and State financial aid programs; and

(ii) may include a disclaimer that grant awards for access and persistence are contingent on—

(I) a determination of the student's financial eligibility at the time of the student's enrollment at an institution of higher education that is a partner in the partnership or qualifies under subsection (d)(1)(C)(ii);

(II) annual Federal and State spending for higher education; and

(III) other aid received by the student at the time of the student's enrollment at such institution of higher education.

(3) Eligibility

In determining which students are eligible to receive grants for access and persistence, the State shall ensure that each such student complies with the following subparagraph (A) or (B):

(A) Meets not less than two of the following criteria, with priority given to students meeting all of the following criteria:

(i) Has an expected family contribution equal to zero, as determined under part E, or a comparable alternative based upon the State's approved criteria in section 1070c–2(b)(4) of this title.

(ii) Qualifies for the State's maximum undergraduate award, as authorized under section 1070c–2(b) of this title.

(iii) Is participating in, or has participated in, a Federal, State, institutional, or community early information and intervention, mentoring, or outreach program, as recognized by the State agency administering activities under this section.

(B) Is receiving, or has received, a grant for access and persistence under this section, in accordance with paragraph (5).

(4) Grant award

Once a student, including those students who have received early notification under paragraph (2) from the State, applies for admission to an institution that is a partner in the partnership, files a Free Application for Federal Student Aid and any related State form, and is determined eligible by the State under paragraph (3), the State shall—

(A) issue the student a preliminary award certificate for a grant for access and persistence with estimated award amounts; and

(B) inform the student that payment of the grant for access and persistence award amounts is subject to certification of enrollment and award eligibility by the institution of higher education.

(5) Duration of award

An eligible student who receives a grant for access and persistence under this section shall receive such grant award for each year of such student's undergraduate education in which the student remains eligible for assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, including pursuant to section 1091(c) of this title, and remains financially eligible as determined by the State, except that the State may impose reasonable time limits to degree completion.

(e) Administrative cost allowance

A State that receives an allotment under this section may reserve not more than two percent of the funds made available annually through the allotment for State administrative functions required to carry out this section.

(f) Statutory and regulatory relief for institutions of higher education

The Secretary may grant, upon the request of an institution of higher education that is in a partnership described in subsection (b)(2)(B)(ii) and that receives an allotment under this section, a waiver for such institution from statutory or regulatory requirements that inhibit the ability of the institution to successfully and efficiently participate in the activities of the partnership.

(g) Applicability rule

The provisions of this subpart that are not inconsistent with this section shall apply to the program authorized by this section.

(h) Maintenance of effort requirement

Each State receiving an allotment under this section for a fiscal year shall provide the Secretary with an assurance that the aggregate amount expended per student or the aggregate expenditures by the State, from funds derived from non-Federal sources, for the authorized activities described in subsection (d) for the preceding fiscal year were not less than the amount expended per student or the aggregate expenditure by the State for the activities for the second preceding fiscal year.

(i) Special rule

Notwithstanding subsection (h), for purposes of determining a State's share of the cost of the authorized activities described in subsection (d), the State shall consider only those expenditures from non-Federal sources that exceed the State's total expenditures for need-based grants, scholarships, and work-study assistance for fiscal year 1999 (including any such assistance provided under this subpart).

(j) Continuation and transition

For the two-year period that begins on August 14, 2008, the Secretary shall continue to award grants under section 1070c–3a of this title as such section existed on the day before August 14, 2008, to States that choose to apply for grants under such predecessor section.

(k) Reports

Not later than three years after August 14, 2008, and annually thereafter, the Secretary shall submit a report describing the activities and the impact of the partnerships under this section to the authorizing committees.

(Pub. L. 89–329, title IV, § 415E, as added Pub. L. 105–244, title IV, § 407(c)(2), Oct. 7, 1998, 112 Stat. 1666; amended Pub. L. 106–554, § 1(a)(1) [title III, § 316(2), (3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–47; Pub. L. 110–315, title IV, § 407(c), Aug. 14, 2008, 122 Stat. 3216; Pub. L. 111–39, title IV, § 401(a)(6), July 1, 2009, 123 Stat. 1938.)

PRIOR PROVISIONS

A prior section 415E of Pub. L. 89–329 was renumbered section 415F and is classified to section 1070c–4 of this title.

Another prior section 415E of Pub. L. 89–329 was classified to section 1070c–4 of this title prior to repeal by Pub. L. 96–374.

AMENDMENTS

2009—Subsec. (b)(1)(B). Pub. L. 111–39 substituted ''Except as provided in clause (ii), if a'' for ''If a'' in cl. (i), added cl. (ii), and redesignated former cl. (ii) as (iii).

2008—Pub. L. 110–315 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (g) relating to a special leveraging educational assistance partnership program.

2000—Subsec. (c). Pub. L. 106–554, § 1(a)(1) [title III, § 316(2)], which directed amendment of section 415 of the Higher Education Act of 1965 in section 415E by adding subsec. (c) and striking out former subsec. (c), was executed to this section, which is section 415E of the Higher Education Act of 1965, to reflect the probable intent of Congress. Prior to amendment, subsec. (c) listed the activities for which States receiving a grant under this section were authorized to use the grant funds.

Subsecs. (f), (g). Pub. L. 106–554, § 1(a)(1) [title III, § 316(3)], which directed amendment of section 415 of the Higher Education Act of 1965 in section 415E by adding subsecs. (f) and (g), was executed by adding subsecs. (f) and (g) to this section, which is section 415E of the Higher Education Act of 1965, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

§ 1070c–4. "Community service" defined

For the purpose of this subpart, the term ''community service'' means services, including direct service, planning, and applied research which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, and which—

(1) are designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to the needs of such residents, including but not limited to, such fields as health care, child care, education, literacy training, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, and community improvement; and

(2) provide participating students with work-learning opportunities related to their educational or vocational programs or goals.

(Pub. L. 89–329, title IV, § 415F, formerly § 415E, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1336; amended Pub. L. 100–50, § 5, June 3, 1987, 101 Stat. 340; renumbered § 415F, Pub. L. 105–244, title IV, § 407(c)(1), Oct. 7, 1998, 112 Stat. 1666.)

PRIOR PROVISIONS

A prior section 1070c–4, Pub. L. 89–329, title IV, § 415E, as added Pub. L. 94–482, title I, § 123(c)(3), Oct. 12, 1976, 90 Stat. 2094; amended Pub. L. 95–43, § 1(a)(7), June 15, 1977, 91 Stat. 213, related to a program of bonus allotments, prior to repeal by Pub. L. 96–374, title IV, § 404(d), Oct. 3, 1980, 94 Stat. 1407, eff. Oct. 1, 1980.

AMENDMENTS

1987—Par. (1). Pub. L. 100–50 substituted ''literacy'' for ''literary''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

§§ 1070d to 1070d–1d. Repealed. Pub. L. 102–325, title IV, § 402(a)(1), July 23, 1992, 106 Stat. 482

Section 1070d, Pub. L. 89–329, title IV, § 417A, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1336, related to program authority and authorization of appropriations.

A prior section 1070d, Pub. L. 89–329, title IV, § 417A, as added Pub. L. 96–374, title IV, § 405, Oct. 3, 1980, 94 Stat. 1407, authorized a program of grants and contracts to assist students from disadvantaged backgrounds, prior to the general revision of this part by Pub. L. 99–498.

Another prior section 1070d, Pub. L. 89–329, title IV, § 417A, as added Pub. L. 92–318, title I, § 131(b)(1), June 23, 1972, 86 Stat. 258; amended Pub. L. 94–482, title I, § 124(a), Oct. 12, 1976, 90 Stat. 2094; Pub. L. 96–49, § 5(a)(5), Aug. 13, 1979, 93 Stat. 352; Pub. L. 96–374, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1503, authorized the Secretary of Education to carry out special programs for students from disadvantaged backgrounds and authorized appropriations for such programs, prior to the general revision of this subpart by Pub. L. 96–374.

Section 1070d–1, Pub. L. 89–329, title IV, § 417B, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1337, authorized a talent search program.

A prior section 1070d–1, Pub. L. 89–329, title IV, § 417B, as added Pub. L. 96–374, title IV, § 405, Oct. 3, 1980, 94 Stat. 1408, authorized a talent search program, prior to the general revision of this part by Pub. L. 99–498.

Another prior section 1070d–1, Pub. L. 89–329, title IV, § 417B, as added Pub. L. 92–318, title I, § 131(b)(1), June 23, 1972, 86 Stat. 258; amended Pub. L. 93–380, title VIII, § 833(a), Aug. 21, 1974, 88 Stat. 603; Pub. L. 94–482, title I, § 124(b), (c), Oct. 12, 1976, 90 Stat. 2094, 2095; Pub. L. 95–566, § 4, Nov. 1, 1978, 92 Stat. 2403; Pub. L. 96–374, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1503, specified the authorized activities of the Secretary of Education in carrying out special programs for students from disadvantaged backgrounds, prior to the general revision of this subpart by Pub. L. 96–374.

Section 1070d–1a, Pub. L. 89–329, title IV, § 417C, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1338, authorized an upward bound program.

A prior section 1070d–1a, Pub. L. 89–329, title IV, § 417C, as added Pub. L. 96–374, title IV, § 405, Oct. 3, 1980, 94 Stat. 1409, authorized an upward bound program, prior to the general revision of this part by Pub. L. 99–498.

Section 1070d–1b, Pub. L. 89–329, title IV, § 417D, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1339; amended Pub. L. 100–50, § 6, June 3, 1987, 101 Stat. 340; Pub. L. 100–418, title VI, § 6271, Aug. 23, 1988, 102 Stat. 1523, related to student support services program.

A prior section 1070d–1b, Pub. L. 89–329, title IV, § 417D, as added Pub. L. 96–374, title IV, § 405, Oct. 3, 1980, 94 Stat. 1410, authorized a special services for disadvantaged students program, prior to the general revision of this part by Pub. L. 99–498.

Section 1070d–1c, Pub. L. 89–329, title IV, § 417E, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1340, authorized an educational opportunity centers program.

A prior section 1070d–1c, Pub. L. 89–329, title IV, § 417E, as added Pub. L. 96–374, title IV, § 405, Oct. 3, 1980, 94 Stat. 1410, authorized an educational opportunity centers program, prior to the general revision of this part by Pub. L. 99–498.

Section 1070d–1d, Pub. L. 89–329, title IV, § 417F, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1341, related to staff development activities.

A prior section 1070d–1d, Pub. L. 89–329, title IV, § 417F, as added Pub. L. 96–374, title IV, § 405, Oct. 3, 1980, 94 Stat. 1411, authorized grants for staff training, prior to the general revision of this part by Pub. L. 99–498.

SUBPART 5—SPECIAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND SEASONAL FARMWORK

§ 1070d–2. Maintenance and expansion of existing programs

(a) Program authority

The Secretary shall maintain and expand existing secondary and postsecondary high school equivalency program and college assistance migrant program projects located at institutions of higher education or at private nonprofit organizations working in cooperation with institutions of higher education.

(b) Services provided by high school equivalency program

The services authorized by this subpart for the high school equivalency program include—

(1) recruitment services to reach persons—

(A)(i) who are 16 years of age and over; or

(ii) who are beyond the age of compulsory school attendance in the State in which such persons reside and are not enrolled in school;

(B)(i) who themselves, or whose immediate family, have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork; or

(ii) who are eligible to participate, or have participated within the preceding 2 years, in programs under part C of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6391 et seq.] or section 2912 of title 29; and

(C) who lack a high school diploma or its equivalent;

(2) educational services which provide instruction designed to help students obtain a general education diploma which meets the guidelines established by the State in which the project is located for high school equivalency;

(3) supportive services which include the following:

(A) personal, vocational, and academic counseling;

(B) placement services designed to place students in a university, college, or junior college program (including preparation for college entrance examinations), or in military service or career positions; and

(C) health services;

(4) information concerning, and assistance in obtaining, available student financial aid;

(5) stipends for high school equivalency program participants;

(6) housing for those enrolled in residential programs;

(7) exposure to cultural events, academic programs, and other educational and cultural activities usually not available to migrant youth;

(8) other essential supportive services (such as transportation and child care), as needed to ensure the success of eligible students; and

(9) other activities to improve persistence and retention in postsecondary education.

(c) Services provided by college assistance migrant program

(1) Services authorized by this subpart for the college assistance migrant program include—

(A) outreach and recruitment services to reach persons who themselves or whose immediate family have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork or who have participated or are eligible to participate, in programs under part C of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6391 et seq.] or section 2912 of title 29, and who meet the minimum qualifications for attendance at a college or university;

(B) supportive and instructional services to improve placement, persistence, and retention in postsecondary education, which include:

(i) personal, academic, career, and economic education or personal finance counseling as an ongoing part of the program;

(ii) tutoring and academic skill building instruction and assistance;

(iii) assistance with special admissions;

(iv) health services; and

(v) other services as necessary to assist students in completing program requirements;

(C) assistance in obtaining student financial aid which includes, but is not limited to:

(i) stipends;

(ii) scholarships;

(iii) student travel;

(iv) career oriented work study;

(v) books and supplies;

(vi) tuition and fees;

(vii) room and board; and

(viii) other assistance necessary to assist students in completing their first year of college;

(D) housing support for students living in institutional facilities and commuting students;

(E) exposure to cultural events, academic programs, and other activities not usually available to migrant youth;

(F) internships; and

(G) other essential supportive services (such as transportation and child care) as necessary to ensure the success of eligible students.

(2) A recipient of a grant to operate a college assistance migrant program under this subpart shall provide followup services for migrant students after such students have completed their first year of college, and shall not use more than 10 percent of such grant for such followup services. Such followup services may include—

(A) monitoring and reporting the academic progress of students who participated in the project during such student's first year of college and during such student's subsequent years in college;

(B) referring such students to on- or off-campus providers of counseling services, academic assistance, or financial aid, and coordinating such services, assistance, and aid with other non-program services, assistance, and aid, including services, assistance, and aid provided by community-based organizations, which may include mentoring and guidance; and

(C) for students attending two-year institutions of higher education, encouraging the students to transfer to four-year institutions of higher education, where appropriate, and monitoring the rate of transfer of such students.

(d) Management plan required

Each project application shall include a management plan which contains assurances that the grant recipient will coordinate the project, to the extent feasible, with other local, State, and Federal programs to maximize the resources available for migrant students, and that staff shall have a demonstrated knowledge and be sensitive to the unique characteristics and needs of the migrant and seasonal farmworker population, and provisions for:

(1) staff in-service training;

(2) training and technical assistance;

(3) staff travel;

(4) student travel;

(5) interagency coordination; and

(6) an evaluation plan.

(e) Five-year grant period; consideration of prior experience

Except under extraordinary circumstances, the Secretary shall award grants for a 5-year period. For the purpose of making grants under this subpart, the Secretary shall consider the prior experience of service delivery under the particular project for which funds are sought by each applicant. Such prior experience shall be awarded the same level of consideration given this factor for applicants for programs in accordance with section 1070a–11(c)(2) of this title.

(f) Minimum allocations

The Secretary shall not allocate an amount less than—

(1) $180,000 for each project under the high school equivalency program, and

(2) $180,000 for each project under the college assistance migrant program.

(g) Reservation and allocation of funds

From the amounts made available under subsection (i), the Secretary—

(1) may reserve not more than a total of ½ of one percent for outreach activities, technical assistance, and professional development programs relating to the programs under subsection (a);

(2) for any fiscal year for which the amount appropriated to carry out this section is equal to or greater than $40,000,000, shall, in awarding grants from the remainder of such amounts—

(A) make available not less than 45 percent of such remainder for the high school equivalency programs and not less than 45 percent of such remainder for the college assistance migrant programs;

(B) award the rest of such remainder for high school equivalency programs or college assistance migrant programs based on the number, quality, and promise of the applications; and

(C) consider the need to provide an equitable geographic distribution of such grants; and

(3) for any fiscal year for which the amount appropriated to carry out this section is less than $40,000,000, shall, in awarding grants from the remainder of such amounts make available the same percentage of funds to the high school equivalency program and to the college assistance migrant program as was made available for each such program for the fiscal year preceding the fiscal year for which the grant was made.

(h) Data collection

The Secretary shall—

(1) annually collect data on persons receiving services authorized under this subpart regarding such persons' rates of secondary school graduation, entrance into postsecondary education, and completion of postsecondary education, as applicable;

(2) not less often than once every two years, prepare and submit to the authorizing committees a report based on the most recently available data under paragraph (1); and

(3) make such report available to the public.

(i) Authorization of appropriations

For the purpose of making grants and contracts under this section, there are authorized to be appropriated $75,000,000 for fiscal year 2009 and such sums as may be necessary for the each of the five succeeding fiscal years.

(Pub. L. 89–329, title IV, § 418A, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1341; amended Pub. L. 100–50, § 7, June 3, 1987, 101 Stat. 340; Pub. L. 102–325, title IV, § 405, July 23, 1992, 106 Stat. 507; Pub. L. 103–382, title III, § 391(e)(1), (2), Oct. 20, 1994, 108 Stat. 4022; Pub. L. 105–244, title IV, § 408, Oct. 7, 1998, 112 Stat. 1667; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(15)(A), (f)(12)(A)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–421, 2681–431; Pub. L. 110–315, title IV, § 408, Aug. 14, 2008, 122 Stat. 3223.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsecs. (b)(1)(B)(ii) and (c)(1)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Part C of title I of the Act is classified generally to part C (§ 6391 et seq.) of subchapter I of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

PRIOR PROVISIONS

A prior section 1070d–2, Pub. L. 89–329, title IV, § 418A, as added Pub. L. 96–374, title IV, § 406, Oct. 3, 1980, 94 Stat. 1411, related to secondary and postsecondary high school equivalency programs and college assistance migrant programs, prior to the general revision of this part by Pub. L. 99–498.

Another prior section 1070d–2, Pub. L. 89–329, title IV, § 418A, as added Pub. L. 94–482, title I, § 125, Oct. 12, 1976, 90 Stat. 2096; amended Pub. L. 96–49, § 5(a)(6), Aug. 13, 1979, 93 Stat. 352, provided for the Educational Information Centers program, prior to repeal by Pub. L. 96–374, title I, § 101(b), Oct. 3, 1980, 94 Stat. 1383. See section 1070d–1c of this title.

A prior section 1070d–3, Pub. L. 89–329, title IV, § 418B, as added Pub. L. 94–482, title I, § 125, Oct. 12, 1976, 90 Stat. 2097, related to administration by States of Educational Information Centers program, prior to repeal by Pub. L. 96–374, title I, § 101(b), Oct. 3, 1980, 94 Stat. 1383, eff. Oct. 1, 1980.

AMENDMENTS

2008—Subsec. (b)(1)(B)(i). Pub. L. 110–315, § 408(1)(A), substituted ''immediate family'' for ''parents''.

Subsec. (b)(3)(B). Pub. L. 110–315, § 408(1)(B), inserted ''(including preparation for college entrance examinations)'' after ''junior college program''.

Subsec. (b)(5). Pub. L. 110–315, § 408(1)(C), struck out ''weekly'' before ''stipends''.

Subsec. (b)(7). Pub. L. 110–315, § 408(1)(D), struck out ''and'' after semicolon.

Subsec. (b)(8). Pub. L. 110–315, § 408(1)(E), inserted ''(such as transportation and child care)'' after ''services'' and substituted ''; and'' for period at end.

Subsec. (b)(9). Pub. L. 110–315, § 408(1)(F), added par. (9).

Subsec. (c)(1)(A). Pub. L. 110–315, § 408(2)(A)(i), substituted ''immediate family'' for ''parents'' and struck out ''(or such part's predecessor authority)'' before ''or section 2912''.

Subsec. (c)(1)(B). Pub. L. 110–315, § 408(2)(A)(ii)(I), inserted ''to improve placement, persistence, and retention in postsecondary education,'' after ''services'' in introductory provisions.

Subsec. (c)(1)(B)(i). Pub. L. 110–315, § 408(2)(A)(ii)(II), substituted ''career, and economic education or personal finance'' for ''and career''.

Subsec. (c)(1)(E) to (G). Pub. L. 110–315, § 408(2)(A)(iii)–(vi), struck out ''and'' at end of subpar. (E), added subpar. (F), redesignated former subpar. (F) as (G) and, in par. (G), substituted ''essential supportive services (such as transportation and child care)'' for ''support services''.

Subsec. (c)(2)(A). Pub. L. 110–315, § 408(2)(B)(i), struck out ''and'' after semicolon.

Subsec. (c)(2)(B). Pub. L. 110–315, § 408(2)(B)(ii), substituted '', and coordinating such services, assistance, and aid with other non-program services, assistance, and aid, including services, assistance, and aid provided by community-based organizations, which may include mentoring and guidance; and'' for period at end.

Subsec. (c)(2)(C). Pub. L. 110–315, § 408(2)(B)(iii), added subpar. (C).

Subsec. (e). Pub. L. 110–315, § 408(3), substituted ''section 1070a–11(c)(2)'' for ''section 1070a–11(c)(1)''.

Subsec. (f)(1), (2). Pub. L. 110–315, § 408(4), substituted ''$180,000'' for ''$150,000''.

Subsecs. (g) to (i). Pub. L. 110–315, § 408(6)–(8), added subsecs. (g) to (i) and struck out former subsecs. (h) and (i), which related to data collection and to authorization of appropriations.

Pub. L. 110–315, § 408(5), redesignated subsecs. (g) and (h) as (h) and (i), respectively.

1998—Subsecs. (b)(1)(B)(ii), (c)(1)(A). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(12)(A)], struck out ''section 1672 of title 29 or'' before ''section 2912 of title 29''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(15)(A)], substituted ''section 1672 of title 29 or section 2912 of title 29'' for ''section 1672 of title 29''.

Subsec. (d). Pub. L. 105–244, § 408(a), inserted ''that the grant recipient will coordinate the project, to the extent feasible, with other local, State, and Federal programs to maximize the resources available for migrant students, and'' after ''contains assurances'' in introductory provisions.

Subsec. (e). Pub. L. 105–244, § 408(d), substituted ''in accordance with section 1070a–11(c)(1) of this title'' for ''authorized by subpart 4 of this part in accordance with section 1070d(b)(2) of this title.''

Subsec. (g). Pub. L. 105–244, § 408(c)(2), added subsec. (g). Former subsec. (g) redesignated (h).

Pub. L. 105–244, § 408(b), substituted ''1999'' for ''1993'' in pars. (1) and (2).

Subsec. (h). Pub. L. 105–244, § 408(c)(1), redesignated subsec. (g) as (h).

1994—Subsec. (b)(1)(B)(ii). Pub. L. 103–382, § 391(e)(1), substituted ''part C'' for ''subpart 1 of part D of chapter 1''.

Subsec. (c)(1)(A). Pub. L. 103–382, § 391(e)(2), substituted ''part C'' for ''subpart 1 of part D of chapter 1'' and inserted ''(or such part's predecessor authority)'' after ''1965''.

1992—Subsec. (b)(1). Pub. L. 102–325, § 405(a)(1)(A), added par. (1) and struck out former par. (1) which read as follows: ''recruitment services to reach persons who are 17 years of age and over, who themselves or whose parents have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork, and who lack a high school diploma or its equivalent;''.

Subsec. (b)(4). Pub. L. 102–325, § 405(a)(1)(B), inserted comma after ''concerning'' and after ''obtaining''.

Subsec. (c). Pub. L. 102–325, § 405(a)(2), (b), designated existing provisions as par. (1), redesignated former par. (1) as subpar. (A) and amended it generally, redesignated par. (2) and its subpars. (A) to (E) as subpar. (B) and cls. (i) to (v), respectively, redesignated par. (3) and its subpars. (A) to (H) as subpar. (C) and cls. (i) to (viii), respectively, redesignated pars. (4) to (6) as subpars. (D) to (F), respectively, and added par. (2). Prior to amendment, par. (1) read as follows: ''outreach and recruitment services to reach persons who themselves or whose parents have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork, and who meet the minimum qualifications for attendance at a college or university;''.

Subsec. (e). Pub. L. 102–325, § 405(c), substituted ''Five-year'' for ''Three-year'' in heading and ''5-year'' for ''3-year'' in text.

Subsec. (g). Pub. L. 102–325, § 405(d), amended subsec. (g) generally, substituting present provisions for former provisions which authorized appropriations for fiscal years 1987 through 1991.

1987—Subsec. (g). Pub. L. 100–50 amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''There is authorized to be appropriated for this part $9,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.''

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by section 101(f) [title VIII, § 405(d)(15)(A)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(12)(A)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

SUBPART 6—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

§ 1070d–31. Statement of purpose

It is the purpose of this subpart to establish a Robert C. Byrd Honors Scholarship Program to promote student excellence and achievement and to recognize exceptionally able students who show promise of continued excellence.

(Pub. L. 89–329, title IV, § 419A, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1343.)

PRIOR PROVISIONS

A prior section 1070d–31, Pub. L. 89–329, title IV, § 419A, as added Pub. L. 98–558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2900; amended Pub. L. 99–145, title XVI, § 1627(a), Nov. 8, 1985, 99 Stat. 779, provided statement of purpose for Robert C. Byrd Honors Scholarship Program, prior to the general revision of this part by Pub. L. 99–498.

§ 1070d–32. Repealed. Pub. L. 102–325, title IV, § 406(a), July 23, 1992, 106 Stat. 508

Section, Pub. L. 89–329, title IV, § 419B, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1343, defined terms used in this subpart.

A prior section 1070d–32, Pub. L. 89–329, title IV, § 419B, as added Pub. L. 98–558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2900, defined terms used in this subpart, prior to the general revision of this part by Pub. L. 99–498.

§ 1070d–33. Scholarships authorized

(a) Program authority

The Secretary is authorized, in accordance with the provisions of this subpart, to make grants to States to enable the States to award scholarships to individuals who have demonstrated outstanding academic achievement and who show promise of continued academic achievement.

(b) Period of award

Scholarships under this section shall be awarded for a period of not less than 1 or more than 4 years during the first 4 years of study at any institution of higher education eligible to participate in any programs assisted under this subchapter and part C of subchapter I of chapter 34 of title 42. The State educational agency administering the program in a State shall have discretion to determine the period of the award (within the limits specified in the preceding sentence), except that—

(1) if the amount appropriated for this subpart for any fiscal year exceeds the amount appropriated for this subpart for fiscal year 1993, the Secretary shall identify to each State educational agency the number of scholarships available to that State under section 1070d–34(b) of this title that are attributable to such excess; and

(2) the State educational agency shall award not less than that number of scholarships for a period of 4 years.

(c) Use at any institution permitted

A student awarded a scholarship under this subpart may attend any institution of higher education.

(d) Byrd Scholars

Individuals awarded scholarships under this subpart shall be known as ''Byrd Scholars''.

(Pub. L. 89–329, title IV, § 419C, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1344; amended Pub. L. 102–325, title IV, § 406(b), July 23, 1992, 106 Stat. 508; Pub. L. 103–208, § 2(b)(28), Dec. 20, 1993, 107 Stat. 2459; Pub. L. 111–39, title IV, § 401(a)(7), July 1, 2009, 123 Stat. 1939.)

PRIOR PROVISIONS

A prior section 1070d–33, Pub. L. 89–329, title IV, § 419C, as added Pub. L. 98–558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2900; amended Pub. L. 99–145, title XVI, § 1627(b), Nov. 8, 1985, 99 Stat. 779, authorized the award of scholarships under Robert C. Byrd Honors Scholarship Program, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111–39 inserted ''and'' after semicolon at end.

1993—Subsec. (b). Pub. L. 103–208 substituted ''for a period of not less than 1 or more than 4 years during the first 4 years of study'' for ''for a period of not more than 4 years for the first 4 years of study'' and inserted at end ''The State educational agency administering the program in a State shall have discretion to determine the period of the award (within the limits specified in the preceding sentence), except that—

''(1) if the amount appropriated for this subpart for any fiscal year exceeds the amount appropriated for this subpart for fiscal year 1993, the Secretary shall identify to each State educational agency the number of scholarships available to that State under section 1070d–34(b) of this title that are attributable to such excess;

''(2) the State educational agency shall award not less than that number of scholarships for a period of 4 years.''

1992—Subsec. (b). Pub. L. 102–325 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Scholarships under this section shall be awarded for a period of one academic year for the first year of study at an institution of higher education.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective on and after Dec. 20, 1993, see section 5(b)(2) of Pub. L. 103–208, set out as a note under section 1051 of this title.

§ 1070d–34. Allocation among States

(a) Allocation formula

From the sums appropriated pursuant to the authority of section 1070d–41 of this title for any fiscal year, the Secretary shall allocate to each State that has an agreement under section 1070d–35 of this title an amount equal to $1,500 multiplied by the number of scholarships determined by the Secretary to be available to such State in accordance with subsection (b) of this section.

(b) Number of scholarships available

The number of scholarships to be made available in a State for any fiscal year shall bear the same ratio to the number of scholarships made available to all States as the State's population ages 5 through 17 bears to the population ages 5 through 17 in all the States, except that not less than 10 scholarships shall be made available to any State.

(c) Use of census data

For the purpose of this section, the population ages 5 through 17 in a State and in all the States shall be determined by the most recently available data, satisfactory to the Secretary, from the Bureau of the Census.

(d) Consolidation by Insular Areas prohibited

Notwithstanding section 1469a of title 48, funds allocated under this part to an Insular Area described in that section shall be deemed to be direct payments to classes of individuals, and the Insular Area may not consolidate such funds with other funds received by the Insular Area from any department or agency of the United States Government.

(e) FAS eligibility

(1) Fiscal years 2000 through 2004

Notwithstanding any other provision of this subpart, in the case of students from the Freely Associated States who may be selected to receive a scholarship under this subpart for the first time for any of the fiscal years 2000 through 2004—

(A) there shall be 10 scholarships in the aggregate awarded to such students for each of the fiscal years 2000 through 2004; and

(B) the Pacific Regional Educational Laboratory shall administer the program under this subpart in the case of scholarships for students in the Freely Associated States.

(2) Termination of eligibility

A student from the Freely Associated States shall not be eligible to receive a scholarship under this subpart after September 30, 2004.

(Pub. L. 89–329, title IV, § 419D, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1344; amended Pub. L. 102–325, title IV, § 406(c), July 23, 1992, 106 Stat. 509; Pub. L. 103–208, § 2(b)(29), Dec. 20, 1993, 107 Stat. 2460; Pub. L. 105–244, title IV, § 409(a), Oct. 7, 1998, 112 Stat. 1668; Pub. L. 111–39, title IV, § 401(a)(8), July 1, 2009, 123 Stat. 1939.)

PRIOR PROVISIONS

A prior section 1070d–34, Pub. L. 89–329, title IV, § 419D, as added Pub. L. 98–558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2901, related to allocation among States of amounts for Robert C. Byrd Honors Scholarship Program, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2009—Subsec. (d). Pub. L. 111–39 made technical amendment to reference in original act which appears in text as reference to section 1469a of title 48.

1998—Subsec. (e). Pub. L. 105–244 added subsec. (e).

1993—Subsec. (d). Pub. L. 103–208 added subsec. (d).

1992—Pub. L. 102–325 amended section generally. Prior to amendment, section read as follows: ''From the sums appropriated pursuant to section 1070d–41 of this title for any fiscal year, the Secretary shall allocate to each State having an agreement under section 1070d–35 of this title—

''(1) $1,500 multiplied by the number of individuals in the State eligible for scholarships pursuant to section 1070d–37(b) of this title, plus

''(2) $10,000, plus 5 percent of the amount to which a State is eligible under paragraph (1) of this section.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective on and after Oct. 1, 1993, see section 5(b)(1) of Pub. L. 103–208, set out as a note under section 1051 of this title.

§ 1070d–35. Agreements

The Secretary shall enter into an agreement with each State desiring to participate in the scholarship program authorized by this subpart. Each such agreement shall include provisions designed to assure that—

(1) the State educational agency will administer the scholarship program authorized by this subpart in the State;

(2) the State educational agency will comply with the eligibility and selection provisions of this subpart;

(3) the State educational agency will conduct outreach activities to publicize the availability of scholarships under this subpart to all eligible students in the State, with particular emphasis on activities designed to assure that students from low-income and moderate-income families have access to the information on the opportunity for full participation in the scholarship program authorized by this subpart; and

(4) the State educational agency will pay to each individual in the State who is awarded a scholarship under this subpart $1,500.

(Pub. L. 89–329, title IV, § 419E, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1344; amended Pub. L. 102–325, title IV, § 406(g)(2), (3), July 23, 1992, 106 Stat. 509.)

PRIOR PROVISIONS

A prior section 1070d–35, Pub. L. 89–329, title IV, § 419E, as added Pub. L. 98–558, title VIII, § 801(a), Oct.

30, 1984, 98 Stat. 2901; amended Pub. L. 99–145, title XVI, § 1627(c), Nov. 8, 1985, 99 Stat. 779, related to agreements with States for participation in the Robert C. Byrd Honors Scholarship Program, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

1992—Par. (3). Pub. L. 102–325, § 406(g)(2)(A), inserted ''and'' after semicolon.

Par. (4). Pub. L. 102–325, § 406(g)(2)(B), substituted ''$1,500.'' for ''$1,500 at an awards ceremony in accordance with section 1070d–39 of this title; and''.

Par. (5). Pub. L. 102–325, § 406(g)(3), which directed that par. (5) be struck out without specifying the section to which the amendment applied, was executed by striking out par. (5) of this section to reflect the probable intent of Congress. Prior to amendment, par. (5) read as follows: ''the State educational agency will use the amount of the allocation described in paragraph (2) of section 1070d–34 of this title for administrative expenses, including the conduct of the awards ceremony required by section 1070d–39 of this title.''

§ 1070d–36. Eligibility of scholars

(a) High school graduation or equivalent and admission to institution required

Each student awarded a scholarship under this subpart shall be a graduate of a public or private secondary school (or a home school, whether treated as a home school or a private school under State law) or have the equivalent of a certificate of graduation as recognized by the State in which the student resides and must have been admitted for enrollment at an institution of higher education.

(b) Selection based on promise of academic achievement

Each student awarded a scholarship under this subpart must demonstrate outstanding academic achievement and show promise of continued academic achievement.

(Pub. L. 89–329, title IV, § 419F, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1344; amended Pub. L. 110–315, title IV, § 409(a), Aug. 14, 2008, 122 Stat. 3225.)

PRIOR PROVISIONS

A prior section 1070d–36, Pub. L. 89–329, title IV, § 419F, as added Pub. L. 98–558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2901, related to eligibility of students for scholarships under Robert C. Byrd Honors Scholarship Program, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–315 inserted ''(or a home school, whether treated as a home school or a private school under State law)'' after ''public or private secondary school''.

§ 1070d–37. Selection of scholars

(a) Establishment of criteria

The State educational agency is authorized to establish the criteria for the selection of scholars under this subpart.

(b) Adoption of procedures

The State educational agency shall adopt selection procedures designed to ensure an equitable geographic distribution of awards within the State (and in the case of the Federated States of Micronesia, the Republic of the Marshall Islands, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or Palau (until such time as the Compact of Free Association is ratified), not to exceed 10 individuals will be selected from such entities).

(c) Consultation requirement

In carrying out its responsibilities under subsections (a) and (b) of this section, the State educational agency shall consult with school administrators, school boards, teachers, counselors, and parents.

(d) Timing of selection

The selection process shall be completed, and the awards made, prior to the end of each secondary school academic year.

(Pub. L. 89–329, title IV, § 419G, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1345; amended Pub. L. 102–325, title IV, § 406(d), July 23, 1992, 106 Stat. 509; Pub. L. 103–208, § 2(b)(30), Dec. 20, 1993, 107 Stat. 2460.)

REFERENCES IN TEXT

For ratification of Compact of Free Association with the Republic of Palau, referred to in subsec. (b), see Proc. No. 6726, Sept. 27, 1994, 59 F.R. 49777, set out as a note under section 1931 of Title 48, Territories and Insular Possessions.

PRIOR PROVISIONS

A prior section 1070d–37, Pub. L. 89–329, title IV, § 419G, as added Pub. L. 98–558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2901, related to selection of merit scholars under Robert C. Byrd Honors Scholarship Program, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–208 substituted ''the Federated States of Micronesia, the Republic of the Marshall Islands,'' for ''the District of Columbia, the Commonwealth of Puerto Rico,''.

1992—Subsec. (b). Pub. L. 102–325, § 406(d)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The State educational agency shall adopt selection procedures which are designed to assure that 10 individuals will be selected from among residents of each congressional district in a State (and in the case of the District of Columbia and the Commonwealth of Puerto Rico not to exceed 10 individuals will be selected in such District or Commonwealth).''

Subsec. (d). Pub. L. 102–325, § 406(d)(2), added subsec. (d).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

§ 1070d–38. Stipends and scholarship conditions

(a) Amount of award

Each student awarded a scholarship under this subpart shall receive a stipend of $1,500 for the academic year of study for which the scholarship is awarded, except that in no case shall the total amount of financial aid awarded to such student exceed such student's total cost-of-attendance.

(b) Use of award

The State educational agency shall establish procedures to assure that a scholar awarded a

scholarship under this subpart pursues a course of study at an institution of higher education.

(Pub. L. 89–329, title IV, § 419H, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1345; amended Pub. L. 102–325, title IV, § 406(e), July 23, 1992, 106 Stat. 509.)

PRIOR PROVISIONS

A prior section 1070d–38, Pub. L. 89–329, title IV, § 419H, as added Pub. L. 98–558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2902, related to stipends and scholarship conditions for students receiving scholarships under Robert C. Byrd Honors Scholarship Program, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–325 inserted before period at end ", except that in no case shall the total amount of financial aid awarded to such student exceed such student's total cost-of-attendance".

§ 1070d–39. Repealed. Pub. L. 102–325, title IV, § 406(g)(1), July 23, 1992, 106 Stat. 509

Section, Pub. L. 89–329, title IV, § 419I, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1345, related to awards ceremony.

A prior section 1070d–39, Pub. L. 89–329, title IV, § 419I, as added Pub. L. 98–558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2902, related to ceremony for awarding scholarships under Robert C. Byrd Honors Scholarship Program, prior to the general revision of this part by Pub. L. 99–498.

§ 1070d–40. Construction of needs provisions

Except as provided in section 1087kk of this title, nothing in this subpart, or any other Act, shall be construed to permit the receipt of a scholarship under this subpart to be counted for any needs test in connection with the awarding of any grant or the making of any loan under this chapter and part C of subchapter I of chapter 34 of title 42 or any other provision of Federal law relating to educational assistance.

(Pub. L. 89–329, title IV, § 419J, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1345; amended Pub. L. 102–325, title IV, § 406(f), July 23, 1992, 106 Stat. 509.)

PRIOR PROVISIONS

A prior section 1070d–40, Pub. L. 89–329, title IV, § 419J, as added Pub. L. 98–558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2902, provided that receipt of scholarship under Robert C. Byrd Honors Scholarship Program not be counted for needs test for education grant or loan, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

1992—Pub. L. 102–325 substituted "Except as provided in section 1087kk of this title, nothing" for "Nothing".

§ 1070d–41. Authorization of appropriations

There are authorized to be appropriated for this subpart such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

(Pub. L. 89–329, title IV, § 419K, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1346; amended Pub. L. 102–325, title IV, § 406(h), July 23, 1992, 106 Stat. 509; Pub. L. 105–244, title IV, § 409(b), Oct. 7, 1998, 112 Stat. 1668; Pub. L. 110–315, title IV, § 409(b), Aug. 14, 2008, 122 Stat. 3225.)

PRIOR PROVISIONS

A prior section 1070d–41, Pub. L. 89–329, title IV, § 419K, as added Pub. L. 98–558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2902, authorized appropriations for fiscal years 1986 to 1988 to carry out Robert C. Byrd Honors Scholarship Program, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2008—Pub. L. 110–315 substituted "such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years" for "$45,000,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years".

1998—Pub. L. 105–244 substituted "$45,000,000 for fiscal year 1999" for "$10,000,000 for fiscal year 1993".

1992—Pub. L. 102–325 amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated for this subpart $8,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

SUBPART 7—CHILD CARE ACCESS MEANS PARENTS IN SCHOOL

PRIOR PROVISIONS

A prior subpart 7, consisted of sections 1070e and 1070e–1 and related to assistance to institutions of higher education, prior to the repeal of sections 1070e and 1070e–1 by Pub. L. 102–325, title IV, §§ 407, 408, July 23, 1992, 106 Stat. 510.

§ 1070e. Child care access means parents in school

(a) Purpose

The purpose of this section is to support the participation of low-income parents in post-secondary education through the provision of campus-based child care services.

(b) Program authorized

(1) Authority

The Secretary may award grants to institutions of higher education to assist the institutions in providing campus-based child care services to low-income students.

(2) Amount of grants

(A) In general

The amount of a grant awarded to an institution of higher education under this section for a fiscal year shall not exceed 1 percent of the total amount of all Federal Pell Grant funds awarded to students enrolled at the institution of higher education for the preceding fiscal year.

(B) Minimum

(i) In general

Except as provided in clause (ii), a grant under this section shall be awarded in an amount that is not less than $10,000.

(ii) Increase trigger

For any fiscal year for which the amount appropriated under the authority of sub-

section (g) is equal to or greater than $20,000,000, a grant under this section shall be awarded in an amount that is not less than $30,000.

(3) Duration; renewal; and payments

(A) Duration

The Secretary shall award a grant under this section for a period of 4 years.

(B) Payments

Subject to subsection (e)(2) of this section, the Secretary shall make annual grant payments under this section.

(4) Eligible institutions

An institution of higher education shall be eligible to receive a grant under this section for a fiscal year if the total amount of all Federal Pell Grant funds awarded to students enrolled at the institution of higher education for the preceding fiscal year equals or exceeds $350,000, except that for any fiscal year for which the amount appropriated to carry out this section is equal to or greater than $20,000,000, this sentence shall be applied by substituting ''$250,000'' for ''$350,000''.

(5) Use of funds

Grant funds under this section shall be used by an institution of higher education to support or establish a campus-based child care program primarily serving the needs of low-income students enrolled at the institution of higher education. Grant funds under this section may be used to provide before and after school services to the extent necessary to enable low-income students enrolled at the institution of higher education to pursue postsecondary education.

(6) Construction

Nothing in this section shall be construed to prohibit an institution of higher education that receives grant funds under this section from serving the child care needs of the community served by the institution.

(7) Definition of low-income student

For the purpose of this section, the term ''low-income student'' means a student—

(A) who is eligible to receive a Federal Pell Grant for the award year for which the determination is made; or

(B) who would otherwise be eligible to receive a Federal Pell Grant for the award year for which the determination is made, except that the student fails to meet the requirements of—

(i) section 1070a(c)(1) of this title because the student is enrolled in a graduate or first professional course of study; or

(ii) section 1091(a)(5) of this title because the student is in the United States for a temporary purpose.

(8) Publicity

The Secretary shall publicize the availability of grants under this section in appropriate periodicals, in addition to publication in the Federal Register, and shall inform appropriate educational organizations of such availability.

(c) Applications

An institution of higher education desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each application shall—

(1) demonstrate that the institution is an eligible institution described in subsection (b)(4) of this section;

(2) specify the amount of funds requested;

(3) demonstrate the need of low-income students at the institution for campus-based child care services by including in the application—

(A) information regarding student demographics;

(B) an assessment of child care capacity on or near campus;

(C) information regarding the existence of waiting lists for existing child care;

(D) information regarding additional needs created by concentrations of poverty or by geographic isolation; and

(E) other relevant data;

(4) contain a description of the activities to be assisted, including whether the grant funds will support an existing child care program or a new child care program;

(5) identify the resources, including technical expertise and financial support, the institution will draw upon to support the child care program and the participation of low-income students in the program, such as accessing social services funding, using student activity fees to help pay the costs of child care, using resources obtained by meeting the needs of parents who are not low-income students, and accessing foundation, corporate or other institutional support, and demonstrate that the use of the resources will not result in increases in student tuition;

(6) contain an assurance that the institution will meet the child care needs of low-income students through the provision of services, or through a contract for the provision of services;

(7) describe the extent to which the child care program will coordinate with the institution's early childhood education curriculum, to the extent the curriculum is available, to meet the needs of the students in the early childhood education program at the institution, and the needs of the parents and children participating in the child care program assisted under this section;

(8) in the case of an institution seeking assistance for a new child care program—

(A) provide a timeline, covering the period from receipt of the grant through the provision of the child care services, delineating the specific steps the institution will take to achieve the goal of providing low-income students with child care services;

(B) specify any measures the institution will take to assist low-income students with child care during the period before the institution provides child care services; and

(C) include a plan for identifying resources needed for the child care services, including space in which to provide child care services, and technical assistance if necessary;

(9) contain an assurance that any child care facility assisted under this section will meet

the applicable State or local government licensing, certification, approval, or registration requirements; and

(10) contain a plan for any child care facility assisted under this section to become accredited within 3 years of the date the institution first receives assistance under this section.

(d) Priority

The Secretary shall give priority in awarding grants under this section to institutions of higher education that submit applications describing programs that—

(1) leverage significant local or institutional resources, including in-kind contributions, to support the activities assisted under this section; and

(2) utilize a sliding fee scale for child care services provided under this section in order to support a high number of low-income parents pursuing postsecondary education at the institution.

(e) Reporting requirements; continuing eligibility

(1) Reporting requirements

(A) Reports

Each institution of higher education receiving a grant under this section shall report to the Secretary annually.

(B) Contents

The report shall include—

(i) data on the population served under this section;

(ii) information on campus and community resources and funding used to help low-income students access child care services;

(iii) information on progress made toward accreditation of any child care facility; and

(iv) information on the impact of the grant on the quality, availability, and affordability of campus-based child care services.

(2) Continuing eligibility

The Secretary shall make continuation awards under this section to an institution of higher education only if the Secretary determines, on the basis of the reports submitted under paragraph (1), that the institution is making a good faith effort to ensure that low-income students at the institution have access to affordable, quality child care services.

(f) Construction

No funds provided under this section shall be used for construction, except for minor renovation or repair to meet applicable State or local health or safety requirements.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

(Pub. L. 89–329, title IV, § 419N, as added Pub. L. 105–244, title IV, § 410, Oct. 7, 1998, 112 Stat. 1668; amended Pub. L. 110–315, title IV, § 410, Aug. 14, 2008, 122 Stat. 3225.)

PRIOR PROVISIONS

A prior section 1070e, Pub. L. 89–329, title IV, § 420, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1346, related to payments to institutions of higher education, prior to repeal by Pub. L. 102–325, title IV, § 407, July 23, 1992, 106 Stat. 510.

Another prior section 1070e, Pub. L. 89–329, title IV, § 420, formerly § 419, as added Pub. L. 92–318, title X, § 1001(a), June 23, 1972, 86 Stat. 375; amended Pub. L. 96–374, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1503; renumbered Pub. L. 98–558, title VIII, § 801(b)(1), Oct. 30, 1984, 98 Stat. 2902, related to payments to institutions of higher education, prior to the general amendment of this part by Pub. L. 99–498.

A prior section 1070e–1, Pub. L. 89–329, title IV, § 420A, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1348; amended Pub. L. 100–50, § 8, June 3, 1987, 101 Stat. 341; Pub. L. 102–54, § 13(g)(2), June 13, 1991, 105 Stat. 275; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406, related to veterans education outreach program, prior to repeal by Pub. L. 102–325, title IV, § 408, July 23, 1992, 106 Stat. 510.

Another prior section 1070e–1, Pub. L. 89–329, title IV, § 420A, formerly § 420, as added Pub. L. 92–318, title X, § 1001(a), June 23, 1972, 86 Stat. 378; amended Pub. L. 93–380, title VIII, § 834(a), Aug. 21, 1974, 88 Stat. 604; Pub. L. 94–482, title I, § 126(a)–(c), Oct. 12, 1976, 90 Stat. 2098; Pub. L. 95–336, § 6(a), Aug. 4, 1978, 92 Stat. 453; Pub. L. 96–49, § 5(a)(7), Aug. 13, 1979, 93 Stat. 352; Pub. L. 96–374, title IV, § 407, Oct. 3, 1980, 94 Stat. 1412; Pub. L. 97–300, title I, § 183, Oct. 13, 1982, 96 Stat. 1357; renumbered § 420A, Pub. L. 98–558, title VIII, § 801(b)(2), Oct. 30, 1984, 98 Stat. 2902, related to veterans' cost-of-instruction payments to institutions of higher education, prior to the general amendment of this part by Pub. L. 99–498.

AMENDMENTS

2008—Subsec. (b)(2)(B). Pub. L. 110–315, § 410(a), designated existing provisions as cl. (i), inserted heading, substituted ''Except as provided in clause (ii), a grant'' for ''A grant'', and added cl. (ii).

Subsec. (b)(4). Pub. L. 110–315, § 410(b), inserted '', except that for any fiscal year for which the amount appropriated to carry out this section is equal to or greater than $20,000,000, this sentence shall be applied by substituting '$250,000' for '$350,000' '' before period at end.

Subsec. (b)(7). Pub. L. 110–315, § 410(c), amended par. (7) generally. Prior to amendment, text read as follows: ''For the purpose of this section, the term 'low-income student' means a student who is eligible to receive a Federal Pell Grant for the fiscal year for which the determination is made.''

Subsec. (b)(8). Pub. L. 110–315, § 410(d), added par. (8).

Subsec. (e)(1)(A). Pub. L. 110–315, § 410(e)(1), substituted ''annually'' for ''18 months, and 36 months, after receiving the first grant payment under this section''.

Subsec. (e)(2). Pub. L. 110–315, § 410(e)(2), substituted ''continuation awards'' for ''the third annual grant payment'' and ''the reports'' for ''the 18-month report''.

Subsec. (g). Pub. L. 110–315, § 410(f), substituted ''such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years'' for ''$45,000,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years''.

EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

SUBPART 8—[REPEALED]

CODIFICATION

Subpart 8 of part A of title IV of the Higher Education Act of 1965, which comprised this subpart, was originally added to Pub. L. 89–329, title IV, by Pub. L.

99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1352, and amended by Pub. L. 100–50, June 3, 1987, 101 Stat. 335; Pub. L. 102–325, July 23, 1992, 106 Stat. 448. Subpart 8, which related to learning anytime anywhere partnerships, was set out as having been added by Pub. L. 105–244, title IV, § 411, Oct. 7, 1998, 112 Stat. 1671, without reference to those intervening amendments because of the extensive revision of subpart 8 by Pub. L. 105–244.

§§ 1070f to 1070f–6. Repealed. Pub. L. 110–315, title IV, § 411, Aug. 14, 2008, 122 Stat. 3226

Section 1070f, Pub. L. 89–329, title IV, § 420D, as added Pub. L. 105–244, title IV, § 411, Oct. 7, 1998, 112 Stat. 1671, set out congressional findings.

A prior section 1070f, Pub. L. 89–329, title IV, § 420B, as added Pub. L. 99–498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1352; amended Pub. L. 100–50, § 9, June 3, 1987, 101 Stat. 341; Pub. L. 102–325, title IV, § 409, July 23, 1992, 106 Stat. 510, related to special child care services for disadvantaged college students, prior to the general amendment of this subpart by Pub. L. 105–244.

Section 1070f–1, Pub. L. 89–329, title IV, § 420E, as added Pub. L. 105–244, title IV, § 411, Oct. 7, 1998, 112 Stat. 1672, related to the purpose of this subpart and the program authorized.

Section 1070f–2, Pub. L. 89–329, title IV, § 420F, as added Pub. L. 105–244, title IV, § 411, Oct. 7, 1998, 112 Stat. 1672, related to grant application.

Section 1070f–3, Pub. L. 89–329, title IV, § 420G, as added Pub. L. 105–244, title IV, § 411, Oct. 7, 1998, 112 Stat. 1672, set out authorized activities for funding.

Section 1070f–4, Pub. L. 89–329, title IV, § 420H, as added Pub. L. 105–244, title IV, § 411, Oct. 7, 1998, 112 Stat. 1673, provided for a matching requirement limiting Federal funds to not more than 50 percent of the cost of a project.

Section 1070f–5, Pub. L. 89–329, title IV, § 420I, as added Pub. L. 105–244, title IV, § 411, Oct. 7, 1998, 112 Stat. 1673, required that the Secretary use a peer review process to review applications and make recommendations for funding.

Section 1070f–6, Pub. L. 89–329, title IV, § 420J, as added Pub. L. 105–244, title IV, § 411, Oct. 7, 1998, 112 Stat. 1673, authorized appropriations for fiscal year 1999 and each of the 4 succeeding fiscal years.

SUBPART 9—TEACH GRANTS

§ 1070g. Definitions

For the purposes of this subpart:

(1) Eligible institution

The term ''eligible institution'' means an institution of higher education, as defined in section 1002 of this title, that the Secretary determines—

(A) provides high quality teacher preparation and professional development services, including extensive clinical experience as a part of pre-service preparation;

(B) is financially responsible;

(C) provides pedagogical course work, or assistance in the provision of such coursework, including the monitoring of student performance, and formal instruction related to the theory and practices of teaching; and

(D) provides supervision and support services to teachers, or assistance in the provision of such services, including mentoring focused on developing effective teaching skills and strategies.

(2) Post-baccalaureate

The term ''post-baccalaureate'' means a program of instruction for individuals who have completed a baccalaureate degree, that does not lead to a graduate degree, and that consists of courses required by a State in order for a teacher candidate to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary school or secondary school in that State, except that such term shall not include any program of instruction offered by an eligible institution that offers a baccalaureate degree in education.

(3) Teacher candidate

The term ''teacher candidate'' means a student or teacher described in subparagraph (A) or (B) of section 1070g–2(a)(2) of this title.

(Pub. L. 89–329, title IV, § 420L, as added Pub. L. 110–84, title I, § 104, Sept. 27, 2007, 121 Stat. 786; amended Pub. L. 110–153, § 3(1), Dec. 21, 2007, 121 Stat. 1824.)

AMENDMENTS

2007—Par. (1)(B). Pub. L. 110–153 substituted ''responsible'' for ''sound''.

EFFECTIVE DATE

Subpart effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as an Effective Date of 2007 Amendment note under section 1070a of this title.

§ 1070g–1. Program established

(a) Program authority

(1) Payments required

The Secretary shall pay to each eligible institution such sums as may be necessary to pay to each teacher candidate who files an application and agreement in accordance with section 1070g–2 of this title, and who qualifies under paragraph (2) of section 1070g–2(a) of this title, a TEACH Grant in the amount of $4,000 for each year during which that teacher candidate is in attendance at the institution.

(2) References

Grants made under paragraph (1) shall be known as ''Teacher Education Assistance for College and Higher Education Grants'' or ''TEACH Grants''.

(b) Payment methodology

(1) Prepayment

Not less than 85 percent of any funds provided to an eligible institution under subsection (a) shall be advanced to the eligible institution prior to the start of each payment period and shall be based upon an amount requested by the institution as needed to pay teacher candidates until such time as the Secretary determines and publishes in the Federal Register with an opportunity for comment, an alternative payment system that provides payments to institutions in an accurate and timely manner, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

(2) Direct payment

Nothing in this section shall be interpreted to prohibit the Secretary from paying directly to teacher candidates, in advance of the begin-

ning of the academic term, an amount for which teacher candidates are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

(3) Distribution of grants to teacher candidates

Payments under this subpart shall be made, in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purposes of this subpart. Any disbursement allowed to be made by crediting the teacher candidate's account shall be limited to tuition and fees and, in the case of institutionally-owned housing, room and board. The teacher candidate may elect to have the institution provide other such goods and services by crediting the teacher candidate's account.

(c) Reductions in amount

(1) Part-time students

In any case where a teacher candidate attends an eligible institution on less than a full-time basis (including a teacher candidate who attends an eligible institution on less than a half-time basis) during any year, the amount of a grant under this subpart for which that teacher candidate is eligible shall be reduced in proportion to the degree to which that teacher candidate is not attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this subpart, computed in accordance with this subpart. Such schedule of reductions shall be established by regulation and published in the Federal Register in accordance with section 1089 of this title.

(2) No exceeding cost

The amount of a grant awarded under this subpart, in combination with Federal assistance and other assistance the student may receive, shall not exceed the cost of attendance (as defined in section 1087*ll* of this title) at the eligible institution at which that teacher candidate is in attendance.

(d) Period of eligibility for grants

(1) Undergraduate and post-baccalaureate students

The period during which an undergraduate or post-baccalaureate student may receive grants under this subpart shall be the period required for the completion of the first undergraduate baccalaureate or post-baccalaureate course of study being pursued by the teacher candidate at the eligible institution at which the teacher candidate is in attendance, except that—

(A) any period during which the teacher candidate is enrolled in a noncredit or remedial course of study as described in paragraph (3) shall not be counted for the purpose of this paragraph; and

(B) the total amount that a teacher candidate may receive under this subpart for undergraduate or post-baccalaureate study shall not exceed $16,000.

(2) Graduate students

The period during which a graduate student may receive grants under this subpart shall be the period required for the completion of a master's degree course of study pursued by the teacher candidate at the eligible institution at which the teacher candidate is in attendance, except that the total amount that a teacher candidate may receive under this subpart for graduate study shall not exceed $8,000.

(3) Remedial course; study abroad

Nothing in this section shall be construed to exclude from eligibility courses of study which are noncredit or remedial in nature (including courses in English language acquisition) which are determined by the eligible institution to be necessary to help the teacher candidate be prepared for the pursuit of a first undergraduate baccalaureate or post-baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the teacher candidate to utilize already existing knowledge, training, or skills. Nothing in this section shall be construed to exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the teacher candidate is enrolled.

(Pub. L. 89–329, title IV, § 420M, as added Pub. L. 110–84, title I, § 104, Sept. 27, 2007, 121 Stat. 787; amended Pub. L. 110–153, § 3(2), Dec. 21, 2007, 121 Stat. 1824.)

AMENDMENTS

2007—Subsecs. (a)(1), (c)(1). Pub. L. 110–153, § 3(2)(A), substituted ''year'' for ''academic year''.

Subsec. (c)(2). Pub. L. 110–153, § 3(2)(B), substituted ''other assistance the student may receive'' for ''other student assistance'' and struck out at end ''If, with respect to any teacher candidate for any academic year, it is determined that the amount of a TEACH Grant exceeds the cost of attendance for that year, the amount of the TEACH Grant shall be reduced until such grant does not exceed the cost of attendance at the eligible institution.''

§ 1070g–2. Applications; eligibility

(a) Applications; demonstration of eligibility

(1) Filing required

The Secretary shall periodically set dates by which teacher candidates shall file applications for grants under this subpart. Each teacher candidate desiring a grant under this subpart for any year shall file an application containing such information and assurances as the Secretary may determine necessary to enable the Secretary to carry out the functions and responsibilities of this subpart.

(2) Demonstration of TEACH Grant eligibility

Each application submitted under paragraph (1) shall contain such information as is necessary to demonstrate that—

(A) if the applicant is an enrolled student—

(i) the student is an eligible student for purposes of section 1091 of this title;

(ii) the student—

(I) has a grade point average that is determined, under standards prescribed by the Secretary, to be comparable to a 3.25 average on a zero to 4.0 scale, except that, if the student is in the first year of

a program of undergraduate education, such grade point average shall be determined on the basis of the student's cumulative secondary school grade point average; or

(II) displayed high academic aptitude by receiving a score above the 75th percentile on at least one of the batteries in an undergraduate, post-baccalaureate, or graduate school admissions test; and

(iii) the student is completing coursework and other requirements necessary to begin a career in teaching, or plans to complete such coursework and requirements prior to graduating; or

(B) if the applicant is a current or prospective teacher applying for a grant to obtain a graduate degree—

(i) the applicant is a teacher or a retiree from another occupation with expertise in a field in which there is a shortage of teachers, such as mathematics, science, special education, English language acquisition, or another high-need subject; or

(ii) the applicant is or was a teacher who is using high-quality alternative certification routes, such as Teach for America, to get certified.

(b) Agreements to serve

Each application under subsection (a) shall contain or be accompanied by an agreement by the applicant that—

(1) the applicant will—

(A) serve as a full-time teacher for a total of not less than 4 academic years within 8 years after completing the course of study for which the applicant received a TEACH Grant under this subpart;

(B) teach in a school described in section 1087ee(a)(2)(A) of this title;

(C) teach in any of the following fields—

(i) mathematics;

(ii) science;

(iii) a foreign language;

(iv) bilingual education;

(v) special education;

(vi) as a reading specialist; or

(vii) another field documented as high-need by the Federal Government, State government, or local educational agency, and approved by the Secretary;

(D) submit evidence of such employment in the form of a certification by the chief administrative officer of the school upon completion of each year of such service; and

(E) comply with the requirements for being a highly qualified teacher as defined in section 7801 of this title;

(2) in the event that the applicant is determined to have failed or refused to carry out such service obligation, the sum of the amounts of any TEACH Grants received by such applicant will be treated as a loan and collected from the applicant in accordance with subsection (c) and the regulations thereunder; and

(3) contains, or is accompanied by, a plain-language disclosure form developed by the Secretary that clearly describes the nature of the TEACH Grant award, the service obligation, and the loan repayment requirements that are the consequence of the failure to complete the service obligation.

(c) Repayment for failure to complete service

In the event that any recipient of a grant under this subpart fails or refuses to comply with the service obligation in the agreement under subsection (b), the sum of the amounts of any TEACH Grants received by such recipient shall, upon a determination of such a failure or refusal in such service obligation, be treated as a Federal Direct Unsubsidized Stafford Loan under part C, and shall be subject to repayment, together with interest thereon accruing from the date of the grant award, in accordance with terms and conditions specified by the Secretary in regulations under this subpart.

(d) Additional administrative provisions

(1) Change of high-need designation

If a recipient of an initial grant under this subpart has acquired an academic degree, or expertise, in a field that was, at the time of the recipient's application for that grant, designated as high need in accordance with subsection (b)(1)(C)(vii), but is no longer so designated, the grant recipient may fulfill the service obligation described in subsection (b)(1) by teaching in that field.

(2) Extenuating circumstances

The Secretary shall establish, by regulation, categories of extenuating circumstances under which a recipient of a grant under this subpart who is unable to fulfill all or part of the recipient's service obligation may be excused from fulfilling that portion of the service obligation.

(Pub. L. 89–329, title IV, § 420N, as added Pub. L. 110–84, title I, § 104, Sept. 27, 2007, 121 Stat. 788; amended Pub. L. 110–315, title IV, § 412(a)(1), Aug. 14, 2008, 122 Stat. 3226.)

AMENDMENTS

2008—Subsec. (b)(3). Pub. L. 110–315, § 412(a)(1)(A), added par. (3).

Subsec. (d). Pub. L. 110–315, § 412(a)(1)(B), added subsec. (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, § 412(b), Aug. 14, 2008, 122 Stat. 3227, provided that: "The amendments made by subsection (a)(1) [amending this section] shall take effect on July 1, 2010."

§ 1070g–3. Program period and funding

Beginning on July 1, 2008, there shall be available to the Secretary to carry out this subpart, from funds not otherwise appropriated, such sums as may be necessary to provide TEACH Grants in accordance with this subpart to each eligible applicant.

(Pub. L. 89–329, title IV, § 420O, as added Pub. L. 110–84, title I, § 104, Sept. 27, 2007, 121 Stat. 790.)

§ 1070g–4. Program report

Not later than two years after August 14, 2008, and every two years thereafter, the Secretary shall prepare and submit to the authorizing

committees a report on TEACH grants with respect to the schools and students served by recipients of such grants. Such report shall take into consideration information related to—

(1) the number of TEACH grant recipients;

(2) the degrees obtained by such recipients;

(3) the location, including the school, local educational agency, and State, where the recipients completed the service agreed to under section 1070g–2(b) of this title and the subject taught;

(4) the duration of such service; and

(5) any other data necessary to conduct such evaluation.

(Pub. L. 89–329, title IV, § 420P, as added Pub. L. 110–315, title IV, § 412(a)(2), Aug. 14, 2008, 122 Stat. 3227.)

SUBPART 10—SCHOLARSHIPS FOR VETERAN'S DEPENDENTS

§ 1070h. Scholarships for veteran's dependents

(a) Definition of eligible veteran's dependent

The term ''eligible veteran's dependent'' means a dependent or an independent student—

(1) whose parent or guardian was a member of the Armed Forces of the United States and died as a result of performing military service in Iraq or Afghanistan after September 11, 2001; and

(2) who, at the time of the parent or guardian's death, was—

(A) less than 24 years of age; or

(B) enrolled at an institution of higher education on a part-time or full-time basis.

(b) Grants

(1) In general

The Secretary shall award a grant to each eligible veteran's dependent to assist in paying the eligible veteran's dependent's cost of attendance at an institution of higher education.

(2) Designation

Grants made under this section shall be known as ''Iraq and Afghanistan Service Grants''.

(c) Prevention of double benefits

No eligible veteran's dependent may receive a grant under both this section and section 1070a of this title.

(d) Terms and conditions

The Secretary shall award grants under this section in the same manner, and with the same terms and conditions, including the length of the period of eligibility, as the Secretary awards Federal Pell Grants under section 1070a of this title, except that—

(1) the award rules and determination of need applicable to the calculation of Federal Pell Grants, shall not apply to grants made under this section;

(2) the provisions of subsection (a)(3), subsection (b)(1), the matter following subsection (b)(2)(A)(v),[1] subsection (b)(3), and subsection (f), of section 1070a of this title shall not apply; and

(3) a grant made under this section to an eligible veteran's dependent for any award year shall equal the maximum Federal Pell Grant available for that award year, except that such a grant under this section—

(A) shall not exceed the cost of attendance of the eligible veteran's dependent for that award year; and

(B) shall be adjusted to reflect the attendance by the eligible veteran's dependent on a less than full-time basis in the same manner as such adjustments are made under section 1070a of this title.

(e) Estimated financial assistance

For purposes of determinations of need under part E, a grant awarded under this section shall not be treated as estimated financial assistance as described in sections 1087kk(3) and 1087vv(j) of this title.

(f) Authorization and appropriations of funds

There are authorized to be appropriated, and there are appropriated, out of any money in the Treasury not otherwise appropriated, for the Secretary to carry out this section, such sums as may be necessary for fiscal year 2010 and each succeeding fiscal year.

(Pub. L. 89–329, title IV, § 420R, as added Pub. L. 111–39, title IV, § 401(a)(9), July 1, 2009, 123 Stat. 1939.)

REFERENCES IN TEXT

Section 1070a(b)(2)(A) of this title, referred to in subsec. (d)(2), as originally enacted, contained cls. (i) to (vi) followed by concluding provisions. Section 1070a(b)(2)(A) of this title was amended generally by section 2101(a)(1) of Pub. L. 111–152 and, as so amended, no longer contains either a cl. (v) or concluding provisions.

EFFECTIVE DATE

Pub. L. 111–39, title IV, § 401(b), July 1, 2009, 123 Stat. 1940, provided that: ''The amendment made by subsection (a)(9) [enacting this subpart] shall take effect on July 1, 2010.''

PART B—FEDERAL FAMILY EDUCATION LOAN PROGRAM

CODIFICATION

Part B of title IV of the Higher Education Act of 1965, comprising this part, was originally enacted by Pub. L. 89–329, title IV, Nov. 8, 1965, 79 Stat. 1236, and amended by Pub. L. 89–698, Oct. 29, 1966, 80 Stat. 1066; Pub. L. 89–752, Nov. 3, 1966, 80 Stat. 1240; Pub. L. 89–794, Nov. 8, 1966, 80 Stat. 1451; Pub. L. 90–460, Aug. 3, 1968, 82 Stat. 634; Pub. L. 90–575, Oct. 16, 1968, 82 Stat. 1014; Pub. L. 91–206, Mar. 10, 1970, 84 Stat. 49; Pub. L. 92–318, June 23, 1972, 86 Stat. 235; Pub. L. 93–269, Apr. 18, 1974, 88 Stat. 87; Pub. L. 93–604, Jan. 2, 1975, 88 Stat. 1959; Pub. L. 94–273, Apr. 21, 1976, 90 Stat. 375; Pub. L. 94–328, June 30, 1976, 90 Stat. 727; Pub. L. 94–482, Oct. 12, 1976, 90 Stat. 2081; S. Res. 4, Feb. 4, 1977; Pub. L. 95–43, June 15, 1977, 91 Stat. 213; Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2143; Pub. L. 95–566, Nov. 1, 1978, 92 Stat. 2402; Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2549; Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3641; S. Res. 30, Mar. 7, 1979; Pub. L. 96–49, Aug. 13, 1979, 93 Stat. 351; Pub. L. 96–88, Oct. 17, 1979, 93 Stat. 668; Pub. L. 96–374, Oct. 3, 1980, 94 Stat. 1367; Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 357; Pub. L. 97–115, Dec. 29, 1981, 95 Stat. 1595; Pub. L. 97–301, Oct. 13, 1982, 96 Stat. 1400; Pub. L. 98–79, Aug. 15, 1983, 97 Stat. 476; Pub. L. 99–272, Apr. 7, 1986, 100 Stat. 82; Pub. L. 99–320, May 23, 1986, 100 Stat. 491. Such part is shown herein, however, as having been added by Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1353, without reference to such intervening amendments because of the extensive revision of part B by Pub. L. 99–498.

[1] See References in Text note below.

§ 1071. Statement of purpose; nondiscrimination; and appropriations authorized

(a) Purpose; discrimination prohibited

(1) Purpose

The purpose of this part is to enable the Secretary—

(A) to encourage States and nonprofit private institutions and organizations to establish adequate loan insurance programs for students in eligible institutions (as defined in section 1085 of this title),

(B) to provide a Federal program of student loan insurance for students or lenders who do not have reasonable access to a State or private nonprofit program of student loan insurance covered by an agreement under section 1078(b) of this title,

(C) to pay a portion of the interest on loans to qualified students which are insured under this part, and

(D) to guarantee a portion of each loan insured under a program of a State or of a nonprofit private institution or organization which meets the requirements of section 1078(a)(1)(B) of this title.

(2) Discrimination by creditors prohibited

No agency, organization, institution, bank, credit union, corporation, or other lender who regularly extends, renews, or continues credit or provides insurance under this part shall exclude from receipt or deny the benefits of, or discriminate against any borrower or applicant in obtaining, such credit or insurance on the basis of race, national origin, religion, sex, marital status, age, or handicapped status.

(b) Authorization of appropriations

For the purpose of carrying out this part—

(1) there are authorized to be appropriated to the student loan insurance fund (established by section 1081 of this title) (A) the sum of $1,000,000, and (B) such further sums, if any, as may become necessary for the adequacy of the student loan insurance fund,

(2) there are authorized to be appropriated, for payments under section 1078 of this title with respect to interest on student loans and for payments under section 1087 of this title, such sums for the fiscal year ending June 30, 1966, and succeeding fiscal years, as may be required therefor,

(3) there is authorized to be appropriated the sum of $17,500,000 for making advances pursuant to section 1072 of this title for the reserve funds of State and nonprofit private student loan insurance programs,

(4) there are authorized to be appropriated (A) the sum of $12,500,000 for making advances after June 30, 1968, pursuant to sections 1072(a) and (b) of this title, and (B) such sums as may be necessary for making advances pursuant to section 1072(c) of this title, for the reserve funds of State and nonprofit private student loan insurance programs,

(5) there are authorized to be appropriated such sums as may be necessary for the purpose of paying a loan processing and issuance fee in accordance with section 1078(f) of this title to guaranty agencies, and

(6) there is authorized to be appropriated, and there are appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the purpose of carrying out section 1072(c)(7) of this title.

Sums appropriated under paragraphs (1), (2), (4), and (5) of this subsection shall remain available until expended, except that no sums may be expended after June 30, 2010, with respect to loans under this part for which the first disbursement is after such date. No additional sums are authorized to be appropriated under paragraph (3) or (4) of this subsection by reason of the reenactment of such paragraphs by the Higher Education Amendments of 1986.

(c) Designation

The program established under this part shall be referred to as the ''Robert T. Stafford Federal Student Loan Program''. Loans made pursuant to sections 1077 and 1078 of this title shall be known as ''Federal Stafford Loans''.

(d) Termination of authority to make or insure new loans

Notwithstanding paragraphs (1) through (6) of subsection (b) or any other provision of law—

(1) no new loans (including consolidation loans) may be made or insured under this part after June 30, 2010; and

(2) no funds are authorized to be appropriated, or may be expended, under this chapter and part C of subchapter I of chapter 34 of title 42 or any other Act to make or insure loans under this part (including consolidation loans) for which the first disbursement is after June 30, 2010,

except as expressly authorized by an Act of Congress enacted after March 30, 2010.

(Pub. L. 89–329, title IV, § 421, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1353; amended Pub. L. 100–297, title II, § 2601(a), Apr. 28, 1988, 102 Stat. 330; Pub. L. 100–369, § 8, July 18, 1988, 102 Stat. 837; Pub. L. 102–325, title IV, § 411(a)(2), (c), July 23, 1992, 106 Stat. 510, 511; Pub. L. 105–244, title IV, § 411, Oct. 7, 1998, 112 Stat. 1673; Pub. L. 109–171, title VIII, § 8004(a), Feb. 8, 2006, 120 Stat. 158; Pub. L. 110–227, § 6(a), May 7, 2008, 122 Stat. 746; Pub. L. 111–152, title II, § 2201, Mar. 30, 2010, 124 Stat. 1074.)

REFERENCES IN TEXT

The Higher Education Amendments of 1986, referred to in subsec. (b), is Pub. L. 99–498, Oct. 17, 1986, 100 Stat. 1268. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

CODIFICATION

Another section 411 of Pub. L. 105–244 enacted subpart 8 (§ 1070f et seq.) of part A of this subchapter.

PRIOR PROVISIONS

A prior section 1071, Pub. L. 89–329, title IV, § 421, Nov. 8, 1965, 79 Stat. 1236; Pub. L. 90–460, §§ 2(b)(3), 3(a), Aug. 3, 1968, 82 Stat. 635, 636; Pub. L. 90–575, title I, §§ 113(b)(1), 114(a), 119(b), Oct. 16, 1968, 82 Stat. 1021, 1027; Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2099; Pub. L. 95–43, § 1(a)(8)–(10), June 15, 1977, 91 Stat. 213; Pub. L. 96–374, title XIII, § 1391(a)(1), (2), Oct. 3, 1980, 94 Stat. 1503; Pub. L. 98–79, § 6, Aug. 15, 1983, 97 Stat. 482, related to statement of purpose of, appropriations for,

and implementation of programs to provide low-interest insured loans to students in institutions of higher education, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–152, § 2201(1), inserted ‘‘, except that no sums may be expended after June 30, 2010, with respect to loans under this part for which the first disbursement is after such date’’ after ‘‘expended’’ in concluding provisions.

Subsec. (d). Pub. L. 111–152, § 2201(2), added subsec. (d).

2008—Subsec. (b)(6). Pub. L. 110–227 added par. (6).

2006—Subsec. (b)(5). Pub. L. 109–171 substituted ‘‘a loan processing and issuance fee’’ for ‘‘an administrative cost allowance’’.

1998—Subsec. (d). Pub. L. 105–244 struck out heading and text of subsec. (d). Text read as follows: ‘‘Notwithstanding any other provision of this part, no new loan guarantees shall be issued after June 30, 1994, if the Secretary does not issue final regulations implementing the changes made to this part under the Higher Education Amendments of 1992 prior to that date. The authority to issue new loan guarantees shall resume upon the Secretary’s issuance of such regulations. This subsection shall not provide the basis for avoiding any requirements for notice and public hearing on such regulations.’’

1992—Subsec. (c). Pub. L. 102–325, § 411(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: ‘‘The program established under this part shall be referred to as the ‘Robert T. Stafford Student Loan Program’. Loans made under this part shall be known as ‘Stafford Loans’.’’

Subsec. (d). Pub. L. 102–325, § 411(c), added subsec. (d).

1988—Subsec. (c). Pub. L. 100–369 substituted ‘‘shall be referred’’ for ‘‘may be referred’’ and inserted provision identifying loans made under this part as ‘‘Stafford Loans’’.

Pub. L. 100–297 added subsec. (c).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–227, § 6(b), May 7, 2008, 122 Stat. 746, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [May 7, 2008].’’

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective July 23, 1992, with changes in the designation or names of loans or programs under this part effective with respect to applications or other documents (used in making such loans) that are printed after July 23, 1992, see section 432 of Pub. L. 102–325, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–297, title VI, § 6303, Apr. 28, 1988, 102 Stat. 431, as amended by Pub. L. 100–351, June 27, 1988, 102 Stat. 661; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that:

‘‘(a) GENERAL RULE.—Except as otherwise provided, this Act and the amendments made by this Act [see Tables for classification] shall take effect July 1, 1988.

‘‘(b) SPECIAL RULES.—(1) Any provision of this Act or any amendment made by this Act which authorizes appropriations for fiscal year 1988 shall take effect on the date of the enactment of this Act [Apr. 28, 1988].

‘‘(2) The provisions of section 2402, relating to the National Center for Vocational Research, shall take effect on April 10, 1988.

‘‘(3) The amendments made by section 3403 [amending sections 1221e and 1221e–1 of this title] shall take effect for assessments made after September 30, 1989, with respect to State data.

‘‘(4) Allotments to States made under chapters 1 and 2 of title I of the Elementary and Secondary Education Act of 1965 [formerly 20 U.S.C. 2701 et seq., 2911 et seq.] and under the Adult Education Act [formerly 20 U.S.C. 1201 et seq.] from amounts appropriated by the joint resolution entitled ‘Joint resolution making further continuing appropriations for the fiscal year 1988, and for other purposes’, approved December 22, 1987 (Public Law 100–202), shall be computed in accordance with the provisions of law applicable to allotments to States under chapters 1 and 2 of the Education Consolidation and Improvement Act of 1981 [formerly 20 U.S.C. 3801 et seq., 3811 et seq.] and under the Adult Education Act, respectively, as such Acts were in effect on the day before the date of the enactment of this Act [Apr. 28, 1988].

‘‘(5) Amounts appropriated by the joint resolution entitled ‘Joint resolution making further continuing appropriations for the fiscal year 1988, and for other purposes’, approved December 22, 1987 (Public Law 100–202), for the following programs shall be awarded in accordance with the applicable provisions of law in effect on the day before the date of the enactment of this Act [Apr. 28, 1988]:

‘‘(A) Programs under subchapter D of chapter 2 of the Education Consolidation and Improvement Act of 1981 [formerly 20 U.S.C. 3851 et seq.], except that projects under section 583(c) [formerly 20 U.S.C. 3851(c)] may not be reviewed by a program significance panel.

‘‘(B) National programs under the Adult Education Act [formerly 20 U.S.C. 1201 et seq.].

‘‘(C) Programs under the Indian Education Act [Pub. L. 92–318, title IV, see Tables for classification].

‘‘(D) Programs under title II of the Education for Economic Security Act [formerly 20 U.S.C. 3961 et seq.].

‘‘(E) The program under section 702 of the McKinney-Vento Homeless Assistance Act [formerly 42 U.S.C. 11421].

‘‘(6) The provisions of part A of title II of this Act [§§ 2001 to 2034 of Pub. L. 100–297, amending sections 236 et seq. and 631 et seq. of this title], excluding sections 2014(e) and 2018 [amending section 238 of this title and enacting provisions set out as a note under section 238 of this title], shall apply only with respect to amounts appropriated for fiscal years beginning after September 30, 1988.

‘‘(7) The amendments made by section 6001 [amending section 11421 of Title 42, The Public Health and Welfare], relating to literacy training of homeless adults, shall take effect on October 1, 1988.

‘‘(8) Any election under section 5209(b)(1) [25 U.S.C. 2508(b)(1)] conveyed to the Secretary prior to August 1, 1988, shall take effect for the fiscal year beginning on October 1, 1988, and thereafter.’’

EFFECTIVE DATE

Section 402(b)–(d) of Pub. L. 99–498, as amended by Pub. L. 100–50, § 22(b), June 3, 1987, 101 Stat. 361, provided that:

‘‘(b) EFFECTIVE DATES.—The changes made in part B of title IV of the Act [20 U.S.C. 1071 et seq.] by the amendment made by subsection (a) of this section shall take effect on the date of enactment of this Act [Oct. 17, 1986], except—

‘‘(1) as otherwise provided in such part B;

‘‘(2) the changes in sections 427(a)(2)(C) and 428(b)(1)(M) of the Act [20 U.S.C. 1077(a)(2)(C), 1078(b)(1)(M)] (other than clauses (viii), (ix), and (x) of each such section) shall apply only to loans to new borrowers that (A) are made to cover the cost of instruction for periods of enrollment beginning on or after July 1, 1987; or (B) are disbursed on or after July 1, 1987;

‘‘(3) the changes made in sections 425(a), 428(b)(1)(A), and 428(b)(1)(B) of the Act [20 U.S.C. 1075(a), 1078(b)(1)(A), (B)] shall apply with respect

only to loans disbursed on or after January 1, 1987, or made to cover the costs of instruction for periods of enrollment beginning on or after January 1, 1987;

''(4) the changes made in subsections (a), (b), and (d) of section 433 of the Act [20 U.S.C. 1083(a), (b), (d)] shall apply with respect only to loans disbursed on or after January 1, 1987, or made to cover the costs of instruction for periods of enrollment beginning on or after January 1, 1987;

''(5) the changes in section 428(b)(1)(H) [20 U.S.C. 1078(b)(1)(H)] shall apply with respect only to loans for which the borrower files an application on or after July 1, 1987;

''(6) the changes in sections 435(d)(5) and 438(d) of the Act [20 U.S.C. 1085(d)(5), 1087–1(d)] shall take effect 30 days after the date of enactment of this Act [Oct. 17, 1986]; and

''(7) the changes made in section 438(b) [20 U.S.C. 1087–1(b)] shall take effect with respect to loans disbursed on or after 30 days after the date of enactment of this Act [Oct. 17, 1986] or made to cover the costs of instruction for periods of enrollment beginning on or after 30 days after the date of enactment of this Act.

''(c) CHANGES EFFECTIVE WITHOUT REGARD TO REGULATIONS; REPUBLICATION OF REGULATIONS.—The changes made in part B of title IV of the Act [20 U.S.C. 1071 et seq.] by the amendment made by subsection (a) of this section shall be effective in accordance with subsection (b) of this section without regard to whether such changes are reflected in the regulations prescribed by the Secretary of Education for the purpose of such part.

''(d) NEW BORROWERS.—For the purpose of this section, the term 'new borrower' means, with respect to any date, an individual who on that date has no outstanding balance of principal or interest owing on any loan made, insured, or guaranteed under part B of title IV of the Act [20 U.S.C. 1071 et seq.].''

STUDY OF ROLE OF GUARANTY AGENCIES

Section 1401 of Pub. L. 102–325 directed Secretary of Education to review role of guaranty agencies within Federal Family Education Loan Program by examining administrative and financial operations of such agencies and the relationships between guaranty agencies and State governments and report to Congress within 1 year of July 23, 1992, on the review, prior to repeal by Pub. L. 105–332, § 6(b)(2), Oct. 31, 1998, 112 Stat. 3128.

GENERAL ACCOUNTING OFFICE REPORTS

Sections 1311 to 1314 of Pub. L. 99–498, as amended by Pub. L. 100–50, § 23(6), June 3, 1987, 101 Stat. 362, directed Comptroller General to conduct studies on practices of State guaranty agencies and multistate guarantors under the student loan program, on the feasibility and efficiency of permitting students to establish multiple year lines of credit with eligible lenders, on the impact of the multiple disbursement system on the ability of students and institutions of higher education to meet expenses, and on the cost, efficiency, and impact of the consolidation loan program established by Pub. L. 99–498, and directed Comptroller General to make and submit a report to Congress on each study not later than two years after Oct. 17, 1986, prior to repeal by Pub. L. 105–332, § 6(a), Oct. 31, 1998, 112 Stat. 3127.

§ 1072. Advances for reserve funds of State and nonprofit private loan insurance programs

(a) Purpose of and authority for advances to reserve funds

(1) Purpose; eligible recipients

From sums appropriated pursuant to paragraphs (3) and (4)(A) of section 1071(b) of this title, the Secretary is authorized to make advances to any State with which the Secretary has made an agreement pursuant to section 1078(b) of this title for the purpose of helping to establish or strengthen the reserve fund of the student loan insurance program covered by that agreement. If for any fiscal year a State does not have a student loan insurance program covered by an agreement made pursuant to section 1078(b) of this title, and the Secretary determines after consultation with the chief executive officer of that State that there is no reasonable likelihood that the State will have such a student loan insurance program for such year, the Secretary may make advances for such year for the same purpose to one or more nonprofit private institutions or organizations with which the Secretary has made an agreement pursuant to section 1078(b) of this title in order to enable students in the State to participate in a program of student loan insurance covered by such an agreement. The Secretary may make advances under this subsection both to a State program (with which he has such an agreement) and to one or more nonprofit private institutions or organizations (with which he has such an agreement) in that State if he determines that such advances are necessary in order that students in each eligible institution have access through such institution to a student loan insurance program which meets the requirements of section 1078(b)(1) of this title.

(2) Matching requirement

No advance shall be made after June 30, 1968, unless matched by an equal amount from non-Federal sources. Such equal amount may include the unencumbered non-Federal portion of a reserve fund. As used in the preceding sentence, the term ''unencumbered non-Federal portion'' means the amount (determined as of the time immediately preceding the making of the advance) of the reserve fund less the greater of—

(A) the sum of—

(i) advances made under this section prior to July 1, 1968;

(ii) an amount equal to twice the amount of advances made under this section after June 30, 1968, and before the advance for purposes of which the determination is made; and

(iii) the proceeds of earnings on advances made under this section; or

(B) any amount which is required to be maintained in such fund pursuant to State law or regulation, or by agreement with lenders, as a reserve against the insurance of outstanding loans.

Except as provided in section 1078(c)(9)(E) or (F) of this title, such unencumbered non-Federal portion shall not be subject to recall, repayment, or recovery by the Secretary.

(3) Terms and conditions; repayment

Advances pursuant to this subsection shall be upon such terms and conditions (including conditions relating to the time or times of payment) consistent with the requirements of section 1078(b) of this title as the Secretary determines will best carry out the purpose of this section. Advances made by the Secretary under this subsection shall be repaid within

such period as the Secretary may deem to be appropriate in each case in the light of the maturity and solvency of the reserve fund for which the advance was made.

(b) Limitations on total advances

(1) In general

The total of the advances from the sums appropriated pursuant to paragraph (4)(A) of section 1071(b) of this title to nonprofit private institutions and organizations for the benefit of students in any State and to such State may not exceed an amount which bears the same ratio to such sums as the population of such State aged 18 to 22, inclusive, bears to the population of all the States aged 18 to 22 inclusive, but such advances may otherwise be in such amounts as the Secretary determines will best achieve the purposes for which they are made. The amount available for advances to any State shall not be less than $25,000 and any additional funds needed to meet this requirement shall be derived by proportionately reducing (but not below $25,000) the amount available for advances to each of the remaining States.

(2) Calculation of population

For the purpose of this subsection, the population aged 18 to 22, inclusive, of each State and of all the States shall be determined by the Secretary on the basis of the most recent satisfactory data available to him.

(c) Advances for insurance obligations

(1) Use for payment of insurance obligations

From sums appropriated pursuant to section 1071(b)(4)(B) of this title, the Secretary shall advance to each State which has an agreement with the Secretary under section 1078(c) of this title with respect to a student loan insurance program, an amount determined in accordance with paragraph (2) of this subsection to be used for the purpose of making payments under the State's insurance obligations under such program.

(2) Amount of advances

(A) Except as provided in subparagraph (B), the amount to be advanced to each such State shall be equal to 10 percent of the principal amount of loans made by lenders and insured by such agency on those loans on which the first payment of principal became due during the fiscal year immediately preceding the fiscal year in which the advance is made.

(B) The amount of any advance determined according to subparagraph (A) of this paragraph shall be reduced by—

(i) the amount of any advance or advances made to such State pursuant to this subsection at an earlier date; and

(ii) the amount of the unspent balance of the advances made to a State pursuant to subsection (a) of this section.

Notwithstanding subparagraph (A) and the preceding sentence of this subparagraph, but subject to subparagraph (D) of this paragraph, the amount of any advance to a State described in paragraph (5)(A) for the first year of its eligibility under such paragraph, and the amount of any advance to any State described in paragraph (5)(B) for each year of its eligibility under such paragraph, shall not be less than $50,000.

(C) For the purpose of subparagraph (B), the unspent balance of the advances made to a State pursuant to subsection (a) of this section shall be that portion of the balance of the State's reserve fund (remaining at the time of the State's first request for an advance pursuant to this subsection) which bears the same ratio to such balance as the Federal advances made and not returned by such State, pursuant to subsection (a) of this section, bears to the total of all past contributions to such reserve funds from all sources (other than interest on investment of any portion of the reserve fund) contributed since the date such State executed an agreement pursuant to section 1078(b) of this title.

(D) If the sums appropriated for any fiscal year for paying the amounts determined under subparagraphs (A) and (B) are not sufficient to pay such amounts in full, then such amounts shall be reduced—

(i) by ratably reducing that portion of the amount allocated to each State which exceeds $50,000; and

(ii) if further reduction is required, by equally reducing the $50,000 minimum allocation of each State.

If additional sums become available for paying such amounts for any fiscal year during which the preceding sentence has been applied, such reduced amounts shall be increased on the same basis as they were reduced.

(3) Use of earnings for insurance obligations

The earnings, if any, on any investments of advances received pursuant to this subsection must be used for making payments under the State's insurance obligations.

(4) Repayment of advances

Advances made by the Secretary under this subsection shall, subject to subsection (d) of this section, be repaid within such period as the Secretary may deem to be appropriate and shall be deposited in the fund established by section 1081 of this title.

(5) Limitation on number of advances

Except as provided in paragraph (7), advances pursuant to this subsection shall be made to a State—

(A) in the case of a State which is actively carrying on a program under an agreement pursuant to section 1078(b) of this title which was entered into before October 12, 1976, upon such date as such State may request, but not before October 1, 1977, and on the same day of each of the 2 succeeding calendar years after the date so requested; and

(B) in the case of a State which enters into an agreement pursuant to section 1078(b) of this title on or after October 12, 1976, or which is not actively carrying on a program under an agreement pursuant to such section on such date, upon such date as such State may request, but not before October 1, 1977, and on the same day of each of the 4 succeeding calendar years after the date so requested of the advance.

(6) Payment of advances where no State program

(A) If for any fiscal year a State does not have a student loan insurance program covered by an agreement made pursuant to section 1078(b) of this title, and the Secretary determines after consultation with the chief executive officer of that State that there is no reasonable likelihood that the State will have such a student loan insurance program for such year, the Secretary may make advances pursuant to this subsection for such year for the same purpose to one or more nonprofit private institutions or organizations with which he has made an agreement pursuant to subsection (c), as well as subsection (b), of section 1078 of this title and subparagraph (B) of this paragraph in order to enable students in that State to participate in a program of student loan insurance covered by such agreements.

(B) The Secretary may enter into an agreement with a private nonprofit institution or organization for the purpose of this paragraph under which such institution or organization—

(i) agrees to establish within such State at least one office with sufficient staff to handle written, electronic, and telephone inquiries from students, eligible lenders, and other persons in the State, to encourage maximum commercial lender participation within the State, and to conduct periodic visits to at least the major eligible lenders within the State;

(ii) agrees that its insurance will not be denied any student because of his or her choice of eligible institutions; and

(iii) certifies that it is neither an eligible institution, nor has any substantial affiliation with an eligible institution.

(7) Emergency advances

The Secretary is authorized to make advances, on terms and conditions satisfactory to the Secretary, to a guaranty agency—

(A) in accordance with section 1078(j) of this title, in order to ensure that the guaranty agency shall make loans as the lender-of-last-resort; or

(B) if the Secretary is seeking to terminate the guaranty agency's agreement, or assuming the guaranty agency's functions, in accordance with section 1078(c)(9)(F)(v) of this title, in order to assist the agency in meeting its immediate cash needs, ensure the uninterrupted payment of claims, or ensure that the guaranty agency shall make loans as described in subparagraph (A).

(d) Recovery of advances during fiscal years 1988 and 1989

(1) Amount and use of recovered funds

Notwithstanding any other provision of this section, advances made by the Secretary under this section shall be repaid in accordance with this subsection and shall be deposited in the fund established by section 1081 of this title. The Secretary shall, in accordance with the requirements of paragraph (2), recover (and so deposit) an amount equal to $75,000,000 during fiscal year 1988 and an amount equal to $35,000,000 for fiscal year 1989.

(2) Determination of guaranty agency obligations

In determining the amount of advances which shall be repaid by a guaranty agency under paragraph (1), the Secretary—

(A) shall consider the solvency and maturity of the reserve and insurance funds of the guaranty agency assisted by such advances, as determined by the Comptroller General taking into account the requirements of State law as in effect on October 17, 1986;

(B) shall not seek repayment of such advances from any State described in subsection (c)(5)(B) of this section during any year of its eligibility under such subsection; and

(C) shall not seek repayment of such advances from any State if such repayment encumbers the reserve fund requirement of State law as in effect on October 17, 1986.

(e) Correction for errors under reduction of excess cash reserves

(1) In general

The Secretary shall pay any guaranty agency the amount of reimbursement of claims under section 1078(c)(1) of this title, filed between September 1, 1988, and December 31, 1989, which were previously withheld or canceled in order to be applied to satisfy such agency's obligation to eliminate excess cash reserves held by such agency, based on the maximum cash reserve (as described in subsection (e) of this section as in effect on September 1, 1988) permitted at the end of 1986, if such maximum cash reserve was miscalculated because of erroneous financial information provided by such agency to the Secretary and if (A) such erroneous information is verified by an audited financial statement of the reserve fund, signed by a certified public accountant, and (B) such audited financial statement is provided to the Secretary prior to January 1, 1993.

(2) Amount

The amount of reimbursement for claims shall be equal to the amount of reimbursement for claims withheld or canceled in order to be applied to such agency's obligation to eliminate excess cash reserves which exceeds the amount of that which would have been withheld or canceled if the maximum excess cash reserves had been accurately calculated.

(f) Refund of cash reserve payments

The Secretary shall, within 30 days after July 23, 1992, pay the full amount of payments withheld or canceled under paragraph (3) of this subsection to any guaranty agency which—

(1) was required to eliminate excess cash reserves, based on the maximum cash reserve (as described in subsection (e) of this section as in effect on September 1, 1988) permitted at the end of 1986;

(2) appealed the Secretary's demand that such agency should eliminate such excess cash reserves and received a waiver of a portion of the amount of such excess cash reserves to be eliminated;

(3) had payments under section 1078(c)(1) of this title or section 1078(f) of this title pre-

viously withheld or canceled in order to be applied to satisfy such agency's obligation to eliminate excess cash reserves held by such agency, based on the maximum cash reserve (as described in subsection (e) of this section as in effect on September 1, 1988) permitted at the end of 1986; and

(4) according to a Department of Education review that was completed and forwarded to such guaranty agency prior to January 1, 1992, is expected to become insolvent during or before 1996 and the payments withheld or canceled under paragraph (3) of this subsection are a factor in such agency's impending insolvency.

(g) Preservation and recovery of guaranty agency reserves

(1) Authority to recover funds

Notwithstanding any other provision of law, the reserve funds of the guaranty agencies, and any assets purchased with such reserve funds, regardless of who holds or controls the reserves or assets, shall be considered to be the property of the United States to be used in the operation of the program authorized by this part. However, the Secretary may not require the return of all reserve funds of a guaranty agency to the Secretary unless the Secretary determines that such return is in the best interest of the operation of the program authorized by this part, or to ensure the proper maintenance of such agency's funds or assets or the orderly termination of the guaranty agency's operations and the liquidation of its assets. The reserves shall be maintained by each guaranty agency to pay program expenses and contingent liabilities, as authorized by the Secretary, except that—

(A) the Secretary may direct a guaranty agency to return to the Secretary a portion of its reserve fund which the Secretary determines is unnecessary to pay the program expenses and contingent liabilities of the guaranty agency;

(B) the Secretary may direct the guaranty agency to require the return, to the guaranty agency or to the Secretary, of any reserve funds or assets held by, or under the control of, any other entity, which the Secretary determines are necessary to pay the program expenses and contingent liabilities of the guaranty agency, or which are required for the orderly termination of the guaranty agency's operations and the liquidation of its assets;

(C) the Secretary may direct a guaranty agency, or such agency's officers or directors, to cease any activities involving expenditure, use or transfer of the guaranty agency's reserve funds or assets which the Secretary determines is a misapplication, misuse, or improper expenditure of such funds or assets; and

(D) any such determination under subparagraph (A) or (B) shall be based on standards prescribed by regulations that are developed through negotiated rulemaking and that include procedures for administrative due process.

(2) Termination provisions in contracts

(A) To ensure that the funds and assets of the guaranty agency are preserved, any contract with respect to the administration of a guaranty agency's reserve funds, or the administration of any assets purchased or acquired with the reserve funds of the guaranty agency, that is entered into or extended by the guaranty agency, or any other party on behalf of or with the concurrence of the guaranty agency, after August 10, 1993, shall provide that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that such contract includes an impermissible transfer of the reserve funds or assets, or is otherwise inconsistent with the terms or purposes of this section.

(B) The Secretary may direct a guaranty agency to suspend or cease activities under any contract entered into by or on behalf of such agency after January 1, 1993, if the Secretary determines that the misuse or improper expenditure of such guaranty agency's funds or assets or such contract provides unnecessary or improper benefits to such agency's officers or directors.

(3) Penalties

Violation of any direction issued by the Secretary under this subsection may be subject to the penalties described in section 1097 of this title.

(4) Availability of funds

Any funds that are returned or otherwise recovered by the Secretary pursuant to this subsection shall be available for expenditure for expenses pursuant to section 1087h of this title.

(h) Recall of reserves; limitations on use of reserve funds and assets

(1) In general

Notwithstanding any other provision of law, the Secretary shall, except as otherwise provided in this subsection, recall $1,000,000,000 from the reserve funds held by guaranty agencies on September 1, 2002.

(2) Deposit

Funds recalled by the Secretary under this subsection shall be deposited in the Treasury.

(3) Required share

The Secretary shall require each guaranty agency to return reserve funds under paragraph (1) based on the agency's required share of recalled reserve funds held by guaranty agencies as of September 30, 1996. For purposes of this paragraph, a guaranty agency's required share of recalled reserve funds shall be determined as follows:

(A) The Secretary shall compute each guaranty agency's reserve ratio by dividing (i) the amount held in the agency's reserve funds as of September 30, 1996 (but reflecting later accounting or auditing adjustments approved by the Secretary), by (ii) the original principal amount of all loans for which the agency has an outstanding insurance obligation as of such date, including amounts of outstanding loans transferred to the agency from another guaranty agency.

(B) If the reserve ratio of any guaranty agency as computed under subparagraph (A) exceeds 2.0 percent, the agency's required share shall include so much of the amounts held in the agency's reserve funds as exceed a reserve ratio of 2.0 percent.

(C) If any additional amount is required to be recalled under paragraph (1) (after deducting the total of the required shares calculated under subparagraph (B)), such additional amount shall be obtained by imposing on each guaranty agency an equal percentage reduction in the amount of the agency's reserve funds remaining after deduction of the amount recalled under subparagraph (B), except that such percentage reduction under this subparagraph shall not result in the agency's reserve ratio being reduced below 0.58 percent. The equal percentage reduction shall be the percentage obtained by dividing—

(i) the additional amount required to be recalled (after deducting the total of the required shares calculated under subparagraph (B)), by

(ii) the total amount of all such agencies' reserve funds remaining (after deduction of the required shares calculated under such subparagraph).

(D) If any additional amount is required to be recalled under paragraph (1) (after deducting the total of the required shares calculated under subparagraphs (B) and (C)), such additional amount shall be obtained by imposing on each guaranty agency with a reserve ratio (after deducting the required shares calculated under such subparagraphs) in excess of 0.58 percent an equal percentage reduction in the amount of the agency's reserve funds remaining (after such deduction) that exceed a reserve ratio of 0.58 percent. The equal percentage reduction shall be the percentage obtained by dividing—

(i) the additional amount to be recalled under paragraph (1) (after deducting the amount recalled under subparagraphs (B) and (C)), by

(ii) the total amount of all such agencies' reserve funds remaining (after deduction of the required shares calculated under such subparagraphs) that exceed a reserve ratio of 0.58 percent.

(4) Restricted accounts required

(A) In general

Within 90 days after the beginning of each of the fiscal years 1998 through 2002, each guaranty agency shall transfer a portion of the agency's required share determined under paragraph (3) to a restricted account established by the agency that is of a type selected by the agency with the approval of the Secretary. Funds transferred to such restricted accounts shall be invested in obligations issued or guaranteed by the United States or in other similarly low-risk securities.

(B) Requirement

A guaranty agency shall not use the funds in such a restricted account for any purpose without the express written permission of the Secretary, except that a guaranty agency may use the earnings from such restricted account for default reduction activities.

(C) Installments

In each of fiscal years 1998 through 2002, each guaranty agency shall transfer the agency's required share to such restricted account in 5 equal annual installments, except that—

(i) a guaranty agency that has a reserve ratio (as computed under subparagraph (3)(A)) equal to or less than 1.10 percent may transfer the agency's required share to such account in 4 equal installments beginning in fiscal year 1999; and

(ii) a guaranty agency may transfer such required share to such account in accordance with such other payment schedules as are approved by the Secretary.

(5) Shortage

If, on September 1, 2002, the total amount in the restricted accounts described in paragraph (4) is less than the amount the Secretary is required to recall under paragraph (1), the Secretary shall require the return of the amount of the shortage from other reserve funds held by guaranty agencies under procedures established by the Secretary. The Secretary shall first attempt to obtain the amount of such shortage from each guaranty agency that failed to transfer the agency's required share to the agency's restricted account in accordance with paragraph (4).

(6) Enforcement

(A) In general

The Secretary may take such reasonable measures, and require such information, as may be necessary to ensure that guaranty agencies comply with the requirements of this subsection.

(B) Prohibition

If the Secretary determines that a guaranty agency has failed to transfer to a restricted account any portion of the agency's required share under this subsection, the agency may not receive any other funds under this part until the Secretary determines that the agency has so transferred the agency's required share.

(C) Waiver

The Secretary may waive the requirements of subparagraph (B) for a guaranty agency described in such subparagraph if the Secretary determines that there are extenuating circumstances beyond the control of the agency that justify such waiver.

(7) Limitation

(A) Restriction on other authority

The Secretary shall not have any authority to direct a guaranty agency to return reserve funds under subsection (g)(1)(A) of this section during the period from August 5, 1997, through September 30, 2002.

(B) Use of termination collections

Any reserve funds directed by the Secretary to be returned to the Secretary under

subsection (g)(1)(B) of this section during such period that do not exceed a guaranty agency's required share of recalled reserve funds under paragraph (3)—

(i) shall be used to satisfy the agency's required share of recalled reserve funds; and

(ii) shall be deposited in the restricted account established by the agency under paragraph (4), without regard to whether such funds exceed the next installment required under such paragraph.

(C) Use of sanctions collections

Any reserve funds directed by the Secretary to be returned to the Secretary under subsection (g)(1)(C) of this section during such period that do not exceed a guaranty agency's next installment under paragraph (4)—

(i) shall be used to satisfy the agency's next installment; and

(ii) shall be deposited in the restricted account established by the agency under paragraph (4).

(D) Balance available to Secretary

Any reserve funds directed by the Secretary to be returned to the Secretary under subparagraph (B) or (C) of subsection (g)(1) of this section that remain after satisfaction of the requirements of subparagraphs (B) and (C) of this paragraph shall be deposited in the Treasury.

(8) Definitions

For the purposes of this subsection:

(A) Default reduction activities

The term ''default reduction activities'' means activities to reduce student loan defaults that improve, strengthen, and expand default prevention activities, such as—

(i) establishing a program of partial loan cancellation to reward disadvantaged borrowers for good repayment histories with their lenders;

(ii) establishing a financial and debt management counseling program for high-risk borrowers that provides long-term training (beginning prior to the first disbursement of the borrower's first student loan and continuing through the completion of the borrower's program of education or training) in budgeting and other aspects of financial management, including debt management;

(iii) establishing a program of placement counseling to assist high-risk borrowers in identifying employment or additional training opportunities; and

(iv) developing public service announcements that would detail consequences of student loan default and provide information regarding a toll-free telephone number established by the guaranty agency for use by borrowers seeking assistance in avoiding default.

(B) Reserve funds

The term ''reserve funds'' when used with respect to a guaranty agency—

(i) includes any reserve funds in cash or liquid assets held by the guaranty agency, or held by, or under the control of, any other entity; and

(ii) does not include buildings, equipment, or other nonliquid assets.

(i) Additional recall of reserves

(1) In general

Notwithstanding any other provision of law and subject to paragraph (4), the Secretary shall recall, from reserve funds held in the Federal Student Loan Reserve Funds established under section 1072a of this title by guaranty agencies—

(A) $85,000,000 in fiscal year 2002;

(B) $82,500,000 in fiscal year 2006; and

(C) $82,500,000 in fiscal year 2007.

(2) Deposit

Funds recalled by the Secretary under this subsection shall be deposited in the Treasury.

(3) Required share

The Secretary shall require each guaranty agency to return reserve funds under paragraph (1) on the basis of the agency's required share. For purposes of this paragraph, a guaranty agency's required share shall be determined as follows:

(A) Equal percentage

The Secretary shall require each guaranty agency to return an amount representing an equal percentage reduction in the amount of reserve funds held by the agency on September 30, 1996.

(B) Calculation

The equal percentage reduction shall be the percentage obtained by dividing—

(i) $250,000,000, by

(ii) the total amount of all guaranty agencies' reserve funds held on September 30, 1996, less any amounts subject to recall under subsection (h) of this section.

(C) Special rule

Notwithstanding subparagraphs (A) and (B), the percentage reduction under subparagraph (B) shall not result in the depletion of the reserve funds of any agency which charges the 1.0 percent insurance premium pursuant to section 1078(b)(1)(H) of this title below an amount equal to the amount of lender claim payments paid during the 90 days prior to the date of the return under this subsection. If any additional amount is required to be returned after deducting the total of the required shares under subparagraph (B) and as a result of the preceding sentence, such additional amount shall be obtained by imposing on each guaranty agency to which the preceding sentence does not apply, an equal percentage reduction in the amount of the agency's remaining reserve funds.

(4) Offset of required shares

If any guaranty agency returns to the Secretary any reserve funds in excess of the amount required under this subsection or subsection (h) of this section, the total amount required to be returned under paragraph (1) shall be reduced by the amount of such excess reserve funds returned.

(5) Definition of reserve funds

The term ''reserve funds'' when used with respect to a guaranty agency—

(A) includes any reserve funds in cash or liquid assets held by the guaranty agency, or held by, or under the control of, any other entity; and

(B) does not include buildings, equipment, or other nonliquid assets.

(Pub. L. 89–329, title IV, § 422, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1354; amended Pub. L. 100–203, title III, §§ 3001(a), 3002(a), Dec. 22, 1987, 101 Stat. 1330–36, 1330–38; Pub. L. 102–325, title IV, §§ 412, 416(p)(8), July 23, 1992, 106 Stat. 511, 527; Pub. L. 103–66, title IV, §§ 4041(a), (2)(A), 4042, Aug. 10, 1993, 107 Stat. 354, 357; Pub. L. 103–208, § 2(c)(1), Dec. 20, 1993, 107 Stat. 2460; Pub. L. 105–33, title VI, § 6101(a), Aug. 5, 1997, 111 Stat. 648; Pub. L. 105–244, title IV, § 412, Oct. 7, 1998, 112 Stat. 1673.)

CODIFICATION

Amendment by Pub. L. 103–208 (which was effective as if included in Pub. L. 102–325) was executed to this section as amended by Pub. L. 102–325 and Pub. L. 103–66, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 1072, Pub. L. 89–329, title IV, § 422, Nov. 8, 1965, 79 Stat. 1236; Pub. L. 89–752, § 11, Nov. 3, 1966, 80 Stat. 1243; Pub. L. 90–575, title I, § 114(b), (c), Oct. 16, 1968, 82 Stat. 1021, 1022; Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2100; Pub. L. 95–43, § 1(a)(11)–(13), June 15, 1977, 91 Stat. 213, 214; Pub. L. 95–561, title XIII, § 1322(a), Nov. 1, 1978, 92 Stat. 2363; Pub. L. 96–374, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1503; Pub. L. 99–272, title XVI, § 16011, Apr. 7, 1986, 100 Stat. 339, authorized advances to establish or strengthen reserve funds of State and nonprofit private loan insurance programs, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–244, § 412(1), substituted ''section 1078(c)(9)(E)'' for ''section 1078(c)(10)(E)'' in concluding provisions.

Subsec. (c)(6)(B)(i). Pub. L. 105–244, § 412(2)(A), substituted ''written, electronic,'' for ''written''.

Subsec. (c)(7)(A). Pub. L. 105–244, § 412(2)(B), struck out ''during the transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part C of this subchapter'' after ''lender-of-last-resort''.

Subsec. (c)(7)(B). Pub. L. 105–244, § 412(2)(C), substituted ''section 1078(c)(9)(F)(v)'' for ''section 1078(c)(10)(F)(v)''.

Subsec. (g)(1). Pub. L. 105–244, § 412(3), struck out ''or the program authorized by part C of this subchapter'' after ''program authorized by this part'' in first and second sentences.

Subsec. (i). Pub. L. 105–244, § 412(4), added subsec. (i).

1997—Subsec. (h). Pub. L. 105–33 added subsec. (h).

1993—Subsec. (c)(7). Pub. L. 103–66, § 4041(a)(2)(A), substituted ''to a guaranty agency—'' and subpars. (A) and (B) for ''to a guaranty agency in accordance with section 1078(c)(10)(F)(v) of this title in order to assist the agency in meeting its immediate cash needs and ensure the uninterrupted payment of default claims by lenders.''

Subsec. (c)(7)(B). Pub. L. 103–208 substituted a period for semicolon at end. See Codification note above.

Subsec. (g). Pub. L. 103–66, § 4042, added subsec. (g).

1992—Subsec. (a)(2). Pub. L. 102–325, § 412(1), inserted at end ''Except as provided in section 1078(c)(10)(E) or (F) of this title, such unencumbered non-Federal portion shall not be subject to recall, repayment, or recovery by the Secretary.''

Subsec. (c)(5), (7). Pub. L. 102–325, § 416(p)(8), substituted ''Except as provided in paragraph (7), advances'' for ''Advances'' in par. (5) and added par. (7).

Subsecs. (e), (f). Pub. L. 102–325, § 412(2), added subsecs. (e) and (f).

1987—Subsec. (e). Pub. L. 100–203, § 3002(a), struck out subsec. (e) which related to reduction of excess cash reserves.

Pub. L. 100–203, § 3001(a), added subsec. (e).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 3002(a) of Pub. L. 100–203 provided that the amendment made by that section 3002(a) is effective Sept. 30, 1989.

§ 1072a. Federal Student Loan Reserve Fund

(a) Establishment

Each guaranty agency shall, not later than 60 days after October 7, 1998, deposit all funds, securities, and other liquid assets contained in the reserve fund established pursuant to section 1072 of this title into a Federal Student Loan Reserve Fund (in this section and section 1072b of this title referred to as the ''Federal Fund''), which shall be an account of a type selected by the agency, with the approval of the Secretary.

(b) Investment of funds

Funds transferred to the Federal Fund shall be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities selected by the guaranty agency, with the approval of the Secretary. Earnings from the Federal Fund shall be the sole property of the Federal Government.

(c) Additional deposits

After the establishment of the Federal Fund, a guaranty agency shall deposit into the Federal Fund—

(1) all amounts received from the Secretary as payment of reinsurance on loans pursuant to section 1078(c)(1) of this title;

(2) from amounts collected on behalf of the obligation of a defaulted borrower, a percentage amount equal to the complement of the reinsurance percentage in effect when payment under the guaranty agreement was made—

(A) with respect to the defaulted loan pursuant to sections 1078(c)(6)(A)[1] and 1078–6(a)(1)(B) of this title; and

(B) with respect to a loan that the Secretary has repaid or discharged under section 1087 of this title;

(3) insurance premiums collected from borrowers pursuant to sections 1078(b)(1)(H) and 1078–8(h) of this title;

[1] See References in Text note below.

(4) all amounts received from the Secretary as payment for supplemental preclaims activity performed prior to October 7, 1998;

(5) 70 percent of amounts received after October 7, 1998, from the Secretary as payment for administrative cost allowances for loans upon which insurance was issued prior to October 7, 1998; and

(6) other receipts as specified in regulations of the Secretary.

(d) Uses of funds

Subject to subsection (f) of this section, the Federal Fund may only be used by a guaranty agency—

(1) to pay lender claims pursuant to sections 1078(b)(1)(G), 1078(j), and 1087 of this title; and

(2) to pay into the Agency Operating Fund established pursuant to section 1072b of this title (in this section and section 1072b of this title referred to as the ''Operating Fund'') a default aversion fee in accordance with section 1078(*l*) of this title.

(e) Ownership of Federal Fund

The Federal Fund, and any nonliquid asset (such as a building or equipment) developed or purchased by the guaranty agency in whole or in part with Federal reserve funds, regardless of who holds or controls the Federal reserve funds or such asset, shall be considered to be the property of the United States, prorated based on the percentage of such asset developed or purchased with Federal reserve funds, which property shall be used in the operation of the program authorized by this part, as provided in subsection (d) of this section. The Secretary may restrict or regulate the use of such asset only to the extent necessary to reasonably protect the Secretary's prorated share of the value of such asset. The Secretary may direct a guaranty agency, or such agency's officers or directors, to cease any activity involving expenditures, use, or transfer of the Federal Fund administered by the guaranty agency that the Secretary determines is a misapplication, misuse, or improper expenditure of the Federal Fund or the Secretary's share of such asset.

(f) Transition

(1) In general

In order to establish the Operating Fund, each guaranty agency may transfer not more than 180 days' cash expenses for normal operating expenses (not including claim payments) as a working capital reserve as defined in Office of Management and Budget Circular A–87 (Cost Accounting Standards) from the Federal Fund for deposit into the Operating Fund for use in the performance of the guaranty agency's duties under this part. Such transfers may occur during the first 3 years following the establishment of the Operating Fund. However, no agency may transfer in excess of 45 percent of the balance, as of September 30, 1998, of the agency's Federal Fund to the agency's Operating Fund during such 3-year period. In determining the amount that may be transferred, the agency shall ensure that sufficient funds remain in the Federal Fund to pay lender claims within the required time periods and to meet the reserve recall requirements of this section and subsections (h) and (i) of section 1072 of this title.

(2) Special rule

A limited number of guaranty agencies may transfer interest earned on the Federal Fund to the Operating Fund during the first 3 years after October 7, 1998, if the guaranty agency demonstrates to the Secretary that—

(A) the cash flow in the Operating Fund will be negative without the transfer of such interest; and

(B) the transfer of such interest will substantially improve the financial circumstances of the guaranty agency.

(3) Repayment provisions

Each guaranty agency shall begin repayment of sums transferred pursuant to this subsection not later than the start of the fourth year after the establishment of the Operating Fund, and shall repay all amounts transferred not later than 5 years from the date of the establishment of the Operating Fund. With respect to amounts transferred from the Federal Fund, the guaranty agency shall not be required to repay any interest on the funds transferred and subsequently repaid. The guaranty agency shall provide to the Secretary a reasonable schedule for repayment of the sums transferred and an annual financial analysis demonstrating the agency's ability to comply with the schedule and repay all outstanding sums transferred.

(4) Prohibition

If a guaranty agency transfers funds from the Federal Fund in accordance with this section, and fails to make scheduled repayments to the Federal Fund, the agency may not receive any other funds under this part until the Secretary determines that the agency has made such repayments. The Secretary shall pay to the guaranty agency any funds withheld in accordance with this paragraph immediately upon making the determination that the guaranty agency has made all such repayments.

(5) Waiver

The Secretary may—

(A) waive the requirements of paragraph (3), but only with respect to repayment of interest that was transferred in accordance with paragraph (2); and

(B) waive paragraph (4);

for a guaranty agency, if the Secretary determines that there are extenuating circumstances (such as State constitutional prohibitions) beyond the control of the agency that justify such a waiver.

(6) Extension of repayment period for interest

(A) Extension permitted

The Secretary shall extend the period for repayment of interest that was transferred in accordance with paragraph (2) from 2 years to 5 years if the Secretary determines that—

(i) the cash flow of the Operating Fund will be negative as a result of repayment as required by paragraph (3);

(ii) the repayment of the interest transferred will substantially diminish the financial circumstances of the guaranty agency; and

(iii) the guaranty agency has demonstrated—

(I) that the agency is able to repay all transferred funds by the end of the 8th year following the date of establishment of the Operating Fund; and

(II) that the agency will be financially sound on the completion of repayment.

(B) Repayment of income on transferred funds

All repayments made to the Federal Fund during the 6th, 7th, and 8th years following the establishment of the Operating Fund of interest that was transferred shall include the sums transferred plus any income earned from the investment of the sums transferred after the 5th year.

(7) Investment of Federal funds

Funds transferred from the Federal Fund to the Operating Fund for operating expenses shall be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities selected by the guaranty agency, with the approval of the Secretary.

(8) Special rule

In calculating the minimum reserve level required by section 1078(c)(9)(A) of this title, the Secretary shall include all amounts owed to the Federal Fund by the guaranty agency in the calculation.

(Pub. L. 89–329, title IV, § 422A, as added Pub. L. 105–244, title IV, § 413(a), Oct. 7, 1998, 112 Stat. 1674; amended Pub. L. 110–315, title IV, § 438(a)(1), Aug. 14, 2008, 122 Stat. 3258.)

REFERENCES IN TEXT

Section 1078(c)(6)(A) of this title, referred to in subsec. (c)(2)(A), was redesignated section 1078(c)(6)(A)(i) of this title by Pub. L. 109–171, title VIII, § 8014(d)(3)(A), (B), Feb. 8, 2006, 120 Stat. 170.

AMENDMENTS

2008—Subsec. (d)(1). Pub. L. 110–315 substituted ''and 1087'' for ''1087, and 1087–2(q)''.

EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

§ 1072b. Agency Operating Fund

(a) Establishment

Each guaranty agency shall, not later than 60 days after October 7, 1998, establish a fund designated as the Operating Fund.

(b) Investment of funds

Funds deposited into the Operating Fund shall be invested at the discretion of the guaranty agency in accordance with prudent investor standards.

(c) Additional deposits

After the establishment of the Operating Fund, the guaranty agency shall deposit into the Operating Fund—

(1) the loan processing and issuance fee paid by the Secretary pursuant to section 1078(f) of this title;

(2) 30 percent of amounts received after October 7, 1998, from the Secretary as payment for administrative cost allowances for loans upon which insurance was issued prior to October 7, 1998;

(3) the account maintenance fee paid by the Secretary in accordance with section 1087h of this title;

(4) the default aversion fee paid in accordance with section 1078(*l*) of this title;

(5) amounts remaining pursuant to section 1078(c)(6)(B)[1] of this title from collection on defaulted loans held by the agency, after payment of the Secretary's equitable share, excluding amounts deposited in the Federal Fund pursuant to section 1072a(c)(2) of this title; and

(6) other receipts as specified in regulations of the Secretary.

(d) Uses of funds

(1) In general

Funds in the Operating Fund shall be used for application processing, loan disbursement, enrollment and repayment status management, default aversion activities (including those described in section 1072(h)(8) of this title), default collection activities, school and lender training, financial aid awareness and related outreach activities, compliance monitoring, and other student financial aid related activities, as selected by the guaranty agency.

(2) Special rule

The guaranty agency may, in the agency's discretion, transfer funds from the Operating Fund to the Federal Fund for use pursuant to section 1072a of this title. Such transfer shall be irrevocable, and any funds so transferred shall become the sole property of the United States.

(3) Definitions

For purposes of this subsection:

(A) Default collection activities

The term ''default collection activities'' means activities of a guaranty agency that are directly related to the collection of the loan on which a default claim has been paid to the participating lender, including the due diligence activities required pursuant to regulations of the Secretary.

(B) Default aversion activities

The term ''default aversion activities'' means activities of a guaranty agency that are directly related to providing collection assistance to the lender on a delinquent loan, prior to the loan's being legally in a default status, including due diligence activities required pursuant to regulations of the Secretary.

(C) Enrollment and repayment status management

The term ''enrollment and repayment status management'' means activities of a

[1] See References in Text note below.

guaranty agency that are directly related to ascertaining the student's enrollment status, including prompt notification to the lender of such status, an audit of the note or written agreement to determine if the provisions of that note or agreement are consistent with the records of the guaranty agency as to the principal amount of the loan guaranteed, and an examination of the note or agreement to assure that the repayment provisions are consistent with the provisions of this part.

(e) Ownership and regulation of Operating Fund

(1) Ownership

The Operating Fund, with the exception of funds transferred from the Federal Fund in accordance with section 1072a(f) of this title, shall be considered to be the property of the guaranty agency.

(2) Regulation

Except as provided in paragraph (3), the Secretary may not regulate the uses or expenditure of moneys in the Operating Fund, but the Secretary may require such necessary reports and audits as provided in section 1078(b)(2) of this title.

(3) Exception

Notwithstanding paragraphs (1) and (2), during any period in which funds are owed to the Federal Fund as a result of transfer under section 1072a(f) of this title—

(A) moneys in the Operating Fund may only be used for expenses related to the student loan programs authorized under this part; and

(B) the Secretary may regulate the uses or expenditure of moneys in the Operating Fund.

(Pub. L. 89–329, title IV, § 422B, as added Pub. L. 105–244, title IV, § 413(b), Oct. 7, 1998, 112 Stat. 1677.)

REFERENCES IN TEXT

Section 1078(c)(6)(B) of this title, referred to in subsec. (c)(5), was redesignated section 1078(c)(6)(A)(ii) of this title by Pub. L. 109–171, title VIII, § 8014(d)(3)(A), (B), Feb. 8, 2006, 120 Stat. 170.

EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

§ 1073. Effects of adequate non-Federal programs

(a) Federal insurance barred to lenders with access to State or private insurance

Except as provided in subsection (b) of this section, the Secretary shall not issue certificates of insurance under section 1079 of this title to lenders in a State if the Secretary determines that every eligible institution has reasonable access in that State to a State or private nonprofit student loan insurance program which is covered by an agreement under section 1078(b) of this title.

(b) Exceptions

The Secretary may issue certificates of insurance under section 1079 of this title to a lender in a State—

(1) for insurance of a loan made to a student borrower who does not, by reason of the borrower's residence, have access to loan insurance under the loan insurance program of such State (or under any private nonprofit loan insurance program which has received an advance under section 1072 of this title for the benefit of students in such State);

(2) for insurance of all the loans made to student borrowers by a lender who satisfies the Secretary that, by reason of the residence of such borrowers, such lender will not have access to any single State or nonprofit private loan insurance program which will insure substantially all of the loans such lender intends to make to such student borrowers; or

(3) under such circumstances as may be approved by the guaranty agency in such State, for the insurance of a loan to a borrower for whom such lender previously was issued such a certificate if the loan covered by such certificate is not yet repaid.

(Pub. L. 89–329, title IV, § 423, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1358.)

PRIOR PROVISIONS

A prior section 1073, Pub. L. 89–329, title IV, § 423, Nov. 8, 1965, 79 Stat. 1237; Pub. L. 90–575, title I, § 119(a), Oct. 16, 1968, 82 Stat. 1026; Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2103; Pub. L. 95–43, § 1(a)(14), June 15, 1977, 91 Stat. 214; Pub. L. 96–374, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1503, limited participation in Federal loan insurance programs, prior to the general revision of this part by Pub. L. 99–498.

§ 1074. Scope and duration of Federal loan insurance program

(a) Limitations on amounts of loans covered by Federal insurance

The total principal amount of new loans made and installments paid pursuant to lines of credit (as defined in section 1085 of this title) to students covered by Federal loan insurance under this part shall not exceed $2,000,000,000 for the period from July 1, 1976, to September 30, 1976, for each of the succeeding fiscal years ending prior to October 1, 2009, and for the period from October 1, 2009, to June 30, 2010, for loans first disbursed on or before June 30, 2010.

(b) Apportionment of amounts

The Secretary may, if he or she finds it necessary to do so in order to assure an equitable distribution of the benefits of this part, assign, within the maximum amounts specified in subsection (a) of this section, Federal loan insurance quotas applicable to eligible lenders, or to States or areas, and may from time to time reassign unused portions of these quotas.

(Pub. L. 89–329, title IV, § 424, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1358; amended Pub. L. 102–325, title IV, § 411(b)(1), July 23, 1992, 106 Stat. 510; Pub. L. 105–33, title VI, § 6104(1), Aug. 5, 1997, 111 Stat. 652; Pub. L. 105–244, title IV, § 414, Oct. 7, 1998, 112 Stat. 1679; Pub. L. 109–171, title VIII, § 8004(b)(1), Feb. 8, 2006, 120 Stat. 158; Pub. L. 110–315, title IV, § 421, Aug. 14, 2008, 122 Stat. 3227; Pub. L. 111–152, title II, § 2202, Mar. 30, 2010, 124 Stat. 1074.)

PRIOR PROVISIONS

A prior section 1074, Pub. L. 89–329, title IV, § 424, Nov. 8, 1965, 79 Stat. 1237; Pub. L. 90–460, § 1(a)(1), Aug. 3, 1968, 82 Stat. 634; Pub. L. 90–575, title I, § 112(a), Oct. 16, 1968, 82 Stat. 1020; Pub. L. 92–318, title I, § 132(a), June 23, 1972, 86 Stat. 261; Pub. L. 94–328, § 2(a), June 30, 1976, 90 Stat. 727; Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2103; Pub. L. 96–374, title IV, § 411(a), title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1415, 1503; Pub. L. 99–272, title XVI, § 16018(a)(1), Apr. 7, 1986, 100 Stat. 348, related to new loans under Federal loan insurance program, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–152 substituted ''September 30, 1976, for each of the succeeding fiscal years ending prior to October 1, 2009, and for the period from October 1, 2009, to June 30, 2010, for loans first disbursed on or before June 30, 2010.'' for ''September 30, 1976, and for each of the succeeding fiscal years ending prior to October 1, 2014. Thereafter, Federal loan insurance pursuant to this part may be granted only for loans made (or for loan installments paid pursuant to lines of credit) to enable students, who have obtained prior loans insured under this part, to continue or complete their educational program; but no insurance may be granted for any loan made or installment paid after September 30, 2018.''

2008—Subsec. (a). Pub. L. 110–315 substituted ''October 1, 2014'' for ''October 1, 2012'' and ''September 30, 2018'' for ''September 30, 2016''.

2006—Subsec. (a). Pub. L. 109–171 substituted ''October 1, 2012'' for ''October 1, 2004'' and ''September 30, 2016'' for ''September 30, 2008''.

1998—Subsec. (a). Pub. L. 105–244 substituted ''October 1, 2004'' for ''October 1, 2002'' and ''September 30, 2008'' for ''September 30, 2006''.

1997—Subsec. (a). Pub. L. 105–33 substituted ''October 1, 2002'' for ''October 1, 1998'' and ''September 30, 2006'' for ''September 30, 2002''.

1992—Subsec. (a). Pub. L. 102–325 substituted ''October 1, 1998'' for ''October 1, 1992'' and ''September 30, 2002'' for ''September 30, 1997''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

§ 1075. Limitations on individual federally insured loans and on Federal loan insurance

(a) Annual and aggregate limits

(1) Annual limits

(A) The total of loans made to a student in any academic year or its equivalent (as determined by the Secretary) which may be covered by Federal loan insurance under this part may not exceed—

(i) in the case of a student at an eligible institution who has not successfully completed the first year of a program of undergraduate education—

(I) $3,500, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 1088 of this title); and

(II) if such student is enrolled in a program of undergraduate education which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as the length of such program measured in semester, trimester, quarter, or clock hours bears to one academic year;

(ii) in the case of a student at an eligible institution who has successfully completed such first year but has not successfully completed the remainder of a program of undergraduate education—

(I) $4,500; or

(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year;

(iii) in the case of a student at an eligible institution who has successfully completed the first and second years of a program of undergraduate education but has not successfully completed the remainder of such program—

(I) $5,500; or

(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year; and

(iv) in the case of a graduate or professional student (as defined in regulations of the Secretary) at an eligible institution, $8,500.

(B) The annual insurable limits contained in subparagraph (A) shall not apply in cases where the Secretary determines, pursuant to regulations, that a higher amount is warranted in order to carry out the purpose of this part with respect to students engaged in specialized training requiring exceptionally high costs of education. The annual insurable limit per student shall not be deemed to be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any year in excess of the annual limit.

(C) For the purpose of subparagraph (A), the number of years that a student has completed in a program of undergraduate education shall include any prior enrollment in an eligible program of undergraduate education for which the student was awarded an associate or baccalaureate degree, if such degree is required by the institution for admission to the program in which the student is enrolled.

(2) Aggregate limits

(A) The aggregate insured unpaid principal amount for all such insured loans made to any student shall not at any time exceed—

(i) $23,000, in the case of any student who has not successfully completed a program of undergraduate education, excluding loans made under section 1078–1[1] or 1078–2 of this title; and

(ii) $65,500, in the case of any graduate or professional student (as defined by regulations of the Secretary) and (I) including any loans which are insured by the Secretary under this section, or by a guaranty agency, made to such student before the student became a graduate or professional student),[2] but (II) excluding loans made under section 1078–1[1] or 1078–2 of this title,

except that the Secretary may increase the limit applicable to students who are pursuing programs which the Secretary determines are exceptionally expensive.

(B) The Secretary may increase the aggregate insurable limit applicable to students who are pursuing programs which the Secretary determines are exceptionally expensive.

(b) Level of insurance coverage based on default rate

(1) Reduction for defaults in excess of 5 or 9 percent

(A) Except as provided in subparagraph (B), the insurance liability on any loan insured by the Secretary under this part shall be 100 percent of the unpaid balance of the principal amount of the loan plus interest, except that—

(i) if, for any fiscal year, the total amount of payments under section 1080 of this title by the Secretary to any eligible lender as described in section 1085(d)(1)(D) of this title exceeds 5 percent of the sum of the loans made by such lender which are insured by the Secretary and which were in repayment at the end of the preceding fiscal year, the insurance liability under this subsection for that portion of such excess which represents loans insured after the applicable date with respect to such loans, as determined under subparagraph (C), shall be equal to 90 percent of the amount of such portion; or

(ii) if, for any fiscal year, the total amount of such payments to such a lender exceeds 9 percent of such sum, the insurance liability under this subsection for that portion of such excess which represents loans insured after the applicable date with respect to such loans, as determined under subparagraph (C), shall be equal to 80 percent of the amount of such portion.

(B) Notwithstanding subparagraph (A), the provisions of clauses (i) and (ii) of such subparagraph shall not apply to an eligible lender as described in section 1085(d)(1)(D) of this title for the fiscal year in which such lender begins to carry on a loan program insured by the Secretary, or for any of the 4 succeeding fiscal years.

(C) The applicable date with respect to a loan made by an eligible lender as described in section 1085(d)(1)(D) of this title shall be—

(i) the 90th day after the adjournment of the next regular session of the appropriate State legislature which convenes after October 12, 1976, or

(ii) if the primary source of lending capital for such lender is derived from the sale of bonds, and the constitution of the appropriate State prohibits a pledge of such State's credit as security against such bonds, the day which is one year after such 90th day.

(2) Computation of amounts in repayment

For the purpose of this subsection, the sum of the loans made by a lender which are insured by the Secretary and which are in repayment shall be the original principal amount of loans made by such lender which are insured by the Secretary reduced by—

(A) the amount the Secretary has been required to pay to discharge his or her insurance obligations under this part;

(B) the original principal amount of loans insured by the Secretary which have been fully repaid;

(C) the original principal amount insured on those loans for which payment of first installment of principal has not become due pursuant to section 1077(a)(2)(B) of this title or such first installment need not be paid pursuant to section 1077(a)(2)(C) of this title; and

(D) the original principal amount of loans repaid by the Secretary under section 1087 of this title.

(3) Payments to assignees

For the purpose of this subsection, payments by the Secretary under section 1080 of this title to an assignee of the lender with respect to a loan shall be deemed payments made to such lender.

(4) Pledge of full faith and credit

The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under the provisions of section 1080 or 1087 of this title.

(Pub. L. 89–329, title IV, § 425, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1359; amended Pub. L. 100–50, § 10(a), June 3, 1987, 101 Stat. 341; Pub. L. 102–325, title IV, § 413, July 23, 1992, 106 Stat. 512; Pub. L. 103–208, § 2(c)(2), (3), Dec. 20, 1993, 107 Stat. 2460, 2461; Pub. L. 105–244, title IV, § 415, Oct. 7, 1998, 112 Stat. 1679; Pub. L. 109–171, title VIII, § 8005(a), Feb. 8, 2006, 120 Stat. 158.)

REFERENCES IN TEXT

Section 1078–1 of this title, referred to in subsec. (a)(2)(A), was repealed by Pub. L. 103–66, title IV, § 4047(b)–(d), Aug. 10, 1993, 107 Stat. 364, eff. July 1, 1994, except with respect to loans provided under that section as it existed prior to Aug. 10, 1993. Subsequently, a new section 1078–1, relating to voluntary flexible agreements with guaranty agencies, was enacted by Pub. L. 105–244, title IV, § 418, Oct. 7, 1998, 112 Stat. 1691.

PRIOR PROVISIONS

A prior section 1075, Pub. L. 89–329, title IV, § 425, Nov. 8, 1965, 79 Stat. 1238; Pub. L. 90–575, title I, §§ 116(b)(1),

[1] See References in Text note below.

[2] So in original. There is no opening parenthesis.

120(a)(2), Oct. 16, 1968, 82 Stat. 1023, 1027; Pub. L. 92–318, title I, §§132A(a), 132B(a), June 23, 1972, 86 Stat. 261, 262; Pub. L. 94–482, title I, §127(a), Oct. 12, 1976, 90 Stat. 2104; Pub. L. 95–43, §1(a)(15)–(17), June 15, 1977, 91 Stat. 214; Pub. L. 95–566, §5(b)(2), Nov. 1, 1978, 92 Stat. 2403; Pub. L. 96–374, title IV, §412(a), (b), (f), title XIII, §1391(a)(1), Oct. 3, 1980, 94 Stat. 1416, 1417, 1503; Pub. L. 97–35, title V, §535(a), (b), Aug. 13, 1981, 95 Stat. 455; Pub. L. 99–272, title XVI, §16013(e)(1), Apr. 7, 1986, 100 Stat. 341, limited Federal loan insurance, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2006—Subsec. (a)(1)(A)(i)(I). Pub. L. 109–171, §8005(a)(1), substituted ''$3,500'' for ''$2,625''.

Subsec. (a)(1)(A)(ii)(I). Pub. L. 109–171, §8005(a)(2), substituted ''$4,500'' for ''$3,500''.

1998—Subsec. (a)(1)(A)(i)(I). Pub. L. 105–244, §415(1)(A), inserted ''and'' after semicolon.

Subsec. (a)(1)(A)(i)(II), (III). Pub. L. 105–244, §415(1)(B), added subcl. (II) and struck out former subcls. (II) and (III) which read as follows:

''(II) $1,750, if such student is enrolled in a program whose length is less than one academic year, but at least ⅔ of such an academic year; and

''(III) $875, if such student is enrolled in a program whose length is less than ⅔, but at least ⅓, of such an academic year;''.

Subsec. (a)(1)(A)(iii)(II). Pub. L. 105–244, §415(2), inserted ''and'' after semicolon at end.

1993—Subsec. (a)(1)(A)(ii), (iii). Pub. L. 103–208, §2(c)(2)(A), added cls. (ii) and (iii) and struck out former cls. (ii) and (iii) which read as follows:

''(ii) the case of a student who has successfully completed such first year but has not successfully completed the remainder of a program of undergraduate study—

''(I) $3,500, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 1088 of this title);

''(II) $2,325, if such student is enrolled in a program whose length is less than one academic year, but at least ⅔ of such an academic year; and

''(III) $1,175, if such student is enrolled in a program whose length is less than ⅔, but at least ⅓, of such an academic year;

''(iii) in the case of a student at an eligible institution who has successfully completed such first and second year but has not successfully completed the remainder of a program of undergraduate study—

''(I) $5,500, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 1088 of this title);

''(II) $3,675, if such student is enrolled in a program whose length is less than one academic year, but at least ⅔ of such an academic year; and

''(III) $1,825, if such student is enrolled in a program whose length is less than ⅔, but at least ⅓, of such an academic year; and''.

Subsec. (a)(1)(A)(iv). Pub. L. 103–208, §2(c)(2)(B), substituted a period for semicolon at end.

Subsec. (a)(1)(C). Pub. L. 103–208, §2(c)(3), added subpar. (C).

1992—Subsec. (a)(1)(A). Pub. L. 102–325, §413(1), added cls. (i) to (iv) and struck out former cls. (i) to (iii) which read as follows:

''(i) $2,625, in the case of a student who has not successfully completed the first and second year of a program of undergraduate education;

''(ii) $4,000, in the case of a student who has successfully completed such first and second year but who has not successfully completed the remainder of a program of undergraduate education; or

''(iii) $7,500, in the case of a graduate or professional student (as defined in regulations of the Secretary).''

Subsec. (a)(2)(A). Pub. L. 102–325, §413(2), added cls. (i) and (ii) and concluding provision and struck out former cls. (i) and (ii) which read as follows:

''(i) $17,250, in the case of any student who has not successfully completed a program of undergraduate education, excluding loans made under section 1078–1 or 1078–2 of this title; and

''(ii) $54,750, in the case of any graduate or professional student (as defined by regulations of the Secretary and including any loans which are insured by the Secretary under this part, or by a guaranty agency, made to such person before he or she became a graduate or professional student), excluding loans made under section 1078–1 or 1078–2 of this title.''

1987—Subsec. (a)(2)(A)(i). Pub. L. 100–50, §10(a)(1), inserted '', excluding loans made under section 1078–1 or 1078–2 of this title'' after ''undergraduate education''.

Subsec. (a)(2)(A)(ii). Pub. L. 100–50, §10(a)(2), inserted '', excluding loans made under section 1078–1 or 1078–2 of this title'' after ''graduate or professional student)''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VIII, §8005(e), Feb. 8, 2006, 120 Stat. 159, provided that: ''The amendments made by subsections (a), (b), and (d) [amending this section and sections 1078 and 1078–8 of this title] shall be effective July 1, 2007.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 2(c)(2) of Pub. L. 103–208 effective on and after July 1, 1994 and amendment by section 2(c)(3) of Pub. L. 103–208 effective on and after Dec. 20, 1993, see section 5(b)(2), (6) of Pub. L. 103–208 set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective July 23, 1992, with changes made in subsec. (a), relating to annual and aggregate loan limits, applicable with respect to loans for which first disbursement is made on or after July 1, 1993, except that changes made in subsec. (a)(1)(A)(i) applicable with respect to loans for which first disbursement is made on or after Oct. 1, 1992, and except that changes made in subsec. (a)(1)(A)(iv) applicable with respect to loans to cover costs of instruction for periods of enrollment beginning on or after Oct. 1, 1993, see section 432 of Pub. L. 102–325, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1986, except that subsec. (a) of this section applicable only to loans disbursed on or after Jan. 1, 1987, or made to cover the costs of instruction for periods of enrollment beginning on or after Jan. 1, 1987, see section 402(b) of Pub. L. 99–498, set out as a note under section 1071 of this title.

§ 1076. Sources of funds

Loans made by eligible lenders in accordance with this part shall be insurable by the Secretary whether made from funds fully owned by the lender or from funds held by the lender in a trust or similar capacity and available for such loans.

(Pub. L. 89–329, title IV, §426, as added Pub. L. 99–498, title IV, §402(a), Oct. 17, 1986, 100 Stat. 1361.)

PRIOR PROVISIONS

A prior section 1076, Pub. L. 89–329, title IV, §426, Nov. 8, 1965, 79 Stat. 1238; Pub. L. 94–482, title I, §127(a), Oct.

12, 1976, 90 Stat. 2106; Pub. L. 96–374, title XIII, §1391(a)(1), Oct. 3, 1980, 94 Stat. 1503, related to insurability of loans made from funds owned by lender or held by lender in trust, prior to the general revision of this part by Pub. L. 99–498.

§ 1077. Eligibility of student borrowers and terms of federally insured student loans

(a) List of requirements

Except as provided in section 1078–3 of this title, a loan by an eligible lender shall be insurable by the Secretary under the provisions of this part only if—

(1) made to a student who (A) is an eligible student under section 1091 of this title, (B) has agreed to notify promptly the holder of the loan concerning any change of address, and (C) is carrying at least one-half the normal full-time academic workload for the course of study the student is pursuing (as determined by the institution); and

(2) evidenced by a note or other written agreement which—

(A) is made without security and without endorsement;

(B) provides for repayment (except as provided in subsection (c) of this section) of the principal amount of the loan in installments over a period of not less than 5 years (unless sooner repaid or unless the student, during the 6 months preceding the start of the repayment period, specifically requests that repayment be made over a shorter period) nor more than 10 years beginning 6 months after the month in which the student ceases to carry at an eligible institution at least one-half the normal full-time academic workload as determined by the institution, except—

(i) as provided in subparagraph (C);

(ii) that the note or other written instrument may contain such reasonable provisions relating to repayment in the event of default in the payment of interest or in the payment of the cost of insurance premiums, or other default by the borrower, as may be authorized by regulations of the Secretary in effect at the time the loan is made; and

(iii) that the lender and the student, after the student ceases to carry at an eligible institution at least one-half the normal full-time academic workload as determined by the institution, may agree to a repayment schedule which begins earlier, or is of shorter duration, than required by this subparagraph, but in the event a borrower has requested and obtained a repayment period of less than 5 years, the borrower may at any time prior to the total repayment of the loan, have the repayment period extended so that the total repayment period is not less than 5 years;

(C) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid, during any period—

(i) during which the borrower—

(I) is pursuing at least a half-time course of study as determined by an eligible institution; or

(II) is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for individuals with disabilities approved by the Secretary,

except that no borrower shall be eligible for a deferment under this clause, or a loan made under this part (other than a loan made under section 1078–2 or 1078–3 of this title), while serving in a medical internship or residency program;

(ii) not in excess of 3 years during which the borrower is seeking and unable to find full-time employment; or

(iii) not in excess of 3 years for any reason which the lender determines, in accordance with regulations prescribed by the Secretary under section 1085(*o*) of this title, has caused or will cause the borrower to have an economic hardship;

and provides that any such period shall not be included in determining the 10-year period described in subparagraph (B);

(D) provides for interest on the unpaid principal balance of the loan at a yearly rate, not exceeding the applicable maximum rate prescribed in section 1077a of this title, which interest shall be payable in installments over the period of the loan except that, if provided in the note or other written agreement, any interest payable by the student may be deferred until not later than the date upon which repayment of the first installment of principal falls due, in which case interest accrued during that period may be added on that date to the principal;

(E) provides that the lender will not collect or attempt to collect from the borrower any portion of the interest on the note which is payable by the Secretary under this part, and that the lender will enter into such agreements with the Secretary as may be necessary for the purpose of section 1087 of this title;

(F) entitles the student borrower to accelerate without penalty repayment of the whole or any part of the loan;

(G)(i) contains a notice of the system,[1] of disclosure of information concerning such loan to consumer reporting agencies under section 1080a of this title, and (ii) provides that the lender on request of the borrower will provide information on the repayment status of the note to such consumer reporting agencies;

(H) provides that, no more than 6 months prior to the date on which the borrower's first payment on a loan is due, the lender shall offer the borrower the option of repaying the loan in accordance with a graduated or income-sensitive repayment schedule established by the lender and in accordance with the regulations of the Secretary; and

(I) contains such other terms and conditions, consistent with the provisions of this part and with the regulations issued by the Secretary pursuant to this part, as may be

[1] So in original. The comma probably should not appear.

agreed upon by the parties to such loan, including, if agreed upon, a provision requiring the borrower to pay the lender, in addition to principal and interest, amounts equal to the insurance premiums payable by the lender to the Secretary with respect to such loan;

(3) the funds borrowed by a student are disbursed to the institution by check or other means that is payable to and requires the endorsement or other certification by such student, except—

(A) that nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted—

(i) to allow the Secretary to require checks to be made copayable to the institution and the borrower; or

(ii) to prohibit the disbursement of loan proceeds by means other than by check; and

(B) in the case of any student who is studying outside the United States in a program of study abroad that is approved for credit by the home institution at which such student is enrolled, the funds shall, at the request of the borrower, be delivered directly to the student and the checks may be endorsed, and fund transfers authorized, pursuant to an authorized power-of-attorney; and

(4) the funds borrowed by a student are disbursed in accordance with section 1078–7 of this title.

(b) Special rules for multiple disbursement

For the purpose of subsection (a)(4) of this section—

(1) all loans issued for the same period of enrollment shall be considered as a single loan; and

(2) the requirements of such subsection shall not apply in the case of a loan made under section 1078–2 or 1078–3 of this title, or made to a student to cover the cost of attendance at an eligible institution outside the United States.

(c) Special repayment rules

Except as provided in subsection (a)(2)(H) of this section, the total of the payments by a borrower during any year of any repayment period with respect to the aggregate amount of all loans to that borrower which are insured under this part shall not, unless the borrower and the lender otherwise agree, be less than $600 or the balance of all such loans (together with interest thereon), whichever amount is less (but in no instance less than the amount of interest due and payable).

(d) Borrower information

The lender shall obtain the borrower's driver's license number, if any, at the time of application for the loan.

(Pub. L. 89–329, title IV, §427, as added Pub. L. 99–498, title IV, §402(a), Oct. 17, 1986, 100 Stat. 1361; amended Pub. L. 100–50, §10(b), (c), June 3, 1987, 101 Stat. 341; Pub. L. 100–369, §§5(b)(1), 7(c), 11(a), July 18, 1988, 102 Stat. 836–838; Pub. L. 101–239, title II, §§2002(a)(1), 2004(b)(2), Dec. 19, 1989, 103 Stat. 2111, 2116; Pub. L. 102–164, title VI, §§601(a), 602(a), Nov. 15, 1991, 105 Stat. 1065, 1066; Pub. L. 102–325, title IV, §414, July 23, 1992, 106 Stat. 513; Pub. L. 103–208, §2(c)(4), Dec. 20, 1993, 107 Stat. 2461; Pub. L. 110–315, title IV, §432(b)(1), Aug. 14, 2008, 122 Stat. 3246.)

PRIOR PROVISIONS

A prior section 1077, Pub. L. 89–329, title IV, §427, Nov. 8, 1965, 79 Stat. 1238; Pub. L. 89–794, title XI, §1101(b)(1), Nov. 8, 1966, 80 Stat. 1476; Pub. L. 90–460, §2(a)(1), Aug. 3, 1968, 82 Stat. 635; Pub. L. 90–575, title I, §§113(b)(2), 116(b)(2), 117(c), 120(c)(2), Oct. 16, 1968, 82 Stat. 1021, 1023, 1026, 1027; Pub. L. 92–318, title I, §§132B(b), 132C(c), June 23, 1972, 86 Stat. 262, 263; Pub. L. 94–482, title I, §127(a), Oct. 12, 1976, 90 Stat. 2106; Pub. L. 95–43, §1(a)(9), (18), June 15, 1977, 91 Stat. 213, 214; Pub. L. 95–566, §5(a)(1), Nov. 1, 1978, 92 Stat. 2403; Pub. L. 96–374, title IV, §§413(a), (c), 415(a)(2), (b)(1), 416(a)(2), 423(a)(1), title XIII, §1391(a)(1), Oct. 3, 1980, 94 Stat. 1417–1421, 1432, 1503; Pub. L. 97–35, title V, §537(b)(1), (d)(2), (e)(1), Aug. 13, 1981, 95 Stat. 456, 457; Pub. L. 98–79, §10[(a)], Aug. 15, 1983, 97 Stat. 484; Pub. L. 99–272, title XVI, §§16012(a), 16013(b), 16017(b)(1), Apr. 7, 1986, 100 Stat. 339, 340, 347, set out conditions for Federal loan insurance, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2008—Subsec. (a)(2)(G)(i). Pub. L. 110–315, §432(b)(1)(A), substituted ''consumer reporting agencies'' for ''credit bureau organizations''.

Subsec. (a)(2)(G)(ii). Pub. L. 110–315, §432(b)(1)(B), substituted ''consumer reporting agencies'' for ''organizations''.

1993—Subsec. (a)(2)(C)(i). Pub. L. 103–208 inserted ''section'' before ''1078–2 or 1078–3''.

1992—Subsec. (a)(2)(A). Pub. L. 102–325, §414(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''is made without security and without endorsement, except that prior to making a loan insurable by the Secretary under this part a lender shall—

''(i) obtain a credit report, from at least one national credit bureau organization, with respect to a loan applicant who will be at least 21 years of age as of July 1 of the award year for which assistance is being sought, for which the lender may charge the applicant an amount not to exceed the lesser of $25 or the actual cost of obtaining the credit report; and

''(ii) require an applicant of the age specified in clause (i) who, in the judgment of the lender in accordance with the regulations of the Secretary, has an adverse credit history, to obtain a credit worthy cosigner in order to obtain the loan, provided that, for purposes of this clause, an insufficient or nonexistent credit history may not be considered to be an adverse credit history;''.

Subsec. (a)(2)(C). Pub. L. 102–325, §414(b), amended subpar. (C) generally, revising and restating as cls. (i) to (iii) provisions formerly contained in cls. (i) to (xi).

Subsec. (a)(2)(G) to (I). Pub. L. 102–325, §414(c)(1), struck out ''and'' at end of subpar. (G), added subpar. (H), and redesignated former subpar. (H) as (I).

Subsec. (a)(3). Pub. L. 102–325, §414(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''the funds borrowed by a student are disbursed to the institution by check or other means that is payable to and requires the endorsement or other certification by such student, except nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted to allow the Secretary to require checks to be made co-payable to the institution and the borrower or to prohibit the disbursement of loan proceeds by means other than by check; and''.

Subsec. (c). Pub. L. 102–325, §414(c)(2), (e), substituted ''Special repayment rules'' for ''Minimum repayment rate'' in heading and in text ''Except as provided in subsection (a)(2)(H) of this section, the total'' for ''The total'' and ''(but in no instance less than the amount of

interest due and payable)'' for '', except that in the case of a husband and wife, both of whom have such loans outstanding, the total of the combined payments for such a couple during any year shall not be less than $600 or the balance of all such loans, whichever is less''.

1991—Subsec. (a)(2)(A). Pub. L. 102–164, § 601(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''is made without security and without endorsement, except that if the borrower is a minor and such note or other written agreement executed by the borrower would not, under the applicable law, create a binding obligation, endorsement may be required;''.

Subsec. (d). Pub. L. 102–164, § 602(a), added subsec. (d).

1989—Subsec. (a)(2)(C)(i). Pub. L. 101–239, § 2002(a)(1), inserted before semicolon at end '', except that no borrower shall be eligible for a deferment under this clause, or a loan made under this part (other than a loan made under section 1078–2 or 1078–3 of this title), while serving in a medical internship or residency program''.

Subsec. (a)(4). Pub. L. 101–239, § 2004(b)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''in the case of any loan made for any period of enrollment that ends more than 180 days (or 6 months) after the date disbursement is scheduled to occur, and for an amount of $1,000 or more, the proceeds of the loan will, subject to subsection (b) of this section, be disbursed directly by the lender in two or more installments, none of which exceeds one-half of the loan, with the second installment being disbursed after not less than one-third of such period (except as necessary to permit the second installment to be disbursed at the beginning of the second semester, quarter, or similar division of such period of enrollment).''

1988—Subsec. (a)(2)(C)(v). Pub. L. 100–369, § 7(c), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (a)(2)(C)(vii). Pub. L. 100–369, § 11(a), inserted ''after January 1, 1986,'' after ''service''.

Subsec. (b)(2). Pub. L. 100–369, § 5(b)(1), substituted ''section 1078–2 or 1078–3'' for ''section 1078–1, 1078–2, or 1078–3''.

1987—Subsec. (a)(2)(C)(vi). Pub. L. 100–50, § 10(b)(1), inserted ''nonprofit'' before ''private''.

Subsec. (a)(2)(C)(vii). Pub. L. 100–50, § 10(b)(2), inserted ''or serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training'' before semicolon at end.

Subsec. (a)(4). Pub. L. 100–50, § 10(c), substituted ''$1,000 or more'' for ''more than $1,000''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1003 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective July 23, 1992, except that changes made in subsec. (a)(2)(C), relating to deferments, applicable with respect to loans for which first disbursement is made on or after July 1, 1993, to an individual who is a new borrower on date such individual applies for a loan, and except that changes made in subsec. (a)(2)(H), relating to offering graduated or income sensitive repayment options, applicable with respect to loans for which first disbursement is made on or after July 1, 1993, to an individual who is a new borrower on date such individual applies for a loan, see section 432 of Pub. L. 102–325, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 2002(a)(4) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and sections 1078 and 1087dd of this title] shall apply to any loan made, insured, or guaranteed under part B or part E of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq., 1087aa et seq.], including a loan made before the enactment of this Act [Dec. 19, 1989], and shall take effect on January 1, 1990, except that such amendments shall not apply with respect to any portion of a period of deferment granted to a borrower under section 427(a)(2)(C)(i), 428(b)(1)(M)(i), or 464(c)(2)(A)(i) of the Higher Education Act of 1965 [sections 1077(a)(2)(C)(i), 1078(b)(1)(M)(i), 1087dd(c)(2)(A)(i) of this title] for service in a medical internship or residency program that is completed prior to the effective date of this section [Dec. 19, 1989].''

Section 2004(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [enacting section 1078–7 of this title and amending this section and section 1078 of this title] shall apply with respect to loans made to cover the cost of instruction for periods of enrollment beginning on or after January 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 11(b) of Pub. L. 100–369 provided that: ''The amendments made by subsection (a) [amending this section and section 1078 of this title] and section 10(b) of the Higher Education Technical Amendments Act of 1987 [section 10(b) of Pub. L. 100–50, amending this section and section 1078 of this title] shall apply with respect to loans made, insured or guaranteed under part B of the Higher Education Act of 1965 [probably means part B of title IV of Pub. L. 89–329 which is classified to this part], on, before, or after the date of enactment of the Higher Education Technical Amendments Act of 1987 [June 3, 1987].''

Amendment by section 5(b)(1) of Pub. L. 100–369 effective with respect to loans made on or after Oct. 1, 1988, and amendment by section 7(c) of Pub. L. 100–369 effective July 18, 1988, see section 13(b) of Pub. L. 100–369, set out as a note under section 1091 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10(b) of Pub. L. 100–50 applicable with respect to loans made, insured or guaranteed under this part on, before, or after June 3, 1987, see section 11(b) of Pub. L. 100–369, set out as an Effective Date of 1988 Amendment note above.

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1986, except that subsec. (a)(2)(C) (other than cls. (viii), (ix), and (x) thereof) of this section shall apply only to loans to new borrowers made to cover the costs of instruction for periods of enrollment beginning on or after July 1, 1987, or disbursed on or after July 1, 1987, see section 402(b) of Pub. L. 99–498, set out as a note under section 1071 of this title.

§ 1077a. Applicable interest rates

(a) Rates to be consistent for borrower's entire debt

With respect to any loan to cover the cost of instruction for any period of instruction beginning on or after January 1, 1981, the rate of interest applicable to any borrower shall—

(1) not exceed 7 percent per year on the unpaid principal balance of the loan in the case of any borrower who, on the date of entering into the note or other written evidence of that loan, has an outstanding balance of principal or interest on any loan made, insured, or guaranteed under this part, for which the interest rate does not exceed 7 percent;

(2) except as provided in paragraph (3), be 9 percent per year on the unpaid principal balance of the loan in the case of any borrower who, on the date of entering into the note or other written evidence of that loan, has no outstanding balance of principal or interest on any loan described in paragraph (1) or any loan for which the interest rate is determined under paragraph (1); or

(3) be 8 percent per year on the unpaid principal balance of the loan for a loan to cover the cost of education for any period of enrollment beginning on or after a date which is 3 months after a determination made under subsection (b) of this section in the case of any borrower who, on the date of entering into the note or other written evidence of the loan, has no outstanding balance of principal or interest on any loan for which the interest rate is determined under paragraph (1) or (2) of this subsection.

(b) Reduction for new borrowers after decline in Treasury bill rates

If for any 12-month period beginning on or after January 1, 1981, the Secretary, after consultation with the Secretary of the Treasury, determines that the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 12-month period is equal to or less than 9 percent, the interest rate for loans under this part shall be the rate prescribed in subsection (a)(3) of this section for borrowers described in such subsection.

(c) Rates for supplemental loans for students and loans for parents

(1) In general

Except as otherwise provided in this subsection, the applicable rate of interest on loans made pursuant to section 1078–1[1] or 1078–2 of this title on or after October 1, 1981, shall be 14 percent per year on the unpaid principal balance of the loan.

(2) Reduction of rate after decline in Treasury bill rates

If for any 12-month period beginning on or after October 1, 1981, the Secretary, after consultation with the Secretary of the Treasury, determines that the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 12-month period is equal to or less than 14 percent, the applicable rate of interest for loans made pursuant to section 1078–1[1] or 1078–2 of this title on and after the first day of the first month beginning after the date of publication of such determination shall be 12 percent per year on the unpaid principal balance of the loan.

(3) Increase of rate after increase in Treasury bill rates

If for any 12-month period beginning on or after the date of publication of a determination under paragraph (2), the Secretary, after consultation with the Secretary of the Treasury, determines that the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 12-month period exceeds 14 percent, the applicable rate of interest for loans made pursuant to section 1078–1[1] or 1078–2 of this title on and after the first day of the first month beginning after the date of publication of that determination under this paragraph shall be 14 percent per year on the unpaid principal balance of the loan.

(4) Availability of variable rates

(A) For any loan made pursuant to section 1078–1[1] or 1078–2 of this title and disbursed on or after July 1, 1987, or any loan made pursuant to such section prior to such date that is refinanced pursuant to section 1078–1(d)[1] or 1078–2(d) of this title, the applicable rate of interest during any 12-month period beginning on July 1 and ending on June 30 shall be determined under subparagraph (B), except that such rate shall not exceed 12 percent.

(B)(i) For any 12-month period beginning on July 1 and ending on or before June 30, 2001, the rate determined under this subparagraph is determined on the preceding June 1 and is equal to—

(I) the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to such June 1; plus

(II) 3.25 percent.

(ii) For any 12-month period beginning on July 1 of 2001 or any succeeding year, the rate determined under this subparagraph is determined on the preceding June 26 and is equal to—

(I) the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before such June 26; plus

(II) 3.25 percent.

(C) The Secretary shall determine the applicable rate of interest under subparagraph (B) after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

(D) Notwithstanding subparagraph (A)—

(i) for any loan made pursuant to section 1078–1[1] of this title for which the first disbursement is made on or after October 1, 1992—

(I) subparagraph (B) shall be applied by substituting ''3.1'' for ''3.25''; and

(II) the interest rate shall not exceed 11 percent; and

(ii) for any loan made pursuant to section 1078–2 of this title for which the first disbursement is made on or after October 1, 1992—

(I) subparagraph (B) shall be applied by substituting ''3.1'' for ''3.25''; and

(II) the interest rate shall not exceed 10 percent.

(E) Notwithstanding subparagraphs (A) and (D) for any loan made pursuant to section 1078–2 of this title for which the first disbursement is made on or after July 1, 1994—

(i) subparagraph (B) shall be applied by substituting ''3.1'' for ''3.25''; and

(ii) the interest rate shall not exceed 9 percent.

[1] See References in Text note below.

(d) Interest rates for new borrowers after July 1, 1988

Notwithstanding subsections (a) and (b) of this section, with respect to any loan (other than a loan made pursuant to sections 1078–1,[1] 1078–2, and 1078–3 of this title) to cover the cost of instruction for any period of enrollment beginning on or after July 1, 1988, to any borrower who, on the date of entering into the note or other written evidence of the loan, has no outstanding balance of principal or interest on any loan made, insured, or guaranteed under this part, the applicable rate of interest shall be—

(1) 8 percent per year on the unpaid principal balance of the loan during the period beginning on the date of the disbursement of the loan and ending 4 years after the commencement of repayment; and

(2) 10 percent per year on the unpaid principal balance of the loan during the remainder of the repayment period.

(e) Interest rates for new borrowers after October 1, 1992

(1) In general

Notwithstanding subsections (a), (b), and (d) of this section, with respect to any loan (other than a loan made pursuant to sections 1078–1,[1] 1078–2 and 1078–3 of this title) for which the first disbursement is made on or after October 1, 1992, to any borrower who, on the date of entering into the note or other written evidence of the loan, has no outstanding balance of principal or interest on any loan made, insured, or guaranteed under section 1077, 1078, or 1078–8 of this title, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(B) 3.10 percent,

except that such rate shall not exceed 9 percent.

(2) Consultation

The Secretary shall determine the applicable rate of interest under paragraph (1) after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

(f) Interest rates for new loans after July 1, 1994

(1) In general

Notwithstanding subsections (a), (b), (d), and (e) of this section, with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to section 1078–2 or 1078–3 of this title) for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(B) 3.10 percent,

except that such rate shall not exceed 8.25 percent.

(2) Consultation

The Secretary shall determine the applicable rate of interest under paragraph (1) after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

(g) In school and grace period rules

(1) General rule

Notwithstanding the provisions of subsection (f) of this section, but subject to subsection (h) of this section, with respect to any loan under section 1078 or 1078–8 of this title for which the first disbursement is made on or after July 1, 1995, the applicable rate of interest for interest which accrues—

(A) prior to the beginning of the repayment period of the loan; or

(B) during the period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 1078(b)(1)(M) or 1077(a)(2)(C) of this title,

shall not exceed the rate determined under paragraph (2).

(2) Rate determination

For purposes of paragraph (1), the rate determined under this paragraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction prior to such June 1; plus

(B) 2.5 percent,

except that such rate shall not exceed 8.25 percent.

(3) Consultation

The Secretary shall determine the applicable rate of interest under this subsection after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

(h) Interest rates for new loans after July 1, 1998

(1) In general

Notwithstanding subsections (a), (b), (d), (e), (f), and (g) of this section, with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to sections 1078–2 and 1078–3 of this title) for which the first disbursement is made on or after July 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(A) the bond equivalent rate of the securities with a comparable maturity as established by the Secretary; plus

(B) 1.0 percent,

except that such rate shall not exceed 8.25 percent.

(2) Interest rates for new PLUS loans after July 1, 1998

Notwithstanding subsections (a), (b), (d), (e), (f), and (g) of this section, with respect to any

loan made under section 1078–2 of this title for which the first disbursement is made on or after July 1, 1998, paragraph (1) shall be applied—

(A) by substituting ''2.1 percent'' for ''1.0 percent'' in subparagraph (B); and

(B) by substituting ''9.0 percent'' for ''8.25 percent'' in the matter following such subparagraph.

(3) Consultation

The Secretary shall determine the applicable rate of interest under this subsection after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

(i) Treatment of excess interest payments on new borrower accounts resulting from decline in Treasury bill rates

(1) Excess interest on 10 percent loans

If, with respect to a loan for which the applicable interest rate is 10 percent under subsection (d) of this section at the close of any calendar quarter, the sum of the average of the bond equivalent rates of 91-day Treasury bills auctioned for that quarter and 3.25 percent is less than 10 percent, then an adjustment shall be made to a borrower's account—

(A) by calculating excess interest in the amount computed under paragraph (2) of this subsection; and

(B)(i) during any period in which a student is eligible to have interest payments paid on his or her behalf by the Government pursuant to section 1078(a) of this title, by crediting the excess interest to the Government; or

(ii) during any other period, by crediting such excess interest to the reduction of principal to the extent provided in paragraph (5) of this subsection.

(2) Amount of adjustment for 10 percent loans

The amount of any adjustment of interest on a loan to be made under this subsection for any quarter shall be equal to—

(A) 10 percent minus the sum of (i) the average of the bond equivalent rates of 91-day Treasury bills auctioned for such calendar quarter, and (ii) 3.25 percent; multiplied by

(B) the average daily principal balance of the loan (not including unearned interest added to principal) during such calendar quarter; divided by

(C) four.

(3) Excess interest on loans after 1992 amendments, to borrowers with outstanding balances

If, with respect to a loan made on or after July 23, 1992, to a borrower, who on the date of entering into the note or other written evidence of the loan, has an outstanding balance of principal or interest on any other loan made, insured, or guaranteed under this part, the sum of the average of the bond equivalent rates of 91-day Treasury bills auctioned for that quarter and 3.1 percent is less than the applicable interest rate, then an adjustment shall be made—

(A) by calculating excess interest in the amount computed under paragraph (4) of this subsection; and

(B)(i) during any period in which a student is eligible to have interest payments paid on his or her behalf by the Government pursuant to section 1078(a) of this title, by crediting the excess interest to the Government; or

(ii) during any other period, by crediting such excess interest to the reduction of principal to the extent provided in paragraph (5) of this subsection.

(4) Amount of adjustment

The amount of any adjustment of interest on a loan to be made under this subsection for any quarter shall be equal to—

(A) the applicable interest rate minus the sum of (i) the average of the bond equivalent rates of 91-day Treasury bills auctioned for such calendar quarter, and (ii) 3.1 percent; multiplied by

(B) the average daily principal balance of the loan (not including unearned interest added to principal) during such calendar quarter; divided by

(C) four.

(5) Annual adjustment of interest and borrower eligibility for credit

Any adjustment amount computed pursuant to paragraphs (2) and (4) of this subsection for any quarter shall be credited, by the holder of the loan on the last day of the calendar year in which such quarter falls, to the loan account of the borrower so as to reduce the principal balance of such account. No such credit shall be made to the loan account of a borrower who on the last day of the calendar year is delinquent for more than 30 days in making a required payment on the loan, but the excess interest shall be calculated and credited to the Secretary. Any credit which is to be made to a borrower's account pursuant to this subsection shall be made effective commencing no later than 30 days following the last day of the calendar year in which the quarter falls for which the credit is being made. Nothing in this subsection shall be construed to require refunding any repayment of a loan. At the option of the lender, the amount of such adjustment may be distributed to the borrower either by reduction in the amount of the periodic payment on loan, by reducing the number of payments that shall be made with respect to the loan, or by reducing the amount of the final payment of the loan. Nothing in this paragraph shall be construed to require the lender to make additional disclosures pursuant to section 1083(b) of this title.

(6) Publication of Treasury bill rate

For the purpose of enabling holders of loans to make the determinations and adjustments provided for in this subsection, the Secretary shall for each calendar quarter commencing with the quarter beginning on July 1, 1987, publish a notice of the average of the bond equivalent rates of 91-day Treasury bills auctioned for such quarter. Such notice shall be published not later than 7 days after the end of the quarter to which the notice relates.

(7) Conversion to variable rate

(A) Subject to subparagraphs (C) and (D), a lender or holder shall convert the interest rate on a loan that is made pursuant to this part and is subject to the provisions of this subsection to a variable rate. Such conversion shall occur not later than January 1, 1995, and, commencing on the date of conversion, the applicable interest rate for each 12-month period beginning on July 1 and ending on June 30 shall be determined by the Secretary on the June 1 preceding each such 12-month period and be equal to the sum of (i) the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to such June 1; and (ii) 3.25 percent in the case of loans described in paragraph (1), or 3.10 percent in the case of loans described in paragraph (3).

(B) In connection with the conversion specified in subparagraph (A) for any period prior to such conversion, and subject to paragraphs (C) and (D), a lender or holder shall convert the interest rate to a variable rate on a loan that is made pursuant to this part and is subject to the provisions of this subsection to a variable rate. The interest rates for such period shall be reset on a quarterly basis and the applicable interest rate for any quarter or portion thereof shall equal the sum of (i) the average of the bond equivalent rates of 91-Treasury bills auctioned for the preceding 3-month period, and (ii) 3.25 percent in the case of loans described in paragraph (1) or 3.10 percent in the case of loans described in paragraph (3). The rebate of excess interest derived through this conversion shall be provided to the borrower as specified in paragraph (5) for loans described in paragraph (1) or to the Government and borrower as specified in paragraph (3).

(C) A lender or holder of a loan being converted pursuant to this paragraph shall complete such conversion on or before January 1, 1995. The lender or holder shall notify the borrower that the loan shall be converted to a variable interest rate and provide a description of the rate to the borrower not later than 30 days prior to the conversion. The notice shall advise the borrower that such rate shall be calculated in accordance with the procedures set forth in this paragraph and shall provide the borrower with a substantially equivalent benefit as the adjustment otherwise provided for under this subsection. Such notice may be incorporated into the disclosure required under section 1083(b) of this title if such disclosure has not been previously made.

(D) The interest rate on a loan converted to a variable rate pursuant to this paragraph shall not exceed the maximum interest rate applicable to the loan prior to such conversion.

(E) Loans on which the interest rate is converted in accordance with subparagraph (A) or (B) shall not be subject to any other provisions of this subsection.

(j) Interest rates for new loans between July 1, 1998, and October 1, 1998

(1) In general

Notwithstanding subsection (h) of this section, but subject to paragraph (2), with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to section 1078–2 or 1078–3 of this title) for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(B) 2.3 percent,

except that such rate shall not exceed 8.25 percent.

(2) In school and grace period rules

Notwithstanding subsection (h) of this section, with respect to any loan under this part (other than a loan made pursuant to section 1078–2 or 1078–3 of this title) for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, the applicable rate of interest for interest which accrues—

(A) prior to the beginning of the repayment period of the loan; or

(B) during the period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 1078(b)(1)(M) or 1077(a)(2)(C) of this title,

shall be determined under paragraph (1) by substituting ''1.7 percent'' for ''2.3 percent''.

(3) PLUS loans

Notwithstanding subsection (h) of this section, with respect to any loan under section 1078–2 of this title for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to the lesser of—

(A)(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(ii) 3.1 percent; or

(B) 9.0 percent.

(4) Consultation

The Secretary shall determine the applicable rate of interest under this subsection after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

(k) Interest rates for new loans on or after October 1, 1998, and before July 1, 2006

(1) In general

Notwithstanding subsection (h) of this section and subject to paragraph (2) of this subsection, with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to section 1078–2 or 1078–3 of this title) for which the first disbursement is made on or after October 1, 1998, and before July 1, 2006, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be deter-

mined on the preceding June 1 and be equal to—

(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(B) 2.3 percent,

except that such rate shall not exceed 8.25 percent.

(2) In school and grace period rules

Notwithstanding subsection (h) of this section, with respect to any loan under this part (other than a loan made pursuant to section 1078–2 or 1078–3 of this title) for which the first disbursement is made on or after October 1, 1998, and before July 1, 2006, the applicable rate of interest for interest which accrues—

(A) prior to the beginning of the repayment period of the loan; or

(B) during the period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 1077(a)(2)(C) or 1078(b)(1)(M) of this title,

shall be determined under paragraph (1) by substituting ''1.7 percent'' for ''2.3 percent''.

(3) PLUS loans

Notwithstanding subsection (h) of this section, with respect to any loan under section 1078–2 of this title for which the first disbursement is made on or after October 1, 1998, and before July 1, 2006, the applicable rate of interest shall be determined under paragraph (1)—

(A) by substituting ''3.1 percent'' for ''2.3 percent''; and

(B) by substituting ''9.0 percent'' for ''8.25 percent''.

(4) Consolidation loans

With respect to any consolidation loan under section 1078–3 of this title for which the application is received by an eligible lender on or after October 1, 1998, and before July 1, 2006, the applicable rate of interest shall be at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—

(A) the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of 1 percent; or

(B) 8.25 percent.

(5) Consultation

The Secretary shall determine the applicable rate of interest under this subsection after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

(*l*) Interest rates for new loans on or after July 1, 2006, and before July 1, 2010

(1) In general

Notwithstanding subsection (h) of this section, with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to section 1078–2 or 1078–3 of this title) for which the first disbursement is made on or after July 1, 2006, and before July 1, 2010, the applicable rate of interest shall be 6.8 percent on the unpaid principal balance of the loan.

(2) PLUS loans

Notwithstanding subsection (h) of this section, with respect to any loan under section 1078–2 of this title for which the first disbursement is made on or after July 1, 2006, and before July 1, 2010, the applicable rate of interest shall be 8.5 percent on the unpaid principal balance of the loan.

(3) Consolidation loans

With respect to any consolidation loan under section 1078–3 of this title for which the application is received by an eligible lender on or after July 1, 2006, and that was disbursed before July 1, 2010, the applicable rate of interest shall be at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—

(A) the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of 1 percent; or

(B) 8.25 percent.

(4) Reduced rates for undergraduate subsidized loans

Notwithstanding subsection (h) and paragraph (1) of this subsection, with respect to any loan to an undergraduate student made, insured, or guaranteed under this part (other than a loan made pursuant to section 1078–2, 1078–3, or 1078–8 of this title) for which the first disbursement is made on or after July 1, 2006, and before July 1, 2010, the applicable rate of interest shall be as follows:

(A) For a loan for which the first disbursement is made on or after July 1, 2006, and before July 1, 2008, 6.8 percent on the unpaid principal balance of the loan.

(B) For a loan for which the first disbursement is made on or after July 1, 2008, and before July 1, 2009, 6.0 percent on the unpaid principal balance of the loan.

(C) For a loan for which the first disbursement is made on or after July 1, 2009, and before July 1, 2010, 5.6 percent on the unpaid principal balance of the loan.

(m) Lesser rates permitted

Nothing in this section or section 1078–3 of this title shall be construed to prohibit a lender from charging a borrower interest at a rate less than the rate which is applicable under this part.

(n) Definitions

For the purpose of subsections (a) and (d) of this section—

(1) the term ''period of instruction'' shall, at the discretion of the lender, be any academic year, semester, trimester, quarter, or other academic period; or shall be the period for which the loan is made as determined by the institution of higher education; and

(2) the term ''period of enrollment'' shall be the period for which the loan is made as determined by the institution of higher education and shall coincide with academic terms such as academic year, semester, trimester, quarter, or other academic period as defined by such institution.

(Pub. L. 89–329, title IV, § 427A, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1364; amended Pub. L. 100–50, § 10(d)(1), June 3, 1987, 101 Stat. 342; Pub. L. 102–325, title IV, § 415, July 23, 1992, 106 Stat. 514; Pub. L. 103–66, title IV, § 4101, Aug. 10, 1993, 107 Stat. 364; Pub. L. 103–208, § 2(c)(5)–(10), Dec. 20, 1993, 107 Stat. 2461; Pub. L. 105–178, title VIII, § 8301(a)(1), June 9, 1998, 112 Stat. 496; Pub. L. 105–244, title IV, § 416(a)(1), Oct. 7, 1998, 112 Stat. 1679; Pub. L. 106–554, § 1(a)(1) [title III, § 318(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–49; Pub. L. 107–139, § 1(a)(1), (c), Feb. 8, 2002, 116 Stat. 8, 9; Pub. L. 109–171, title VIII, § 8006(a), Feb. 8, 2006, 120 Stat. 159; Pub. L. 110–84, title II, § 201(a)(1), Sept. 27, 2007, 121 Stat. 790; Pub. L. 111–152, title II, § 2203, Mar. 30, 2010, 124 Stat. 1074.)

REFERENCES IN TEXT

Section 1078–1 of this title, referred to in subsecs. (c) to (e)(1), was repealed by Pub. L. 103–66, title IV, § 4047(b)–(d), Aug. 10, 1993, 107 Stat. 364, eff. July 1, 1994, except with respect to loans provided under that section as it existed prior to Aug. 10, 1993. Subsequently, a new section 1078–1, relating to voluntary flexible agreements with guaranty agencies, was enacted by Pub. L. 105–244, title IV, § 418, Oct. 7, 1998, 112 Stat. 1691.

CODIFICATION

Amendments by section 2(c)(6)–(10) of Pub. L. 103–208 (which were effective as if included in Pub. L. 102–325) were executed to this section as amended by Pub. L. 102–325 and Pub. L. 103–66, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 1077a, Pub. L. 89–329, title IV, § 427A, as added Pub. L. 96–374, title IV, § 415(a)(1), Oct. 3, 1980, 94 Stat. 1419; amended Pub. L. 97–35, title V, § 534(a)(1), Aug. 13, 1981, 95 Stat. 454; Pub. L. 98–79, § 5(a), (b)(1), Aug. 15, 1983, 97 Stat. 481, 482, prescribed applicable interest rates on loans, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2010—Subsec. (*l*). Pub. L. 111–152, § 2203(1), inserted ''and before July 1, 2010'' in heading.

Subsec. (*l*)(1), (2). Pub. L. 111–152, § 2203(2), (3), inserted ''and before July 1, 2010,'' after ''July 1, 2006,''.

Subsec. (*l*)(3). Pub. L. 111–152, § 2203(4), inserted ''and that was disbursed before July 1, 2010,'' after ''July 1, 2006,''.

Subsec. (*l*)(4). Pub. L. 111–152, § 2203(5)(A), substituted ''July 1, 2010'' for ''July 1, 2012'' in introductory provisions.

Subsec. (*l*)(4)(D), (E). Pub. L. 111–152, § 2203(5)(B), struck out subpars. (D) and (E) which read as follows:

''(D) For a loan for which the first disbursement is made on or after July 1, 2010, and before July 1, 2011, 4.5 percent on the unpaid principal balance of the loan.

''(E) For a loan for which the first disbursement is made on or after July 1, 2011, and before July 1, 2012, 3.4 percent on the unpaid principal balance of the loan.''

2007—Subsec. (*l*)(4). Pub. L. 110–84 added par. (4).

2006—Subsec. (*l*)(2). Pub. L. 109–171 substituted ''8.5 percent'' for ''7.9 percent''.

2002—Subsec. (k). Pub. L. 107–139, § 1(c), substituted ''2006'' for ''2003'' in heading and ''July 1, 2006,'' for ''July 1, 2003,'' wherever appearing in text.

Subsecs. (*l*) to (n). Pub. L. 107–139, § 1(a)(1), added subsec. (*l*) and redesignated former subsecs. (*l*) and (m) as (m) and (n), respectively.

2000—Subsec. (c)(4)(B). Pub. L. 106–554 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For any 12-month period beginning on July 1 and ending on June 30, the rate determined under this subparagraph is determined on the preceding June 1 and is equal to—

''(i) the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to such June 1; plus

''(ii) 3.25 percent.''

1998—Subsec. (j). Pub. L. 105–178, § 8301(a)(1)(B), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 105–244, § 416(a)(1)(B), added subsec. (k). Former subsec. (k) redesignated (*l*).

Pub. L. 105–178, § 8301(a)(1)(A), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 105–244, § 416(a)(1)(A), redesignated subsec. (k) as (*l*). Former subsec. (*l*) redesignated (m).

Pub. L. 105–178, § 8301(a)(1)(A), redesignated subsec. (k) as (*l*).

Subsec. (m). Pub. L. 105–244, § 416(a)(1)(A), redesignated subsec. (*l*) as (m).

1993—Subsec. (c)(4)(E). Pub. L. 103–66, § 4101(1), added subpar. (E).

Subsec. (e)(1). Pub. L. 103–208, § 2(c)(5), substituted ''under section 1077, 1078, or 1078–8 of this title'' for ''under this part''.

Subsecs. (f) to (h). Pub. L. 103–66, § 4101(3), added subsecs. (f) to (h). Former subsecs. (f) to (h) redesignated (i) to (k), respectively.

Subsec. (i). Pub. L. 103–66, § 4101(2), redesignated subsec. (f) as (i).

Subsec. (i)(1)(B). Pub. L. 103–208, § 2(c)(6), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''by crediting the excess interest to the reduction of principal to the extent provided for under paragraph (5) of this subsection.'' See Codification note above.

Subsec. (i)(2)(B). Pub. L. 103–208, § 2(c)(7), substituted ''average daily principal balance'' for ''outstanding principal balance'' and ''during'' for ''at the end of''. See Codification note above.

Subsec. (i)(4)(B). Pub. L. 103–208, § 2(c)(8), substituted ''average daily principal balance'' for ''outstanding principal balance'' and ''during'' for ''at the end of''. See Codification note above.

Subsec. (i)(5). Pub. L. 103–208, § 2(c)(9)(A)(i), (B), substituted ''paragraphs (2) and (4)'' for ''paragraph (2)'' in first sentence and inserted '', but the excess interest shall be calculated and credited to the Secretary'' after ''required payment on the loan'' in second sentence. See Codification note above.

Pub. L. 103–208, § 2(c)(9)(A)(ii), which directed substitution of ''principal'' for ''principle'' in first sentence, could not be executed because the word ''principle'' does not appear in text.

Subsec. (i)(7). Pub. L. 103–208, § 2(c)(10), added par. (7). See Codification note above.

Subsecs. (j), (k). Pub. L. 103–66, § 4101(2), redesignated subsecs. (g) and (h) as (j) and (k), respectively.

1992—Subsec. (c)(4)(D). Pub. L. 102–325, § 415(a), added subpar. (D).

Subsec. (e). Pub. L. 102–325, § 415(c)(2), added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 102–325, § 415(b), amended par. (1) heading and substituted ''paragraph (5)'' for ''paragraph (3)'' in par. (1)(B), amended par. (2) heading, added pars. (3) and (4), redesignated former par. (3) as (5), struck out ''or'' before ''by reducing the number'' and inserted '', or by reducing the amount of the final payment of the loan. Nothing in this paragraph shall be construed to require the lender to make additional disclosures pursuant to section 1083(b) of this title'' before period at end, redesignated former par. (4) as (6), and struck out former par. (5) which provided for study of treatment of excess interest payments provisions.

Subsecs. (f) to (h). Pub. L. 102–325, § 415(c)(1), redesignated subsecs. (e) to (g) as (f) to (h), respectively.

1987—Subsec. (c)(4)(A). Pub. L. 100–50, § 10(d)(1)(A), (B), substituted ''and disbursed on or after July 1, 1987'' for ''to cover the cost of instruction for any period of enrollment beginning on or after July 1, 1987'' and ''any 12-month period beginning on or after July 1 and ending on June 30'' for ''any calendar year''.

Subsec. (c)(4)(B). Pub. L. 100–50, § 10(d)(1)(C), added subpar. (B) and struck out former subpar. (B) which

read as follows: ''For any calendar year, the rate determined under this subparagraph is determined on December 15 preceding such calendar year and is equal to—

''(i) the average of the bond equivalent rates of 91-day Treasury bills auctioned during the 12 months ending on November 30 preceding such calendar year; plus

''(ii) 3.75 percent.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–84 effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as a note under section 1070a of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–244, title IV, § 416(c), Oct. 7, 1998, 112 Stat. 1682, provided that: ''The amendments made by this section [amending this section and sections 1078–2, 1078–3, and 1087–1 of this title] shall apply with respect to any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.] for which the first disbursement is made on or after October 1, 1998, and before July 1, 2003, except that such amendments shall apply with respect to any loan made under section 428C of such Act [20 U.S.C. 1078–3] for which the application is received by an eligible lender on or after October 1, 1998, and before July 1, 2003.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 2(c)(5) of Pub. L. 103–208 effective on and after Dec. 20, 1993, and amendment by section 2(c)(6)–(10) of Pub. L. 103–208 effective, except as otherwise provided, as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, see section 5(a), (b)(2) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

§ 1078. Federal payments to reduce student interest costs

(a) Federal interest subsidies

(1) Types of loans that qualify

Each student who has received a loan for study at an eligible institution for which the first disbursement is made before July 1, 2010, and—

(A) which is insured by the Secretary under this part; or

(B) which is insured under a program of a State or of a nonprofit private institution or organization which was contracted for, and paid to the student, within the period specified in paragraph (5), and which—

(i) in the case of a loan insured prior to July 1, 1967, was made by an eligible lender and is insured under a program which meets the requirements of subparagraph (E) of subsection (b)(1) of this section and provides that repayment of such loan shall be in installments beginning not earlier than 60 days after the student ceases to pursue a course of study (as described in subparagraph (D) of subsection (b)(1) of this section) at an eligible institution, or

(ii) in the case of a loan insured after June 30, 1967, was made by an eligible lender and is insured under a program covered by an agreement made pursuant to subsection (b) of this section,

shall be entitled to have paid on his or her behalf and for his or her account to the holder of the loan a portion of the interest on such loan under circumstances described in paragraph (2).

(2) Additional requirements to receive subsidy

(A) Each student qualifying for a portion of an interest payment under paragraph (1) shall—

(i) have provided to the lender a statement from the eligible institution, at which the student has been accepted for enrollment, or at which the student is in attendance, which—

(I) sets forth the loan amount for which the student shows financial need; and

(II) sets forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 1078–7 of this title;

(ii) meet the requirements of subparagraph (B); and

(iii) have provided to the lender at the time of application for a loan made, insured, or guaranteed under this part, the student's driver's number, if any.

(B) For the purpose of clause (ii) of subparagraph (A), a student shall qualify for a portion of an interest payment under paragraph (1) if the eligible institution has determined and documented the student's amount of need for a loan based on the student's estimated cost of attendance, estimated financial assistance, and, for the purpose of an interest payment pursuant to this section, expected family contribution (as determined under part E of this subchapter), subject to the provisions of subparagraph (D).

(C) For the purpose of this paragraph—

(i) a student's cost of attendance shall be determined under section 1087*ll of this title;*

(ii) a student's estimated financial assistance means, for the period for which the loan is sought—

(I) the amount of assistance such student will receive under subpart 1 of part A of this subchapter (as determined in accordance with section 1091(b) of this title), subpart 3 of part A of this subchapter, and part C of subchapter I of chapter 34 of title 42 and part D of this subchapter; plus

(II) other scholarship, grant, or loan assistance, but excluding—

(aa) any national service education award or post-service benefit under title I of the National and Community Service Act of 1990 [42 U.S.C. 12511 et seq.]; and

(bb) any veterans' education benefits as defined in section 1087vv(c) of this title; and

(iii) the determination of need and of the amount of a loan by an eligible institution under subparagraph (B) with respect to a student shall be calculated in accordance with part E of this subchapter.

(D) An eligible institution may not, in carrying out the provisions of subparagraphs (A) and (B) of this paragraph, provide a statement which certifies the eligibility of any student to receive any loan under this part in excess of the maximum amount applicable to such loan.

(E) For the purpose of subparagraphs (B) and (C) of this paragraph, any loan obtained by a student under section 1078–1[1] or 1078–8 of this title or a parent under section 1078–2 of this title or under any State-sponsored or private loan program for an academic year for which the determination is made may be used to offset the expected family contribution of the student for that year.

(3) Amount of interest subsidy

(A)(i) Subject to section 1087–1(c) of this title, the portion of the interest on a loan which a student is entitled to have paid, on behalf of and for the account of the student, to the holder of the loan pursuant to paragraph (1) of this subsection shall be equal to the total amount of the interest on the unpaid principal amount of the loan—

(I) which accrues prior to the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution), or

(II) which accrues during a period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in subsection (b)(1)(M) of this section or in section 1077(a)(2)(C) of this title.

(ii) Such portion of the interest on a loan shall not exceed, for any period, the amount of the interest on that loan which is payable by the student after taking into consideration the amount of any interest on that loan which the student is entitled to have paid on his or her behalf for that period under any State or private loan insurance program.

(iii) The holder of a loan with respect to which payments are required to be made under this section shall be deemed to have a contractual right, as against the United States, to receive from the Secretary the portion of interest which has been so determined without administrative delay after the receipt by the Secretary of an accurate and complete request for payment pursuant to paragraph (4).

(iv) The Secretary shall pay this portion of the interest to the holder of the loan on behalf of and for the account of the borrower at such times as may be specified in regulations in force when the applicable agreement entered into pursuant to subsection (b) of this section was made, or, if the loan was made by a State or is insured under a program which is not covered by such an agreement, at such times as may be specified in regulations in force at the time the loan was paid to the student.

(v) A lender may not receive interest on a loan for any period that precedes the date that is—

(I) in the case of a loan disbursed by check, 10 days before the first disbursement of the loan;

(II) in the case of a loan disbursed by electronic funds transfer, 3 days before the first disbursement of the loan; or

(III) in the case of a loan disbursed through an escrow agent, 3 days before the first disbursement of the loan.

(B) If—

(i) a State student loan insurance program is covered by an agreement under subsection (b) of this section,

(ii) a statute of such State limits the interest rate on loans insured by such program to a rate which is less than the applicable interest rate under this part, and

(iii) the Secretary determines that subsection (d) of this section does not make such statutory limitation inapplicable and that such statutory limitation threatens to impede the carrying out of the purpose of this part,

then the Secretary may pay an administrative cost allowance to the holder of each loan which is insured under such program and which is made during the period beginning on the 60th day after October 16, 1968, and ending 120 days after the adjournment of such State's first regular legislative session which adjourns after January 1, 1969. Such administrative cost allowance shall be paid over the term of the loan in an amount per year (determined by the Secretary) which shall not exceed 1 percent of the unpaid principal balance of the loan.

(4) Submission of statements by holders on amount of payment

Each holder of a loan with respect to which payments of interest are required to be made by the Secretary shall submit to the Secretary, at such time or times and in such manner as the Secretary may prescribe, statements containing such information as may be required by or pursuant to regulation for the purpose of enabling the Secretary to determine the amount of the payment which he must make with respect to that loan.

(5) Duration of authority to make interest subsidized loans

The period referred to in subparagraph (B) of paragraph (1) of this subsection shall begin on November 8, 1965, and end at the close of June 30, 2010.

(6) Assessment of borrower's financial condition not prohibited or required

Nothing in this chapter and part C of subchapter I of chapter 34 of title 42 or any other Act shall be construed to prohibit or require, unless otherwise specifically provided by law, a lender to evaluate the total financial situation of a student making application for a loan under this part, or to counsel a student with respect to any such loan, or to make a decision based on such evaluation and counseling with respect to the dollar amount of any such loan.

[1] See References in Text note below.

(7) Loans that have not been consummated

Lenders may not charge interest or receive interest subsidies or special allowance payments for loans for which the disbursement checks have not been cashed or for which electronic funds transfers have not been completed.

(b) Insurance program agreements to qualify loans for interest subsidies

(1) Requirements of insurance program

Any State or any nonprofit private institution or organization may enter into an agreement with the Secretary for the purpose of entitling students who receive loans which are insured under a student loan insurance program of that State, institution, or organization to have made on their behalf the payments provided for in subsection (a) of this section if the Secretary determines that the student loan insurance program—

(A) authorizes the insurance in any academic year, as defined in section 1088(a)(2) of this title, or its equivalent (as determined under regulations of the Secretary) for any student who is carrying at an eligible institution or in a program of study abroad approved for credit by the eligible home institution at which such student is enrolled at least one-half the normal full-time academic workload (as determined by the institution) in any amount up to a maximum of—

(i) in the case of a student at an eligible institution who has not successfully completed the first year of a program of undergraduate education—

(I) $3,500, if such student is enrolled in a program whose length is at least one academic year in length; and

(II) if such student is enrolled in a program of undergraduate education which is less than 1 academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as the length of such program measured in semester, trimester, quarter, or clock hours bears to 1 academic year;

(ii) in the case of a student at an eligible institution who has successfully completed such first year but has not successfully completed the remainder of a program of undergraduate education—

(I) $4,500; or

(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year;

(iii) in the case of a student at an eligible institution who has successfully completed the first and second years of a program of undergraduate education but has not successfully completed the remainder of such program—

(I) $5,500; or

(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year;

(iv) in the case of a student who has received an associate or baccalaureate degree and is enrolled in an eligible program for which the institution requires such degree for admission, the number of years that a student has completed in a program of undergraduate education shall, for the purposes of clauses (ii) and (iii), include any prior enrollment in the eligible program of undergraduate education for which the student was awarded such degree;

(v) in the case of a graduate or professional student (as defined in regulations of the Secretary) at an eligible institution, $8,500; and

(vi) in the case of a student enrolled in coursework specified in sections 1091(b)(3)(B) and 1091(b)(4)(B) of this title—

(I) $2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program, and, in the case of a student who has obtained a baccalaureate degree, $5,500 for coursework necessary for enrollment in a graduate or professional degree or certification program; and

(II) in the case of a student who has obtained a baccalaureate degree, $5,500 for coursework necessary for a professional credential or certification from a State required for employment as a teacher in an elementary school or secondary school;

except in cases where the Secretary determines, pursuant to regulations, that a higher amount is warranted in order to carry out the purpose of this part with respect to students engaged in specialized training requiring exceptionally high costs of education, but the annual insurable limit per student shall not be deemed to be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any years in excess of the annual limit;

(B) provides that the aggregate insured unpaid principal amount for all such insured loans made to any student shall be any amount up to a maximum of—

(i) $23,000, in the case of any student who has not successfully completed a program of undergraduate education, excluding loans made under section 1078–1[1] or 1078–2 of this title; and

(ii) $65,500, in the case of any graduate or professional student (as defined by regulations of the Secretary), and (I) including any loans which are insured by the Secretary under this section, or by a guaranty

agency, made to such student before the student became a graduate or professional student, but (II) excluding loans made under section 1078–1[1] or 1078–2 of this title,

except that the Secretary may increase the limit applicable to students who are pursuing programs which the Secretary determines are exceptionally expensive;

(C) authorizes the insurance of loans to any individual student for at least 6 academic years of study or their equivalent (as determined under regulations of the Secretary);

(D) provides that (i) the student borrower shall be entitled to accelerate without penalty the whole or any part of an insured loan, (ii) the student borrower may annually change the selection of a repayment plan under this part, and (iii) the note, or other written evidence of any loan, may contain such reasonable provisions relating to repayment in the event of default by the borrower as may be authorized by regulations of the Secretary in effect at the time such note or written evidence was executed, and shall contain a notice that repayment may, following a default by the borrower, be subject to income contingent repayment in accordance with subsection (m) of this section;

(E) subject to subparagraphs (D) and (L), and except as provided by subparagraph (M), provides that—

(i) not more than 6 months prior to the date on which the borrower's first payment is due, the lender shall offer the borrower of a loan made, insured, or guaranteed under this section or section 1078–8 of this title, the option of repaying the loan in accordance with a standard, graduated, income-sensitive, or extended repayment schedule (as described in paragraph (9)) established by the lender in accordance with regulations of the Secretary; and

(ii) repayment of loans shall be in installments in accordance with the repayment plan selected under paragraph (9) and commencing at the beginning of the repayment period determined under paragraph (7);

(F) authorizes interest on the unpaid balance of the loan at a yearly rate not in excess (exclusive of any premium for insurance which may be passed on to the borrower) of the rate required by section 1077a of this title;

(G) insures 98 percent of the unpaid principal of loans insured under the program, except that—

(i) such program shall insure 100 percent of the unpaid principal of loans made with funds advanced pursuant to subsection (j);

(ii) for any loan for which the first disbursement of principal is made on or after July 1, 2006, and before July 1, 2010, the preceding provisions of this subparagraph shall be applied by substituting ''97 percent'' for ''98 percent''; and

(iii) notwithstanding the preceding provisions of this subparagraph, such program shall insure 100 percent of the unpaid principal amount of exempt claims as defined in subsection (c)(1)(G);

(H) provides—

(i) for loans for which the date of guarantee of principal is before July 1, 2006, for the collection of a single insurance premium equal to not more than 1.0 percent of the principal amount of the loan, by deduction proportionately from each installment payment of the proceeds of the loan to the borrower, and ensures that the proceeds of the premium will not be used for incentive payments to lenders; or

(ii) for loans for which the date of guarantee of principal is on or after July 1, 2006, and that are first disbursed before July 1, 2010, for the collection, and the deposit into the Federal Student Loan Reserve Fund under section 1072a of this title of a Federal default fee of an amount equal to 1.0 percent of the principal amount of the loan, which fee shall be collected either by deduction from the proceeds of the loan or by payment from other non-Federal sources, and ensures that the proceeds of the Federal default fee will not be used for incentive payments to lenders;

(I) provides that the benefits of the loan insurance program will not be denied any student who is eligible for interest benefits under subsection (a)(1) and (2) of this section;

(J) provides that a student may obtain insurance under the program for a loan for any year of study at an eligible institution;

(K) in the case of a State program, provides that such State program is administered by a single State agency, or by one or more nonprofit private institutions or organizations under supervision of a single State agency;

(L) provides that the total of the payments by borrower—

(i) except as otherwise provided by a repayment plan selected by the borrower under clause (ii), (iii), or (v) of paragraph (9)(A), during any year of any repayment period with respect to the aggregate amount of all loans to that borrower which are insured under this part shall not, unless the borrower and the lender otherwise agree, be less than $600 or the balance of all such loans (together with interest thereon), whichever amount is less (but in no instance less than the amount of interest due and payable, notwithstanding any payment plan under paragraph (9)(A)); and

(ii) for a monthly or other similar payment period with respect to the aggregate of all loans held by the lender may, when the amount of a monthly or other similar payment is not a multiple of $5, be rounded to the next highest whole dollar amount that is a multiple of $5;

(M) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid by the Secretary, during any period—

(i) during which the borrower—

(I) is pursuing at least a half-time course of study as determined by an eli-

gible institution, except that no borrower, notwithstanding the provisions of the promissory note, shall be required to borrow an additional loan under this subchapter and part C of subchapter I of chapter 34 of title 42 in order to be eligible to receive a deferment under this clause; or

(II) is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for disabled individuals approved by the Secretary,

except that no borrower shall be eligible for a deferment under this clause, or loan made under this part (other than a loan made under section 1078–2 or 1078–3 of this title), while serving in a medical internship or residency program;

(ii) not in excess of 3 years during which the borrower is seeking and unable to find full-time employment, except that no borrower who provides evidence of eligibility for unemployment benefits shall be required to provide additional paperwork for a deferment under this clause;

(iii) during which the borrower—

(I) is serving on active duty during a war or other military operation or national emergency; or

(II) is performing qualifying National Guard duty during a war or other military operation or national emergency,

and for the 180-day period following the demobilization date for the service described in subclause (I) or (II); or

(iv) not in excess of 3 years for any reason which the lender determines, in accordance with regulations prescribed by the Secretary under section 1085(*o*) of this title, has caused or will cause the borrower to have an economic hardship;

(N) provides that funds borrowed by a student—

(i) are disbursed to the institution by check or other means that is payable to, and requires the endorsement or other certification by, such student;

(ii) in the case of a student who is studying outside the United States in a program of study abroad that is approved for credit by the home institution at which such student is enrolled, and only after verification of the student's enrollment by the lender or guaranty agency, are, at the request of the student, disbursed directly to the student by the means described in clause (i), unless such student requests that the check be endorsed, or the funds transfer be authorized, pursuant to an authorized power-of-attorney; or

(iii) in the case of a student who is studying outside the United States in a program of study at an eligible foreign institution, are, at the request of the foreign institution, disbursed directly to the student, only after verification of the student's enrollment by the lender or guaranty agency by the means described in clause (i).[2]

(O) provides that the proceeds of the loans will be disbursed in accordance with the requirements of section 1078–7 of this title;

(P) requires the borrower to notify the institution concerning any change in local address during enrollment and requires the borrower and the institution at which the borrower is in attendance promptly to notify the holder of the loan, directly or through the guaranty agency, concerning (i) any change of permanent address, (ii) when the student ceases to be enrolled on at least a half-time basis, and (iii) any other change in status, when such change in status affects the student's eligibility for the loan;

(Q) provides for the guarantee of loans made to students and parents under sections 1078–1[1] and 1078–2 of this title;

(R) with respect to lenders which are eligible institutions, provides for the insurance of loans by only such institutions as are located within the geographic area served by such guaranty agency;

(S) provides no restrictions with respect to the insurance of loans for students who are otherwise eligible for loans under such program if such a student is accepted for enrollment in or is attending an eligible institution within the State, or if such a student is a legal resident of the State and is accepted for enrollment in or is attending an eligible institution outside that State;

(T) authorizes (i) the limitation of the total number of loans or volume of loans, made under this part to students attending a particular eligible institution during any academic year; and (ii) the limitation, suspension, or termination of the eligibility of an eligible institution if—

(I) such institution is ineligible for the emergency action, limitation, suspension, or termination of eligible institutions under regulations issued by the Secretary or is ineligible pursuant to criteria, rules, or regulations issued under the student loan insurance program which are substantially the same as regulations with respect to emergency action, limitation, suspension, or termination of such eligibility issued by the Secretary;

(II) there is a State constitutional prohibition affecting the eligibility of such an institution;

(III) such institution fails to make timely refunds to students as required by regulations issued by the Secretary or has not satisfied within 30 days of issuance a final judgment obtained by a student seeking such a refund;

(IV) such institution or an owner, director, or officer of such institution is found guilty in any criminal, civil, or administrative proceeding, or such institution or an owner, director, or officer of such institution is found liable in any civil or administrative proceeding, regarding the ob-

[2] So in original. The period probably should be a semicolon.

taining, maintenance, or disbursement of State or Federal grant, loan, or work assistance funds; or

(V) such institution or an owner, director, or officer of such institution has unpaid financial liabilities involving the improper acquisition, expenditure, or refund of State or Federal financial assistance funds;

except that, if a guaranty agency limits, suspends, or terminates the participation of an eligible institution, the Secretary shall apply that limitation, suspension, or termination to all locations of such institution, unless the Secretary finds, within 30 days of notification of the action by the guaranty agency, that the guaranty agency's action did not comply with the requirements of this section;

(U) provides (i) for the eligibility of all lenders described in section 1085(d)(1) of this title under reasonable criteria, unless (I) that lender is eliminated as a lender under regulations for the emergency action, limitation, suspension, or termination of a lender under the Federal student loan insurance program or is eliminated as a lender pursuant to criteria issued under the student loan insurance program which are substantially the same as regulations with respect to such eligibility as a lender issued under the Federal student loan insurance program, or (II) there is a State constitutional prohibition affecting the eligibility of a lender, (ii) assurances that the guaranty agency will report to the Secretary concerning changes in such criteria, including any procedures in effect under such program to take emergency action, limit, suspend, or terminate lenders, and (iii) for (I) a compliance audit of each lender that originates or holds more than $5,000,000 in loans made under this subchapter and part C of subchapter I of chapter 34 of title 42 for any lender fiscal year (except that each lender described in section 1085(d)(1)(A)(ii)(III) of this title shall annually submit the results of an audit required by this clause), at least once a year and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary, or (II) with regard to a lender that is audited under chapter 75 of title 31, such audit shall be deemed to satisfy the requirements of subclause (I) for the period covered by such audit, except that the Secretary may waive the requirements of this clause (iii) if the lender submits to the Secretary the results of an audit conducted for other purposes that the Secretary determines provides the same information as the audits required by this clause;

(V) provides authority for the guaranty agency to require a participation agreement between the guaranty agency and each eligible institution within the State in which it is designated, as a condition for guaranteeing loans made on behalf of students attending the institution;

(W) provides assurances that the agency will implement all requirements of the Secretary for uniform claims and procedures pursuant to section 1082(*l*) of this title;

(X) provides information to the Secretary in accordance with subsection (c)(9) of this section and maintains reserve funds determined by the Secretary to be sufficient in relation to such agency's guarantee obligations; and

(Y) provides that—

(i) the lender shall determine the eligibility of a borrower for a deferment described in subparagraph (M)(i) based on—

(I) receipt of a request for deferment from the borrower and documentation of the borrower's eligibility for the deferment;

(II) receipt of a newly completed loan application that documents the borrower's eligibility for a deferment;

(III) receipt of student status information documenting that the borrower is enrolled on at least a half-time basis; or

(IV) the lender's confirmation of the borrower's half-time enrollment status through use of the National Student Loan Data System, if the confirmation is requested by the institution of higher education;

(ii) the lender will notify the borrower of the granting of any deferment under clause (i)(II) or (III) of this subparagraph and of the option to continue paying on the loan; and

(iii) the lender shall, at the time the lender grants a deferment to a borrower who received a loan under section 1078–8 of this title and is eligible for a deferment under subparagraph (M) of this paragraph, provide information to the borrower to assist the borrower in understanding the impact of the capitalization of interest on the borrower's loan principal and on the total amount of interest to be paid during the life of the loan.

(2) Contents of insurance program agreement

Such an agreement shall—

(A) provide that the holder of any such loan will be required to submit to the Secretary, at such time or times and in such manner as the Secretary may prescribe, statements containing such information as may be required by or pursuant to regulation for the purpose of enabling the Secretary to determine the amount of the payment which must be made with respect to that loan;

(B) include such other provisions as may be necessary to protect the United States from the risk of unreasonable loss and promote the purpose of this part, including such provisions as may be necessary for the purpose of section 1087 of this title, and as are agreed to by the Secretary and the guaranty agency, as the case may be;

(C) provide for making such reports, in such form and containing such information,

including financial information, as the Secretary may reasonably require to carry out the Secretary's functions under this part and protect the financial interest of the United States, and for keeping such records and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports;

(D) provide for—

(i) conducting, except as provided in clause (ii), financial and compliance audits of the guaranty agency on at least an annual basis and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

(ii) with regard to a guaranty program of a State which is audited under chapter 75 of title 31, deeming such audit to satisfy the requirements of clause (i) for the period of time covered by such audit;

(E)(i) provide that any guaranty agency may transfer loans which are insured under this part to any other guaranty agency with the approval of the holder of the loan and such other guaranty agency; and

(ii) provide that the lender (or the holder of the loan) shall, not later than 120 days after the borrower has left the eligible institution, notify the borrower of the date on which the repayment period begins; and

(F) provide that, if the sale, other transfer, or assignment of a loan made under this part to another holder will result in a change in the identity of the party to whom the borrower must send subsequent payments or direct any communications concerning the loans, then—

(i) the transferor and the transferee will be required, not later than 45 days from the date the transferee acquires a legally enforceable right to receive payment from the borrower on such loan, either jointly or separately to provide a notice to the borrower of—

(I) the sale or other transfer;

(II) the identity of the transferee;

(III) the name and address of the party to whom subsequent payments or communications must be sent;

(IV) the telephone numbers of both the transferor and the transferee;

(V) the effective date of the transfer;

(VI) the date on which the current servicer (as of the date of the notice) will stop accepting payments; and

(VII) the date on which the new servicer will begin accepting payments; and

(ii) the transferee will be required to notify the guaranty agency, and, upon the request of an institution of higher education, the guaranty agency shall notify the last such institution the student attended prior to the beginning of the repayment period of any loan made under this part, of—

(I) any sale or other transfer of the loan; and

(II) the address and telephone number by which contact may be made with the new holder concerning repayment of the loan,

except that this subparagraph (F) shall only apply if the borrower is in the grace period described in section 1077(a)(2)(B) of this title or subsection (b)(7) of this section or is in repayment status.

(3) Restrictions on inducements, payments, mailings, and advertising

A guaranty agency shall not—

(A) offer, directly or indirectly, premiums, payments, stock or other securities, prizes, travel, entertainment expenses, tuition payment or reimbursement, or other inducements to—

(i) any institution of higher education, any employee of an institution of higher education, or any individual or entity in order to secure applicants for loans made under this part; or

(ii) any lender, or any agent, employee, or independent contractor of any lender or guaranty agency, in order to administer or market loans made under this part (other than a loan made as part of the guaranty agency's lender-of-last-resort program pursuant to subsection (j)), for the purpose of securing the designation of the guaranty agency as the insurer of such loans;

(B) conduct unsolicited mailings, by postal or electronic means, of student loan application forms to students enrolled in secondary schools or postsecondary educational institutions, or to the families of such students, except that applications may be mailed, by postal or electronic means, to students or borrowers who have previously received loans guaranteed under this part by the guaranty agency;

(C) perform, for an institution of higher education participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42, any function that such institution is required to perform under this subchapter and part C of subchapter I of chapter 34 of title 42, except that the guaranty agency may perform functions on behalf of such institution in accordance with section 1092(b) or 1092(*l*) of this title;

(D) pay, on behalf of an institution of higher education, another person to perform any function that such institution is required to perform under this subchapter and part C of subchapter I of chapter 34 of title 42, except that the guaranty agency may perform functions on behalf of such institution in accordance with section 1092(b) or 1092(*l*) of this title; or

(E) conduct fraudulent or misleading advertising concerning loan availability, terms, or conditions.

It shall not be a violation of this paragraph for a guaranty agency to provide technical assistance to institutions of higher education comparable to the technical assistance provided to

institutions of higher education by the Department.

(4) Special rule

With respect to the graduate fellowship program referred to in paragraph (1)(M)(i)(II), the Secretary shall approve any course of study at a foreign university that is accepted for the completion of a recognized international fellowship program by the administrator of such a program. Requests for deferment of repayment of loans under this part by students engaged in graduate or postgraduate fellowship-supported study (such as pursuant to a Fulbright grant) outside the United States shall be approved until completion of the period of the fellowship.

(5) Guaranty agency information transfers

(A) Until such time as the Secretary has implemented section 1092b of this title and is able to provide to guaranty agencies the information required by such section, any guaranty agency may request information regarding loans made after January 1, 1987, to students who are residents of the State for which the agency is the designated guarantor, from any other guaranty agency insuring loans to such students.

(B) Upon a request pursuant to subparagraph (A), a guaranty agency shall provide—

(i) the name and the social security number of the borrower; and

(ii) the amount borrowed and the cumulative amount borrowed.

(C) Any costs associated with fulfilling the request of a guaranty agency for information on students shall be paid by the guaranty agency requesting the information.

(6) State guaranty agency information request of State licensing boards

Each guaranty agency is authorized to enter into agreements with each appropriate State licensing board under which the State licensing board, upon request, will furnish the guaranty agency with the address of a student borrower in any case in which the location of the student borrower is unknown or unavailable to the guaranty agency.

(7) Repayment period

(A) In the case of a loan made under section 1077 of this title or this section, the repayment period shall exclude any period of authorized deferment or forbearance and shall begin the day after 6 months after the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution).

(B) In the case of a loan made under section 1078–8 of this title, the repayment period shall exclude any period of authorized deferment or forbearance, and shall begin as described in subparagraph (A), but interest shall begin to accrue or be paid by the borrower on the day the loan is disbursed.

(C) In the case of a loan made under section 1078–2 or 1078–3 of this title, the repayment period shall begin on the day the loan is disbursed, or, if the loan is disbursed in multiple installments, on the day of the last such disbursement, and shall exclude any period of authorized deferment or forbearance.

(D) There shall be excluded from the 6-month period that begins on the date on which a student ceases to carry at least one-half the normal full-time academic workload as described in subparagraph (A) any period not to exceed 3 years during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10 is called or ordered to active duty for a period of more than 30 days (as defined in section 101(d)(2) of such title). Such period of exclusion shall include the period necessary to resume enrollment at the borrower's next available regular enrollment period.

(8) Means of disbursement of loan proceeds

Nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted to prohibit the disbursement of loan proceeds by means other than by check or to allow the Secretary to require checks to be made co-payable to the institution and the borrower.

(9) Repayment plans

(A) Design and selection

In accordance with regulations promulgated by the Secretary, the lender shall offer a borrower of a loan made under this part the plans described in this subparagraph for repayment of such loan, including principal and interest thereon. No plan may require a borrower to repay a loan in less than 5 years unless the borrower, during the 6 months immediately preceding the start of the repayment period, specifically requests that repayment be made over of[3] a shorter period. The borrower may choose from—

(i) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, not to exceed 10 years;

(ii) a graduated repayment plan paid over a fixed period of time, not to exceed 10 years;

(iii) an income-sensitive repayment plan, with income-sensitive repayment amounts paid over a fixed period of time, not to exceed 10 years, except that the borrower's scheduled payments shall not be less than the amount of interest due;

(iv) for new borrowers on or after October 7, 1998, who accumulate (after October 7, 1998) outstanding loans under this part totaling more than $30,000, an extended repayment plan, with a fixed annual or graduated repayment amount paid over an extended period of time, not to exceed 25 years, except that the borrower shall repay annually a minimum amount determined in accordance with paragraph (1)(L)(i); and

(v) beginning July 1, 2009, an income-based repayment plan that enables a borrower who has a partial financial hardship to make a lower monthly payment in accordance with section 1098e of this title, except that the plan described in this

[3] So in original.

clause shall not be available to a borrower for a loan under section 1078–2 of this title made on behalf of a dependent student or for a consolidation loan under section 1078–3 of this title, if the proceeds of such loan were used to discharge the liability of a loan under section 1078–2 of this title made on behalf of a dependent student.

(B) Lender selection of option if borrower does not select

If a borrower of a loan made under this part does not select a repayment plan described in subparagraph (A), the lender shall provide the borrower with a repayment plan described in subparagraph (A)(i).

(c) Guaranty agreements for reimbursing losses

(1) Authority to enter into agreements

(A) The Secretary may enter into a guaranty agreement with any guaranty agency, whereby the Secretary shall undertake to reimburse it, under such terms and conditions as the Secretary may establish, with respect to losses (resulting from the default of the student borrower) on the unpaid balance of the principal and accrued interest of any insured loan. The guaranty agency shall be deemed to have a contractual right against the United States, during the life of such loan, to receive reimbursement according to the provisions of this subsection. Upon receipt of an accurate and complete request by a guaranty agency for reimbursement with respect to such losses, the Secretary shall pay promptly and without administrative delay. Except as provided in subparagraph (B) of this paragraph and in paragraph (7), the amount to be paid a guaranty agency as reimbursement under this subsection shall be equal to 95 percent of the amount expended by it in discharge of its insurance obligation incurred under its loan insurance program. A guaranty agency shall file a claim for reimbursement with respect to losses under this subsection within 30 days after the guaranty agency discharges its insurance obligation on the loan.

(B) Notwithstanding subparagraph (A)—

(i) if, for any fiscal year, the amount of such reimbursement payments by the Secretary under this subsection exceeds 5 percent of the loans which are insured by such guaranty agency under such program and which were in repayment at the end of the preceding fiscal year, the amount to be paid as reimbursement under this subsection for such excess shall be equal to 85 percent of the amount of such excess; and

(ii) if, for any fiscal year, the amount of such reimbursement payments exceeds 9 percent of such loans, the amount to be paid as reimbursement under this subsection for such excess shall be equal to 75 percent of the amount of such excess.

(C) For the purpose of this subsection, the amount of loans of a guaranty agency which are in repayment shall be the original principal amount of loans made by a lender which are insured by such a guaranty agency reduced by—

(i) the amount the insurer has been required to pay to discharge its insurance obligations under this part;

(ii) the original principal amount of loans insured by it which have been fully repaid; and

(iii) the original principal amount insured on those loans for which payment of the first installment of principal has not become due pursuant to subsection (b)(1)(E) of this section or such first installment need not be paid pursuant to subsection (b)(1)(M) of this section.

(D) Notwithstanding any other provisions of this section, in the case of a loan made pursuant to a lender-of-last-resort program, the Secretary shall apply the provisions of—

(i) the fourth sentence of subparagraph (A) by substituting ''100 percent'' for ''95 percent'';

(ii) subparagraph (B)(i) by substituting ''100 percent'' for ''85 percent''; and

(iii) subparagraph (B)(ii) by substituting ''100 percent'' for ''75 percent''.

(E) Notwithstanding any other provisions of this section, in the case of an outstanding loan transferred to a guaranty agency from another guaranty agency pursuant to a plan approved by the Secretary in response to the insolvency of the latter such guarantee agency, the Secretary shall apply the provision of—

(i) the fourth sentence of subparagraph (A) by substituting ''100 percent'' for ''95 percent'';

(ii) subparagraph (B)(i) by substituting ''90 percent'' for ''85 percent''; and

(iii) subparagraph (B)(ii) by substituting ''80 percent'' for ''75 percent''.

(F)(i) Notwithstanding any other provisions of this section, in the case of exempt claims, the Secretary shall apply the provisions of—

(I) the fourth sentence of subparagraph (A) by substituting ''100 percent'' for ''95 percent'';

(II) subparagraph (B)(i) by substituting ''100 percent'' for ''85 percent''; and

(III) subparagraph (B)(ii) by substituting ''100 percent'' for ''75 percent''.

(ii) For purposes of clause (i) of this subparagraph, the term ''exempt claims'' means claims with respect to loans for which it is determined that the borrower (or the student on whose behalf a parent has borrowed), without the lender's or the institution's knowledge at the time the loan was made, provided false or erroneous information or took actions that caused the borrower or the student to be ineligible for all or a portion of the loan or for interest benefits thereon.

(G) Notwithstanding any other provision of this section, the Secretary shall exclude a loan made pursuant to a lender-of-last-resort program when making reimbursement payment calculations under subparagraphs (B) and (C).

(2) Contents of guaranty agreements

The guaranty agreement—

(A) shall set forth such administrative and fiscal procedures as may be necessary to pro-

tect the United States from the risk of unreasonable loss thereunder, to ensure proper and efficient administration of the loan insurance program, and to assure that due diligence will be exercised in the collection of loans insured under the program, including (i) a requirement that each beneficiary of insurance on the loan submit proof that the institution was contacted and other reasonable attempts were made to locate the borrower (when the location of the borrower is unknown) and proof that contact was made with the borrower (when the location is known) and (ii) requirements establishing procedures to preclude consolidation lending from being an excessive proportion of guaranty agency recoveries on defaulted loans under this part;

(B) shall provide for making such reports, in such form and containing such information, as the Secretary may reasonably require to carry out the Secretary's functions under this subsection, and for keeping such records and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports;

(C) shall set forth adequate assurances that, with respect to so much of any loan insured under the loan insurance program as may be guaranteed by the Secretary pursuant to this subsection, the undertaking of the Secretary under the guaranty agreement is acceptable in full satisfaction of State law or regulation requiring the maintenance of a reserve;

(D) shall provide that if, after the Secretary has made payment under the guaranty agreement pursuant to paragraph (1) of this subsection with respect to any loan, any payments are made in discharge of the obligation incurred by the borrower with respect to such loan (including any payments of interest accruing on such loan after such payment by the Secretary), there shall be paid over to the Secretary (for deposit in the fund established by section 1081 of this title) such proportion of the amounts of such payments as is determined (in accordance with paragraph (6)(A)) to represent his equitable share thereof, but (i) shall provide for subrogation of the United States to the rights of any insurance beneficiary only to the extent required for the purpose of paragraph (8); and (ii) except as the Secretary may otherwise by or pursuant to regulation provide, amounts so paid by a borrower on such a loan shall be first applied in reduction of principal owing on such loan;

(E) shall set forth adequate assurance that an amount equal to each payment made under paragraph (1) will be promptly deposited in or credited to the accounts maintained for the purpose of section 1072(c) of this title;

(F) set forth adequate assurances that the guaranty agency will not engage in any pattern or practice which results in a denial of a borrower's access to loans under this part 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 guaranty agency, length of the borrower's educational program, or the borrower's academic year in school;

(G) shall prohibit the Secretary from making any reimbursement under this subsection to a guaranty agency when a default claim is based on an inability to locate the borrower, unless the guaranty agency, at the time of filing for reimbursement, certifies to the Secretary that diligent attempts, including contact with the institution, have been made to locate the borrower through the use of reasonable skip-tracing techniques in accordance with regulations prescribed by the Secretary; and

(H) set forth assurances that—

(i) upon the request of an eligible institution, the guaranty agency shall, subject to clauses (ii) and (iii), furnish to the institution information with respect to students (including the names and addresses of such students) who received loans made, insured, or guaranteed under this part for attendance at the eligible institution and for whom default aversion assistance activities have been requested under subsection (*l*) of this section;

(ii) the guaranty agency shall not require the payment from the institution of any fee for such information; and

(iii) the guaranty agency will require the institution to use such information only to assist the institution in reminding students of their obligation to repay student loans and shall prohibit the institution from disseminating the information for any other purpose.

(I) may include such other provisions as may be necessary to promote the purpose of this part.

(3) Forbearance

A guaranty agreement under this subsection—

(A) shall contain provisions providing that—

(i) upon request, a lender shall grant a borrower forbearance, renewable at 12-month intervals, on terms agreed to by the parties to the loan with the approval of the insurer and documented in accordance with paragraph (10), and otherwise consistent with the regulations of the Secretary, if the borrower—

(I) is serving in a medical or dental internship or residency program, the successful completion of which is required to begin professional practice or service, or is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training, provided that if the borrower qualifies for a deferment under section 1077(a)(2)(C)(vii) of this title or subsection (b)(1)(M)(vii) of this section as in effect prior to the enactment of the Higher Education Amendments of 1992,

or section 1077(a)(2)(C) of this title or subsection (b)(1)(M) of this section as amended by such amendments, the borrower has exhausted his or her eligibility for such deferment;

(II) has a debt burden under this subchapter and part C of subchapter I of chapter 34 of title 42 that equals or exceeds 20 percent of income;

(III) is serving in a national service position for which the borrower receives a national service educational award under the National and Community Service Trust Act of 1993; or

(IV) is eligible for interest payments to be made on such loan for service in the Armed Forces under section 2174 of title 10, and, pursuant to that eligibility, the interest is being paid on such loan under subsection (*o*) of this section;

(ii) the length of the forbearance granted by the lender—

(I) under clause (i)(I) shall equal the length of time remaining in the borrower's medical or dental internship or residency program, if the borrower is not eligible to receive a deferment described in such clause, or such length of time remaining in the program after the borrower has exhausted the borrower's eligibility for such deferment;

(II) under clause (i)(II) or (IV) shall not exceed 3 years; or

(III) under clause (i)(III) shall not exceed the period for which the borrower is serving in a position described in such clause; and

(iii) no administrative or other fee may be charged in connection with the granting of a forbearance under clause (i), and no adverse information regarding a borrower may be reported to a consumer reporting agency solely because of the granting of such forbearance;

(B) may, to the extent provided in regulations of the Secretary, contain provisions that permit such forbearance for the benefit of the student borrower as may be agreed upon by the parties to an insured loan and approved by the insurer;

(C) shall contain provisions that specify that—

(i) the form of forbearance granted by the lender pursuant to this paragraph, other than subparagraph (A)(i)(IV), shall be temporary cessation of payments, unless the borrower selects forbearance in the form of an extension of time for making payments, or smaller payments than were previously scheduled;

(ii) the form of forbearance granted by the lender pursuant to subparagraph (A)(i)(IV) shall be the temporary cessation of all payments on the loan other than payments of interest on the loan that are made under subsection (*o*) of this section;

(iii) the lender shall, at the time of granting a borrower forbearance, provide information to the borrower to assist the borrower in understanding the impact of capitalization of interest on the borrower's loan principal and total amount of interest to be paid during the life of the loan; and

(iv) the lender shall contact the borrower not less often than once every 180 days during the period of forbearance to inform the borrower of—

(I) the amount of unpaid principal and the amount of interest that has accrued since the last statement of such amounts provided to the borrower by the lender;

(II) the fact that interest will accrue on the loan for the period of forbearance;

(III) the amount of interest that will be capitalized, and the date on which capitalization will occur;

(IV) the option of the borrower to pay the interest that has accrued before the interest is capitalized; and

(V) the borrower's option to discontinue the forbearance at any time; and

(D) shall contain provisions that specify that—

(i) forbearance for a period not to exceed 60 days may be granted if the lender reasonably determines that such a suspension of collection activity is warranted following a borrower's request for deferment, forbearance, a change in repayment plan, or a request to consolidate loans, in order to collect or process appropriate supporting documentation related to the request, and

(ii) during such period interest shall accrue but not be capitalized.

Guaranty agencies shall not be precluded from permitting the parties to such a loan from entering into a forbearance agreement solely because the loan is in default. The Secretary shall permit lenders to exercise administrative forbearances that do not require the agreement of the borrower, under conditions authorized by the Secretary. Such forbearances shall include (i) forbearances for borrowers who are delinquent at the time of the granting of an authorized period of deferment under subsection (b)(1)(M) of this section or section 1077(a)(2)(C) of this title, and (ii) if the borrower is less than 60 days delinquent on such loans at the time of sale or transfer, forbearances for borrowers on loans which are sold or transferred.

(4) Definitions

For the purpose of this subsection, the terms ''insurance beneficiary'' and ''default'' have the meanings assigned to them by section 1085 of this title.

(5) Applicability to existing loans

In the case of any guaranty agreement with a guaranty agency, the Secretary may, in accordance with the terms of this subsection, undertake to guarantee loans described in paragraph (1) which are insured by such guaranty agency and are outstanding on the date of execution of the guaranty agreement, but only with respect to defaults occurring after the execution of such guaranty agreement or, if later, after its effective date.

(6) Secretary's equitable share

(A) For the purpose of paragraph (2)(D), the Secretary's equitable share of payments made by the borrower shall be that portion of the payments remaining after the guaranty agency with which the Secretary has an agreement under this subsection has deducted from such payments—

(i) a percentage amount equal to the complement of the reinsurance percentage in effect when payment under the guaranty agreement was made with respect to the loan; and

(ii) an amount equal to 24 percent of such payments for use in accordance with section 1072b of this title, except that—

(I) beginning October 1, 2003 and ending September 30, 2007, this clause shall be applied by substituting ''23 percent'' for ''24 percent''; and

(II) beginning October 1, 2007, this clause shall be applied by substituting ''16 percent'' for ''24 percent''.

(B) A guaranty agency shall—

(i) on or after October 1, 2006—

(I) not charge the borrower collection costs in an amount in excess of 18.5 percent of the outstanding principal and interest of a defaulted loan that is paid off through consolidation by the borrower under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(II) remit to the Secretary a portion of the collection charge under subclause (I) equal to 8.5 percent of the outstanding principal and interest of such defaulted loan; and

(ii) on and after October 1, 2009, remit to the Secretary the entire amount charged under clause (i)(I) with respect to each defaulted loan that is paid off with excess consolidation proceeds.

(C) For purposes of subparagraph (B), the term ''excess consolidation proceeds'' means, with respect to any guaranty agency for any Federal fiscal year beginning on or after October 1, 2009, the proceeds of consolidation of defaulted loans under this subchapter and part C of subchapter I of chapter 34 of title 42 that exceed 45 percent of the agency's total collections on defaulted loans in such Federal fiscal year.

(7) New programs eligible for 100 percent reinsurance

(A) Notwithstanding paragraph (1)(C), the amount to be paid a guaranty agency for any fiscal year—

(i) which begins on or after October 1, 1977 and ends before October 1, 1991; and

(ii) which is either the fiscal year in which such guaranty agency begins to actively carry on a student loan insurance program which is subject to a guaranty agreement under subsection (b) of this section, or is one of the 4 succeeding fiscal years,

shall be 100 percent of the amount expended by such guaranty agency in discharge of its insurance obligation insured under such program.

(B) Notwithstanding the provisions of paragraph (1)(C), the Secretary may pay a guaranty agency 100 percent of the amount expended by such agency in discharge of such agency's insurance obligation for any fiscal year which—

(i) begins on or after October 1, 1991; and

(ii) is the fiscal year in which such guaranty agency begins to actively carry on a student loan insurance program which is subject to a guaranty agreement under subsection (b) of this section or is one of the 4 succeeding fiscal years.

(C) The Secretary shall continuously monitor the operations of those guaranty agencies to which the provisions of subparagraph (A) or (B) are applicable and revoke the application of such subparagraph to any such guaranty agency which the Secretary determines has not exercised reasonable prudence in the administration of such program.

(8) Assignment to protect Federal fiscal interest

If the Secretary determines that the protection of the Federal fiscal interest so requires, a guaranty agency shall assign to the Secretary any loan of which it is the holder and for which the Secretary has made a payment pursuant to paragraph (1) of this subsection.

(9) Guaranty agency reserve level

(A) Each guaranty agency which has entered into an agreement with the Secretary pursuant to this subsection shall maintain in the agency's Federal Student Loan Reserve Fund established under section 1072a of this title a current minimum reserve level of at least 0.25 percent of the total attributable amount of all outstanding loans guaranteed by such agency. For purposes of this paragraph, such total attributable amount does not include amounts of outstanding loans transferred to the guaranty agency from another guaranty agency pursuant to a plan of the Secretary in response to the insolvency of the latter such guaranty agency.

(B) The Secretary shall collect, on an annual basis, information from each guaranty agency having an agreement under this subsection to enable the Secretary to evaluate the financial solvency of each such agency. The information collected shall include the level of such agency's current reserves, cash disbursements and accounts receivable.

(C) If (i) any guaranty agency falls below the required minimum reserve level in any 2 consecutive years, (ii) any guaranty agency's Federal reimbursement payments are reduced to 85 percent pursuant to paragraph (1)(B)(i), or (iii) the Secretary determines that the administrative or financial condition of a guaranty agency jeopardizes such agency's continued ability to perform its responsibilities under its guaranty agreement, then the Secretary shall require the guaranty agency to submit and implement a management plan acceptable to the Secretary within 45 working days of any such event.

(D)(i) If the Secretary is not seeking to terminate the guaranty agency's agreement

under subparagraph (E), or assuming the guaranty agency's functions under subparagraph (F), a management plan described in subparagraph (C) shall include the means by which the guaranty agency will improve its financial and administrative condition to the required level within 18 months.

(ii) If the Secretary is seeking to terminate the guaranty agency's agreement under subparagraph (E), or assuming the guaranty agency's functions under subparagraph (F), a management plan described in subparagraph (C) shall include the means by which the Secretary and the guaranty agency shall work together to ensure the orderly termination of the operations, and liquidation of the assets, of the guaranty agency.

(E) The Secretary may terminate a guaranty agency's agreement in accordance with subparagraph (F) if—

(i) a guaranty agency required to submit a management plan under this paragraph fails to submit a plan that is acceptable to the Secretary;

(ii) the Secretary determines that a guaranty agency has failed to improve substantially its administrative and financial condition;

(iii) the Secretary determines that the guaranty agency is in danger of financial collapse;

(iv) the Secretary determines that such action is necessary to protect the Federal fiscal interest; or

(v) the Secretary determines that such action is necessary to ensure the continued availability of loans to student or parent borrowers.

(F) If a guaranty agency's agreement under this subsection is terminated pursuant to subparagraph (E), then the Secretary shall assume responsibility for all functions of the guaranty agency under the loan insurance program of such agency. In performing such functions the Secretary is authorized to—

(i) permit the transfer of guarantees to another guaranty agency;

(ii) revoke the reinsurance agreement of the guaranty agency at a specified date, so as to require the merger, consolidation, or termination of the guaranty agency;

(iii) transfer guarantees to the Department of Education for the purpose of payment of such claims and process such claims using the claims standards of the guaranty agency, if such standards are determined by the Secretary to be in compliance with this chapter and part C of subchapter I of chapter 34 of title 42;

(iv) design and implement a plan to restore the guaranty agency's viability;

(v) provide the guaranty agency with additional advance funds in accordance with section 1072(c)(7) of this title, with such restrictions on the use of such funds as is determined appropriate by the Secretary, in order to—

(I) meet the immediate cash needs of the guaranty agency;

(II) ensure the uninterrupted payment of claims; or

(III) ensure that the guaranty agency will make loans as the lender-of-last-resort, in accordance with subsection (j) of this section;

(vi) use all funds and assets of the guaranty agency to assist in the activities undertaken in accordance with this subparagraph and take appropriate action to require the return, to the guaranty agency or the Secretary, of any funds or assets provided by the guaranty agency, under contract or otherwise, to any person or organization; or

(vii) take any other action the Secretary determines necessary to ensure the continued availability of loans made under this part to residents of the State or States in which the guaranty agency did business, the full honoring of all guarantees issued by the guaranty agency prior to the Secretary's assumption of the functions of such agency, and the proper servicing of loans guaranteed by the guaranty agency prior to the Secretary's assumption of the functions of such agency, and to avoid disruption of the student loan program.

(G) Notwithstanding any other provision of Federal or State law, if the Secretary has terminated or is seeking to terminate a guaranty agency's agreement under subparagraph (E), or has assumed a guaranty agency's functions under subparagraph (F)—

(i) no State court may issue any order affecting the Secretary's actions with respect to such guaranty agency;

(ii) any contract with respect to the administration of a guaranty agency's reserve funds, or the administration of any assets purchased or acquired with the reserve funds of the guaranty agency, that is entered into or extended by the guaranty agency, or any other party on behalf of or with the concurrence of the guaranty agency, after August 10, 1993, shall provide that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that such contract includes an impermissible transfer of the reserve funds or assets, or is otherwise inconsistent with the terms or purposes of this section; and

(iii) no provision of State law shall apply to the actions of the Secretary in terminating the operations of a guaranty agency.

(H) Notwithstanding any other provision of law, the Secretary's liability for any outstanding liabilities of a guaranty agency (other than outstanding student loan guarantees under this part), the functions of which the Secretary has assumed, shall not exceed the fair market value of the reserves of the guaranty agency, minus any necessary liquidation or other administrative costs.

(I) The Secretary shall not take any action under subparagraph (E) or (F) without giving the guaranty agency notice and the opportunity for a hearing that, if commenced after September 24, 1998, shall be on the record.

(J) Notwithstanding any other provision of law, the information transmitted to the Secretary pursuant to this paragraph shall be

confidential and exempt from disclosure under section 552 of title 5, relating to freedom of information, or any other Federal law.

(K) The Secretary, within 6 months after the end of each fiscal year, shall submit to the authorizing committees a report specifying the Secretary's assessment of the fiscal soundness of the guaranty agency system.

(10) Documentation of forbearance agreements

For the purposes of paragraph (3), the terms of forbearance agreed to by the parties shall be documented by confirming the agreement of the borrower by notice to the borrower from the lender, and by recording the terms in the borrower's file.

(d) Usury laws inapplicable

No provision of any law of the United States (other than this chapter and part C of subchapter I of chapter 34 of title 42 and section 527 of the Appendix to title 50) or of any State (other than a statute applicable principally to such State's student loan insurance program) which limits the rate or amount of interest payable on loans shall apply to a loan—

(1) which bears interest (exclusive of any premium for insurance) on the unpaid principal balance at a rate not in excess of the rate specified in this part; and

(2) which is insured (i) by the United States under this part, or (ii) by a guaranty agency under a program covered by an agreement made pursuant to subsection (b) of this section.

(e) Repealed. Pub. L. 110–315, title IV, § 422(h), Aug. 14, 2008, 122 Stat. 3231

(f) Payments of certain costs

(1)[4] Payment for certain activities

(A) In general

The Secretary—

(i) for loans originated during fiscal years beginning on or after October 1, 1998, and before October 1, 2003, and in accordance with the provisions of this paragraph, shall, except as provided in subparagraph (C), pay to each guaranty agency, a loan processing and issuance fee equal to 0.65 percent of the total principal amount of the loans on which insurance was issued under this part during such fiscal year by such agency; and

(ii) for loans originated on or after October 1, 2003, and first disbursed before July 1, 2010, and in accordance with the provisions of this paragraph, shall, except as provided in subparagraph (C), pay to each guaranty agency, a loan processing and issuance fee equal to 0.40 percent of the total principal amount of the loans on which insurance was issued under this part during such fiscal year by such agency.

(B) Payment

The payment required by subparagraph (A) shall be paid on a quarterly basis. The guaranty agency shall be deemed to have a contractual right against the United States to receive payments according to the provisions of this paragraph. Payments shall be made promptly and without administrative delay to any guaranty agency submitting an accurate and complete application under this subparagraph.

(C) Requirement for payment

No payment may be made under this paragraph for loans for which the disbursement checks have not been cashed or for which electronic funds transfers have not been completed.

(g) Action on insurance program and guaranty agreements

If a nonprofit private institution or organization—

(1) applies to enter into an agreement with the Secretary under subsections (b) and (c) of this section with respect to a student loan insurance program to be carried on in a State with which the Secretary does not have an agreement under subsection (b) of this section, and

(2) as provided in the application, undertakes to meet the requirements of section 1072(c)(6)(B)(i), (ii), and (iii) of this title,

the Secretary shall consider and act upon such application within 180 days, and shall forthwith notify the authorizing committees of his actions.

(h) Repealed. Pub. L. 110–315, title IV, § 438(a)(2)(B), Aug. 14, 2008, 122 Stat. 3258

(i) Multiple disbursement of loans

(1) Escrow accounts administered by escrow agent

Any guaranty agency or eligible lender (hereafter in this subsection referred to as the ''escrow agent'') may enter into an agreement with any other eligible lender that is not an eligible institution or an agency or instrumentality of the State (hereafter in this subsection referred to as the ''lender'') for the purpose of authorizing disbursements of the proceeds of a loan to a student. Such agreement shall provide that the lender will pay the proceeds of such loans into an escrow account to be administered by the escrow agent in accordance with the provisions of paragraph (2) of this subsection. Such agreement may allow the lender to make payments into the escrow account in amounts that do not exceed the sum of the amounts required for disbursement of initial or subsequent installments to borrowers and to make such payments not more than 10 days prior to the date of the disbursement of such installment to such borrowers. Such agreement shall require the lender to notify promptly the eligible institution when funds are escrowed under this subsection for a student at such institution.

(2) Authority of escrow agent

Each escrow agent entering into an agreement under paragraph (1) of this subsection is authorized to—

(A) make the disbursements in accordance with the note evidencing the loan;

(B) commingle the proceeds of all loans paid to the escrow agent pursuant to the es-

[4] So in original. No par. (2) has been enacted.

crow agreement entered into under such paragraph (1);

(C) invest the proceeds of such loans in obligations of the Federal Government or obligations which are insured or guaranteed by the Federal Government;

(D) retain interest or other earnings on such investment; and

(E) return to the lender undisbursed funds when the student ceases to carry at an eligible institution at least one-half of the normal full-time academic workload as determined by the institution.

(j) Lenders-of-last-resort

(1) General requirement

In each State, the guaranty agency or an eligible lender in the State described in section 1085(d)(1)(D) of this title shall, before July 1, 2010, make loans directly, or through an agreement with an eligible lender or lenders, to eligible students and parents who are otherwise unable to obtain loans under this part (except for consolidation loans under section 1078–3 of this title) or who attend an institution of higher education in the State that is designated under paragraph (4). Loans made under this subsection shall not exceed the amount of the need of the borrower, as determined under subsection (a)(2)(B) of this section, nor be less than $200. No loan under section 1078, 1078–2, or 1078–8 of this title that is made pursuant to this subsection shall be made with interest rates, origination or default fees, or other terms and conditions that are more favorable to the borrower than the maximum interest rates, origination or default fees, or other terms and conditions applicable to that type of loan under this part. The guaranty agency shall consider the request of any eligible lender, as defined under section 1085(d)(1)(A) of this title, to serve as the lender-of-last-resort pursuant to this subsection.

(2) Rules and operating procedures

The guaranty agency shall develop rules and operating procedures for the lender-of-last-resort program designed to ensure that—

(A) the program establishes operating hours and methods of application designed to facilitate application by students and ensure a response within 60 days after the student's original complete application is filed under this subsection;

(B) consistent with standards established by the Secretary, students applying for loans under this subsection shall not be subject to additional eligibility requirements or requests for additional information beyond what is required under this subchapter and part C of subchapter I of chapter 34 of title 42 in order to receive a loan under this part from an eligible lender, nor, in the case of students and parents applying for loans under this subsection because of an inability to otherwise obtain loans under this part (except for consolidation loans under section 1078–3 of this title), be required to receive more than two rejections from eligible lenders in order to obtain a loan under this subsection;

(C) information about the availability of loans under the program is made available to institutions of higher education in the State; and

(D) appropriate steps are taken to ensure that borrowers receiving loans under the program are appropriately counseled on their loan obligation.

(3) Advances to guaranty agencies for lender-of-last-resort services

(A) In order to ensure the availability of loan capital, the Secretary is authorized to provide a guaranty agency designated for a State with additional advance funds in accordance with subparagraph (C) and section 1072(c)(7) of this title, with such restrictions on the use of such funds as are determined appropriate by the Secretary, in order to ensure that the guaranty agency will make loans as the lender-of-last-resort. Such agency shall make such loans in accordance with this subsection and the requirements of the Secretary.

(B) Notwithstanding any other provision in this part, a guaranty agency serving as a lender-of-last-resort under this paragraph shall be paid a fee, established by the Secretary, for making such loans in lieu of interest and special allowance subsidies, and shall be required to assign such loans to the Secretary on demand. Upon such assignment, the portion of the advance represented by the loans assigned shall be considered repaid by such guaranty agency.

(C) The Secretary shall exercise the authority described in subparagraph (A) only if the Secretary determines that eligible borrowers are seeking and are unable to obtain loans under this part or designates an institution of higher education for participation in the program under this subsection under paragraph (4), and that the guaranty agency designated for that State has the capability to provide lender-of-last-resort loans in a timely manner, in accordance with the guaranty agency's obligations under paragraph (1), but cannot do so without advances provided by the Secretary under this paragraph. If the Secretary makes the determinations described in the preceding sentence and determines that it would be cost-effective to do so, the Secretary may provide advances under this paragraph to such guaranty agency. If the Secretary determines that such guaranty agency does not have such capability, or will not provide such loans in a timely fashion, the Secretary may provide such advances to enable another guaranty agency, that the Secretary determines to have such capability, to make lender-of-last-resort loans to eligible borrowers in that State who are experiencing loan access problems or to eligible borrowers who attend an institution in the State that is designated under paragraph (4).

(4) Institution-wide student qualification

Upon the request of an institution of higher education and pursuant to standards developed by the Secretary, the Secretary shall designate such institution for participation in the lender-of-last-resort program under this para-

graph.[5] If the Secretary designates an institution under this paragraph, the guaranty agency designated for the State in which the institution is located shall make loans, in the same manner as such loans are made under paragraph (1), to students and parent borrowers of the designated institution, regardless of whether the students or parent borrowers are otherwise unable to obtain loans under this part (other than a consolidation loan under section 1078–3 of this title).

(5) Standards developed by the Secretary

In developing standards with respect to paragraph (4), the Secretary may require—

(A) an institution of higher education to demonstrate that, despite due diligence on the part of the institution, the institution has been unable to secure the commitment of eligible lenders willing to make loans under this part to a significant number of students attending the institution;

(B) that, prior to making a request under such paragraph for designation for participation in the lender-of-last-resort program, an institution of higher education shall demonstrate that the institution has met a minimum threshold, as determined by the Secretary, for the number or percentage of students at such institution who have received rejections from eligible lenders for loans under this part; and

(C) any other standards and guidelines the Secretary determines to be appropriate.

(6) Expiration of authority

The Secretary's authority under paragraph (4) to designate institutions of higher education for participation in the program under this subsection shall expire on June 30, 2010.

(7) Expiration of designation

The eligibility of an institution of higher education, or borrowers from such institution, to participate in the program under this subsection pursuant to a designation of the institution by the Secretary under paragraph (4) shall expire on June 30, 2010. After such date, borrowers from an institution designated under paragraph (4) shall be eligible to participate in the program under this subsection as such program existed on the day before May 7, 2008.

(8) Prohibition on inducements and marketing

Each guaranty agency or eligible lender that serves as a lender-of-last-resort under this subsection—

(A) shall be subject to the prohibitions on inducements contained in subsection (b)(3) and the requirements of section 1085(d)(5) of this title; and

(B) shall not advertise, market, or otherwise promote loans under this subsection, except that nothing in this paragraph shall prohibit a guaranty agency from fulfilling its responsibilities under paragraph (2)(C).

(9) Dissemination and reporting

(A) In general

The Secretary shall—

(i) broadly disseminate information regarding the availability of loans made under this subsection;

(ii) during the period beginning July 1, 2008 and ending June 30, 2011, provide to the authorizing committees and make available to the public—

(I) copies of any new or revised plans or agreements made by guaranty agencies or the Department related to the authorities under this subsection;

(II) quarterly reports on—

(aa) the number and amounts of loans originated or approved pursuant to this subsection by each guaranty agency and eligible lender; and

(bb) any related payments by the Department, a guaranty agency, or an eligible lender; and

(III) a budget estimate of the costs to the Federal Government (including subsidy and administrative costs) for each 100 dollars loaned, of loans made pursuant to this subsection between May 7, 2008, and June 30, 2010, disaggregated by type of loan, compared to such costs to the Federal Government during such time period of comparable loans under this part and part C, disaggregated by part and by type of loan; and

(iii) beginning July 1, 2011, provide to the authorizing committees and make available to the public—

(I) copies of any new or revised plans or agreements made by guaranty agencies or the Department related to the authorities under this subsection; and

(II) annual reports on—

(aa) the number and amounts of loans originated or approved pursuant to this subsection by each guaranty agency and eligible lender; and

(bb) any related payments by the Department, a guaranty agency, or an eligible lender.

(B) Separate reporting

The information required to be reported under subparagraph (A)(ii)(II) shall be reported separately for loans originated or approved pursuant to paragraph (4), or payments related to such loans, for the time period in which the Secretary is authorized to make designations under paragraph (4).

(k) Information on defaults

(1) Provision of information to eligible institutions

Notwithstanding any other provision of law, in order to notify eligible institutions of former students who are in default of their continuing obligation to repay student loans, each guaranty agency shall, upon the request of an eligible institution, furnish information with respect to students who were enrolled at the eligible institution and who are in default on the repayment of any loan made, insured, or guaranteed under this part. The information authorized to be furnished under this subsection shall include the names and addresses of such students.

[5] So in original. Probably should be ''subsection.''

(2) Public dissemination not authorized

Nothing in paragraph (1) of this subsection shall be construed to authorize public dissemination of the information described in paragraph (1).

(3) Borrower location information

Any information provided by the institution relating to borrower location shall be used by the guaranty agency in conducting required skip-tracing activities.

(4) Provision of information to borrowers in default

Each guaranty agency that has received a default claim from a lender regarding a borrower, shall provide the borrower in default, on not less than two separate occasions, with a notice, in simple and understandable terms, of not less than the following information:

(A) The options available to the borrower to remove the borrower's loan from default.

(B) The relevant fees and conditions associated with each option.

(*l*) Default aversion assistance

(1) Assistance required

Upon receipt of a complete request from a lender received not earlier than the 60th day of delinquency, a guaranty agency having an agreement with the Secretary under subsection (c) of this section shall engage in default aversion activities designed to prevent the default by a borrower on a loan covered by such agreement.

(2) Reimbursement

(A) In general

A guaranty agency, in accordance with the provisions of this paragraph, may transfer from the Federal Student Loan Reserve Fund under section 1072a of this title to the Agency Operating Fund under section 1072b of this title a default aversion fee. Such fee shall be paid for any loan on which a claim for default has not been paid as a result of the loan being brought into current repayment status by the guaranty agency on or before the 300th day after the loan becomes 60 days delinquent.

(B) Amount

The default aversion fee shall be equal to 1 percent of the total unpaid principal and accrued interest on the loan at the time the request is submitted by the lender. A guaranty agency may transfer such fees earned under this subsection not more frequently than monthly. Such a fee shall not be paid more than once on any loan for which the guaranty agency averts the default unless—

(i) at least 18 months has elapsed between the date the borrower entered current repayment status and the date the lender filed a subsequent default aversion assistance request; and

(ii) during the period between such dates, the borrower was not more than 30 days past due on any payment of principal and interest on the loan.

(C) Definition

For the purpose of earning the default aversion fee, the term ''current repayment status'' means that the borrower is not delinquent in the payment of any principal or interest on the loan.

(m) Income contingent and income-based repayment

(1) Authority of Secretary to require

The Secretary may require borrowers who have defaulted on loans made under this part that are assigned to the Secretary under subsection (c)(8) of this section to repay those loans under an income contingent repayment plan or income-based repayment plan, the terms and conditions of which shall be established by the Secretary and the same as, or similar to, an income contingent repayment plan established for purposes of part C of this subchapter or an income-based repayment plan under section 1098e of this title, as the case may be.

(2) Loans for which income contingent or income-based repayment may be required

A loan made under this part may be required to be repaid under this subsection if the note or other evidence of the loan has been assigned to the Secretary pursuant to subsection (c)(8) of this section.

(n) Blanket certificate of loan guaranty

(1) In general

Subject to paragraph (3), any guaranty agency that has entered into or enters into any insurance program agreement with the Secretary under this part may—

(A) offer eligible lenders participating in the agency's guaranty program a blanket certificate of loan guaranty that permits the lender to make loans without receiving prior approval from the guaranty agency of individual loans for eligible borrowers enrolled in eligible programs at eligible institutions; and

(B) provide eligible lenders with the ability to transmit electronically data to the agency concerning loans the lender has elected to make under the agency's insurance program via standard reporting formats, with such reporting to occur at reasonable and standard intervals.

(2) Limitations on blanket certificate of guaranty

(A) An eligible lender may not make a loan to a borrower under this section after such lender receives a notification from the guaranty agency that the borrower is not an eligible borrower.

(B) A guaranty agency may establish limitations or restrictions on the number or volume of loans issued by a lender under the blanket certificate of guaranty.

(3) Participation level

During fiscal years 1999 and 2000, the Secretary may permit, on a pilot basis, a limited number of guaranty agencies to offer blanket certificates of guaranty under this subsection. Beginning in fiscal year 2001, any guaranty agency that has an insurance program agreement with the Secretary may offer blanket certificates of guaranty under this subsection.

(4) Report required

The Secretary shall, at the conclusion of the pilot program under paragraph (3), provide a report to the authorizing committees on the impact of the blanket certificates of guaranty on program efficiency and integrity.

(*o*) Armed Forces student loan interest payment program

(1) Authority

Using funds received by transfer to the Secretary under section 2174 of title 10 for the payment of interest and any special allowance on a loan to a member of the Armed Forces that is made, insured, or guaranteed under this part, the Secretary shall pay the interest and special allowance on such loan as due for a period not in excess of 36 consecutive months. The Secretary may not pay interest or any special allowance on such a loan out of any funds other than funds that have been so transferred.

(2) Forbearance

During the period in which the Secretary is making payments on a loan under paragraph (1), the lender shall grant the borrower forbearance in accordance with the guaranty agreement under subsection (c)(3)(A)(i)(IV) of this section.

(3) Special allowance defined

For the purposes of this subsection, the term ''special allowance'',[6] means a special allowance that is payable with respect to a loan under section 1087–1 of this title.

(Pub. L. 89–329, title IV, § 428, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1367; amended Pub. L. 100–50, § 10(a)–(c), (e)–(m), June 3, 1987, 101 Stat. 341–343; Pub. L. 100–203, title III, §§ 3001(b), 3002(b), 3003, Dec. 22, 1987, 101 Stat. 1330–38, 1330–39; Pub. L. 100–369, §§ 5(b)(2), 7(c), 11(a), July 18, 1988, 102 Stat. 836–838; Pub. L. 101–239, title II, §§ 2002(a)(2), (b)(1), 2004(b)(1), (3), 2006(b), Dec. 19, 1989, 103 Stat. 2111, 2116, 2118; Pub. L. 101–508, title III, §§ 3002, 3004(b), Nov. 5, 1990, 104 Stat. 1388–25, 1388–27; Pub. L. 102–26, § 9, Apr. 9, 1991, 105 Stat. 128; Pub. L. 102–164, title VI, §§ 601(b), 602(b), 604, 605(b)(2), Nov. 15, 1991, 105 Stat. 1065, 1066, 1068; Pub. L. 102–325, title IV, §§ 411(b)(2), 416(a)–(e)(1), (f)–(p)(7), (q)–(t), July 23, 1992, 106 Stat. 510, 516–525, 527–529; Pub. L. 103–66, title IV, §§ 4041(a)(1), (2)(B), (b), 4043(a), 4044, 4045, 4102(c), 4107(a), (b), 4108(a), (b), 4110(a), 4112(a), 4201(a), Aug. 10, 1993, 107 Stat. 354, 355, 358, 359, 367–370; Pub. L. 103–82, title I, § 102(c)(1), Sept. 21, 1993, 107 Stat. 823; Pub. L. 103–208, § 2(c)(11)–(28), Dec. 20, 1993, 107 Stat. 2462–2465; Pub. L. 103–382, title III, § 355(a), Oct. 20, 1994, 108 Stat. 3967; Pub. L. 105–33, title VI, §§ 6101(b), 6104(2), Aug. 5, 1997, 111 Stat. 652; Pub. L. 105–244, title IV, § 417(a)–(c)(1)(A), (2)–(k), Oct. 7, 1998, 112 Stat. 1682–1690; Pub. L. 107–314, div. A, title VI, § 651(b), Dec. 2, 2002, 116 Stat. 2579; Pub. L. 109–171, title VIII, §§ 8004(b)(2), 8005(b), 8007(a), 8008(a), 8009(b)(1), 8014(a)(1), (b)(1), (c)(1), (d), (e), (j)(1)–(3), Feb. 8, 2006, 120 Stat. 158, 160, 162, 164, 168–171; Pub. L. 110–84, title II, § 202(a), title III, §§ 301, 302(b)(1), 303(a), Sept. 27, 2007, 121 Stat. 791, 796, 797; Pub. L. 110–227, §§ 3(b), 5(a), May 7, 2008, 122 Stat. 742, 743; Pub. L. 110–315, title I, § 103(b)(4), title IV, §§ 422(a)(1), (b)–(g)(1), (h)–(j), 424(b), 432(b)(2), 438(a)(2), Aug. 14, 2008, 122 Stat. 3088, 3227–3231, 3233, 3246, 3258; Pub. L. 110–350, § 2, Oct. 7, 2008, 122 Stat. 3947; Pub. L. 111–39, title IV, § 402(a)(1), (b)(1), (f)(1), July 1, 2009, 123 Stat. 1940, 1943; Pub. L. 111–152, title II, § 2204, Mar. 30, 2010, 124 Stat. 1075; Pub. L. 112–74, div. F, title III, § 309(d)(1), Dec. 23, 2011, 125 Stat. 1101.)

[6] So in original. The comma probably should not appear.

REFERENCES IN TEXT

The National and Community Service Act of 1990, referred to in subsec. (a)(2)(C)(ii)(II)(aa), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127. Title I of the Act enacted subchapter I (§ 12511 et seq.) of chapter 129 of Title 42, The Public Health and Welfare, and amended sections 1070a–6 and 1087vv of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

Section 1078–1 of this title, referred to in subsecs. (a)(2)(E) and (b)(1)(B), (Q), was repealed by Pub. L. 103–66, title IV, § 4047(b)–(d), Aug. 10, 1993, 107 Stat. 364, eff. July 1, 1994, except with respect to loans provided under that section as it existed prior to Aug. 10, 1993. Subsequently, a new section 1078–1, relating to voluntary flexible agreements with guaranty agencies, was enacted by Pub. L. 105–244, title IV, § 418, Oct. 7, 1998, 112 Stat. 1691.

The Higher Education Amendments of 1992, referred to in subsec. (c)(3)(A)(i)(I), is Pub. L. 102–325, July 23, 1992, 106 Stat. 448. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 1001 of this title and Tables.

The National and Community Service Trust Act of 1993, referred to in subsec. (c)(3)(A)(i)(III), is Pub. L. 103–82, Sept. 21, 1993, 107 Stat. 785. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 12501 of Title 42, The Public Health and Welfare, and Tables.

CODIFICATION

Amendments by section 2(c)(17), (26), (27) of Pub. L. 103–208 (which were effective as if included in Pub. L. 102–325) were executed to this section as amended by Pub. L. 102–325, Pub. L. 103–66, and Pub. L. 103–82, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 1078, Pub. L. 89–329, title IV, § 428, Nov. 8, 1965, 79 Stat. 1240; Pub. L. 90–460, §§ 1(a)(2), 2(a)(2), (b)(1), (2), 3(b), Aug. 3, 1968, 82 Stat. 634–636; Pub. L. 90–575, title I, §§ 111(a), (b)(1), 112(b), 113(b)(3), (4), 115(a)(1)–(3), (b), 116(b)(3), 117(a), (b), 120(a)(1), (b), (c)(1), Oct. 16, 1968, 82 Stat. 1020–1027; Pub. L. 92–318, title I, §§ 132(b), 132A(b), 132C(a), (b), 132D(b)–(d), June 23, 1972, 86 Stat. 261–264; Pub. L. 93–269, §§ 2–4, Apr. 18, 1974, 88 Stat. 87, 89; Pub. L. 94–328, § 2(b), June 30, 1976, 90 Stat. 727; Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2108; S. Res. 4, Feb. 4, 1977; Pub. L. 95–43, § 1(a)(19)–(29), June 15, 1977, 91 Stat. 214–216; Pub. L. 95–566, § 5(a)(2), (b)(1), (3)–(5), Nov. 1, 1978, 92 Stat. 2403; S. Res. 30, Mar. 7, 1979; Pub. L. 96–49, § 5(b), Aug. 13, 1979, 93 Stat. 352; Pub. L. 96–374, title IV, §§ 411(b), 412(c), (d), (f), 413(b), (d), 414, 415(a)(3)–(5), (b)(2), 417, 423(a)(2), (b)–(d), title XIII, § 1391(a)(1), (2), Oct. 3, 1980, 94 Stat. 1416–1420, 1422, 1432, 1503; Pub. L. 97–35, title V, §§ 532(a), (b)(1), 535(c), (d), 536(b), 537(a)(1), (b)(2), (c), (d)(1), (e)(2), Aug. 13, 1981, 95 Stat. 451, 452, 455–457; Pub. L. 98–79, § 10(b), Aug. 15, 1983, 97 Stat. 484; Pub. L. 99–272, title XVI, §§ 16012(b), 16013(a), (c), (e)(2), (3), 16014(a)(1), (b)(1), (2) formerly (1), (3) formerly (2), 16015(b), 16016, 16018(a)(2), 16021, 16032(c), Apr. 7, 1986, 100 Stat. 340–343, 348, 349, 355, renumbered and amended, Pub. L. 99–320, § 2(a), (b), May 23, 1986, 100 Stat. 491, related to Federal interest subsidy payments, prior to the general revision of this part by Pub. L. 99–498.

A prior section 1078a, Pub. L. 91–95, § 2, Oct. 22, 1969, 83 Stat. 141; Pub. L. 92–318, title I, § 134(a), June 23, 1972,

86 Stat. 270; Pub. L. 93–269, § 5, Apr. 18, 1974, 88 Stat. 89; Pub. L. 94–328, § 2(c), June 30, 1976, 90 Stat. 727; Pub. L. 94–482, title I, § 127(c)(1), Oct. 12, 1976, 90 Stat. 2142, related to special allowances for insured student loans, prior to repeal by Pub. L. 94–482, title I, § 127(c)(2), Oct. 12, 1976, 90 Stat. 2142.

AMENDMENTS

2011—Subsec. (a)(3)(A)(i)(I). Pub. L. 112–74 amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''which accrues prior to the beginning of the repayment period of the loan, or''.

2010—Subsec. (a)(1). Pub. L. 111–152, § 2204(a)(1)(A), inserted ''for which the first disbursement is made before July 1, 2010, and'' after ''eligible institution'' in introductory provisions.

Subsec. (a)(5). Pub. L. 111–152, § 2204(a)(1)(B), substituted ''June 30, 2010.'' for ''September 30, 2014, except that, in the case of a loan made or insured under a student loan or loan insurance program to enable a student who has obtained a prior loan made or insured under such program to continue his or her education program, such period shall end at the close of September 30, 2018.''

Subsec. (b)(1)(G). Pub. L. 111–152, § 2204(b), repealed Pub. L. 110–84, § 303. See 2007 Amendment note below.

Subsec. (b)(1)(G)(ii). Pub. L. 111–152, § 2204(a)(2)(A), inserted ''and before July 1, 2010,'' after ''July 1, 2006,''.

Subsec. (b)(1)(H)(ii). Pub. L. 111–152, § 2204(a)(2)(B), inserted ''and that are first disbursed before July 1, 2010,'' after ''July 1, 2006,''.

Subsec. (f)(1)(A)(ii). Pub. L. 111–152, § 2204(a)(3), struck out ''during fiscal years beginning'' after ''originated'' and inserted ''and first disbursed before July 1, 2010,'' after ''October 1, 2003,''.

Subsec. (j)(1). Pub. L. 111–152, § 2204(a)(4), inserted '', before July 1, 2010,'' after ''section 1085(d)(1)(D) of this title shall''.

2009—Subsec. (a)(2)(A)(i)(II). Pub. L. 111–39, § 402(f)(1)(A), struck out ''and'' after semicolon at end.

Subsec. (b)(1)(G)(i). Pub. L. 111–39, § 402(a)(1), which directed amendment of cl. (i), as amended by section 303 of Pub. L. 110–84, by striking ''or 1087–2(q)'', could not be executed because of the repeal of section 303 by Pub. L. 111–152, § 2204(b). See 2010 Amendment note above and 2007 Amendment note below.

Subsec. (b)(1)(M)(i). Pub. L. 111–39, § 402(f)(1)(B)(i), inserted ''section'' before ''1078–2'' in concluding provisions.

Subsec. (b)(3)(A)(i). Pub. L. 111–39, § 402(f)(1)(B)(ii), substituted ''any institution of higher education, any employee of an institution of higher education, or any individual or entity'' for ''any institution of higher education or the employees of an institution of higher education''.

Subsec. (b)(3)(C), (D). Pub. L. 111–39, § 402(b)(1), inserted ''or 1092(*l*)'' after ''section 1092(b)''.

Subsec. (b)(4). Pub. L. 111–39, § 402(f)(1)(B)(iii), substituted ''With respect to the graduate fellowship program referred to in paragraph (1)(M)(i)(II),'' for ''For the purpose of paragraph (1)(M)(i)(III) of this subsection,''.

Subsec. (b)(7)(B). Pub. L. 111–39, § 402(f)(1)(B)(iv)(I), struck out ''clause (i) or (ii) of'' before ''subparagraph (A)''.

Subsec. (b)(7)(D). Pub. L. 111–39, § 402(f)(1)(B)(iv)(II), substituted ''subparagraph (A)'' for ''subparagraph (A)(i)''.

Subsec. (c)(9)(K). Pub. L. 111–39, § 402(f)(1)(C), substituted ''6 months'' for ''3 months''.

2008—Subsec. (a)(2)(C). Pub. L. 110–315, § 422(a)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''For the purpose of subparagraph (B) and this paragraph—

''(i) a student's cost of attendance shall be determined under section 1087*ll* of this title;

''(ii) a student's estimated financial assistance means, for the period for which the loan is sought—

''(I) the amount of assistance such student will receive under subpart 1 of part A of this subchapter (as determined in accordance with section 1091(b) of this title), subpart 3 of part A of this subchapter, and part C of subchapter I of chapter 34 of title 42 and part D of this subchapter;

''(II) any veterans' education benefits paid because of enrollment in a postsecondary education institution, including veterans' education benefits (as defined in section 1087vv(c) of this title, but excluding benefits described in paragraph (2)(E) of such section); plus

''(III) other scholarship, grant, or loan assistance, but excluding any national service education award or post-service benefit under title I of the National and Community Service Act of 1990; and

''(iii) the determination of need and of the amount of a loan by an eligible institution under subparagraph (B) with respect to a student shall be calculated in accordance with part E of this subchapter.''

Subsec. (a)(5). Pub. L. 110–315, § 422(b), substituted ''2014'' for ''2012'' and ''2018'' for ''2016''.

Subsec. (b)(1)(G)(i). Pub. L. 110–315, § 438(a)(2)(A), struck out ''or section 1087–2(q) of this title'' before semicolon at end.

Subsec. (b)(1)(L)(i). Pub. L. 110–315, § 422(e)(2), substituted ''clause (ii), (iii), or (v)'' for ''clause (ii) or (iii)''.

Subsec. (b)(1)(Y)(i). Pub. L. 110–315, § 422(c)(1)(A), added cl. (i) and struck out former cl. (i) which read as follows: ''the lender shall determine the eligibility of a borrower for a deferment described in subparagraph (M)(i) based on receipt of—

''(I) a request for deferment from the borrower and documentation of the borrower's eligibility for the deferment;

''(II) a newly completed loan application that documents the borrower's eligibility for a deferment; or

''(III) student status information received by the lender that the borrower is enrolled on at least a half-time basis; and''.

Subsec. (b)(1)(Y)(iii). Pub. L. 110–315, § 422(c)(1)(B), (C), added cl. (iii).

Subsec. (b)(2)(F)(i)(V) to (VII). Pub. L. 110–315, § 422(c)(2), added subcls. (V) to (VII).

Subsec. (b)(3). Pub. L. 110–315, § 422(d), amended par. (3) generally. Prior to amendment, text read as follows: ''A guaranty agency shall not—

''(A) offer, directly or indirectly, premiums, payments, or other inducements to any educational institution or its employees in order to secure applicants for loans under this part;

''(B) offer, directly or indirectly, any premium, incentive payment, or other inducement to any lender, or any agent, employee, or independent contractor of any lender or guaranty agency, in order to administer or market loans made under this part (other than a loan made under section 1078–8 of this title or a loan made as part of a guaranty agency's lender-of-last-resort program) for the purpose of securing the designation of that guaranty agency as the insurer of such loans;

''(C) conduct unsolicited mailings of student loan application forms to students enrolled in secondary school or a postsecondary institution, or to parents of such students, except that applications may be mailed to borrowers who have previously received loans guaranteed under this part by the guaranty agency; or

''(D) conduct fraudulent or misleading advertising concerning loan availability.

''It shall not be a violation of this paragraph for a guaranty agency to provide assistance to institutions of higher education comparable to the kinds of assistance provided to institutions of higher education by the Department of Education.''

Subsec. (b)(7)(C). Pub. L. 110–315, § 424(b), substituted ''section 1078–2 or 1078–3'' for ''section 1078–1 or 1078–3''.

Pub. L. 110–227, § 3(b), struck out '', 1078–2,'' after ''section 1078–1''.

Subsec. (b)(9)(A)(v). Pub. L. 110–315, § 422(e)(1), added cl. (v).

Subsec. (c)(2)(H)(i). Pub. L. 110–315, § 422(f)(1), substituted ''default aversion'' for ''preclaims''.

Subsec. (c)(3)(A)(iii). Pub. L. 110–315, § 432(b)(2), substituted ''consumer reporting agency'' for ''credit bureau organization''.

Subsec. (c)(3)(C)(iii), (iv). Pub. L. 110–315, § 422(f)(2), added cls. (iii) and (iv).

Subsec. (c)(9)(K). Pub. L. 110–315, § 103(b)(4)(A), substituted ''authorizing committees'' for ''House Committee on Education and the Workforce and the Senate Committee on Labor and Human Resources''.

Subsec. (d). Pub. L. 110–315, § 422(g)(1), inserted ''and section 527 of the Appendix to title 50'' after ''(other than this chapter and part C of subchapter I of chapter 34 of title 42'' in introductory provisions.

Subsec. (e). Pub. L. 110–315, § 422(h), struck out subsec. (e). Text read as follows: ''At the time of offering a borrower a loan under this part, and at the time of offering the borrower the option of repaying a loan in accordance with this section, the lender shall provide the borrower with a notice that informs the borrower, in a form prescribed by the Secretary by regulation—

''(1) that all borrowers are eligible for income-sensitive repayment, including through loan consolidation under section 1078–3 of this title;

''(2) the procedures by which the borrower may elect income-sensitive repayment; and

''(3) where and how the borrower may obtain additional information concerning income-sensitive repayment.''

Subsec. (g). Pub. L. 110–315, § 103(b)(4)(B), substituted ''authorizing committees'' for ''Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives'' in concluding provisions.

Subsec. (h). Pub. L. 110–315, § 438(a)(2)(B), struck out subsec. (h) which related to lending by guaranty agencies.

Subsec. (j)(1). Pub. L. 110–227, § 5(a)(1), after second sentence, inserted ''No loan under section 1078, 1078–2, or 1078–8 of this title that is made pursuant to this subsection shall be made with interest rates, origination or default fees, or other terms and conditions that are more favorable to the borrower than the maximum interest rates, origination or default fees, or other terms and conditions applicable to that type of loan under this part.''

Pub. L. 110–227, § 5(a)(1), in first sentence, substituted ''eligible students and parents who are otherwise unable to obtain loans under this part (except for consolidation loans under section 1078–3 of this title) or who attend an institution of higher education in the State that is designated under paragraph (4)'' for ''students eligible to receive interest benefits paid on their behalf under subsection (a) of this section who are otherwise unable to obtain loans under this part''.

Subsec. (j)(2)(B). Pub. L. 110–227, § 5(a)(2), inserted '', in the case of students and parents applying for loans under this subsection because of an inability to otherwise obtain loans under this part (except for consolidation loans under section 1078–3 of this title),'' after ''lender, nor''.

Subsec. (j)(2)(C) to (E). Pub. L. 110–315, § 438(a)(2)(C), inserted ''and'' at the end of subpar. (C), substituted period for ''; and'' at the end of subpar. (D), and struck out subpar. (E) which read as follows: ''the guaranty agency notifies the Secretary when the guaranty agency believes or has reason to believe that the Secretary may need to exercise the Secretary's authority under section 1087–2(q) of this title.''

Subsec. (j)(3)(C). Pub. L. 110–227, § 5(a)(3), inserted ''or designates an institution of higher education for participation in the program under this subsection under paragraph (4)'' after ''under this part'' in first sentence and ''or to eligible borrowers who attend an institution in the State that is designated under paragraph (4)'' after ''problems'' in third sentence.

Subsec. (j)(4), (5). Pub. L. 110–227, § 5(a)(4), added pars. (4) and (5).

Subsec. (j)(6). Pub. L. 110–350, § 2(1), substituted ''June 30, 2010'' for ''June 30, 2009''.

Pub. L. 110–227, § 5(a)(4), added par. (6).

Subsec. (j)(7). Pub. L. 110–350, § 2(2), substituted ''June 30, 2010'' for ''June 30, 2009''.

Pub. L. 110–227, § 5(a)(4), added par. (7).

Subsec. (j)(8), (9). Pub. L. 110–227, § 5(a)(4), added pars. (8) and (9).

Subsec. (j)(9)(A)(ii). Pub. L. 110–350, § 2(3)(A), substituted ''June 30, 2011'' for ''June 30, 2010'' in introductory provisions.

Pub. L. 110–315, § 103(b)(4)(C), substituted ''authorizing committees'' for ''Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives'' in introductory provisions.

Subsec. (j)(9)(A)(ii)(III). Pub. L. 110–350, § 2(3)(B), substituted ''June 30, 2010'' for ''June 30, 2009''.

Subsec. (j)(9)(A)(iii). Pub. L. 110–350, § 2(3)(C), substituted ''July 1, 2011'' for ''July 1, 2010''.

Pub. L. 110–315, § 103(b)(4)(C), substituted ''authorizing committees'' for ''Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives'' in introductory provisions.

Subsec. (k)(4). Pub. L. 110–315, § 422(i), added par. (4).

Subsec. (m). Pub. L. 110–315, § 422(j)(1), inserted ''and income-based'' after ''Income contingent'' in heading.

Subsec. (m)(1). Pub. L. 110–315, § 422(j)(2), inserted ''or income-based repayment plan'' before '', the terms and conditions'' and ''or an income-based repayment plan under section 1098e of this title, as the case may be'' before the period at end.

Subsec. (m)(2). Pub. L. 110–315, § 422(j)(3), inserted ''or income-based'' after ''income contingent'' in heading.

Subsec. (n)(4). Pub. L. 110–315, § 103(b)(4)(D), substituted ''authorizing committees'' for ''Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate''.

2007—Subsec. (b)(1)(G). Pub. L. 110–84, § 303(a), which directed the general amendment of subpar. (G), was repealed by Pub. L. 111–152, § 2204(b).

Subsec. (b)(1)(M)(iii). Pub. L. 110–84, § 202(a), struck out ''not in excess of 3 years'' before ''during'' in introductory provisions, substituted comma for ''; or'' at end of subcl. (II), and inserted concluding provisions.

Subsec. (c)(1)(D) to (H). Pub. L. 110–84, § 302(b)(1), redesignated subpars. (E) to (H) as (D) to (G), respectively, and struck out former subpar. (D) which read as follows: ''Reimbursements of losses made by the Secretary on loans submitted for claim by an eligible lender, servicer, or guaranty agency designated for exceptional performance under section 1078–9 of this title shall not be subject to additional review by the Secretary or repurchase by the guaranty agency for any reason other than a determination by the Secretary that the eligible lender, servicer, or guaranty agency engaged in fraud or other purposeful misconduct in obtaining designation for exceptional performance.''

Subsec. (c)(6)(A)(ii). Pub. L. 110–84, § 301, amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''an amount equal to 24 percent of such payments for use in accordance with section 1072b of this title, except that, beginning on October 1, 2003, this subparagraph shall be applied by substituting '23 percent' for '24 percent'.''

2006—Subsec. (a)(3)(A)(v)(III). Pub. L. 109–171, § 8014(j)(1), added subcl. (III).

Subsec. (a)(5). Pub. L. 109–171, § 8004(b)(2), substituted ''2012'' and ''2016'' for ''2004'' and ''2008'', respectively.

Subsec. (b)(1)(A)(i)(I). Pub. L. 109–171, § 8005(b)(1), substituted ''$3,500'' for ''$2,625''.

Subsec. (b)(1)(A)(ii)(I). Pub. L. 109–171, § 8005(b)(2), substituted ''$4,500'' for ''$3,500''.

Subsec. (b)(1)(G). Pub. L. 109–171, § 8014(a)(1), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: ''insures 98 percent of the unpaid principal of loans insured under the program, except that such program shall insure 100 percent of the unpaid principal of loans made with funds advanced pursuant to subsection (j) of this section or section 1087–2(q) of this title;''.

Subsec. (b)(1)(H). Pub. L. 109–171, § 8014(b)(1), amended subpar. (H) generally. Prior to amendment, subpar. (H) read as follows: ''provides for collection of a single insurance premium equal to not more than 1.0 percent of the principal amount of the loan, by deduction proportionately from each installment payment of the proceeds of the loan to the borrower, and insures that the proceeds of the premium will not be used for incentive payments to lenders;''.

Subsec. (b)(1)(M)(iii), (iv). Pub. L. 109–171, § 8007(a), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (b)(1)(N)(ii), (iii). Pub. L. 109–171, § 8008(a), added cls. (ii) and (iii) and struck out former cl. (ii), which read as follows: ''in the case of a student who is studying outside the United States in a program of study abroad that is approved for credit by the home institution at which such student is enrolled or at an eligible foreign institution, are, at the request of the student, disbursed directly to the student by the means described in clause (i), unless such student requests that the check be endorsed, or the funds transfer authorized, pursuant to an authorized power-of-attorney;''.

Subsec. (b)(7)(A). Pub. L. 109–171, § 8009(b)(1), substituted ''shall begin the day after 6 months after the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution).'' for ''shall begin—

''(i) the day after 6 months after the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution); or

''(ii) on an earlier date if the borrower requests and is granted a repayment schedule that provides for repayment to commence at an earlier date.''

Subsec. (c)(1)(A). Pub. L. 109–171, § 8014(j)(2), substituted ''30 days'' for ''45 days'' in last sentence.

Subsec. (c)(1)(G), (H). Pub. L. 109–171, § 8014(c)(1), added subpar. (G) and redesignated former subpar. (G) as (H) and realigned margin.

Subsec. (c)(2)(A). Pub. L. 109–171, § 8014(d)(1), inserted ''(i)'' after ''including'' and added cl. (ii) before semicolon at end.

Subsec. (c)(2)(D). Pub. L. 109–171, § 8014(d)(2), substituted ''paragraph (6)(A)'' for ''paragraph (6)''.

Subsec. (c)(3)(A)(i). Pub. L. 109–171, § 8014(e)(1), in introductory provisions, struck out ''in writing'' after ''on terms agreed to'' and inserted ''and documented in accordance with paragraph (10)'' after ''approval of the insurer''.

Subsec. (c)(6). Pub. L. 109–171, § 8014(d)(3), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), and added subpars. (B) and (C).

Subsec. (c)(10). Pub. L. 109–171, § 8014(e)(2), added par. (10).

Subsec. (i)(1). Pub. L. 109–171, § 8014(j)(3), substituted ''10 days'' for ''21 days'' in third sentence.

2002—Subsec. (c)(3)(A)(i)(IV). Pub. L. 107–314, § 651(b)(1)(A), added subcl. (IV).

Subsec. (c)(3)(A)(ii)(II). Pub. L. 107–314, § 651(b)(1)(B), inserted ''or (IV)'' after ''(i)(II)''.

Subsec. (c)(3)(C). Pub. L. 107–314, § 651(b)(1)(C), added subpar. (C) and struck out former subpar. (C) which read as follows: ''shall contain provisions that specify that the form of forbearance granted by the lender for purposes of this paragraph shall be the temporary cessation of payments, unless the borrower selects forbearance in the form of an extension of time for making payments, or smaller payments than were previously scheduled; and''.

Subsec. (*o*). Pub. L. 107–314, § 651(b)(2), added subsec. (*o*).

1998—Subsec. (a)(2)(A)(i). Pub. L. 105–244, § 417(a)(1)(A), added subcls. (I) and (II) and struck out former subcls. (I) to (III) which read as follows:

''(I) sets forth such student's estimated cost of attendance (as determined under section 1087*ll* of this title);

''(II) sets forth such student's estimated financial assistance; and

''(III) sets forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 1078–7 of this title;''.

Subsec. (a)(2)(B). Pub. L. 105–244, § 417(a)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For the purpose of clause (ii) of subparagraph (A), a student shall qualify for a portion of an interest payment under paragraph (1) if the eligible institution has provided the lender with a statement evidencing a determination of need for a loan (as determined under part E of this subchapter) and the amount of such need, subject to the provisions of subparagraph (D).''

Subsec. (a)(2)(C). Pub. L. 105–244, § 417(a)(1)(C), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''For the purpose of paragraph (1) and this paragraph—

''(i) a student's estimated financial assistance means, for the period for which the loan is sought, the amount of assistance such student will receive under subpart 1 of part A of this subchapter (as determined in accordance with section 1091(b) of this title), subpart 3 of part A of this subchapter, and part C of subchapter I of chapter 34 of title 42 and part D of this subchapter, and any veterans' education benefits paid because of enrollment in a postsecondary education institution, including veterans' education benefits (as defined in section 1087vv(c) of this title), plus other scholarship, grant, or loan assistance; and

''(ii) the determination of need and of the amount of a loan by an eligible institution under subparagraph (B) with respect to a student shall be calculated in accordance with part E of this subchapter.''

Subsec. (a)(2)(F). Pub. L. 105–244, § 417(a)(1)(D), struck out subpar. (F) which read as follows: ''Except as provided in subparagraph (D), an eligible institution may refuse to certify a statement which permits a student to receive a loan under this part or to certify a loan amount that is less than the student's determination of need (as determined under part E of this subchapter), if the reason for such action is documented and provided in written form to each student so affected.''

Subsec. (a)(5). Pub. L. 105–244, § 417(a)(2), substituted ''September 30, 2004'' for ''September 30, 2002'' and ''September 30, 2008'' for ''September 30, 2006''.

Subsec. (b)(1)(A). Pub. L. 105–244, § 417(b)(1)(A), inserted '', as defined in section 1088(a)(2) of this title,'' after ''academic year'' in introductory provisions.

Subsec. (b)(1)(A)(i)(I). Pub. L. 105–244, § 417(b)(1)(B)(i), substituted ''length; and'' for ''length (as determined under section 1088 of this title);''.

Subsec. (b)(1)(A)(i)(II), (III). Pub. L. 105–244, § 417(b)(1)(B)(ii), added subcl. (II) and struck out former subcls. (II) and (III) which read as follows:

''(II) $1,750, if such student is enrolled in a program whose length is less than one academic year, but at least ⅔ of such an academic year; and

''(III) $875, if such student is enrolled in a program whose length is less than ⅔, but at least ⅓, of such an academic year;''.

Subsec. (b)(1)(A)(vi). Pub. L. 105–244, § 417(b)(1)(C)–(E), added cl. (vi).

Subsec. (b)(1)(D)(ii). Pub. L. 105–244, § 417(b)(2), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the repayment period of any insured loan may not exceed 10 years, and''.

Subsec. (b)(1)(E). Pub. L. 105–244, § 417(b)(3), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''subject to subparagraphs (D) and (L), and except as provided by subparagraph (M), provides that—

''(i) not more than 6 months prior to the date on which the borrower's first payment is due, the lender shall offer the borrower of a loan made, insured, or guaranteed under this section or section 1078–1 of this title, the option of repaying the loan in accordance with a graduated or income-sensitive repayment schedule established by the lender and in accordance with regulations of the Secretary; and

''(ii) repayment of loans shall be in installments over a period of not less than 5 years (unless the student, during the 6 months immediately preceding the start of the repayment period, specifically requests that repayment be made over a shorter period) nor more than 10 years commencing at the beginning of the repayment period determined under paragraph (7) of this subsection;''.

Subsec. (b)(1)(G). Pub. L. 105–244, § 417(b)(4), struck out ''not less than'' after ''insures''.

Subsec. (b)(1)(L)(i). Pub. L. 105–244, § 417(b)(5), inserted ''except as otherwise provided by a repayment plan selected by the borrower under clause (ii) or (iii) of paragraph (9)(A),'' before ''during any'' and '', notwithstanding any payment plan under paragraph (9)(A)'' after ''due and payable''.

Subsec. (b)(1)(M)(i)(I). Pub. L. 105–244, § 417(b)(6)(A), inserted before semicolon '', except that no borrower, notwithstanding the provisions of the promissory note, shall be required to borrow an additional loan under this subchapter and part C of subchapter I of chapter 34 of title 42 in order to be eligible to receive a deferment under this clause''.

Subsec. (b)(1)(M)(ii). Pub. L. 105–244, § 417(b)(6)(B), inserted before semicolon '', except that no borrower who provides evidence of eligibility for unemployment benefits shall be required to provide additional paperwork for a deferment under this clause''.

Subsec. (b)(1)(U)(i)(I), (ii). Pub. L. 105–244, § 417(b)(7)(A), substituted ''emergency action,'' for ''emergency action,,''.

Subsec. (b)(1)(U)(iii)(I). Pub. L. 105–244, § 417(b)(7)(B), inserted ''that originates or holds more than $5,000,000 in loans made under this subchapter and part C of subchapter I of chapter 34 of title 42 for any lender fiscal year (except that each lender described in section 1085(d)(1)(A)(ii)(III) of this title shall annually submit the results of an audit required by this clause),'' before ''at least once a year''.

Subsec. (b)(1)(X). Pub. L. 105–244, § 417(b)(8)(B)(i), substituted ''subsection (c)(9)'' for ''subsection (c)(10)''.

Subsec. (b)(1)(Y). Pub. L. 105–244, § 417(b)(8)(A), (B)(ii), (C), added subpar. (Y).

Subsec. (b)(3). Pub. L. 105–244, § 417(b)(9)(B), inserted concluding provisions.

Subsec. (b)(3)(C). Pub. L. 105–244, § 417(b)(9)(A), added subpar. (C) and struck out former subpar. (C) which read as follows: ''conduct unsolicited mailings to students enrolled in secondary school of student loan application forms; or''.

Subsec. (b)(7)(D). Pub. L. 105–244, § 417(b)(10), added subpar. (D).

Subsec. (b)(9). Pub. L. 105–244, § 417(b)(11), added par. (9).

Subsec. (c)(1)(A). Pub. L. 105–244, § 417(c)(1)(A)(i), substituted ''95 percent'' for ''98 percent''.

Subsec. (c)(1)(B)(i). Pub. L. 105–244, § 417(c)(1)(A)(ii), substituted ''85 percent'' for ''88 percent''.

Subsec. (c)(1)(B)(ii). Pub. L. 105–244, § 417(c)(1)(A)(iii), substituted ''75 percent'' for ''78 percent''.

Subsec. (c)(1)(E)(i). Pub. L. 105–244, § 417(c)(1)(A)(iv)(I), substituted ''95 percent'' for ''98 percent''.

Subsec. (c)(1)(E)(ii). Pub. L. 105–244, § 417(c)(1)(A)(iv)(II), substituted ''85 percent'' for ''88 percent''.

Subsec. (c)(1)(E)(iii). Pub. L. 105–244, § 417(c)(1)(A)(iv)(III), substituted ''75 percent'' for ''78 percent''.

Subsec. (c)(1)(F)(i). Pub. L. 105–244, § 417(c)(1)(A)(v)(I), substituted ''95 percent'' for ''98 percent''.

Subsec. (c)(1)(F)(ii). Pub. L. 105–244, § 417(c)(1)(A)(v)(II), substituted ''85 percent'' for ''88 percent''.

Subsec. (c)(1)(F)(iii). Pub. L. 105–244, § 417(c)(1)(A)(v)(III), substituted ''75 percent'' for ''78 percent''.

Subsec. (c)(2)(A). Pub. L. 105–244, § 417(c)(2)(A), substituted ''proof that the institution was contacted and other reasonable attempts were made'' for ''proof that reasonable attempts were made''.

Subsec. (c)(2)(G). Pub. L. 105–244, § 417(c)(2)(B), substituted ''certifies to the Secretary that diligent attempts, including contact with the institution, have been made'' for ''certifies to the Secretary that diligent attempts have been made''.

Subsec. (c)(2)(H)(ii). Pub. L. 105–244, § 417(c)(3), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the guaranty agency may require the payment by the institution of a reasonable fee (as determined in accordance with regulations prescribed by the Secretary) for such information; and''.

Subsec. (c)(3)(A)(i). Pub. L. 105–244, § 417(c)(4)(A), struck out ''written'' before ''request'' in introductory provisions.

Subsec. (c)(3)(D). Pub. L. 105–244, § 417(c)(4)(B)–(D), added subpar. (D).

Subsec. (c)(6). Pub. L. 105–244, § 417(c)(5), amended heading and text of par. (6) generally, revising and restating provisions relating to Secretary's equitable share.

Subsec. (c)(8). Pub. L. 105–244, § 417(c)(6), redesignated subpar. (A) as entire par. and struck out subpar. (B) which read as follows: ''An orderly transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part C of this subchapter shall be deemed to be in the Federal fiscal interest, and a guaranty agency shall promptly assign loans to the Secretary under this paragraph upon the Secretary's request.''

Subsec. (c)(9)(A). Pub. L. 105–244, § 417(c)(7)(A), substituted ''maintain in the agency's Federal Student Loan Reserve Fund established under section 1072a of this title a current minimum reserve level of at least 0.25 percent'' for ''maintain a current minimum reserve level of at least .5 percent''.

Subsec. (c)(9)(C). Pub. L. 105–244, § 417(c)(7)(B), substituted ''85 percent pursuant to paragraph (1)(B)(i)'' for ''80 percent pursuant to subsection (c)(1)(B)(ii) of this section'', struck out '', as appropriate,'' after ''Secretary shall require'', and substituted ''45 working days'' for ''30 working days''.

Subsec. (c)(9)(E)(iv). Pub. L. 105–244, § 417(c)(7)(C)(i), inserted ''or'' at end.

Subsec. (c)(9)(E)(v). Pub. L. 105–244, § 417(c)(7)(C)(ii), substituted a period for ''; or'' at end.

Subsec. (c)(9)(E)(vi). Pub. L. 105–244, § 417(c)(7)(C)(iii), struck out cl. (vi) which read as follows: ''the Secretary determines that such action is necessary to ensure an orderly transition from the loan programs under this part to the direct student loan programs under part C of this subchapter.''

Subsec. (c)(9)(F)(vii). Pub. L. 105–244, § 417(c)(7)(D), substituted ''and to avoid disruption of the student loan program.'' for ''to avoid disruption of the student loan program, and to ensure an orderly transition from the loan programs under this part to the direct student loan programs under part C of this subchapter.''

Subsec. (c)(9)(I). Pub. L. 105–244, § 417(c)(7)(E), inserted ''that, if commenced after September 24, 1998, shall be on the record'' after ''for a hearing''.

Subsec. (c)(9)(K). Pub. L. 105–244, § 417(c)(7)(F), substituted ''and the Workforce'' for ''and Labor'' and struck out ''and the progress of the transition from the loan programs under this part to the direct student loan programs under part C of this subchapter'' after ''guaranty agency system''.

Subsec. (e). Pub. L. 105–244, § 417(d), amended heading and text of subsec. (e) generally. Prior to amendment, subsec. (e) related to payments for lender referral services.

Subsec. (f). Pub. L. 105–244, § 417(e), amended heading and text of subsec. (f) generally. Prior to amendment, subsec. (f) authorized the Secretary to make payments to guaranty agencies for fiscal years prior to fiscal year 1994 for certain administrative and other costs and provided for applications for such payments.

Subsec. (g). Pub. L. 105–244, § 417(f), substituted ''and the Workforce'' for ''and Labor'' in concluding provisions.

Subsec. (j)(3). Pub. L. 105–244, § 417(g)(1), struck out ''during transition to direct lending'' after ''services'' in heading.

Subsec. (j)(3)(A). Pub. L. 105–244, § 417(g)(2), struck out ''during the transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part C of this subchapter'' after ''loan capital'' and inserted ''designated for a State'' after ''a guaranty agency'' and ''subparagraph (C) and'' after ''funds in accordance with''.

Subsec. (j)(3)(C). Pub. L. 105–244, § 417(g)(3), added subpar. (C).

Subsec. (*l*). Pub. L. 105–244, § 417(h), amended heading and text of subsec. (*l*) generally. Prior to amendment, text read as follows:

''(1) ASSISTANCE REQUIRED.—Upon receipt of a proper request from the lender, a guaranty agency having an agreement with the Secretary under subsection (c) of this section shall engage in preclaims assistance activities (as described in subsection (c)(6)(C)(i)(I) of this section) and supplemental preclaims assistance activities (as described in subsection (c)(6)(C) of this section) with respect to each loan covered by such agreement.

''(2) PAYMENTS FOR SUPPLEMENTAL PRECLAIMS ASSISTANCE.—The Secretary shall make payments in accordance with the provisions of this paragraph to any guaranty agency that engages in supplemental preclaims assistance (as defined in subsection (c)(6)(C) of this section) on a loan guaranteed under this part. For each loan on which such assistance is performed and for which a default claim is not presented to the guaranty agency by the lender on or before the 150th day after the loan becomes 120 days delinquent, such payment shall be equal to one percent of the total of the unpaid principal and the accrued unpaid interest of the loan.''

Subsec. (m)(1). Pub. L. 105–244, § 417(i), substituted ''may require borrowers'' for ''shall require at least 10 percent of the borrowers''.

Subsec. (n). Pub. L. 105–244, § 417(k), added subsec. (n).

Pub. L. 105–244, § 417(j), struck out heading and text of subsec. (n) which related to State share of default costs.

1997—Subsec. (a)(5). Pub. L. 105–33, § 6104(2), substituted ''September 30, 2002,'' for ''September 30, 1998,'' and ''September 30, 2006.'' for ''September 30, 2002.''

Subsec. (c)(9)(A). Pub. L. 105–33, § 6101(b), struck out ''for the fiscal year of the agency that begins in 1993'' after ''loans guaranteed by such agency'' and struck out at end ''The minimum reserve level shall increase to—

''(i) .7 percent of such total attributable amount for the fiscal year of the agency that begins in 1994;

''(ii) .9 percent of such total attributable amount for the fiscal year of the agency that begins in 1995; and

''(iii) 1.1 percent of such total attributable amount for each fiscal year of the agency that begins on or after January 1, 1996.''

1994—Subsec. (c)(1)(G). Pub. L. 103–382 added subpar. (G).

1993—Subsec. (a)(2)(C)(i). Pub. L. 103–208, § 2(c)(11), substituted ''; and'' for period at end.

Subsec. (a)(2)(E). Pub. L. 103–208, § 2(c)(12), inserted ''or 1078–8'' after ''1078–1''.

Subsec. (b)(1)(A)(ii), (iii). Pub. L. 103–208, § 2(c)(13)(A), added cls. (ii) and (iii) and struck out former cls. (ii) and (iii) which read as follows:

''(ii) in the case of a student who has successfully completed such first year but has not successfully completed the remainder of a program of undergraduate study—

''(I) $3,500, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 1088 of this title);

''(II) $2,325, if such student is enrolled in a program whose length is less than one academic year, but at least ⅔ of such academic year; and

''(III) $1,175, if such student is enrolled in a program whose length is less than ⅔, but at least ⅓, of such academic year;

''(iii) in the case of a student at an eligible institution who has successfully completed such first and second year but has not successfully completed the remainder of a program of undergraduate study—

''(I) $5,500, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 1088 of this title);

''(II) $3,675, if such student is enrolled in a program whose length is less than one academic year, but at least ⅔ of such an academic year; and

''(III) $1,825, if such student is enrolled in a program whose length is less than ⅔, but at least ⅓, of such an academic year; and''.

Subsec. (b)(1)(A)(iv), (v). Pub. L. 103–208, § 2(c)(13)(B), (C), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (b)(1)(B). Pub. L. 103–208, § 2(c)(14), substituted a semicolon for period at end of closing provisions.

Subsec. (b)(1)(D). Pub. L. 103–66, § 4043(a)(1), substituted ''be subject to income contingent repayment in accordance with subsection (m) of this section;'' for ''be subject to repayment in accordance with the regulations required by subsection (m) of this section if the Secretary has published the finding required by paragraph (2) of such subsection;''.

Subsec. (b)(1)(G). Pub. L. 103–66, § 4108(b), substituted ''98 percent'' for ''100 percent'' and inserted before semicolon at end '', except that such program shall insure 100 percent of the unpaid principal of loans made with funds advanced pursuant to subsection (j) of this section or section 1087–2(q) of this title''.

Subsec. (b)(1)(H). Pub. L. 103–66, § 4102(c), substituted ''1.0 percent'' for ''3 percent''.

Subsec. (b)(1)(N). Pub. L. 103–208, § 2(c)(15), amended subpar. (N) generally. Prior to amendment, subpar. (N) read as follows: ''provides that funds borrowed by a student are disbursed to the institution by check or other means that is payable to and requires the endorsement or other certification by such student, except nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted to allow the Secretary to require checks to be made co-payable to the institution and the borrower or to prohibit the disbursement of loan proceeds by means other than by check and except in the case of students who are studying outside the United States in a program of study abroad that is approved for credit by the home institution at which the student is enrolled, the funds shall, at the request of the borrower, be delivered directly to the student and the checks may be endorsed, and fund transfers authorized, pursuant to an authorized power-of-attorney;''.

Subsec. (b)(1)(U). Pub. L. 103–208, § 2(c)(16), inserted a comma after ''emergency action'' in two places and substituted ''this clause'' for ''this clause;'' at end.

Subsec. (b)(1)(V). Pub. L. 103–208, § 2(c)(17), redesignated subpar. (X) as (V) and struck out former subpar. (V) which related to procedure and requirements for granting a forbearance while a borrower is enrolled in a medical or dental internship or residency program. See Codification note above.

Subsec. (b)(1)(W). Pub. L. 103–208, § 2(c)(17), redesignated subpar. (Y) as (W) and struck out former subpar. (W) which read as follows:

''(i) provides that, upon written request, a lender shall grant a borrower forbearance on such terms as are otherwise consistent with the regulations of the Secretary, during periods in which the borrower is serving in a national service position, for which the borrower receives a national service educational award under the National and Community Service Trust Act of 1993;

''(ii) provides that clauses (iii) and (iv) of subparagraph (V) shall also apply to a forbearance granted under this subparagraph; and

''(iii) provides that interest shall continue to accrue on a loan for which a borrower receives forbearance under this subparagraph and shall be capitalized or paid by the borrower;''. See Codification note above.

Pub. L. 103–82, § 102(c)(1)(A), added subpar. (W) and redesignated former subpar. (W) as (X).

Subsec. (b)(1)(X). Pub. L. 103–208, § 2(c)(17)(B), redesignated subpar. (Z) as (X). Former subpar. (X) redesignated (V). See Codification note above.

Pub. L. 103–82, § 102(c)(1)(A)(i), redesignated subpar. (W) as (X). Former subpar. (X) redesignated (Y).

Subsec. (b)(1)(Y). Pub. L. 103–208, § 2(c)(17)(B), redesignated subpar. (Y) as (W). See Codification note above.

Pub. L. 103–82, § 102(c)(1)(A)(i), redesignated subpar. (X) as (Y). Former subpar. (Y) redesignated (Z).

Subsec. (b)(1)(Z). Pub. L. 103–208, § 2(c)(17)(B), redesignated subpar. (Z) as (X). See Codification note above.

Pub. L. 103–82, § 102(c)(1)(A)(i), redesignated subpar. (Y) as (Z).

Subsec. (b)(2)(F)(i). Pub. L. 103–208, § 2(c)(18), substituted ''either jointly or separately to provide a notice'' for ''each to provide a separate notice''.

Subsec. (b)(2)(F)(ii). Pub. L. 103–208, § 2(c)(19)–(21), substituted ''transferee'' for ''transferor'' in introductory provisions, struck out ''to another holder'' after ''the loan'' in subcl. (I), and substituted ''the new'' for ''such other'' in subcl. (II).

Subsec. (b)(7). Pub. L. 103–208, § 2(c)(22), amended par. (7) generally. Prior to amendment, par. (7) read as follows:

''(A) In the case of a loan made under section 1077 of this title or this section, the repayment period shall begin on the day immediately following the expiration of the 6-month period after the student ceases to carry at least one-half the normal full-time academic workload as determined by the institution, unless the borrower requests and is granted a repayment schedule that provides for repayment to commence at an earlier point in time, and shall exclude any period of authorized deferment or forbearance.

''(B) In the case of a loan made under section 1078–1 or 1078–8 of this title, the repayment period shall begin on the day the loan is disbursed, or, if the loan is disbursed in multiple installments, on the day of the last such disbursement, and shall exclude any period of authorized deferment or forbearance.

''(C) In the case of a loan made under section 1078–2 or 1078–3 of this title, the repayment period shall begin on the day the loan is disbursed, and shall exclude any period of authorized deferment or forbearance.''

Subsec. (b)(8). Pub. L. 103–208, § 2(c)(23), added par. (8).

Subsec. (c)(1)(A). Pub. L. 103–208, § 2(c)(24), substituted last sentence for former last sentence which read as follows: ''In no case shall a guaranty agency file a claim under this subsection for reimbursement with respect to losses prior to 270 days after the loan becomes delinquent with respect to any installment thereon, or later than 45 days after the guaranty agency discharges its insurance obligation on the loan.''

Pub. L. 103–66, § 4108(a)(1), substituted ''98 percent'' for ''100 percent'' in fourth sentence.

Subsec. (c)(1)(B), (E), (F). Pub. L. 103–66, § 4108(a)(2)–(4), in subpar. (B), substituted ''88 percent'' for ''90 percent'' in cl. (i) and ''78 percent'' for ''80 percent'' in cl. (ii), and added subpars. (E) and (F).

Subsec. (c)(2)(G). Pub. L. 103–208, § 2(c)(25), substituted ''certifies'' for ''demonstrates'' before ''to the Secretary''.

Subsec. (c)(3)(A). Pub. L. 103–208, § 2(c)(26), added subpar. (A) and struck out former subpar. (A) which read as follows: ''shall contain provisions providing for forbearance in accordance with subparagraphs (V) and (W) of subsection (b)(1) of this section for the benefit of the student borrower serving in a medical or dental internship or residency program;''. See Codification note above.

Pub. L. 103–82, § 102(c)(1)(B), substituted ''subparagraphs (V) and (W) of subsection (b)(1)'' for ''subsection (b)(1)(V)''.

Subsec. (c)(6)(A)(ii). Pub. L. 103–66, § 4110(a), substituted ''27 percent'' for ''30 percent''.

Subsec. (c)(8). Pub. L. 103–66, § 4044, designated existing provisions as subpar. (A), struck out second and third sentences, and added subpar. (B). Prior to amendment, second and third sentences read as follows: ''Prior to making such determination for any guaranty agency, the Secretary shall, in consultation with the guaranty agency, develop criteria to determine whether such agency has made adequate collections efforts. In determining whether a guaranty agency's collection efforts have met such criteria, the Secretary shall consider the agency's record of success in collecting on defaulted loans, the age of the loans, and the amount of recent payments received on the loans.''

Subsec. (c)(9). Pub. L. 103–66, § 4107(a), redesignated par. (10) as (9) and struck out former par. (9) which required guaranty agencies to pay reinsurance fees to the Secretary.

Subsec. (c)(10). Pub. L. 103–66, § 4107(a)(2), redesignated par. (10) as (9).

Subsec. (c)(10)(C). Pub. L. 103–66, § 4045(1), inserted '', as appropriate,'' after ''the Secretary shall require''.

Subsec. (c)(10)(D). Pub. L. 103–66, § 4045(2), designated existing provisions as cl. (i), substituted ''If the Secretary is not seeking to terminate the guaranty agency's agreement under subparagraph (E), or assuming the guaranty agency's functions under subparagraph (F), a'' for ''Each'', and added cl. (ii).

Subsec. (c)(10)(E)(iv) to (vi). Pub. L. 103–66, § 4045(3), added cls. (iv) to (vi).

Subsec. (c)(10)(F). Pub. L. 103–66, § 4045(4)(A), substituted ''If a guaranty'' for ''Except as provided in subparagraph (G), if a guaranty''.

Subsec. (c)(10)(F)(v). Pub. L. 103–66, § 4045(4)(B), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: ''provide the guaranty agency with additional advance funds in accordance with section 1072(c)(7) of this title in order to meet immediate cash needs of the guaranty agency and ensure the uninterrupted payment of claims, with such restrictions on the use of such funds, as determined appropriate by the Secretary; or''.

Subsec. (c)(10)(F)(vi), (vii). Pub. L. 103–66, § 4045(4)(C), (D), in cl. (vi), substituted ''to avoid'' for ''and to avoid'' before ''disruption of the student'' and inserted before period at end '', and to ensure an orderly transition from the loan programs under this part to the direct student loan programs under part C of this subchapter'', redesignated cl. (vi) as (vii), and added new cl. (vi).

Subsec. (c)(10)(G). Pub. L. 103–66, § 4045(5), (7), added subpar. (G) and struck out former subpar. (G) which read as follows: ''The Secretary may not take any action under subparagraph (E) or (F) against any guaranty agency that is backed by the full faith and credit of the State where such guaranty agency is the primary guarantor.''

Subsec. (c)(10)(H) to (J). Pub. L. 103–66, § 4045(6), (7), added subpar. (H) and redesignated former subpars. (H) and (I) as (I) and (J), respectively. Former subpar. (J) redesignated (K).

Subsec. (c)(10)(K). Pub. L. 103–66, § 4045(6), (8), redesignated subpar. (J) as (K) and substituted ''system and the progress of the transition from the loan programs under this part to the direct student loan programs under part C of this subchapter.'' for ''system, together with recommendations for legislative changes, if necessary, for the maintenance of a strong guaranty agency system.''

Subsec. (e)(1). Pub. L. 103–66, § 4041(b)(1), amended heading, designated existing provisions as subpar. (A) and substituted ''with which the Secretary has an agreement under subparagraph (B)'' for ''in any State'', and added subpar. (B).

Subsec. (e)(2). Pub. L. 103–66, § 4041(b)(2)(A), in introductory provisions, substituted ''with which the Secretary has an agreement under paragraph (1)(B)'' for ''in a State''.

Subsec. (e)(2)(A). Pub. L. 103–208, § 2(c)(27), redesignated former cl. (i), subcl. (I) as (i) and former cl. (i), subcl. (II) as (ii) and struck out cl. (i) designation following subpar. (A) designation. See Codification note above.

Pub. L. 103–66, § 4041(b)(2)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''such student is either a resident of such State or is accepted for enrollment in or is attending an eligible institution in such State; and''.

Subsec. (e)(3). Pub. L. 103–66, § 4041(b)(3), substituted ''From funds available for costs of transition under section 1087h of this title, the'' for ''The''.

Subsec. (e)(5). Pub. L. 103–66, §4041(b)(4), struck out par. (5) which related to authorization of appropriations.

Subsec. (f)(1)(A). Pub. L. 103–66, §4107(b)(1), substituted ''For a fiscal year prior to fiscal year 1994, the Secretary'' for ''The Secretary''.

Subsec. (f)(1)(B). Pub. L. 103–66, §4107(b)(2), inserted ''prior to fiscal year 1994'' after ''any fiscal year''.

Subsec. (j)(2). Pub. L. 103–208, §2(c)(28), substituted ''lender-of-last-resort'' for ''lender of last resort'' in introductory provisions.

Subsec. (j)(2)(A) to (E). Pub. L. 103–66, §4041(a)(2)(B), in subpar. (A) inserted before semicolon ''and ensure a response within 60 days after the student's original complete application is filed under this subsection'', added subpar. (B), and redesignated former subpars. (B) to (D) as (C) to (E), respectively.

Subsec. (j)(3). Pub. L. 103–66, §4041(a)(1), added par. (3) consisting of subpars. (A) and (B), and struck out former par. (3) relating to limitation on lender-of-last-resort program, consisting of subpars. (A) to (C).

Subsec. (*l*)(2). Pub. L. 103–66, §4112(a), inserted second sentence and struck out former second sentence which read as follows: ''Such payments shall be equal to $50.00 for each loan on which such assistance is performed and for which a default claim is not presented to the guaranty agency by the lender on or before the 150th day after the loan becomes 120 days delinquent.''

Subsec. (m). Pub. L. 103–66, §4043(a)(2), amended par. (1) generally, added par. (2), and struck out former pars. (2) to (4). Prior to amendment, former pars. (1) to (4) related to establishment of terms and conditions, collection mechanism, loans for which income contingent repayment is required, and additional authority, respectively.

Subsec. (n). Pub. L. 103–66, §4201(a), added subsec. (n).

1992—Subsec. (a)(2)(C). Pub. L. 102–325, §416(a)(1), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

''(i) a student's estimated financial assistance means, for the period for which the loan is sought, the amount of assistance such student will receive under subpart 1 of part A of this subchapter (as determined in accordance with section 1091(b) of this title), subpart 2 of part A of this subchapter, part D of this subchapter, and part C of subchapter I of chapter 34 of title 42, and any amount paid the student under chapters 32, 34, and 35 of title 38, plus other scholarship, grant, or loan assistance; and

''(ii) the determination of need and of the amount of a loan by an eligible institution under subparagraph (B) with respect to a student shall be calculated by subtracting from the estimated cost of attendance at the eligible institution the total of the expected family contribution with respect to such student plus any estimated financial assistance reasonably available to such student.''

Subsec. (a)(3)(A)(v). Pub. L. 102–325, §416(a)(2), added cl. (v).

Subsec. (a)(5). Pub. L. 102–325, §411(b)(2), substituted ''September 30, 1998'' for ''September 30, 1992'' and ''September 30, 2002'' for ''September 30, 1997''.

Subsec. (a)(7). Pub. L. 102–325, §416(a)(3), added par. (7).

Subsec. (b)(1)(A). Pub. L. 102–325, §416(b)(1)(A), inserted ''or in a program of study abroad approved for credit by the eligible home institution at which such student is enrolled'' in introductory provisions.

Subsec. (b)(1)(A)(i) to (iv). Pub. L. 102–325, §416(b)(1)(B), added cls. (i) to (iv) and struck out former cls. (i) to (iii) which read as follows:

''(i) $2,625, in the case of a student who has not successfully completed the first and second year of a program of undergraduate education;

''(ii) $4,000, in the case of a student who has successfully completed such first and second year but who has not successfully completed the remainder of a program of undergraduate education; and

''(iii) $7,500, in the case of a graduate or professional student (as defined in regulations of the Secretary);''.

Subsec. (b)(1)(B). Pub. L. 102–325, §416(b)(2), which directed the amendment of subpar. (B) by striking clauses (i) and (ii) and inserting language which contained new cls. (i) and (ii) followed by concluding provisions, was executed by substituting the new cls. (i) and (ii) and concluding provisions for former cls. (i) and (ii) and former concluding provisions to reflect the probable intent of Congress. Prior to amendment, cls. (i) and (ii) and concluding provisions read as follows:

''(i) $17,250, in the case of any student who has not successfully completed a program of undergraduate education, excluding loans made under section 1078–1 or 1078–2 of this title; and

''(ii) $54,750, in the case of any graduate or professional student (as defined by regulations of the Secretary and including any loans which are insured by the Secretary under this part, or by a guaranty agency, made to such student before the student became a graduate or professional student), excluding loans made under section 1078–1 or 1078–2 of this title;

except that the Secretary may increase the limit applicable to students who are pursuing programs which the Secretary determines are exceptionally expensive;''.

Subsec. (b)(1)(D), (E). Pub. L. 102–325, §416(c)(1), amended subpars. (D) and (E) generally. Prior to amendment, subpars. (D) and (E) read as follows:

''(D) provides that (i) the student borrower shall be entitled to accelerate without penalty the whole or any part of an insured loan, (ii) except as provided in subparagraph (M) of this paragraph, the repayment period of any insured loan may not exceed 10 years, and (iii) the note or other written evidence of any loan, may contain such reasonable provisions relating to repayment in the event of default by the borrower as may be authorized by regulations of the Secretary in effect at the time such note or written evidence was executed;

''(E) subject to subparagraphs (D) and (L) of this paragraph and except as provided by subparagraph (M) of this paragraph, provides that repayment of loans shall be in installments over a period of not less than 5 years (unless the student, during the 6 months preceding the start of the repayment period, specifically requests that repayment be made over a shorter period) nor more than 10 years beginning 6 months after the month in which the student ceases to carry at least one-half the normal full-time academic workload as determined by the institution;''.

Subsec. (b)(1)(L)(i). Pub. L. 102–325, §416(d), substituted ''(but in no instance less than the amount of interest due and payable)'' for '', except that, in the case of a husband and wife, both of whom have such loans outstanding, the total of the combined payments for such a couple during any year shall not be less than $600 or the balance of all such loans, whichever is less''.

Subsec. (b)(1)(M). Pub. L. 102–325, §416(e)(1), amended subpar. (M) generally, revising and restating as cls. (i) to (iii) provisions formerly contained in cls. (i) to (xi).

Subsec. (b)(1)(N). Pub. L. 102–325, §416(f), substituted ''except in the case of students who are studying outside the United States in a program of study abroad that is approved for credit by the home institution at which the student is enrolled, the funds shall, at the request of the borrower, be delivered directly to the student and the checks may be endorsed, and fund transfers authorized, pursuant to an authorized power-of-attorney;'' for ''except in the case of attendance at an institution outside the United States, the funds shall be delivered directly to the student;''.

Subsec. (b)(1)(T). Pub. L. 102–325, §416(g), amended subpar. (T) generally. Prior to amendment, subpar. (T) read as follows: ''provides no restrictions with respect to eligible institutions (other than nonresidential correspondence schools) which are more onerous than eligibility requirements for institutions under the Federal student loan insurance program as in effect on January 1, 1985, unless—

''(i) that institution is ineligible under regulations for the emergency action, limitation, suspension, or termination of eligible institutions under the Federal student loan insurance program or is ineligible pursu-

ant to criteria issued under the student loan insurance program which are substantially the same as regulations with respect to such eligibility issued under the Federal student loan insurance program; or

''(ii) there is a State constitutional prohibition affecting the eligibility of such an institution;''.

Subsec. (b)(1)(U)(iii). Pub. L. 102–325, § 416(h), added cl. (iii).

Subsec. (b)(1)(V). Pub. L. 102–325, § 416(i)(4), (5), added cls. (ii) and (iii) and redesignated former cl. (ii) as (iv).

Pub. L. 102–325, § 416(i)(3), which directed the amendment of cl. (ii) by substituting a semicolon for a period at end, could not be executed because the period had been stricken by Pub. L. 102–164, § 601(b)(2).

Pub. L. 102–325, § 416(i)(1), (2), struck out ''and'' at end of cl. (i) and inserted ''or (ii)'' after ''clause (i)'' in two places in cl. (ii).

Subsec. (b)(1)(W) to (Y). Pub. L. 102–325, § 416(j), added subpars. (W) to (Y) and struck out former subpars. (W) and (X) which related to credit reports, credit worthy cosigners, and authorizations for entry of judgments against borrowers in the event of default.

Subsec. (b)(2)(C). Pub. L. 102–325, § 416(k)(1), substituted '', including financial information, as the Secretary may reasonably require to carry out the Secretary's functions under this part and protect the financial interest of the United States,'' for '', as the Secretary may reasonably require to carry out the Secretary's functions under this part,''.

Subsec. (b)(2)(D)(i). Pub. L. 102–325, § 416(k)(2)(A), substituted ''on at least an annual basis'' for ''at least once every 2 years''.

Subsec. (b)(2)(E). Pub. L. 102–325, § 416(k)(3), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(2)(F). Pub. L. 102–325, § 416(k)(2)(B), (4), added subpar. (F).

Subsec. (b)(3)(B) to (D). Pub. L. 102–325, § 416(*l*), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (b)(4). Pub. L. 102–325, § 416(n), inserted at end sentence relating to requests for deferment of repayment by students engaged in fellowship-supported study outside the United States.

Pub. L. 102–325, § 416(m), redesignated par. (5) as (4) and struck out former par. (4) which related to targeted teacher deferment rule.

Subsec. (b)(5). Pub. L. 102–325, § 416(m)(2), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (b)(6). Pub. L. 102–325, § 416(*o*), added par. (6). Former par. (6) redesignated (5).

Subsec. (b)(7). Pub. L. 102–325, § 416(c)(2), added par. (7).

Subsec. (c)(1)(A). Pub. L. 102–325, § 416(p)(1), substituted '', or later than 45 days after the guaranty agency discharges its insurance obligation on the loan.'' for period at end.

Subsec. (c)(1)(D). Pub. L. 102–325, § 416(p)(2), added subpar. (D).

Subsec. (c)(2). Pub. L. 102–325, § 416(p)(3), struck out ''and'' at end of subpar. (F), added subpars. (G) and (H), and redesignated former subpar. (G) as (I).

Subsec. (c)(3). Pub. L. 102–325, § 416(p)(4), added subpar. (C) and concluding provisions and struck out former last sentence which read as follows: ''Such regulations shall not preclude guaranty agencies from permitting the parties to such a loan from entering into a forbearance agreement solely because the loan is in default.''

Subsec. (c)(7)(A). Pub. L. 102–325, § 416(p)(5)(A), substituted ''(1)(C)'' for ''(1)(B)'' in introductory provisions and inserted ''and ends before October 1, 1991'' in cl. (i).

Subsec. (c)(7)(B). Pub. L. 102–325, § 416(p)(5)(D), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (c)(7)(C). Pub. L. 102–325, § 416(p)(5)(B), (C), redesignated subpar. (B) as (C) and inserted ''or (B)'' after ''(A)''.

Subsec. (c)(8). Pub. L. 102–325, § 416(p)(6), inserted provisions at end directing Secretary to develop criteria to determine whether agency has made adequate collection efforts and directing Secretary to consider certain factors in making determination.

Subsec. (c)(10). Pub. L. 102–325, § 416(p)(7), added par. (10).

Subsec. (f)(1)(A)(i). Pub. L. 102–325, § 416(q)(1), substituted ''eligible lender'' for ''commercial lender''.

Subsec. (f)(1)(C). Pub. L. 102–325, § 416(q)(2), added subpar. (C).

Subsec. (j). Pub. L. 102–325, § 416(r), designated existing provisions as par. (1), inserted par. heading, and added pars. (2) and (3).

Subsec. (k)(3). Pub. L. 102–325, § 416(s), added par. (3).

Subsec. (m). Pub. L. 102–325, § 416(t), added subsec. (m).

1991—Subsec. (a)(2)(A)(iii). Pub. L. 102–164, § 602(b)(1), added cl. (iii).

Subsec. (a)(2)(F). Pub. L. 102–26 amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''Except as provided in subparagraph (D), an eligible institution may not, in carrying out the provisions of subparagraphs (A) and (B) of this paragraph, refuse to provide to any eligible lender which has an agreement under subsection (b) of this section with any guaranty agency, a statement which permits a student to receive any loan under this part, except that, in individual cases where the institution determines that the portion of the student's expenses to be covered by the loan can be met more appropriately, either by the institution or directly by the student, from other sources, the institution may refuse to provide such statement or may reduce the determination of need contained in such statement.''

Subsec. (b)(1)(W). Pub. L. 102–164, § 601(b), added subpar. (W).

Subsec. (b)(1)(X). Pub. L. 102–164, § 604, added subpar. (X).

Subsec. (c)(6)(D). Pub. L. 102–164, § 605(b)(2), struck out subpar. (D) which read as follows: ''In the case of a State which enacts and enforces a garnishment law that complies with the requirements of section 1078–5 of this title, subparagraph (A)(ii) shall be applied by substituting '35 percent' for '30 percent'.''

1990—Subsec. (a)(2)(F). Pub. L. 101–508, § 3004(b), inserted before period at end '', except that, in individual cases where the institution determines that the portion of the student's expenses to be covered by the loan can be met more appropriately, either by the institution or directly by the student, from other sources, the institution may refuse to provide such statement or may reduce the determination of need contained in such statement''.

Subsec. (c)(1)(A). Pub. L. 101–508, § 3002(a)(1), struck out before period at end of first sentence '', including the administrative costs of supplemental preclaim assistance for default prevention as defined in paragraph (6)(C)''.

Subsec. (c)(6)(C). Pub. L. 101–508, § 3002(a)(2)–(5), in introductory provisions of cl. (i), substituted ''subsection (*l*) of this section'' for ''this paragraph'', in cl. (i)(I), substituted ''generally comparable in intensiveness to the level of preclaims assistance performed, prior to the 120th day of delinquency, by the guaranty agency as of October 16, 1990'' for ''required or permitted under paragraph (2)(A) of this subsection and subsection (f) of this section'', in cl. (ii), substituted ''payment under subsection (*l*) of this section'' for ''reimbursement'' and ''described in division (i)(I) of this subparagraph'' for ''which the guaranty agency is required or permitted to provide pursuant to paragraph (2)(A) of this subsection and subsection (f) of this section'', and in cl. (iv), struck out first sentence which read as follows: ''The costs for each delinquent loan associated with carrying out this subparagraph may not exceed 2 percent of the outstanding principal balance of each such loan subject to the supplemental preclaims assistance authorized by this subparagraph or $100, whichever is less.''

Subsec. (*l*). Pub. L. 101–508, § 3002(b), added subsec. (*l*).

1989—Subsec. (a)(2)(A)(i)(III). Pub. L. 101–239, § 2004(b)(1), added subcl. (III).

Subsec. (b)(1)(M)(i). Pub. L. 101–239, § 2002(a)(2), inserted before semicolon at end '', except that no borrower shall be eligible for a deferment under this

clause, or loan made under this part (other than a loan made under section 1078–2 or 1078–3 of this title), while serving in a medical internship or residency program''.

Subsec. (b)(1)(O). Pub. L. 101–239, §2004(b)(3), amended subpar. (O) generally, substituting requirement that student loans be disbursed in accordance with section 1078–7 of this title for provisions requiring that certain loans be disbursed directly by lender in 2 or more installments, none exceeding more than one-half of the loan, or in installments pursuant to escrow provisions in subsec. (i).

Subsec. (b)(1)(T)(i). Pub. L. 101–239, §2006(b)(1), inserted ''emergency action,'' after ''regulations for the''.

Subsec. (b)(1)(U). Pub. L. 101–239, §2006(b), in cl. (i) inserted ''emergency action,'' after ''regulations for the'', and in cl. (ii) inserted ''take emergency action,'' after ''such program to''.

Subsec. (b)(1)(V). Pub. L. 101–239, §2002(b)(1)(A), added subpar. (V).

Subsec. (c)(3). Pub. L. 101–239, §2002(b)(1)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''To the extent provided in regulations of the Secretary, a guaranty agreement under this subsection may contain provisions which permit such forbearance for the benefit of the student borrower as may be agreed upon by the parties to an insured loan and approved by the insurer. Such regulations shall not preclude guaranty agencies from permitting the parties to such a loan from entering into a forbearance agreement solely because the loan is in default.''

1988—Subsec. (b)(1)(M)(v). Pub. L. 100–369, §7(c), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (b)(1)(M)(vii). Pub. L. 100–369, §11(a), inserted ''after January 1, 1986,'' after ''service''.

Subsec. (b)(1)(O). Pub. L. 100–369, §5(b)(2), substituted ''section 1078–2 or 1078–3'' for ''section 1078–1, 1078–2, or 1078–3''.

1987—Subsec. (a)(2)(D). Pub. L. 100–50, §10(e), substituted ''certifies the eligibility of any student'' for ''permits the student''.

Subsec. (b)(1)(A)(i). Pub. L. 100–50, §10(f)(1), substituted ''first and'' for ''first or''.

Subsec. (b)(1)(B)(i). Pub. L. 100–50, §10(a)(1), inserted '', excluding loans made under section 1078–1 or 1078–2 of this title'' after ''undergraduate education''.

Subsec. (b)(1)(B)(ii). Pub. L. 100–50, §10(a)(2), inserted '', excluding loans made under section 1078–1 or 1078–2 of this title'' after ''graduate or professional student)''.

Subsec. (b)(1)(M)(vi). Pub. L. 100–50, §10(b)(1), inserted ''nonprofit'' before ''private''.

Subsec. (b)(1)(M)(vii). Pub. L. 100–50, §10(b)(2), inserted ''or serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training'' before semicolon at end.

Subsec. (b)(1)(N). Pub. L. 100–50, §10(f)(2), inserted ''and except in the case of attendance at an institution outside the United States, the funds shall be delivered directly to the student'' before semicolon at end.

Subsec. (b)(1)(O). Pub. L. 100–50, §10(c), substituted ''$1,000 or more'' for ''more than $1,000''.

Subsec. (b)(1)(O)(i). Pub. L. 100–50, §10(f)(3), substituted ''being disbursed'' for ''being dispensed''.

Subsec. (b)(1)(P). Pub. L. 100–50, §10(f)(4), added subpar. (P) and struck out former subpar. (P) which read as follows: ''requires the borrower and the institution at which the borrower is in attendance to promptly notify the holder of the loan, directly or through the guaranty agency, concerning any change of address or status;''.

Subsec. (b)(1)(T). Pub. L. 100–50, §10(f)(5), inserted ''(other than nonresidential correspondence schools)'' after ''eligible institutions''.

Subsec. (b)(5). Pub. L. 100–50, §10(g), substituted ''paragraph (1)(M)(i)(III)'' for ''paragraph (1)(M)''.

Subsec. (b)(6)(A). Pub. L. 100–50, §10(h)(1), substituted ''Until such time as the Secretary has implemented section 1092b of this title and is able to provide to guaranty agencies the information required by such section'' for ''Prior to the implementation of section 1092b of this title''.

Subsec. (b)(6)(B)(ii). Pub. L. 100–50, §10(h)(2), added cl. (ii) and struck out former cl. (ii) which read as follows: ''the amount borrowed, the cumulative amount borrowed, the income reported on the loan application, and the purposes and the cost of attendance of the borrower.''

Subsec. (c)(1)(A). Pub. L. 100–203, §3002(b)(1), substituted ''shall be deemed'' for ''shall, subject to section 1072(e) of this title, be deemed''.

Pub. L. 100–203, §3001(b)(1), substituted ''shall, subject to section 1072(e) of this title, be deemed'' for ''shall be deemed''.

Subsec. (c)(6)(C)(iv). Pub. L. 100–50, §10(i), inserted at end ''In the case of accounts brought into repayment status as a result of performing supplemental preclaims assistance, the cost of such assistance is a permissible charge to the borrower (for the cost of collection) for which the borrower shall be liable.''

Subsec. (c)(6)(D). Pub. L. 100–50, §10(j), inserted ''and enforces'' after ''enacts''.

Subsec. (c)(9)(A). Pub. L. 100–203, §3002(b)(2), substituted ''an amount equal to'' for ''an amount, subject to section 1072(e) of this title, equal to'' in introductory provisions.

Pub. L. 100–203, §3001(b)(2), substituted ''an amount, subject to section 1072(e) of this title, equal to'' for ''an amount equal to'' in introductory provisions.

Subsec. (c)(9)(A)(i), (ii). Pub. L. 100–50, §10(k)(1), inserted ''covered'' before ''loans''.

Subsec. (c)(9)(D). Pub. L. 100–50, §10(k)(2), added subpar. (D).

Subsec. (f)(1)(B). Pub. L. 100–203, §3002(b)(3), substituted ''shall be deemed'' for ''shall, subject to section 1072(e) of this title, be deemed''.

Pub. L. 100–203, §3001(b)(3), substituted ''shall, subject to section 1072(e) of this title, be deemed'' for ''shall be deemed''.

Subsec. (i)(1). Pub. L. 100–50, §10(*l*), struck out ''multiple'' after ''authorizing'' and substituted ''21 days'' for ''45 days''.

Subsec. (j). Pub. L. 100–50, §10(m), inserted provision at end that the guaranty agency consider the request of an eligible lender to serve as the lender-of-last-resort pursuant to this subsection.

Subsec. (k)(1). Pub. L. 100–203, §3003, substituted ''Notwithstanding any other provision of law, in'' for ''In'', ''guaranty agency shall'' for ''guaranty agency may'', and ''subsection shall include'' for ''subsection may include''.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–74, div. F, title III, §309(d)(2), Dec. 23, 2011, 125 Stat. 1101, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to new Federal Direct Stafford Loans made on or after July 1, 2012 and before July 1, 2014.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), except as otherwise provided, see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

Pub. L. 111–39, title IV, §402(a)(2), July 1, 2009, 123 Stat. 1940, provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if enacted as part of the amendment in [former] section 303(a) of the College Cost Reduction and Access Act (Public Law 110–84) [amending this section], shall take effect on October 1, 2012, and shall apply with respect to loans made on or after such date.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, §422(a)(2), Aug. 14, 2008, 122 Stat. 3228, provided that: ''The amendments made by

paragraph (1) [amending this section] shall take effect on July 1, 2010.''

Pub. L. 110–315, title IV, § 422(g)(3), Aug. 14, 2008, 122 Stat. 3231, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of enactment of this Act [Aug. 14, 2008], and the amendment made by paragraph (2) [amending section 1087–1 of this title] shall take effect for loans for which the first disbursement is made on or after July 1, 2008.''

Pub. L. 110–315, title IV, § 424(c), Aug. 14, 2008, 122 Stat. 3233, provided that: ''The amendments made by this section [amending this section and section 1078–2 of this title] shall take effect for loans for which the first disbursement is made on or after July 1, 2008.''

Pub. L. 110–227, § 3(c), May 7, 2008, 122 Stat. 742, provided that: ''The amendments made by this section [amending this section and section 1078–2 of this title] shall be effective for loans first disbursed on or after July 1, 2008.''

Pub. L. 110–227, § 5(b), May 7, 2008, 122 Stat. 746, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [May 7, 2008].''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by sections 202(a), (d) and 301 of Pub. L. 110–84 effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as a note under section 1070a of this title.

Pub. L. 110–84, title III, § 302(c), Sept. 27, 2007, 121 Stat. 796, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1087–1 of this title and repealing section 1078–9 of this title] shall be effective on October 1, 2007, except that section 428I of the Higher Education Act of 1965 [20 U.S.C. 1078–9] (as in effect on the day before the date of enactment of this Act [Sept. 27, 2007]) shall apply to eligible lenders that received a designation under subsection (a) of such section prior to October 1, 2007, for the remainder of the year for which the designation was made.''

Pub. L. 110–84, title III, § 303(b), Sept. 27, 2007, 121 Stat. 797, which provided that amendment by former section 303(a) of Pub. L. 110–84 (amending this section) would be effective on Oct. 1, 2012, and applicable with respect to loans made on or after such date, was repealed by Pub. L. 111–152, title II, § 2204(b), Mar. 30, 2010, 124 Stat. 1075.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Amendment by section 8005(b) of Pub. L. 109–171 effective July 1, 2007, see section 8005(e) of Pub. L. 109–171, set out as a note under section 1075 of this title.

Pub. L. 109–171, title VIII, § 8007(f), Feb. 8, 2006, 120 Stat. 161, as amended by Pub. L. 110–84, title II, § 202(d), Sept. 27, 2007, 121 Stat. 792, provided that: ''The amendments made by this section [amending this section and sections 1087e, 1087dd, and 1088 of this title] shall apply with respect to all loans under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.].''

Pub. L. 109–171, title VIII, § 8014(a)(2), Feb. 8, 2006, 120 Stat. 168, provided that: ''The amendment made by this subsection [amending this section] shall apply with respect to loans for which the first disbursement of principal is made on or after July 1, 2006.''

Pub. L. 109–171, title VIII, § 8014(c)(2), Feb. 8, 2006, 120 Stat. 170, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to loans for which the first disbursement of principal is made on or after July 1, 2006.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–314 applicable with respect to interest, and any special allowance under section 1087–1 of this title, that accrue for months beginning on or after Oct. 1, 2003, on student loans described in section 2174(c) of Title 10, Armed Forces, that were made before, on, or after such date to members of the Armed Forces who are on active duty (as defined in section 101(d) of Title 10) on or after that date, see section 651(e) of Pub. L. 107–314, set out as an Effective Date note under section 2174 of Title 10.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 417(a), (b), (c)(2)–(k) of Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

Pub. L. 105–244, title IV, § 417(c)(1)(B), Oct. 7, 1998, 112 Stat. 1687, provided that: ''The amendments made by subparagraph (A) of this paragraph [amending this section] apply to loans for which the first disbursement is made on or after October 1, 1998.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 355(b) of Pub. L. 103–382 provided that: ''Subsection (a) [amending this section] and the amendment made by subsection (a) shall take effect on August 10, 1993.''

EFFECTIVE DATE OF 1993 AMENDMENTS

Amendment by section 2(c)(11), (12), (14)–(17), (22)–(28) of Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, amendment by section 2(c)(13)(A) of Pub. L. 103–208 effective on and after July 1, 1994, amendment by section 2(c)(13)(B), (C) and (18) of Pub. L. 103–208 effective on and after Dec. 20, 1993, and amendment by section 2(c)(19)–(21) of Pub. L. 103–208 effective on and after 30 days after Dec. 20, 1993, see section 5(a), (b)(2), (3), (6) of Pub. L. 103–208, set out as a note under section 1051 of this title.

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

Section 4043(b) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall take effect on July 1, 1994.''

Section 4102(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 1078–8 and 1087–1 of this title] shall take effect on July 1, 1994.''

Section 4107(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1993.''

Section 4108(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to any loan for which the first disbursement is made on or after October 1, 1993.''

Section 4110(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1993.''

Section 4112(b) of Pub. L. 103–66 provided that: ''The amendment made by this section [amending this section] shall take effect on October 1, 1993.''

Section 4201(b) of Pub. L. 103–66 provided that: ''The amendment made by this section [amending this section] shall take effect on October 1, 1994.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 432 of Pub. L. 102–325, as amended by Pub. L. 103–208, § 2(k)(5), Dec. 20, 1993, 107 Stat. 2486, provided that:

''(a) IN GENERAL.—The changes made in part B of title IV of the Act [20 U.S.C. 1071 et seq.] by the amendments made by this part [part B (§§ 411–432) of title IV of Pub. L. 102–325, see Tables for classification] shall take effect on the date of enactment of this Act [July 23, 1992], except—

''(1) as otherwise provided in such part B;

''(2) that the changes made in sections 425(a), 428(b)(1)(A), 428(b)(1)(B), 428A(b), 428B(b) [20 U.S.C. 1075(a), 1078(b)(1)(A), (B), 1078–1(b), 1078–2(b)], relating

to annual and aggregate loan limits, shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993, except that—

''(A) the changes made in section 425(a)(1)(A)(i) and 428(b)(1)(A)(i) shall apply with respect to loans for which the first disbursement is made on or after October 1, 1992; and

''(B) the changes made in section 425(a)(1)(A)(iv) and 428(b)(1)(A)(iv) shall apply with respect to loans to cover the costs of instruction for periods of enrollment beginning on or after October 1, 1993;

''(3) that the changes made in sections 427(a)(2)(C), 428(b)(1)(M), and 428B(d)(1) [20 U.S.C. 1077(a)(2)(C), 1078(b)(1)(M), 1078–2(d)(1)], relating to deferments, shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993, to an individual who is a new borrower on the date such individual applies for a loan;

''(4) that the changes made in sections 428(a)(7) and 428(f)(1)(C), relating to payments for unconsummated loans, shall apply with respect to loans made on or after October 1, 1992;

''(5) that the changes made in sections 427(a)(2)(H) and 428(b)(1)(E)(i), relating to offering graduated or income sensitive repayment options, shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993, to an individual who is a new borrower on the date such individual applies for a loan;

''(6) that the changes made in section 428(b)(4), relating to teacher deferment, shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993, to an individual who is a new borrower on the date such individual applies for a loan;

''(7) that section 428(c)(2)(H)(i) as added by such amendments shall be effective on and after October 1, 1992;

''(8) that the changes in section 428(c)(3) with respect to forbearance after a default shall be effective on and after October 1, 1992;

''(9) that the changes made in section 428B(a) [20 U.S.C. 1078–2(a)] with respect to use of credit histories shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993;

''(10) that section 428B(c) as added by such amendments, relating to disbursement of Federal PLUS Loans, shall apply with respect to loans for which the first disbursement is made on or after October 1, 1992;

''(11) that the changes made in section 428C [20 U.S.C. 1078–3], relating to consolidation loans, shall apply with respect to loans under such section for which the application is received by an eligible lender on or after January 1, 1993;

''(12) that section 428H [20 U.S.C. 1078–8] as added by such amendments shall be effective with respect to loans made to cover the cost of instruction for periods of enrollment beginning on or after October 1, 1992;

''(13) that the changes made in section 438 [20 U.S.C. 1087–1] shall apply with respect to loans for which the first disbursement is made on or after October 1, 1992;

''(14) that the changes in section 439(d)(1) [20 U.S.C. 1087–2(d)(1)], relating to facilities loans, shall apply with respect to applications received on or after July 1, 1992; and

''(15) that the changes in the designation or names of loans or programs under part B is [sic] effective with respect to applications or other documents (used in making such loans) that are printed after the date of enactment of this Act.

''(b) NEW BORROWERS.—For purposes of the section, the term 'new borrower' means, with respect to any date, an individual who on that date has no outstanding balance of principal or interest owing on any loan made, insured, or guaranteed under part B of title IV of the Act [20 U.S.C. 1071 et seq.].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 2002(a)(2) of Pub. L. 101–239 applicable to any loan made, insured, or guaranteed under this part or part D of this subchapter, including a loan made before Dec. 19, 1989, and amendment effective Jan. 1, 1990, but inapplicable with respect to any portion of a period of deferment granted to a borrower under section 1077(a)(2)(C)(i), 1078(b)(1)(M)(i), or 1087dd(c)(2)(A)(i) of this title for service in a medical internship or residency program completed prior to Dec. 19, 1989, see section 2002(a)(4) of Pub. L. 101–239, set out as a note under section 1077 of this title.

Section 2002(b)(2) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to loans made before, on, or after the date of enactment of this Act [Dec. 19, 1989].''

Amendment by section 2004(b)(1), (3) of Pub. L. 101–239 applicable with respect to loans made to cover the cost of instruction for periods of enrollment beginning on or after Jan. 1, 1990, see section 2004(c) of Pub. L. 101–239, set out as a note under section 1077 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 11(a) of Pub. L. 100–369 applicable with respect to loans made, insured or guaranteed under this part on, before, or after June 3, 1987, see section 11(b) of Pub. L. 100–369, set out as a note under section 1077 of this title.

Amendment by section 5(b)(2) of Pub. L. 100–369 effective with respect to loans made on or after Oct. 1, 1988, and amendment by section 7(c) of Pub. L. 100–369 effective July 18, 1988, see section 13(b) of Pub. L. 100–369, set out as a note under section 1091 of this title.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 3002(b)(1)–(3) of Pub. L. 100–203 provided in part that the amendments by section 3002(b)(1)–(3) of Pub. L. 100–203 are effective Sept. 30, 1989.

Amendment by section 10(b) of Pub. L. 100–50 applicable with respect to loans made, insured or guaranteed under this part on, before, or after June 3, 1987, see section 11(b) of Pub. L. 100–369, set out as an Effective Date of 1988 Amendment note under section 1077 of this title.

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1987, with subsection (b)(1)(M) (except cls. (viii), (ix), and (x)) applicable only to loans to new borrowers made to cover the costs of instruction for periods of enrollment beginning on or after July 1, 1987, or disbursed on or after July 1, 1987, subsection (b)(1)(A) and (B) applicable with respect only to loans disbursed on or after Jan. 1, 1987, or made to cover the costs of instruction for periods of enrollment beginning on or after Jan. 1, 1987, and subsection (b)(1)(H) applicable with respect only to loans for which the borrower files an application on or after July 1, 1987, see section 402(b) of Pub. L. 99–498, set out as a note under section 1071 of this title.

CONSTRUCTION OF 2006 AMENDMENT

Pub. L. 109–171, title VIII, §8007(e), Feb. 8, 2006, 120 Stat. 161, provided that: ''Nothing in the amendments made by this section [amending this section and sections 1087e, 1087dd, and 1088 of this title] shall be construed to authorize any refunding of any repayment of a loan.''

REVIEW OF INDUCEMENTS LIMITATIONS

Pub. L. 110–227, §5(c), May 7, 2008, 122 Stat. 746, provided that: ''Within 90 days after the date of enactment of this Act [May 7, 2008], the Secretary of Education shall review, and as necessary revise, the Department of Education's regulations concerning prohibited guaranty agency inducements to eligible lenders (34 CFR 682.401(e)) to ensure that such agencies do not engage in improper inducements in the expansion of operations of the lender-of-last-resort program as authorized by the

amendments made by this section [amending this section]. The Secretary shall submit a report on the review and revision required by this subsection to the Committee on Education and Labor [now Committee on Education and the Workforce] of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 180 days after such date of enactment.''

GUARANTEED STUDENT LOAN FAMILY CONTRIBUTION SCHEDULE FOR THE PERIODS OF INSTRUCTION BEGINNING AFTER JUNE 30, 1983

Pub. L. 97–301, § 9, Oct. 13, 1982, 96 Stat. 1403, as amended by Pub. L. 98–79, § 4(b), Aug. 15, 1983, 97 Stat. 481; Pub. L. 98–511, title VII, § 707(7), (8), Oct. 19, 1984, 98 Stat. 2407, 2408; Pub. L. 99–272, title XVI, § 16018(b), Apr. 7, 1986, 100 Stat. 348; Pub. L. 99–498, title IV, § 408(a)(6), (7), Oct. 17, 1986, 100 Stat. 1495, specified that the family contribution schedule for specific periods of instruction through June 30, 1988, for loans made, insured, or guaranteed under this part be the family contribution schedule for such loans for the period of instruction from July 1, 1982, through June 30, 1983, and required the family contribution schedule for the period of instruction from July 1, 1982, through June 30, 1983, to be modified by the Secretary of Education for use for each of the specific periods of instruction to reflect the most recent and relevant data, prior to repeal by Pub. L. 99–498, title IV, § 408(b), Oct. 17, 1986, 100 Stat. 1495, effective with respect to any academic year beginning on or after July 1, 1988, Pub. L. 97–301.

§ 1078–1. Voluntary flexible agreements with guaranty agencies

(a) Voluntary agreements

(1) Authority

Subject to paragraph (2),[1] the Secretary may enter into a voluntary, flexible agreement with a guaranty agency under this section, in lieu of agreements with a guaranty agency under subsections (b) and (c) of section 1078 of this title. The Secretary may waive or modify any requirement under such subsections, except that the Secretary may not waive—

(A) any statutory requirement pertaining to the terms and conditions attached to student loans or default claim payments made to lenders;

(B) the prohibitions on inducements contained in section 1078(b)(3) of this title; or

(C) the Federal default fee required by section 1078(b)(1)(H) of this title and the second sentence of section 1078–8(h) of this title.

(2) Eligibility

During fiscal years 1999, 2000, and 2001, the Secretary may enter into a voluntary, flexible agreement with not more than 6 guaranty agencies that had 1 or more agreements with the Secretary under subsections (b) and (c) of section 1078 of this title as of the day before October 7, 1998. Beginning in fiscal year 2002, any guaranty agency or consortium thereof may enter into a voluntary flexible agreement with the Secretary.

(3) Report required

(A) In general

The Secretary, in consultation with the guaranty agencies operating under voluntary flexible agreements, shall report on an annual basis to the authorizing committees regarding the program outcomes that the voluntary flexible agreements have had with respect to—

(i) program integrity and program and cost efficiencies, delinquency prevention, and default aversion, including a comparison of such outcomes to such outcomes for each guaranty agency operating under an agreement under subsection (b) or (c) of section 1078 of this title;

(ii) consumer education programs described in section 1083a of this title; and

(iii) the availability and delivery of student financial aid.

(B) Contents

Each report described in subparagraph (A) shall include—

(i) a description of each voluntary flexible agreement and the performance goals established by the Secretary for each agreement;

(ii) a list of—

(I) guaranty agencies operating under voluntary flexible agreements;

(II) the specific statutory or regulatory waivers provided to each such guaranty agency; and

(III) any other waivers provided to other guaranty agencies under paragraph (1);

(iii) a description of the standards by which each guaranty agency's performance under the guaranty agency's voluntary flexible agreement was assessed and the degree to which each guaranty agency achieved the performance standards;

(iv) an analysis of the fees paid by the Secretary, and the costs and efficiencies achieved under each voluntary flexible agreement; and

(v) an identification of promising practices for program improvement that could be replicated by other guaranty agencies.

(b) Terms of agreement

An agreement between the Secretary and a guaranty agency under this section—

(1) shall be developed by the Secretary, in consultation with the guaranty agency, on a case-by-case basis;

(2) may only include provisions—

(A) specifying the responsibilities of the guaranty agency under the agreement, with respect to—

(i) administering the issuance of insurance on loans made under this part on behalf of the Secretary;

(ii) monitoring insurance commitments made under this part;

(iii) default aversion activities;

(iv) review of default claims made by lenders;

(v) payment of default claims;

(vi) collection of defaulted loans;

(vii) adoption of internal systems of accounting and auditing that are acceptable to the Secretary, and reporting the result thereof to the Secretary in a timely manner, and on an accurate, and auditable basis;

[1] See References in Text note below.

(viii) timely and accurate collection and reporting of such other data as the Secretary may require to carry out the purposes of the programs under this subchapter and part C of subchapter I of chapter 34 of title 42;

(ix) monitoring of institutions and lenders participating in the program under this part; and

(x) informational outreach to schools and students in support of access to higher education;

(B) regarding the fees the Secretary shall pay, in lieu of revenues that the guaranty agency may otherwise receive under this part, to the guaranty agency under the agreement, and other funds that the guaranty agency may receive or retain under the agreement, except that in no case may the cost to the Secretary of the agreement, as reasonably projected by the Secretary, exceed the cost to the Secretary, as similarly projected, in the absence of the agreement;

(C) regarding the use of net revenues, as described in the agreement under this section, for such other activities in support of postsecondary education as may be agreed to by the Secretary and the guaranty agency;

(D) regarding the standards by which the guaranty agency's performance of the agency's responsibilities under the agreement will be assessed, and the consequences for a guaranty agency's failure to achieve a specified level of performance on 1 or more performance standards;

(E) regarding the circumstances in which a guaranty agency's agreement under this section may be ended in advance of the agreement's expiration date;

(F) regarding such other businesses, previously purchased or developed with reserve funds, that relate to the program under this part and in which the Secretary permits the guaranty agency to engage; and

(G) such other provisions as the Secretary may determine to be necessary to protect the United States from the risk of unreasonable loss and to promote the purposes of this part;

(3) shall provide for uniform lender participation with the guaranty agency under the terms of the agreement; and

(4) shall not prohibit or restrict borrowers from selecting a lender of the borrower's choosing, subject to the prohibitions and restrictions applicable to the selection under this chapter and part C of subchapter I of chapter 34 of title 42.

(c) Public notice

(1) In general

The Secretary shall publish in the Federal Register a notice to all guaranty agencies that sets forth—

(A) an invitation for the guaranty agencies to enter into agreements under this section; and

(B) the criteria that the Secretary will use for selecting the guaranty agencies with which the Secretary will enter into agreements under this section.

(2) Agreement notice

The Secretary shall notify the members of the authorizing committees not later than 30 days prior to concluding an agreement under this section. The notice shall contain—

(A) a description of the voluntary flexible agreement and the performance goals established by the Secretary for the agreement;

(B) a list of participating guaranty agencies and the specific statutory or regulatory waivers provided to each guaranty agency;

(C) a description of the standards by which each guaranty agency's performance under the agreement will be assessed; and

(D) a description of the fees that will be paid to each participating guaranty agency.

(3) Waiver notice

The Secretary shall notify the members of the authorizing committees not later than 30 days prior to the granting of a waiver pursuant to subsection (a)(2)[1] of this section to a guaranty agency that is not a party to a voluntary flexible agreement.

(4) Public availability

The text of any voluntary flexible agreement, and any subsequent revisions, and any waivers related to section 1078(b)(3) of this title that are not part of such an agreement, shall be readily available to the public.

(5) Modification notice

The Secretary shall notify the members of the authorizing committees 30 days prior to any modifications to an agreement under this section.

(d) Termination

At the expiration or early termination of an agreement under this section, the Secretary shall reinstate the guaranty agency's prior agreements under subsections (b) and (c) of section 1078 of this title, subject only to such additional requirements as the Secretary determines to be necessary in order to ensure the efficient transfer of responsibilities between the agreement under this section and the agreements under subsections (b) and (c) of section 1078 of this title, and including the guaranty agency's compliance with reserve requirements under sections 1072 and 1078 of this title.

(Pub. L. 89–329, title IV, § 428A, as added Pub. L. 105–244, title IV, § 418, Oct. 7, 1998, 112 Stat. 1691; amended Pub. L. 109–171, title VIII, § 8014(b)(3), (f), Feb. 8, 2006, 120 Stat. 169, 170; Pub. L. 110–315, title I, § 103(b)(5), title IV, § 423, Aug. 14, 2008, 122 Stat. 3089, 3231.)

REFERENCES IN TEXT

Paragraph (2) of subsec. (a) of this section, referred to in subsecs. (a)(1) and (c)(3), was struck out by Pub. L. 109–171, § 8014(f)(2), and par. (3) was redesignated (2). See 2006 Amendment note below.

PRIOR PROVISIONS

A prior section 1078–1, Pub. L. 89–329, title IV, § 428A, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1384; amended Pub. L. 100–50, § 10(n), (*o*)(1), (p)(1), (q), (r)(1), June 3, 1987, 101 Stat. 343, 344; Pub. L.

100–369, §§3–5(a), (b)(3), July 18, 1988, 102 Stat. 835, 836; Pub. L. 101–239, title II, §2003(a)(1), (b)(1), (c)(1), Dec. 19, 1989, 103 Stat. 2112, 2114; Pub. L. 101–508, title III, §3006(b), Nov. 5, 1990, 104 Stat. 1388–28; Pub. L. 102–26, §2(c)(1), Apr. 9, 1991, 105 Stat. 123; Pub. L. 102–325, title IV, §417, July 23, 1992, 106 Stat. 529; Pub. L. 103–208, §2(c)(29)–(32), Dec. 20, 1993, 107 Stat. 2465, 2466, related to Federal supplemental loans for students, prior to repeal by Pub. L. 103–66, title IV, §4047(b), (d), Aug. 10, 1993, 107 Stat. 364, effective July 1, 1994.

Another prior section 1078–1, Pub. L. 89–329, title IV, §428A, as added Pub. L. 94–482, title I, §127(a), Oct. 12, 1976, 90 Stat. 2120; amended Pub. L. 95–43, §1(a)(30)–(32), June 15, 1977, 91 Stat. 216; Pub. L. 96–374, title IV, §412(e), (f), title XIII, §1391(a)(1), Oct. 3, 1980, 94 Stat. 1416, 1417, 1503; Pub. L. 97–35, title V, §535(e), Aug. 13, 1981, 95 Stat. 455, related to student loan insurance programs, prior to the general amendment of this part by Pub. L. 99–498.

AMENDMENTS

2008—Subsec. (a)(3). Pub. L. 110–315, §423, added par. (3).

Subsec. (c)(2), (3). Pub. L. 110–315, §103(b)(5)(A), (B), substituted ''members of the authorizing committees'' for ''Chairperson and the Ranking Minority Member of the Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives''.

Subsec. (c)(5). Pub. L. 110–315, §103(b)(5)(C), substituted ''members of the authorizing committees'' for ''Chairperson and the Ranking Minority Members of the Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives''.

2006—Subsec. (a)(1)(B). Pub. L. 109–171, §8014(f)(1), struck out ''unless the Secretary determines that such a waiver is consistent with the purposes of this section and is limited to activities of the guaranty agency within the State or States for which the guaranty agency serves as the designated guarantor'' before ''; or''.

Subsec. (a)(1)(C). Pub. L. 109–171, §8014(b)(3), added subpar. (C).

Subsec. (a)(2), (3). Pub. L. 109–171, §8014(f)(2), (3), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: ''If the Secretary grants a waiver pursuant to paragraph (1)(B), any guaranty agency doing business within the affected State or States may request, and the Secretary shall grant, an identical waiver to such guaranty agency under the same terms and conditions (including service area limitations) as govern the original waiver.''

Subsec. (a)(4). Pub. L. 109–171, §8014(f)(4), struck out par. (4), which required the Secretary to report to congressional committees regarding the impact that the voluntary flexible agreements had on program integrity, program and cost efficiencies, and the availability and delivery of student financial aid.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1998, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

§ 1078–2. Federal PLUS loans

(a) Authority to borrow

(1) Authority and eligibility

Prior to July 1, 2010, a graduate or professional student or the parents of a dependent student shall be eligible to borrow funds under this section in amounts specified in subsection (b) of this section, if—

(A) the graduate or professional student or the parents do not have an adverse credit history as determined pursuant to regulations promulgated by the Secretary;

(B) in the case of a graduate or professional student or parent who has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining funds under this subchapter and part C of subchapter I of chapter 34 of title 42, such graduate or professional student or parent has completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this subchapter and part C of subchapter I of chapter 34 of title 42 obtained by fraud; and

(C) the graduate or professional student or the parents meet such other eligibility criteria as the Secretary may establish by regulation, after consultation with guaranty agencies, eligible lenders, and other organizations involved in student financial assistance.

(2) Terms, conditions, and benefits

Except as provided in subsections (c), (d), and (e) of this section, loans made under this section shall have the same terms, conditions, and benefits as all other loans made under this part.

(3) Special rules

(A) Parent borrowers

Whenever necessary to carry out the provisions of this section, the terms ''student'' and ''borrower'' as used in this part shall include a parent borrower under this section.

(B)(i) Extenuating circumstances

An eligible lender may determine that extenuating circumstances exist under the regulations promulgated pursuant to paragraph (1)(A) if, during the period beginning January 1, 2007, and ending December 31, 2009, an applicant for a loan under this section—

(I) is or has been delinquent for 180 days or fewer on mortgage loan payments or on medical bill payments during such period; and

(II) does not otherwise have an adverse credit history, as determined by the lender in accordance with the regulations promulgated pursuant to paragraph (1)(A), as such regulations were in effect on the day before May 7, 2008.

(ii) Definition of mortgage loan

In this subparagraph, the term ''mortgage loan'' means an extension of credit to a borrower that is secured by the primary residence of the borrower.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to limit an eligible lender's authority under the regulations promulgated pursuant to paragraph (1)(A) to determine that extenuating circumstances exist.

(b) Limitation based on need

Any loan under this section may be counted as part of the expected family contribution in the

determination of need under this subchapter and part C of subchapter I of chapter 34 of title 42, but no loan may be made to any graduate or professional student or any parent under this section for any academic year in excess of (A) the student's estimated cost of attendance, minus (B) other financial aid as certified by the eligible institution under section 1078(a)(2)(A) of this title. The annual insurable limit on account of any student shall not be deemed to be exceeded by a line of credit under which actual payments to the borrower will not be made in any year in excess of the annual limit.

(c) PLUS loan disbursement

All loans made under this section shall be disbursed in accordance with the requirements of section 1078–7 of this title and shall be disbursed by—

(1) an electronic transfer of funds from the lender to the eligible institution; or

(2) a check copayable to the eligible institution and the graduate or professional student or parent borrower.

(d) Payment of principal and interest

(1) Commencement of repayment

Repayment of principal on loans made under this section shall commence not later than 60 days after the date such loan is disbursed by the lender, subject to deferral—

(A)(i) during any period during which the parent borrower or the graduate or professional student borrower meets the conditions required for a deferral under section 1077(a)(2)(C) or 1078(b)(1)(M) of this title; and

(ii) upon the request of the parent borrower, during any period during which the student on whose behalf the loan was borrowed by the parent borrower meets the conditions required for a deferral under section 1077(a)(2)(C)(i)(I) or 1078(b)(1)(M)(i)(I) of this title; and

(B)(i) in the case of a parent borrower, upon the request of the parent borrower, during the 6-month period beginning on the later of—

(I) the day after the date the student on whose behalf the loan was borrowed ceases to carry at least one-half the normal full-time academic workload (as determined by the institution); or

(II) if the parent borrower is also a student, the day after the date such parent borrower ceases to carry at least one-half such a workload; and

(ii) in the case of a graduate or professional student borrower, during the 6-month period beginning on the day after the date such student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution).

(2) Capitalization of interest

(A) In general

Interest on loans made under this section for which payments of principal are deferred pursuant to paragraph (1) shall, if agreed upon by the borrower and the lender—

(i) be paid monthly or quarterly; or

(ii) be added to the principal amount of the loan not more frequently than quarterly by the lender.

(B) Insurable limits

Capitalization of interest under this paragraph shall not be deemed to exceed the annual insurable limit on account of the borrower.

(3) Subsidies prohibited

No payments to reduce interest costs shall be paid pursuant to section 1078(a) of this title on loans made pursuant to this section.

(4) Applicable rates of interest

Interest on loans made pursuant to this section shall be at the applicable rate of interest provided in section 1077a of this title.

(5) Amortization

The amount of the periodic payment and the repayment schedule for any loan made pursuant to this section shall be established by assuming an interest rate equal to the applicable rate of interest at the time the repayment of the principal amount of the loan commences. At the option of the lender, the note or other written evidence of the loan may require that—

(A) the amount of the periodic payment will be adjusted annually, or

(B) the period of repayment of principal will be lengthened or shortened,

in order to reflect adjustments in interest rates occurring as a consequence of section 1077a(c)(4) of this title.

(e) Refinancing

(1) Refinancing to secure combined payment

An eligible lender may at any time consolidate loans held by it which are made under this section to a borrower, including loans which were made under this section as in effect prior to October 17, 1986, under a single repayment schedule which provides for a single principal payment and a single payment of interest, and shall calculate the repayment period for each included loan from the date of the commencement of repayment of the most recent included loan. Unless the consolidated loan is obtained by a borrower who is electing to obtain variable interest under paragraph (2) or (3), such consolidated loan shall bear interest at the weighted average of the rates of all included loans. The extension of any repayment period of an included loan pursuant to this paragraph shall be reported (if required by them) to the Secretary or guaranty agency insuring the loan, as the case may be, but no additional insurance premiums shall be payable with respect to any such extension. The extension of the repayment period of any included loan shall not require the formal extension of the promissory note evidencing the included loan or the execution of a new promissory note, but shall be treated as an administrative forbearance of the repayment terms of the included loan.

(2) Refinancing to secure variable interest rate

An eligible lender may reissue a loan which was made under this section before July 1, 1987, or under this section as in effect prior to October 17, 1986, in order to permit the borrower to obtain the interest rate provided

under section 1077a(c)(4) of this title. A lender offering to reissue a loan or loans for such purpose may charge a borrower an amount not to exceed $100 to cover the administrative costs of reissuing such loan or loans, not more than one-half of which shall be paid to the guarantor of the loan being reissued to cover costs of reissuance. Reissuance of a loan under this paragraph shall not affect any insurance applicable with respect to the loan, and no additional insurance fee may be charged to the borrower with respect to the loan.

(3) Refinancing by discharge of previous loan

A borrower who has applied to an original lender for reissuance of a loan under paragraph (2) and who is denied such reissuance may obtain a loan from another lender for the purpose of discharging the loan from such original lender. A loan made for such purpose—

(A) shall bear interest at the applicable rate of interest provided under section 1077a(c)(4) of this title;

(B) shall not result in the extension of the duration of the note (other than as permitted under subsection (d)(5)(B) of this section);

(C) may be subject to an additional insurance fee but shall not be subject to the administrative cost charge permitted by paragraph (2) of this subsection; and

(D) shall be applied to discharge the borrower from any remaining obligation to the original lender with respect to the original loan.

(4) Certification in lieu of promissory note presentation

Each new lender may accept certification from the original lender of the borrower's original loan in lieu of presentation of the original promissory note.

(f) Verification of immigration status and social security number

A parent who wishes to borrow funds under this section shall be subject to verification of the parent's—

(1) immigration status in the same manner as immigration status is verified for students under section 1091(g) of this title; and

(2) social security number in the same manner as social security numbers are verified for students under section 1091(p) of this title.

(Pub. L. 89–329, title IV, § 428B, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1386; amended Pub. L. 100–50, § 10(*o*), (p)(2), (q), (r)(1), June 3, 1987, 101 Stat. 343, 344; Pub. L. 102–325, title IV, § 418, July 23, 1992, 106 Stat. 531; Pub. L. 103–66, title IV, § 4109(a), Aug. 10, 1993, 107 Stat. 369; Pub. L. 105–178, title VIII, § 8301(a)(2), June 9, 1998, 112 Stat. 497; Pub. L. 105–244, title IV, §§ 416(a)(2), 419, Oct. 7, 1998, 112 Stat. 1680, 1694; Pub. L. 109–171, title VIII, §§ 8005(c), 8014(g), Feb. 8, 2006, 120 Stat. 158, 171; Pub. L. 110–227, §§ 3(a), 4, May 7, 2008, 122 Stat. 742, 743; Pub. L. 110–315, title IV, § 424(a), Aug. 14, 2008, 122 Stat. 3232; Pub. L. 111–39, title IV, § 402(f)(2), July 1, 2009, 123 Stat. 1943; Pub. L. 111–152, title II, § 2205, Mar. 30, 2010, 124 Stat. 1075.)

PRIOR PROVISIONS

A prior section 1078–2, Pub. L. 89–329, title IV, § 428B, as added Pub. L. 96–374, title IV, § 419, Oct. 3, 1980, 94 Stat. 1424; amended Pub. L. 97–35, title V, §§ 532(b)(3), 534(a)(2), (c)(1), (2), Aug. 13, 1981, 95 Stat. 452, 454; Pub. L. 98–79, § 12, Aug. 15, 1983, 97 Stat. 484, related to auxiliary loans to assist students, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–152 substituted "Prior to July 1, 2010, a graduate" for "A graduate" in introductory provisions.

2009—Subsec. (e)(3)(B). Pub. L. 111–39, § 402(f)(2)(A), substituted "subsection (d)(5)(B)" for "subsection (c)(5)(B)".

Subsec. (e)(5). Pub. L. 111–39, § 402(f)(2)(B), struck out par. (5) which related to notification to borrowers of availability of refinancing options for certain loans made before Oct. 17, 1986.

2008—Subsec. (a)(3). Pub. L. 110–227, § 4, amended par. (3) generally. Prior to amendment, text read as follows: "Whenever necessary to carry out the provisions of this section, the terms 'student' and 'borrower' as used in this part shall include a parent borrower under this section."

Subsec. (a)(3)(B)(i)(II). Pub. L. 110–315, § 424(a)(1), added subcl. (II) and struck out former subcl. (II) which read as follows: "is not and has not been more than 89 days delinquent on the repayment of any other debt during such period."

Subsec. (d)(1), (2). Pub. L. 110–315, § 424(a)(2), added pars. (1) and (2) and struck out former pars. (1) and (2) which related to commencement of repayment and capitalization of interest.

Pub. L. 110–227, § 3(a), amended pars. (1) and (2) generally. Prior to amendment, text related to commencement of repayment and capitalization of interest.

2006—Subsec. (a)(1). Pub. L. 109–171, § 8005(c)(1)(A), in introductory provisions, substituted "A graduate or professional student or the parents" for "Parents".

Subsec. (a)(1)(A). Pub. L. 109–171, § 8005(c)(1)(B), substituted "the graduate or professional student or the parents" for "the parents".

Subsec. (a)(1)(B). Pub. L. 109–171, § 8014(g)(1), (3), added subpar. (B). Former subpar. (B) redesignated (C).

Pub. L. 109–171, § 8005(c)(1)(C), substituted "the graduate or professional student or the parents" for "the parents".

Subsec. (a)(1)(C). Pub. L. 109–171, § 8014(g)(2), redesignated subpar. (B) as (C).

Subsec. (b). Pub. L. 109–171, § 8005(c)(2), substituted "any graduate or professional student or any parent" for "any parent".

Subsec. (c)(2). Pub. L. 109–171, § 8005(c)(3), substituted "graduate or professional student or parent" for "parent".

Subsec. (d)(1). Pub. L. 109–171, § 8005(c)(4), substituted "the graduate or professional student or the parent" for "the parent".

1998—Subsec. (a). Pub. L. 105–244, § 419(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "Parents of a dependent student, who do not have an adverse credit history as determined pursuant to regulations of the Secretary, shall be eligible to borrow funds under this section in amounts specified in subsection (b) of this section, and unless otherwise specified in subsections (c), (d), and (e) of this section, such loans shall have the same terms, conditions, and benefits as all other loans made under this part. Whenever necessary to carry out the provisions of this section, the terms 'student' and 'borrower' as used in this part shall include a parent borrower under this section."

Subsec. (d)(4). Pub. L. 105–244, § 416(a)(2), substituted "section 1077a" for "section 1077a(c)".

Pub. L. 105–178 which directed substitution of "section 1077a of this title for loans made under this section" for "section 1077a(c) of this title" in "section

428B(d)(4) (20 U.S.C. 1078–2(d)(4))'' could not be executed because it did not indicate what act was to be amended.

Subsec. (f). Pub. L. 105–244, § 419(2), added subsec. (f).

1993—Subsec. (c). Pub. L. 103–66 inserted ''shall be disbursed in accordance with the requirements of section 1078–7 of this title and'' after ''under this section''.

1992—Pub. L. 102–325, § 418(a), substituted ''Federal PLUS'' for ''PLUS'' in section catchline.

Subsec. (a). Pub. L. 102–325, § 418(b)(1), substituted ''subsections (c), (d), and (e)'' for ''subsections (c) and (d)'' and inserted '', who do not have an adverse credit history as determined pursuant to regulations of the Secretary,'' after ''a dependent student''.

Subsec. (b). Pub. L. 102–325, § 418(b)(2), struck out subsec. (b) designation and heading, redesignated par. (3) as subsec. (b), and struck out pars. (1) and (2) which set the annual limit on the amount parents may borrow for one student in any academic year at $4,000 and set the aggregate insured principal amount for insured loans at not to exceed $20,000.

Subsec. (c). Pub. L. 102–325, § 418(b)(4), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102–325, § 418(c), (d), amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1) COMMENCEMENT OF REPAYMENT.—Repayment of principal on loans made under this section shall commence not later than 60 days after the date such loan is disbursed by the lender, subject to deferral (A) during any period during which the parent meets the conditions required for a deferral under clause (i), (viii), or (ix) of section 1077(a)(2)(C) or 1078(b)(1)(M) of this title; and (B) during any period during which the borrower has a dependent student for whom a loan obligation was incurred under this section and who meets the conditions required for a deferral under clause (i) of either such section.

''(2) CAPITALIZATION OF INTEREST.—Interest on loans made under this section for which payments of principal are deferred pursuant to paragraph (1) of this subsection shall, if agreed upon by the borrower and the lender (A) be paid monthly or quarterly or (B) be added to the principal amount of the loan on a quarterly basis by the lender. Such capitalization of interest shall not be deemed to exceed the annual insurable limit on account of the student.''

Pub. L. 102–325, § 418(b)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 102–325, § 418(b)(3), redesignated subsec. (d) as (e).

1987—Subsec. (a). Pub. L. 100–50, § 10(*o*)(2)(A), struck out '', but such a parent borrower shall not be eligible for any deferment pursuant to section 1077(a)(2)(C) or 1078(b)(1)(M) of this title except for the deferments allowed (with respect to the student) under clauses (i), (viii), and (ix) of such sections'' after ''borrower under this section''.

Subsec. (b)(3). Pub. L. 100–50, § 10(p)(2), amended first sentence generally, substituting ''for any academic year in excess of (A) the student's estimated cost of attendance, minus (B) other financial aid'' for ''which would cause the combined loans of the parent and the student for any academic year to exceed the student's estimated cost of attendance minus such student's estimated financial assistance''.

Subsec. (c)(1). Pub. L. 100–50, § 10(*o*)(2)(B), struck out ''pursuant to sections 1077(a)(2)(C)(i), (viii), and (ix) and 1078(b)(1)(M)(i), (viii), and (ix) of this title'' after ''subject to deferral'' and inserted in lieu cls. (A) and (B).

Subsec. (c)(2). Pub. L. 100–50, § 10(*o*)(1), (2)(C), (q), in introductory provisions, struck out ''and interest'' after first reference to ''principal'', and substituted ''pursuant to paragraph (1) of this subsection'' for ''under sections 1077(a)(2)(C)(i) and 1078(b)(1)(M)(i) of this title'', and, in subpar. (A), inserted ''monthly or'' before ''quarterly''.

Subsec. (d)(1). Pub. L. 100–50, § 10(r)(1)(A), inserted ''at any time'' after ''eligible lender may'' in first sentence, substituted ''the consolidated loan is obtained by a borrower who is electing to obtain variable interest under paragraph (2) or (3)'' for ''the borrower complies with the requirements of paragraph (2)'' in second sentence, and inserted ''(if required by them)'' after ''shall be reported'' in third sentence.

Subsec. (d)(2). Pub. L. 100–50, § 10(r)(1)(B), inserted ''under this section before July 1, 1987, or'' before ''under this section'' and substituted ''to reissue a loan or loans'' for ''to reissue a loan'' and ''reissuing such loan or loans'' for ''reissuing such loan''.

Subsec. (d)(5). Pub. L. 100–50, § 10(r)(1)(C), substituted ''October 1, 1987'' for ''January 1, 1987'' and, in subpar. (B), inserted ''and of the practical consequences of such options in terms of interest rates and monthly and total payments for a set of loan examples'' before semicolon at end.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–315 effective for loans for which the first disbursement is made on or after July 1, 2008, see section 424(c) of Pub. L. 110–315, set out as a note under section 1078 of this title.

Amendment by section 3(a) of Pub. L. 110–227 effective for loans first disbursed on or after July 1, 2008, see section 3(c) of Pub. L. 110–227, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 416(a)(2) of Pub. L. 105–244 applicable with respect to any loan made, insured, or guaranteed under this part for which the first disbursement is made on or after Oct. 1, 1998, and before July 1, 2003, except that such amendment is applicable with respect to any loan made under section 1078–3 of this title for which application is received by an eligible lender on or after Oct. 1, 1998, and before July 1, 2003, see section 416(c) of Pub. L. 105–244, set out as a note under section 1077a of this title.

Amendment by section 419 of Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 4109(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 1078–7 of this title] shall be effective with respect to loans for which the first disbursement is made on or after October 1, 1993.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective July 23, 1992, except that changes made in subsec. (b), relating to annual and aggregate loan limits, are applicable with respect to loans for which first disbursement is made on or after July 1, 1993, changes made in subsec. (a) with respect to use of credit histories are applicable with respect to loans for which first disbursement is made on or after July 1, 1993, and subsec. (c), as added by Pub. L. 102–325, relating to disbursement of Federal PLUS Loans, is applicable with respect to loans for which first disbursement is made on or after Oct. 1, 1992, see section 432 of Pub. L. 102–325, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986,

Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

AMENDMENT OF NOTE OR OTHER WRITTEN EVIDENCE OF LOAN BY ELIGIBLE LENDER AT REQUEST OF BORROWER; CIRCUMSTANCES; DENIAL OF REQUEST

Section 10(r)(2) of Pub. L. 100–50 provided that: ''An eligible lender who has refinanced a loan or loans under section 428A(d) [former 20 U.S.C. 1078–1(d)] or 428B(d) [20 U.S.C. 1078–2(d)] between the date of enactment of the Higher Education Amendments of 1986 [Oct. 17, 1986] and July 1, 1987, may, at the request of a borrower or with the written consent of the borrower, amend the note or other written evidence of loan as necessary to comply with the requirements of such sections and section 427A(c)(4) [20 U.S.C. 1077a(c)(4)] as amended by this Act. Any borrower who is denied such a request shall be treated as eligible to obtain a loan from another lender under section 428A(d)(3) or 428B(d)(3), as applicable, for the purposes of discharging the loan from the original lender, and a borrower exercising this option shall not be subject to an additional insurance fee under section 428A(d)(3)(C) or 428B(d)(3)(C).''

§ 1078–3. Federal consolidation loans

(a) Agreements with eligible lenders

(1) Agreement required for insurance coverage

For the purpose of providing loans to eligible borrowers for consolidation of their obligations with respect to eligible student loans, the Secretary or a guaranty agency shall enter into agreements in accordance with subsection (b) of this section with the following eligible lenders:

(A) the Student Loan Marketing Association or the Holding Company of the Student Loan Marketing Association, including any subsidiary of the Holding Company, created pursuant to section 1087–3 of this title;

(B) State agencies described in subparagraphs (D) and (F) of section 1085(d)(1) of this title; and

(C) other eligible lenders described in subparagraphs (A), (B), (C), (E), and (J) of such section.

(2) Insurance coverage of consolidation loans

Except as provided in section 1079(e) of this title, no contract of insurance under this part shall apply to a consolidation loan unless such loan is made under an agreement pursuant to this section and is covered by a certificate issued in accordance with subsection (b)(2) of this section. Loans covered by such a certificate that is issued by a guaranty agency shall be considered to be insured loans for the purposes of reimbursements under section 1078(c) of this title, but no payment shall be made with respect to such loans under section 1078(f) of this title to any such agency.

(3) Definition of eligible borrower

(A) For the purpose of this section, the term ''eligible borrower'' means a borrower who—

(i) is not subject to a judgment secured through litigation with respect to a loan under this subchapter and part C of subchapter I of chapter 34 of title 42 or to an order for wage garnishment under section 1095a of this title; and

(ii) at the time of application for a consolidation loan—

(I) is in repayment status as determined under section 1078(b)(7)(A) of this title;

(II) is in a grace period preceding repayment; or

(III) is a defaulted borrower who has made arrangements to repay the obligation on the defaulted loans satisfactory to the holders of the defaulted loans.

(B)(i)[1] An individual's status as an eligible borrower under this section or under section 1087e(g) of this title terminates under both sections upon receipt of a consolidation loan under this section or under section 1087e(g) of this title, except that—

(I) an individual who receives eligible student loans after the date of receipt of the consolidation loan may receive a subsequent consolidation loan;

(II) loans received prior to the date of the consolidation loan may be added during the 180-day period following the making of the consolidation loan;

(III) loans received following the making of the consolidation loan may be added during the 180-day period following the making of the consolidation loan;

(IV) loans received prior to the date of the first consolidation loan may be added to a subsequent consolidation loan; and

(V) an individual may obtain a subsequent consolidation loan under section 1087e(g) of this title only—

(aa) for the purposes of obtaining income contingent repayment or income-based repayment, and only if the loan has been submitted to the guaranty agency for default aversion or if the loan is already in default;

(bb) for the purposes of using the public service loan forgiveness program under section 1087e(m) of this title; or

(cc) for the purpose of using the no accrual of interest for active duty service members benefit offered under section 1087e(*o*) of this title.

(4) "Eligible student loans" defined

For the purpose of paragraph (1), the term ''eligible student loans'' means loans—

(A) made, insured, or guaranteed under this part, and first disbursed before July 1, 2010, including loans on which the borrower has defaulted (but has made arrangements to repay the obligation on the defaulted loans satisfactory to the Secretary or guaranty agency, whichever insured the loans);

(B) made under part D of this subchapter;

(C) made under part C of this subchapter;

(D) made under subpart II of part A of title VII of the Public Health Service Act [42 U.S.C. 292q et seq.]; or

(E) made under part E of title VIII of the Public Health Service Act [42 U.S.C. 297a et seq.].

(b) Contents of agreements, certificates of insurance, and loan notes

(1) Agreements with lenders

Any lender described in subparagraph (A), (B), or (C) of subsection (a)(1) of this section who wishes to make consolidation loans under

[1] So in original. No cl. (ii) has been enacted.

this section shall enter into an agreement with the Secretary or a guaranty agency which provides—

(A) that, in the case of all lenders described in subsection (a)(1) of this section, the lender will make a consolidation loan to an eligible borrower (on request of that borrower) only if the borrower certifies that the borrower has no other application pending for a loan under this section;

(B) that each consolidation loan made by the lender will bear interest, and be subject to repayment, in accordance with subsection (c) of this section;

(C) that each consolidation loan will be made, notwithstanding any other provision of this part limiting the annual or aggregate principal amount for all insured loans made to a borrower, in an amount (i) which is not less than the minimum amount required for eligibility of the borrower under subsection (a)(3) of this section, and (ii) which is equal to the sum of the unpaid principal and accrued unpaid interest and late charges of all eligible student loans received by the eligible borrower which are selected by the borrower for consolidation;

(D) that the proceeds of each consolidation loan will be paid by the lender to the holder or holders of the loans so selected to discharge the liability on such loans;

(E) that the lender shall offer an income-sensitive repayment schedule, established by the lender in accordance with the regulations promulgated by the Secretary, to the borrower of any consolidation loan made by the lender on or after July 1, 1994, and before July 1, 2010;

(F) that the lender shall disclose to a prospective borrower, in simple and understandable terms, at the time the lender provides an application for a consolidation loan—

(i) whether consolidation would result in a loss of loan benefits under this part or part C, including loan forgiveness, cancellation, and deferment;

(ii) with respect to Federal Perkins Loans under part D—

(I) that if a borrower includes a Federal Perkins Loan under part D in the consolidation loan, the borrower will lose all interest-free periods that would have been available for the Federal Perkins Loan, such as—

(aa) the periods during which no interest accrues on such loan while the borrower is enrolled in school at least half-time;

(bb) the grace period under section 1087dd(c)(1)(A) of this title; and

(cc) the periods during which the borrower's student loan repayments are deferred under section 1087dd(c)(2) of this title;

(II) that if a borrower includes a Federal Perkins Loan in the consolidation loan, the borrower will no longer be eligible for cancellation of part or all of the Federal Perkins Loan under section 1087ee(a) of this title; and

(III) the occupations listed in section 1087ee of this title that qualify for Federal Perkins Loan cancellation under section 1087ee(a) of this title;

(iii) the repayment plans that are available to the borrower;

(iv) the options of the borrower to prepay the consolidation loan, to pay such loan on a shorter schedule, and to change repayment plans;

(v) that borrower benefit programs for a consolidation loan may vary among different lenders;

(vi) the consequences of default on the consolidation loan; and

(vii) that by applying for a consolidation loan, the borrower is not obligated to agree to take the consolidation loan; and

(G) such other terms and conditions as the Secretary or the guaranty agency may specifically require of the lender to carry out this section.

(2) Issuance of certificate of comprehensive insurance coverage

The Secretary shall issue a certificate of comprehensive insurance coverage under section 1079(b) of this title to a lender which has entered into an agreement with the Secretary under paragraph (1) of this subsection. The guaranty agency may issue a certificate of comprehensive insurance coverage to a lender with which it has an agreement under such paragraph. The Secretary shall not issue a certificate to a lender described in subparagraph (B) or (C) of subsection (a)(1) of this section unless the Secretary determines that such lender has first applied to, and has been denied a certificate of insurance by, the guaranty agency which insures the preponderance of its loans (by value).

(3) Contents of certificate

A certificate issued under paragraph (2) shall, at a minimum, provide—

(A) that all consolidation loans made by such lender in conformity with the requirements of this section will be insured by the Secretary or the guaranty agency (whichever is applicable) against loss of principal and interest;

(B) that a consolidation loan will not be insured unless the lender has determined to its satisfaction, in accordance with reasonable and prudent business practices, for each loan being consolidated—

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

(ii) that each such loan was made and serviced in compliance with applicable laws and regulations; and

(iii) in the case of loans under this part, that the insurance on such loan is in full force and effect;

(C) the effective date and expiration date of the certificate;

(D) the aggregate amount to which the certificate applies;

(E) the reporting requirements of the Secretary on the lender and an identification of the office of the Department of Education or of the guaranty agency which will process

claims and perform other related administrative functions;

(F) the alternative repayment terms which will be offered to borrowers by the lender;

(G) that, if the lender prior to the expiration of the certificate no longer proposes to make consolidation loans, the lender will so notify the issuer of the certificate in order that the certificate may be terminated (without affecting the insurance on any consolidation loan made prior to such termination); and

(H) the terms upon which the issuer of the certificate may limit, suspend, or terminate the lender's authority to make consolidation loans under the certificate (without affecting the insurance on any consolidation loan made prior to such limitation, suspension, or termination).

(4) Terms and conditions of loans

A consolidation loan made pursuant to this section shall be insurable by the Secretary or a guaranty agency pursuant to paragraph (2) only if the loan is made to an eligible borrower who has agreed to notify the holder of the loan promptly concerning any change of address and the loan is evidenced by a note or other written agreement which—

(A) is made without security and without endorsement, except that if the borrower is a minor and such note or other written agreement executed by him or her would not, under applicable law, create a binding obligation, endorsement may be required;

(B) provides for the payment of interest and the repayment of principal in accordance with subsection (c) of this section;

(C)(i) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid in accordance with clause (ii), during any period for which the borrower would be eligible for a deferral under section 1078(b)(1)(M) of this title, and that any such period shall not be included in determining the repayment schedule pursuant to subsection (c)(2) of this section; and

(ii) provides that interest shall accrue and be paid during any such period—

(I) by the Secretary, in the case of a consolidation loan for which the application is received by an eligible lender before November 13, 1997, that consolidated only Federal Stafford Loans for which the student borrower received an interest subsidy under section 1078 of this title;

(II) by the Secretary, in the case of a consolidation loan for which the application is received by an eligible lender on or after November 13, 1997, except that the Secretary shall pay such interest only on that portion of the loan that repays Federal Stafford Loans for which the student borrower received an interest subsidy under section 1078 of this title or Federal Direct Stafford Loans for which the borrower received an interest subsidy under section 1087e of this title; or

(III) by the borrower, or capitalized, in the case of a consolidation loan other than a loan described in subclause (I) or (II);

(D) entitles the borrower to accelerate without penalty repayment of the whole or any part of the loan; and

(E)(i) contains a notice of the system of disclosure concerning such loan to consumer reporting agencies under section 1080a of this title, and (ii) provides that the lender on request of the borrower will provide information on the repayment status of the note to such consumer reporting agencies.

(5) Direct loans

If, before July 1, 2010, a borrower is unable to obtain a consolidation loan from a lender with an agreement under subsection (a)(1), or is unable to obtain a consolidation loan with income-sensitive repayment terms or income-based repayment terms acceptable to the borrower from such a lender, or chooses to obtain a consolidation loan for the purposes of using the public service loan forgiveness program offered under section 1087e(m) of this title, the Secretary shall offer any such borrower who applies for it, a Federal Direct Consolidation loan. In addition, in the event that a borrower chooses to obtain a consolidation loan for the purposes of using the no accrual of interest for active duty service members program offered under section 1087e(*o*) of this title, the Secretary shall offer a Federal Direct Consolidation loan to any such borrower who applies for participation in such program. A direct consolidation loan offered under this paragraph shall, as requested by the borrower, be repaid either pursuant to income contingent repayment under part C of this subchapter, pursuant to income-based repayment under section 1098e of this title, or pursuant to any other repayment provision under this section, except that if a borrower intends to be eligible to use the public service loan forgiveness program under section 1087e(m) of this title, such loan shall be repaid using one of the repayment options described in section 1087e(m)(1)(A) of this title. The Secretary shall not offer such loans if, in the Secretary's judgment, the Department of Education does not have the necessary origination and servicing arrangements in place for such loans.

(6) Nondiscrimination in loan consolidation

An eligible lender that makes consolidation loans under this section shall not discriminate against any borrower seeking such a loan—

(A) based on the number or type of eligible student loans the borrower seeks to consolidate, except that a lender is not required to consolidate loans described in subparagraph (D) or (E) of subsection (a)(4) of this section or subsection (d)(1)(C)(ii) of this section;

(B) based on the type or category of institution of higher education that the borrower attended;

(C) based on the interest rate to be charged to the borrower with respect to the consolidation loan; or

(D) with respect to the types of repayment schedules offered to such borrower.

(c) Payment of principal and interest

(1) Interest rate

(A) Notwithstanding subparagraphs (B) and (C), with respect to any loan made under this

section for which the application is received by an eligible lender—

(i) on or after October 1, 1998, and before July 1, 2006, the applicable interest rate shall be determined under section 1077a(k)(4) of this title; or

(ii) on or after July 1, 2006, and that is disbursed before July 1, 2010, the applicable interest rate shall be determined under section 1077a(*l*)(3) of this title.

(B) A consolidation loan made before July 1, 1994, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the greater of—

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

(ii) 9 percent.

(C) A consolidation loan made on or after July 1, 1994, and disbursed before July 1, 2010, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the weighted average of the interest rates on the loans consolidated, rounded upward to the nearest whole percent.

(D) A consolidation loan for which the application is received by an eligible lender on or after November 13, 1997, and before October 1, 1998, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the rate specified in section 1077a(f) of this title, except that the eligible lender may continue to calculate interest on such a loan at the rate previously in effect and defer, until not later than April 1, 1998, the recalculation of the interest on such a loan at the rate required by this subparagraph if the recalculation is applied retroactively to the date on which the loan is made.

(2) Repayment schedules

(A) Notwithstanding any other provision of this part, to the extent authorized by its certificate of insurance under subsection (b)(2) of this section and approved by the issuer of such certificate, the lender of a consolidation loan shall establish repayment terms as will promote the objectives of this section, which shall include the establishment of graduated, income-sensitive, or income-based repayment schedules, established by the lender in accordance with the regulations of the Secretary. Except as required by such income-sensitive or income-based repayment schedules, or by the terms of repayment pursuant to income contingent repayment offered by the Secretary under subsection (b)(5) of this section, such repayment terms shall require that if the sum of the consolidation loan and the amount outstanding on other student loans to the individual—

(i) is less than $7,500, then such consolidation loan shall be repaid in not more than 10 years;

(ii) is equal to or greater than $7,500 but less than $10,000, then such consolidation loan shall be repaid in not more than 12 years;

(iii) is equal to or greater than $10,000 but less than $20,000, then such consolidation loan shall be repaid in not more than 15 years;

(iv) is equal to or greater than $20,000 but less than $40,000, then such consolidation loan shall be repaid in not more than 20 years;

(v) is equal to or greater than $40,000 but less than $60,000, then such consolidation loan shall be repaid in not more than 25 years; or

(vi) is equal to or greater than $60,000, then such consolidation loan shall be repaid in not more than 30 years.

(B) The amount outstanding on other student loans which may be counted for the purpose of subparagraph (A) may not exceed the amount of the consolidation loan.

(3) Additional repayment requirements

Notwithstanding paragraph (2)—

(A) except in the case of an income-based repayment schedule under section 1098e of this title, a repayment schedule established with respect to a consolidation loan shall require that the minimum installment payment be an amount equal to not less than the accrued unpaid interest;

(B) except as required by the terms of repayment pursuant to income contingent repayment offered by the Secretary under subsection (b)(5) of this section, the lender of a consolidation loan may, with respect to repayment on the loan, when the amount of a monthly or other similar payment on the loan is not a multiple of $5, round the payment to the next highest whole dollar amount that is a multiple of $5; and

(C) an income-based repayment schedule under section 1098e of this title shall not be available to a consolidation loan borrower who used the proceeds of the loan to discharge the liability on a loan under section 1078–2 of this title, or a Federal Direct PLUS loan, made on behalf of a dependent student.

(4) Commencement of repayment

Repayment of a consolidation loan shall commence within 60 days after all holders have, pursuant to subsection (b)(1)(D) of this section, discharged the liability of the borrower on the loans selected for consolidation.

(5) Insurance premiums prohibited

No insurance premium shall be charged to the borrower on any consolidation loan, and no insurance premium shall be payable by the lender to the Secretary with respect to any such loan, but a fee may be payable by the lender to the guaranty agency to cover the costs of increased or extended liability with respect to such loan.

(d) Special program authorized

(1) General rule and definition of eligible student loan

(A) In general

Subject to the provisions of this subsection, the Secretary or a guaranty agency shall enter into agreements with eligible lenders described in subparagraphs (A), (B), and (C) of subsection (a)(1) of this section for the consolidation of eligible student loans.

(B) Applicability rule

Unless otherwise provided in this subsection, the agreements entered into under subparagraph (A) and the loans made under such agreements for the consolidation of eligible student loans under this subsection shall have the same terms, conditions, and benefits as all other agreements and loans made under this section.

(C) "Eligible student loans" defined

For the purpose of this subsection, the term ''eligible student loans'' means loans—

(i) of the type described in subparagraphs (A), (B), and (C) of subsection (a)(4) of this section; and

(ii) made under subpart I of part A of title VII of the Public Health Service Act [42 U.S.C. 292 et seq.].

(2) Interest rate rule

(A) In general

The portion of each consolidated loan that is attributable to an eligible student loan described in paragraph (1)(C)(ii) shall bear interest at a rate not to exceed the rate determined under subparagraph (B).

(B) Determination of the maximum interest rate

For the 12-month period beginning after July 1, 1992, and for each 12-month period thereafter, beginning on July 1 and ending on June 30, the interest rate applicable under subparagraph (A) shall be equal to the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter prior to July 1, for each 12-month period for which the determination is made, plus 3 percent.

(C) Publication of maximum interest rate

The Secretary shall determine the applicable rate of interest under subparagraph (B) after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of such determination.

(3) Special rules

(A) No special allowance rule

No special allowance under section 1087–1 of this title shall be paid with respect to the portion of any consolidated loan under this subsection that is attributable to any loan described in paragraph (1)(C)(ii).

(B) No interest subsidy rule

No interest subsidy under section 1078(a) of this title shall be paid on behalf of any eligible borrower for any portion of a consolidated loan under this subsection that is attributable to any loan described in paragraph (1)(C)(ii).

(C) Additional reserve rule

Notwithstanding any other provision of this chapter and part C of subchapter I of chapter 34 of title 42, additional reserves shall not be required for any guaranty agency with respect to a loan made under this subsection.

(D) Insurance rule

Any insurance premium paid by the borrower under subpart I of part A of title VII of the Public Health Service Act [42 U.S.C. 292 et seq.] with respect to a loan made under that subpart and consolidated under this subsection shall be retained by the student loan insurance account established under section 710 of the Public Health Service Act [42 U.S.C. 292i].

(4) Regulations

The Secretary is authorized to promulgate such regulations as may be necessary to facilitate carrying out the provisions of this subsection.

(e) Termination of authority

The authority to make loans under this section expires at the close of June 30, 2010. No loan may be made under this section for which the disbursement is on or after July 1, 2010. Nothing in this section shall be construed to authorize the Secretary to promulgate rules or regulations governing the terms or conditions of the agreements and certificates under subsection (b) of this section. Loans made under this section which are insured by the Secretary shall be considered to be new loans made to students for the purpose of section 1074(a) of this title.

(f) Interest payment rebate fee

(1) In general

For any month beginning on or after October 1, 1993, each holder of a consolidation loan under this section for which the first disbursement was made on or after October 1, 1993, shall pay to the Secretary, on a monthly basis and in such manner as the Secretary shall prescribe, a rebate fee calculated on an annual basis equal to 1.05 percent of the principal plus accrued unpaid interest on such loan.

(2) Special rule

For consolidation loans based on applications received during the period from October 1, 1998 through January 31, 1999, inclusive, the rebate described in paragraph (1) shall be equal to 0.62 percent of the principal plus accrued unpaid interest on such loan.

(3) Deposit

The Secretary shall deposit all fees collected pursuant to this subsection into the insurance fund established in section 1081 of this title.

(Pub. L. 89–329, title IV, § 428C, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1388; amended Pub. L. 100–50, § 10(s), June 3, 1987, 101 Stat. 345; Pub. L. 102–325, title IV, § 419, July 23, 1992, 106 Stat. 532; Pub. L. 102–408, title III, § 306(a), (b), Oct. 13, 1992, 106 Stat. 2084, 2086; Pub. L. 103–66, title IV, §§ 4046(a), (b)(2), 4106(a), Aug. 10, 1993, 107 Stat. 360, 363, 368; Pub. L. 103–208, § 2(c)(33)–(37), Dec. 20, 1993, 107 Stat. 2466; Pub. L. 103–382, title III, § 356, Oct. 20, 1994, 108 Stat. 3967; Pub. L. 104–208, div. A, title I, § 101(e) [title VI, § 602(b)(1)(A)(ii)], Sept. 30, 1996, 110 Stat. 3009–233, 3009–283; Pub. L. 105–33, title VI, § 6104(3), Aug. 5, 1997, 111 Stat. 652; Pub. L. 105–78, title VI, § 609(b)–(e), Nov. 13, 1997, 111 Stat. 1522, 1523; Pub. L. 105–244, title IV, §§ 416(b)(2), 420, Oct. 7, 1998, 112 Stat. 1682, 1695; Pub. L. 107–139, § 1(a)(2), Feb.

8, 2002, 116 Stat. 8; Pub. L. 109–171, title VIII, §§ 8004(b)(3), 8009(a), (b)(2), (c), Feb. 8, 2006, 120 Stat. 158, 163, 164; Pub. L. 109–234, title VII, § 7015(a), (c), (d), June 15, 2006, 120 Stat. 485; Pub. L. 110–84, title II, § 203(b)(1), (2), Sept. 27, 2007, 121 Stat. 794, 795; Pub. L. 110–315, title IV, §§ 425(a)–(b)(2), (c), (d)(1), (e), 432(b)(3), Aug. 14, 2008, 122 Stat. 3233–3235, 3246; Pub. L. 111–39, title IV, § 402(c)(1), (f)(3), July 1, 2009, 123 Stat. 1940, 1943; Pub. L. 111–152, title II, § 2206(a), Mar. 30, 2010, 124 Stat. 1075.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsecs. (a)(4)(D), (E) and (d)(1)(C)(ii), (3)(D), is act July 1, 1944, ch. 373, 58 Stat. 682. Subparts I and II of part A of title VII of the Act are classified generally to subpart I (§ 292 et seq.) and subpart II (§ 292q et seq.), respectively, of part A of subchapter V of chapter 6A of Title 42, The Public Health and Welfare. Part E of title VIII of the Act is classified generally to part E (§ 297a et seq.) of subchapter VI of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

CODIFICATION

Amendments by section 2(c)(33), (36) of Pub. L. 103–208 (which were effective as if included in Pub. L. 102–325) were executed to this section as amended by Pub. L. 102–325 and Pub. L. 103–66, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 1078–3, Pub. L. 89–329, title IV, § 428C, as added Pub. L. 99–272, title XVI, § 16017(a), Apr. 7, 1986, 100 Stat. 343, related to consolidation loans, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2010—Subsec. (a)(4)(A). Pub. L. 111–152, § 2206(a)(1), inserted ", and first disbursed before July 1, 2010" after "under this part".

Subsec. (b)(1)(E). Pub. L. 111–152, § 2206(a)(2)(A), inserted ", and before July 1, 2010" before semicolon.

Subsec. (b)(5). Pub. L. 111–152, § 2206(a)(2)(B), substituted "If, before July 1, 2010," for "In the event that".

Subsec. (c)(1)(A)(ii). Pub. L. 111–152, § 2206(a)(3)(A), inserted "and that is disbursed before July 1, 2010," after "2006,".

Subsec. (c)(1)(C). Pub. L. 111–152, § 2206(a)(3)(B), inserted "and disbursed before July 1, 2010," after "1994,".

Subsec. (e). Pub. L. 111–152, § 2206(a)(4), substituted "June 30, 2010. No loan may be made under this section for which the disbursement is on or after July 1, 2010." for "September 30, 2014."

2009—Subsec. (a)(4)(E). Pub. L. 111–39, § 402(f)(3)(A), substituted "part E" for "subpart II of part B".

Subsec. (c)(2)(A). Pub. L. 111–39, § 402(f)(3)(B), in introductory provisions, substituted "subsection (b)(2)" for "subsection (b)(2)(F)" and inserted comma after "graduated".

Subsec. (c)(3)(A). Pub. L. 111–39, § 402(c)(1), substituted "section 1098e of this title," for "section 1098e of this title".

Subsec. (d)(3)(D). Pub. L. 111–39, § 402(f)(3)(C), substituted "loan insurance account" for "loan insurance fund".

Subsec. (f)(3). Pub. L. 111–39, § 402(f)(3)(D), substituted "this subsection" for "subsection (a) of this section".

2008—Subsec. (a)(3)(B)(i)(V)(cc). Pub. L. 110–315, § 425(a), added item (cc).

Subsec. (b)(1)(F), (G). Pub. L. 110–315, § 425(b)(1), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (b)(4)(E)(i). Pub. L. 110–315, § 432(b)(3)(A), substituted "consumer reporting agencies" for "credit bureau organizations".

Subsec. (b)(4)(E)(ii). Pub. L. 110–315, § 432(b)(3)(B), substituted "consumer reporting agencies" for "organizations".

Subsec. (b)(5). Pub. L. 110–315, § 425(c), made technical correction to directory language of Pub. L. 110–84, § 203(b)(2)(C). See 2007 Amendment note below.

Pub. L. 110–315, § 425(b)(2), substituted "A direct consolidation loan offered under this paragraph" for "Such direct consolidation loan" and inserted after first sentence "In addition, in the event that a borrower chooses to obtain a consolidation loan for the purposes of using the no accrual of interest for active duty service members program offered under section 1087e(*o*) of this title, the Secretary shall offer a Federal Direct Consolidation loan to any such borrower who applies for participation in such program."

Subsec. (c)(2)(A). Pub. L. 110–315, § 425(d)(1)(A), in introductory provisions, substituted "income-sensitive, or income-based" for "or income-sensitive" and inserted "or income-based" after "such income-sensitive".

Subsec. (c)(3). Pub. L. 110–315, § 425(d)(1)(B), inserted "except in the case of an income-based repayment schedule under section 1098e of this title" before "a repayment schedule" in subpar. (A) and added subpar. (C).

Subsec. (e). Pub. L. 110–315, § 425(e), substituted "2014" for "2012".

2007—Subsec. (a)(3)(B)(i)(V). Pub. L. 110–84, § 203(b)(1)(A), amended subcl. (V) generally. Prior to amendment, subcl. (V) read as follows: "an individual may obtain a subsequent consolidation loan under section 1087e(g) of this title only for the purposes of obtaining an income contingent repayment plan, and only if the loan has been submitted to the guaranty agency for default aversion."

Subsec. (a)(3)(B)(i)(V)(aa). Pub. L. 110–84, § 203(b)(2)(A), substituted "income contingent repayment or income-based repayment," for "an income contingent repayment plan," and inserted "or if the loan is already in default" before semicolon.

Subsec. (b)(5). Pub. L. 110–84, § 203(b)(2)(C), as amended by Pub. L. 110–315, § 425(c), inserted ", pursuant to income-based repayment under section 1098e of this title," after "part C of this subchapter" in third sentence.

Pub. L. 110–84, § 203(b)(2)(B), inserted "or income-based repayment terms" after "income-sensitive repayment terms" in first sentence.

Pub. L. 110–84, § 203(b)(1)(B), (C), inserted "or chooses to obtain a consolidation loan for the purposes of using the public service loan forgiveness program offered under section 1087e(m) of this title," after "from such a lender," in first sentence and ", except that if a borrower intends to be eligible to use the public service loan forgiveness program under section 1087e(m) of this title, such loan shall be repaid using one of the repayment options described in section 1087e(m)(1)(A) of this title" before period at end of second sentence.

2006—Subsec. (a)(3)(A)(ii)(I). Pub. L. 109–171, § 8009(b)(2), inserted "as determined under section 1078(b)(7)(A) of this title" after "repayment status".

Subsec. (a)(3)(B)(i). Pub. L. 109–171, § 8009(a)(1)(A), (B), substituted "under this section or under section 1087e(g) of this title terminates under both sections upon receipt of a consolidation loan under this section or under section 1087e(g) of this title" for "under this section terminates upon receipt of a consolidation loan under this section".

Subsec. (a)(3)(B)(i)(V). Pub. L. 109–171, § 8009(a)(1)(C)–(E), added subcl. (V).

Subsec. (a)(3)(C). Pub. L. 109–171, § 8009(c), struck out subpar. (C), which read as follows:

"(C)(i) A married couple, each of whom has eligible student loans, may be treated as if such couple were an individual borrowing under subparagraphs (A) and (B) if such couple agrees to be held jointly and severally liable for the repayment of a consolidation loan, without regard to the amounts of the respective loan obligations that are to be consolidated, and without regard to

any subsequent change that may occur in such couple's marital status.

''(ii) Only one spouse in a married couple applying for a consolidation loan under this subparagraph need meet any of the requirements of subsection (b) of this section, except that each spouse shall—

''(I) individually make the initial certification that no other application is pending in accordance with subsection (b)(1)(A) of this section; and

''(II) agree to notify the holder concerning any change of address in accordance with subsection (b)(4) of this section.''

Subsec. (b)(1)(A). Pub. L. 109–234, § 7015(a), struck out ''and (i) the lender holds an outstanding loan of that borrower which is selected by the borrower for consolidation under this section, except that this clause shall not apply in the case of a borrower with multiple holders of loans under this part, or (ii) the borrower certifies that the borrower has sought and has been unable to obtain a consolidation loan with income-sensitive repayment terms from the holders of the outstanding loans of that borrower (which are so selected for consolidation)'' after ''loan under this section''.

Subsec. (b)(5). Pub. L. 109–234, § 7015(c), reenacted heading without change and substituted in text ''In the event that a borrower is unable to obtain a consolidation loan from a lender with an agreement under subsection (a)(1), or is unable to obtain a consolidation loan with income-sensitive repayment terms acceptable to the borrower from such a lender, the Secretary shall offer any such borrower who applies for it, a Federal Direct Consolidation loan. Such direct consolidation loan'' for ''In the event that a borrower is unable to obtain a consolidation loan from a lender with an agreement under subsection (a)(1) of this section, or is unable to obtain a consolidation loan with income-sensitive repayment terms acceptable to the borrower from such a lender, the Secretary shall offer any such borrower who applies for it, a direct consolidation loan. Such direct consolidation loan''.

Pub. L. 109–171, § 8009(a)(2), which directed substitution of ''In the event that a lender with an agreement under subsection (a)(1) of this section denies a consolidation loan application submitted to the lender by an eligible borrower under this section, or denies an application submitted to the lender by such a borrower for a consolidation loan with income-sensitive repayment terms, the Secretary shall offer any such borrower who applies for it, a Federal Direct Consolidation loan. The Secretary shall offer such a loan to a borrower who has defaulted, for the purpose of resolving the default.'' for first sentence, was repealed by Pub. L. 109–234, § 7015(d). See Effective Date of 2006 Amendment note below.

Subsec. (e). Pub. L. 109–171, § 8004(b)(3), substituted ''2012'' for ''2004''.

2002—Subsec. (c)(1)(A). Pub. L. 107–139 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Notwithstanding subparagraphs (B) and (C), with respect to any loan made under this section for which the application is received by an eligible lender on or after October 1, 1998, and before July 1, 2003, the applicable interest rate shall be determined under section 1077a(k)(4) of this title.''

1998—Subsec. (a)(3). Pub. L. 105–244, § 420(a), amended heading, added subpars. (A) and (B), and struck out former subpars. (A) and (B) which defined the term ''eligible borrower'', provided for termination of individual's status as an eligible borrower, and provided for counting loans against certain limitations on aggregate indebtedness.

Subsec. (a)(4)(C). Pub. L. 105–244, § 420(b), added subpar. (C) and struck out former subpar. (C) which read as follows: ''made under part C of this subchapter, except that loans made under such part shall be eligible student loans only for consolidation loans for which the application is received by an eligible lender during the period beginning on November 13, 1997, and ending on October 1, 1998;''.

Subsec. (b)(1)(A)(i). Pub. L. 105–244, § 420(c)(1), inserted ''except that this clause shall not apply in the case of a borrower with multiple holders of loans under this part,'' after ''under this section,''.

Subsec. (b)(4)(C)(ii). Pub. L. 105–244, § 420(c)(2), inserted ''during any such period'' after ''and be paid'' in introductory provisions and struck out '', or on or after October 1, 1998,'' before ''that consolidated'' in subcl. (I) and ''and before October 1, 1998,'' before ''except that'' in subcl. (II).

Subsec. (b)(6)(A). Pub. L. 105–244, § 420(c)(3), inserted before semicolon at end '', except that a lender is not required to consolidate loans described in subparagraph (D) or (E) of subsection (a)(4) of this section or subsection (d)(1)(C)(ii) of this section''.

Subsec. (c)(1). Pub. L. 105–244, § 420(b)(2), amended heading, added subpar. (A), and struck out former subpar. (A) which read as follows: ''Consolidation loans made under this section shall bear interest at rates determined under subparagraph (B), (C), or (D). For the purposes of payment of special allowances under section 1087–1(b)(2) of this title, the interest rate required by this subsection is the applicable interest rate with respect to a consolidation loan.''

Subsec. (e). Pub. L. 105–244, § 420(d), substituted ''September 30, 2004'' for ''September 30, 2002''.

Subsec. (f)(2), (3). Pub. L. 105–244, § 420(e), added par. (2) and redesignated former par. (2) as (3).

1997—Subsec. (a)(4)(C) to (E). Pub. L. 105–78, § 609(b), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (b)(4)(C)(ii)(I). Pub. L. 105–78, § 609(c)(1), (2), inserted ''for which the application is received by an eligible lender before November 13, 1997, or on or after October 1, 1998,'' after ''consolidation loan'' and struck out ''or'' at end.

Subsec. (b)(4)(C)(ii)(II), (III). Pub. L. 105–78, § 609(c)(3)–(5), added subcl. (II) and redesignated former subcl. (II) as (III) and inserted ''or (II)'' before semicolon at end.

Subsec. (b)(6). Pub. L. 105–78, § 609(d), added par. (6).

Subsec. (c)(1)(A). Pub. L. 105–78, § 609(e)(1), substituted ''subparagraph (B), (C), or (D)'' for ''subparagraph (B) or (D)''.

Subsec. (c)(1)(D). Pub. L. 105–78, § 609(e)(2), added subpar. (D).

Subsec. (e). Pub. L. 105–33 substituted ''September 30, 2002.'' for ''September 30, 1998.''

1996—Subsec. (a)(1)(A). Pub. L. 104–208 inserted ''or the Holding Company of the Student Loan Marketing Association, including any subsidiary of the Holding Company, created pursuant to section 1087–3 of this title'' after ''Student Loan Marketing Association''.

1994—Subsec. (a)(4)(D). Pub. L. 103–382 added subpar. (D).

1993—Subsec. (a)(3). Pub. L. 103–66, § 4046(a)(1), amended heading.

Subsec. (a)(3)(A). Pub. L. 103–208, § 2(c)(33), substituted ''defaulted borrower who has made arrangements to repay the obligation on the defaulted loans satisfactory to the holders of the defaulted loans'' for ''delinquent or defaulted borrower who will reenter repayment through loan consolidation''. See Codification note above.

Pub. L. 103–66, § 4046(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''For the purpose of this section, the term 'eligible borrower' means a borrower who, at the time of application for a consolidation loan—

''(i) has an outstanding indebtedness on eligible student loans, at the time of application for a consolidation loan, of not less than $7,500; and

''(ii) is in repayment status, or in a grace period preceding repayment, or is a delinquent or defaulted borrower who will reenter repayment through loan consolidation.''

Subsec. (a)(3)(B)(ii). Pub. L. 103–66, § 4046(b)(2), struck out at end ''Nothing in this section shall be interpreted to authorize the Secretary to require lenders, holders, or guarantors of consolidated loans to receive, to maintain, or to make reports with respect to preexisting records relating to any eligible student loan (as defined

under paragraph (4)) discharged by a borrower in receiving a consolidation loan.''

Subsec. (a)(4)(A). Pub. L. 103–208, § 2(c)(34), struck out before semicolon at end '', except for loans made to parent borrowers under section 1078–2 of this title as in effect prior to October 17, 1986''.

Subsec. (a)(4)(C). Pub. L. 103–208, § 2(c)(35), substituted ''part A'' for ''part C'' before ''of title VII of the Public Health Service Act''.

Subsec. (b)(1)(A), (E), (F). Pub. L. 103–66, § 4046(a)(2)(A), inserted ''with income-sensitive repayment terms'' after ''obtain a consolidation loan'' in subpar. (A)(ii), added subpar. (E), and redesignated former subpar. (E) as (F).

Subsec. (b)(4)(C). Pub. L. 103–66, § 4046(a)(2)(B), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''provides that periodic installments of principal need not be paid, but interest shall accrue and be paid by the Secretary, during any period for which the borrower would be eligible for a deferral under section 1078(b)(1)(M) of this title, and that any such period shall not be included in determining the repayment period pursuant to subsection (c)(2) of this section;''.

Subsec. (b)(5). Pub. L. 103–66, § 4046(a)(2)(C), added par. (5).

Subsec. (c)(1)(B), (C). Pub. L. 103–66, § 4046(a)(3)(A), amended subpars. (B) and (C) generally. Prior to amendment, subpars. (B) and (C) read as follows:

''(B) Except as provided in subparagraph (C), a consolidation loan shall bear interest at an annual rate on the unpaid principal balance of the loan which is equal to the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent.

''(C) A consolidation loan shall bear interest at an annual rate on the unpaid principal balance of the loan equal to not less than 9 percent.''

Subsec. (c)(2)(A). Pub. L. 103–208, § 2(c)(36), inserted period at end of cl. (vi). See Codification note above.

Pub. L. 103–66, § 4046(a)(3)(B)(i), in introductory provisions substituted ''income-sensitive repayment schedules, established by the lender in accordance with the regulations of the Secretary. Except as required by such income-sensitive repayment schedules, or by the terms of repayment pursuant to income contingent repayment offered by the Secretary under subsection (b)(5) of this section, such repayment terms'' for ''income sensitive repayment schedules. Such repayment terms'', added cl. (i), and redesignated former cls. (i) to (v) as (ii) to (vi), respectively.

Subsec. (c)(2)(B), (C). Pub. L. 103–66, § 4046(a)(3)(B)(ii), (iii), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''Unless a consolidation loan under subparagraph (A)(ii) will be used to discharge at least $5,000 of loans made under this part, such loan shall be repaid in accordance with subparagraph (A)(i).''

Subsec. (c)(3)(A). Pub. L. 103–208, § 2(c)(37), inserted ''be an amount'' before ''equal to''.

Subsec. (c)(3)(B). Pub. L. 103–66, § 4046(a)(3)(C), inserted ''except as required by the terms of repayment pursuant to income contingent repayment offered by the Secretary under subsection (b)(5) of this section,'' before ''the lender''.

Subsec. (f). Pub. L. 103–66, § 4106(a), added subsec. (f).

1992—Pub. L. 102–325, § 419(a), substituted ''Federal consolidation'' for ''Consolidation'' in section catchline.

Subsec. (a)(3)(A)(i). Pub. L. 102–325, § 419(b)(1)(A), substituted ''$7,500'' for ''$5,000''.

Subsec. (a)(3)(A)(ii). Pub. L. 102–325, § 419(b)(1)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''is in repayment status, or in a grace period preceding repayment, and is not delinquent with respect to any required payment on such indebtedness by more than 90 days.''

Subsec. (a)(3)(B). Pub. L. 102–325, § 419(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''An individual's status as an eligible borrower under this section terminates upon receipt of a consolidation loan under this section except with respect to eligible student loans received after the date of receipt of the consolidation loan. Loans made under this section shall, to the extent used to discharge loans made under this subchapter and part C of subchapter I of chapter 34 of title 42, be counted against the applicable limitations on aggregate indebtedness contained in sections 1075(a)(2), 1078(b)(1)(B), 1078–1(b)(2), and 1087dd(a)(2) of this title. Nothing in this subparagraph shall be interpreted to authorize the Secretary to require lenders, holders, or guarantors of consolidation loans to receive, to maintain, or to make reports with respect to pre-existing records relating to any eligible student loan (as defined under subsection (a)(4) of this section) discharged by a borrower in receiving a consolidation loan.''

Subsec. (a)(3)(C). Pub. L. 102–325, § 419(d), added subpar. (C).

Subsec. (a)(4)(A). Pub. L. 102–325, § 419(b)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''made, insured, or guaranteed under this part, except for loans made to parent borrowers under section 1078–2 of this title, including loans made to parent borrowers under section 1078–2 of this title as in effect prior to October 17, 1986;''.

Subsec. (b)(4)(C). Pub. L. 102–325, § 419(e), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''provides that periodic installments of principal need not be paid, but interest shall accrue and be paid, during any period for which the borrower would be eligible for a deferral under clause (i), (viii), or (ix) of section 1078(b)(1)(M) of this title, and that any such period shall not be included in determining the repayment period pursuant to subsection (c)(2) of this section;''.

Subsec. (c)(2)(A). Pub. L. 102–325, § 419(f), substituted ''which shall include'' for ''which may include'' in first sentence, inserted second sentence, and struck out former second sentence which read as follows: ''Such repayment terms shall require that if the sum of the consolidation loan and the amount outstanding on other student loans to the individual—

''(i) is equal to or greater than $5,000 but less than $7,500, then such consolidation loan shall be repaid in not more than 10 years;

''(ii) is equal to or greater than $7,500 but less than $10,000, then such consolidation loan shall be repaid in not more than 12 years;

''(iii) is equal to or greater than $10,000 but less than $20,000, then such consolidation loan shall be repaid in not more than 15 years;

''(iv) is equal to or greater than $20,000 but less than $45,000, then such consolidation loan shall be repaid in not more than 20 years; or

''(v) is equal to or greater than $45,000, then such consolidation loan shall be repaid in not more than 25 years.''

Subsec. (d). Pub. L. 102–408, § 306(a), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 102–325, § 419(g), substituted ''September 30, 1998'' for ''September 30, 1992''.

Subsec. (e). Pub. L. 102–408, § 306(b), which directed the substitution of ''1997'' for ''1992'', could not be executed because ''1992'' did not appear in text subsequent to the amendment by Pub. L. 102–325, § 419(g). See above.

Pub. L. 102–408, § 306(a)(1), redesignated subsec. (d) as subsec. (e).

1987—Subsec. (a)(1)(C). Pub. L. 100–50, § 10(s)(1), which directed the amendment of subpar. (C) by substituting ''(C), (E), and (J)'' for ''(C) and (E)'', was executed by substituting the new language for ''(C), and (E)'', as the probable intent of Congress.

Subsec. (a)(3)(A). Pub. L. 100–50, § 10(s)(2), struck out cl. (iii) which read as follows: ''is not a parent borrower under section 1078–2 of this title.''

Subsec. (a)(3)(B). Pub. L. 100–50, § 10(s)(3), substituted ''eligible student loans received'' for ''loans received under this subchapter and part C of subchapter I of

chapter 34 of title 42'', ''under this subchapter and part C of subchapter I of chapter 34 of title 42'' for ''under this part'', and '', 1078(b)(1)(B), 1078–1(b)(2), and 1087dd(a)(2) of this title'' for ''and 1078(b)(1)(B) of this title'', and inserted provision that nothing in subpar. (B) should be interpreted to authorize Secretary to require lenders, holders, or guarantors of consolidation loans to make reports with respect to pre-existing records relating to eligible student loans discharged by a borrower in receiving a consolidation loan.

Subsec. (a)(4)(A). Pub. L. 100–50, § 10(s)(4), inserted exception for loans made to parent borrowers under section 1078–2 of this title.

Subsec. (b)(1)(C). Pub. L. 100–50, § 10(s)(5), in cl. (i), substituted ''subsection (a)(3) of this section'' for ''subsection (a)(2) of this section'' and, in cl. (ii), substituted ''all eligible student loans received by the eligible borrower'' for ''all loans received by the eligible borrower under this subchapter and part C of subchapter I of chapter 34 of title 42''.

Subsec. (c)(2)(A)(v). Pub. L. 100–50, § 10(s)(6), substituted ''equal to or greater'' for ''more'' the first time appearing, as the probable intent of Congress.

Subsec. (c)(5). Pub. L. 100–50, § 10(s)(7), inserted '', but a fee may be payable by the lender to the guaranty agency to cover the costs of increased or extended liability with respect to such loan'' before period at end.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), except as otherwise provided, see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

Pub. L. 111–39, title IV, § 402(c)(2), July 1, 2009, 123 Stat. 1941, provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if enacted as part of the amendments in section 425(d)(1) of the Higher Education Opportunity Act (Public Law 110–315), and shall take effect on July 1, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, § 425(d)(2), Aug. 14, 2008, 122 Stat. 3235, provided that: ''The amendments made by this subsection [amending this section] shall take effect on July 1, 2009.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–84, title II, § 203(c), Sept. 27, 2007, 121 Stat. 795, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 1098e of this title and amending this section and section 1087e of this title] shall be effective on July 1, 2009.

''(2) EXCEPTION.—The amendments made by subsection (b)(1) [amending this section] shall be effective on July 1, 2008.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–234, title VII, § 7015(b), June 15, 2006, 120 Stat. 485, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to any loan made under section 428C of the Higher Education Act of 1965 (20 U.S.C. 1078–3) for which the application is received by an eligible lender on or after the date of enactment of this Act [June 15, 2006].''

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 416(b)(2) of Pub. L. 105–244 applicable with respect to any loan made, insured, or guaranteed under this part for which the first disbursement is made on or after Oct. 1, 1998, and before July 1, 2003, except that such amendment is applicable with respect to any loan made under this section for which application is received by an eligible lender on or after Oct. 1, 1998, and before July 1, 2003, see section 416(c) of Pub. L. 105–244, set out as a note under section 1077a of this title.

Amendment by section 420 of Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(e) [title VI, § 602(b)(1)(B)] of div. A of Pub. L. 104–208 provided that: ''The amendments made by this paragraph [amending this section and section 1085 of this title] shall take effect on the reorganization effective date as defined in section 440(h) of the Higher Education Act of 1965 [20 U.S.C. 1087–3(h)] (as added by subsection (a)).''

EFFECTIVE DATE OF 1993 AMENDMENTS

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

Section 4046(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 1085 of this title] shall take effect on July 1, 1994, except that the amendments made by subsection (a)(2)(B) [amending this section] shall take effect upon enactment [Aug. 10, 1993].''

EFFECTIVE DATE OF 1992 AMENDMENTS

Section 306(c) of Pub. L. 102–408 provided that: ''The amendments made by this section [amending this section] take effect 60 days after the date of enactment of this Act [Oct. 13, 1992].''

Amendment by Pub. L. 102–325 effective July 23, 1992, except that changes made in this section, relating to consolidation loans, applicable with respect to loans for which the application is received by an eligible lender on or after Jan. 1, 1993, see section 432, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

PENDING APPLICANTS

Section 609(f) of Pub. L. 105–78 provided that: ''The consolidation loans authorized by the amendments made by this section [amending this section] shall be available notwithstanding any pending application by a student for a consolidation loan under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.), upon withdrawal of such application by the student at any time prior to receipt of such a consolidation loan.''

COST EVALUATION REPORT

Pub. L. 99–272, title XVI, § 16017(d), Apr. 7, 1986, 100 Stat. 348, provided that: ''The Secretary of Education shall evaluate the cost, efficiency, and impact of the consolidation loan program established by the amendments made by this section [enacting former section 1078–3 of this title and amending former sections 1077, 1085, 1087–1, and 1087–2 of this title] and shall report to the Congress not later than June 30, 1988, on the findings and recommendations required by this subsection.''

§ 1078–4. Commingling of funds

Notwithstanding any other provision of this part regarding permissible uses of funds from any source, funds received by a guaranty agency under any provision of this part may be commingled with funds received under any other

provision of this part and may be used to carry out the purposes of such other provision, except that—

(1) the total amount expended for the purposes of such other provision shall not exceed the amount the guaranty agency would otherwise be authorized to expend; and

(2) the authority to commingle such funds shall not relieve such agency of any accounting or auditing obligations under this part.

(Pub. L. 89–329, title IV, § 428D, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1393.)

§ 1078–5. Repealed. Pub. L. 102–164, title VI, § 605(b)(1), Nov. 15, 1991, 105 Stat. 1068

Section, Pub. L. 89–329, title IV, § 428E, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1393; amended Pub. L. 100–50, § 10(t), June 3, 1987, 101 Stat. 345, related to State garnishment law requirements.

§ 1078–6. Default reduction program

(a) Other repayment incentives

(1) Sale or assignment of loan

(A) In general

Each guaranty agency, upon securing 9 payments made within 20 days of the due date during 10 consecutive months of amounts owed on a loan for which the Secretary has made a payment under paragraph (1) of section 1078(c) of this title, shall—

(i) if practicable, sell the loan to an eligible lender; or

(ii) on or before September 30, 2011, assign the loan to the Secretary if—

(I) the Secretary has determined that market conditions unduly limit a guaranty agency's ability to sell loans under clause (i); and

(II) the guaranty agency has been unable to sell loans under clause (i).

(B) Monthly payments

Neither the guaranty agency nor the Secretary shall demand from a borrower as monthly payment amounts described in subparagraph (A) more than is reasonable and affordable based on the borrower's total financial circumstances.

(C) Consumer reporting agencies

Upon the sale or assignment of the loan, the Secretary, guaranty agency or other holder of the loan shall request any consumer reporting agency to which the Secretary, guaranty agency or holder, as applicable, reported the default of the loan, to remove the record of the default from the borrower's credit history.

(D) Duties upon sale

With respect to a loan sold under subparagraph (A)(i)—

(i) the guaranty agency—

(I) shall repay the Secretary 81.5 percent of the amount of the principal balance outstanding at the time of such sale, multiplied by the reinsurance percentage in effect when payment under the guaranty agreement was made with respect to the loan; and

(II) may, in order to defray collection costs—

(aa) charge to the borrower an amount not to exceed 18.5 percent of the outstanding principal and interest at the time of the loan sale; and

(bb) retain such amount from the proceeds of the loan sale; and

(ii) the Secretary shall reinstate the Secretary's obligation to—

(I) reimburse the guaranty agency for the amount that the agency may, in the future, expend to discharge the guaranty agency's insurance obligation; and

(II) pay to the holder of such loan a special allowance pursuant to section 1087–1 of this title.

(E) Duties upon assignment

With respect to a loan assigned under subparagraph (A)(ii)—

(i) the guaranty agency shall add to the principal and interest outstanding at the time of the assignment of such loan an amount equal to the amount described in subparagraph (D)(i)(II)(aa); and

(ii) the Secretary shall pay the guaranty agency, for deposit in the agency's Operating Fund established pursuant to section 1072b of this title, an amount equal to the amount added to the principal and interest outstanding at the time of the assignment in accordance with clause (i).

(F) Eligible lender limitation

A loan shall not be sold to an eligible lender under subparagraph (A)(i) if such lender has been found by the guaranty agency or the Secretary to have substantially failed to exercise the due diligence required of lenders under this part.

(G) Default due to error

A loan that does not meet the requirements of subparagraph (A) may also be eligible for sale or assignment under this paragraph upon a determination that the loan was in default due to clerical or data processing error and would not, in the absence of such error, be in a delinquent status.

(2) Use of proceeds of sales

Amounts received by the Secretary pursuant to the sale of such loans by a guaranty agency under paragraph (1)(A)(i) shall be deducted from the calculations of the amount of reimbursement for which the agency is eligible under paragraph (1)(D)(ii)(I) for the fiscal year in which the amount was received, notwithstanding the fact that the default occurred in a prior fiscal year.

(3) Borrower eligibility

Any borrower whose loan is sold or assigned under paragraph (1)(A) shall not be precluded by section 1091 of this title from receiving additional loans or grants under this subchapter and part C of subchapter I of chapter 34 of title 42 (for which he or she is otherwise eligible) on the basis of defaulting on the loan prior to such loan sale or assignment.

(4) Applicability of general loan conditions

A loan that is sold or assigned under paragraph (1) shall, so long as the borrower con-

tinues to make scheduled repayments thereon, be subject to the same terms and conditions and qualify for the same benefits and privileges as other loans made under this part.

(5) Limitation

A borrower may obtain the benefits available under this subsection with respect to rehabilitating a loan (whether by loan sale or assignment) only one time per loan.

(b) Satisfactory repayment arrangements to renew eligibility

Each guaranty agency shall establish a program which allows a borrower with a defaulted loan or loans to renew eligibility for all title IV student financial assistance (regardless of whether the defaulted loan has been sold to an eligible lender or assigned to the Secretary) upon the borrower's payment of 6 consecutive monthly payments. The guaranty agency shall not demand from a borrower as a monthly payment amount under this subsection more than is reasonable and affordable based upon the borrower's total financial circumstances. A borrower may only obtain the benefit of this subsection with respect to renewed eligibility once.

(c) Financial and economic literacy

Each program described in subsection (b) shall include making available financial and economic education materials for a borrower who has rehabilitated a loan.

(Pub. L. 89–329, title IV, § 428F, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1394; amended Pub. L. 100–50, § 10(u), June 3, 1987, 101 Stat. 346; Pub. L. 101–239, title II, § 2005(a), Dec. 19, 1989, 103 Stat. 2116; Pub. L. 102–325, title IV, § 420, July 23, 1992, 106 Stat. 534; Pub. L. 103–208, § 2(c)(38)–(40), Dec. 20, 1993, 107 Stat. 2466; Pub. L. 105–244, title IV, § 421, Oct. 7, 1998, 112 Stat. 1696; Pub. L. 109–171, title VIII, § 8014(h), Feb. 8, 2006, 120 Stat. 171; Pub. L. 110–315, title IV, § 426, Aug. 14, 2008, 122 Stat. 3235; Pub. L. 111–39, title IV, § 402(d)(1), July 1, 2009, 123 Stat. 1941.)

REFERENCES IN TEXT

Title IV, referred to in subsec. (b), means title IV of the Higher Education Act of 1965, Pub. L. 89–329, which is classified generally to this subchapter and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of title IV to the Code, see Tables.

AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111–39, § 402(d)(1)(A)(i), amended par. (1) generally. Prior to amendment, par. (1) related to the sale of a loan by a guaranty agency or the Secretary.

Subsec. (a)(2). Pub. L. 111–39, § 402(d)(1)(A)(ii), substituted ''paragraph (1)(A)(i)'' for ''paragraph (1) of this subsection'' and ''paragraph (1)(D)(ii)(I)'' for ''paragraph (1)(B)(ii) of this subsection''.

Subsec. (a)(3). Pub. L. 111–39, § 402(d)(1)(A)(iii)(II), substituted ''sale or assignment.'' for ''sale.''

Pub. L. 111–39, § 402(d)(1)(A)(iii)(I), which directed substitution of ''sold or assigned under paragraph (1)(A)'' for ''sold under paragraph (2)'', was executed by making the substitution for ''sold under paragraph (1)'' to reflect the probable intent of Congress.

Subsec. (a)(4). Pub. L. 111–39, § 402(d)(1)(A)(iv), substituted ''that is sold or assigned under paragraph (1)'' for ''which is sold under paragraph (1) of this subsection''.

Subsec. (a)(5). Pub. L. 111–39, § 402(d)(1)(A)(v), inserted ''(whether by loan sale or assignment)'' after ''rehabilitating a loan''.

Subsec. (b). Pub. L. 111–39, § 402(d)(1)(B), inserted ''or assigned to the Secretary'' after ''sold to an eligible lender''.

2008—Subsec. (a)(1)(A). Pub. L. 110–315, § 426(1)(A), inserted at end ''Upon the sale of the loan to an eligible lender, the guaranty agency or other holder of the loan shall request any consumer reporting agency to which the guaranty agency or holder, as applicable, reported the default of the loan, to remove the record of default from the borrower's credit history.''

Subsec. (a)(5). Pub. L. 110–315, § 426(1)(B), added par. (5).

Subsec. (c). Pub. L. 110–315, § 426(2), added subsec. (c).

2006—Subsec. (a)(1)(A). Pub. L. 109–171, § 8014(h)(1), substituted ''9 payments made within 20 days of the due date during 10 consecutive months'' for ''consecutive payments for 12 months''.

Subsec. (a)(1)(C), (D). Pub. L. 109–171, § 8014(h)(2), (3), added subpar. (C) and redesignated former subpar. (C) as (D).

1998—Subsec. (b). Pub. L. 105–244 substituted ''Satisfactory repayment arrangements to renew eligibility'' for ''Special rule'' in heading.

1993—Subsec. (a)(2). Pub. L. 103–208, § 2(c)(38), substituted ''paragraph (1) of this subsection'' for ''this paragraph'' and ''this subsection'' for ''this section''.

Subsec. (a)(4). Pub. L. 103–208, § 2(c)(39), substituted ''paragraph (1) of this subsection'' for ''this paragraph''.

Subsec. (b). Pub. L. 103–208, § 2(c)(40), inserted at end ''A borrower may only obtain the benefit of this subsection with respect to renewed eligibility once.''

1992—Subsec. (a). Pub. L. 102–325, § 420(1)–(3), redesignated subsec. (b) as (a), in par. (1)(A) substituted ''Each guaranty agency shall enter into an agreement with the Secretary which shall provide that upon'' for ''Upon'' and inserted provision at end that neither the guaranty agency nor the Secretary demand from the borrower as monthly payments more than is reasonable and affordable based upon the borrower's total financial circumstances, in par. (3) inserted ''or grants'' after ''loans'', and struck out former subsec. (a) which related to program requirements for the default reduction program.

Subsec. (b). Pub. L. 102–325, § 420(4), added subsec. (b). Former subsec. (b) redesignated (a).

1989—Pub. L. 101–239 amended section generally, substituting provisions relating to default reduction program for former provisions relating to rehabilitation of defaulted loans.

1987—Subsecs. (b), (c). Pub. L. 100–50 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''The loans which shall be eligible for rehabilitation under this section shall be only those loans which are made to borrowers who, at the time of default on the loan, are unemployed or institutionalized.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–39, title IV, § 402(d)(2), July 1, 2009, 123 Stat. 1942, provided that: ''The amendments made by paragraph (1) [amending this section] shall be effective on the date of enactment of this Act [July 1, 2009], and shall apply to any loan on which monthly payments described in section 428F(a)(1)(A) [42 U.S.C. 1078–6(a)(1)(A)] were paid before, on, or after such date of enactment.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see sec-

tion 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

PUBLICITY THROUGH COMMUNICATIONS MEDIA OF AVAILABILITY OF DEFAULT REDUCTION PROGRAM

Section 2005(b) of Pub. L. 101–239 provided that: ''The Secretary of Education shall, from funds available through student loan collections, commencing not less than 30 days before the beginning of the default reduction program required by the amendment made by this section [amending this section], and continuing throughout the duration of such program, widely publicize (through various communications media) the availability of the default reduction program.''

§ 1078–7. Requirements for disbursement of student loans

(a) Multiple disbursement required

(1) Two disbursements required

The proceeds of any loan made, insured, or guaranteed under this part that is made for any period of enrollment shall be disbursed in 2 or more installments, none of which exceeds one-half of the loan.

(2) Minimum interval required

The interval between the first and second such installments shall be not less than one-half of such period of enrollment, except as necessary to permit the second installment to be disbursed at the beginning of the second semester, quarter, or similar division of such period of enrollment.

(3) Special rule

An institution whose cohort default rate (as determined under section 1085(m) of this title) for each of the 3 most recent fiscal years for which data are available is less than 10 percent may disburse any loan made, insured, or guaranteed under this part in a single installment for any period of enrollment that is not more than 1 semester, 1 trimester, 1 quarter, or 4 months. Notwithstanding section 422(d) of the Higher Education Amendments of 1998, this paragraph shall be effective beginning on February 8, 2006.

(4) Amendment to special rule

Beginning on October 1, 2011, the special rule under paragraph (3) shall be applied by substituting ''15 percent'' for ''10 percent''.

(b) Disbursement and endorsement requirements

(1) First year students

The first installment of the proceeds of any loan made, insured, or guaranteed under this part that is made to a student borrower who is entering the first year of a program of undergraduate education, and who has not previously obtained a loan under this part, shall not (regardless of the amount of such loan or the duration of the period of enrollment) be presented by the institution to the student for endorsement until 30 days after the borrower begins a course of study, but may be delivered to the eligible institution prior to the end of that 30-day period. An institution whose cohort default rate (as determined under section 1085(m) of this title) for each of the three most recent fiscal years for which data are available is less than 10 percent shall be exempt from the requirements of this paragraph. Notwithstanding section 422(d) of the Higher Education Amendments of 1998, the second sentence of this paragraph shall be effective beginning on February 8, 2006.

(2) Other students

The proceeds of any loan made, insured, or guaranteed under this part that is made to any student other than a student described in paragraph (1) shall not be disbursed more than 30 days prior to the beginning of the period of enrollment for which the loan is made.

(3) Amendment to cohort default rate exemption

Beginning on October 1, 2011, the exemption to the requirements of paragraph (1) in the second sentence of such paragraph shall be applied by substituting ''15 percent'' for ''10 percent''.

(c) Method of multiple disbursement

Disbursements under subsection (a) of this section—

(1) shall be made in accordance with a schedule provided by the institution (under section 1078(a)(2)(A)(i)(II) of this title) that complies with the requirements of this section;

(2) may be made directly by the lender or, in the case of a loan under sections 1078 and 1078–1[1] of this title, may be disbursed pursuant to the escrow provisions of section 1078(i) of this title; and

(3) notwithstanding subsection (a)(2), may, with the permission of the borrower, be disbursed by the lender on a weekly or monthly basis, provided that the proceeds of the loan are disbursed by the lender in substantially equal weekly or monthly installments, as the case may be, over the period of enrollment for which the loan is made.

(d) Withholding of second disbursement

(1) Withdrawing students

A lender or escrow agent that is informed by the borrower or the institution that the borrower has ceased to be enrolled before the disbursement of the second or any succeeding installment shall withhold such disbursement. Any disbursement which is so withheld shall be credited to the borrower's loan and treated as a prepayment thereon.

(2) Students receiving over-awards

If the sum of a disbursement for any student and the other financial aid obtained by such student exceeds the amount of assistance for

[1] See References in Text note below.

which the student is eligible under this subchapter and part C of subchapter I of chapter 34 of title 42, the institution such student is attending shall withhold and return to the lender or escrow agent the portion (or all) of such installment that exceeds such eligible amount, except that overawards permitted pursuant to section 2753(b)(4) of title 42 shall not be construed to be overawards for purposes of this paragraph. Any portion (or all) of a disbursement installment which is so returned shall be credited to the borrower's loan and treated as a prepayment thereon.

(e) Exclusion of consolidation and foreign study loans

The provisions of this section shall not apply in the case of a loan made under section 1078–3 of this title, or made to a student to cover the cost of attendance in a program of study abroad approved by the home eligible institution if the home eligible institution has a cohort default rate (as calculated under section 1085(m) of this title) of less than 5 percent.

(f) Beginning of period of enrollment

For purposes of this section, a period of enrollment begins on the first day that classes begin for the applicable period of enrollment.

(g) Sales prior to disbursement prohibited

An eligible lender shall not sell or transfer a promissory note for any loan made, insured, or guaranteed under this part until the final disbursement of such loan has been made, except that the prohibition of this subsection shall not apply if—

(1) the sale of the loan does not result in a change in the identity of the party to whom payments will be made for the loan; and

(2) the first disbursement of such loan has been made.

(Pub. L. 89–329, title IV, § 428G, as added Pub. L. 101–239, title II, § 2004(a), Dec. 19, 1989, 103 Stat. 2115; amended Pub. L. 101–508, title III, § 3003(a), Nov. 5, 1990, 104 Stat. 1388–26; Pub. L. 102–325, title IV, § 421, July 23, 1992, 106 Stat. 534; Pub. L. 103–66, title IV, § 4109(b), Aug. 10, 1993, 107 Stat. 369; Pub. L. 103–208, § 2(c)(41), Dec. 20, 1993, 107 Stat. 2466; Pub. L. 105–244, title IV, § 422(a)–(c), Oct. 7, 1998, 112 Stat. 1696; Pub. L. 109–171, title VIII, § 8010, Feb. 8, 2006, 120 Stat. 164; Pub. L. 110–315, title IV, § 427, Aug. 14, 2008, 122 Stat. 3235; Pub. L. 111–39, title IV, § 402(f)(4), July 1, 2009, 123 Stat. 1943.)

REFERENCES IN TEXT

Section 422(d) of the Higher Education Amendments of 1998, referred to in subsecs. (a)(3) and (b)(1), is section 422(d) of Pub. L. 105–244, set out as an Effective and Termination Dates of 1998 Amendment note below.

Section 1078–1 of this title, referred to in subsec. (c)(2), was repealed by Pub. L. 103–66, title IV, § 4047(b)–(d), Aug. 10, 1993, 107 Stat. 364, eff. July 1, 1994, except with respect to loans provided under that section as it existed prior to Aug. 10, 1993. Subsequently, a new section 1078–1, relating to voluntary flexible agreements with guaranty agencies, was enacted by Pub. L. 105–244, title IV, § 418, Oct. 7, 1998, 112 Stat. 1691.

CODIFICATION

Text of subsec. (a)(3) and second sentence of subsec. (b)(1), which was temporarily added by Pub. L. 105–244, § 422(a), (b), and then omitted, was restored pursuant to amendment by Pub. L. 109–171, § 8010(1), (2). See 1998 and 2006 Amendment notes and Effective and Termination Dates of 1998 Amendment note below.

AMENDMENTS

2009—Subsec. (c)(1). Pub. L. 111–39, § 402(f)(4)(A), substituted ''section 1078(a)(2)(A)(i)(II)'' for ''section 1078(a)(2)(A)(i)(III)''.

Subsec. (c)(3). Pub. L. 111–39, § 402(f)(4)(B), added par. (3) and struck out former par. (3) which read as follows: ''notwithstanding subsection (a)(2) of this section, may, with the permission of the borrower, be disbursed by the lender on a weekly or monthly basis, provided that the proceeds of the loan are disbursed in substantially equal weekly or monthly installments, as the case may be, over the period of enrollment for which the loan is made.''

2008—Subsec. (a)(4). Pub. L. 110–315, § 427(a), added par. (4).

Subsec. (b)(3). Pub. L. 110–315, § 427(b), added par. (3).

2006—Subsec. (a)(3). Pub. L. 109–171, § 8010(1), inserted ''Notwithstanding section 422(d) of the Higher Education Amendments of 1998, this paragraph shall be effective beginning February 8, 2006.'' at end. See Codification note above and Effective and Termination Dates of 1998 Amendment note below.

Subsec. (b)(1). Pub. L. 109–171, § 8010(2), inserted ''Notwithstanding section 422(d) of the Higher Education Amendments of 1998, the second sentence of this paragraph shall be effective beginning February 8, 2006.'' at end. See Codification note above and Effective and Termination Dates of 1998 Amendment note below.

Subsec. (e). Pub. L. 109–171, § 8010(3), struck out '', made to a student to cover the cost of attendance at an eligible institution outside the United States'' after ''section 1078–3 of this title''.

1998—Subsec. (a)(3). Pub. L. 105–244, § 422(a), (d), temporarily added par. (3) which read as follows: ''An institution whose cohort default rate (as determined under section 1085(m) of this title) for each of the 3 most recent fiscal years for which data are available is less than 10 percent may disburse any loan made, insured, or guaranteed under this part in a single installment for any period of enrollment that is not more than 1 semester, 1 trimester, 1 quarter, or 4 months.'' See Codification note and 2006 Amendment note above and Effective and Termination Dates of 1998 Amendment note below.

Subsec. (b)(1). Pub. L. 105–244, § 422(b), (d), temporarily inserted at end ''An institution whose cohort default rate (as determined under section 1085(m) of this title) for each of the three most recent fiscal years for which data are available is less than 10 percent shall be exempt from the requirements of this paragraph.'' See Codification note and 2006 Amendment note above and Effective and Termination Dates of 1998 Amendment note below.

Subsec. (e). Pub. L. 105–244, § 422(c), substituted '', made to a student'' for ''or made to a student'' and inserted before the period at end '', or made to a student to cover the cost of attendance in a program of study abroad approved by the home eligible institution if the home eligible institution has a cohort default rate (as calculated under section 1085(m) of this title) of less than 5 percent''.

1993—Subsec. (c)(3). Pub. L. 103–208 directed the substitution of ''disbursed by the lender'' for ''disbursed'' and was executed by making the substitution the first place ''disbursed'' appeared, to reflect the probable intent of Congress.

Subsec. (e). Pub. L. 103–66 substituted ''consolidation'' for ''PLUS, consolidation,'' in heading and ''section 1078–3'' for ''section 1078–2 or 1078–3'' in text.

1992—Subsec. (c)(3). Pub. L. 102–325, § 421(a), added par. (3).

Subsec. (d)(2). Pub. L. 102–325, § 421(b), inserted '', except that overawards permitted pursuant to section 2753(b)(4) of title 42 shall not be construed to be overawards for purposes of this paragraph'' before period at end of first sentence.

Subsec. (g). Pub. L. 102–325, § 421(c), added subsec. (g).

1990—Subsec. (b)(1). Pub. L. 101–508 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The first installment of the proceeds of any loan made under section 1078–1 of this title that is made to a student borrower who has not successfully completed the first year of a program of undergraduate education shall not (regardless of the amount of such loan or the duration of the period of enrollment) be presented by the institution to the student for endorsement until—

''(A) 30 days after the borrower begins a course of study; and

''(B) the institution certifies that the borrower continues to be enrolled and in attendance at the end of such 30-day period, and is maintaining satisfactory progress;

but may be disbursed to the eligible institution prior to the end of such 30-day period.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE AND TERMINATION DATES OF 1998 AMENDMENT

Amendment by section 422(c) of Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

Pub. L. 105–244, title IV, § 422(d), Oct. 7, 1998, 112 Stat. 1696, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall be effective during the period beginning on October 1, 1998, and ending on September 30, 2002.''

EFFECTIVE DATE OF 1993 AMENDMENTS

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

Amendment by Pub. L. 103–66 effective with respect to loans for which the first disbursement is made on or after Oct. 1, 1993, see section 4109(c) of Pub. L. 103–66, set out as a note under section 1078–2 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 3003(b) of Pub. L. 101–508 provided that: ''The amendment made by this section [amending this section] shall be effective for loans made on or after the date of enactment of this Act [Nov. 5, 1990] to cover the cost of instruction for periods of enrollment beginning on or after January 1, 1991.''

EFFECTIVE DATE

Section applicable with respect to loans made to cover cost of instruction for periods of enrollment beginning on or after Jan. 1, 1990, see section 2004(c) of Pub. L. 101–239, set out as an Effective Date of 1989 Amendment note under section 1077 of this title.

§ 1078–8. Unsubsidized Stafford loans for middle-income borrowers

(a) In general

It is the purpose of this section to authorize insured loans under this part that are first disbursed before July 1, 2010, for borrowers who do not qualify for Federal interest subsidy payments under section 1078 of this title. Except as provided in this section, all terms and conditions for Federal Stafford loans established under section 1078 of this title shall apply to loans made pursuant to this section.

(b) Eligible borrowers

Prior to July 1, 2010, any student meeting the requirements for student eligibility under section 1091 of this title (including graduate and professional students as defined in regulations promulgated by the Secretary) shall be entitled to borrow an unsubsidized Federal Stafford Loan for which the first disbursement is made before such date if the eligible institution at which the student has been accepted for enrollment, or at which the student is in attendance, has—

(1) determined and documented the student's need for the loan based on the student's estimated cost of attendance (as determined under section 1087*ll* of this title) and the student's estimated financial assistance, including a loan which qualifies for interest subsidy payments under section 1078 of this title; and

(2) provided the lender a statement—

(A) certifying the eligibility of the student to receive a loan under this section and the amount of the loan for which such student is eligible, in accordance with subsection (c) of this section; and

(B) setting forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 1078–7 of this title.

(c) Determination of amount of loan

The determination of the amount of a loan by an eligible institution under subsection (b) of this section shall be calculated by subtracting from the estimated cost of attendance at the eligible institution any estimated financial assistance reasonably available to such student. An eligible institution may not, in carrying out the provisions of subsection (b) of this section, provide a statement which certifies the eligibility of any student to receive any loan under this section in excess of the amount calculated under the preceding sentence.

(d) Loan limits

(1) In general

Except as provided in paragraphs (2), (3), and (4), the annual and aggregate limits for loans under this section shall be the same as those established under section 1078(b)(1) of this title, less any amount received by such student pursuant to the subsidized loan program established under section 1078 of this title.

(2) Limits for graduate, professional, and independent postbaccalaureate students

(A) Annual limits

The maximum annual amount of loans under this section a graduate or professional student, or a student described in clause (ii), may borrow in any academic year (as defined in section 1088(a)(2) of this title) or its equivalent shall be the amount determined under paragraph (1), plus—

(i) in the case of such a student who is a graduate or professional student attending an eligible institution, $12,000; and

(ii) notwithstanding paragraph (4), in the case of an independent student, or a de-

pendent student whose parents are unable to borrow under section 1078–2 of this title or the Federal Direct PLUS Loan Program, who has obtained a baccalaureate degree and who is enrolled in coursework specified in paragraph (3)(B) or (4)(B) of section 1091(b) of this title—

(I) $7,000 for coursework necessary for enrollment in a graduate or professional program; and

(II) $7,000 for coursework necessary for a professional credential or certification from a State required for employment as a teacher in an elementary or secondary school,

except in cases where the Secretary determines that a higher amount is warranted in order to carry out the purpose of this part with respect to students engaged in specialized training requiring exceptionally high costs of education, but the annual insurable limit per student shall not be deemed to be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any years in excess of the annual limit.

(B) Aggregate limit

The maximum aggregate amount of loans under this section a student described in subparagraph (A) may borrow shall be the amount described in paragraph (1), adjusted to reflect the increased annual limits described in subparagraph (A), as prescribed by the Secretary by regulation.

(3) Limits for undergraduate dependent students

(A) Annual limits

The maximum annual amount of loans under this section an undergraduate dependent student (except an undergraduate dependent student whose parents are unable to borrow under section 1078–2 of this title or the Federal Direct PLUS Loan Program) may borrow in any academic year (as defined in section 1088(a)(2) of this title) or its equivalent shall be the sum of the amount determined under paragraph (1), plus $2,000.

(B) Aggregate limits

The maximum aggregate amount of loans under this section a student described in subparagraph (A) may borrow shall be $31,000.

(4) Limits for undergraduate independent students

(A) Annual limits

The maximum annual amount of loans under this section an undergraduate independent student, or an undergraduate dependent student whose parents are unable to borrow under section 1078–2 of this title or the Federal Direct PLUS Loan Program, may borrow in any academic year (as defined in section 1088(a)(2) of this title) or its equivalent shall be the sum of the amount determined under paragraph (1), plus—

(i) in the case of such a student attending an eligible institution who has not completed such student's first 2 years of undergraduate study—

(I) $6,000, if such student is enrolled in a program whose length is at least one academic year in length; or

(II) if such student is enrolled in a program of undergraduate education which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as the length of such program measured in semester, trimester, quarter, or clock hours bears to one academic year;

(ii) in the case of such a student at an eligible institution who has successfully completed such first and second years but has not successfully completed the remainder of a program of undergraduate education—

(I) $7,000; or

(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year; and

(iii) in the case of such a student enrolled in coursework specified in—

(I) section 1091(b)(3)(B) of this title, $6,000; or

(II) section 1091(b)(4)(B) of this title, $7,000.

(B) Aggregate limits

The maximum aggregate amount of loans under this section a student described in subparagraph (A) may borrow shall be $57,500.

(5) Capitalized interest

Interest capitalized shall not be deemed to exceed a maximum aggregate amount determined under subparagraph (B) of paragraph (2), (3), or (4).

(e) Payment of principal and interest

(1) Commencement of repayment

Repayment of principal on loans made under this section shall begin at the beginning of the repayment period described in section 1078(b)(7) of this title. Not less than 30 days prior to the anticipated commencement of such repayment period, the holder of such loan shall provide notice to the borrower that interest will accrue before repayment begins and of the borrower's option to begin loan repayment at an earlier date.

(2) Capitalization of interest

(A) Interest on loans made under this section for which payments of principal are not required during the in-school and grace periods or for which payments are deferred under sections 1077(a)(2)(C) and 1078(b)(1)(M) of this

title shall, if agreed upon by the borrower and the lender—

(i) be paid monthly or quarterly; or

(ii) be added to the principal amount of the loan by the lender only—

(I) when the loan enters repayment;

(II) at the expiration of a grace period, in the case of a loan that qualifies for a grace period;

(III) at the expiration of a period of deferment or forbearance; or

(IV) when the borrower defaults.

(B) The capitalization of interest described in subparagraph (A) shall not be deemed to exceed the annual insurable limit on account of the student.

(3) Subsidies prohibited

No payments to reduce interest costs shall be paid pursuant to section 1078(a) of this title on loans made pursuant to this section.

(4) Applicable rates of interest

Interest on loans made pursuant to this section shall be at the applicable rate of interest provided in section 1077a of this title.

(5) Amortization

The amount of the periodic payment and the repayment schedule for any loan made pursuant to this section shall be established by assuming an interest rate equal to the applicable rate of interest at the time the repayment of the principal amount of the loan commences. At the option of the lender, the note or other written evidence of the loan may require that—

(A) the amount of the periodic payment will be adjusted annually; or

(B) the period of repayment of principal will be lengthened or shortened,

in order to reflect adjustments in interest rates occurring as a consequence of section 1077a(c)(4) of this title.

(6) Repayment period

For purposes of calculating the repayment period under section 1078(b)(9) of this title, such period shall commence at the time the first payment of principal is due from the borrower.

(7) Qualification for forbearance

A lender may grant the borrower of a loan under this section a forbearance for a period not to exceed 60 days if the lender reasonably determines that such a forbearance from collection activity is warranted following a borrower's request for forbearance, deferment, or a change in repayment plan, or a request to consolidate loans in order to collect or process appropriate supporting documentation related to the request. During any such period, interest on the loan shall accrue but not be capitalized.

(f) Repealed. Pub. L. 105–244, title IV, § 423(f), Oct. 7, 1998, 112 Stat. 1698

(g) Single application form and loan repayment schedule

A guaranty agency shall use a single application form and a single repayment schedule for subsidized Federal Stafford loans made pursuant to section 1078 of this title and for unsubsidized Federal Stafford loans made pursuant to this section.

(h) Insurance premium

Each State or nonprofit private institution or organization having an agreement with the Secretary under section 1078(b)(1) of this title may charge a borrower under this section an insurance premium equal to not more than 1.0 percent of the principal amount of the loan, if such premium will not be used for incentive payments to lenders. Effective for loans for which the date of guarantee of principal is on or after July 1, 2006, and that are first disbursed before July 1, 2010, in lieu of the insurance premium authorized under the preceding sentence, each State or nonprofit private institution or organization having an agreement with the Secretary under section 1078(b)(1) of this title shall collect and deposit into the Federal Student Loan Reserve Fund under section 1072a of this title, a Federal default fee of an amount equal to 1.0 percent of the principal amount of the loan, which fee shall be collected either by deduction from the proceeds of the loan or by payment from other non-Federal sources. The Federal default fee shall not be used for incentive payments to lenders.

(Pub. L. 89–329, title IV, § 428H, as added Pub. L. 102–325, title IV, § 422, July 23, 1992, 106 Stat. 535; amended Pub. L. 103–66, title IV, §§ 4047(a), 4102(b), Aug. 10, 1993, 107 Stat. 363, 366; Pub. L. 103–208, § 2(c)(42)–(45), Dec. 20, 1993, 107 Stat. 2466, 2467; Pub. L. 104–134, title I, § 101(d) [title V, § 514(a)], Apr. 26, 1996, 110 Stat. 1321–211, 1321–245; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–244, title IV, § 423, Oct. 7, 1998, 112 Stat. 1696; Pub. L. 109–171, title VIII, §§ 8005(d), 8014(b)(2), Feb. 8, 2006, 120 Stat. 159, 169; Pub. L. 110–227, § 2(a), May 7, 2008, 122 Stat. 740; Pub. L. 110–315, title IV, § 428(a), Aug. 14, 2008, 122 Stat. 3235; Pub. L. 111–39, title IV, § 402(f)(5), July 1, 2009, 123 Stat. 1944; Pub. L. 111–152, title II, § 2207, Mar. 30, 2010, 124 Stat. 1076.)

CODIFICATION

Amendments by section 2(c)(42), (45) of Pub. L. 103–208 (which were effective as if included in Pub. L. 102–325) were executed to this section as amended by Pub. L. 102–325 and Pub. L. 103–66, to reflect the probable intent of Congress.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–152, § 2207(1), inserted ''that are first disbursed before July 1, 2010,'' after ''under this part''.

Subsec. (b). Pub. L. 111–152, § 2207(2), substituted ''Prior to July 1, 2010, any student'' for ''Any student'' and inserted ''for which the first disbursement is made before such date'' after ''unsubsidized Federal Stafford Loan'' in introductory provisions.

Subsec. (h). Pub. L. 111–152, § 2207(3), inserted ''and that are first disbursed before July 1, 2010,'' after ''July 1, 2006,''.

2009—Subsec. (d)(2). Pub. L. 111–39, § 402(f)(5)(A), amended heading generally, resulting in text identical to that after execution of the amendment by Pub. L. 110–315, § 428(a)(1)(A). See 2008 Amendment note below.

Subsec. (e)(6). Pub. L. 111–39, § 402(f)(5)(B), amended par. (6) generally, resulting in text identical to that

after execution of the amendment by Pub. L. 105–244, § 423(d). See 1998 Amendment note below.

2008—Subsec. (d). Pub. L. 110–227 amended subsec. (d) generally. Prior to amendment, subsec. (d) related to loan limits.

Subsec. (d)(2). Pub. L. 110–315, § 428(a)(1)(A), which directed substitution of ''Graduate, professional, and independent postbaccalaureate students'' for ''Graduate and professional students'' in heading, was executed by substituting ''graduate, professional, and independent postbaccalaureate students'' for ''graduate and professional students'' to reflect the probable intent on Congress.

Subsec. (d)(2)(A). Pub. L. 110–315, § 428(a)(1)(B)(i), inserted '', or a student described in clause (ii),'' after ''graduate or professional student'' in introductory provisions.

Subsec. (d)(2)(A)(ii). Pub. L. 110–315, § 428(a)(1)(B)(ii), added cl. (ii) and struck out former cl. (ii) which read as follows: ''in the case of a graduate student enrolled in coursework specified in sections 1091(b)(3)(B) and 1091(b)(4)(B) of this title, $7,000;''.

Subsec. (d)(4)(A)(iii). Pub. L. 110–315, § 428(a)(2), added cl. (iii) and struck out former cl. (iii) which read as follows: ''in the case of such a student enrolled in coursework specified in sections 1091(b)(3)(B) and 1091(b)(4)(B) of this title, $6,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.''

2006—Subsec. (d)(2)(C). Pub. L. 109–171, § 8005(d)(1), substituted ''$12,000'' for ''$10,000''.

Subsec. (d)(2)(D). Pub. L. 109–171, § 8005(d)(2), substituted ''$7,000'' for ''$5,000'' in cls. (i) and (ii).

Subsec. (h). Pub. L. 109–171, § 8014(b)(2), inserted at end ''Effective for loans for which the date of guarantee of principal is on or after July 1, 2006, in lieu of the insurance premium authorized under the preceding sentence, each State or nonprofit private institution or organization having an agreement with the Secretary under section 1078(b)(1) of this title shall collect and deposit into the Federal Student Loan Reserve Fund under section 1072a of this title, a Federal default fee of an amount equal to 1.0 percent of the principal amount of the loan, which fee shall be collected either by deduction from the proceeds of the loan or by payment from other non-Federal sources. The Federal default fee shall not be used for incentive payments to lenders.''

1998—Subsec. (b). Pub. L. 105–244, § 423(a), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''Any student meeting the requirements for student eligibility under section 1091 of this title (including graduate and professional students as defined in regulations promulgated by the Secretary) shall be entitled to borrow an unsubsidized Stafford loan. Such student shall provide to the lender a statement from the eligible institution at which the student has been accepted for enrollment, or at which the student is in attendance, which—

''(1) sets forth such student's estimated cost of attendance (as determined under section 1087*ll* of this title);

''(2) sets forth such student's estimated financial assistance, including a loan which qualifies for subsidy payments under section 1078 of this title; and

''(3) certifies the eligibility of the student to receive a loan under this section and the amount of the loan for which such student is eligible, in accordance with subsection (c) of this section.''

Subsec. (d)(2). Pub. L. 105–244, § 423(b)(1)(A), in introductory provisions, inserted ''(as defined in section 1088(a)(2) of this title)'' after ''academic year'' and struck out ''or in any period of 7 consecutive months, whichever is longer,'' after ''or its equivalent''.

Subsec. (d)(2)(A). Pub. L. 105–244, § 423(b)(1)(B), substituted ''length; and'' for ''length (as determined under section 1088 of this title);'' in cl. (i), added cl. (ii), and struck out former cls. (ii) and (iii) which read as follows:

''(ii) $2,500, if such student is enrolled in a program whose length is less than one academic year, but at least ⅔ of such an academic year; and

''(iii) $1,500, if such student is enrolled in a program whose length is less than ⅔, but at least ⅓, of such an academic year;''.

Subsec. (d)(2)(D). Pub. L. 105–244, § 423(b)(1)(C), (D), added subpar. (D).

Subsec. (d)(3). Pub. L. 105–244, § 423(b)(2), inserted at end ''Interest capitalized shall not be deemed to exceed such maximum aggregate amount.''

Subsec. (e)(2). Pub. L. 105–244, § 423(c), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''Interest on loans made under this section for which payments of principal are not required during the in-school and grace periods or for which payments are deferred under sections 1077(a)(2)(C) and 1078(b)(1)(M) of this title shall, if agreed upon by the borrower and the lender (A) be paid monthly or quarterly, or (B) be added to the principal amount of the loan not more frequently than quarterly by the lender. Such capitalization of interest shall not be deemed to exceed the annual insurable limit on account of the student.''

Subsec. (e)(6). Pub. L. 105–244, § 423(d), which directed substitution of ''repayment period under section 1078(b)(9) of this title'' for ''10 year repayment period under section 1078(b)(1)(D) of this title'', was executed by making the substitution for ''10-year repayment period under section 1078(b)(1)(D) of this title'' to reflect the probable intent of Congress.

Subsec. (e)(7). Pub. L. 105–244, § 423(e), added par. (7).

Subsec. (f). Pub. L. 105–244, § 423(f), struck out heading and text of subsec. (f) which provided for lenders to charge borrowers origination fees on loans.

1996—Subsec. (d)(2). Pub. L. 104–134 substituted semicolon for period at end of subpar. (C) and inserted concluding provisions.

1993—Subsec. (b). Pub. L. 103–66, § 4047(a)(1), inserted ''(including graduate and professional students as defined in regulations promulgated by the Secretary)'' in introductory provisions.

Subsec. (d). Pub. L. 103–66, § 4047(a)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The annual and aggregate limits for loans under this section shall be the same as those established under section 1078(b)(1) of this title, less any amount received by such student pursuant to the subsidized loan program established under section 1078 of this title.''

Subsec. (d)(2)(B). Pub. L. 103–208, § 2(c)(42), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''in the case of such a student attending an eligible institution who has completed the first 2 years of undergraduate study but who has not completed the remainder of a program of undergraduate study—

''(i) $5,000, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 1088 of this section);

''(ii) $3,325, if such student is enrolled in a program whose length is less than one academic year, but at least ⅔ of such an academic year; and

''(iii) $1,675, if such student is enrolled in a program whose length is less than ⅔, but at least ⅓, of such an academic year; and''. See Codification note above.

Subsec. (e)(1). Pub. L. 103–208, § 2(c)(43), substituted ''shall begin at the beginning of the repayment period described in section 1078(b)(7) of this title.'' for ''shall commence 6 months after the month in which the student ceases to carry at least one-half the normal full-time workload as determined by the institution.'' and inserted at end ''Not less than 30 days prior to the anticipated commencement of such repayment period, the holder of such loan shall provide notice to the borrower that interest will accrue before repayment begins and of the borrower's option to begin loan repayment at an earlier date.''

Subsec. (e)(4). Pub. L. 103–208, § 2(c)(44), substituted ''section 1077a'' for ''section 1077a(e)''.

Subsec. (e)(5), (6). Pub. L. 103–66, § 4047(a)(3), added pars. (5) and (6).

Subsec. (f). Pub. L. 103–66, § 4102(b)(1)(A), substituted ''Origination fee'' for ''Insurance premium'' in section catchline.

Subsec. (f)(1). Pub. L. 103–66, § 4102(b)(1)(B), (C), struck out reference to insurance premium in heading and in text substituted ''an origination fee in the amount of 3.0 percent'' for ''a combined origination fee and insurance premium in the amount of 6.5 percent'' and struck out second sentence which read as follows: ''A guaranty agency may not charge an insurance premium on any loan made under this section.''

Subsec. (f)(2). Pub. L. 103–66, § 4102(b)(1)(D), substituted ''origination fee'' for ''combined fee and premium''.

Subsec. (f)(3). Pub. L. 103–66, § 4102(b)(1)(E), substituted ''origination fee'' for ''combined origination fee and insurance premium''.

Subsec. (f)(4). Pub. L. 103–66, § 4102(b)(1)(F), in heading substituted ''origination fee'' for ''insurance premium'' and in text substituted ''origination fees'' for ''combined origination fee and insurance premiums'' and ''to pay'' for ''and premiums to pay''.

Subsec. (f)(5). Pub. L. 103–66, § 4102(b)(1)(G), inserted ''origination fee and'' in heading and in text substituted ''do not exceed the combined origination fee under this subsection and the insurance premium under subsection (h) of this section, the Secretary is directed to lower the origination fee and insurance premium accordingly'' for ''do not exceed the 6.5 percent insurance premium, the Secretary is directed to lower the insurance premium accordingly''.

Subsec. (h). Pub. L. 103–208, § 2(c)(45), redesignated subsec. (*l*) as (h). See Codification note above.

Subsec. (*l*). Pub. L. 103–208, § 2(c)(45), redesignated subsec. (*l*) as (h). See Codification note above.

Pub. L. 103–66, § 4102(b)(2), added subsec. (*l*).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, § 428(b), Aug. 14, 2008, 122 Stat. 3236, provided that: ''The amendments made by this section [amending this section] shall take effect for loans for which the first disbursement is made on or after July 1, 2008.''

Pub. L. 110–227, § 2(c), May 7, 2008, 122 Stat. 742, provided that: ''The amendments made by this section [amending this section] shall be effective for loans first disbursed on or after July 1, 2008.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 8014(b)(2) of Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Amendment by section 8005(d) of Pub. L. 109–171 effective July 1, 2007, see section 8005(e) of Pub. L. 109–171, set out as a note under section 1075 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(d) [title V, § 514(b)] of Pub. L. 104–134 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective for loans made to cover the cost of instruction for periods of enrollment beginning on or after July 1, 1996.''

EFFECTIVE DATE OF 1993 AMENDMENTS

Amendment by section 2(c)(42)–(43)(A), (44), (45) of Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, and amendment by section 2(c)(43)(B) of Pub. L. 103–208 effective on and after Apr. 1, 1994, see section 5(a), (b)(5) of Pub. L. 103–208, set out as a note under section 1051 of this title.

Section 4047(d) of Pub. L. 103–66 provided that: ''Except as otherwise provided herein [see section 4047(c) of Pub. L. 103–66, set out below], the amendments made by this section [amending this section and repealing section 1078–1 of this title] shall take effect on July 1, 1994.''

Amendment by section 4102(b) of Pub. L. 103–66 effective July 1, 1994, see section 4102(d) of Pub. L. 103–66, set out as a note under section 1078 of this title.

EFFECTIVE DATE

Section effective with respect to loans made to cover the cost of instruction for periods of enrollment beginning on or after Oct. 1, 1992, see section 432(a)(12) of Pub. L. 102–325, set out as an Effective Date of 1992 Amendment note under section 1078 of this title.

STUDENT ELIGIBILITY

Pub. L. 110–227, § 2(b), May 7, 2008, 122 Stat. 742, provided that: ''Loan limit increases authorized by the amendments made by this section [amending this section] shall be available only to students who meet the requirements of section 484(a) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)).''

CONTINUING APPLICABILITY OF TERMS, CONDITIONS, AND BENEFITS OF LOANS

Section 4047(c) of Pub. L. 103–66 provided that: ''Notwithstanding the amendments made by this section [amending this section and repealing section 1078–1 of this section], with respect to loans provided under sections 428A [former 20 U.S.C. 1078–1] and 428H of the Act [20 U.S.C. 1078–8] (as such sections existed on the date preceding the date of enactment of this Act [Aug. 10, 1993]) the terms, conditions and benefits applicable to such loans under such sections shall continue to apply to such loans after the date of enactment of this Act.''

§ 1078–9. Repealed. Pub. L. 110–84, title III, § 302(a), Sept. 27, 2007, 121 Stat. 796

Section, Pub. L. 89–329, title IV, § 428I, as added Pub. L. 102–325, title IV, § 422, July 23, 1992, 106 Stat. 536; amended Pub. L. 103–208, § 2(c)(46), Dec. 20, 1993, 107 Stat. 2467; Pub. L. 109–171, title VIII, § 8014(i), Feb. 8, 2006, 120 Stat. 171, related to special insurance and reinsurance rules.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2007, except that section as in effect on the day before Sept. 27, 2005, shall apply to eligible lenders that received a designation under subsec. (a) of this section prior to Oct. 1, 2007, for the remainder of the year for which the designation was made, see section 302(c) of Pub. L. 110–84, set out as an Effective Date of 2007 Amendment note under section 1078 of this title.

§ 1078–10. Loan forgiveness for teachers

(a) Statement of purpose

It is the purpose of this section to encourage individuals to enter and continue in the teaching profession.

(b) Program authorized

The Secretary shall carry out a program, through the holder of the loan, of assuming the obligation to repay a qualified loan amount for a loan made under section 1078 or 1078–8 of this title, in accordance with subsection (c) of this section, for any new borrower on or after October 1, 1998, who—

(1) has been employed as a full-time teacher for 5 consecutive complete school years—

(A) in a school or location that qualifies under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such schools or locations; and

(B) if employed as an elementary school or secondary school teacher, is highly qualified as defined in section 7801 of this title,[1] or meets the requirements of subsection (g)(3); and

(2) is not in default on a loan for which the borrower seeks forgiveness.

(c) Qualified loans amount

(1) In general

The Secretary shall repay not more than $5,000 in the aggregate of the loan obligation on a loan made under section 1078 or 1078–8 of this title that is outstanding after the completion of the fifth complete school year of teaching described in subsection (b)(1) of this section. No borrower may receive a reduction of loan obligations under both this section and section 1087j of this title.

(2) Treatment of consolidation loans

A loan amount for a loan made under section 1078–3 of this title may be a qualified loan amount for the purposes of this subsection only to the extent that such loan amount was used to repay a Federal Direct Stafford Loan, a Federal Direct Unsubsidized Stafford Loan, or a loan made under section 1078 or 1078–8 of this title for a borrower who meets the requirements of subsection (b) of this section, as determined in accordance with regulations prescribed by the Secretary.

(3) Additional amounts for teachers in mathematics, science, or special education

Notwithstanding the amount specified in paragraph (1), the aggregate amount that the Secretary shall repay under this section shall be not more than $17,500 in the case of—

(A) a secondary school teacher—

(i) who meets the requirements of subsection (b) of this section; and

(ii) whose qualifying employment for purposes of such subsection is teaching mathematics or science on a full-time basis; and

(B) an elementary school or secondary school teacher—

(i) who meets the requirements of subsection (b) of this section;

(ii) whose qualifying employment for purposes of such subsection is as a special education teacher whose primary responsibility is to provide special education to children with disabilities (as those terms are defined in section 1401 of this title); and

(iii) who, as certified by the chief administrative officer of the public or non-profit private elementary school or secondary school in which the borrower is employed, or, in the case of a teacher who is employed by an educational service agency, as certified by the chief administrative officer of such agency, is teaching children with disabilities that correspond with the borrower's special education training and has demonstrated knowledge and teaching skills in the content areas of the elementary school or secondary school curriculum that the borrower is teaching.

(d) Regulations

The Secretary is authorized to issue such regulations as may be necessary to carry out the provisions of this section.

(e) Construction

Nothing in this section shall be construed to authorize any refunding of any repayment of a loan.

(f) List

If the list of schools in which a teacher may perform service pursuant to subsection (b) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make such service determination.

(g) Additional eligibility provisions

(1) Continued eligibility

Any teacher who performs service in a school that—

(A) meets the requirements of subsection (b)(1)(A) of this section in any year during such service; and

(B) in a subsequent year fails to meet the requirements of such subsection,

may continue to teach in such school and shall be eligible for loan forgiveness pursuant to subsection (b) of this section.

(2) Prevention of double benefits

No borrower may, for the same service, receive a benefit under both this section and—

(A) section 1078–11 of this title;

(B) section 1087e(m) of this title; or

(C) subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12601 et seq.).

(3) Private school teachers

An individual who is employed as a teacher in a private school and is exempt from State certification requirements (unless otherwise applicable under State law), may, in lieu of the requirement of subsection (b)(1)(B), have such employment treated as qualifying employment under this section if such individual is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in the applicable grade levels and subject areas. For such purposes, the competency tests taken by such a private school teacher shall be recognized by 5 or more States for the purpose of fulfilling the highly qualified teacher requirements under section 7801 of this title, and the score achieved by such teacher on each test shall equal or exceed the average passing score of those 5 States.

(h) "Year" defined

For purposes of this section, the term ''year'', where applied to service as a teacher, means an academic year as defined by the Secretary.

(Pub. L. 89–329, title IV, § 428J, as added Pub. L. 102–325, title IV, § 422, July 23, 1992, 106 Stat. 541;

[1] See References in Text note below.

amended Pub. L. 103–82, title I, § 102(c)(2), Sept. 21, 1993, 107 Stat. 824; Pub. L. 103–208, § 2(c)(47)–(51), Dec. 20, 1993, 107 Stat. 2467; Pub. L. 105–244, title IV, § 424, Oct. 7, 1998, 112 Stat. 1698; Pub. L. 108–409, § 3(a)(1)(A), (b)(1), Oct. 30, 2004, 118 Stat. 2300; Pub. L. 109–171, title VIII, § 8013(e)(1), Feb. 8, 2006, 120 Stat. 167; Pub. L. 110–315, title IV, § 429, Aug. 14, 2008, 122 Stat. 3236; Pub. L. 111–39, title IV, § 402(f)(6), July 1, 2009, 123 Stat. 1944.)

REFERENCES IN TEXT

Section 7801 of this title, referred to in subsec. (b)(1)(B), was in the original ''section 9101 of the Elementary Secondary Education Act of 1965'', which was translated as meaning section 9101 of the Elementary and Secondary Education Act of 1965, to reflect the probable intent of Congress.

The National and Community Service Act of 1990, referred to in subsec. (g)(2)(C), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127. Subtitle D of title I of the Act is classified generally to division D of subchapter I (§ 12601 et seq.) of chapter 129 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

AMENDMENTS

2009—Subsec. (c)(1). Pub. L. 111–39, § 402(f)(6)(A), inserted at end ''No borrower may receive a reduction of loan obligations under both this section and section 1087j of this title.''

Subsec. (g)(2)(B) to (D). Pub. L. 111–39, § 402(f)(6)(B), inserted ''or'' at end of subpar. (B), redesignated subpar. (D) as (C) and substituted ''12601'' for ''12571'', and struck out former subpar. (C) which read as follows: ''section 1087j of this title; or''.

2008—Subsec. (b)(1)(A). Pub. L. 110–315, § 429(1), inserted ''or location'' after ''a school'' and ''or locations'' after ''schools''.

Subsec. (c)(1). Pub. L. 110–315, § 429(2), struck out at end ''No borrower may receive a reduction of loan obligations under both this section and section 1087j of this title.''

Subsec. (c)(3)(B)(iii). Pub. L. 110–315, § 429(3), inserted ''or, in the case of a teacher who is employed by an educational service agency, as certified by the chief administrative officer of such agency,'' after ''borrower is employed,''.

Subsec. (g)(2). Pub. L. 110–315, § 429(4), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: ''No borrower may, for the same service, receive a benefit under both this subsection and subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq.).''

2006—Subsec. (b)(1)(B). Pub. L. 109–171, § 8013(e)(1)(A), inserted '', or meets the requirements of subsection (g)(3)'' after ''section 7801 of this title''.

Subsec. (g)(3). Pub. L. 109–171, § 8013(e)(1)(B), added par. (3).

2004—Subsec. (b)(1). Pub. L. 108–409, § 3(a)(1)(A), added subpar. (B) and struck out former subpars. (B) and (C) which read as follows:

''(B) if employed as a secondary school teacher, is teaching a subject area that is relevant to the borrower's academic major as certified by the chief administrative officer of the public or nonprofit private secondary school in which the borrower is employed; and

''(C) if employed as an elementary school teacher, has demonstrated, as certified by the chief administrative officer of the public or nonprofit private elementary school in which the borrower is employed, knowledge and teaching skills in reading, writing, mathematics, and other areas of the elementary school curriculum; and''.

Subsec. (c)(3). Pub. L. 108–409, § 3(b)(1), added par. (3).

1998—Pub. L. 105–244 amended section catchline and text generally. Prior to amendment, section authorized Secretary to carry out demonstration program for loan forgiveness for teachers, individuals performing national community service, and nurses.

1993—Subsec. (b)(1). Pub. L. 103–208, § 2(c)(47), substituted ''section'' for ''sections'' in introductory provisions.

Pub. L. 103–82, § 102(c)(2)(A), substituted ''October 1, 1989'' for ''October 1, 1992'' in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 103–208, § 2(c)(48), substituted ''serves as a full-time volunteer'' for ''agrees in writing to volunteer for service''.

Subsec. (c)(1). Pub. L. 103–208, § 2(c)(49), substituted ''year of service'' for ''academic year'' wherever appearing.

Subsec. (c)(5). Pub. L. 103–82, § 102(c)(2)(B), added par. (5).

Subsec. (d). Pub. L. 103–208, § 2(c)(50), substituted ''to eligible'' for ''of eligibility'' in heading.

Subsec. (e). Pub. L. 103–208, § 2(c)(51), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Each eligible individual desiring loan repayment under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT; TRANSITION RULE

Pub. L. 108–409, § 3(a)(2), Oct. 30, 2004, 118 Stat. 2300, provided that:

''(A) RULE.—The amendments made by paragraph (1) of this subsection to sections 428J(b)(1) and 460(b)(1)(A) of the Higher Education Act of 1965 [sections 1078–10(b)(1) and 1087j(b)(1)(A) of this title] shall not be applied to disqualify any individual who, before the date of enactment of this Act [Oct. 30, 2004], commenced service that met and continues to meet the requirements of such sections as such sections were in effect on the day before the date of enactment of this Act.

''(B) RULE NOT APPLICABLE TO INCREASED QUALIFIED LOAN AMOUNTS.—Subparagraph (A) of this paragraph shall not apply for purposes of obtaining increased qualified loan amounts under sections 428J(c)(3) and 460(c)(3) of the Higher Education Act of 1965 [sections 1078–10(c)(3) and 1087j(c)(3) of this title] as added by subsection (b) of this section.''

Pub. L. 108–409, § 3(b)(3), Oct. 30, 2004, 118 Stat. 2301, as amended by Pub. L. 109–150, § 2(c)(1), Dec. 30, 2005, 119 Stat. 2884; Pub. L. 109–171, title VIII, § 8013(c)(2), (d)(1), Feb. 8, 2006, 120 Stat. 167, provided that: ''The amendments made by this subsection [amending this section and section 1087j of this title] shall apply only with respect to eligible individuals who are new borrowers (as such term is defined in 103 of the Higher Education Act of 1965 (20 U.S.C. 1003)) on or after October 1, 1998.''

[Pub. L. 109–150, § 2(c)(1), which amended section 3(b)(3) of Pub. L. 108–409, set out above, was repealed by Pub. L. 109–171, § 8013(d)(1), eff. July 1, 2006.]

[Amendment by Pub. L. 109–150 effective as if enacted on Oct. 1, 2005, see section 2(d)(2) of Pub. L. 109–150, set out as an Effective Date of 2005 Amendment note under section 1087–1 of this title.]

[Amendment by Pub. L. 109–171, § 8013(c)(2), effective as if enacted on Oct. 1, 2005, and as if amendment by section 2(c)(1) of Pub. L. 109–150 had not been enacted, see section 8013(c)(3), (d)(2) of Pub. L. 109–171, set out as notes under section 1087–1 of this title.]

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENTS

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

INFORMATION ON BENEFITS TO RURAL SCHOOL DISTRICTS

Pub. L. 108–409, § 3(c), Oct. 30, 2004, 118 Stat. 2302, provided that: ''The Secretary shall—

''(1) notify local educational agencies eligible to participate in the Small Rural Achievement Program authorized under subpart 1 of part B of title VI of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7345 et seq.] of the benefits available under the amendments made by this section [amending this section and section 1087j of this title]; and

''(2) encourage such agencies to notify their teachers of such benefits.''

§ 1078–11. Loan forgiveness for service in areas of national need

(a) Program authorized

(1) Loan forgiveness authorized

The Secretary shall forgive, in accordance with this section, the qualified loan amount described in subsection (c) of the student loan obligation of a borrower who—

(A) is employed full-time in an area of national need, as described in subsection (b); and

(B) is not in default on a loan for which the borrower seeks forgiveness.

(2) Method of loan forgiveness

To provide loan forgiveness under paragraph (1), the Secretary is authorized to carry out a program—

(A) through the holder of the loan, to assume the obligation to repay a qualified loan amount for a loan made, insured, or guaranteed under this part (other than an excepted PLUS loan or an excepted consolidation loan (as such terms are defined in section 1098e(a) of this title)); and

(B) to cancel a qualified loan amount for a loan made under part C of this subchapter (other than an excepted PLUS loan or an excepted consolidation loan).

(3) Regulations

The Secretary is authorized to issue such regulations as may be necessary to carry out this section.

(b) Areas of national need

For purposes of this section, an individual is employed in an area of national need if the individual meets the requirements of one of the following:

(1) Early childhood educators

The individual is employed full-time as an early childhood educator.

(2) Nurses

The individual is employed full-time—

(A) as a nurse in a clinical setting; or

(B) as a member of the nursing faculty at an accredited school of nursing (as those terms are defined in section 296 of title 42).

(3) Foreign language specialists

The individual—

(A) has obtained a baccalaureate or advanced degree in a critical foreign language; and

(B) is employed full-time—

(i) in an elementary school or secondary school as a teacher of a critical foreign language;

(ii) in an agency of the United States Government in a position that regularly requires the use of such critical foreign language; or

(iii) in an institution of higher education as a faculty member or instructor teaching a critical foreign language.

(4) Librarians

The individual is employed full-time as a librarian in—

(A) a public library that serves a geographic area within which the public schools have a combined average of 30 percent or more of the schools' total student enrollments composed of children meeting a measure of poverty under section 6313(a)(5) of this title; or

(B) a school that qualifies under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such a school.

(5) Highly qualified teachers serving students who are limited English proficient, low-income communities, and underrepresented populations

The individual—

(A) is highly qualified, as such term is defined in section 7801 of this title; and

(B) is employed full-time—

(i) as a teacher educating students who are limited English proficient;

(ii) as a teacher in a school that qualifies under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such a school;

(iii) as a teacher and is an individual from an underrepresented population in the teaching profession, as determined by the Secretary; or

(iv) as a teacher in an educational service agency, as such term is defined in section 7801 of this title.

(6) Child welfare workers

The individual—

(A) has obtained a degree in social work or a related field with a focus on serving children and families; and

(B) is employed full-time in public or private child welfare services.

(7) Speech-language pathologists and audiologists

The individual—

(A) is employed full-time as a speech-language pathologist or audiologist in an eligible preschool program or a school that qualifies under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such a school; and

(B) has, at a minimum, a graduate degree in speech-language pathology, audiology, or communication sciences and disorders.

(8) School counselors

The individual is employed full-time as a school counselor (as such term is defined in section 7245(e) of this title), in a school that qualifies under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such a school.

(9) Public sector employees

The individual is employed full-time in—

(A) public safety (including as a first responder, firefighter, police officer, or other law enforcement or public safety officer);

(B) emergency management (including as an emergency medical technician);

(C) public health (including full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics); or

(D) public interest legal services (including prosecution, public defense, or legal advocacy in low-income communities at a nonprofit organization).

(10) Nutrition professionals

The individual—

(A) is a licensed, certified, or registered dietician who has completed a degree in a relevant field; and

(B) is employed full-time as a dietician with an agency of the special supplemental nutrition program for women, infants, and children under section 1786 of title 42.

(11) Medical specialists

The individual—

(A) has received a degree from a medical school at an institution of higher education; and

(B) has been accepted to, or currently participates in, a full-time graduate medical education training program or fellowship (or both) to provide health care services (as recognized by the Accreditation Council for Graduate Medical Education) that—

(i) requires more than five years of total graduate medical training; and

(ii) has fewer United States medical school graduate applicants than the total number of positions available in such program or fellowship.

(12) Mental health professionals

The individual—

(A) has not less than a master's degree in social work, psychology, or psychiatry; and

(B) is employed full-time providing mental health services to children, adolescents, or veterans.

(13) Dentists

The individual—

(A)(i) has received a degree from an accredited dental school (as accredited by the Commission on Dental Accreditation);

(ii) has completed residency training in pediatric dentistry, general dentistry, or dental public health; and

(iii) is employed full-time as a dentist; or

(B) is employed full-time as a member of the faculty at a program or school accredited by the Commission on Dental Accreditation.

(14) STEM employees

The individual is employed full-time in applied sciences, technology, engineering, or mathematics.

(15) Physical therapists

The individual—

(A) is a physical therapist; and

(B) is employed full-time providing physical therapy services to children, adolescents, or veterans.

(16) Superintendents, principals, and other administrators

The individual is employed full-time as a school superintendent, principal, or other administrator in a local educational agency, including in an educational service agency, in which 30 percent or more of the schools are schools that qualify under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such a school.

(17) Occupational therapists

The individual is an occupational therapist and is employed full-time providing occupational therapy services to children, adolescents, or veterans.

(18) Allied health professionals

The individual is employed full-time as an allied health professional—

(A) in a Federal, State, local, or tribal public health agency; or

(B) in a setting where patients might require health care services, including acute care facilities, ambulatory care facilities, personal residences and other settings located in health professional shortage areas, medically underserved areas, or medically underserved populations, as recognized by the Secretary of Health and Human Services.

(c) Qualified loan amount

(1) In general

Subject to paragraph (2), for each school, academic, or calendar year of full-time employment in an area of national need described in subsection (b) that a borrower completes on or after August 14, 2008, the Secretary shall forgive not more than $2,000 of the student loan obligation of the borrower that is outstanding after the completion of each such school, academic, or calendar year of employment, respectively.

(2) Maximum amount

The Secretary shall not forgive more than $10,000 in the aggregate for any borrower under

this section, and no borrower shall receive loan forgiveness under this section for more than five years of service.

(d) Priority

The Secretary shall grant loan forgiveness under this section on a first-come, first-served basis, and subject to the availability of appropriations.

(e) Rule of construction

Nothing in this section shall be construed to authorize the refunding of any repayment of a loan.

(f) Ineligibility for double benefits

No borrower may, for the same service, receive a reduction of loan obligations under both this section and section 1078–10, 1078–12, 1087e(m), or 1087j of this title.

(g) Definitions

In this section:

(1) Allied health professional

The term ''allied health professional'' means an allied health professional as defined in section 295p(5) of title 42 who—

(A) has graduated and received an allied health professions degree or certificate from an institution of higher education; and

(B) is employed with a Federal, State, local or tribal public health agency, or in a setting where patients might require health care services, including acute care facilities, ambulatory care facilities, personal residences and other settings located in health professional shortage areas, medically underserved areas, or medically underserved populations, as recognized by the Secretary of Health and Human Services.

(2) Audiologist

The term ''audiologist'' means an individual who—

(A) has received, at a minimum, a graduate degree in audiology from an institution of higher education accredited by an agency or association recognized by the Secretary pursuant to section 1099b(a) of this title; and

(B)(i) provides audiology services under subsection (*ll*)(2) of section 1395x of title 42; or

(ii) meets or exceeds the qualifications for a qualified audiologist under subsection (*ll*)(4) of such section.

(3) Early childhood educator

The term ''early childhood educator'' means an individual who—

(A) works directly with children in an eligible preschool program or eligible early childhood education program in a low-income community;

(B) is involved directly in the care, development, and education of infants, toddlers, or young children age five and under; and

(C) has completed a baccalaureate or advanced degree in early childhood development or early childhood education, or in a field related to early childhood education.

(4) Eligible preschool program

The term ''eligible preschool program'' means a program that—

(A) provides for the care, development, and education of infants, toddlers, or young children age five and under;

(B) meets any applicable State or local government licensing, certification, approval, and registration requirements, and

(C) is operated by—

(i) a public or private school that is supported, sponsored, supervised, or administered by a local educational agency;

(ii) a Head Start agency serving as a grantee designated under the Head Start Act (42 U.S.C. 9831 et seq.);

(iii) a nonprofit or community based organization; or

(iv) a child care program, including a home.

(5) Eligible early childhood education program

The term ''eligible early childhood education program'' means—

(A) a family child care program, center-based child care program, State prekindergarten program, school program, or other out-of-home early childhood development care program, that—

(i) is licensed or regulated by the State; and

(ii) serves two or more unrelated children who are not old enough to attend kindergarten;

(B) a Head Start Program carried out under the Head Start Act (42 U.S.C. 9831 et seq.); or

(C) an Early Head Start Program carried out under section 645A of the Head Start Act (42 U.S.C. 9840a).

(6) Low-income community

The term ''low-income community'' means a school attendance area (as defined in section 6313(a)(2)(A) of this title)—

(A) in which 70 percent of households earn less than 85 percent of the State median household income; or

(B) that includes a school that qualifies under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such a school.

(7) Nurse

The term ''nurse'' means a nurse who meets all of the following:

(A) The nurse graduated from—

(i) an accredited school of nursing (as those terms are defined in section 296 of title 42);

(ii) a nursing center; or

(iii) an academic health center that provides nurse training.

(B) The nurse holds a valid and unrestricted license to practice nursing in the State in which the nurse practices in a clinical setting.

(C) The nurse holds one or more of the following:

(i) A graduate degree in nursing, or an equivalent degree.

(ii) A nursing degree from a collegiate school of nursing (as defined in section 296 of title 42).

(iii) A nursing degree from an associate degree school of nursing (as defined in such section).

(iv) A nursing degree from a diploma school of nursing (as defined in such section).

(8) Occupational therapist

The term ''occupational therapist'' means an individual who—

(A) has received, at a minimum, a baccalaureate degree in occupational therapy from an institution of higher education accredited by an agency or association recognized by the Secretary pursuant to section 1099b(a) of this title; and

(B)(i) provides occupational therapy services under section 1395x(g) of title 42; or

(ii) meets or exceeds the qualifications for a qualified occupational therapist, as determined by State law.

(9) Physical therapist

The term ''physical therapist'' means an individual who—

(A) has received, at a minimum, a graduate degree in physical therapy from an institution of higher education accredited by an agency or association recognized by the Secretary pursuant to section 1099b(a) of this title; and

(B)(i) provides physical therapy services under section 1395x(p) of title 42; or

(ii) meets or exceeds the qualifications for a qualified physical therapist, as determined by State law.

(10) Speech-language pathologist

The term ''speech-language pathologist'' means a speech-language pathologist who—

(A) has received, at a minimum, a graduate degree in speech-language pathology or communication sciences and disorders from an institution of higher education accredited by an agency or association recognized by the Secretary pursuant to section 1099b(a) of this title; and

(B) provides speech-language pathology services under section 1395x(*ll*)(1) of title 42, or meets or exceeds the qualifications for a qualified speech-language pathologist under subsection (*ll*)(4) of such section.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years to provide loan forgiveness in accordance with this section.

(Pub. L. 89–329, title IV, § 428K, as added Pub. L. 105–244, title IV, § 425, Oct. 7, 1998, 112 Stat. 1699; amended Pub. L. 110–315, title IV, § 430, Aug. 14, 2008, 122 Stat. 3236; Pub. L. 111–39, title IV, § 402(f)(7), July 1, 2009, 123 Stat. 1944; Pub. L. 111–148, title V, § 5205(b), Mar. 23, 2010, 124 Stat. 611.)

REFERENCES IN TEXT

The Head Start Act, referred to in subsec. (g)(4)(C)(ii), (5)(B), is subchapter B (§ 635 et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of Title 42 and Tables.

AMENDMENTS

2010—Subsec. (b)(18). Pub. L. 111–148, § 5205(b)(1), added par. (18).

Subsec. (g). Pub. L. 111–148, § 5205(b)(2), added par. (1) and redesignated former pars. (1) to (9) as (2) to (10), respectively.

2009—Subsec. (g)(9)(B). Pub. L. 111–39 substituted ''under subsection (*ll*)(4) of such section'' for ''under subsection (*ll*)(3) of such section''.

2008—Pub. L. 110–315 amended section generally. Prior to amendment, section related to loan forgiveness for child care providers.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

ALLIED HEALTH WORKFORCE RECRUITMENT AND RETENTION PROGRAMS

Pub. L. 111–148, title V, § 5205(a), Mar. 23, 2010, 124 Stat. 611, provided that: ''The purpose of this section [amending this section] is to assure an adequate supply of allied health professionals to eliminate critical allied health workforce shortages in Federal, State, local, and tribal public health agencies or in settings where patients might require health care services, including acute care facilities, ambulatory care facilities, personal residences and other settings, as recognized by the Secretary of Health and Human Services by authorizing an Allied Health Loan Forgiveness Program.''

[For definition of ''Allied Health Loan Forgiveness Program'' as used in section 5205(a) of Pub. L. 111–148, set out above, see section 5002(a) of Pub. L. 111–148, set out as a note under section 294q of Title 42, The Public Health and Welfare.]

§ 1078–12. Loan repayment for civil legal assistance attorneys

(a) Purpose

The purpose of this section is to encourage qualified individuals to enter and continue employment as civil legal assistance attorneys.

(b) Definitions

In this section:

(1) Civil legal assistance attorney

The term ''civil legal assistance attorney'' means an attorney who—

(A) is a full-time employee of—

(i) a nonprofit organization that provides legal assistance with respect to civil matters to low-income individuals without a fee; or

(ii) a protection and advocacy system or client assistance program that provides legal assistance with respect to civil matters and receives funding under—

(I) subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.);

(II) section 732 or 794e of title 29;

(III) part A of title I of the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801 et seq.);

(IV) section 3004 of title 29;

(V) section 1320b–21 of title 42;

(VI) section 300d–53 of title 42; or

(VII) section 15461 of title 42;

(B) as such employee, provides civil legal assistance as described in subparagraph (A) on a full-time basis; and

(C) is continually licensed to practice law.

(2) Student loan

(A) In general

Except as provided in subparagraph (B), the term ''student loan'' means—

(i) subject to clause (ii), a loan made, insured, or guaranteed under this part, part C, or part D; and

(ii) a loan made under section 1078–3 or 1087e(g) of this title, to the extent that such loan was used to repay—

(I) a Federal Direct Stafford Loan, a Federal Direct Unsubsidized Stafford Loan, or a Federal Direct PLUS Loan;

(II) a loan made under section 1078, 1078–2, or 1078–8 of this title; or

(III) a loan made under part D.

(B) Exclusion of parent plus loans

The term ''student loan'' does not include any of the following loans:

(i) A loan made to the parents of a dependent student under section 1078–2 of this title.

(ii) A Federal Direct PLUS Loan made to the parents of a dependent student.

(iii) A loan made under section 1078–3 or 1087e(g) of this title, to the extent that such loan was used to repay—

(I) a loan made to the parents of a dependent student under section 1078–2 of this title; or

(II) a Federal Direct PLUS Loan made to the parents of a dependent student.

(c) Program authorized

From amounts appropriated under subsection (i) for a fiscal year, the Secretary shall carry out a program of assuming the obligation to repay a student loan, by direct payments on behalf of a borrower to the holder of such loan, in accordance with subsection (d), for any borrower who—

(1) is employed as a civil legal assistance attorney; and

(2) is not in default on a loan for which the borrower seeks repayment.

(d) Terms of agreement

(1) In general

To be eligible to receive repayment benefits under subsection (c), a borrower shall enter into a written agreement with the Secretary that specifies that—

(A) the borrower will remain employed as a civil legal assistance attorney for a required period of service of not less than three years, unless involuntarily separated from that employment;

(B) if the borrower is involuntarily separated from employment on account of misconduct, or voluntarily separates from employment, before the end of the period specified in the agreement, the borrower will repay the Secretary the amount of any benefits received by such employee under this agreement;

(C) if the borrower is required to repay an amount to the Secretary under subparagraph (B) and fails to repay such amount, a sum equal to that amount shall be recoverable by the Federal Government from the employee by such methods as are provided by law for the recovery of amounts owed to the Federal Government;

(D) the Secretary may waive, in whole or in part, a right of recovery under this subsection if it is shown that recovery would be contrary to the public interest; and

(E) the Secretary shall make student loan payments under this section for the period of the agreement, subject to the availability of appropriations.

(2) Repayments

(A) In general

Any amount repaid by, or recovered from, an individual under this subsection shall be credited to the appropriation account from which the amount involved was originally paid.

(B) Merger

Any amount credited under subparagraph (A) shall be merged with other sums in such account and shall be available for the same purposes and period, and subject to the same limitations, if any, as the sums with which the amount was merged.

(3) Limitations

(A) Student loan payment amount

Student loan repayments made by the Secretary under this section shall be made subject to such terms, limitations, or conditions as may be mutually agreed upon by the borrower and the Secretary in an agreement under paragraph (1), except that the amount paid by the Secretary under this section shall not exceed—

(i) $6,000 for any borrower in any calendar year; or

(ii) an aggregate total of $40,000 in the case of any borrower.

(B) Beginning of payments

Nothing in this section shall authorize the Secretary to pay any amount to reimburse a borrower for any repayments made by such borrower prior to the date on which the Secretary entered into an agreement with the borrower under this subsection.

(e) Additional agreements

(1) In general

On completion of the required period of service under an agreement under subsection (d), the borrower and the Secretary may, subject to paragraph (2), enter into an additional agreement in accordance with subsection (d).

(2) Term

An agreement entered into under paragraph (1) may require the borrower to remain em-

ployed as a civil legal assistance attorney for less than three years.

(f) Award basis; priority

(1) Award basis

Subject to paragraph (2), the Secretary shall provide repayment benefits under this section on a first-come, first-served basis, and subject to the availability of appropriations.

(2) Priority

The Secretary shall give priority in providing repayment benefits under this section in any fiscal year to a borrower who—

(A) has practiced law for five years or less and, for not less than 90 percent of the time in such practice, has served as a civil legal assistance attorney;

(B) received repayment benefits under this section during the preceding fiscal year; and

(C) has completed less than three years of the first required period of service specified for the borrower in an agreement entered into under subsection (d).

(g) Ineligibility for double benefits

No borrower may, for the same service, receive a reduction of loan obligations under both this section and section 1078–11 or 1087e(m) of this title.

(h) Regulations

The Secretary is authorized to issue such regulations as may be necessary to carry out this section.

(i) Authorization of appropriations

There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years.

(Pub. L. 89–329, title IV, § 428L, as added Pub. L. 110–315, title IV, § 431, Aug. 14, 2008, 122 Stat. 3242.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in (b)(1)(A)(ii)(I), is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of title I of the Act is classified generally to part C (§ 15041 et seq.) of subchapter I of chapter 144 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of Title 42 and Tables.

The Protection and Advocacy for Individuals with Mental Illness Act, referred to in subsec. (b)(1)(A)(ii)(III), is Pub. L. 99–319, May 23, 1986, 100 Stat. 478. Part A of title I of the Act is classified generally to part A (§ 10801 et seq.) of subchapter I of chapter 114 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of Title 42 and Tables.

§ 1079. Certificate of Federal loan insurance—effective date of insurance

(a) Loan-by-loan insurance

(1) Authority to issue certificates on application

If, upon application by an eligible lender, made upon such form, containing such information, and supported by such evidence as the Secretary may require, and otherwise in conformity with this section, the Secretary finds that the applicant has made a loan to an eligible student which is insurable under the provisions of this part, he may issue to the applicant a certificate of insurance covering the loan and setting forth the amount and terms of the insurance.

(2) Effectiveness of certificate

Insurance evidenced by a certificate of insurance pursuant to subsection (a)(1) of this section shall become effective upon the date of issuance of the certificate, except that the Secretary is authorized, in accordance with regulations, to issue commitments with respect to proposed loans, or with respect to lines (or proposed lines) of credit, submitted by eligible lenders, and in that event, upon compliance with subsection (a)(1) of this section by the lender, the certificate of insurance may be issued effective as of the date when any loan, or any payment by the lender pursuant to a line of credit, to be covered by such insurance was made. Such insurance shall cease to be effective upon 60 days' default by the lender in the payment of any installment of the premiums payable pursuant to subsection (c) of this section.

(3) Contents of applications

An application submitted pursuant to subsection (a)(1) of this section shall contain (A) an agreement by the applicant to pay, in accordance with regulations, the premiums fixed by the Secretary pursuant to subsection (c) of this section, and (B) an agreement by the applicant that if the loan is covered by insurance the applicant will submit such supplementary reports and statement during the effective period of the loan agreement, upon such forms, at such times, and containing such information as the Secretary may prescribe by or pursuant to regulation.

(b) Comprehensive insurance coverage certificate

(1) Establishment of system by regulation

In lieu of requiring a separate insurance application and issuing a separate certificate of insurance for each student loan made by an eligible lender as provided in subsection (a) of this section, the Secretary may, in accordance with regulations consistent with section 1074 of this title, issue to any eligible lender applying therefor a certificate of comprehensive insurance coverage which shall, without further action by the Secretary, insure all insurable loans made by that lender, on or after the date of the certificate and before a specified cutoff date, within the limits of an aggregate maximum amount stated in the certificate. Such regulations may provide for conditioning such insurance, with respect to any loan, upon compliance by the lender with such requirements (to be stated or incorporated by reference in the certificate) as in the Secretary's judgment will best achieve the purpose of this subsection while protecting the United States from the risk of unreasonable loss and promoting the objectives of this part, including (but not limited to) provisions as to the reporting of such loans and information relevant thereto

to the Secretary and as to the payment of initial and other premiums and the effect of default therein, and including provision for confirmation by the Secretary from time to time (through endorsement of the certificate) of the coverage of specific new loans by such certificate, which confirmation shall be incontestable by the Secretary in the absence of fraud or misrepresentation of fact or patent error.

(2) Uncovered loans

If the holder of a certificate of comprehensive insurance coverage issued under this subsection grants to a student a line of credit extending beyond the cutoff date specified in that certificate, loans or payments thereon made by the holder after that date pursuant to the line of credit shall not be deemed to be included in the coverage of that certificate except as may be specifically provided therein; but, subject to the limitations of section 1074 of this title, the Secretary may, in accordance with regulations, make commitments to insure such future loans or payments, and such commitments may be honored either as provided in subsection (a) of this section or by inclusion of such insurance on comprehensive coverage under the subsection for the period or periods in which such future loans or payments are made.

(c) Charges for Federal insurance

The Secretary shall, pursuant to regulations, charge for insurance on each loan under this part a premium in an amount not to exceed one-fourth of 1 percent per year of the unpaid principal amount of such loan (excluding interest added to principal), payable in advance, at such times and in such manner as may be prescribed by the Secretary. Such regulations may provide that such premium shall not be payable, or if paid shall be refundable, with respect to any period after default in the payment of principal or interest or after the borrower has died or becomes totally and permanently disabled, if (1) notice of such default or other event has been duly given, and (2) requests for payment of the loss insured against has been made or the Secretary has made such payment on his own motion pursuant to section 1080(a) of this title.

(d) Assignability of insurance

The rights of an eligible lender arising under insurance evidenced by a certificate of insurance issued to it under this section may be assigned as security by such lender only to another eligible lender, and subject to regulation by the Secretary.

(e) Consolidation not to affect insurance

The consolidation of the obligations of two or more federally insured loans obtained by a student borrower in any fiscal year into a single obligation evidenced by a single instrument of indebtedness shall not affect the insurance by the United States. If the loans thus consolidated are covered by separate certificates of insurance issued under subsection (a) of this section, the Secretary may upon surrender of the original certificates issue a new certificate of insurance in accordance with that subsection upon the consolidated obligation; if they are covered by a single comprehensive certificate issued under subsection (b) of this section, the Secretary may amend that certificate accordingly.

(Pub. L. 89–329, title IV, § 429, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1395.)

PRIOR PROVISIONS

A prior section 1079, Pub. L. 89–329, title IV, § 429, Nov. 8, 1965, 79 Stat. 1243; Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2123; Pub. L. 96–374, title XIII, § 1391(a)(1), (2), Oct. 3, 1980, 94 Stat. 1503, related to certificates of Federal loan insurance, prior to the general revision of this part by Pub. L. 99–498.

§ 1080. Default of student under Federal loan insurance program

(a) Notice to Secretary and payment of loss

Upon default by the student borrower on any loan covered by Federal loan insurance pursuant to this part, and prior to the commencement of suit or other enforcement proceedings upon security for that loan, the insurance beneficiary shall promptly notify the Secretary, and the Secretary shall if requested (at that time or after further collection efforts) by the beneficiary, or may on the Secretary's own motion, if the insurance is still in effect, pay to the beneficiary the amount of the loss sustained by the insured upon that loan as soon as that amount has been determined. The ''amount of the loss'' on any loan shall, for the purposes of this subsection and subsection (b) of this section, be deemed to be an amount equal to the unpaid balance of the principal amount and accrued interest, including interest accruing from the date of submission of a valid default claim (as determined by the Secretary) to the date on which payment is authorized by the Secretary, reduced to the extent required by section 1075(b) of this title. Such beneficiary shall be required to meet the standards of due diligence in the collection of the loan and shall be required to submit proof that the institution was contacted and other reasonable attempts were made to locate the borrower (when the location of the borrower is unknown) and proof that contact was made with the borrower (when the location is known). The Secretary shall make the determination required to carry out the provisions of this section not later than 90 days after the notification by the insurance beneficiary and shall make payment in full on the amount of the beneficiary's loss pending completion of the due diligence investigation.

(b) Effect of payment of loss

Upon payment of the amount of the loss pursuant to subsection (a) of this section, the United States shall be subrogated for all of the rights of the holder of the obligation upon the insured loan and shall be entitled to an assignment of the note or other evidence of the insured loan by the insurance beneficiary. If the net recovery made by the Secretary on a loan after deduction of the cost of that recovery (including reasonable administrative costs and collection costs, to the extent set forth in regulations issued by the Secretary) exceeds the amount of the loss, the excess shall be paid over to the insured. The Secretary may, in attempt-

ing to make recovery on such loans, contract with private business concerns, State student loan insurance agencies, or State guaranty agencies, for payment for services rendered by such concerns or agencies in assisting the Secretary in making such recovery. Any contract under this subsection entered into by the Secretary shall provide that attempts to make recovery on such loans shall be fair and reasonable, and do not involve harassment, intimidation, false or misleading representations, or unnecessary communications concerning the existence of any such loan to persons other than the student borrower.

(c) Forbearance not precluded

Nothing in this section or in this part shall be construed to preclude any forbearance for the benefit of the student borrower which may be agreed upon by the parties to the insured loan and approved by the Secretary, or to preclude forbearance by the Secretary in the enforcement of the insured obligation after payment on that insurance. Any forbearance which is approved by the Secretary under this subsection with respect to the repayment of a loan, including a forbearance during default, shall not be considered as indicating that a holder of a federally insured loan has failed to exercise reasonable care and due diligence in the collection of the loan.

(d) Care and diligence required of holders

Nothing in this section or in this part shall be construed to excuse the holder of a federally insured loan from exercising reasonable care and diligence in the making and collection of loans under the provisions of this part. If the Secretary, after a reasonable notice and opportunity for hearing to an eligible lender, finds that it has substantially failed to exercise such care and diligence or to make the reports and statements required under section 1078(a)(4) of this title and section 1079(a)(3) of this title, or to pay the required Federal loan insurance premiums, the Secretary shall disqualify that lender for further Federal insurance on loans granted pursuant to this part until the Secretary is satisfied that its failure has ceased and finds that there is reasonable assurance that the lender will in the future exercise necessary care and diligence or comply with such requirements, as the case may be.

(e) Default rate of lenders, holders, and guaranty agencies

(1) In general

The Secretary shall annually publish a list indicating the cohort default rate (determined in accordance with section 1085(m) of this title) for each originating lender, subsequent holder, and guaranty agency participating in the program assisted under this part and an average cohort default rate for all institutions of higher education within each State.

(2) Regulations

The Secretary shall prescribe regulations designed to prevent an institution from evading the application to that institution of a cohort default rate through the use of such measures as branching, consolidation, change of ownership or control, or any similar device.

(3) Rate establishment and correction

The Secretary shall establish a cohort default rate for lenders, holders, and guaranty agencies (determined consistent with section 1085(m) of this title), except that the rate for lenders, holders, and guaranty agencies shall not reflect any loans issued in accordance with section 1078(j) of this title. The Secretary shall allow institutions, lenders, holders, and guaranty agencies the opportunity to correct such cohort default rate information.

(Pub. L. 89–329, title IV, §430, as added Pub. L. 99–498, title IV, §402(a), Oct. 17, 1986, 100 Stat. 1397; amended Pub. L. 102–325, title IV, §423, July 23, 1992, 106 Stat. 543; Pub. L. 105–244, title IV, §426, Oct. 7, 1998, 112 Stat. 1702.)

PRIOR PROVISIONS

A prior section 1080, Pub. L. 89–329, title IV, §430, Nov. 8, 1965, 79 Stat. 1244; Pub. L. 90–575, title I, §113(b)(5), Oct. 16, 1968, 82 Stat. 1021; Pub. L. 92–318, title I, §132B(c), June 23, 1972, 86 Stat. 262; Pub. L. 94–482, title I, §127(a), Oct. 12, 1976, 90 Stat. 2125; Pub. L. 95–43, §1(a)(33), June 15, 1977, 91 Stat. 216; Pub. L. 96–374, title IV, §§416(a)(1), (b), 422, title XIII, §1391(a)(1), Oct. 3, 1980, 94 Stat. 1420, 1421, 1432, 1503; Pub. L. 99–272, title XVI, §§16014(a)(2), 16022, Apr. 7, 1986, 100 Stat. 341, 349, related to default of student borrowers under Federal loan insurance program, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–244 inserted ''the institution was contacted and other'' after ''submit proof that'' in third sentence.

1992—Subsec. (e). Pub. L. 102–325 added subsec. (e).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

STUDY OF FRAUD-BASED DEFENSES

Pub. L. 102–325, title XIV, §1403, July 23, 1992, 106 Stat. 817, directed Secretary of Education to conduct a study of impact of fraud-based defenses on Federal Family Education Loan Program and to submit a report to Congress on the study not later than 19 months after July 23, 1992, prior to repeal by Pub. L. 105–332, §6(b)(2), Oct. 31, 1998, 112 Stat. 3128.

§1080a. Reports to consumer reporting agencies and institutions of higher education

(a) Agreements to exchange information

For the purpose of promoting responsible repayment of loans covered by Federal loan insurance pursuant to this part or covered by a guaranty agreement pursuant to section 1078 of this title, the Secretary and each guaranty agency, eligible lender, and subsequent holder shall enter into an agreement with each consumer reporting agency to exchange information concerning student borrowers, in accordance with the requirements of this section. For the purpose of assisting such consumer reporting agencies in complying with the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], such agreements may provide for timely response by the Secretary (concerning loans covered by Federal loan insurance) or by a guaranty agency, eligible lender, or subsequent holder (concerning loans covered by a guaranty agreement), or to

requests from such consumer reporting agencies for responses to objections raised by borrowers. Subject to the requirements of subsection (c) of this section, such agreements shall require the Secretary or the guaranty agency, eligible lender, or subsequent holder, as appropriate, to disclose to such consumer reporting agencies, with respect to any loan under this part that has not been repaid by the borrower—

(1) that the loan is an education loan (as such term is defined in section 1019 of this title);

(2) the total amount of loans made to any borrower under this part and the remaining balance of the loans;

(3) information concerning the repayment status of the loan for inclusion in the file of the borrower, except that nothing in this subsection shall be construed to affect any otherwise applicable provision of the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

(4) information concerning the date of any default on the loan and the collection of the loan, including information concerning the repayment status of any defaulted loan on which the Secretary has made a payment pursuant to section 1080(a) of this title or the guaranty agency has made a payment to the previous holder of the loan; and

(5) the date of cancellation of the note upon completion of repayment by the borrower of the loan or payment by the Secretary pursuant to section 1087 of this title.

(b) Additional information

Such agreements may also provide for the disclosure by such consumer reporting agencies to the Secretary or a guaranty agency, whichever insures or guarantees a loan, upon receipt of a notice under subsection (a)(4) of this section that such a loan is in default, of information concerning the borrower's location or other information which may assist the Secretary, the guaranty agency, the eligible lender, or the subsequent holder in collecting the loan.

(c) Contents of agreements

Agreements entered into pursuant to this section shall contain such provisions as may be necessary to ensure that—

(1) no information is disclosed by the Secretary or the guaranty agency, eligible lender, or subsequent holder unless its accuracy and completeness have been verified and the Secretary or the guaranty agency has determined that disclosure would accomplish the purpose of this section;

(2) as to any information so disclosed, such consumer reporting agencies will be promptly notified of, and will promptly record, any change submitted by the Secretary, the guaranty agency, eligible lender, or subsequent holder with respect to such information, or any objections by the borrower with respect to any such information, as required by section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i);

(3) no use will be made of any such information which would result in the use of collection practices with respect to such a borrower that are not fair and reasonable or that involve harassment, intimidation, false or misleading representations, or unnecessary communication concerning the existence of such loan or concerning any such information; and

(4) with regard to notices of default under subsection (a)(4) of this section, except for disclosures made to obtain the borrower's location, the Secretary, or the guaranty agency, eligible lender, or subsequent holder whichever is applicable (A) shall not disclose any such information until the borrower has been notified that such information will be disclosed to consumer reporting agencies unless the borrower enters into repayment of his or her loan, but (B) shall, if the borrower has not entered into repayment within a reasonable period of time, but not less than 30 days, from the date such notice has been sent to the borrower, disclose the information required by this subsection.

(d) Contractor status of participants

A guaranty agency, eligible lender, or subsequent holder or consumer reporting agency which discloses or receives information under this section shall not be considered a Government contractor within the meaning of section 552a of title 5.

(e) Disclosure to institutions

The Secretary and each guaranty agency, eligible lender, and subsequent holder of a loan are authorized to disclose information described in subsections (a) and (b) of this section concerning student borrowers to the eligible institutions such borrowers attend or previously attended. To further the purpose of this section, an eligible institution may enter into an arrangement with any or all of the holders of delinquent loans made to borrowers who attend or previously attended such institution for the purpose of providing current information regarding the borrower's location or employment or for the purpose of assisting the holder in contacting and influencing borrowers to avoid default.

(f) Duration of authority

Notwithstanding paragraphs (4) and (5) of subsection (a) of section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)(4), (a)(5)), a consumer reporting agency may make a report containing information received from the Secretary or a guaranty agency, eligible lender, or subsequent holder regarding the status of a borrower's defaulted account on a loan guaranteed under this part until—

(1) 7 years from the date on which the Secretary or the agency paid a claim to the holder on the guaranty;

(2) 7 years from the date the Secretary, guaranty agency, eligible lender, or subsequent holder first reported the account to the consumer reporting agency; or

(3) in the case of a borrower who reenters repayment after defaulting on a loan and subsequently goes into default on such loan, 7 years from the date the loan entered default such subsequent time.

(Pub. L. 89–329, title IV, § 430A, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1398; amended Pub. L. 100–50, § 10(v), June 3, 1987, 101 Stat. 346; Pub. L. 102–325, title IV, § 424, July 23, 1992, 106 Stat. 543; Pub. L. 103–208, § 2(c)(52),

Dec. 20, 1993, 107 Stat. 2467; Pub. L. 110–315, title IV, § 432(a), Aug. 14, 2008, 122 Stat. 3245; Pub. L. 111–39, title IV, § 402(f)(8), July 1, 2009, 123 Stat. 1944.)

REFERENCES IN TEXT

The Fair Credit Reporting Act, referred to in subsec. (a), is title VI of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1127, as amended, which is classified generally to subchapter III (§ 1681 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

PRIOR PROVISIONS

A prior section 1080a, Pub. L. 89–329, title IV, § 430A, as added Pub. L. 99–272, title XVI, § 16023, Apr. 7, 1986, 100 Stat. 349; amended Pub. L. 99–320, § 2(c), May 23, 1986, 100 Stat. 491, related to reports to credit bureaus and institutions of higher education, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2009—Subsec. (f). Pub. L. 111–39, in introductory provisions, substituted ''and (5)'' for ''and (6)'' and ''(a)(5)'' for ''(a)(6)''.

2008—Pub. L. 110–315, § 432(a)(1), substituted ''consumer reporting agencies'' for ''credit bureaus'' in section catchline.

Subsec. (a). Pub. L. 110–315, § 432(a)(2)(B)–(D), added pars. (1) and (3) and redesignated former pars. (1), (2) and (3) as (2), (4) and (5), respectively.

Pub. L. 110–315, § 432(a)(2)(A), in introductory provisions, substituted ''the Secretary and'' for ''the Secretary,'' and ''an agreement with each consumer reporting agency'' for ''agreements with credit bureau organizations'' in first sentence, ''such consumer reporting agencies'' for ''such organizations'' in two places and ''insurance) or by'' for ''insurance), by'' in second sentence, and ''Secretary or'' for ''Secretary,'' and ''consumer reporting agencies'' for ''organizations'' in third sentence.

Subsec. (b). Pub. L. 110–315, § 432(a)(3), substituted ''consumer reporting agencies'' for ''organizations'' and ''subsection (a)(4)'' for ''subsection (a)(2)''.

Subsec. (c)(2). Pub. L. 110–315, § 432(a)(4)(A), substituted ''consumer reporting agencies'' for ''organizations''.

Subsec. (c)(4). Pub. L. 110–315, § 432(a)(4)(B)(i), substituted ''subsection (a)(4)'' for ''subsection (a)(2)''.

Subsec. (c)(4)(A). Pub. L. 110–315, § 432(a)(4)(B)(ii), substituted ''consumer reporting agencies'' for ''credit bureau organizations''.

Subsec. (d). Pub. L. 110–315, § 432(a)(5), substituted ''consumer reporting agency'' for ''credit bureau organization''.

1993—Subsec. (f)(1). Pub. L. 103–208 substituted a semicolon for the comma at end.

1992—Subsec. (f). Pub. L. 102–325 struck out ''or'' at end of par. (1), added pars. (2) and (3), and struck out former par. (2) which read as follows: ''with regard to an account on a loan on which the Secretary or the guaranty agency has paid a claim but not reported the account to a consumer reporting agency on or before October 1, 1985, 7 years from that date.''

1987—Subsec. (e). Pub. L. 100–50 inserted sentence at end permitting an eligible institution to enter into arrangements with holders of delinquent loans made to borrowers for purpose of providing current information on borrower's location or employment or to assist holder in contacting and influencing borrower to avoid default.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

§ 1081. Insurance fund

(a) Establishment

There is hereby established a student loan insurance fund (hereinafter in this section called the ''fund'') which shall be available without fiscal year limitation to the Secretary for making payments in connection with the default of loans insured by the Secretary under this part, or in connection with payments under a guaranty agreement under section 1078(c) of this title. All amounts received by the Secretary as premium charges for insurance and as receipts, earnings, or proceeds derived from any claim or other assets acquired by the Secretary in connection with operations under this part, any excess advances under section 1072 of this title, and any other moneys, property, or assets derived by the Secretary from operations in connection with this section, shall be deposited in the fund. All payments in connection with the default of loans insured by the Secretary under this part, or in connection with such guaranty agreements shall be paid from the fund. Moneys in the fund not needed for current operations under this section may be invested in bonds or other obligations guaranteed as to principal and interest by the United States.

(b) Borrowing authority

If at any time the moneys in the fund are insufficient to make payments in connection with the default of any loan insured by the Secretary under this part, or in connection with any guaranty agreement made under section 1078(c) of this title, the Secretary is authorized, to the extent provided in advance by appropriations Acts, to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell

any of the notes or other obligations acquired under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under the subsection shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from such fund.

(Pub. L. 89–329, title IV, § 431, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1400; amended Pub. L. 100–50, § 10(w), June 3, 1987, 101 Stat. 346.)

CODIFICATION

In subsec. (b), ''chapter 31 of title 31'' and ''that chapter'' substituted for ''the Second Liberty Bond Act, as amended'' and ''that Act, as amended'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 1081, Pub. L. 89–329, title IV, § 431, Nov. 8, 1965, 79 Stat. 1245; Pub. L. 90–460, § 3(c), Aug. 3, 1968, 82 Stat. 638; Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2126; Pub. L. 96–374, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1503, related to a student loan insurance fund, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–50 substituted ''section 1072 of this title'' for ''section 1072(a)(4)(C) of this title''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

FEDERAL FAMILY EDUCATION LOAN INSURANCE FUND

Pub. L. 105–244, title IV, § 434, Oct. 7, 1998, 112 Stat. 1711, provided that: ''Any funds in the insurance fund, as established under section 431 of the Higher Education Act of 1965 (20 U.S.C. 1081), on the date of enactment of this Act [Oct. 7, 1998] shall be transferred to and deposited in the Treasury. All funds received by the Secretary of Education under subsection (a) of such section after the date of enactment of this Act shall be deposited into the fund in accordance with such subsection.''

TRANSFER OF ASSETS AND LIABILITIES OF THE VOCATIONAL STUDENT LOAN INSURANCE FUND

All assets and liabilities of the vocational student loan insurance fund transferred to the student loan insurance fund, see section 116(c)(2) of Pub. L. 90–575, set out as a note under former section 981 et seq. of this title.

§ 1082. Legal powers and responsibilities

(a) General powers

In the performance of, and with respect to, the functions, powers, and duties, vested in him by this part, the Secretary may—

(1) prescribe such regulations as may be necessary to carry out the purposes of this part, including regulations applicable to third party servicers (including regulations concerning financial responsibility standards for, and the assessment of liabilities for program violations against, such servicers) to establish minimum standards with respect to sound management and accountability of programs under this part, except that in no case shall damages be assessed against the United States for the actions or inactions of such servicers;

(2) sue and be sued in any court of record of a State having general jurisdiction or in any district court of the United States, and such district courts shall have jurisdiction of civil actions arising under this part without regard to the amount in controversy, and action instituted under this subsection by or against the Secretary shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in that office; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Secretary or property under the Secretary's control and nothing herein shall be construed to except litigation arising out of activities under this part from the application of sections 509, 517, 547, and 2679 of title 28;

(3) include in any contract for Federal loan insurance such terms, conditions, and covenants relating to repayment of principal and payment of interest, relating to the Secretary's obligations and rights to those of eligible lenders, and borrowers in case of default, and relating to such other matters as the Secretary determines to be necessary to assure that the purposes of this part will be achieved; and any term, condition, and covenant made pursuant to this paragraph or pursuant to any other provision of this part may be modified by the Secretary, after notice and opportunity for a hearing, if the Secretary finds that the modification is necessary to protect the United States from the risk of unreasonable loss;

(4) subject to the specific limitations in this part, consent to modification, with respect to rate of interest, time of payment of any installment of principal and interest or any portion thereof, or any other provision of any note or other instrument evidencing a loan which has been insured by the Secretary under this part;

(5) enforce, pay, or compromise, any claim on, or arising because of, any such insurance or any guaranty agreement under section 1078(c) of this title; and

(6) enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption.

(b) Financial operations responsibilities

The Secretary shall, with respect to the financial operations arising by reason of this part prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31. The transactions of the Secretary, including the settlement of insurance claims and of claims for payments pursuant to section 1078 of this title, and transactions related thereto and vouchers approved by the Secretary in connection with such transactions, shall be final and conclusive upon all accounting and other officers of the Government. The Secretary may not enter into any set-

tlement of any claim under this subchapter and part C of subchapter I of chapter 34 of title 42 that exceeds $1,000,000 unless—

(1) the Secretary requests a review of the proposed settlement of such claim by the Attorney General; and

(2) the Attorney General responds to such request, which may include, at the Attorney General's discretion, a written opinion related to such proposed settlement.

(c) Data collection

(1) Collection by category of loan

(A) For loans insured after December 31, 1976, or in the case of each insurer after such earlier date where the data required by this subsection are available, the Secretary and all other insurers under this part shall collect and accumulate all data relating to (i) loan volume insured and (ii) defaults reimbursed or default rates according to the categories of loans listed in subparagraph (B) of this paragraph.

(B) The data indicated in subparagraph (A) of this paragraph shall be accumulated according to the category of lender making the loan and shall be accumulated separately for lenders who are (i) eligible institutions, (ii) State or private, nonprofit direct lenders, (iii) commercial financial institutions who are banks, savings and loan associations, or credit unions, and (iv) all other types of institutions or agencies.

(C) The Secretary may designate such additional subcategories within the categories specified in subparagraph (B) of this paragraph as the Secretary deems appropriate.

(D) The category or designation of a loan shall not be changed for any reason, including its purchase or acquisition by a lender of another category.

(2) Collection and reporting requirements

(A) The Secretary shall collect data under this subsection from all insurers under this part and shall publish not less often than once every fiscal year a report showing loan volume guaranteed and default data for each category specified in subparagraph (B) of paragraph (1) of this subsection and for the total of all lenders.

(B) The reports specified in subparagraph (A) of this paragraph shall include a separate report for each insurer under this part including the Secretary, and where an insurer insures loans for lenders in more than one State, such insurer's report shall list all data separately for each State.

(3) Institutional, public, or nonprofit lenders

For purposes of clarity in communications, the Secretary shall separately identify loans made by the lenders referred to in clause (i) and loans made by the lenders referred to in clause (ii) of paragraph (1)(B) of this subsection.

(d) Delegation

(1) Regional offices

The functions of the Secretary under this part listed in paragraph (2) of this subsection may be delegated to employees in the regional office of the Department.

(2) Delegable functions

The functions which may be delegated pursuant to this subsection are—

(A) reviewing applications for loan insurance under section 1079 of this title and issuing contracts for Federal loan insurance, certificates of insurance, and certificates of comprehensive insurance coverage to eligible lenders which are financial or credit institutions subject to examination and supervision by an agency of the United States or of any State;

(B) receiving claims for payments under section 1080(a) of this title, examining those claims, and pursuant to regulations of the Secretary, approving claims for payment, or requiring lenders to take additional collection action as a condition for payment of claims; and

(C) certifying to the central office when collection of defaulted loans has been completed, compromising or agreeing to the modification of any Federal claim against a borrower (pursuant to regulations of the Secretary issued under subsection (a) of this section), and recommending litigation with respect to any such claim.

(e) Use of information on borrowers

Notwithstanding any other provision of law, the Secretary may provide to eligible lenders, and to any guaranty agency having a guaranty agreement under section 1078(c)(1) of this title, any information with respect to the names and addresses of borrowers or other relevant information which is available to the Secretary, from whatever source such information may be derived.

(f) Audit of financial transactions

(1) Comptroller General and Inspector General authority

The Comptroller General and the Inspector General of the Department of Education shall each have the authority to conduct an audit of the financial transactions of—

(A) any guaranty agency operating under an agreement with the Secretary pursuant to section 1078(b) of this title;

(B) any eligible lender as defined in section 1085(d)(1) of this title;

(C) a representative sample of eligible lenders under this part, upon the request of either of the authorizing committees, with respect to the payment of the special allowance under section 1087–1 of this title in order to evaluate the program authorized by this part.

(2) Access to records

For the purpose of carrying out this subsection, the records of any entity described in subparagraph (A), (B), (C), or (D)[1] of paragraph (1) shall be available to the Comptroller General and the Inspector General of the Department of Education. For the purpose of section 716(c) of title 31, such records shall be considered to be records to which the Comptroller General has access by law, and for the purpose

[1] See References in Text note below.

of section 6(a)(4) of the Inspector General Act of 1978, such records shall be considered to be records necessary in the performance of functions assigned by that Act to the Inspector General.

(3) "Record" defined

For the purpose of this subsection, the term ''record'' includes any information, document, report, answer, account, paper, or other data or documentary evidence.

(4) Audit procedures

In conducting audits pursuant to this subsection, the Comptroller General and the Inspector General of the Department of Education shall audit the records to determine the extent to which they, at a minimum, comply with Federal statutes, and rules and regulations prescribed by the Secretary, in effect at the time that the record was made, and in no case shall the Comptroller General or the Inspector General apply subsequently determined standards, procedures, or regulations to the records of such agency, lender, or Authority.

(g) Civil penalties

(1) Authority to impose penalties

Upon determination, after reasonable notice and opportunity for a hearing, that a lender or a guaranty agency—

(A) has violated or failed to carry out any provision of this part or any regulation prescribed under this part, or

(B) has engaged in substantial misrepresentation of the nature of its financial charges,

the Secretary may impose a civil penalty upon such lender or agency of not to exceed $25,000 for each violation, failure, or misrepresentation.

(2) Limitations

No civil penalty may be imposed under paragraph (1) of this subsection unless the Secretary determines that—

(A) the violation, failure, or substantial misrepresentation referred to in that paragraph resulted from a violation, failure, or misrepresentation that is material; and

(B) the lender or guaranty agency knew or should have known that its actions violated or failed to carry out the provisions of this part or the regulations thereunder.

(3) Correction of failure

A lender or guaranty agency has no liability under paragraph (1) of this subsection if, prior to notification by the Secretary under that paragraph, the lender or guaranty agency cures or corrects the violation or failure or notifies the person who received the substantial misrepresentation of the actual nature of the financial charges involved.

(4) Consideration as single violation

For the purpose of paragraph (1) of this subsection, violations, failures, or substantial misrepresentations arising from a specific practice of a lender or guaranty agency, and occurring prior to notification by the Secretary under that paragraph, shall be deemed to be a single violation, failure, or substantial misrepresentation even if the violation, failure, or substantial misrepresentation affects more than one loan or more than one borrower, or both. The Secretary may only impose a single civil penalty for each such violation, failure, or substantial misrepresentation.

(5) Assignees not liable for violations by others

If a loan affected by a violation, failure, or substantial misrepresentation is assigned to another holder, the lender or guaranty agency responsible for the violation, failure, or substantial misrepresentation shall remain liable for any civil money penalty provided for under paragraph (1) of this subsection, but the assignee shall not be liable for any such civil money penalty.

(6) Compromise

Until a matter is referred to the Attorney General, any civil penalty under paragraph (1) of this subsection may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the Secretary shall consider the appropriateness of the penalty to the resources of the lender or guaranty agency subject to the determination; the gravity of the violation, failure, or substantial misrepresentation; the frequency and persistence of the violation, failure, or substantial misrepresentation; and the amount of any losses resulting from the violation, failure, or substantial misrepresentation. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the lender or agency charged, unless the lender or agency has, in the case of a final agency determination, commenced proceedings for judicial review within 90 days of the determination, in which case the deduction may not be made during the pendency of the proceeding.

(h) Authority of the Secretary to impose and enforce limitations, suspensions, and terminations

(1) Imposition of sanctions

(A) If the Secretary, after a reasonable notice and opportunity for hearing to an eligible lender, finds that the eligible lender—

(i) has substantially failed—

(I) to exercise reasonable care and diligence in the making and collecting of loans under the provisions of this part,

(II) to make the reports or statements under section 1078(a)(4) of this title, or

(III) to pay the required loan insurance premiums to any guaranty agency, or

(ii) has engaged in—

(I) fraudulent or misleading advertising or in solicitations that have resulted in the making of loans insured or guaranteed under this part to borrowers who are ineligible; or

(II) the practice of making loans that violate the certification for eligibility provided in section 1078 of this title,

the Secretary shall limit, suspend, or terminate that lender from participation in the in-

surance programs operated by guaranty agencies under this part.

(B) The Secretary shall not lift any such limitation, suspension, or termination until the Secretary is satisfied that the lender's failure under subparagraph (A)(i) of this paragraph or practice under subparagraph (A)(ii) of this paragraph has ceased and finds that there are reasonable assurances that the lender will—

(i) exercise the necessary care and diligence,

(ii) comply with the requirements described in subparagraph (A)(i), or

(iii) cease to engage in the practices described in subparagraph (A)(ii),

as the case may be.

(2) Review of sanctions on lenders

(A) The Secretary shall review each limitation, suspension, or termination imposed by any guaranty agency pursuant to section 1078(b)(1)(U) of this title within 60 days after receipt by the Secretary of a notice from the guaranty agency of the imposition of such limitation, suspension, or termination, unless the right to such review is waived in writing by the lender. The Secretary shall uphold the imposition of such limitation, suspension, or termination in the student loan insurance program of each of the guaranty agencies under this part, and shall notify such guaranty agencies of such sanction—

(i) if such review is waived; or

(ii) if such review is not waived, unless the Secretary determines that the limitation, suspension, or termination was not imposed in accordance with requirements of such section.

(B) The Secretary's review under this paragraph of the limitation, suspension, or termination imposed by a guaranty agency pursuant to section 1078(b)(1)(U) of this title shall be limited to—

(i) a review of the written record of the proceedings in which the guaranty agency imposed such sanctions; and

(ii) a determination as to whether the guaranty agency complied with section 1078(b)(1)(U) of this title and any notice and hearing requirements prescribed in regulations of the Secretary under this part.

(C) The Secretary shall not lift any such sanction until the Secretary is satisfied that the lender has corrected the failures which led to the limitation, suspension, or termination, and finds that there are reasonable assurances that the lender will, in the future, comply with the requirements of this part. The Secretary shall notify each guaranty agency of the lifting of any such sanction.

(3) Review of sanctions on eligible institutions

(A) The Secretary shall review each limitation, suspension, or termination imposed by any guaranty agency pursuant to section 1078(b)(1)(T) of this title within 60 days after receipt by the Secretary of a notice from the guaranty agency of the imposition of such limitation, suspension, or termination, unless the right to such review is waived in writing by the institution. The Secretary shall uphold the imposition of such limitation, suspension, or termination in the student loan insurance program of each of the guaranty agencies under this part, and shall notify such guaranty agencies of such sanctions—

(i) if such review is waived; or

(ii) if such review is not waived, unless the Secretary determines that the limitation, suspension, or termination was not imposed in accordance with requirements of such section.

(B) The Secretary's review under this paragraph of the limitation, suspension, or termination imposed by a guaranty agency pursuant to section 1078(b)(1)(T) of this title shall be limited to—

(i) a review of the written record of the proceedings in which the guaranty agency imposed such sanctions; and

(ii) a determination as to whether the guaranty agency complied with section 1078(b)(1)(T) of this title and any notice and hearing requirements prescribed in regulations of the Secretary under this part.

(C) The Secretary shall not lift any such sanction until the Secretary is satisfied that the institution has corrected the failures which led to the limitation, suspension, or termination, and finds that there are reasonable assurances that the institution will, in the future, comply with the requirements of this part. The Secretary shall notify each guaranty agency of the lifting of any such sanction.

(i) Authority to sell defaulted loans

In the event that all other collection efforts have failed, the Secretary is authorized to sell defaulted student loans assigned to the United States under this part to collection agencies, eligible lenders, guaranty agencies, or other qualified purchaser on such terms as the Secretary determines are in the best financial interests of the United States. A loan may not be sold pursuant to this subsection if such loan is in repayment status.

(j) Authority of Secretary to take emergency actions against lenders

(1) Imposition of sanctions

If the Secretary—

(A) receives information, determined by the Secretary to be reliable, that a lender is violating any provision of this subchapter and part C of subchapter I of chapter 34 of title 42, any regulation prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, or any applicable special arrangement, agreement, or limitation;

(B) determines that immediate action is necessary to prevent misuse of Federal funds; and

(C) determines that the likelihood of loss outweighs the importance of following the limitation, suspension, or termination procedures authorized in subsection (h) of this section;

the Secretary shall, effective on the date on which a notice and statement of the basis of

the action is mailed to the lender (by registered mail, return receipt requested), take emergency action to stop the issuance of guarantee commitments and the payment of interest benefits and special allowance to the lender.

(2) Length of emergency action

An emergency action under this subsection may not exceed 30 days unless a limitation, suspension, or termination proceeding is initiated against the lender under subsection (h) of this section before the expiration of that period.

(3) Opportunity to show cause

The Secretary shall provide the lender, if it so requests, an opportunity to show cause that the emergency action is unwarranted.

(k) Program of assistance for borrowers

(1) In general

The Secretary shall undertake a program to encourage corporations and other private and public employers, including the Federal Government, to assist borrowers in repaying loans received under this subchapter and part C of subchapter I of chapter 34 of title 42, including providing employers with options for payroll deduction of loan payments and offering loan repayment matching provisions as part of employee benefit packages.

(2) Publication

The Secretary shall publicize models for providing the repayment assistance described in paragraph (1) and each year select entities that deserve recognition, through means devised by the Secretary, for the development of innovative plans for providing such assistance to employees.

(3) Recommendation

The Secretary shall recommend to the appropriate committees in the Senate and House of Representatives changes to statutes that could be made in order to further encourage such efforts.

***(l)* Uniform administrative and claims procedures**

(1) In general

The Secretary shall, by regulation developed in consultation with guaranty agencies, lenders, institutions of higher education, secondary markets, students, third party servicers and other organizations involved in providing loans under this part, prescribe standardized forms and procedures regarding—

(A) origination of loans;
(B) electronic funds transfer;
(C) guaranty of loans;
(D) deferments;
(E) forbearance;
(F) servicing;
(G) claims filing;
(H) borrower status change and anticipated graduation date; and
(I) cures.

(2) Special rules

(A) The forms and procedures described in paragraph (1) shall include all aspects of the loan process as such process involves eligible lenders and guaranty agencies and shall be designed to minimize administrative costs and burdens (other than the costs and burdens involved in the transition to new forms and procedures) involved in exchanges of data to and from borrowers, schools, lenders, secondary markets, and the Department.

(B) Nothing in this paragraph shall be construed to limit the development of electronic forms and procedures.

(3) Simplification requirements

Such regulations shall include—

(A) standardization of computer formats, forms design, and guaranty agency procedures relating to the origination, servicing, and collection of loans made under this part;

(B) authorization of alternate means of document retention, including the use of microfilm, microfiche, laser disc, compact disc, and other methods allowing the production of a facsimile of the original documents;

(C) authorization of the use of computer or similar electronic methods of maintaining records relating to the performance of servicing, collection, and other regulatory requirements under this chapter and part C of subchapter I of chapter 34 of title 42; and

(D) authorization and implementation of electronic data linkages for the exchange of information to and from lenders, guarantors, institutions of higher education, third party servicers, and the Department of Education for student status confirmation reports, claim filing, interest and special allowance billing, deferment processing, and all other administrative steps relating to loans made pursuant to this part where using electronic data linkage is feasible.

(4) Additional recommendations

The Secretary shall review regulations prescribed pursuant to paragraph (1) and seek additional recommendations from guaranty agencies, lenders, institutions of higher education, students, secondary markets, third party servicers and other organizations involved in providing loans under this part, not less frequently than annually, for additional methods of simplifying and standardizing the administration of the programs authorized by this part.

(m) Common forms and formats

(1) Common guaranteed student loan application form and promissory note

(A) In general

The Secretary, in cooperation with representatives of guaranty agencies, eligible lenders, and organizations involved in student financial assistance, shall prescribe common application forms and promissory notes, or master promissory notes, to be used for applying for loans under this part.

(B) Requirements

The forms prescribed by the Secretary shall—

(i) use clear, concise, and simple language to facilitate understanding of loan terms and conditions by applicants; and

(ii) be formatted to require the applicant to clearly indicate a choice of lender.

(C) Free application form

For academic year 1999–2000 and succeeding academic years, the Secretary shall prescribe the form developed under section 1090 of this title as the application form under this part, other than for loans under sections 1078–2 and 1078–3 of this title.

(D) Master promissory note

(i) In general

The Secretary shall develop and require the use of master promissory note forms for loans made under this part and part C of this subchapter. Such forms shall be available for periods of enrollment beginning not later than July 1, 2000. Each form shall allow eligible borrowers to receive, in addition to initial loans, additional loans for the same or subsequent periods of enrollment through a student confirmation process approved by the Secretary. Such forms shall be used for loans made under this part or part C of this subchapter as directed by the Secretary. Unless otherwise notified by the Secretary, each institution of higher education that participates in the program under this part or part C may use a master promissory note for loans under this part and part C.

(ii) Consultation

In developing the master promissory note under this subsection, the Secretary shall consult with representatives of guaranty agencies, eligible lenders, institutions of higher education, students, and organizations involved in student financial assistance.

(iii) Sale; assignment; enforceability

Notwithstanding any other provision of law, each loan made under a master promissory note under this subsection may be sold or assigned independently of any other loan made under the same promissory note and each such loan shall be separately enforceable in all Federal and State courts on the basis of an original or copy of the master promissory note in accordance with the terms of the master promissory note.

(E) Perfection of security interests in student loans

(i) In general

Notwithstanding the provisions of any State law to the contrary, including the Uniform Commercial Code as in effect in any State, a security interest in loans made under this part, on behalf of any eligible lender (as defined in section 1085(d) of this title) shall attach, be perfected, and be assigned priority in the manner provided by the applicable State's law for perfection of security interests in accounts, as such law may be amended from time to time (including applicable transition provisions). If any such State's law provides for a statutory lien to be created in such loans, such statutory lien may be created by the entity or entities governed by such State law in accordance with the applicable statutory provisions that created such a statutory lien.

(ii) Collateral description

In addition to any other method for describing collateral in a legally sufficient manner permitted under the laws of the State, the description of collateral in any financing statement filed pursuant to this subparagraph shall be deemed legally sufficient if it lists such loans, or refers to records (identifying such loans) retained by the secured party or any designee of the secured party identified in such financing statement, including the debtor or any loan servicer.

(iii) Sales

Notwithstanding clauses (i) and (ii) and any provisions of any State law to the contrary, other than any such State's law providing for creation of a statutory lien, an outright sale of loans made under this part shall be effective and perfected automatically upon attachment as defined in the Uniform Commercial Code of such State.

(2) Common deferment form

The Secretary, in cooperation with representatives of guaranty agencies, institutions of higher education, and lenders involved in loans made under this part, shall prescribe a common deferment reporting form to be used for the processing of deferments of loans made under this subchapter and part C of subchapter I of chapter 34 of title 42.

(3) Common reporting formats

The Secretary shall promulgate standards including necessary rules, regulations (including the definitions of all relevant terms), and procedures so as to require all lenders and guaranty agencies to report information on all aspects of loans made under this part in uniform formats, so as to permit the direct comparison of data submitted by individual lenders, servicers, or guaranty agencies.

(4) Electronic forms

Nothing in this section shall be construed to limit the development and use of electronic forms and procedures.

(n) Default reduction management

(1) Authorization

There are authorized to be appropriated $25,000,000 for fiscal year 1999 and each of the four succeeding fiscal years, for the Secretary to expend for default reduction management activities for the purposes of establishing a performance measure that will reduce defaults by 5 percent relative to the prior fiscal year. Such funds shall be in addition to, and not in lieu of, other appropriations made for such purposes.

(2) Allowable activities

Allowable activities for which such funds shall be expended by the Secretary shall include the following: (A) program reviews; (B)

audits; (C) debt management programs; (D) training activities; and (E) such other management improvement activities approved by the Secretary.

(3) Plan for use required

The Secretary shall submit a plan, for inclusion in the materials accompanying the President's budget each fiscal year, detailing the expenditure of funds authorized by this section to accomplish the 5 percent reduction in defaults. At the conclusion of the fiscal year, the Secretary shall report the Secretary's findings and activities concerning the expenditure of funds and whether the performance measure was met. If the performance measure was not met, the Secretary shall report the following:

(A) why the goal was not met, including an indication of any managerial deficiencies or of any legal obstacles;

(B) plans and a schedule for achieving the established performance goal;

(C) recommended legislative or regulatory changes necessary to achieve the goal; and

(D) if the performance standard or goal is impractical or infeasible, why that is the case and what action is recommended, including whether the goal should be changed or the program altered or eliminated.

This report shall be submitted to the Appropriations Committees of the House of Representatives and the Senate and to the authorizing committees.

(*o*) Consequences of guaranty agency insolvency

In the event that the Secretary has determined that a guaranty agency is unable to meet its insurance obligations under this part, the holder of loans insured by the guaranty agency may submit insurance claims directly to the Secretary and the Secretary shall pay to the holder the full insurance obligation of the guaranty agency, in accordance with insurance requirements no more stringent than those of the guaranty agency. Such arrangements shall continue until the Secretary is satisfied that the insurance obligations have been transferred to another guarantor who can meet those obligations or a successor will assume the outstanding insurance obligations.

(p) Reporting requirement

All officers and directors, and those employees and paid consultants of eligible institutions, eligible lenders, guaranty agencies, loan servicing agencies, accrediting agencies or associations, State licensing agencies or boards, and entities acting as secondary markets (including the Student Loan Marketing Association), who are engaged in making decisions as to the administration of any program or funds under this subchapter and part C of subchapter I of chapter 34 of title 42 or as to the eligibility of any entity or individual to participate under this subchapter and part C of subchapter I of chapter 34 of title 42, shall report to the Secretary, in such manner and at such time as the Secretary shall require, on any financial interest which such individual may hold in any other entity participating in any program assisted under this subchapter and part C of subchapter I of chapter 34 of title 42.

(Pub. L. 89–329, title IV, § 432, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1401; amended Pub. L. 100–50, § 10(x), (y), June 3, 1987, 101 Stat. 346; Pub. L. 101–239, title II, § 2006(a), Dec. 19, 1989, 103 Stat. 2118; Pub. L. 102–325, title IV, § 425, July 23, 1992, 106 Stat. 543; Pub. L. 103–208, § 2(k)(2), (3), Dec. 20, 1993, 107 Stat. 2485; Pub. L. 104–66, title I, § 1042(e), Dec. 21, 1995, 109 Stat. 716; Pub. L. 105–244, title IV, § 427, Oct. 7, 1998, 112 Stat. 1702; Pub. L. 106–554, § 1(a)(1) [title III, § 311], Dec. 21, 2000, 114 Stat. 2763, 2763A–46; Pub. L. 109–171, title VIII, § 8014(j), Feb. 8, 2006, 120 Stat. 171; Pub. L. 110–315, title I, § 103(b)(6), title IV, § 433, Aug. 14, 2008, 122 Stat. 3089, 3247; Pub. L. 111–39, title IV, § 402(f)(9), July 1, 2009, 123 Stat. 1944.)

REFERENCES IN TEXT

Subparagraph (D) of paragraph (1) of subsec. (f), referred to in subsec. (f)(2), was repealed by Pub. L. 105–244, title IV, § 427(a)(3), Oct. 7, 1998, 112 Stat. 1702.

The Inspector General Act of 1978, referred to in subsec. (f)(2), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 1082, Pub. L. 89–329, title IV, § 432, Nov. 8, 1965, 79 Stat. 1246; Pub. L. 90–460, § 3(d), Aug. 3, 1968, 82 Stat. 638; Pub. L. 93–604, title VII, § 705(a), Jan. 2, 1975, 88 Stat. 1964; Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2127; Pub. L. 96–88, title III, § 301(b)(2), Oct. 17, 1979, 93 Stat. 678; Pub. L. 96–374, title IV, § 416(c), title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1421, 1503; Pub. L. 99–272, title XVI, § 16024, Apr. 7, 1986, 100 Stat. 351, related to functions, powers, and duties of Secretary, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2009—Subsec. (b). Pub. L. 111–39, § 402(f)(9)(A), made technical amendment to reference in original act which appears in text as reference to section 1078 of this title.

Subsec. (m)(1)(B). Pub. L. 111–39, § 402(f)(9)(B), in cl. (i), inserted "and" at end and, in cl. (ii), substituted period for "; and".

2008—Subsec. (b). Pub. L. 110–315, § 433(a), inserted at end "The Secretary may not enter into any settlement of any claim under this subchapter and part C of subchapter I of chapter 34 of title 42 that exceeds $1,000,000 unless—" and pars. (1) and (2).

Subsec. (f)(1)(C). Pub. L. 110–315, § 103(b)(6)(A), substituted "either of the authorizing committees" for "the Committee on Education and the Workforce of the House of Representatives or the Committee on Labor and Human Resources of the Senate".

Subsec. (m)(1)(D)(i). Pub. L. 110–315, § 433(b), inserted at end "Unless otherwise notified by the Secretary, each institution of higher education that participates in the program under this part or part C may use a master promissory note for loans under this part and part C."

Subsec. (n)(3). Pub. L. 110–315, § 103(b)(6)(B), substituted "authorizing committees" for "Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate" in concluding provisions.

2006—Subsec. (*l*)(1)(H). Pub. L. 109–171 inserted "and anticipated graduation date" after "status change".

2000—Subsec. (m)(1)(D)(iv). Pub. L. 106–554, § 1(a)(1) [title III, § 311(1)], struck out heading and text of cl. (iv). Text read as follows: "Notwithstanding the provisions of any State law to the contrary, including the Uniform Commercial Code as in effect in any State, a security interest in loans made under this part created on behalf of any eligible lender as defined in section 1085(d) of this title may be perfected either through the

taking of possession of such loans (which can be through taking possession of an original or copy of the master promissory note) or by the filing of notice of such security interest in such loans in the manner provided by such State law for perfection of security interests in accounts.''

Subsec. (m)(1)(E). Pub. L. 106–554, §1(a)(1) [title III, §311(2)], added subpar. (E).

1998—Subsec. (f)(1)(B). Pub. L. 105–244, §427(a)(1), substituted ''section 1085(d)(1)'' for ''section 1085(d)(1)(D), (F), or (H)''.

Subsec. (f)(1)(C). Pub. L. 105–244, §427(a)(2), substituted ''and the Workforce'' for ''and Labor'' and a period for ''; and'' at end.

Subsec. (f)(1)(D). Pub. L. 105–244, §427(a)(3), struck out subpar. (D) which read as follows: ''any Authority required to file a plan for doing business under section 1087–1(d) of this title.''

Subsec. (k)(3). Pub. L. 105–244, §427(b), substituted ''The Secretary'' for ''Within 1 year after July 23, 1992, the Secretary''.

Subsec. (m)(1)(A). Pub. L. 105–244, §427(c)(1)(A), substituted ''common application forms and promissory notes, or master promissory notes,'' for ''a common application form and promissory note''.

Subsec. (m)(1)(B). Pub. L. 105–244, §427(c)(1)(B), substituted ''The forms'' for ''The form'' in introductory provisions and struck out cl. (iii) which read as follows: ''permit, to the maximum extent practicable, application for any loan under this part.''

Subsec. (m)(1)(C). Pub. L. 105–244, §427(c)(1)(C), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''The Secretary shall approve a form for use not later than 360 days after July 23, 1992.''

Subsec. (m)(1)(D). Pub. L. 105–244, §427(c)(1)(D), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: ''Nothing in this section shall be construed to limit the development of electronic forms and procedures.''

Subsec. (m)(4). Pub. L. 105–244, §427(c)(2), added par. (4).

Subsec. (n)(1). Pub. L. 105–244, §427(d)(1), substituted ''1999'' for ''1993''.

Subsec. (n)(3). Pub. L. 105–244, §427(d)(2), substituted ''and the Workforce'' for ''and Labor'' in concluding provisions.

Subsec. (p). Pub. L. 105–244, §427(e), struck out ''State postsecondary reviewing entities designated under subpart 1 of part G of this subchapter,'' after ''agencies or boards,''.

1995—Subsec. (b). Pub. L. 104–66 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''The Secretary shall, with respect to the financial operations arising by reason of this part—

''(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31; and

''(2) maintain with respect to insurance under this part an integral set of accounts and prepare financial statements in accordance with generally accepted accounting principles, which shall be audited annually by the General Accounting Office in conformity with generally accepted Government auditing standards except that the transactions of the Secretary, including the settlement of insurance claims and of claims for payments pursuant to section 1078 of this title, and transactions related thereto and vouchers approved by the Secretary in connection with such transactions, shall be final and conclusive upon all accounting and other officers of the Government.''

1993—Subsec. (h)(2)(A), (3)(A). Pub. L. 103–208 amended directory language of Pub. L. 102–325, §425(d)(1). See 1992 Amendment notes below.

1992—Subsec. (a)(1). Pub. L. 102–325, §425(a), inserted before semicolon at end '', including regulations applicable to third party servicers (including regulations concerning financial responsibility standards for, and the assessment of liabilities for program violations against, such servicers) to establish minimum standards with respect to sound management and accountability of programs under this part, except that in no case shall damages be assessed against the United States for the actions or inactions of such servicers''.

Subsecs. (a)(3), (g)(1). Pub. L. 102–325, §425(b)(1), (2), struck out ''on the record'' after ''for a hearing''.

Subsec. (g)(2). Pub. L. 102–325, §425(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''No civil penalty may be imposed under paragraph (1) of this subsection unless it is determined that the violation, failure, or substantial misrepresentation referred to in that paragraph resulted from—

''(A)(i) a clear and consistent pattern or practice of violations, failures, or substantial misrepresentations in which the lender or guaranty agency did not maintain procedures reasonably adapted to avoid the violation, failure, or substantial misrepresentation;

''(ii) gross negligence; or

''(iii) willful actions on the part of the lender or guaranty agency; and

''(B) the violation, failure, or substantial misrepresentation is material.''

Subsec. (g)(3). Pub. L. 102–325, §425(c)(2), substituted ''notification by the Secretary under that paragraph'' for ''the institution of an action under that paragraph''.

Subsec. (g)(4). Pub. L. 102–325, §425(c)(3), inserted '', and occurring prior to notification by the Secretary under that paragraph,'' after ''guaranty agency'' and substituted ''or both. The'' for ''or both, and the''.

Subsec. (h)(2)(A). Pub. L. 102–325, §425(d)(1), as amended by Pub. L. 103–208, §2(k)(2), in second sentence substituted ''The Secretary shall uphold the imposition of such limitation, suspension, or termination in the student loan insurance program of each of the guaranty agencies under this part, and shall notify such guaranty agencies of such sanction'' for ''The Secretary shall disqualify such lender from participation in the student loan insurance program of each of the guaranty agencies under this part, and notify such guaranty agencies of such disqualification''.

Pub. L. 102–325, §425(b)(3), in first sentence struck out '', in accordance with sections 556 and 557 of title 5,'' after ''The Secretary shall''.

Subsec. (h)(2)(B), (C). Pub. L. 102–325, §425(d)(2), (3), added subpar. (B), redesignated former subpar. (B) as (C), and substituted ''sanction'' for ''disqualification'' in two places.

Subsec. (h)(3)(A). Pub. L. 102–325, §425(d)(4), as amended by Pub. L. 103–208, §2(k)(3), in second sentence substituted ''The Secretary shall uphold the imposition of such limitation, suspension, or termination in the student loan insurance program of each of the guaranty agencies under this part, and shall notify such guaranty agencies of such sanctions'' for ''The Secretary shall disqualify such institution from participation in the student loan insurance program of each of the guaranty agencies under this part, and notify such guaranty agencies of such disqualification''.

Pub. L. 102–325, §425(b)(4), in first sentence struck out '', in accordance with sections 556 and 557 of title 5,'' after ''The Secretary shall''.

Subsec. (h)(3)(B), (C). Pub. L. 102–325, §425(d)(5), (6), added subpar. (B), redesignated former subpar. (B) as (C), and substituted ''sanction'' for ''disqualification'' in two places.

Subsecs. (k) to (p). Pub. L. 102–325, §425(e), added subsecs. (k) to (p).

1989—Subsec. (j). Pub. L. 101–239 added subsec. (j).

1987—Subsec. (f)(4). Pub. L. 100–50, §10(x), added par. (4).

Subsec. (g)(2)(A)(i), (B). Pub. L. 100–50, §10(y), substituted ''misrepresentation'' for ''representation''.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

§ 1083. Student loan information by eligible lenders

(a) Required disclosure before disbursement

Each eligible lender, at or prior to the time such lender disburses a loan that is insured or guaranteed under this part (other than a loan made under section 1078–3 of this title), shall provide thorough and accurate loan information on such loan to the borrower in simple and understandable terms. Any disclosure required by this subsection may be made by an eligible lender by written or electronic means, including as part of the application material provided to the borrower, as part of the promissory note evidencing the loan, or on a separate written form provided to the borrower. Each lender shall provide to each borrower a telephone number, and may provide an electronic address, through which additional loan information can be obtained. The disclosure shall include—

(1) a statement prominently and clearly displayed and in bold print that the borrower is receiving a loan that must be repaid;

(2) the name of the eligible lender, and the address to which communications and payments should be sent;

(3) the principal amount of the loan;

(4) the amount of any charges, such as the origination fee and Federal default fee, and whether those fees will be—

(A) collected by the lender at or prior to the disbursal of the loan;

(B) deducted from the proceeds of the loan;

(C) paid separately by the borrower; or

(D) paid by the lender;

(5) the stated interest rate on the loan;

(6) for loans made under section 1078–8 of this title or to a student borrower under section 1078–2 of this title, an explanation—

(A) that the borrower has the option to pay the interest that accrues on the loan while the borrower is a student at an institution of higher education; and

(B) if the borrower does not pay such interest while attending an institution, when and how often interest on the loan will be capitalized;

(7) for loans made to a parent borrower on behalf of a student under section 1078–2 of this title, an explanation—

(A) that the parent has the option to defer payment on the loan while the student is enrolled on at least a half-time basis in an institution of higher education;

(B) if the parent does not pay the interest on the loan while the student is enrolled in an institution, when and how often interest on the loan will be capitalized; and

(C) that the parent may be eligible for a deferment on the loan if the parent is enrolled on at least a half-time basis in an institution of higher education;

(8) the yearly and cumulative maximum amounts that may be borrowed;

(9) a statement of the total cumulative balance, including the loan being disbursed, owed by the borrower to that lender, and an estimate of the projected monthly payment, given such cumulative balance;

(10) an explanation of when repayment of the loan will be required and when the borrower will be obligated to pay interest that accrues on the loan;

(11) a description of the types of repayment plans that are available for the loan;

(12) a statement as to the minimum and maximum repayment terms which the lender may impose, and the minimum annual payment required by law;

(13) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan;

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

(15) a statement summarizing circumstances in which repayment of the loan or interest that accrues on the loan may be deferred;

(16) a statement summarizing the circumstances in which a borrower may obtain forbearance on the loan;

(17) a description of the options available for forgiveness of the loan, and the requirements to obtain loan forgiveness;

(18) a definition of default and the consequences to the borrower if the borrower defaults, including a statement that the default will be reported to a consumer reporting agency; and

(19) an explanation of any cost the borrower may incur during repayment or in the collection of the loan, including fees that the borrower may be charged, such as late payment fees and collection costs.

(b) Required disclosure before repayment

Each eligible lender shall, at or prior to the start of the repayment period on a loan made, insured, or guaranteed under section 1078, 1078–2, or 1078–8 of this title, disclose to the borrower by written or electronic means the information required under this subsection in simple and understandable terms. Each eligible lender shall provide to each borrower a telephone number, and may provide an electronic address, through which additional loan information can be obtained. The disclosure required by this subsection shall be made not less than 30 days nor

more than 150 days before the first payment on the loan is due from the borrower. The disclosure shall include—

(1) the name of the eligible lender or loan servicer, and the address to which communications and payments should be sent;

(2) the scheduled date upon which the repayment period is to begin or the deferment period under section 1078–2(d)(1) of this title is to end, as applicable;

(3) the estimated balance owed by the borrower on the loan or loans covered by the disclosure (including, if applicable, the estimated amount of interest to be capitalized) as of the scheduled date on which the repayment period is to begin or the deferment period under 1078–2(d)(1) of this title is to end, as applicable;

(4) the stated interest rate on the loan or loans, or the combined interest rate of loans with different stated interest rates;

(5) information on loan repayment benefits offered for the loan or loans, including—

(A) whether the lender offers any benefits that are contingent on the repayment behavior of the borrower, such as—

(i) a reduction in interest rate if the borrower repays the loan by automatic payroll or checking account deduction;

(ii) a reduction in interest rate if the borrower makes a specified number of on-time payments; and

(iii) other loan repayment benefits for which the borrower could be eligible that would reduce the amount of repayment or the length of the repayment period;

(B) if the lender provides a loan repayment benefit—

(i) any limitations on such benefit;

(ii) explicit information on the reasons a borrower may lose eligibility for such benefit;

(iii) for a loan repayment benefit that reduces the borrower's interest rate—

(I) examples of the impact the interest rate reduction would have on the length of the borrower's repayment period and the amount of repayment; and

(II) upon the request of the borrower, the effect the reduction in interest rate would have with respect to the borrower's payoff amount and time for repayment; and

(iv) whether and how the borrower can regain eligibility for a benefit if a borrower loses a benefit;

(6) a description of all the repayment plans that are available to the borrower and a statement that the borrower may change from one plan to another during the period of repayment;

(7) the repayment schedule for all loans covered by the disclosure, including—

(A) the date the first installment is due; and

(B) the number, amount, and frequency of required payments, which shall be based on a standard repayment plan or, in the case of a borrower who has selected another repayment plan, on the repayment plan selected by the borrower;

(8) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan and of the availability and terms of such other options;

(9) except as provided in subsection (d)—

(A) the projected total of interest charges which the borrower will pay on the loan or loans, assuming that the borrower makes payments exactly in accordance with the repayment schedule; and

(B) if the borrower has already paid interest on the loan or loans, the amount of interest paid;

(10) the nature of any fees which may accrue or be charged to the borrower during the repayment period;

(11) a statement that the borrower has the right to prepay all or part of the loan or loans covered by the disclosure at any time without penalty;

(12) a description of the options by which the borrower may avoid or be removed from default, including any relevant fees associated with such options; and

(13) additional resources, including nonprofit organizations, advocates, and counselors (including the Student Loan Ombudsman of the Department) of which the lender is aware, where borrowers may receive advice and assistance on loan repayment.

(c) Separate notification

Each eligible lender shall, at the time such lender notifies a borrower of approval of a loan which is insured or guaranteed under this part, provide the borrower with a separate notification which summarizes, in simple and understandable terms, the rights and responsibilities of the borrower with respect to the loan, including a statement of the consequences of defaulting on the loan and a statement that each borrower who defaults will be reported to a consumer reporting agency. The requirement of this subsection shall be in addition to the information required by subsection (a) of this section.

(d) Special disclosure rules on PLUS loans, and unsubsidized loans

Loans made under sections 1078–2 and 1078–8 of this title shall not be subject to the disclosure of projected monthly payment amounts required under subsection (b)(7) if the lender, in lieu of such 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 borrower, or the student on whose behalf the loan is made, is in school, in simple and understandable terms. Such sample projections shall disclose the cost to the borrower of—

(1) capitalizing the interest; and

(2) paying the interest as the interest accrues.

(e) Required disclosures during repayment

(1) Pertinent information about a loan provided on a periodic basis

Each eligible lender shall provide the borrower of a loan made, insured, or guaranteed under this part with a bill or statement (as ap-

plicable) that corresponds to each payment installment time period in which a payment is due and that includes, in simple and understandable terms—

(A) the original principal amount of the borrower's loan;

(B) the borrower's current balance, as of the time of the bill or statement, as applicable;

(C) the interest rate on such loan;

(D) the total amount the borrower has paid in interest on the loan;

(E) the aggregate amount the borrower has paid for the loan, including the amount the borrower has paid in interest, the amount the borrower has paid in fees, and the amount the borrower has paid against the balance;

(F) a description of each fee the borrower has been charged for the most recently preceding installment time period;

(G) the date by which the borrower needs to make a payment in order to avoid additional fees and the amount of such payment and the amount of such fees;

(H) the lender's or loan servicer's address and toll-free phone number for payment and billing error purposes; and

(I) a reminder that the borrower has the option to change repayment plans, a list of the names of the repayment plans available to the borrower, a link to the appropriate page of the Department's website to obtain a more detailed description of the repayment plans, and directions for the borrower to request a change in repayment plan.

(2) Information provided to a borrower having difficulty making payments

Each eligible lender shall provide to a borrower who has notified the lender that the borrower is having difficulty making payments on a loan made, insured, or guaranteed under this part with the following information in simple and understandable terms:

(A) A description of the repayment plans available to the borrower, including how the borrower should request a change in repayment plan.

(B) A description of the requirements for obtaining forbearance on a loan, including expected costs associated with forbearance.

(C) A description of the options available to the borrower to avoid defaulting on the loan, and any relevant fees or costs associated with such options.

(3) Required disclosures during delinquency

Each eligible lender shall provide to a borrower who is 60 days delinquent in making payments on a loan made, insured, or guaranteed under this part with a notice, in simple and understandable terms, of the following:

(A) The date on which the loan will default if no payment is made.

(B) The minimum payment the borrower must make to avoid default.

(C) A description of the options available to the borrower to avoid default, and any relevant fees or costs associated with such options, including a description of deferment and forbearance and the requirements to obtain each.

(D) Discharge options to which the borrower may be entitled.

(E) Additional resources, including nonprofit organizations, advocates, and counselors (including the Student Loan Ombudsman of the Department), of which the lender is aware, where the borrower can receive advice and assistance on loan repayment.

(f) Cost of disclosure and consequences of nondisclosure

(1) No cost to borrowers

The information required under this section shall be available without cost to the borrower.

(2) Consequences of nondisclosure

The failure of an eligible lender to provide information as required by this section shall not—

(A) relieve a borrower of the obligation to repay a loan in accordance with the loan's terms; or

(B) provide a basis for a claim for civil damages.

(3) Rule of construction

Nothing in this section shall be construed as subjecting the lender to the Truth in Lending Act [15 U.S.C. 1601 et seq.] with regard to loans made under this part.

(4) Actions by the Secretary

The Secretary may limit, suspend, or terminate the continued participation of an eligible lender in making loans under this part for failure by that lender to comply with this section.

(Pub. L. 89–329, title IV, § 433, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1406; amended Pub. L. 100–50, § 10(z), June 3, 1987, 101 Stat. 346; Pub. L. 102–325, title IV, § 426, July 23, 1992, 106 Stat. 548; Pub. L. 103–208, § 2(c)(53), (54), (k)(4), Dec. 20, 1993, 107 Stat. 2468, 2485; Pub. L. 105–244, title IV, § 428, Oct. 7, 1998, 112 Stat. 1704; Pub. L. 110–315, title IV, § 434(a), Aug. 14, 2008, 122 Stat. 3247.)

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (f)(3), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§ 1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

PRIOR PROVISIONS

A prior section 1083, Pub. L. 89–329, title IV, § 433, Nov. 8, 1965, 79 Stat. 1247; Pub. L. 90–575, title I, § 116(d), Oct. 16, 1968, 82 Stat. 1024; Pub. L. 92–318, title I, § 132(c), June 23, 1972, 86 Stat. 261; Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2129; Pub. L. 95–43, § 1(a)(34), June 15, 1977, 91 Stat. 216; Pub. L. 96–374, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1503, related to requirements for institutional lenders, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2008—Pub. L. 110–315 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (e) relating to student loan information by eligible lenders.

1998—Subsec. (a). Pub. L. 105–244, § 428(a), amended heading and introductory provisions generally. Prior to

amendment, introductory provisions read as follows: ''Each eligible lender shall, at or prior to the time such lender disburses a loan which is insured or guaranteed under this part (other than a loan made under section 1078–3 of this title), provide thorough and accurate loan information on such loan to the borrower. Any disclosure required by this subsection may be made by an eligible lender as part of the written application material provided to the borrower, or as part of the promissory note evidencing the loan, or on a separate written form provided to the borrower. The disclosure shall include—''.

Subsec. (b). Pub. L. 105–244, § 428(b), amended heading and introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''Each eligible lender shall, at or prior to the start of the repayment period of the student borrower on loans made, insured, or guaranteed under this part, disclose to the borrower the information required under this subsection. For any loan made, insured, or guaranteed under this part, other than a loan made under section 1078–2 or 1078–3 of this title, such disclosure required by this subsection shall be made not less than 30 days nor more than 240 days before the first payment on the loan is due from the borrower. The disclosure shall include—''.

1993—Subsec. (b). Pub. L. 103–208, § 2(c)(53), substituted ''30 days'' for ''60 days'' in introductory provisions.

Subsec. (e). Pub. L. 103–208, § 2(k)(4), amended directory language of Pub. L. 102–325, § 426(c). See 1992 Amendment note below.

Pub. L. 103–208, § 2(c)(54), substituted ''sections'' for ''section'' before ''1078–1''.

1992—Subsec. (a). Pub. L. 102–325, § 426(a), added par. (1) and redesignated former pars. (1) to (13) as (2) to (14), respectively.

Subsec. (b). Pub. L. 102–325, § 426(b)(1), in introductory provisions, inserted second sentence and struck out former second sentence which read as follows: ''Any disclosure required by this subsection may be made by an eligible lender either in a promissory note evidencing the loan or loans or in a written statement provided to the borrower.''

Subsec. (b)(8). Pub. L. 102–325, § 426(b)(2), inserted ''except as provided in subsection (e) of this section,'' before ''the projected''.

Subsec. (e). Pub. L. 102–325, § 426(c), as amended by Pub. L. 103–208, § 2(k)(4), added subsec. (e).

1987—Subsec. (a). Pub. L. 100–50, § 10(z)(1), inserted ''(other than a loan made under section 1078–3 of this title)'' after ''this part'' in first sentence.

Subsec. (a)(8). Pub. L. 100–50, § 10(z)(2), added par. (8) and struck out former par. (8) which read as follows: ''a statement of the total cumulative balance, including the loan applied for, owed by the student to that lender, the projected level of indebtedness of the student based on a 4-year college career, and an estimate of the projected monthly repayment given the level of indebtedness over a 4- or 5-year college career;''.

Subsec. (b)(7). Pub. L. 100–50, § 10(z)(3), inserted '', except that such explanation is not required when the loan being made is a consolidation loan under section 1078–3 of this title'' before semicolon at end.

Subsec. (d). Pub. L. 100–50, § 10(z)(4), substituted ''notifies a borrower of approval of a loan'' for ''makes the first disbursement of a loan with respect to a borrower''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, § 434(b), Aug. 14, 2008, 122 Stat. 3252, provided that:

''(1) REGULAR DISCLOSURE REQUIREMENTS AND DISCLOSURE REQUIREMENTS TO BORROWERS HAVING DIFFICULTY MAKING PAYMENTS.—Paragraphs (1) and (2) of section 433(e) of the Higher Education Act of 1965 [20 U.S.C. 1083(e)(1), (2)], as amended by subsection (a), shall apply with respect to loans for which the first payment is due on or after July 1, 2009.

''(2) DISCLOSURE REQUIREMENTS FOR BORROWERS WITH DELINQUENT LOANS.—Section 433(e)(3) of the Higher Education Act of 1965 [20 U.S.C. 1083(e)(3)], as amended by subsection (a), shall apply with respect to loans that become delinquent on or after July 1, 2009.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 2(c)(53) of Pub. L. 103–208 effective on and after 60 days after Dec. 20, 1993 and amendments by section 2(c)(54), (k)(4) of Pub. L. 103–208 effective, except as otherwise provided, as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, see section 5(a), (b)(4) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1986, with subsecs. (a), (b), and (d) of this section applicable only with respect to loans disbursed on or after Jan. 1, 1987, or made to cover the costs of instruction for periods of enrollment beginning on or after Jan. 1, 1987, see section 402(b) of Pub. L. 99–498, set out as a note under section 1071 of this title.

§ 1083a. Consumer education information

(a) In general

Each guaranty agency participating in a program under this part, working with the institutions of higher education served by such guaranty agency, shall develop and make available high-quality educational programs and materials to provide training for students and families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high interest loans to pay for postsecondary education, particularly as budgeting and financial management relates to student loan programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42. Such programs and materials shall be in formats that are simple and understandable to students and families, and shall be provided before, during, and after the students' enrollment in an institution of higher education. The activities described in this section shall be considered default reduction activities for the purposes of section 1072 of this title.

(b) Rule of construction

Nothing in this section shall be construed to prohibit—

(1) a guaranty agency from using existing activities, programs, and materials in meeting the requirements of this section;

(2) a guaranty agency from providing programs or materials similar to the programs or materials described in subsection (a) to an institution of higher education that provides loans exclusively through part C; or

(3) a lender or loan servicer from providing outreach or financial aid literacy information in accordance with subsection (a).

(Pub. L. 89–329, title IV, § 433A, as added Pub. L. 110–315, title IV, § 435, Aug. 14, 2008, 122 Stat. 3252.)

PRIOR PROVISIONS

A prior section 1083a, Pub. L. 89–329, title IV, § 433A, as added Pub. L. 96–374, title IV, § 418, Oct. 3, 1980, 94 Stat. 1423; amended Pub. L. 97–301, § 13(a), Oct. 13, 1982, 96 Stat. 1404; Pub. L. 98–79, § 3(a), Aug. 15, 1983, 97 Stat. 476; Pub. L. 99–272, title XVI, § 16012(c), Apr. 7, 1986, 100 Stat. 340, related to student loan information to be provided by eligible lenders, prior to the general revision of this part by Pub. L. 99–498. See section 1083 of this title.

§ 1084. Participation by Federal credit unions in Federal, State, and private student loan insurance programs

Notwithstanding any other provision of law, Federal credit unions shall, pursuant to regulations of the National Credit Union Administration, have power to make insured loans to student members in accordance with the provisions of this part relating to federally insured loans, or in accordance with the provisions of any State or nonprofit private student loan insurance program which meets the requirements of section 1078(a)(1)(B) of this title.

(Pub. L. 89–329, title IV, § 434, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1408.)

PRIOR PROVISIONS

A prior section 1084, Pub. L. 89–329, title IV, § 434, Nov. 8, 1965, 79 Stat. 1247; Pub. L. 90–575, title I, § 116(b)(4), Oct. 16, 1968, 82 Stat. 1024; Pub. L. 91–206, § 6, Mar. 10, 1970, 84 Stat. 51; Pub. L. 92–318, title I, § 132D(e), June 23, 1972, 86 Stat. 264; Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2129; Pub. L. 95–630, title V, § 502(a), Nov. 10, 1978, 92 Stat. 3681, related to participation by Federal credit unions in Federal, State, and private student loan insurance programs, prior to the general revision of this part by Pub. L. 99–498.

§ 1085. Definitions for student loan insurance program

As used in this part:

(a) Eligible institution

(1) In general

Except as provided in paragraph (2), the term ''eligible institution'' means an institution of higher education, as defined in section 1002 of this title, except that, for the purposes of sections 1077(a)(2)(C)(i) and 1078(b)(1)(M)(i) of this title, an eligible institution includes any institution that is within this definition without regard to whether such institution is participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 and includes any institution ineligible for participation in any program under this part pursuant to paragraph (2) of this subsection.

(2) Ineligibility based on high default rates

(A) An institution whose cohort default rate is equal to or greater than the threshold percentage specified in subparagraph (B) for each of the three most recent fiscal years for which data are available shall not be eligible to participate in a program under this part for the fiscal year for which the determination is made and for the two succeeding fiscal years, unless, within 30 days of receiving notification from the Secretary of the loss of eligibility under this paragraph, the institution appeals the loss of its eligibility to the Secretary. The Secretary shall issue a decision on any such appeal within 45 days after its submission. Such decision may permit the institution to continue to participate in a program under this part if—

(i) the institution demonstrates to the satisfaction of the Secretary that the Secretary's calculation of its cohort default rate is not accurate, and that recalculation would reduce its cohort default rate for any of the three fiscal years below the threshold percentage specified in subparagraph (B);

(ii) there are exceptional mitigating circumstances within the meaning of paragraph (5); or

(iii) there are, in the judgment of the Secretary, other exceptional mitigating circumstances that would make the application of this paragraph inequitable.

During such appeal, the Secretary may permit the institution to continue to participate in a program under this part. If an institution continues to participate in a program under this part, and the institution's appeal of the loss of eligibility is unsuccessful, the institution shall be required to pay to the Secretary an amount equal to the amount of interest, special allowance, reinsurance, and any related payments made by the Secretary (or which the Secretary is obligated to make) with respect to loans made under this part to students attending, or planning to attend, that institution during the pendency of such appeal.

(B) For purposes of determinations under subparagraph (A), the threshold percentage is—

(i) 35 percent for fiscal year 1991 and 1992;

(ii) 30 percent for fiscal year 1993;

(iii) 25 percent for fiscal year 1994 through fiscal year 2011; and

(iv) 30 percent for fiscal year 2012 and any succeeding fiscal year.

(C) Until July 1, 1999, this paragraph shall not apply to any institution that is—

(i) a part B institution within the meaning of section 1061(2) of this title;

(ii) a tribally controlled college or university, as defined in section 1801(a)(4) of title 25; or

(iii) a Navajo Community College under the Navajo Community College Act [25 U.S.C. 640a et seq.].

(D) Notwithstanding the first sentence of subparagraph (A), the Secretary shall restore the eligibility to participate in a program under subpart 1 of part A, part B, or part D of this subchapter of an institution that did not appeal its loss of eligibility within 30 days of receiving notification if the Secretary determines, on a case-by-case basis, that the institution's failure to appeal was substantially justified under the circumstances, and that—

(i) the institution made a timely request that the appropriate guaranty agency cor-

rect errors in the draft data used to calculate the institution's cohort default rate;

(ii) the guaranty agency did not correct the erroneous data in a timely fashion; and

(iii) the institution would have been eligible if the erroneous data had been corrected by the guaranty agency.

(3) Appeals for regulatory relief

An institution whose cohort default rate, calculated in accordance with subsection (m), is equal to or greater than the threshold percentage specified in paragraph (2)(B)(iv) for any two consecutive fiscal years may, not later than 30 days after the date the institution receives notification from the Secretary, file an appeal demonstrating exceptional mitigating circumstances, as defined in paragraph (5). The Secretary shall issue a decision on any such appeal not later than 45 days after the date of submission of the appeal. If the Secretary determines that the institution demonstrates exceptional mitigating circumstances, the Secretary may not subject the institution to provisional certification based solely on the institution's cohort default rate.

(4) Appeals based upon allegations of improper loan servicing

An institution that—

(A) is subject to loss of eligibility for the Federal Family Education Loan Program pursuant to paragraph (2)(A) of this subsection;

(B) is subject to loss of eligibility for the Federal Supplemental Loans for Students pursuant to section 1078–1(a)(2)[1] of this title; or

(C) is an institution whose cohort default rate equals or exceeds 20 percent for the most recent year for which data are available;

may include in its appeal of such loss or rate a defense based on improper loan servicing (in addition to other defenses). In any such appeal, the Secretary shall take whatever steps are necessary to ensure that such institution has access for a reasonable period of time, not to exceed 30 days, to a representative sample (as determined by the Secretary) of the relevant loan servicing and collection records used by a guaranty agency in determining whether to pay a claim on a defaulted loan or by the Department in determining an institution's default rate in the loan program under part C of this subchapter. The Secretary shall reduce the institution's cohort default rate to reflect the percentage of defaulted loans in the representative sample that are required to be excluded pursuant to subsection (m)(1)(B) of this section.

(5) Definition of mitigating circumstances

(A) For purposes of this subsection, an institution of higher education shall be treated as having exceptional mitigating circumstances that make application of paragraph (2) inequitable, and that provide for regulatory relief under paragraph (3), if such institution, in the opinion of an independent auditor, meets the following criteria:

(i) For a 12-month period that ended during the 6 months immediately preceding the fiscal year for which the cohort of borrowers used to calculate the institution's cohort default rate is determined, at least two-thirds of the students enrolled on at least a half-time basis at the institution—

(I) are eligible to receive a Federal Pell Grant award that is at least equal to one-half the Federal Pell Grant amount, determined under section 1070a(b)(2)(A) of this title, for which a student would be eligible based on the student's enrollment status; or

(II) have an adjusted gross income that when added with the adjusted gross income of the student's parents (unless the student is an independent student), of less than the poverty level, as determined by the Department of Health and Human Services.

(ii) In the case of an institution of higher education that offers an associate, baccalaureate, graduate or professional degree, 70 percent or more of the institution's regular students who were initially enrolled on a full-time basis and were scheduled to complete their programs during the same 12-month period described in clause (i)—

(I) completed the educational programs in which the students were enrolled;

(II) transferred from the institution to a higher level educational program;

(III) at the end of the 12-month period, remained enrolled and making satisfactory progress toward completion of the student's educational programs; or

(IV) entered active duty in the Armed Forces of the United States.

(iii)(I) In the case of an institution of higher education that does not award a degree described in clause (ii), had a placement rate of 44 percent or more with respect to the institution's former regular students who—

(aa) remained in the program beyond the point the students would have received a 100 percent tuition refund from the institution;

(bb) were initially enrolled on at least a half-time basis; and

(cc) were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period described in clause (i).

(II) The placement rate shall not include students who are still enrolled and making satisfactory progress in the educational programs in which the students were originally enrolled on the date following 12 months after the date of the student's last date of attendance at the institution.

(III) The placement rate is calculated by determining the percentage of all those former regular students who—

(aa) are employed, in an occupation for which the institution provided training, on the date following 12 months after the date of their last day of attendance at the institution;

[1] See References in Text note below.

(bb) were employed, in an occupation for which the institution provided training, for at least 13 weeks before the date following 12 months after the date of their last day of attendance at the institution; or

(cc) entered active duty in the Armed Forces of the United States.

(IV) The placement rate shall not include as placements a student or former student for whom the institution is the employer.

(B) For purposes of determining a rate of completion and a placement rate under this paragraph, a student is originally scheduled, at the time of enrollment, to complete the educational program on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The amount of time normally required to complete the program for a student who is initially enrolled full-time is the period of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student. For a student who is initially enrolled less than full-time, the period is the amount of time it would take the student to complete the program if the student remained enrolled at that level of enrollment throughout the program.

(6) Reduction of default rates at certain minority institutions

(A) Beneficiaries of exception required to establish management plan

After July 1, 1999, any institution that has a cohort default rate that equals or exceeds 25 percent for each of the three most recent fiscal years for which data are available and that relies on the exception in subparagraph (B) to continue to be an eligible institution shall—

(i) submit to the Secretary a default management plan which the Secretary, in the Secretary's discretion, after consideration of the institution's history, resources, dollars in default, and targets for default reduction, determines is acceptable and provides reasonable assurance that the institution will, by July 1, 2004, have a cohort default rate that is less than 25 percent;

(ii) engage an independent third party (which may be paid with funds received under section 1059d of this title or part B of subchapter III of this chapter) to provide technical assistance in implementing such default management plan; and

(iii) provide to the Secretary, on an annual basis or at such other intervals as the Secretary may require, evidence of cohort default rate improvement and successful implementation of such default management plan.

(B) Discretionary eligibility conditioned on improvement

Notwithstanding the expiration of the exception in paragraph (2)(C), the Secretary may, in the Secretary's discretion, continue to treat an institution described in subparagraph (A) of this paragraph as an eligible institution for each of the 1-year periods beginning on July 1 of 1999 through 2003, only if the institution submits by the beginning of such period evidence satisfactory to the Secretary that—

(i) such institution has complied and is continuing to comply with the requirements of subparagraph (A); and

(ii) such institution has made substantial improvement, during each of the preceding 1-year periods, in the institution's cohort default rate.

(7) Default prevention and assessment of eligibility based on high default rates

(A) First year

(i) In general

An institution whose cohort default rate is equal to or greater than the threshold percentage specified in paragraph (2)(B)(iv) in any fiscal year shall establish a default prevention task force to prepare a plan to—

(I) identify the factors causing the institution's cohort default rate to exceed such threshold;

(II) establish measurable objectives and the steps to be taken to improve the institution's cohort default rate; and

(III) specify actions that the institution can take to improve student loan repayment, including appropriate counseling regarding loan repayment options.

(ii) Technical assistance

Each institution subject to this subparagraph shall submit the plan under clause (i) to the Secretary, who shall review the plan and offer technical assistance to the institution to promote improved student loan repayment.

(B) Second consecutive year

(i) In general

An institution whose cohort default rate is equal to or greater than the threshold percentage specified in paragraph (2)(B)(iv) for two consecutive fiscal years, shall require the institution's default prevention task force established under subparagraph (A) to review and revise the plan required under such subparagraph, and shall submit such revised plan to the Secretary.

(ii) Review by the Secretary

The Secretary shall review each revised plan submitted in accordance with this subparagraph, and may direct that such plan be amended to include actions, with measurable objectives, that the Secretary determines, based on available data and analyses of student loan defaults, will promote student loan repayment.

(8) Participation rate index

(A) In general

An institution that demonstrates to the Secretary that the institution's participation rate index is equal to or less than 0.0625

for any of the 3 most recent fiscal years for which data is available shall not be subject to paragraph (2). The participation rate index shall be determined by multiplying the institution's cohort default rate for loans under this part or part C of this subchapter, or weighted average cohort default rate for loans under this part and part C of this subchapter, by the percentage of the institution's regular students, enrolled on at least a half-time basis, who received a loan made under this part or part C of this subchapter for a 12-month period ending during the 6 months immediately preceding the fiscal year for which the cohort of borrowers used to calculate the institution's cohort default rate is determined.

(B) Data

An institution shall provide the Secretary with sufficient data to determine the institution's participation rate index within 30 days after receiving an initial notification of the institution's draft cohort default rate.

(C) Notification

Prior to publication of a final cohort default rate for an institution that provides the data described in subparagraph (B), the Secretary shall notify the institution of the institution's compliance or noncompliance with subparagraph (A).

(b), (c) Repealed. Pub. L. 102–325, title IV, § 427(b)(1), (c), July 23, 1992, 106 Stat. 549

(d) Eligible lender

(1) In general

Except as provided in paragraphs (2) through (6), the term ''eligible lender'' means—

(A) a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, or a credit union which—

(i) is subject to examination and supervision by an agency of the United States or of the State in which its principal place of operation is established, and

(ii) does not have as its primary consumer credit function the making or holding of loans made to students under this part unless (I) it is a bank which is wholly owned by a State, or a bank which is subject to examination and supervision by an agency of the United States, makes student loans as a trustee pursuant to an express trust, operated as a lender under this part prior to January 1, 1975, and which meets the requirements of this provision prior to July 23, 1992, (II) it is a single wholly owned subsidiary of a bank holding company which does not have as its primary consumer credit function the making or holding of loans made to students under this part, (III) it is a bank (as defined in section 1813(a)(1) of title 12) that is a wholly owned subsidiary of a nonprofit foundation, the foundation is described in section 501(c)(3) of title 26 and exempt from taxation under section 501(a) of such title, and the bank makes loans under this part only to undergraduate students who are age 22 or younger and has a portfolio of such loans that is not more than $5,000,000, or (IV) it is a National or State chartered bank, or a credit union, with assets of less than $1,000,000,000;

(B) a pension fund as defined in the Employee Retirement Income Security Act [29 U.S.C. 1001 et seq.];

(C) an insurance company which is subject to examination and supervision by an agency of the United States or a State;

(D) in any State, a single agency of the State or a single nonprofit private agency designated by the State;

(E) an eligible institution which meets the requirements of paragraphs (2) through (5) of this subsection;

(F) for purposes only of purchasing and holding loans made by other lenders under this part, the Student Loan Marketing Association or the Holding Company of the Student Loan Marketing Association, including any subsidiary of the Holding Company, created pursuant to section 1087–3 of this title, or an agency of any State functioning as a secondary market;

(G) for purposes of making loans under sections 1078–2(d) and 1078–3 of this title, the Student Loan Marketing Association or the Holding Company of the Student Loan Marketing Association, including any subsidiary of the Holding Company, created pursuant to section 1087–3 of this title;

(H) for purposes of making loans under sections 1078(h)[1] and 1078(j) of this title, a guaranty agency;

(I) a Rural Rehabilitation Corporation, or its successor agency, which has received Federal funds under Public Law 499, Eighty-first Congress (64 Stat. 98 (1950));

(J) for purpose of making loans under section 1078–3 of this title, any nonprofit private agency functioning in any State as a secondary market; and

(K) a consumer finance company subsidiary of a national bank which, as of October 7, 1998, through one or more subsidiaries: (i) acts as a small business lending company, as determined under regulations of the Small Business Administration under section 120.470 of title 13, Code of Federal Regulations (as such section is in effect on October 7, 1998); and (ii) participates in the program authorized by this part pursuant to subparagraph (C), provided the national bank and all of the bank's direct and indirect subsidiaries taken together as a whole, do not have, as their primary consumer credit function, the making or holding of loans made to students under this part.

(2) Requirements for eligible institutions

(A) In general

To be an eligible lender under this part, an eligible institution—

(i) shall employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending such institution;

(ii) shall not be a home study school;

(iii) shall not—

(I) make a loan to any undergraduate student;

(II) make a loan other than a loan under section 1078 or 1078–8 of this title to a graduate or professional student; or

(III) make a loan to a borrower who is not enrolled at that institution;

(iv) shall award any contract for financing, servicing, or administration of loans under this subchapter and part C of subchapter I of chapter 34 of title 42 on a competitive basis;

(v) shall offer loans that carry an origination fee or an interest rate, or both, that are less than such fee or rate authorized under the provisions of this subchapter and part C of subchapter I of chapter 34 of title 42;

(vi) shall not have a cohort default rate (as defined in subsection (m)) greater than 10 percent;

(vii) shall, for any year for which the institution engages in activities as an eligible lender, provide for a compliance audit conducted in accordance with section 1078(b)(1)(U)(iii)(I) of this title, and the regulations thereunder, and submit the results of such audit to the Secretary;

(viii) shall use any proceeds from special allowance payments and interest payments from borrowers, interest subsidies received from the Department of Education, and any proceeds from the sale or other disposition of loans, for need-based grant programs; and

(ix) shall have met the requirements of subparagraphs (A) through (F) of this paragraph as in effect on the day before February 8, 2006, and made loans under this part, on or before April 1, 2006.

(B) Administrative expenses

An eligible lender under subparagraph (A) shall be permitted to use a portion of the proceeds described in subparagraph (A)(viii) for reasonable and direct administrative expenses.

(C) Supplement, not supplant

An eligible lender under subparagraph (A) shall ensure that the proceeds described in subparagraph (A)(viii) are used to supplement, and not to supplant, non-Federal funds that would otherwise be used for need-based grant programs.

(3) Disqualification for high default rates

The term ''eligible lender'' does not include any eligible institution in any fiscal year immediately after the fiscal year in which the Secretary determines, after notice and opportunity for a hearing, that for each of 2 consecutive years, 15 percent or more of the total amount of such loans as are described in section 1078(a)(1) of this title made by the institution with respect to students at that institution and repayable in each such year, are in default, as defined in subsection (m).

(4) Waiver of disqualification

Whenever the Secretary determines that—

(A) there is reasonable possibility that an eligible institution may, within 1 year after a determination is made under paragraph (3), improve the collection of loans described in section 1078(a)(1) of this title, so that the application of paragraph (3) would be a hardship to that institution, or

(B) the termination of the lender's status under paragraph (3) would be a hardship to the present or for prospective students of the eligible institution, after considering the management of that institution, the ability of that institution to improve the collection of loans, the opportunities that institution offers to economically disadvantaged students, and other related factors,

the Secretary shall waive the provisions of paragraph (3) with respect to that institution. Any determination required under this paragraph shall be made by the Secretary prior to the termination of an eligible institution as a lender under the exception of paragraph (3). Whenever the Secretary grants a waiver pursuant to this paragraph, the Secretary shall provide technical assistance to the institution concerned in order to improve the collection rate of such loans.

(5) Disqualification for use of certain incentives

The term ''eligible lender'' does not include any lender that the Secretary determines, after notice and opportunity for a hearing, has—

(A) offered, directly or indirectly, points, premiums, payments (including payments for referrals and for processing or finder fees), prizes, stock or other securities, travel, entertainment expenses, tuition payment or reimbursement, the provision of information technology equipment at below-market value, additional financial aid funds, or other inducements, to any institution of higher education, any employee of an institution of higher education, or any individual or entity in order to secure applicants for loans under this part;

(B) conducted unsolicited mailings, by postal or electronic means, of student loan application forms to students enrolled in secondary schools or postsecondary institutions, or to family members of such students, except that applications may be mailed, by postal or electronic means, to students or borrowers who have previously received loans under this part from such lender;

(C) entered into any type of consulting arrangement, or other contract to provide services to a lender, with an employee who is employed in the financial aid office of an institution of higher education, or who otherwise has responsibilities with respect to student loans or other financial aid of the institution;

(D) compensated an employee who is employed in the financial aid office of an institution of higher education, or who otherwise has responsibilities with respect to student loans or other financial aid of the institution, and who is serving on an advisory

board, commission, or group established by a lender or group of lenders for providing such service, except that the eligible lender may reimburse such employee for reasonable expenses incurred in providing such service;

(E) performed for an institution of higher education any function that such institution of higher education is required to perform under this title, except that a lender shall be permitted to perform functions on behalf of such institution in accordance with section 1092(b) or 1092(*l*) of this title;

(F) paid, on behalf of an institution of higher education, another person to perform any function that such institution of higher education is required to perform under this subchapter and part C of subchapter I of chapter 34 of title 42, except that a lender shall be permitted to perform functions on behalf of such institution in accordance with section 1092(b) or 1092(*l*) of this title;

(G) provided payments or other benefits to a student at an institution of higher education to act as the lender's representative to secure applications under this subchapter and part C of subchapter I of chapter 34 of title 42 from individual prospective borrowers, unless such student—

(i) is also employed by the lender for other purposes; and

(ii) made all appropriate disclosures regarding such employment;

(H) offered, directly or indirectly, loans under this part as an inducement to a prospective borrower to purchase a policy of insurance or other product; or

(I) engaged in fraudulent or misleading advertising.

It shall not be a violation of this paragraph for a lender to provide technical assistance to institutions of higher education comparable to the kinds of technical assistance provided to institutions of higher education by the Department.

(6) Rebate fee requirement

To be an eligible lender under this part, an eligible lender shall pay rebate fees in accordance with section 1078–3(f) of this title.

(7) Eligible lender trustees

Notwithstanding any other provision of this subsection, an eligible lender may not make or hold a loan under this part as trustee for an institution of higher education, or for an organization affiliated with an institution of higher education, unless—

(A) the eligible lender is serving as trustee for that institution or organization as of September 30, 2006, under a contract that was originally entered into before September 30, 2006, and that continues in effect or is renewed after September 30, 2006; and

(B) the institution or organization, and the eligible lender, with respect to its duties as trustee, each comply on and after January 1, 2007, with the requirements of paragraph (2), except that—

(i) the requirements of clauses (i), (ii), (vi), and (viii) of paragraph (2)(A) shall, subject to clause (ii) of this subparagraph, only apply to the institution (including both an institution for which the lender serves as trustee and an institution affiliated with an organization for which the lender serves as trustee);

(ii) in the case of an organization affiliated with an institution—

(I) the requirements of clauses (iii) and (v) of paragraph (2)(A) shall apply to the organization; and

(II) the requirements of clause (viii) of paragraph (2)(A) shall apply to the institution or the organization (or both), if the institution or organization receives (directly or indirectly) the proceeds described in such clause;

(iii) the requirements of clauses (iv) and (ix) of paragraph (2)(A) shall not apply to the eligible lender, institution, or organization; and

(iv) the eligible lender, institution, and organization shall ensure that the loans made or held by the eligible lender as trustee for the institution or organization, as the case may be, are included in a compliance audit in accordance with clause (vii) of paragraph (2)(A).

(8) School as lender program audit

Each institution serving as an eligible lender under paragraph (1)(E), and each eligible lender serving as a trustee for an institution of higher education or an organization affiliated with an institution of higher education, shall annually complete and submit to the Secretary a compliance audit to determine whether—

(A) the institution or lender is using all proceeds from special allowance payments and interest payments from borrowers, interest subsidies received from the Department, and any proceeds from the sale or other disposition of loans, for need-based grant programs, in accordance with paragraph (2)(A)(viii);

(B) the institution or lender is using not more than a reasonable portion of the proceeds described in paragraph (2)(A)(viii) for direct administrative expenses; and

(C) the institution or lender is ensuring that the proceeds described in paragraph (2)(A)(viii) are being used to supplement, and not to supplant, Federal and non-Federal funds that would otherwise be used for need-based grant programs.

(e) Line of credit

The term ''line of credit'' means an arrangement or agreement between the lender and the borrower whereby a loan is paid out by the lender to the borrower in annual installments, or whereby the lender agrees to make, in addition to the initial loan, additional loans in subsequent years.

(f) Due diligence

The term ''due diligence'' requires the utilization by a lender, in the servicing and collection of loans insured under this part, of servicing and collection practices at least as extensive and forceful as those generally practiced by financial institutions for the collection of consumer loans.

(g), (h) Repealed. Pub. L. 102–325, title IV, § 427(f), July 23, 1992, 106 Stat. 550

(i) Holder

The term ''holder'' means an eligible lender who owns a loan.

(j) Guaranty agency

The term ''guaranty agency'' means any State or nonprofit private institution or organization with which the Secretary has an agreement under section 1078(b) of this title.

(k) Insurance beneficiary

The term ''insurance beneficiary'' means the insured or its authorized representative assigned in accordance with section 1079(d) of this title.

(*l*) Default

Except as provided in subsection (m) of this section, the term ''default'' includes only such defaults as have existed for (1) 270 days in the case of a loan which is repayable in monthly installments, or (2) 330 days in the case of a loan which is repayable in less frequent installments.

(m) Cohort default rate

(1) In general

(A) Except as provided in paragraph (2), the term ''cohort default rate'' means, for any fiscal year in which 30 or more current and former students at the institution enter repayment on loans under section 1078, 1078–1,[1] or 1078–8 of this title received for attendance at the institution, the percentage of those current and former students who enter repayment on such loans (or on the portion of a loan made under section 1078–3 of this title that is used to repay any such loans) received for attendance at that institution in that fiscal year who default before the end of the second fiscal year following the fiscal year in which the students entered repayment. The Secretary shall require that each guaranty agency that has insured loans for current or former students of the institution afford such institution a reasonable opportunity (as specified by the Secretary) to review and correct errors in the information required to be provided to the Secretary by the guaranty agency for the purposes of calculating a cohort default rate for such institution, prior to the calculation of such rate.

(B) In determining the number of students who default before the end of such second fiscal year, the Secretary shall include only loans for which the Secretary or a guaranty agency has paid claims for insurance. In considering appeals with respect to cohort default rates pursuant to subsection (a)(3) of this section, the Secretary shall exclude, from the calculation of the number of students who entered repayment and from the calculation of the number of students who default, any loans which, due to improper servicing or collection, would, as demonstrated by the evidence submitted in support of the institution's timely appeal to the Secretary, result in an inaccurate or incomplete calculation of such cohort default rate.

(C) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment, the term ''cohort default rate'' means the percentage of such current and former students who entered repayment on such loans (or on the portion of a loan made under section 1078–3 of this title that is used to repay any such loans) in any of the three most recent fiscal years, who default before the end of the second fiscal year following the year in which they entered repayment.

(2) Special rules

(A) In the case of a student who has attended and borrowed at more than one school, the student (and such student's subsequent repayment or default) is attributed to each school for attendance at which the student received a loan that entered repayment in the fiscal year.

(B) A loan on which a payment is made by the school, such school's owner, agent, contractor, employee, or any other entity or individual affiliated with such school, in order to avoid default by the borrower, is considered as in default for purposes of this subsection.

(C) Any loan which has been rehabilitated before the end of the second fiscal year following the year in which the loan entered repayment is not considered as in default for purposes of this subsection. The Secretary may require guaranty agencies to collect data with respect to defaulted loans in a manner that will permit the identification of any defaulted loan for which (i) the borrower is currently making payments and has made not less than 6 consecutive on-time payments by the end of such second fiscal year, and (ii) a guaranty agency has renewed the borrower's title IV eligibility as provided in section 1078–6(b) of this title.

(D) For the purposes of this subsection, a loan made in accordance with section 1078–1[1] of this title (or the portion of a loan made under section 1078–3 of this title that is used to repay a loan made under section 1078–1[1] of this title) shall not be considered to enter repayment until after the borrower has ceased to be enrolled in a course of study leading to a degree or certificate at an eligible institution on at least a half-time basis (as determined by the institution) and ceased to be in a period of forbearance based on such enrollment. Each eligible lender of a loan made under section 1078–1[1] of this title (or a loan made under section 1078–3 of this title a portion of which is used to repay a loan made under section 1078–1[1] of this title) shall provide the guaranty agency with the information necessary to determine when the loan entered repayment for purposes of this subsection, and the guaranty agency shall provide such information to the Secretary.

(3) Regulations to prevent evasions

The Secretary shall prescribe regulations designed to prevent an institution from evading the application to that institution of a default rate determination under this subsection through the use of such measures as branching, consolidation, change of ownership or control, or any similar device.

(4) Collection and reporting of cohort default rates and life of cohort default rates

(A) The Secretary shall publish not less often than once every fiscal year a report showing cohort default data and life of cohort default rates for each category of institution, including: (i) four-year public institutions; (ii) four-year private nonprofit institutions; (iii) two-year public institutions; (iv) two-year private nonprofit institutions; (v) four-year proprietary institutions; (vi) two-year proprietary institutions; and (vii) less than two-year proprietary institutions. For purposes of this subparagraph, for any fiscal year in which one or more current and former students at an institution enter repayment on loans under section 1078, 1078–2, or 1078–8 of this title, received for attendance at the institution, the Secretary shall publish the percentage of those current and former students who enter repayment on such loans (or on the portion of a loan made under section 1078–3 of this title that is used to repay any such loans) received for attendance at the institution in that fiscal year who default before the end of each succeeding fiscal year.

(B) The Secretary may designate such additional subcategories within the categories specified in subparagraph (A) as the Secretary deems appropriate.

(C) The Secretary shall publish not less often than once every fiscal year a report showing default data for each institution for which a cohort default rate is calculated under this subsection.

(D) The Secretary shall publish the report described in subparagraph (C) by September 30 of each year.

(n) Repealed. Pub. L. 102–325, title IV, § 427(f), July 23, 1992, 106 Stat. 550

(*o*) Economic hardship

(1) In general

For purposes of this part and part D of this subchapter, a borrower shall be considered to have an economic hardship if—

(A) such borrower is working full-time and is earning an amount which does not exceed the greater of—

(i) the minimum wage rate described in section 206 of title 29; or

(ii) an amount equal to 150 percent of the poverty line applicable to the borrower's family size as determined in accordance with section 9902(2) of title 42; or

(B) such borrower meets such other criteria as are established by the Secretary by regulation in accordance with paragraph (2).

(2) Considerations

In establishing criteria for purposes of paragraph (1)(B), the Secretary shall consider the borrower's income and debt-to-income ratio as primary factors.

(p) Eligible not-for-profit holder

(1) Definition

Subject to the limitations in paragraph (2) and the prohibition in paragraph (3), the term ''eligible not-for-profit holder'' means an eligible lender under subsection (d) (except for an eligible lender described in subsection (d)(1)(E)) that requests a special allowance payment under section 1087–1(b)(2)(I)(vi)(II) of this title or a payment under section 1141 of this title and that is—

(A) a State, or a political subdivision, authority, agency, or other instrumentality thereof, including such entities that are eligible to issue bonds described in section 1.103–1 of title 26, Code of Federal Regulations, or section 144(b) of title 26;

(B) an entity described in section 150(d)(2) of such title that has not made the election described in section 150(d)(3) of such title;

(C) an entity described in section 501(c)(3) of such title; or

(D) acting as a trustee on behalf of a State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (A), (B), or (C), regardless of whether such State, political subdivision, authority, agency, instrumentality, or other entity is an eligible lender under subsection (d).

(2) Limitations

(A) Existing on September 27, 2007

(i) In general

An eligible lender shall not be an eligible not-for-profit holder under this chapter and part C of subchapter I of chapter 34 of title 42 unless such lender—

(I) was a State, political subdivision, authority, agency, instrumentality, or other entity described in paragraph (1)(A), (B), or (C) that was, on September 27, 2007, acting as an eligible lender under subsection (d) (other than an eligible lender described in subsection (d)(1)(E)); or

(II) is acting as a trustee on behalf of a State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (A), (B), or (C) of paragraph (1), regardless of whether such State, political subdivision, authority, agency, instrumentality, or other entity is an eligible lender under subsection (d), and such State, political subdivision, authority, agency, instrumentality, or other entity, on September 27, 2007, was the sole beneficial owner of a loan eligible for any special allowance payment under section 1087–1 of this title.

(ii) Exception

Notwithstanding clause (i), a State may elect, in accordance with regulations of the Secretary, to waive the requirements of this subparagraph for a new not-for-profit holder determined by the State to be necessary to carry out a public purpose of such State, except that a State may not make such election with respect the[2] requirements of clause (i)(II).

[2] So in original. Probably should be ''with respect to the''.

(B) No for-profit ownership or control

(i) In general

No State, political subdivision, authority, agency, instrumentality, or other entity described in paragraph (1)(A), (B), or (C) shall be an eligible not-for-profit holder under this chapter and part C of subchapter I of chapter 34 of title 42 if such State, political subdivision, authority, agency, instrumentality, or other entity is owned or controlled, in whole or in part, by a for-profit entity.

(ii) Trustees

A trustee described in paragraph (1)(D) shall not be an eligible not-for-profit holder under this chapter and part C of subchapter I of chapter 34 of title 42 with respect to a State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (A), (B), or (C) of paragraph (1), regardless of whether such State, political subdivision, authority, agency, instrumentality, or other entity is an eligible lender under subsection (d), if such State, political subdivision, authority, agency, instrumentality, or other entity is owned or controlled, in whole or in part, by a for-profit entity.

(C) Sole ownership of loans and income

No State, political subdivision, authority, agency, instrumentality, trustee, or other entity described in paragraph (1)(A), (B), (C), or (D) shall be an eligible not-for-profit holder under this chapter and part C of subchapter I of chapter 34 of title 42 with respect to any loan, or income from any loan, unless—

(i) such State, political subdivision, authority, agency, instrumentality, or other entity is the sole beneficial owner of such loan and the income from such loan; or

(ii) such trustee holds the loan on behalf of a State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (A), (B), or (C) of paragraph (1), regardless of whether such State, political subdivision, authority, agency, instrumentality, or other entity is an eligible lender under subsection (d), and such State, political subdivision, authority, agency, instrumentality, or other entity is the sole beneficial owner of such loan and the income from such loan.

(D) Trustee compensation limitations

A trustee described in paragraph (1)(D) shall not receive compensation as consideration for acting as an eligible lender on behalf of a State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (A), (B), or (C) of paragraph (1), regardless of whether such State, political subdivision, authority, agency, instrumentality, or other entity is an eligible lender under subsection (d), in excess of reasonable and customary fees.

(E) Rule of construction

For purposes of subparagraphs (A), (B), (C), and (D) of this paragraph, a State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (A), (B), or (C) of paragraph (1), regardless of whether such State, political subdivision, authority, agency, instrumentality, or other entity is an eligible lender under subsection (d), shall not—

(i) be deemed to be owned or controlled, in whole or in part, by a for-profit entity; or

(ii) lose its status as the sole owner of a beneficial interest in a loan and the income from a loan,

by such State, political subdivision, authority, agency, instrumentality, or other entity, or by the trustee described in paragraph (1)(D), granting a security interest in, or otherwise pledging as collateral, such loan, or the income from such loan, to secure a debt obligation for which such State, political subdivision, authority, agency, instrumentality, or other entity is the issuer of the debt obligation.

(3) Prohibition

In the case of a loan for which the special allowance payment is calculated under section 1087–1(b)(2)(I)(vi)(II) of this title and that is sold by the eligible not-for-profit holder holding the loan to an entity that is not an eligible not-for-profit holder under this chapter and part C of subchapter I of chapter 34 of title 42, the special allowance payment for such loan shall, beginning on the date of the sale, no longer be calculated under section 1087–1(b)(2)(I)(vi)(II) of this title and shall be calculated under section 1087–1(b)(2)(I)(vi)(I) of this title instead.

(4) Regulations

Not later than 1 year after September 27, 2007, the Secretary shall promulgate regulations in accordance with the provisions of this subsection.

(Pub. L. 89–329, title IV, § 435, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1408; amended Pub. L. 100–50, § 10(aa), June 3, 1987, 101 Stat. 347; Pub. L. 101–239, title II, §§ 2003(a)(2), 2007(a), Dec. 19, 1989, 103 Stat. 2113, 2120; Pub. L. 101–508, title III, § 3004(a), Nov. 5, 1990, 104 Stat. 1388–26; Pub. L. 101–542, title III, § 301, Nov. 8, 1990, 104 Stat. 2387; Pub. L. 102–26, § 2(a)(1), Apr. 9, 1991, 105 Stat. 123; Pub. L. 102–325, title IV, §§ 416(e)(2), 427(a), (b)(1), (c)–(g), July 23, 1992, 106 Stat. 519, 549, 550; Pub. L. 103–66, title IV, §§ 4046(b)(1), 4106(b), Aug. 10, 1993, 107 Stat. 362, 368; Pub. L. 103–208, § 2(c)(55)–(62), Dec. 20, 1993, 107 Stat. 2468, 2469; Pub. L. 103–235, § 1, Apr. 28, 1994, 108 Stat. 381; Pub. L. 103–382, title III, § 357, Oct. 20, 1994, 108 Stat. 3967; Pub. L. 104–208, div. A, title I, § 101(e) [title VI, § 602(b)(1)(A)], Sept. 30, 1996, 110 Stat. 3009–233, 3009–283; Pub. L. 105–244, title I, § 102(b)(2), title IV, § 429(a)–(c)(1), (d), title IX, § 901(d), Oct. 7, 1998, 112 Stat. 1622, 1704–1709, 1828; Pub. L. 106–554, § 1(a)(1) [title III, §§ 308(a), 312], Dec. 21, 2000, 114 Stat. 2763, 2763A–45, 2763A–46; Pub. L. 109–171, title VIII, § 8011, Feb. 8, 2006, 120 Stat. 165; Pub. L. 109–292, § 3(a), Sept. 30, 2006, 120 Stat. 1340; Pub. L. 110–84, title III, § 304, Sept. 27, 2007, 121 Stat. 797; Pub. L. 110–109, § 4, Oct. 31, 2007, 121

Stat. 1028; Pub. L. 110–315, title IV, §§ 436(a)(1), (b)–(e)(1), 438(a)(3), Aug. 14, 2008, 122 Stat. 3253–3256, 3258; Pub. L. 111–39, title IV, § 402(b)(2), (f)(10), July 1, 2009, 123 Stat. 1940, 1944; Pub. L. 111–152, title II, § 2101(b)(3), Mar. 30, 2010, 124 Stat. 1073.)

REFERENCES IN TEXT

The Navajo Community College Act, referred to in subsec. (a)(2)(C)(iii), is Pub. L. 92–189, Dec. 15, 1971, 85 Stat. 646, which is classified to section 640a et seq. of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 640a of Title 25 and Tables.

The Employee Retirement Income Security Act, referred to in subsec. (d)(1)(B), probably means the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Section 1078–1 of this title, referred to in subsecs. (a)(4)(B) and (m)(1)(A), (2)(D), was repealed by Pub. L. 103–66, title IV, § 4047(b)–(d), Aug. 10, 1993, 107 Stat. 364, eff. July 1, 1994, except with respect to loans provided under that section as it existed prior to Aug. 10, 1993. Subsequently, a new section 1078–1, relating to voluntary flexible agreements with guaranty agencies, was enacted by Pub. L. 105–244, title IV, § 418, Oct. 7, 1998, 112 Stat. 1691.

Section 1078(h) of this title, referred to in subsec. (d)(1)(H), was repealed by Pub. L. 110–315, title IV, § 438(a)(2)(B), Aug. 14, 2008, 122 Stat. 3258.

Public Law 499, Eighty-first Congress (64 Stat. 98 (1950)), referred to in subsec. (d)(1)(I), is act May 3, 1950, ch. 152, 64 Stat. 98, known as the Rural Rehabilitation Corporation Trust Liquidation Act, which was classified to sections 440 to 444 of former Title 40, Public Buildings, Property, and Works, and as notes set out under section 1001 of Title 7, Agriculture, and section 440 of former Title 40, and was omitted from the Code.

Title IV, referred to in subsec. (m)(2)(C), means title IV of the Higher Education Act of 1965, Pub. L. 89–329, which is classified generally to this subchapter and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of title IV to the Code, see Tables.

PRIOR PROVISIONS

A prior section 1085, Pub. L. 89–329, title IV, § 435, Nov. 8, 1965, 79 Stat. 1247; Pub. L. 89–698, title II, § 204, Oct. 29, 1966, 80 Stat. 1072; Pub. L. 90–575, title I, §§ 116(a), 118(a), Oct. 16, 1968, 82 Stat. 1023, 1026; Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2130; Pub. L. 95–43, § 1(a)(35), (36), June 15, 1977, 91 Stat. 216; Pub. L. 96–374, title IV, §§ 413(e), 421(e)(2), title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1418, 1432, 1503; Pub. L. 99–272, title XVI, §§ 16017(b)(2), 16020, Apr. 7, 1986, 100 Stat. 347, 349, defined terms used in this part, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2010—Subsec. (a)(5)(A)(i)(I). Pub. L. 111–152 substituted ''one-half the Federal Pell Grant amount, determined under section 1070a(b)(2)(A) of this title, for which a student would be eligible'' for ''one-half the maximum Federal Pell Grant award for which a student would be eligible''.

2009—Subsec. (a)(2)(C)(ii). Pub. L. 111–39, § 402(f)(10)(A), substituted ''a tribally controlled college or university, as defined in section 1801(a)(4) of title 25'' for ''a tribally controlled community college within the meaning of section 1801(a)(4) of title 25''.

Subsec. (d)(1). Pub. L. 111–39, § 402(f)(10)(B)(i), substituted ''section 501(a) of such title'' for ''section 501(1) of such title'' in subpar. (A)(ii)(III) and ''sections 1078–2(d) and 1078–3 of this title,'' for ''sections 1078–1(d), 1078–2(d), and 1078–3 of this title,'' in subpar (G).

Subsec. (d)(2)(A)(vi), (3). Pub. L. 111–39, § 402(f)(10)(B)(ii), (iii), made technical amendment to reference in original act which appears in text as reference to subsec. (m).

Subsec. (d)(5)(A). Pub. L. 111–39, § 402(f)(10)(B)(iv), substituted ''to any institution of higher education, any employee of an institution of higher education, or any individual or entity in order to secure applicants for loans under this part'' for ''to any institution of higher education or any employee of an institution of higher education in order to secure applicants for loans under this part''.

Subsec. (d)(5)(E), (F). Pub. L. 111–39, § 402(b)(2), inserted ''or 1092(*l*)'' after ''section 1092(b)''.

Subsec. (*o*)(1)(A)(ii). Pub. L. 111–39, § 402(f)(10)(C), made technical amendment to reference in original act which appears in text as reference to section 9902(2) of title 42.

Subsec. (p)(1). Pub. L. 111–39, § 402(f)(10)(D), made technical amendment to reference in original act which appears in text as reference to section 1141 of this title.

2008—Subsec. (a)(2)(A)(ii). Pub. L. 110–315, § 436(a)(1)(A)(i), substituted ''paragraph (5)'' for ''paragraph (4)''.

Subsec. (a)(2)(B)(iii), (iv). Pub. L. 110–315, § 436(a)(1)(A)(ii), added cls. (iii) and (iv) and struck out former cl. (iii) which read as follows: ''25 percent for any succeeding fiscal year.''

Subsec. (a)(3) to (8). Pub. L. 110–315, § 436(a)(1)(B)–(E), added pars. (3) and (7), redesignated former pars. (3), (4), (5), and (6), as (4), (5), (6), and (8), respectively, and, in introductory provisions of par. (5)(A), substituted ''For purposes of this subsection, an institution of higher education shall be treated as having exceptional mitigating circumstances that make application of paragraph (2) inequitable, and that provide for regulatory relief under paragraph (3), if such institution, in the opinion of an independent auditor, meets the following criteria:'' for ''For purposes of paragraph (2)(A)(ii), an institution of higher education shall be treated as having exceptional mitigating circumstances that make application of that paragraph inequitable if such institution, in the opinion of an independent auditor, meets the following criteria:''.

Subsec. (a)(8)(A). Pub. L. 110–315, § 436(a)(1)(F), substituted ''0.0625'' for ''0.0375''.

Subsec. (d)(1)(A)(ii). Pub. L. 110–315, § 436(b), substituted ''part, (III)'' for ''part, or (III)'' and inserted '', or (IV) it is a National or State chartered bank, or a credit union, with assets of less than $1,000,000,000'' before semicolon at end.

Subsec. (d)(1)(G). Pub. L. 110–315, § 438(a)(3), substituted ''and 1078–3'' for ''1078–3, and 1087–2(q)''.

Subsec. (d)(5). Pub. L. 110–315, § 436(c), amended par. (5) generally. Prior to amendment, par. (5) related to disqualification for use of certain incentives.

Subsec. (d)(8). Pub. L. 110–315, § 436(d), added par. (8).

Subsec. (m)(1)(A). Pub. L. 110–315, § 436(e)(1)(A)(i), substituted ''end of the second fiscal year following the fiscal year in which the students entered repayment'' for ''end of the following fiscal year'' in first sentence.

Subsec. (m)(1)(B). Pub. L. 110–315, § 436(e)(1)(A)(ii), substituted ''such second fiscal year'' for ''such fiscal year''.

Subsec. (m)(1)(C). Pub. L. 110–315, § 436(e)(1)(A)(iii), substituted ''end of the second fiscal year following the year in which they entered repayment'' for ''end of the fiscal year immediately following the year in which they entered repayment''.

Subsec. (m)(2)(C). Pub. L. 110–315, § 436(e)(1)(B), substituted ''end of the second fiscal year following the year in which the loan entered repayment is not considered as in default for purposes of this subsection'' for ''end of such following fiscal year is not considered as in default for the purposes of this subsection'' and ''such second fiscal year'' for ''such following fiscal year''.

Subsec. (m)(4). Pub. L. 110–315, § 436(e)(1)(C)(i), substituted ''Collection and reporting of cohort default rates and life of cohort default rates'' for ''Collection and reporting of cohort default rates'' in heading.

Subsec. (m)(4)(A). Pub. L. 110–315, § 436(e)(1)(C)(ii), amended subpar. (A) generally. Prior to amendment, text read as follows: ''The Secretary shall collect data from all insurers under this part and shall publish not less often than once every fiscal year a report showing default data for each category of institution, including (i) 4-year public institutions, (ii) 4-year private institutions, (iii) 2-year public institutions, (iv) 2-year private institutions, (v) 4-year proprietary institutions, (vi) 2-year proprietary institutions, and (vii) less than 2-year proprietary institutions.''

2007—Subsec. (*o*)(1)(A)(ii). Pub. L. 110–84, § 304(1)(A), substituted ''150 percent of the poverty line applicable to the borrower's family size'' for ''100 percent of the poverty line for a family of 2'' and inserted ''or'' after semicolon at end.

Subsec. (*o*)(1)(B), (C). Pub. L. 110–84, § 304(1)(B), (C), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''such borrower is working full-time and has a Federal educational debt burden that equals or exceeds 20 percent of such borrower's adjusted gross income, and the difference between such borrower's adjusted gross income minus such burden is less than 220 percent of the greater of—

''(i) the annual earnings of an individual earning the minimum wage under section 206 of title 29; or

''(ii) the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of title 42) applicable to a family of two; or''.

Subsec. (*o*)(2). Pub. L. 110–84, § 304(2), substituted ''(1)(B)'' for ''(1)(C)''.

Subsec. (p). Pub. L. 110–84, § 304(3), added subsec. (p).

Subsec. (p)(1)(D). Pub. L. 110–109, § 4(1), added subpar. (D) and struck out former subpar. (D) which read as follows: ''a trustee acting as an eligible lender on behalf of a State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (A), (B), or (C).''

Subsec. (p)(2)(A)(i)(II). Pub. L. 110–109, § 4(2)(A), added subcl. (II) and struck out former subcl. (II) which read as follows: ''is a trustee acting as an eligible lender under this chapter on behalf of such a State, political subdivision, authority, agency, instrumentality, or other entity described in subclause (I) of this clause.''

Subsec. (p)(2)(A)(ii). Pub. L. 110–109, § 4(2)(B), inserted ''of'' after ''waive the requirements''.

Subsec. (p)(2)(B). Pub. L. 110–109, § 4(2)(C), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: ''No political subdivision, authority, agency, instrumentality, or other entity described in paragraph (1)(A), (B), or (C) shall be an eligible not-for-profit holder under this chapter if such entity is owned or controlled, in whole or in part, by a for-profit entity.''

Subsec. (p)(2)(C). Pub. L. 110–109, § 4(2)(D), reenacted heading without change and amended text of subpar. (C) generally. Prior to amendment, text read as follows: ''No State, political subdivision, authority, agency, instrumentality, or other entity described in paragraph (1)(A), (B), or (C) shall be an eligible not-for-profit holder under this chapter with respect to any loan, or income from any loan, unless the State, political subdivision, authority, agency, instrumentality, or other entity described in paragraph (1)(A), (B), or (C) is the sole owner of the beneficial interest in such loan and the income from such loan.''

Subsec. (p)(2)(D). Pub. L. 110–109, § 4(2)(E), substituted ''a State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (A), (B), or (C) of paragraph (1), regardless of whether such State, political subdivision, authority, agency, instrumentality, or other entity is an eligible lender under subsection (d),'' for ''an entity described in described in paragraph (1)(A), (B), or (C)''.

Subsec. (p)(2)(E). Pub. L. 110–109, § 4(2)(F), reenacted heading without change and amended text of subpar. (E) generally. Prior to amendment, text read as follows: ''For purposes of subparagraphs (B), (C), and (D) of this paragraph, a State, political subdivision, authority, agency, instrumentality, or other entity described in paragraph (1)(A), (B), or (C) shall not—

''(i) be deemed to be owned or controlled, in whole or in part, by a for-profit entity, or

''(ii) lose its status as the sole owner of a beneficial interest in a loan and the income from a loan by that political subdivision, authority, agency, instrumentality, or other entity,

by granting a security interest in, or otherwise pledging as collateral, such loan, or the income from such loan, to secure a debt obligation in the operation of an arrangement described in paragraph (1)(D).''

2006—Subsec. (d)(2). Pub. L. 109–171 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''To be an eligible lender under this part, an eligible institution—

''(A) shall employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending such institution;

''(B) shall not be a home study school;

''(C) shall make loans to not more than 50 percent of the undergraduate students at the institution;

''(D) shall not make a loan, other than a loan to a graduate or professional student, unless the borrower has previously received a loan from the school or has been denied a loan by an eligible lender;

''(E) shall not have a cohort default rate (as defined in subsection (m) of this section) greater than 15 percent; and

''(F) shall use the proceeds from special allowance payments and interest payments from borrowers for need-based grant programs, except for reasonable reimbursement for direct administrative expenses;

except that the requirements of subparagraphs (C) and (D) shall not apply with respect to loans made, and loan commitments made, after October 17, 1986, and prior to July 1, 1987.''

Subsec. (d)(7). Pub. L. 109–292 added par. (7).

2000—Subsec. (a)(2)(D). Pub. L. 106–554, § 1(a)(1) [title III, § 308(a)], added subpar. (D).

Subsec. (a)(5)(A)(i). Pub. L. 106–554, § 1(a)(1) [title III, § 312(1)], substituted ''July 1, 2004,'' for ''July 1, 2002,''.

Subsec. (a)(5)(B). Pub. L. 106–554, § 1(a)(1) [title III, § 312(2)], substituted ''1999 through 2003'' for ''1999, 2000, and 2001'' in introductory provisions.

1998—Subsec. (a)(1). Pub. L. 105–244, § 102(b)(2), substituted ''section 1002'' for ''section 1088''.

Subsec. (a)(2)(A). Pub. L. 105–244, § 429(a)(1)(A)(i), (ii), struck out ''or'' at end of cl. (i), added cls. (ii) and (iii), and struck out former cl. (ii) which read as follows: ''there are, in the judgment of the Secretary, exceptional mitigating circumstances that would make the application of this paragraph inequitable.''

Pub. L. 105–244, § 429(a)(1)(A)(iii), inserted at end of concluding provisions ''If an institution continues to participate in a program under this part, and the institution's appeal of the loss of eligibility is unsuccessful, the institution shall be required to pay to the Secretary an amount equal to the amount of interest, special allowance, reinsurance, and any related payments made by the Secretary (or which the Secretary is obligated to make) with respect to loans made under this part to students attending, or planning to attend, that institution during the pendency of such appeal.''

Subsec. (a)(2)(C). Pub. L. 105–244, § 429(a)(1)(B), substituted ''July 1, 1999,'' for ''July 1, 1998,'' in introductory provisions.

Subsec. (a)(2)(C)(ii). Pub. L. 105–244, § 901(d), made technical amendment to reference in original act which appears in text as reference to section 1801(a)(4) of title 25.

Subsec. (a)(3). Pub. L. 105–244, § 429(a)(2), in concluding provisions, inserted ''for a reasonable period of time, not to exceed 30 days,'' after ''access'' and substituted ''used by a guaranty agency in determining whether to pay a claim on a defaulted loan or by the Department in determining an institution's default rate in the loan program under part C of this subchapter'' for ''of the affected guaranty agencies and

loan servicers for a reasonable period of time, not to exceed 30 days''.

Subsec. (a)(4) to (6). Pub. L. 105–244, § 429(a)(3), added pars. (4) to (6).

Subsec. (d)(1)(A)(ii)(III). Pub. L. 105–244, § 429(b)(1)(A), added subcl. (III).

Subsec. (d)(1)(K). Pub. L. 105–244, § 429(b)(1)(B)–(D), added subpar. (K).

Subsec. (d)(5). Pub. L. 105–244, § 429(b)(2), inserted concluding provisions.

Subsec. (*l*). Pub. L. 105–244, § 429(c)(1), substituted ''270 days'' for ''180 days'' and ''330 days'' for ''240 days''.

Subsec. (m)(1)(B). Pub. L. 105–244, § 429(d)(1), substituted ''insurance. In considering appeals with respect to cohort default rates pursuant to subsection (a)(3) of this section, the Secretary shall exclude, from the calculation of the number of students who entered repayment and from the calculation of the number of students who default,'' for ''insurance, and, in considering appeals with respect to cohort default rates pursuant to subsection (a)(3) of this section, exclude''.

Subsec. (m)(2)(C). Pub. L. 105–244, § 429(d)(2), inserted at end ''The Secretary may require guaranty agencies to collect data with respect to defaulted loans in a manner that will permit the identification of any defaulted loan for which (i) the borrower is currently making payments and has made not less than 6 consecutive on-time payments by the end of such following fiscal year, and (ii) a guaranty agency has renewed the borrower's title IV eligibility as provided in section 1078–6(b) of this title.''

Subsec. (m)(4)(D). Pub. L. 105–244, § 429(d)(3), added subpar. (D).

1996—Subsec. (d)(1)(F). Pub. L. 104–208, § 101(e) [title VI, § 602(b)(1)(A)(i)], inserted ''or the Holding Company of the Student Loan Marketing Association, including any subsidiary of the Holding Company, created pursuant to section 1087–3 of this title,'' after ''Student Loan Marketing Association''.

Subsec. (d)(1)(G). Pub. L. 104–208, § 101(e) [title VI, § 602(b)(1)(A)(ii)], inserted ''or the Holding Company of the Student Loan Marketing Association, including any subsidiary of the Holding Company, created pursuant to section 1087–3 of this title'' after ''Student Loan Marketing Association''.

1994—Subsec. (a)(2)(C). Pub. L. 103–235 substituted ''July 1, 1998'' for ''July 1, 1994''.

Subsec. (*o*)(1). Pub. L. 103–382, § 357(1)–(3), struck out ''or'' at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (*o*)(2). Pub. L. 103–382, § 357(4), substituted ''(1)(C)'' for ''(1)(B)''.

1993—Subsec. (a)(3). Pub. L. 103–208, § 2(c)(55), added par. (3).

Subsec. (d)(1). Pub. L. 103–66, § 4106(b)(1), in par. (1) substituted ''through (6)'' for ''through (5)'' in introductory provisions.

Subsec. (d)(2). Pub. L. 103–208, § 2(c)(57), realigned margins of closing provisions.

Subsec. (d)(2)(D). Pub. L. 103–208, § 2(c)(56), substituted ''lender;'' for ''lender; and''.

Subsec. (d)(3). Pub. L. 103–208, § 2(c)(58), substituted ''subsection (m)'' for ''subsection (*o*)''.

Subsec. (d)(6). Pub. L. 103–66, § 4106(b)(2), added par. (6).

Subsec. (m)(1). Pub. L. 103–66, § 4046(b)(1)(C), which directed the insertion in par. (1)(D) of ''(or the portion of a loan made under section 1078–3 of this title that is used to repay a loan made under such section)'' after ''section 1078–1 of this title'' the first place it appears, and ''(or a loan made under section 1078–3 of this title a portion of which is used to repay a loan made under such section)'' after ''section 1078–1 of this title'' the second place it appears, could not be executed because subsec. (m)(1) does not contain a subpar. (D).

Subsec. (m)(1)(A). Pub. L. 103–208, § 2(c)(60)(A), inserted at end ''The Secretary shall require that each guaranty agency that has insured loans for current or former students of the institution afford such institution a reasonable opportunity (as specified by the Secretary) to review and correct errors in the information required to be provided to the Secretary by the guaranty agency for the purposes of calculating a cohort default rate for such institution, prior to the calculation of such rate.''

Pub. L. 103–208, § 2(c)(59), substituted ''section 1078, 1078–1, or 1078–8'' for ''section 1078 or 1078–1''.

Pub. L. 103–66, § 4046(b)(1)(A), inserted ''(or on the portion of a loan made under section 1078–3 of this title that is used to repay any such loans)'' after ''on such loans''.

Subsec. (m)(1)(B). Pub. L. 103–208, § 2(c)(60)(B), substituted ''and, in considering appeals with respect to cohort default rates pursuant to subsection (a)(3) of this section, exclude any loans which, due to improper servicing or collection, would, as demonstrated by the evidence submitted in support of the institution's timely appeal to the Secretary, result in an inaccurate or incomplete calculation of such cohort default rate.'' for ''and, in calculating the cohort default rate, exclude any loans which, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate.''

Subsec. (m)(1)(C). Pub. L. 103–66, § 4046(b)(1)(B), inserted ''(or on the portion of a loan made under section 1078–3 of this title that is used to repay any such loans)'' after ''on such loans''.

Subsec. (m)(2)(D). Pub. L. 103–208, § 2(c)(61), inserted ''(or the portion of a loan made under section 1078–3 of this title that is used to repay a loan made under section 1078–1 of this title)'' after ''in accordance with section 1078–1 of this title'', and ''(or a loan made under section 1078–3 of this title a portion of which is used to repay a loan made under section 1078–1 of this title)'' after ''a loan made under section 1078–1 of this title''.

Subsec. (m)(4). Pub. L. 103–208, § 2(c)(62), added par. (4).

1992—Subsec. (a)(1). Pub. L. 102–325, § 427(a)(1), added par. (1) and struck out former par. (1) which read as follows: ''Subject to subsection (n) of this section, the term 'eligible institution' means—

''(A) an institution of higher education;

''(B) a vocational school; or

''(C) with respect to students who are nationals of the United States, an institution outside the United States which is comparable to an institution of higher education or to a vocational school and which has been approved by the Secretary for the purpose of this part,

except that such term does not include any such institution or school which employs or uses commissioned salesmen to promote the availability of any loan program described in section 1078(a)(1), 1078–1, or 1078–2 of this title at that institution or school.''

Subsec. (a)(2). Pub. L. 102–325, § 427(a)(3), struck out ''and'' at end of subpar. (B)(i), substituted ''fiscal year 1993; and'' for ''any succeeding fiscal year.'' in subpar. (B)(ii), and added subpar. (B)(iii).

Pub. L. 102–325, § 427(a)(1), (2), redesignated par. (3) as (2) and struck out former par. (2) which required Secretary to establish criteria for qualifying foreign medical schools as ''eligible institutions''.

Subsec. (a)(3). Pub. L. 102–325, § 427(a)(2), redesignated par. (3) as (2).

Subsec. (b). Pub. L. 102–325, § 427(b)(1), struck out subsec. (b) which defined ''institution of higher education''.

Subsec. (c). Pub. L. 102–325, § 427(c), struck out subsec. (c) which defined ''vocational school''.

Subsec. (d)(1)(A). Pub. L. 102–325, § 427(d)(1), in introductory provisions, struck out ''a trust company,'' after ''stock savings bank,'' and in cl. (ii), inserted at end of subcl. (I) ''or a bank which is subject to examination and supervision by an agency of the United States, makes student loans as a trustee pursuant to an express trust, operated as a lender under this part prior to January 1, 1975, and which meets the requirements of this provision prior to July 23, 1992, or'' and substituted a semicolon for ''or (III) it is a trust company which makes student loans as a trustee pursuant to an ex-

press trust and which operated as a lender under this part prior to January 1, 1981;''.

Subsec. (d)(2)(E), (F). Pub. L. 102–325, § 427(d)(2), added subpars. (E) and (F).

Subsec. (f). Pub. L. 102–325, § 427(e), inserted ''servicing and'' before ''collection practices''.

Subsecs. (g), (h). Pub. L. 102–325, § 427(f), struck out subsec. (g) which defined ''temporarily totally disabled'' and subsec. (h) which defined ''parental leave''.

Subsec. (m). Pub. L. 102–325, § 427(g), amended subsec. (m) generally, revising and restating as pars. (1) to (3) provisions formerly contained in a single paragraph.

Subsec. (n). Pub. L. 102–325, § 427(f), struck out subsec. (n) which related to impact of loss of accreditation on certification or recertification as an eligible institution.

Subsec. (*o*). Pub. L. 102–325, § 416(e)(2), added subsec. (*o*).

1991—Subsec. (c)(1). Pub. L. 102–26 substituted ''or who are beyond the age of compulsory school attendance in the State in which the institution is located'' for ''and who have the ability to benefit (as determined by the institution under section 1088(d) of this title) from the training offered by such institution;''.

1990—Subsec. (a)(3). Pub. L. 101–508 added par. (3).

Subsec. (*l*). Pub. L. 101–542, § 301(1), substituted ''Except as provided in subsection (m) of this section, the term'' for ''The term''.

Subsec. (m). Pub. L. 101–542, § 301(2), inserted after first sentence ''In determining the number of students who default before the end of such fiscal year, the Secretary shall include only loans for which the Secretary or a guaranty agency has paid claims for insurance, and, in calculating the cohort default rate, exclude any loans which, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate.''

1989—Subsec. (a)(1). Pub. L. 101–239, § 2007(a)(1), substituted ''Subject to subsection (n) of this section, the term'' for ''The term''.

Subsec. (m). Pub. L. 101–239, § 2003(a)(2), added subsec. (m).

Subsec. (n). Pub. L. 101–239, § 2007(a)(2), added subsec. (n).

1987—Subsec. (b)(3). Pub. L. 100–50, § 10(aa)(1), inserted '', or in the case of a hospital or health care facility, which provides training of not less than one year for graduates of accredited health professions programs, leading to a degree or certificate upon completion of such training'' before semicolon at end.

Subsec. (d)(1)(J). Pub. L. 100–50, § 10(aa)(2), added subpar. (J).

Subsec. (d)(2). Pub. L. 100–50, § 10(aa)(3), added subpars. (C) and (D) and inserted concluding provision that the requirements of subpars. (C) and (D) not apply with respect to loans made, and loan commitments made, after Oct. 17, 1986, and prior to July 1, 1987.

Subsec. (g)(2). Pub. L. 100–50, § 10(aa)(4), added par. (2) and struck out former par. (2) which read as follows: ''Such term when used with respect to the disabled dependent of a single parent borrower means a dependent who, by reason of injury or illness, cannot be expected to be able to attend school or to be gainfully employed during a period of injury or illness of not less than 3 months and who during such period requires continuous nursing or similar services.''

Subsec. (h). Pub. L. 100–50, § 10(aa)(5), struck out ''Definition of'' before ''Parental'' in heading.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–152 effective July 1, 2010, see section 2101(c) of Pub. L. 111–152, set out as a note under section 1070a of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, § 436(a)(2), Aug. 14, 2008, 122 Stat. 3254, provided that: ''The amendment made by paragraph (1)(F) [amending this section] shall take effect for fiscal years beginning on or after October 1, 2011.''

Pub. L. 110–315, title IV, § 436(e)(2), Aug. 14, 2008, 122 Stat. 3257, provided that:

''(A) EFFECTIVE DATE.—The amendments made by paragraph (1) [amending this section] shall take effect for purposes of calculating cohort default rates for fiscal year 2009 and succeeding fiscal years.

''(B) TRANSITION.—Notwithstanding subparagraph (A), the method of calculating cohort default rates under section 435(m) of the Higher Education Act of 1965 [20 U.S.C. 1085(m)] as in effect on the day before the date of enactment of this Act [Aug. 14, 2008] shall continue in effect, and the rates so calculated shall be the basis for any sanctions imposed on institutions of higher education because of their cohort default rates, until three consecutive years of cohort default rates calculated in accordance with the amendments made by paragraph (1) are available.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–84 effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as a note under section 1070a of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–292, § 3(b), Sept. 30, 2006, 120 Stat. 1341, provided that: ''The amendment made by subsection (a) [amending this section] shall not apply with respect to any loan under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.) disbursed before January 1, 2007.''

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(1) [title III, § 308(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–45, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be effective for cohort default rate calculations for fiscal years 1997 and 1998.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by sections 102(b)(2) and 429(a), (b), (d) of Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

Pub. L. 105–244, title IV, § 429(c)(2), Oct. 7, 1998, 112 Stat. 1708, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to loans for which the first day of delinquency occurs on or after the date of enactment of this Act [Oct. 7, 1998].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective on reorganization effective date as defined in section 1087–3(h) of this title, see section 101(e) [title VI, § 602(b)(1)(B)] of Pub. L. 104–208, set out as a note under section 1078–3 of this title.

EFFECTIVE DATE OF 1993 AMENDMENTS

Amendments by section 2(c)(55), (60)(B) of Pub. L. 103–208 applicable with respect to determination (and appeals from determinations) of cohort default rates for fiscal year 1989 and any succeeding fiscal year, amendments by section 2(c)(56)–(58), (61) of Pub. L. 103–208 effective, except as otherwise provided, as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, amendment by section 2(c)(59) of Pub. L. 103–208 effective on and after 30 days after Dec. 20, 1993, amendment by section 2(c)(60)(A) of Pub. L. 103–208

effective on and after Oct. 1, 1994, and amendment by section 2(c)(62) effective on and after Dec. 20, 1993, see section 5(a), (b)(2), (3), (7), (8) of Pub. L. 103–208, set out as a note under section 1051 of this title.

Amendment by section 4046(b)(1) of Pub. L. 103–66 effective July 1, 1994, see section 4046(c) of Pub. L. 103–66, set out as a note under section 1078–3 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 2(d)(1) of Pub. L. 102–26 provided that: ''The amendments made by this section [amending this section and sections 1078–1, 1088, 1091, 1094, and 1141 of this title] shall apply to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after July 1, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 3004(d) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section, section 1078 of this title, and provisions set out as a note under section 1078–1 of this title] shall be effective July 1, 1991, except that the amendment made by subsection (b) [amending section 1078 of this title] shall be effective upon enactment.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1986, with subsec. (d)(5) of this section effective 30 days after Oct. 17, 1986, see section 402(b) of Pub. L. 99–498, set out as a note under section 1071 of this title.

DEFINITION OF INSTITUTION OF HIGHER EDUCATION

Section 427(b)(2) of Pub. L. 102–325 provided that: ''With respect to reference in any other provision of law to the definition of institution of higher education contained in section 435(b) of the Act [former 20 U.S.C. 1085(b)], such provision shall be deemed to refer to section 481(a) of the Act [former 20 U.S.C. 1088(a)].''

§ 1086. Delegation of functions

(a) In general

An eligible lender or guaranty agency that contracts with another entity to perform any of the lender's or agency's functions under this subchapter and part C of subchapter I of chapter 34 of title 42, or otherwise delegates the performance of such functions to such other entity—

(1) shall not be relieved of the lender's or agency's duty to comply with the requirements of this subchapter and part C of subchapter I of chapter 34 of title 42; and

(2) shall monitor the activities of such other entity for compliance with such requirements.

(b) Special rule

A lender that holds a loan made under this part in the lender's capacity as a trustee is responsible for complying with all statutory and regulatory requirements imposed on any other holder of a loan made under this part.

(Pub. L. 89–329, title IV, § 436, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1413; amended Pub. L. 105–244, title IV, § 430, Oct. 7, 1998, 112 Stat. 1709.)

PRIOR PROVISIONS

A prior section 1086, Pub. L. 89–329, title IV, § 436, as added Pub. L. 89–752, § 12, Nov. 3, 1966, 80 Stat. 1244; amended Pub. L. 90–575, title I, § 116(b)(5), Oct. 16, 1968, 82 Stat. 1024; Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2132; Pub. L. 96–374, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1503, related to a District of Columbia student loan insurance program, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

1998—Pub. L. 105–244 amended section catchline and text generally. Prior to amendment, section authorized establishment of a District of Columbia student loan insurance program.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

§ 1087. Repayment by Secretary of loans of bankrupt, deceased, or disabled borrowers; treatment of borrowers attending schools that fail to provide a refund, attending closed schools, or falsely certified as eligible to borrow

(a) Repayment in full for death and disability

(1) In general

If a student borrower who has received a loan described in subparagraph (A) or (B) of section 1078(a)(1) of this title dies or becomes permanently and totally disabled (as determined in accordance with regulations of the Secretary), or if a student borrower who has received such a loan is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months then the Secretary shall discharge the borrower's liability on the loan by repaying the amount owed on the loan. The Secretary may develop such safeguards as the Secretary determines necessary to prevent fraud and abuse in the discharge of liability under this subsection. Notwithstanding any other provision of this subsection, the Secretary may promulgate regulations to reinstate the obligation of, and resume collection on, loans discharged under this subsection in any case in which—

(A) a borrower received a discharge of liability under this subsection and after the discharge the borrower—

(i) receives a loan made, insured, or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42; or

(ii) has earned income in excess of the poverty line; or

(B) the Secretary determines the reinstatement and resumption to be necessary.

(2) Disability determinations

A borrower who has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected condition and who provides documentation of such determination to the Secretary of Education, shall be considered permanently and totally disabled for the purpose of discharging such bor-

rower's loans under this subsection, and such borrower shall not be required to present additional documentation for purposes of this subsection.

(b) Payment of claims on loans in bankruptcy

The Secretary shall pay to the holder of a loan described in section 1078(a)(1)(A) or (B), 1078–1,[1] 1078–2, 1078–3, or 1078–8 of this title, the amount of the unpaid balance of principal and interest owed on such loan—

(1) when the borrower files for relief under chapter 12 or 13 of title 11;

(2) when the borrower who has filed for relief under chapter 7 or 11 of such title commences an action for a determination of dischargeability under section 523(a)(8)(B) of such title; or

(3) for loans described in section 523(a)(8)(A) of such title, when the borrower files for relief under chapter 7 or 11 of such title.

(c) Discharge

(1) In general

If a borrower who received, on or after January 1, 1986, a loan made, insured, or guaranteed under this part and the student borrower, or the student on whose behalf a parent borrowed, is unable to complete the program in which such student is enrolled due to the closure of the institution or if such student's eligibility to borrow under this part was falsely certified by the eligible institution or was falsely certified as a result of a crime of identity theft, or if the institution failed to make a refund of loan proceeds which the institution owed to such student's lender, then the Secretary shall discharge the borrower's liability on the loan (including interest and collection fees) by repaying the amount owed on the loan and shall subsequently pursue any claim available to such borrower against the institution and its affiliates and principals or settle the loan obligation pursuant to the financial responsibility authority under subpart 3 of part G of this subchapter. In the case of a discharge based upon a failure to refund, the amount of the discharge shall not exceed that portion of the loan which should have been refunded. The Secretary shall report to the authorizing committees annually as to the dollar amount of loan discharges attributable to failures to make refunds.

(2) Assignment

A borrower whose loan has been discharged pursuant to this subsection shall be deemed to have assigned to the United States the right to a loan refund up to the amount discharged against the institution and its affiliates and principals.

(3) Eligibility for additional assistance

The period of a student's attendance at an institution at which the student was unable to complete a course of study due to the closing of the institution shall not be considered for purposes of calculating the student's period of eligibility for additional assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(4) Special rule

A borrower whose loan has been discharged pursuant to this subsection shall not be precluded from receiving additional grants, loans, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 for which the borrower would be otherwise eligible (but for the default on such discharged loan). The amount discharged under this subsection shall be treated the same as loans under section 1087ee(a)(5) of this title.

(5) Reporting

The Secretary shall report to consumer reporting agencies with respect to loans which have been discharged pursuant to this subsection.

(d) Repayment of loans to parents

If a student on whose behalf a parent has received a loan described in section 1078–2 of this title dies, then the Secretary shall discharge the borrower's liability on the loan by repaying the amount owed on the loan.

(Pub. L. 89–329, title IV, § 437, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1414; amended Pub. L. 102–325, title IV, § 428, July 23, 1992, 106 Stat. 551; Pub. L. 103–208, § 2(c)(63)–(65), Dec. 20, 1993, 107 Stat. 2469; Pub. L. 105–244, title IV, § 431, Oct. 7, 1998, 112 Stat. 1709; Pub. L. 109–171, title VIII, § 8012, Feb. 8, 2006, 120 Stat. 166; Pub. L. 110–315, title I, § 103(b)(7), title IV, §§ 432(b)(4), 437(a), (b), Aug. 14, 2008, 122 Stat. 3089, 3246, 3257, 3258; Pub. L. 111–39, title IV, § 402(e)(1), July 1, 2009, 123 Stat. 1942.)

REFERENCES IN TEXT

Section 1078–1 of this title, referred to in subsec. (b), was repealed by Pub. L. 103–66, title IV, § 4047(b)–(d), Aug. 10, 1993, 107 Stat. 364, eff. July 1, 1994, except with respect to loans provided under that section as it existed prior to Aug. 10, 1993. Subsequently, a new section 1078–1, relating to voluntary flexible agreements with guaranty agencies, was enacted by Pub. L. 105–244, title IV, § 418, Oct. 7, 1998, 112 Stat. 1691.

PRIOR PROVISIONS

A prior section 1087, Pub. L. 89–329, title IV, § 437, as added Pub. L. 90–575, title I, § 113(a), Oct. 16, 1968, 82 Stat. 1020; amended Pub. L. 92–318, title I, § 132D(a), June 23, 1972, 86 Stat. 263; Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2133; Pub. L. 96–374, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1503, related to repayment of loans by Secretary, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111–39 substituted "Secretary), or if" for "Secretary),, or if" in introductory provisions and inserted "the reinstatement and resumption to be" after "determines" in subpar. (B).

2008—Subsec. (a). Pub. L. 110–315, § 437(a)(3), which directed insertion of "The Secretary may develop such safeguards as the Secretary determines necessary to prevent fraud and abuse in the discharge of liability under this subsection. Notwithstanding any other provision of this subsection, the Secretary may promulgate regulations to reinstate the obligation of, and resume collection on, loans discharged under this subsection in any case in which—

"(A) a borrower received a discharge of liability under this subsection and after the discharge the borrower—

"(i) receives a loan made, insured, or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42; or

[1] See References in Text note below.

''(ii) has earned income in excess of the poverty line; or

''(B) the Secretary determines necessary.''

at the end of subsec. (a), was executed by making the insertion at the end of par. (1) to reflect the probable intent of Congress, notwithstanding the addition of par. (2) prior to the effective date of this amendment.

Pub. L. 110–315, § 437(a)(1), (2), designated existing provisions as par. (1), inserted par. (1) heading, and inserted '', or if a student borrower who has received such a loan is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months'' after ''of the Secretary),''.

Subsec. (a)(2). Pub. L. 110–315, § 437(b), added par. (2).

Subsec. (c)(1). Pub. L. 110–315, § 103(b)(7), substituted ''authorizing committees'' for ''Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate''.

Subsec. (c)(5). Pub. L. 110–315, § 432(b)(4), substituted ''consumer reporting agencies'' for ''credit bureaus''.

2006—Pub. L. 109–171, § 8012(1), in section catchline, substituted ''schools that fail to provide a refund, attending closed schools, or falsely certified as eligible to borrow'' for ''closed schools or falsely certified as eligible to borrow''.

Subsec. (c)(1). Pub. L. 109–171, § 8012(2), inserted ''or was falsely certified as a result of a crime of identity theft'' after ''falsely certified by the eligible institution'' in first sentence.

1998—Subsec. (c)(1). Pub. L. 105–244 inserted ''or if the institution failed to make a refund of loan proceeds which the institution owed to such student's lender,'' after ''falsely certified by the eligible institution,'' and inserted at end ''In the case of a discharge based upon a failure to refund, the amount of the discharge shall not exceed that portion of the loan which should have been refunded. The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate annually as to the dollar amount of loan discharges attributable to failures to make refunds.''

1993—Subsec. (b). Pub. L. 103–208, § 2(c)(63), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''If the collection of a loan described in subparagraph (A) or (B) of section 1078(a)(1) of this title or sections 1078–1, 1078–2, 1078–3, or 1078–8 of this title is stayed in any action under title 11, the Secretary shall repay the unpaid balance of principal and interest owed on the loan.''

Subsec. (c)(1). Pub. L. 103–208, § 2(c)(64), substituted ''If a borrower'' for ''If a student borrower'', ''under this part and the student borrower, or the student on whose behalf a parent borrowed, is unable'' for ''under this part is unable'', and ''in which such student is enrolled'' for ''in which the borrower is enrolled''.

Subsec. (c)(4). Pub. L. 103–208, § 2(c)(65), inserted at end ''The amount discharged under this subsection shall be treated the same as loans under section 1087ee(a)(5) of this title.''

1992—Pub. L. 102–325 amended section generally, substituting subsecs. (a) to (d) for former subsecs. (a) and (b) which related to repayment by Secretary of loans of bankrupt, deceased, or disabled borrowers.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–39, title IV, § 402(e)(2), July 1, 2009, 123 Stat. 1943, provided that: ''The amendments made by paragraph (1) [amending this section] shall be effective as if enacted as part of the amendments in section 437(a) of the Higher Education Opportunity Act (Public Law 110–315) [amending this section], and shall take effect on July 1, 2010.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, § 437(c), Aug. 14, 2008, 122 Stat. 3258, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on July 1, 2010.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

§ 1087–0. Repealed. Pub. L. 105–244, title IV, § 432, Oct. 7, 1998, 112 Stat. 1710

Section, Pub. L. 89–329, title IV, § 437A, as added Pub. L. 102–325, title IV, § 429, July 23, 1992, 106 Stat. 552; amended Pub. L. 103–208, § 2(c)(66)–(68), Dec. 20, 1993, 107 Stat. 2469, related to debt management options.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

§ 1087–1. Special allowances

(a) Findings

In order to assure (1) that the limitation on interest payments or other conditions (or both) on loans made or insured under this part, do not impede or threaten to impede the carrying out of the purposes of this part or do not cause the return to holders of loans to be less than equitable, (2) that incentive payments on such loans are paid promptly to eligible lenders, and (3) that appropriate consideration of relative administrative costs and money market conditions is made in setting the quarterly rate of such payments, the Congress finds it necessary to establish an improved method for the determination of the quarterly rate of the special allowances on such loans, and to provide for a thorough, expeditious, and objective examination of alternative methods for the determination of the quarterly rate of such allowances.

(b) Computation and payment

(1) Quarterly payment based on unpaid balance

A special allowance shall be paid for each of the 3-month periods ending March 31, June 30, September 30, and December 31 of every year and the amount of such allowance paid to any holder with respect to any 3-month period shall be a percentage of the average unpaid balance of principal (not including unearned interest added to principal) of all eligible loans held by such holder during such period.

(2) Rate of special allowance

(A) Subject to subparagraphs (B), (C), (D), (E), (F), (G), (H), and (I) and paragraph (4), the special allowance paid pursuant to this sub-

section on loans shall be computed (i) by determining the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 3-month period, (ii) by subtracting the applicable interest rate on such loans from such average, (iii) by adding 3.10 percent to the resultant percent, and (iv) by dividing the resultant percent by 4. If such computation produces a number less than zero, such loans shall be subject to section 1077a(i) of this title.

(B)(i) The quarterly rate of the special allowance for holders of loans which were made or purchased with funds obtained by the holder from the issuance of obligations, the income from which is exempt from taxation under title 26 shall be one-half the quarterly rate of the special allowance established under subparagraph (A), except that, in determining the rate for the purpose of this clause, subparagraph (A)(iii) shall be applied by substituting ''3.5 percent'' for ''3.10 percent''. Such rate shall also apply to holders of loans which were made or purchased with funds obtained by the holder from collections or default reimbursements on, or interests or other income pertaining to, eligible loans made or purchased with funds described in the preceding sentence of this subparagraph or from income on the investment of such funds. This subparagraph shall not apply to loans which were made or insured prior to October 1, 1980.

(ii) The quarterly rate of the special allowance set under clause (i) of this subparagraph shall not be less than 9.5 percent minus the applicable interest rate on such loans, divided by 4.

(iii) No special allowance may be paid under this subparagraph unless the issuer of such obligations complies with subsection (d) of this section.

(iv) Notwithstanding clauses (i) and (ii), the quarterly rate of the special allowance for holders of loans which are financed with funds obtained by the holder from the issuance of obligations originally issued on or after October 1, 1993, or refunded after September 30, 2004, the income from which is excluded from gross income under title 26, shall be the quarterly rate of the special allowance established under subparagraph (A), (E), (F), (G), (H), or (I) as the case may be. Such rate shall also apply to holders of loans which were made or purchased with funds obtained by the holder from collections or default reimbursements on, or interest or other income pertaining to, eligible loans made or purchased with funds described in the preceding sentence of this subparagraph or from income on the investment of such funds.

(v) Notwithstanding clauses (i) and (ii), the quarterly rate of the special allowance shall be the rate determined under subparagraph (A), (E), (F), (G), (H), or (I) of this paragraph, or paragraph (4), as the case may be, for a holder of loans that—

(I) were made or purchased with funds—

(aa) obtained from the issuance of obligations the income from which is excluded from gross income under title 26 and which obligations were originally issued before October 1, 1993; or

(bb) obtained from collections or default reimbursements on, or interest or other income pertaining to, eligible loans made or purchased with funds described in division (aa), or from income on the investment of such funds; and

(II) are—

(aa) financed by such an obligation that, after September 30, 2004, has matured or been retired or defeased;

(bb) refinanced after September 30, 2004, with funds obtained from a source other than funds described in subclause (I) of this clause; or

(cc) sold or transferred to any other holder after September 30, 2004.

(vi) Notwithstanding clauses (i), (ii), and (v), but subject to clause (vii), the quarterly rate of the special allowance shall be the rate determined under subparagraph (A), (E), (F), (G), (H), or (I) of this paragraph, as the case may be, for a holder of loans—

(I) that were made or purchased on or after February 8, 2006; or

(II) that were not earning a quarterly rate of special allowance determined under clauses (i) or (ii) of subparagraph (B) of this paragraph as of February 8, 2006.

(vii) Clause (vi) shall be applied by substituting ''December 31, 2010'' for ''February 8, 2006'' in the case of a holder of loans that—

(I) was, as of February 8, 2006, and during the quarter for which the special allowance is paid, a unit of State or local government or a nonprofit private entity;

(II) was, as of February 8, 2006, and during such quarter, not owned or controlled by, or under common ownership or control with, a for-profit entity; and

(III) held, directly or through any subsidiary, affiliate, or trustee, a total unpaid balance of principal equal to or less than $100,000,000 on loans for which special allowances were paid under this subparagraph in the most recent quarterly payment prior to September 30, 2005.

(C)(i) In the case of loans made before October 1, 1992, pursuant to section 1078–1[1] or 1078–2 of this title for which the interest rate is determined under section 1077a(c)(4) of this title, a special allowance shall not be paid unless the rate determined for any 12-month period under subparagraph (B) of such section exceeds 12 percent.

(ii) Subject to subparagraphs (G), (H), and (I), in the case of loans disbursed on or after October 1, 1992, pursuant to section 1078–1[1] or 1078–2 of this title for which the interest rate is determined under section 1077a(c)(4) of this title, a special allowance shall not be paid unless the rate determined for any 12-month period under section 1077a(c)(4)(B) of this title exceeds—

(I) 11 percent in the case of a loan under section 1078–1[1] of this title; or

(II) 10 percent in the case of a loan under section 1078–2 of this title.

[1] See References in Text note below.

(D)(i) In the case of loans made or purchased directly from funds loaned or advanced pursuant to a qualified State obligation, subparagraph (A)(iii) shall be applied by substituting ''3.5 percent'' for ''3.10 percent''.

(ii) For the purpose of division (i) of this subparagraph, the term ''qualified State obligation'' means—

(I) an obligation of the Maine Educational Loan Marketing Corporation to the Student Loan Marketing Association pursuant to an agreement entered into on January 31, 1984; or

(II) an obligation of the South Carolina Student Loan Corporation to the South Carolina National Bank pursuant to an agreement entered into on July 30, 1986.

(E) In the case of any loan for which the applicable rate of interest is described in section 1077a(g)(2) of this title, subparagraph (A)(iii) shall be applied by substituting ''2.5 percent'' for ''3.10 percent''.

(F) Subject to paragraph (4), the special allowance paid pursuant to this subsection on loans for which the applicable rate of interest is determined under section 1077a(h) of this title shall be computed (i) by determining the applicable bond equivalent rate of the security with a comparable maturity, as established by the Secretary, (ii) by subtracting the applicable interest rates on such loans from such applicable bond equivalent rate, (iii) by adding 1.0 percent to the resultant percent, and (iv) by dividing the resultant percent by 4. If such computation produces a number less than zero, such loans shall be subject to section 1077a(i) of this title.

(G) LOANS DISBURSED BETWEEN JULY 1, 1998, AND OCTOBER 1, 1998.—

(i) IN GENERAL.—Subject to paragraph (4) and clauses (ii), (iii), and (iv) of this subparagraph, and except as provided in subparagraph (B), the special allowance paid pursuant to this subsection on loans for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, shall be computed—

(I) by determining the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 3-month period;

(II) by subtracting the applicable interest rates on such loans from such average bond equivalent rate;

(III) by adding 2.8 percent to the resultant percent; and

(IV) by dividing the resultant percent by 4.

(ii) IN SCHOOL AND GRACE PERIOD.—In the case of any loan for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, and for which the applicable rate of interest is described in section 1077a(j)(2) of this title, clause (i)(III) of this subparagraph shall be applied by substituting ''2.2 percent'' for ''2.8 percent''.

(iii) PLUS LOANS.—In the case of any loan for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, and for which the applicable rate of interest is described in section 1077a(j)(3) of this title, clause (i)(III) of this subparagraph shall be applied by substituting ''3.1 percent'' for ''2.8 percent'', subject to clause (v) of this subparagraph.

(iv) CONSOLIDATION LOANS.—This subparagraph shall not apply in the case of any consolidation loan.

(v) LIMITATION ON SPECIAL ALLOWANCES FOR PLUS LOANS.—In the case of PLUS loans made under section 1078–2 of this title and disbursed on or after July 1, 1998, and before October 1, 1998, for which the interest rate is determined under 1077a(j)(3) of this title, a special allowance shall not be paid for such loan for such[2] unless the rate determined under subparagraph (A) of such section (without regard to subparagraph (B) of such section) exceeds 9.0 percent.

(H) LOANS DISBURSED ON OR AFTER OCTOBER 1, 1998, AND BEFORE JANUARY 1, 2000.—

(i) IN GENERAL.—Subject to paragraph (4) and clauses (ii), (iii), and (iv) of this subparagraph, and except as provided in subparagraph (B), the special allowance paid pursuant to this subsection on loans for which the first disbursement is made on or after October 1, 1998, and before January 1, 2000, shall be computed—

(I) by determining the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 3-month period;

(II) by subtracting the applicable interest rates on such loans from such average bond equivalent rate;

(III) by adding 2.8 percent to the resultant percent; and

(IV) by dividing the resultant percent by 4.

(ii) IN SCHOOL AND GRACE PERIOD.—In the case of any loan for which the first disbursement is made on or after October 1, 1998, and before January 1, 2000, and for which the applicable rate of interest is described in section 1077a(k)(2) of this title, clause (i)(III) of this subparagraph shall be applied by substituting ''2.2 percent'' for ''2.8 percent''.

(iii) PLUS LOANS.—In the case of any loan for which the first disbursement is made on or after October 1, 1998, and before January 1, 2000, and for which the applicable rate of interest is described in section 1077a(k)(3) of this title, clause (i)(III) of this subparagraph shall be applied by substituting ''3.1 percent'' for ''2.8 percent'', subject to clause (v) of this subparagraph.

(iv) CONSOLIDATION LOANS.—In the case of any consolidation loan for which the application is received by an eligible lender on or after October 1, 1998, and before January 1, 2000, and for which the applicable interest rate is determined under section 1077a(k)(4) of this title, clause (i)(III) of this subparagraph shall be applied by substituting ''3.1 percent'' for ''2.8 percent'', subject to clause (vi) of this subparagraph.

(v) LIMITATION ON SPECIAL ALLOWANCES FOR PLUS LOANS.—In the case of PLUS loans made under section 1078–2 of this title and

[2] So in original.

first disbursed on or after October 1, 1998, and before January 1, 2000, for which the interest rate is determined under section 1077a(k)(3) of this title, a special allowance shall not be paid for such loan during any 12-month period beginning on July 1 and ending on June 30 unless, on the June 1 preceding such July 1—

(I) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1 (as determined by the Secretary for purposes of such section); plus

(II) 3.1 percent,

exceeds 9.0 percent.

(vi) LIMITATION ON SPECIAL ALLOWANCES FOR CONSOLIDATION LOANS.—In the case of consolidation loans made under section 1078–3 of this title and for which the application is received on or after October 1, 1998, and before January 1, 2000, for which the interest rate is determined under section 1077a(k)(4) of this title, a special allowance shall not be paid for such loan during any 3-month period ending March 31, June 30, September 30, or December 31 unless—

(I) the average of the bond equivalent rate of 91-day Treasury bills auctioned for such 3-month period; plus

(II) 3.1 percent,

exceeds the rate determined under section 1077a(k)(4) of this title.

(I) LOANS DISBURSED ON OR AFTER JANUARY 1, 2000, AND BEFORE JULY 1, 2010.—

(i) IN GENERAL.—Notwithstanding subparagraphs (G) and (H), but subject to paragraph (4) and the following clauses of this subparagraph, and except as provided in subparagraph (B), the special allowance paid pursuant to this subsection on loans for which the first disbursement is made on or after January 1, 2000, and before July 1, 2010, shall be computed—

(I) by determining the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period;

(II) by subtracting the applicable interest rates on such loans from the rate determined under subclause (I) (in accordance with clause (vii));

(III) by adding 2.34 percent to the resultant percent; and

(IV) by dividing the resultant percent by 4.

(ii) IN SCHOOL AND GRACE PERIOD.—In the case of any loan—

(I) for which the first disbursement is made on or after January 1, 2000, and before July 1, 2006, and for which the applicable rate of interest is described in section 1077a(k)(2) of this title; or

(II) for which the first disbursement is made on or after July 1, 2006, and before July 1, 2010, and for which the applicable rate of interest is described in section 1077a(*l*)(1) or (*l*)(4) of this title, but only with respect to (aa) periods prior to the beginning of the repayment period of the loan; or (bb) during the periods in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 1077(a)(2)(C) or 1078(b)(1)(M) of this title;

clause (i)(III) of this subparagraph shall be applied by substituting ''1.74 percent'' for ''2.34 percent''.

(iii) PLUS LOANS.—In the case of any loan for which the first disbursement is made on or after January 1, 2000, and before July 1, 2010, and for which the applicable rate of interest is described in section 1077a(k)(3) or (*l*)(2) of this title, clause (i)(III) of this subparagraph shall be applied by substituting ''2.64 percent'' for ''2.34 percent''.

(iv) CONSOLIDATION LOANS.—In the case of any consolidation loan for which the application is received by an eligible lender on or after January 1, 2000, and that is disbursed before July 1, 2010, and for which the applicable interest rate is determined under section 1077a(k)(4) or (*l*)(3) of this title, clause (i)(III) of this subparagraph shall be applied by substituting ''2.64 percent'' for ''2.34 percent''.

(v) RECAPTURE OF EXCESS INTEREST.—

(I) EXCESS CREDITED.—With respect to a loan on which the applicable interest rate is determined under subsection (k) or (*l*) of section 1077a of this title and for which the first disbursement of principal is made on or after April 1, 2006, and before July 1, 2010, if the applicable interest rate for any 3-month period exceeds the special allowance support level applicable to such loan under this subparagraph for such period, then an adjustment shall be made by calculating the excess interest in the amount computed under subclause (II) of this clause, and by crediting the excess interest to the Government not less often than annually.

(II) CALCULATION OF EXCESS.—The amount of any adjustment of interest on a loan to be made under this subsection for any quarter shall be equal to—

(aa) the applicable interest rate minus the special allowance support level determined under this subparagraph; multiplied by

(bb) the average daily principal balance of the loan (not including unearned interest added to principal) during such calendar quarter; divided by

(cc) four.

(III) SPECIAL ALLOWANCE SUPPORT LEVEL.—For purposes of this clause, the term ''special allowance support level'' means, for any loan, a number expressed as a percentage equal to the sum of the rates determined under subclauses (I) and (III) of clause (i), and applying any substitution rules applicable to such loan under clauses (ii), (iii), (iv), (vi), and (vii) in determining such sum.

(vi) REDUCTION FOR LOANS DISBURSED ON OR AFTER OCTOBER 1, 2007, AND BEFORE JULY 1,

2010.—With respect to a loan on which the applicable interest rate is determined under section 1077a(*l*) of this title and for which the first disbursement of principal is made on or after October 1, 2007, and before July 1, 2010, the special allowance payment computed pursuant to this subparagraph shall be computed—

(I) for loans held by an eligible lender not described in subclause (II)—

(aa) by substituting ''1.79 percent'' for ''2.34 percent'' each place the term appears in this subparagraph;

(bb) by substituting ''1.19 percent'' for ''1.74 percent'' in clause (ii);

(cc) by substituting ''1.79 percent'' for ''2.64 percent'' in clause (iii); and

(dd) by substituting ''2.09 percent'' for ''2.64 percent'' in clause (iv); and

(II) for loans held by an eligible not-for-profit holder—

(aa) by substituting ''1.94 percent'' for ''2.34 percent'' each place the term appears in this subparagraph;

(bb) by substituting ''1.34 percent'' for ''1.74 percent'' in clause (ii);

(cc) by substituting ''1.94 percent'' for ''2.64 percent'' in clause (iii); and

(dd) by substituting ''2.24 percent'' for ''2.64 percent'' in clause (iv).

(vii) REVISED CALCULATION RULE TO REFLECT FINANCIAL MARKET CONDITIONS.—

(I) CALCULATION BASED ON LIBOR.—For the calendar quarter beginning on April 1, 2012[3] and each subsequent calendar quarter, in computing the special allowance paid pursuant to this subsection with respect to loans described in subclause (II), clause (i)(I) of this subparagraph shall be applied by substituting ''of the 1-month London Inter Bank Offered Rate (LIBOR) for United States dollars in effect for each of the days in such quarter as compiled and released by the British Bankers Association'' for ''of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period''.

(II) LOANS ELIGIBLE FOR LIBOR-BASED CALCULATION.—The special allowance paid pursuant to this subsection shall be calculated as described in subclause (I) with respect to special allowance payments for the 3-month period ending June 30, 2012, and each succeeding 3-month period, on loans for which the first disbursement is made on or after January 1, 2000, and before July 1, 2010, if, not later than April 1, 2012, the holder of the loan (or, if the holder acts as eligible lender trustee for the beneficial owner of the loan, the beneficial owner of the loan), affirmatively and permanently waives all contractual, statutory, or other legal rights to a special allowance paid pursuant to this subsection that is calculated using the formula in effect at the time the loans were first disbursed.

(III) TERMS OF WAIVER.—

(aa) IN GENERAL.—A waiver pursuant to subclause (II) shall be in a form (printed or electronic) prescribed by the Secretary, and shall be applicable to—

(AA) all loans described in such subclause that the lender holds solely in its own right under any lender identification number associated with the holder (pursuant to section 1094b of this title);

(BB) all loans described in such subclause for which the beneficial owner has the authority to make an election of a waiver under such subclause, regardless of the lender identification number associated with the loan or the lender that holds the loan as eligible lender trustee on behalf of such beneficial owner; and

(CC) all future calculations of the special allowance on loans that, on the date of such waiver, are loans described in subitem (AA) or (BB), or that, after such date, become loans described in subitem (AA) or (BB).

(bb) EXCEPTIONS.—Any waiver pursuant to subclause (II) that is elected for loans described in subitem (AA) or (BB) of item (aa) shall not apply to any loan described in such subitem for which the lender or beneficial owner of the loan demonstrates to the satisfaction of the Secretary that—

(AA) in accordance with an agreement entered into before the date of enactment of this section by which such lender or owner is governed and that applies to such loans, such lender or owner is not legally permitted to make an election of such waiver with respect to such loans without the approval of one or more third parties with an interest in the loans, and that the lender or owner followed all available options under such agreement to obtain such approval, and was unable to do so; or

(BB) such lender or beneficial owner presented the proposal of electing such a waiver applicable to such loans associated with an obligation rated by a nationally recognized statistical rating organization (as defined in section 78c(a)(62) of title 15), and such rating organization provided a written opinion that the agency would downgrade the rating applicable to such obligation if the lender or owner elected such a waiver.

(3) Contractual right of holders to special allowance

The holder of an eligible loan shall be deemed to have a contractual right against the United States, during the life of such loan, to receive the special allowance according to the provisions of this section. The special allowance determined for any such 3-month pe-

[3] So in original. Probably should be followed by a comma.

riod shall be paid promptly after the close of such period, and without administrative delay after receipt of an accurate and complete request for payment, pursuant to procedures established by regulations promulgated under this section.

(4) Penalty for late payment

(A) If payments of the special allowances payable under this section or of interest payments under section 1078(a) of this title with respect to a loan have not been made within 30 days after the Secretary has received an accurate, timely, and complete request for payment thereof, the special allowance payable to such holder shall be increased by an amount equal to the daily interest accruing on the special allowance and interest benefits payments due the holder.

(B) Such daily interest shall be computed at the daily equivalent rate of the sum of the special allowance rate computed pursuant to paragraph (2) and the interest rate applicable to the loan and shall be paid for the later of (i) the 31st day after the receipt of such request for payment from the holder, or (ii) the 31st day after the final day of the period or periods covered by such request, and shall be paid for each succeeding day until, and including, the date on which the Secretary authorizes payment.

(C) For purposes of reporting to the Congress the amounts of special allowances paid under this section, amounts of special allowances paid pursuant to this paragraph shall be segregated and reported separately.

(5) "Eligible loan" defined

As used in this section, the term ''eligible loan'' means a loan—

(A)(i) on which a portion of the interest is paid on behalf of the student and for the student's account to the holder of the loan under section 1078(a) of this title;

(ii) which is made under section 1078–1,[1] 1078–2, 1078–3, 1078–8, or 1087–2(*o*) of this title; or

(iii) which was made prior to October 1, 1981; and

(B) which is insured under this part, or made under a program covered by an agreement under section 1078(b) of this title.

(6) Regulation of time and manner of payment

The Secretary shall pay the holder of an eligible loan, at such time or times as are specified in regulations, a special allowance prescribed pursuant to this subsection subject to the condition that such holder shall submit to the Secretary, at such time or times and in such a manner as the Secretary may deem proper, such information as may be required by regulation for the purpose of enabling the Secretary to carry out his functions under this section and to carry out the purposes of this section.

(7) Use of average quarterly balance

The Secretary shall permit lenders to calculate interest benefits and special allowance through the use of the average quarterly balance method until July 1, 1988.

(c) Origination fees from students

(1) Deduction from interest and special allowance subsidies

(A) Notwithstanding subsection (b) of this section, the Secretary shall collect the amount the lender is authorized to charge as an origination fee in accordance with paragraph (2) of this subsection—

(i) by reducing the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, to any holder; or

(ii) directly from the holder of the loan, if the lender fails or is not required to bill the Secretary for interest and special allowance or withdraws from the program with unpaid loan origination fees.

(B) If the Secretary collects the origination fee under this subsection through the reduction of interest and special allowance, and the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, is less than the amount the lender was authorized to charge borrowers for origination fees in that quarter, the Secretary shall deduct the excess amount from the subsequent quarters' payments until the total amount has been deducted.

(2) Amount of origination fees

(A) In general

Subject to paragraph (6) of this subsection, with respect to any loan (including loans made under section 1078–8 of this title, but excluding loans made under sections 1078–3 and 1087–2(*o*) of this title) for which a completed note or other written evidence of the loan was sent or delivered to the borrower for signing on or after 10 days after August 13, 1981, each eligible lender under this part is authorized to charge the borrower an origination fee in an amount not to exceed 3.0 percent of the principal amount of the loan, to be deducted proportionately from each installment payment of the proceeds of the loan prior to payment to the borrower. Except as provided in paragraph (8), a lender that charges an origination fee under this paragraph shall assess the same fee to all student borrowers.

(B) Subsequent reductions

Subparagraph (A) shall be applied to loans made under this part (other than loans made under sections 1078–3 and 1087–2(*o*) of this title)—

(i) by substituting ''2.0 percent'' for ''3.0 percent'' with respect to loans for which the first disbursement of principal is made on or after July 1, 2006, and before July 1, 2007;

(ii) by substituting ''1.5 percent'' for ''3.0 percent'' with respect to loans for which the first disbursement of principal is made on or after July 1, 2007, and before July 1, 2008;

(iii) by substituting ''1.0 percent'' for ''3.0 percent'' with respect to loans for

which the first disbursement of principal is made on or after July 1, 2008, and before July 1, 2009; and

(iv) by substituting ''0.5 percent'' for ''3.0 percent'' with respect to loans for which the first disbursement of principal is made on or after July 1, 2009, and before July 1, 2010.

(3) Relation to applicable interest

Such origination fee shall not be taken into account for purposes of determining compliance with section 1077a of this title.

(4) Disclosure required

The lender shall disclose to the borrower the amount and method of calculating the origination fee.

(5) Prohibition on department compelling origination fee collections by lenders

Nothing in this subsection shall be construed to permit the Secretary to require any lender that is making loans that are insured or guaranteed under this part, but for which no amount will be payable for interest under section 1078(a)(3)(A) of this title or for special allowances under subsection (b) of this section, to collect any origination fee or to submit the sums collected as origination fees to the United States. The Secretary shall, not later than January 1, 1987, return to any such lender any such sums collected before October 17, 1986, together with interest thereon.

(6) SLS and PLUS loans

With respect to any loans made under section 1078–1[1] or 1078–2 of this title on or after October 1, 1992, and first disbursed before July 1, 2010, each eligible lender under this part shall charge the borrower an origination fee of 3.0 percent of the principal amount of the loan, to be deducted proportionately from each installment payment of the proceeds of the loan prior to payments to the borrower.

(7) Distribution of origination fees

All origination fees collected pursuant to this section on loans authorized under section 1078–1[1] or 1078–2 of this title shall be paid to the Secretary by the lender and deposited in the fund authorized under section 1081 of this title.

(8) Exception

Notwithstanding paragraph (2), a lender may assess a lesser origination fee for a borrower demonstrating greater financial need as determined by such borrower's adjusted gross family income.

(d) Loan fees from lenders

(1) Deduction from interest and special allowance subsidies

(A) In general

Notwithstanding subsection (b) of this section, the Secretary shall collect a loan fee in an amount determined in accordance with paragraph (2)—

(i) by reducing the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, to any holder of a loan; or

(ii) directly from the holder of the loan, if the lender—

(I) fails or is not required to bill the Secretary for interest and special allowance payments; or

(II) withdraws from the program with unpaid loan fees.

(B) Special rule

If the Secretary collects loan fees under this subsection through the reduction of interest and special allowance payments, and the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, is less than the amount of such loan fees, then the Secretary shall deduct the amount of the loan fee balance from the amount of interest and special allowance payments that would otherwise be payable, in subsequent quarterly increments until the balance has been deducted.

(2) Amount of loan fees

The amount of the loan fee which shall be deducted under paragraph (1), but which may not be collected from the borrower, shall be equal to—

(A) except as provided in subparagraph (B), 0.50 percent of the principal amount of the loan with respect to any loan under this part for which the first disbursement was made on or after October 1, 1993; and

(B) 1.0 percent of the principal amount of the loan with respect to any loan under this part for which the first disbursement was made on or after October 1, 2007, and before July 1, 2010.

(3) Distribution of loan fees

The Secretary shall deposit all fees collected pursuant to paragraph (3) into the insurance fund established in section 1081 of this title.

(e) Nondiscrimination

In order for the holders of loans which were made or purchased with funds obtained by the holder from an Authority issuing obligations, the income from which is exempt from taxation under title 26, to be eligible to receive a special allowance under subsection (b)(2) of this section on any such loans, the Authority shall not engage in any pattern or practice which results in a denial of a borrower's access to loans under this part because of the borrower's race, sex, color, religion, national origin, age, disability status, income, attendance at a particular eligible institution within the area served by the Authority, length of the borrower's educational program, or the borrower's academic year in school.

(f) Regulations to prevent denial of loans to eligible students

The Secretary shall adopt or amend appropriate regulations pertaining to programs carried out under this part to prevent, where practicable, any practices which the Secretary finds have denied loans to a substantial number of eligible students.

(g) Special Rule

With respect to any loan made under this part for which the interest rate is determined under

the Servicemembers Civil Relief Act (50 U.S.C. App. 527), the applicable interest rate to be subtracted in calculating the special allowance for such loan under this section shall be the interest rate determined under that Act for such loan.

(Pub. L. 89–329, title IV, § 438, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1414; amended Pub. L. 100–50, § 10(d)(2), (bb), (cc), June 3, 1987, 101 Stat. 342, 347; Pub. L. 100–369, § 7(c), July 18, 1988, 102 Stat. 837; Pub. L. 102–325, title IV, § 430, July 23, 1992, 106 Stat. 553; Pub. L. 103–66, title IV, §§ 4102(a), 4103, 4105, 4111, Aug. 10, 1993, 107 Stat. 366, 367, 368, 370; Pub. L. 105–178, title VIII, § 8301(b), June 9, 1998, 112 Stat. 497; Pub. L. 105–244, title IV, §§ 416(b)(1), (3), 433(a)–(d)(1), Oct. 7, 1998, 112 Stat. 1680, 1682, 1710, 1711; Pub. L. 106–170, title IV, § 409(a), Dec. 17, 1999, 113 Stat. 1914; Pub. L. 107–139, § 2, Feb. 8, 2002, 116 Stat. 10; Pub. L. 108–409, § 2, Oct. 30, 2004, 118 Stat. 2299; Pub. L. 109–150, § 2(b), (c)(2), Dec. 30, 2005, 119 Stat. 2884; Pub. L. 109–171, title VIII, §§ 8006(b)(1), 8008(c)(1), 8013(a)–(c)(1), (d)(1), Feb. 8, 2006, 120 Stat. 159, 162, 166, 167; Pub. L. 110–84, title II, § 201(a)(2), title III, §§ 302(b)(2), 305, Sept. 27, 2007, 121 Stat. 791, 796, 799; Pub. L. 110–315, title IV, § 422(g)(2), Aug. 14, 2008, 122 Stat. 3230; Pub. L. 111–39, title IV, § 402(f)(11), July 1, 2009, 123 Stat. 1945; Pub. L. 111–152, title II, § 2208, Mar. 30, 2010, 124 Stat. 1077; Pub. L. 112–74, div. F, title III, § 309(e), Dec. 23, 2011, 125 Stat. 1101.)

References in Text

Section 1078–1 of this title, referred to in subsecs. (b)(2)(C), (5)(A)(ii) and (c)(6), (7), was repealed by Pub. L. 103–66, title IV, § 4047(b)–(d), Aug. 10, 1993, 107 Stat. 364, eff. July 1, 1994, except with respect to loans provided under that section as it existed prior to Aug. 10, 1993. Subsequently, a new section 1078–1, relating to voluntary flexible agreements with guaranty agencies, was enacted by Pub. L. 105–244, title IV, § 418, Oct. 7, 1998, 112 Stat. 1691.

The date of enactment of this section, referred to in subsec. (b)(2)(I)(vii)(III)(bb)(AA), probably means the date of enactment of Pub. L. 112–74, which enacted subsec. (b)(2)(I)(vii) and was approved Dec. 23, 2011.

The Servicemembers Civil Relief Act, referred to in subsec. (g), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, which is classified to section 501 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 501 of Title 50, Appendix, and Tables.

Prior Provisions

A prior section 1087–1, Pub. L. 89–329, title IV, § 438, as added Pub. L. 92–318, title I, § 132E(a), June 23, 1972, 86 Stat. 264; amended Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2133; Pub. L. 95–43, § 1(a)(37), June 15, 1977, 91 Stat. 216; Pub. L. 96–49, § 5(c)(1), Aug. 13, 1979, 93 Stat. 352; Pub. L. 96–374, title IV, §§ 420(a), 451(d), title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1425, 1458, 1503; Pub. L. 97–35, title V, §§ 532(b)(4), 534(b), 536(a), Aug. 13, 1981, 95 Stat. 452, 454, 455; Pub. L. 98–79, § 7(a), (c), Aug. 15, 1983, 97 Stat. 482, 483; Pub. L. 99–272, title XVI, §§ 16013(d), 16017(b)(3), (c), Apr. 7, 1986, 100 Stat. 340, 347, related to special allowances, prior to the general revision of this part by Pub. L. 99–498.

A prior section 1087–1a, Pub. L. 96–374, title IV, § 420(b), Oct. 3, 1980, 94 Stat. 1427, related to eligibility for special allowances covering loans made or purchased with funds obtained from Authorities issuing tax exempt obligations, and established requirement relating to plans for doing business, prior to repeal by Pub. L. 98–79, § 7(b), Aug. 15, 1983, 97 Stat. 483.

Amendments

2011—Subsec. (b)(2)(I)(i)(II). Pub. L. 112–74, § 309(e)(2)(A), substituted ''the rate determined under subclause (I) (in accordance with clause (vii))'' for ''such average bond equivalent rate''.

Subsec. (b)(2)(I)(v)(III). Pub. L. 112–74, § 309(e)(2)(B), substituted ''(iv), (vi), and (vii)'' for ''(iv), and (vi)''.

Subsec. (b)(2)(I)(vii). Pub. L. 112–74, § 309(e)(1), added cl. (vii).

2010—Subsec. (b)(2)(I). Pub. L. 111–152, § 2208(1)(A), which directed amendment of subpar. (I) ''in the subclause heading'' by inserting '', and before july 1, 2010'' after ''2000'', was executed in subpar. (I) heading to reflect the probable intent of Congress.

Subsec. (b)(2)(I)(i). Pub. L. 111–152, § 2208(1)(B), inserted ''and before July 1, 2010,'' after ''2000,'' in introductory provisions.

Subsec. (b)(2)(I)(ii)(II). Pub. L. 111–152, § 2208(1)(C), inserted ''and before July 1, 2010,'' after ''2006,''.

Subsec. (b)(2)(I)(iii). Pub. L. 111–152, § 2208(1)(D), inserted ''and before July 1, 2010,'' after ''2000,''.

Subsec. (b)(2)(I)(iv). Pub. L. 111–152, § 2208(1)(E), inserted ''and that is disbursed before July 1, 2010,'' after ''2000,''.

Subsec. (b)(2)(I)(v)(I). Pub. L. 111–152, § 2208(1)(F), inserted ''and before July 1, 2010,'' after ''2006,''.

Subsec. (b)(2)(I)(vi). Pub. L. 111–152, § 2208(1)(G), inserted '', and before july 1, 2010'' after ''2007'' in heading and ''and before July 1, 2010,'' after ''2007,'' in introductory provisions.

Subsec. (c)(2)(B)(iii) to (v). Pub. L. 111–152, § 2208(2)(A), inserted ''and'' after semicolon in cl. (iii), substituted period for ''; and'' at end of cl. (iv), and struck out cl. (v), which read as follows: ''by substituting '0.0 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2010.''

Subsec. (c)(6). Pub. L. 111–152, § 2208(2)(B), inserted ''and first disbursed before July 1, 2010,'' after ''1992,''.

Subsec. (d)(2)(B). Pub. L. 111–152, § 2208(3), inserted '', and before July 1, 2010'' after ''2007''.

2009—Subsec. (b)(2)(A). Pub. L. 111–39, § 402(f)(11)(A), substituted ''1077a(i)'' for ''1077a(f)''.

Subsec. (b)(2)(B)(i). Pub. L. 111–39, § 402(f)(11)(B), which directed substitution of ''1986'' for ''1954'' in the first sentence, could not be executed because ''1954'' did not appear in original text subsequent to amendment by Pub. L. 100–369. See 1988 Amendment note below.

Subsec. (b)(2)(F). Pub. L. 111–39, § 402(f)(11)(C), substituted ''1077a(i)'' for ''1077a(f)''.

2008—Subsec. (g). Pub. L. 110–315 added subsec. (g).

2007—Subsec. (b)(2)(I)(i). Pub. L. 110–84, § 305(a)(1), substituted ''the following clauses'' for ''clauses (ii), (iii), and (iv)''.

Subsec. (b)(2)(I)(ii)(II). Pub. L. 110–84, § 201(a)(2), substituted ''section 1077a(*l*)(1) or (*l*)(4)'' for ''section 1077a(*l*)(1)''.

Subsec. (b)(2)(I)(v)(III). Pub. L. 110–84, § 305(a)(2), substituted ''clauses (ii), (iii), (iv), and (vi)'' for ''clauses (ii), (iii), and (iv)''.

Subsec. (b)(2)(I)(vi). Pub. L. 110–84, § 305(a)(3), added cl. (vi).

Subsec. (b)(5). Pub. L. 110–84, § 302(b)(2), struck out concluding provisions which read as follows: ''As used in this section, the term 'eligible loan' includes all loans subject to section 1078–9 of this title.''

Subsec. (d)(2). Pub. L. 110–84, § 305(b), amended par. (2) generally. Prior to amendment, text read as follows: ''With respect to any loan under this part for which the first disbursement was made on or after October 1, 1993, the amount of the loan fee which shall be deducted under paragraph (1) shall be equal to 0.50 percent of the principal amount of the loan.''

2006—Subsec. (b)(2)(B). Pub. L. 109–171, § 8013(d)(1), repealed Pub. L. 109–150, § 2(b), (c)(2). See 2005 Amendment note below.

Pub. L. 109–171, § 8013(c)(1), amended directory language of Pub. L. 108–409, § 2. See 2004 Amendment note below.

Subsec. (b)(2)(B)(iv). Pub. L. 109–171, § 8013(a)(1), struck out ''and before January 1, 2006,'' after ''September 30, 2004,''.

Subsec. (b)(2)(B)(v)(II)(aa), (bb). Pub. L. 109–171, § 8013(a)(2)(A), struck out ''and before January 1, 2006,'' after ''September 30, 2004,''.

Subsec. (b)(2)(B)(v)(II)(cc). Pub. L. 109–171, § 8013(a)(2)(B), struck out ", and before January 1, 2006" after "September 30, 2004".

Subsec. (b)(2)(B)(vi), (vii). Pub. L. 109–171, § 8013(b), added cls. (vi) and (vii).

Subsec. (b)(2)(I)(iii). Pub. L. 109–171, § 8006(b)(1)(A), struck out ", subject to clause (v) of this subparagraph" before period at end.

Subsec. (b)(2)(I)(iv). Pub. L. 109–171, § 8006(b)(1)(B), struck out ", subject to clause (vi) of this subparagraph" before period at end.

Subsec. (b)(2)(I)(v) to (vii). Pub. L. 109–171, § 8006(b)(1)(C), added cl. (v) and struck out former cls. (v) to (vii), which related to limitation on special allowances for plus loans before July 1, 2006, limitation on special allowances for consolidation loans, and limitation on special allowances for plus loans on or after July 1, 2006, respectively.

Subsec. (c)(2). Pub. L. 109–171, § 8008(c)(1), reenacted par. heading, designated existing provisions as subpar. (A), inserted subpar. (A) heading, and added subpar. (B).

2005—Subsec. (b)(2)(B). Pub. L. 109–150, § 2(c)(2), which directed amendment of directory language of Pub. L. 108–409, § 2, was repealed by Pub. L. 109–171, § 8013(d)(1). See 2004 Amendment note and Effective Date of 2006 Amendment note below.

Subsec. (b)(2)(B)(iv), (v)(II). Pub. L. 109–150, § 2(b), which directed substitution of "April 1, 2006" for "January 1, 2006" wherever appearing, was repealed by Pub. L. 109–171, § 8013(d)(1). See Effective Date of 2006 Amendment note below.

2004—Subsec. (b)(2)(B). Pub. L. 108–409, § 2, as amended by Pub. L. 109–171, § 8013(c)(1), substituted "this clause" for "this division" in cl. (i) and "clause (i) of this subparagraph" for "division (i) of this subparagraph" in cl. (ii), inserted "or refunded after September 30, 2004, and before January 1, 2006," after "October 1, 1993," in cl. (iv), and added cl. (v). Pub. L. 109–150, § 2(c)(2), which made an amendment to directory language of Pub. L. 108–409, § 2, identical to that made by Pub. L. 109–171, § 8013(c)(1), was repealed by Pub. L. 109–171, § 8013(d)(1). See Effective Date of 2006 Amendment note below.

2002—Subsec. (b)(2)(I). Pub. L. 107–139, § 2(1), struck out ", AND BEFORE JULY 1, 2003" after "JANUARY 1, 2000" in heading.

Subsec. (b)(2)(I)(i). Pub. L. 107–139, § 2(2), struck out "and before July 1, 2003," after "January 1, 2000," in introductory provisions.

Subsec. (b)(2)(I)(ii). Pub. L. 107–139, § 2(3), added cl. (ii) and struck out heading and text of former cl. (ii). Text read as follows: "In the case of any loan for which the first disbursement is made on or after January 1, 2000, and before July 1, 2003, and for which the applicable rate of interest is described in section 1077a(k)(2) of this title, clause (i)(III) of this subparagraph shall be applied by substituting '1.74 percent' for '2.34 percent'."

Subsec. (b)(2)(I)(iii). Pub. L. 107–139, § 2(2), (4), struck out "and before July 1, 2003," after "January 1, 2000," and inserted "or (*l*)(2)" after "section 1077a(k)(3)".

Subsec. (b)(2)(I)(iv). Pub. L. 107–139, § 2(2), (5), inserted "or (*l*)(3)" after "section 1077a(k)(4)" and struck out "and before July 1, 2003," after "January 1, 2000,".

Subsec. (b)(2)(I)(v). Pub. L. 107–139, § 2(6), inserted "BEFORE JULY 1, 2006" after "PLUS LOANS" in heading and substituted "July 1, 2006," for "July 1, 2003," in introductory provisions.

Subsec. (b)(2)(I)(vi). Pub. L. 107–139, § 2(2), (7), in introductory provisions, struck out "and before July 1, 2003," after "January 1, 2000," and inserted "or (*l*)(3)" after "section 1077a(k)(4)", and in concluding provisions, substituted "section 1077a(k)(4) or (*l*)(3) of this title, whichever is applicable" for "section 1077a(k)(4) of this title".

Subsec. (b)(2)(I)(vii). Pub. L. 107–139, § 2(8), added cl. (vii).

1999—Subsec. (b)(2)(A). Pub. L. 106–170, § 409(a)(1), substituted "(G), (H), and (I)" for "(G), and (H)" in first sentence.

Subsec. (b)(2)(B)(iv). Pub. L. 106–170, § 409(a)(2), substituted "(G), (H), or (I)" for "(G), or (H)" in first sentence.

Subsec. (b)(2)(C)(ii). Pub. L. 106–170, § 409(a)(3), substituted "(G), (H), and (I)" for "(G) and (H)" in introductory provisions.

Subsec. (b)(2)(H). Pub. L. 106–170, § 409(a)(4), (5), substituted "JANUARY 1, 2000" for "JULY 1, 2003" in subpar. heading and "January 1, 2000" for "July 1, 2003" in text wherever appearing.

Subsec. (b)(2)(I). Pub. L. 106–170, § 409(a)(6), added subpar. (I).

1998—Subsec. (b)(2)(A). Pub. L. 105–244, § 416(b)(3)(A), substituted "(F), (G), and (H)" for "(F), and (G)".

Pub. L. 105–178, § 8301(b)(2)(A), substituted "(E), (F), and (G)" for "(E), and (F)".

Subsec. (b)(2)(B)(iv). Pub. L. 105–244, § 416(b)(3)(B), substituted "(F), (G), or (H)" for "(F), or (G)".

Pub. L. 105–178, § 8301(b)(2)(B), substituted "(E), (F), or (G)" for "(E), or (F)".

Subsec. (b)(2)(C)(ii). Pub. L. 105–244, § 416(b)(3)(C), substituted "subparagraphs (G) and (H)" for "subparagraph (G)".

Pub. L. 105–178, § 8301(b)(2)(C), substituted "Subject to subparagraph (G), in the case" for "In the case".

Subsec. (b)(2)(G). Pub. L. 105–178, § 8301(b)(1), added subpar. (G).

Subsec. (b)(2)(H). Pub. L. 105–244, § 416(b)(1), added subpar. (H).

Subsec. (c)(1). Pub. L. 105–244, § 433(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "Notwithstanding subsection (b) of this section, the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, to any holder shall be reduced by the Secretary by the amount which the lender is authorized to charge as an origination fee in accordance with paragraph (2) of this subsection. If the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, is less than the amount the lender was authorized to charge borrowers for origination fees in that quarter, the Secretary shall deduct the excess amount from the subsequent quarters' payments until the total amount has been deducted."

Subsec. (c)(2). Pub. L. 105–244, § 433(b)(1), substituted "(including loans made under section 1078–8 of this title, but excluding" for "(other than" and inserted at end "Except as provided in paragraph (8), a lender that charges an origination fee under this paragraph shall assess the same fee to all student borrowers."

Subsec. (c)(8). Pub. L. 105–244, § 433(b)(2), added par. (8).

Subsec. (d)(1). Pub. L. 105–244, § 433(c), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "Notwithstanding subsection (b) of this section, the Secretary shall reduce the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, to any holder of a loan by a loan fee in an amount determined in accordance with paragraph (2) of this subsection. If the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, is less than the amount of such loan fee, then the Secretary shall deduct such excess amount from subsequent quarters' payments until the total amount has been deducted."

Subsec. (e). Pub. L. 105–244, § 433(d)(1), amended heading and text of subsec. (e) generally. Prior to amendment, subsec. (e) related to lending from proceeds of tax exempt obligations.

1993—Subsec. (b)(2)(A). Pub. L. 103–66, § 4111(1), substituted "subparagraphs (B), (C), (D), (E), and (F)" for "subparagraphs (B), (C), and (D)" and "section 1077a(f)" for "section 1077a(e)".

Subsec. (b)(2)(B)(iv). Pub. L. 103–66, § 4105, added cl. (iv).

Subsec. (b)(2)(E), (F). Pub. L. 103–66, § 4111(2), added subpars. (E) and (F).

Subsec. (c). Pub. L. 103–66, § 4102(a)(1), inserted "from students" after "origination fees" in heading.

Subsec. (c)(2). Pub. L. 103–66, § 4102(a)(2)(A), substituted ''sections 1078–3 and 1087–2(*o*)'' for ''sections 1078–1, 1078–2, 1078–3, and 1087–2(*o*)'' and ''3.0 percent'' for ''5 percent''.

Subsec. (c)(6). Pub. L. 103–66, § 4102(a)(2)(B), substituted ''3.0 percent'' for ''5 percent''.

Subsecs. (d) to (f). Pub. L. 103–66, § 4103, added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1992—Subsec. (b)(2)(A). Pub. L. 102–325, § 430(a)(1), (2), substituted ''3.10'' for ''3.25'' and inserted at end ''If such computation produces a number less than zero, such loans shall be subject to section 1077a(e) of this title.''

Subsec. (b)(2)(B)(i). Pub. L. 102–325, § 430(a)(3), substituted ''3.10'' for ''3.25''.

Subsec. (b)(2)(B)(ii). Pub. L. 102–325, § 430(a)(4), added cl. (ii) and struck out former cl. (ii) which read as follows: ''The rate set under division (i) shall not be less than (I) 2.5 percent per year in the case of loans for which the applicable interest rate is 7 percent per year, (II) 1.5 percent per year in the case of loans for which the applicable interest rate is 8 percent per year, or (III) 0.5 percent in the case of loans for which the applicable rate is 9 percent per year.''

Subsec. (b)(2)(C). Pub. L. 102–325, § 430(a)(5), designated existing provision as cl. (i), inserted ''before October 1, 1992,'' after ''made'', and added cl. (ii).

Subsec. (b)(2)(D)(i). Pub. L. 102–325, § 430(a)(6), substituted ''3.10'' for ''3.25''.

Subsec. (b)(5). Pub. L. 102–325, § 430(c), inserted closing provision which defined ''eligible loan'' as used in this section to include all loans subject to section 1078–9 of this title.

Subsec. (b)(5)(A)(ii). Pub. L. 102–325, § 430(b), inserted ''1078–8,'' after ''1078–3,''.

Subsec. (c)(2). Pub. L. 102–325, § 430(d)(1), substituted ''Subject to paragraph (6) of this subsection, with'' for ''With''.

Subsec. (c)(6), (7). Pub. L. 102–325, § 430(d)(2), added pars. (6) and (7).

Subsec. (d)(2)(C). Pub. L. 102–325, § 430(e), struck out ''or discount'' after ''premium''.

1988—Subsecs. (b)(2)(B)(i), (d)(1), (3). Pub. L. 100–369 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1987—Subsec. (b)(2)(B)(iii). Pub. L. 100–50, § 10(bb)(1), substituted ''subsection (d) of this section'' for ''subsection (c) of this section''.

Subsec. (b)(2)(C). Pub. L. 100–50, § 10(d)(2), substituted ''12 percent'' for ''12.5 percent''.

Subsec. (b)(7). Pub. L. 100–50, § 10(bb)(2), added par. (7).

Subsec. (d)(4)(C). Pub. L. 100–50, § 10(cc), struck out '', as evidenced by the information submitted under paragraph (2)(G) of this subsection'' after ''fiscal year''.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–315 effective for loans for which the first disbursement is made on or after July 1, 2008, see section 422(g)(3) of Pub. L. 110–315, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by sections 201(a)(2) and 305 of Pub. L. 110–84 effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as a note under section 1070a of this title.

Amendment by section 302(b)(2) of Pub. L. 110–84 effective Oct. 1, 2007, see section 302(c) of Pub. L. 110–84, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Pub. L. 109–171, title VIII, § 8006(b)(2), Feb. 8, 2006, 120 Stat. 160, provided that: ''The amendments made by this subsection [amending this section] shall not apply with respect to any special allowance payment made under section 438 of the Higher Education Act of 1965 (20 U.S.C. 1087–1) before April 1, 2006.''

Pub. L. 109–171, title VIII, § 8013(c)(3), Feb. 8, 2006, 120 Stat. 167, provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if enacted on October 30, 2004, and the amendment made by paragraph (2) [amending provisions set out as a note under section 1078–10 of this title] shall be effective as if enacted on October 1, 2005.''

Pub. L. 109–171, title VIII, § 8013(d)(2), Feb. 8, 2006, 120 Stat. 167, provided that: ''The amendments made by subsections (a) and (c) of this section [amending this section and provisions set out as a note under section 1078–10 of this title] shall be effective as if the amendments made in subsections (b) and (c) of section 2 of the Second Higher Education Extension Act of 2005 [Pub. L. 109–150, amending this section and provisions set out as a note under section 1078–10 of this title] had not been enacted.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–150, § 2(d), Dec. 30, 2005, 119 Stat. 2884, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and provisions set out as notes under sections 1001 and 1078–10 of this title] are effective upon enactment [Dec. 30, 2005].

''(2) EXCEPTION.—The amendment made by subsection (c)(1) [amending provisions set out as a note under section 1078–10 of this title] shall take effect as if enacted on October 1, 2005.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title IV, § 409(b), Dec. 17, 1999, 113 Stat. 1916, provided that: ''Subparagraph (I) of section 438(b)(2) of the Higher Education Act of 1965 (20 U.S.C. 1087–1(b)(2)) as added by subsection (a) of this section shall apply with respect to any payment pursuant to such section with respect to any 3-month period beginning on or after January 1, 2000, for loans for which the first disbursement is made after such date.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 416(b)(1) and (3) of Pub. L. 105–244 applicable with respect to any loan made, insured, or guaranteed under this part for which the first disbursement is made on or after Oct. 1, 1998, and before July 1, 2003, except that such amendment is applicable with respect to any loan made under section 1078–3 of this title for which application is received by an eligible lender on or after Oct. 1, 1998, and before July 1, 2003, see section 416(c) of Pub. L. 105–244, set out as a note under section 1077a of this title.

Amendment by section 433(a)–(c) of Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

Pub. L. 105–244, title IV, § 433(d)(2), Oct. 7, 1998, 112 Stat. 1711, provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as of the date the plan required by section 438(e)(1) [subsec. (e)(1) of this section] (as such section was in effect prior to such amendment) was approved by the Secretary or the Governor (whichever was the case). No Authority shall have a right or cause of action against the Secretary for any amounts paid to or offset by the Secretary pursuant to a final settlement agreement entered into prior to July 1, 1998, resolving any audit or program review findings alleging violations of any provision of section 438(e) (as in effect prior to such amendment).''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 4102(a) of Pub. L. 103–66 effective July 1, 1994, see section 4102(d) of Pub. L. 103–66, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 applicable with respect to loans for which first disbursement is made on or after Oct. 1, 1992, see section 432(a)(13) of Pub. L. 102–325, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1986, with subsec. (b) of this section effective with respect to loans disbursed on or after 30 days after Oct. 17, 1986, or made to cover the costs of instruction for periods of enrollment beginning on or after 30 days after Oct. 17, 1986, and subsec. (d) of this section effective 30 days after Oct. 17, 1986, see section 402(b) of Pub. L. 99–498, set out as a note under section 1071 of this title.

§ 1087–2. Student Loan Marketing Association

(a) Purpose

The Congress hereby declares that it is the purpose of this section (1) to establish a private corporation which will be financed by private capital and which will serve as a secondary market and warehousing facility for student loans, including loans which are insured by the Secretary under this part or by a guaranty agency, and which will provide liquidity for student loan investments; (2) in order to facilitate secured transactions involving student loans, to provide for perfection of security interests in student loans either through the taking of possession or by notice filing; and (3) to assure nationwide the establishment of adequate loan insurance programs for students, to provide for an additional program of loan insurance to be covered by agreements with the Secretary.

(b) Establishment

(1) In general

There is hereby created a body corporate to be known as the Student Loan Marketing Association (hereinafter referred to as the ''Association''). The Association shall have succession until dissolved. It shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue and jurisdiction in civil actions, to be a resident and citizen thereof. Offices may be established by the Association in such other place or places as it may deem necessary or appropriate for the conduct of its business.

(2) Exemption from State and local taxes

The Association, including its franchise, capital, reserves, surplus, mortgages, or other security holdings, and income shall be exempt from all taxation now or hereafter imposed by any State, territory, possession, Commonwealth, or dependency of the United States, or by the District of Columbia, or by any county, municipality, or local taxing authority, except that any real property of the Association shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(3) Appropriations authorized for establishment

There is hereby authorized to be appropriated to the Secretary $5,000,000 for making advances for the purpose of helping to establish the Association. Such advances shall be repaid within such period as the Secretary may deem to be appropriate in light of the maturity and solvency of the Association. Such advances shall bear interest at a rate not less than (A) a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining period to maturity comparable to the maturity of such advances, adjusted to the nearest one-eighth of 1 percent, plus (B) an allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses. Repayments of such advances shall be deposited into miscellaneous receipts of the Treasury.

(c) Board of Directors

(1) Composition of Board; Chairman

(A) The Association shall have a Board of Directors which shall consist of 21 persons, 7 of whom shall be appointed by the President and shall be representative of the general public. The remaining 14 directors shall be elected by the common stockholders of the Association entitled to vote pursuant to subsection (f) of this section. Commencing with the annual shareholders meeting to be held in 1993—

(i) 7 of the elected directors shall be affiliated with an eligible institution; and

(ii) 7 of the elected directors shall be affiliated with an eligible lender.

(B) The President shall designate 1 of the directors to serve as Chairman.

(2) Terms of appointed and elected members

The directors appointed by the President shall serve at the pleasure of the President and until their successors have been appointed and have qualified. The remaining directors shall each be elected for a term ending on the date of the next annual meeting of the common stockholders of the Association, and shall serve until their successors have been elected and have qualified. Any appointive seat on the Board which becomes vacant shall be filled by appointment of the President. Any elective seat on the Board which becomes vacant after the annual election of the directors shall be filled by the Board, but only for the unexpired portion of the term.

(3) Affiliated members

For the purpose of this subsection, the references to a director ''affiliated with the eligible institution'' or a director ''affiliated with an eligible lender'' means an individual who is, or within 5 years of election to the Board has been, an employee, officer, director, or similar official of—

(A) an eligible institution or an eligible lender;

(B) an association whose members consist primarily of eligible institutions or eligible lenders; or

(C) a State agency, authority, instrumentality, commission, or similar institution, the primary purpose of which relates to educational matters or banking matters.

(4) Meetings and functions of the Board

The Board of Directors shall meet at the call of its Chairman, but at least semiannually. The Board shall determine the general policies which shall govern the operations of the Association. The Chairman of the Board shall, with the approval of the Board, select, appoint, and compensate qualified persons to fill the offices as may be provided for in the bylaws, with such functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the officers of the Association and shall discharge all such functions, powers, and duties.

(d) Authority of Association

(1) In general

The Association is authorized, subject to the provisions of this section—

(A) pursuant to commitments or otherwise to make advances on the security of, purchase, or repurchase, service, sell or resell, offer participations, or pooled interests or otherwise deal in, at prices and on terms and conditions determined by the Association, student loans which are insured by the Secretary under this part or by a guaranty agency;

(B) to buy, sell, hold, underwrite, and otherwise deal in obligations, if such obligations are issued, for the purpose of making or purchasing insured loans, by a guaranty agency or by an eligible lender in a State described in section 1085(d)(1)(D) or (F) of this title;

(C) to buy, sell, hold, insure, underwrite, and otherwise deal in obligations issued for the purpose of financing or refinancing the construction, reconstruction, renovation, improvement, or purchase at institutions of higher education of any of the following facilities (including the underlying property) and materials (including related equipment, instrumentation, and furnishings) at an eligible institution of higher education:

(i) educational and training facilities;

(ii) housing for students and faculties, dining halls, student unions, and facilities specifically designed to promote fitness and health for students, faculty, and staff or for physical education courses; and

(iii) library facilities, including the acquisition of library materials at institutions of higher education;

except that not more than 30 percent of the value of transactions entered into under this subparagraph shall involve transactions of the types described in clause (ii);

(D) to undertake a program of loan insurance pursuant to agreements with the Secretary under section 1078 of this title, and except with respect to loans under subsection (*o*) of this section or under section 1078–3 of this title, the Secretary may enter into an agreement with the Association for such purpose only if the Secretary determines that (i) eligible borrowers are seeking and unable to obtain loans under this part, and (ii) no guaranty agency is capable of or willing to provide a program of loan insurance for such borrowers; and

(E) to undertake any other activity which the Board of Directors of the Association determines to be in furtherance of the programs of insured student loans authorized under this part or will otherwise support the credit needs of students, except that—

(i) in carrying out all such activities the purpose shall always be to provide secondary market and other support for lending programs offered by other organizations and not to replace or compete with such other programs;

(ii) nothing in this subparagraph (E) shall be deemed to authorize the Association to acquire, own, operate, or control any bank, savings and loan association, savings bank or credit union; and

(iii) not later than 30 days prior to the initial implementation of a program undertaken pursuant to this subparagraph (E), the Association shall advise the Chairman and the Ranking Member on the Committee on Labor and Human Resources of the Senate and the Chairman and the Ranking Member of the Committee on Education and Labor of the House of Representatives in writing of its plans to offer such program and shall provide information relating to the general terms and conditions of such program.

The Association is further authorized to undertake any activity with regard to student loans which are not insured or guaranteed as provided for in this subsection as it may undertake with regard to insured or guaranteed student loans. Any warehousing advance made on the security of such loans shall be subject to the provisions of paragraph (3) of this subsection to the same extent as a warehousing advance made on the security of insured loans.

(2) Warehousing advances

Any warehousing advance made under paragraph (1)(A) of this subsection shall be made on the security of (A) insured loans, (B) marketable obligations and securities issued, guaranteed, or insured by, the United States, or for which the full faith and credit of the United States is pledged for the repayment of principal and interest thereof, or (C) marketable obligations issued, guaranteed, or insured by any agency, instrumentality, or corporation of the United States for which the credit of such agency, instrumentality, or corporation is pledged for the repayment of principal and interest thereof, in an amount equal to the amount of such advance. The proceeds of any such advance secured by insured loans shall either be invested in additional insured loans or the lender shall provide assurances to the Association that during the period of the borrowing it will maintain a level of insured loans in its portfolio not less than the aggre-

gate outstanding balance of such loans held at the time of the borrowing. The proceeds from any such advance secured by collateral described in clauses (B) and (C) shall be invested in additional insured student loans.

(3) Perfection of security interests in student loans

Notwithstanding the provisions of any State law to the contrary, including the Uniform Commercial Code as in effect in any State, a security interest in insured student loans created on behalf of the Association or any eligible lender as defined in section 1085(a) of this title may be perfected either through the taking of possession of such loans or by the filing of notice of such security interest in such loans in the manner provided by such State law for perfection of security interests in accounts.

(4) Form of securities

Securities issued pursuant to the offering of participations or pooled interests under paragraph (1) of this subsection may be in the form of debt obligations, or trust certificates of beneficial ownership, or both. Student loans set aside pursuant to the offering of participations or pooled interests shall at all times be adequate to ensure the timely principal and interest payments on such securities.

(5) Restrictions on facilities and housing activities

Not less than 75 percent of the aggregate dollar amount of obligations bought, sold, held, insured, underwritten, and otherwise supported in accordance with the authority contained in paragraph (1)(C) shall be obligations which are listed by a nationally recognized statistical rating organization at a rating below the second highest rating of such organization.

(e) Advances to lenders that do not discriminate

The Association, pursuant to such criteria as the Board of Directors may prescribe, shall make advances on security or purchase student loans pursuant to subsection (d) of this section only after the Association is assured that the lender (1) does not discriminate by pattern or practice against any particular class or category of students by requiring that, as a condition to the receipt of a loan, the student or his family maintain a business relationship with the lender, except that this clause shall not apply in the case of a loan made by a credit union, savings and loan association, mutual savings bank, institution of higher education, or any other lender with less than $75,000,000 in deposits, and (2) does not discriminate on the basis of race, sex, color, creed, or national origin.

(f) Stock of the Association

(1) Voting common stock

The Association shall have voting common stock having such par value as may be fixed by its Board of Directors from time to time. Each share of voting common stock shall be entitled to one vote with rights of cumulative voting at all elections of directors.

(2) Number of shares; transferability

The maximum number of shares of voting common stock that the Association may issue and have outstanding at any one time shall be fixed by the Board of Directors from time to time. Any voting common stock issued shall be fully transferable, except that, as to the Association, it shall be transferred only on the books of the Association.

(3) Dividends

To the extent that net income is earned and realized, subject to subsection (g)(2) of this section, dividends may be declared on voting common stock by the Board of Directors. Such dividends as may be declared by the Board of Directors shall be paid to the holders of outstanding shares of voting common stock, except that no such dividends shall be payable with respect to any share which has been called for redemption past the effective date of such call.

(4) Single class of voting common stock

As of the effective date of the Higher Education Amendments of 1992, all of the previously authorized shares of voting common stock and nonvoting common stock of the Association shall be converted to shares of a single class of voting common stock on a share-for-share basis, without any further action on the part of the Association or any holder. Each outstanding certificate for voting or nonvoting common stock shall evidence ownership of the same number of shares of voting stock into which it is converted. All preexisting rights and obligations with respect to any class of common stock of the Association shall be deemed to be rights and obligations with respect to such converted shares.

(g) Preferred stock

(1) Authority of Board

The Association is authorized to issue nonvoting preferred stock having such par value as may be fixed by its Board of Directors from time to time. Any preferred share issued shall be freely transferable, except that, as to the Association, it shall be transferred only on the books of the Association.

(2) Rights of preferred stock

The holders of the preferred shares shall be entitled to such rate of cumulative dividends and such shares shall be subject to such redemption or other conversion provisions as may be provided for at the time of issuance. No dividends shall be payable on any share of common stock at any time when any dividend is due on any share of preferred stock and has not been paid.

(3) Preference on termination of business

In the event of any liquidation, dissolution, or winding up of the Association's business, the holders of the preferred shares shall be paid in full at par value thereof, plus all accrued dividends, before the holders of the common shares receive any payment.

(h) Debt obligations

(1) Approval by Secretaries of Education and the Treasury

The Association is authorized with the approval of the Secretary of Education and the

Secretary of the Treasury to issue and have outstanding obligations having such maturities and bearing such rate or rates of interest as may be determined by the Association. The authority of the Secretary of Education to approve the issuance of such obligations is limited to obligations issued by the Association and guaranteed by the Secretary pursuant to paragraph (2) of this subsection. Such obligations may be redeemable at the option of the Association before maturity in such manner as may be stipulated therein. The Secretary of the Treasury may not direct as a condition of his approval that any such issuance of obligations by the Association be made or sold to the Federal Financing Bank. To the extent that the average outstanding amount of the obligations owned by the Association pursuant to the authority contained in subsection (d)(1)(B) and (C) of this section and as to which the income is exempt from taxation under title 26 does not exceed the average stockholders' equity of the Association, the interest on obligations issued under this paragraph shall not be deemed to be interest on indebtedness incurred or continued to purchase or carry obligations for the purpose of section 265 of title 26.

(2) Guarantee of debt

The Secretary is authorized, prior to October 1, 1984, to guarantee payment when due of principal and interest on obligations issued by the Association in an aggregate amount determined by the Secretary in consultation with the Secretary of the Treasury. Nothing in this section shall be construed so as to authorize the Secretary of Education or the Secretary of the Treasury to limit, control, or constrain programs of the Association or support of the Guaranteed Student Loan Program by the Association.

(3) Borrowing authority to meet guarantee obligations

To enable the Secretary to discharge his responsibilities under guarantees issued by him, he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the months preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. There is authorized to be appropriated to the Secretary such sums as may be necessary to pay the principal and interest on the notes or obligations issued by him to the Secretary of the Treasury.

(4) Action on request for guarantees

Upon receipt of a request from the Association under this subsection requiring approvals by the Secretary of Education or the Secretary of the Treasury, the Secretary of Education or the Secretary of the Treasury shall act promptly either to grant approval or to advise the Association of the reasons for withholding approval. In no case shall such an approval be withheld for a period longer than 60 days unless, prior to the end of such period, the Secretary of Education and the Secretary of the Treasury submit to the Congress a detailed explanation of reasons for doing so.

(5) Authority of Treasury to purchase debt

The Secretary of the Treasury is authorized to purchase any obligations issued by the Association pursuant to this subsection as now or hereafter in force, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, as now or hereafter in force, and the purposes for which securities may be issued under chapter 31 of title 31, as now or hereafter in force are extended to include such purchases. The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if such purchase would increase the aggregate principal amount of his then outstanding holdings of such obligations under this subsection to an amount greater than $1,000,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States of comparable maturities as of the last day of the month preceding the making of such purchase. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

(6) Sale of debt to Federal Financing Bank

Notwithstanding any other provision of law the Association is authorized to sell or issue obligations on the security of student loans, the payment of interest or principal of which has at any time been guaranteed under section 1078 or 1079 of this title, to the Federal Financing Bank.

(7) Offset fee

(A) The Association shall pay to the Secretary, on a monthly basis, an offset fee calculated on an annual basis in an amount equal to 0.30 percent of the principal amount of each loan made, insured or guaranteed under this part that the Association holds (except for loans made pursuant to section 1078–3 of this title, subsection (*o*) of this section, or subsection (q) of this section) and that was acquired on or after August 10, 1993.

(B) If the Secretary determines that the Association has substantially failed to comply with subsection (q) of this section, subparagraph (A) shall be applied by substituting ''1.0 percent'' for ''0.3 percent''.

(C) The Secretary shall deposit all fees collected pursuant to this paragraph into the insurance fund established in section 1081 of this title.

(i) General corporate powers

The Association shall have power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel;

(2) to adopt, alter, and use the corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal by its Board of Directors, bylaws, rules, and regulations as may be necessary for the conduct of its business;

(4) to conduct its business, carry on its operations, and have officers and exercise the power granted by this section in any State without regard to any qualification or similar statute in any State;

(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Association;

(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

(8) to appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them, and fix the penalty thereof; and

(9) to enter into contracts, to execute instruments, to incur liabilities, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

(j) Accounting, auditing, and reporting

The accounts of the Association shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States, except that independent public accountants licensed to practice by such regulatory authority after December 31, 1970, and persons who, although not so certified or licensed, meet, in the opinion of the Secretary, standards of education and experience representative of the highest standards prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations may perform such audits until December 31, 1975. A report of each such audit shall be furnished to the Secretary of the Treasury. The audit shall be conducted at the place or places where the accounts are normally kept. The representatives of the Secretary shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Association and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians.

(k) Report on audits by Treasury

A report of each such audit for a fiscal year shall be made by the Secretary of the Treasury to the President and to the Congress not later than 6 months following the close of such fiscal year. The report shall set forth the scope of the audit and shall include a statement (showing intercorporate relations) of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep the President and the Congress informed of the operations and financial condition of the Association, together with such recommendations with respect thereto as the Secretary may deem advisable, including a report of any impairment of capital or lack of sufficient capital noted in the audit. A copy of each report shall be furnished to the Secretary, and to the Association.

(*l*) Lawful investment instruments; effect of and exemptions from other laws

All obligations issued by the Association including those made under subsection (d)(4) of this section shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof. All stock and obligations issued by the Association pursuant to this section shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States. The Association shall, for the purposes of section 355(2) of title 12, be deemed to be an agency of the United States. The obligations of the Association shall be deemed to be obligations of the United States for the purpose of section 3124 of title 31. For the purpose of the distribution of its property pursuant to section 726 of title 11, the Association shall be deemed a person within the meaning of such title. The priority established in favor of the United States by section 3713 of title 31 shall

not establish a priority over the indebtedness of the Association issued or incurred on or before September 30, 1992. The Federal Reserve Banks are authorized to act as depositaries, custodians, or fiscal agents, or a combination thereof, for the Association in the general performance of its powers under this section.

(m) Preparation of obligations

In order to furnish obligations for delivery by the Association, the Secretary of the Treasury is authorized to prepare such obligations in such form as the Board of Directors may approve, such obligations when prepared to be held in the Treasury subject to delivery upon order by the Association. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Association shall reimburse the Secretary of the Treasury for any expenditures made in the preparation, custody, and delivery of such obligations. The Secretary of the Treasury is authorized to promulgate regulations on behalf of the Association so that the Association may utilize the book-entry system of the Federal Reserve Banks.

(n) Report on operations and activities

The Association shall, as soon as practicable after the end of each fiscal year, transmit to the President and the Congress a report of the Association's operations and activities, including a report with respect to all facilities transactions, during each year.

(*o*) Loan consolidations

(1) In general

The Association or its designated agent may, upon request of a borrower, consolidate loans received under this subchapter and part C of subchapter I of chapter 34 of title 42 in accordance with section 1078–3 of this title.

(2) Use of existing agencies as agent

The Association in making loans pursuant to this subsection in any State served by a guaranty agency or an eligible lender in a State described in section 1085(d)(1)(D) or (F) of this title may designate as its agent such agency or lender to perform such functions as the Association determines appropriate. Any agreements made pursuant to this subparagraph shall be on such terms and conditions as agreed upon by the Association and such agency or lender.

(p) Advances for direct loans by guaranty agencies

(1) In general

The Association shall make advances in each fiscal year from amounts available to it to each guaranty agency and eligible lender described in subsection 1078(h)(1)[1] of this title which has an agreement with the Association which sets forth that advances are necessary to enable such agency or lender to make student loans in accordance with section 1078(h)[1] of this title and that such advances will be repaid to the Association in accordance with such terms and conditions as may be set forth in the agreement and agreed to by the Association and such agency or lender. Advances made under this subsection shall not be subject to subsection (d)(2) of this section.

(2) Limitation

No advance may be made under this subsection unless the guaranty agency or lender makes an application to the Association, which shall be accompanied by such information as the Association determines to be reasonably necessary.

(q) Lender-of-last-resort

(1) Action at request of Secretary

(A) Whenever the Secretary determines that eligible borrowers are seeking and are unable to obtain loans under this part, the Association or its designated agent shall, not later than 90 days after August 10, 1993, begin making loans to such eligible borrowers in accordance with this subsection at the request of the Secretary. The Secretary may request that the Association make loans to borrowers within a geographic area or for the benefit of students attending institutions of higher education that certify, in accordance with standards established by the Secretary, that their students are seeking and unable to obtain loans.

(B) Loans made pursuant to this subsection shall be insurable by the Secretary under section 1079 of this title with a certificate of comprehensive insurance coverage provided for under section 1079(b)(1) of this title or by a guaranty agency under paragraph (2)(A) of this subsection.

(2) Issuance and coverage of loans

(A) Whenever the Secretary, after consultation with, and with the agreement of, representatives of the guaranty agency in a State, or an eligible lender in a State described in section 1085(d)(1)(D) of this title, determines that a substantial portion of eligible borrowers in such State or within an area of such State are seeking and are unable to obtain loans under this part, the Association or its designated agent shall begin making such loans to borrowers in such State or within an area of such State in accordance with this subsection at the request of the Secretary.

(B) Loans made pursuant to this subsection shall be insurable by the agency identified in subparagraph (A) having an agreement pursuant to section 1078(b) of this title. For loans insured by such agency, the agency shall provide the Association with a certificate of comprehensive insurance coverage, if the Association and the agency have mutually agreed upon a means to determine that the agency has not already guaranteed a loan under this part to a student which would cause a subsequent loan made by the Association to be in violation of any provision under this part.

(3) Termination of lending

The Association or its designated agent shall cease making loans under this subsection at such time as the Secretary determines that the conditions which caused the implementation of this subsection have ceased to exist.

[1] See References in Text note below.

(r) Safety and soundness of Association

(1) Reports by the Association

The Association shall promptly furnish to the Secretary of Education and Secretary of the Treasury copies of all—

(A) periodic financial reports publicly distributed by the Association;

(B) reports concerning the Association that are received by the Association and prepared by nationally recognized statistical rating organizations; and

(C)(i) financial statements of the Association within 45 days of the end of each fiscal quarter; and

(ii) reports setting forth the calculation of the capital ratio of the Association within 45 days of the end of each fiscal quarter.

(2) Audit by Secretary of the Treasury

(A) The Secretary of the Treasury may—

(i) appoint and fix the compensation of such auditors and examiners as may be necessary to conduct audits of the Association from time to time to determine the condition of the Association for the purpose of assessing the Association's financial safety and soundness and to determine whether the requirements of this section and section 1087–3 of this title are being met; and

(ii) obtain the services of such experts as the Secretary of the Treasury determines necessary and appropriate, as authorized by section 3109 of title 5, to assist in determining the condition of the Association for the purpose of assessing the Association's financial safety and soundness, and to determine whether the requirements of this section and section 1087–3 of this title are being met.

(B) Each auditor appointed under this paragraph shall conduct an audit of the Association to the extent requested by the Secretary of the Treasury and shall prepare and submit a report to the Secretary of the Treasury concerning the results of such audit. A copy of such report shall be furnished to the Association and the Secretary of Education on the date on which it is delivered to the Secretary of the Treasury.

(C) The Association shall provide full and prompt access to the Secretary of the Treasury to its books and records and other information requested by the Secretary of the Treasury.

(D) ANNUAL ASSESSMENT.—

(i) IN GENERAL.—For each fiscal year beginning on or after October 1, 1996, the Secretary of the Treasury may establish and collect from the Association an assessment (or assessments) in amounts sufficient to provide for reasonable costs and expenses of carrying out the duties of the Secretary of the Treasury under this section and section 1087–3 of this title during such fiscal year. In no event may the total amount so assessed exceed, for any fiscal year, $800,000, adjusted for each fiscal year ending after September 30, 1997, by the ratio of the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) for the final month of the fiscal year preceding the fiscal year for which the assessment is made to the Consumer Price Index for All Urban Consumers for September 1997.

(ii) DEPOSIT.—Amounts collected from assessments under this subparagraph shall be deposited in an account within the Treasury of the United States as designated by the Secretary of the Treasury for that purpose. The Secretary of the Treasury is authorized and directed to pay out of any funds available in such account the reasonable costs and expenses of carrying out the duties of the Secretary of the Treasury under this section and section 1087–3 of this title. None of the funds deposited into such account shall be available for any purpose other than making payments for such costs and expenses.

(E) OBLIGATION TO OBTAIN, MAINTAIN, AND REPORT INFORMATION.—

(i) IN GENERAL.—The Association shall obtain such information and make and keep such records as the Secretary of the Treasury may from time to time prescribe concerning—

(I) the financial risk to the Association resulting from the activities of any associated person, to the extent such activities are reasonably likely to have a material impact on the financial condition of the Association, including the Association's capital ratio, the Association's liquidity, or the Association's ability to conduct and finance the Association's operations; and

(II) the Association's policies, procedures, and systems for monitoring and controlling any such financial risk.

(ii) SUMMARY REPORTS.—The Secretary of the Treasury may require summary reports of such information to be filed no more frequently than quarterly. If, as a result of adverse market conditions or based on reports provided pursuant to this subparagraph or other available information, the Secretary of the Treasury has concerns regarding the financial or operational condition of the Association, the Secretary of the Treasury may, notwithstanding the preceding sentence and clause (i), require the Association to make reports concerning the activities of any associated person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of the Association.

(iii) DEFINITION.—For purposes of this subparagraph, the term ''associated person'' means any person, other than a natural person, directly or indirectly controlling, controlled by, or under common control with the Association.

(F) COMPENSATION OF AUDITORS AND EXAMINERS.—

(i) RATES OF PAY.—Rates of basic pay for all auditors and examiners appointed pursuant to subparagraph (A) may be set and adjusted by the Secretary of the Treasury without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5.

(ii) COMPARABILITY.—

(I) IN GENERAL.—Subject to section 5373 of title 5, the Secretary of the Treasury

may provide additional compensation and benefits to auditors and examiners appointed pursuant to subparagraph (A) if the same type of compensation or benefits are then being provided by any agency referred to in section 1833b of title 12 or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation.

(II) CONSULTATION.—In setting and adjusting the total amount of compensation and benefits for auditors and examiners appointed pursuant to subparagraph (A), the Secretary of the Treasury shall consult with, and seek to maintain comparability with, the agencies referred to in section 1833b of title 12.

(3) Monitoring of safety and soundness

The Secretary of the Treasury shall conduct such studies as may be necessary to monitor the financial safety and soundness of the Association. In the event that the Secretary of the Treasury determines that the financial safety and soundness of the Association is at risk, the Secretary of the Treasury shall inform the Chairman and ranking minority member of the Committee on Labor and Human Resources of the Senate, the Chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives, and the Secretary of Education of such determination and identify any corrective actions that should be taken to ensure the safety and soundness of the Association.

(4) Capital standard

If the capital ratio is less than 2 percent and is greater than or equal to 1.75 percent at the end of the Association's most recent calendar quarter the Association shall, within 60 days of such occurrence, submit to the Secretary of the Treasury a capital restoration plan, in reasonable detail, that the Association believes is adequate to cause the capital ratio to equal or exceed 2 percent within 36 months.

(5) Capital restoration plan

(A) Submission, approval, and implementation

The Secretary of the Treasury and the Association shall consult with respect to any capital restoration plan submitted pursuant to paragraph (4) and the Secretary of the Treasury shall approve such plan (or a modification thereof accepted by the Association) or disapprove such plan within 30 days after such plan is first submitted to the Secretary of the Treasury by the Association, unless the Association and Secretary of the Treasury mutually agree to a longer consideration period. If the Secretary of the Treasury approves a capital restoration plan (including a modification of a plan accepted by the Association), the Association shall forthwith proceed with diligence to implement such plan to the best of its ability.

(B) Disapproval

If the Secretary of the Treasury does not approve a capital restoration plan as provided in subparagraph (A), then not later than the earlier of the date the Secretary of the Treasury disapproves of such plan by written notice to the Association or the expiration of the 30-day consideration period referred to in subparagraph (A) (as such period may have been extended by mutual agreement), the Secretary of the Treasury shall submit the Association's capital restoration plan, in the form most recently proposed to the Secretary of the Treasury by the Association, together with a report on the Secretary of the Treasury's reasons for disapproval of such plan and an alternative capital restoration plan, to the Chairman and ranking minority member of the Senate Committee on Labor and Human Resources and to the Chairman and ranking minority member of the House Committee on Education and Labor. A copy of such submission simultaneously shall be sent to the Association and the Secretary of Education by the Secretary of the Treasury.

(C) Association implementation and response

Upon receipt of the submission by the Association, the Association shall forthwith proceed with diligence to implement the most recently proposed capital restoration plan of the Association. The Association, within 30 days after receipt from the Secretary of the Treasury of such submission, shall submit to such Chairmen and ranking minority members a written response to such submission, setting out fully the nature and extent of the Association's agreement or the disagreement with the Secretary of the Treasury with respect to the capital restoration plan submitted to the Secretary of the Treasury and any findings of the Secretary of the Treasury.

(6) Substantial capital ratio reduction

(A) Additional plan required

If the capital ratio is less than 1.75 percent and is greater than or equal to 1 percent at the end of the Association's most recent calendar quarter, the Association shall submit to the Secretary of the Treasury within 60 days after such occurrence a capital restoration plan (or an appropriate modification of any plan previously submitted or approved under paragraph (4)) to increase promptly its capital ratio to equal or exceed 1.75 percent. The Secretary of the Treasury and the Association shall consult with respect to any plan or modified plan submitted pursuant to this paragraph. The Secretary of the Treasury shall approve such plan or modified plan (or a modification thereof accepted by the Association) or disapprove such plan or modified plan within 30 days after such plan or modified plan is first submitted to the Secretary of the Treasury by the Association, unless the Association and Secretary of the Treasury mutually agree to a longer consideration period. If the Secretary of the Treasury approves a plan or modified plan (including a modification of a plan accepted by the Association), the Association shall forthwith proceed with diligence to implement such plan or modified plan to the best of the Association's ability.

(B) Disapproval

If the Secretary of the Treasury disapproves a capital restoration plan or modified plan submitted pursuant to subparagraph (A), then, not later than the earlier of the date the Secretary of the Treasury disapproves of such plan or modified plan (by written notice to the Association) or the expiration of the 30-day consideration period described in subparagraph (A) (as such period may have been extended by mutual agreement), the Secretary of the Treasury shall prepare and submit an alternative capital restoration plan, together with a report on his reasons for disapproval of the Association's plan or modified plan, to the Chairman and ranking minority member of the Committee on Labor and Human Resources of the Senate and to the Chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives. A copy of such submission simultaneously shall be sent to the Association and the Secretary of Education by the Secretary of the Treasury. The Association, within 5 days after receipt from the Secretary of the Treasury of such submission, shall submit to the Chairmen and ranking minority members of such Committees, and the Secretary of the Treasury, a written response to such submission, setting out fully the nature and extent of the Association's agreement or disagreement with the Secretary of the Treasury with respect to the disapproved plan and the alternative plan of the Secretary of the Treasury and any findings of the Secretary of the Treasury.

(C) Review by Congress; Association implementation

Congress shall have 60 legislative days after the date on which Congress receives the alternative plan under subparagraph (B) from the Secretary of the Treasury to review such plan. If Congress does not take statutory action with respect to any such plan within such 60-day period, the Association shall immediately proceed with diligence to implement the alternative capital restoration plan of the Secretary of the Treasury under subparagraph (B). If Congress is out of session when any such alternative plan is received, such 60-day period shall begin on the first day of the next session of Congress.

(7) Actions by Secretary of the Treasury

If the capital ratio of the Association does not equal or exceed 1.75 percent at the end of the Association's most recent calendar quarter, the Secretary of the Treasury may, until the capital ratio equals or exceeds 1.75 percent, take any one or more of the following actions:

(A) Limit increase in liabilities

Limit any increase in, or order the reduction of, any liabilities of the Association, except as necessary to fund student loan purchases and warehousing advances.

(B) Restrict growth

Restrict or eliminate growth of the Association's assets, other than student loans purchases and warehousing advances.

(C) Restrict distributions

Restrict the Association from making any capital distribution.

(D) Require issuance of new capital

Require the Association to issue new capital in any form and in any amount sufficient to restore at least a 1.75 percent capital ratio.

(E) Limit executive compensation

Prohibit the Association from increasing for any executive officer any compensation including bonuses at a rate exceeding that officer's average rate of compensation during the previous 12 calendar months and prohibiting the Board from adopting any new employment severance contracts.

(8) Critical capital standard

(A) If the capital ratio is less than 1 percent at the end of the Association's most recent calendar quarter and the Association has already submitted a capital restoration plan to the Secretary of the Treasury pursuant to paragraph (4) or (6)(A), the Association shall forthwith proceed with diligence to implement the most recently proposed plan with such modifications as the Secretary of the Treasury determines are necessary to cause the capital ratio to equal or exceed 2 percent within 60 months.

(B) If the capital ratio is less than 1 percent at the end of the Association's most recent calendar quarter and the Association has not submitted a capital restoration plan to the Secretary of the Treasury pursuant to paragraph (4) or (6)(A), the Association shall—

(i) within 14 days of such occurrence submit a capital restoration plan to the Secretary of the Treasury which the Association believes is adequate to cause the capital ratio to equal or exceed 2 percent within 60 months; and

(ii) forthwith proceed with diligence to implement such plan with such modifications as the Secretary of the Treasury determines are necessary to cause the capital ratio to equal or exceed 2 percent within 60 months.

(C) Immediately upon a determination under subparagraph (A) or (B) to implement a capital restoration plan, the Secretary of the Treasury shall submit the capital restoration plan to be implemented to the Chairman and ranking minority member of the Committee on Labor and Human Resources of the Senate, the Chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives, and the Secretary of Education.

(9) Additional reports to committees

The Association shall submit a copy of its capital restoration plan, modifications proposed to the Secretary of the Treasury, and proposed modifications received from the Secretary of the Treasury to the Congressional

Budget Office and Government Accountability Office upon their submission to the Secretary of the Treasury or receipt from the Secretary of the Treasury. Notwithstanding any other provision of law, the Congressional Budget Office and Government Accountability Office shall maintain the confidentiality of information received pursuant to the previous sentence. In the event that the Secretary of the Treasury does not approve a capital restoration plan as provided in paragraph (5)(A) or (6)(A), or in the event that a capital restoration plan is modified by the Secretary of the Treasury pursuant to paragraph (6)(B) or (8), the Congressional Budget Office and Government Accountability Office shall each submit a report within 30 days of the Secretary of the Treasury's submission to the Chairmen and ranking minority members as required in paragraphs (5)(B), (6)(B), and (8)(C) to such Chairmen and ranking members—

(A) analyzing the financial condition of the Association;

(B) analyzing the capital restoration plan and reasons for disapproval of the plan contained in the Secretary of the Treasury's submission made pursuant to paragraph (5)(B), or the capital restoration plan proposed by the Association and the modifications made by the Secretary of the Treasury pursuant to paragraph (6)(B) or (8);

(C) analyzing the impact of the capital restoration plan and reasons for disapproval of the plan contained in the Secretary of the Treasury's submission made pursuant to paragraph (5)(B), or the impact of the capital restoration plan proposed by the Association and the modifications made by the Secretary of the Treasury pursuant to paragraph (6)(B) or (8), and analyzing the impact of the recommendations made pursuant to subparagraph (D) of this paragraph, on—

(i) the ability of the Association to fulfill its purpose and authorized activities as provided in this section, and

(ii) the operation of the student loan programs; and

(D) recommending steps which the Association should take to increase its capital ratio without impairing its ability to perform its purpose and authorized activities as provided in this section.

(10) Review by Secretary of Education

The Secretary of Education shall review the Secretary of the Treasury's submission required pursuant to paragraph (5)(B), (6)(B), or (8) and shall submit a report within 30 days to the Chairman and ranking minority member of the Senate Committee on Labor and Human Resources and to the Chairman and ranking minority member of the House Committee on Education and Labor—

(A) describing any administrative or legislative provisions governing the student loan programs which contributed to the decline in the Association's capital ratio; and

(B) recommending administrative and legislative changes in the student loan programs to maintain the orderly operation of such programs and to enable the Association to fulfill its purpose and authorized activities consistent with the capital ratio specified in paragraph (4).

(11) Safe harbor

The Association shall be deemed in compliance with the capital ratios described in paragraphs (4) and (6)(A) if the Association is rated in 1 of the 2 highest full rating categories (such categories to be determined without regard to designations within categories) by 2 nationally recognized statistical rating organizations, determined without regard to the Association's status as a federally chartered corporation.

(12) Treatment of confidential information

Notwithstanding any other provision of law, the Secretary of the Treasury, the Secretary of Education, the Congressional Budget Office, and the Government Accountability Office shall not disclose any information treated as confidential by the Association or the Association's associated persons and obtained pursuant to this subsection. Nothing in this paragraph shall authorize the Secretary of the Treasury, the Secretary of Education, the Congressional Budget Office, and the Government Accountability Office to withhold information from Congress, or prevent the Secretary of Education, the Congressional Budget Office, and the Government Accountability Office from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States. For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3) of such section 552.

(13) Enforcement of safety and soundness requirements

The Secretary of Education or the Secretary of the Treasury, as appropriate, may request that the Attorney General bring an action in the United States District Court for the District of Columbia for the enforcement of any provision of this section, or may, under the direction or control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance with this section.

(14) Actions by Secretary

(A) In general

For any fiscal quarter ending after January 1, 2000, the Association shall have a capital ratio of at least 2.25 percent. The Secretary of the Treasury may, whenever such capital ratio is not met, take any one or more of the actions described in paragraph (7), except that—

(i) the capital ratio to be restored pursuant to paragraph (7)(D) shall be 2.25 percent; and

(ii) if the relevant capital ratio is in excess of or equal to 2 percent for such quarter, the Secretary of the Treasury shall defer taking any of the actions set forth in

paragraph (7) until the next succeeding quarter and may then proceed with any such action only if the capital ratio of the Association remains below 2.25 percent.

(B) Applicability

The provisions of paragraphs (4), (5), (6), (8), (9), (10), and (11) shall be of no further application to the Association for any period after January 1, 2000.

(15) Definitions

As used in this subsection:

(A) The term ''nationally recognized statistical rating organization'' means any nationally recognized statistical rating organization, as that term is defined in section 78c(a) of title 15.

(B) The term ''capital ratio'' means the ratio of total stockholders' equity, as shown on the Association's most recent quarterly consolidated balance sheet prepared in the ordinary course of its business, to the sum of—

(i) the total assets of the Association, as shown on the balance sheet prepared in the ordinary course of its business; and

(ii) 50 percent of the credit equivalent amount of the following off-balance sheet items of the Association as of the date of such balance sheet—

(I) all financial standby letters of credit and other irrevocable guarantees of the repayment of financial obligations of others; and

(II) all interest rate contracts and exchange rate contracts, including interest exchange agreements, floor, cap, and collar agreements and similar arrangements.

For purposes of this subparagraph, the calculation of the credit equivalent amount of the items set forth in clause (ii) of this subparagraph, the netting of such items and eliminations for the purpose of avoidance of double-counting of such items shall be made in accordance with the measures for computing credit conversion factors for off-balance sheet items for capital maintenance purposes established for commercial banks from time to time by the Federal Reserve Board, but without regard to any risk weighting provisions in such measures.

(C) The term ''legislative days'' means only days on which either House of Congress is in session.

(16) Dividends

The Association may pay dividends in the form of cash or noncash distributions so long as at the time of the declaration of such dividends, after giving effect to the payment of such dividends as of the date of such declaration by the Board of Directors of the Association, the Association's capital would be in compliance with the capital standards set forth in this section.

(17) Certification prior to payment of dividend

Prior to the payment of any dividend under paragraph (16), the Association shall certify to the Secretary of the Treasury that the payment of the dividend will be made in compliance with paragraph (16) and shall provide copies of all calculations needed to make such certification.

(s) Charter sunset

(1) Application of provisions

This subsection applies beginning 18 months and one day after September 30, 1996, if no reorganization of the Association occurs in accordance with the provisions of section 1087–3 of this title.

(2) Sunset plan

(A) Plan submission by the Association

Not later than July 1, 2007, the Association shall submit to the Secretary of the Treasury and to the Chairman and Ranking Member of the Committee on Labor and Human Resources of the Senate and the Chairman and Ranking Member of the Committee on Economic and Educational Opportunities of the House of Representatives, a detailed plan for the orderly winding up, by July 1, 2013, of business activities conducted pursuant to the charter set forth in this section. Such plan shall—

(i) ensure that the Association will have adequate assets to transfer to a trust, as provided in this subsection, to ensure full payment of remaining obligations of the Association in accordance with the terms of such obligations;

(ii) provide that all assets not used to pay liabilities shall be distributed to shareholders as provided in this subsection; and

(iii) provide that the operations of the Association shall remain separate and distinct from that of any entity to which the assets of the Association are transferred.

(B) Amendment of the plan by the Association

The Association shall from time to time amend such plan to reflect changed circumstances, and submit such amendments to the Secretary of the Treasury and to the Chairman and Ranking Minority Member of the Committee on Labor and Human Resources of the Senate and Chairman and Ranking Minority Member of the Committee on Economic and Educational Opportunities of the House of Representatives. In no case may any amendment extend the date for full implementation of the plan beyond the dissolution date provided in paragraph (3).

(C) Plan monitoring

The Secretary of the Treasury shall monitor the Association's compliance with the plan and shall continue to review the plan (including any amendments thereto).

(D) Amendment of the plan by the Secretary of the Treasury

The Secretary of the Treasury may require the Association to amend the plan (including any amendments to the plan), if the Secretary of the Treasury deems such amendments necessary to ensure full payment of all obligations of the Association.

(E) Implementation by the Association

The Association shall promptly implement the plan (including any amendments to the plan, whether such amendments are made by the Association or are required to be made by the Secretary of the Treasury).

(3) Dissolution of the Association

The Association shall dissolve and the Association's separate existence shall terminate on July 1, 2013, after discharge of all outstanding debt obligations and liquidation pursuant to this subsection. The Association may dissolve pursuant to this subsection prior to such date by notifying the Secretary of Education and the Secretary of the Treasury of the Association's intention to dissolve, unless within 60 days of receipt of such notice the Secretary of Education notifies the Association that the Association continues to be needed to serve as a lender of last resort pursuant to subsection (q) of this section or continues to be needed to purchase loans under an agreement with the Secretary described in paragraph (4)(A). On the dissolution date, the Association shall take the following actions:

(A) Establishment of a trust

The Association shall, under the terms of an irrevocable trust agreement in form and substance satisfactory to the Secretary of the Treasury, the Association, and the appointed trustee, irrevocably transfer all remaining obligations of the Association to a trust and irrevocably deposit or cause to be deposited into such trust, to be held as trust funds solely for the benefit of holders of the remaining obligations, money or direct noncallable obligations of the United States or any agency thereof for which payment the full faith and credit of the United States is pledged, maturing as to principal and interest in such amounts and at such times as are determined by the Secretary of the Treasury to be sufficient, without consideration of any significant reinvestment of such interest, to pay the principal of, and interest on, the remaining obligations in accordance with their terms.

(B) Use of trust assets

All money, obligations, or financial assets deposited into the trust pursuant to this subsection shall be applied by the trustee to the payment of the remaining obligations assumed by the trust. Upon the fulfillment of the trustee's duties under the trust, any remaining assets of the trust shall be transferred to the persons who, at the time of the dissolution, were the shareholders of the Association, or to the legal successors or assigns of such persons.

(C) Obligations not transferred to the trust

The Association shall make proper provision for all other obligations of the Association, including the repurchase or redemption, or the making of proper provision for the repurchase or redemption, of any preferred stock of the Association outstanding.

(D) Transfer of remaining assets

After compliance with subparagraphs (A) and (C), the Association shall transfer to the shareholders of the Association any remaining assets of the Association.

(4) Restrictions relating to winding up

(A) Restrictions on new business activity or acquisition of assets by the Association

(i) In general

Beginning on July 1, 2009, the Association shall not engage in any new business activities or acquire any additional program assets (including acquiring assets pursuant to contractual commitments) described in subsection (d) of this section other than in connection with the Association—

(I) serving as a lender of last resort pursuant to subsection (q) of this section; and

(II) purchasing loans insured under this part, if the Secretary, with the approval of the Secretary of the Treasury, enters into an agreement with the Association for the continuation or resumption of the Association's secondary market purchase program because the Secretary determines there is inadequate liquidity for loans made under this part.

(ii) Agreement

The Secretary is authorized to enter into an agreement described in subclause (II) of clause (i) with the Association covering such secondary market activities. Any agreement entered into under such subclause shall cover a period of 12 months, but may be renewed if the Secretary determines that liquidity remains inadequate. The fee provided under subsection (h)(7) of this section shall not apply to loans acquired under any such agreement with the Secretary.

(B) Issuance of debt obligations during the wind up period; attributes of debt obligations

The Association shall not issue debt obligations which mature later than July 1, 2013, except in connection with serving as a lender of last resort pursuant to subsection (q) of this section or with purchasing loans under an agreement with the Secretary as described in subparagraph (A). Nothing in this subsection shall modify the attributes accorded the debt obligations of the Association by this section, regardless of whether such debt obligations are transferred to a trust in accordance with paragraph (3).

(C) Use of Association name

The Association may not transfer or permit the use of the name ''Student Loan Marketing Association'', ''Sallie Mae'', or any variation thereof, to or by any entity other than a subsidiary of the Association.

(Pub. L. 89–329, title IV, § 439, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1418; amended Pub. L. 100–50, § 10(dd), June 3, 1987, 101 Stat. 347; Pub. L. 100–369, § 7(c), July 18, 1988, 102 Stat. 837; Pub. L. 102–325, title IV, § 431, July 23, 1992, 106 Stat. 554; Pub. L. 103–66, title IV, §§ 4041(c), 4104, Aug. 10, 1993, 107 Stat. 356, 367;

Pub. L. 103–208, § 2(c)(69), Dec. 20, 1993, 107 Stat. 2470; Pub. L. 103–382, title III, § 358, Oct. 20, 1994, 108 Stat. 3968; Pub. L. 104–208, div. A, title I, § 101(e) [title VI, § 602(b)(2)–(4), (c)], Sept. 30, 1996, 110 Stat. 3009–233, 3009–284 to 3009–286; Pub. L. 106–554, § 1(a)(1) [title III, § 309], Dec. 21, 2000, 114 Stat. 2763, 2763A–45; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–291, § 4(b)(5), Sept. 29, 2006, 120 Stat. 1338.)

REPEAL OF SECTION

Pub. L. 104–208, div. A, title I, § 101(e) [title VI, § 602(d)], Sept. 30, 1996, 110 Stat. 3009–233, 3009–289, provided that this section is repealed effective one year after date on which all obligations of trust established under section 1087–3(d)(1) of this title have been extinguished, if reorganization occurs in accordance with section 1087–3 of this title; or date on which all obligations of trust established under subsec. (s)(3)(A) of this section have been extinguished, if reorganization does not occur in accordance with section 1087–3 of this title.

REFERENCES IN TEXT

For the effective date of the Higher Education Amendments of 1992, referred to in subsec. (f)(4), see section 2 of Pub. L. 102–325, set out as an Effective Date of 1992 Amendment note under section 1001 of this title.

Section 1078(h) of this title, referred to in subsec. (p)(1), was repealed by Pub. L. 110–315, title IV, § 438(a)(2)(B), Aug. 14, 2008, 122 Stat. 3258.

CODIFICATION

In subsec. (h)(3) and (5), ''chapter 31 of title 31'' substituted for ''the Second Liberty Bond Act, as amended'' and ''the Second Liberty Bond Act'', and ''that chapter'' substituted for ''that Act, as amended'', on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 1087–2, Pub. L. 89–329, title IV, § 439, as added Pub. L. 92–318, title I, § 133(a), June 23, 1972, 86 Stat. 265; amended Pub. L. 94–273, § 3(9), Apr. 21, 1976, 90 Stat. 376; Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2136; Pub. L. 95–43, § 1(a)(38), June 15, 1977, 91 Stat. 217; Pub. L. 96–374, title IV, § 421(a)–(e)(1), title XIII, § 1391(a)(1), (3), Oct. 3, 1980, 94 Stat. 1427–1430, 1503; Pub. L. 97–35, title V, § 538, Aug. 13, 1981, 95 Stat. 457; Pub. L. 97–115, § 18, Dec. 29, 1981, 95 Stat. 1610; Pub. L. 97–301, § 14, Oct. 13, 1982, 96 Stat. 1405; Pub. L. 98–79, §§ 2, 8, Aug. 15, 1983, 97 Stat. 476, 483; Pub. L. 99–272, title XVI, §§ 16017(b)(4), 16018(a)(3), Apr. 7, 1986, 100 Stat. 347, 348, established the Student Loan Marketing Association, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2006—Subsec. (r)(15)(A). Pub. L. 109–291 substituted ''means any nationally recognized statistical rating organization, as that term is defined in section 78c(a) of title 15'' for ''means any entity recognized as such by the Securities and Exchange Commission''.

2004—Subsec. (r)(9), (12). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' wherever appearing.

2000—Subsec. (r)(2)(A)(i). Pub. L. 106–554, § 1(a)(1) [title III, § 309(1)], which directed amendment of this section by substituting ''and fix the compensation of such auditors and examiners as may be necessary'' for ''auditors and examiners'', was executed by making the substitution for ''auditors or examiners'', to reflect the probable intent of Congress.

Subsec. (r)(2)(F). Pub. L. 106–554, § 1(a)(1) [title III, § 309(2)], added subpar. (F).

1996—Subsec. (r)(1)(C). Pub. L. 104–208, § 101(e) [title VI, § 602(b)(3)(A)], added subpar. (C).

Subsec. (r)(2)(A)(i), (ii). Pub. L. 104–208, § 101(e) [title VI, § 602(b)(3)(B)(i)], added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) appoint auditors to conduct audits of the Association from time to time to determine the condition of the Association for the purpose of assessing its financial safety and soundness; and

''(ii) enter into contracts to obtain the services of such technical experts as the Secretary of the Treasury determines necessary and appropriate to provide technical assistance to any auditor appointed under this paragraph.''

Subsec. (r)(2)(D). Pub. L. 104–208, § 101(e) [title VI, § 602(b)(3)(B)(ii)], added subpar. (D).

Subsec. (r)(2)(E). Pub. L. 104–208, § 101(e) [title VI, § 602(b)(4)(A)], added subpar. (E).

Subsec. (r)(12). Pub. L. 104–208, § 101(e) [title VI, § 602(b)(2)(A)], inserted ''or the Association's associated persons'' after ''by the Association'' in first sentence.

Subsec. (r)(13). Pub. L. 104–208, § 101(e) [title VI, § 602(b)(2)(B), (C)], added par. (13) and redesignated former par. (13) as (15).

Subsec. (r)(14). Pub. L. 104–208, § 101(e) [title VI, § 602(b)(3)(C)], added par. (14).

Subsec. (r)(15). Pub. L. 104–208, § 101(e) [title VI, § 602(b)(2)(B)], redesignated par. (13) as (15).

Subsec. (r)(16), (17). Pub. L. 104–208, § 101(e), [title VI, § 602(b)(4)(B)], added pars. (16) and (17).

Subsec. (s). Pub. L. 104–208, § 101(e) [title VI, § 602(c)], added subsec. (s).

1994—Subsec. (d)(1)(C). Pub. L. 103–382, § 358(1)(A), (D), inserted ''(including related equipment, instrumentation, and furnishings)'' after ''materials'' in introductory provisions and substituted ''30 percent'' for ''15 percent'' and ''types'' for ''type'' in concluding provisions.

Subsec. (d)(1)(C)(ii). Pub. L. 103–382, § 358(1)(B), substituted '', dining halls, student unions, and facilities specifically designed to promote fitness and health for students, faculty, and staff or for physical education courses; and'' for the semicolon.

Subsec. (d)(1)(C)(iii), (iv). Pub. L. 103–382, § 358(1)(C), (E), struck out ''and'' after the semicolon in cl. (iii) and struck out cl. (iv) which read as follows: ''related equipment, instrumentation, and furnishings for facilities and materials described in clause (i) or (iii);''.

Subsec. (n). Pub. L. 103–382, § 358(2), substituted ''a report of the Association's operations and activities, including a report with respect to all facilities transactions, during each year'' for ''a report of its operations and activities during each year''.

1993—Subsec. (h)(7). Pub. L. 103–66, § 4104, added par. (7).

Subsec. (q). Pub. L. 103–66, § 4041(c), amended subsec. (q) generally, substituting present provisions for substantially similar former provisions.

Subsec. (r)(12). Pub. L. 103–208 substituted ''section 552'' for ''section 522''.

1992—Subsec. (c). Pub. L. 102–325, § 431(a), amended subsec. (c) generally, substituting present provisions consisting of pars. (1) to (4) for former provisions which provided for: in par. (1), Board membership; in par. (2), interim Board; in par. (3), regular Board; in par. (4), succession of regular Board; in par. (5), terms of appointed and elected members; and in par. (6), meetings and functions of Board.

Subsec. (d)(1)(C). Pub. L. 102–325, § 431(b), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''to buy, sell, hold, insure, underwrite, and otherwise deal in obligations issued for the purpose of financing or refinancing the construction, reconstruction, renovation, or purchase of educational and training facilities and housing for students and faculties (including the underlying real property), and related equipment, instrumentation, and furnishings;''.

Subsec. (d)(5). Pub. L. 102–325, § 431(c), substituted ''second highest rating'' for ''third highest rating''.

Subsec. (f). Pub. L. 102–325, § 431(d), amended subsec. (f) generally, substituting present provisions consisting

of pars. (1) to (4) for former provisions which provided for: in par. (1), common stock to insured lenders and eligible institutions only; in par. (2), voting rights; in par. (3), number of shares and transferability; in par. (4), dividends; and in par. (5), nonvoting common stock.

Subsec. (r). Pub. L. 102–325, § 431(e), added subsec. (r).

1988—Subsec. (h)(1). Pub. L. 100–369 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' in two places, which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1987—Subsec. (d)(1)(E)(iii). Pub. L. 100–50 inserted ''Labor and'' before ''Human Resources''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(e) [title VI, § 602(d)(2)] of div. A of Pub. L. 104–208 provided that: ''The repeals made by paragraph (1) [repealing this section and section 1087–3 of this title] shall be effective one year after—

''(A) the date on which all of the obligations of the trust established under section 440(d)(1) of the Higher Education Act of 1965 [20 U.S.C. 1087–3(d)(1)] (as added by subsection (a)) have been extinguished, if a reorganization occurs in accordance with section 440 of such Act; or

''(B) the date on which all of the obligations of the trust established under subsection [sic] 439(s)(3)(A) of such Act [20 U.S.C. 1087–2(s)(3)(A)] (as added by subsection (c)) have been extinguished, if a reorganization does not occur in accordance with section 440 of such Act.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective July 23, 1992, except that changes in subsec. (d)(1), relating to facilities loans, applicable with respect to applications received on or after July 1, 1992, see section 432 of Pub. L. 102–325, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsecs. (k) and (n) of this section relating to transmitting annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and pages 141 and 206 of House Document No. 103–7.

USE OF ASSOCIATION NAMES UPON DISSOLUTION; ENFORCEMENT

Section 101(e) [title VI, § 602(e), (f)] of div. A of Pub. L. 104–208 provided that:

''(e) ASSOCIATION NAMES.—Upon dissolution in accordance with section 439(s) of the Higher Education Act of 1965 (20 U.S.C. 1087–2[(s)]), the names 'Student Loan Marketing Association', 'Sallie Mae', and any variations thereof may not be used by any entity engaged in any business similar to the business conducted pursuant to section 439 of such Act (as such section was in effect on the date of enactment of this Act [Sept. 30, 1996]) without the approval of the Secretary of the Treasury.

''(f) RIGHT TO ENFORCE.—The Secretary of Education or the Secretary of the Treasury, as appropriate, may request that the Attorney General bring an action in the United States District Court for the District of Columbia for the enforcement of any provision of subsection (e), or may, under the direction or control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance with subsection (e).''

§ 1087–3. Reorganization of Student Loan Marketing Association through formation of Holding Company

(a) Actions by Association's Board of Directors

The Board of Directors of the Association shall take or cause to be taken all such action as the Board of Directors deems necessary or appropriate to effect, upon the shareholder approval described in subsection (b) of this section, a restructuring of the common stock ownership of the Association, as set forth in a plan of reorganization adopted by the Board of Directors (the terms of which shall be consistent with this section) so that all of the outstanding common shares of the Association shall be directly owned by a Holding Company. Such actions may include, in the Board of Director's discretion, a merger of a wholly owned subsidiary of the Holding Company with and into the Association, which would have the effect provided in the plan of reorganization and the law of the jurisdiction in which such subsidiary is incorporated. As part of the restructuring, the Board of Directors may cause—

(1) the common shares of the Association to be converted, on the reorganization effective date, to common shares of the Holding Company on a one for one basis, consistent with applicable State or District of Columbia law; and

(2) Holding Company common shares to be registered with the Securities and Exchange Commission.

(b) Shareholder approval

The plan of reorganization adopted by the Board of Directors pursuant to subsection (a) of this section shall be submitted to common shareholders of the Association for their approval. The reorganization shall occur on the reorganization effective date, provided that the plan of reorganization has been approved by the affirmative votes, cast in person or by proxy, of the holders of a majority of the issued and outstanding shares of the Association common stock.

(c) Transition

In the event the shareholders of the Association approve the plan of reorganization under subsection (b) of this section, the following provisions shall apply beginning on the reorganization effective date:

(1) In general

Except as specifically provided in this section, until the dissolution date the Associa-

tion shall continue to have all of the rights, privileges and obligations set forth in, and shall be subject to all of the limitations and restrictions of, section 1087–2 of this title, and the Association shall continue to carry out the purposes of such section. The Holding Company and any subsidiary of the Holding Company (other than the Association) shall not be entitled to any of the rights, privileges, and obligations, and shall not be subject to the limitations and restrictions, applicable to the Association under section 1087–2 of this title, except as specifically provided in this section. The Holding Company and any subsidiary of the Holding Company (other than the Association or a subsidiary of the Association) shall not purchase loans insured under this chapter and part C of subchapter I of chapter 34 of title 42 until such time as the Association ceases acquiring such loans, except that the Holding Company may purchase such loans if the Association is merely continuing to acquire loans as a lender of last resort pursuant to section 1087–2(q) of this title or under an agreement with the Secretary described in paragraph (6).

(2) Transfer of certain property

(A) In general

Except as provided in this section, on the reorganization effective date or as soon as practicable thereafter, the Association shall use the Association's best efforts to transfer to the Holding Company or any subsidiary of the Holding Company (or both), as directed by the Holding Company, all real and personal property of the Association (both tangible and intangible) other than the remaining property. Subject to the preceding sentence, such transferred property shall include all right, title, and interest in—

(i) direct or indirect subsidiaries of the Association (excluding special purpose funding companies in existence on September 30, 1996, and any interest in any government-sponsored enterprise);

(ii) contracts, leases, and other agreements of the Association;

(iii) licenses and other intellectual property of the Association; and

(iv) any other property of the Association.

(B) Construction

Nothing in this paragraph shall be construed to prohibit the Association from transferring remaining property from time to time to the Holding Company or any subsidiary of the Holding Company, subject to the provisions of paragraph (4).

(3) Transfer of personnel

On the reorganization effective date, employees of the Association shall become employees of the Holding Company (or any subsidiary of the Holding Company), and the Holding Company (or any subsidiary of the Holding Company) shall provide all necessary and appropriate management and operational support (including loan servicing) to the Association, as requested by the Association. The Association, however, may obtain such management and operational support from persons or entities not associated with the Holding Company.

(4) Dividends

The Association may pay dividends in the form of cash or noncash distributions so long as at the time of the declaration of such dividends, after giving effect to the payment of such dividends as of the date of such declaration by the Board of Directors of the Association, the Association's capital would be in compliance with the capital standards and requirements set forth in section 1087–2(r) of this title. If, at any time after the reorganization effective date, the Association fails to comply with such capital standards, the Holding Company shall transfer with due diligence to the Association additional capital in such amounts as are necessary to ensure that the Association again complies with the capital standards.

(5) Certification prior to dividend

Prior to the payment of any dividend under paragraph (4), the Association shall certify to the Secretary of the Treasury that the payment of the dividend will be made in compliance with paragraph (4) and shall provide copies of all calculations needed to make such certification.

(6) Restrictions on new business activity or acquisition of assets by Association

(A) In general

After the reorganization effective date, the Association shall not engage in any new business activities or acquire any additional program assets described in section 1087–2(d) of this title other than in connection with—

(i) student loan purchases through September 30, 2007;

(ii) contractual commitments for future warehousing advances, or pursuant to letters of credit or standby bond purchase agreements, which are outstanding as of the reorganization effective date;

(iii) the Association serving as a lender-of-last-resort pursuant to section 1087–2(q) of this title; and

(iv) the Association's purchase of loans insured under this part, if the Secretary, with the approval of the Secretary of the Treasury, enters into an agreement with the Association for the continuation or resumption of the Association's secondary market purchase program because the Secretary determines there is inadequate liquidity for loans made under this part.

(B) Agreement

The Secretary is authorized to enter into an agreement described in clause (iv) of subparagraph (A) with the Association covering such secondary market activities. Any agreement entered into under such clause shall cover a period of 12 months, but may be renewed if the Secretary determines that liquidity remains inadequate. The fee provided under section 1087–2(h)(7) of this title shall not apply to loans acquired under any such agreement with the Secretary.

(7) Issuance of debt obligations during the transition period; attributes of debt obligations

After the reorganization effective date, the Association shall not issue debt obligations which mature later than September 30, 2008, except in connection with serving as a lender-of-last-resort pursuant to section 1087–2(q) of this title or with purchasing loans under an agreement with the Secretary as described in paragraph (6). Nothing in this section shall modify the attributes accorded the debt obligations of the Association by section 1087–2 of this title, regardless of whether such debt obligations are incurred prior to, or at any time following, the reorganization effective date or are transferred to a trust in accordance with subsection (d) of this section.

(8) Monitoring of safety and soundness

(A) Obligation to obtain, maintain, and report information

The Association shall obtain such information and make and keep such records as the Secretary of the Treasury may from time to time prescribe concerning—

(i) the financial risk to the Association resulting from the activities of any associated person, to the extent such activities are reasonably likely to have a material impact on the financial condition of the Association, including the Association's capital ratio, the Association's liquidity, or the Association's ability to conduct and finance the Association's operations; and

(ii) the Association's policies, procedures, and systems for monitoring and controlling any such financial risk.

(B) Summary reports

The Secretary of the Treasury may require summary reports of the information described in subparagraph (A) to be filed no more frequently than quarterly. If, as a result of adverse market conditions or based on reports provided pursuant to this subparagraph or other available information, the Secretary of the Treasury has concerns regarding the financial or operational condition of the Association, the Secretary of the Treasury may, notwithstanding the preceding sentence and subparagraph (A), require the Association to make reports concerning the activities of any associated person whose business activities are reasonably likely to have a material impact on the financial or operational condition of the Association.

(C) Separate operation of corporations

(i) In general

The funds and assets of the Association shall at all times be maintained separately from the funds and assets of the Holding Company or any subsidiary of the Holding Company and may be used by the Association solely to carry out the Association's purposes and to fulfill the Association's obligations.

(ii) Books and records

The Association shall maintain books and records that clearly reflect the assets and liabilities of the Association, separate from the assets and liabilities of the Holding Company or any subsidiary of the Holding Company.

(iii) Corporate office

The Association shall maintain a corporate office that is physically separate from any office of the Holding Company or any subsidiary of the Holding Company.

(iv) Director

No director of the Association who is appointed by the President pursuant to section 1087–2(c)(1)(A) of this title may serve as a director of the Holding Company.

(v) One officer requirement

At least one officer of the Association shall be an officer solely of the Association.

(vi) Transactions

Transactions between the Association and the Holding Company or any subsidiary of the Holding Company, including any loan servicing arrangements, shall be on terms no less favorable to the Association than the Association could obtain from an unrelated third party offering comparable services.

(vii) Credit prohibition

The Association shall not extend credit to the Holding Company or any subsidiary of the Holding Company nor guarantee or provide any credit enhancement to any debt obligations of the Holding Company or any subsidiary of the Holding Company.

(viii) Amounts collected

Any amounts collected on behalf of the Association by the Holding Company or any subsidiary of the Holding Company with respect to the assets of the Association, pursuant to a servicing contract or other arrangement between the Association and the Holding Company or any subsidiary of the Holding Company, shall be collected solely for the benefit of the Association and shall be immediately deposited by the Holding Company or such subsidiary to an account under the sole control of the Association.

(D) Encumbrance of assets

Notwithstanding any Federal or State law, rule, or regulation, or legal or equitable principle, doctrine, or theory to the contrary, under no circumstances shall the assets of the Association be available or used to pay claims or debts of or incurred by the Holding Company. Nothing in this subparagraph shall be construed to limit the right of the Association to pay dividends not otherwise prohibited under this subparagraph or to limit any liability of the Holding Company explicitly provided for in this section.

(E) Holding Company activities

After the reorganization effective date and prior to the dissolution date, all business activities of the Holding Company shall be conducted through subsidiaries of the Holding Company.

(F) Confidentiality

Any information provided by the Association pursuant to this section shall be subject to the same confidentiality obligations contained in section 1087–2(r)(12) of this title.

(G) Definition

For purposes of this paragraph, the term ''associated person'' means any person, other than a natural person, who is directly or indirectly controlling, controlled by, or under common control with, the Association.

(9) Issuance of stock warrants

(A) In general

On the reorganization effective date, the Holding Company shall issue to the District of Columbia Financial Responsibility and Management Assistance Authority a number of stock warrants that is equal to one percent of the outstanding shares of the Association, determined as of the last day of the fiscal quarter preceding September 30, 1996, with each stock warrant entitling the holder of the stock warrant to purchase from the Holding Company one share of the registered common stock of the Holding Company or the Holding Company's successors or assigns, at any time on or before September 30, 2008. The exercise price for such warrants shall be an amount equal to the average closing price of the common stock of the Association for the 20 business days prior to September 30, 1996, on the exchange or market which is then the primary exchange or market for the common stock of the Association. The number of shares of Holding Company common stock subject to each stock warrant and the exercise price of each stock warrant shall be adjusted as necessary to reflect—

(i) the conversion of Association common stock into Holding Company common stock as part of the plan of reorganization approved by the Association's shareholders; and

(ii) any issuance or sale of stock (including issuance or sale of treasury stock), stock split, recapitalization, reorganization, or other corporate event, if agreed to by the Secretary of the Treasury and the Association.

(B) Authority to sell or exercise stock warrants; deposit of proceeds

The District of Columbia Financial Responsibility and Management Assistance Authority is authorized to sell or exercise the stock warrants described in subparagraph (A). The District of Columbia Financial Responsibility and Management Assistance Authority shall deposit into the account established under section 1155(e)[1] of this title amounts collected from the sale and proceeds resulting from the exercise of the stock warrants pursuant to this subparagraph.

[1] See References in Text note below.

(10) Restrictions on transfer of Association shares and bankruptcy of Association

After the reorganization effective date, the Holding Company shall not sell, pledge, or otherwise transfer the outstanding shares of the Association, or agree to or cause the liquidation of the Association or cause the Association to file a petition for bankruptcy under title 11, without prior approval of the Secretary of the Treasury and the Secretary of Education.

(d) Termination of Association

In the event the shareholders of the Association approve a plan of reorganization under subsection (b) of this section, the Association shall dissolve, and the Association's separate existence shall terminate on September 30, 2008, after discharge of all outstanding debt obligations and liquidation pursuant to this subsection. The Association may dissolve pursuant to this subsection prior to such date by notifying the Secretary of Education and the Secretary of the Treasury of the Association's intention to dissolve, unless within 60 days after receipt of such notice the Secretary of Education notifies the Association that the Association continues to be needed to serve as a lender of last resort pursuant to section 1087–2(q) of this title or continues to be needed to purchase loans under an agreement with the Secretary described in subsection (c)(6) of this section. On the dissolution date, the Association shall take the following actions:

(1) Establishment of a trust

The Association shall, under the terms of an irrevocable trust agreement that is in form and substance satisfactory to the Secretary of the Treasury, the Association and the appointed trustee, irrevocably transfer all remaining obligations of the Association to the trust and irrevocably deposit or cause to be deposited into such trust, to be held as trust funds solely for the benefit of holders of the remaining obligations, money or direct noncallable obligations of the United States or any agency thereof for which payment the full faith and credit of the United States is pledged, maturing as to principal and interest in such amounts and at such times as are determined by the Secretary of the Treasury to be sufficient, without consideration of any significant reinvestment of such interest, to pay the principal of, and interest on, the remaining obligations in accordance with their terms. To the extent the Association cannot provide money or qualifying obligations in the amount required, the Holding Company shall be required to transfer money or qualifying obligations to the trust in the amount necessary to prevent any deficiency.

(2) Use of trust assets

All money, obligations, or financial assets deposited into the trust pursuant to this subsection shall be applied by the trustee to the payment of the remaining obligations assumed by the trust.

(3) Obligations not transferred to the trust

The Association shall make proper provision for all other obligations of the Association not

transferred to the trust, including the repurchase or redemption, or the making of proper provision for the repurchase or redemption, of any preferred stock of the Association outstanding. Any obligations of the Association which cannot be fully satisfied shall become liabilities of the Holding Company as of the date of dissolution.

(4) Transfer of remaining assets

After compliance with paragraphs (1) and (3), any remaining assets of the trust shall be transferred to the Holding Company or any subsidiary of the Holding Company, as directed by the Holding Company.

(e) Operation of Holding Company

In the event the shareholders of the Association approve the plan of reorganization under subsection (b) of this section, the following provisions shall apply beginning on the reorganization effective date:

(1) Holding Company Board of Directors

The number of members and composition of the Board of Directors of the Holding Company shall be determined as set forth in the Holding Company's charter or like instrument (as amended from time to time) or bylaws (as amended from time to time) and as permitted under the laws of the jurisdiction of the Holding Company's incorporation.

(2) Holding Company name

The names of the Holding Company and any subsidiary of the Holding Company (other than the Association)—

(A) may not contain the name ''Student Loan Marketing Association''; and

(B) may contain, to the extent permitted by applicable State or District of Columbia law, ''Sallie Mae'' or variations thereof, or such other names as the Board of Directors of the Association or the Holding Company deems appropriate.

(3) Use of Sallie Mae name

Subject to paragraph (2), the Association may assign to the Holding Company, or any subsidiary of the Holding Company, the ''Sallie Mae'' name as a trademark or service mark, except that neither the Holding Company nor any subsidiary of the Holding Company (other than the Association or any subsidiary of the Association) may use the ''Sallie Mae'' name on, or to identify the issuer of, any debt obligation or other security offered or sold by the Holding Company or any subsidiary of the Holding Company (other than a debt obligation or other security issued to and held by the Holding Company or any subsidiary of the Holding Company). The Association shall remit to the account established under section 1155(e)[2] of this title, $5,000,000, within 60 days of the reorganization effective date as compensation for the right to assign the ''Sallie Mae'' name as a trademark or service mark.

(4) Disclosure required

Until 3 years after the dissolution date, the Holding Company, and any subsidiary of the Holding Company (other than the Association), shall prominently display—

(A) in any document offering the Holding Company's securities, a statement that the obligations of the Holding Company and any subsidiary of the Holding Company are not guaranteed by the full faith and credit of the United States; and

(B) in any advertisement or promotional materials which use the ''Sallie Mae'' name or mark, a statement that neither the Holding Company nor any subsidiary of the Holding Company is a government-sponsored enterprise or instrumentality of the United States.

(f) Strict construction

Except as specifically set forth in this section, nothing in this section shall be construed to limit the authority of the Association as a federally chartered corporation, or of the Holding Company as a State or District of Columbia chartered corporation.

(g) Right to enforce

The Secretary of Education or the Secretary of the Treasury, as appropriate, may request that the Attorney General bring an action in the United States District Court for the District of Columbia for the enforcement of any provision of this section, or may, under the direction or control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance with this section.

(h) Deadline for reorganization effective date

This section shall be of no further force and effect in the event that the reorganization effective date does not occur on or before 18 months after September 30, 1996.

(i) Definitions

For purposes of this section:

(1) Association

The term ''Association'' means the Student Loan Marketing Association.

(2) Dissolution date

The term ''dissolution date'' means September 30, 2008, or such earlier date as the Secretary of Education permits the transfer of remaining obligations in accordance with subsection (d) of this section.

(3) Holding Company

The term ''Holding Company'' means the new business corporation established pursuant to this section by the Association under the laws of any State of the United States or the District of Columbia for the purposes of the reorganization and restructuring described in subsection (a) of this section.

(4) Remaining obligations

The term ''remaining obligations'' means the debt obligations of the Association outstanding as of the dissolution date.

(5) Remaining property

The term ''remaining property'' means the following assets and liabilities of the Association which are outstanding as of the reorganization effective date:

[2] See References in Text note below.

(A) Debt obligations issued by the Association.

(B) Contracts relating to interest rate, currency, or commodity positions or protections.

(C) Investment securities owned by the Association.

(D) Any instruments, assets, or agreements described in section 1087–2(d) of this title (including, without limitation, all student loans and agreements relating to the purchase and sale of student loans, forward purchase and lending commitments, warehousing advances, academic facilities obligations, letters of credit, standby bond purchase agreements, liquidity agreements, and student loan revenue bonds or other loans).

(E) Except as specifically prohibited by this section or section 1087–2 of this title, any other nonmaterial assets or liabilities of the Association which the Association's Board of Directors determines to be necessary or appropriate to the Association's operations.

(6) Reorganization

The term ''reorganization'' means the restructuring event or events (including any merger event) giving effect to the Holding Company structure described in subsection (a) of this section.

(7) Reorganization effective date

The term ''reorganization effective date'' means the effective date of the reorganization as determined by the Board of Directors of the Association, which shall not be earlier than the date that shareholder approval is obtained pursuant to subsection (b) of this section and shall not be later than the date that is 18 months after September 30, 1996.

(8) Subsidiary

The term ''subsidiary'' means one or more direct or indirect subsidiaries.

(Pub. L. 89–329, title IV, § 440, as added Pub. L. 104–208, div. A, title I, § 101(e) [title VI, § 602(a)], Sept. 30, 1996, 110 Stat. 3009–233, 3009–275.)

REPEAL OF SECTION

Pub. L. 104–208, div. A, title I, § 101(e) [title VI, § 602(d)], Sept. 30, 1996, 110 Stat. 3009–233, 3009–289, provided that this section is repealed effective one year after date on which all obligations of trust established under subsec. (d)(1) of this section have been extinguished, if reorganization occurs in accordance with this section, or date on which all obligations of trust established under section 1087–2(s)(3)(A) of this title have been extinguished, if reorganization does not occur in accordance with this section.

REFERENCES IN TEXT

Section 1155(e) of this title, referred to in subsecs. (c)(9)(B) and (e)(3), was in the original a reference to section 3(e) of the Student Loan Marketing Association Reorganization Act of 1996, and was translated as reading section 603(e) of that Act, which is Pub. L. 104–208, div. A, title I, § 101(e) [title VI, § 603(e)], Sept. 30, 1996, 110 Stat. 3009–233, 3009–293, to reflect the probable intent of Congress, because that Act does not contain a section 3(e), but does contain a section 603(e) which establishes the account referred to in text.

PRIOR PROVISIONS

A prior section 1087–3, Pub. L. 89–329, title IV, § 439A, as added Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2141, related to a five-year nondischargeability of certain loan debts, prior to repeal by Pub. L. 95–598, title III, § 317, Nov. 6, 1978, 92 Stat. 2678, eff. Nov. 6, 1978.

A prior section 1087–3a, Pub. L. 89–329, title IV, § 439B, as added Pub. L. 95–566, § 8, Nov. 1, 1978, 92 Stat. 2404, authorized any loan under this part to be counted as part of the expected family contribution in the determination of need, prior to repeal by Pub. L. 97–35, title V, § 532(b)(2), Aug. 13, 1981, 95 Stat. 452, applicable to loans for the statement required by section 1078(a)(2)(A) of this title is completed on or after Oct. 1, 1981.

§ 1087–4. Discrimination in secondary markets prohibited

The Student Loan Marketing Association (and, if the Association is privatized under section 1087–3 of this title, any successor entity functioning as a secondary market for loans under this part, including the Holding Company described in such section) shall not engage directly or indirectly in any pattern or practice that results in a denial of a borrower's access to loans under this part because of the borrower's race, sex, color, religion, national origin, age, disability status, income, attendance at a particular eligible institution, length of the borrower's educational program, or the borrower's academic year at an eligible institution.

(Pub. L. 89–329, title IV, § 440A, as added Pub. L. 104–208, div. A, title I, § 101(e) [title VI, § 604], Sept. 30, 1996, 110 Stat. 3009–233, 3009–293.)

PRIOR PROVISIONS

A prior section 1087–4, Pub. L. 89–329, title IV, § 440, as added Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2141, provided for criminal penalties, prior to repeal by Pub. L. 96–374, title IV, § 451(b), Oct. 3, 1980, 94 Stat. 1458, eff. Oct. 1, 1980. See section 1097 of this title.

PART C—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

CODIFICATION

This part was, in the original, part D of title IV of Pub. L. 89–329, the Higher Education Act of 1965. The letter designation was changed from ''D'' to ''C'' for codification purposes. Part C of title IV of Pub. L. 89–329, consisting of sections 441 to 447, as added by Pub. L. 99–498, title IV, § 403(a), Oct. 17, 1986, 100 Stat. 1429, is set out as section 2751 et seq. of Title 42, The Public Health and Welfare, because sections 441 to 446 of Pub. L. 89–329 had originally been enacted as part C of title I of the Economic Opportunity Act of 1964, consisting of sections 121 to 126 of Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 513, prior to the transfer of such sections into Pub. L. 89–329, and had already been classified to section 2751 et seq. of Title 42 at the time of the transfer.

§ 1087a. Program authority

(a) In general

There are hereby made available, in accordance with the provisions of this part, such sums as may be necessary (1) to make loans to all eligible students (and the eligible parents of such students) in attendance at participating institutions of higher education selected by the Secretary, to enable such students to pursue their courses of study at such institutions during the period beginning July 1, 1994; and (2) for pur-

chasing loans under section 1087i–1 of this title. Loans made under this part shall be made by participating institutions, or consortia thereof, that have agreements with the Secretary to originate loans, or by alternative originators designated by the Secretary to make loans for students in attendance at participating institutions (and their parents).

(b) Designation

(1) Program

The program established under this part shall be referred to as the ''William D. Ford Federal Direct Loan Program''.

(2) Direct loans

Notwithstanding any other provision of this part, loans made to borrowers under this part that, except as otherwise specified in this part, have the same terms, conditions, and benefits as loans made to borrowers under section 1078 of this title, shall be known as ''Federal Direct Stafford/Ford Loans''.

(Pub. L. 89–329, title IV, § 451, as added Pub. L. 99–498, title IV, § 404, Oct. 17, 1986, 100 Stat. 1437; amended Pub. L. 102–325, title IV, § 451, July 23, 1992, 106 Stat. 569; Pub. L. 103–66, title IV, § 4021, Aug. 10, 1993, 107 Stat. 341; Pub. L. 103–382, title III, § 358A, Oct. 20, 1994, 108 Stat. 3968; Pub. L. 110–227, § 7(a), May 7, 2008, 122 Stat. 746.)

PRIOR PROVISIONS

A prior section 1087a, Pub. L. 89–329, title IV, § 451, as added Pub. L. 90–575, title I, § 141, Oct. 16, 1968, 82 Stat. 1031; amended Pub. L. 92–318, title I, § 136(a), (b)(1), June 23, 1972, 86 Stat. 272, authorized appropriations for cooperative education programs from the fiscal year ending June 30, 1969, through the fiscal year ending prior to July 1, 1975, prior to repeal by Pub. L. 94–482, title I, § 129(a), Oct. 12, 1976, 90 Stat. 2144, eff. 30 days after Oct. 12, 1976.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–227, in first sentence, inserted ''(1)'' before ''to make loans'' and ''; and (2) for purchasing loans under section 1087i–1 of this title'' before period at end and, in second sentence, substituted ''Loans made under this part shall'' for ''Such loans shall''.

1994—Pub. L. 103–382 designated existing provisions as subsec. (a), added heading, and added subsec. (b).

1993—Pub. L. 103–66 amended section generally, substituting provisions relating to program authority for former provisions relating to program and payment authority.

1992—Pub. L. 102–325 amended section generally, substituting provisions relating to program and payment authority for Federal direct loan demonstration program for former provisions relating to statement of purpose of income contingent direct loan demonstration project.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of this title.

INCOME CONTINGENT LOAN DISTRIBUTION OF FUNDS

Section 452 of Pub. L. 102–325 provided that:

''(a) IN GENERAL.—After September 30, 1992, and not later than March 31, 1992, the capital balance of the student loan fund established under part D of title IV of the Higher Education Act of 1965 [20 U.S.C. 1087a et seq.] (as such Act was in effect on the date of enactment of this Act [July 23, 1992]) shall be distributed by allowing institutions to transfer any remaining funds, including future collections and all other funds at the institution's discretion, to such institution's part E [20 U.S.C. 1087aa et seq.] account, part C [42 U.S.C. 2751 et seq.] fund, or subpart 3 of part A [20 U.S.C. 1070b et seq.] fund under the terms and conditions of the appropriate program.

''(b) CONVERSION OF EXISTING LOANS.—Institutions may, after July 1, 1992, convert all outstanding loans made under part D of title IV of the Higher Education Act of 1965 [20 U.S.C. 1087a et seq.] (as such Act was in effect on such date) to part E [20 U.S.C. 1087aa et seq.] loans, provided that such institution—

''(1) notify the borrower of such conversion;

''(2) obtain a signed part E promissory note from the borrower for the remaining amount outstanding; and

''(3) provide the borrower in writing with a description of all terms and conditions of the new loan.''

§ 1087b. Funds for origination of direct student loans

(a) In general

The Secretary shall provide, on the basis of the need and the eligibility of students at each participating institution, and parents of such students, for such loans, funds for student and parent loans under this part—

(1) directly to an institution of higher education that has an agreement with the Secretary under section 1087d(a) of this title to participate in the direct student loan programs under this part and that also has an agreement with the Secretary under section 1087d(b) of this title to originate loans under this part; or

(2) through an alternative originator designated by the Secretary to students (and parents of students) attending institutions of higher education that have an agreement with the Secretary under section 1087d(a) of this title but that do not have an agreement with the Secretary under section 1087d(b) of this title.

(b) No entitlement to participate or originate

No institution of higher education shall have a right to participate in the programs authorized by this part, to originate loans, or to perform any program function under this part. Nothing in this subsection shall be construed so as to limit the entitlement of an eligible student attending a participating institution (or the eligible parent of such student) to borrow under this part.

(c) Delivery of loan funds

Loan funds shall be paid and delivered to an institution by the Secretary prior to the beginning of the payment period established by the Secretary in a manner that is consistent with payment and delivery of Federal Pell Grants under subpart 1 of part A of this subchapter.

(d) Institutions outside the United States

Loan funds for students (and parents of students) attending institutions outside the United States shall be disbursed through a financial institution located or operating in the United States and designated by the Secretary to serve as the agent of such institutions with respect to the receipt of the disbursements of such loan funds and the transfer of such funds to such in-

stitutions. To be eligible to receive funds under this part, an institution outside the United States shall make arrangements with the agent designated by the Secretary under this subsection to receive funds under this part.

(Pub. L. 89–329, title IV, § 452, as added Pub. L. 99–498, title IV, § 404, Oct. 17, 1986, 100 Stat. 1437; amended Pub. L. 102–325, title IV, § 451, July 23, 1992, 106 Stat. 569; Pub. L. 103–66, title IV, § 4021, Aug. 10, 1993, 107 Stat. 341; Pub. L. 105–33, title VI, § 6102, Aug. 5, 1997, 111 Stat. 652; Pub. L. 105–244, title IV, § 401(g)(5), Oct. 7, 1998, 112 Stat. 1652; Pub. L. 111–152, title II, § 2209(a), Mar. 30, 2010, 124 Stat. 1077.)

PRIOR PROVISIONS

A prior section 1087b, Pub. L. 89–329, title IV, § 452, as added Pub. L. 90–575, title I, § 141, Oct. 16, 1968, 82 Stat. 1031, authorized grants for programs of cooperative education, prior to repeal by Pub. L. 94–482, title I, § 129(a), Oct. 12, 1976, 90 Stat. 2144, eff. 30 days after Oct. 12, 1976.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–152 added subsec. (d).

1998—Subsec. (c). Pub. L. 105–244 substituted ''Federal Pell Grants'' for ''basic grants''.

1997—Subsecs. (b) to (d). Pub. L. 105–33 redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) which required the Secretary to pay fees to institutions of higher education and alternative loan originators to assist in meeting the cost of loan origination.

1993—Pub. L. 103–66 amended section generally, substituting provisions relating to funds for origination of direct student loans for former provisions relating to payment rules.

1992—Pub. L. 102–325 amended section generally, substituting provisions relating to payment rules for former provisions authorizing demonstration projects.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of this title.

§ 1087c. Selection of institutions for participation and origination

(a) General authority

The Secretary shall enter into agreements pursuant to section 1087d(a) of this title with institutions of higher education to participate in the direct student loan program under this part, and agreements pursuant to section 1087d(b) of this title with institutions of higher education, or consortia thereof, to originate loans in such program, for academic years beginning on or after July 1, 1994. Alternative origination services, through which an entity other than the participating institution at which the student is in attendance originates the loan, shall be provided by the Secretary, through 1 or more contracts under section 1087f(b) of this title or such other means as the Secretary may provide, for students attending participating institutions that do not originate direct student loans under this part. Such agreements for the academic year 1994–1995 shall, to the extent feasible, be entered into not later than January 1, 1994.

(b) Selection criteria

(1) Application

Each institution of higher education desiring to participate in the direct student loan program under this part shall submit an application satisfactory to the Secretary containing such information and assurances as the Secretary may require.

(2) Selection procedure

The Secretary shall select institutions for participation in the direct student loan program under this part, and shall enter into agreements with such institutions under section 1087d(a) of this title, from among those institutions that submit the applications described in paragraph (1), and meet such other eligibility requirements as the Secretary shall prescribe.

(c) Selection criteria for origination

(1) In general

The Secretary may enter into a supplemental agreement with an institution (or a consortium of such institutions) that—

(A) has an agreement under subsection[1] 1087d(a) of this title;

(B) desires to originate loans under this part; and

(C) meets the criteria described in paragraph (2).

(2) Selection criteria

The Secretary may approve an institution to originate loans only if such institution—

(A) is not on the reimbursement system of payment for any of the programs under subpart 1 or 3 of part A of this subchapter, part C of subchapter I of chapter 34 of title 42, or part D of this subchapter;

(B) is not overdue on program or financial reports or audits required under this subchapter;

(C) is not subject to an emergency action, or a limitation, suspension, or termination under section 1078(b)(1)(T), 1082(h), or 1094(c) of this title;

(D) in the opinion of the Secretary, has not had severe performance deficiencies for any of the programs under this subchapter, including such deficiencies demonstrated by audits or program reviews submitted or conducted during the 5 calendar years immediately preceding the date of application;

(E) provides an assurance that such institution has no delinquent outstanding debts to the Federal Government, unless such debts are being repaid under or in accordance with a repayment arrangement satisfactory to the Federal Government, or the Secretary in the Secretary's discretion determines that the existence or amount of such debts has not been finally determined by the cognizant Federal agency; and

(F) meets such other criteria as the Secretary may establish to protect the financial interest of the United States and to promote the purposes of this part.

(d) Eligible institutions

The Secretary may not select an institution of higher education for participation under this

[1] So in original. Probably should be ''section''.

section unless such institution is an eligible institution under section 1085(a) of this title.

(e) Consortia

Subject to such requirements as the Secretary may prescribe, eligible institutions of higher education (as determined under subsection (d) of this section) with agreements under section 1087d(a) of this title may apply to the Secretary as consortia to originate loans under this part for students in attendance at such institutions. Each such institution shall be required to meet the requirements of subsection (c) of this section with respect to loan origination.

(Pub. L. 89–329, title IV, § 453, as added Pub. L. 99–498, title IV, § 404, Oct. 17, 1986, 100 Stat. 1438; amended Pub. L. 102–325, title IV, § 451, July 23, 1992, 106 Stat. 569; Pub. L. 103–66, title IV, § 4021, Aug. 10, 1993, 107 Stat. 342; Pub. L. 103–208, § 2(e), Dec. 20, 1993, 107 Stat. 2470; Pub. L. 105–244, title IV, § 451, Oct. 7, 1998, 112 Stat. 1715; Pub. L. 111–39, title IV, § 404(b)(1), July 1, 2009, 123 Stat. 1946.)

CODIFICATION

Amendment by section 2 of Pub. L. 103–208 (which was effective as if included in Pub. L. 102–325) was executed to this section as amended by Pub. L. 102–325 and Pub. L. 103–66, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 1087c, Pub. L. 89–329, title IV, § 453, as added Pub. L. 90–575, title I, § 141, Oct. 16, 1968, 82 Stat. 1032; amended Pub. L. 92–318, title I, § 136(b)(2), June 23, 1972, 86 Stat. 272, authorized grants and contracts for training and research in cooperative education programs, prior to repeal by Pub. L. 94–482, title I, § 129(a), Oct. 12, 1976, 90 Stat. 2144, eff. 30 days after Oct. 12, 1976.

AMENDMENTS

2009—Subsec. (c)(3). Pub. L. 111–39 struck out par. (3). Text read as follows: ''The Secretary shall promulgate and publish in the Federal Register regulations governing the approval of institutions to originate loans under this part in accordance with section 1087g(a)(2) of this title.''

1998—Subsec. (a). Pub. L. 105–244, § 451(a), amended heading, redesignated par. (1) as entire subsec., and struck out pars. (2) to (4) which provided for transition from loan programs under part B of this subchapter to direct student loan program under this part and defined term ''new student loan volume''.

Subsec. (b)(2). Pub. L. 105–244, § 451(b), substituted ''prescribe.'' for ''prescribe, by, to the extent possible—

''(A)(i) categorizing such institutions according to anticipated loan volume, length of academic program, control of the institution, highest degree offered, size of student enrollment, geographic location, annual loan volume, and default experience; and

''(ii) beginning in academic year 1995–1996 selecting institutions that are reasonably representative of each of the categories described pursuant to clause (i); and

''(B) if the Secretary determines it necessary in order to carry out the purposes of subparagraph (A) and attain such reasonable representation (as required by subparagraph (A)), selecting additional institutions.''

Subsec. (c)(2). Pub. L. 105–244, § 451(c)(1)(A), (B), substituted ''Selection criteria'' for ''Transition selection criteria'' in heading and ''The Secretary'' for ''For academic year 1994–1995, the Secretary'' in introductory provisions.

Subsec. (c)(2)(A). Pub. L. 105–244, § 451(c)(1)(E), redesignated subpar. (B) as (A).

Pub. L. 105–244, § 451(c)(1)(C), struck out subpar. (A) which read as follows: ''made loans under part D of this subchapter in academic year 1993–1994 and did not exceed the applicable maximum default rate under section 1087bb(g) of this title for the most recent fiscal year for which data are available;''.

Subsec. (c)(2)(B) to (D). Pub. L. 105–244, § 451(c)(1)(E), redesignated subpars. (C), (D), and (F) as (B) to (D), respectively. Former subpar. (B) redesignated (A).

Subsec. (c)(2)(E). Pub. L. 105–244, § 451(c)(1)(E), redesignated subpar. (G) as (E).

Pub. L. 105–244, § 451(c)(1)(D), struck out subpar. (E) which read as follows: ''in the opinion of the Secretary, has not had significant deficiencies identified by a State postsecondary review entity under subpart 1 of part G of this subchapter;''.

Subsec. (c)(2)(F) to (H). Pub. L. 105–244, § 451(c)(1)(E), redesignated subpars. (G) and (H) as (E) and (F), respectively. Former subpar. (F) redesignated (D).

Subsec. (c)(3). Pub. L. 105–244, § 451(c)(2), struck out ''after transition'' after ''approval'' in heading and substituted ''The Secretary'' for ''For academic year 1995–1996 and subsequent academic years, the Secretary'' in text.

1993—Pub. L. 103–66 amended section generally, substituting provisions relating to selection of institutions for participation and origination for former provisions relating to selection by Secretary.

Subsec. (b)(2)(B). Pub. L. 103–208 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''if the Secretary determines it necessary to carry out the purposes of this part, selecting additional institutions.'' See Codification note above.

1992—Pub. L. 102–325 amended section generally, substituting provisions relating to selection by the Secretary for former provisions relating to agreements with institutions of higher education.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of this title.

§ 1087d. Agreements with institutions

(a) Participation agreements

An agreement with any institution of higher education for participation in the direct student loan program under this part shall—

(1) provide for the establishment and maintenance of a direct student loan program at the institution under which the institution will—

(A) identify eligible students who seek student financial assistance at such institution in accordance with section 1091 of this title;

(B) estimate the need of each such student as required by part E of this subchapter for an academic year, except that, any loan obtained by a student under this part with the

same terms as loans made under section 1078–8 of this title (except as otherwise provided in this part), or a loan obtained by a parent under this part with the same terms as loans made under section 1078–2 of this title (except as otherwise provided in this part), or obtained under any State-sponsored or private loan program, may be used to offset the expected family contribution of the student for that year;

(C) provide a statement that certifies the eligibility of any student to receive a loan under this part that is not in excess of the annual or aggregate limit applicable to such loan, except that the institution may, in exceptional circumstances identified by the Secretary, refuse to certify a statement that permits a student to receive a loan under this part, or certify a loan amount that is less than the student's determination of need (as determined under part E of this subchapter), if the reason for such action is documented and provided in written form to such student;

(D) set forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 1078–7 of this title; and

(E) provide timely and accurate information—

(i) concerning the status of student borrowers (and students on whose behalf parents borrow under this part) while such students are in attendance at the institution and concerning any new information of which the institution becomes aware for such students (or their parents) after such borrowers leave the institution, to the Secretary for the servicing and collecting of loans made under this part; and

(ii) if the institution does not have an agreement with the Secretary under subsection (b) of this section, concerning student eligibility and need, as determined under subparagraphs (A) and (B), to the Secretary as needed for the alternative origination of loans to eligible students and parents in accordance with this part;

(2) provide assurances that the institution will comply with requirements established by the Secretary relating to student loan information with respect to loans made under this part;

(3) provide that the institution accepts responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

(4) provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with institutions of higher education, to ensure that the institution is complying with program requirements and meeting program objectives;

(5) provide that the institution will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under this part, or any benefits associated with such loan; and

(6) include such other provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part.

(b) Origination

An agreement with any institution of higher education, or consortia thereof, for the origination of loans under this part shall—

(1) supplement the agreement entered into in accordance with subsection (a) of this section;

(2) include provisions established by the Secretary that are similar to the participation agreement provisions described in paragraphs (1)(E)(ii), (2), (3), (4), (5), and (6) of subsection (a) of this section, as modified to relate to the origination of loans by the institution or consortium;

(3) provide that the institution or consortium will originate loans to eligible students and parents in accordance with this part; and

(4) provide that the note or evidence of obligation on the loan shall be the property of the Secretary.

(c) Withdrawal and termination procedures

The Secretary shall establish procedures by which institutions or consortia may withdraw or be terminated from the program under this part.

(Pub. L. 89–329, title IV, § 454, as added Pub. L. 99–498, title IV, § 404, Oct. 17, 1986, 100 Stat. 1438; amended Pub. L. 100–50, § 12, June 3, 1987, 101 Stat. 348; Pub. L. 102–325, title IV, § 451, July 23, 1992, 106 Stat. 571; Pub. L. 103–66, title IV, § 4021, Aug. 10, 1993, 107 Stat. 345; Pub. L. 111–152, title II, § 2210(a), Mar. 30, 2010, 124 Stat. 1078.)

AMENDMENTS

2010—Subsec. (a)(4) to (7). Pub. L. 111–152, § 2210(a)(1), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out former par. (4), which read as follows: ''provide that students at the institution and their parents (with respect to such students) will be eligible to participate in the programs under part B of this subchapter at the discretion of the Secretary for the period during which such institution participates in the direct student loan program under this part, except that a student or parent may not receive loans under both this part and part B of this subchapter for the same period of enrollment;''.

Subsec. (b)(2). Pub. L. 111–152, § 2210(a)(2), substituted ''(5), and (6)'' for ''(5), (6), and (7)''.

1993—Pub. L. 103–66 amended section generally, substituting provisions relating to agreements with institutions, consisting of subsecs. (a) to (c), for former provisions relating to requirements of agreements, consisting of pars. (1) to (7).

1992—Pub. L. 102–325 amended section generally, substituting provisions relating to requirements of agreements for former provisions relating to terms of loans under pilot program.

1987—Subsec. (a)(4). Pub. L. 100–50 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The interest rate on all such loans shall be the rate equal to the rate obtained for each calendar year (A) by computing the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 3-month period preceding such year, and (B) by adding 3 percent to the resulting percent.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–152, title II, § 2210(b), Mar. 30, 2010, 124 Stat. 1078, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on July 1, 2010.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

§ 1087e. Terms and conditions of loans

(a) In general

(1) Parallel terms, conditions, benefits, and amounts

Unless otherwise specified in this part, loans made to borrowers under this part shall have the same terms, conditions, and benefits, and be available in the same amounts, as loans made to borrowers, and first disbursed on June 30, 2010, under sections 1078, 1078–2, 1078–3, and 1078–8 of this title.

(2) Designation of loans

Loans made to borrowers under this part that, except as otherwise specified in this part, have the same terms, conditions, and benefits as loans made to borrowers under—

(A) section 1078 of this title shall be known as ''Federal Direct Stafford Loans'';

(B) section 1078–2 of this title shall be known as ''Federal Direct PLUS Loans'';

(C) section 1078–3 of this title shall be known as ''Federal Direct Consolidation Loans''; and

(D) section 1078–8 of this title shall be known as ''Federal Direct Unsubsidized Stafford Loans''.

(3) Termination of authority to make interest subsidized loans to graduate and professional students

(A) In general

Subject to subparagraph (B) and notwithstanding any provision of this part or part B, for any period of instruction beginning on or after July 1, 2012—

(i) a graduate or professional student shall not be eligible to receive a Federal Direct Stafford loan under this part; and

(ii) the maximum annual amount of Federal Direct Unsubsidized Stafford loans such a student may borrow in any academic year (as defined in section 1088(a)(2) of this title) or its equivalent shall be the maximum annual amount for such student determined under section 1078–8 of this title, plus an amount equal to the amount of Federal Direct Stafford loans the student would have received in the absence of this subparagraph.

(B) Exception

Subparagraph (A) shall not apply to an individual enrolled in course work specified in paragraph (3)(B) or (4)(B) of section 1091(b) of this title.

(b) Interest rate

(1) Rates for FDSL and FDUSL

For Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(B) 3.1 percent,

except that such rate shall not exceed 8.25 percent.

(2) In school and grace period rules

(A) Notwithstanding the provisions of paragraph (1), but subject to paragraph (3), with respect to any Federal Direct Stafford Loan or Federal Direct Unsubsidized Stafford Loan for which the first disbursement is made on or after July 1, 1995, the applicable rate of interest for interest which accrues—

(i) prior to the beginning of the repayment period of the loan; or

(ii) during the period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 1078(b)(1)(M) or 1077(a)(2)(C) of this title,

shall not exceed the rate determined under subparagraph (B).

(B) For the purpose of subparagraph (A), the rate determined under this subparagraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction prior to such June 1; plus

(ii) 2.5 percent,

except that such rate shall not exceed 8.25 percent.

(3) Out-year rule

Notwithstanding paragraphs (1) and (2), for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans made on or after July 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(A) the bond equivalent rate of the security with a comparable maturity as established by the Secretary; plus

(B) 1.0 percent,

except that such rate shall not exceed 8.25 percent.

(4) Rates for FDPLUS

(A)(i) For Federal Direct PLUS Loans for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on or before June 30, 2001, be determined on the preceding June 1 and be equal to—

(I) the bond equivalent rate of 52-week Treasury bills auctioned at final auction held prior to such June 1; plus

(II) 3.1 percent,

except that such rate shall not exceed 9 percent.

(ii) For any 12-month period beginning on July 1 of 2001 or any succeeding year, the applicable rate of interest determined under this subparagraph shall be determined on the preceding June 26 and be equal to—

(I) the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before such June 26; plus

(II) 3.1 percent,

except that such rate shall not exceed 9 percent.

(B) For Federal Direct PLUS loans made on or after July 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(i) the bond equivalent rate of the security with a comparable maturity as established by the Secretary; plus

(ii) 2.1 percent,

except that such rate shall not exceed 9 percent.

(5) Temporary interest rate provision

(A) Rates for FDSL and FDUSL

Notwithstanding the preceding paragraphs of this subsection, for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(ii) 2.3 percent,

except that such rate shall not exceed 8.25 percent.

(B) In school and grace period rules

Notwithstanding the preceding paragraphs of this subsection, with respect to any Federal Direct Stafford Loan or Federal Direct Unsubsidized Stafford Loan for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, the applicable rate of interest for interest which accrues—

(i) prior to the beginning of the repayment period of the loan; or

(ii) during the period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 1078(b)(1)(M) or 1077(a)(2)(C) of this title,

shall be determined under subparagraph (A) by substituting ''1.7 percent'' for ''2.3 percent''.

(C) PLUS loans

Notwithstanding the preceding paragraphs of this subsection, with respect to Federal Direct PLUS Loan for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, the applicable rate of interest shall be determined under subparagraph (A)—

(i) by substituting ''3.1 percent'' for ''2.3 percent''; and

(ii) by substituting ''9.0 percent'' for ''8.25 percent''.

(6) Interest rate provision for new loans on or after October 1, 1998, and before July 1, 2006

(A) Rates for FDSL and FDUSL

Notwithstanding the preceding paragraphs of this subsection, for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans for which the first disbursement is made on or after October 1, 1998, and before July 1, 2006, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(ii) 2.3 percent,

except that such rate shall not exceed 8.25 percent.

(B) In school and grace period rules

Notwithstanding the preceding paragraphs of this subsection, with respect to any Federal Direct Stafford Loan or Federal Direct Unsubsidized Stafford Loan for which the first disbursement is made on or after October 1, 1998, and before July 1, 2006, the applicable rate of interest for interest which accrues—

(i) prior to the beginning of the repayment period of the loan; or

(ii) during the period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 1078(b)(1)(M) or 1077(a)(2)(C) of this title,

shall be determined under subparagraph (A) by substituting ''1.7 percent'' for ''2.3 percent''.

(C) PLUS loans

Notwithstanding the preceding paragraphs of this subsection, with respect to Federal Direct PLUS Loan for which the first disbursement is made on or after October 1, 1998, and before July 1, 2006, the applicable rate of interest shall be determined under subparagraph (A)—

(i) by substituting ''3.1 percent'' for ''2.3 percent''; and

(ii) by substituting ''9.0 percent'' for ''8.25 percent''.

(D) Consolidation loans

Notwithstanding the preceding paragraphs of this subsection, any Federal Direct Consolidation loan for which the application is received on or after February 1, 1999, and before July 1, 2006, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—

(i) the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent; or

(ii) 8.25 percent.

(E) Temporary rules for consolidation loans

Notwithstanding the preceding paragraphs of this subsection, any Federal Direct Consolidation loan for which the application is received on or after October 1, 1998, and before February 1, 1999, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to—

(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(ii) 2.3 percent,

except that such rate shall not exceed 8.25 percent.

(7) Interest rate provision for new loans on or after July 1, 2006

(A) Rates for FDSL and FDUSL

Notwithstanding the preceding paragraphs of this subsection, for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans for which the first disbursement is made on or after July 1, 2006, the applicable rate of interest shall be 6.8 percent on the unpaid principal balance of the loan.

(B) PLUS loans

Notwithstanding the preceding paragraphs of this subsection, with respect to any Federal Direct PLUS loan for which the first disbursement is made on or after July 1, 2006, the applicable rate of interest shall be 7.9 percent on the unpaid principal balance of the loan.

(C) Consolidation loans

Notwithstanding the preceding paragraphs of this subsection, any Federal Direct Consolidation loan for which the application is received on or after July 1, 2006, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—

(i) the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent; or

(ii) 8.25 percent.

(D) Reduced rates for undergraduate FDSL

Notwithstanding the preceding paragraphs of this subsection and subparagraph (A) of this paragraph, for Federal Direct Stafford Loans made to undergraduate students for which the first disbursement is made on or after July 1, 2006, and before July 1, 2012, the applicable rate of interest shall be as follows:

(i) For a loan for which the first disbursement is made on or after July 1, 2006, and before July 1, 2008, 6.8 percent on the unpaid principal balance of the loan.

(ii) For a loan for which the first disbursement is made on or after July 1, 2008, and before July 1, 2009, 6.0 percent on the unpaid principal balance of the loan.

(iii) For a loan for which the first disbursement is made on or after July 1, 2009, and before July 1, 2010, 5.6 percent on the unpaid principal balance of the loan.

(iv) For a loan for which the first disbursement is made on or after July 1, 2010, and before July 1, 2011, 4.5 percent on the unpaid principal balance of the loan.

(v) For a loan for which the first disbursement is made on or after July 1, 2011, and before July 1, 2012, 3.4 percent on the unpaid principal balance of the loan.

(8) Repayment incentives

(A) Incentives for loans disbursed before July 1, 2012

Notwithstanding any other provision of this part[1] with respect to loans for which the first disbursement of principal is made before July 1, 2012,,[2] the Secretary is authorized to prescribe by regulation such reductions in the interest rate or origination fee paid by a borrower of a loan made under this part as the Secretary determines appropriate to encourage on-time repayment of the loan. Such reductions may be offered only if the Secretary determines the reductions are cost neutral and in the best financial interest of the Federal Government. Any increase in subsidy costs resulting from such reductions shall be completely offset by corresponding savings in funds available for the William D. Ford Federal Direct Loan Program in that fiscal year from section 1087h of this title and other administrative accounts.

(B) Accountability

Prior to publishing regulations proposing repayment incentives with respect to loans for which the first disbursement of principal is made before July 1, 2012, the Secretary shall ensure the cost neutrality of such reductions. The Secretary shall not prescribe such regulations in final form unless an official report from the Director of the Office of Management and Budget to the Secretary and a comparable report from the Director of the Congressional Budget Office to the Congress each certify that any such reductions will be completely cost neutral. Such reports shall be transmitted to the authorizing committees not less than 60 days prior to the publication of regulations proposing such reductions.

(C) No repayment incentives for new loans disbursed on or after July 1, 2012

Notwithstanding any other provision of this part, the Secretary is prohibited from authorizing or providing any repayment incentive not otherwise authorized under this part to encourage on-time repayment of a loan under this part for which the first disbursement of principal is made on or after July 1, 2012, including any reduction in the interest or origination fee rate paid by a borrower of such a loan, except that the Sec-

[1] So in original. Probably should be followed by a comma.

[2] So in original. The second comma probably should not appear.

retary may provide for an interest rate reduction for a borrower who agrees to have payments on such a loan automatically electronically debited from a bank account.

(9) Publication

The Secretary shall determine the applicable rates of interest under this subsection after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

(c) Loan fee

(1) In general

The Secretary shall charge the borrower of a loan made under this part an origination fee of 4.0 percent of the principal amount of loan.

(2) Subsequent reduction

Paragraph (1) shall be applied to loans made under this part, other than Federal Direct Consolidation loans and Federal Direct PLUS loans—

(A) by substituting ''3.0 percent'' for ''4.0 percent'' with respect to loans for which the first disbursement of principal is made on or after February 8, 2006, and before July 1, 2007;

(B) by substituting ''2.5 percent'' for ''4.0 percent'' with respect to loans for which the first disbursement of principal is made on or after July 1, 2007, and before July 1, 2008;

(C) by substituting ''2.0 percent'' for ''4.0 percent'' with respect to loans for which the first disbursement of principal is made on or after July 1, 2008, and before July 1, 2009;

(D) by substituting ''1.5 percent'' for ''4.0 percent'' with respect to loans for which the first disbursement of principal is made on or after July 1, 2009, and before July 1, 2010; and

(E) by substituting ''1.0 percent'' for ''4.0 percent'' with respect to loans for which the first disbursement of principal is made on or after July 1, 2010.

(d) Repayment plans

(1) Design and selection

Consistent with criteria established by the Secretary, the Secretary shall offer a borrower of a loan made under this part a variety of plans for repayment of such loan, including principal and interest on the loan. The borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part. The borrower may choose—

(A) a standard repayment plan, consistent with subsection (a)(1) of this section and with section 1078(b)(9)(A)(i) of this title;

(B) a graduated repayment plan, consistent with section 1078(b)(9)(A)(ii) of this title;

(C) an extended repayment plan, consistent with section 1078(b)(9)(A)(iv) of this title, except that the borrower shall annually repay a minimum amount determined by the Secretary in accordance with section 1078(b)(1)(L) of this title;

(D) an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years, except that the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS loan made on behalf of a dependent student; and

(E) beginning on July 1, 2009, an income-based repayment plan that enables borrowers who have a partial financial hardship to make a lower monthly payment in accordance with section 1098e of this title, except that the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS Loan made on behalf of a dependent student or a Federal Direct Consolidation Loan, if the proceeds of such loan were used to discharge the liability on such Federal Direct PLUS Loan or a loan under section 1078–2 of this title made on behalf of a dependent student.

(2) Selection by Secretary

If a borrower of a loan made under this part does not select a repayment plan described in paragraph (1), the Secretary may provide the borrower with a repayment plan described in subparagraph (A), (B), or (C) of paragraph (1).

(3) Changes in selections

The borrower of a loan made under this part may change the borrower's selection of a repayment plan under paragraph (1), or the Secretary's selection of a plan for the borrower under paragraph (2), as the case may be, under such terms and conditions as may be established by the Secretary.

(4) Alternative repayment plans

The Secretary may provide, on a case by case basis, an alternative repayment plan to a borrower of a loan made under this part who demonstrates to the satisfaction of the Secretary that the terms and conditions of the repayment plans available under paragraph (1) are not adequate to accommodate the borrower's exceptional circumstances. In designing such alternative repayment plans, the Secretary shall ensure that such plans do not exceed the cost to the Federal Government, as determined on the basis of the present value of future payments by such borrowers, of loans made using the plans available under paragraph (1).

(5) Repayment after default

The Secretary may require any borrower who has defaulted on a loan made under this part to—

(A) pay all reasonable collection costs associated with such loan; and

(B) repay the loan pursuant to an income contingent repayment plan.

(e) Income contingent repayment

(1) Information and procedures

The Secretary may obtain such information as is reasonably necessary regarding the income of a borrower (and the borrower's spouse, if applicable) of a loan made under this part that is, or may be, repaid pursuant to income contingent repayment, for the purpose of determining the annual repayment obligation of the borrower. Returns and return information (as defined in section 6103 of title 26) may be

obtained under the preceding sentence only to the extent authorized by section 6103(*l*)(13) of title 26. The Secretary shall establish procedures for determining the borrower's repayment obligation on that loan for such year, and such other procedures as are necessary to implement effectively income contingent repayment.

(2) Repayment based on adjusted gross income

A repayment schedule for a loan made under this part and repaid pursuant to income contingent repayment shall be based on the adjusted gross income (as defined in section 62 of title 26) of the borrower or, if the borrower is married and files a Federal income tax return jointly with the borrower's spouse, on the adjusted gross income of the borrower and the borrower's spouse.

(3) Additional documents

A borrower who chooses, or is required, to repay a loan made under this part pursuant to income contingent repayment, and for whom adjusted gross income is unavailable or does not reasonably reflect the borrower's current income, shall provide to the Secretary other documentation of income satisfactory to the Secretary, which documentation the Secretary may use to determine an appropriate repayment schedule.

(4) Repayment schedules

Income contingent repayment schedules shall be established by regulations promulgated by the Secretary and shall require payments that vary in relation to the appropriate portion of the annual income of the borrower (and the borrower's spouse, if applicable) as determined by the Secretary.

(5) Calculation of balance due

The balance due on a loan made under this part that is repaid pursuant to income contingent repayment shall equal the unpaid principal amount of the loan, any accrued interest, and any fees, such as late charges, assessed on such loan. The Secretary may promulgate regulations limiting the amount of interest that may be capitalized on such loan, and the timing of any such capitalization.

(6) Notification to borrowers

The Secretary shall establish procedures under which a borrower of a loan made under this part who chooses or is required to repay such loan pursuant to income contingent repayment is notified of the terms and conditions of such plan, including notification of such borrower—

(A) that the Internal Revenue Service will disclose to the Secretary tax return information as authorized under section 6103(*l*)(13) of title 26; and

(B) that if a borrower considers that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment in the borrower's loan repayment as determined using the information described in subparagraph (A), or the alternative documentation described in paragraph (3), the borrower may contact the Secretary, who shall determine whether such adjustment is appropriate, in accordance with criteria established by the Secretary.

(7) Maximum repayment period

In calculating the extended period of time for which an income contingent repayment plan under this subsection may be in effect for a borrower, the Secretary shall include all time periods during which a borrower of loans under part B, part C, or part D—

(A) is not in default on any loan that is included in the income contingent repayment plan; and

(B)(i) is in deferment due to an economic hardship described in section 1085(*o*) of this title;

(ii) makes monthly payments under paragraph (1) or (6) of section 1098e(b) of this title;

(iii) makes monthly payments of not less than the monthly amount calculated under section 1078(b)(9)(A)(i) of this title or subsection (d)(1)(A), based on a 10-year repayment period, when the borrower first made the election described in section 1098e(b)(1) of this title;

(iv) makes payments of not less than the payments required under a standard repayment plan under section 1078(b)(9)(A)(i) of this title or subsection (d)(1)(A) with a repayment period of 10 years; or

(v) makes payments under an income contingent repayment plan under subsection (d)(1)(D).

(f) Deferment

(1) Effect on principal and interest

A borrower of a loan made under this part who meets the requirements described in paragraph (2) shall be eligible for a deferment, during which periodic installments of principal need not be paid, and interest—

(A) shall not accrue, in the case of a—

(i) Federal Direct Stafford Loan; or

(ii) a Federal Direct Consolidation Loan that consolidated only Federal Direct Stafford Loans, or a combination of such loans and Federal Stafford Loans for which the student borrower received an interest subsidy under section 1078 of this title; or

(B) shall accrue and be capitalized or paid by the borrower, in the case of a Federal Direct PLUS Loan, a Federal Direct Unsubsidized Stafford Loan, or a Federal Direct Consolidation Loan not described in subparagraph (A)(ii).

(2) Eligibility

A borrower of a loan made under this part shall be eligible for a deferment during any period—

(A) during which the borrower—

(i) is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible institution (as such term is defined in section 1085(a) of this title) the borrower is attending; or

(ii) is pursuing a course of study pursuant to a graduate fellowship program ap-

proved by the Secretary, or pursuant to a rehabilitation training program for individuals with disabilities approved by the Secretary,

except that no borrower shall be eligible for a deferment under this subparagraph, or a loan made under this part (other than a Federal Direct PLUS Loan or a Federal Direct Consolidation Loan), while serving in a medical internship or residency program;

(B) not in excess of 3 years during which the borrower is seeking and unable to find full-time employment;

(C) during which the borrower—

(i) is serving on active duty during a war or other military operation or national emergency; or

(ii) is performing qualifying National Guard duty during a war or other military operation or national emergency,

and for the 180-day period following the demobilization date for the service described in clause (i) or (ii); or

(D) not in excess of 3 years during which the Secretary determines, in accordance with regulations prescribed under section 1085(*o*) of this title, that the borrower has experienced or will experience an economic hardship.

(3) "Borrower" defined

For the purpose of this subsection, the term ''borrower'' means an individual who is a new borrower on the date such individual applies for a loan under this part for which the first disbursement is made on or after July 1, 1993.

(4) Deferments for previous part B loan borrowers

A borrower of a loan made under this part, who at the time such individual applies for such loan, has an outstanding balance of principal or interest owing on any loan made, insured, or guaranteed under part B of this subchapter prior to July 1, 1993, shall be eligible for a deferment under section 1077(a)(2)(C) of this title or section 1078(b)(1)(M) of this title as such sections were in effect on July 22, 1992.

(g) Federal Direct Consolidation Loans

A borrower of a loan made under this part may consolidate such loan with the loans described in section 1078–3(a)(4) of this title, including any loan made under part B and first disbursed before July 1, 2010. To be eligible for a consolidation loan under this part, a borrower shall meet the eligibility criteria set forth in section 1078–3(a)(3) of this title.

(h) Borrower defenses

Notwithstanding any other provision of State or Federal law, the Secretary shall specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under this part, except that in no event may a borrower recover from the Secretary, in any action arising from or relating to a loan made under this part, an amount in excess of the amount such borrower has repaid on such loan.

(i) Loan application and promissory note

The common financial reporting form required in section 1090(a)(1) of this title shall constitute the application for loans made under this part (other than a Federal Direct PLUS loan). The Secretary shall develop, print, and distribute to participating institutions a standard promissory note and loan disclosure form.

(j) Loan disbursement

(1) In general

Proceeds of loans to students under this part shall be applied to the student's account for tuition and fees, and, in the case of institutionally owned housing, to room and board. Loan proceeds that remain after the application of the previous sentence shall be delivered to the borrower by check or other means that is payable to and requires the endorsement or other certification by such borrower.

(2) Payment periods

The Secretary shall establish periods for the payments described in paragraph (1) in a manner consistent with payment of Federal Pell Grants under subpart 1 of part A of this subchapter.

(k) Fiscal control and fund accountability

(1) In general

(A) An institution shall maintain financial records in a manner consistent with records maintained for other programs under this subchapter.

(B) Except as otherwise required by regulations of the Secretary[1] an institution may maintain loan funds under this part in the same account as other Federal student financial assistance.

(2) Payments and refunds

Payments and refunds shall be reconciled in a manner consistent with the manner set forth for the submission of a payment summary report required of institutions participating in the program under subpart 1 of part A of this subchapter, except that nothing in this paragraph shall prevent such reconciliations on a monthly basis.

(3) Transaction histories

All transaction histories under this part shall be maintained using the same system designated by the Secretary for the provision of Federal Pell Grants under subpart 1 of part A of this subchapter.

(*l*) Armed Forces student loan interest payment program

(1) Authority

Using funds received by transfer to the Secretary under section 2174 of title 10 for the payment of interest on a loan made under this part to a member of the Armed Forces, the Secretary shall pay the interest on the loan as due for a period not in excess of 36 consecutive months. The Secretary may not pay interest on such a loan out of any funds other than funds that have been so transferred.

(2) Forbearance

During the period in which the Secretary is making payments on a loan under paragraph (1), the Secretary shall grant the borrower forbearance, in the form of a temporary cessation

of all payments on the loan other than the payments of interest on the loan that are made under that paragraph.

(m) Repayment plan for public service employees

(1) In general

The Secretary shall cancel the balance of interest and principal due, in accordance with paragraph (2), on any eligible Federal Direct Loan not in default for a borrower who—

(A) has made 120 monthly payments on the eligible Federal Direct Loan after October 1, 2007, pursuant to any one or a combination of the following—

(i) payments under an income-based repayment plan under section 1098e of this title;

(ii) payments under a standard repayment plan under subsection (d)(1)(A), based on a 10-year repayment period;

(iii) monthly payments under a repayment plan under subsection (d)(1) or (g) of not less than the monthly amount calculated under subsection (d)(1)(A), based on a 10-year repayment period; or

(iv) payments under an income contingent repayment plan under subsection (d)(1)(D); and

(B)(i) is employed in a public service job at the time of such forgiveness; and

(ii) has been employed in a public service job during the period in which the borrower makes each of the 120 payments described in subparagraph (A).

(2) Loan cancellation amount

After the conclusion of the employment period described in paragraph (1), the Secretary shall cancel the obligation to repay the balance of principal and interest due as of the time of such cancellation, on the eligible Federal Direct Loans made to the borrower under this part.

(3) Definitions

In this subsection:

(A) Eligible Federal Direct Loan

The term ''eligible Federal Direct Loan'' means a Federal Direct Stafford Loan, Federal Direct PLUS Loan, or Federal Direct Unsubsidized Stafford Loan, or a Federal Direct Consolidation Loan.

(B) Public service job

The term ''public service job'' means—

(i) a full-time job in emergency management, government (excluding time served as a member of Congress), military service, public safety, law enforcement, public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics), public education, social work in a public child or family service agency, public interest law services (including prosecution or public defense or legal advocacy on behalf of low-income communities at a non-profit organization), early childhood education (including licensed or regulated childcare, Head Start, and State funded prekindergarten), public service for individuals with disabilities, public service for the elderly, public library sciences, school-based library sciences and other school-based services, or at an organization that is described in section 501(c)(3) of title 26 and exempt from taxation under section 501(a) of such title; or

(ii) teaching as a full-time faculty member at a Tribal College or University as defined in section 1059c(b) of this title and other faculty teaching in high-needs subject areas or areas of shortage (including nurse faculty, foreign language faculty, and part-time faculty at community colleges), as determined by the Secretary.

(4) Ineligibility for double benefits

No borrower may, for the same service, receive a reduction of loan obligations under both this subsection and section 1078–10, 1078–11, 1078–12, or 1087j of this title.

(n) Identity fraud protection

The Secretary shall take such steps as may be necessary to ensure that monthly Federal Direct Loan statements and other publications of the Department do not contain more than four digits of the Social Security number of any individual.

***(o)* No accrual of interest for active duty service members**

(1) In general

Notwithstanding any other provision of this part and in accordance with paragraphs (2) and (4), interest shall not accrue for an eligible military borrower on a loan made under this part for which the first disbursement is made on or after October 1, 2008.

(2) Consolidation loans

In the case of any consolidation loan made under this part that is disbursed on or after October 1, 2008, interest shall not accrue pursuant to this subsection only on such portion of such loan as was used to repay a loan made under this part for which the first disbursement is made on or after October 1, 2008.

(3) Eligible military borrower

In this subsection, the term ''eligible military borrower'' means an individual who—

(A)(i) is serving on active duty during a war or other military operation or national emergency; or

(ii) is performing qualifying National Guard duty during a war or other military operation or national emergency; and

(B) is serving in an area of hostilities in which service qualifies for special pay under section 310 of title 37.

(4) Limitation

An individual who qualifies as an eligible military borrower under this subsection may receive the benefit of this subsection for not more than 60 months.

(p) Disclosures

Each institution of higher education with which the Secretary has an agreement under

section 1087c of this title, and each contractor with which the Secretary has a contract under section 1087f of this title, shall, with respect to loans under this part and in accordance with such regulations as the Secretary shall prescribe, comply with each of the requirements under section 1083 of this title that apply to a lender with respect to a loan under part B.

(Pub. L. 89–329, title IV, § 455, as added Pub. L. 99–498, title IV, § 404, Oct. 17, 1986, 100 Stat. 1439; amended Pub. L. 102–325, title IV, § 451, July 23, 1992, 106 Stat. 572; Pub. L. 103–66, title IV, § 4021, Aug. 10, 1993, 107 Stat. 346; Pub. L. 103–382, title III, § 359, Oct. 20, 1994, 108 Stat. 3968; Pub. L. 105–178, title VIII, § 8301(c), June 9, 1998, 112 Stat. 498; Pub. L. 105–244, title IV, §§ 401(g)(6), 452(a)(1), (b), (c), Oct. 7, 1998, 112 Stat. 1652, 1715–1717; Pub. L. 106–554, § 1(a)(1) [title III, § 318(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–49; Pub. L. 107–139, § 1(b), (c), Feb. 8, 2002, 116 Stat. 9; Pub. L. 107–314, div. A, title VI, § 651(c), Dec. 2, 2002, 116 Stat. 2580; Pub. L. 109–171, title VIII, §§ 8007(b), 8008(b), (c)(2), (3), 8009(d), Feb. 8, 2006, 120 Stat. 160, 162–164; Pub. L. 110–84, title II, §§ 201(b), 202(b), 203(b)(3), 205, title IV, § 401, Sept. 27, 2007, 121 Stat. 791, 795, 800; Pub. L. 110–315, title I, § 103(b)(8), title IV, §§ 425(b)(3), 451, Aug. 14, 2008, 122 Stat. 3089, 3234, 3261; Pub. L. 111–39, title IV, § 404(b)(2), July 1, 2009, 123 Stat. 1946; Pub. L. 111–152, title II, § 2211(a), Mar. 30, 2010, 124 Stat. 1078; Pub. L. 112–25, title V, §§ 502, 503, Aug. 2, 2011, 125 Stat. 266.)

REFERENCES IN TEXT

Sections 1077(a)(2)(C) and 1078(b)(1)(M) of this title as such sections were in effect on July 22, 1992, referred to in subsec. (f)(4), means sections 1077(a)(2)(C) and 1078(b)(1)(M) of this title prior to being amended generally by sections 414(b) and 416(e)(1), respectively, of Pub. L. 102–325, title IV, July 23, 1992, 106 Stat. 513, 519.

AMENDMENTS

2011—Subsec. (a)(3). Pub. L. 112–25, § 502, added par. (3).

Subsec. (b)(8)(A). Pub. L. 112–25, § 503(1), substituted ''Incentives for loans disbursed before July 1, 2012'' for ''In general'' in heading and inserted ''with respect to loans for which the first disbursement of principal is made before July 1, 2012,'' after ''of this part'' in text.

Subsec. (b)(8)(B). Pub. L. 112–25, § 503(2), inserted ''with respect to loans for which the first disbursement of principal is made before July 1, 2012'' after ''repayment incentives''.

Subsec. (b)(8)(C). Pub. L. 112–25, § 503(3), added subpar. (C).

2010—Subsec. (a)(1). Pub. L. 111–152, § 2211(a)(1), inserted '', and first disbursed on June 30, 2010,'' before ''under sections 1078''.

Subsec. (g). Pub. L. 111–152, § 2211(a)(2), inserted '', including any loan made under part B and first disbursed before July 1, 2010'' after ''section 1078–3(a)(4) of this title'' and struck out at end ''The Secretary, upon application for such a loan, shall comply with the requirements applicable to a lender under section 1078–3(b)(1)(G) of this title.''

2009—Subsec. (d)(1)(C). Pub. L. 111–39, § 404(b)(2)(A), substituted ''1078(b)(9)(A)(iv)'' for ''1078(b)(9)(A)(v)''.

Subsec. (h). Pub. L. 111–39, § 404(b)(2)(B), struck out ''(except as authorized under section 1087g(a)(1) of this title)'' after ''regulations''.

Subsec. (k)(1)(B). Pub. L. 111–39, § 404(b)(2)(C), struck out '', or in a notice under section 1087g(a)(1) of this title,'' after ''regulations of the Secretary''.

2008—Subsec. (b)(8)(B). Pub. L. 110–315, § 103(b)(8), substituted ''authorizing committees'' for ''Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives''.

Subsec. (d)(1)(E). Pub. L. 110–315, § 451(a), added subpar. (E).

Subsec. (g). Pub. L. 110–315, § 425(b)(3), substituted ''section 1078–3(b)(1)(G)'' for ''section 1078–3(b)(1)(F)''.

Subsec. (m)(3)(B). Pub. L. 110–315, § 451(b)(1), amended subpar. (B) generally. Prior to amendment, text read as follows: ''The term 'public service job' means—

''(i) a full-time job in emergency management, government, military service, public safety, law enforcement, public health, public education (including early childhood education), social work in a public child or family service agency, public interest law services (including prosecution or public defense or legal advocacy in low-income communities at a nonprofit organization), public child care, public service for individuals with disabilities, public service for the elderly, public library sciences, school-based library sciences and other school-based services, or at an organization that is described in section 501(c)(3) of title 26 and exempt from taxation under section 501(a) of such title; or

''(ii) teaching as a full-time faculty member at a Tribal College or University as defined in section 1059c(b) of this title and other faculty teaching in high-needs areas, as determined by the Secretary.''

Subsec. (m)(4). Pub. L. 110–315, § 451(b)(2), added par. (4).

Subsec. (n). Pub. L. 110–315, § 451(c), added subsec. (n).

Subsec. (*o*). Pub. L. 110–315, § 451(d), added subsec. (*o*).

Subsec. (p). Pub. L. 110–315, § 451(e), added subsec. (p).

2007—Subsec. (b)(7)(D). Pub. L. 110–84, § 201(b), added subpar. (D).

Subsec. (d)(1)(D). Pub. L. 110–84, § 203(b)(3), inserted ''made on behalf of a dependent student'' after ''PLUS loan''.

Subsec. (e)(7). Pub. L. 110–84, § 205, added par. (7).

Subsec. (f)(2)(C). Pub. L. 110–84, § 202(b), struck out ''not in excess of 3 years'' before ''during'' in introductory provisions, substituted comma for ''; or'' at end of cl. (ii), and inserted concluding provisions.

Subsec. (m). Pub. L. 110–84, § 401, added subsec. (m).

2006—Subsec. (a)(1). Pub. L. 109–171, § 8009(d)(1), inserted ''1078–3,'' after ''1078–2,''.

Subsec. (a)(2)(C), (D). Pub. L. 109–171, § 8009(d)(2), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (b)(8)(A). Pub. L. 109–171, § 8008(c)(3), inserted ''or origination fee'' after ''reductions in the interest rate''.

Subsec. (c). Pub. L. 109–171, § 8008(c)(2), designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

Subsec. (d)(1)(A) to (C). Pub. L. 109–171, § 8008(b), added subpars. (A) to (C) and struck out former subpars. (A) to (C), which read as follows:

''(A) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, consistent with subsection (a)(1) of this section;

''(B) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, except that the borrower shall annually repay a minimum amount determined by the Secretary in accordance with section 1078(b)(1)(L) of this title;

''(C) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over a fixed or extended period of time, except that the borrower's scheduled payments shall not be less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and''.

Subsec. (f)(2)(C), (D). Pub. L. 109–171, § 8007(b), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (g). Pub. L. 109–171, § 8009(d)(3), substituted ''To be eligible for a consolidation loan under this part, a borrower shall meet the eligibility criteria set forth in section 1078–3(a)(3) of this title. The Secretary, upon

application for such a loan, shall comply with the requirements applicable to a lender under section 1078–3(b)(1)(F) of this title.'' for ''Loans made under this subsection shall be known as 'Federal Direct Consolidation Loans'.''

2002—Subsec. (b)(6) to (9). Pub. L. 107–139, in par. (6) relating to interest rate provision for new loans substituted ''2006'' for ''2003'' in heading and ''July 1, 2006,'' for ''July 1, 2003,'' wherever appearing in text, added par. (7), redesignated former par. (7) as (8), and redesignated par. (6) relating to publication of rate in Federal Register as (9).

Subsec. (*l*). Pub. L. 107–314 added subsec. (*l*).

2000—Subsec. (b)(4)(A). Pub. L. 106–554 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''For Federal Direct PLUS Loans for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

''(i) the bond equivalent rate of 52-week Treasury bills auctioned at final auction held prior to such June 1; plus

''(ii) 3.1 percent,

except that such rate shall not exceed 9 percent.''

1998—Subsec. (b)(5). Pub. L. 105–178, § 8301(c)(2), which directed amendment of section 455(b) (20 U.S.C. 1087e(b)) by adding par. (5), was executed to this section, which is section 455(b) of Pub. L. 89–329, to reflect the probable intent of Congress. Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 105–244, § 452(a)(1), added par. (6) relating to interest rate provision for new loans.

Pub. L. 105–178, § 8301(c)(1), which directed amendment of section 455(b) (20 U.S.C. 1087e(b)) by redesignating par. (5) as (6), was executed to this section, which is section 455(b) of Pub. L. 89–329, to reflect the probable intent of Congress.

Subsec. (b)(7). Pub. L. 105–244, § 452(b), added par. (7).

Subsec. (g). Pub. L. 105–244, § 452(c), struck out ''only under such terms and conditions as the Secretary shall establish pursuant to section 1087g(a)(1) of this title or regulations promulgated under this part'' after ''section 1078–3(a)(4) of this title''.

Subsecs. (j)(2), (k)(3). Pub. L. 105–244, § 401(g)(6), substituted ''Federal Pell Grants'' for ''basic grants''.

1994—Subsec. (f)(3), (4). Pub. L. 103–382 added pars. (3) and (4).

1993—Pub. L. 103–66 amended section generally, substituting provisions relating to terms and conditions of loans for former provisions relating to withdrawal and termination procedures.

1992—Pub. L. 102–325 amended section generally, substituting provisions relating to withdrawal and termination procedures for former provisions relating to feasibility study.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–152, title II, § 2211(b), Mar. 30, 2010, 124 Stat. 1078, provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply with respect to loans first disbursed under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.) on or after July 1, 2010.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by sections 201(b), 202(b), 205, and 401 of Pub. L. 110–84 effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as a note under section 1070a of this title.

Amendment by section 203(b)(3) of Pub. L. 110–84 effective July 1, 2009, see section 203(c)(1) of Pub. L. 110–84, set out as a note under section 1078–3 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Amendment by section 8007(b) of Pub. L. 109–171 applicable with respect to all loans under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.), see section 8007(f) of Pub. L. 109–171, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–314 applicable with respect to interest, and any special allowance under section 1087–1 of this title, that accrue for months beginning on or after Oct. 1, 2003, on student loans described in section 2174(c) of Title 10, Armed Forces, that were made before, on, or after such date to members of the Armed Forces who are on active duty (as defined in section 101(d) of Title 10) on or after that date, see section 651(e) of Pub. L. 107–314, set out as an Effective Date note under section 2174 of Title 10.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by sections 401(g)(6) and 452(b), (c) of Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

Pub. L. 105–244, title IV, § 452(d), Oct. 7, 1998, 112 Stat. 1717, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to any loan made under part D of title IV of the Higher Education Act of 1965 [this part] for which the first disbursement is made on or after October 1, 1998, and before July 1, 2003, except that such amendments shall apply with respect to a Federal Direct Consolidation Loan for which the application is received on or after October 1, 1998, and before July 1, 2003.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of this title.

CONSTRUCTION OF 2006 AMENDMENT

Nothing in amendment by section 8007(b) of Pub. L. 109–171 to be construed to authorize any refunding of any repayment of a loan, see section 8007(e) of Pub. L. 109–171, set out as a note under section 1078 of this title.

LIMITATION ON CONSOLIDATION LOANS DURING TEMPORARY INTEREST RATE

Pub. L. 105–244, title IV, § 452(a)(2), Oct. 7, 1998, 112 Stat. 1716, provided that: ''Notwithstanding section 455(g) of the Higher Education Act of 1965 [subsec. (g) of this section], a borrower who is enrolled or accepted for enrollment in an institution of higher education may not consolidate loans under such section during the period beginning October 1, 1998, and ending February 1, 1999, unless the borrower certifies that the borrower has no outstanding loans made, insured, or guaranteed under title IV of such Act [20 U.S.C. 1070 et seq.; 42 U.S.C. 2751 et seq.] other than loans made under part D of such title [this part].''

§ 1087f. Contracts

(a) Contracts for supplies and services

(1) In general

The Secretary shall, to the extent practicable, award contracts for origination, servicing, and collection described in subsection (b) of this section. In awarding such contracts, the Secretary shall ensure that such services

and supplies are provided at competitive prices.

(2) Entities

The entities with which the Secretary may enter into contracts shall include only entities which the Secretary determines are qualified to provide such services and supplies and will comply with the procedures applicable to the award of such contracts. In the case of awarding contracts for the origination, servicing, and collection of loans under this part, the Secretary shall enter into contracts only with entities that have extensive and relevant experience and demonstrated effectiveness. The entities with which the Secretary may enter into such contracts shall include, where practicable, agencies with agreements with the Secretary under sections 1078(b) and (c) of this title, if such agencies meet the qualifications as determined by the Secretary under this subsection and if those agencies have such experience and demonstrated effectiveness. In awarding contracts to such State agencies, the Secretary shall, to the extent practicable and consistent with the purposes of this part, give special consideration to State agencies with a history of high quality performance to perform services for institutions of higher education within their State.

(3) Rule of construction

Nothing in this section shall be construed as a limitation of the authority of any State agency to enter into an agreement for the purposes of this section as a member of a consortium of State agencies.

(4) Servicing by eligible not-for-profit servicers

(A) Servicing contracts

(i) In general

The Secretary shall contract with each eligible not-for-profit servicer to service loans originated under this part, if the servicer—

(I) meets the standards for servicing Federal assets that apply to contracts awarded pursuant to paragraph (1); and

(II) has the capacity to service the applicable loan volume allocation described in subparagraph (B).

(ii) Competitive market rate determination for first 100,000 borrower accounts

The Secretary shall establish a separate pricing tier for each of the first 100,000 borrower loan accounts at a competitive market rate.

(iii) Ineligibility

An eligible not-for-profit servicer shall no longer be eligible for a contract under this paragraph after July 1, 2014, if—

(I) the servicer has not been awarded such a contract before that date; or

(II) the servicer's contract was terminated, and the servicer had not reapplied for, and been awarded, a contract under this paragraph.

(B) Allocations

(i) In general

The Secretary shall (except as provided in clause (ii)) allocate to an eligible not-for-profit servicer, subject to the contract of such servicer described in subparagraph (A), the servicing rights for the loan accounts of 100,000 borrowers (including borrowers who borrowed loans in a prior year that were serviced by the servicer).

(ii) Servicer allocation

The Secretary may reallocate, increase, reduce, or terminate an eligible not-for-profit servicer's allocation of servicing rights under clause (i) based on the performance of such servicer, on the same terms as loan allocations provided by contracts awarded pursuant to paragraph (1).

(b) Contracts for origination, servicing, and data systems

The Secretary may enter into contracts for—

(1) the alternative origination of loans to students attending institutions of higher education with agreements to participate in the program under this part (or their parents), if such institutions do not have agreements with the Secretary under section 1087d(b) of this title;

(2) the servicing and collection of loans made or purchased under this part;

(3) the establishment and operation of 1 or more data systems for the maintenance of records on all loans made or purchased under this part; and

(4) such other aspects of the direct student loan program as the Secretary determines are necessary to ensure the successful operation of the program.

(c) Definition of eligible not-for-profit servicer

In this section:

(1) In general

The term ''eligible not-for-profit servicer'' means an entity—

(A) that is not owned or controlled in whole or in part by—

(i) a for-profit entity; or

(ii) a nonprofit entity having its principal place of business in another State; and

(B) that—

(i) as of July 1, 2009—

(I) meets the definition of an eligible not-for-profit holder under section 1085(p) of this title, except that such term does not include eligible lenders described in paragraph (1)(D) of such section; and

(II) was performing, or had entered into a contract with a third party servicer (as such term is defined in section 1088(c) of this title) who was performing, student loan servicing functions for loans made under part B of this subchapter;

(ii) notwithstanding clause (i), as of July 1, 2009—

(I) is the sole beneficial owner of a loan for which the special allowance rate is calculated under section 1087–1(b)(2)(I)(vi)(II) of this title because the loan is held by an eligible lender

trustee that is an eligible not-for-profit holder as defined under section 1085(p)(1)(D) of this title; and

(II) was performing, or had entered into a contract with a third party servicer (as such term is defined in section 1088(c) of this title) who was performing, student loan servicing functions for loans made under part B of this subchapter; or

(iii) is an affiliated entity of an eligible not-for-profit servicer described in clause (i) or (ii) that—

(I) directly employs, or will directly employ (on or before the date the entity begins servicing loans under a contract awarded by the Secretary pursuant to subsection (a)(3)(A)),[1] the majority of individuals who perform borrower-specific student loan servicing functions; and

(II) as of July 1, 2009, was performing, or had entered into a contract with a third party servicer (as such term is defined in section 1088(c) of this title) who was performing, student loan servicing functions for loans made under part B of this subchapter.

(2) Affiliated entity

For the purposes of paragraph (1), the term ''affiliated entity''—

(A) means an entity contracted to perform services for an eligible not-for-profit servicer that—

(i) is a nonprofit entity or is wholly owned by a nonprofit entity; and

(ii) is not owned or controlled, in whole or in part, by—

(I) a for-profit entity; or

(II) an entity having its principal place of business in another State; and

(B) may include an affiliated entity that is established by an eligible not-for-profit servicer after March 30, 2010, if such affiliated entity is otherwise described in paragraph (1)(B)(iii)(I) and subparagraph (A) of this paragraph.

(Pub. L. 89–329, title IV, § 456, as added Pub. L. 102–325, title IV, § 451, July 23, 1992, 106 Stat. 572; amended Pub. L. 103–66, title IV, § 4021, Aug. 10, 1993, 107 Stat. 352; Pub. L. 105–244, title IV, § 453, Oct. 7, 1998, 112 Stat. 1717; Pub. L. 110–227, § 7(c), May 7, 2008, 122 Stat. 747; Pub. L. 111–152, title II, § 2212(a), Mar. 30, 2010, 124 Stat. 1078.)

AMENDMENTS

2010—Subsec. (a)(4). Pub. L. 111–152, § 2212(a)(1)(A), added par. (4).

Subsec. (c). Pub. L. 111–152, § 2212(a)(2), added subsec. (c).

2008—Subsec. (b)(2), (3). Pub. L. 110–227 inserted ''or purchased'' after ''loans made''.

1998—Subsec. (b)(3). Pub. L. 105–244, § 453(1), inserted ''and'' after semicolon.

Subsec. (b)(4), (5). Pub. L. 105–244, § 453(2), (3), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''services to assist in the orderly transition from the loan programs under part B of this subchapter to the direct student loan program under this part; and''.

1993—Pub. L. 103–66 amended section generally, substituting provisions relating to contracts for former provisions relating to terms and conditions.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as an Effective Date of 1992 Amendment note under section 1001 of this title.

§ 1087g. Repealed. Pub. L. 111–39, title IV, § 404(b)(3), July 1, 2009, 123 Stat. 1946

Section, Pub. L. 89–329, title IV, § 457, as added Pub. L. 102–325, title IV, § 451, July 23, 1992, 106 Stat. 572; amended Pub. L. 103–66, title IV, § 4021, Aug. 10, 1993, 107 Stat. 352, related to regulatory activities associated with implementation of the first year of the direct student loan program authorized by part C, including establishment of closing date for applications not later than Oct. 1, 1993, and publication of list of selected institutions not later than Jan. 1, 1994.

EFFECTIVE DATE OF REPEAL

Repeal effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as an Effective Date of 2009 Amendment note under section 1001 of this title.

§ 1087h. Funds for administrative expenses

(a) Administrative expenses

(1) Mandatory funds for fiscal year 2006

For fiscal year 2006, there shall be available to the Secretary, from funds not otherwise appropriated, funds to be obligated for—

(A) administrative costs under this part and part B, including the costs of the direct student loan programs under this part; and

(B) account maintenance fees payable to guaranty agencies under part B and calculated in accordance with subsections (b) and (c),

not to exceed (from such funds not otherwise appropriated) $820,000,000 in fiscal year 2006.

(2) Mandatory funds for eligible not-for-profit servicers

For fiscal years 2010 through 2019, there shall be available to the Secretary, in addition to any other amounts appropriated to carry out this paragraph and out of any money in the Treasury not otherwise appropriated, funds to be obligated for administrative costs of servicing contracts with eligible not-for-profit servicers as described in section 1087f of this title.

(3) Authorization for administrative costs beginning in fiscal years 2007 through 2014

For each of the fiscal years 2007 through 2014, there are authorized to be appropriated such sums as may be necessary for administrative costs under this part and part B, including the costs of the direct student loan programs under this part.

(4) Continuing mandatory funds for account maintenance fees

For each of the fiscal years 2007 through 2014, there shall be available to the Secretary,

[1] So in original. Probably should be ''subsection (a)(4)(A)),''.

from funds not otherwise appropriated, funds to be obligated for account maintenance fees payable to guaranty agencies under part B and calculated in accordance with subsection (b).

(5) Account maintenance fees

Account maintenance fees under paragraph (3)[1] shall be paid quarterly and deposited in the Agency Operating Fund established under section 1072b of this title.

(6) Technical assistance to institutions of higher education

(A) Provision of assistance

The Secretary shall provide institutions of higher education participating, or seeking to participate, in the loan programs under this part with technical assistance in establishing and administering such programs.

(B) Funds

There are authorized to be appropriated, and there are appropriated, to carry out this paragraph (in addition to any other amounts appropriated to carry out this paragraph and out of any money in the Treasury not otherwise appropriated), $50,000,000 for fiscal year 2010.

(C) Definition

In this paragraph, the term ''assistance'' means the provision of technical support, training, materials, technical assistance, and financial assistance.

(7) Additional payments

(A) Provision of assistance

The Secretary shall provide payments to loan servicers for retaining jobs at locations in the United States where such servicers were operating under part B on January 1, 2010.

(B) Funds

There are authorized to be appropriated, and there are appropriated, to carry out this paragraph (in addition to any other amounts appropriated to carry out this paragraph and out of any money in the Treasury not otherwise appropriated), $25,000,000 for each of the fiscal years 2010 and 2011.

(8) Carryover

The Secretary may carry over funds made available under this section to a subsequent fiscal year.

(b) Calculation basis

Account maintenance fees payable to guaranty agencies under subsection (a)(4) shall be calculated on the basis of 0.06 percent of the original principal amount of outstanding loans on which insurance was issued under part B.

(c) Budget justification

No funds may be expended under this section unless the Secretary includes in the Department of Education's annual budget justification to Congress a detailed description of the specific activities for which the funds made available by this section have been used in the prior and current years (if applicable), the activities and costs planned for the budget year, and the projection of activities and costs for each remaining year for which administrative expenses under this section are made available.

(Pub. L. 89–329, title IV, § 458, as added Pub. L. 102–325, title IV, § 451, July 23, 1992, 106 Stat. 573; amended Pub. L. 103–66, title IV, § 4021, Aug. 10, 1993, 107 Stat. 353; Pub. L. 104–19, title I, § 601, July 27, 1995, 109 Stat. 219; Pub. L. 105–33, title VI, § 6103, Aug. 5, 1997, 111 Stat. 652; Pub. L. 105–78, title VI, § 609(*l*), Nov. 13, 1997, 111 Stat. 1524; Pub. L. 105–244, title IV, § 454, Oct. 7, 1998, 112 Stat. 1717; Pub. L. 109–171, title VIII, § 8015, Feb. 8, 2006, 120 Stat. 172; Pub. L. 109–292, § 5, Sept. 30, 2006, 120 Stat. 1341; Pub. L. 110–84, title III, § 306, Sept. 27, 2007, 121 Stat. 800; Pub. L. 110–315, title IV, § 452, Aug. 14, 2008, 122 Stat. 3263; Pub. L. 111–152, title II, § 2212(b), Mar. 30, 2010, 124 Stat. 1080.)

REFERENCES IN TEXT

Paragraph (3), referred to in subsec. (a)(5), was redesignated par. (4) by Pub. L. 111–152, § 2212(b)(1)(B).

AMENDMENTS

2010—Subsec. (a)(2) to (8). Pub. L. 111–152, § 2212(b)(1), added pars. (2), (6), and (7) and redesignated former pars. (2), (3), (4), and (5) as (3), (4), (5), and (8), respectively.

Subsec. (b). Pub. L. 111–152, § 2212(b)(2), substituted ''subsection (a)(4)'' for ''subsection (a)(3)''.

2008—Subsec. (a)(2). Pub. L. 110–315, § 452(1), substituted ''2014'' for ''2011'' in heading and text.

Subsec. (a)(3). Pub. L. 110–315, § 452(2), substituted ''2014'' for ''2011''.

2007—Subsec. (b). Pub. L. 110–84 substituted ''0.06 percent'' for ''0.10 percent''.

2006—Pub. L. 109–171 reenacted section catchline without change and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (d) relating to administrative expenses, calculation basis for account maintenance fees payable to guaranty agencies, special rules relating to caps on account maintenance fees and insufficient funding, and budget justification for funds expended, respectively.

Subsec. (b). Pub. L. 109–292 substituted ''shall be calculated on'' for ''shall not exceed''.

1998—Subsec. (a). Pub. L. 105–244, § 454(1), amended heading and text of subsec. (a) generally. Prior to amendment, subsec. (a) related to availability of funds for administrative costs and cost allowances.

Subsec. (b). Pub. L. 105–244, § 454(2), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''Funds made available under subsection (a) of this section shall remain available until expended.''

Subsec. (c). Pub. L. 105–244, § 454(5), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105–244, § 454(4), redesignated subsec. (c) as (d).

Pub. L. 105–244, § 454(3), struck out heading and text of subsec. (d). Text read as follows: ''In the event the Secretary finds it necessary to use the authority provided to the Secretary under subsection (a) of this section to draw funds for administrative expenses from a future year's funds, no funds may be expended under this section unless the Secretary immediately notifies the Committees on Appropriations of the Senate and of the House of Representatives, and the Labor and Human Resources Committee of the Senate and the Education and Labor Committee of the House of Representatives, of such action and explain the reasons for such action.''

1997—Subsec. (a). Pub. L. 105–33 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''Each fiscal year, there shall be avail-

[1] See References in Text note below.

able to the Secretary of Education from funds available pursuant to section 1072(g) of this title and from funds not otherwise appropriated, funds to be obligated for administrative costs under this part, including the costs of the transition from the loan programs under part B of this subchapter to the direct student loan programs under this part (including the costs of annually assessing the program under this part and the progress of the transition) and transition support (including administrative costs) for the expenses of guaranty agencies in servicing outstanding loans in their portfolios and in guaranteeing new loans, not to exceed (from such funds not otherwise appropriated) $260,000,000 in fiscal year 1994, $284,000,000 in fiscal year 1995, $550,000,000 in fiscal year 1996, $595,000,000 in fiscal year 1997, and $750,000,000 in fiscal year 1998. If in any fiscal year the Secretary determines that additional funds for administrative expenses are needed as a result of such transition or the expansion of the direct student loan programs under this part, the Secretary is authorized to use funds available under this section for a subsequent fiscal year for such expenses, except that the total expenditures by the Secretary (from such funds not otherwise appropriated) shall not exceed $2,439,000,000 in fiscal years 1994 through 1998. The Secretary is also authorized to carry over funds available under this section to a subsequent fiscal year.''

Subsec. (a)(1). Pub. L. 105–78 substituted ''$507,000,000'' for ''$532,000,000'' in closing provisions.

1995—Subsec. (a). Pub. L. 104–19 substituted ''$284,000,000 in fiscal year 1995'' for ''$345,000,000 in fiscal year 1995'' and ''$2,439,000,000 in fiscal years 1994 through 1998'' for ''$2,500,000,000 in fiscal years 1994 through 1998''.

1993—Pub. L. 103–66 amended section generally, substituting provisions relating to funds for administrative expenses for former provisions relating to reports.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–84 effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as a note under section 1070a of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as an Effective Date of 1992 Amendment note under section 1001 of this title.

CONSTRUCTION

Section 609(m) of Pub. L. 105–78 provided that: ''Nothing in this Act [see Tables for classification] or an amendment made by this Act shall be construed to prohibit the Secretary of Education from using funds that are returned or otherwise recovered by the Secretary under section 422(g) of the Higher Education Act of 1965 (20 U.S.C. 1072(g)) including the balances of returned reserve funds, formerly held by the Higher Education Assistance Foundation, that are currently held in Higher Education Assistance Foundation Claims Reserves, Treasury account number 91X6192, for expenditure for expenses pursuant to section 458 of such Act (20 U.S.C. 1087h).''

USE OF FUNDS FOR ADMINISTRATIVE EXPENSES OF WILLIAM D. FORD DIRECT LOAN PROGRAM PROHIBITED

Pub. L. 104–208, div. A, title I, § 101(e) [title III, § 304], Sept. 30, 1996, 110 Stat. 3009–233, 3009–261, provided in part that: ''Notwithstanding section 458 of the Higher Education Act [of 1965] [20 U.S.C. 1087h], the Secretary may not use funds available under that section or any other section for subsequent fiscal years for administrative expenses of the William D. Ford Direct Loan Program.''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 104–134, title I, § 101(d) [title III, § 305], Apr. 26, 1996, 110 Stat. 1321–211, 1321–236; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

§ 1087i. Authority to sell loans

The Secretary, in consultation with the Secretary of the Treasury, is authorized to sell loans made under this part on such terms as the Secretary determines are in the best interest of the United States, except that any such sale shall not result in any cost to the Federal Government. Notwithstanding any other provision of law, the proceeds of any such sale may be used by the Secretary to offer reductions in the interest rate paid by a borrower of a loan made under this part as the Secretary determines appropriate to encourage on-time repayment in accordance with section 1087e(b)(7) of this title. Such reductions may be offered only if the Secretary determines the reductions are in the best financial interests of the Federal Government.

(Pub. L. 89–329, title IV, § 459, as added Pub. L. 105–244, title IV, § 455, Oct. 7, 1998, 112 Stat. 1718.)

PRIOR PROVISIONS

A prior section 1087i, Pub. L. 89–329, title IV, § 459, as added Pub. L. 102–325, title IV, § 451, July 23, 1992, 106 Stat. 575, which related to schedule of regulatory activities by Secretary under Federal direct loan demonstration program, was omitted in the general amendment of this part by Pub. L. 103–66.

EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

§ 1087i–1. Temporary authority to purchase student loans

(a) Authority to purchase

(1) Authority; determination required

Upon a determination by the Secretary that there is an inadequate availability of loan capital to meet the demand for loans under sections 1078, 1078–2, or 1078–8 of this title, whether as a result of inadequate liquidity for such loans or for other reasons, the Secretary, in consultation with the Secretary of the Treasury, is authorized to purchase, or enter into forward commitments to purchase, from any eligible lender, as defined by section 1085(d)(1) of this title, loans first disbursed under sections 1078, 1078–2, or 1078–8 of this title on or after October 1, 2003, and before July 1, 2010, on such terms as the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget jointly determine are in the best interest of the United States, except that any purchase under this section shall not result in any net cost to the Federal Government (including the cost of servicing the loans purchased), as determined jointly by the Secretary, the Secretary of the Treasury,

and the Director of the Office of Management and Budget.

(2) Federal Register notice

The Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget, shall jointly publish a notice in the Federal Register prior to any purchase of loans under paragraph (1) that—

(A) establishes the terms and conditions governing the purchases authorized by paragraph (1);

(B) includes an outline of the methodology and factors that the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget, will jointly consider in evaluating the price at which to purchase loans made under section 1078, 1078–2, or 1078–8 of this title; and

(C) describes how the use of such methodology and consideration of such factors used to determine purchase price will ensure that loan purchases do not result in any net cost to the Federal Government (including the cost of servicing the loans purchased).

(3) Temporary authority to purchase rehabilitated loans

(A) Authority

In addition to the authority described in paragraph (1), the Secretary, in consultation with the Secretary of the Treasury, is authorized to purchase, or enter into forward commitments to purchase, from any eligible lender (as defined in section 1085(d)(1) of this title), loans that such lender purchased under section 1078–6 of this title on or after October 1, 2003, and before July 1, 2010, and that are not in default, on such terms as the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget jointly determine are in the best interest of the United States, except that any purchase under this paragraph shall not result in any net cost to the Federal Government (including the cost of servicing the loans purchased), as determined jointly by the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget.

(B) Federal Register notice

The Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget shall jointly publish a notice in the Federal Register prior to any purchase of loans under this paragraph that—

(i) establishes the terms and conditions governing the purchases authorized by this paragraph;

(ii) includes an outline of the methodology and factors that the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget will jointly consider in evaluating the price at which to purchase loans rehabilitated pursuant to section 1078–6(a) of this title; and

(iii) describes how the use of such methodology and consideration of such factors used to determine purchase price will ensure that loan purchases do not result in any net cost to the Federal Government (including the cost of servicing the loans purchased).

(b) Proceeds

The Secretary shall require, as a condition of any purchase under subsection (a), that the funds paid by the Secretary to any eligible lender under this section be used—

(1) to ensure continued participation of such lender in the Federal student loan programs authorized under part B of this subchapter; and

(2)(A) in the case of loans purchased pursuant to subsection (a)(1), to originate new Federal loans to students, as authorized under part B of this subchapter; or

(B) in the case of loans purchased pursuant to subsection (a)(3), to originate such new Federal loans to students, or to purchase loans in accordance with section 1078–6(a) of this title.

(c) Maintaining servicing arrangements

The Secretary may, if agreed upon by an eligible lender selling loans under this section, contract with such lender for the servicing of the loans purchased, provided that—

(1) the cost of such servicing arrangement does not exceed the cost the Federal Government would otherwise incur for the servicing of loans purchased, as determined under subsection (a); and

(2) such servicing arrangement is in the best interest of the borrowers whose loans are purchased.

(d) Guaranty agency responsibilities and payments

Notwithstanding any other provision of this chapter and part C of subchapter I of chapter 34 of title 42, beginning on the date on which the Secretary purchases a loan under this section—

(1) the guaranty agency that insured such loan shall cease to have any obligations, responsibilities, or rights (including rights to any payment) under this chapter and part C of subchapter I of chapter 34 of title 42 for any activity related to the administration of such loan that is carried out or required to be carried out on or after the date of such purchase; and

(2) the insurance issued by such agency pursuant to section 1078(b) of this title for such loan shall cease to be effective with respect to any default on such loan that occurs on or after the date of such purchase.

(e) Reports and cost estimates

The Secretary shall prepare, transmit to the authorizing committees, and make available to the public, the following:

(1) Quarterly reports

(A) Contents

Not later than 60 days after the end of each quarter during the period beginning July 1, 2008, and ending September 30, 2010, a quarterly report on—

(i) the number of loans the Secretary has agreed to purchase, or has purchased, using the authority provided under this

section, and the total amount of outstanding principal and accrued interest of such loans, during such period; and

(ii) the number of loans in which the Secretary has purchased a participation interest, and the total amount of outstanding principal and accrued interest of such loans, during such period.

(B) Disaggregated information

For each quarterly report, the information described in clauses (i) and (ii) of subparagraph (A) shall be disaggregated by lender and, for each lender, by category of institution (using the categories described in section 1015a(d) of this title) and type of loan.

(2) Estimates of purchase program costs

Not later than February 15, 2011, an estimate of the costs associated with the program of purchasing loans described in paragraph (1)(A)(i) during the period beginning July 1, 2008, and ending September 30, 2010, and an estimate of the costs associated with the program of purchasing a participation interest in loans described in paragraph (1)(A)(ii) during such period. Each such estimate shall—

(A) contain the same level of detail, and be reported in a similar manner, as the budget estimates provided for the loan program under part B and the direct student loan program under this part in the President's annual budget submission to Congress, except that current and future administrative costs shall also be reported;

(B) include an estimate of the gross and net outlays that have been, or will be, incurred by the Federal Government (including subsidy and administrative costs, and any payments made by the Department to lenders, trusts, or other entities related to such activities) in purchasing such loans or purchasing a participation interest in such loans during such period (as applicable); and

(C) include a comparison of—

(i) the average amount of the gross and net outlays (including costs and payments) described in subparagraph (B) for each $100 of loans purchased or for which a participation interest was purchased (as applicable) during such period, disaggregated by type of loan; with

(ii) the average amount of such gross and net outlays (including costs and payments) to the Federal Government for each $100 of comparable loans made under this part and part B during such period, disaggregated by part and by type of loan.

(3) Annual cost estimates

Not later than February 15 of the fiscal year following each of the fiscal years 2008, 2009, 2010, and 2011, an annual estimate of the costs associated with the program of purchasing loans described in paragraph (1)(A)(i), and an annual estimate of the costs associated with the program of purchasing a participation interest in loans described in paragraph (1)(A)(ii), that includes the information described in paragraph (2) for such fiscal year.

(f) Expiration of authority

The Secretary's authority to purchase loans under this section shall expire on July 1, 2010.

(Pub. L. 89–329, title IV, § 459A, as added Pub. L. 110–227, § 7(b), May 7, 2008, 122 Stat. 746; amended Pub. L. 110–315, title IV, § 453, Aug. 14, 2008, 122 Stat. 3263; Pub. L. 110–350, § 1, Oct. 7, 2008, 122 Stat. 3947; Pub. L. 111–39, title IV, § 404(a), July 1, 2009, 123 Stat. 1945.)

AMENDMENTS

2009—Subsec. (a)(2). Pub. L. 111–39, § 404(a)(1)(A), substituted ''purchase of loans under paragraph (1)'' for ''purchase of loans under this section'' in introductory provisions.

Subsec. (a)(3). Pub. L. 111–39, § 404(a)(1)(B), added par. (3).

Subsec. (b). Pub. L. 111–39, § 404(a)(2), amended subsec. (b) generally. Prior to amendment, text read as follows: ''The Secretary shall require, as a condition of any purchase under subsection (a), that the funds paid by the Secretary to any eligible lender under this section shall be used: (1) to ensure continued participation of such lender in the Federal student loan programs authorized under part B of this subchapter; and (2) to originate new Federal loans to students, as authorized under part B of this subchapter.''

2008—Subsec. (a)(1). Pub. L. 110–350, § 1(1), substituted ''July 1, 2010'' for ''July 1, 2009''.

Subsecs. (d), (e). Pub. L. 110–315, § 453(2), added subsecs. (d) and (e). Former subsec. (d) redesignated (f).

Subsec. (e)(1)(A). Pub. L. 110–350, § 1(2)(A), substituted ''September 30, 2010'' for ''September 30, 2009'' in introductory provisions.

Subsec. (e)(2). Pub. L. 110–350, § 1(2)(A), (B), substituted ''February 15, 2011'' for ''February 15, 2010'' and ''September 30, 2010'' for ''September 30, 2009'' in introductory provisions.

Subsec. (e)(3). Pub. L. 110–350, § 1(2)(C), substituted ''2009, 2010, and 2011'' for ''2009, and 2010''.

Subsec. (f). Pub. L. 110–350, § 1(1), substituted ''July 1, 2010'' for ''July 1, 2009''.

Pub. L. 110–315, § 453(1), redesignated subsec. (d) as (f).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

§ 1087i–2. Temporary loan consolidation authority

(a) Temporary loan consolidation authority

(1) In general

A borrower who has 1 or more loans in 2 or more of the categories described in paragraph (2), and who has not yet entered repayment on 1 or more of those loans in any of the categories, may consolidate all of the loans of the borrower that are described in paragraph (2) into a Federal Direct Consolidation Loan during the period described in paragraph (3).

(2) Categories of loans that may be consolidated

The categories of loans that may be consolidated under paragraph (1) are—

(A) loans made under this part;

(B) loans purchased by the Secretary pursuant to section 1087i–1 of this title; and

(C) loans made under part B that are held by an eligible lender, as such term is defined in section 1085(d) of this title.

(3) Time period in which loans may be consolidated

The Secretary may make a Federal Direct Consolidation Loan under this section to a

borrower whose application for such Federal Direct Consolidation Loan is received on or after July 1, 2010, and before July 1, 2011.

(b) Terms of loans

A Federal Direct Consolidation Loan made under this section shall have the same terms and conditions as a Federal Direct Consolidation Loan made under section 1087e(g) of this title, except that—

(1) in determining the applicable rate of interest on the Federal Direct Consolidation Loan made under this section (other than on a Federal Direct Consolidation Loan described in paragraph (2)), section 1077a(*l*)(3) of this title shall be applied without rounding the weighted average of the interest rate on the loans consolidated to the nearest higher one-eighth of 1 percent as described in subparagraph (A) of section 1077a(*l*)(3) of this title; and

(2) if a Federal Direct Consolidation Loan made under this section that repays a loan which is subject to an interest rate determined under section 1077a(g)(2), (j)(2), or (k)(2) of this title, then the interest rate for such Federal Direct Consolidation Loan shall be calculated—

(A) by using the applicable rate of interest described in section 1077a(g)(2), (j)(2), or (k)(2) of this title, respectively; and

(B) in accordance with section 1077a(*l*)(3) of this title.

(Pub. L. 89–329, title IV, § 459B, as added Pub. L. 111–152, title II, § 2206(b), Mar. 30, 2010, 124 Stat. 1075.)

§ 1087j. Loan cancellation for teachers

(a) Statement of purpose

It is the purpose of this section to encourage individuals to enter and continue in the teaching profession.

(b) Program authorized

The Secretary shall carry out a program of canceling the obligation to repay a qualified loan amount in accordance with subsection (c) for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans made under this part for any new borrower on or after October 1, 1998, who—

(1) has been employed as a full-time teacher for 5 consecutive complete school years—

(A) in a school or location that qualifies under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such schools or locations; and

(B) if employed as an elementary school or secondary school teacher, is highly qualified as defined in section 7801 of this title, or meets the requirements of subsection (g)(3); and

(2) is not in default on a loan for which the borrower seeks forgiveness.

(c) Qualified loan amounts

(1) In general

The Secretary shall cancel not more than $5,000 in the aggregate of the loan obligation on a Federal Direct Stafford Loan or a Federal Direct Unsubsidized Stafford Loan that is outstanding after the completion of the fifth complete school year of teaching described in subsection (b)(1). No borrower may receive a reduction of loan obligations under both this section and section 1078–10 of this title.

(2) Treatment of consolidation loans

A loan amount for a Federal Direct Consolidation Loan may be a qualified loan amount for the purposes of this subsection only to the extent that such loan amount was used to repay a Federal Direct Stafford Loan, a Federal Direct Unsubsidized Stafford Loan, or a loan made under section 1078 or 1078–8 of this title, for a borrower who meets the requirements of subsection (b), as determined in accordance with regulations prescribed by the Secretary.

(3) Additional amounts for teachers in mathematics, science, or special education

Notwithstanding the amount specified in paragraph (1), the aggregate amount that the Secretary shall cancel under this section shall be not more than $17,500 in the case of—

(A) a secondary school teacher—

(i) who meets the requirements of subsection (b); and

(ii) whose qualifying employment for purposes of such subsection is teaching mathematics or science on a full-time basis; and

(B) an elementary school or secondary school teacher—

(i) who meets the requirements of subsection (b);

(ii) whose qualifying employment for purposes of such subsection is as a special education teacher whose primary responsibility is to provide special education to children with disabilities (as those terms are defined in section 1401 of this title); and

(iii) who, as certified by the chief administrative officer of the public or non-profit private elementary school or secondary school in which the borrower is employed, or, in the case of a teacher who is employed by an educational service agency, as certified by the chief administrative officer of such agency, is teaching children with disabilities that correspond with the borrower's special education training and has demonstrated knowledge and teaching skills in the content areas of the elementary school or secondary school curriculum that the borrower is teaching.

(d) Regulations

The Secretary is authorized to issue such regulations as may be necessary to carry out the provisions of this section.

(e) Construction

Nothing in this section shall be construed to authorize any refunding of any canceled loan.

(f) List

If the list of schools in which a teacher may perform service pursuant to subsection (b) is not available before May 1 of any year, the Secretary may use the list for the year preceding

the year for which the determination is made to make such service determination.

(g) Additional eligibility provisions

(1) Continued eligibility

Any teacher who performs service in a school that—

(A) meets the requirements of subsection (b)(1)(A) in any year during such service; and

(B) in a subsequent year fails to meet the requirements of such subsection, may continue to teach in such school and shall be eligible for loan cancellation pursuant to subsection (b).

(2) Prevention of double benefits

No borrower may, for the same voluntary service, receive a benefit under both this section and—

(A) section 1078–11 of this title;

(B) section 1087e(m) of this title; or

(C) subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12601 et seq.).

(3) Private school teachers

An individual who is employed as a teacher in a private school and is exempt from State certification requirements (unless otherwise applicable under State law), may, in lieu of the requirement of subsection (b)(1)(B), have such employment treated as qualifying employment under this section if such individual is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in the applicable grade levels and subject areas. For such purposes, the competency tests taken by such a private school teacher shall be recognized by 5 or more States for the purpose of fulfilling the highly qualified teacher requirements under section 7801 of this title, and the score achieved by such teacher on each test shall equal or exceed the average passing score of those 5 States.

(h) "Year" defined

For the purpose of this section, the term "year" where applied to service as a teacher means an academic year as defined by the Secretary.

(Pub. L. 89–329, title IV, § 460, as added Pub. L. 105–244, title IV, § 456, Oct. 7, 1998, 112 Stat. 1719; amended Pub. L. 108–409, § 3(a)(1)(B), (b)(2), Oct. 30, 2004, 118 Stat. 2300, 2301; Pub. L. 109–171, title VIII, § 8013(e)(2), Feb. 8, 2006, 120 Stat. 167; Pub. L. 110–315, title IV, § 454, Aug. 14, 2008, 122 Stat. 3265; Pub. L. 111–39, title IV, § 404(b)(4), July 1, 2009, 123 Stat. 1946.)

REFERENCES IN TEXT

The National and Community Service Act of 1990, referred to in subsec. (g)(2)(D), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127. Subtitle D of title I of the Act is classified generally to division D of subchapter I (§ 12601 et seq.) of chapter 129 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1087j, Pub. L. 89–329, title IV, § 459A, as added Pub. L. 102–325, title IV, § 451, July 23, 1992, 106 Stat. 575, which related to funds for administrative expenses under Federal direct loan demonstration program, was omitted in the general amendment of this part by Pub. L. 103–66.

AMENDMENTS

2009—Subsec. (c)(1). Pub. L. 111–39, § 404(b)(4)(A), inserted at end "No borrower may receive a reduction of loan obligations under both this section and section 1078–10 of this title."

Subsec. (g)(2). Pub. L. 111–39, § 404(b)(4)(B), redesignated subpars. (B) to (D) as (A) to (C), respectively, substituted "12601" for "12571" in subpar. (C), and struck out former subpar. (A) which read as follows: "section 1078–10 of this title;".

2008—Subsec. (b). Pub. L. 110–315, § 454(c), struck out "(1) In general" before "The Secretary shall", redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and cls. (i) and (ii) of former subpar. (A) as subpars. (A) and (B), respectively, of par. (1), realigned margins, and struck out par. (2). Prior to amendment, text of par. (2) read as follows: "No borrower may obtain a reduction of loan obligations under both this section and section 1078–10 of this title."

Subsec. (b)(1)(A)(i). Pub. L. 110–315, § 454(a)(1), inserted "or location" after "a school" and "or locations" after "such schools".

Subsec. (c)(1). Pub. L. 110–315, § 454(d)(1), substituted "subsection (b)(1)" for "subsection (b)(1)(A)".

Subsec. (c)(3)(A)(i), (B)(i). Pub. L. 110–315, § 454(d)(2), substituted "subsection (b)" for "subsection (b)(1)".

Subsec. (c)(3)(B)(iii). Pub. L. 110–315, § 454(a)(2), inserted "or, in the case of a teacher who is employed by an educational service agency, as certified by the chief administrative officer of such agency," after "borrower is employed,".

Subsec. (g)(2). Pub. L. 110–315, § 454(b), amended par. (2) generally. Prior to amendment, text read as follows: "No borrower may, for the same volunteer service, receive a benefit under both this section and subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq.)".

Subsec. (g)(3). Pub. L. 110–315, § 454(d)(3), substituted "subsection (b)(1)(B)" for "subsection (b)(1)(A)(ii)".

2006—Subsec. (b)(1)(A)(ii). Pub. L. 109–171, § 8013(e)(2)(A), inserted ", or meets the requirements of subsection (g)(3)" after "section 7801 of this title".

Subsec. (g)(3). Pub. L. 109–171, § 8013(e)(2)(B), added par. (3).

2004—Subsec. (b)(1)(A). Pub. L. 108–409, § 3(a)(1)(B), added cl. (ii) and struck out former cls. (ii) and (iii) which read as follows:

"(ii) if employed as a secondary school teacher, is teaching a subject area that is relevant to the borrower's academic major as certified by the chief administrative officer of the public or non-profit private secondary school in which the borrower is employed; and

"(iii) if employed as an elementary school teacher, has demonstrated, as certified by the chief administrative officer of the public or nonprofit private elementary school in which the borrower is employed, knowledge and teaching skills in reading, writing, mathematics and other areas of the elementary school curriculum; and".

Subsec. (c)(3). Pub. L. 108–409, § 3(b)(2), added par. (3).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT; TRANSITION RULE

Amendment by section 3(b)(2) of Pub. L. 108–409 applicable only with respect to eligible individuals who are

new borrowers (as defined in section 1003 of this title) on or after Oct. 1, 1998, see section 3(b)(3) of Pub. L. 108–409, as amended, set out as a note under section 1078–10 of this title.

For transition rules relating to amendments made by section 3(a)(1)(B) of Pub. L. 108–409, see section 3(a)(2) of Pub. L. 108–409, set out as a note under section 1078–10 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

PART D—FEDERAL PERKINS LOANS

CODIFICATION

This part was added as part E of title IV of Pub. L. 89–329 by Pub. L. 92–318, title I, § 137(b), June 23, 1972, 86 Stat. 273, and amended by Pub. L. 94–482, Oct. 12, 1976, 90 Stat. 2081; Pub. L. 95–43, June 15, 1977, 91 Stat. 213; Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2143; Pub. L. 96–49, Aug. 13, 1979, 93 Stat. 351; Pub. L. 96–374, Oct. 3, 1980, 94 Stat. 1367; Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 357; Pub. L. 97–301, Oct. 13, 1982, 96 Stat. 1400; Pub. L. 98–79, Aug. 15, 1983, 97 Stat. 476; Pub. L. 99–272, Apr. 7, 1986, 100 Stat. 82. Such part is shown herein, however, as having been added by Pub. L. 99–498, title IV, § 405(a), Oct. 17, 1986, 100 Stat. 1439, without reference to such intervening amendments because of the extensive revision of this part by Pub. L. 99–498. The letter designation of this part was changed from ''E'' to ''D'' for codification purposes. See Codification note preceding section 1087a of this title.

§ 1087aa. Appropriations authorized

(a) Program authority

The Secretary shall carry out a program of stimulating and assisting in the establishment and maintenance of funds at institutions of higher education for the making of low-interest loans to students in need thereof to pursue their courses of study in such institutions or while engaged in programs of study abroad approved for credit by such institutions. Loans made under this part shall be known as ''Federal Perkins Loans''.

(b) Authorization of appropriations

(1) For the purpose of enabling the Secretary to make contributions to student loan funds established under this part, there are authorized to be appropriated $300,000,000 for fiscal year 2009 and for each of the five succeeding fiscal years.

(2) In addition to the funds authorized under paragraph (1), there are hereby authorized to be appropriated such sums for fiscal year 2015 and each of the 5 succeeding fiscal years as may be necessary to enable students who have received loans for academic years ending prior to October 1, 2015, to continue or complete courses of study.

(c) Use of appropriations

Any sums appropriated pursuant to subsection (b) of this section for any fiscal year shall be available for apportionment pursuant to section 1087bb of this title and for payments of Federal capital contributions therefrom to institutions of higher education which have agreements with the Secretary under section 1087cc of this title. Such Federal capital contributions and all contributions from such institutions shall be used for the establishment, expansion, and maintenance of student loan funds.

(Pub. L. 89–329, title IV, § 461, as added Pub. L. 99–498, title IV, § 405(a), Oct. 17, 1986, 100 Stat. 1439; amended Pub. L. 102–325, title IV, § 461(a)(2)–(c), July 23, 1992, 106 Stat. 576; Pub. L. 105–244, title IV, § 461, Oct. 7, 1998, 112 Stat. 1720; Pub. L. 110–315, title IV, § 461, Aug. 14, 2008, 122 Stat. 3265.)

PRIOR PROVISIONS

A prior section 1087aa, Pub. L. 89–329, title IV, § 461, as added Pub. L. 92–318, title I, § 137(b), June 23, 1972, 86 Stat. 273; amended Pub. L. 94–482, title I, § 130(a), (b), Oct. 12, 1976, 90 Stat. 2146; Pub. L. 96–49, § 5(d)(1), (2), Aug. 13, 1979, 93 Stat. 352; Pub. L. 96–374, title IV, § 441, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1436, 1503, authorized a program to establish and maintain funds at institutions of higher education for making low-interest loans to students, prior to the general revision of this part by Pub. L. 99–498.

Another prior section 461 of Pub. L. 89–329 amended former section 403 of this title.

AMENDMENTS

2008—Subsec. (b)(1). Pub. L. 110–315, § 461(1), substituted ''$300,000,000 for fiscal year 2009 and for each of the five succeeding fiscal years'' for ''$250,000,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years''.

Subsec. (b)(2). Pub. L. 110–315, § 461(2), substituted ''2015'' for ''2003'' in two places.

1998—Subsec. (b)(1). Pub. L. 105–244, § 461(1), substituted ''1999'' for ''1993''.

Subsec. (b)(2). Pub. L. 105–244, § 461(2), substituted ''2003'' for ''1997'' in two places.

1992—Subsec. (a). Pub. L. 102–325, § 461(a)(2), (b), inserted ''or while engaged in programs of study abroad approved for credit by such institutions'' after ''in such institutions'' and substituted ''Federal Perkins Loans'' for ''Perkins Loans''.

Subsec. (b). Pub. L. 102–325, § 461(c), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) For the purpose of enabling the Secretary to make contributions to student loan funds established under this part, there are authorized to be appropriated $268,000,000 for fiscal year 1987 and such sums as may be necessary for each of the 4 succeeding fiscal years.

''(2) In addition there are hereby authorized to be appropriated such sums for fiscal year 1991 and each of the five succeeding fiscal years as may be necessary to enable students who have received loans for academic years ending prior to October 1, 1991, to continue or complete courses of study.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

§ 1087bb. Allocation of funds

(a) Allocation based on previous allocation

(1) From the amount appropriated pursuant to section 1087aa(b) of this title for each fiscal year, the Secretary shall first allocate to each eligible institution an amount equal to—

(A) 100 percent of the amount received under subsections (a) and (b) of this section for fiscal year 1999 (as such subsections were in effect with respect to allocations for such fiscal year), multiplied by

(B) the institution's default penalty, as determined under subsection (e) of this section,

except that if the institution has a cohort default rate in excess of the applicable maximum

cohort default rate under subsection (f) of this section, the institution may not receive an allocation under this paragraph.

(2)(A) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this part after fiscal year 1999 but is not a first or second time participant, an amount equal to the greater of—

(i) $5,000; or

(ii) 100 percent of the amount received and expended under this part for the first year it participated in the program.

(B) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this part after fiscal year 1999 and is a first or second time participant, an amount equal to the greatest of—

(i) $5,000;

(ii) an amount equal to (I) 90 percent of the amount received and used under this part in the second preceding fiscal year by eligible institutions offering comparable programs of instruction, divided by (II) the number of students enrolled at such comparable institutions in such fiscal year, multiplied by (III) the number of students enrolled at the applicant institution in such fiscal year; or

(iii) 90 percent of the institution's allocation under this part for the preceding fiscal year.

(C) Notwithstanding subparagraphs (A) and (B) of this paragraph, the Secretary shall allocate to each eligible institution which—

(i) was a first-time participant in the program in fiscal year 2000 or any subsequent fiscal year, and

(ii) received a larger amount under this subsection in the second year of participation,

an amount equal to 90 percent of the amount it received under this subsection in its second year of participation.

(D) For any fiscal year after a fiscal year in which an institution receives an allocation under subparagraph (A), (B), or (C), the Secretary shall allocate to such institution an amount equal to the product of—

(i) the amount determined under subparagraph (A), (B), or (C), multiplied by

(ii) the institution's default penalty, as determined under subsection (e) of this section,

except that if the institution has a cohort default rate in excess of the applicable maximum cohort default rate under subsection (f) of this section, the institution may not receive an allocation under this paragraph.

(3)(A) If the amount appropriated for any fiscal year is less than the amount required to be allocated to all institutions under paragraph (1) of this subsection, then the amount of the allocation to each such institution shall be ratably reduced.

(B) If the amount appropriated for any fiscal year is more than the amount required to be allocated to all institutions under paragraph (1) but less than the amount required to be allocated to all institutions under paragraph (2), then—

(i) the Secretary shall allot the amount required to be allocated to all institutions under paragraph (1), and

(ii) the amount of the allocation to each institution under paragraph (2) shall be ratably reduced.

(C) If additional amounts are appropriated for any such fiscal year, such reduced amounts shall be increased on the same basis as they were reduced (until the amount allocated equals the amount required to be allocated under paragraphs (1) and (2) of this subsection).

(b) Allocation of excess based on share of excess eligible amounts

(1) From the remainder of the amount appropriated pursuant to section 1087aa(b) of this title after making the allocations required by subsection (a) of this section, the Secretary shall allocate to each eligible institution which has an excess eligible amount an amount which bears the same ratio to such remainder as such excess eligible amount bears to the sum of the excess eligible amounts of all such eligible institutions (having such excess eligible amounts).

(2) For any eligible institution, the excess eligible amount is the amount, if any, by which—

(A)(i) that institution's eligible amount (as determined under paragraph (3)), divided by

(ii) the sum of the eligible amounts of all institutions (as so determined), multiplied by

(iii) the amount appropriated pursuant to section 1087aa(b) of this title for the fiscal year; exceeds

(B) the amount required to be allocated to that institution under subsection (a) of this section,

except that an eligible institution which has a cohort default rate in excess of the applicable maximum cohort default rate under subsection (f) of this section may not receive an allocation under this paragraph.

(3) For any eligible institution, the eligible amount of that institution is equal to—

(A) the amount of the institution's self-help need, as determined under subsection (c) of this section; minus

(B) the institution's anticipated collections; multiplied by

(C) the institution's default penalty, as determined under subsection (e) of this section;

except that, if the institution has a cohort default rate in excess of the applicable maximum cohort default rate under subsection (f) of this section, the eligible amount of that institution is zero.

(c) Determination of institution's self-help need

(1) The amount of an institution's self-help need is equal to the sum of the self-help need of the institution's eligible undergraduate students and the self-help need of the institution's eligible graduate and professional students.

(2) To determine the self-help need of an institution's eligible undergraduate students, the Secretary shall—

(A) establish various income categories for dependent and independent undergraduate students;

(B) establish an expected family contribution for each income category of dependent and independent undergraduate students, determined on the basis of the average expected

family contribution (computed in accordance with part E of this subchapter) of a representative sample within each income category for the second preceding fiscal year;

(C) compute 25 percent of the average cost of attendance for all undergraduate students;

(D) multiply the number of eligible dependent students in each income category by the lesser of—

(i) 25 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or

(ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction shall not be less than zero;

(E) add the amounts determined under subparagraph (D) for each income category of dependent students;

(F) multiply the number of eligible independent students in each income category by the lesser of—

(i) 25 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or

(ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction for any income category shall not be less than zero;

(G) add the amounts determined under subparagraph (F) for each income category of independent students; and

(H) add the amounts determined under subparagraphs (E) and (G).

(3) To determine the self-help need of an institution's eligible graduate and professional students, the Secretary shall—

(A) establish various income categories for graduate and professional students;

(B) establish an expected family contribution for each income category of graduate and professional students, determined on the basis of the average expected family contribution (computed in accordance with part E of this subchapter) of a representative sample within each income category for the second preceding fiscal year;

(C) determine the average cost of attendance for all graduate and professional students;

(D) subtract from the average cost of attendance for all graduate and professional students (determined under subparagraph (C)), the expected family contribution (determined under subparagraph (B)) for each income category, except that the amount computed by such subtraction for any income category shall not be less than zero;

(E) multiply the amounts determined under subparagraph (D) by the number of eligible students in each category;

(F) add the amounts determined under subparagraph (E) for each income category.

(4)(A) For purposes of paragraphs (2) and (3), the term ''average cost of attendance'' means the average of the attendance costs for undergraduate students and for graduate and professional students, which shall include (i) tuition and fees determined in accordance with subparagraph (B), (ii) standard living expenses determined in accordance with subparagraph (C), and (iii) books and supplies determined in accordance with subparagraph (D).

(B) The average undergraduate and graduate and professional tuition and fees described in subparagraph (A)(i) shall be computed on the basis of information reported by the institution to the Secretary, which shall include (i) total revenue received by the institution from undergraduate and graduate tuition and fees for the second year preceding the year for which it is applying for an allocation, and (ii) the institution's enrollment for such second preceding year.

(C) The standard living expense described in subparagraph (A)(ii) is equal to 150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college for a single independent student.

(D) The allowance for books and supplies described in subparagraph (A)(iii) is equal to $600.

(d) Anticipated collections

(1) An institution's anticipated collections are equal to the amount which was collected during the second year preceding the beginning of the award period, multiplied by 1.21.

(2) The Secretary shall establish an appeals process by which the anticipated collections required in paragraph (1) may be waived for institutions with low cohort default rates in the program assisted under this part.

(e) Default penalties

(1) Years preceding fiscal year 2000

For any fiscal year preceding fiscal year 2000, any institution with a cohort default rate that—

(A) equals or exceeds 15 percent, shall establish a default reduction plan pursuant to regulations prescribed by the Secretary, except that such plan shall not be required with respect to an institution that has a default rate of less than 20 percent and that has less than 100 students who have loans under this part in such academic year;

(B) equals or exceeds 20 percent, but is less than 25 percent, shall have a default penalty of 0.9;

(C) equals or exceeds 25 percent, but is less than 30 percent, shall have a default penalty of 0.7; and

(D) equals or exceeds 30 percent shall have a default penalty of zero.

(2) Years following fiscal year 2000

For fiscal year 2000 and any succeeding fiscal year, any institution with a cohort default rate (as defined under subsection (g) of this section) that equals or exceeds 25 percent shall have a default penalty of zero.

(3) Ineligibility

(A) In general

For fiscal year 2000 and any succeeding fiscal year, any institution with a cohort de-

fault rate (as defined in subsection (g) of this section) that equals or exceeds 50 percent for each of the 3 most recent years for which data are available shall not be eligible to participate in a program under this part for the fiscal year for which the determination is made and the 2 succeeding fiscal years, unless, within 30 days of receiving notification from the Secretary of the loss of eligibility under this paragraph, the institution appeals the loss of eligibility to the Secretary. The Secretary shall issue a decision on any such appeal within 45 days after the submission of the appeal. Such decision may permit the institution to continue to participate in a program under this part if—

(i) the institution demonstrates to the satisfaction of the Secretary that the calculation of the institution's cohort default rate is not accurate, and that recalculation would reduce the institution's cohort default rate for any of the 3 fiscal years below 50 percent; or

(ii) there are, in the judgment of the Secretary, such a small number of borrowers entering repayment that the application of this subparagraph would be inequitable.

(B) Continued participation

During an appeal under subparagraph (A), the Secretary may permit the institution to continue to participate in a program under this part.

(C) Return of funds

Within 90 days after the date of any termination pursuant to subparagraph (A), or the conclusion of any appeal pursuant to subparagraph (B), whichever is later, the balance of the student loan fund established under this part by the institution that is the subject of the termination shall be distributed as follows:

(i) The Secretary shall first be paid an amount which bears the same ratio to such balance (as of the date of such distribution) as the total amount of Federal capital contributions to such fund by the Secretary under this part bears to the sum of such Federal capital contributions and the capital contributions to such fund made by the institution.

(ii) The remainder of such student loan fund shall be paid to the institution.

(D) Use of returned funds

Any funds returned to the Secretary under this paragraph shall be reallocated to institutions of higher education pursuant to subsection (i) of this section.

(E) Definition

For the purposes of subparagraph (A), the term ''loss of eligibility'' shall be defined as the mandatory liquidation of an institution's student loan fund, and assignment of the institution's outstanding loan portfolio to the Secretary.

(f) Applicable maximum cohort default rate

(1) Award years prior to 2000

For award years prior to award year 2000, the applicable maximum cohort default rate is 30 percent.

(2) Award year 2000 and succeeding award years

For award year 2000 and subsequent years, the applicable maximum cohort default rate is 25 percent.

(g) "Cohort default rate" defined

(1)(A) The term ''cohort default rate'' means, for any award year in which 30 or more current and former students at the institution enter repayment on loans under this part (received for attendance at the institution), the percentage of those current and former students who enter repayment on such loans (received for attendance at that institution) in that award year who default before the end of the following award year.

(B) For any award year in which less than 30 of the institution's current and former students enter repayment, the term ''cohort default rate'' means the percentage of such current and former students who entered repayment on such loans in any of the three most recent award years and who default before the end of the award year immediately following the year in which they entered repayment.

(C) A loan on which a payment is made by the institution of higher education, its owner, agency, contractor, employee, or any other entity or individual affiliated with such institution, in order to avoid default by the borrower, is considered as in default for the purposes of this subsection.

(D) In the case of a student who has attended and borrowed at more than one school, the student (and his or her subsequent repayment or default) is attributed to the school for attendance at which the student received the loan that entered repayment in the award year.

(E) In determining the number of students who default before the end of such award year, the institution, in calculating the cohort default rate, shall exclude—

(i) any loan on which the borrower has, after the time periods specified in paragraph (2)—

(I) voluntarily made 6 consecutive payments;

(II) voluntarily made all payments currently due;

(III) repaid in full the amount due on the loan; or

(IV) received a deferment or forbearance, based on a condition that began prior to such time periods;

(ii) any loan which has, after the time periods specified in paragraph (2), been rehabilitated or canceled; and

(iii) any other loan that the Secretary determines should be excluded from such determination.

(F) The Secretary shall prescribe regulations designed to prevent an institution from evading the application to that institution of a cohort default rate determination under this subsection through the use of such measures as branching, consolidation, change of ownership or control or other means as determined by the Secretary.

(2) For purposes of calculating the cohort default rate under this subsection, a loan shall be considered to be in default—

(A) 240 days (in the case of a loan repayable monthly), or

(B) 270 days (in the case of a loan repayable quarterly),

after the borrower fails to make an installment payment when due or to comply with other terms of the promissory note.

(h) Filing deadlines

The Secretary shall, from time to time, set dates before which institutions must file applications for allocations under this part.

(i) Reallocation of excess allocations

(1) In general

(A) If an institution of higher education returns to the Secretary any portion of the sums allocated to such institution under this section for any fiscal year, the Secretary shall reallocate 80 percent of such returned portions to participating institutions in an amount not to exceed such participating institution's excess eligible amounts as determined under paragraph (2).

(B) For the purpose of this subsection, the term ''participating institution'' means an institution of higher education that—

(i) was a participant in the program assisted under this part in fiscal year 1999; and

(ii) did not receive an allocation under subsection (a) of this section in the fiscal year for which the reallocation determination is made.

(2) Excess eligible amount

For any participating institution, the excess eligible amount is the amount, if any, by which—

(A)(i) that institution's eligible amount (as determined under subsection (b)(3) of this section), divided by (ii) the sum of the eligible amounts of all participating institutions (as determined under paragraph (3)), multiplied by (iii) the amount of funds available for reallocation under this subsection; exceeds

(B) the amount required to be allocated to that institution under subsection (b) of this section.

(3) Remainder

The Secretary shall reallocate the remainder of such returned portions in accordance with regulations of the Secretary.

(4) Allocation reductions

If under paragraph (1) of this subsection an institution returns more than 10 percent of its allocation, the institution's allocation for the next fiscal year shall be reduced by the amount returned. The Secretary may waive this paragraph for a specific institution if the Secretary finds that enforcing it is contrary to the interest of the program.

(Pub. L. 89–329, title IV, § 462, as added Pub. L. 99–498, title IV, § 405(a), Oct. 17, 1986, 100 Stat. 1440; amended Pub. L. 100–50, § 13(a)–(d), June 3, 1987, 101 Stat. 348; Pub. L. 102–325, title IV, § 462, July 23, 1992, 106 Stat. 576; Pub. L. 103–208, § 2(f)(1)–(4), Dec. 20, 1993, 107 Stat. 2470, 2471; Pub. L. 105–244, title IV, § 462(a)(1), (2), (b)–(e), Oct. 7, 1998, 112 Stat. 1720–1723; Pub. L. 110–315, title IV, § 462, Aug. 14, 2008, 122 Stat. 3266; Pub. L. 111–39, title IV, § 405(1), July 1, 2009, 123 Stat. 1947.)

PRIOR PROVISIONS

A prior section 1087bb, Pub. L. 89–329, title IV, § 462, as added Pub. L. 92–318, title I, § 137(b), June 23, 1972, 86 Stat. 273; amended Pub. L. 96–374, title IV, § 448(a), title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1443, 1503, provided for apportionment of appropriations among States, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2009—Subsec. (a)(1)(A). Pub. L. 111–39 added subpar. (A) and struck out former subpar. (A), resulting in text identical to that after execution of the amendment by Pub. L. 105–244, § 462(a)(1)(A). See 1998 Amendment note below.

2008—Subsec. (c)(4)(D). Pub. L. 110–315 substituted ''$600'' for ''$450''.

1998—Subsec. (a)(1). Pub. L. 105–244, § 462(e)(1), inserted ''cohort'' before ''default'' in two places in concluding provisions.

Pub. L. 105–244, § 462(a)(2)(A)(ii), substituted ''subsection (f)'' for ''subsection (g)'' in concluding provisions.

Subsec. (a)(1)(A). Pub. L. 105–244, § 462(a)(1)(A), which directed the substitution of ''the amount received under subsections (a) and (b) of this section for fiscal year 1999 (as such subsections were in effect with respect to allocations for such fiscal year)'' for ''the amount of the Federal capital contribution allocated to such institution under this part for fiscal year 1985'', was executed by making the substitution for text which read ''amount of Federal capital'' rather than ''amount of the Federal capital'', to reflect the probable intent of Congress.

Subsec. (a)(1)(B). Pub. L. 105–244, § 462(a)(2)(A)(i), substituted ''subsection (e)'' for ''subsection (f)''.

Subsec. (a)(2)(A), (B). Pub. L. 105–244, § 462(a)(1)(B)(i), substituted ''1999'' for ''1985'' in introductory provisions.

Subsec. (a)(2)(C)(i). Pub. L. 105–244, § 462(a)(1)(B)(ii), substituted ''2000'' for ''1986''.

Subsec. (a)(2)(D). Pub. L. 105–244, § 462(e)(1), inserted ''cohort'' before ''default'' in two places in concluding provisions.

Pub. L. 105–244, § 462(a)(2)(A)(iv), substituted ''subsection (f)'' for ''subsection (g)'' in concluding provisions.

Subsec. (a)(2)(D)(ii). Pub. L. 105–244, § 462(a)(2)(A)(iii), substituted ''subsection (e)'' for ''subsection (f)''.

Subsec. (b). Pub. L. 105–244, § 462(a)(2)(H), redesignated subsec. (c) as (b).

Pub. L. 105–244, § 462(a)(2)(B), struck out heading and text of subsec. (b). Text read as follows: ''From one-quarter of the remainder of the amount appropriated pursuant to section 1087aa(b) of this title for any fiscal year (after making the allocations required by subsection (a) of this section), the Secretary shall allocate to each eligible institution an amount which bears the same ratio to such one-quarter as—

''(1) the amount the eligible institution receives for such fiscal year under subsection (a) of this section, bears to

''(2) the amount all such institutions receive under such subsection (a) of this section.''

Subsec. (b)(2). Pub. L. 105–244, § 462(e)(2), inserted ''cohort'' before ''default'' in two places in concluding provisions.

Subsec. (b)(3). Pub. L. 105–244, § 462(e)(2), inserted ''cohort'' before ''default'' in two places in concluding provisions.

Subsec. (c). Pub. L. 105–244, § 462(a)(2)(H), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(1). Pub. L. 105–244, § 462(a)(2)(C), substituted ''the remainder'' for ''three-quarters of the remainder''.

Subsec. (c)(2). Pub. L. 105–244, § 462(a)(2)(D), substituted ''subsection (f)'' for ''subsection (g)'' in concluding provisions.

Subsec. (c)(3). Pub. L. 105–244, § 462(b), in introductory provisions, struck out ''the Secretary, for academic

year 1988–1989, shall use the procedures employed for academic year 1986–1987, and, for any subsequent academic years,'' after ''professional students,''.

Pub. L. 105–244, § 462(a)(2)(E)(iii), substituted ''subsection (f)'' for ''subsection (g)'' in concluding provisions.

Subsec. (c)(3)(A). Pub. L. 105–244, § 462(a)(2)(E)(i), substituted ''subsection (c)'' for ''subsection (d)''.

Subsec. (c)(3)(C). Pub. L. 105–244, § 462(a)(2)(E)(ii), substituted ''subsection (e)'' for ''subsection (f)''.

Subsec. (d). Pub. L. 105–244, § 462(a)(2)(H), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(2). Pub. L. 105–244, § 462(e)(3), inserted ''cohort'' before ''default''.

Subsec. (e). Pub. L. 105–244, § 462(c), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

''(1) For any fiscal year prior to fiscal year 1994, any institution which has a default rate which equals or exceeds 7.5 percent but does not exceed the maximum default rate applicable to the award year under subsection (g) of this section, the institution's default penalty is a percentage equal to the complement of such default rate. For any institution which has a default rate that does not exceed 7.5 percent, the institution's default penalty is equal to one.

''(2) For fiscal year 1994 and any succeeding fiscal year, any institution with a cohort default rate (as defined under subsection (h) of this section) which—

''(A) equals or exceeds 15 percent, shall establish a default reduction plan pursuant to regulations issued by the Secretary;

''(B) equals or exceeds 20 percent, but is less than 25 percent, shall have a default penalty of 0.9;

''(C) equals or exceeds 25 percent, but is less than 30 percent, shall have a default penalty of 0.7; and

''(D) equals or exceeds 30 percent shall have a default penalty of zero.''

Pub. L. 105–244, § 462(a)(2)(H), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 105–244, § 462(c), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows:

''(1) For award years 1992 and 1993, the applicable maximum default rate is 15 percent.

''(2) For award year 1994 and subsequent years, the maximum cohort default rate is 30 percent.''

Pub. L. 105–244, § 462(a)(2)(H), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 105–244, § 462(d)(1), inserted heading and struck out former heading.

Pub. L. 105–244, § 462(a)(2)(H), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Subsec. (g)(1). Pub. L. 105–244, § 462(d)(1), (2), redesignated par. (3) as (1), substituted ''The term'' for ''For award year 1994 and any succeeding award year, the term'' in subpar. (A), and struck out former par. (1) which read as follows: ''For any award year prior to award year 1994, for the purpose of this section, the default rate is computed by dividing—

''(A) the total principal amount of defaulted loans; by

''(B) the total principal amount of loans made under this part, less the principal amount of all loans made to borrowers who are eligible for deferment under section 1087dd(c)(2)(A)(i) of this title or are in a grace period preceding repayment.''

Subsec. (g)(1)(B). Pub. L. 105–244, § 462(d)(3)(A), (B), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''In determining the number of students who default before the end of such award year, the Secretary shall, in calculating the cohort default rate, exclude any loans which, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate.''

Subsec. (g)(1)(C), (D). Pub. L. 105–244, § 462(d)(3)(B), redesignated subpars. (D) and (F) as (C) and (D), respectively. Former subpar. (C) redesignated (B).

Subsec. (g)(1)(E). Pub. L. 105–244, § 462(d)(3)(A), (C), added subpar. (E) and struck out former subpar. (E) which read as follows: ''Any loan that is in default but on which the borrower has made satisfactory arrangements to resume payment or any loan which has been rehabilitated before the end of such following award year is not considered as in default for purposes of this subsection.''

Subsec. (g)(1)(F). Pub. L. 105–244, § 462(d)(3)(B), (e)(4), redesignated subpar. (G) as (F) and inserted ''cohort'' before ''default''. Former subpar. (F) redesignated (D).

Subsec. (g)(1)(G). Pub. L. 105–244, § 462(d)(3)(B), redesignated subpar. (G) as (F).

Subsec. (g)(2). Pub. L. 105–244, § 462(d)(4), added par. (2).

Pub. L. 105–244, § 462(d)(1), struck out par. (2) which read as follows: ''For the purpose of paragraph (1)(A), the total principal amount of defaulted loans is equal to the total amount borrowed under loans that have reached repayment status and that are in default, minus—

''(A) amounts that have been repaid or cancelled on such loans;

''(B) loans discharged in bankruptcy;

''(C) loans referred or assigned to the Secretary for collection under paragraph (5)(A), (5)(B)(i), or (6) of section 1087cc(a) of this title; and

''(D) loans that are in default but on which the borrowers have made satisfactory arrangements to resume payment.''

Subsec. (g)(3). Pub. L. 105–244, § 462(d)(2), redesignated par. (3) as (1).

Subsec. (g)(4). Pub. L. 105–244, § 462(d)(4), struck out par. (4) which read as follows: ''A loan shall be considered to be in default—

''(A) 240 days (in the case of a loan repayable monthly), or

''(B) 270 days (in the case of a loan repayable quarterly), after the borrower fails to make an installment payment when due or to comply with other terms of the promissory note,

after the borrower fails to make an installment payment when due or to comply with other terms of the promissory note.''

Subsecs. (h), (i). Pub. L. 105–244, § 462(a)(2)(H), redesignated subsecs. (i) and (j) as (h) and (i), respectively. Former subsec. (h) redesignated (g).

Subsec. (j). Pub. L. 105–244, § 462(a)(2)(H), redesignated subsec. (j) as (i).

Subsec. (j)(1)(B)(i). Pub. L. 105–244, § 462(a)(2)(F), substituted ''1999'' for ''1985''.

Subsec. (j)(2)(A)(i). Pub. L. 105–244, § 462(a)(2)(G)(i), substituted ''subsection (b)(3)'' for ''paragraph (3) of subsection (c)''.

Subsec. (j)(2)(B). Pub. L. 105–244, § 462(a)(2)(G)(ii), substituted ''subsection (b)'' for ''subsection (c)''.

1993—Subsec. (a)(1), (2)(D). Pub. L. 103–208, § 2(f)(1), substituted ''if the institution has'' for ''if the institution which has'' in closing provisions.

Subsec. (d)(4)(C). Pub. L. 103–208, § 2(f)(2), substituted ''150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college'' for ''three-fourths in the Pell Grant family size offset''.

Subsecs. (e)(2), (h)(4)(B). Pub. L. 103–208, § 2(f)(3), (4), realigned margins.

1992—Subsec. (a)(1)(A). Pub. L. 102–325, § 462(a), substituted ''allocated to such institution'' for ''such institution received''.

Subsec. (e). Pub. L. 102–325, § 462(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (f). Pub. L. 102–325, § 462(c), substituted ''default reduction and default penalties'' for ''Default penalty'' in heading and amended text generally. Prior to amendment, text read as follows: ''For any institution which has a default rate which equals or exceeds 7.5 percent but does not exceed the maximum default rate applicable to the award year under subsection (g) of this section, the institution's default penalty is a percentage equal to the complement of such default rate. For any institution which has a default rate that does

not exceed 7.5 percent, the institution's default penalty is equal to one.''

Subsec. (g). Pub. L. 102–325, § 462(d), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows:

''(1) For award years 1988, 1989, and 1990, the applicable maximum default rate is 20 percent.

''(2) For award year 1991 and subsequent years, the applicable maximum default rate is 15 percent.''

Subsec. (h). Pub. L. 102–325, § 462(e), substituted ''Definitions of default rate and cohort default rate'' for ''Definition of default rate'' in heading, in par. (1) substituted ''For any award year prior to award year 1994, for the purpose'' for ''For the purpose'', added par. (3), redesignated former par. (3) as (4), substituted ''240'' for ''120'' in par. (4)(A), and amended par. (4)(B) generally. Prior to amendment, par. (4)(B) read as follows: ''180 days (in the case of a loan repayable quarterly),''.

Subsec. (j). Pub. L. 102–325, § 462(f), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: ''If an institution returns to the Secretary any portion of the sums allocated to such institution under this section for any fiscal year the Secretary shall, in accordance with regulations, reallocate such excess to other institutions.''

1987—Subsec. (a)(1)(A). Pub. L. 100–50, § 13(a), amended subpar. (A) generally, substituting ''of Federal capital contribution such institution received'' for ''such institution expended''.

Subsec. (d)(3), (4). Pub. L. 100–50, § 13(b), redesignated par. (3), defining ''average cost of attendance'' and calculating average undergraduate and graduate and professional tuition and fees, standard living expenses, and allowance for books and supplies, as (4).

Subsec. (e). Pub. L. 100–50, § 13(c), struck out ''; cash on hand'' after ''collections'' in heading.

Subsec. (f). Pub. L. 100–50, § 13(d), substituted ''subsection (g) of this section'' for ''paragraph (2)''.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–244, title IV, § 462(a)(3), Oct. 7, 1998, 112 Stat. 1721, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to allocations of amounts appropriated pursuant to section 461(b) [20 U.S.C. 1087aa(b)] for fiscal year 2000 or any succeeding fiscal year.''

Amendment by section 462(b)–(e) of Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section applicable with respect to academic year 1988-1989 and succeeding academic years, see section 405(b) of Pub. L. 99–498, as amended, set out as a note under section 1087dd of this title.

§ 1087cc. Agreements with institutions of higher education

(a) Contents of agreements

An agreement with any institution of higher education for the payment of Federal capital contributions under this part shall—

(1) provide for the establishment and maintenance of a student loan fund for the purpose of this part;

(2) provide for the deposit in such fund of—

(A) Federal capital contributions from funds appropriated under section 1087aa of this title;

(B) a capital contribution by an institution in an amount equal to one-third of the Federal capital contributions described in subparagraph (A);

(C) collections of principal and interest on student loans made from deposited funds;

(D) charges collected pursuant to regulations under section 1087dd(c)(1)(H) of this title; and

(E) any other earnings of the funds;

(3) provide that such student loan fund shall be used only for—

(A) loans to students, in accordance with the provisions of this part;

(B) administrative expenses, as provided in subsection (b) of this section;

(C) capital distributions, as provided in section 1087ff of this title; and

(D) costs of litigation, and other collection costs agreed to by the Secretary in connection with the collection of a loan from the fund (and interest thereon) or a charge assessed pursuant to regulations under section 1087dd(c)(1)(H) of this title;

(4) provide that where a note or written agreement evidencing a loan has been in default despite due diligence on the part of the institution in attempting collection thereon—

(A) if the institution has knowingly failed to maintain an acceptable collection record with respect to such loan, as determined by the Secretary in accordance with criteria established by regulation, the Secretary may—

(i) require the institution to assign such note or agreement to the Secretary, without recompense; and

(ii) apportion any sums collected on such a loan, less an amount not to exceed 30 percent of any sums collected to cover the Secretary's collection costs, among other institutions in accordance with section 1087bb of this title; or

(B) if the institution is not one described in subparagraph (A), the Secretary may allow such institution to refer such note or agreement to the Secretary, without recompense, except that, once every six months, any sums collected on such a loan (less an amount not to exceed 30 percent of any such sums collected to cover the Secretary's collection costs) shall be repaid to such institution and treated as an additional capital contribution under section 1087bb of this title;

(5) provide that, if an institution of higher education determines not to service and col-

lect student loans made available from funds under this part, the institution will assign, at the beginning of the repayment period, notes or evidence of obligations of student loans made from such funds to the Secretary and the Secretary shall apportion any sums collected on such notes or obligations (less an amount not to exceed 30 percent of any such sums collected to cover that Secretary's collection costs) among other institutions in accordance with section 1087bb of this title;

(6) provide that, notwithstanding any other provision of law, the Secretary will provide to the institution any information with respect to the names and addresses of borrowers or other relevant information which is available to the Secretary, from whatever source such information may be derived;

(7) provide assurances that the institution will comply with the provisions of section 1087cc–1 of this title;

(8) provide that the institution of higher education will make loans first to students with exceptional need; and

(9) include such other reasonable provisions as may be necessary to protect the United States from unreasonable risk of loss and as are agreed to by the Secretary and the institution, except that nothing in this paragraph shall be construed to permit the Secretary to require the assignment of loans to the Secretary other than as is provided for in paragraphs (4) and (5).

(b) Administrative expenses

An institution which has entered into an agreement under subsection (a) of this section shall be entitled, for each fiscal year during which it makes student loans from a student loan fund established under such agreement, to a payment in lieu of reimbursement for its expenses in administering its student loan program under this part during such year. Such payment shall be made in accordance with section 1096 of this title.

(c) Cooperative agreements with consumer reporting agencies

(1) For the purpose of promoting responsible repayment of loans made pursuant to this part, the Secretary and each institution of higher education participating in the program under this part shall enter into cooperative agreements with consumer reporting agencies to provide for the exchange of information concerning student borrowers concerning whom the Secretary has received a referral pursuant to section 1087gg of this title and regarding loans held by the Secretary or an institution.

(2) Each cooperative agreement made pursuant to paragraph (1) shall be made in accordance with the requirements of section 1080a of this title except that such agreement shall provide for the disclosure by the Secretary or an institution, as the case may be, to such consumer reporting agencies, with respect to any loan held by the Secretary or the institution, respectively, of—

(A) the date of disbursement and the amount of such loans made to any borrower under this part at the time of disbursement of the loan;

(B) information concerning the repayment and collection of any such loan, including information concerning the status of such loan; and

(C) the date of cancellation of the note upon completion of repayment by the borrower of any such loan, or upon cancellation or discharge of the borrower's obligation on the loan for any reason.

(3) Notwithstanding paragraphs (4) and (5) of subsection (a) of section 1681c of title 15, a consumer reporting agency may make a report containing information received from the Secretary or an institution regarding the status of a borrower's account on a loan made under this part until the loan is paid in full.

(4)(A) Except as provided in subparagraph (B), an institution of higher education, after consultation with the Secretary and pursuant to the agreements entered into under paragraph (1), shall disclose at least annually to any consumer reporting agency with which the Secretary has such an agreement the information set forth in paragraph (2), and shall disclose promptly to such consumer reporting agency any changes to the information previously disclosed.

(B) The Secretary may promulgate regulations establishing criteria under which an institution of higher education may cease reporting the information described in paragraph (2) before a loan is paid in full.

(5) Each institution of higher education shall notify the appropriate consumer reporting agencies whenever a borrower of a loan that is made and held by the institution and that is in default makes 6 consecutive monthly payments on such loan, for the purpose of encouraging such consumer reporting agencies to update the status of information maintained with respect to that borrower.

(d) Limitation on use of interest bearing accounts

In carrying out the provisions of subsection (a)(9) of this section, the Secretary may not require that any collection agency, collection attorney, or loan servicer collecting loans made under this part deposit amounts collected on such loans in interest bearing accounts, unless such agency, attorney, or servicer holds such amounts for more than 45 days.

(e) Special due diligence rule

In carrying out the provisions of subsection (a)(5)[1] of this section relating to due diligence, the Secretary shall make every effort to ensure that institutions of higher education may use Internal Revenue Service skip-tracing collection procedures on loans made under this part.

(Pub. L. 89–329, title IV, § 463, as added Pub. L. 99–498, title IV, § 405(a), Oct. 17, 1986, 100 Stat. 1444; amended Pub. L. 100–50, § 13(e), (f), June 3, 1987, 101 Stat. 349; Pub. L. 102–325, title IV, § 463(a), (b), July 23, 1992, 106 Stat. 579; Pub. L. 103–208, § 2(f)(5)–(7), Dec. 20, 1993, 107 Stat. 2471; Pub. L. 105–244, title IV, § 463, Oct. 7, 1998, 112 Stat. 1724; Pub. L. 110–315, title IV, §§ 432(b)(5), 463, Aug. 14, 2008, 122 Stat. 3246, 3266; Pub. L. 111–39, title IV, § 405(2), July 1, 2009, 123 Stat. 1947.)

REFERENCES IN TEXT

Subsection (a)(5) of this section relating to due diligence, referred to in subsec. (e), was redesignated sub-

sec. (a)(4), by Pub. L. 105–244, title IV, § 463(a)(3), Oct. 7, 1998, 112 Stat. 1724.

PRIOR PROVISIONS

A prior section 1087cc, Pub. L. 89–329, title IV, § 463, as added Pub. L. 92–318, title I, § 137(b), June 23, 1972, 86 Stat. 274; amended Pub. L. 94–482, title I, § 130(c), Oct. 12, 1976, 90 Stat. 2146; Pub. L. 96–374, title IV, §§ 442(b)(1)–(4), 445(a), (b)(1), 447(a), 448(b), title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1439, 1440, 1442, 1443, 1503; Pub. L. 99–272, title XVI, §§ 16025, 16026, Apr. 7, 1986, 100 Stat. 352, 353, related to agreements with institutions of higher education, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2009—Subsec. (c)(2)(A). Pub. L. 111–39, § 405(2)(A)(i), realigned margins.

Subsec. (c)(2)(B). Pub. L. 111–39, § 405(2)(A)(ii), added subpar. (B) and struck out former subpar. (B), resulting in text identical to that after execution of the amendment by Pub. L. 105–244, § 463(b)(2)(C). See 1998 Amendment note below.

Subsec. (c)(3). Pub. L. 111–39, § 405(2)(B), substituted ''and (5)'' for ''and (6)'' and made technical amendment to reference in original act which appears in text as reference to section 1681c of title 15.

2008—Subsec. (a)(4)(B). Pub. L. 110–315, § 463(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''if the institution is not one described in subparagraph (A), the Secretary may—

''(i) allow such institution to transfer its interest in such loan to the Secretary, for collection, and the Secretary may use any collections thereon (less an amount not to exceed 30 percent of any such sums collected to cover the Secretary's collection costs) to make allocations to institutions of additional capital contributions in accordance with section 1087bb of this title; or

''(ii) allow such institution to refer such note or agreement to the Secretary, without recompense, except that any sums collected on such a loan (less an amount not to exceed 30 percent of any such sums collected to cover the Secretary's collection costs) shall be repaid to such institution no later than 180 days after collection by the Secretary and treated as an additional capital contribution;''.

Subsec. (a)(9). Pub. L. 110–315, § 463(b), inserted '', except that nothing in this paragraph shall be construed to permit the Secretary to require the assignment of loans to the Secretary other than as is provided for in paragraphs (4) and (5)'' before period.

Subsec. (c). Pub. L. 110–315, § 432(b)(5)(A), substituted ''consumer reporting agencies'' for ''credit bureau organizations'' in heading.

Subsec. (c)(1). Pub. L. 110–315, § 432(b)(5)(B), substituted ''consumer reporting agencies'' for ''credit bureau organizations''.

Subsec. (c)(2). Pub. L. 110–315, § 432(b)(5)(C), substituted ''such consumer reporting agencies'' for ''such organizations''.

Subsec. (c)(4)(A). Pub. L. 110–315, § 432(b)(5)(D), substituted ''consumer reporting agency'' for ''credit bureau organization'' in two places.

Subsec. (c)(5). Pub. L. 110–315, § 432(b)(5)(E), substituted ''consumer reporting agencies'' for ''credit bureau organizations'' and ''such consumer reporting agencies'' for ''such organizations''.

1998—Subsec. (a)(2)(B). Pub. L. 105–244, § 463(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''a capital contribution—

''(i) by an institution that—

''(I) is granted permission by the Secretary to participate in an Expanded Lending Option under the program, and

''(II) has a default rate which does not exceed 7.5 percent for award year 1993–1994 and has a cohort default rate which does not exceed 15 percent for award year 1994–1995 or for any succeeding award year,

in an amount not less than the amount of the Federal capital contributions described in subparagraph (A); or

''(ii) by any other institution, in an amount not less than three-seventeenths of such Federal capital contribution in fiscal year 1993, and one-third of such Federal capital contribution in each of the succeeding fiscal years, of the amount of the Federal capital contributions described in subparagraph (A);''.

Subsec. (a)(4) to (10). Pub. L. 105–244, § 463(a)(2), (3), redesignated pars. (5) to (10) as (4) to (9), respectively, and struck out former par. (4) which read as follows: ''provide that where a note or written agreement evidencing a note has been in default for (A) 120 days, in the case of a loan which is repayable in monthly installments, or (B) 180 days, in the case of a loan which is repayable in less frequent installments, notice of such default shall be given to the Secretary in an annual report describing the total number of loans from such fund which are in such default;''.

Subsec. (c)(1). Pub. L. 105–244, § 463(b)(1), substituted ''the Secretary and each institution of higher education participating in the program under this part shall'' for ''the Secretary shall'' and inserted ''and regarding loans held by the Secretary or an institution'' after ''section 1087gg of this title''.

Subsec. (c)(2). Pub. L. 105–244, § 463(b)(2)(A), in introductory provisions, substituted ''by the Secretary or an institution, as the case may be, to such organizations, with respect to any loan held by the Secretary or the institution, respectively, of—'' for ''by the Secretary to such organizations, with respect to any loan for which the Secretary is responsible, of—''.

Subsec. (c)(2)(A). Pub. L. 105–244, § 463(b)(2)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the date of disbursement and the amount of any such loan;''.

Subsec. (c)(2)(B). Pub. L. 105–244, § 463(b)(2)(C), inserted ''the repayment and'' after ''concerning'' the first place appearing and substituted ''status of such'' for ''status of any defaulted''.

Subsec. (c)(2)(C). Pub. L. 105–244, § 463(b)(2)(D), inserted '', or upon cancellation or discharge of the borrower's obligation on the loan for any reason'' before period at end.

Subsec. (c)(3). Pub. L. 105–244, § 463(b)(3)(A), in introductory provisions, inserted ''or an institution'' after ''from the Secretary'' and substituted ''until the loan is paid in full.'' for ''until—''.

Subsec. (c)(3)(A), (B). Pub. L. 105–244, § 463(b)(3)(B), struck out subpars. (A) and (B) which read as follows:

''(A) 7 years from the date on which the Secretary accepted an assignment or referral of a loan, or

''(B) 7 years from the date the Secretary first reports the account to a consumer reporting agency.''

Subsec. (c)(4). Pub. L. 105–244, § 463(b)(4), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Each institution of higher education, after consultation with the Secretary and pursuant to the agreements entered into under paragraph (1), shall disclose at least annually to any credit bureau organization with which the Secretary has such an agreement—

''(A) the amount of loans made to any borrower under this part at the time of the disbursement of the loan; and

''(B) the information set forth in section 1080a(a) of this title.''

Subsec. (c)(5). Pub. L. 105–244, § 463(b)(4), added par. (5).

Subsec. (d). Pub. L. 105–244, § 463(c), substituted ''subsection (a)(9)'' for ''subsection (a)(10)''.

1993—Subsec. (a)(2)(B)(i)(II). Pub. L. 103–208, § 2(f)(5), substituted ''7.5 percent for award year 1993–1994 and has a cohort default rate which does not exceed 15 percent for award year 1994–1995 or for any succeeding award year'' for ''7.5 percent''.

Subsec. (c)(4). Pub. L. 103–208, § 2(f)(6), substituted ''shall disclose at least annually'' for ''shall disclose'' in introductory provisions.

Subsecs. (d), (e). Pub. L. 103–208, § 2(f)(7), added subsecs. (d) and (e).

1992—Subsec. (a)(2)(B). Pub. L. 102–325, § 463(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''a capital contribution by such institution in an amount equal to not less than one-ninth of the amount of the Federal capital contributions described in subparagraph (A);''.

Subsec. (c)(3)(B). Pub. L. 102–325, § 463(b)(1), struck out '', if that account has not been previously reported by any other holder of the note'' after ''agency''.

Subsec. (c)(4). Pub. L. 102–325, § 463(b)(2), added par. (4).

1987—Subsec. (a)(4). Pub. L. 100–50, § 13(e), substituted ''in an annual report'' for ''in a report'' and struck out '', and made to the Secretary at least semiannually'' after ''in such default''.

Subsec. (b). Pub. L. 100–50, § 13(f), substituted ''section 1096 of this title'' for ''section 1092 of this title''.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective July 23, 1992, except that changes made in subsec. (a)(2)(B), relating to the matching of Federal capital contributions, applicable to funds provided for such program for award years beginning on or after July 1, 1993, see section 468 of Pub. L. 102–325, set out as a note under section 1087dd of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub. L. 99–498, set out as a note under section 1001 of this title.

Subsection (a)(9) of this section applicable only to loans made for periods of enrollment beginning on or after July 1, 1987, see section 405(b) of Pub. L. 99–498, set out as a note under section 1087dd of this title.

§ 1087cc–1. Student loan information by eligible institutions

(a) Disclosure required prior to disbursement

Each institution of higher education shall, at or prior to the time such institution makes a loan to a student borrower which is made under this part, provide thorough and adequate loan information on such loan to the student borrower. Any disclosure required by this subsection may be made by an institution of higher education as part of the written application material provided to the borrower, or as part of the promissory note evidencing the loan, or on a separate written form provided to the borrower. The disclosures shall include—

(1) the name of the institution of higher education, and the address to which communications and payments should be sent;

(2) the principal amount of the loan;

(3) the amount of any charges collected by the institution at or prior to the disbursal of the loan and whether such charges are deducted from the proceeds of the loan or paid separately by the borrower;

(4) the stated interest rate on the loan;

(5) the yearly and cumulative maximum amounts that may be borrowed;

(6) an explanation of when repayment of the loan will be required and when the borrower will be obligated to pay interest that accrues on the loan;

(7) a statement as to the minimum and maximum repayment term which the institution may impose, and the minimum monthly payment required by law and a description of any penalty imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or institutions to collect on a loan;

(8) a statement of the total cumulative balance, including the loan applied for, owed by the student to that lender, and an estimate of the projected monthly payment, given such cumulative balance;

(9) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan;

(10) a statement that the borrower has the right to prepay all or part of the loan, at any time, without penalty, a statement summarizing circumstances in which repayment of the loan or interest that accrues on the loan may be deferred, and a brief notice of the program for repayment of loans, on the basis of military service, pursuant to the Department of Defense educational loan repayment program (10 U.S.C. 16302);

(11) a definition of default and the consequences to the borrower if the borrower defaults, together with a statement that the disbursement of, and the default on, a loan under this part, shall be reported to a consumer reporting agency;

(12) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

(13) an explanation of any cost the borrower may incur in the making or collection of the loan.

(b) Disclosure required prior to repayment

Each institution of higher education shall enter into an agreement with the Secretary under which the institution will, prior to the start of the repayment period of the student borrower on loans made under this part, disclose to the student borrower the information required under this subsection. Any disclosure required by this subsection may be made by an institution of higher education either in a promissory note evidencing the loan or loans or in a written statement provided to the borrower. The disclosures shall include—

(1) the name of the institution of higher education, and the address to which communications and payments should be sent;

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

(3) the estimated balance owed by the borrower on the loan or loans covered by the disclosure as of the scheduled date on which the repayment period is to begin (including, if applicable, the estimated amount of interest to be capitalized);

(4) the stated interest rate on the loan or loans, or the combined interest rate of loans with different stated interest rates;

(5) the nature of any fees which may accrue or be charged to the borrower during the repayment period;

(6) the repayment schedule for all loans covered by the disclosure including the date the first installment is due, and the number, amount, and frequency of required payments;

(7) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan;

(8) the projected total of interest charges which the borrower will pay on the loan or loans, assuming that the borrower makes payments exactly in accordance with the repayment schedule; and

(9) a statement that the borrower has the right to prepay all or part of the loan or loans covered by the disclosure at any time without penalty.

(c) Costs and effects of disclosures

Such information shall be available without cost to the borrower. The failure of an eligible institution to provide information as required by this section shall not (1) relieve a borrower of the obligation to repay a loan in accordance with its terms, (2) provide a basis for a claim for civil damages, or (3) be deemed to abrogate the obligation of the Secretary to make payments with respect to such loan.

(Pub. L. 89–329, title IV, § 463A, as added Pub. L. 99–498, title IV, § 405(a), Oct. 17, 1986, 100 Stat. 1446; amended Pub. L. 100–50, § 13(g), (h), June 3, 1987, 101 Stat. 349; Pub. L. 102–325, title IV, § 463(c), July 23, 1992, 106 Stat. 579; Pub. L. 103–208, § 2(f)(8), Dec. 20, 1993, 107 Stat. 2471; Pub. L. 104–106, div. A, title XV, § 1501(e)(4), Feb. 10, 1996, 110 Stat. 501; Pub. L. 110–315, title IV, § 432(b)(6), Aug. 14, 2008, 122 Stat. 3246; Pub. L. 111–39, title IV, § 405(3), July 1, 2009, 123 Stat. 1947.)

PRIOR PROVISIONS

A prior section 1087cc–1, Pub. L. 89–329, title IV, § 463A, as added Pub. L. 96–374, title IV, § 447(b), Oct. 3, 1980, 94 Stat. 1443; amended Pub. L. 97–301, § 13, Oct. 13, 1982, 96 Stat. 1405; Pub. L. 98–79, § 3(b), Aug. 15, 1983, 97 Stat. 478; Pub. L. 99–272, title XVI, § 16027, Apr. 7, 1986, 100 Stat. 353, related to student loan information to be provided by institutions, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–39 struck out ‘‘, in order to carry out the provisions of section 1087cc(a)(8) of this title,’’ after ‘‘Each institution of higher education’’ in introductory provisions.

2008—Subsec. (a)(11). Pub. L. 110–315 substituted ‘‘consumer’’ for ‘‘credit bureau or credit’’.

1996—Subsec. (a)(10). Pub. L. 104–106 substituted ‘‘(10 U.S.C. 16302)’’ for ‘‘(10 U.S.C. 2172)’’.

1993—Subsecs. (d), (e). Pub. L. 103–208 struck out subsecs. (d) and (e), which read as follows:

‘‘(d) LIMITATION ON USE OF INTEREST BEARING ACCOUNTS.—In carrying out the provisions of subsection (a)(10) of this section, the Secretary may not require that any collection agency, collection attorney, or loan servicer collecting loans made under this part deposit amounts collected on such loans in interest bearing accounts, unless such agency, attorney, or servicer holds such amounts for more than 45 days.

‘‘(e) SPECIAL DUE DILIGENCE RULE.—In carrying out the provisions of subsection (a)(5) of this section relating to due diligence, the Secretary shall make every effort to ensure that institutions of higher education may use Internal Revenue Service skip-tracing collection procedures on loans made under this part.’’

1992—Subsec. (a)(11). Pub. L. 102–325, § 463(c)(1), substituted ‘‘together with a statement that the disbursement of, and the default on, a loan under this part, shall be’’ for ‘‘including a statement that the default may be’’.

Subsecs. (d), (e). Pub. L. 102–325, § 463(c)(2), added subsecs. (d) and (e).

1987—Subsec. (a)(8). Pub. L. 100–50, § 13(g), added par. (8) and struck out former par. (8) which read as follows: ‘‘a statement of the total cumulative balance owed by the student to that institution, the projected level of indebtedness of the student based on a 2- or 4-year college career, and an estimate of the projected monthly repayment given the level of indebtedness over a 2-, 4-, or 5-year college career;’’.

Subsec. (a)(10). Pub. L. 100–50, § 13(h), substituted ‘‘the Department of Defense educational loan repayment program (10 U.S.C. 2172)’’ for ‘‘section 902 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141, note)’’.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section applicable only to loans made for periods of enrollment beginning on or after July 1, 1987, see section 405(b) of Pub. L. 99–498, as amended, set out as a note under section 1087dd of this title.

§ 1087dd. Terms of loans

(a) Terms and conditions

(1) Loans from any student loan fund established pursuant to an agreement under section 1087cc of this title to any student by any institution shall, subject to such conditions, limitations, and requirements as the Secretary shall prescribe by regulation, be made on such terms and conditions as the institution may determine.

(2)(A) Except as provided in paragraph (4), the total of loans made to a student in any academic year or its equivalent by an institution of higher education from a loan fund established pursuant to an agreement under this part shall not exceed—

(i) $5,500, in the case of a student who has not successfully completed a program of undergraduate education; or

(ii) $8,000, in the case of a graduate or professional student (as defined in regulations issued by the Secretary).

(B) Except as provided in paragraph (4), the aggregate unpaid principal amount for all loans made to a student by institutions of higher education from loan funds established pursuant to agreements under this part may not exceed—

(i) $60,000, in the case of any graduate or professional student (as defined by regulations issued by the Secretary, and including any loans from such funds made to such person before such person became a graduate or professional student);

(ii) $27,500, in the case of a student who has successfully completed 2 years of a program of education leading to a bachelor's degree but who has not completed the work necessary for such a degree (determined under regulations issued by the Secretary), and including any loans from such funds made to such person before such person became such a student; and

(iii) $11,000, in the case of any other student.

(3) Regulations of the Secretary under paragraph (1) shall be designed to prevent the impairment of the capital student loan funds to the maximum extent practicable and with a view toward the objective of enabling the student to complete his course of study.

(4) In the case of a program of study abroad that is approved for credit by the home institution at which a student is enrolled and that has reasonable costs in excess of the home institution's budget, the annual and aggregate loan limits for the student may exceed the amounts described in paragraphs (2)(A) and (2)(B) by 20 percent.

(b) Demonstration of need and eligibility required

(1) A loan from a student loan fund assisted under this part may be made only to a student who demonstrates financial need in accordance with part E of this subchapter, who meets the requirements of section 1091 of this title, and who provides the institution with the student's drivers license number, if any, at the time of application for the loan. A student who is in default on a loan under this part shall not be eligible for an additional loan under this part unless such loan meets one of the conditions for exclusion under section 1087bb(g)(1)(E) of this title.

(2) If the institution's capital contribution under section 1087bb of this title is directly or indirectly based in part on the financial need demonstrated by students who are (A) attending the institution less than full time, or (B) independent students, then a reasonable portion of the loans made from the institution's student loan fund containing the contribution shall be made available to such students.

(c) Contents of loan agreement

(1) Any agreement between an institution and a student for a loan from a student loan fund assisted under this part—

(A) shall be evidenced by note or other written instrument which, except as provided in paragraph (2), provides for repayment of the principal amount of the loan, together with interest thereon, in equal installments (or, if the borrower so requests, in graduated periodic installments determined in accordance with such schedules as may be approved by the Secretary) payable quarterly, bimonthly, or monthly, at the option of the institution, over a period beginning nine months after the date on which the student ceases to carry, at an institution of higher education or a comparable institution outside the United States approved for this purpose by the Secretary, at least one-half the normal full-time academic workload, and ending 10 years and 9 months after such date except that such period may begin earlier than 9 months after such date upon the request of the borrower;

(B) shall include provision for acceleration of repayment of the whole, or any part, of such loan, at the option of the borrower;

(C)(i) may provide, at the option of the institution, in accordance with regulations of the Secretary, that during the repayment period of the loan, payments of principal and interest by the borrower with respect to all outstanding loans made to the student from a student loan fund assisted under this part shall be at a rate equal to not less than $40 per month, except that the institution may, subject to such regulations, permit a borrower to pay less than $40 per month for a period of not more than one year where necessary to avoid hardship to the borrower, but without extending the 10-year maximum repayment period provided for in subparagraph (A) of this paragraph; and

(ii) may provide that the total payments by a borrower for a monthly or similar payment period with respect to the aggregate of all loans held by the institution may, when the amount of a monthly or other similar payment is not a multiple of $5, be rounded to the next highest whole dollar amount that is a multiple of $5;

(D) shall provide that the loan shall bear interest, on the unpaid balance of the loan, at the rate of 5 percent per year in the case of any loan made on or after October 1, 1981, except that no interest shall accrue (i) prior to the beginning date of repayment determined under paragraph (2)(A)(i), or (ii) during any period in which repayment is suspended by reason of paragraph (2);

(E) shall provide that the loan shall be made without security and without endorsement;

(F) shall provide that the liability to repay the loan shall be cancelled—

(i) upon the death of the borrower;

(ii) if the borrower becomes permanently and totally disabled as determined in accordance with regulations of the Secretary;

(iii) if the borrower is unable to engage in any substantial gainful activity by reason of any medically determinable physical or

mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months; or

(iv) if the borrower is determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability;

(G) shall provide that no note or evidence of obligation may be assigned by the lender, except upon the transfer of the borrower to another institution participating under this part (or, if not so participating, is eligible to do so and is approved by the Secretary for such purpose), to such institution, and except as necessary to carry out section 1087cc(a)(6)[1] of this title;

(H) pursuant to regulations of the Secretary, shall provide for an assessment of a charge with respect to the loan for failure of the borrower to pay all or part of an installment when due, which shall include the expenses reasonably incurred in attempting collection of the loan, to the extent permitted by the Secretary, except that no charge imposed under this subparagraph shall exceed 20 percent of the amount of the monthly payment of the borrower; and

(I) shall contain a notice of the system of disclosure of information concerning default on such loan to consumer reporting agencies under section 1087cc(c) of this title.

(2)(A) No repayment of principal of, or interest on, any loan from a student loan fund assisted under this part shall be required during any period—

(i) during which the borrower—

(I) is pursuing at least a half-time course of study as determined by an eligible institution; or

(II) is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for disabled individuals approved by the Secretary,

except that no borrower shall be eligible for a deferment under this clause, or loan made under this part while serving in a medical internship or residency program;

(ii) not in excess of 3 years during which the borrower is seeking and unable to find full-time employment;

(iii) during which the borrower—

(I) is serving on active duty during a war or other military operation or national emergency; or

(II) is performing qualifying National Guard duty during a war or other military operation or national emergency,

and for the 180-day period following the demobilization date for the service described in subclause (I) or (II);

(iv) not in excess of 3 years for any reason which the lender determines, in accordance with regulations prescribed by the Secretary under section 1085(*o*) of this title, has caused or will cause the borrower to have an economic hardship; or

(v) during which the borrower is engaged in service described in section 1087ee(a)(2) of this title;

and provides that any such period shall not be included in determining the 10-year period described in subparagraph (A) of paragraph (1).

(B) No repayment of principal of, or interest on, any loan for any period described in subparagraph (A) shall begin until 6 months after the completion of such period.

(C) An individual with an outstanding loan balance who meets the eligibility criteria for a deferment described in subparagraph (A) as in effect on October 7, 1998, shall be eligible for deferment under this paragraph notwithstanding any contrary provision of the promissory note under which the loan or loans were made, and notwithstanding any amendment (or effective date provision relating to any amendment) to this section made prior to the date of such deferment.

(3)(A) The Secretary is authorized, when good cause is shown, to extend, in accordance with regulations, the 10-year maximum repayment period provided for in subparagraph (A) of paragraph (1) with respect to individual loans.

(B) Pursuant to uniform criteria established by the Secretary, the repayment period for any student borrower who during the repayment period is a low-income individual may be extended for a period not to exceed 10 years and the repayment schedule may be adjusted to reflect the income of that individual.

(4) The repayment period for a loan made under this part shall begin on the day immediately following the expiration of the period, specified in paragraph (1)(A), after the student ceases to carry the required academic workload, unless the borrower requests and is granted a repayment schedule that provides for repayment to commence at an earlier point in time, and shall exclude any period of authorized deferment, forbearance, or cancellation.

(5) The institution may elect—

(A) to add the amount of any charge imposed under paragraph (1)(H) to the principal amount of the loan as of the first day after the day on which the installment was due and to notify the borrower of the assessment of the charge; or

(B) to make the amount of the charge payable to the institution not later than the due date of the next installment.

(6) Requests for deferment of repayment of loans under this part by students engaged in graduate or post-graduate fellowship-supported study (such as pursuant to a Fulbright grant) outside the United States shall be approved until completion of the period of the fellowship.

(7) There shall be excluded from the 9-month period that begins on the date on which a student ceases to carry at least one-half the normal full-time academic workload (as described in paragraph (1)(A)) any period not to exceed 3 years during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10 is called or ordered to active duty for a period of more than 30

[1] See References in Text note below.

days (as defined in section 101(d)(2) of such title). Such period of exclusion shall include the period necessary to resume enrollment at the borrower's next available regular enrollment period.

(d) Availability of loan fund to all eligible students

An agreement under this part for payment of Federal capital contributions shall include provisions designed to make loans from the student loan fund established pursuant to such agreement reasonably available (to the extent of the available funds in such fund) to all eligible students in such institutions in need thereof.

(e) Forbearance

(1) The Secretary shall ensure that, as documented in accordance with paragraph (2), an institution of higher education shall grant a borrower forbearance of principal and interest or principal only, renewable at 12-month intervals for a period not to exceed 3 years, on such terms as are otherwise consistent with the regulations issued by the Secretary and agreed upon in writing by the parties to the loan, if—

(A) the borrower's debt burden equals or exceeds 20 percent of such borrower's gross income;

(B) the institution determines that the borrower should qualify for forbearance for other reasons; or

(C) the borrower is eligible for interest payments to be made on such loan for service in the Armed Forces under section 2174 of title 10 and, pursuant to that eligibility, the interest on such loan is being paid under subsection (j) of this section, except that the form of a forbearance under this paragraph shall be a temporary cessation of all payments on the loan other than payments of interest on the loan that are made under subsection (j) of this section.

(2) For the purpose of paragraph (1), the terms of forbearance agreed to by the parties shall be documented by—

(A) confirming the agreement of the borrower by notice to the borrower from the institution of higher education; and

(B) recording the terms in the borrower's file.

(f) Special repayment rule authority

(1) Subject to such restrictions as the Secretary may prescribe to protect the interest of the United States, in order to encourage repayment of loans made under this part which are in default, the Secretary may, in the agreement entered into under this part, authorize an institution of higher education to compromise on the repayment of such defaulted loans in accordance with paragraph (2). The Federal share of the compromise repayment shall bear the same relation to the institution's share of such compromise repayment as the Federal capital contribution to the institution's loan fund under this part bears to the institution's capital contribution to such fund.

(2) No compromise repayment of a defaulted loan as authorized by paragraph (1) may be made unless the student borrower pays—

(A) 90 percent of the loan under this part;

(B) the interest due on such loan; and

(C) any collection fees due on such loan;

in a lump sum payment.

(g) Discharge

(1) In general

If a student borrower who received a loan made under this part on or after January 1, 1986, is unable to complete the program in which such student is enrolled due to the closure of the institution, then the Secretary shall discharge the borrower's liability on the loan (including the interest and collection fees) and shall subsequently pursue any claim available to such borrower against the institution and the institution's affiliates and principals, or settle the loan obligation pursuant to the financial responsibility standards described in section 1099c(c) of this title.

(2) Assignment

A borrower whose loan has been discharged pursuant to this subsection shall be deemed to have assigned to the United States the right to a loan refund in an amount that does not exceed the amount discharged against the institution and the institution's affiliates and principals.

(3) Eligibility for additional assistance

The period during which a student was unable to complete a course of study due to the closing of the institution shall not be considered for purposes of calculating the student's period of eligibility for additional assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(4) Special rule

A borrower whose loan has been discharged pursuant to this subsection shall not be precluded, because of that discharge, from receiving additional grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 for which the borrower would be otherwise eligible (but for the default on the discharged loan). The amount discharged under this subsection shall be treated as an amount canceled under section 1087ee(a) of this title.

(5) Reporting

The Secretary or institution, as the case may be, shall report to consumer reporting agencies with respect to loans that have been discharged pursuant to this subsection.

(h) Rehabilitation of loans

(1) Rehabilitation

(A) In general

If the borrower of a loan made under this part who has defaulted on the loan makes 9 on-time, consecutive, monthly payments of amounts owed on the loan, as determined by the institution, or by the Secretary in the case of a loan held by the Secretary, the loan shall be considered rehabilitated, and the institution that made that loan (or the Secretary, in the case of a loan held by the Secretary) shall request that any consumer reporting agency to which the default was reported remove the default from the borrower's credit history.

(B) Comparable conditions

As long as the borrower continues to make scheduled repayments on a loan rehabilitated under this paragraph, the rehabilitated loan shall be subject to the same terms and conditions, and qualify for the same benefits and privileges, as other loans made under this part.

(C) Additional assistance

The borrower of a rehabilitated loan shall not be precluded by section 1091 of this title from receiving additional grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 (for which the borrower is otherwise eligible) on the basis of defaulting on the loan prior to such rehabilitation.

(D) Limitations

A borrower only once may obtain the benefit of this paragraph with respect to rehabilitating a loan under this part.

(2) Restoration of eligibility

If the borrower of a loan made under this part who has defaulted on that loan makes 6 ontime, consecutive, monthly payments of amounts owed on such loan, the borrower's eligibility for grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 shall be restored to the extent that the borrower is otherwise eligible. A borrower only once may obtain the benefit of this paragraph with respect to restored eligibility.

(i) Incentive repayment program

(1) In general

Each institution of higher education may establish, with the approval of the Secretary, an incentive repayment program designed to reduce default and to replenish student loan funds established under this part. Each such incentive repayment program may—

(A) offer a reduction of the interest rate on a loan on which the borrower has made 48 consecutive, monthly repayments, but in no event may the rate be reduced by more than 1 percent;

(B) provide for a discount on the balance owed on a loan on which the borrower pays the principal and interest in full prior to the end of the applicable repayment period, but in no event may the discount exceed 5 percent of the unpaid principal balance due on the loan at the time the early repayment is made; and

(C) include such other incentive repayment options as the institution determines will carry out the objectives of this subsection.

(2) Limitation

No incentive repayment option under an incentive repayment program authorized by this subsection may be paid for with Federal funds, including any Federal funds from the student loan fund, or with institutional funds from the student loan fund.

(j) Armed Forces student loan interest payment program

(1) Authority

Using funds received by transfer to the Secretary under section 2174 of title 10 for the payment of interest on a loan made under this part to a member of the Armed Forces, the Secretary shall pay the interest on the loan as due for a period not in excess of 36 consecutive months. The Secretary may not pay interest on such a loan out of any funds other than funds that have been so transferred.

(2) Forbearance

During the period in which the Secretary is making payments on a loan under paragraph (1), the institution of higher education shall grant the borrower forbearance in accordance with subsection (e)(1)(C).

(k) Additional safeguards

The Secretary may develop such additional safeguards as the Secretary determines necessary to prevent fraud and abuse in the cancellation of liability under subsection (c)(1)(F). Notwithstanding subsection (c)(1)(F), the Secretary may promulgate regulations to resume collection on loans cancelled under subsection (c)(1)(F) in any case in which—

(1) a borrower received a cancellation of liability under subsection (c)(1)(F) and after the cancellation the borrower—

(A) receives a loan made, insured, or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42; or

(B) has earned income in excess of the poverty line; or

(2) the Secretary determines necessary.

(Pub. L. 89–329, title IV, § 464, as added Pub. L. 99–498, title IV, § 405(a), Oct. 17, 1986, 100 Stat. 1448; amended Pub. L. 100–50, § 13(i), June 3, 1987, 101 Stat. 349; Pub. L. 100–369, § 7(c), July 18, 1988, 102 Stat. 837; Pub. L. 101–239, title II, § 2002(a)(3), Dec. 19, 1989, 103 Stat. 2111; Pub. L. 102–325, title IV, § 464, July 23, 1992, 106 Stat. 580; Pub. L. 103–208, § 2(f)(9)–(11), Dec. 20, 1993, 107 Stat. 2471; Pub. L. 105–244, title IV, § 464, Oct. 7, 1998, 112 Stat. 1725; Pub. L. 107–314, div. A, title VI, § 651(d), Dec. 2, 2002, 116 Stat. 2580; Pub. L. 109–171, title VIII, § 8007(c), Feb. 8, 2006, 120 Stat. 160; Pub. L. 110–84, title II, § 202(c), Sept. 27, 2007, 121 Stat. 792; Pub. L. 110–315, title IV, §§ 432(b)(7), 464(a), (b)(1), (c), Aug. 14, 2008, 122 Stat. 3246, 3266, 3267; Pub. L. 111–39, title IV, § 405(4), July 1, 2009, 123 Stat. 1947.)

REFERENCES IN TEXT

Section 1087cc(a) of this title, referred to in subsec. (c)(1)(G), was amended by Pub. L. 105–244, title IV, § 463(a)(3), Oct. 7, 1998, 112 Stat. 1724, which redesignated pars. (6) and (7) as (5) and (6), respectively.

PRIOR PROVISIONS

A prior section 1087dd, Pub. L. 89–329, title IV, § 464, as added Pub. L. 92–318, title I, § 137(b), June 23, 1972, 86 Stat. 275; amended Pub. L. 94–482, title I, § 130(d)–(g)(1), Oct. 12, 1976, 90 Stat. 2147; Pub. L. 95–43, § 1(a)(39), June 15, 1977, 91 Stat. 217; Pub. L. 96–374, title IV, §§ 442(b)(5), 443, 444, 445(b)(2), 446, 448(c), title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1440–1443, 1503; Pub. L. 97–35, title V, § 539, Aug. 13, 1981, 95 Stat. 458; Pub. L. 99–272, title XVI,

§ 16028, Apr. 7, 1986, 100 Stat. 353, related to terms and conditions of loans, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2009—Subsec. (c). Pub. L. 111–39, § 405(4)(A), substituted ''(i)'' for ''(I)'' and ''(ii)'' for ''(II)'' in par. (1)(D) and realigned margins in par. (2)(A)(iii).

Subsec. (g)(5). Pub. L. 111–39, § 405(4)(B), substituted ''consumer reporting agencies'' for ''credit bureaus''.

2008—Subsec. (a)(2)(A). Pub. L. 110–315, § 464(a)(1), substituted ''$5,500'' for ''$4,000'' in cl. (i) and ''$8,000'' for ''$6,000'' in cl. (ii).

Subsec. (a)(2)(B). Pub. L. 110–315, § 464(a)(2), substituted ''$60,000'' for ''$40,000'' in cl. (i), ''$27,500'' for ''$20,000'' in cl. (ii), and ''$11,000'' for ''$8,000'' in cl. (iii).

Subsec. (c)(1)(F). Pub. L. 110–315, § 464(b)(1)(A), substituted ''cancelled—'' and cls. (i) to (iv) for ''canceled upon the death of the borrower, or if he becomes permanently and totally disabled as determined in accordance with regulations of the Secretary;''.

Subsec. (c)(1)(I). Pub. L. 110–315, § 432(b)(7)(A), substituted ''consumer reporting agencies'' for ''credit bureau organizations''.

Subsec. (e). Pub. L. 110–315, § 464(c)(1), substituted '', as documented in accordance with paragraph (2),'' for '', upon written request,'' in introductory provisions, designated existing text as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and added par. (2).

Subsec. (h)(1)(A). Pub. L. 110–315, §§ 432(b)(7)(B), 464(c)(2), substituted ''9 on-time'' for ''12 ontime'' and ''consumer'' for ''credit bureau organization or credit''.

Subsec. (j)(2). Pub. L. 110–315, § 464(c)(3), substituted ''subsection (e)(1)(C)'' for ''subsection (e)(3)''.

Subsec. (k). Pub. L. 110–315, § 464(b)(1)(B), added subsec. (k).

2007—Subsec. (c)(2)(A)(iii). Pub. L. 110–84 struck out ''not in excess of 3 years'' before ''during'' in introductory provisions, substituted comma for semicolon at end of subcl. (II), and inserted concluding provisions.

2006—Subsec. (c)(2)(A)(iii) to (v). Pub. L. 109–171 added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

2002—Subsec. (e)(3). Pub. L. 107–314, § 651(d)(1), added par. (3).

Subsec. (j). Pub. L. 107–314, § 651(d)(2), added subsec. (j).

1998—Subsec. (a)(2). Pub. L. 105–244, § 464(a), amended par. (2) generally. Prior to amendment, par. (2) related to limitations on the total of loans that could be made to a student by an institution of higher education from a loan fund established pursuant to an agreement under this part.

Subsec. (b)(1). Pub. L. 105–244, § 464(b)(1), inserted at end ''A student who is in default on a loan under this part shall not be eligible for an additional loan under this part unless such loan meets one of the conditions for exclusion under section 1087bb(g)(1)(E) of this title.''

Subsec. (b)(2). Pub. L. 105–244, § 464(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''If the institution's capital contribution under section 1087bb of this title is directly or indirectly based in part on the financial need demonstrated by students who are (A) attending the institution less than full time, or (B) independent students, and if the total financial need of all such less than full-time and independent students at the institution exceeds 5 percent of the total financial need of all students at such institution, then at least 5 percent of such loans shall be made available to such less than full-time and independent students.''

Subsec. (c)(1)(D). Pub. L. 105–244, § 464(c)(1), struck out ''(i) 3 percent per year, (ii) 4 percent per year in the case of any loan made on or after July 1, 1981, or (iii)'' after ''at the rate of'' and substituted ''paragraph (2)(A)(i)'' for ''subparagraph (A)(i)''.

Subsec. (c)(2)(A). Pub. L. 105–244, § 464(c)(2), substituted ''subparagraph (A) of paragraph (1)'' for ''subparagraph (B)'' in concluding provisions.

Subsec. (c)(2)(C). Pub. L. 105–244, § 464(c)(3), added subpar. (C).

Subsec. (c)(7). Pub. L. 105–244, § 464(c)(4), added par. (7).

Subsecs. (g) to (i). Pub. L. 105–244, § 464(d), added subsecs. (g) to (i).

1993—Subsec. (c)(2)(B). Pub. L. 103–208, § 2(f)(9), substituted ''repayment of'' for ''repayment or''.

Subsec. (c)(6). Pub. L. 103–208, § 2(f)(10), substituted ''Fulbright'' for ''Fullbright''.

Subsec. (e). Pub. L. 103–208, § 2(f)(11), substituted ''principal'' for ''principle'' before ''only''.

1992—Subsec. (a)(2). Pub. L. 102–325, § 464(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The aggregate of the loans for all years made by institutions of higher education from loan funds established pursuant to agreements under this part may not exceed—

''(A) $18,000 in the case of any graduate or professional student (as defined by regulations of the Secretary, and including any loans from such funds made to such person before he became a graduate or professional student);

''(B) $9,000 in the case of a student who has successfully completed 2 years of a program of education leading to a bachelor's degree, but who has not completed the work necessary for such a degree (determined under regulations of the Secretary, and including any loans from such funds made to such person before he became such a student); and

''(C) $4,500 in the case of any other student.''

Subsec. (a)(4). Pub. L. 102–325, § 464(b), added par. (4).

Subsec. (b)(1). Pub. L. 102–325, § 464(c)(1), substituted ''this subchapter, who meets the requirements of section 1091 of this title, and who provides the institution with the student's drivers license number, if any, at the time of application for the loan'' for ''this subchapter and who meets the requirements of section 1091 of this title''.

Subsec. (b)(2). Pub. L. 102–325, § 464(c)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''If the institution's Federal capital contribution under section 1087bb of this title is directly or indirectly based in part on the financial need demonstrated by students attending the institution less than full time, a reasonable proportion of the loans under this part shall be made available to such students.''

Subsec. (c)(1)(C)(i). Pub. L. 102–325, § 464(d), substituted ''$40'' for ''$30'' in two places.

Subsec. (c)(1)(E). Pub. L. 102–325, § 464(e), struck out ''unless the borrower is a minor and the note or other evidence of obligation executed by him would not, under applicable law, create a binding obligation,'' before ''shall provide''.

Subsec. (c)(2)(A). Pub. L. 102–325, § 464(f), amended subpar. (A) generally, revising and restating as cls. (i) to (iv) provisions formerly contained in cls. (i) to (ix).

Subsec. (c)(2)(B), (C). Pub. L. 102–325, § 464(g)(1), added subpar. (B) and struck out former subpars. (B) and (C) which read as follows:

''(B) Any period during which repayment is deferred under subparagraph (A) shall not be included in computing the 10-year maximum period provided for in subparagraph (A) of paragraph (1).

''(C) No repayment of principal of, or interest on, any loan for any period of study, service, or disability described in subparagraph (A) or any combination thereof shall begin until 6 months after the completion of such period of study, service, disability, or combination thereof.''

Subsec. (c)(4) to (6). Pub. L. 102–325, § 464(g)(2)–(4), added par. (4), redesignated former par. (4) as (5), and added par. (6).

Subsecs. (e), (f). Pub. L. 102–325, § 464(h), added subsecs. (e) and (f).

1989—Subsec. (c)(2)(A)(i). Pub. L. 101–239 inserted before semicolon at end '', except that no borrower shall be eligible for a deferment under this clause, or a loan made under this part (other than a loan made under section 1078–2 or 1078–3 of this title), while serving in a medical internship or residency program''.

1988—Subsec. (c)(2)(A)(v). Pub. L. 100–369 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1987—Subsec. (c)(2)(A)(vi). Pub. L. 100–50 inserted ''or serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training'' before semicolon at end.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, § 464(b)(2), Aug. 14, 2008, 122 Stat. 3267, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on July 1, 2008.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–84 effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as a note under section 1070a of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Amendment by Pub. L. 109–171 applicable with respect to all loans under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.), see section 8007(f) of Pub. L. 109–171, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–314 applicable with respect to interest, and any special allowance under section 1087–1 of this title, that accrue for months beginning on or after Oct. 1, 2003, on student loans described in section 2174(c) of Title 10, Armed Forces, that were made before, on, or after such date to members of the Armed Forces who are on active duty (as defined in section 101(d) of Title 10) on or after that date, see section 651(e) of Pub. L. 107–314, set out as an Effective Date note under section 2174 of Title 10.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 468 of Pub. L. 102–325, as amended by Pub. L. 102–394, title III, § 307(a), Oct. 6, 1992, 106 Stat. 1820, provided that: ''The changes made in part E of title IV of the Act [20 U.S.C. 1087aa et seq.] by the amendments made by this part [part E (§§ 461–468) of title IV of Pub. L. 102–325, enacting section 1087ii of this title and amending sections 1087aa to 1087gg of this title] shall take effect on the date of enactment of this Act [July 23, 1992], except that—

''(1) the changes in section 463(a)(2)(B) [20 U.S.C. 1087cc(a)(2)(B)], relating to the matching of Federal capital contributions, shall apply to funds provided for such program for the award years beginning on or after July 1, 1993;

''(2) the changes made in section 464(c)(1)(C) [20 U.S.C. 1087dd(c)(1)(C)], relating to minimum monthly payments shall apply with respect to loans for which the first disbursement is made on or after October 1, 1992, to an individual who, on the date the loan is made, has no outstanding balance of principal or interest owing on any loan made under part E of title IV of the Act;

''(3) the changes made in section 464(c)(2)(A), relating to deferments, shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993;

''(4) the changes made in section 467 [20 U.S.C. 1087gg], relating to the creation of a Perkins Loan Revolving Fund, shall take effect on September 15, 1997; and

''(5) the changes in section 464(a)(2)(A), (B) and (C) shall not apply to any loan made for the award year beginning July 1, 1992 provided that the loan does not result in a violation of section 464(a)(2)(A), (B) and (C) as in effect prior to such date of enactment.''

[Pub. L. 102–394, title III, § 307(b), Oct. 6, 1992, 106 Stat. 1820, provided that: ''The amendments made by subsection (a) [amending section 468 of Pub. L. 102–325, set out above] shall take effect as if enacted on July 23, 1992.'']

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to any loan made, insured, or guaranteed under this part or part B of this subchapter, including a loan made before Dec. 19, 1989, and amendment effective Jan. 1, 1990, but inapplicable with respect to any portion of a period of deferment granted to a borrower under section 1077(a)(2)(C)(i), 1078(b)(1)(M)(i), or 1087dd(c)(2)(A)(i) of this title for service in a medical internship or residency program completed prior to Dec. 19, 1989, see section 2002(a)(4) of Pub. L. 101–239, set out as a note under section 1077 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub. L. 99–498, set out as a note under section 1001 of this title.

Section 405(b) of Pub. L. 99–498, as amended by Pub. L. 100–50, § 22(d), June 3, 1987, 101 Stat. 361, provided that:

''(1) Section 462 of the Act [20 U.S.C. 1087bb] shall apply with respect to academic year 1988-1989 and succeeding academic years.

''(2) The changes made in sections 464(c)(1)(A), 464(c)(2), and 465(a)(2)(E) of the Act [20 U.S.C. 1087dd(c)(1)(A), (2), 1087ee(a)(2)(E)] shall apply only to loans made to cover the costs of instruction for periods of enrollment beginning on or after July 1, 1987, to individuals who are new borrowers on that date.

''(3) Section 463(a)(9) and section 463A of the Act [20 U.S.C. 1087cc(a)(9), 1087cc–1] as amended by this section shall apply only to loans made for periods of enrollment beginning on or after July 1, 1987.

''(4) For the purpose of this subsection, the term 'new borrower' means, with respect to any date, an individual who on that date has no outstanding balance of principal or interest owing on any loan made under part E of title IV of the Act [this part].''

CONSTRUCTION OF 2006 AMENDMENT

Nothing in amendment by Pub. L. 109–171 to be construed to authorize any refunding of any repayment of a loan, see section 8007(e) of Pub. L. 109–171, set out as a note under section 1078 of this title.

§ 1087ee. Cancellation of loans for certain public service

(a) Cancellation of percentage of debt based on years of qualifying service

(1) The percent specified in paragraph (3) of this subsection of the total amount of any loan made after June 30, 1972, from a student loan fund assisted under this part shall be canceled for each complete year of service after such date by the borrower under circumstances described in paragraph (2).

(2) Loans shall be canceled under paragraph (1) for service—

(A) as a full-time teacher for service in an academic year (including such a teacher employed by an educational service agency)—

(i) in a public or other nonprofit private elementary school or secondary school, which, for the purpose of this paragraph and for that year—

(I) has been determined by the Secretary (pursuant to regulations of the Secretary and after consultation with the State educational agency of the State in which the school is located) to be a school in which the number of children meeting a measure of poverty under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6313(a)(5)], exceeds 30 percent of the total number of children enrolled in such school; and

(II) is in the school district of a local educational agency which is eligible in such year for assistance pursuant to part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311 et seq.]; or

(ii) in one or more public, or nonprofit private, elementary schools or secondary schools or locations operated by an educational service agency that have been determined by the Secretary (pursuant to regulations of the Secretary and after consultation with the State educational agency of the State in which the educational service agency operates) to be a school or location at which the number of children taught who meet a measure of poverty under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6313(a)(5)], exceeds 30 percent of the total number of children taught at such school or location;

(B) as a full-time staff member in a preschool program carried on under the Head Start Act [42 U.S.C. 9831 et seq.], or in a prekindergarten or child care program that is licensed or regulated by the State, that is operated for a period which is comparable to a full school year in the locality if the salary of such staff member is not more than the salary of a comparable employee of the local educational agency;

(C) as a full-time special education teacher, including teachers of infants, toddlers, children, or youth with disabilities in a public or other nonprofit elementary or secondary school system, including a system administered by an educational service agency, or as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 1435(a)(10) of this title;

(D) as a member of the Armed Forces of the United States, for service that qualifies for special pay under section 310 of title 37 as an area of hostilities;

(E) as a volunteer under the Peace Corps Act [22 U.S.C. 2501 et seq.] or a volunteer under the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.];

(F) as a full-time law enforcement officer or corrections officer for service to local, State, or Federal law enforcement or corrections agencies, or as a full-time attorney employed in a defender organization established in accordance with section 3006A(g)(2) of title 18;

(G) as a full-time teacher of mathematics, science, foreign languages, bilingual education, or any other field of expertise where the State educational agency determines there is a shortage of qualified teachers;

(H) as a full-time nurse or medical technician providing health care services;

(I) as a full-time employee of a public or private nonprofit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities and the families of such children;

(J) as a full-time fire fighter for service to a local, State, or Federal fire department or fire district;

(K) as a full-time faculty member at a Tribal College or University, as that term is defined in section 1059c of this title;

(L) as a librarian, if the librarian has a master's degree in library science and is employed in—

(i) an elementary school or secondary school that is eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311 et seq.]; or

(ii) a public library that serves a geographic area that contains one or more schools eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965; or

(M) as a full-time speech language pathologist, if the pathologist has a masters degree and is working exclusively with schools that are eligible for assistance under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

For the purpose of this paragraph, the term ''children with disabilities'' has the meaning set forth in section 1401 of this title.

(3)(A) The percent of a loan which shall be canceled under paragraph (1) of this subsection is—

(i) in the case of service described in subparagraph (A), (C), (D), (F), (G), (H), (I), (J), (K), (L), or (M) of paragraph (2), at the rate of 15 percent for the first or second year of such service, 20 percent for the third or fourth year of such service, and 30 percent for the fifth year of such service;

(ii) in the case of service described in subparagraph (B) of paragraph (2), at the rate of 15 percent for each year of such service; or

(iii) in the case of service described in subparagraph (E) of paragraph (2) at the rate of 15 percent for the first or second year of such service and 20 percent for the third or fourth year of such service.

(B) If a portion of a loan is canceled under this subsection for any year, the entire amount of interest on such loan which accrues for such year shall be canceled.

(C) Nothing in this subsection shall be construed to authorize refunding of any repayment of a loan.

(4) For the purpose of this subsection, the term ''year'' where applied to service as a teacher means academic year as defined by the Secretary.

(5) The amount of a loan, and interest on a loan, which is canceled under this section shall not be considered income for purposes of title 26.

(6) No borrower may, for the same volunteer service, receive a benefit under both this section and subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12601 et seq.).

(7) An individual with an outstanding loan obligation under this part who performs service of any type that is described in paragraph (2) as in effect on October 7, 1998, shall be eligible for cancellation under this section for such service notwithstanding any contrary provision of the promissory note under which the loan or loans were made, and notwithstanding any amendment (or effective date provision relating to any amendment) to this section made prior to the date of such service.

(b) Reimbursement for cancellation

The Secretary shall pay to each institution for each fiscal year an amount equal to the aggregate of the amounts of loans from its student loan fund which are canceled pursuant to this section for such year, minus an amount equal to the aggregate of the amounts of any such loans so canceled which were made from Federal capital contributions to its student loan fund provided by the Secretary under section 1087hh of this title. None of the funds appropriated pursuant to section 1087aa(b) of this title shall be available for payments pursuant to this subsection. To the extent feasible, the Secretary shall pay the amounts for which any institution qualifies under this subsection not later than 3 months after the institution files an institutional application for campus-based funds.

(c) Special rules

(1) List

If the list of schools in which a teacher may perform service pursuant to subsection (a)(2)(A) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make such service determination.

(2) Continuing eligibility

Any teacher who performs service in a school which—

(A) meets the requirements of subsection (a)(2)(A) of this section in any year; and

(B) in a subsequent year fails to meet the requirements of such subsection,

may continue to teach in such school and shall be eligible for loan cancellation pursuant to subsection (a)(1) of this section such[1] subsequent years.

(Pub. L. 89–329, title IV, § 465, as added Pub. L. 99–498, title IV, § 405(a), Oct. 17, 1986, 100 Stat. 1451; amended Pub. L. 100–50, § 13(j), June 3, 1987, 101 Stat. 349; Pub. L. 100–369, § 7(c), July 18, 1988, 102 Stat. 837; Pub. L. 101–476, title IX, § 901(e), Oct. 30, 1990, 104 Stat. 1151; Pub. L. 101–647, title XXI, § 2101(a), (b), Nov. 29, 1990, 104 Stat. 4856; Pub. L. 102–119, § 26(h), Oct. 7, 1991, 105 Stat. 607; Pub. L. 102–325, title IV, § 465(a)–(c), July 23, 1992, 106 Stat. 582, 583; Pub. L. 103–82, title I, § 102(c)(3), Sept. 21, 1993, 107 Stat. 824; Pub. L. 103–208, § 2(f)(12)–(14), (k)(7), Dec. 20, 1993, 107 Stat. 2471, 2486; Pub. L. 103–382, title III, § 391(e)(3), Oct. 20, 1994, 108 Stat. 4022; Pub. L. 105–244, title IV, § 465, Oct. 7, 1998, 112 Stat. 1728; Pub. L. 108–446, title III, § 305(c)(1), Dec. 3, 2004, 118 Stat. 2805; Pub. L. 110–315, title IV, § 465, Aug. 14, 2008, 122 Stat. 3267; Pub. L. 111–39, title IV, § 405(5), July 1, 2009, 123 Stat. 1947.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(2)(A)(i), (L), (M), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of this title. Part A of title I of the Act is classified generally to part A (§ 6311 et seq.) of subchapter I of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

The Head Start Act, referred to in subsec. (a)(2)(B), is subchapter B (§§ 635 to 657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of Title 42 and Tables.

The Peace Corps Act, referred to in subsec. (a)(2)(E), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (a)(2)(E), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§ 4950 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

The National and Community Service Act of 1990, referred to in subsec. (a)(6), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended. Subtitle D of title I of the Act is classified generally to division D of subchapter I (§ 12601 et seq.) of chapter 129 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

CODIFICATION

Amendment by section 2(f)(14) of Pub. L. 103–208 (which was effective as if included in Pub. L. 102–325) was executed to this section as amended by Pub. L. 102–325 and Pub. L. 103–82, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 1087ee, Pub. L. 89–329, title IV, § 465, as added Pub. L. 92–318, title I, § 137(b), June 23, 1972, 86

[1] So in original. Probably should be ''in such''.

Stat. 277; amended Pub. L. 95–561, title XIII, § 1323, Nov. 1, 1978, 92 Stat. 2363; Pub. L. 96–374, title IV, §§ 442(b)(6), 448(d), (e), title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1440, 1443, 1503, related to cancellation of loans for certain public service, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2009—Subsec. (a)(6). Pub. L. 111–39 substituted ''12601'' for ''12571''.

2008—Subsec. (a)(2)(A). Pub. L. 110–315, § 465(1)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: ''as a full-time teacher for service in an academic year in a public or other nonprofit private elementary or secondary school which is in the school district of a local educational agency which is eligible in such year for assistance pursuant to title I of the Elementary and Secondary Education Act of 1965, and which for the purpose of this paragraph and for that year has been determined by the Secretary (pursuant to regulations and after consultation with the State educational agency of the State in which the school is located) to be a school in which the enrollment of children counted under section 111(c) of the Elementary and Secondary Education Act of 1965 exceeds 30 percent of the total enrollment of that school;''.

Subsec. (a)(2)(B). Pub. L. 110–315, § 465(1)(B), substituted ''Head Start Act, or in a prekindergarten or child care program that is licensed or regulated by the State, that'' for ''Head Start Act which''.

Subsec. (a)(2)(C). Pub. L. 110–315, § 465(1)(C), inserted '', including a system administered by an educational service agency'' after ''secondary school system''.

Subsec. (a)(2)(F). Pub. L. 110–315, § 465(1)(D), added subpar. (F) and struck out former subpar. (F) which read as follows: ''as a full-time law enforcement officer or corrections officer for service to local, State, or Federal law enforcement or corrections agencies;''.

Subsec. (a)(2)(J) to (M). Pub. L. 110–315, § 465(1)(E)–(G), added subpars. (J) to (M).

Subsec. (a)(3)(A)(i). Pub. L. 110–315, § 465(2)(A), inserted ''(D),'' after ''(C),'' and substituted ''(I), (J), (K), (L), or (M)'' for ''or (I)''.

Subsec. (a)(3)(A)(iii), (iv). Pub. L. 110–315, § 465(2)(B)–(D), redesignated cl. (iv) as (iii) and struck out former cl. (iii) which read as follows: ''in the case of service described in subparagraph (D) of paragraph (2), not to exceed a total of 50 percent of such loan at the rate of 12½ percent for each year of qualifying service; or''.

2004—Subsec. (a)(2)(C). Pub. L. 108–446 made technical amendment to reference in original act which appears in text as reference to section 1435(a)(10) of this title.

1998—Subsec. (a)(2). Pub. L. 105–244, § 465(1)(B), substituted ''section 1401'' for ''section 1401(a)(1)'' in concluding provisions.

Subsec. (a)(2)(C). Pub. L. 105–244, § 465(1)(A), substituted ''section 1435(a)(10)'' for ''section 1476(b)(9)''.

Subsec. (a)(7). Pub. L. 105–244, § 465(1)(C), added par. (7).

Subsec. (b). Pub. L. 105–244, § 465(2), inserted at end ''To the extent feasible, the Secretary shall pay the amounts for which any institution qualifies under this subsection not later than 3 months after the institution files an institutional application for campus-based funds.''

1994—Subsec. (a)(2)(A). Pub. L. 103–382 substituted ''title I of the Elementary and Secondary Education Act of 1965'' for ''chapter 1 of the Education Consolidation and Improvement Act of 1981''.

1993—Subsec. (a)(2)(A). Pub. L. 103–208, § 2(k)(7), amended Pub. L. 102–325, § 465(a)(1). See 1992 Amendment note below.

Subsec. (a)(2)(D). Pub. L. 103–208, § 2(f)(12), substituted ''service'' for ''services''.

Subsec. (a)(2)(F). Pub. L. 103–208, § 2(f)(13), struck out ''or'' after semicolon at end.

Subsec. (a)(6). Pub. L. 103–208, § 2(f)(14), realigned margin. See Codification note above.

Pub. L. 103–82 added par. (6).

1992—Subsec. (a)(2)(A). Pub. L. 102–325, § 465(a)(1), as amended by Pub. L. 103–208, § 2(k)(7), struck out before semicolon at end ''and such determination shall not be made with respect to more than 50 percent of the total number of schools in the State receiving assistance under such chapter 1''.

Subsec. (a)(2)(C). Pub. L. 102–325, § 465(a)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''as a full-time teacher of children with disabilities in a public or other nonprofit elementary or secondary school system;''.

Subsec. (a)(2)(G) to (I). Pub. L. 102–325, § 465(a)(3)–(5), added subpars. (G) to (I).

Subsec. (a)(3)(A)(i). Pub. L. 102–325, § 465(b), substituted ''(A), (C), (F), (G), (H), or (I)'' for ''(A), (C), or (F)''.

Subsec. (c). Pub. L. 102–325, § 465(c), added subsec. (c).

1991—Subsec. (a)(2). Pub. L. 102–119 substituted ''1401(a)(1)'' for ''1401(1)'' in last sentence. The references to section 1401 include the substitution of ''Individuals with Disabilities Education Act'' for ''Education of the Handicapped Act'' in the original.

1990—Subsec. (a)(2). Pub. L. 101–476, § 901(e), substituted ''children with disabilities'' for ''handicapped children'' in two places.

Subsec. (a)(2)(F). Pub. L. 101–647, § 2101(a), which directed amendment of subsec. (a)(2) by adding at the end a new subpar. (F), was executed by adding subpar. (F) after subpar. (E) and before last sentence to reflect the probable intent of Congress.

Subsec. (a)(3)(A)(i). Pub. L. 101–647, § 2101(b), which directed amendment of subsec. (a)(3)(i) by substituting ''(A), (C), or (F)'' for ''(A) or (C)'', was executed by making the substitution in subsec. (a)(3)(A)(i) to reflect the probable intent of Congress.

1988—Subsec. (a)(5). Pub. L. 100–369 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1987—Subsec. (a)(2)(A). Pub. L. 100–50, § 13(j)(1), (2), substituted ''chapter 1 of the Education Consolidation and Improvement Act of 1981'' for ''title I of the Elementary and Secondary Education Act of 1965'' and ''such chapter 1'' for ''such title I''.

Subsec. (a)(2)(B). Pub. L. 100–50, § 13(j)(3), substituted ''the Head Start Act'' for ''section 2809(a)(1) of title 42''.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENTS

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 2101(c) of Pub. L. 101–647 provided that: ''The amendments made by this section [amending this section] shall apply only to loans made on or after the date of enactment of this Act [Nov. 29, 1990] under part E of title IV of the Higher Education Act of 1965 [this part].''

Section 1001 of Pub. L. 101–476 provided that: ''The amendments made by this Act [see Short Title of 1990

Amendment note set out under section 1400 of this title] shall take effect October 1, 1990.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub. L. 99–498, set out as a note under section 1001 of this title.

Subsection (a)(2)(E) of this section applicable only to loans made to cover the costs of instruction for periods of enrollment beginning on or after July 1, 1987, to individuals who are new borrowers on that date, see section 405(b) of Pub. L. 99–498, set out as a note under section 1087dd of this title.

§ 1087ff. Distribution of assets from student loan funds

(a) In general

After September 30, 2003, and not later than March 31, 2004, there shall be a capital distribution of the balance of the student loan fund established under this part by each institution of higher education as follows:

(1) The Secretary shall first be paid an amount which bears the same ratio to the balance in such fund at the close of September 30, 2003, as the total amount of the Federal capital contributions to such fund by the Secretary under this part bears to the sum of such Federal contributions and the institution's capital contributions to such fund.

(2) The remainder of such balance shall be paid to the institution.

(b) Distribution of late collections

After October 1, 2012, each institution with which the Secretary has made an agreement under this part, shall pay to the Secretary the same proportionate share of amounts received by this institution after September 30, 2003, in payment of principal and interest on student loans made from the student loan fund established pursuant to such agreement (which amount shall be determined after deduction of any costs of litigation incurred in collection of the principal or interest on loans from the fund and not already reimbursed from the fund or from such payments of principal or interest), as was determined for the Secretary under subsection (a) of this section.

(c) Distribution of excess capital

(1) Upon a finding by the institution or the Secretary prior to October 1, 2004, that the liquid assets of a student loan fund established pursuant to an agreement under this part exceed the amount required for loans or otherwise in the foreseeable future, and upon notice to such institution or to the Secretary, as the case may be, there shall be, subject to such limitations as may be included in regulations of the Secretary or in such agreement, a capital distribution from such fund. Such capital distribution shall be made as follows:

(A) The Secretary shall first be paid an amount which bears the same ratio to the total to be distributed as the Federal capital contributions by the Secretary to the student loan fund prior to such distribution bear to the sum of such Federal capital contributions and the capital contributions to the fund made by the institution.

(B) The remainder of the capital distribution shall be paid to the institution.

(2) No finding that the liquid assets of a student loan fund established under this part exceed the amount required under paragraph (1) may be made prior to a date which is 2 years after the date on which the institution of higher education received the funds from such institution's allocation under section 1087bb of this title.

(Pub. L. 89–329, title IV, § 466, as added Pub. L. 99–498, title IV, § 405(a), Oct. 17, 1986, 100 Stat. 1453; amended Pub. L. 102–325, title IV, § 466, July 23, 1992, 106 Stat. 584; Pub. L. 103–208, § 2(f)(15), Dec. 20, 1993, 107 Stat. 2471; Pub. L. 105–244, title IV, § 466, Oct. 7, 1998, 112 Stat. 1728; Pub. L. 110–84, title V, § 501, Sept. 27, 2007, 121 Stat. 801.)

PRIOR PROVISIONS

A prior section 1087ff, Pub. L. 89–329, title IV, § 466, as added Pub. L. 92–318, title I, § 137(b), June 23, 1972, 86 Stat. 278; amended Pub. L. 94–482, title I, § 130(h), Oct. 12, 1976, 90 Stat. 2147; Pub. L. 96–374, title IV, § 442(c), title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1440, 1503, related to distribution of assets from student loan funds, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2007—Subsec. (b). Pub. L. 110–84 substituted ''October 1, 2012'' for ''March 31, 2012''.

1998—Subsec. (a). Pub. L. 105–244, § 466(1)(A), in introductory provisions, substituted ''2003'' for ''1996'' and ''2004'' for ''1997''.

Subsec. (a)(1). Pub. L. 105–244, § 466(1)(B), substituted ''2003'' for ''1996''.

Subsec. (b). Pub. L. 105–244, § 466(2), substituted ''2012'' for ''2005'' and ''2003'' for ''1996''.

Subsec. (c)(1). Pub. L. 105–244, § 466(3), substituted ''2004'' for ''1997'' in introductory provisions.

1993—Subsec. (c)(2). Pub. L. 103–208 realigned margin.

1992—Subsec. (b). Pub. L. 102–325, § 466(1), substituted ''2005'' for ''1997''.

Subsec. (c). Pub. L. 102–325, § 466(2), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–84 effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as a note under section 1070a of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

§ 1087gg. Collection of defaulted loans: Perkins Loan Revolving Fund

(a) Authority of Secretary to collect referred, transferred, or assigned loans

With respect to any loan—

(1) which was made under this part, and

(2) which is referred, transferred, or assigned to the Secretary by an institution with an agreement under section 1087cc(a) of this title,

the Secretary is authorized to attempt to collect such loan by any means authorized by law for collecting claims of the United States (including referral to the Attorney General for litigation) and under such terms and conditions as the Secretary may prescribe, including reimbursement for expenses reasonably incurred in attempting such collection.

(b) Collection of referred, transferred, or assigned loans

The Secretary shall continue to attempt to collect any loan referred, transferred, or assigned under paragraph (4) or (5) of section 1087cc(a) of this title until all appropriate collection efforts, as determined by the Secretary, have been expended.

(Pub. L. 89–329, title IV, § 467, as added Pub. L. 99–498, title IV, § 405(a), Oct. 17, 1986, 100 Stat. 1453; amended Pub. L. 102–325, title IV, § 467, July 23, 1992, 106 Stat. 584; Pub. L. 105–244, title IV, § 467(a), Oct. 7, 1998, 112 Stat. 1728; Pub. L. 111–39, title IV, § 405(6), July 1, 2009, 123 Stat. 1947.)

PRIOR PROVISIONS

A prior section 1087gg, Pub. L. 89–329, title IV, § 467, as added Pub. L. 96–49, § 5(d)(3)(A), Aug. 13, 1979, 93 Stat. 352; amended Pub. L. 96–374, title IV, § 445(c), title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1442, 1503; Pub. L. 99–272, title XVI, § 16029, Apr. 7, 1986, 100 Stat. 354, related to collection of defaulted loans, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2009—Subsec. (b). Pub. L. 111–39 substituted ''paragraph (4) or (5)'' for ''paragraph (5)(A), (5)(B)(i), or (6)''.

1998—Subsec. (c). Pub. L. 105–244 struck out heading and text of subsec. (c) which established the Perkins Loan Revolving Fund and provided for deposits into and payments from the Fund.

1992—Pub. L. 102–325 amended section catchline generally, inserting '': Perkins Loan Revolving Fund'' after ''loans'' and added subsec. (c).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 to this section, relating to creation of Perkins Loan Revolving Fund, effective Sept. 15, 1997, see section 468(4) of Pub. L. 102–325, set out as a note under section 1087dd of this title.

TRANSFER OF BALANCE

Pub. L. 105–244, title IV, § 467(b), Oct. 7, 1998, 112 Stat. 1728, provided that: ''Any funds in the Perkins Loan Revolving Fund on the date of enactment of this Act [Oct. 7, 1998] shall be transferred to and deposited in the Treasury.''

§ 1087hh. General authority of Secretary

In carrying out the provisions of this part, the Secretary is authorized—

(1) to consent to modification, with respect to rate of interest, time of payment of any installment of principal and interest or any portion thereof, or any other provision of any note evidencing a loan which has been made under this part;

(2) to enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption;

(3) to conduct litigation in accordance with the provisions of section 1082(a)(2) of this title; and

(4) to enter into a contract or other arrangement with State or nonprofit agencies and, on a competitive basis, with collection agencies for servicing and collection of loans under this part.

(Pub. L. 89–329, title IV, § 468, as added Pub. L. 99–498, title IV, § 405(a), Oct. 17, 1986, 100 Stat. 1454.)

PRIOR PROVISIONS

A prior section 1087hh, Pub. L. 89–329, title IV, § 468, as added Pub. L. 96–374, title IV, § 442(a), Oct. 3, 1980, 94 Stat. 1437, related to alternative source of funds, prior to the general revision of this part by Pub. L. 99–498.

A prior section 1087ii, Pub. L. 89–329, title IV, § 469, as added Pub. L. 96–374, title IV, § 442(a), Oct. 3, 1980, 94 Stat. 1439, related to recapture of current balance of student loan funds, prior to the general revision of this part by Pub. L. 99–498.

§ 1087ii. Definitions

(a) Low-income communities

For the purpose of this part, the term ''low-income communities'' means communities in which there is a high concentration of children eligible to be counted under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

(b) High-risk children

For the purposes of this part, the term ''high-risk children'' means individuals under the age of 21 who are low-income or at risk of abuse or neglect, have been abused or neglected, have serious emotional, mental, or behavioral disturbances, reside in placements outside their homes, or are involved in the juvenile justice system.

(c) Infants, toddlers, children, and youth with disabilities

For purposes of this part, the term ''infants, toddlers, children, and youth with disabilities'' means children with disabilities and infants and toddlers with disabilities as defined in sections 1401 and 1432 of this title, respectively, and the term ''early intervention services'' has the meaning given the term in section 1432 of this title.

(Pub. L. 89–329, title IV, § 469, as added Pub. L. 102–325, title IV, § 465(d), July 23, 1992, 106 Stat. 583; amended Pub. L. 103–382, title III, § 391(e)(4), Oct. 20, 1994, 108 Stat. 4022; Pub. L. 108–446, title III, § 305(c)(2), Dec. 3, 2004, 118 Stat. 2805; Pub. L. 111–39, title IV, § 405(7), July 1, 2009, 123 Stat. 1947.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a), is Pub. L. 89–10, Apr. 11,

1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

AMENDMENTS

2009—Subsec. (c). Pub. L. 111–39 substituted ''and the term 'early intervention services' has the meaning given the term in section 1432 of this title.'' for ''and the term 'qualified professional provider of early intervention services' has the meaning specified in section 1472(2) of this title.''

2004—Subsec. (c). Pub. L. 108–446 substituted ''sections 1401 and 1432'' for ''sections 1401(a)(1) and 1472(1)''.

1994—Subsec. (a). Pub. L. 103–382 substituted ''title I'' for ''chapter 1 of title I''.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

PART E—NEED ANALYSIS

CODIFICATION

This part was added as part F of title IV of Pub. L. 89–329 by Pub. L. 99–498, title IV, § 406(a), Oct. 17, 1986, 100 Stat. 1454. The letter designation of this part was changed from ''F'' to ''E'' for codification purposes. See Codification note preceding section 1087a of this title.

§ 1087kk. Amount of need

Except as otherwise provided therein, the amount of need of any student for financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 (except subparts[1] 1 or 2 of part A of this subchapter) is equal to—

(1) the cost of attendance of such student, minus

(2) the expected family contribution for such student, minus

(3) estimated financial assistance not received under this subchapter and part C of subchapter I of chapter 34 of title 42 (as defined in section 1087vv(j) of this title).

(Pub. L. 89–329, title IV, § 471, as added Pub. L. 99–498, title IV, § 406(a), Oct. 17, 1986, 100 Stat. 1454; amended Pub. L. 102–325, title IV, § 471(a), July 23, 1992, 106 Stat. 585; Pub. L. 105–244, title IV, § 480(a), Oct. 7, 1998, 112 Stat. 1732.)

AMENDMENTS

1998—Pub. L. 105–244 substituted ''or 2'' for ''or 4'' in introductory provisions.

1992—Pub. L. 102–325 amended section generally. Prior to amendment, section read as follows: ''Except as otherwise provided therein, the amount of need of any student for financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 (except subparts 1 and 3 of part A of this subchapter) is equal to the cost of attendance of such student minus the expected family contribution for such student.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–244, title IV, § 480A, Oct. 7, 1998, 112 Stat. 1732, provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this part [part F (§§ 471–480A) of title IV of Pub. L. 105–244, amending this section and sections 1087*ll* to 1087tt and 1087vv of this title] are effective on the date of enactment of this Act [Oct. 7, 1998].

''(b) PROVISIONS EFFECTIVE FOR ACADEMIC YEAR 2000–2001, AND THEREAFTER.—The amendments made by sections 472, 473, 474, and 475 [amending sections 1087nn to 1087qq of this title] shall apply with respect to determinations of need under part F of title IV of the Higher Education Act of 1965 [this part] for academic years beginning on or after July 1, 2000.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 471(b) of Pub. L. 102–325 provided that: ''The changes made in part F of title IV of the Act [this part] by the amendment made by this section [amending sections 1087kk to 1087vv of this title] shall apply with respect to determinations of need under such part F for award years beginning on or after July 1, 1993.''

EFFECTIVE DATE

Section 406(b)(1)–(3) of Pub. L. 99–498, as amended by Pub. L. 100–50, § 22(e)(1), (3), June 3, 1987, 101 Stat. 361, provided that:

''(1) Except as provided in paragraphs (2) through (4)—

''(A) part F of title IV of the Act [this part] shall apply with respect to determinations of need under such title for academic years beginning with academic year 1988–1989 and succeeding academic years; and

''(B) for any preceding academic year, determinations of need shall be made in accordance with regulations prescribed by the Secretary of Education in accordance with the Student Financial Assistance Technical Amendments Act of 1982 [Pub. L. 97–301, see Short Title of 1982 Amendment note set out under section 1001 of this title].

''(2) With respect to an application filed after the date of enactment of this Act [Oct. 17, 1986] for a loan under part B of such title [part B of this subchapter] for any academic year preceding academic year 1988–1989, any determination of expected family contribution shall be made using the system of financial need analysis approved by the Secretary of Education for use under subpart 2 of part A and parts C and E of such title [subpart 2 of part A of this subchapter and part C of subchapter I of chapter 34 of Title 42, The Public Health and Welfare, and part D of this subchapter].

''(3) For purposes of sections 413D(d)(2)(B) [now 413D(c)(2)(B)], 442(d)(2)(B) and 462(d)(2)(B) [20 U.S.C. 1070b–3(c)(2)(B), 42 U.S.C. 2752(d)(2)(B), 20 U.S.C. 1087bb(d)(2)(B)] for any academic year preceding academic year 1988–1989, the Secretary shall, in lieu of average expected family contribution, use the procedures for sampling expected family contribution within income categories that was employed for academic year 1986–1987, adjusted to reflect changes in data.

''(4) Section 479B of the Act [20 U.S.C. 1087uu] (as so added) shall apply with respect to financial assistance provided for any academic year beginning after such date of enactment [Oct. 17, 1986].''

[References to subpart 2 of part A of title IV of Pub. L. 89–329 deemed, after July 23, 1992, to refer to subpart 3 of such part, see section 402(b) of Pub. L. 102–325, set out as a note under section 1070a–11 of this title.]

SPECIAL STUDY OF SIMPLIFICATION OF NEED ANALYSIS AND APPLICATION FOR TITLE IV AID

Pub. L. 108–199, div. E, title III, § 305, Jan. 23, 2004, 118 Stat. 263, provided that:

''(a) STUDY REQUIRED.—The Advisory Committee on Student Financial Assistance established by section 491 of the Higher Education Act of 1965 (20 U.S.C. 1098), hereafter in this section referred to as 'the Advisory Committee', shall conduct a thorough study of the feasibility of simplifying the need analysis methodology for all Federal student financial assistance programs and the process of applying for such assistance.

''(b) REQUIRED SUBJECTS OF STUDY.—In performing the study, the Advisory Committee shall, at a minimum, examine the following:

[1] So in original. Probably should be ''subpart''.

''(1) whether the methodology used to calculate the expected family contribution can be simplified without significant adverse effects on program intent, costs, integrity, delivery, and distribution of awards;

''(2) whether the number of data elements, and, accordingly, the number and complexity of questions asked of students and families, used to calculate the expected family contribution can be reduced without such adverse effects;

''(3) whether the procedures for determining such data elements, including determining and updating offsets and allowances, is the most efficient, effective, and fair means to determine a family's available income and assets;

''(4) whether the methodology used to calculate the expected family contribution, specifically the consideration of income earned by a dependent student and its effect on Pell grant eligibility, is an effective and fair means to determine a family's available income and a student's need;

''(5) whether the nature and timing of the application required in section 483 (a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1090(a)(1)), eligibility and award determination, financial aid processing, and funds delivery can be streamlined further for students and families, institutions, and States;

''(6) whether it is feasible to allow students to complete only those limited sections of the financial aid application that apply to their specific circumstances and the State in which they reside;

''(7) whether a widely disseminated printed form, or the use of an Internet or other electronic means, can be developed to notify individuals of an estimation of their approximate eligibility for grant, work-study, and loan assistance upon completion and verification of the simplified application form;

''(8) whether information provided on other Federal forms (such as the form applying for supplemental security income under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.], the form for applying for food stamps under the Food Stamp Act of 1977 [now the Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq.], and the schedule for applying for the earned income tax credit under section 32 of the Internal Revenue Code of 1986 [26 U.S.C. 32]) that are designed to determine eligibility for various Federal need-based assistance programs could be used to qualify potential students for the simplified needs test; and

''(9) whether any proposed changes to data elements collected, in addition to those used to calculate expected family contribution, or any proposed changes to the form's design or the process of applying for aid, may have adverse effects on program costs, integrity, delivery, or distribution of awards, as well as, application development or application processing.

''(c) ADDITIONAL CONSIDERATIONS.—In conducting the feasibility study, the Advisory Committee's primary objective under this subsection shall be simplifying the financial aid application forms and process and obtaining a substantial reduction in the number of required data items. In carrying out that objective, the Advisory Committee shall pay special attention to the needs of low-income and moderate-income students and families.

''(d) CONSULTATION.—

''(1) IN GENERAL.—The Advisory Committee shall consult with a broad range of interested parties in higher education, including parents and students, high school guidance counselors, financial aid and other campus administrators, appropriate State administrators, administrators of intervention and outreach programs, and appropriate officials from the Department of Education.

''(2) FORMS DESIGN EXPERT.—With the goal of making significant changes to the form to make the questions more easily understandable, the Advisory Committee shall consult a forms design expert to ensure that its recommendations for revision of the application form would assist in making the form easily readable and understood by parents, students, and other members of the public.

''(3) CONGRESSIONAL CONSULTATION.—The Advisory Committee shall consult on a regular basis with the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate in carrying out the feasibility study required by this subsection.

''(4) DEPARTMENTAL CONSULTATION.—The Secretary of Education shall provide such assistance to the Advisory Committee as is requested and practicable in conducting the study required by this subsection.

''(e) REPORTS.—

''(1) INTERIM REPORT.—The Advisory Committee shall, not later than 6 months after the date of enactment of this Act [Jan. 23, 2004], prepare and submit an interim report containing any such legislative changes as the Advisory Committee recommends to reform and simplify the needs analysis under part F of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087kk et seq.) and forms and other requirements under such title to the Committee on Education and the Workforce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Secretary of Education.

''(2) FINAL REPORT.—The Advisory Committee shall, not later than 1 year after the date of enactment of this Act, prepare and submit a full final report on the study, including recommendations for regulatory and administrative changes required by this section, to the Committee on Education and the Workforce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Secretary of Education.

''(f) IMPLEMENTATION.—The Secretary of Education shall consult with the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate and shall subsequently initiate a redesign of the form required by section 483 of the Higher Education Act of 1965 (20 U.S.C. 1090). Such redesign shall include the testing of alternative simplified versions of the free Federal form. The Secretary shall keep the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate fully and currently informed on the progress of these efforts.

''(g) POSTPONEMENT OF TAX TABLE UPDATE PENDING REPORT AND IMPLEMENTATION.—The Secretary of Education shall not implement or enforce for the award year 2004–2005 the annual update to the allowances for State and other taxes in the tables used in the Federal needs analysis methodology, as prescribed by the Secretary on May 30, 2003 (68 Fed. Reg. 32473).''

§ 1087*ll*. Cost of attendance

For the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42, the term ''cost of attendance'' means—

(1) tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(2) an allowance for books, supplies, transportation, and miscellaneous personal expenses, including a reasonable allowance for the documented rental or purchase of a personal computer, for a student attending the institution on at least a half-time basis, as determined by the institution;

(3) an allowance (as determined by the institution) for room and board costs incurred by the student which—

(A) shall be an allowance determined by the institution for a student without dependents residing at home with parents;

(B) for students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board;

(C) for students who live in housing located on a military base or for which a basic allowance is provided under section 403(b) of title 37, shall be an allowance based on the expenses reasonably incurred by such students for board but not for room; and

(D) for all other students shall be an allowance based on the expenses reasonably incurred by such students for room and board;

(4) for less than half-time students (as determined by the institution), tuition and fees and an allowance for only—

(A) books, supplies, and transportation (as determined by the institution);

(B) dependent care expenses (determined in accordance with paragraph (8)); and

(C) room and board costs (determined in accordance with paragraph (3)), except that a student may receive an allowance for such costs under this subparagraph for not more than 3 semesters or the equivalent, of which not more than 2 semesters or the equivalent may be consecutive;

(5) for a student engaged in a program of study by correspondence, only 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;

(6) for incarcerated students only tuition and fees and, if required, books and supplies;

(7) for a student enrolled in an academic program in a program of study abroad approved for credit by the student's home institution, reasonable costs associated with such study (as determined by the institution at which such student is enrolled);

(8) for a student with one or more dependents, an allowance based on the estimated actual expenses incurred for such dependent care, based on the number and age of such dependents, except that—

(A) such allowance shall not exceed the reasonable cost in the community in which such student resides for the kind of care provided; and

(B) the period for which dependent care is required includes, but is not limited to, class-time, study-time, field work, internships, and commuting time;

(9) for a student with a disability, an allowance (as determined by the institution) for those expenses related to the student's disability, including special services, personal assistance, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies;

(10) for a student receiving all or part of the student's instruction by means of telecommunications technology, no distinction shall be made with respect to the mode of instruction in determining costs;

(11) for a student engaged in a work experience under a cooperative education program, an allowance for reasonable costs associated with such employment (as determined by the institution);

(12) for a student who receives a loan under this or any other Federal law, or, at the option of the institution, a conventional student loan incurred by the student to cover a student's cost of attendance at the institution, an allowance for the actual cost of any loan fee, origination fee, or insurance premium charged to such student or such parent on such loan, or the average cost of any such fee or premium charged by the Secretary, lender, or guaranty agency making or insuring such loan, as the case may be; and

(13) at the option of the institution, for a student in a program requiring professional licensure or certification, the one-time cost of obtaining the first professional credentials (as determined by the institution).

(Pub. L. 89–329, title IV, § 472, as added Pub. L. 99–498, title IV, § 406(a), Oct. 17, 1986, 100 Stat. 1454; amended Pub. L. 102–325, title IV, § 471(a), July 23, 1992, 106 Stat. 585; Pub. L. 103–208, § 2(g)(1), Dec. 20, 1993, 107 Stat. 2471; Pub. L. 105–244, title IV, § 471, Oct. 7, 1998, 112 Stat. 1729; Pub. L. 109–171, title VIII, § 8016, Feb. 8, 2006, 120 Stat. 172; Pub. L. 110–315, title IV, § 471(a), Aug. 14, 2008, 122 Stat. 3269.)

AMENDMENTS

2008—Par. (3)(C), (D). Pub. L. 110–315 added subpar. (C) and redesignated former subpar. (C) as (D).

2006—Par. (4). Pub. L. 109–171, § 8016(1), added par. (4) and struck out former par. (4), which read as follows: ''for less than half-time students (as determined by the institution) tuition and fees and an allowance for only books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (8));''.

Par. (13). Pub. L. 109–171, § 8016(2)–(4), added par. (13).

1998—Par. (2). Pub. L. 105–244, § 471(1), inserted '', including a reasonable allowance for the documented rental or purchase of a personal computer,'' after ''personal expenses''.

Par. (3)(A). Pub. L. 105–244, § 471(2)(A), substituted ''determined by the institution'' for ''of not less than $1,500''.

Par. (3)(C). Pub. L. 105–244, § 471(2)(B), struck out '', except that the amount may not be less than $2,500'' after ''room and board''.

Par. (10). Pub. L. 105–244, § 471(3), substituted a semicolon for '', but this paragraph shall not be construed to permit including the cost of rental or purchase of equipment;''.

Par. (11). Pub. L. 105–244, § 471(4), substituted ''engaged'' for ''placed''.

1993—Par. (12). Pub. L. 103–208 added par. (12).

1992—Pub. L. 102–325 amended section generally, revising and restating as pars. (1) to (11) provisions formerly contained in pars. (1) to (9).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, § 471(b), Aug. 14, 2008, 122 Stat. 3269, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on July 1, 2010.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 7, 1998, see section 480A of Pub. L. 105–244, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

§ 1087mm. Family contribution

(a) In general

For the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42, other than subpart 2 of part A of this subchapter, and except as provided in subsection (b), the term ''family contribution'' with respect to any student means the amount which the student and the student's family may be reasonably expected to contribute toward the student's postsecondary education for the academic year for which the determination is made, as determined in accordance with this part.

(b) Special rule

(1) In general

Notwithstanding any other provision of this subchapter and part C of subchapter I of chapter 34 of title 42, the family contribution of each student described in paragraph (2) shall be deemed to be zero for the academic year for which the determination is made.

(2) Applicability

Paragraph (1) shall apply to any dependent or independent student with respect to determinations of need for academic year 2009–2010 and succeeding academic years—

(A) who is eligible to receive a Federal Pell Grant for the academic year for which the determination is made;

(B) whose parent or guardian was a member of the Armed Forces of the United States and died as a result of performing military service in Iraq or Afghanistan after September 11, 2001; and

(C) who, at the time of the parent or guardian's death, was—

(i) less than 24 years of age; or

(ii) enrolled at an institution of higher education on a part-time or full-time basis.

(3) Information

Notwithstanding any other provision of law, the Secretary of Veterans Affairs and the Secretary of Defense, as appropriate, shall provide the Secretary of Education with information necessary to determine which students meet the requirements of paragraph (2).

(Pub. L. 89–329, title IV, § 473, as added Pub. L. 99–498, title IV, § 406(a), Oct. 17, 1986, 100 Stat. 1455; amended Pub. L. 102–325, title IV, § 471(a), July 23, 1992, 106 Stat. 586; Pub. L. 105–244, title IV, § 480(b), Oct. 7, 1998, 112 Stat. 1732; Pub. L. 111–39, title IV, § 406(a)(1), July 1, 2009, 123 Stat. 1948.)

AMENDMENTS

2009—Pub. L. 111–39 designated existing provisions as subsec. (a), inserted heading, substituted ''For the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42, other than subpart 2 of part A of this subchapter, and except as provided in subsection (b),'' for ''For the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42, except subpart 2 of part A of this subchapter,'', and added subsec. (b).

1998—Pub. L. 105–244 substituted ''subpart 2'' for ''subpart 4''.

1992—Pub. L. 102–325 amended section generally. Prior to amendment, section read as follows: ''For the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42, except subparts 1 and 3 of part A of this subchapter, the term 'family contribution' with respect to any student means the amount which the student and his or her family may be reasonably expected to contribute toward his or her postsecondary education for the academic year for which the determination is made, as determined in accordance with this part.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–39, title IV, § 406(b), July 1, 2009, 123 Stat. 1950, provided that: ''The amendments made by—

''(1) paragraph (1) of subsection (a) [amending this section] shall take effect on July 1, 2009; and

''(2) paragraph (4) of such subsection [amending section 1087ss of this title] shall be effective as if enacted as part of the amendments in section 602(a) of the College Cost Reduction and Access Act (Public Law 110–84), and shall take effect on July 1, 2009.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 7, 1998, see section 480A of Pub. L. 105–244, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

§ 1087nn. Determination of expected family contribution; data elements

(a) General rule for determination of expected family contribution

The expected family contribution—

(1) for a dependent student shall be determined in accordance with section 1087*oo* of this title;

(2) for a single independent student or a married independent student without dependents (other than a spouse) shall be determined in accordance with section 1087pp of this title; and

(3) for an independent student with dependents other than a spouse shall be determined in accordance with section 1087qq of this title.

(b) Data elements

The following data elements are considered in determining the expected family contribution:

(1) the available income of (A) the student and the student's spouse, or (B) the student and the student's parents, in the case of a dependent student;

(2) the number of dependents in the family of the student;

(3) the number of dependents in the family of the student, excluding the student's parents, who are enrolled or accepted for enrollment, on at least a half-time basis, in a degree, certificate, or other program leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 1094 of this title and for whom the family may reasonably be expected to contribute to their postsecondary education;

(4) the net assets of (A) the student and the student's spouse, and (B) the student and the student's parents, in the case of a dependent student;

(5) the marital status of the student;

(6) the age of the older parent, in the case of a dependent student, and the student; and

(7) the additional expenses incurred (A) in the case of a dependent student, when both parents of the student are employed or when the family is headed by a single parent who is employed, or (B) in the case of an independent student, when the student is married and the student's spouse is employed, or when the employed student qualifies as a surviving spouse or as a head of a household under section 2 of title 26.

(Pub. L. 89–329, title IV, § 474, as added Pub. L. 99–498, title IV, § 406(a), Oct. 17, 1986, 100 Stat. 1456; amended Pub. L. 100–369, § 7(c), July 18, 1988, 102 Stat. 837; Pub. L. 102–325, title IV, § 471(a), July 23, 1992, 106 Stat. 587; Pub. L. 105–244, title IV, § 472, Oct. 7, 1998, 112 Stat. 1729.)

AMENDMENTS

1998—Subsec. (b)(3). Pub. L. 105–244 inserted ", excluding the student's parents," after "family of the student".

1992—Pub. L. 102–325 substituted "Determination of expected family contribution; data elements" for "Data elements used in determining expected family contribution" in section catchline and amended text generally, adding subsec. (a), designating existing provisions as subsec. (b) and inserting heading, adding the age of the older parent, in the case of a dependent student, and the student as a data element and striking out consideration of any unusual medical and dental expenses and consideration of the number of dependent children other than the student enrolled in a private elementary or secondary institution and the unreimbursed tuition paid as data elements.

1988—Par. (8). Pub. L. 100–369 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244, effective Oct. 7, 1998, and applicable with respect to determinations of need under this part for academic years beginning on or after July 1, 2000, see section 480A of Pub. L. 105–244, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

§ 1087*oo*. Family contribution for dependent students

(a) Computation of expected family contribution

For each dependent student, the expected family contribution is equal to the sum of—

(1) the parents' contribution from adjusted available income (determined in accordance with subsection (b) of this section);

(2) the student contribution from available income (determined in accordance with subsection (g) of this section); and

(3) the student contribution from assets (determined in accordance with subsection (h) of this section).

(b) Parents' contribution from adjusted available income

The parents' contribution from adjusted available income is equal to the amount determined by—

(1) computing adjusted available income by adding—

(A) the parents' available income (determined in accordance with subsection (c) of this section); and

(B) the parents' contribution from assets (determined in accordance with subsection (d) of this section);

(2) assessing such adjusted available income in accordance with the assessment schedule set forth in subsection (e) of this section; and

(3) dividing the assessment resulting under paragraph (2) by the number of the family members, excluding the student's parents, who are enrolled or accepted for enrollment, on at least a half-time basis, in a degree, certificate, or other program leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 1094 of this title during the award period for which assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 is requested;

except that the amount determined under this subsection shall not be less than zero.

(c) Parents' available income

(1) In general

The parents' available income is determined by deducting from total income (as defined in section 1087vv of this title)—

(A) Federal income taxes;

(B) an allowance for State and other taxes, determined in accordance with paragraph (2);

(C) an allowance for social security taxes, determined in accordance with paragraph (3);

(D) an income protection allowance, determined in accordance with paragraph (4);

(E) an employment expense allowance, determined in accordance with paragraph (5); and

(F) the amount of any tax credit taken by the parents under section 25A of title 26.

(2) Allowance for State and other taxes

The allowance for State and other taxes is equal to an amount determined by multiply-

ing total income (as defined in section 1087vv of this title) by a percentage determined according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

Percentages for Computation of State and Other Tax Allowance

If parents' State or territory of residence is—	And parents' total income is—	
	less than $15,000 or	$15,000 or more
	then the percentage is—	
Alaska, Puerto Rico, Wyoming	3	2
American Samoa, Guam, Louisiana, Nevada, Texas, Trust Territory, Virgin Islands	4	3
Florida, South Dakota, Tennessee, New Mexico	5	4
North Dakota, Washington	6	5
Alabama, Arizona, Arkansas, Indiana, Mississippi, Missouri, Montana, New Hampshire, Oklahoma, West Virginia	7	6
Colorado, Connecticut, Georgia, Illinois, Kansas, Kentucky	8	7
California, Delaware, Idaho, Iowa, Nebraska, North Carolina, Ohio, Pennsylvania, South Carolina, Utah, Vermont, Virginia, Canada, Mexico	9	8

Percentages for Computation of State and Other Tax Allowance—Continued

If parents' State or territory of residence is—	And parents' total income is—	
	less than $15,000 or	$15,000 or more
	then the percentage is—	
Maine, New Jersey	10	9
District of Columbia, Hawaii, Maryland, Massachusetts, Oregon, Rhode Island	11	10
Michigan, Minnesota	12	11
Wisconsin	13	12
New York	14	13
Other	9	8

(3) Allowance for social security taxes

The allowance for social security taxes is equal to the amount earned by each parent multiplied by the social security withholding rate appropriate to the tax year of the earnings, up to the maximum statutory social security tax withholding amount for that same tax year.

(4) Income protection allowance

The income protection allowance is determined by the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

Income Protection Allowance

Family Size	Number in College					
(including student)	1	2	3	4	5	For each additional subtract:
2	$10,520	$8,720				$1,790
3	13,100	11,310	$9,510			
4	16,180	14,380	12,590	$10,790		
5	19,090	17,290	15,500	13,700	$11,910	
6	22,330	20,530	18,740	16,940	15,150	
For each additional add:	2,520	2,520	2,520	2,520	2,520	

(5) Employment expense allowance

The employment expense allowance is determined as follows (or using a successor provision prescribed by the Secretary under section 1087rr of this title):

(A) If both parents were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, such allowance is equal to the lesser of $2,500 or 35 percent of the earned income of the parent with the lesser earned income.

(B) If a parent qualifies as a surviving spouse or as a head of household as defined in section 2 of title 26, such allowance is equal to the lesser of $2,500 or 35 percent of such parent's earned income.

(d) Parents' contribution from assets

(1) In general

The parents' contribution from assets is equal to—

(A) the parental net worth (determined in accordance with paragraph (2)); minus

(B) the education savings and asset protection allowance (determined in accordance with paragraph (3)); multiplied by

(C) the asset conversion rate (determined in accordance with paragraph (4)), except that the result shall not be less than zero.

(2) Parental net worth

The parental net worth is calculated by adding—

(A) the current balance of checking and savings accounts and cash on hand;

(B) the net value of investments and real estate, excluding the net value of the principal place of residence; and

(C) the adjusted net worth of a business or farm, computed on the basis of the net worth of such business or farm (hereafter in this subsection referred to as ''NW''), determined in accordance with the following table (or a successor table prescribed by the Secretary under section 1087rr of this title), except as provided under section 1087vv(f) of this title:

Adjusted Net Worth of a Business or Farm

If the net worth of a business or farm is—	Then the adjusted net worth is:
Less than $1	$0
$1–$75,000	40 percent of NW
$75,001–$225,000	$30,000 plus 50 percent of NW over $75,000
$225,001–$375,000	$105,000 plus 60 percent of NW over $225,000
$375,001 or more	$195,000 plus 100 percent of NW over $375,000

(3) Education savings and asset protection allowance

The education savings and asset protection allowance is calculated according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

Education Savings and Asset Protection Allowances for Families and Students

If the age of the oldest parent is—	And there are	
	two parents	one parent
	then the allowance is—	
25 or less	$ 0	$0
26	2,200	1,600
27	4,300	3,200
28	6,500	4,700
29	8,600	6,300
30	10,800	7,900
31	13,000	9,500
32	15,100	11,100
33	17,300	12,600
34	19,400	14,200
35	21,600	15,800
36	23,800	17,400
37	25,900	19,000
38	28,100	20,500
39	30,200	22,100
40	32,400	23,700
41	33,300	24,100
42	34,100	24,700
43	35,000	25,200
44	35,700	25,800
45	36,600	26,300
46	37,600	26,900
47	38,800	27,600
48	39,800	28,200
49	40,800	28,800
50	41,800	29,500
51	43,200	30,200
52	44,300	31,100
53	45,700	31,800
54	47,100	32,600
55	48,300	33,400
56	49,800	34,400
57	51,300	35,200
58	52,900	36,200
59	54,800	37,200
60	56,500	38,100
61	58,500	39,200
62	60,300	40,300
63	62,400	41,500
64	64,600	42,800
65 or more	66,800	44,000

Education Savings and Asset Protection Allowances for Families and Students—Continued

(4) Asset conversion rate

The asset conversion rate is 12 percent.

(e) Assessment schedule

The adjusted available income (as determined under subsection (b)(1) of this section and hereafter in this subsection referred to as ''AAI'') is assessed according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

Parents' Assessment From Adjusted Available Income (AAI)

If AAI is—	Then the assessment is—
Less than −$3,409	−$750
−$3,409 to $9,400	22% of AAI
$9,401 to $11,800	$2,068 + 25% of AAI over $9,400
$11,801 to $14,200	$2,668 + 29% of AAI over $11,800
$14,201 to $16,600	$3,364 + 34% of AAI over $14,200
$16,601 to $19,000	$4,180 + 40% of AAI over $16,600
$19,001 or more	$5,140 + 47% of AAI over $19,000

(f) Computations in case of separation, divorce, remarriage, or death

(1) Divorced or separated parents

Parental income and assets for a student whose parents are divorced or separated is determined under the following procedures:

(A) Include only the income and assets of the parent with whom the student resided for the greater portion of the 12-month period preceding the date of the application.

(B) If the preceding criterion does not apply, include only the income and assets of the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application.

(C) If neither of the preceding criteria apply, include only the income and assets of the parent who provided the greater support during the most recent calendar year for which parental support was provided.

(2) Death of a parent

Parental income and assets in the case of the death of any parent is determined as follows:

(A) If either of the parents has died, the student shall include only the income and assets of the surviving parent.

(B) If both parents have died, the student shall not report any parental income or assets.

(3) Remarried parents

If a parent whose income and assets are taken into account under paragraph (1) of this subsection, or if a parent who is a widow or widower and whose income is taken into account under paragraph (2) of this subsection, has remarried, the income of that parent's

spouse shall be included in determining the parent's adjusted available income only if—

(A) the student's parent and the stepparent are married as of the date of application for the award year concerned; and

(B) the student is not an independent student.

(g) Student contribution from available income

(1) In general

The student contribution from available income is equal to—

(A) the student's total income (determined in accordance with section 1087vv of this title); minus

(B) the adjustment to student income (determined in accordance with paragraph (2)); multiplied by

(C) the assessment rate as determined in paragraph (5);

except that the amount determined under this subsection shall not be less than zero.

(2) Adjustment to student income

The adjustment to student income is equal to the sum of—

(A) Federal income taxes of the student;

(B) an allowance for State and other income taxes (determined in accordance with paragraph (3));

(C) an allowance for social security taxes determined in accordance with paragraph (4);

(D) an income protection allowance of the following amount (or a successor amount prescribed by the Secretary under section 1087rr of this title)—

(i) for academic year 2009–2010, $3,750;

(ii) for academic year 2010–2011, $4,500;

(iii) for academic year 2011–2012, $5,250; and

(iv) for academic year 2012–2013, $6,000;

(E) the amount of any tax credit taken by the student under section 25A of title 26; and

(F) an allowance for parents' negative available income, determined in accordance with paragraph (6).

(3) Allowance for State and other income taxes

The allowance for State and other income taxes is equal to an amount determined by multiplying total income (as defined in section 1087vv of this title) by a percentage determined according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

Percentages for Computation of State and Other Tax Allowance

If the students' State or territory of residence is—	The percentage is—
Alaska, American Samoa, Florida, Guam, Nevada, South Dakota, Tennessee, Texas, Trust Territory, Virgin Islands, Washington, Wyoming	0
Connecticut, Louisiana, Puerto Rico	1
Arizona, New Hampshire, New Mexico, North Dakota	2
Alabama, Colorado, Illinois, Indiana, Kansas, Mississippi, Missouri, Montana, Nebraska, New Jersey, Oklahoma	3

Percentages for Computation of State and Other Tax Allowance—Continued

If the students' State or territory of residence is—	The percentage is—
Arkansas, Georgia, Iowa, Kentucky, Maine, Pennsylvania, Utah, Vermont, Virginia, West Virginia, Canada, Mexico	4
California, Idaho, Massachusetts, North Carolina, Ohio, Rhode Island, South Carolina	5
Hawaii, Maryland, Michigan, Wisconsin	6
Delaware, District of Columbia, Minnesota, Oregon	7
New York	8
Other	4

(4) Allowance for social security taxes

The allowance for social security taxes is equal to the amount earned by the student multiplied by the social security withholding rate appropriate to the tax year of the earnings, up to the maximum statutory social security tax withholding amount for that same tax year.

(5) Assessment of available income

The student's available income (determined in accordance with paragraph (1) of this subsection) is assessed at 50 percent.

(6) Allowance for parents' negative available income

The allowance for parents' negative available income is the amount, if any, by which the sum of the amounts deducted under subparagraphs (A) through (F) of subsection (c)(1) of this section exceeds the sum of the parents' total income (as defined in section 1087vv of this title) and the parents' contribution from assets (as determined in accordance with subsection (d) of this section).

(h) Student contribution from assets

The student contribution from assets is determined by calculating the net assets of the student and multiplying such amount by 20 percent, except that the result shall not be less than zero.

(i) Adjustments to parents' contribution for enrollment periods other than 9 months for purposes other than subpart 2 of part A of this subchapter

For periods of enrollment other than 9 months, the parents' contribution from adjusted available income (as determined under subsection (b) of this section) is determined as follows for purposes other than subpart 2 of part A of this subchapter:

(1) For periods of enrollment less than 9 months, the parents' contribution from adjusted available income is divided by 9 and the result multiplied by the number of months enrolled.

(2) For periods of enrollment greater than 9 months—

(A) the parents' adjusted available income (determined in accordance with subsection (b)(1) of this section) is increased by the difference between the income protection allowance (determined in accordance with sub-

section (c)(4) of this section) for a family of four and a family of five, each with one child in college;

(B) the resulting revised parents' adjusted available income is assessed according to subsection (e) of this section and adjusted according to subsection (b)(3) of this section to determine a revised parents' contribution from adjusted available income;

(C) the original parents' contribution from adjusted available income is subtracted from the revised parents' contribution from adjusted available income, and the result is divided by 12 to determine the monthly adjustment amount; and

(D) the original parents' contribution from adjusted available income is increased by the product of the monthly adjustment amount multiplied by the number of months greater than 9 for which the student will be enrolled.

(j) Adjustments to student's contribution for enrollment periods of less than nine months

For periods of enrollment of less than 9 months, the student's contribution from adjusted available income (as determined under subsection (g) of this section) is determined, for purposes other than subpart 2 of part A of this subchapter, by dividing the amount determined under such subsection by 9, and multiplying the result by the number of months in the period of enrollment.

(Pub. L. 89–329, title IV, § 475, as added Pub. L. 99–498, title IV, § 406(a), Oct. 17, 1986, 100 Stat. 1456; amended Pub. L. 100–50, § 14(1)–(12), June 3, 1987, 101 Stat. 349, 350; Pub. L. 102–325, title IV, § 471(a), July 23, 1992, 106 Stat. 587; Pub. L. 103–208, § 2(g)(2)–(5), Dec. 20, 1993, 107 Stat. 2472; Pub. L. 105–78, title VI, § 609(g), Nov. 13, 1997, 111 Stat. 1523; Pub. L. 105–244, title IV, § 473, Oct. 7, 1998, 112 Stat. 1729; Pub. L. 109–171, title VIII, § 8017(a)(1), Feb. 8, 2006, 120 Stat. 173; Pub. L. 110–84, title VI, § 601(a), Sept. 27, 2007, 121 Stat. 801; Pub. L. 111–39, title IV, § 406(a)(2), July 1, 2009, 123 Stat. 1948.)

AMENDMENTS

2009—Subsec. (c)(5)(B). Pub. L. 111–39 made technical amendment to reference in original act which appears in text as reference to section 2 of title 26.

2007—Subsec. (g)(2)(D). Pub. L. 110–84 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "an income protection allowance of $3,000 (or a successor amount prescribed by the Secretary under section 1087rr of this title);".

2006—Subsec. (g)(2)(D). Pub. L. 109–171, § 8017(a)(1)(A), substituted "$3,000" for "$2,200".

Subsec. (h). Pub. L. 109–171, § 8017(a)(1)(B), substituted "20" for "35".

1998—Subsec. (b)(3). Pub. L. 105–244, § 473(a), which directed insertion of ", excluding the student's parents," after "number of family members", was executed by making the insertion after "number of the family members" to reflect the probable intent of Congress.

Subsec. (g)(2)(D). Pub. L. 105–244, § 473(b)(1)(A), substituted "$2,200 (or a successor amount prescribed by the Secretary under section 1087rr of this title);" for "$1,750; and".

Subsec. (g)(2)(F). Pub. L. 105–244, § 473(b)(1)(B), (C), added subpar. (F).

Subsec. (g)(6). Pub. L. 105–244, § 473(b)(2), added par. (6).

Subsec. (j). Pub. L. 105–244, § 473(c), added subsec. (j).

1997—Subsec. (c)(1)(F). Pub. L. 105–78, § 609(g)(1), added subpar. (F).

Subsec. (g)(2)(E). Pub. L. 105–78, § 609(g)(2), added subpar. (E).

1993—Subsec. (c)(4). Pub. L. 103–208, § 2(g)(2), substituted "$9,510" for "9,510" in table.

Subsec. (f)(3). Pub. L. 103–208, § 2(g)(3), in introductory provisions, substituted "If a parent" for "Income in the case of a parent", "(1) of this subsection, or if a parent" for "(1) of this subsection, or a parent", and "the income" for "is determined as follows: The income".

Subsec. (g)(1)(B). Pub. L. 103–208, § 2(g)(4), inserted closing parenthesis after "paragraph (2)".

Subsec. (g)(3). Pub. L. 103–208, § 2(g)(5), in table added last item relating to Other.

1992—Pub. L. 102–325 amended section generally, making minor changes in subsecs. (a) to (c) and (e) to (g), in subsec. (d) substituting provisions relating to parents' contribution from assets for provisions relating to parents' income supplemental amount from assets, in subsec. (h) substituting provisions relating to student contribution from assets for provisions relating to student and spouse income supplemental amount from assets, and in subsec. (i) substituting provisions relating to adjustments to parents' contribution for enrollment periods other than 9 months for purposes other than subpart 2 of part A of this subchapter for provisions relating to adjustments for enrollment periods other than 9 months.

1987—Subsec. (c)(2), (4). Pub. L. 100–50, § 14(1), substituted "section 1087rr of this title" for "section 1087ss of this title".

Subsec. (c)(7). Pub. L. 100–50, § 14(2), struck out "National" before "Center".

Subsec. (d)(2)(B). Pub. L. 100–50, § 14(3), substituted "displaced homemaker" for "dislocated homemaker".

Subsec. (d)(2)(C). Pub. L. 100–50, § 14(1), substituted "section 1087rr of this title" for "section 1087ss of this title".

Pub. L. 100–50, § 14(4), added table after subpar. (C) and struck out former table which read as follows:

"Adjusted Net Worth of a Business or Farm

If the net worth of a business or farm is—	Then the adjusted net worth is:
Less than $1	$0
$1–$65,000	40 percent of NW
$65,001–$195,000	$26,000 plus 50 percent of NW over $65,000
$195,001–$325,000	$91,000 plus 60 percent of NW over $195,000
$325,001 or more	$169,000 plus 100 percent of NW over $325,000".

Subsec. (d)(4)(B). Pub. L. 100–50, § 14(5), substituted "$15,999" for "$15,000".

Subsec. (d)(4)(C). Pub. L. 100–50, § 14(6), substituted "$16,000" for "$15,000" in three places.

Subsec. (d)(4)(D). Pub. L. 100–50, § 14(7), substituted "income is less than zero" for "income is equal to or less than zero".

Subsec. (e). Pub. L. 100–50, § 14(8), inserted a minus sign before "$3,409" in two places in table.

Subsec. (g)(1)(C). Pub. L. 100–50, § 14(9), substituted "paragraph (2)" for "paragraph (3)".

Subsec. (g)(3). Pub. L. 100–50, § 14(10), inserted "(or a successor table prescribed by the Secretary under section 1087rr of this title)" after "following table".

Subsec. (h). Pub. L. 100–50, § 14(11), added subsec. (h) and struck out former subsec. (h) which read as follows: "The student (and spouse) supplemental income amount from assets is determined by multiplying by 35 percent the sum of—

"(1) the current balance of checking and savings accounts and cash on hand; and

"(2) the net value of investments and real estate, including the net value in the principal place of residence except in the case of a dislocated worker (certified in accordance with title III of the Job Training Partnership Act) or a dislocated homemaker (as defined in section 1087vv(e) of this title)."

Subsec. (i). Pub. L. 100–50, § 14(12), added subsec. (i).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–84, title VI, § 601(e), Sept. 27, 2007, 121 Stat. 804, provided that: ''The amendments made by this section [amending this section and sections 1087pp, 1087qq, and 1087rr of this title] shall be effective on July 1, 2009.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Pub. L. 109–171, title VIII, § 8017(a)(2), Feb. 8, 2006, 120 Stat. 173, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to determinations of need for periods of enrollment beginning on or after July 1, 2007.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244, effective Oct. 7, 1998, and applicable with respect to determinations of need under this part for academic years beginning on or after July 1, 2000, see section 480A of Pub. L. 105–244, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

§ 1087pp. Family contribution for independent students without dependents other than a spouse

(a) Computation of expected family contribution

For each independent student without dependents other than a spouse, the expected family contribution is determined by—

(1) adding—

(A) the family's contribution from available income (determined in accordance with subsection (b) of this section); and

(B) the family's contribution from assets (determined in accordance with subsection (c) of this section);

(2) dividing the sum resulting under paragraph (1) by the number of students who are enrolled or accepted for enrollment, on at least a half-time basis, in a degree, certificate, or other program leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 1094 of this title during the award period for which assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 is requested; and

(3) for periods of enrollment of less than 9 months, for purposes other than subpart 2 of part A of this subchapter—

(A) dividing the quotient resulting under paragraph (2) by 9; and

(B) multiplying the result by the number of months in the period of enrollment;

except that the amount determined under this subsection shall not be less than zero.

(b) Family's contribution from available income

(1) In general

The family's contribution from income is determined by—

(A) deducting from total income (as defined in section 1087vv of this title)—

(i) Federal income taxes;

(ii) an allowance for State and other taxes, determined in accordance with paragraph (2);

(iii) an allowance for social security taxes, determined in accordance with paragraph (3);

(iv) an income protection allowance of the following amount (or a successor amount prescribed by the Secretary under section 1087rr of this title)—

(I) for single or separated students, or married students where both are enrolled pursuant to subsection (a)(2)—

(aa) for academic year 2009–2010, $7,000;

(bb) for academic year 2010–2011, $7,780;

(cc) for academic year 2011–2012, $8,550; and

(dd) for academic year 2012–2013, $9,330; and

(II) for married students where 1 is enrolled pursuant to subsection (a)(2)—

(aa) for academic year 2009–2010, $11,220;

(bb) for academic year 2010–2011, $12,460;

(cc) for academic year 2011–2012, $13,710; and

(dd) for academic year 2012–2013, $14,960;

(v) in the case where a spouse is present, an employment expense allowance, as determined in accordance with paragraph (4); and

(vi) the amount of any tax credit taken under section 25A of title 26; and

(B) assessing such available income in accordance with paragraph (5).

(2) Allowance for State and other taxes

The allowance for State and other taxes is equal to an amount determined by multiplying total income (as defined in section 1087vv of this title) by a percentage determined according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

Percentages for Computation of State and Other Tax Allowance

If the students' State or territory of residence is—	The percentage is—
Alaska, American Samoa, Florida, Guam, Nevada, South Dakota, Tennessee, Texas, Trust Territory, Virgin Islands, Washington, Wyoming	0
Connecticut, Louisiana, Puerto Rico	1
Arizona, New Hampshire, New Mexico, North Dakota	2
Alabama, Colorado, Illinois, Indiana, Kansas, Mississippi, Missouri, Montana, Nebraska, New Jersey, Oklahoma	3
Arkansas, Georgia, Iowa, Kentucky, Maine, Pennsylvania, Utah, Vermont, Virginia, West Virginia, Canada, Mexico	4
California, Idaho, Massachusetts, North Carolina, Ohio, Rhode Island, South Carolina	5
Hawaii, Maryland, Michigan, Wisconsin	6
Delaware, District of Columbia, Minnesota, Oregon	7
New York	8
Other	4

(3) Allowance for social security taxes

The allowance for social security taxes is equal to the amount earned by the student (and spouse, if appropriate), multiplied by the social security withholding rate appropriate to the tax year preceding the award year, up to the maximum statutory social security tax withholding amount for that same tax year.

(4) Employment expenses allowance

The employment expense allowance is determined as follows (or using a successor provision prescribed by the Secretary under section 1087rr of this title):

(A) If the student is married and the student's spouse is employed in the year for which income is reported, such allowance is equal to the lesser of $2,500 or 35 percent of the earned income of the student or spouse with the lesser earned income.

(B) If a student is not married, the employment expense allowance is zero.

(5) Assessment of available income

The family's available income (determined in accordance with paragraph (1)(A) of this subsection) is assessed at 50 percent.

(c) Family contribution from assets

(1) In general

The family's contribution from assets is equal to—

(A) the family's net worth (determined in accordance with paragraph (2)); minus

(B) the asset protection allowance (determined in accordance with paragraph (3)); multiplied by

(C) the asset conversion rate (determined in accordance with paragraph (4));

except that the family's contribution from assets shall not be less than zero.

(2) Family's net worth

The family's net worth is calculated by adding—

(A) the current balance of checking and savings accounts and cash on hand;

(B) the net value of investments and real estate, excluding the net value in the principal place of residence; and

(C) the adjusted net worth of a business or farm, computed on the basis of the net worth of such business or farm (hereafter referred to as ''NW''), determined in accordance with the following table (or a successor table prescribed by the Secretary under section 1087rr of this title), except as provided under section 1087vv(f) of this title:

Adjusted Net Worth of a Business or Farm

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0
$1–$75,000	40 percent of NW
$75,001–$225,000	$30,000 plus 50 percent of NW over $75,000
$225,001–$375,000	$105,000 plus 60 percent of NW over $225,000
$375,001 or more	$195,000 plus 100 percent of NW over $375,000

(3) Asset protection allowance

The asset protection allowance is calculated according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

Asset Protection Allowances for Families and Students

If the age of the student is—	And the student is	
	married	single
	then the allowance is—	
25 or less	$ 0	$0
26	2,200	1,600
27	4,300	3,200
28	6,500	4,700
29	8,600	6,300
30	10,800	7,900
31	13,000	9,500
32	15,100	11,100
33	17,300	12,600
34	19,400	14,200
35	21,600	15,800
36	23,800	17,400
37	25,900	19,000
38	28,100	20,500
39	30,200	22,100
40	32,400	23,700
41	33,300	24,100
42	34,100	24,700
43	35,000	25,200
44	35,700	25,800
45	36,600	26,300
46	37,600	26,900
47	38,800	27,600
48	39,800	28,200
49	40,800	28,800
50	41,800	29,500
51	43,200	30,200
52	44,300	31,100
53	45,700	31,800
54	47,100	32,600
55	48,300	33,400
56	49,800	34,400
57	51,300	35,200
58	52,900	36,200
59	54,800	37,200
60	56,500	38,100
61	58,500	39,200

Asset Protection Allowances for Families and Students—Continued

If the age of the student is—	And the student is	
	married	single
	then the allowance is—	
62	60,300	40,300
63	62,400	41,500
64	64,600	42,800
65 or more	66,800	44,000

(4) Asset conversion rate

The asset conversion rate is 20 percent.

(d) Computations in case of separation, divorce, or death

In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income and assets shall not be considered in determining the family's contribution from income or assets.

(Pub. L. 89–329, title IV, § 476, as added Pub. L. 99–498, title IV, § 406(a), Oct. 17, 1986, 100 Stat. 1463; amended Pub. L. 100–50, § 14(1), (3), (4), (13)–(17), June 3, 1987, 101 Stat. 349, 351; Pub. L. 102–325, title IV, § 471(a), July 23, 1992, 106 Stat. 594; Pub. L. 103–208, § 2(g)(6), Dec. 20, 1993, 107 Stat. 2472; Pub. L. 105–78, title VI, § 609(h), Nov. 13, 1997, 111 Stat. 1524; Pub. L. 105–244, title IV, § 474, Oct. 7, 1998, 112 Stat. 1730; Pub. L. 109–171, title VIII, § 8017(b)(1), Feb. 8, 2006, 120 Stat. 173; Pub. L. 110–84, title VI, § 601(b), Sept. 27, 2007, 121 Stat. 801.)

AMENDMENTS

2007—Subsec. (b)(1)(A)(iv). Pub. L. 110–84 amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''an income protection allowance of the following amount (or a successor amount prescribed by the Secretary under section 1087rr of this title)—

''(I) $6,050 for single students;

''(II) $6,050 for married students where both are enrolled pursuant to subsection (a)(2) of this section; and

''(III) $9,700 for married students where one is enrolled pursuant to subsection (a)(2) of this section;''.

2006—Subsec. (b)(1)(A)(iv). Pub. L. 109–171, § 8017(b)(1)(A), substituted ''$6,050'' for ''$5,000'' in subcls. (I) and (II) and ''$9,700'' for ''$8,000'' in subcl. (III).

Subsec. (c)(4). Pub. L. 109–171, § 8017(b)(1)(B), substituted ''20'' for ''35''.

1998—Subsec. (a)(3). Pub. L. 105–244, § 474(a), added par. (3).

Subsec. (b)(1)(A)(iv). Pub. L. 105–244, § 474(b)(1), in introductory provisions, substituted ''allowance of the following amount (or a successor amount prescribed by the Secretary under section 1087rr of this title)—'' for ''allowance of—''.

Subsec. (b)(1)(A)(iv)(I), (II). Pub. L. 105–244, § 474(b)(2), substituted ''$5,000'' for ''$3,000''.

Subsec. (b)(1)(A)(iv)(III). Pub. L. 105–244, § 474(b)(3), substituted ''$8,000'' for ''$6,000''.

1997—Subsec. (b)(1)(A)(vi). Pub. L. 105–78 added cl. (vi).

1993—Subsec. (d). Pub. L. 103–208 added subsec. (d).

1992—Pub. L. 102–325 amended section generally, substituting provisions relating to family contribution for independent students without dependents other than a spouse for provisions relating to family contribution for independent students without dependents (including a spouse).

1987—Subsec. (b)(1)(A), (B). Pub. L. 100–50, § 14(13)(B), (C), substituted subpar. (A) and introductory provisions of subpar. (B) for introductory provisions of former subpar. (A) which read as follows: ''computing the student's available taxable income by deducting from the student's adjusted gross income—''. Former subpar. (B) redesignated (C).

Subsec. (b)(1)(C). Pub. L. 100–50, § 14(13)(B), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (b)(1)(D). Pub. L. 100–50, § 14(15), which directed that subsec. (b)(1)(C) be amended by inserting ''plus the amount of veterans' benefits paid during the award period under chapters 32, 34, and 35 of title 28'', was executed to subpar. (D) to reflect the probable intent of Congress and the intervening redesignation of subpar. (C) as (D) by section 14(13)(B) of Pub. L. 100–50.

Pub. L. 100–50, § 14(13)(A), (B), redesignated subpar. (C) as (D) and substituted ''subparagraph (C)'' for ''subparagraph (B)''.

Subsec. (b)(2). Pub. L. 100–50, § 14(1), (14), substituted ''total income'' for ''total taxable income'' and ''section 1087rr of this title'' for ''section 1087ss of this title''.

Subsec. (b)(4)(A). Pub. L. 100–50, § 14(16)(A), substituted ''$8,600'' for ''$8,900''.

Subsec. (b)(4)(B). Pub. L. 100–50, § 14(16), substituted ''$8,600'' for ''$8,900'' in two places and ''$6,020'' for ''$6,230''.

Subsec. (c)(1). Pub. L. 100–50, § 14(17), substituted a semicolon for a period at end of subpar. (C) and inserted, after subpar. (C), provision that the student's income supplemental amount from assets not be less than zero.

Subsec. (c)(2)(B). Pub. L. 100–50, § 14(3), substituted ''displaced homemaker'' for ''dislocated homemaker''.

Subsec. (c)(2)(C). Pub. L. 100–50, § 14(4), added table and struck out former table which read as follows:

''Adjusted Net Worth of a Business or Farm

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0
$1–$65,000	40 percent of NW
$65,001–$195,000	$26,000 plus 50 percent of NW over $65,000
$195,001–$325,000	$91,000 plus 60 percent of NW over $195,000
$325,001 or more	$169,000 plus 100 percent of NW over $325,000''.

Pub. L. 100–50, § 14(1), substituted ''section 1087rr of this title'' for ''section 1087ss of this title''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–84 effective July 1, 2009, see section 601(e) of Pub. L. 110–84, set out as a note under section 1087*oo* of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Pub. L. 109–171, title VIII, § 8017(b)(2), Feb. 8, 2006, 120 Stat. 173, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to determinations of need for periods of enrollment beginning on or after July 1, 2007.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244, effective Oct. 7, 1998, and applicable with respect to determinations of need under this part for academic years beginning on or after July 1, 2000, see section 480A of Pub. L. 105–244, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of

Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

§ 1087qq. Family contribution for independent students with dependents other than a spouse

(a) Computation of expected family contribution

For each independent student with dependents other than a spouse, the expected family contribution is equal to the amount determined by—

(1) computing adjusted available income by adding—

(A) the family's available income (determined in accordance with subsection (b) of this section); and

(B) the family's contribution from assets (determined in accordance with subsection (c) of this section);

(2) assessing such adjusted available income in accordance with an assessment schedule set forth in subsection (d) of this section;

(3) dividing the assessment resulting under paragraph (2) by the number of family members who are enrolled or accepted for enrollment, on at least a half-time basis, in a degree, certificate, or other program leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 1094 of this title during the award period for which assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 is requested; and

(4) for periods of enrollment of less than 9 months, for purposes other than subpart 2 of part A of this subchapter—

(A) dividing the quotient resulting under paragraph (3) by 9; and

(B) multiplying the result by the number of months in the period of enrollment;

except that the amount determined under this subsection shall not be less than zero.

(b) Family's available income

(1) In general

The family's available income is determined by deducting from total income (as defined in section 1087vv of this title)—

(A) Federal income taxes;

(B) an allowance for State and other taxes, determined in accordance with paragraph (2);

(C) an allowance for social security taxes, determined in accordance with paragraph (3);

(D) an income protection allowance, determined in accordance with paragraph (4);

(E) an employment expense allowance, determined in accordance with paragraph (5); and

(F) the amount of any tax credit taken under section 25A of title 26.

(2) Allowance for State and other taxes

The allowance for State and other taxes is equal to an amount determined by multiplying total income (as defined in section 1087vv of this title) by a percentage determined according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

Percentages for Computation of State and Other Tax Allowance

If student's State or territory of residence is—	And family's total income is—	
	less than $15,000	$15,000 or more
	then the percentage is—	
Alaska, Puerto Rico, Wyoming	3	2
American Samoa, Guam, Louisiana, Nevada, Texas, Trust Territory, Virgin Islands	4	3
Florida, South Dakota, Tennessee, New Mexico	5	4
North Dakota, Washington	6	5
Alabama, Arizona, Arkansas, Indiana, Mississippi, Missouri, Montana, New Hampshire, Oklahoma, West Virginia	7	6
Colorado, Connecticut, Georgia, Illinois, Kansas, Kentucky	8	7
California, Delaware, Idaho, Iowa, Nebraska, North Carolina, Ohio, Pennsylvania, South Carolina, Utah, Vermont, Virginia, Canada, Mexico	9	8
Maine, New Jersey	10	9
District of Columbia, Hawaii, Maryland, Massachusetts, Oregon, Rhode Island	11	10
Michigan, Minnesota	12	11
Wisconsin	13	12
New York	14	13
Other	9	8

(3) Allowance for social security taxes

The allowance for social security taxes is equal to the amount estimated to be earned by the student (and spouse, if appropriate) multiplied by the social security withholding rate appropriate to the tax year preceding the award year, up to the maximum statutory social security tax withholding amount for that same tax year.

(4) Income protection allowance

The income protection allowance is determined by the tables described in subparagraphs (A) through (D) (or a successor table prescribed by the Secretary under section 1087rr of this title).

(A) Academic year 2009–2010

For academic year 2009–2010, the income protection allowance is determined by the following table:

Income Protection Allowance

Family Size	Number in College					
(including student)	1	2	3	4	5	For each additional subtract:
2	$17,720	$14,690				
3	22,060	19,050	$16,020			
4	27,250	24,220	21,210	$18,170		
5	32,150	29,120	26,100	23,070	$20,060	
6	37,600	34,570	31,570	28,520	25,520	$3,020
For each additional add:	4,240	4,240	4,240	4,240	4,240	

(B) Academic year 2010–2011

For academic year 2010–2011, the income protection allowance is determined by the following table:

Income Protection Allowance

Family Size	Number in College					
(including student)	1	2	3	4	5	For each additional subtract:
2	$19,690	$16,330				
3	24,510	21,160	$17,800			
4	30,280	26,910	23,560	$20,190		
5	35,730	32,350	29,000	25,640	$22,290	
6	41,780	38,410	35,080	31,690	28,350	$3,350
For each additional add:	4,710	4,710	4,710	4,710	4,710	

(C) Academic year 2011–2012

For academic year 2011–2012, the income protection allowance is determined by the following table:

Income Protection Allowance

Family Size	Number in College					
(including student)	1	2	3	4	5	For each additional subtract:
2	$21,660	$17,960				
3	26,960	23,280	$19,580			
4	33,300	29,600	25,920	$22,210		
5	39,300	35,590	31,900	28,200	$24,520	
6	45,950	42,250	38,580	34,860	31,190	$3,690
For each additional add:	5,180	5,180	5,180	5,180	5,180	

(D) Academic year 2012–2013

For academic year 2012–2013, the income protection allowance is determined by the following table:

Income Protection Allowance

Family Size	Number in College					
(including student)	1	2	3	4	5	For each additional subtract:
2	$23,630	$19,590				
3	29,420	25,400	$21,360			
4	36,330	32,300	28,280	$24,230		
5	42,870	38,820	34,800	30,770	$26,750	
6	50,130	46,100	42,090	38,030	34,020	$4,020
For each additional add:	5,660	5,660	5,660	5,660	5,660	

(5) Employment expense allowance

The employment expense allowance is determined as follows (or a successor table prescribed by the Secretary under section 1087rr of this title):

(A) If the student is married and the student's spouse is employed in the year for which their income is reported, such allowance is equal to the lesser of $2,500 or 35 percent of the earned income of the student or spouse with the lesser earned income.

(B) If a student qualifies as a surviving spouse or as a head of household as defined in section 2 of title 26, such allowance is equal to the lesser of $2,500 or 35 percent of the student's earned income.

(c) Family's contribution from assets

(1) In general

The family's contribution from assets is equal to—

(A) the family net worth (determined in accordance with paragraph (2)); minus

(B) the asset protection allowance (determined in accordance with paragraph (3)); multiplied by

(C) the asset conversion rate (determined in accordance with paragraph (4)), except that the result shall not be less than zero.

(2) Family net worth

The family net worth is calculated by adding—

(A) the current balance of checking and savings accounts and cash on hand;

(B) the net value of investments and real estate, excluding the net value in the principal place of residence; and

(C) the adjusted net worth of a business or farm, computed on the basis of the net worth of such business or farm (hereafter referred to as ''NW''), determined in accordance with the following table (or a successor table prescribed by the Secretary under section 1087rr of this title), except as provided under section 1087vv(f) of this title:

Adjusted Net Worth of a Business or Farm

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0
$1–$75,000	40 percent of NW
$75,001–$225,000	$30,000 plus 50 percent of NW over $75,000
$225,001–$375,000	$105,000 plus 60 percent of NW over $225,000
$375,001 or more	$195,000 plus 100 percent of NW over $375,000

(3) Asset protection allowance

The asset protection allowance is calculated according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

Asset Protection Allowances for Families and Students

If the age of the student is—	And the student is	
	married	single
	then the allowance is—	
25 or less	$ 0	$0

Asset Protection Allowances for Families and Students—Continued

If the age of the student is—	And the student is	
	married	single
	then the allowance is—	
26	2,200	1,600
27	4,300	3,200
28	6,500	4,700
29	8,600	6,300
30	10,800	7,900
31	13,000	9,500
32	15,100	11,100
33	17,300	12,600
34	19,400	14,200
35	21,600	15,800
36	23,800	17,400
37	25,900	19,000
38	28,100	20,500
39	30,200	22,100
40	32,400	23,700
41	33,300	24,100
42	34,100	24,700
43	35,000	25,200
44	35,700	25,800
45	36,600	26,300
46	37,600	26,900
47	38,800	27,600
48	39,800	28,200
49	40,800	28,800
50	41,800	29,500
51	43,200	30,200
52	44,300	31,100
53	45,700	31,800
54	47,100	32,600
55	48,300	33,400
56	49,800	34,400
57	51,300	35,200
58	52,900	36,200
59	54,800	37,200
60	56,500	38,100
61	58,500	39,200
62	60,300	40,300
63	62,400	41,500
64	64,600	42,800
65 or more	66,800	44,000

(4) Asset conversion rate

The asset conversion rate is 7 percent.

(d) Assessment schedule

The adjusted available income (as determined under subsection (a)(1) of this section and hereafter referred to as ''AAI'') is assessed according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

Assessment From Adjusted Available Income (AAI)

If AAI is—	Then the assessment is—
Less than −$3,409	−$750
−$3,409 to $9,400	22% of AAI
$9,401 to $11,800	$2,068 + 25% of AAI over $9,400
$11,801 to $14,200	$2,668 + 29% of AAI over $11,800
$14,201 to $16,600	$3,364 + 34% of AAI over $14,200
$16,601 to $19,000	$4,180 + 40% of AAI over $16,600
$19,001 or more	$5,140 + 47% of AAI over $19,000

(e) Computations in case of separation, divorce, or death

In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income and assets shall not be considered in de-

termining the family's available income or assets.

(Pub. L. 89–329, title IV, § 477, as added Pub. L. 99–498, title IV, § 406(a), Oct. 17, 1986, 100 Stat. 1465; amended Pub. L. 100–50, § 14(1)–(6), (8), (18), (19), June 3, 1987, 101 Stat. 349–351; Pub. L. 102–325, title IV, § 471(a), July 23, 1992, 106 Stat. 597; Pub. L. 103–208, § 2(g)(2), (7), Dec. 20, 1993, 107 Stat. 2472; Pub. L. 105–78, title VI, § 609(i), Nov. 13, 1997, 111 Stat. 1524; Pub. L. 105–244, title IV, § 475, Oct. 7, 1998, 112 Stat. 1730; Pub. L. 109–171, title VIII, § 8017(c)(1), Feb. 8, 2006, 120 Stat. 173; Pub. L. 110–84, title VI, § 601(c), Sept. 27, 2007, 121 Stat. 802; Pub. L. 111–39, title IV, § 406(a)(3), July 1, 2009, 123 Stat. 1948.)

AMENDMENTS

2009—Subsec. (b)(5)(B). Pub. L. 111–39 made technical amendment to reference in original act which appears in text as reference to section 2 of title 26.

2007—Subsec. (b)(4). Pub. L. 110–84 amended par. (4) generally. Prior to amendment, par. (4) consisted of a single table to be used to determine income protection allowances.

2006—Subsec. (c)(4). Pub. L. 109–171 substituted "7" for "12".

1998—Subsec. (a)(4). Pub. L. 105–244 added par. (4).

1997—Subsec. (b)(1)(F). Pub. L. 105–78 added subpar. (F).

1993—Subsec. (b)(4). Pub. L. 103–208, § 2(g)(2), substituted "$9,510" for "9,510" in table.

Subsec. (e). Pub. L. 103–208, § 2(g)(7), added subsec. (e).

1992—Pub. L. 102–325 amended section generally, substituting provisions relating to family contribution for independent students with dependents other than a spouse for provisions relating to family contribution for independent students with dependents (including a spouse).

1987—Subsec. (a)(1)(C). Pub. L. 100–50, § 14(18), added subpar. (C).

Subsec. (b)(2). Pub. L. 100–50, § 14(1), substituted "section 1087rr of this title" for "section 1087ss of this title".

Subsec. (b)(5)(A). Pub. L. 100–50, § 14(19), substituted "$2,100" for "$2,000".

Subsec. (b)(7). Pub. L. 100–50, § 14(2), struck out "National" before "Center".

Subsec. (c)(2)(B). Pub. L. 100–50, § 14(3), substituted "displaced homemaker" for "dislocated homemaker".

Subsec. (c)(2)(C). Pub. L. 100–50, § 14(1), (4), substituted "section 1087rr of this title" for "section 1087ss of this title" in text, added table, and struck out former table which read as follows:

"Adjusted Net Worth of a Business or Farm

If the net worth of a business or farm is—	Then the adjusted net worth is:
Less than $1	$0
$1–$65,000	40 percent of NW
$65,001–$195,000	$26,000 plus 50 percent of NW over $65,000
$195,001–$325,000	$91,000 plus 60 percent of NW over $195,000
$325,001 or more	$169,000 plus 100 percent of NW over $325,000".

Subsec. (c)(4)(B). Pub. L. 100–50, § 14(5), substituted "$15,999" for "$15,000".

Subsec. (c)(4)(C). Pub. L. 100–50, § 14(6), substituted "$16,000" for "$15,000" in three places.

Subsec. (d). Pub. L. 100–50, § 14(1), (8), substituted "section 1087rr of this title" for "section 1087ss of this title" in text and inserted a minus sign before "$3,409" in two places in table.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–84 effective July 1, 2009, see section 601(e) of Pub. L. 110–84, set out as a note under section 1087*oo* of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Pub. L. 109–171, title VIII, § 8017(c)(2), Feb. 8, 2006, 120 Stat. 173, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to determinations of need for periods of enrollment beginning on or after July 1, 2007."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244, effective Oct. 7, 1998, and applicable with respect to determinations of need under this part for academic years beginning on or after July 1, 2000, see section 480A of Pub. L. 105–244, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

§ 1087rr. Regulations; updated tables

(a) Authority to prescribe regulations restricted

(1) Notwithstanding any other provision of law, the Secretary shall not have the authority to prescribe regulations to carry out this part except—

(A) to prescribe updated tables in accordance with subsections (b) through (h) of this section; or

(B) to propose modifications in the need analysis methodology required by this part.

(2) Any regulation proposed by the Secretary that (A) updates tables in a manner that does not comply with subsections (b) through (h) of this section, or (B) that proposes modifications under paragraph (1)(B) of this subsection, shall not be effective unless approved by joint resolution of the Congress by May 1 following the date such regulations are published in the Federal Register in accordance with section 1089 of this title. If the Congress fails to approve such regulations by such May 1, the Secretary shall publish in the Federal Register in accordance with section 1089 of this title updated tables for the applicable award year that are prescribed in accordance with subsections (b) through (h) of this section.

(b) Income protection allowance

(1) Revised tables

(A) In general

For each academic year after academic year 2008–2009, the Secretary shall publish in the Federal Register a revised table of income protection allowances for the purpose of sections 1087*oo*(c)(4) and 1087qq(b)(4) of this title, subject to subparagraphs (B) and (C).

(B) Table for independent students

(i) Academic years 2009–2010 through 2012–2013

For each of the academic years 2009–2010 through 2012–2013, the Secretary shall not develop a revised table of income protection allowances under section 1087qq(b)(4) of this title and the table specified for such academic year under subparagraphs (A) through (D) of such section shall apply.

(ii) Other academic years

For each academic year after academic year 2012–2013, the Secretary shall develop the revised table of income protection allowances by increasing each of the dollar amounts contained in the table of income protection allowances under section 1087qq(b)(4)(D) of this title by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 2011 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10.

(C) Table for parents

For each academic year after academic year 2008–2009, the Secretary shall develop the revised table of income protection allowances under section 1087*oo*(c)(4) of this title by increasing each of the dollar amounts contained in the table by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 1992 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10.

(2) Revised amounts

For each academic year after academic year 2007–2008, the Secretary shall publish in the Federal Register revised income protection allowances for the purpose of sections 1087*oo*(g)(2)(D) and 1087pp(b)(1)(A)(iv) of this title. Such revised allowances shall be developed for each academic year after academic year 2012–2013, by increasing each of the dollar amounts contained in such section for academic year 2012–2013 by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 2011 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10.

(c) Adjusted net worth of a farm or business

For each award year after award year 1993–1994, the Secretary shall publish in the Federal Register a revised table of adjusted net worth of a farm or business for purposes of sections 1087*oo*(d)(2)(C), 1087pp(c)(2)(C), and 1087qq(c)(2)(C) of this title. Such revised table shall be developed—

(1) by increasing each dollar amount that refers to net worth of a farm or business by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 1992 and the December next preceding the beginning of such award year, and rounding the result to the nearest $5,000; and

(2) by adjusting the dollar amounts ''$30,000'', ''$105,000'', and ''$195,000'' to reflect the changes made pursuant to paragraph (1).

(d) Education savings and asset protection allowance

For each award year after award year 1993–1994, the Secretary shall publish in the Federal Register a revised table of allowances for the purpose of sections 1087*oo*(d)(3), 1087pp(c)(3), and 1087qq(c)(3) of this title. Such revised table shall be developed by determining the present value cost, rounded to the nearest $100, of an annuity that would provide, for each age cohort of 40 and above, a supplemental income at age 65 (adjusted for inflation) equal to the difference between the moderate family income (as most recently determined by the Bureau of Labor Statistics), and the current average social security retirement benefits. For each age cohort below 40, the allowance shall be computed by decreasing the allowance for age 40, as updated, by one-fifteenth for each year of age below age 40 and rounding the result to the nearest $100. In making such determinations—

(1) inflation shall be presumed to be 6 percent per year;

(2) the rate of return of an annuity shall be presumed to be 8 percent; and

(3) the sales commission on an annuity shall be presumed to be 6 percent.

(e) Assessment schedules and rates

For each award year after award year 1993–1994, the Secretary shall publish in the Federal Register a revised table of assessments from adjusted available income for the purpose of sections 1087*oo*(e) and 1087qq(d) of this title. Such revised table shall be developed—

(1) by increasing each dollar amount that refers to adjusted available income by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 1992 and the December next preceding the beginning of such academic year, rounded to the nearest $100; and

(2) by adjusting the other dollar amounts to reflect the changes made pursuant to paragraph (1).

(f) "Consumer Price Index" defined

As used in this section, the term ''Consumer Price Index'' means the Consumer Price Index for All Urban Consumers published by the Department of Labor. Each annual update of tables to reflect changes in the Consumer Price Index shall be corrected for misestimation of actual changes in such Index in previous years.

(g) State and other tax allowance

For each award year after award year 1993–1994, the Secretary shall publish in the Federal Register a revised table of State and other tax allowances for the purpose of sections 1087*oo*(c)(2), 1087*oo*(g)(3), 1087pp(b)(2), and 1087qq(b)(2) of this title. The Secretary shall develop such revised table after review of the Department of the Treasury's Statistics of Income file and determination of the percentage of income that each State's taxes represent.

(h) Employment expense allowance

For each award year after award year 1993–1994, the Secretary shall publish in the Federal Register a revised table of employment expense allowances for the purpose of sections 1087*oo*(c)(5), 1087pp(b)(4), and 1087qq(b)(5) of this title. Such revised table shall be developed by increasing the dollar amount specified in sections 1087*oo*(c)(5)(A), 1087*oo*(c)(5)(B), 1087pp(b)(4)(A), 1087qq (b)(5)(A), and 1087qq(b)(5)(B) of this title to reflect increases in the amount and percent of the Bureau of Labor Statistics budget of the marginal costs for food away from home, apparel, transportation, and household furnishings and operations for a two-worker versus one-worker family.

(Pub. L. 89–329, title IV, § 478, as added Pub. L. 99–498, title IV, § 406(a), Oct. 17, 1986, 100 Stat. 1470; amended Pub. L. 100–50, § 14(20)–(22), June 3, 1987, 101 Stat. 351, 352; Pub. L. 102–325, title IV, § 471(a), July 23, 1992, 106 Stat. 602; Pub. L. 103–208, § 2(g)(8), (9), Dec. 20, 1993, 107 Stat. 2472; Pub. L. 105–244, title IV, § 476, Oct. 7, 1998, 112 Stat. 1730; Pub. L. 109–171, title VIII, § 8017(d), (e), Feb. 8, 2006, 120 Stat. 173, 174; Pub. L. 110–84, title VI, § 601(d), Sept. 27, 2007, 121 Stat. 803.)

AMENDMENTS

2007—Subsec. (b)(1). Pub. L. 110–84, § 601(d)(1), added par. (1) and struck out former par. (1). Prior to amendment, par. (1) required the Secretary to publish in the Federal Register, for each academic year after academic year 1993–1994, a revised table of income protection allowances for the purpose of sections 1087*oo*(c)(4) and 1087qq(b)(4) of this title.

Subsec. (b)(2). Pub. L. 110–84, § 601(d)(2), substituted "shall be developed for each academic year after academic year 2012–2013, by increasing each of the dollar amounts contained in such section for academic year 2012–2013 by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 2011 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10." for "shall be developed by increasing each of the dollar amounts contained in such section by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 2006 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10."

2006—Subsec. (b)(1). Pub. L. 109–171, § 8017(d)(1), inserted at end "For the 2007–2008 academic year, the Secretary shall revise the tables in accordance with this paragraph, except that the Secretary shall increase the amounts contained in the table in section 1087qq(b)(4) of this title by a percentage equal to the greater of the estimated percentage increase in the Consumer Price Index (as determined under the preceding sentence) or 5 percent."

Subsec. (b)(2). Pub. L. 109–171, § 8017(d)(2), substituted "2007–2008" for "2000–2001" and "2006" for "1999".

Subsec. (h). Pub. L. 109–171, § 8017(e), struck out "1087pp(b)(4)(B)," after "1087pp(b)(4)(A)," and substituted "food away from home, apparel, transportation, and household furnishings and operations" for "meals away from home, apparel and upkeep, transportation, and housekeeping services".

1998—Subsec. (b). Pub. L. 105–244 designated existing provisions as par. (1), inserted heading, and added par. (2).

1993—Subsec. (b). Pub. L. 103–208, § 2(g)(8)(A), substituted "1993–1994" for "1992–1993".

Subsec. (c). Pub. L. 103–208, § 2(g)(8), substituted "1993–1994" for "1992–1993" in introductory provisions and inserted "December" before "1992" in par. (1).

Subsecs. (d), (e), (g). Pub. L. 103–208, § 2(g)(8)(A), substituted "1993–1994" for "1992–1993".

Subsec. (h). Pub. L. 103–208, § 2(g)(8)(A), (9), substituted "1993–1994" for "1992–1993" and "Bureau of Labor Statistics" for "Bureau of Labor Standards".

1992—Pub. L. 102–325 amended section generally, revising and restating as subsecs. (a) to (h) provisions formerly contained in subsecs. (a) to (f).

1987—Subsec. (c)(2). Pub. L. 100–50, § 14(21), substituted "'$24,000', '$84,000', and '$156,000'" for "'$26,000', '$91,000', and '$169,000'".

Subsec. (d). Pub. L. 100–50, § 14(20), inserted ", rounded to the nearest $100," after "present value cost" and "of 40 and above" after "each age cohort" in second sentence and, after second sentence, inserted "For each age cohort below 40, the asset protection allowance shall be computed by decreasing the asset protection allowance for age 40, as updated, by one-fifteenth for each year of age below age 40 and rounding the result to the nearest $100."

Subsec. (f). Pub. L. 100–50, § 14(22), substituted "Consumer Price Index for All Urban Consumers" for "Consumer Price Index for Wage Earners and Clerical Workers".

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–84 effective July 1, 2009, see section 601(e) of Pub. L. 110–84, set out as a note under section 1087*oo* of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 7, 1998, see section 480A of Pub. L. 105–244, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

§ 1087ss. Simplified needs test

(a) Simplified application section

(1) In general

The Secretary shall develop and use an easily identifiable simplified application section

as part of the common financial reporting form prescribed under section 1090(a) of this title for families described in subsections (b) and (c) of this section.

(2) Reduced data requirements

The simplified application form shall—

(A) in the case of a family meeting the requirements of subsection (b)(1) of this section, permit such family to submit only the data elements required under subsection (b)(2) of this section for the purposes of establishing eligibility for student financial aid under this part; and

(B) in the case of a family meeting the requirements of subsection (c) of this section, permit such family to be treated as having an expected family contribution equal to zero for purposes of establishing such eligibility and to submit only the data elements required to make a determination under subsection (c) of this section.

(b) Simplified needs test

(1) Eligibility

An applicant is eligible to file a simplified form containing the elements required by paragraph (2) if—

(A) in the case of an applicant who is a dependent student—

(i) the student's parents—

(I) file, or are eligible to file, a form described in paragraph (3);

(II) certify that the parents are not required to file a Federal income tax return;

(III) include at least one parent who is a dislocated worker; or

(IV) received, or the student received, benefits at some time during the previous 24-month period under a means-tested Federal benefit program as defined under subsection (d); and

(ii) the total adjusted gross income of the parents (excluding any income of the dependent student) is less than $50,000; or

(B) in the case of an applicant who is an independent student—

(i) the student (and the student's spouse, if any)—

(I) files, or is eligible to file, a form described in paragraph (3);

(II) certifies that the student (and the student's spouse, if any) is not required to file a Federal income tax return;

(III) is a dislocated worker or has a spouse who is a dislocated worker; or

(IV) received benefits at some time during the previous 24-month period under a means-tested Federal benefit program as defined under subsection (d); and

(ii) the adjusted gross income of the student (and the student's spouse, if any) is less than $50,000.

(2) Simplified test elements

The six elements to be used for the simplified needs analysis are—

(A) adjusted gross income,

(B) Federal taxes paid,

(C) untaxed income and benefits,

(D) the number of family members,

(E) the number of family members in postsecondary education, and

(F) an allowance (A) for State and other taxes, as defined in section 1087*oo*(c)(2) of this title for dependent students and in section 1087qq(b)(2) of this title for independent students with dependents other than a spouse, or (B) for State and other income taxes, as defined in section 1087pp(b)(2) of this title for independent students without dependents other than a spouse.

(3) Qualifying forms

In the case of an independent student, the student, or in the case of a dependent student, the family, files a form described in this subsection, or subsection (c), as the case may be, if the student or family, as appropriate, files—

(A) a form 1040A or 1040EZ (including any prepared or electronic version of such form) required pursuant to title 26;

(B) a form 1040 (including any prepared or electronic version of such form) required pursuant to title 26, except that such form shall be considered a qualifying form only if the student or family files such form in order to take a tax credit under section 25A of title 26, and would otherwise be eligible to file a form described in subparagraph (A); or

(C) an income tax return (including any prepared or electronic version of such return) required pursuant to the tax code of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or Palau.

(c) Zero expected family contribution

The Secretary shall consider an applicant to have an expected family contribution equal to zero if—

(1) in the case of a dependent student—

(A) the student's parents—

(i) file, or are eligible to file, a form described in subsection (b)(3);

(ii) certify that the parents are not required to file a Federal income tax return;

(iii) include at least one parent who is a dislocated worker; or

(iv) received, or the student received, benefits at some time during the previous 24-month period under a means-tested Federal benefit program as defined under subsection (d); and

(B) the sum of the adjusted gross income of the parents is less than or equal to $23,000; or

(2) in the case of an independent student with dependents other than a spouse—

(A) the student (and the student's spouse, if any)—

(i) files, or is eligible to file, a form described in subsection (b)(3);

(ii) certifies that the student (and the student's spouse, if any) is not required to file a Federal income tax return;

(iii) is a dislocated worker or has a spouse who is a dislocated worker; or

(iv) received benefits at some time during the previous 24-month period under a means-tested Federal benefit program as defined under subsection (d); and

(B) the sum of the adjusted gross income of the student and spouse (if appropriate) is less than or equal to $23,000.

An individual is not required to qualify or file for the earned income credit in order to be eligible under this subsection. The Secretary shall annually adjust the income level necessary to qualify an applicant for the zero expected family contribution. The income level shall be adjusted according to increases in the Consumer Price Index, as defined in section 1087rr(f) of this title.

(d) Definitions

In this section:

(1) Dislocated worker

The term ''dislocated worker'' has the meaning given the term in section 2801 of title 29.

(2) Means-tested Federal benefit program

The term ''means-tested Federal benefit program'' means a mandatory spending program of the Federal Government, other than a program under this subchapter and part C of subchapter I of chapter 34 of title 42, in which eligibility for the program's benefits, or the amount of such benefits, are determined on the basis of income or resources of the individual or family seeking the benefit, and may include such programs as—

(A) the supplemental security income program under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.);

(B) the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

(C) the free and reduced price school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);

(D) the program of block grants for States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(E) the special supplemental nutrition program for women, infants, and children established by section 1786 of title 42; and

(F) other programs identified by the Secretary.

(Pub. L. 89–329, title IV, § 479, as added Pub. L. 99–498, title IV, § 406(a), Oct. 17, 1986, 100 Stat. 1472; amended Pub. L. 100–50, § 14(23)–(25), June 3, 1987, 101 Stat. 352; Pub. L. 100–369, § 7(c), July 18, 1988, 102 Stat. 837; Pub. L. 102–26, § 11, Apr. 9, 1991, 105 Stat. 129; Pub. L. 102–325, title IV, § 471(a), July 23, 1992, 106 Stat. 604; Pub. L. 103–208, § 2(g)(10)–(15), Dec. 20, 1993, 107 Stat. 2472; Pub. L. 105–244, title IV, § 477, Oct. 7, 1998, 112 Stat. 1731; Pub. L. 109–171, title VIII, § 8018(a), Feb. 8, 2006, 120 Stat. 174; Pub. L. 110–84, title VI, § 602(a), Sept. 27, 2007, 121 Stat. 804; Pub. L. 110–234, title IV, § 4002(b)(1)(A), (B), (2)(N), May 22, 2008, 122 Stat. 1095–1097; Pub. L. 110–246, § 4(a), title IV, § 4002(b)(1)(A), (B), (2)(N), June 18, 2008, 122 Stat. 1664, 1857, 1858; Pub. L. 111–39, title IV, § 406(a)(4), July 1, 2009, 123 Stat. 1948; Pub. L. 112–74, div. F, title III, § 309(b), Dec. 23, 2011, 125 Stat. 1100.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(2)(A), (D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Title XVI of the Act is classified generally to subchapter XVI (§ 1381 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Food and Nutrition Act of 2008, referred to in subsec. (d)(2)(B), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Richard B. Russell National School Lunch Act, referred to in subsec. (d)(2)(C), is act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to chapter 13 (§ 1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2011—Subsec. (c)(1)(B). Pub. L. 112–74, § 309(b)(1), substituted ''$23,000'' for ''$30,000''.

Subsec. (c)(2)(B). Pub. L. 112–74, § 309(b)(2), substituted ''$23,000'' for ''$30,000''.

2009—Subsec. (b)(1)(A)(i)(III). Pub. L. 111–39, § 406(a)(4)(A)(i), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: ''1 of whom is a dislocated worker; or''.

Subsec. (b)(1)(B)(i)(III). Pub. L. 111–39, § 406(a)(4)(A)(ii), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: ''1 of whom is a dislocated worker; or''.

Subsec. (c)(1)(A)(iii). Pub. L. 111–39, § 406(a)(4)(B)(i), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''1 of whom is a dislocated worker; or''.

Subsec. (c)(2)(A)(iii). Pub. L. 111–39, § 406(a)(4)(B)(ii), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''1 of whom is a dislocated worker; or''.

2008—Subsec. (d)(2). Pub. L. 110–246, § 4002(b)(1)(A), (B), (2)(N), substituted ''supplemental nutrition assistance program'' for ''food stamp program'' and ''Food and Nutrition Act of 2008'' for ''Food Stamp Act of 1977''.

2007—Subsec. (b)(1)(A)(i), (B)(i). Pub. L. 110–84, § 602(a)(1), added subcl. (III), redesignated former subcl. (III) as (IV), and, in subcl. (IV), substituted ''24-month'' for ''12-month''.

Subsec. (c). Pub. L. 110–84, § 602(a)(2)(C), inserted at end of concluding provisions ''The Secretary shall annually adjust the income level necessary to qualify an applicant for the zero expected family contribution. The income level shall be adjusted according to increases in the Consumer Price Index, as defined in section 1087rr(f) of this title.''

Subsec. (c)(1)(A). Pub. L. 110–84, § 602(a)(2)(A)(i), added cl. (iii), redesignated former cl. (iii) as (iv), and, in cl. (iv), substituted ''24-month'' for ''12-month''.

Subsec. (c)(1)(B). Pub. L. 110–84, § 602(a)(2)(A)(ii), substituted ''$30,000'' for ''$20,000''.

Subsec. (c)(2)(A). Pub. L. 110–84, § 602(a)(2)(B)(i), added cl. (iii), redesignated former cl. (iii) as (iv), and, in cl. (iv), substituted ''24-month'' for ''12-month''.

Subsec. (c)(2)(B). Pub. L. 110–84, § 602(a)(2)(B)(ii), substituted ''$30,000'' for ''$20,000''.

Subsec. (d). Pub. L. 110–84, § 602(a)(3), substituted ''Definitions'' for ''Definition of means-tested Federal benefit program'' in heading, added par. (1), designated

existing provisions as par. (2) and substituted ''The term'' for ''In this section, the term'' in introductory provisions, redesignated former pars. (1) to (6) as subpars. (A) to (F), respectively, of par. (2), and realigned margins.

2006—Subsec. (b)(1)(A)(i). Pub. L. 109–171, § 8018(a)(1)(A)(i), added cl. (i) and struck out former cl. (i) which read as follows: ''the student's parents file or are eligible to file a form described in paragraph (3) or certify that they are not required to file an income tax return and the student files or is eligible to file such a form or certifies that the student is not required to file an income tax return; and''.

Subsec. (b)(1)(B)(i). Pub. L. 109–171, § 8018(a)(1)(A)(ii), added cl. (i) and struck out former cl. (i) which read as follows: ''the student (and the student's spouse, if any) files or is eligible to file a form described in paragraph (3) or certifies that the student (and the student's spouse, if any) is not required to file an income tax return; and''.

Subsec. (b)(3). Pub. L. 109–171, § 8018(a)(1)(B), in introductory provisions substituted ''In the case of an independent student, the student, or in the case of a dependent student, the family, files a form described in this subsection, or subsection (c), as the case may be, if the student or family, as appropriate, files'' for ''A student or family files a form described in this subsection, or subsection (c) of this section, as the case may be, if the student or family, respectively, files''.

Subsec. (c)(1)(A). Pub. L. 109–171, § 8018(a)(2)(A)(i), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the student's parents file, or are eligible to file, a form described in subsection (b)(3) of this section, or certify that the parents are not required to file an income tax return and the student files, or is eligible to file, such a form, or certifies that the student is not required to file an income tax return; and''.

Subsec. (c)(1)(B). Pub. L. 109–171, § 8018(a)(2)(A)(ii), added subpar. (B) and struck out former subpar. (B) which read as follows: ''the sum of the adjusted gross income of the parents is less than or equal to the maximum amount of income (rounded annually to the nearest thousand dollars) that may be earned in 1992 or the current year, whichever is higher, in order to claim the maximum Federal earned income credit; or''.

Subsec. (c)(2)(A). Pub. L. 109–171, § 8018(a)(2)(B)(i), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the student (and the student's spouse, if any) files, or is eligible to file, a form described in subsection (b)(3) of this section, or certifies that the student (and the student's spouse, if any) is not required to file an income tax return; and''.

Subsec. (c)(2)(B). Pub. L. 109–171, § 8018(a)(2)(B)(ii), added subpar. (B) and struck out former subpar. (B) which read as follows: ''the sum of the adjusted gross income of the student and spouse (if appropriate) is less than or equal to the maximum amount of income (rounded annually to the nearest thousand dollars) that may be earned in 1992 or the current year, whichever is higher, in order to claim the maximum Federal earned income credit.''

Subsec. (d). Pub. L. 109–171, § 8018(a)(3), added subsec. (d).

1998—Subsec. (b)(3). Pub. L. 105–244, § 477(1)(A), substituted ''this subsection, or subsection (c) of this section, as the case may be,'' for ''this paragraph'' in introductory provisions.

Subsec. (b)(3)(A). Pub. L. 105–244, § 477(1)(B), struck out ''or'' at end.

Subsec. (b)(3)(B), (C). Pub. L. 105–244, § 477(1)(C), (D), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (c)(1)(A). Pub. L. 105–244, § 477(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the student's parents were not required to file an income tax return under section 6012(a)(1) of title 26; and''.

Subsec. (c)(2)(A). Pub. L. 105–244, § 477(2)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the student (and the student's spouse, if any) was not required to file an income tax return under section 6012(a)(1) of title 26; and''.

1993—Subsec. (a)(1). Pub. L. 103–208, § 2(g)(10), inserted ''of'' after ''(c)''.

Subsec. (b)(1)(B)(i). Pub. L. 103–208, § 2(g)(11), inserted ''(and the student's spouse, if any)'' after ''student'' in two places and struck out ''such'' before ''an income tax return''.

Subsec. (b)(2). Pub. L. 103–208, § 2(g)(12), (13), substituted ''six elements'' for ''five elements'' in introductory provisions and a comma for semicolon in subpar. (E).

Subsec. (b)(3)(A). Pub. L. 103–208, § 2(g)(14)(A), inserted ''(including any prepared or electronic version of such form)'' before ''required''.

Subsec. (b)(3)(B). Pub. L. 103–208, § 2(g)(14)(B), inserted ''(including any prepared or electronic version of such return)'' before ''required''.

Subsec. (c)(1)(A). Pub. L. 103–208, § 2(g)(15)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the student's parents did not file, and were not required to file, a form 1040 required pursuant to title 26; and''.

Subsec. (c)(1)(B). Pub. L. 103–208, § 2(g)(15)(C), inserted ''in 1992 or the current year, whichever is higher,'' after ''that may be earned''.

Subsec. (c)(2)(A). Pub. L. 103–208, § 2(g)(15)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the student (and the student's spouse, if any) did not file, and was not required to file, a form 1040 required pursuant to title 26; and''.

Subsec. (c)(2)(B). Pub. L. 103–208, § 2(g)(15)(C), inserted ''in 1992 or the current year, whichever is higher,'' after ''that may be earned''.

1992—Pub. L. 102–325 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), analysis applicable to all title IV programs; in subsec. (b), elements in tests; and in subsec. (c), simplified application form.

1991—Subsec. (a). Pub. L. 102–26 inserted before period at end '', or who file an income tax return pursuant to the tax code of the Commonwealth of Puerto Rico or who are not required to file pursuant to that tax code''.

1988—Subsec. (a). Pub. L. 100–369 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1987—Subsec. (a). Pub. L. 100–50, § 14(23), substituted ''subsection (b) of this section'' for ''paragraph (2)'', ''families (1) who'' for ''families which'', and ''and (2) who file a form 1040A or 1040EZ pursuant to title 26, or are not required to file pursuant to such title'' for ''and which file a form 1040A pursuant to title 26''.

Subsec. (b)(2). Pub. L. 100–50, § 14(24)(A), struck out ''and State'' after ''Federal''.

Subsec. (b)(6). Pub. L. 100–50, § 14(24)(B)–(D), added par. (6).

Subsec. (c). Pub. L. 100–50, § 14(25), added subsec. (c).

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by of Pub. L. 112–74 effective July 1, 2012, see section 309(g) of Pub. L. 112–74, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted as part of amendments made by section 602(a) of Pub. L. 110–84 and effective July 1, 2009, see section 406(b)(2) of Pub. L. 111–39, set out as a note under section 1087mm of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(A), (B), (2)(N) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–84, title VI, § 602(b), Sept. 27, 2007, 121 Stat. 805, provided that: ''The amendments made by this section [amending this section] shall be effective on July 1, 2009.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 7, 1998, see section 480A of Pub. L. 105–244, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EVALUATION OF SIMPLIFIED NEEDS TEST

Pub. L. 109–171, title VIII, § 8018(b), Feb. 8, 2006, 120 Stat. 175, provided that:

''(1) ELIGIBILITY GUIDELINES.—The Secretary of Education shall regularly evaluate the impact of the eligibility guidelines in subsections (b)(1)(A)(i), (b)(1)(B)(i), (c)(1)(A), and (c)(2)(A) of section 479 of the Higher Education Act of 1965 (20 U.S.C. 1087ss(b)(1)(A)(i), (b)(1)(B)(i), (c)(1)(A), and (c)(2)(A)).

''(2) MEANS-TESTED FEDERAL BENEFIT PROGRAM.—For each 3-year period, the Secretary of Education shall evaluate the impact of including the receipt of benefits by a student or parent under a means-tested Federal benefit program (as defined in section 479(d) of the Higher Education Act of 1965 (20 U.S.C. 1087ss(d))[)] as a factor in determining eligibility under subsections (b) and (c) of section 479 of the Higher Education Act of 1965 (20 U.S.C. 1087ss(b) and (c)).''

§ 1087tt. Discretion of student financial aid administrators

(a) In general

Nothing in this part shall be interpreted as limiting the authority of the financial aid administrator, on the basis of adequate documentation, to make adjustments on a case-by-case basis to the cost of attendance or the values of the data items required to calculate the expected student or parent contribution (or both) to allow for treatment of an individual eligible applicant with special circumstances. However, this authority shall not be construed to permit aid administrators to deviate from the contributions expected in the absence of special circumstances. Special circumstances may include tuition expenses at an elementary or secondary school, medical, dental, or nursing home expenses not covered by insurance, unusually high child care or dependent care costs, recent unemployment of a family member or an independent student, a student or family member who is a dislocated worker (as defined in section 2801 of title 29), the number of parents enrolled at least half-time in a degree, certificate, or other program leading to a recognized educational credential at an institution with a program participation agreement under section 1094 of this title, a change in housing status that results in an individual being homeless (as defined in section 11302 of title 42), or other changes in a family's income, a family's assets, or a student's status. Special circumstances shall be conditions that differentiate an individual student from a class of students rather than conditions that exist across a class of students. Adequate documentation for such adjustments shall substantiate such special circumstances of individual students. In addition, nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted as limiting the authority of the student financial aid administrator in such cases (1) to request and use supplementary information about the financial status or personal circumstances of eligible applicants in selecting recipients and determining the amount of awards under this subchapter and part C of subchapter I of chapter 34 of title 42, or (2) to offer a dependent student financial assistance under section 1078–8 of this title or a Federal Direct Unsubsidized Stafford Loan without requiring the parents of such student to file the financial aid form prescribed under section 1090 of this title if the student financial aid administrator verifies that the parent or parents of such student have ended financial support of such student and refuse to file such form. No student or parent shall be charged a fee for collecting, processing, or delivering such supplementary information.

(b) Adjustments to assets taken into account

A student financial aid administrator shall be considered to be making a necessary adjustment in accordance with subsection (a) of this section if—

(1) the administrator makes adjustments excluding from family income any proceeds of a sale of farm or business assets of a family if such sale results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy or an involuntary liquidation; or

(2) the administrator makes adjustments in the award level of a student with a disability so as to take into consideration the additional costs such student incurs as a result of such student's disability.

(c) Refusal or adjustment of loan certifications

On a case-by-case basis, an eligible institution may refuse to certify a statement that permits a student to receive a loan under part B or C of this subchapter, or may certify a loan amount or make a loan that is less than the student's determination of need (as determined under this part), if the reason for the action is documented

and provided in written form to the student. No eligible institution shall discriminate against any borrower or applicant in obtaining a loan on the basis of race, national origin, religion, sex, marital status, age, or disability status.

(Pub. L. 89–329, title IV, § 479A, as added Pub. L. 100–50, § 14(26), June 3, 1987, 101 Stat. 352; amended Pub. L. 101–239, title II, § 2009, Dec. 19, 1989, 103 Stat. 2122; Pub. L. 102–325, title IV, § 471(a), July 23, 1992, 106 Stat. 605; Pub. L. 103–208, § 2(g)(16), Dec. 20, 1993, 107 Stat. 2473; Pub. L. 105–244, title IV, § 478, Oct. 7, 1998, 112 Stat. 1731; Pub. L. 110–84, title VI, § 603(a), Sept. 27, 2007, 121 Stat. 805; Pub. L. 110–315, title IV, § 472(a), Aug. 14, 2008, 122 Stat. 3269.)

PRIOR PROVISIONS

A prior section 1087tt, Pub. L. 89–329, title IV, § 479A, as added Pub. L. 99–498, title IV, § 406(a), Oct. 17, 1986, 100 Stat. 1472, related to discretion of student financial aid administrators under this part, prior to repeal by section 14(26) of Pub. L. 100–50.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–315 substituted ''medical, dental, or nursing home expenses'' for ''medical or dental expenses'', inserted ''or dependent care'' after ''child care'' and ''student or'' before ''family member who is a dislocated worker'', and substituted ''In addition, nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted as limiting the authority of the student financial aid administrator in such cases (1) to request and use supplementary information about the financial status or personal circumstances of eligible applicants in selecting recipients and determining the amount of awards under this subchapter and part C of subchapter I of chapter 34 of title 42, or (2) to offer a dependent student financial assistance under section 1078–8 of this title or a Federal Direct Unsubsidized Stafford Loan without requiring the parents of such student to file the financial aid form prescribed under section 1090 of this title if the student financial aid administrator verifies that the parent or parents of such student have ended financial support of such student and refuse to file such form.'' for ''In addition, nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted as limiting the authority of the student financial aid administrator in such cases to request and use supplementary information about the financial status or personal circumstances of eligible applicants in selecting recipients and determining the amount of awards under this subchapter and part C of subchapter I of chapter 34 of title 42.''

2007—Subsec. (a). Pub. L. 110–84, in third sentence, substituted ''family member or an independent student, a family member who is a dislocated worker (as defined in section 2801 of title 29), the number of parents'' for ''family member, the number of parents'' and inserted ''a change in housing status that results in an individual being homeless (as defined in section 11302 of title 42),'' after ''under section 1094 of this title,''.

1998—Subsec. (a). Pub. L. 105–244, § 478(1), inserted after second sentence ''Special circumstances may include tuition expenses at an elementary or secondary school, medical or dental expenses not covered by insurance, unusually high child care costs, recent unemployment of a family member, the number of parents enrolled at least half-time in a degree, certificate, or other program leading to a recognized educational credential at an institution with a program participation agreement under section 1094 of this title, or other changes in a family's income, a family's assets, or a student's status.''

Subsec. (c). Pub. L. 105–244, § 478(2), amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) related to student financial aid administrators making adjustments for special circumstances.

1993—Subsec. (c). Pub. L. 103–208 added subsec. (c).

1992—Pub. L. 102–325 amended section generally, revising and restating provisions of subsecs. (a) and (b) and striking out former subsec. (c) which related to asset adjustment as example.

1989—Subsec. (a). Pub. L. 101–239 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted as limiting the authority of the student financial aid administrator, on the basis of adequate documentation, to make necessary adjustments to the cost of attendance and expected student or parent contribution (or both) to allow for treatment of individual students with special circumstances. In addition, nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted as limiting the authority of the student financial aid administrator to use supplementary information about the financial status or personal circumstance of eligible applicants in selecting recipients and determining the amount of awards under subparts 1 and 2 of part A and parts B and D of this subchapter and part C of subchapter I of chapter 34 of title 42.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–84, title VI, § 603(b), Sept. 27, 2007, 121 Stat. 806, as amended by Pub. L. 110–315, title IV, § 472(b), Aug. 14, 2008, 122 Stat. 3270, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of the Higher Education Opportunity Act [Aug. 14, 2008].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 7, 1998, see section 480A of Pub. L. 105–244, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(a) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

EFFECTIVE DATE

Section effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as an Effective Date of 1987 Amendment note under section 1001 of this title.

§ 1087uu. Disregard of student aid in other Federal programs

Notwithstanding any other provision of law, student financial assistance received under this subchapter and part C of subchapter I of chapter 34 of title 42, or under Bureau of Indian Affairs student assistance programs, shall not be taken into account in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal, State, or local program financed in whole or in part with Federal funds.

(Pub. L. 89–329, title IV, § 479B, as added Pub. L. 100–50, § 14(27), June 3, 1987, 101 Stat. 353; amended Pub. L. 102–325, title IV, § 471(a), July 23, 1992, 106 Stat. 606.)

PRIOR PROVISIONS

A prior section 1087uu, Pub. L. 89–329, title IV, § 479B, as added Pub. L. 99–498, title IV, § 406(a), Oct. 17, 1986,

100 Stat. 1472, related to exclusion of student financial assistance for attendance costs in determining student eligibility for assistance under any other program funded in whole or part with Federal funds, prior to repeal by section 14(27) of Pub. L. 100–50.

AMENDMENTS

1992—Pub. L. 102–325 amended section generally, revising and restating as a single paragraph provisions formerly contained in subsec. (a) which proscribed consideration of aid for attendance costs as income or resources, and in subsec. (b) which delineated elements of attendance costs.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

EFFECTIVE DATE

Section effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as an Effective Date of 1987 Amendment note under section 1001 of this title.

Section applicable with respect to financial assistance provided for any academic year beginning after Oct. 17, 1986, see section 406(b)(4) of Pub. L. 99–498, as amended, set out as a note under section 1087kk of this title.

§ 1087uu–1. Native American students

In determining family contributions for Native American students, computations performed pursuant to this part shall exclude—

(1) any income and assets of $2,000 or less per individual payment received by the student (and spouse) and student's parents under Public Law 98–64 (25 U.S.C. 117a et seq.; 97 Stat. 365) (commonly known as the ''Per Capita Act'') or the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.); and

(2) any income received by the student (and spouse) and student's parents under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) or the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721 et seq.).

(Pub. L. 89–329, title IV, § 479C, as added Pub. L. 100–50, § 14(27), June 3, 1987, 101 Stat. 353; amended Pub. L. 102–325, title IV, § 471(a), July 23, 1992, 106 Stat. 606; Pub. L. 111–39, title IV, § 406(a)(5), July 1, 2009, 123 Stat. 1949.)

REFERENCES IN TEXT

Public Law 98–64, referred to in par. (1), is Pub. L. 98–64, Aug. 2, 1983, 97 Stat. 365, commonly known as the Per Capita Act, which enacted sections 117a to 117c of Title 25, Indians, and repealed section 117 of Title 25. For complete classification of this Act to the Code, see Tables.

The Indian Tribal Judgment Funds Use or Distribution Act, referred to in par. (1), is Pub. L. 93–134, Oct. 19, 1973, 87 Stat. 466, which is classified generally to chapter 16 (§ 1401 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see section 1401(c) of Title 25 and Tables.

The Alaska Native Claims Settlement Act, referred to in par. (2), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Maine Indian Claims Settlement Act of 1980, referred to in par. (2), is Pub. L. 96–420, Oct. 10, 1980, 94 Stat. 1785, which is classified generally to subchapter II (§ 1721 et seq.) of chapter 19 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1721 of Title 25 and Tables.

AMENDMENTS

2009—Par. (1). Pub. L. 111–39, § 406(a)(5)(A), substituted ''under Public Law 98–64 (25 U.S.C. 117a et seq.; 97 Stat. 365) (commonly known as the 'Per Capita Act') or the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.); and'' for ''under the Per Capita Act or the Distribution of Judgment Funds Act; and''.

Par. (2). Pub. L. 111–39, § 406(a)(5)(B), substituted ''Alaska'' for ''Alaskan'' and inserted ''(43 U.S.C. 1601 et seq.)'' after ''Native Claims Settlement Act'' and ''of 1980 (25 U.S.C. 1721 et seq.)'' after ''Maine Indian Claims Settlement Act''.

1992—Pub. L. 102–325 amended section generally, reenacting provisions without change.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

EFFECTIVE DATE

Section effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as an Effective Date of 1987 Amendment note under section 1001 of this title.

§ 1087vv. Definitions

As used in this part:

(a) Total income

(1)(A) Except as provided in subparagraph (B) and paragraph (2), the term ''total income'' is equal to adjusted gross income plus untaxed income and benefits for the preceding tax year minus excludable income (as defined in subsection (e) of this section).

(B) Notwithstanding section 1087rr(a) of this title, the Secretary may provide for the use of data from the second preceding tax year when and to the extent necessary to carry out the simplification of applications (including simplification for a subset of applications) used for the estimation and determination of financial aid eligibility. Such simplification may include the sharing of data between the Internal Revenue Service and the Department, pursuant to the consent of the taxpayer.

(2) No portion of any student financial assistance received from any program by an individual, no portion of veterans' education benefits received by an individual, no portion of a national service educational award or post-service benefit received by an individual under title I of the National and Community Service Act of 1990 (42 U.S.C. 12511 et seq.), no portion of any tax credit taken under section 25A of title 26, and no distribution from any qualified education benefit described in subsection (f)(3) that is not subject to Federal income tax, shall be included as income or assets in the computation of expected

family contribution for any program funded in whole or in part under this chapter and part C of subchapter I of chapter 34 of title 42.

(b) Untaxed income and benefits

(1) The term ''untaxed income and benefits'' means—

(A) child support received;

(B) workman's compensation;

(C) veteran's benefits such as death pension, dependency, and indemnity compensation, but excluding veterans' education benefits as defined in subsection (c);

(D) interest on tax-free bonds;

(E) housing, food, and other allowances (excluding rent subsidies for low-income housing) for military, clergy, and others (including cash payments and cash value of benefits), except that the value of on-base military housing or the value of basic allowance for housing determined under section 403(b) of title 37 received by the parents, in the case of a dependent student, or the student or student's spouse, in the case of an independent student, shall be excluded;

(F) cash support or any money paid on the student's behalf, except, for dependent students, funds provided by the student's parents;

(G) untaxed portion of pensions;

(H) payments to individual retirement accounts and Keogh accounts excluded from income for Federal income tax purposes; and

(I) any other untaxed income and benefits, such as Black Lung Benefits, Refugee Assistance, or railroad retirement benefits, or benefits received through participation in employment and training activities under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

(2) The term ''untaxed income and benefits'' shall not include—

(A) the amount of additional child tax credit claimed for Federal income tax purposes;

(B) welfare benefits, including assistance under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] and aid to dependent children;

(C) the amount of earned income credit claimed for Federal income tax purposes;

(D) the amount of credit for Federal tax on special fuels claimed for Federal income tax purposes;

(E) the amount of foreign income excluded for purposes of Federal income taxes; or

(F) untaxed social security benefits.

(c) Veteran and veterans' education benefits

(1) The term ''veteran'' means any individual who—

(A) has engaged in the active duty in the United States Army, Navy, Air Force, Marines, or Coast Guard; and

(B) was released under a condition other than dishonorable.

(2) The term ''veterans' education benefits'' means veterans' benefits the student will receive during the award year, including but not limited to benefits under the following provisions of law:

(A) Chapter 103 of title 10 (Senior Reserve Officers' Training Corps).

(B) Chapter 106A of title 10 (Educational Assistance for Persons Enlisting for Active Duty).

(C) Chapter 1606 of title 10 (Selected Reserve Educational Assistance Program).

(D) Chapter 1607 of title 10 (Educational Assistance Program for Reserve Component Members Supporting Contingency Operations and Certain Other Operations).

(E) Chapter 30 of title 38 (All-Volunteer Force Educational Assistance Program, also known as the ''Montgomery GI Bill—active duty'').

(F) Chapter 31 of title 38 (Training and Rehabilitation for Veterans with Service-Connected Disabilities).

(G) Chapter 32 of title 38 (Post-Vietnam Era Veterans' Educational Assistance Program).

(H) Chapter 33 of title 38 (Post-9/11 Educational Assistance).

(I) Chapter 35 of title 38 (Survivors' and Dependents' Educational Assistance Program).

(J) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note) (Educational Assistance Pilot Program).

(K) Section 156(b) of the ''Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes'' (42 U.S.C. 402 note) (Restored Entitlement Program for Survivors, also known as ''Quayle benefits'').

(L) The provisions of chapter 3 of title 37, related to subsistence allowances for members of the Reserve Officers Training Corps.

(d) Independent student

(1) Definition

The term ''independent'', when used with respect to a student, means any individual who—

(A) is 24 years of age or older by December 31 of the award year;

(B) is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or a ward of the court at any time when the individual was 13 years of age or older;

(C) is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's State of legal residence;

(D) is a veteran of the Armed Forces of the United States (as defined in subsection (c)(1) of this section) or is currently serving on active duty in the Armed Forces for other than training purposes;

(E) is a graduate or professional student;

(F) is a married individual;

(G) has legal dependents other than a spouse;

(H) has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth (as such terms are defined in section 725 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11434a]), or as unaccompanied, at risk of homelessness, and self-supporting, by—

(i) a local educational agency homeless liaison, designated pursuant to section

722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11432(g)(1)(J)(ii)];

(ii) the director of a program funded under the Runaway and Homeless Youth Act [42 U.S.C. 5701 et seq.] or a designee of the director;

(iii) the director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11371 et seq.] (relating to emergency shelter grants) or a designee of the director; or

(iv) a financial aid administrator; or

(I) is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.

(2) Simplifying the dependency override process

A financial aid administrator may make a determination of independence under paragraph (1)(I) based upon a documented determination of independence that was previously made by another financial aid administrator under such paragraph in the same award year.

(e) Excludable income

The term ''excludable income'' means—

(1) any student financial assistance awarded based on need as determined in accordance with the provisions of this part, including any income earned from work under part C of subchapter I of chapter 34 of title 42;

(2) any income earned from work under a cooperative education program offered by an institution of higher education;

(3) any living allowance received by a participant in a program established under the National and Community Service Act of 1990 [42 U.S.C. 12501 et seq.];

(4) child support payments made by the student or parent;

(5) payments made and services provided under part E of title IV of the Social Security Act [42 U.S.C. 670 et seq.]; and

(6) special combat pay.

(f) Assets

(1) The term ''assets'' means cash on hand, including the amount in checking and savings accounts, time deposits, money market funds, trusts, stocks, bonds, other securities, mutual funds, tax shelters, qualified education benefits (except as provided in paragraph (3)), and the net value of real estate, income producing property, and business and farm assets.

(2) With respect to determinations of need under this subchapter and part C of subchapter I of chapter 34 of title 42, other than for subpart 4 of part A of this subchapter, the term ''assets'' shall not include the net value of—

(A) the family's principal place of residence;

(B) a family farm on which the family resides; or

(C) a small business with not more than 100 full-time or full-time equivalent employees (or any part of such a small business) that is owned and controlled by the family.

(3) A qualified education benefit shall be considered an asset of—

(A) the student if the student is an independent student; or

(B) the parent if the student is a dependent student, regardless of whether the owner of the account is the student or the parent.

(4) In determining the value of assets in a determination of need under this subchapter and part C of subchapter I of chapter 34 of title 42 (other than for subpart 4 of part A of this subchapter), the value of a qualified education benefit shall be—

(A) the refund value of any tuition credits or certificates purchased under a qualified education benefit; and

(B) in the case of a program in which contributions are made to an account that is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account, the current balance of such account.

(5) In this subsection:

(A) The term ''qualified education benefit'' means—

(i) a qualified tuition program (as defined in section 529(b)(1)(A) of title 26) or other prepaid tuition plan offered by a State; and

(ii) a Coverdell education savings account (as defined in section 530(b)(1) of title 26).

(B) The term ''qualified higher education expenses'' has the meaning given the term in section 529(e) of title 26.

(g) Net assets

The term ''net assets'' means the current market value at the time of application of the assets (as defined in subsection (f) of this section), minus the outstanding liabilities or indebtedness against the assets.

(h) Treatment of income taxes paid to other jurisdictions

(1) The tax on income paid to the Governments of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or Palau under the laws applicable to those jurisdictions, or the comparable tax paid to the central government of a foreign country, shall be treated as Federal income taxes.

(2) References in this part to title 26, Federal income tax forms, and the Internal Revenue Service shall, for purposes of the tax described in paragraph (1), be treated as references to the corresponding laws, tax forms, and tax collection agencies of those jurisdictions, respectively, subject to such adjustments as the Secretary may provide by regulation.

(i) Current balance

The term ''current balance of checking and savings accounts'' does not include any funds over which an individual is barred from exercising discretion and control because of the actions of any State in declaring a bank emergency due to the insolvency of a private deposit insurance fund.

(j) Other financial assistance

(1) For purposes of determining a student's eligibility for funds under this subchapter and part

C of subchapter I of chapter 34 of title 42, estimated financial assistance not received under this subchapter and part C of subchapter I of chapter 34 of title 42 shall include all scholarships, grants, loans, or other assistance known to the institution at the time the determination of the student's need is made, including national service educational awards or post-service benefits under title I of the National and Community Service Act of 1990 (42 U.S.C. 12511 et seq.), but excluding veterans' education benefits as defined in subsection (c).

(2) Notwithstanding paragraph (1), a tax credit taken under section 25A of title 26, or a distribution that is not includable in gross income under section 529 of such title, under another prepaid tuition plan offered by a State, or under a Coverdell education savings account under section 530 of such title, shall not be treated as estimated financial assistance for purposes of section 1087kk(3) of this title.

(3) Notwithstanding paragraph (1) and section 1087*ll* of this title, assistance not received under this subchapter and part C of subchapter I of chapter 34 of title 42 may be excluded from both estimated financial assistance and cost of attendance, if that assistance is provided by a State and is designated by such State to offset a specific component of the cost of attendance. If that assistance is excluded from either estimated financial assistance or cost of attendance, it shall be excluded from both.

(4) Notwithstanding paragraph (1), special combat pay shall not be treated as estimated financial assistance for purposes of section 1087kk(3) of this title.

(k) Dependents

(1) Except as otherwise provided, the term ''dependent of the parent'' means the student, dependent children of the student's parents, including those children who are deemed to be dependent students when applying for aid under this subchapter and part C of subchapter I of chapter 34 of title 42, and other persons who live with and receive more than one-half of their support from the parent and will continue to receive more than half of their support from the parent during the award year.

(2) Except as otherwise provided, the term ''dependent of the student'' means the student's dependent children and other persons (except the student's spouse) who live with and receive more than one-half of their support from the student and will continue to receive more than half of their support from the student during the award year.

(*l*) Family size

(1) In determining family size in the case of a dependent student—

(A) if the parents are not divorced or separated, family members include the student's parents, and the dependents of the student's parents including the student;

(B) if the parents are divorced or separated, family members include the parent whose income is included in computing available income and that parent's dependents, including the student; and

(C) if the parents are divorced and the parent whose income is so included is remarried, or if the parent was a widow or widower who has remarried, family members also include, in addition to those individuals referred to in subparagraph (B), the new spouse and any dependents of the new spouse if that spouse's income is included in determining the parents' adjusted available income.

(2) In determining family size in the case of an independent student—

(A) family members include the student, the student's spouse, and the dependents of the student; and

(B) if the student is divorced or separated, family members do not include the spouse (or ex-spouse), but do include the student and the student's dependents.

(m) Business assets

The term ''business assets'' means property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery, and other equipment, patents, franchise rights, and copyrights.

(n) Special combat pay

The term ''special combat pay'' means pay received by a member of the Armed Forces because of exposure to a hazardous situation.

(Pub. L. 89–329, title IV, § 480, as added Pub. L. 99–498, title IV, § 406(a), Oct. 17, 1986, 100 Stat. 1472; amended Pub. L. 100–50, § 14(28), June 3, 1987, 101 Stat. 353; Pub. L. 100–369, § 7(b), July 18, 1988, 102 Stat. 837; Pub. L. 101–610, title I, § 185(3), (4), Nov. 16, 1990, 104 Stat. 3168; Pub. L. 102–325, title IV, § 471(a), July 23, 1992, 106 Stat. 606; Pub. L. 103–82, title I, § 102(c)(4), (5), Sept. 21, 1993, 107 Stat. 824; Pub. L. 103–208, § 2(g)(17)–(20), Dec. 20, 1993, 107 Stat. 2474; Pub. L. 104–193, title I, § 110(h)(2), Aug. 22, 1996, 110 Stat. 2172; Pub. L. 105–78, title VI, § 609(j), (k), Nov. 13, 1997, 111 Stat. 1524; Pub. L. 105–244, title IV, § 479, Oct. 7, 1998, 112 Stat. 1732; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(15)(B), (f)(12)(B)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–421, 2681–431; Pub. L. 109–171, title VIII, § 8019, Feb. 8, 2006, 120 Stat. 176; Pub. L. 110–84, title VI, § 604(a), Sept. 27, 2007, 121 Stat. 806; Pub. L. 110–153, § 1(a), Dec. 21, 2007, 121 Stat. 1824; Pub. L. 110–315, title IV, § 473(a)–(e), Aug. 14, 2008, 122 Stat. 3270, 3271; Pub. L. 111–39, title IV, § 406(a)(6)–(8), July 1, 2009, 123 Stat. 1949, 1950.)

REFERENCES IN TEXT

The National and Community Service Act of 1990, referred to in subsecs. (a)(2), (e)(3), and (j)(1), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, which is classified principally to chapter 129 (§ 12501 et seq.) of Title 42, The Public Health and Welfare. Title I of the Act enacted subchapter I (§ 12511 et seq.) of chapter 129 of Title 42 and amended this section and section 1070a–6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

The Workforce Investment Act of 1998, referred to in subsec. (b)(1)(I), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of this title and Tables.

The Social Security Act, referred to in subsecs. (b)(2)(B) and (e)(5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Parts A and E of title IV of the Act are classified generally to parts A (§ 601 et seq.) and E (§ 670 et seq.)

of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 903 of the Department of Defense Authorization Act, 1981, referred to in subsec. (c)(2)(J), is section 903 of Pub. L. 96–342, which is set out as a note under section 2141 of Title 10, Armed Forces.

Section 156(b) of the ''Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes'', referred to in subsec. (c)(2)(K), is section 156(b) of Pub. L. 97–377, which is set out as a note under section 402 of Title 42, The Public Health and Welfare.

The Runaway and Homeless Youth Act, referred to in subsec. (d)(1)(H)(ii), is title III of Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1129, which is classified generally to subchapter III (§ 5701 et seq.) of chapter 72 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of Title 42 and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (d)(1)(H)(iii), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482. Subtitle B of title IV of the Act is classified generally to part B (§ 11371 et seq.) of subchapter IV of chapter 119 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

CODIFICATION

Amendment by section 2(g)(19) of Pub. L. 103–208 (which was effective as if included in Pub. L. 102–325) was executed to this section as amended by Pub. L. 102–325 and Pub. L. 103–82, to reflect the probable intent of Congress.

AMENDMENTS

2009—Subsec. (a)(2). Pub. L. 111–39, § 406(a)(6), substituted ''12511'' for ''12571''.

Subsec. (c)(2). Pub. L. 111–39, § 406(a)(7), substituted ''benefits under the following provisions of law'' for ''the following'' in introductory provisions, added subpars. (A) to (L), and struck out former subpars. (A) to (J) which listed, respectively, the following provisions of law: title 10, chapter 2; title 10, chapter 106; title 10, chapter 107; title 37, chapter 2; title 38, chapter 30; title 38, chapter 31; title 38, chapter 32; title 38, chapter 35; Public Law 97–376, section 156; and Public Law 96–342, section 903.

Subsec. (j)(1). Pub. L. 111–39, § 406(a)(8), substituted ''12511'' for ''12571''.

2008—Subsec. (a)(1). Pub. L. 110–315, § 473(a)(1), designated existing provisions as subpar. (A), inserted ''subparagraph (B) and'' after ''provided in'', and added subpar. (B).

Subsec. (a)(2). Pub. L. 110–315, § 473(a)(2), inserted ''no portion of veterans' education benefits received by an individual,'' after ''any program by an individual,''.

Subsec. (b)(1)(E). Pub. L. 110–315, § 473(b), inserted '', except that the value of on-base military housing or the value of basic allowance for housing determined under section 403(b) of title 37 received by the parents, in the case of a dependent student, or the student or student's spouse, in the case of an independent student, shall be excluded'' before semicolon.

Subsec. (d)(1)(B), (C). Pub. L. 110–315, § 473(c), added subpars. (B) and (C) and struck out former subpars. (B) and (C) which read as follows:

''(B) is an orphan, in foster care, or a ward of the court, at any time when the individual is 13 years of age or older;

''(C) is an emancipated minor or is in legal guardianship as determined by a court of competent jurisdiction in the individual's State of legal residence;''.

Subsec. (e)(2) to (6). Pub. L. 110–315, § 473(d), added par. (2) and redesignated former pars. (2) to (5) as (3) to (6), respectively.

Subsec. (j)(1). Pub. L. 110–315, § 473(e), struck out ''veterans' education benefits as defined in subsection (c) of this section, and'' before ''national service educational awards'' and inserted '', but excluding veterans' education benefits as defined in subsection (c)'' before period at end.

2007—Subsec. (a)(2). Pub. L. 110–84, § 604(a)(1), substituted ''no portion of any'' for ''and no portion of any'' and inserted ''and no distribution from any qualified education benefit described in subsection (f)(3) that is not subject to Federal income tax,'' after ''section 25A of title 26,''.

Subsec. (b). Pub. L. 110–84, § 604(a)(2), added subsec. (b) and struck out former subsec. (b) which defined ''untaxed income and benefits''.

Subsec. (b)(2). Pub. L. 110–153 added par. (2) and struck out former par. (2) which read as follows: ''The term 'untaxed income and benefits' shall not include the amount of additional child tax credit claimed for Federal income tax purposes.''

Subsec. (d). Pub. L. 110–84, § 604(a)(3)(A), (B), designated existing provisions as par. (1), inserted par. heading, redesignated former pars. (1), (2), (3) to (6), and (7) as subpars. (A), (B), (D) to (G), and (I), respectively, and realigned margins.

Subsec. (d)(1)(B), (C). Pub. L. 110–84, § 604(a)(3)(C), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: ''is an orphan or ward of the court or was a ward of the court until the individual reached the age of 18;''.

Subsec. (d)(1)(H). Pub. L. 110–84, § 604(a)(3)(D), (E), added subpar. (H).

Subsec. (d)(2). Pub. L. 110–84, § 604(a)(3)(F), added par. (2).

Subsec. (e)(5). Pub. L. 110–84, § 604(a)(4), added par. (5).

Subsec. (f)(3). Pub. L. 110–84, § 604(a)(5), added par. (3) and struck out former par. (3) which read as follows: ''A qualified education benefit shall not be considered an asset of a student for purposes of section 1087*oo* of this title.''

Subsec. (j)(2). Pub. L. 110–84, § 604(a)(6)(A), inserted '', or a distribution that is not includable in gross income under section 529 of such title, under another prepaid tuition plan offered by a State, or under a Coverdell education savings account under section 530 of such title,'' after ''title 26''.

Subsec. (j)(4). Pub. L. 110–84, § 604(a)(6)(B), added par. (4).

Subsec. (n). Pub. L. 110–84, § 604(a)(7), added subsec. (n).

2006—Subsec. (d)(3). Pub. L. 109–171, § 8019(a), inserted ''or is currently serving on active duty in the Armed Forces for other than training purposes'' before semicolon at end.

Subsec. (f)(1). Pub. L. 109–171, § 8019(b), inserted ''qualified education benefits (except as provided in paragraph (3)),'' after ''tax shelters,''.

Subsec. (f)(2)(C). Pub. L. 109–171, § 8019(c), added subpar. (C).

Subsec. (f)(3) to (5). Pub. L. 109–171, § 8019(d), added pars. (3) to (5).

Subsec. (j). Pub. L. 109–171, § 8019(e)(1), struck out ''; tuition prepayment plans'' at end of heading.

Subsec. (j)(2), (3). Pub. L. 109–171, § 8019(e)(2)–(4), struck out par. (2), redesignated par. (3) as (2), and added par. (3). Prior to amendment, par. (2) read as follows:

''(2)(A) Except as provided in subparagraph (B), for purposes of determining a student's eligibility for funds under this subchapter and part C of subchapter I of chapter 34 of title 42, tuition prepayment plans shall reduce the cost of attendance (as determined under section 1087*ll* of this title) by the amount of the prepayment, and shall not be considered estimated financial assistance.

''(B) If the institutional expense covered by the prepayment must be part of the student's cost of attendance for accounting purposes, the prepayment shall be considered estimated financial assistance.''

1998—Subsec. (b)(14). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(12)(B)], struck out ''Job Training Partnership Act noneducational benefits or'' after ''railroad retirement benefits, or''.

Pub. L. 105–277, §101(f) [title VIII, §405(d)(15)(B)], substituted ''Job Training Partnership Act noneducational benefits or benefits received through participation in employment and training activities under title I of the Workforce Investment Act of 1998'' for ''Job Training Partnership Act noneducational benefits''.

Subsec. (j)(1). Pub. L. 105–244, §479(1), inserted before period at end '', and national service educational awards or post-service benefits under title I of the National and Community Service Act of 1990''.

Subsec. (j)(3), (4). Pub. L. 105–244, §479(2), (3), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''Notwithstanding paragraph (1), a national service educational award or post-service benefit under title I of the National and Community Service Act of 1990 shall not be treated as financial assistance for purposes of section 1087kk(3) of this title.''

1997—Subsec. (a)(2). Pub. L. 105–78, §609(j), substituted ''program by an individual, no'' for ''program by an individual, and no'' and inserted ''and no portion of any tax credit taken under section 25A of title 26,'' before ''shall be included''.

Subsec. (j)(4). Pub. L. 105–78, §609(k), added par. (4).

1996—Subsec. (b)(2). Pub. L. 104–193 substituted ''assistance under a State program funded'' for ''aid to families with dependent children under a State plan approved''.

1993—Subsec. (a)(2). Pub. L. 103–82, §102(c)(4), inserted '', and no portion of a national service educational award or post-service benefit received by an individual under title I of the National and Community Service Act of 1990,'' after ''by an individual''.

Subsec. (c)(2). Pub. L. 103–208, §2(g)(17), made technical amendment to references to titles of the United States Code in subpars. (A) to (H).

Subsec. (d)(2). Pub. L. 103–208, §2(g)(18), inserted before semicolon ''or was a ward of the court until the individual reached the age of 18''.

Subsec. (j)(3). Pub. L. 103–208, §2(g)(19), realigned margin. See Codification note above.

Pub. L. 103–82, §102(c)(5), added par. (3).

Subsecs. (k) to (m). Pub. L. 103–208, §2(g)(20), added subsecs. (k) to (m).

1992—Pub. L. 102–325 amended section generally, substituting subsecs. (a) to (j) for former subsecs. (a) to (i).

1990—Subsec. (d)(2)(F). Pub. L. 101–610, §185(4), inserted ''and living allowances as a result of participation in a program established under the National and Community Service Act of 1990)'' after ''other than parents''.

Subsec. (f)(3). Pub. L. 101–610, §185(3), added par. (3).

1988—Subsec. (i). Pub. L. 100–369 added subsec. (i).

1987—Subsec. (a)(1). Pub. L. 100–50, §14(28)(A), (B), substituted ''paragraphs (2) through (4)'' for ''paragraphs (2) and (3)'' and inserted ''minus excludable income (as defined in subsection (f) of this section)'' before period at end.

Subsec. (a)(2). Pub. L. 100–50, §14(28)(C), added par. (2) and struck out former par. (2) which read as follows: ''The Secretary shall promulgate special regulations to permit, in the computation of family contributions for the programs under subpart 2 of part A and parts B and D of this subchapter and part C of subchapter I of chapter 34 of title 42 for any academic year the exclusion from family income of any proceeds of a sale of farm or business assets of that family if such sale results from a voluntary or involuntary foreclosure, forfeiture, liquidation, or bankruptcy.''

Subsec. (a)(4). Pub. L. 100–50, §14(28)(D), added par. (4).

Subsecs. (b), (c). Pub. L. 100–50, §14(28)(E), substituted subsec. (b) consisting of pars. (1) to (14) for former subsec. (b) consisting of pars. (1) to (19), and substituted subsec. (c) consisting of pars. (1) to (14) for former subsec. (c) consisting of pars. (1) to (16).

Subsec. (d)(2)(F). Pub. L. 100–50, §14(28)(F), substituted ''annual total resources (including all sources of resources other than parents)'' for ''an annual total income''.

Subsecs. (f) to (h). Pub. L. 100–50, §14(28)(G), added subsecs. (f) to (h).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, §473(f), Aug. 14, 2008, 122 Stat. 3271, as amended by Pub. L. 111–39, title IV, §406(c), July 1, 2009, 123 Stat. 1950, provided that: ''The amendments made by this section [amending this section] shall take effect on July 1, 2010, except that the amendments made in subsection (e) [amending this section] shall take effect on July 1, 2009.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–153, §1(b), Dec. 21, 2007, 121 Stat. 1824, provided that: ''This section [amending this section] and the amendment made by this section shall take effect on July 1, 2009.''

Pub. L. 110–84, title VI, §604(b), Sept. 27, 2007, 121 Stat. 808, provided that: ''The amendments made by this section [amending this section] shall be effective on July 1, 2009.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–244 effective Oct. 7, 1998, see section 480A of Pub. L. 105–244, set out as a note under section 1087kk of this title.

Amendment by section 101(f) [title VIII, §405(d)(15)(B)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(12)(B)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1993 AMENDMENTS

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DEFINITION OF ''INDEPENDENT STUDENT''; APPLICATION TO SPECIFIED PERIODS OF ENROLLMENT

Section 406(b)(5), formerly section 406(b)(4), of Pub. L. 99–498, renumbered Pub. L. 100–50, § 22(e)(2), June 3, 1987, 101 Stat. 361, provided that: ''The definition of independent student contained in section 480(d) of the Act [20 U.S.C. 1087vv(d)] as amended by subsection (a) of this section shall apply with respect to the determination of such need for periods of enrollment beginning on or after January 1, 1987, in the case of programs operated under part B of title IV of the Act [part B of this subchapter], or for periods of enrollment beginning on or after July 1, 1987, in the case of programs operated under subpart 2 of part A and parts C and E of such title [subpart 2 of part A of this subchapter and part C of subchapter I of chapter 34 of Title 42, The Public Health and Welfare, and part D of this subchapter].''

[References to subpart 2 of part A of title IV of Pub. L. 89–329 deemed, after July 23, 1992, to refer to subpart 3 of such part, see section 402(b) of Pub. L. 102–325, set out as a note under section 1070a–11 of this title.]

PART F—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

CODIFICATION

This part was originally added as part E of title IV of Pub. L. 89–329 by Pub. L. 90–575, title I, § 151, Oct. 16, 1968, 82 Stat. 1032, and subsequently redesignated part F of said title IV by Pub. L. 92–318, title I, § 137(b), June 23, 1972, 86 Stat. 273, and then part G of said title IV by Pub. L. 99–498, title IV, § 406(a), Oct. 17, 1986, 100 Stat. 1454. For codification purposes, the letter designation of this part was originally changed from ''E'' to ''D.'' It was subsequently rechanged to ''E'' when this part was redesignated ''F'', and then to ''F'' when this part was redesignated ''G''. See Codification notes preceding sections 1087a and 1087aa of this title.

Part G of title IV of the Higher Education Act of 1965, comprising this part which was editorially designated as part F of this subchapter, see Codification note above, was originally enacted by Pub. L. 89–329, title IV, §§ 461 to 464 and 469, as added by Pub. L. 90–575, title I, §§ 151, 152, Oct. 16, 1968, 82 Stat. 1032, 1033; amended Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 121; Pub. L. 92–318, June 23, 1972, 86 Stat. 235; Pub. L. 94–482, Oct. 12, 1976, 90 Stat. 2081; Pub. L. 95–43, June 15, 1977, 91 Stat. 213; Pub. L. 95–180, Nov. 15, 1977, 91 Stat. 1372; Pub. L. 95–566, Nov. 1, 1978, 92 Stat. 2402; S. Res. 30, Mar. 7, 1979; Pub. L. 96–49, Aug. 13, 1979, 93 Stat. 351; Pub. L. 96–374, Oct. 3, 1980, 94 Stat. 1367; Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 357; Pub. L. 98–79, Aug. 15, 1983, 97 Stat. 476; Pub. L. 99–272, Apr. 7, 1986, 100 Stat. 82. Such part is shown herein, however, as having been added by Pub. L. 99–498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1475, without reference to such intervening amendments because of the extensive revision of the part's provisions by Pub. L. 99–498.

§ 1088. Definitions

(a) Academic and award year

(1) For the purpose of any program under this subchapter and part C of subchapter I of chapter 34 of title 42, the term ''award year'' shall be defined as the period beginning July 1 and ending June 30 of the following year.

(2)(A) For the purpose of any program under this subchapter and part C of subchapter I of chapter 34 of title 42, the term ''academic year'' shall—

(i) require a minimum of 30 weeks of instructional time for a course of study that measures its program length in credit hours; or

(ii) require a minimum of 26 weeks of instructional time for a course of study that measures its program length in clock hours; and

(iii) require an undergraduate course of study to contain an amount of instructional time whereby a full-time student is expected to complete at least—

(I) 24 semester or trimester hours or 36 quarter credit hours in a course of study that measures its program length in credit hours; or

(II) 900 clock hours in a course of study that measures its program length in clock hours.

(B) The Secretary may reduce such minimum of 30 weeks to not less than 26 weeks for good cause, as determined by the Secretary on a case-by-case basis, in the case of an institution of higher education that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree and that measures program length in credit hours or clock hours.

(b) Eligible program

(1) For purposes of this subchapter and part C of subchapter I of chapter 34 of title 42, the term ''eligible program'' means a program of at least—

(A) 600 clock hours of instruction, 16 semester hours, or 24 quarter hours, offered during a minimum of 15 weeks, in the case of a program that—

(i) provides a program of training to prepare students for gainful employment in a recognized profession; and

(ii) admits students who have not completed the equivalent of an associate degree; or

(B) 300 clock hours of instruction, 8 semester hours, or 12 hours, offered during a minimum of 10 weeks, in the case of—

(i) an undergraduate program that requires the equivalent of an associate degree for admissions; or

(ii) a graduate or professional program.

(2)(A) A program is an eligible program for purposes of part B of this subchapter if it is a program of at least 300 clock hours of instruction, but less than 600 clock hours of instruction, offered during a minimum of 10 weeks, that—

(i) has a verified completion rate of at least 70 percent, as determined in accordance with the regulations of the Secretary;

(ii) has a verified placement rate of at least 70 percent, as determined in accordance with the regulations of the Secretary; and

(iii) satisfies such further criteria as the Secretary may prescribe by regulation.

(B) In the case of a program being determined eligible for the first time under this paragraph,

such determination shall be made by the Secretary before such program is considered to have satisfied the requirements of this paragraph.

(3) An otherwise eligible program that is offered in whole or in part through telecommunications is eligible for the purposes of this subchapter and part C of subchapter I of chapter 34 of title 42 if the program is offered by an institution, other than a foreign institution, that has been evaluated and determined (before or after February 8, 2006) to have the capability to effectively deliver distance education programs by an accrediting agency or association that—

(A) is recognized by the Secretary under subpart 2 of part G of this subchapter; and

(B) has evaluation of distance education programs within the scope of its recognition, as described in section 1099b(n)(3) of this title.

(4) For purposes of this subchapter and part C of subchapter I of chapter 34 of title 42, the term ''eligible program'' includes an instructional program that, in lieu of credit hours or clock hours as the measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others, if such assessment is consistent with the accreditation of the institution or program utilizing the results of the assessment. In the case of a program being determined eligible for the first time under this paragraph, such determination shall be made by the Secretary before such program is considered to be an eligible program.

(c) Third party servicer

For purposes of this subchapter and part C of subchapter I of chapter 34 of title 42, the term ''third party servicer'' means any individual, any State, or any private, for-profit or nonprofit organization, which enters into a contract with—

(1) any eligible institution of higher education to administer, through either manual or automated processing, any aspect of such institution's student assistance programs under this subchapter and part C of subchapter I of chapter 34 of title 42; or

(2) any guaranty agency, or any eligible lender, to administer, through either manual or automated processing, any aspect of such guaranty agency's or lender's student loan programs under part B of this subchapter, including originating, guaranteeing, monitoring, processing, servicing, or collecting loans.

(d) Definitions for military deferments

For purposes of parts B, C, and D of this subchapter:

(1) Active duty

The term ''active duty'' has the meaning given such term in section 101(d)(1) of title 10, except that such term does not include active duty for training or attendance at a service school.

(2) Military operation

The term ''military operation'' means a contingency operation as such term is defined in section 101(a)(13) of title 10.

(3) National emergency

The term ''national emergency'' means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

(4) Serving on active duty

The term ''serving on active duty during a war or other military operation or national emergency'' means service by an individual who is—

(A) a Reserve of an Armed Force ordered to active duty under section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10 or any retired member of an Armed Force ordered to active duty under section 688 of such title, for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; and

(B) any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

(5) Qualifying National Guard duty

The term ''qualifying National Guard duty during a war or other military operation or national emergency'' means service as a member of the National Guard on full-time National Guard duty (as defined in section 101(d)(5) of title 10) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32 in connection with a war, other military operation, or a national emergency declared by the President and supported by Federal funds.

(e) Consumer reporting agency

For purposes of this subchapter and part C of subchapter I of chapter 34 of title 42, the term ''consumer reporting agency'' has the meaning given the term ''consumer reporting agency that compiles and maintains files on consumers on a nationwide basis'' in Section[1] 1681a(p) of title 15.

(f) Definition of educational service agency

For purposes of parts B, C, and D, the term ''educational service agency'' has the meaning given the term in section 7801 of this title.

(Pub. L. 89–329, title IV, § 481, as added Pub. L. 99–498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1476; amended Pub. L. 100–50, § 15(1), June 3, 1987, 101 Stat. 355; Pub. L. 101–239, title II, § 2007(b), (c), Dec. 19, 1989, 103 Stat. 2120, 2121; Pub. L. 101–508, title III, § 3005(b), Nov. 5, 1990, 104 Stat. 1388–28; Pub. L. 102–26, § 2(a)(2), (3), (d)(2)(A), Apr. 9, 1991, 105 Stat. 123, 124; Pub. L. 102–325, title IV, § 481, July 23, 1992, 106 Stat. 609; Pub. L. 103–208, § 2(h)(1)–(6), Dec. 20, 1993, 107 Stat. 2475, 2476; Pub. L. 105–216, § 12, July 29, 1998, 112 Stat. 908; Pub. L. 105–244, title I, § 101(c), Oct. 7, 1998, 112 Stat. 1617; Pub. L. 109–171, title VIII, §§ 8007(d), 8020(a), (b), Feb. 8, 2006, 120 Stat. 161, 177; Pub. L. 110–315, title IV, § 481, Aug. 14, 2008, 122 Stat. 3271; Pub. L. 111–39, title IV, § 407(b)(1), July 1, 2009, 123 Stat. 1950.)

[1] So in original. Probably should not be capitalized.

PRIOR PROVISIONS

A prior section 1088, Pub. L. 89–329, title IV, § 481, as added Pub. L. 96–374, title IV, § 451(a), Oct. 3, 1980, 94 Stat. 1443, defined ''institution of higher education'' for this subchapter and part C of subchapter I of chapter 34 of Title 42, The Public Health and Welfare, prior to the general amendment of this part by Pub. L. 99–498.

Another prior section 1088, Pub. L. 89–329, title IV, § 491, formerly § 461, as added Pub. L. 90–575, title I, § 151, Oct. 16, 1968, 82 Stat. 1032, renumbered § 491 and amended Pub. L. 92–318, title I, §§ 131(c), 137(b), title X, § 1001(c)(3), June 23, 1972, 86 Stat. 259, 272, 381; amended Pub. L. 95–180, § 1(b), Nov. 15, 1977, 91 Stat. 1372; Pub. L. 95–566, § 6, Nov. 1, 1978, 92 Stat. 2403; Pub. L. 96–49, § 5(e), Aug. 13, 1979, 93 Stat. 352, defined terms for this subchapter and part C of subchapter I of chapter 34 of title 42, prior to the general revision of this part by Pub. L. 96–374.

AMENDMENTS

2009—Subsec. (c). Pub. L. 111–39 substituted ''any State, or any private, for-profit or nonprofit organization,'' for ''or any State, or private, profit or nonprofit organization'' in introductory provisions.

2008—Subsec. (a)(2)(B). Pub. L. 110–315, § 481(1), inserted ''and that measures program length in credit hours or clock hours'' after ''baccalaureate degree''.

Subsecs. (e), (f). Pub. L. 110–315, § 481(2), added subsecs. (e) and (f).

2006—Subsec. (a)(2). Pub. L. 109–171, § 8020(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For the purpose of any program under this subchapter and part C of subchapter I of chapter 34 of title 42, the term 'academic year' shall require a minimum of 30 weeks of instructional time, and, with respect to an undergraduate course of study, shall require that during such minimum period of instructional time a full-time student is expected to complete at least 24 semester or trimester hours or 36 quarter hours at an institution that measures program length in credit hours, or at least 900 clock hours at an institution that measures program length in clock hours. The Secretary may reduce such minimum of 30 weeks to not less than 26 weeks for good cause, as determined by the Secretary on a case-by-case basis, in the case of an institution of higher education that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree.''

Subsec. (b)(3), (4). Pub. L. 109–171, § 8020(b), added pars. (3) and (4).

Subsec. (d). Pub. L. 109–171, § 8007(d), added subsec. (d).

1998—Pub. L. 105–244 redesignated subsecs. (d) to (f) as (a) to (c), respectively, and struck out former subsecs. (a) to (c) which defined the terms ''institution of higher education'', ''proprietary institution of higher education'', and ''postsecondary vocational institution''. See section 1002 of this title.

Subsec. (a)(4). Pub. L. 105–216, which directed the amendment of par. (4), effective 1 year after July 29, 1998, by designating existing provisions as subpar. (A), redesignating former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), and by adding subpar. (B) to read as follows: ''Subparagraph (A)(i) shall not apply to a nonprofit institution whose primary function is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, and December 31, 1998.'', could not be executed because subsec. (a) did not contain a par. (4) subsequent to amendment by Pub. L. 105–244. See above.

1993—Subsec. (a)(3)(B). Pub. L. 103–208, § 2(h)(1), inserted before semicolon at end '', except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree''.

Subsec. (a)(3)(D). Pub. L. 103–208, § 2(h)(2), substituted ''do not have a high school diploma or its recognized equivalent'' for ''are admitted pursuant to section 1091(d) of this title'' and inserted before period at end '', except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that it exceeds such limitation because it serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a high school diploma or its recognized equivalent''.

Subsec. (a)(4)(A). Pub. L. 103–208, § 2(h)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''such institution has filed for bankruptcy; or''.

Subsec. (d)(2). Pub. L. 103–208, § 2(h)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For the purpose of any program under this subchapter and part C of subchapter I of chapter 34 of title 42, the term 'academic year' shall require a minimum of 30 weeks of instructional time in which a full-time student is expected to complete at least 24 semester or trimester hours or 36 quarter hours at an institution which measures program length in credit hours or at least 900 clock hours at an institution which measures program length in clock hours.''

Subsec. (e)(2). Pub. L. 103–208, § 2(h)(5), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary shall develop regulations to determine the quality of programs of less than 600 clock hours in length. Such regulations shall require, at a minimum, that the programs have a verified rate of completion of at least 70 percent and a verified rate of placement of at least 70 percent. Pursuant to these regulations and notwithstanding paragraph (1), the Secretary shall allow programs of less than 600 clock hours, but greater than 300 clock hours, in length to be eligible to participate in the programs authorized under part B of this subchapter.''

Subsec. (f). Pub. L. 103–208, § 2(h)(6), substituted ''individual, or any State,'' for ''State'' in introductory provisions.

1992—Pub. L. 102–325, § 481(a), amended section catchline.

Subsec. (a). Pub. L. 102–325, § 481(a), added subsec. (a) and struck out former subsec. (a) which contained pars. (1) and (2) defining ''institution of higher education'' and ''accredited'' and par. (3) which related to recognition of accreditation of eligible institutions of higher education.

Subsec. (b). Pub. L. 102–325, § 481(b)(4), struck out at end ''For the purpose of this subsection, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of training offered.''

Subsec. (b)(1). Pub. L. 102–325, § 481(b)(1), substituted ''an eligible program'' for ''not less than a 6-month program''.

Subsec. (b)(4). Pub. L. 102–325, § 481(b)(2), substituted ''pursuant to part G of this subchapter,'' for ''for this purpose, and''.

Subsec. (b)(5), (6). Pub. L. 102–325, § 481(b)(3), substituted ''years, and'' for ''years.'' in cl. (5) and added cl. (6).

Subsec. (c)(1). Pub. L. 102–325, § 481(c), substituted ''an eligible program'' for ''not less than a six-month program''.

Subsec. (d). Pub. L. 102–325, § 481(d), inserted ''and award'' after ''Academic'' in heading and amended text generally. Prior to amendment, text read as follows: ''For the purpose of any program under this subchapter and part C of subchapter I of chapter 34 of title 42, the term 'academic year' shall be defined by the Secretary by regulation.''

Subsec. (e). Pub. L. 102–325, § 481(e), amended subsec. (e) generally, substituting provisions relating to eligi-

ble program for provisions relating to impact of loss of accreditation.

Subsec. (f). Pub. L. 102–325, §481(f), added subsec. (f).

1991—Subsec. (b). Pub. L. 102–26, §2(d)(2)(A), repealed Pub. L. 101–508, §3005(b). See 1990 Amendment note below.

Pub. L. 102–26, §2(a)(2), struck out ''and who have the ability to benefit (as determined by the institution under section 1091(d) of this title) from the training offered by the institution'' before period at end of second sentence, and struck out at end ''The Secretary shall not promulgate regulations defining the admissions procedures or remediation programs that must be used by an institution in admitting students on the basis of their ability to benefit from the training offered and shall not, as a condition of recognition under section 413(e) of this Act, impose upon any accrediting body or bodies standards which are different or more restrictive than the standards provided in this subsection.''

Subsec. (c). Pub. L. 102–26, §2(a)(3), struck out before period at end ''and who have the ability to benefit (as determined by the institution under section 1091(d) of this title) from the training offered by the institution''.

1990—Subsec. (b). Pub. L. 101–508, which inserted '', except in accordance with section 1091(d) of this title,'' after ''shall not'' in fourth sentence, was repealed by Pub. L. 102–26, §2(d)(2)(A). See Construction of 1991 Amendment note below.

1989—Subsec. (a)(1). Pub. L. 101–239, §2007(b)(1), substituted ''Subject to subsection (e) of this section, for the purpose'' for ''For the purpose''.

Subsec. (a)(3). Pub. L. 101–239, §2007(c), added par. (3).

Subsec. (e). Pub. L. 101–239, §2007(b)(2), added subsec. (e).

1987—Subsec. (c). Pub. L. 100–50 substituted ''section 1091(d) of this title'' for ''subsection (d) of this section''.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Amendment by section 8007(d) of Pub. L. 109–171 applicable with respect to all loans under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.), see section 8007(f) of Pub. L. 109–171, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

Amendment by Pub. L. 105–216 effective 1 year after July 29, 1998, see section 13 of Pub. L. 105–216, set out as an Effective Date note under section 4901 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 498 of Pub. L. 102–325 provided that: ''The changes made in part G of title IV of the Act [20 U.S.C. 1088 et seq.] by the amendments made by this part [part G (§§481–498) of title IV of Pub. L. 102–325, enacting sections 1091b, 1092c, 1094a, 1094b, 1098a, and 1098b of this title, amending sections 1088 to 1091, 1092, 1092b, 1093, 1094, 1095, 1096, 1097, and 1098 of this title, and repealing section 1096a of this title] shall take effect on the date of enactment of this Act [July 23, 1992], except that—

''(1) as otherwise provided in such part G;

''(2) the changes in section 481(a) [20 U.S.C. 1088(a)], relating to the definition of institution of higher education, other than paragraph (4) of such section, shall be effective on and after October 1, 1992;

''(3) section 481(e) as added by such amendments, relating to the definition of eligible program, shall be effective on and after July 1, 1993;

''(4) section 484(m)(1) [20 U.S.C. 1091(m)(1)], relating to proportion of courses permitted to be correspondence courses, as added by such amendments shall be effective on and after October 1, 1992;

''(5) the changes in section 485 [20 U.S.C. 1092], relating to disclosures, shall be effective with respect to periods of enrollment beginning on or after July 1, 1993;

''(6) the changes in section 488 [20 U.S.C. 1095], relating to transfers of allotments, shall apply with respect to funds provided for award years beginning on or after July 1, 1993; and

''(7) the changes in section 489 [20 U.S.C. 1096], relating to payments for administrative expenses, shall apply with respect to funds provided for award years beginning on or after July 1, 1993.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–26 applicable to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after July 1, 1991, see section 2(d)(1) of Pub. L. 102–26, set out as a note under section 1085 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 3005(c) of Pub. L. 101–508, which provided that the amendments made by section 3005 (amending this section and section 1091 of this title) were to apply to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after Jan. 1, 1991, was repealed by section 2(d)(2)(A) of Pub. L. 102–26. See Construction of 1991 Amendment note below.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

CONSTRUCTION OF 2006 AMENDMENT

Nothing in amendment by section 8007(d) of Pub. L. 109–171 to be construed to authorize any refunding of any repayment of a loan, see section 8007(e) of Pub. L. 109–171, set out as a note under section 1078 of this title.

CONSTRUCTION OF 1991 AMENDMENT

Section 2(d)(2)(A) of Pub. L. 102–26 provided that: ''Section 3005 of the Omnibus Reconciliation Act of 1990 [Pub. L. 101–508, amending this section and section 1091 of this title and enacting provisions set out as a note above] is repealed. Sections 484(d) and 481(b) of the Act [20 U.S.C. 1091(d), 1088(b)] shall be applied as if such section 3005 had not been enacted.''

NEED-BASED AID

Section 1544 of Pub. L. 102–325 authorized institutions of higher education to voluntarily agree with other such institutions to award financial aid not awarded under this chapter to students attending such institutions only on basis of demonstrated financial need for such aid, and to discuss and adopt principles of professional judgment for determining student financial need for such aid, with exceptions for cases pending on July 23, 1992, and for discussions or agreements on prospective financial aid awards to specific common applicants, and provided that such authorization was to expire on Sept. 30, 1994, prior to repeal by Pub. L. 103–382,

title V, § 568(e)(2), Oct. 20, 1994, 108 Stat. 4061. See section 568(a)–(d) of Pub. L. 103–382, set out as a note under section 1 of Title 15, Commerce and Trade.

§ 1088a. Clock and credit hour treatment of diploma nursing schools

Notwithstanding any other provision of this chapter and part C of subchapter I of chapter 34 of title 42, any regulations promulgated by the Secretary concerning the relationship between clock hours and semester, trimester, or quarter hours in calculating student grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, shall not apply to a public or private nonprofit hospital-based school of nursing that awards a diploma at the completion of the school's program of education.

(Pub. L. 89–329, title IV, § 481A, as added Pub. L. 103–382, title III, § 360(a), Oct. 20, 1994, 108 Stat. 3969.)

PRIOR PROVISIONS

Prior sections 1088a to 1088g were omitted in the general amendment of this part by Pub. L. 96–374.

Section 1088a, Pub. L. 89–329, title IV, § 492, formerly § 462, as added Pub. L. 90–575, title I, § 151, Oct. 16, 1968, 82 Stat. 1032; renumbered § 492, Pub. L. 92–318, title I, § 137(b), June 23, 1972, 86 Stat. 272, related to the eligibility of residents of the Trust Territory of the Pacific Islands. See section 1091(b) of this title.

Section 1088b, Pub. L. 89–329, title IV, § 493, formerly § 463, as added Pub. L. 90–575, title I, § 152, Oct. 16, 1968, 82 Stat. 1033; renumbered § 493, Pub. L. 92–318, title I, § 137(b), June 23, 1972, 86 Stat. 272; amended Pub. L. 94–482, title I, § 131(a), Oct. 12, 1976, 90 Stat. 2147; Pub. L. 95–43, § 1(a)(40), June 15, 1977, 91 Stat. 217, related to administration expenses. See section 1096 of this title.

Section 1088b–1, Pub. L. 89–329, title IV, § 493A, as added Pub. L. 94–482, title I, § 131(b), Oct. 12, 1976, 90 Stat. 2148, related to institutional and financial assistance information for students. See section 1092 of this title.

Section 1088b–2, Pub. L. 89–329, title IV, § 493B, as added Pub. L. 94–482, title I, § 131(b), Oct. 12, 1976, 90 Stat. 2149, related to student aid information services.

Section 1088b–3, Pub. L. 89–329, title IV, § 493C, as added Pub. L. 94–482, title I, § 131(b), Oct. 12, 1976, 90 Stat. 2149, related to the student financial assistance training program.

Section 1088c, Pub. L. 89–329, title IV, § 494, formerly § 464, as added Pub. L. 90–575, title I, § 152, Oct. 16, 1968, 82 Stat. 1033; renumbered § 494 and amended Pub. L. 92–318, title I, §§ 137(b), 138(a), June 23, 1972, 86 Stat. 272, 280, related to maintenance of effort requirement.

Section 1088d, Pub. L. 89–329, title IV, § 495, as added Pub. L. 92–318, title I, § 139, June 23, 1972, 86 Stat. 280; amended S. Res. 4, Feb. 4, 1977; S. Res. 30, Mar. 7, 1979, related to requirement that copies of rules, regulations, instructions, and application forms be supplied to Congressional committees. See section 1090(b) of this title.

Section 1088e, Pub. L. 89–329, title IV, § 496, as added Pub. L. 92–318, title I, § 139A(a), June 23, 1972, 86 Stat. 281, related to transfer of funds between programs. See section 1095 of this title.

Section 1088f, Pub. L. 89–329, title IV, § 497, as added Pub. L. 92–318, title I, § 139B(a), June 23, 1972, 86 Stat. 281; amended Pub. L. 94–482, title I, § 132, Oct. 12, 1976, 90 Stat. 2150; Pub. L. 95–566, § 7, Nov. 1, 1978, 92 Stat. 2404, related to eligibility for student assistance. See section 1091 of this title.

Section 1088f–1, Pub. L. 89–329, title IV, § 497A, as added Pub. L. 94–482, title I, § 133(a), Oct. 12, 1976, 90 Stat. 2150; amended Pub. L. 95–43, § 1(a)(41), June 15, 1977, 91 Stat. 217; Pub. L. 95–561, title XII, § 1231(b), Nov. 1, 1978, 92 Stat. 2346, related to fiscal eligibility of institutions.

Section 1088g, Pub. L. 89–329, title IV, § 498, as added Pub. L. 92–318, title I, § 139C(a), June 23, 1972, 86 Stat. 282, related to requirement of an affidavit of educational purpose.

EFFECTIVE DATE

Section 360(b) of Pub. L. 103–382 provided that: "Subsection (a) [enacting this section] and the amendment made by subsection (a) shall take effect on July 1, 1994."

§ 1089. Master calendar

(a) Secretary required to comply with schedule

To assure adequate notification and timely delivery of student aid funds under this subchapter and part C of subchapter I of chapter 34 of title 42, the Secretary shall adhere to the following calendar dates in the year preceding the award year:

(1) Development and distribution of Federal and multiple data entry forms—

(A) by February 1: first meeting of the technical committee on forms design of the Department;

(B) by March 1: proposed modifications, updates, and notices pursuant to sections 1087rr and 1090(a)(5) of this title published in the Federal Register;

(C) by June 1: final modifications, updates, and notices pursuant to sections 1087rr and 1090(a)(5) of this title published in the Federal Register;

(D) by August 15: application for Federal student assistance and multiple data entry data elements and instructions approved;

(E) by August 30: final approved forms delivered to servicers and printers;

(F) by October 1: Federal and multiple data entry forms and instructions printed; and

(G) by November 1: Federal and multiple data entry forms, instructions, and training materials distributed.

(2) Allocations of campus-based and Pell Grant funds—

(A) by August 1: distribution of institutional application for campus-based funds (FISAP) to institutions;

(B) by October 1: final date for submission of FISAP by institutions to the Department;

(C) by November 15: edited FISAP and computer printout received by institutions;

(D) by December 1: appeals procedures received by institutions;

(E) by December 15: edits returned by institutions to the Department;

(F) by February 1: tentative award levels received by institutions and final Pell Grant payment schedule;

(G) by February 15: closing date for receipt of institutional appeals by the Department;

(H) by March 1: appeals process completed;

(I) by April 1: final award notifications sent to institutions; and

(J) by June 1: Pell Grant authorization levels sent to institutions.

(3) The Secretary shall, to the extent practicable, notify eligible institutions, guaranty agencies, lenders, interested software providers, and, upon request, other interested par-

ties, by December 1 prior to the start of an award year of minimal hardware and software requirements necessary to administer programs under this subchapter and part C of subchapter I of chapter 34 of title 42.

(4) The Secretary shall attempt to conduct training activities for financial aid administrators and others in an expeditious and timely manner prior to the start of an award year in order to ensure that all participants are informed of all administrative requirements.

(b) Timing for reallocations

With respect to any funds reallocated under section 1070b–3(d) of this title, section 2752(d) of title 42, or section 1087bb(i) of this title, the Secretary shall reallocate such funds at any time during the course of the year that will best meet the purpose of the programs under subpart 3 of part A of this subchapter, part C of subchapter I of chapter 34 of title 42, and part D of this subchapter, respectively. However, such reallocation shall occur at least once each year, not later than September 30 of that year.

(c) Delay of effective date of late publications

(1) Except as provided in paragraph (2), any regulatory changes initiated by the Secretary affecting the programs under this subchapter and part C of subchapter I of chapter 34 of title 42 that have not been published in final form by November 1 prior to the start of the award year shall not become effective until the beginning of the second award year after such November 1 date.

(2)(A) The Secretary may designate any regulatory provision that affects the programs under this subchapter and part C of subchapter I of chapter 34 of title 42 and is published in final form after November 1 as one that an entity subject to the provision may, in the entity's discretion, choose to implement prior to the effective date described in paragraph (1). The Secretary may specify in the designation when, and under what conditions, an entity may implement the provision prior to that effective date. The Secretary shall publish any designation under this subparagraph in the Federal Register.

(B) If an entity chooses to implement a regulatory provision prior to the effective date described in paragraph (1), as permitted by subparagraph (A), the provision shall be effective with respect to that entity in accordance with the terms of the Secretary's designation.

(d) Notice to Congress

The Secretary shall notify the authorizing committees when a deadline included in the calendar described in subsection (a) of this section is not met. Nothing in this section shall be interpreted to penalize institutions or deny them the specified times allotted to enable them to return information to the Secretary based on the failure of the Secretary to adhere to the dates specified in this section.

(e) Compliance calendar

Prior to the beginning of each award year, the Secretary shall provide to institutions of higher education a list of all the reports and disclosures required under this chapter and part C of subchapter I of chapter 34 of title 42. The list shall include—

(1) the date each report or disclosure is required to be completed and to be submitted, made available, or disseminated;

(2) the required recipients of each report or disclosure;

(3) any required method for transmittal or dissemination of each report or disclosure;

(4) a description of the content of each report or disclosure sufficient to allow the institution to identify the appropriate individuals to be assigned the responsibility for such report or disclosure;

(5) references to the statutory authority, applicable regulations, and current guidance issued by the Secretary regarding each report or disclosure; and

(6) any other information which is pertinent to the content or distribution of the report or disclosure.

(Pub. L. 89–329, title IV, § 482, as added Pub. L. 99–498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1477; amended Pub. L. 100–50, § 15(2), June 3, 1987, 101 Stat. 355; Pub. L. 102–325, title IV, § 482, July 23, 1992, 106 Stat. 612; Pub. L. 103–208, § 2(h)(7), Dec. 20, 1993, 107 Stat. 2476; Pub. L. 104–66, title I, § 1042(b), Dec. 21, 1995, 109 Stat. 715; Pub. L. 105–244, title IV, § 481, Oct. 7, 1998, 112 Stat. 1732; Pub. L. 110–315, title I, § 103(b)(9), title IV, § 482(a), Aug. 14, 2008, 122 Stat. 3089, 3271; Pub. L. 111–39, title IV, § 407(b)(2), July 1, 2009, 123 Stat. 1950.)

PRIOR PROVISIONS

A prior section 1089, Pub. L. 89–329, title IV, § 482, as added Pub. L. 96–374, title IV, § 451(a), Oct. 3, 1980, 94 Stat. 1445; amended Pub. L. 97–35, title V, § 533(a)(1), (2), (b), Aug. 13, 1981, 95 Stat. 453; Pub. L. 99–272, title XVI, § 16031, Apr. 7, 1986, 100 Stat. 354, related to analysis of student's need for financial assistance, prior to the general revision of this part by Pub. L. 99–498.

Another prior section 1089, Pub. L. 89–329, title IV, § 499, formerly § 469, as added Pub. L. 90–575, title I, § 151, Oct. 16, 1968, 82 Stat. 1032; amended Pub. L. 91–230, title IV, § 401(h)(4), Apr. 13, 1970, 84 Stat. 174; renumbered Pub. L. 92–318, title I, § 137(b), June 23, 1972, 86 Stat. 272, related to the Advisory Council on Financial Aid to Students, prior to the general revision of this part by Pub. L. 96–374.

AMENDMENTS

2009—Subsec. (b). Pub. L. 111–39 substituted ''section 1070b–3(d) of this title, section 2752(d) of title 42, or section 1087bb(i) of this title'' for ''section 1070b–3(e) of this title, section 2752(e) of title 42, or section 1087bb(j) of this title''.

2008—Subsec. (a)(1)(B), (C). Pub. L. 110–315, § 482(a)(1), added subpars. (B) and (C) and struck out former subpars. (B) and (C) which read as follows:

''(B) by March 1: proposed modifications and updates pursuant to section 1087rr of this title published in the Federal Register;

''(C) by June 1: final modifications and updates pursuant to section 1087rr of this title published in the Federal Register;''.

Subsec. (d). Pub. L. 110–315, § 103(b)(9), substituted ''authorizing committees'' for ''Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives''.

Subsec. (e). Pub. L. 110–315, § 482(a)(2), added subsec. (e).

1998—Subsec. (a)(3), (4). Pub. L. 105–244, § 481(a), added pars. (3) and (4).

Subsec. (c). Pub. L. 105–244, § 481(b), amended heading and text of subsec. (c) generally. Prior to amendment,

text read as follows: ''Any regulatory changes initiated by the Secretary affecting the programs pursuant to this subchapter and part C of subchapter I of chapter 34 of title 42 that have not been published in final form by December 1 prior to the start of the award year shall not become effective until the beginning of the second award year after such December 1 date. For award year 1994–95, this subsection shall not require a delay in the effectiveness of regulatory changes affecting this part and parts B and G of this subchapter that are published in final form by May 1, 1994.''

1995—Subsec. (d). Pub. L. 104–66, in first sentence substituted ''a deadline included in the calendar described in subsection (a) of this section is not met'' for ''the items specified in the calendar have been completed and provide all relevant forms, rules, and instructions with such notice'' and after first sentence struck out ''When a deadline included in the calendar is not met, the Secretary, within 7 days, shall submit to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives a written report, including proper documentation, as to why the deadline was not adhered to and a detailed plan for ensuring that subsequent dates are met.''

1993—Subsec. (c). Pub. L. 103–208 inserted at end ''For award year 1994–95, this subsection shall not require a delay in the effectiveness of regulatory changes affecting this part and parts B and G of this subchapter that are published in final form by May 1, 1994.''

1992—Subsec. (a)(1)(B), (C). Pub. L. 102–325, § 482(b)(1), substituted ''section 1087rr'' for ''sections 1070a–5 and 1087rr''.

Subsec. (b). Pub. L. 102–325, § 482(b)(2), substituted ''subpart 3'' for ''subpart 2''.

Subsec. (c). Pub. L. 102–325, § 482(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Any additional regulatory changes initiated by the Secretary affecting the general administration of the programs pursuant to this subchapter and part C of subchapter I of chapter 34 of title 42 that have not been published in final form by December 1 prior to the start of the award year shall not become effective until the beginning of the second award year after the December 1 date.''

1987—Subsec. (b). Pub. L. 100–50 inserted reference to section 1087bb(j) of this title and part D of this subchapter.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, § 482(b), Aug. 14, 2008, 122 Stat. 3272, provided that: ''The amendment made by subsection (a)(1) [amending this section] shall take effect on July 1, 2010.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

INAPPLICABILITY OF MASTER CALENDAR AND NEGOTIATED RULEMAKING REQUIREMENTS

Pub. L. 112–74, div. F, title III, § 309(h), Dec. 23, 2011, 125 Stat. 1103, provided that: ''Sections 482(c) and 492 of the HEA (20 U.S.C. 1089(c), 1098a) shall not apply to the amendments made by this section [amending sections 1001, 1070a, 1078, 1087–1, 1087ss, and 1091 of this title and enacting provisions set out as notes under sections 1001, 1078, and 1091 of this title], or to any regulations promulgated under those amendments.''

Pub. L. 112–25, title V, § 504, Aug. 2, 2011, 125 Stat. 267, provided that: ''Sections 482(c) and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the amendments made by this title [amending sections 1070a and 1087e of this title], or to any regulations promulgated under those amendments.''

Pub. L. 112–10, div. B, title VIII, § 1860(c), Apr. 15, 2011, 125 Stat. 170, provided that: ''Sections 482(c) and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the amendments made by subsection (a)(2) [amending section 1070a of this title], or to any regulations promulgated under those amendments.''

Pub. L. 111–39, title IV, § 409, July 1, 2009, 123 Stat. 1953, provided that: ''Sections 482 and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089, 1098a) shall not apply to the amendments made by this title [see Tables for classification], or to any regulations promulgated under those amendments.''

Pub. L. 110–315, title IV, § 402(b), Aug. 14, 2008, 122 Stat. 3191, provided that: ''Sections 482 and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089, 1098a) shall not apply to the amendments made by subsection (a) [amending section 1070a–1 of this title], or to any regulations promulgated under those amendments.''

Pub. L. 110–227, § 11, May 7, 2008, 122 Stat. 752, as amended by Pub. L. 110–315, title IV, § 402(c)(1), Aug. 14, 2008, 122 Stat. 3191, provided that: ''Sections 482 and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089, 1098a) shall not apply to amendments made by this Act [see Tables for classification], or to any regulations promulgated under such amendments.''

[Pub. L. 110–315, title IV, § 402(c)(2), Aug. 14, 2008, 122 Stat. 3191, provided that: ''The amendment made by paragraph (1) [amending section 11 of Pub. L. 110–227, set out above] shall take effect as if enacted as part of the Ensuring Continued Access to Student Loans Act of 2008 [Pub. L. 110–227].'']

ESTABLISHMENT OF SEPARATE SYSTEMS OF NEED ANALYSIS FOR ACADEMIC YEARS 1983–1984 THROUGH 1987–1988

Pub. L. 97–301, § 4, Oct. 13, 1982, 96 Stat. 1400, as amended by Pub. L. 98–79, § 4(a), Aug. 15, 1983, 97 Stat. 480; Pub. L. 98–511, title VII, § 707(3), Oct. 19, 1984, 98 Stat. 2407; Pub. L. 99–498, title IV, § 408(a)(1), Oct. 17, 1986, 100 Stat. 1495, which required Secretary of Education to establish or approve separate systems of need analysis for the academic years 1983–1984, 1984–1985, 1985–1986, 1986–1987, and 1987–1988 for the programs authorized under subpart 2 [now 3] of part A [20 U.S.C. 1070b et seq.], part C [42 U.S.C. 2751 et seq.], and part E [20 U.S.C. 1087aa et seq.] of title IV of the Higher Education Act of 1965, was repealed by Pub. L. 99–498, title IV, § 408(b), Oct. 17, 1986, 100 Stat. 1495, eff. with respect to any academic year beginning on or after July 1, 1988.

DETERMINATION OF INDEPENDENT STUDENT STATUS FOR ACADEMIC YEARS 1982–1983 THROUGH 1987–1988

Pub. L. 97–301, § 6, Oct. 13, 1982, 96 Stat. 1400, as amended by Pub. L. 98–79, § 4(a), Aug. 15, 1983, 97 Stat. 481; Pub. L. 98–516, title VII, § 707(3), Oct. 19, 1984, 98 Stat. 2407; Pub. L. 99–498, title IV, § 408(a)(1), Oct. 17, 1986, 100 Stat. 1495, which provided that notwithstanding any rule or regulation, the criteria for the determination of independent student status, prescribed under subsec. (c)(2) of this section, in effect for academic year 1982–1983, was to be the criteria for such determinations for each of the academic years 1983–1984,

1984–1985, 1985–1986, 1986–1987, and 1987–1988, was repealed by Pub. L. 99–498, title IV, § 408(b), Oct. 17, 1986, 100 Stat. 1495, eff. with respect to any academic year beginning on or after July 1, 1988.

§ 1090. Forms and regulations

(a) Common financial aid form development and processing

(1) In general

The Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance, shall produce, distribute, and process free of charge common financial reporting forms as described in this subsection to be used for application and reapplication to determine the need and eligibility of a student for financial assistance under parts A through D of this subchapter and part C of subchapter I of chapter 34 of title 42 (other than under subpart 4 of part A of this subchapter). The forms shall be made available to applicants in both paper and electronic formats and shall be referred to as the ''Free Application for Federal Student Aid'' or the ''FAFSA''. The Secretary shall work to make the FAFSA consumer-friendly and to make questions on the FAFSA easy for students and families to read and understand, and shall ensure that the FAFSA is available in formats accessible to individuals with disabilities.

(2) Paper format

(A) In general

The Secretary shall develop, make available, and process—

(i) a paper version of EZ FAFSA, as described in subparagraph (B); and

(ii) a paper version of the other forms described in this subsection, in accordance with subparagraph (C), for any applicant who does not meet the requirements of or does not wish to use the process described in subparagraph (B).

(B) EZ FAFSA

(i) In general

The Secretary shall develop and use, after appropriate field testing, a simplified paper form, to be known as the EZ FAFSA, to be used for applicants meeting the requirements of subsection (b) or (c) of section 1087ss of this title.

(ii) Reduced data requirements

The EZ FAFSA shall permit an applicant to submit, for financial assistance purposes, only the data elements required to make a determination of whether the applicant meets the requirements under subsection (b) or (c) of section 1087ss of this title.

(iii) State data

The Secretary shall include on the EZ FAFSA such data items as may be necessary to award State financial assistance, as provided under paragraph (5), except that the Secretary shall not include a State's data if that State does not permit the State's resident applicants to use the EZ FAFSA for State assistance.

(iv) Free availability and processing

The provisions of paragraph (6) shall apply to the EZ FAFSA, and the data collected by means of the EZ FAFSA shall be available to institutions of higher education, guaranty agencies, and States in accordance with paragraph (10).

(C) Promoting the use of electronic FAFSA

(i) In general

The Secretary shall make all efforts to encourage all applicants to utilize the electronic version of the forms described in paragraph (3).

(ii) Maintenance of the FAFSA in a printable electronic file

The Secretary shall maintain a version of the paper forms described in subparagraphs (A) and (B) in a printable electronic file that is easily portable, accessible, and downloadable to students on the same website used to provide students with the electronic version of the forms described in paragraph (3).

(iii) Requests for printed copy

The Secretary shall provide a printed copy of the full paper version of FAFSA upon request.

(iv) Reporting requirement

The Secretary shall maintain data, and periodically report to Congress, on the impact of the digital divide on students completing applications for aid under this subchapter and part C of subchapter I of chapter 34 of title 42. The Secretary shall report on the steps taken to eliminate the digital divide and reduce production of the paper form described in subparagraph (A). The Secretary's report shall specifically address the impact of the digital divide on the following student populations:

(I) Independent students.

(II) Traditionally underrepresented students.

(III) Dependent students.

(3) Electronic format

(A) In general

The Secretary shall produce, distribute, and process forms in electronic format to meet the requirements of paragraph (1). The Secretary shall develop an electronic version of the forms for applicants who do not meet the requirements of subsection (b) or (c) of section 1087ss of this title.

(B) Simplified applications: FAFSA on the web

(i) In general

The Secretary shall develop and use a simplified electronic version of the form to be used by applicants meeting the requirements under subsection (b) or (c) of section 1087ss of this title.

(ii) Reduced data requirements

The simplified electronic version of the forms shall permit an applicant to submit, for financial assistance purposes, only the

data elements required to make a determination of whether the applicant meets the requirements under subsection (b) or (c) of section 1087ss of this title.

(iii) Use of forms

Nothing in this subsection shall be construed to prohibit the use of the forms developed by the Secretary pursuant to this paragraph by an eligible institution, eligible lender, guaranty agency, State grant agency, private computer software provider, a consortium thereof, or such other entities as the Secretary may designate.

(C) State data

The Secretary shall include on the electronic version of the forms such items as may be necessary to determine eligibility for State financial assistance, as provided under paragraph (5), except that the Secretary shall not require an applicant to enter data pursuant to this subparagraph that are required by any State other than the applicant's State of residence.

(D) Availability and processing

The data collected by means of the simplified electronic version of the forms shall be available to institutions of higher education, guaranty agencies, and States in accordance with paragraph (10).

(E) Privacy

The Secretary shall ensure that data collection under this paragraph complies with section 552a of title 5 and that any entity using the electronic version of the forms developed by the Secretary pursuant to this paragraph shall maintain reasonable and appropriate administrative, technical, and physical safeguards to ensure the integrity and confidentiality of the information, and to protect against security threats, or unauthorized uses or disclosures of the information provided on the electronic version of the forms. Data collected by such electronic version of the forms shall be used only for the application, award, and administration of aid awarded under this subchapter and part C of subchapter I of chapter 34 of title 42, State aid, or aid awarded by eligible institutions or such entities as the Secretary may designate. No data collected by such electronic version of the forms shall be used for making final aid awards under this subchapter and part C of subchapter I of chapter 34 of title 42 until such data have been processed by the Secretary or a contractor or designee of the Secretary, except as may be permitted under this subchapter and part C of subchapter I of chapter 34 of title 42.

(F) Signature

Notwithstanding any other provision of this chapter and part C of subchapter I of chapter 34 of title 42, the Secretary may continue to permit an electronic version of the form under this paragraph to be submitted without a signature, if a signature is subsequently submitted by the applicant or if the applicant uses a personal identification number provided by the Secretary under subparagraph (G).

(G) Personal identification numbers authorized

The Secretary may continue to assign to an applicant a personal identification number—

(i) to enable the applicant to use such number as a signature for purposes of completing an electronic version of a form developed under this paragraph; and

(ii) for any purpose determined by the Secretary to enable the Secretary to carry out this subchapter and part C of subchapter I of chapter 34 of title 42.

(H) Personal identification number improvement

The Secretary shall continue to work with the Commissioner of Social Security to minimize the time required for an applicant to obtain a personal identification number when applying for aid under this subchapter and part C of subchapter I of chapter 34 of title 42 through an electronic version of a form developed under this paragraph.

(4) Streamlining

(A) Streamlined reapplication process

(i) In general

The Secretary shall continue to streamline reapplication forms and processes for an applicant who applies for financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 in the next succeeding academic year subsequent to an academic year for which such applicant applied for financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(ii) Updating of data elements

The Secretary shall determine, in cooperation with States, institutions of higher education, agencies, and organizations involved in student financial assistance, the data elements that may be transferred from the previous academic year's application and those data elements that shall be updated.

(iii) Reduced data authorized

Nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be construed as limiting the authority of the Secretary to reduce the number of data elements required of reapplicants.

(iv) Zero family contribution

Applicants determined to have a zero family contribution pursuant to section 1087ss(c) of this title shall not be required to provide any financial data in a reapplication form, except data that are necessary to determine eligibility under such section.

(B) Reduction of data elements

(i) Reduction encouraged

Of the number of data elements on the FAFSA used for the 2009–2010 award year, the Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance

and consistent with efforts under subsection (c), shall continue to reduce the number of such data elements required to be entered by all applicants, with the goal of reducing such number by 50 percent.

(ii) Report

The Secretary shall submit a report on the process of this reduction to each of the authorizing committees by June 30, 2011.

(5) State requirements

(A) In general

Except as provided in paragraphs (2)(B)(iii), (3)(B), and (4)(A)(ii), the Secretary shall include on the forms developed under this subsection, such State-specific data items as the Secretary determines are necessary to meet State requirements for need-based State aid. Such items shall be selected in consultation with State agencies in order to assist in the awarding of State financial assistance in accordance with the terms of this subsection. The number of such data items shall not be less than the number included on the form for the 2008–2009 award year unless a State notifies the Secretary that the State no longer requires those data items for the distribution of State need-based aid.

(B) Annual review

The Secretary shall conduct an annual review to determine—

(i) which data items each State requires to award need-based State aid; and

(ii) if the State will permit an applicant to file a form described in paragraph (2)(B) or (3)(B).

(C) Federal register notice

Beginning with the forms developed under paragraphs (2)(B) and (3)(B) for the award year 2010–2011, the Secretary shall publish on an annual basis a notice in the Federal Register requiring State agencies to inform the Secretary—

(i) if the State agency is unable to permit applicants to utilize the simplified forms described in paragraphs (2)(B) and (3)(B); and

(ii) of the State-specific nonfinancial data that the State agency requires for delivery of State need-based financial aid.

(D) Use of simplified forms encouraged

The Secretary shall encourage States to take such steps as are necessary to encourage the use of simplified forms under this subsection, including those forms described in paragraphs (2)(B) and (3)(B), for applicants who meet the requirements of subsection (b) or (c) of section 1087ss of this title.

(E) Consequences if State does not accept simplified forms

If a State does not permit an applicant to file a form described in paragraph (2)(B) or (3)(B) for purposes of determining eligibility for State need-based financial aid, the Secretary may determine that State-specific questions for such State will not be included on a form described in paragraph (2)(B) or (3)(B). If the Secretary makes such determination, the Secretary shall advise the State of the Secretary's determination.

(F) Lack of State response to request for information

If a State does not respond to the Secretary's request for information under subparagraph (B), the Secretary shall—

(i) permit residents of that State to complete simplified forms under paragraphs (2)(B) and (3)(B); and

(ii) not require any resident of such State to complete any data items previously required by that State under this section.

(G) Restriction

The Secretary shall, to the extent practicable, not require applicants to complete any financial or nonfinancial data items that are not required—

(i) by the applicant's State; or

(ii) by the Secretary.

(6) Charges to students and parents for use of forms prohibited

The need and eligibility of a student for financial assistance under parts A through D of this subchapter and part C of subchapter I of chapter 34 of title 42 (other than under subpart 4 of part A of this subchapter) may be determined only by using a form developed by the Secretary under this subsection. Such forms shall be produced, distributed, and processed by the Secretary, and no parent or student shall be charged a fee by the Secretary, a contractor, a third-party servicer or private software provider, or any other public or private entity for the collection, processing, or delivery of financial aid through the use of such forms. No data collected on a form for which a fee is charged shall be used to complete the form prescribed under this section, except that a Federal or State income tax form prepared by a paid income tax preparer or preparer service for the primary purpose of filing a Federal or State income tax return may be used to complete the form prescribed under this section.

(7) Restrictions on use of PIN

No person, commercial entity, or other entity may request, obtain, or utilize an applicant's personal identification number assigned under paragraph (3)(G) for purposes of submitting a form developed under this subsection on an applicant's behalf.

(8) Application processing cycle

The Secretary shall enable students to submit forms developed under this subsection and initiate the processing of such forms under this subsection, as early as practicable prior to January 1 of the student's planned year of enrollment.

(9) Early estimates

The Secretary shall continue to—

(A) permit applicants to enter data in such forms as described in this subsection in the years prior to enrollment in order to obtain a non-binding estimate of the applicant's

family contribution (as defined in section 1087mm of this title);

(B) permit applicants to update information submitted on forms described in this subsection, without needing to re-enter previously submitted information;

(C) develop a means to inform applicants, in the years prior to enrollment, of student aid options for individuals in similar financial situations;

(D) develop a means to provide a clear and conspicuous notice that the applicant's expected family contribution is subject to change and may not reflect the final expected family contribution used to determine Federal student financial aid award amounts under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(E) consult with representatives of States, institutions of higher education, and other individuals with experience or expertise in student financial assistance application processes in making updates to forms used to provide early estimates under this paragraph.

(10) Distribution of data

Institutions of higher education, guaranty agencies, and States shall receive, without charge, the data collected by the Secretary using a form developed under this subsection for the purposes of processing loan applications and determining need and eligibility for institutional and State financial aid awards. Entities designated by institutions of higher education, guaranty agencies, or States to receive such data shall be subject to all the requirements of this section, unless such requirements are waived by the Secretary.

(11) Third party servicers and private software providers

To the extent practicable and in a timely manner, the Secretary shall provide, to private organizations and consortia that develop software used by institutions of higher education for the administration of funds under this subchapter and part C of subchapter I of chapter 34 of title 42, all the necessary specifications that the organizations and consortia must meet for the software the organizations and consortia develop, produce, and distribute (including any diskette, modem, or network communications) to be so used. The specifications shall contain record layouts for required data. The Secretary shall develop in advance of each processing cycle an annual schedule for providing such specifications. The Secretary, to the extent practicable, shall use multiple means of providing such specifications, including conferences and other meetings, outreach, and technical support mechanisms (such as training and printed reference materials). The Secretary shall, from time to time, solicit from such organizations and consortia means of improving the support provided by the Secretary.

(12) Parent's social security number and birth date

The Secretary is authorized to include space on the forms developed under this subsection for the social security number and birth date of parents of dependent students seeking financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(b) Information to committees of Congress

Copies of all rules, regulations, guidelines, instructions, and application forms published or promulgated pursuant to this subchapter and part C of subchapter I of chapter 34 of title 42 shall be provided to the authorizing committees at least 45 days prior to their effective date.

(c) Toll-free information

The Secretary shall contract for, or establish, and publicize a toll-free telephone service to provide timely and accurate information to the general public. The information provided shall include specific instructions on completing the application form for assistance under this subchapter and part C of subchapter I of chapter 34 of title 42. Such service shall also include a service accessible by telecommunications devices for the deaf (TDD's) and shall, in addition to the services provided for in the previous sentence, refer such students to the national clearinghouse on postsecondary education or other appropriate provider of technical assistance and information on postsecondary educational services for individuals with disabilities, including the National Technical Assistance Center under section 1140q of this title. The Secretary shall continue to implement, to the extent practicable, a toll-free telephone based system to permit applicants who meet the requirements of subsection (b) or (c) of section 1087ss of this title to submit an application over such system.

(d) Assistance in preparation of financial aid application

(1) Preparation authorized

Notwithstanding any provision of this chapter, an applicant may use a preparer for consultative or preparation services for the completion of a form developed under subsection (a) if the preparer satisfies the requirements of this subsection.

(2) Preparer identification required

If an applicant uses a preparer for consultative or preparation services for the completion of a form developed under subsection (a), and for which a fee is charged, the preparer shall—

(A) include, at the time the form is submitted to the Department, the name, address or employer's address, social security number or employer identification number, and organizational affiliation of the preparer on the applicant's form; and

(B) be subject to the same penalties as an applicant for purposely giving false or misleading information in the application.

(3) Additional requirements

A preparer that provides consultative or preparation services pursuant to this subsection shall—

(A) clearly inform each individual upon initial contact, including contact through the Internet or by telephone, that the FAFSA and EZ FAFSA are free forms that

may be completed without professional assistance via paper or electronic version of the forms that are provided by the Secretary;

(B) include in any advertising clear and conspicuous information that the FAFSA and EZ FAFSA are free forms that may be completed without professional assistance via paper or electronic version of the forms that are provided by the Secretary;

(C) if advertising or providing any information on a website, or if providing services through a website, include on the website a link to the website that provides the electronic version of the forms developed under subsection (a); and

(D) not produce, use, or disseminate any other form for the purpose of applying for Federal student financial aid other than the form developed by the Secretary under subsection (a).

(4) Special rule

Nothing in this chapter and part C of subchapter I of chapter 34 of title 42 shall be construed to limit preparers of the forms required under this subchapter and part C of subchapter I of chapter 34 of title 42 that meet the requirements of this subsection from collecting source information from a student or parent, including Internal Revenue Service tax forms, in providing consultative and preparation services in completing the forms.

(e) Early application and estimated award demonstration program

(1) Purpose and objectives

The purpose of the demonstration program under this subsection is to measure the benefits, in terms of student aspirations and plans to attend an institution of higher education, and any adverse effects, in terms of program costs, integrity, distribution, and delivery of aid under this subchapter and part C of subchapter I of chapter 34 of title 42, of implementing an early application system for all dependent students that allows dependent students to apply for financial aid using information from two years prior to the year of enrollment. Additional objectives associated with implementation of the demonstration program are the following:

(A) To measure the feasibility of enabling dependent students to apply for Federal, State, and institutional financial aid in their junior year of secondary school, using information from two years prior to the year of enrollment, by completing any of the forms under this subsection.

(B) To identify whether receiving final financial aid award estimates not later than the fall of the senior year of secondary school provides students with additional time to compete for the limited resources available for State and institutional financial aid and positively impacts the college aspirations and plans of these students.

(C) To measure the impact of using income information from the years prior to enrollment on—

(i) eligibility for financial aid under this subchapter and part C of subchapter I of chapter 34 of title 42 and for other State and institutional aid; and

(ii) the cost of financial aid programs under this subchapter and part C of subchapter I of chapter 34 of title 42.

(D) To effectively evaluate the benefits and adverse effects of the demonstration program on program costs, integrity, distribution, and delivery of financial aid.

(2) Program authorized

Not later than two years after August 14, 2008, the Secretary shall implement an early application demonstration program enabling dependent students who wish to participate in the program—

(A) to complete an application under this subsection during the academic year that is two years prior to the year such students plan to enroll in an institution of higher education; and

(B) based on the application described in subparagraph (A), to obtain, not later than one year prior to the year of the students' planned enrollment, information on eligibility for Federal Pell Grants, Federal student loans under this subchapter and part C of subchapter I of chapter 34 of title 42, and State and institutional financial aid for the student's first year of enrollment in the institution of higher education.

(3) Early application and estimated award

For all dependent students selected for participation in the demonstration program who submit a completed FAFSA, or, as appropriate, an EZ FAFSA, two years prior to the year such students plan to enroll in an institution of higher education, the Secretary shall, not later than one year prior to the year of such planned enrollment—

(A) provide each student who completes an early application with an estimated determination of such student's—

(i) expected family contribution for the first year of the student's enrollment in an institution of higher education; and

(ii) Federal Pell Grant award for the first such year, based on the Federal Pell Grant amount, determined under section 1070a(b)(2)(A) of this title, for which a student is eligible at the time of application; and

(B) remind the students of the need to update the students' information during the calendar year of enrollment using the expedited reapplication process provided for in subsection (a)(4)(A).

(4) Participants

The Secretary shall include as participants in the demonstration program—

(A) States selected through the application process described in paragraph (5);

(B) institutions of higher education within the selected States that are interested in participating in the demonstration program, and that can make estimates or commitments of institutional student financial aid, as appropriate, to students the year before the students' planned enrollment date; and

(C) secondary schools within the selected States that are interested in participating in the demonstration program, and that can commit resources to—

(i) advertising the availability of the program;

(ii) identifying students who might be interested in participating in the program;

(iii) encouraging such students to apply; and

(iv) participating in the evaluation of the program.

(5) Applications

Each State that is interested in participating in the demonstration program shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary shall require. The application shall include—

(A) information on the amount of the State's need-based student financial assistance available, and the eligibility criteria for receiving such assistance;

(B) a commitment to make, not later than the year before the dependent students participating in the demonstration program plan to enroll in an institution of higher education, an estimate of the award of State financial aid to such dependent students;

(C) a plan for recruiting institutions of higher education and secondary schools with different demographic characteristics to participate in the program;

(D) a plan for selecting institutions of higher education and secondary schools to participate in the program that—

(i) demonstrate a commitment to encouraging students to submit a FAFSA, or, as appropriate, an EZ FAFSA, two years before the students' planned date of enrollment in an institution of higher education;

(ii) serve different populations of students;

(iii) in the case of institutions of higher education—

(I) to the extent possible, are of varying types and sectors; and

(II) commit to making, not later than the year prior to the year that dependent students participating in the demonstration program plan to enroll in the institution—

(aa) estimated institutional awards to participating dependent students; and

(bb) estimated grants or other financial aid available under this subchapter and part C of subchapter I of chapter 34 of title 42 (including supplemental grants under subpart 3 of part A of this subchapter), for all participating dependent students, along with information on State awards, as provided to the institution by the State;

(E) a commitment to participate in the evaluation conducted by the Secretary; and

(F) such other information as the Secretary may require.

(6) Special provisions

(A) Discretion of student financial aid administrators

A financial aid administrator at an institution of higher education participating in a demonstration program under this subsection may use the discretion provided under section 1087tt of this title as necessary for students participating in the demonstration program.

(B) Waivers

The Secretary is authorized to waive, for an institution of higher education participating in the demonstration program, any requirements under this subchapter and part C of subchapter I of chapter 34 of title 42, or regulations prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, that will make the demonstration program unworkable, except that the Secretary shall not waive any provisions with respect to the maximum award amounts for grants and loans under this subchapter and part C of subchapter I of chapter 34 of title 42.

(7) Outreach

The Secretary shall make appropriate efforts to notify States of the demonstration program under this subsection. Upon determination of participating States, the Secretary shall continue to make efforts to notify institutions of higher education and dependent students within participating States of the opportunity to participate in the demonstration program and of the participation requirements.

(8) Evaluation

The Secretary shall conduct a rigorous evaluation of the demonstration program to measure the program's benefits and adverse effects, as the benefits and effects relate to the purpose and objectives of the program described in paragraph (1). In conducting the evaluation, the Secretary shall—

(A) determine whether receiving financial aid estimates one year prior to the year in which the student plans to enroll in an institution of higher education, has a positive impact on the higher education aspirations and plans of such student;

(B) measure the extent to which using a student's income information from the year that is two years prior to the student's planned enrollment date had an impact on the ability of States and institutions of higher education to make financial aid awards and commitments;

(C) determine what operational changes are required to implement the program on a larger scale;

(D) identify any changes to Federal law that are necessary to implement the program on a permanent basis;

(E) identify the benefits and adverse effects of providing early estimates on program costs, program operations, program integrity, award amounts, distribution, and delivery of aid; and

(F) examine the extent to which estimated awards differ from actual awards made to students participating in the program.

(9) Consultation

The Secretary shall consult, as appropriate, with the Advisory Committee on Student Financial Assistance established under section 1098 of this title on the design, implementation, and evaluation of the demonstration program.

(f) Reduction of income and asset information to determine eligibility for student financial aid

(1) Continuation of current FAFSA simplification efforts

The Secretary shall continue to examine—

(A) how the Internal Revenue Service can provide to the Secretary income and other data needed to compute an expected family contribution for taxpayers and dependents of taxpayers, and when in the application cycle the data can be made available;

(B) whether data provided by the Internal Revenue Service can be used to—

(i) prepopulate the electronic version of the FAFSA with student and parent taxpayer data; or

(ii) generate an expected family contribution without additional action on the part of the student and taxpayer; and

(C) whether the data elements collected on the FAFSA that are needed to determine eligibility for student aid, or to administer the Federal student financial aid programs under this subchapter and part C of subchapter I of chapter 34 of title 42, but are not needed to compute an expected family contribution, such as information regarding the student's citizenship or permanent residency status, registration for selective service, or driver's license number, can be reduced without adverse effects.

(2) Report on FAFSA simplification efforts to date

Not later than 90 days after August 14, 2008, the Secretary shall provide a written report to the authorizing committees on the work the Department has done with the Secretary of the Treasury regarding—

(A) how the expected family contribution of a student can be calculated using substantially less income and asset information than was used on March 31, 2008;

(B) the extent to which the reduced income and asset information will result in a redistribution of Federal grants and subsidized loans under this subchapter and part C of subchapter I of chapter 34 of title 42, State aid, or institutional aid, or in a change in the composition of the group of recipients of such aid, and the amount of such redistribution;

(C) how the alternative approaches for calculating the expected family contribution will—

(i) rely mainly, in the case of students and parents who file income tax returns, on information available on the 1040, 1040EZ, and 1040A; and

(ii) include formulas for adjusting income or asset information to produce similar results to the existing approach with less data;

(D) how the Internal Revenue Service can provide to the Secretary of Education income and other data needed to compute an expected family contribution for taxpayers and dependents of taxpayers, and when in the application cycle the data can be made available;

(E) whether data provided by the Internal Revenue Service can be used to—

(i) prepopulate the electronic version of the FAFSA with student and parent taxpayer data; or

(ii) generate an expected family contribution without additional action on the part of the student and taxpayer;

(F) the extent to which the use of income data from two years prior to a student's planned enrollment date will change the expected family contribution computed in accordance with part E, and potential adjustments to the need analysis formula that will minimize the change; and

(G) the extent to which the data elements collected on the FAFSA on March 31, 2008, that are needed to determine eligibility for student aid or to administer the Federal student financial aid programs, but are not needed to compute an expected family contribution, such as information regarding the student's citizenship or permanent residency status, registration for selective service, or driver's license number, can be reduced without adverse effects.

(3) Study

(A) Formation of study group

Not later than 90 days after August 14, 2008, the Comptroller General shall convene a study group the membership of which shall include the Secretary of Education, the Secretary of the Treasury, the Director of the Office of Management and Budget, the Director of the Congressional Budget Office, representatives of institutions of higher education with expertise in Federal and State financial aid assistance, State chief executive officers of higher education with a demonstrated commitment to simplifying the FAFSA, and such other individuals as the Comptroller General and the Secretary of Education may designate.

(B) Study required

The Comptroller General, in consultation with the study group convened under subparagraph (A) shall—

(i) review and build on the work of the Secretary of Education and the Secretary of the Treasury, and individuals with expertise in analysis of financial need, to assess alternative approaches for calculating the expected family contribution under the statutory need analysis formula in effect on the day before August 14, 2008, and under a new calculation that will use substantially less income and asset informa-

tion than was used for the 2008–2009 FAFSA;

(ii) conduct an additional analysis if necessary; and

(iii) make recommendations to the authorizing committees.

(C) Objectives of study

The objectives of the study required under subparagraph (B) are—

(i) to determine methods to shorten the FAFSA and make the FAFSA easier and less time-consuming to complete, thereby increasing higher education access for low-income students;

(ii) to identify changes to the statutory need analysis formula that will be necessary to reduce the amount of financial information students and families need to provide to receive a determination of eligibility for student financial aid without causing significant redistribution of Federal grants and subsidized loans under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(iii) to review State and institutional needs and uses for data collected on the FAFSA, and to determine the best means of addressing such needs in the case of modification of the FAFSA as described in clause (i), or modification of the need analysis formula as described in clause (ii).

(D) Required subjects of study

The study required under subparagraph (B) shall examine—

(i) with respect to simplification of the financial aid application process using the statutory requirements for need analysis—

(I) additional steps that can be taken to simplify the financial aid application process for students who (or, in the case of dependent students, whose parents) are not required to file a Federal income tax return for the prior taxable year;

(II) information on State use of information provided on the FAFSA, including—

(aa) whether a State uses, as of the time of the study, or can use, a student's expected family contribution based on data from two years prior to the student's planned enrollment date;

(bb) the extent to which States and institutions will accept the data provided by the Internal Revenue Service to prepopulate the electronic version of the FAFSA to determine the distribution of State and institutional student financial aid funds;

(cc) what data are used by States, as of the time of the study, to determine eligibility for State student financial aid, and whether the data are used for merit- or need-based aid;

(dd) whether State data are required by State law, State regulations, or policy directives; and

(ee) the extent to which any State-specific information requirements can be met by completion of a State application linked to the electronic version of the FAFSA; and

(III) information on institutional needs, including the extent to which institutions of higher education are already using supplemental forms to collect additional data from students and their families to determine eligibility for institutional funds; and

(ii) ways to reduce the amount of financial information students and families need to provide to receive a determination of eligibility for student financial aid, taking into account—

(I) the amount of redistribution of Federal grants and subsidized loans under this subchapter and part C of subchapter I of chapter 34 of title 42 caused by such a reduction, and the benefits to be gained by having an application process that will be easier for students and their families;

(II) students and families who do not file income tax returns;

(III) the extent to which the full array of income and asset information collected on the FAFSA, as of the time of the study, plays an important role in the awarding of need-based State financial aid, and whether the State can use an expected family contribution generated by the FAFSA, instead of income and asset information or a calculation with reduced data elements, to support determinations of eligibility for such State aid programs and, if not, what additional information will be needed or what changes to the FAFSA will be required; and

(IV) information on institutional needs, including the extent to which institutions of higher education are already using supplemental forms to collect additional data from students and their families to determine eligibility for institutional funds; and

(V) changes to this chapter and part C of subchapter I of chapter 34 of title 42 or other laws that will be required to implement a modified need analysis system.

(4) Consultation

The Secretary shall consult with the Advisory Committee on Student Financial Assistance established under section 1098 of this title as appropriate in carrying out this subsection.

(5) Reports

(A) Reports on study

The Secretary shall prepare and submit to the authorizing committees—

(i) not later than one year after August 14, 2008, an interim report on the progress of the study required under paragraph (3) that includes any preliminary recommendations by the study group established under such paragraph; and

(ii) not later than two years after August 14, 2008, a final report on the results of the study required under paragraph (3) that includes recommendations by the study group established under such paragraph.

(B) Reports on FAFSA simplification efforts

The Secretary shall report to the authorizing committees, from time to time, on the progress of the simplification efforts under this subsection.

(g) Addressing the digital divide

The Secretary shall utilize savings accrued by moving more applicants to the electronic version of the forms described in subsection (a)(3) to improve access to the electronic version of the forms described in such subsection for applicants meeting the requirements of subsection (b) or (c) of section 1087ss of this title.

(h) Adjustments

The Secretary shall disclose, on the form notifying a student of the student's expected family contribution, that the student may, on a case-by-case basis, qualify for an adjustment under section 1087tt of this title to the cost of attendance or the values of the data items required to calculate the expected contribution for the student or parent. Such disclosure shall specify—

(1) the special circumstances under which a student or family member may qualify for such adjustment; and

(2) additional information regarding the steps a student or family member may take in order to seek an adjustment under section 1087tt of this title.

(Pub. L. 89–329, title IV, §483, as added Pub. L. 99–498, title IV, §407(a), Oct. 17, 1986, 100 Stat. 1478; amended Pub. L. 100–50, §15(3)–(6), June 3, 1987, 101 Stat. 356; Pub. L. 102–325, title IV, §483, July 23, 1992, 106 Stat. 612; Pub. L. 103–208, §2(h)(8)–(12), Dec. 20, 1993, 107 Stat. 2476; Pub. L. 105–244, title IV, §482, Oct. 7, 1998, 112 Stat. 1733; Pub. L. 110–315, title I, §103(b)(10), title IV, §483(a), Aug. 14, 2008, 122 Stat. 3090, 3272; Pub. L. 111–39, title IV, §407(b)(3), July 1, 2009, 123 Stat. 1950; Pub. L. 111–152, title II, §2101(b)(4), Mar. 30, 2010, 124 Stat. 1073.)

PRIOR PROVISIONS

A prior section 1090, Pub. L. 89–329, title IV, §483, as added Pub. L. 96–374, title IV, §451(a), Oct. 3, 1980, 94 Stat. 1448, related to forms and regulations for student assistance programs, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2010—Subsec. (e)(3)(A)(ii). Pub. L. 111–152 substituted ''based on the Federal Pell Grant amount, determined under section 1070a(b)(2)(A) of this title, for which a student is eligible at the time of application'' for ''based on the maximum Federal Pell Grant award at the time of application''.

2009—Subsec. (a)(3)(C). Pub. L. 111–39, §407(b)(3)(A), inserted ''that'' after ''except''.

Subsec. (e)(8)(A). Pub. L. 111–39, §407(b)(3)(B), substituted ''determine'' for ''identify''.

2008—Subsec. (a). Pub. L. 110–315, §483(a)(1), added pars. (1) to (12) and struck out former pars. (1) to (7), which related to forms required, charges for forms, distribution of data, contracts for collection and processing, electronic forms, third party servicers and private software providers, and parents' social security numbers and birth dates.

Subsec. (b). Pub. L. 110–315, §483(a)(2), (3), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to streamlined reapplication process.

Subsec. (c). Pub. L. 110–315, §483(a)(4), substituted ''or other appropriate provider of technical assistance and information on postsecondary educational services for individuals with disabilities, including the National Technical Assistance Center under section 1140q of this title. The Secretary shall continue to implement, to the extent practicable, a toll-free telephone based system to permit applicants who meet the requirements of subsection (b) or (c) of section 1087ss of this title to submit an application over such system'' for ''that is authorized under section 1485(d)(2)(C) of this title''.

Pub. L. 110–315, §483(a)(3), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Pub. L. 110–315, §103(b)(10), substituted ''authorizing committees'' for ''Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives''.

Subsec. (d). Pub. L. 110–315, §483(a)(5), added subsec. (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 110–315, §483(a)(2), (5), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: ''Any financial aid application required to be made under this subchapter and part C of subchapter I of chapter 34 of title 42 shall include the name, signature, address or employer's address, social security number or employer identification number, and organizational affiliation of the preparer of such financial aid application.''

Subsecs. (f) to (h). Pub. L. 110–315, §483(a)(5), added subsecs. (f) to (h).

1998—Subsec. (a). Pub. L. 105–244, §482(a)(1), substituted ''form development'' for ''form'' in heading.

Subsec. (a)(1). Pub. L. 105–244, §482(a)(2)(D), struck out at end ''For the purpose of collecting eligibility and other data for the purpose of part B of this subchapter, the Secretary shall develop a separate, identifiable loan application document (pursuant to section 1082(m) of this title) that applicants or institutions in which the students are enrolled or accepted for enrollment shall submit directly to eligible lenders and on which the applicant shall clearly indicate a choice of a lender.''

Pub. L. 105–244, §482(a)(2)(C), substituted ''The Secretary shall include on the form developed under this subsection such data items as the Secretary determines are appropriate for inclusion. Such items shall be selected in consultation with States to assist in the awarding of State financial assistance. In no case shall the number of such data items be less than the number included on the form on October 7, 1998.'' for ''The Secretary may include on the form developed pursuant to this paragraph not more than eight nonfinancial data items selected in consultation with the States to assist the States in awarding State student financial assistance.''

Pub. L. 105–244, §482(a)(2)(A), (B), substituted ''A through D'' for ''A, C, and D'' and struck out ''and to determine the need of a student for the purpose of part B of this subchapter'' after ''part A of this subchapter)''.

Subsec. (a)(2). Pub. L. 105–244, §482(a)(3), substituted ''A through D'' for ''A, C, and D'' in two places and struck out ''and the need of a student for the purpose of part B of this subchapter,'' before ''may only be determined'' and ''or have the student's need established for the purpose of part B of this subchapter'' before '', except by use of''.

Subsec. (a)(3). Pub. L. 105–244, §482(a)(4), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''Institutions of higher education and States shall receive, without charge, the data collected by the Secretary using the form developed pursuant to this section for the purposes of determining need and eligibility for institutional and State financial aid awards. Entities designated by institutions of higher education or States to receive such data shall be subject to all requirements of this section, unless such requirements are waived by the Secretary.''

Subsec. (a)(5) to (7). Pub. L. 105–244, §482(a)(5), added pars. (5) to (7).

Subsec. (b)(1). Pub. L. 105–244, §482(b), struck out '', within 240 days after July 23, 1992,'' after ''The Secretary shall''.

Subsec. (c). Pub. L. 105–244, § 482(c), substituted ''and the Workforce'' for ''and Labor''.

Subsec. (d). Pub. L. 105–244, § 482(d), substituted ''section 1485(d)(2)(C)'' for ''section 1433(c)''.

Subsec. (f). Pub. L. 105–244, § 482(e), struck out heading and text of subsec. (f). Text read as follows: ''Nothing in section 1544 of the Higher Education Amendments of 1992 shall relieve processors or institutions of higher education of any or all obligations under this section.''

1993—Subsec. (a)(1). Pub. L. 103–208, § 2(h)(8), made technical amendment to reference to section 1070a(d) of this title to correct reference to corresponding section of original act.

Subsec. (a)(2). Pub. L. 103–208, § 2(h)(9), inserted at end ''No data collected on a form for which a fee is charged shall be used to complete the form prescribed under paragraph (1).''

Subsec. (a)(3). Pub. L. 103–208, § 2(h)(10), inserted at end ''Entities designated by institutions of higher education or States to receive such data shall be subject to all requirements of this section, unless such requirements are waived by the Secretary.''

Subsecs. (d), (e). Pub. L. 103–208, § 2(h)(12), redesignated subsecs. (e) and (f) as (d) and (e), respectively.

Subsec. (f). Pub. L. 103–208, § 2(h)(12), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Pub. L. 103–208, § 2(h)(11), substituted ''address or employer's address, social security number or employer identification number,'' for ''address, social security number,''.

Subsec. (g). Pub. L. 103–208, § 2(h)(12), redesignated subsec. (g) as (f).

1992—Subsec. (a). Pub. L. 102–325, § 483(a), added subsec. (a) and struck out former subsec. (a) which contained pars. (1) to (5) relating to a common financial aid form and processing of financial aid applications.

Subsec. (b). Pub. L. 102–325, § 483(a), added subsec. (b) and struck out former subsec. (b) which related to certifications of capability of systems for determining expected family contributions.

Subsec. (d). Pub. L. 102–325, § 483(b)(1), struck out subsec. (d) which related to provision of early notice to students of their potential eligibility for financial aid.

Subsec. (e). Pub. L. 102–325, § 483(b)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The Secretary shall contract for, or establish, and publicize a toll-free telephone number to provide timely and accurate information to the general public. The information provided shall include specific instructions on completing application forms for assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.''

Subsecs. (f), (g). Pub. L. 102–325, § 483(b)(1), (3), added subsecs. (f) and (g) and struck out former subsec. (f) which related to notice of student aid receipt.

1987—Subsec. (a)(1). Pub. L. 100–50, § 15(3), (4), inserted in second sentence ''or institutions in which the students are enrolled or accepted for enrollment'' after ''that applicants'' and ''and on which the applicant shall clearly indicate a choice of lender'' before period at end.

Subsec. (a)(2). Pub. L. 100–50, § 15(5), substituted ''not less than 5'' for ''not less than 3'' and inserted sentence at end providing that the Secretary not select new multiple data entry processors until certain examinations and recommendations are made by the Advisory Commission on Student Financial Assistance.

Subsecs. (b) to (f). Pub. L. 100–50, § 15(6), added subsec. (b) and redesignated former subsecs. (b) to (e) as (c) to (f), respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–152 effective July 1, 2010, see section 2101(c) of Pub. L. 111–152, set out as a note under section 1070a of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub. L. 99–498, set out as a note under section 1001 of this title.

Subsec. (e) of this section applicable to student assistance awarded for periods of enrollment beginning on or after July 1, 1987, see section 407(b) of Pub. L. 99–498, set out as a note under section 1091 of this title.

DELAYED IMPLEMENTATION OF EZ FAFSA

Pub. L. 111–39, title IV, § 407(a), July 1, 2009, 123 Stat. 1950, provided that: ''Notwithstanding any other provision of law, the Secretary of Education shall be required to carry out the requirements under the following provisions of section 483 of the Higher Education Act of 1965 (20 U.S.C. 1090) only for academic year 2010–2011 and subsequent academic years:

''(1) In subsection (a) of such section—

''(A) subparagraphs (A)(i) and (B) of paragraph (2);

''(B) in paragraph (3)—

''(i) the second sentence of subparagraph (A);

''(ii) clauses (i) and (ii) of subparagraph (B); and

''(iii) subparagraph (C);

''(C) paragraph (4)(A)(iv); and

''(D) paragraph (5)(E).

''(2) Subsection (h) of such section.''

§ 1091. Student eligibility

(a) In general

In order to receive any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, a student must—

(1) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which such student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 1094 of this title, except as provided in subsections (b)(3) and (b)(4) of this section, and not be enrolled in an elementary or secondary school;

(2) if the student is presently enrolled at an institution, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with the provisions of subsection (c) of this section;

(3) not owe a refund on grants previously received at any institution under this subchapter and part C of subchapter I of chapter

34 of title 42, or be in default on any loan from a student loan fund at any institution provided for in part D of this subchapter, or a loan made, insured, or guaranteed by the Secretary under this subchapter and part C of subchapter I of chapter 34 of title 42 for attendance at any institution;

(4) file with the Secretary, as part of the original financial aid application process, a certification, which need not be notarized, but which shall include—

(A) a statement of educational purpose stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at such institution; and

(B) such student's social security number;

(5) be a citizen or national of the United States, a permanent resident of the United States, or able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; and

(6) if the student has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining funds under this subchapter and part C of subchapter I of chapter 34 of title 42, have completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this subchapter and part C of subchapter I of chapter 34 of title 42 obtained by fraud.

(b) Eligibility for student loans

(1) In order to be eligible to receive any loan under this subchapter and part C of subchapter I of chapter 34 of title 42 (other than a loan under section 1078–2 or 1078–3 of this title, or under section 1078–8 of this title pursuant to an exercise of discretion under section 1087tt of this title) for any period of enrollment, a student who is not a graduate or professional student (as defined in regulations of the Secretary), and who is enrolled in a program at an institution which has a participation agreement with the Secretary to make awards under subpart 1 of part A of this subchapter, shall—

(A)(i) have received a determination of eligibility or ineligibility for a Pell Grant under such subpart 1 for such period of enrollment; and (ii) if determined to be eligible, have filed an application for a Pell Grant for such enrollment period; or

(B) have (i) filed an application with the Pell Grant processor for such institution for such enrollment period, and (ii) received from the financial aid administrator of the institution a preliminary determination of the student's eligibility or ineligibility for a grant under such subpart 1.

(2) In order to be eligible to receive any loan under section 1078–1[1] of this title for any period of enrollment, a student shall—

(A) have received a determination of need for a loan under section 1078(a)(2)(B) of this title;

(B) if determined to have need for a loan under section 1078 of this title, have applied for such a loan; and

(C) has applied for a loan under section 1078–8 of this title, if such student is eligible to apply for such a loan.

(3) A student who—

(A) is carrying at least one-half the normal full-time work load for the course of study that the student is pursuing, as determined by an eligible institution, and

(B) is enrolled in a course of study necessary for enrollment in a program leading to a degree or certificate,

shall be, notwithstanding paragraph (1) of subsection (a) of this section, eligible to apply for loans under part B or C of this subchapter. The eligibility described in this paragraph shall be restricted to one 12-month period.

(4) A student who—

(A) is carrying at least one-half the normal full-time work load for the course of study the student is pursuing, as determined by the institution, and

(B) is enrolled or accepted for enrollment in a program at an eligible institution necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State,

shall be, notwithstanding paragraph (1) of subsection (a) of this section, eligible to apply for loans under part B, C, or D of this subchapter or work-study assistance under part C of subchapter I of chapter 34 of title 42.

(5) Notwithstanding any other provision of this subsection, no incarcerated student is eligible to receive a loan under this subchapter and part C of subchapter I of chapter 34 of title 42.

(c) Satisfactory progress

(1) For the purpose of subsection (a)(2) of this section, a student is maintaining satisfactory progress if—

(A) the institution at which the student is in attendance, reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution, and

(B) the student has a cumulative C average, or its equivalent or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

(2) Whenever a student fails to meet the eligibility requirements of subsection (a)(2) of this section as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(2) of this section for a grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(3) Any institution of higher education at which the student is in attendance may waive the provisions of paragraph (1) or paragraph (2) of this subsection for undue hardship based on—

[1] See References in Text note below.

(A) the death of a relative of the student,

(B) the personal injury or illness of the student, or

(C) special circumstances as determined by the institution.

(d) Students who are not high school graduates

In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any assistance under subparts 1, 3, and 4 of part A and parts B, C, and D of this subchapter and part C of subchapter I of chapter 34 of title 42, the student shall have completed a secondary school education in a home school setting that is treated as a home school or private school under State law.

(e) Certification for GSL eligibility

Each eligible institution may certify student eligibility for a loan by an eligible lender under part B of this subchapter prior to completing the review for accuracy of the information submitted by the applicant required by regulations issued under this subchapter and part C of subchapter I of chapter 34 of title 42, if—

(1) checks for the loans are mailed to the eligible institution prior to disbursements;

(2) the disbursement is not made until the review is complete; and

(3) the eligible institution has no evidence or documentation on which the institution may base a determination that the information submitted by the applicant is incorrect.

(f) Loss of eligibility for violation of loan limits

(1) No student shall be eligible to receive any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 if the eligible institution determines that the student fraudulently borrowed in violation of the annual loan limits under part B, part C, or part D of this subchapter in the same academic year, or if the student fraudulently borrowed in excess of the aggregate maximum loan limits under such part B, part C, or part D.

(2) If the institution determines that the student inadvertently borrowed amounts in excess of such annual or aggregate maximum loan limits, such institution shall allow the student to repay any amount borrowed in excess of such limits prior to certifying the student's eligibility for further assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(g) Verification of immigration status

(1) In general

The Secretary shall implement a system under which the statements and supporting documentation, if required, of an individual declaring that such individual is in compliance with the requirements of subsection (a)(5) of this section shall be verified prior to the individual's receipt of a grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(2) Special rule

The documents collected and maintained by an eligible institution in the admission of a student to the institution may be used by the student in lieu of the documents used to establish both employment authorization and identity under section 1324a(b)(1)(B) of title 8 to verify eligibility to participate in work-study programs under part C of subchapter I of chapter 34 of title 42.

(3) Verification mechanisms

The Secretary is authorized to verify such statements and supporting documentation through a data match, using an automated or other system, with other Federal agencies that may be in possession of information relevant to such statements and supporting documentation.

(4) Review

In the case of such an individual who is not a citizen or national of the United States, if the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the institution—

(i) shall provide a reasonable opportunity to submit to the institution evidence indicating a satisfactory immigration status, and

(ii) may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

(B) if there are submitted documents which the institution determines constitute reasonable evidence indicating such status—

(i) the institution shall transmit to the Immigration and Naturalization Service either photostatic or other similar copies of such documents, or information from such documents, as specified by the Immigration and Naturalization Service, for official verification,

(ii) pending such verification, the institution may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status, and

(iii) the institution shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(h) Limitations of enforcement actions against institutions

The Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an institution of higher education with respect to any error in the institution's determination to make a student eligible for a grant, loan, or work assistance based on citizenship or immigration status—

(1) if the institution has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the institution, under subsection (g)(4)(A)(i) of this section, was required to pro-

vide a reasonable opportunity to submit documentation, or

(3) because the institution, under subsection (g)(4)(B)(i) of this section, was required to wait for the response of the Immigration and Naturalization Service to the institution's request for official verification of the immigration status of the student.

(i) Validity of loan guarantees for loan payments made before immigration status verification completed

Notwithstanding subsection (h)[1] of this section, if—

(1) a guaranty is made under this subchapter and part C of subchapter I of chapter 34 of title 42 for a loan made with respect to an individual,

(2) at the time the guaranty is entered into, the provisions of subsection (h)[1] of this section had been complied with,

(3) amounts are paid under the loan subject to such guaranty, and

(4) there is a subsequent determination that, because of an unsatisfactory immigration status, the individual is not eligible for the loan,

the official of the institution making the determination shall notify and instruct the entity making the loan to cease further payments under the loan, but such guaranty shall not be voided or otherwise nullified with respect to such payments made before the date the entity receives the notice.

(j) Repealed. Pub. L. 110–315, title IV, § 485(a)(4), Aug. 14, 2008, 122 Stat. 3288

(k) Special rule for correspondence courses

A student shall not be eligible to receive grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 for a correspondence course unless such course is part of a program leading to an associate, bachelor or graduate degree.

(*l*) Courses offered through distance education

(1) Relation to correspondence courses

(A) In general

A student enrolled in a course of instruction at an institution of higher education that is offered principally through distance education and leads to a recognized certificate, or recognized associate, recognized baccalaureate, or recognized graduate degree, conferred by such institution, shall not be considered to be enrolled in correspondence courses.

(B) Exception

An institution of higher education referred to in subparagraph (A) shall not include an institution or school described in section 2302(3)(C) of this title.

(2) Reductions of financial aid

A student's eligibility to receive grants, loans, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 shall be reduced if a financial aid officer determines under the discretionary authority provided in section 1087tt of this title that distance education results in a substantially reduced cost of attendance to such student.

(3) Special rule

For award years beginning prior to July 1, 2008, the Secretary shall not take any compliance, disallowance, penalty, or other action based on a violation of this subsection against a student or an eligible institution when such action arises out of such institution's prior award of student assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 if the institution demonstrates to the satisfaction of the Secretary that its course of instruction would have been in conformance with the requirements of this subsection.

(m) Students with a first baccalaureate or professional degree

A student shall not be ineligible for assistance under parts B, C, and D of this subchapter and part C of subchapter I of chapter 34 of title 42 because such student has previously received a baccalaureate or professional degree.

(n) Data base matching

To enforce the Selective Service registration provisions of section 462(f) of title 50, Appendix, the Secretary shall conduct data base matches with the Selective Service, using common demographic data elements. Appropriate confirmation, through an application output document or through other means, of any person's registration shall fulfill the requirement to file a separate statement of compliance. In the absence of a confirmation from such data matches, an institution may also use data or documents that support either the student's registration, or the absence of a registration requirement for the student, to fulfill the requirement to file a separate statement of compliance. The mechanism for reporting the resolution of nonconfirmed matches shall be prescribed by the Secretary in regulations.

(*o*) Study abroad

Nothing in this chapter and part C of subchapter I of chapter 34 of title 42 shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, without regard to whether such study abroad program is required as part of the student's degree program.

(p) Verification of social security number

The Secretary of Education, in cooperation with the Commissioner of the Social Security Administration, shall verify any social security number provided by a student to an eligible institution under subsection (a)(4) of this section and shall enforce the following conditions:

(1) Except as provided in paragraphs (2) and (3), an institution shall not deny, reduce, delay, or terminate a student's eligibility for

assistance under this part because social security number verification is pending.

(2) If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student's eligibility for any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.

(3) If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, and a correct social security number cannot be provided by such student, and a loan has been guaranteed for such student under part B of this subchapter, the institution shall notify and instruct the lender and guaranty agency making and guaranteeing the loan, respectively, to cease further disbursements of the loan, but such guaranty shall not be voided or otherwise nullified with respect to such disbursements made before the date that the lender and the guaranty agency receives such notice.

(4) Nothing in this subsection shall permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against—

(A) any institution of higher education with respect to any error in a social security number, unless such error was a result of fraud on the part of the institution; or

(B) any student with respect to any error in a social security number, unless such error was a result of fraud on the part of the student.

(q) Use of income data

(1) Matching with IRS

The Secretary, in cooperation with the Secretary of the Treasury, is authorized to obtain from the Internal Revenue Service such information reported on Federal income tax returns by applicants, or by any other person whose financial information is required to be provided on the Federal student financial aid application, as the Secretary determines is necessary for the purpose of—

(A) prepopulating the Federal student financial aid application described in section 1090 of this title; or

(B) verifying the information reported on such student financial aid applications.

(2) Consent

The Secretary may require that applicants for financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 provide a consent to the disclosure of the data described in paragraph (1) as a condition of the student receiving assistance under this subchapter and part C of subchapter I of chapter 34 of title 42. The parents of an applicant, in the case of a dependent student, or the spouse of an applicant, in the case of an applicant who is married but files separately, may also be required to provide consent as a condition of the student receiving assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(r) Suspension of eligibility for drug-related offenses

(1) In general

A student who is convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 shall not be eligible to receive any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 from the date of that conviction for the period of time specified in the following table:

If convicted of an offense involving:

The possession of a controlled substance:	Ineligibility period is:
First offense	1 year
Second offense	2 years
Third offense	Indefinite.

The sale of a controlled substance:	Ineligibility period is:
First offense	2 years
Second offense	Indefinite.

(2) Rehabilitation

A student whose eligibility has been suspended under paragraph (1) may resume eligibility before the end of the ineligibility period determined under such paragraph if—

(A) the student satisfactorily completes a drug rehabilitation program that—

(i) complies with such criteria as the Secretary shall prescribe in regulations for purposes of this paragraph; and

(ii) includes two unannounced drug tests;

(B) the student successfully passes two unannounced drug tests conducted by a drug rehabilitation program that complies with such criteria as the Secretary shall prescribe in regulations for purposes of subparagraph (A)(i); or

(C) the conviction is reversed, set aside, or otherwise rendered nugatory.

(3) Definitions

In this subsection, the term ''controlled substance'' has the meaning given the term in section 802(6) of title 21.

(s) Students with intellectual disabilities

(1) Definitions

In this subsection the terms ''comprehensive transition and postsecondary program for students with intellectual disabilities'' and ''student with an intellectual disability'' have the meanings given the terms in section 1140 of this title.

(2) Requirements

Notwithstanding subsections (a), (c), and (d), in order to receive any grant or work assistance under section 1070a of this title, subpart 3 of part A of this subchapter, or part C of subchapter I of chapter 34 of title 42, a student with an intellectual disability shall—

(A) be enrolled or accepted for enrollment in a comprehensive transition and postsecondary program for students with intellectual disabilities at an institution of higher education;

(B) be maintaining satisfactory progress in the program as determined by the institution, in accordance with standards established by the institution; and

(C) meet the requirements of paragraphs (3), (4), (5), and (6) of subsection (a).

(3) Authority

Notwithstanding any other provision of law unless such provision is enacted with specific reference to this section, the Secretary is authorized to waive any statutory provision applicable to the student financial assistance programs under section 1070a of this title, subpart 3 of part A of this subchapter, or part C of subchapter I of chapter 34 of title 42 (other than a provision of part E of this subchapter related to such a program), or any institutional eligibility provisions of this subchapter and part C of subchapter I of chapter 34 of title 42, as the Secretary determines necessary to ensure that programs enrolling students with intellectual disabilities otherwise determined to be eligible under this subsection may receive such financial assistance.

(4) Regulations

Notwithstanding regulations applicable to grant or work assistance awards made under section 1070a of this title, subpart 3 of part A of this subchapter, and part C of subchapter I of chapter 34 of title 42 (other than a regulation under part E of this subchapter related to such an award), including with respect to eligible programs, instructional time, credit status, and enrollment status as described in section 1088 of this title, the Secretary shall promulgate regulations allowing programs enrolling students with intellectual disabilities otherwise determined to be eligible under this subsection to receive such awards.

(t) Data analysis on access to Federal student aid for certain populations

(1) Development of the system

Within one year of August 14, 2008, the Secretary shall analyze data from the FAFSA containing information regarding the number, characteristics, and circumstances of students denied Federal student aid based on a drug conviction while receiving Federal aid.

(2) Results from analysis

The results from the analysis of such information shall be made available on a continuous basis via the Department website and the Digest of Education Statistics.

(3) Data updating

The data analyzed under this subsection shall be updated at the beginning of each award year and at least one additional time during such award year.

(4) Report to Congress

The Secretary shall prepare and submit to the authorizing committees, in each fiscal year, a report describing the results obtained by the establishment and operation of the data system authorized by this subsection.

(Pub. L. 89–329, title IV, § 484, as added Pub. L. 99–498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1479; amended Pub. L. 99–603, title I, § 121(a)(3), Nov. 6, 1986, 100 Stat. 3388; Pub. L. 100–50, § 15(7)–(9), June 3, 1987, 101 Stat. 356, 357; Pub. L. 100–369, §§ 1, 2, 6, July 18, 1988, 102 Stat. 835, 836; Pub. L. 100–525, § 2(g), Oct. 24, 1988, 102 Stat. 2611; Pub. L. 101–508, title III, § 3005(a), Nov. 5, 1990, 104 Stat. 1388–27; Pub. L. 102–26, § 2(b), (c)(2), (d)(2)(A), Apr. 9, 1991, 105 Stat. 123, 124; Pub. L. 102–73, title VIII, § 801(a), July 25, 1991, 105 Stat. 359; Pub. L. 102–325, title IV, § 484(a), (b)(1), (c)–(h), July 23, 1992, 106 Stat. 615–619; Pub. L. 103–208, § 2(h)(13)–(25), Dec. 20, 1993, 107 Stat. 2476, 2477; Pub. L. 103–382, title III, § 360A, Oct. 20, 1994, 108 Stat. 3969; Pub. L. 104–208, div. C, title V, § 507(b), Sept. 30, 1996, 110 Stat. 3009–673; Pub. L. 105–244, title IV, § 483(a)–(f)(1), Oct. 7, 1998, 112 Stat. 1735, 1736; Pub. L. 109–171, title VIII, §§ 8020(c), 8021, Feb. 8, 2006, 120 Stat. 178; Pub. L. 109–270, § 2(c)(2), Aug. 12, 2006, 120 Stat. 746; Pub. L. 110–315, title IV, § 485(a), Aug. 14, 2008, 122 Stat. 3287; Pub. L. 111–39, title IV, § 407(b)(4), July 1, 2009, 123 Stat. 1950; Pub. L. 112–74, div. F, title III, § 309(c)(1), Dec. 23, 2011, 125 Stat. 1100.)

REFERENCES IN TEXT

Section 1078–1 of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 103–66, title IV, § 4047(b)–(d), Aug. 10, 1993, 107 Stat. 364, eff. July 1, 1994, except with respect to loans provided under that section as it existed prior to Aug. 10, 1993. Subsequently, a new section 1078–1, relating to voluntary flexible agreements with guaranty agencies, was enacted by Pub. L. 105–244, title IV, § 418, Oct. 7, 1998, 112 Stat. 1691.

Subsection (h) of this section, referred to in subsec. (i), was redesignated subsec. (g) of this section by Pub. L. 103–208, § 2(h)(25), Dec. 20, 1993, 107 Stat. 2477.

PRIOR PROVISIONS

A prior section 1091, Pub. L. 89–329, title IV, § 484, as added Pub. L. 96–374, title IV, § 451(a), Oct. 3, 1980, 94 Stat. 1448; Pub. L. 99–272, title XVI, § 16032(a), (b), Apr. 7, 1986, 100 Stat. 354, related to student eligibility for assistance, prior to the general revision of this part by Pub. L. 99–498.

Another prior section 1091, Pub. L. 89–329, title V, § 501, Nov. 8, 1965, 79 Stat. 1254; Pub. L. 90–35, § 2(c), June 29, 1967, 81 Stat. 82; Pub. L. 92–318, title I, § 141(b)(1), June 23, 1972, 86 Stat. 285, set forth statement of purpose and authorization of appropriations for education professions development program, prior to repeal effective Sept. 30, 1976, by Pub. L. 94–482, title I, § 151(a)(2), (b), Oct. 12, 1976, 90 Stat. 2151.

AMENDMENTS

2011—Subsec. (d). Pub. L. 112–74 struck out ''meet one of the following standards:'' after ''the student shall'', substituted ''have completed'' for ''(3) The student has completed'', and struck out pars. (1), (2) and (4), which required students to take an independently administered examination, required a State process, or required an institution of higher education, respectively, to determine ability of students to benefit from education or training.

2009—Subsec. (a)(4). Pub. L. 111–39, § 407(b)(4)(A), substituted ''certification,'' for ''certification,,'' in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 111–39, § 407(b)(4)(B), substituted ''have (i)'' for ''have (A)'' and ''and (ii)'' for ''and (B)''.

Subsec. (f)(1). Pub. L. 111–39, § 407(b)(4)(C), amended references in original which appear in text as ref-

erences to part B, part C, or part D, resulting in text identical to that after execution of Pub. L. 103–208, § 2(h)(18). See 1993 Amendment note for subsec. (g) below.

Subsec. (h)(2), (3). Pub. L. 111–39, § 407(b)(4)(D), substituted ''(g)(4)(A)(i)'' for ''(h)(4)(A)(i)'' in par. (2) and ''(g)(4)(B)(i)'' for ''(h)(4)(B)(i)'' in par. (3).

Subsec. (n). Pub. L. 111–39, § 407(b)(4)(E), substituted ''section 462(f) of title 50, Appendix'' for ''section 1113 of Public Law 97–252''.

2008—Subsec. (a)(4)(B). Pub. L. 110–315, § 485(a)(1)(A), substituted ''number;'' for ''number, except that the provisions of this subparagraph shall not apply to a student from the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau;''.

Subsec. (a)(5). Pub. L. 110–315, § 485(a)(1)(B), inserted ''or'' after ''a permanent resident of the United States,'' and substituted ''citizen or permanent resident;'' for ''citizen or permanent resident, a citizen of any one of the Freely Associated States;''.

Subsec. (b)(1). Pub. L. 110–315, § 485(a)(2), inserted '', or under section 1078–8 of this title pursuant to an exercise of discretion under section 1087tt of this title'' after ''1078–3 of this title''.

Subsec. (d)(4). Pub. L. 110–315, § 485(a)(3), added par. (4).

Subsec. (j). Pub. L. 110–315, § 485(a)(4), struck out subsec. (j). Text read as follows: ''Notwithstanding any other provision of law, a student shall be eligible until September 30, 2004, for assistance under subparts 1 and 3 of part A of this subchapter, and part C of subchapter I of chapter 34 of title 42, if the student is otherwise qualified and—

''(1) is a citizen of any one of the Freely Associated States and attends an institution of higher education in a State or a public or nonprofit private institution of higher education in the Freely Associated States; or

''(2) meets the requirements of subsection (a)(5) of this section and attends a public or nonprofit private institution of higher education in any one of the Freely Associated States.''

Subsec. (*l*). Pub. L. 110–315, § 485(a)(5), added subsec. (*l*) and struck out former subsec. (*l*) which related to courses offered through telecommunications.

Subsec. (q). Pub. L. 110–315, § 485(a)(6), added subsec. (q) and struck out former subsec. (q) which related to verification of income data.

Subsec. (r)(2)(B), (C). Pub. L. 110–315, § 485(a)(7), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (s). Pub. L. 110–315, § 485(a)(8), added subsec. (s).

Subsec. (t). Pub. L. 110–315, § 485(a)(9), added subsec. (t).

2006—Subsec. (a)(6). Pub. L. 109–171, § 8021(a), added par. (6).

Subsec. (*l*)(1)(A). Pub. L. 109–171, § 8020(c)(1), struck out ''for a program of study of 1 year or longer'' after ''recognized certificate'' and ''unless the total amount of telecommunications and correspondence courses at such institution equals or exceeds 50 percent of the total amount of all courses at the institution'' before period at end.

Subsec. (*l*)(1)(B). Pub. L. 109–171, § 8020(c)(2), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''An institution of higher education referred to in subparagraph (A) is an institution of higher education—

''(i) that is not an institute or school described in section 2471(4)(C) of this title; and

''(ii) for which at least 50 percent of the programs of study offered by the institution lead to the award of a recognized associate, baccalaureate, or graduate degree.''

Subsec. (*l*)(1)(B)(i). Pub. L. 109–270, which directed substitution of reference to section 2302(C) of this title for reference to section 2471(4)(C) of this title in cl. (i), could not be executed due to general amendment of subpar. (B) by Pub. L. 109–171. See above.

Subsec. (q)(1). Pub. L. 109–171, § 8021(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The Secretary of Education, in cooperation with the Secretary of the Treasury, is authorized to confirm with the Internal Revenue Service the adjusted gross income, Federal income taxes paid, filing status, and exemptions reported by applicants (including parents) under this subchapter and part C of subchapter I of chapter 34 of title 42 on their Federal income tax returns for the purpose of verifying the information reported by applicants on student financial aid applications.''

Subsec. (r)(1). Pub. L. 109–171, § 8021(c), amended heading and text of introductory provisions generally. Prior to amendment, text of introductory provisions read as follows: ''A student who has been convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance shall not be eligible to receive any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 during the period beginning on the date of such conviction and ending after the interval specified in the following table:''.

1998—Subsec. (a)(4). Pub. L. 105–244, § 483(a)(1), substituted ''the Secretary, as part of the original financial aid application process, a certification,'' for ''the institution of higher education which the student intends to attend, or is attending (or in the case of a loan or loan guarantee with the lender), a document'' in introductory provisions.

Subsec. (a)(5). Pub. L. 105–244, § 483(a)(2), substituted ''a citizen of any one of the Freely Associated States'' for ''or a permanent resident of the Trust Territory of the Pacific Islands, Guam, or the Northern Mariana Islands''.

Subsec. (d). Pub. L. 105–244, § 483(b), struck out ''either'' after ''shall meet'' in introductory provisions and added par. (3).

Subsec. (j). Pub. L. 105–244, § 483(c), amended heading and text of subsec. (j) generally. Prior to amendment, text read as follows: ''Notwithstanding any other provision of law, a student shall be eligible, if otherwise qualified, for assistance under subparts 1, 3, and 6, and division 1 of subpart 2, of part A of this subchapter, and part C of subchapter I of chapter 34 of title 42, if the student is otherwise qualified and—

''(1) is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau, and attends an institution of higher education in a State or a public or nonprofit private institution of higher education in the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau; or

''(2) meets the requirements of subsection (a)(5) of this section and attends a public or nonprofit private institution of higher education in the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.''

Subsec. (*l*)(1). Pub. L. 105–244, § 483(d), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''A student enrolled in a course of instruction at an eligible institution of higher education (other than an institution that meets the definition in section 2471(4)(C) of this title) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor, or graduate degree conferred by such institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at such institution equals or exceeds 50 percent of such courses.''

Subsec. (q). Pub. L. 105–244, § 483(e), added subsec. (q).

Subsec. (r). Pub. L. 105–244, § 483(f)(1), added subsec. (r).

1996—Subsec. (g)(4)(B)(i). Pub. L. 104–208 amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''the institution shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,''.

1994—Subsec. (j). Pub. L. 103–382 amended heading and text of subsec. (j) generally. Prior to amendment, text read as follows: ''Notwithstanding any other provision of law, a student who meets the requirements of paragraph (a)(5) of this section or who is a resident of the freely associated states, and who attends a public or nonprofit institution of higher education located in any of the freely associated states rather than a State, shall be eligible, if otherwise qualified, for assistance under subpart 1, 2, or 4 of part A of this subchapter or part C of subchapter I of chapter 34 of title 42.''

1993—Subsec. (a)(4)(B). Pub. L. 103–208, § 2(h)(13), inserted '', except that the provisions of this subparagraph shall not apply to a student from the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau'' after ''number''.

Subsec. (a)(5). Pub. L. 103–208, § 2(h)(14), substituted ''able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident'' for ''in the United States for other than a temporary purpose and able to provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident''.

Subsec. (b)(2)(C). Pub. L. 103–208, § 2(h)(15), added subpar. (C).

Subsec. (b)(3). Pub. L. 103–208, § 2(h)(16), substituted ''part B or C of this subchapter'' for ''part B of this subchapter'' in closing provisions.

Subsec. (f). Pub. L. 103–208, § 2(h)(17), (25), redesignated subsec. (g) as (f) and struck out heading and text of former subsec. (f). Text read as follows: ''Notwithstanding any other provision of law, the Secretary may not require, or prescribe regulations that require, institutions to verify the accuracy of data used to determine the eligibility for any program under this subchapter and part C of subchapter I of chapter 34 of title 42 for more than 30 percent of the applicants in any award year. In carrying out the provisions of this subsection no eligible institution shall be required to verify more than 30 percent of such applicants in any award year. Nothing in this subsection shall preclude the Secretary from verifying all applications for aid through the use of any means available, including through the exchange of information with any other Federal agency.''

Subsec. (g). Pub. L. 103–208, § 2(h)(25), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Pub. L. 103–208, § 2(h)(18), which directed insertion of a comma after '', Part C'' wherever appearing, was executed by inserting a comma after '', part C'' wherever appearing, to reflect the probable intent of Congress.

Subsec. (h). Pub. L. 103–208, § 2(h)(25), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Pub. L. 103–208, § 2(h)(19), substituted ''constitute'' for ''constitutes'' in introductory provisions of par. (4)(B).

Subsec. (i). Pub. L. 103–208, § 2(h)(25), redesignated subsec. (j) as (i). Former subsec. (i) redesignated (h).

Pub. L. 103–208, § 2(h)(22), struck out par. (4) which read as follows: ''because of a fair hearing process described in subsection (h)(5)(B) of this section.''

Pub. L. 103–208, § 2(h)(21), substituted ''(h)(4)(B)(i)'' for ''(h)(4)(B)(ii)'' and ''student.'' for ''student, or'' in par. (3).

Pub. L. 103–208, § 2(h)(20), inserted ''or'' after ''documentation,'' and substituted ''(h)(4)(A)(i)'' for ''(h)(4)(A)(ii)'' in par. (2).

Subsecs. (j) to (m). Pub. L. 103–208, § 2(h)(25), redesignated subsecs. (k) to (n) as (j) to (m), respectively. Former subsec. (j) redesignated (i).

Subsec. (n). Pub. L. 103–208, § 2(h)(25), redesignated subsec. (*o*) as (n). Former subsec. (n) redesignated (m).

Pub. L. 103–208, § 2(h)(23), substituted ''parts B, C,'' for ''part B, C,''.

Subsecs. (*o*), (p). Pub. L. 103–208, § 2(h)(25), redesignated subsecs. (p) and (q) as (*o*) and (p), respectively. Former subsec. (*o*) redesignated (n).

Subsec. (q). Pub. L. 103–208, § 2(h)(25), redesignated subsec. (q) as (p).

Pub. L. 103–208, § 2(h)(24), substituted ''documented evidence of a social security number that is determined by the institution to be correct'' for ''a correct social security number'' in par. (2).

1992—Subsec. (a)(1). Pub. L. 102–325, § 484(a)(1), inserted ''(including a program of study abroad approved for credit by the eligible institution at which such student is enrolled)'' after ''or other program''.

Subsec. (a)(4). Pub. L. 102–325, § 484(a)(2), added par. (4) and struck out former par. (4) which read as follows: ''file with the institution of higher education which the student intends to attend, or is attending (or in the case of a loan or loan guarantee with the lender), a statement of educational purpose (which need not be notarized but which shall include such student's social security number or, if the student does not have a social security number, such student's student identification number) stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at such institution; and''.

Subsec. (b)(4)(B). Pub. L. 102–325, § 484(b)(1)(A), substituted ''part B, C, or D of this subchapter or work-study assistance under part C of subchapter I of chapter 34 of title 42'' for ''part B of this subchapter'' in concluding provisions.

Subsec. (b)(5). Pub. L. 102–325, § 484(b)(1)(B), added par. (5).

Subsec. (d). Pub. L. 102–325, § 484(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any assistance under subparts 1, 2, and 3 of part A and parts B, C, and D of this subchapter and part C of subchapter I of chapter 34 of title 42, the student shall pass an independently administered examination approved by the Secretary.''

Subsec. (f). Pub. L. 102–325, § 484(d), inserted at end ''Nothing in this subsection shall preclude the Secretary from verifying all applications for aid through the use of any means available, including through the exchange of information with any other Federal agency.''

Subsec. (g). Pub. L. 102–325, § 484(e), designated existing provisions as par. (1), inserted '', part C'' after ''part B'' in two places and ''fraudulently'' before ''borrowed'' in two places, and added par. (2).

Subsec. (h). Pub. L. 102–325, § 484(f), amended subsec. (h) generally. Prior to amendment, subsec. (h) contained pars. (1) to (6) relating to requirements for verification of student immigration status.

Subsec. (k). Pub. L. 102–325, § 484(h), made technical amendment to directory language of Pub. L. 102–73, § 801(a). See 1991 Amendment note below.

Subsecs. (*l*) to (q). Pub. L. 102–325, § 484(g), added subsecs. (*l*) to (q).

1991—Subsec. (a)(1). Pub. L. 102–26, § 2(c)(2), inserted before semicolon at end '', and not be enrolled in an elementary or secondary school''.

Subsec. (d). Pub. L. 102–26, § 2(d)(2)(A), repealed Pub. L. 101–508, § 3005(a). See 1990 Amendment note below.

Pub. L. 102–26, § 2(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''A student who is admitted on the basis of the ability to benefit from the education or training in order to remain eligible for any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 shall—

''(1) receive the general education diploma prior to the student's certification or graduation from the program of study, or by the end of the first year of the course of study, whichever is earlier;

''(2) be counseled prior to admission and be enrolled in and successfully complete the institutionally prescribed program of remedial or developmental education not to exceed one academic year or its equivalent; or

''(3)(A) be administered a nationally recognized, standardized, or industry developed test, subject to

criteria developed by the appropriate accrediting association, measuring the applicant's aptitude to complete successfully the program to which the applicant has applied; and

''(B) with respect to applicants who are unable to satisfy the institutions' admissions testing requirements specified in subparagraph (A), be enrolled in and successfully complete an institutionally prescribed program or course of remedial or developmental education not to exceed one academic year or its equivalent.

In order to be eligible for assistance a student cannot be enrolled in either an elementary or a secondary school.''

Subsec. (k). Pub. L. 102–73, as amended by Pub. L. 102–325, § 484(h), added subsec. (k).

1990—Subsec. (d). Pub. L. 101–508, which amended subsec. (d) generally to read: ''In order for a student who is admitted on the basis of ability to benefit from the education or training offered to be eligible for any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, the student shall, prior to enrollment, pass an independently administered examination approved by the Secretary.'', was repealed by Pub. L. 102–26, § 2(d)(2)(A). See Construction of 1991 Amendment note below.

1988—Subsec. (a)(1). Pub. L. 100–369, § 6(1), substituted ''subsections (b)(3) and (b)(4)'' for ''subsection (b)(2)''.

Subsec. (b)(1). Pub. L. 100–369, § 1(1), substituted ''section 1078–2 or 1078–3'' for ''section 1078–1, 1078–2, or 1078–3''.

Subsec. (b)(1)(A). Pub. L. 100–369, § 1(2), added subpar. (A) and struck out former subpar. (A) which read as follows: ''have received a determination of eligibility or ineligibility for a grant under such subpart 1 for such period of enrollment; or''.

Subsec. (b)(2), (3). Pub. L. 100–369, § 2, added par. (2) and redesignated former par. (2) as (3).

Subsec. (b)(4). Pub. L. 100–369, § 6(2), added par. (4).

Subsecs. (c) to (e), (h) to (j). Pub. L. 100–525 redesignated subsecs. (c) to (e) enacted by Pub. L. 99–603 as (h) to (j), respectively, and inserted headings, substituted references to subsec. (h) for references to subsec. (c) wherever appearing, and in closing provisions of subsec. (j) substituted ''date'' for ''date of''.

1987—Subsec. (a)(1). Pub. L. 100–50, § 15(7)(A), inserted '', except as provided in subsection (b)(2) of this section'' before semicolon at end.

Subsec. (b). Pub. L. 100–50, § 15(7)(B)–(D), designated existing provision as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (d). Pub. L. 100–50, § 15(8), added pars. (2) and (3) and last sentence relating to ineligibility for assistance if a student is enrolled in either an elementary or a secondary school, and struck out former par. (2) which read as follows:

''(A) be counseled prior to admissions or be administered a nationally recognized standardized or industry developed test, subject to criteria developed by the appropriate accrediting association, measuring the applicant's aptitude to complete successfully the program to which he has applied; and

''(B) with respect to applicants who are unable to satisfy the institution's admissions testing requirements specified in subparagraph (A), be enrolled in an institutionally prescribed program or course of remedial or developmental education, not to exceed one academic year or its equivalent.''

Subsec. (f). Pub. L. 100–50, § 15(9), inserted at end ''In carrying out provisions of this subsection no eligible institution shall be required to verify more than 30 percent of such applications in any award year.''

1986—Subsec. (c). Pub. L. 99–603 added subsec. (c) requiring immigration status verification.

Subsec. (d). Pub. L. 99–603 added subsec. (d) limiting enforcement actions against institutions.

Subsec. (e). Pub. L. 99–603 added subsec. (e) relating to validity of loan guarantees for loan payments made before completion of immigration status verification.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–74, div. F, title III, § 309(c)(2), Dec. 23, 2011, 125 Stat. 1100, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to students who first enroll in a program of study on or after July 1, 2012.''

Amendment by Pub. L. 112–74 effective July 1, 2012, see section 309(g) of Pub. L. 112–74, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, § 485(b), Aug. 14, 2008, 122 Stat. 3290, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on July 1, 2010, except that the amendments made by paragraphs (3), (4), and (8) of such subsection shall take effect on the date of enactment of this Act [August 14, 2008].''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 483(a)–(e) of Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

Pub. L. 105–244, title IV, § 483(f)(2), Oct. 7, 1998, 112 Stat. 1737, provided that: ''The amendment made by paragraph (1) [amending this section], regarding suspension of eligibility for drug-related offenses, shall apply with respect to financial assistance to cover the costs of attendance for periods of enrollment beginning after the date of enactment of this Act [Oct. 7, 1998].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 484(a), (b)(1)(B), and (c) to (h) of Pub. L. 102–325 effective July 23, 1992, except that subsec. (m)(1) of this section, relating to proportion of courses permitted to be correspondence courses, as added by such amendment, effective on and after Oct. 1, 1992, see section 498 of Pub. L. 102–325, set out as a note under section 1088 of this title, and subsec. (n) of this section, relating to eligibility of students with first baccalaureate or professional degree for assistance, as added by such amendment, effective on and after Dec. 1, 1987, see section 484(i) of Pub. L. 102–325, set out below.

Section 484(b)(2) of Pub. L. 102–325 provided that: ''The amendments made by paragraph (1)(A) of this subsection [amending this section] shall be effective on and after December 1, 1987.''

Section 484(i) of Pub. L. 102–325, as added by Pub. L. 103–208, § 2(k)(8), Dec. 20, 1993, 107 Stat. 2486, provided that: ''The amendments made by subsection (g) [section 484(g) of Pub. L. 102–325] with respect to the addition of subsection (n) [adding subsec. (n) of this section] shall be effective on and after December 1, 1987.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–26 applicable to any grant, loan, or work assistance to cover the cost of instruc-

tion for periods of enrollment beginning on or after July 1, 1991, see section 2(d)(1) of Pub. L. 102–26, set out as a note under section 1085 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99–603, see section 2(s) of Pub. L. 100–525, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Section 13 of Pub. L. 100–369 provided that:

''(a) GENERAL RULE.—Except as otherwise provided, the amendments made by this Act to title IV of the Higher Education Act of 1965 [amending this section and section 1078–1 of this title] shall be effective for any loan for which the eligibility of the borrower is certified by the institution 30 days after the date of enactment of this Act [July 18, 1988].

''(b) SPECIAL RULES.—(1) The amendments made by section 5 [amending this section and sections 1077 and 1078 of this title] shall be effective with respect to loans made on or after October 1, 1988.

''(2) The amendments made by sections 6, 7, 8, 9, 10, 11, and 12 [amending this section, sections 1058, 1061, 1062, 1070a–1, 1070a–3, 1070a–4, 1070a–6, 1071, 1077, 1078, 1087–2, 1087dd, 1087ee, 1087nn, 1087ss, 1087vv, 1132d–1, 1132g–1, and 1134m of this title, and section 1905 of Title 48, Territories and Insular Possessions] shall take effect on the date of enactment of this Act [July 18, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–603 effective Oct. 1, 1988, with certain exceptions and qualifications, see section 121(c)(3), (4) of Pub. L. 99–603, set out as a note under section 1320b–7 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub. L. 99–498, set out as a note under section 1001 of this title.

Section 407(b) of Pub. L. 99–498 provided that:

''(1) Sections 483(e) and 484(d) of the Act [20 U.S.C. 1090(e), 1091(d)] as amended by this section shall apply to student assistance awarded for periods of enrollment beginning on or after July 1, 1987.

''(2) The changes made in section 484(a)(1) of the Act [20 U.S.C. 1091(a)(1)] shall apply to student assistance awarded for periods of enrollment beginning on or after July 1, 1987.

''(3) Section 484(c) of the Act [20 U.S.C. 1091(c)] as amended by this section shall apply only to student assistance awarded for periods of enrollment beginning on or after July 1, 1987, to individuals who were not awarded such assistance for any preceding period of enrollment.

''(4) Sections 484(f), 485(b), and 487(a)(10) of the Act [20 U.S.C. 1091(f), 1092(b), 1094(a)(10)] as amended by this section shall apply only to periods of enrollment beginning on or after July 1, 1987.''

CONSTRUCTION OF 1991 AMENDMENT

For repeal of section 3005 of Pub. L. 101–508 and application of subsec. (d) of this section as if such section 3005 had not been enacted, see section 2(d)(2)(A) of Pub. L. 102–26, set out as a note under section 1088 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

SATISFACTORY PROGRESS

Section 1301 of Pub. L. 99–498, as amended by Pub. L. 100–50, §23(1), June 3, 1987, 101 Stat. 362, directed Secretary, through the Office of Educational Research and Improvement, to conduct survey over 5-year period ending Sept. 30, 1991, on impact on grades of students of amendments made by Pub. L. 99–498 to subsec. (c) of this section and to submit annual reports to Congress of survey, prior to repeal by Pub. L. 105–332, §6(a), Oct. 31, 1998, 112 Stat. 3127.

DENIAL OF STUDENT ASSISTANCE TO CERTAIN NONCITIZENS

Section 1361 of Pub. L. 99–498 established in Department of Education the Alien Youth Education Opportunity Panel and provided for Panel's composition, duties, reports, administrative and clerical support, compensation and expenses, and access to information, prior to repeal by Pub. L. 105–332, §6(a), Oct. 31, 1998, 112 Stat. 3127.

FINANCIAL AID TO STUDENTS NOT DEEMED INCOME OR RESOURCES FOR PURPOSES OF CERTAIN SOCIAL SECURITY ACT PROGRAMS

Pub. L. 90–575, title V, §507, Oct. 16, 1968, 82 Stat. 1063, as amended by Pub. L. 96–88, title III, §301(a)(1), Oct. 17, 1979, 93 Stat. 677, provided that: ''For the purpose of any program assisted under title I, IV, X, XIV, XVI, or XIX of the Social Security Act [subchapters I, IV, X, XIV, XVI, or XIX of chapter 7 of Title 42, The Public Health and Welfare], no grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Secretary of Education shall be considered to be income or resources.''

§1091a. Statute of limitations, and State court judgments

(a) In general

(1) It is the purpose of this subsection to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced.

(2) Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken by—

(A) an institution that receives funds under this subchapter and part C of subchapter I of chapter 34 of title 42 that is seeking to collect a refund due from a student on a grant made, or work assistance awarded, under this subchapter and part C of subchapter I of chapter 34 of title 42;

(B) a guaranty agency that has an agreement with the Secretary under section 1078(c) of this title that is seeking the repayment of the amount due from a borrower on a loan made under part B of this subchapter after such guaranty agency reimburses the previous holder of the loan for its loss on account of the default of the borrower;

(C) an institution that has an agreement with the Secretary pursuant to section 1087c or 1087cc(a) of this title that is seeking the repayment of the amount due from a borrower on a loan made under part C or D of this sub-

chapter after the default of the borrower on such loan; or

(D) the Secretary, the Attorney General, or the administrative head of another Federal agency, as the case may be, for payment of a refund due from a student on a grant made under this subchapter and part C of subchapter I of chapter 34 of title 42, or for the repayment of the amount due from a borrower on a loan made under this subchapter and part C of subchapter I of chapter 34 of title 42 that has been assigned to the Secretary under this subchapter and part C of subchapter I of chapter 34 of title 42.

(b) Assessment of costs and other charges

Notwithstanding any provision of State law to the contrary—

(1) a borrower who has defaulted on a loan made under this subchapter and part C of subchapter I of chapter 34 of title 42 shall be required to pay, in addition to other charges specified in this subchapter and part C of subchapter I of chapter 34 of title 42 reasonable collection costs;

(2) in collecting any obligation arising from a loan made under part B of this subchapter, a guaranty agency or the Secretary shall not be subject to a defense raised by any borrower based on a claim of infancy; and

(3) in collecting any obligation arising from a loan made under part D, an institution of higher education that has an agreement with the Secretary pursuant to section 1087cc(a) of this title shall not be subject to a defense raised by any borrower based on a claim of infancy.

(c) State court judgments

A judgment of a State court for the recovery of money provided as grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 that has been assigned or transferred to the Secretary under this subchapter and part C of subchapter I of chapter 34 of title 42 may be registered in any district court of the United States by filing a certified copy of the judgment and a copy of the assignment or transfer. A judgment so registered shall have the same force and effect, and may be enforced in the same manner, as a judgment of the district court of the district in which the judgment is registered.

(d) Special rule

This section shall not apply in the case of a student who is deceased, or to a deceased student's estate or the estate of such student's family. If a student is deceased, then the student's estate or the estate of the student's family shall not be required to repay any financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, including interest paid on the student's behalf, collection costs, or other charges specified in this subchapter and part C of subchapter I of chapter 34 of title 42.

(Pub. L. 89–329, title IV, § 484A, as added Pub. L. 99–498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1482; amended Pub. L. 102–26, § 3(a), Apr. 9, 1991, 105 Stat. 124; Pub. L. 105–244, title IV, § 484, Oct. 7, 1998, 112 Stat. 1737; Pub. L. 110–315, title IV, § 486, Aug. 14, 2008, 122 Stat. 3290.)

PRIOR PROVISIONS

A prior section 1091a, Pub. L. 89–329, title IV, § 484A, as added Pub. L. 99–272, title XVI, § 16033, Apr. 7, 1986, 100 Stat. 355, related to statute of limitations, collection costs, and defense of infancy, prior to the general revision of this part by Pub. L. 99–498.

Another prior section 1091a, Pub. L. 89–329, title V, § 502, as added Pub. L. 90–35, § 2(c), June 29, 1967, 81 Stat. 82; amended Pub. L. 91–230, title IV, § 401(h)(4), title VIII, § 802, Apr. 13, 1970, 84 Stat. 174, 190; Pub. L. 92–318, title I, § 141(c)(1)(A), June 23, 1972, 86 Stat. 285, established the National Advisory Council on Education Professions Development and set forth functions, composition, etc., of the Council, prior to repeal by Pub. L. 94–482, title I, § 151(a)(2), (b), Oct. 12, 1976, 90 Stat. 2151, effective Sept. 30, 1976.

AMENDMENTS

2008—Subsec. (b)(3). Pub. L. 110–315, § 486(1), added par. (3).

Subsec. (d). Pub. L. 110–315, § 486(2), added subsec. (d).

1998—Pub. L. 105–244, § 484(1), inserted ", and State court judgments" after "limitations" in section catchline.

Subsec. (c). Pub. L. 105–244, § 484(2), added subsec. (c).

1991—Subsec. (a). Pub. L. 102–26 amended subsec. (a) generally, substituting provisions eliminating statute of limitations for student loan collections for provisions establishing six year limitations period for collection of such loans.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 3(c) of Pub. L. 102–26, as amended by Pub. L. 102–325, title XV, § 1551, July 23, 1992, 105 Stat. 838, provided that: "The amendments made by this section [amending this section] shall be effective as if enacted by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272), and shall apply to any actions pending on or after the date of enactment of the Higher Education Technical Amendments of 1991 [Apr. 9, 1991]."

§ 1091b. Institutional refunds

(a) Return of title IV funds

(1) In general

If a recipient of assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the amount of grant or loan assistance (other than assistance received under part C of subchapter I of chapter 34 of title 42) to be returned to the title IV programs is calculated according to paragraph (3) and returned in accordance with subsection (b) of this section.

(2) Leave of absence

(A) Leave not treated as withdrawal

In the case of a student who takes 1 or more leaves of absence from an institution for not more than a total of 180 days in any 12-month period, the institution may consider the student as not having withdrawn from the institution during the leave of absence, and not calculate the amount of grant and loan assistance provided under this subchapter and part C of subchapter I of chapter

34 of title 42 that is to be returned in accordance with this section if—

(i) the institution has a formal policy regarding leaves of absence;

(ii) the student followed the institution's policy in requesting a leave of absence; and

(iii) the institution approved the student's request in accordance with the institution's policy.

(B) Consequences of failure to return

If a student does not return to the institution at the expiration of an approved leave of absence that meets the requirements of subparagraph (A), the institution shall calculate the amount of grant and loan assistance provided under this subchapter and part C of subchapter I of chapter 34 of title 42 that is to be returned in accordance with this section based on the day the student withdrew (as determined under subsection (c) of this section).

(3) Calculation of amount of title IV assistance earned

(A) In general

The amount of grant or loan assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 that is earned by the recipient for purposes of this section is calculated by—

(i) determining the percentage of grant and loan assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 that has been earned by the student, as described in subparagraph (B); and

(ii) applying such percentage to the total amount of such grant and loan assistance that was disbursed (and that could have been disbursed) to the student, or on the student's behalf, for the payment period or period of enrollment for which the assistance was awarded, as of the day the student withdrew.

(B) Percentage earned

For purposes of subparagraph (A)(i), the percentage of grant or loan assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 that has been earned by the student is—

(i) equal to the percentage of the payment period or period of enrollment for which assistance was awarded that was completed (as determined in accordance with subsection (d) of this section) as of the day the student withdrew, provided that such date occurs on or before the completion of 60 percent of the payment period or period of enrollment; or

(ii) 100 percent, if the day the student withdrew occurs after the student has completed (as determined in accordance with subsection (d)) 60 percent of the payment period or period of enrollment.

(C) Percentage and amount not earned

For purposes of subsection (b) of this section, the amount of grant and loan assistance awarded under this subchapter and part C of subchapter I of chapter 34 of title 42 that has not been earned by the student shall be calculated by—

(i) determining the complement of the percentage of grant assistance under subparts 1 and 3 of part A, or loan assistance under parts B, C, and D, that has been earned by the student described in subparagraph (B); and

(ii) applying the percentage determined under clause (i) to the total amount of such grant and loan assistance that was disbursed (and that could have been disbursed) to the student, or on the student's behalf, for the payment period or period of enrollment, as of the day the student withdrew.

(4) Differences between amounts earned and amounts received

(A) In general

After determining the eligibility of the student for a late disbursement or post-withdrawal disbursement (as required in regulations prescribed by the Secretary), the institution of higher education shall contact the borrower and obtain confirmation that the loan funds are still required by the borrower. In making such contact, the institution shall explain to the borrower the borrower's obligation to repay the funds following any such disbursement. The institution shall document in the borrower's file the result of such contact and the final determination made concerning such disbursement.

(B) Return

If the student has received more grant or loan assistance than the amount earned as calculated under paragraph (3)(A), the unearned funds shall be returned by the institution or the student, or both, as may be required under paragraphs (1) and (2) of subsection (b) of this section, to the programs under this subchapter and part C of subchapter I of chapter 34 of title 42 in the order specified in subsection (b)(3) of this section.

(b) Return of title IV program funds

(1) Responsibility of the institution

The institution shall return not later than 45 days from the determination of withdrawal, in the order specified in paragraph (3), the lesser of—

(A) the amount of grant and loan assistance awarded under this subchapter and part C of subchapter I of chapter 34 of title 42 that has not been earned by the student, as calculated under subsection (a)(3)(C) of this section; or

(B) an amount equal to—

(i) the total institutional charges incurred by the student for the payment period or period of enrollment for which such assistance was awarded; multiplied by

(ii) the percentage of grant and loan assistance awarded under this subchapter and part C of subchapter I of chapter 34 of title 42 that has not been earned by the student, as described in subsection (a)(3)(C)(i) of this section.

(2) Responsibility of the student

(A) In general

The student shall return assistance that has not been earned by the student as described in subsection (a)(3)(C)(ii) of this section in the order specified in paragraph (3) minus the amount the institution is required to return under paragraph (1).

(B) Special rule

The student (or parent in the case of funds due to a loan borrowed by a parent under part B or C of this subchapter) shall return or repay, as appropriate, the amount determined under subparagraph (A) to—

(i) a loan program under this subchapter and part C of subchapter I of chapter 34 of title 42 in accordance with the terms of the loan; and

(ii) a grant program under this subchapter and part C of subchapter I of chapter 34 of title 42, as an overpayment of such grant and shall be subject to—

(I) repayment arrangements satisfactory to the institution; or

(II) overpayment collection procedures prescribed by the Secretary.

(C) Grant overpayment requirements

(i) In general

Notwithstanding subparagraphs (A) and (B), a student shall only be required to return grant assistance in the amount (if any) by which—

(I) the amount to be returned by the student (as determined under subparagraphs (A) and (B)), exceeds

(II) 50 percent of the total grant assistance received by the student under this subchapter and part C of subchapter I of chapter 34 of title 42 for the payment period or period of enrollment.

(ii) Minimum

A student shall not be required to return amounts of $50 or less.

(D) Waivers of Federal Pell Grant repayment by students affected by disasters

The Secretary may waive the amounts that students are required to return under this section with respect to Federal Pell Grants if the withdrawals on which the returns are based are withdrawals by students—

(i) who were residing in, employed in, or attending an institution of higher education that is located in an area in which the President has declared that a major disaster exists, in accordance with section 5170 of title 42;

(ii) whose attendance was interrupted because of the impact of the disaster on the student or the institution; and

(iii) whose withdrawal ended within the academic year during which the designation occurred or during the next succeeding academic year.

(E) Waivers of grant assistance repayment by students affected by disasters

In addition to the waivers authorized by subparagraph (D), the Secretary may waive the amounts that students are required to return under this section with respect to any other grant assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 if the withdrawals on which the returns are based are withdrawals by students—

(i) who were residing in, employed in, or attending an institution of higher education that is located in an area in which the President has declared that a major disaster exists, in accordance with section 5170 of title 42;

(ii) whose attendance was interrupted because of the impact of the disaster on the student or the institution; and

(iii) whose withdrawal ended within the academic year during which the designation occurred or during the next succeeding academic year.

(3) Order of return of title IV funds

(A) In general

Excess funds returned by the institution or the student, as appropriate, in accordance with paragraph (1) or (2), respectively, shall be credited to outstanding balances on loans made under this subchapter and part C of subchapter I of chapter 34 of title 42 to the student or on behalf of the student for the payment period or period of enrollment for which a return of funds is required. Such excess funds shall be credited in the following order:

(i) To outstanding balances on loans made under section 1078–8 of this title for the payment period or period of enrollment for which a return of funds is required.

(ii) To outstanding balances on loans made under section 1078 of this title for the payment period or period of enrollment for which a return of funds is required.

(iii) To outstanding balances on unsubsidized loans (other than parent loans) made under part C of this subchapter for the payment period or period of enrollment for which a return of funds is required.

(iv) To outstanding balances on subsidized loans made under part C of this subchapter for the payment period or period of enrollment for which a return of funds is required.

(v) To outstanding balances on loans made under part D of this subchapter for the payment period or period of enrollment for which a return of funds is required.

(vi) To outstanding balances on loans made under section 1078–2 of this title for the payment period or period of enrollment for which a return of funds is required.

(vii) To outstanding balances on parent loans made under part C of this subchapter for the payment period or period of enrollment for which a return of funds is required.

(B) Remaining excesses

If excess funds remain after repaying all outstanding loan amounts, the remaining

excess shall be credited in the following order:

(i) To awards under subpart 1 of part A of this subchapter for the payment period or period of enrollment for which a return of funds is required.

(ii) To awards under subpart 3 of part A of this subchapter for the payment period or period of enrollment for which a return of funds is required.

(iii) To other assistance awarded under this subchapter and part C of subchapter I of chapter 34 of title 42 for which a return of funds is required.

(c) Withdrawal date

(1) In general

In this section, the term ''day the student withdrew''—

(A) is the date that the institution determines—

(i) the student began the withdrawal process prescribed by the institution;

(ii) the student otherwise provided official notification to the institution of the intent to withdraw; or

(iii) in the case of a student who does not begin the withdrawal process or otherwise notify the institution of the intent to withdraw, the date that is the mid-point of the payment period for which assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 was disbursed or a later date documented by the institution; or

(B) for institutions required to take attendance, is determined by the institution from such attendance records.

(2) Special rule

Notwithstanding paragraph (1), if the institution determines that a student did not begin the withdrawal process, or otherwise notify the institution of the intent to withdraw, due to illness, accident, grievous personal loss, or other such circumstances beyond the student's control, the institution may determine the appropriate withdrawal date.

(d) Percentage of the payment period or period of enrollment completed

For purposes of subsection (a)(3)(B) of this section, the percentage of the payment period or period of enrollment for which assistance was awarded that was completed, is determined—

(1) in the case of a program that is measured in credit hours, by dividing the total number of calendar days comprising the payment period or period of enrollment for which assistance is awarded into the number of calendar days completed in that period as of the day the student withdrew; and

(2) in the case of a program that is measured in clock hours, by dividing the total number of clock hours comprising the payment period or period of enrollment for which assistance is awarded into the number of clock hours scheduled to be completed by the student in that period as of the day the student withdrew.

(e) Effective date

The provisions of this section shall take effect 2 years after October 7, 1998. An institution of higher education may choose to implement such provisions prior to that date.

(Pub. L. 89–329, title IV, § 484B, as added Pub. L. 102–325, title IV, § 485(a), July 23, 1992, 106 Stat. 619; amended Pub. L. 103–208, § 2(h)(26), (27), Dec. 20, 1993, 107 Stat. 2477; Pub. L. 105–244, title IV, § 485, Oct. 7, 1998, 112 Stat. 1737; Pub. L. 109–66, § 2, Sept. 21, 2005, 119 Stat. 1999; Pub. L. 109–67, § 2, Sept. 21, 2005, 119 Stat. 2001; Pub. L. 109–171, title VIII, § 8022, Feb. 8, 2006, 120 Stat. 178.)

REFERENCES IN TEXT

Title IV, referred to in subsecs. (a) and (b), means title IV of the Higher Education Act of 1965, Pub. L. 89–329, which is classified generally to this subchapter and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of title IV to the Code, see Tables.

PRIOR PROVISIONS

A prior section 1091b, Pub. L. 89–329, title V, § 503, as added Pub. L. 90–35, § 2(c), June 29, 1967, 81 Stat. 83; amended Pub. L. 92–318, title IV, § 451(a), June 23, 1972, 86 Stat. 344, authorized the Commissioner to appraise and annually report on existing and future education personnel needs, prior to repeal, effective Sept. 30, 1976, by Pub. L. 94–482, title I, § 151(a)(2), (b), Oct. 12, 1976, 90 Stat. 2151.

AMENDMENTS

2006—Subsec. (a)(2)(A). Pub. L. 109–171, § 8022(1), substituted ''1 or more leaves of'' for ''a leave of'' in introductory provisions.

Subsec. (a)(3)(B)(ii). Pub. L. 109–171, § 8022(2), inserted ''(as determined in accordance with subsection (d))'' after ''student has completed''.

Subsec. (a)(3)(C)(i). Pub. L. 109–171, § 8022(3), substituted ''grant assistance under subparts 1 and 3 of part A, or loan assistance under parts B, C, and D,'' for ''grant or loan assistance under this subchapter and part C of subchapter I of chapter 34 of title 42''.

Subsec. (a)(4)(A). Pub. L. 109–171, § 8022(4), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''If the student has received less grant or loan assistance than the amount earned as calculated under subparagraph (A) of paragraph (3), the institution of higher education shall comply with the procedures for late disbursement specified by the Secretary in regulations.''

Subsec. (b)(1). Pub. L. 109–171, § 8022(5), inserted ''not later than 45 days from the determination of withdrawal'' after ''return'' in introductory provisions.

Subsec. (b)(2)(C). Pub. L. 109–171, § 8022(6), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''Notwithstanding subparagraphs (A) and (B), a student shall not be required to return 50 percent of the grant assistance received by the student under this subchapter and part C of subchapter I of chapter 34 of title 42, for a payment period or period of enrollment, that is the responsibility of the student to repay under this section.''

Subsec. (d). Pub. L. 109–171, § 8022(7), (8), in introductory provisions, substituted ''(a)(3)(B)'' for ''(a)(3)(B)(i)'' and, in par. (2), substituted ''clock hours scheduled to be completed by the student in that period as of the day the student withdrew.'' for ''clock hours—

''(A) completed by the student in that period as of the day the student withdrew; or

''(B) scheduled to be completed as of the day the student withdrew, if the clock hours completed in the period are not less than a percentage, to be determined by the Secretary in regulations, of the hours that were scheduled to be completed by the student in the period.''

2005—Subsec. (b)(2)(D). Pub. L. 109–66 added subpar. (D).

Subsec. (b)(2)(E). Pub. L. 109–67 added subpar. (E).

1998—Pub. L. 105–244 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (c) requiring each institution of higher education participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42 to have in effect a fair and equitable refund policy for refunding unearned tuition, fees, room and board, and other charges to students or parents who received grant or loan assistance under this subchapter or part C of subchapter I of chapter 34 of title 42.

1993—Subsec. (a). Pub. L. 103–208, § 2(h)(26), substituted ''grant or loan assistance'' for ''grant, loan, or work assistance'' in introductory provisions.

Subsec. (b)(3). Pub. L. 103–208, § 2(h)(27), substituted ''subsection (c) of this section'' for ''subsection (d) of this section''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

§ 1091c. Readmission requirements for servicemembers

(a) Definition of service in the uniformed services

In this section, the term ''service in the uniformed services'' means service (whether voluntary or involuntary) on active duty in the Armed Forces, including such service by a member of the National Guard or Reserve, for a period of more than 30 days under a call or order to active duty of more than 30 days.

(b) Discrimination against students who serve in the uniformed services prohibited

A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services shall not be denied readmission to an institution of higher education on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(c) Readmission procedures

(1) In general

Any student whose absence from an institution of higher education is necessitated by reason of service in the uniformed services shall be entitled to readmission to the institution of higher education if—

(A) the student (or an appropriate officer of the Armed Forces or official of the Department of Defense) gives advance written or verbal notice of such service to the appropriate official at the institution of higher education;

(B) the cumulative length of the absence and of all previous absences from that institution of higher education by reason of service in the uniformed services does not exceed five years; and

(C) except as otherwise provided in this section, the student submits a notification of intent to reenroll in the institution of higher education in accordance with the provisions of paragraph (4).

(2) Exceptions

(A) Military necessity

No notice is required under paragraph (1)(A) if the giving of such notice is precluded by military necessity, such as—

(i) a mission, operation, exercise, or requirement that is classified; or

(ii) a pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge.

(B) Failure to give advance notice

Any student (or an appropriate officer of the Armed Forces or official of the Department of Defense) who did not give advance written or verbal notice of service to the appropriate official at the institution of higher education in accordance with paragraph (1)(A) may meet the notice requirement by submitting, at the time the student seeks readmission, an attestation to the student's institution of higher education that the student performed service in the uniformed services that necessitated the student's absence from the institution of higher education.

(3) Applicability

This section shall apply to a student who is absent from an institution of higher education by reason of service in the uniformed services if such student's cumulative period of service in the Armed Forces (including the National Guard or Reserve), with respect to the institution of higher education for which a student seeks readmission, does not exceed five years, except that any such period of service shall not include any service—

(A) that is required, beyond five years, to complete an initial period of obligated service;

(B) during which such student was unable to obtain orders releasing such student from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such student; or

(C) performed by a member of the Armed Forces (including the National Guard and Reserves) who is—

(i) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, or 12305 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;

(ii) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(iii) ordered to active duty (other than for training) in support, as determined by

the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;

(iv) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); or

(v) called into Federal service as a member of the National Guard under chapter 15 of title 10 or section 12406 of title 10.

(4) Notification of intent to return

(A) In general

Except as provided in subparagraph (B), a student referred to in subsection (a) shall, upon the completion of a period of service in the uniformed services, notify the institution of higher education of the student's intent to return to the institution not later than three years after the completion of the period of service.

(B) Hospitalization or convalescence

A student who is hospitalized for or convalescing from an illness or injury incurred in or aggravated during the performance of service in the uniformed services shall notify the institution of higher education of the student's intent to return to the institution not later than two years after the end of the period that is necessary for recovery from such illness or injury.

(C) Special rule

A student who fails to apply for readmission within the period described in this section shall not automatically forfeit such eligibility for readmission to the institution of higher education, but shall be subject to the institution of higher education's established leave of absence policy and general practices.

(5) Documentation

(A) In general

A student who submits an application for readmission to an institution of higher education under this section shall provide to the institution of higher education documentation to establish that—

(i) the student has not exceeded the service limitations established under this section; and

(ii) the student's eligibility for readmission has not been terminated due to an exception in subsection (d).

(B) Prohibited documentation demands

An institution of higher education may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

(6) No change in academic status

A student who is readmitted to an institution of higher education under this section shall be readmitted with the same academic status as such student had when such student last attended the institution of higher education.

(d) Exception from readmission eligibility

A student's eligibility for readmission to an institution of higher education under this section by reason of such student's service in the uniformed services terminates upon the occurrence of any of the following events:

(1) A separation of such person from the Armed Forces (including the National Guard and Reserves) with a dishonorable or bad conduct discharge.

(2) A dismissal of such person permitted under section 1161(a) of title 10.

(3) A dropping of such person from the rolls pursuant to section 1161(b) of title 10.

(Pub. L. 89–329, title IV, § 484C, as added Pub. L. 110–315, title IV, § 487, Aug. 14, 2008, 122 Stat. 3290.)

PRIOR PROVISIONS

Prior sections 1091c to 1091f were repealed, effective Sept. 30, 1976, by Pub. L. 94–482, title I, § 151(a)(2), (b), Oct. 12, 1976, 90 Stat. 2151.

Section 1091c, Pub. L. 89–329, title V, § 504, as added Pub. L. 90–35, § 2(c), June 29, 1967, 81 Stat. 83; amended Pub. L. 90–575, title II, § 231(a), Oct. 16, 1968, 82 Stat. 1039; Pub. L. 92–318, title I, § 141(a)(1)(B), (c)(1)(B), June 23, 1972, 86 Stat. 284, 285, authorized the Commissioner to make grants or contracts with State or local educational agencies for attracting qualified persons to the field of education.

Section 1091d, Pub. L. 89–329, title V, § 505, as added Pub. L. 90–35, § 2(c), June 29, 1967, 81 Stat. 84, required the Commissioner to consult with the National Science Foundation and the National Foundation on the Arts and the Humanities in development and review of programs.

Section 1091e, Pub. L. 89–329, title V, § 506, as added Pub. L. 90–35, § 2(c), June 29, 1967, 81 Stat. 84, authorized transfer of funds for programs for education professions development.

Section 1091f, Pub. L. 89–329, title V, § 507, as added Pub. L. 90–35, § 2(c), June 29, 1967, 81 Stat. 84, authorized employment of experts and consultants and set forth provisions for compensation and travel expenses.

§ 1092. Institutional and financial assistance information for students

(a) Information dissemination activities

(1) Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall carry out information dissemination activities for prospective and enrolled students (including those attending or planning to attend less than full time) regarding the institution and all financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42. The information required by this section shall be produced and be made readily available upon request, through appropriate publications, mailings, and electronic media, to an enrolled student and to any prospective student. Each eligible institution shall, on an annual basis, provide to all enrolled students a list of the information that is required to be provided by institutions to students by this section and section 444 of the General Education Provisions Act [20 U.S.C. 1232g] (commonly known as the ''Family Educational Rights and Privacy Act of 1974''), together with a statement of the procedures re-

quired to obtain such information. The information required by this section shall accurately describe—

(A) the student financial assistance programs available to students who enroll at such institution;

(B) the methods by which such assistance is distributed among student recipients who enroll at such institution;

(C) any means, including forms, by which application for student financial assistance is made and requirements for accurately preparing such application;

(D) the rights and responsibilities of students receiving financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42;

(E) the cost of attending the institution, including (i) tuition and fees, (ii) books and supplies, (iii) estimates of typical student room and board costs or typical commuting costs, and (iv) any additional cost of the program in which the student is enrolled or expresses a specific interest;

(F) a statement of—

(i) the requirements of any refund policy with which the institution is required to comply;

(ii) the requirements under section 1091b of this title for the return of grant or loan assistance provided under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(iii) the requirements for officially withdrawing from the institution;

(G) the academic program of the institution, including (i) the current degree programs and other educational and training programs, (ii) the instructional, laboratory, and other physical plant facilities which relate to the academic program, (iii) the faculty and other instructional personnel, and (iv) any plans by the institution for improving the academic program of the institution;

(H) each person designated under subsection (c) of this section, and the methods by which and locations in which any person so designated may be contacted by students and prospective students who are seeking information required by this subsection;

(I) special facilities and services available to students with disabilities;

(J) the names of associations, agencies, or governmental bodies which accredit, approve, or license the institution and its programs, and the procedures under which any current or prospective student may obtain or review upon request a copy of the documents describing the institution's accreditation, approval, or licensing;

(K) the standards which the student must maintain in order to be considered to be making satisfactory progress, pursuant to section 1091(a)(2) of this title;

(L) the completion or graduation rate of certificate- or degree-seeking, full-time, undergraduate students entering such institutions;

(M) the terms and conditions of the loans that students receive under parts B, C, and D;

(N) that enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment in the home institution for purposes of applying for Federal student financial assistance;

(O) the campus crime report prepared by the institution pursuant to subsection (f) of this section, including all required reporting categories;

(P) institutional policies and sanctions related to copyright infringement, including—

(i) an annual disclosure that explicitly informs students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities;

(ii) a summary of the penalties for violation of Federal copyright laws; and

(iii) a description of the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in unauthorized distribution of copyrighted materials using the institution's information technology system;

(Q) student body diversity at the institution, including information on the percentage of enrolled, full-time students who—

(i) are male;

(ii) are female;

(iii) receive a Federal Pell Grant; and

(iv) are a self-identified member of a major racial or ethnic group;

(R) the placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, the Community College Survey of Student Engagement, State data systems, or other relevant sources;

(S) the types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, State data systems, or other relevant sources;

(T) the fire safety report prepared by the institution pursuant to subsection (i);

(U) the retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students entering such institution; and

(V) institutional policies regarding vaccinations.

(2) For the purpose of this section, the term ''prospective student'' means any individual who has contacted an eligible institution requesting information concerning admission to that institution.

(3) In calculating the completion or graduation rate under subparagraph (L) of paragraph (1) of this subsection or under subsection (e) of this section, a student shall be counted as a completion or graduation if, within 150 percent of the normal time for completion of or graduation from the program, the student has completed or graduated from the program, or enrolled in any program of an eligible institution

for which the prior program provides substantial preparation. The information required to be disclosed under such subparagraph—

(A) shall be made available by July 1 each year to enrolled students and prospective students prior to the students enrolling or entering into any financial obligation; and

(B) shall cover the one-year period ending on August 31 of the preceding year.

(4) For purposes of this section, institutions may—

(A) exclude from the information disclosed in accordance with subparagraph (L) of paragraph (1) the completion or graduation rates of students who leave school to serve in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government; or

(B) in cases where the students described in subparagraph (A) represent 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at the institution, recalculate the completion or graduation rates of such students by excluding from the calculation described in paragraph (3) the time period during which such students were not enrolled due to their service in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government.

(5) The Secretary shall permit any institution of higher education that is a member of an athletic association or athletic conference that has voluntarily published completion or graduation rate data or has agreed to publish data that, in the opinion of the Secretary, is substantially comparable to the information required under this subsection, to use such data to satisfy the requirements of this subsection.

(6) Each institution may provide supplemental information to enrolled and prospective students showing the completion or graduation rate for students described in paragraph (4) or for students transferring into the institution or information showing the rate at which students transfer out of the institution.

(7)(A)(i) Subject to clause (ii), the information disseminated under paragraph (1)(L), or reported under subsection (e), shall be disaggregated by gender, by each major racial and ethnic subgroup, by recipients of a Federal Pell Grant, by recipients of a loan made under part B or C (other than a loan made under section 1078–8 of this title or a Federal Direct Unsubsidized Stafford Loan) who did not receive a Federal Pell Grant, and by recipients of neither a Federal Pell Grant nor a loan made under part B or C (other than a loan made under section 1078–8 of this title or a Federal Direct Unsubsidized Stafford Loan), if the number of students in such subgroup or with such status is sufficient to yield statistically reliable information and reporting will not reveal personally identifiable information about an individual student. If such number is not sufficient for such purposes, then the institution shall note that the institution enrolled too few of such students to so disclose or report with confidence and confidentiality.

(ii) The requirements of clause (i) shall not apply to two-year, degree-granting institutions of higher education until academic year 2011-2012.

(B)(i) In order to assist two-year degree-granting institutions of higher education in meeting the requirements of paragraph (1)(L) and subsection (e), the Secretary, in consultation with the Commissioner for Education Statistics, shall, not later than 90 days after August 14, 2008, convene a group of representatives from diverse institutions of higher education, experts in the field of higher education policy, state[1] higher education officials, students, and other stakeholders in the higher education community, to develop recommendations regarding the accurate calculation and reporting of the information required to be disseminated or reported under paragraph (1)(L) and subsection (e) by two-year, degree-granting institutions of higher education. In developing such recommendations, the group of representatives shall consider the mission and role of two-year degree-granting institutions of higher education, and may recommend additional or alternative measures of student success for such institutions in light of the mission and role of such institutions.

(ii) The Secretary shall widely disseminate the recommendations required under this subparagraph to two-year, degree-granting institutions of higher education, the public, and the authorizing committees not later than 18 months after the first meeting of the group of representatives convened under clause (i).

(iii) The Secretary shall use the recommendations from the group of representatives convened under clause (i) to provide technical assistance to two-year, degree-granting institutions of higher education in meeting the requirements of paragraph (1)(L) and subsection (e).

(iv) The Secretary may modify the information required to be disseminated or reported under paragraph (1)(L) or subsection (e) by a two-year, degree-granting institution of higher education—

(I) based on the recommendations received under this subparagraph from the group of representatives convened under clause (i);

(II) to include additional or alternative measures of student success if the goals of the provisions of paragraph (1)(L) and subsection (e) can be met through additional means or comparable alternatives; and

(III) during the period beginning on August 14, 2008, and ending on June 30, 2011.

(b) Exit counseling for borrowers

(1)(A) Each eligible institution shall, through financial aid offices or otherwise, provide counseling to borrowers of loans that are made, insured, or guaranteed under part B (other than loans made pursuant to section 1078–3 of this title or loans under section 1078–2 of this title made on behalf of a student) or made under part C (other than Federal Direct Consolidation Loans or Federal Direct PLUS Loans made on behalf of a student) or made under part D of this subchapter prior to the completion of the course of study for which the borrower enrolled at the institution or at the time of departure from

[1] So in original. Probably should be capitalized.

such institution. The counseling required by this subsection shall include—

(i) information on the repayment plans available, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments, under each plan;

(ii) debt management strategies that are designed to facilitate the repayment of such indebtedness;

(iii) an explanation that the borrower has the options to prepay each loan, pay each loan on a shorter schedule, and change repayment plans;

(iv) for any loan forgiveness or cancellation provision of this subchapter and part C of subchapter I of chapter 34 of title 42, a general description of the terms and conditions under which the borrower may obtain full or partial forgiveness or cancellation of the principal and interest, and a copy of the information provided by the Secretary under section 1092(d) of this title;

(v) for any forbearance provision of this subchapter and part C of subchapter I of chapter 34 of title 42, a general description of the terms and conditions under which the borrower may defer repayment of principal or interest or be granted forbearance, and a copy of the information provided by the Secretary under section 1092(d) of this title;

(vi) the consequences of defaulting on a loan, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(vii) information on the effects of using a consolidation loan under section 1078–3 of this title or a Federal Direct Consolidation Loan to discharge the borrower's loans under parts B, C, and D, including at a minimum—

(I) the effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

(II) the effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;

(III) the option of the borrower to prepay the loan or to change repayment plans; and

(IV) that borrower benefit programs may vary among different lenders;

(viii) a general description of the types of tax benefits that may be available to borrowers; and

(ix) a notice to borrowers about the availability of the National Student Loan Data System and how the system can be used by a borrower to obtain information on the status of the borrower's loans; and

(B) In the case of borrower who leaves an institution without the prior knowledge of the institution, the institution shall attempt to provide the information described in subparagraph (A) to the student in writing.

(2)(A) Each eligible institution shall require that the borrower of a loan made under part B, C, or D of this subchapter submit to the institution, during the exit interview required by this subsection—

(i) the borrower's expected permanent address after leaving the institution (regardless of the reason for leaving);

(ii) the name and address of the borrower's expected employer after leaving the institution;

(iii) the address of the borrower's next of kin; and

(iv) any corrections in the institution's records relating the borrower's name, address, social security number, references, and driver's license number.

(B) The institution shall, within 60 days after the interview, forward any corrected or completed information received from the borrower to the guaranty agency indicated on the borrower's student aid records.

(C) Nothing in this subsection shall be construed to prohibit an institution of higher education from utilizing electronic means to provide personalized exit counseling.

(c) Financial assistance information personnel

Each eligible institution shall designate an employee or group of employees who shall be available on a full-time basis to assist students or potential students in obtaining information as specified in subsection (a) of this section. The Secretary may, by regulation, waive the requirement that an employee or employees be available on a full-time basis for carrying out responsibilities required under this section whenever an institution in which the total enrollment, or the portion of the enrollment participating in programs under this subchapter and part C of subchapter I of chapter 34 of title 42 at that institution, is too small to necessitate such employee or employees being available on a full-time basis. No such waiver may include permission to exempt any such institution from designating a specific individual or a group of individuals to carry out the provisions of this section.

(d) Departmental publication of descriptions of assistance programs

(1) The Secretary shall make available to eligible institutions, eligible lenders, and secondary schools descriptions of Federal student assistance programs including the rights and responsibilities of student and institutional participants, in order to (A) assist students in gaining information through institutional sources, and (B) assist institutions in carrying out the provisions of this section, so that individual and institutional participants will be fully aware of their rights and responsibilities under such programs. In particular, such information shall include information to enable students and prospective students to assess the debt burden and monthly and total repayment obligations that will be incurred as a result of receiving loans of varying amounts under this subchapter and part C of subchapter I of chapter 34 of title 42. Such information shall also include information on the various payment options available for student loans, including income-sensitive and income-based repayment plans for loans made, insured, or guaranteed under part B and income-contingent and income-based repayment plans for loans made under part C. In addition, such

information shall include information to enable borrowers to assess the practical consequences of loan consolidation, including differences in deferment eligibility, interest rates, monthly payments, and finance charges, and samples of loan consolidation profiles to illustrate such consequences. The Secretary shall provide information concerning the specific terms and conditions under which students may obtain partial or total cancellation or defer repayment of loans for service, shall indicate (in terms of the Federal minimum wage) the maximum level of compensation and allowances that a student borrower may receive from a tax-exempt organization to qualify for a deferment, and shall explicitly state that students may qualify for such partial cancellations or deferments when they serve as a paid employee of a tax-exempt organization. The Secretary shall also provide information on loan forbearance, including the increase in debt that results from capitalization of interest. Such information shall be provided by eligible institutions and eligible lenders at any time that information regarding loan availability is provided to any student.

(2) The Secretary, to the extent the information is available, shall compile information describing State and other prepaid tuition programs and savings programs and disseminate such information to States, eligible institutions, students, and parents in departmental publications.

(3) The Secretary, to the extent practicable, shall update the Department's Internet site to include direct links to databases that contain information on public and private financial assistance programs. The Secretary shall only provide direct links to databases that can be accessed without charge and shall make reasonable efforts to verify that the databases included in a direct link are not providing fraudulent information. The Secretary shall prominently display adjacent to any such direct link a disclaimer indicating that a direct link to a database does not constitute an endorsement or recommendation of the database, the provider of the database, or any services or products of such provider. The Secretary shall provide additional direct links to information resources from which students may obtain information about fraudulent and deceptive practices in the provision of services related to student financial aid.

(4) The Secretary shall widely publicize the location of the information described in paragraph (1) among the public, eligible institutions, and eligible lenders, and promote the use of such information by prospective students, enrolled students, families of prospective and enrolled students, and borrowers.

(e) Disclosures required with respect to athletically related student aid

(1) Each institution of higher education which participates in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 and is attended by students receiving athletically related student aid shall annually submit a report to the Secretary which contains—

(A) the number of students at the institution of higher education who received athletically related student aid broken down by race and sex in the following sports: basketball, football, baseball, cross country/track, and all other sports combined;

(B) the number of students at the institution of higher education, broken down by race and sex;

(C) the completion or graduation rate for students at the institution of higher education who received athletically related student aid broken down by race and sex in the following sports: basketball, football, baseball, cross country/track and all other sports combined;

(D) the completion or graduation rate for students at the institution of higher education, broken down by race and sex;

(E) the average completion or graduation rate for the 4 most recent completing or graduating classes of students at the institution of higher education who received athletically related student aid broken down by race and sex in the following categories: basketball, football, baseball, cross country/track, and all other sports combined; and

(F) the average completion or graduation rate for the 4 most recent completing or graduating classes of students at the institution of higher education broken down by race and sex.

(2) When an institution described in paragraph (1) of this subsection offers a potential student athlete athletically related student aid, such institution shall provide to the student and the student's parents, guidance counselor, and coach the information contained in the report submitted by such institution pursuant to paragraph (1). If the institution is a member of a national collegiate athletic association that compiles graduation rate data on behalf of the association's member institutions that the Secretary determines is substantially comparable to the information described in paragraph (1), the distribution of the compilation of such data to all secondary schools in the United States shall fulfill the responsibility of the institution to provide information to a prospective student athlete's guidance counselor and coach.

(3) For purposes of this subsection, institutions may—

(A) exclude from the reporting requirements under paragraphs (1) and (2) the completion or graduation rates of students and student athletes who leave school to serve in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government; or

(B) in cases where the students described in subparagraph (A) represent 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at the institution, calculate the completion or graduation rates of such students by excluding from the calculations described in paragraph (1) the time period during which such students were not enrolled due to their service in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government.

(4) Each institution of higher education described in paragraph (1) may provide supplemental information to students and the Sec-

retary showing the completion or graduation rate when such completion or graduation rate includes students transferring into and out of such institution.

(5) The Secretary, using the reports submitted under this subsection, shall compile and publish a report containing the information required under paragraph (1) broken down by—

(A) individual institutions of higher education; and

(B) athletic conferences recognized by the National Collegiate Athletic Association and the National Association of Intercollegiate Athletics.

(6) The Secretary shall waive the requirements of this subsection for any institution of higher education that is a member of an athletic association or athletic conference that has voluntarily published completion or graduation rate data or has agreed to publish data that, in the opinion of the Secretary, is substantially comparable to the information required under this subsection.

(7) The Secretary, in conjunction with the National Junior College Athletic Association, shall develop and obtain data on completion or graduation rates from two-year colleges that award athletically related student aid. Such data shall, to the extent practicable, be consistent with the reporting requirements set forth in this section.

(8) For purposes of this subsection, the term ''athletically related student aid'' means any scholarship, grant, or other form of financial assistance the terms of which require the recipient to participate in a program of intercollegiate athletics at an institution of higher education in order to be eligible to receive such assistance.

(9) The reports required by this subsection shall be due each July 1 and shall cover the 1-year period ending August 31 of the preceding year.

(f) Disclosure of campus security policy and campus crime statistics

(1) Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, shall on August 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter, prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:

(A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.

(B) A statement of current policies concerning security and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(C) A statement of current policies concerning campus law enforcement, including—

(i) the law enforcement authority of campus security personnel;

(ii) the working relationship of campus security personnel with State and local law enforcement agencies, including whether the institution has agreements with such agencies, such as written memoranda of understanding, for the investigation of alleged criminal offenses; and

(iii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate law enforcement agencies.

(D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(E) A description of programs designed to inform students and employees about the prevention of crimes.

(F) Statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available—

(i) of the following criminal offenses reported to campus security authorities or local police agencies:

(I) murder;

(II) sex offenses, forcible or nonforcible;

(III) robbery;

(IV) aggravated assault;

(V) burglary;

(VI) motor vehicle theft;

(VII) manslaughter;

(VIII) arson; and

(IX) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession; and

(ii) of the crimes described in subclauses (I) through (VIII) of clause (i), of larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and of other crimes involving bodily injury to any person, in which the victim is intentionally selected because of the actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice.

(G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.

(H) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the

possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs as required under section 1011i of this title.

(I) A statement advising the campus community where law enforcement agency information provided by a State under section 14071(j)[2] of title 42, concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

(J) A statement of current campus policies regarding immediate emergency response and evacuation procedures, including the use of electronic and cellular communication (if appropriate), which policies shall include procedures to—

(i) immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on the campus, as defined in paragraph (6), unless issuing a notification will compromise efforts to contain the emergency;

(ii) publicize emergency response and evacuation procedures on an annual basis in a manner designed to reach students and staff; and

(iii) test emergency response and evacuation procedures on an annual basis.

(2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

(3) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.

(4)(A) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, that maintains a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording all crimes reported to such police or security department, including—

(i) the nature, date, time, and general location of each crime; and

(ii) the disposition of the complaint, if known.

(B)(i) All entries that are required pursuant to this paragraph shall, except where disclosure of such information is prohibited by law or such disclosure would jeopardize the confidentiality of the victim, be open to public inspection within two business days of the initial report being made to the department or a campus security authority.

(ii) If new information about an entry into a log becomes available to a police or security department, then the new information shall be recorded in the log not later than two business days after the information becomes available to the police or security department.

(iii) If there is clear and convincing evidence that the release of such information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until that damage is no longer likely to occur from the release of such information.

(5) On an annual basis, each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, shall submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(F). The Secretary shall—

(A) review such statistics and report to the authorizing committees on campus crime statistics by September 1, 2000;

(B) make copies of the statistics submitted to the Secretary available to the public; and

(C) in coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

(6)(A) In this subsection:

(i) The term ''campus'' means—

(I) any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(II) property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).

(ii) The term ''noncampus building or property'' means—

(I) any building or property owned or controlled by a student organization recognized by the institution; and

(II) any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

(iii) The term ''public property'' means all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adja-

[2] See References in Text note below.

cent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes.

(B) In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this section.

(7) The statistics described in paragraph (1)(F) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act. Such statistics shall not identify victims of crimes or persons accused of crimes.

(8)(A) Each institution of higher education participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding—

(i) such institution's campus sexual assault programs, which shall be aimed at prevention of sex offenses; and

(ii) the procedures followed once a sex offense has occurred.

(B) The policy described in subparagraph (A) shall address the following areas:

(i) Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses.

(ii) Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or nonforcible.

(iii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.

(iv) Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that—

(I) the accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and

(II) both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.

(v) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.

(vi) Notification of students of existing counseling, mental health or student services for victims of sexual assault, both on campus and in the community.

(vii) Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.

(C) Nothing in this paragraph shall be construed to confer a private right of action upon any person to enforce the provisions of this paragraph.

(9) The Secretary shall provide technical assistance in complying with the provisions of this section to an institution of higher education who requests such assistance.

(10) Nothing in this section shall be construed to require the reporting or disclosure of privileged information.

(11) The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

(12) For purposes of reporting the statistics with respect to crimes described in paragraph (1)(F), an institution of higher education shall distinguish, by means of separate categories, any criminal offenses that occur—

(A) on campus;

(B) in or on a noncampus building or property;

(C) on public property; and

(D) in dormitories or other residential facilities for students on campus.

(13) Upon a determination pursuant to section 1094(c)(3)(B) of this title that an institution of higher education has substantially misrepresented the number, location, or nature of the crimes required to be reported under this subsection, the Secretary shall impose a civil penalty upon the institution in the same amount and pursuant to the same procedures as a civil penalty is imposed under section 1094(c)(3)(B) of this title.

(14)(A) Nothing in this subsection may be construed to—

(i) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or

(ii) establish any standard of care.

(B) Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

(15) The Secretary shall annually report to the authorizing committees regarding compliance with this subsection by institutions of higher education, including an up-to-date report on the Secretary's monitoring of such compliance.

(16) The Secretary may seek the advice and counsel of the Attorney General concerning the development, and dissemination to institutions of higher education, of best practices information about campus safety and emergencies.

(17) Nothing in this subsection shall be construed to permit an institution, or an officer, employee, or agent of an institution, participating in any program under this subchapter and

part C of subchapter I of chapter 34 of title 42 to retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual with respect to the implementation of any provision of this subsection.

(18) This subsection may be cited as the ''Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act''.

(g) Data required

(1) In general

Each coeducational institution of higher education that participates in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, and has an intercollegiate athletic program, shall annually, for the immediately preceding academic year, prepare a report that contains the following information regarding intercollegiate athletics:

(A) The number of male and female full-time undergraduates that attended the institution.

(B) A listing of the varsity teams that competed in intercollegiate athletic competition and for each such team the following data:

(i) The total number of participants, by team, as of the day of the first scheduled contest for the team.

(ii) Total operating expenses attributable to such teams, except that an institution may also report such expenses on a per capita basis for each team and expenditures attributable to closely related teams such as track and field or swimming and diving, may be reported together, although such combinations shall be reported separately for men's and women's teams.

(iii) Whether the head coach is male or female and whether the head coach is assigned to that team on a full-time or part-time basis. Graduate assistants and volunteers who serve as head coaches shall be considered to be head coaches for the purposes of this clause.

(iv) The number of assistant coaches who are male and the number of assistant coaches who are female for each team and whether a particular coach is assigned to that team on a full-time or part-time basis. Graduate assistants and volunteers who serve as assistant coaches shall be considered to be assistant coaches for the purposes of this clause.

(C) The total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, separately for men's and women's teams overall.

(D) The ratio of athletically related student aid awarded male athletes to athletically related student aid awarded female athletes.

(E) The total amount of expenditures on recruiting, separately for men's and women's teams overall.

(F) The total annual revenues generated across all men's teams and across all women's teams, except that an institution may also report such revenues by individual team.

(G) The average annual institutional salary of the head coaches of men's teams, across all offered sports, and the average annual institutional salary of the head coaches of women's teams, across all offered sports.

(H) The average annual institutional salary of the assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the assistant coaches of women's teams, across all offered sports.

(I)(i) The total revenues, and the revenues from football, men's basketball, women's basketball, all other men's sports combined and all other women's sports combined, derived by the institution from the institution's intercollegiate athletics activities.

(ii) For the purpose of clause (i), revenues from intercollegiate athletics activities allocable to a sport shall include (without limitation) gate receipts, broadcast revenues, appearance guarantees and options, concessions, and advertising, but revenues such as student activities fees or alumni contributions not so allocable shall be included in the calculation of total revenues only.

(J)(i) The total expenses, and the expenses attributable to football, men's basketball, women's basketball, all other men's sports combined, and all other women's sports combined, made by the institution for the institution's intercollegiate athletics activities.

(ii) For the purpose of clause (i), expenses for intercollegiate athletics activities allocable to a sport shall include (without limitation) grants-in-aid, salaries, travel, equipment, and supplies, but expenses such as general and administrative overhead not so allocable shall be included in the calculation of total expenses only.

(2) Special rule

For the purposes of paragraph (1)(G), if a coach has responsibilities for more than one team and the institution does not allocate such coach's salary by team, the institution should divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(3) Disclosure of information to students and public

An institution of higher education described in paragraph (1) shall make available to students and potential students, upon request, and to the public, the information contained in the report described in paragraph (1), except that all students shall be informed of their right to request such information.

(4) Submission; report; information availability

(A) On an annual basis, each institution of higher education described in paragraph (1) shall provide to the Secretary, within 15 days of the date that the institution makes available the report under paragraph (1), the information contained in the report.

(B) The Secretary shall ensure that the reports described in subparagraph (A) are made available to the public within a reasonable period of time.

(C) Not later than 180 days after October 7, 1998, the Secretary shall notify all secondary schools in all States regarding the availability of the information made available under paragraph (1), and how such information may be accessed.

(5) "Operating expenses" defined

For the purposes of this subsection, the term ''operating expenses'' means expenditures on lodging and meals, transportation, officials, uniforms and equipment.

(h) Transfer of credit policies

(1) Disclosure

Each institution of higher education participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall publicly disclose, in a readable and comprehensible manner, the transfer of credit policies established by the institution which shall include a statement of the institution's current transfer of credit policies that includes, at a minimum—

(A) any established criteria the institution uses regarding the transfer of credit earned at another institution of higher education; and

(B) a list of institutions of higher education with which the institution has established an articulation agreement.

(2) Rule of construction

Nothing in this subsection shall be construed to—

(A) authorize the Secretary or the National Advisory Committee on Institutional Quality and Integrity to require particular policies, procedures, or practices by institutions of higher education with respect to transfer of credit;

(B) authorize an officer or employee of the Department to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any institution of higher education, or over any accrediting agency or association;

(C) limit the application of the General Education Provisions Act [20 U.S.C. 1221 et seq.]; or

(D) create any legally enforceable right on the part of a student to require an institution of higher education to accept a transfer of credit from another institution.

(i) Disclosure of fire safety standards and measures

(1) Annual fire safety reports on student housing required

Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 that maintains on-campus student housing facilities shall, on an annual basis, publish a fire safety report, which shall contain information with respect to the campus fire safety practices and standards of that institution, including—

(A) statistics concerning the following in each on-campus student housing facility during the most recent calendar years for which data are available:

(i) the number of fires and the cause of each fire;

(ii) the number of injuries related to a fire that result in treatment at a medical facility;

(iii) the number of deaths related to a fire; and

(iv) the value of property damage caused by a fire;

(B) a description of each on-campus student housing facility fire safety system, including the fire sprinkler system;

(C) the number of regular mandatory supervised fire drills;

(D) policies or rules on portable electrical appliances, smoking, and open flames (such as candles), procedures for evacuation, and policies regarding fire safety education and training programs provided to students, faculty, and staff; and

(E) plans for future improvements in fire safety, if determined necessary by such institution.

(2) Report to the Secretary

Each institution described in paragraph (1) shall, on an annual basis, submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(A).

(3) Current information to campus community

Each institution described in paragraph (1) shall—

(A) make, keep, and maintain a log, recording all fires in on-campus student housing facilities, including the nature, date, time, and general location of each fire; and

(B) make annual reports to the campus community on such fires.

(4) Responsibilities of the Secretary

The Secretary shall—

(A) make the statistics submitted under paragraph (1)(A) to the Secretary available to the public; and

(B) in coordination with nationally recognized fire organizations and representatives of institutions of higher education, representatives of associations of institutions of higher education, and other organizations that represent and house a significant number of students—

(i) identify exemplary fire safety policies, procedures, programs, and practices, including the installation, to the technical standards of the National Fire Protection Association, of fire detection, prevention, and protection technologies in student housing, dormitories, and other buildings;

(ii) disseminate the exemplary policies, procedures, programs and practices described in clause (i) to the Administrator of the United States Fire Administration;

(iii) make available to the public information concerning those policies, procedures, programs, and practices that have proven effective in the reduction of fires; and

(iv) develop a protocol for institutions to review the status of their fire safety systems.

(5) Rules of construction

Nothing in this subsection shall be construed to—

(A) authorize the Secretary to require particular policies, procedures, programs, or practices by institutions of higher education with respect to fire safety, other than with respect to the collection, reporting, and dissemination of information required by this subsection;

(B) affect section 444 of the General Education Provisions Act [20 U.S.C. 1232g] (commonly known as the ''Family Educational Rights and Privacy Act of 1974'') or the regulations issued under section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note);

(C) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or

(D) establish any standard of care.

(6) Compliance report

The Secretary shall annually report to the authorizing committees regarding compliance with this subsection by institutions of higher education, including an up-to-date report on the Secretary's monitoring of such compliance.

(7) Evidence

Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

(j) Missing person procedures

(1) Option and procedures

Each institution of higher education that provides on-campus housing and participates in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall—

(A) establish a missing student notification policy for students who reside in on-campus housing that—

(i) informs each such student that such student has the option to identify an individual to be contacted by the institution not later than 24 hours after the time that the student is determined missing in accordance with official notification procedures established by the institution under subparagraph (B);

(ii) provides each such student a means to register confidential contact information in the event that the student is determined to be missing for a period of more than 24 hours;

(iii) advises each such student who is under 18 years of age, and not an emancipated individual, that the institution is required to notify a custodial parent or guardian not later 24 hours after the time that the student is determined to be missing in accordance with such procedures;

(iv) informs each such residing student that the institution will notify the appropriate law enforcement agency not later than 24 hours after the time that the student is determined missing in accordance with such procedures; and

(v) requires, if the campus security or law enforcement personnel has been notified and makes a determination that a student who is the subject of a missing person report has been missing for more than 24 hours and has not returned to the campus, the institution to initiate the emergency contact procedures in accordance with the student's designation; and

(B) establish official notification procedures for a missing student who resides in on-campus housing that—

(i) includes procedures for official notification of appropriate individuals at the institution that such student has been missing for more than 24 hours;

(ii) requires any official missing person report relating to such student be referred immediately to the institution's police or campus security department; and

(iii) if, on investigation of the official report, such department determines that the missing student has been missing for more than 24 hours, requires—

(I) such department to contact the individual identified by such student under subparagraph (A)(i);

(II) if such student is under 18 years of age, and not an emancipated individual, the institution to immediately contact the custodial parent or legal guardian of such student; and

(III) if subclauses (I) or (II) do not apply to a student determined to be a missing person, inform the appropriate law enforcement agency.

(2) Rule of construction

Nothing in this subsection shall be construed—

(A) to provide a private right of action to any person to enforce any provision of this subsection; or

(B) to create a cause of action against any institution of higher education or any employee of the institution for any civil liability.

(k) Notice to students concerning penalties for drug violations

(1) Notice upon enrollment

Each institution of higher education shall provide to each student, upon enrollment, a separate, clear, and conspicuous written notice that advises the student of the penalties under section 1091(r) of this title.

(2) Notice after loss of eligibility

An institution of higher education shall provide in a timely manner to each student who has lost eligibility for any grant, loan, or work-study assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 as a result of the penalties listed under section 1091(r)(1) of this title a separate, clear, and conspicuous written notice that notifies the student of the loss of eligibility and ad-

vises the student of the ways in which the student can regain eligibility under section 1091(r)(2) of this title.

(*l*) Entrance counseling for borrowers

(1) Disclosure required prior to disbursement

(A) In general

Each eligible institution shall, at or prior to the time of a disbursement to a first-time borrower of a loan made, insured, or guaranteed under part B (other than a loan made pursuant to section 1078–3 of this title or a loan made on behalf of a student pursuant to section 1078–2 of this title) or made under part C (other than a Federal Direct Consolidation Loan or a Federal Direct PLUS loan made on behalf of a student), ensure that the borrower receives comprehensive information on the terms and conditions of the loan and of the responsibilities the borrower has with respect to such loan in accordance with paragraph (2). Such information—

(i) shall be provided in a simple and understandable manner; and

(ii) may be provided—

(I) during an entrance counseling session conduction in person;

(II) on a separate written form provided to the borrower that the borrower signs and returns to the institution; or

(III) online, with the borrower acknowledging receipt of the information.

(B) Use of interactive programs

The Secretary shall encourage institutions to carry out the requirements of subparagraph (A) through the use of interactive programs that test the borrower's understanding of the terms and conditions of the borrower's loans under part B or C, using simple and understandable language and clear formatting.

(2) Information to be provided

The information to be provided to the borrower under paragraph (1)(A) shall include the following:

(A) To the extent practicable, the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance.

(B) An explanation of the use of the master promissory note.

(C) Information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary.

(D) In the case of a loan made under section 1078–2 or 1078–8 of this title, a Federal Direct PLUS Loan, or a Federal Direct Unsubsidized Stafford Loan, the option of the borrower to pay the interest while the borrower is in school.

(E) The definition of half-time enrollment at the institution, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment.

(F) An explanation of the importance of contacting the appropriate offices at the institution of higher education if the borrower withdraws prior to completing the borrower's program of study so that the institution can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation.

(G) Sample monthly repayment amounts based on—

(i) a range of levels of indebtedness of—

(I) borrowers of loans under section 1078 or 1078–8 of this title; and

(II) as appropriate, graduate borrowers of loans under section 1078, 1078–2, or 1078–8 of this title; or

(ii) the average cumulative indebtedness of other borrowers in the same program as the borrower at the same institution.

(H) The obligation of the borrower to repay the full amount of the loan, regardless of whether the borrower completes or does not complete the program in which the borrower is enrolled within the regular time for program completion.

(I) The likely consequences of default on the loan, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation.

(J) Information on the National Student Loan Data System and how the borrower can access the borrower's records.

(K) The name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan.

(m) Disclosures of reimbursements for service on advisory boards

(1) Disclosure

Each institution of higher education participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall report, on an annual basis, to the Secretary, any reasonable expenses paid or provided under section 1650(d) of title 15 to any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to education loans or other financial aid of the institution. Such reports shall include—

(A) the amount for each specific instance of reasonable expenses paid or provided;

(B) the name of the financial aid official, other employee, or agent to whom the expenses were paid or provided;

(C) the dates of the activity for which the expenses were paid or provided; and

(D) a brief description of the activity for which the expenses were paid or provided.

(2) Report to Congress

The Secretary shall summarize the information received from institutions of higher education under paragraph (1) in a report and transmit such report annually to the authorizing committees.

(Pub. L. 89–329, title IV, § 485, as added Pub. L. 99–498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1482; amended Pub. L. 100–50, § 15(10), (11), June 3, 1987, 101 Stat. 357; Pub. L. 101–542, title I, §§ 103(a), (b), 104(a), title II, § 204(a), Nov. 8, 1990,

104 Stat. 2381–2385; Pub. L. 101–610, title II, §§ 201–203, Nov. 16, 1990, 104 Stat. 3171, 3172; Pub. L. 102–26, § 10(a)–(d), Apr. 9, 1991, 105 Stat. 128; Pub. L. 102–164, title VI, § 603, Nov. 15, 1991, 105 Stat. 1066; Pub. L. 102–325, title IV, § 486(a)–(c)(2), July 23, 1992, 106 Stat. 620, 621; Pub. L. 103–208, § 2(h)(28)–(37), (k)(9), Dec. 20, 1993, 107 Stat. 2477, 2486; Pub. L. 103–382, title III, § 360B(c), Oct. 20, 1994, 108 Stat. 3970; Pub. L. 104–208, div. A, title I, § 101(e) [title III, § 308], Sept. 30, 1996, 110 Stat. 3009–233, 3009–262; Pub. L. 105–18, title VI, § 60001(a), June 12, 1997, 111 Stat. 214; Pub. L. 105–244, title I, § 102(b)(3), title IV, § 486, Oct. 7, 1998, 112 Stat. 1622, 1741; Pub. L. 106–386, div. B, title VI, § 1601(c)(1), Oct. 28, 2000, 114 Stat. 1537; Pub. L. 110–315, title I, § 103(b)(11), title IV, § 488, title X, § 1011(c), Aug. 14, 2008, 122 Stat. 3090, 3293, 3482; Pub. L. 111–39, title IV, § 407(b)(5), July 1, 2009, 123 Stat. 1951.)

REFERENCES IN TEXT

Section 14071 of title 42, referred to in subsec. (f)(1)(I), was repealed by Pub. L. 109–248, title I, § 129(a), July 27, 2006, 120 Stat. 600.

The Hate Crime Statistics Act, referred to in subsec. (f)(7), is Pub. L. 101–275, Apr. 23, 1990, 104 Stat. 140, which is set out as a note under section 534 of Title 28, Judiciary and Judicial Procedure.

The General Education Provisions Act, referred to in subsec. (h)(2)(C), is title IV of Pub. L. 90–247, Jan. 2, 1968, 81 Stat. 814, which is classified generally to chapter 31 (§ 1221 et seq.) of this title. For complete classification of this Act to the Code, see section 1221 of this title and Tables.

Section 264 of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (i)(5)(B), is section 264 of title II of Pub. L. 104–191, Aug. 21, 1996, 110 Stat. 2033, which is set out as a note under section 1320d–2 of Title 42, The Public Health and Welfare.

PRIOR PROVISIONS

A prior section 1092, Pub. L. 89–329, title IV, § 485, as added Pub. L. 96–374, title IV, § 451(a), Oct. 3, 1980, 94 Stat. 1449, related to provision of institutional and financial assistance information for students, prior to the general revision of this part by Pub. L. 99–498.

Another prior section 1092, Pub. L. 89–329, title V, § 508, formerly § 502, Nov. 8, 1965, 79 Stat. 1255; renumbered § 508 and amended Pub. L. 90–35, §§ 2(b), 7, June 29, 1967, 81 Stat. 82, 93, prohibited the making of payments for religious purposes for authorized programs, prior to repeal by Pub. L. 94–482, title I, § 151(a)(2), Oct. 12, 1976, 90 Stat. 2151.

AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111–39, § 407(b)(5)(A)(i)(I), substituted ''commonly known as the 'Family Educational Rights and Privacy Act of 1974' '' for ''also referred to as the Family Educational Rights and Privacy Act of 1974'' in introductory provisions.

Subsec. (a)(1)(I). Pub. L. 111–39, § 407(b)(5)(A)(i)(II), substituted ''students with disabilities'' for ''handicapped students''.

Subsec. (a)(4)(B). Pub. L. 111–39, § 407(b)(5)(A)(ii), inserted ''during which'' after ''time period''.

Subsec. (a)(7)(B)(iv). Pub. L. 111–39, § 407(b)(5)(A)(iii), inserted ''education'' after ''higher'' in introductory provisions.

Subsec. (e)(3)(B). Pub. L. 111–39, § 407(b)(5)(B), inserted ''during which'' after ''time period''.

Subsec. (f)(1). Pub. L. 111–39, § 407(b)(5)(C), inserted ''of'' after ''foreign institution'' in introductory provisions.

Subsec. (f)(3), (4)(A), (5), (8)(A). Pub. L. 111–39, § 407(b)(5)(C)(ii), substituted ''under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education,'' for ''under this subchapter and part C of subchapter I of chapter 34 of title 42''.

Subsec. (g)(2). Pub. L. 111–39, § 407(b)(5)(D), substituted ''paragraph (1)(G)'' for ''subparagraph (G)''.

Subsec. (i)(2), (3). Pub. L. 111–39, § 407(b)(5)(E)(i), (ii), substituted ''institution described in paragraph (1)'' for ''eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42''.

Subsec. (i)(5)(B). Pub. L. 111–39, § 407(b)(5)(E)(iii), substituted ''commonly known as the 'Family Educational Rights and Privacy Act of 1974' '' for ''the Family Educational Rights and Privacy Act of 1974''.

Subsec. (k)(2). Pub. L. 111–39, § 407(b)(5)(F), inserted ''section'' before ''1091(r)(1)''.

Subsec. (*l*)(1)(A). Pub. L. 111–39, § 407(b)(5)(G), substituted ''paragraph (2)'' for ''subparagraph (B)'' in introductory provisions.

2008—Subsec. (a)(1)(G)(iv). Pub. L. 110–315, § 488(a)(1)(A), added cl. (iv).

Subsec. (a)(1)(M). Pub. L. 110–315, § 488(a)(1)(B), added subpar. (M) and struck out former subpar. (M) which read as follows: ''the terms and conditions under which students receiving guaranteed student loans under part B of this subchapter or direct student loans under part D of this subchapter, or both, may—

''(i) obtain deferral of the repayment of the principal and interest for service under the Peace Corps Act (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)) or under the Domestic Volunteer Service Act of 1973, or for comparable full-time service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service, and

''(ii) obtain partial cancellation of the student loan for service under the Peace Corps Act (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)) under the Domestic Volunteer Service Act of 1973 or, for comparable full-time service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service;''.

Subsec. (a)(1)(P) to (V). Pub. L. 110–315, § 488(a)(1)(C)–(E), added subpars. (P) to (V).

Subsec. (a)(4). Pub. L. 110–315, § 488(a)(2), added par. (4) and struck out former par. (4) which read as follows: ''For purposes of this section, institutions may exclude from the information disclosed in accordance with subparagraph (L) of paragraph (1) the completion or graduation rates of students who leave school to serve in the armed services, on official church missions, or with a recognized foreign aid service of the Federal Government.''

Subsec. (a)(7). Pub. L. 110–315, § 488(a)(3), added par. (7).

Subsec. (b)(1)(A). Pub. L. 110–315, § 488(b), which directed the general amendment of subpar. (A), with the new subpar. (A) including a subsec. (b) designation and heading and par. (1) designation, was executed by substituting the new subpar. (A) without the added subsec. (b) designation and heading and par. (1) designation for the existing subpar. (A), to reflect the probable intent of Congress. Prior to amendment, subpar. (A) read as follows: ''Each eligible institution shall, through financial aid officers or otherwise, make available counseling to borrowers of loans which are made, insured, or guaranteed under part B (other than loans made pursuant to section 1078–2 of this title) of this subchapter or made under part C or D of this subchapter prior to the completion of the course of study for which the borrower enrolled at the institution or at the time of departure from such institution. The counseling required by this subsection shall include—

''(i) the average anticipated monthly repayments, a review of the repayment options available, and such debt and management strategies as the institution determines are designed to facilitate the repayment of such indebtedness; and

''(ii) the terms and conditions under which the student may obtain partial cancellation or defer repay-

ment of the principal and interest pursuant to sections 1078(b), 1087dd(c)(2), and 1087ee of this title.''

Subsec. (d)(1). Pub. L. 110–315, § 488(c)(1), inserted ''Such information shall also include information on the various payment options available for student loans, including income-sensitive and income-based repayment plans for loans made, insured, or guaranteed under part B and income-contingent and income-based repayment plans for loans made under part C.'' before ''In addition, such information'' and ''The Secretary shall also provide information on loan forbearance, including the increase in debt that results from capitalization of interest.'' before ''Such information shall be provided''.

Subsec. (d)(4). Pub. L. 110–315, § 488(c)(2), added par. (4).

Subsec. (e)(3). Pub. L. 110–315, § 488(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of this subsection, institutions may exclude from the reporting requirements under paragraphs (1) and (2) the completion or graduation rates of students and student athletes who leave school to serve in the armed services, on official church missions, or with a recognized foreign aid service of the Federal Government.''

Subsec. (f)(1). Pub. L. 110–315, § 488(e)(1)(A), inserted '', other than a foreign institution higher education,'' after ''chapter 34 of title 42'' in introductory provisions.

Subsec. (f)(1)(C)(i) to (iii). Pub. L. 110–315, § 488(e)(1)(B), added cls. (i) to (iii) and struck out former cls. (i) and (ii) which read as follows:

''(i) the enforcement authority of security personnel, including their working relationship with State and local police agencies; and

''(ii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies.''

Subsec. (f)(1)(F)(ii). Pub. L. 110–315, § 488(e)(1)(C), substituted ''clause (i), of larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and of'' for ''clause (i), and'' and inserted a comma after ''any person''.

Subsec. (f)(1)(J). Pub. L. 110–315, § 488(e)(1)(D), added subpar. (J).

Subsec. (f)(5)(A). Pub. L. 110–315, § 103(b)(11), substituted ''authorizing committees'' for ''Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate''.

Subsec. (f)(15) to (18). Pub. L. 110–315, § 488(e)(2), (3), added pars. (15) to (17) and redesignated former par. (15) as (18).

Subsec. (g)(4)(B) to (D). Pub. L. 110–315, § 488(f), redesignated subpars. (C) and (D) as (B) and (C), respectively, struck out ''and the report to Congress described in subparagraph (B)'' after ''subparagraph (A)'' in subpar. (B) and ''the information reported under subparagraph (B) and'' after ''availability of'' in subpar. (C), and struck out former subpar. (B) which read as follows: ''The Secretary shall prepare a report regarding the information received under subparagraph (A) and submit such report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate by April 1, 2000. The report shall—

''(i) summarize the information and identify trends in the information;

''(ii) aggregate the information by divisions of the National Collegiate Athletic Association; and

''(iii) contain information on each individual institution of higher education.''

Subsecs. (h) to (*l*). Pub. L. 110–315, § 488(g), added subsecs. (h) to (*l*).

Subsec. (m). Pub. L. 110–315, § 1011(c), added subsec. (m).

2000—Subsec. (f)(1)(I). Pub. L. 106–386 added subpar. (I).

1998—Subsec. (a)(1). Pub. L. 105–244, § 486(a)(1)(B), in introductory provisions, inserted after second sentence ''Each eligible institution shall, on an annual basis, provide to all enrolled students a list of the information that is required to be provided by institutions to students by this section and section 1232g of this title, together with a statement of the procedures required to obtain such information.''

Pub. L. 105–244, § 486(a)(1)(A), in introductory provisions, substituted ''upon request, through appropriate publications, mailings, and electronic media, to an enrolled student and to any prospective student'' for '', through appropriate publications and mailings, to all current students, and to any prospective student upon request''.

Subsec. (a)(1)(F). Pub. L. 105–244, § 486(a)(1)(C), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''a statement of the refund policy of the institution, as determined under section 1091b of this title, for the return of unearned tuition and fees or other refundable portion of cost, as described in subparagraph (E) of this paragraph, which refunds shall be credited in the following order:

''(i) to outstanding balances on loans under part B of this subchapter for the period of enrollment for which a refund is required,

''(ii) to outstanding balances on loans under part C of this subchapter for the period of enrollment for which a refund is required,

''(iii) to outstanding balances on loans under part D of this subchapter for the period of enrollment for which a refund is required,

''(iv) to awards under subpart 1 of part A of this subchapter,

''(v) to awards under subpart 3 of part A of this subchapter,

''(vi) to other student assistance, and

''(vii) to the student;''.

Subsec. (a)(1)(O). Pub. L. 105–244, § 486(a)(1)(D)–(F), added subpar. (O).

Subsec. (a)(3)(A). Pub. L. 105–244, § 486(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''shall, for any academic year beginning more than 270 days after the Secretary first prescribes final regulations pursuant to such subparagraph (L), be made available to current and prospective students prior to enrolling or entering into any financial obligation; and''.

Subsec. (a)(6). Pub. L. 105–244, § 486(a)(3), added par. (6).

Subsec. (b)(1)(A). Pub. L. 105–244, § 486(b)(1), struck out ''(individually or in groups)'' after ''counseling to borrowers'' in introductory provisions.

Subsec. (b)(2)(C). Pub. L. 105–244, § 486(b)(2), added subpar. (C).

Subsec. (d). Pub. L. 105–244, § 486(c), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added pars. (2) and (3).

Subsec. (e)(2). Pub. L. 105–244, § 486(d)(1), substituted ''the student's parents, guidance'' for ''his parents, his guidance'' and inserted at end ''If the institution is a member of a national collegiate athletic association that compiles graduation rate data on behalf of the association's member institutions that the Secretary determines is substantially comparable to the information described in paragraph (1), the distribution of the compilation of such data to all secondary schools in the United States shall fulfill the responsibility of the institution to provide information to a prospective student athlete's guidance counselor and coach.''

Subsec. (e)(9). Pub. L. 105–244, § 486(d)(2), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''This subsection shall not be effective until the first July 1 that follows, by more than 270 days, the date on which the Secretary first prescribes final regulations pursuant to this subsection. The reports required by this subsection shall be due on that July 1 and each succeeding July 1 and shall cover the 1-year period ending August 31 of the preceding year.''

Subsec. (f)(1)(F). Pub. L. 105–244, § 486(e)(1)(A), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''Statistics concerning the occur-

rence on campus, during the most recent calendar year, and during the 2 preceding calendar years for which data are available, of the following criminal offenses reported to campus security authorities or local police agencies—

''(i) murder;

''(ii) sex offenses, forcible or nonforcible;

''(iii) robbery;

''(iv) aggravated assault;

''(v) burglary; and

''(vi) motor vehicle theft.''

Subsec. (f)(1)(H). Pub. L. 105–244, § 486(e)(1)(B), (C), redesignated subpar. (I) as (H) and struck out former subpar. (H) which read as follows: ''Statistics concerning the number of arrests for the following crimes occurring on campus:

''(i) liquor law violations;

''(ii) drug abuse violations; and

''(iii) weapons possessions.''

Subsec. (f)(1)(I). Pub. L. 105–244, § 486(e)(1)(C), redesignated subpar. (I) as (H).

Pub. L. 105–244, § 102(b)(3), substituted ''section 1011i'' for ''section 1145g''.

Subsec. (f)(4). Pub. L. 105–244, § 486(e)(6), added par. (4). Former par. (4) redesignated (5).

Pub. L. 105–244, § 486(e)(2)(A), which directed the substitution of ''On an annual basis, each'' for ''Upon request of the Secretary, each'' was executed by making the substitution for ''Upon the request of the Secretary, each'' to reflect the probable intent of Congress.

Pub. L. 105–244, § 486(e)(2)(B), substituted ''paragraph (1)(F)'' for ''paragraphs (1)(F) and (1)(H)''.

Subsec. (f)(4)(A). Pub. L. 105–244, § 486(e)(2)(C)–(E), substituted ''and the Workforce'' for ''and Labor'' and ''2000'' for ''1995'' and struck out ''and'' at end.

Subsec. (f)(4)(B), (C). Pub. L. 105–244, § 486(e)(2)(F), (G), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(5). Pub. L. 105–244, § 486(e)(5), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (f)(5)(A). Pub. L. 105–244, § 486(e)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''For purposes of this subsection, the term 'campus' includes—

''(i) any building or property owned or controlled by the institution of higher education within the same reasonably contiguous geographic area and used by the institution in direct support of, or related to its educational purposes; or

''(ii) any building or property owned or controlled by student organizations recognized by the institution.''

Subsec. (f)(6). Pub. L. 105–244, § 486(e)(5), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Pub. L. 105–244, § 486(e)(4), substituted ''paragraph (1)(F)'' for ''paragraphs (1)(F) and (1)(H)'' and inserted at end ''Such statistics shall not identify victims of crimes or persons accused of crimes.''

Subsec. (f)(7), (8). Pub. L. 105–244, § 486(e)(5), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (f)(9) to (15). Pub. L. 105–244, § 486(e)(7), added pars. (9) to (15).

Subsec. (g)(1)(I), (J). Pub. L. 105–244, § 486(f)(1), added subpars. (I) and (J).

Subsec. (g)(4), (5). Pub. L. 105–244, § 486(f)(2)–(4), added par. (4), redesignated former par. (4) as (5), and struck out heading and text of former par. (5). Text read as follows: ''The Secretary shall issue final regulations to implement the requirements of this subsection not later than 180 days following October 20, 1994. Each institution described in paragraph (1) shall make available its first report pursuant to this section not later than October 1, 1996.''

1997—Subsec. (a)(3)(B). Pub. L. 105–18, § 60001(a)(1), substituted ''August 31'' for ''June 30''.

Subsec. (e)(9). Pub. L. 105–18, § 60001(a)(2), substituted ''August 31'' for ''August 30''.

1996—Subsec. (e)(9). Pub. L. 104–208 substituted ''August 30'' for ''June 30''.

1994—Subsec. (g). Pub. L. 103–382 added subsec. (g).

1993—Subsec. (a)(1)(F)(i) to (iii). Pub. L. 103–208, § 2(h)(28), inserted before comma at end ''for the period of enrollment for which a refund is required''.

Subsec. (a)(1)(F)(iv). Pub. L. 103–208, § 2(h)(29), inserted ''under'' after ''awards''.

Subsec. (a)(1)(F)(vi). Pub. L. 103–208, § 2(h)(32), redesignated cl. (vii) as (vi) and struck out former cl. (vi) which read as follows: ''to awards under part C of subchapter I of chapter 34 of title 42,''.

Subsec. (a)(1)(F)(vii). Pub. L. 103–208, § 2(h)(32), redesignated cl. (viii) as (vii). Former cl. (vii) redesignated (vi).

Pub. L. 103–208, § 2(h)(30), struck out ''provided under this subchapter and part C of subchapter I of chapter 34 of title 42'' after ''student assistance''.

Subsec. (a)(1)(F)(viii). Pub. L. 103–208, § 2(h)(32), redesignated cl. (viii) as (vii).

Pub. L. 103–208, § 2(h)(31), struck out period after ''student''.

Subsec. (a)(1)(L). Pub. L. 103–208, § 2(k)(9), amended directory language of Pub. L. 102–325, § 486(a)(3). See 1992 Amendment note below.

Pub. L. 103–208, § 2(h)(33), inserted comma after ''full-time''.

Subsec. (a)(3)(A). Pub. L. 103–208, § 2(h)(34), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''shall be available beginning on July 1, 1993, and each year thereafter to current and prospective students prior to enrolling or entering into any financial obligation; and''.

Subsec. (b)(1)(A), (2)(A). Pub. L. 103–208, § 2(h)(35), substituted ''under part'' for ''under parts''.

Subsec. (d). Pub. L. 103–208, § 2(h)(36), inserted period at end of penultimate sentence.

Subsec. (e)(9). Pub. L. 103–208, § 2(h)(37), added subpar. (9).

1992—Subsec. (a)(1)(F). Pub. L. 102–325, § 486(a)(1), inserted '', as determined under section 1091b of this title,'' after ''of the institution'' and '', which refunds shall be credited in the following order:'' after ''of this paragraph'' and added cls. (i) to (viii).

Subsec. (a)(1)(K). Pub. L. 102–325, § 486(a)(2), struck out ''and'' at end.

Subsec. (a)(1)(L). Pub. L. 102–325, § 486(a)(4), redesignated subpar. (L), relating to deferral or partial cancellation of student loans, as (M).

Pub. L. 102–325, § 486(a)(3), as amended by Pub. L. 103–208, § 2(k)(9), amended subpar. (L), relating to completion or graduation rate, by substituting semicolon for period at end.

Subsec. (a)(1)(M). Pub. L. 102–325, § 486(a)(4), (5), redesignated subpar. (L), relating to deferral or partial cancellation of student loans, as (M) and substituted ''; and'' for period at end.

Subsec. (a)(1)(N). Pub. L. 102–325, § 486(a)(6), added subpar. (N).

Subsec. (b). Pub. L. 102–325, § 486(b), amended subsec. (b) generally, making changes in substance and structure of former text which related to exit counseling for borrowers and borrower information.

Subsec. (f)(1)(F). Pub. L. 102–325, § 486(c)(1), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''Statistics concerning the occurrence on campus, during the most recent calendar year, and during the 2 preceding calendar years for which data are available, of the following criminal offenses reported to campus security authorities or local police agencies—

''(i) murder;

''(ii) rape;

''(iii) robbery;

''(iv) aggravated assault;

''(v) burglary; and

''(vi) motor vehicle theft.''

Subsec. (f)(7). Pub. L. 102–325, § 486(c)(2), added par. (7).

1991—Subsec. (a)(1)(L). Pub. L. 102–26, § 10(a), which directed the insertion of ''undergraduate'' after ''full-time'' in subpar. (L), was executed to the subpar. (L) added by Pub. L. 101–542, § 103(a), relating to completion or graduation rate, to reflect the probable intent of Congress.

Subsec. (a)(3)(A) to (C). Pub. L. 102–26, § 10(b), inserted ''and'' at end of subpar. (A), substituted a period for ''; and'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''shall be updated not less than biennially.''

Subsec. (a)(5). Pub. L. 102–26, § 10(c), added par. (5).

Subsec. (b). Pub. L. 102–164 substituted ''Exit counseling for borrowers; borrower information'' for ''Exit counseling for borrowers'' in heading and inserted at end ''Each eligible institution shall require that the borrower of a loan made under part B, part C, or part D of this subchapter submit to the institution, during the exit interview required by this subsection, the borrower's expected permanent address after leaving the institution, regardless of the reason for leaving; the name and address of the borrower's expected employer after leaving the institution; and the address of the borrower's next of kin. In the case of a loan made under part B of this subchapter, the institution shall then submit this information to the holder of the loan.''

Subsec. (f)(1). Pub. L. 102–26, § 10(d), substituted ''August 1, 1991,'' for ''September 1, 1991,'' in introductory provisions, and in subpar. (F) substituted ''calendar year'' and ''calendar years'' for ''school year'' and ''school years'', respectively.

1990—Subsec. (a)(1)(L). Pub. L. 101–610, § 201, added subpar. (L) relating to deferral or partial cancellation of student loans.

Pub. L. 101–542, § 103(a), added subpar. (L) relating to completion or graduation rate.

Subsec. (a)(3), (4). Pub. L. 101–542, § 103(b), added pars. (3) and (4).

Subsec. (b)(3). Pub. L. 101–610, § 202, added par. (3).

Subsec. (d). Pub. L. 101–610, § 203, inserted before last sentence ''The Secretary shall provide information concerning the specific terms and conditions under which students may obtain partial or total cancellation or defer repayment of loans for service, shall indicate (in terms of the Federal minimum wage) the maximum level of compensation and allowances that a student borrower may receive from a tax-exempt organization to qualify for a deferment, and shall explicitly state that students may qualify for such partial cancellations or deferments when they serve as a paid employee of a tax-exempt organization''.

Subsec. (e). Pub. L. 101–542, § 104(a), added subsec. (e).

Subsec. (f). Pub. L. 101–542, § 204(a), added subsec. (f).

1987—Subsec. (b). Pub. L. 100–50, § 15(10), inserted ''(other than loans made pursuant to section 1078–2 of this title)'' after ''part B of this subchapter''.

Subsec. (d). Pub. L. 100–50, § 15(11), inserted after second sentence ''In addition, such information shall include information to enable borrowers to assess the practical consequences of loan consolidation, including differences in deferment eligibility, interest rates, monthly payments, and finance charges, and samples of loan consolidation profiles to illustrate such consequences.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–386, div. B, title VI, § 1601(c)(2), Oct. 28, 2000, 114 Stat. 1538, provided that: ''The amendment made by this subsection [amending this section] shall take effect 2 years after the date of the enactment of this Act [Oct. 28, 2000].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 60001(b) of Pub. L. 105–18 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] are effective upon enactment [June 12, 1997].

''(2) INFORMATION DISSEMINATION.—No institution shall be required to comply with the amendment made by subsection (a)(1) [amending this section] before July 1, 1998.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 486(a), (b), and (c)(2) of Pub. L. 102–325 effective July 23, 1992, except that changes relating to disclosures effective with respect to periods of enrollment beginning on or after July 1, 1993, see section 498 of Pub. L. 102–325, set out as a note under section 1088 of this title.

Section 486(c)(3) of Pub. L. 102–325 provided that: ''The amendment made by this subsection to subparagraph (F)(ii) of section 485(f)(1) of the Act [20 U.S.C. 1092(f)(1)(F)(ii)] shall be effective with respect to reports made pursuant to such section on or after September 1, 1993. The statistics required by subparagraph (F) of such section shall—

''(A) in the report required on September 1, 1992, include statistics concerning the occurrence on campus of offenses during the period from August 1, 1991, to July 31, 1992;

''(B) in the report required on September 1, 1993, include statistics concerning the occurrence on campus of offenses during (i) the period from August 1, 1991, to December 31, 1991, and (ii) the calendar year 1992;

''(C) in the report required on September 1, 1994, include statistics concerning the occurrence on campus of offenses during (i) the period from August 1, 1991, to December 31, 1991, and (ii) the calendar years 1992 and 1993; and

''(D) in the report required on September 1 of 1995 and each succeeding year, include statistics concerning the occurrence on campus of offenses during the three calendar years preceding the year in which the report is made.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 104(b) of Pub. L. 101–542, as amended by Pub. L. 102–26, § 10(e), Apr. 9, 1991, 105 Stat. 128, provided that: ''The report to the Secretary of Education required by the amendments made by this section [amending this section] shall be due on July 1, 1993, and annually thereafter, and shall cover the one-year period ending on June 30 of the preceding year.''

Section 204(c) of Pub. L. 101–542 provided that: ''The amendments made by this section [amending this section] shall take effect on September 1, 1991, except that the requirement of section 485(f)(1)(F) and (H) of the Higher Education Act of 1965 [subsec. (f)(1)(F), (H) of this section] (as added by this section) shall be applied to require statistics with respect to school years preceding the date of enactment of this Act [Nov. 8, 1990] only to the extent that data concerning such years is reasonably available.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub. L. 99–498, set out as a note under section 1001 of this title.

Subsec. (b) of this section applicable only to periods of enrollment beginning on or after July 1, 1987, see sec-

tion 407(b) of Pub. L. 99–498, set out as a note under section 1091 of this title.

REGULATIONS

Section 401(a) of Pub. L. 101–542 provided that: ''The Secretary is authorized to issue regulations to carry out the provisions of this Act [amending this section and sections 1085, 1094, and 1232g of this title and enacting provisions set out as notes under this section and section 1001 of this title].''

MODEL INSTITUTION FINANCIAL AID OFFER FORM

Pub. L. 110–315, title IV, § 484, Aug. 14, 2008, 122 Stat. 3286, provided that:

''(a) MODEL FORMAT.—The Secretary of Education shall—

''(1) not later than six months after the date of enactment of the Higher Education Opportunity Act [Aug. 14, 2008], convene a group of students, families of students, secondary school guidance counselors, representatives of institutions of higher education (including financial aid administrators, registrars, and business officers), and nonprofit consumer groups for the purpose of offering recommendations for improvements that—

''(A) can be made to financial aid offer forms; and

''(B) include the information described in subsection (b);

''(2) develop a model format for financial aid offer forms based on the recommendations of the group; and

''(3) not later than one year after the date of enactment of the Higher Education Opportunity Act—

''(A) submit recommendations to the authorizing committees (as defined in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003); and

''(B) make the recommendations and model format widely available.

''(b) CONTENTS.—The recommendations developed under subsection (a) for model financial aid offer forms shall include, in a consumer-friendly manner that is simple and understandable, the following:

''(1) Information on the student's cost of attendance, including the following:

''(A) Tuition and fees.

''(B) Room and board costs.

''(C) Books and supplies.

''(D) Transportation.

''(2) The amount of financial aid that the student does not have to repay, such as scholarships, grants, and work-study assistance, offered to the student for such year, and the conditions of such financial aid.

''(3) The types and amounts of loans under part B, D, or E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.) for which the student is eligible for such year, and the applicable terms and conditions of such loans.

''(4) The net amount that the student, or the student's family on behalf of the student, will have to pay for the student to attend the institution for such year, equal to—

''(A) the cost of attendance for the student for such year; minus

''(B) the amount of financial aid described in paragraphs (2) and (3) that is offered in the financial aid offer form.

''(5) Where a student or the student's family can seek additional information regarding the financial aid offered.

''(6) Any other information the Secretary of Education determines necessary so that students and parents can make informed student loan borrowing decisions.''

CONGRESSIONAL FINDINGS

Section 360B(b) of Pub. L. 103–382 provided that: ''The Congress finds that—

''(1) participation in athletic pursuits plays an important role in teaching young Americans how to work on teams, handle challenges and overcome obstacles;

''(2) participation in athletic pursuits plays an important role in keeping the minds and bodies of young Americans healthy and physically fit;

''(3) there is increasing concern among citizens, educators, and public officials regarding the athletic opportunities for young men and women at institutions of higher education;

''(4) a recent study by the National Collegiate Athletic Association found that in Division I–A institutions, only 20 percent of the average athletic department operations budget of $1,310,000 is spent on women's athletics; 15 percent of the average recruiting budget of $318,402 is spent on recruiting female athletes; the average scholarship expenses for men is $1,300,000 and $505,246 for women; and an average of 143 grants are awarded to male athletes and 59 to women athletes;

''(5) female college athletes receive less than 18 percent of the athletics recruiting dollar and less than 24 percent of the athletics operating dollar;

''(6) male college athletes receive approximately $179,000,000 more per year in athletic scholarship grants than female college athletes;

''(7) prospective students and prospective student athletes should be aware of the commitments of an institution to providing equitable athletic opportunities for its men and women students; and

''(8) knowledge of an institution's expenditures for women's and men's athletic programs would help prospective students and prospective student athletes make informed judgments about the commitments of a given institution of higher education to providing equitable athletic benefits to its men and women students.''

Section 102 of Pub. L. 101–542 provided that: ''The Congress finds that—

''(1) education is fundamental to the development of individual citizens and the progress of the Nation as a whole;

''(2) there is increasing concern among citizens, educators, and public officials regarding the academic performance of students at institutions of higher education;

''(3) a recent study by the National Institute of Independent Colleges and Universities found that just 43 percent of students attending 4-year public colleges and universities and 54 percent of students entering private institutions graduated within 6 years of enrolling;

''(4) the academic performance of student athletes, especially student athletes receiving football and basketball scholarships, has been a source of great concern in recent years;

''(5) more than 10,000 athletic scholarships are provided annually by institutions of higher education;

''(6) prospective students and prospective student athletes should be aware of the educational commitments of an institution of higher education; and

''(7) knowledge of graduation rates would help prospective students and prospective student athletes make an informed judgment about the educational benefits available at a given institution of higher education.''

Pub. L. 101–542, title II, § 202, Nov. 8, 1990, 104 Stat. 2384, provided that: ''The Congress finds that—

''(1) the reported incidence of crime, particularly violent crime, on some college campuses has steadily risen in recent years;

''(2) although annual 'National Campus Violence Surveys' indicate that roughly 80 percent of campus crimes are committed by a student upon another student and that approximately 95 percent of the campus crimes that are violent are alcohol- or drug-related, there are currently no comprehensive data on campus crimes;

''(3) out of 8,000 postsecondary institutions participating in Federal student aid programs, only 352 colleges and universities voluntarily provide crime sta-

tistics directly through the Uniform Crime Report of the Federal Bureau of Investigation, and other institutions report data indirectly, through local police agencies or States, in a manner that does not permit campus statistics to be separated;

''(4) several State legislatures have adopted or are considering legislation to require reporting of campus crime statistics and dissemination of security practices and procedures, but the bills are not uniform in their requirements and standards;

''(5) students and employees of institutions of higher education should be aware of the incidence of crime on campus and policies and procedures to prevent crime or to report occurrences of crime;

''(6) applicants for enrollment at a college or university, and their parents, should have access to information about the crime statistics of that institution and its security policies and procedures; and

''(7) while many institutions have established crime preventive measures to increase the safety of campuses, there is a clear need—

''(A) to encourage the development on all campuses of security policies and procedures;

''(B) for uniformity and consistency in the reporting of crimes on campus; and

''(C) to encourage the development of policies and procedures to address sexual assaults and racial violence on college campuses.''

§ 1092a. Combined payment plan

(a) Eligibility for plan

Upon the request of the borrower, a lender described in subparagraph (A), (B), or (C) of section 1078–3(a)(1) of this title, or an eligible lender as defined in section 719 of the Public Health Service Act (42 U.S.C. 292*o*) may, with respect to a consolidation loan made under section 1078–3 of this title (and section 1087–2(*o*) of this title as in effect prior to the enactment of section 1078–3 of this title) and loans guaranteed under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.), offer a combined payment plan under which the lender shall submit one bill to the borrower for the repayment of all such loans for the monthly or other similar period of repayment.

(b) Applicability of other requirements

A lender offering a combined payment plan shall comply with all provisions of section 1078–3 of this title applicable to loans consolidated or to be consolidated and shall comply with all provisions of part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) applicable to loans under that subpart which are made part of the combined payment plan, except that a lender offering a combined payment plan under this section may offer consolidation loans pursuant to section 1078–3(b)(1)(A) of this title if such lender holds any outstanding loan of a borrower which is selected for inclusion in a combined payment plan.

(c) Lender eligibility

Such lender may offer a combined payment plan only if—

(1) the lender holds an outstanding loan of that borrower which is selected by the borrower for incorporation into a combined payment plan pursuant to this section (including loans which are selected by the borrower for consolidation under this section); or

(2) the borrower certifies that the borrower has sought and has been unable to obtain a combined payment plan from the holders of the outstanding loans of that borrower.

(d) Borrower selection of competing offers

In the case of multiple offers by lenders to administer a combined payment plan for a borrower, the borrower shall select from among them the lender to administer the combined payment plan including its loan consolidation component.

(e) Effect of plan

Upon selection of a lender to administer the combined payment plan, the lender may reissue any loan under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) selected by the borrower for incorporation in the combined payment plan which is not held by such lender and the proceeds of such reissued loan shall be paid by the lender to the holder or holders of the loans so selected to discharge the liability on such loans, if—

(1) the lender selected to administer the combined payment plan has determined to its satisfaction, in accordance with reasonable and prudent business practices, for each loan being reissued (A) that the loan is a legal, valid, and binding obligation of the borrower; (B) that each such loan was made and serviced in compliance with applicable laws and regulations; and (C) the insurance on such loan is in full force and effect; and

(2) the loan being reissued was not in default (as defined in section 707(e)(3) of the Public Health Service Act [42 U.S.C. 292f(e)(3)]) at the time the request for a combined payment plan is made.

(f) Notes and insurance certificates

(1) Each loan reissued under subsection (e) of this section shall be evidenced by a note executed by the borrower. The Secretary of Health and Human Services shall insure such loan under a certificate of comprehensive insurance with no insurance limit, but any such certificate shall only be issued to an authorized holder of loans insured under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) (including the Student Loan Marketing Association). Such certificates shall provide that all loans reissued under this section shall be fully insured against loss of principal and interest. Any insurance issued with respect to loans reissued under this section shall be excluded from the limitation on maximum insurance authority set forth in section 710 of the Public Health Service Act [42 U.S.C. 292i]. Notwithstanding the provisions of section 729(a)[1] of the Public Health Service Act, the reissued loan shall be made in an amount, including outstanding principal, capitalized interest, accrued unpaid interest not yet capitalized, and authorized late charges. The proceeds of each such loan will be paid by the lender to the holder of the original loan being reissued and the borrower's obligation to that holder on that loan shall be discharged.

(2) Except as otherwise specifically provided for under the provisions of this section, the terms of any reissued loan shall be the same as the terms of the original loan. The maximum re-

[1] See References in Text note below.

payment period for a loan reissued under this section shall not exceed the remainder of the period which would have been permitted on the original loan. If the lender holds more than one loan insured under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.), the maximum repayment period for all such loans may extend to the latest date permitted for any individual loan. Any reissued loan may be consolidated with any other Health Education Assistance Loan as provided in the Public Health Service Act [42 U.S.C. 201 et seq.], and, with the concurrence of the borrower, repayment of any such loans during any period may be made in amounts that are less than the interest that accrues on such loans during that period.

(g) Termination of borrower eligibility

The status of an individual as an eligible combined payment plan borrower terminates upon receipt of a combined payment plan.

(h) Fees and premiums

No origination fee or insurance premium shall be charged to the borrower on any combined payment plan, and no origination fee or insurance premium shall be payable by the lender to the Secretary of Health and Human Services.

(i) Commencement of repayment

Repayment of a combined payment plan shall commence within 60 days after the later of the date of acceptance of the lender's offer to administer a combined payment plan, the making of the consolidation loan or the reissuance of any Health Education Assistance Loans pursuant to subsection (e) of this section.

(Pub. L. 89–329, title IV, § 485A, as added Pub. L. 99–498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1484; amended Pub. L. 100–50, § 15(12), June 3, 1987, 101 Stat. 357; Pub. L. 111–39, title IV, § 407(b)(6), July 1, 2009, 123 Stat. 1951.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsecs. (a), (b), (e), and (f), is act July 1, 1944, ch. 373, 58 Stat. 682, which is classified generally to chapter 6A (§ 201 et seq.) of Title 42, The Public Health and Welfare. Part A of title VII of the Act is classified generally to part A (§ 292 et seq.) of subchapter V of chapter 6A of Title 42. Section 729 of the Act was classified to section 294b of Title 42 and was omitted in the general revision of subchapter V of chapter 6A by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–39, § 407(b)(6)(A), substituted "or an eligible lender as defined in section 719 of the Public Health Service Act (42 U.S.C. 292*o*)" for "or defined in subpart I of part C of title VII of the Public Health Service Act" and "under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.)" for "under subpart I of part C of title VII of the Public Health Service Act (known as Health Education Assistance Loans)".

Subsec. (b). Pub. L. 111–39, § 407(b)(6)(B), substituted "part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.)" for "subpart I of part C of title VII of the Public Health Service Act".

Subsec. (e). Pub. L. 111–39, § 407(b)(6)(C)(i), substituted "loan under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.)" for "Health Education Assistance Loan" in introductory provisions.

Subsec. (e)(2). Pub. L. 111–39, § 407(b)(6)(C)(ii), substituted "707(e)(3)" for "733(e)(3)".

Subsec. (f)(1). Pub. L. 111–39, § 407(b)(6)(D)(i), substituted "part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.)" for "subpart I of part C of title VII of the Public Health Service Act" and "710" for "728(a)".

Subsec. (f)(2). Pub. L. 111–39, § 407(b)(6)(D)(ii), substituted "part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.)" for "subpart I of part C of title VII of the Public Health Service Act".

1987—Subsec. (a). Pub. L. 100–50 substituted "subparagraph (A), (B), or (C)" for "clause (i), (ii), or (iii)".

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

§ 1092b. National Student Loan Data System

(a) Development of System

The Secretary shall consult with a representative group of guaranty agencies, eligible lenders, and eligible institutions to develop a mutually agreeable proposal for the establishment of a National Student Loan Data System containing information regarding loans made, insured, or guaranteed under part B of this subchapter and loans made under parts C and D of this subchapter, and for allowing the electronic exchange of data between program participants and the system. In establishing such data system, the Secretary shall place a priority on providing for the monitoring of enrollment, student status, information about current loan holders and servicers, and internship and residency information. Such data system shall also permit borrowers to use the system to identify the current loan holders and servicers of such borrower's loan not later than one year after October 7, 1998. The information in the data system shall include (but is not limited to)—

(1) the amount and type of each such loan made;

(2) the names and social security numbers of the borrowers;

(3) the guaranty agency responsible for the guarantee of the loan;

(4) the institution of higher education or organization responsible for loans made under parts C and D of this subchapter;

(5) the exact amount of loans partially or totally canceled or in deferment for service under the Peace Corps Act (22 U.S.C. 2501 et seq.), for service under the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.], and for comparable full-time service as a volunteer for a tax-exempt organization of demonstrated effectiveness;

(6) the eligible institution in which the student was enrolled or accepted for enrollment at the time the loan was made, and any additional institutions attended by the borrower;

(7) the total amount of loans made to any borrower and the remaining balance of the loans;

(8) the lender, holder, and servicer of such loans;

(9) information concerning the date of any default on the loan and the collection of the loan, including any information concerning the repayment status of any defaulted loan on which the Secretary has made a payment pursuant to section 1080(a) of this title or the guaranty agency has made a payment to the previous holder of the loan;

(10) information regarding any deferments or forbearance granted on such loans; and

(11) the date of cancellation of the note upon completion of repayment by the borrower of the loan or payment by the Secretary pursuant to section 1087 of this title.

(b) Additional information

For the purposes of research and policy analysis, the proposal shall also contain provisions for obtaining additional data concerning the characteristics of borrowers and the extent of student loan indebtedness on a statistically valid sample of borrowers under part B of this subchapter. Such data shall include—

(1) information concerning the income level of the borrower and his family and the extent of the borrower's need for student financial assistance, including loans;

(2) information concerning the type of institution attended by the borrower and the year of the program of education for which the loan was obtained;

(3) information concerning other student financial assistance received by the borrower; and

(4) information concerning Federal costs associated with the student loan program under part B of this subchapter, including the costs of interest subsidies, special allowance payments, and other subsidies.

(c) Verification

The Secretary may require lenders, guaranty agencies, or institutions of higher education to verify information or obtain eligibility or other information through the National Student Loan Data System prior to making, guaranteeing, or certifying a loan made under part B, C, or D of this subchapter.

(d) Principles for administering the data system

In managing the National Student Loan Data System, the Secretary shall take actions necessary to maintain confidence in the data system, including, at a minimum—

(1) ensuring that the primary purpose of access to the data system by guaranty agencies, eligible lenders, and eligible institutions of higher education is for legitimate program operations, such as the need to verify the eligibility of a student, potential student, or parent for loans under part B, C, or D;

(2) prohibiting nongovernmental researchers and policy analysts from accessing personally identifiable information;

(3) creating a disclosure form for students and potential students that is distributed when such students complete the common financial reporting form under section 1090 of this title, and as a part of the exit counseling process under section 1092(b) of this title, that—

(A) informs the students that any title IV grant or loan the students receive will be included in the National Student Loan Data System, and instructs the students on how to access that information;

(B) describes the categories of individuals or entities that may access the data relating to such grant or loan through the data system, and for what purposes access is allowed;

(C) defines and explains the categories of information included in the data system;

(D) provides a summary of the provisions of section 1232g of this title (commonly known as the ''Family Educational Rights and Privacy Act of 1974'') and other applicable Federal privacy statutes, and a statement of the students' rights and responsibilities with respect to such statutes;

(E) explains the measures taken by the Department to safeguard the students' data; and

(F) includes other information as determined appropriate by the Secretary;

(4) requiring guaranty agencies, eligible lenders, and eligible institutions of higher education that enter into an agreement with a potential student, student, or parent of such student regarding a loan under part B, C, or D, to inform the student or parent that such loan shall be—

(A) submitted to the data system; and

(B) accessible to guaranty agencies, eligible lenders, and eligible institutions of higher education determined by the Secretary to be authorized users of the data system;

(5) regularly reviewing the data system to—

(A) delete inactive users from the data system;

(B) ensure that the data in the data system are not being used for marketing purposes; and

(C) monitor the use of the data system by guaranty agencies and eligible lenders to determine whether an agency or lender is accessing the records of students in which the agency or lender has no existing financial interest; and

(6) developing standardized protocols for limiting access to the data system that include—

(A) collecting data on the usage of the data system to monitor whether access has been or is being used contrary to the purposes of the data system;

(B) defining the steps necessary for determining whether, and how, to deny or restrict access to the data system; and

(C) determining the steps necessary to reopen access to the data system following a denial or restriction of access.

(e) Reports to Congress

(1) Annual report

Not later than September 30 of each fiscal year, the Secretary shall prepare and submit to the authorizing committees a report describing—

(A) the effectiveness of existing privacy safeguards in protecting student and parent information in the data system;

(B) the success of any new authorization protocols in more effectively preventing abuse of the data system;

(C) the ability of the Secretary to monitor how the system is being used, relative to the intended purposes of the data system; and

(D) any protocols developed under subsection (d)(6) during the preceding fiscal year.

(2) Study

(A) In general

The Secretary shall conduct a study regarding—

(i) available mechanisms for providing students and parents with the ability to opt in or opt out of allowing eligible lenders to access their records in the National Student Loan Data System; and

(ii) appropriate protocols for limiting access to the data system, based on the risk assessment required under subchapter III of chapter 35 of title 44.

(B) Submission of study

Not later than three years after August 14, 2008, the Secretary shall prepare and submit a report on the findings of the study under subparagraph (A) to the authorizing committees.

(f) Standardization of data reporting

(1) In general

The Secretary shall by regulation prescribe standards and procedures (including relevant definitions) that require all lenders and guaranty agencies to report information on all aspects of loans made under this subchapter and part C of subchapter I of chapter 34 of title 42 in uniform formats in order to permit the direct comparison of data submitted by individual lenders, servicers or guaranty agencies.

(2) Activities

For the purpose of establishing standards under this section, the Secretary shall—

(A) consult with guaranty agencies, lenders, institutions of higher education, and organizations representing the groups described in paragraph (1);

(B) develop standards designed to be implemented by all guaranty agencies and lenders with minimum modifications to existing data processing hardware and software; and

(C) publish the specifications selected to be used to encourage the automation of exchanges of information between all parties involved in loans under this subchapter and part C of subchapter I of chapter 34 of title 42.

(g) Common identifiers

The Secretary shall, not later than July 1, 1993—

(1) revise the codes used to identify institutions and students in the student loan data system authorized by this section to make such codes consistent with the codes used in each database used by the Department of Education that contains information of participation in programs under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(2) modify the design or operation of the system authorized by this section to ensure that data relating to any institution is readily accessible and can be used in a form compatible with the integrated postsecondary education data system (IPEDS).

(h) Integration of databases

The Secretary shall integrate the National Student Loan Data System with the Pell Grant applicant and recipient databases as of January 1, 1994, and any other databases containing information on participation in programs under this subchapter and part C of subchapter I of chapter 34 of title 42.

(Pub. L. 89–329, title IV, § 485B, as added Pub. L. 99–498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1486; amended Pub. L. 100–50, § 15(13), June 3, 1987, 101 Stat. 357; Pub. L. 101–239, title II, § 2008, Dec. 19, 1989, 103 Stat. 2121; Pub. L. 101–610, title II, § 204, Nov. 16, 1990, 104 Stat. 3172; Pub. L. 102–325, title IV, § 487, July 23, 1992, 106 Stat. 623; Pub. L. 103–208, § 2(h)(38)–(41), Dec. 20, 1993, 107 Stat. 2478; Pub. L. 105–244, title IV, § 487, Oct. 7, 1998, 112 Stat. 1746; Pub. L. 110–315, title IV, § 489, Aug. 14, 2008, 122 Stat. 3303; Pub. L. 111–39, title IV, § 407(b)(7), July 1, 2009, 123 Stat. 1952.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in subsec. (a)(5), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (a)(5), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§ 4950 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

Title IV, referred to in subsec. (d)(3)(A), means title IV of the Higher Education Act of 1965, Pub. L. 89–329, which is classified generally to this subchapter and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of title IV to the Code, see Tables.

AMENDMENTS

2009—Subsec. (a)(5). Pub. L. 111–39, § 407(b)(7)(A), substituted ''2501 et seq.)'' for ''2501 et seq.))''.

Subsec. (d)(3)(D). Pub. L. 111–39, § 407(b)(7)(B), substituted ''commonly known as the 'Family Educational Rights and Privacy Act of 1974' '' for ''the Family Educational Rights and Privacy Act of 1974''.

2008—Subsec. (a)(5). Pub. L. 110–315, § 489(1)(C), which directed redesignation of par. (5) ''as added by Pub. L. 101–234'' as (6), was executed by redesignating par. (5) relating to eligible institutions as (6) to reflect the probable intent of Congress. Par. (5) relating to eligible institutions was added by Pub. L. 101–239.

Pub. L. 110–315, § 489(1)(B), substituted ''effectiveness;'' for ''effectiveness.'' in par. (5) relating to loan cancellations and deferments.

Subsec. (a)(6). Pub. L. 110–315, § 489(1)(C), which directed redesignation of par. (5) ''as added by Pub. L. 101–234'' as (6), was executed by redesignating par. (5) relating to eligible institutions as (6), to reflect the probable intent of Congress. Par. (5) relating to eligible institutions was added by Pub. L. 101–239.

Subsec. (a)(7) to (11). Pub. L. 110–315, § 489(1)(A), redesignated pars. (6) to (10) as (7) to (11), respectively.

Subsec. (d). Pub. L. 110–315, § 489(3), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 110–315, § 489(4), added subsec. (e) and struck out former subsec. (e) which required the Secretary to prepare and submit to appropriate committees of Congress, in each fiscal year, a report describing the results obtained by the establishment and operation of the student loan data system authorized by this section.

Pub. L. 110–315, § 489(2), redesignated subsec. (d) as (e). Former subsec. (e) designated (f).

Subsecs. (f) to (h). Pub. L. 110–315, § 489(2), redesignated subsecs. (e) to (g) as (f) to (h), respectively.

1998—Subsec. (a). Pub. L. 105–244 inserted ''not later than one year after October 7, 1998'' before period at end of third sentence.

1993—Subsec. (a). Pub. L. 103–208, § 2(h)(38), substituted ''parts C and D of this subchapter'' for ''part D of this subchapter'' and struck out second period at end of third sentence.

Subsec. (a)(4). Pub. L. 103–208, § 2(h)(39), substituted ''parts C and D of this subchapter'' for ''part D of this subchapter''.

Subsec. (c). Pub. L. 103–208, § 2(h)(40), substituted ''part B, C, or D of this subchapter'' for ''part B or part D of this subchapter''.

Subsec. (e)(1), (2)(C). Pub. L. 103–208, § 2(h)(41), substituted ''under this subchapter and part C of subchapter I of chapter 34 of title 42'' for ''under this part''.

1992—Subsec. (a). Pub. L. 102–325, § 487(a), inserted '', and for allowing the electronic exchange of data between program participants and the system. In establishing such data system, the Secretary shall place a priority on providing for the monitoring of enrollment, student status, information about current loan holders and servicers, and internship and residency information. Such data system shall also permit borrowers to use the system to identify the current loan holders and servicers of such borrower's loan.'' after ''part D of this subchapter''.

Subsecs. (e) to (g). Pub. L. 102–325, § 487(b), added subsecs. (e) to (g).

1990—Subsec. (a)(5). Pub. L. 101–610 added subsec. (a)(5) relating to loan cancellations and deferments.

1989—Pub. L. 101–239 amended section generally, substituting subsecs. (a) to (d) for former subsec. (a) relating to authority of Secretary, subsec. (b) relating to access to information, subsec. (c) relating to verification not required, and subsec. (d) relating to report to Congress.

1987—Subsec. (b)(1). Pub. L. 100–50, § 15(13)(A), substituted ''public agencies'' for ''Federal agencies''.

Subsec. (b)(2)(D). Pub. L. 100–50, § 15(13)(B), substituted ''of any borrower'' for ''of a borrower for whom the guaranty agency provides insurance''.

Subsec. (b)(3). Pub. L. 100–50, § 15(13)(C), substituted ''public agency'' for ''Federal agency''.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

§ 1092c. Simplification of lending process for borrowers

(a) All like loans treated as one

To the extent practicable, and with the cooperation of the borrower, eligible lenders shall treat all loans made to a borrower under the same section of part B of this subchapter as one loan and shall submit one bill to the borrower for the repayment of all such loans for the monthly or other similar period of repayment. Any deferments on one such loan will be considered a deferment on the total amount of all such loans.

(b) One lender, one guaranty agency

To the extent practicable, and with the cooperation of the borrower, the guaranty agency shall ensure that a borrower only have one lender, one holder, one guaranty agency, and one servicer with which to maintain contact.

(Pub. L. 89–329, title IV, § 485C, as added Pub. L. 102–325, title IV, § 488, July 23, 1992, 106 Stat. 624.)

§ 1092d. Scholarship fraud assessment and awareness activities

(a) Annual report on scholarship fraud

(1) Requirement

The Attorney General and the Secretary of Education, in conjunction with the Federal Trade Commission, shall jointly submit to Congress each year a report on fraud in the offering of financial assistance for purposes of financing an education at an institution of higher education. Each report shall contain an assessment of the nature and quantity of incidents of such fraud during the one-year period ending on the date of such report.

(2) Initial report

The first report under paragraph (1) shall be submitted not later than 18 months after November 1, 2000.

(b) National awareness activities

The Secretary of Education shall, in conjunction with the Federal Trade Commission, maintain a scholarship fraud awareness site on the Internet web site of the Department of Education. The scholarship fraud awareness site may include the following:

(1) Appropriate materials from the Project Scholarscam awareness campaign of the Commission, including examples of common fraudulent schemes.

(2) A list of companies and individuals who have been convicted of scholarship fraud in Federal or State court.

(3) An Internet-based message board to provide a forum for public complaints and experiences with scholarship fraud.

(4) An electronic comment form for individuals who have experienced scholarship fraud or have questions about scholarship fraud, with appropriate mechanisms for the transfer of comments received through such forms to the Department and the Commission.

(5) Internet links to other sources of information on scholarship fraud, including Inter-

net web sites of appropriate nongovernmental organizations, colleges and universities, and government agencies.

(6) An Internet link to the Better Business Bureau in order to assist individuals in assessing the business practices of other persons and entities.

(7) Information on means of communicating with the Federal Student Aid Information Center, including telephone and Internet contact information.

(Pub. L. 106–420, § 5, Nov. 1, 2000, 114 Stat. 1868.)

CODIFICATION

Section was enacted as part of the College Scholarship Fraud Prevention Act of 2000, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

FINDINGS

Pub. L. 106–420, § 2, Nov. 1, 2000, 114 Stat. 1867, provided that: ''Congress makes the following findings:

''(1) A substantial amount of fraud occurs in the offering of college education financial assistance services to consumers.

''(2) Such fraud includes the following:

''(A) Misrepresentations regarding the provision of sources from which consumers may obtain financial assistance (including scholarships, grants, loans, tuition, awards, and other assistance) for purposes of financing a college education.

''(B) Misrepresentations regarding the provision of portfolios of such assistance tailored to the needs of specific consumers.

''(C) Misrepresentations regarding the pre-selection of students as eligible to receive such assistance.

''(D) Misrepresentations that such assistance will be provided to consumers who purchase specified services from specified entities.

''(E) Misrepresentations regarding the business relationships between particular entities and entities that award or may award such assistance.

''(F) Misrepresentations regarding refunds of processing fees if consumers are not provided specified amounts of such assistance, and other misrepresentations regarding refunds.

''(3) In 1996, the Federal Trade Commission launched 'Project Scholarscam', a joint law enforcement and consumer education campaign directed at fraudulent purveyors of so-called 'scholarship services'.

''(4) Despite the efforts of the Federal Trade Commission, colleges and universities, and nongovernmental organizations, the continued lack of awareness about scholarship fraud permits a significant amount of fraudulent activity to occur.''

§ 1092e. College access initiative

(a) State-by-State information

The Secretary shall direct each guaranty agency with which the Secretary has an agreement under section 1078(c) of this title to provide to the Secretary the information necessary for the development of Internet web links and access for students and families to a comprehensive listing of the postsecondary education opportunities, programs, publications, Internet web sites, and other services available in the States for which such agency serves as the designated guarantor.

(b) Guaranty agency activities

(1) Plan and activity required

Each guaranty agency with which the Secretary has an agreement under section 1078(c) of this title shall develop a plan, and undertake the activity necessary, to gather the information required under subsection (a) and to make such information available to the public and to the Secretary in a form and manner as prescribed by the Secretary.

(2) Activities

Each guaranty agency shall undertake such activities as are necessary to promote access to postsecondary education for students through providing information on college planning, career preparation, and paying for college. The guaranty agency shall publicize such information and coordinate such activities with other entities that either provide or distribute such information in the States for which such guaranty agency serves as the designated guarantor.

(3) Funding

The activities required by this section may be funded from the guaranty agency's Operating Fund established pursuant to section 1072b of this title and, to the extent funds remain, from earnings on the restricted account established pursuant to section 1072(h)(4) of this title.

(4) Rule of construction

Nothing in this subsection shall be construed to require a guaranty agency to duplicate any efforts under way on February 8, 2006, that meet the requirements of this section.

(c) Access to information

(1) Secretary's responsibility

The Secretary shall ensure the availability of the information provided, by the guaranty agencies in accordance with this section, to students, parents, and other interested individuals, through Internet web links or other methods prescribed by the Secretary.

(2) Guaranty agency responsibility

The guaranty agencies shall ensure that the information required by this section is available without charge in printed format for students and parents requesting such information.

(3) Publicity

Not later than 270 days after February 8, 2006, the Secretary and guaranty agencies shall publicize the availability of the information required by this section, with special emphasis on ensuring that populations that are traditionally underrepresented in postsecondary education are made aware of the availability of such information.

(Pub. L. 89–329, title IV, § 485D, as added Pub. L. 109–171, title VIII, § 8023, Feb. 8, 2006, 120 Stat. 179.)

EFFECTIVE DATE

Section effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as an Effective Date of 2006 Amendment note under section 1002 of this title.

§ 1092f. Early awareness of financial aid eligibility

(a) In general

The Secretary shall implement, in cooperation with States, institutions of higher education,

secondary schools, early intervention and outreach programs under this subchapter and part C of subchapter I of chapter 34 of title 42, other agencies and organizations involved in student financial assistance and college access, public libraries, community centers, employers, and businesses, a comprehensive system of early financial aid information in order to provide students and families with early information about financial aid and early estimates of such students' eligibility for financial aid from multiple sources. Such system shall include the activities described in subsection (b).

(b) Communication of availability of aid and aid eligibility

(1) Students who receive benefits

The Secretary shall—

(A) make special efforts to notify students who receive or are eligible to receive benefits under a Federal means-tested benefit program (including the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.)), or another such benefit program as determined by the Secretary, of such students' potential eligibility for the Federal Pell Grant amount, determined under section 1070a(b)(2)(A) of this title, for which the student would be eligible; and

(B) disseminate such informational materials, that are part of the system described in subsection (a), as the Secretary determines necessary.

(2) Secondary school students

The Secretary, in cooperation with States, institutions of higher education, other organizations involved in college access and student financial aid, secondary schools, and programs under this subchapter and part C of subchapter I of chapter 34 of title 42 that serve secondary school students, shall make special efforts to notify students in secondary school and their families, as early as possible but not later than such students' junior year of secondary school, of the availability of financial aid under this subchapter and part C of subchapter I of chapter 34 of title 42 and shall provide nonbinding estimates of the amounts of grant and loan aid that an individual may be eligible for under this subchapter and part C of subchapter I of chapter 34 of title 42 upon completion of an application form under section 1090(a) of this title. The Secretary shall ensure that such information is as accurate as possible and that such information is provided in an age-appropriate format using dissemination mechanisms suitable for students in secondary school.

(3) Adult learners

The Secretary, in cooperation with States, institutions of higher education, other organizations involved in college access and student financial aid, employers, workforce investment boards, and public libraries, shall make special efforts to provide individuals who would qualify as independent students, as defined in section 1087vv(d) of this title, with information regarding the availability of financial aid under this title and with nonbinding estimates of the amounts of grant and loan aid that an individual may be eligible for under this subchapter and part C of subchapter I of chapter 34 of title 42 upon completion of an application form under section 1090(a) of this title. The Secretary shall ensure that such information—

(A) is as accurate as possible;

(B) includes specific information regarding the availability of financial aid for students qualified as independent students, as defined in section 1087vv(d) of this title; and

(C) uses dissemination mechanisms suitable for adult learners.

(4) Public awareness campaign

Not later than two years after August 14, 2008, the Secretary, in coordination with States, institutions of higher education, early intervention and outreach programs under this subchapter and part C of subchapter I of chapter 34 of title 42, other agencies and organizations involved in college access and student financial aid, secondary schools, organizations that provide services to individuals that are or were homeless, to individuals in foster care, or to other disconnected individuals, local educational agencies, public libraries, community centers, businesses, employers, employment services, workforce investment boards, and movie theaters, shall implement a public awareness campaign in order to increase national awareness regarding the availability of financial aid under this title. The public awareness campaign shall disseminate accurate information regarding the availability of financial aid under this subchapter and part C of subchapter I of chapter 34 of title 42 and shall be implemented, to the extent practicable, using a variety of media, including print, television, radio, and the Internet. The Secretary shall design and implement the public awareness campaign based upon relevant independent research and the information and dissemination strategies found most effective in implementing paragraphs (1) through (3).

(Pub. L. 89–329, title IV, § 485E, as added Pub. L. 110–315, title IV, § 490, Aug. 14, 2008, 122 Stat. 3305; amended Pub. L. 111–152, title II, § 2101(b)(5), Mar. 30, 2010, 124 Stat. 1073.)

REFERENCES IN TEXT

The Food and Nutrition Act of 2008, referred to in subsec. (b)(1)(A), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

AMENDMENTS

2010—Subsec. (b)(1)(A). Pub. L. 111–152 substituted ''of such students' potential eligibility for the Federal Pell Grant amount, determined under section 1070a(b)(2)(A) of this title, for which the student would be eligible'' for ''of such students' potential eligibility for a maximum Federal Pell Grant under subpart 1 of part A''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–152 effective July 1, 2010, see section 2101(c) of Pub. L. 111–152, set out as a note under section 1070a of this title.

§ 1093. Distance education demonstration programs

(a) Purpose

It is the purpose of this section—

(1) to allow demonstration programs that are strictly monitored by the Department of Education to test the quality and viability of expanded distance education programs currently restricted under this chapter and part C of subchapter I of chapter 34 of title 42;

(2) to provide for increased student access to higher education through distance education programs; and

(3) to help determine—

(A) the most effective means of delivering quality education via distance education course offerings;

(B) the specific statutory and regulatory requirements which should be altered to provide greater access to high quality distance education programs; and

(C) the appropriate level of Federal assistance for students enrolled in distance education programs.

(b) Demonstration programs authorized

(1) In general

In accordance with the provisions of subsection (d) of this section, the Secretary is authorized to select institutions of higher education, systems of such institutions, or consortia of such institutions for voluntary participation in a Distance Education Demonstration Program that provides participating institutions with the ability to offer distance education programs that do not meet all or a portion of the sections or regulations described in paragraph (2).

(2) Waivers

The Secretary is authorized to waive for any institution of higher education, system of institutions of higher education, or consortium participating in a Distance Education Demonstration Program, the requirements of section 1087*ll*(5) of this title as the section relates to computer costs, sections 1088(a) and 1088(b) of this title as such sections relate to requirements for a minimum number of weeks of instruction, sections 1002(a)(3)(A), 1002(a)(3)(B), and 1091(*l*)(1) of this title, or one or more of the regulations prescribed under this part or part E of this subchapter which inhibit the operation of quality distance education programs.

(3) Eligible applicants

(A) Eligible institutions

Except as provided in subparagraphs (B), (C), and (D), only an institution of higher education that is eligible to participate in programs under this subchapter and part C of subchapter I of chapter 34 of title 42 shall be eligible to participate in the demonstration program authorized under this section.

(B) Prohibition

An institution of higher education described in section 1002(a)(1)(C) of this title shall not be eligible to participate in the demonstration program authorized under this section.

(C) Special rule

Subject to subparagraph (B), an institution of higher education that meets the requirements of subsection (a) of section 1002 of this title, other than the requirement of paragraph (3)(A) or (3)(B) of such subsection, and that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree, shall be eligible to participate in the demonstration program authorized under this section.

(D) Requirement

Notwithstanding any other provision of this paragraph, Western Governors University shall be considered eligible to participate in the demonstration program authorized under this section. In addition to the waivers described in paragraph (2), the Secretary may waive the provisions of subchapter I of this chapter and this part and part G of this subchapter for such university that the Secretary determines to be appropriate because of the unique characteristics of such university. In carrying out the preceding sentence, the Secretary shall ensure that adequate program integrity and accountability measures apply to such university's participation in the demonstration program authorized under this section.

(c) Application

(1) In general

Each institution, system, or consortium of institutions desiring to participate in a demonstration program under this section shall submit an application to the Secretary at such time and in such manner as the Secretary may require.

(2) Contents

Each application shall include—

(A) a description of the institution, system, or consortium's consultation with a recognized accrediting agency or association with respect to quality assurances for the distance education programs to be offered;

(B) a description of the statutory and regulatory requirements described in subsection (b)(2) of this section or, if applicable, subsection (b)(3)(D) of this section for which a waiver is sought and the reasons for which the waiver is sought;

(C) a description of the distance education programs to be offered;

(D) a description of the students to whom distance education programs will be offered;

(E) an assurance that the institution, system, or consortium will offer full cooperation with the ongoing evaluations of the demonstration program provided for in this section; and

(F) such other information as the Secretary may require.

(d) Selection

(1) In general

For the first year of the demonstration program authorized under this section, the Secretary is authorized to select for participation

in the program not more than 15 institutions, systems of institutions, or consortia of institutions. For the third year of the demonstration program authorized under this section, the Secretary may select not more than 35 institutions, systems, or consortia, in addition to the institutions, systems, or consortia selected pursuant to the preceding sentence, to participate in the demonstration program if the Secretary determines that such expansion is warranted based on the evaluations conducted in accordance with subsections (f) and (g) of this section.

(2) Considerations

In selecting institutions to participate in the demonstration program in the first or succeeding years of the program, the Secretary shall take into account—

(A) the number and quality of applications received;

(B) the Department's capacity to oversee and monitor each institution's participation;

(C) an institution's—

(i) financial responsibility;

(ii) administrative capability; and

(iii) program or programs being offered via distance education; and

(D) ensuring the participation of a diverse group of institutions with respect to size, mission, and geographic distribution.

(e) Notification

The Secretary shall make available to the public and to the authorizing committees a list of institutions, systems or consortia selected to participate in the demonstration program authorized by this section. Such notice shall include a listing of the specific statutory and regulatory requirements being waived for each institution, system or consortium and a description of the distance education courses to be offered.

(f) Evaluations and reports

(1) Evaluation

The Secretary shall evaluate the demonstration programs authorized under this section on an annual basis. Such evaluations specifically shall review—

(A) the extent to which the institution, system or consortium has met the goals set forth in its application to the Secretary, including the measures of program quality assurance;

(B) the number and types of students participating in the programs offered, including the progress of participating students toward recognized certificates or degrees and the extent to which participation in such programs increased;

(C) issues related to student financial assistance for distance education;

(D) effective technologies for delivering distance education course offerings; and

(E) the extent to which statutory or regulatory requirements not waived under the demonstration program present difficulties for students or institutions.

(2) Policy analysis

The Secretary shall review current policies and identify those policies that present impediments to the development and use of distance education and other nontraditional methods of expanding access to education.

(3) Annual reports

The Secretary shall provide reports to the authorizing committees on an annual basis regarding—

(A) the demonstration programs authorized under this section; and

(B) the number and types of students receiving assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 for instruction leading to a recognized certificate, as provided for in section 1091(*l*)(1) of this title, including the progress of such students toward recognized certificates and the degree to which participation in such programs leading to such certificates increased.

(g) Oversight

In conducting the demonstration program authorized under this section, the Secretary shall, on a continuing basis—

(1) assure compliance of institutions, systems or consortia with the requirements of this subchapter and part C of subchapter I of chapter 34 of title 42 (other than the sections and regulations that are waived under subsections (b)(2) and (b)(3)(D) of this section);

(2) provide technical assistance;

(3) monitor fluctuations in the student population enrolled in the participating institutions, systems or consortia; and

(4) consult with appropriate accrediting agencies or associations and appropriate State regulatory authorities.

(h) "Distance education" defined

For the purpose of this section, the term ''distance education'' means an educational process that is characterized by the separation, in time or place, between instructor and student. Such term may include courses offered principally through the use of—

(1) television, audio, or computer transmission, such as open broadcast, closed circuit, cable, microwave, or satellite transmission;

(2) audio or computer conferencing;

(3) video cassettes or discs; or

(4) correspondence.

(Pub. L. 89–329, title IV, § 486, as added Pub. L. 99–498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1487; amended Pub. L. 102–325, title IV, § 489, July 23, 1992, 106 Stat. 624; Pub. L. 105–244, title IV, § 488, Oct. 7, 1998, 112 Stat. 1746; Pub. L. 110–315, title I, § 103(b)(12), title IV, § 491, Aug. 14, 2008, 122 Stat. 3090, 3307.)

PRIOR PROVISIONS

A prior section 1093, Pub. L. 89–329, title IV, § 486, as added Pub. L. 96–374, title IV, § 451(a), Oct. 3, 1980, 94 Stat. 1450, related to training in financial aid and student support services, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2008—Subsec. (e). Pub. L. 110–315, § 103(b)(12), substituted ''authorizing committees'' for ''Committee on Labor and Human Resources of the Senate and the

Committee on Education and the Workforce of the House of Representatives''.

Subsec. (f)(3). Pub. L. 110–315, § 491, substituted ''Annual reports'' for ''Reports'' in heading, in subpar. (B) redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and adjusted their margins, and substituted ''The Secretary shall provide reports to the authorizing committees on an annual basis'' for former subpar. (A) which required Secretary to report to congressional committees on evaluations of demonstration programs and for introductory provisions of former subpar. (B) which related to additional annual reports.

1998—Pub. L. 105–244 amended section catchline and text generally. Prior to amendment, section authorized Secretary to make grants to nonprofit private organizations to provide training for student financial aid administrators and TRIO personnel.

1992—Pub. L. 102–325 struck out ''and student support'' after ''aid'' in section catchline and amended text generally, substituting present provisions for former subsec. (a) relating to program authority, subsec. (b) relating to use of funds, and subsec. (c) relating to authorization of appropriations.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

§ 1093a. Articulation agreements

(a) Definition

In this section, the term ''articulation agreement'' means an agreement between or among institutions of higher education that specifies the acceptability of courses in transfer toward meeting specific degree or program requirements.

(b) Program to encourage articulation agreements

(1) Program established

The Secretary shall carry out a program for States, in cooperation with public institutions of higher education, to develop, enhance, and implement comprehensive articulation agreements between or among such institutions in a State, and (to the extent practicable) across State lines, by 2010. Such articulation agreements shall be made widely and publicly available on the websites of States and such institutions. In developing, enhancing, and implementing articulation agreements, States and public institutions of higher education may employ strategies, where applicable, including—

(A) common course numbering;

(B) a general education core curriculum;

(C) management systems regarding course equivalency, transfer of credit, and articulation; and

(D) other strategies identified by the Secretary.

(2) Technical assistance provided

The Secretary shall provide technical assistance to States and public institutions of higher education for the purposes of developing and implementing articulation agreements in accordance with this subsection.

(3) Rule of construction

Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to articulation agreements.

(Pub. L. 89–329, title IV, § 486A, as added Pub. L. 110–315, title IV, § 492, Aug. 14, 2008, 122 Stat. 3307.)

§ 1094. Program participation agreements

(a) Required for programs of assistance; contents

In order to be an eligible institution for the purposes of any program authorized under this subchapter and part C of subchapter I of chapter 34 of title 42, an institution must be an institution of higher education or an eligible institution (as that term is defined for the purpose of that program) and shall, except with respect to a program under subpart 4 of part A of this subchapter, enter into a program participation agreement with the Secretary. The agreement shall condition the initial and continuing eligibility of an institution to participate in a program upon compliance with the following requirements:

(1) The institution will use funds received by it for any program under this subchapter and part C of subchapter I of chapter 34 of title 42 and any interest or other earnings thereon solely for the purpose specified in and in accordance with the provision of that program.

(2) The institution shall not charge any student a fee for processing or handling any application, form, or data required to determine the student's eligibility for assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 or the amount of such assistance.

(3) The institution will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under this subchapter and part C of subchapter I of chapter 34 of title 42, together with assurances that the institution will provide, upon request and in a timely fashion, information relating to the administrative capability and financial responsibility of the institution to—

(A) the Secretary;

(B) the appropriate guaranty agency; and

(C) the appropriate accrediting agency or association.

(4) The institution will comply with the provisions of subsection (c) of this section and the regulations prescribed under that subsection, relating to fiscal eligibility.

(5) The institution will submit reports to the Secretary and, in the case of an institution participating in a program under part B or part D of this subchapter, to holders of loans made to the institution's students under such parts at such times and containing such information as the Secretary may reasonably require to carry out the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42.

(6) The institution will not provide any student with any statement or certification to any lender under part B of this subchapter that qualifies the student for a loan or loans

in excess of the amount that student is eligible to borrow in accordance with sections 1075(a), 1078(a)(2), and 1078(b)(1)(A) and (B) of this title.

(7) The institution will comply with the requirements of section 1092 of this title.

(8) In the case of an institution that advertises job placement rates as a means of attracting students to enroll in the institution, the institution will make available to prospective students, at or before the time of application (A) the most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements, and (B) relevant State licensing requirements of the State in which such institution is located for any job for which the course of instruction is designed to prepare such prospective students.

(9) In the case of an institution participating in a program under part B or C of this subchapter, the institution will inform all eligible borrowers enrolled in the institution about the availability and eligibility of such borrowers for State grant assistance from the State in which the institution is located, and will inform such borrowers from another State of the source for further information concerning such assistance from that State.

(10) The institution certifies that it has in operation a drug abuse prevention program that is determined by the institution to be accessible to any officer, employee, or student at the institution.

(11) In the case of any institution whose students receive financial assistance pursuant to section 1091(d) of this title, the institution will make available to such students a program proven successful in assisting students in obtaining a certificate of high school equivalency.

(12) The institution certifies that—

(A) the institution has established a campus security policy; and

(B) the institution has complied with the disclosure requirements of section 1092(f) of this title.

(13) The institution will not deny any form of Federal financial aid to any student who meets the eligibility requirements of this subchapter and part C of subchapter I of chapter 34 of title 42 on the grounds that the student is participating in a program of study abroad approved for credit by the institution.

(14)(A) The institution, in order to participate as an eligible institution under part B or C of this subchapter, will develop a Default Management Plan for approval by the Secretary as part of its initial application for certification as an eligible institution and will implement such Plan for two years thereafter.

(B) Any institution of higher education which changes ownership and any eligible institution which changes its status as a parent or subordinate institution shall, in order to participate as an eligible institution under part B or C of this subchapter, develop a Default Management Plan for approval by the Secretary and implement such Plan for two years after its change of ownership or status.

(C) This paragraph shall not apply in the case of an institution in which (i) neither the parent nor the subordinate institution has a cohort default rate in excess of 10 percent, and (ii) the new owner of such parent or subordinate institution does not, and has not, owned any other institution with a cohort default rate in excess of 10 percent.

(15) The institution acknowledges the authority of the Secretary, guaranty agencies, lenders, accrediting agencies, the Secretary of Veterans Affairs, and the State agencies under subpart 1 of part G of this subchapter to share with each other any information pertaining to the institution's eligibility to participate in programs under this subchapter and part C of subchapter I of chapter 34 of title 42 or any information on fraud and abuse.

(16)(A) The institution will not knowingly employ an individual in a capacity that involves the administration of programs under this subchapter and part C of subchapter I of chapter 34 of title 42, or the receipt of program funds under this subchapter and part C of subchapter I of chapter 34 of title 42, who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under this subchapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under this subchapter and part C of subchapter I of chapter 34 of title 42 or contract with an institution or third party servicer that has been terminated under section 1082 of this title involving the acquisition, use, or expenditure of funds under this subchapter and part C of subchapter I of chapter 34 of title 42, or who has been judicially determined to have committed fraud involving funds under this subchapter and part C of subchapter I of chapter 34 of title 42.

(B) The institution will not knowingly contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been—

(i) convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under this subchapter and part C of subchapter I of chapter 34 of title 42; or

(ii) judicially determined to have committed fraud involving funds under this subchapter and part C of subchapter I of chapter 34 of title 42.

(17) The institution will complete surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS) or any other Federal postsecondary institution data collection effort, as designated by the Secretary, in a timely manner and to the satisfaction of the Secretary.

(18) The institution will meet the requirements established pursuant to section 1092(g) of this title.

(19) The institution will not impose any penalty, including the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds, on any student because of the student's inability

to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a loan made under this subchapter and part C of subchapter I of chapter 34 of title 42 due to compliance with the provisions of this subchapter and part C of subchapter I of chapter 34 of title 42, or delays attributable to the institution.

(20) The institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except that this paragraph shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(21) The institution will meet the requirements established by the Secretary and accrediting agencies or associations, and will provide evidence to the Secretary that the institution has the authority to operate within a State.

(22) The institution will comply with the refund policy established pursuant to section 1091b of this title.

(23)(A) The institution, if located in a State to which section 1973gg–2(b) of title 42 does not apply, will make a good faith effort to distribute a mail voter registration form, requested and received from the State, to each student enrolled in a degree or certificate program and physically in attendance at the institution, and to make such forms widely available to students at the institution.

(B) The institution shall request the forms from the State 120 days prior to the deadline for registering to vote within the State. If an institution has not received a sufficient quantity of forms to fulfill this section from the State within 60 days prior to the deadline for registering to vote in the State, the institution shall not be held liable for not meeting the requirements of this section during that election year.

(C) This paragraph shall apply to general and special elections for Federal office, as defined in section 431(3) of title 2, and to the elections for Governor or other chief executive within such State).[1]

(D) The institution shall be considered in compliance with the requirements of subparagraph (A) for each student to whom the institution electronically transmits a message containing a voter registration form acceptable for use in the State in which the institution is located, or an Internet address where such a form can be downloaded, if such information is in an electronic message devoted exclusively to voter registration.

(24) In the case of a proprietary institution of higher education (as defined in section 1002(b) of this title), such institution will derive not less than ten percent of such institution's revenues from sources other than funds provided under this subchapter and part C of subchapter I of chapter 34 of title 42, as calculated in accordance with subsection (d)(1), or will be subject to the sanctions described in subsection (d)(2).

(25) In the case of an institution that participates in a loan program under this subchapter and part C of subchapter I of chapter 34 of title 42, the institution will—

(A) develop a code of conduct with respect to such loans with which the institution's officers, employees, and agents shall comply, that—

(i) prohibits a conflict of interest with the responsibilities of an officer, employee, or agent of an institution with respect to such loans; and

(ii) at a minimum, includes the provisions described in subsection (e);

(B) publish such code of conduct prominently on the institution's website; and

(C) administer and enforce such code by, at a minimum, requiring that all of the institution's officers, employees, and agents with responsibilities with respect to such loans be annually informed of the provisions of the code of conduct.

(26) The institution will, upon written request, disclose to the alleged victim of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, the report on the results of any disciplinary proceeding conducted by such institution against a student who is the alleged perpetrator of such crime or offense with respect to such crime or offense. If the alleged victim of such crime or offense is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this paragraph.

(27) In the case of an institution that has entered into a preferred lender arrangement, the institution will at least annually compile, maintain, and make available for students attending the institution, and the families of such students, a list, in print or other medium, of the specific lenders for loans made, insured, or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42 or private education loans that the institution recommends, promotes, or endorses in accordance with such preferred lender arrangement. In making such list, the institution shall comply with the requirements of subsection (h).

(28)(A) The institution will, upon the request of an applicant for a private education loan, provide to the applicant the form required under section 1638(e)(3) of title 15, and the information required to complete such form, to the extent the institution possesses such information.

(B) For purposes of this paragraph, the term ''private education loan'' has the meaning given such term in section 1650 of title 15.

(29) The institution certifies that the institution—

(A) has developed plans to effectively combat the unauthorized distribution of copyrighted material, including through the use

[1] So in original. The closing parenthesis probably should not appear.

of a variety of technology-based deterrents; and

(B) will, to the extent practicable, offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property, as determined by the institution in consultation with the chief technology officer or other designated officer of the institution.

(b) Hearings

(1) An institution that has received written notice of a final audit or program review determination and that desires to have such determination reviewed by the Secretary shall submit to the Secretary a written request for review not later than 45 days after receipt of notification of the final audit or program review determination.

(2) The Secretary shall, upon receipt of written notice under paragraph (1), arrange for a hearing and notify the institution within 30 days of receipt of such notice the date, time, and place of such hearing. Such hearing shall take place not later than 120 days from the date upon which the Secretary notifies the institution.

(c) Audits; financial responsibility; enforcement of standards

(1) Notwithstanding any other provisions of this subchapter and part C of subchapter I of chapter 34 of title 42, the Secretary shall prescribe such regulations as may be necessary to provide for—

(A)(i) except as provided in clauses (ii) and (iii), a financial audit of an eligible institution with regard to the financial condition of the institution in its entirety, and a compliance audit of such institution with regard to any funds obtained by it under this subchapter and part C of subchapter I of chapter 34 of title 42 or obtained from a student or a parent who has a loan insured or guaranteed by the Secretary under this subchapter and part C of subchapter I of chapter 34 of title 42, on at least an annual basis and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary and shall be available to cognizant guaranty agencies, eligible lenders, State agencies, and the appropriate State agency notifying the Secretary under subpart 1 of part G of this subchapter, except that the Secretary may modify the requirements of this clause with respect to institutions of higher education that are foreign institutions, and may waive such requirements with respect to a foreign institution whose students receive less than $500,000 in loans under this subchapter and part C of subchapter I of chapter 34 of title 42 during the award year preceding the audit period;

(ii) with regard to an eligible institution which is audited under chapter 75 of title 31, deeming such audit to satisfy the requirements of clause (i) for the period covered by such audit; or

(iii) at the discretion of the Secretary, with regard to an eligible institution (other than an eligible institution described in section 1002(a)(1)(C) of this title) that has obtained less than $200,000 in funds under this subchapter and part C of subchapter I of chapter 34 of title 42 during each of the 2 award years that precede the audit period and submits a letter of credit payable to the Secretary equal to not less than ½ of the annual potential liabilities of such institution as determined by the Secretary, deeming an audit conducted every 3 years to satisfy the requirements of clause (i), except for the award year immediately preceding renewal of the institution's eligibility under section 1099c(g) of this title;

(B) in matters not governed by specific program provisions, the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid under this subchapter and part C of subchapter I of chapter 34 of title 42, including any matter the Secretary deems necessary to the sound administration of the financial aid programs, such as the pertinent actions of any owner, shareholder, or person exercising control over an eligible institution;

(C)(i) except as provided in clause (ii), a compliance audit of a third party servicer (other than with respect to the servicer's functions as a lender if such functions are otherwise audited under this part and such audits meet the requirements of this clause), with regard to any contract with an eligible institution, guaranty agency, or lender for administering or servicing any aspect of the student assistance programs under this subchapter and part C of subchapter I of chapter 34 of title 42, at least once every year and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

(ii) with regard to a third party servicer that is audited under chapter 75 of title 31, such audit shall be deemed to satisfy the requirements of clause (i) for the period covered by such audit;

(D)(i) a compliance audit of a secondary market with regard to its transactions involving, and its servicing and collection of, loans made under this subchapter and part C of subchapter I of chapter 34 of title 42, at least once a year and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

(ii) with regard to a secondary market that is audited under chapter 75 of title 31, such audit shall be deemed to satisfy the requirements of clause (i) for the period covered by the audit;

(E) the establishment, by each eligible institution under part B of this subchapter responsible for furnishing to the lender the statement required by section 1078(a)(2)(A)(i) of this title, of policies and procedures by which the latest known address and enrollment status of any student who has had a loan insured under this part and who has either formally terminated his enrollment, or failed to re-enroll on at least a half-time basis, at such institution, shall be furnished either to the holder (or if unknown, the insurer) of the note, not later than 60 days after such termination or failure to re-enroll;

(F) the limitation, suspension, or termination of the participation in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 of an eligible institution, or the imposition of a civil penalty under paragraph (3)(B) whenever the Secretary has determined, after reasonable notice and opportunity for hearing, that such institution has violated or failed to carry out any provision of this subchapter and part C of subchapter I of chapter 34 of title 42, any regulation prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, or any applicable special arrangement, agreement, or limitation, except that no period of suspension under this section shall exceed 60 days unless the institution and the Secretary agree to an extension or unless limitation or termination proceedings are initiated by the Secretary within that period of time;

(G) an emergency action against an institution, under which the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to the institution (by registered mail, return receipt requested), withhold funds from the institution or its students and withdraw the institution's authority to obligate funds under any program under this subchapter and part C of subchapter I of chapter 34 of title 42, if the Secretary—

(i) receives information, determined by the Secretary to be reliable, that the institution is violating any provision of this subchapter and part C of subchapter I of chapter 34 of title 42, any regulation prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, or any applicable special arrangement, agreement, or limitation,

(ii) determines that immediate action is necessary to prevent misuse of Federal funds, and

(iii) determines that the likelihood of loss outweighs the importance of the procedures prescribed under subparagraph (D) for limitation, suspension, or termination,

except that an emergency action shall not exceed 30 days unless limitation, suspension, or termination proceedings are initiated by the Secretary against the institution within that period of time, and except that the Secretary shall provide the institution an opportunity to show cause, if it so requests, that the emergency action is unwarranted;

(H) the limitation, suspension, or termination of the eligibility of a third party servicer to contract with any institution to administer any aspect of an institution's student assistance program under this subchapter and part C of subchapter I of chapter 34 of title 42, or the imposition of a civil penalty under paragraph (3)(B), whenever the Secretary has determined, after reasonable notice and opportunity for a hearing, that such organization, acting on behalf of an institution, has violated or failed to carry out any provision of this subchapter and part C of subchapter I of chapter 34 of title 42, any regulation prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, or any applicable special arrangement, agreement, or limitation, except that no period of suspension under this subparagraph shall exceed 60 days unless the organization and the Secretary agree to an extension, or unless limitation or termination proceedings are initiated by the Secretary against the individual or organization within that period of time; and

(I) an emergency action against a third party servicer that has contracted with an institution to administer any aspect of the institution's student assistance program under this subchapter and part C of subchapter I of chapter 34 of title 42, under which the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to such individual or organization (by registered mail, return receipt requested), withhold funds from the individual or organization and withdraw the individual or organization's authority to act on behalf of an institution under any program under this subchapter and part C of subchapter I of chapter 34 of title 42, if the Secretary—

(i) receives information, determined by the Secretary to be reliable, that the individual or organization, acting on behalf of an institution, is violating any provision of this subchapter and part C of subchapter I of chapter 34 of title 42, any regulation prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, or any applicable special arrangement, agreement, or limitation,

(ii) determines that immediate action is necessary to prevent misuse of Federal funds, and

(iii) determines that the likelihood of loss outweighs the importance of the procedures prescribed under subparagraph (F), for limitation, suspension, or termination,

except that an emergency action shall not exceed 30 days unless the limitation, suspension, or termination proceedings are initiated by the Secretary against the individual or organization within that period of time, and except that the Secretary shall provide the individual or organization an opportunity to show cause, if it so requests, that the emergency action is unwarranted.

(2) If an individual who, or entity that, exercises substantial control, as determined by the Secretary in accordance with the definition of substantial control in subpart 3 of part G of this subchapter, over one or more institutions participating in any program under this subchapter and part C of subchapter I of chapter 34 of title

42, or, for purposes of paragraphs (1)(H) and (I), over one or more organizations that contract with an institution to administer any aspect of the institution's student assistance program under this subchapter and part C of subchapter I of chapter 34 of title 42, is determined to have committed one or more violations of the requirements of any program under this subchapter and part C of subchapter I of chapter 34 of title 42, or has been suspended or debarred in accordance with the regulations of the Secretary, the Secretary may use such determination, suspension, or debarment as the basis for imposing an emergency action on, or limiting, suspending, or terminating, in a single proceeding, the participation of any or all institutions under the substantial control of that individual or entity.

(3)(A) Upon determination, after reasonable notice and opportunity for a hearing, that an eligible institution has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates, the Secretary may suspend or terminate the eligibility status for any or all programs under this subchapter and part C of subchapter I of chapter 34 of title 42 of any otherwise eligible institution, in accordance with procedures specified in paragraph (1)(D) of this subsection, until the Secretary finds that such practices have been corrected.

(B)(i) Upon determination, after reasonable notice and opportunity for a hearing, that an eligible institution—

(I) has violated or failed to carry out any provision of this subchapter and part C of subchapter I of chapter 34 of title 42 or any regulation prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42; or

(II) has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, and the employability of its graduates,

the Secretary may impose a civil penalty upon such institution of not to exceed $25,000 for each violation or misrepresentation.

(ii) Any civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the institution of higher education subject to the determination, and the gravity of the violation, failure, or misrepresentation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the institution charged.

(4) The Secretary shall publish a list of State agencies which the Secretary determines to be reliable authority as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for all Federal student assistance programs.

(5) The Secretary shall make readily available to appropriate guaranty agencies, eligible lenders, State agencies notifying the Secretary under subpart 1 of part G of this subchapter, and accrediting agencies or associations the results of the audits of eligible institutions conducted pursuant to paragraph (1)(A).

(6) The Secretary is authorized to provide any information collected as a result of audits conducted under this section, together with audit information collected by guaranty agencies, to any Federal or State agency having responsibilities with respect to student financial assistance, including those referred to in subsection (a)(15) of this section.

(7) Effective with respect to any audit conducted under this subsection after December 31, 1988, if, in the course of conducting any such audit, the personnel of the Department of Education discover, or are informed of, grants or other assistance provided by an institution in accordance with this subchapter and part C of subchapter I of chapter 34 of title 42 for which the institution has not received funds appropriated under this subchapter and part C of subchapter I of chapter 34 of title 42 (in the amount necessary to provide such assistance), including funds for which reimbursement was not requested prior to such discovery or information, such institution shall be permitted to offset that amount against any sums determined to be owed by the institution pursuant to such audit, or to receive reimbursement for that amount (if the institution does not owe any such sums).

(d) Implementation of non-title IV revenue requirement

(1) Calculation

In making calculations under subsection (a)(24), a proprietary institution of higher education shall—

(A) use the cash basis of accounting, except in the case of loans described in subparagraph (D)(i) that are made by the proprietary institution of higher education;

(B) consider as revenue only those funds generated by the institution from—

(i) tuition, fees, and other institutional charges for students enrolled in programs eligible for assistance under this subchapter and part C of subchapter I of chapter 34 of title 42;

(ii) activities conducted by the institution that are necessary for the education and training of the institution's students, if such activities are—

(I) conducted on campus or at a facility under the control of the institution;

(II) performed under the supervision of a member of the institution's faculty; and

(III) required to be performed by all students in a specific educational program at the institution; and

(iii) funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible for funds under this subchapter and part C of subchapter I of chapter 34 of title 42, if the program—

(I) is approved or licensed by the appropriate State agency;

(II) is accredited by an accrediting agency recognized by the Secretary; or

(III) provides an industry-recognized credential or certification;

(C) presume that any funds for a program under this subchapter and part C of subchapter I of chapter 34 of title 42 that are disbursed or delivered to or on behalf of a student will be used to pay the student's tuition, fees, or other institutional charges, regardless of whether the institution credits those funds to the student's account or pays those funds directly to the student, except to the extent that the student's tuition, fees, or other institutional charges are satisfied by—

(i) grant funds provided by non-Federal public agencies or private sources independent of the institution;

(ii) funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who are in need of that training;

(iii) funds used by a student from savings plans for educational expenses established by or on behalf of the student and which qualify for special tax treatment under title 26; or

(iv) institutional scholarships described in subparagraph (D)(iii);

(D) include institutional aid as revenue to the school only as follows:

(i) in the case of loans made by a proprietary institution of higher education on or after July 1, 2008 and prior to July 1, 2012, the net present value of such loans made by the institution during the applicable institutional fiscal year accounted for on an accrual basis and estimated in accordance with generally accepted accounting principles and related standards and guidance, if the loans—

(I) are bona fide as evidenced by enforceable promissory notes;

(II) are issued at intervals related to the institution's enrollment periods; and

(III) are subject to regular loan repayments and collections;

(ii) in the case of loans made by a proprietary institution of higher education on or after July 1, 2012, only the amount of loan repayments received during the applicable institutional fiscal year, excluding repayments on loans made and accounted for as specified in clause (i); and

(iii) in the case of scholarships provided by a proprietary institution of higher education, only those scholarships provided by the institution in the form of monetary aid or tuition discounts based upon the academic achievements or financial need of students, disbursed during each fiscal year from an established restricted account, and only to the extent that funds in that account represent designated funds from an outside source or from income earned on those funds;

(E) in the case of each student who receives a loan on or after July 1, 2008, and prior to July 1, 2011, that is authorized under section 1078–8 of this title or that is a Federal Direct Unsubsidized Stafford Loan, treat as revenue received by the institution from sources other than funds received under this subchapter and part C of subchapter I of chapter 34 of title 42, the amount by which the disbursement of such loan received by the institution exceeds the limit on such loan in effect on the day before May 7, 2008; and

(F) exclude from revenues—

(i) the amount of funds the institution received under part C of subchapter I of chapter 34 of title 42, unless the institution used those funds to pay a student's institutional charges;

(ii) the amount of funds the institution received under subpart 4 of part A;

(iii) the amount of funds provided by the institution as matching funds for a program under this subchapter and part C of subchapter I of chapter 34 of title 42;

(iv) the amount of funds provided by the institution for a program under this subchapter and part C of subchapter I of chapter 34 of title 42 that are required to be refunded or returned; and

(v) the amount charged for books, supplies, and equipment, unless the institution includes that amount as tuition, fees, or other institutional charges.

(2) Sanctions

(A) Ineligibility

A proprietary institution of higher education that fails to meet a requirement of subsection (a)(24) for two consecutive institutional fiscal years shall be ineligible to participate in the programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42 for a period of not less than two institutional fiscal years. To regain eligibility to participate in the programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42, a proprietary institution of higher education shall demonstrate compliance with all eligibility and certification requirements under section 1099c of this title for a minimum of two institutional fiscal years after the institutional fiscal year in which the institution became ineligible.

(B) Additional enforcement

In addition to such other means of enforcing the requirements of this subchapter and part C of subchapter I of chapter 34 of title 42 as may be available to the Secretary, if a proprietary institution of higher education fails to meet a requirement of subsection (a)(24) for any institutional fiscal year, then the institution's eligibility to participate in the programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42 becomes provisional for the two institutional fiscal years after the institutional fiscal year in which the institution failed to meet the requirement of subsection (a)(24), except that such provisional eligibility shall terminate—

(i) on the expiration date of the institution's program participation agreement under this subsection that is in effect on the date the Secretary determines that the

institution failed to meet the requirement of subsection (a)(24); or

(ii) in the case that the Secretary determines that the institution failed to meet a requirement of subsection (a)(24) for two consecutive institutional fiscal years, on the date the institution is determined ineligible in accordance with subparagraph (A).

(3) Publication on college navigator website

The Secretary shall publicly disclose on the College Navigator website—

(A) the identity of any proprietary institution of higher education that fails to meet a requirement of subsection (a)(24); and

(B) the extent to which the institution failed to meet such requirement.

(4) Report to Congress

Not later than July 1, 2009, and July 1 of each succeeding year, the Secretary shall submit to the authorizing committees a report that contains, for each proprietary institution of higher education that receives assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, as provided in the audited financial statements submitted to the Secretary by each institution pursuant to the requirements of subsection (a)(24)—

(A) the amount and percentage of such institution's revenues received from sources under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(B) the amount and percentage of such institution's revenues received from other sources.

(e) Code of conduct requirements

An institution of higher education's code of conduct, as required under subsection (a)(25), shall include the following requirements:

(1) Ban on revenue-sharing arrangements

(A) Prohibition

The institution shall not enter into any revenue-sharing arrangement with any lender.

(B) Definition

For purposes of this paragraph, the term ''revenue-sharing arrangement'' means an arrangement between an institution and a lender under which—

(i) a lender provides or issues a loan that is made, insured, or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42 to students attending the institution or to the families of such students; and

(ii) the institution recommends the lender or the loan products of the lender and in exchange, the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution, an officer or employee of the institution, or an agent.

(2) Gift ban

(A) Prohibition

No officer or employee of the institution who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or agent who has responsibilities with respect to education loans, shall solicit or accept any gift from a lender, guarantor, or servicer of education loans.

(B) Definition of gift

(i) In general

In this paragraph, the term ''gift'' means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimus amount. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(ii) Exceptions

The term ''gift'' shall not include any of the following:

(I) Standard material, activities, or programs on issues related to a loan, default aversion, default prevention, or financial literacy, such as a brochure, a workshop, or training.

(II) Food, refreshments, training, or informational material furnished to an officer or employee of an institution, or to an agent, as an integral part of a training session that is designed to improve the service of a lender, guarantor, or servicer of education loans to the institution, if such training contributes to the professional development of the officer, employee, or agent.

(III) Favorable terms, conditions, and borrower benefits on an education loan provided to a student employed by the institution if such terms, conditions, or benefits are comparable to those provided to all students of the institution.

(IV) Entrance and exit counseling services provided to borrowers to meet the institution's responsibilities for entrance and exit counseling as required by subsections (b) and (*l*) of section 1092 of this title, as long as—

(aa) the institution's staff are in control of the counseling, (whether in person or via electronic capabilities); and

(bb) such counseling does not promote the products or services of any specific lender.

(V) Philanthropic contributions to an institution from a lender, servicer, or guarantor of education loans that are unrelated to education loans or any contribution from any lender, guarantor, or servicer that is not made in exchange for any advantage related to education loans.

(VI) State education grants, scholarships, or financial aid funds administered by or on behalf of a State.

(iii) Rule for gifts to family members

For purposes of this paragraph, a gift to a family member of an officer or employee

of an institution, to a family member of an agent, or to any other individual based on that individual's relationship with the officer, employee, or agent, shall be considered a gift to the officer, employee, or agent if—

(I) the gift is given with the knowledge and acquiescence of the officer, employee, or agent; and

(II) the officer, employee, or agent has reason to believe the gift was given because of the official position of the officer, employee, or agent.

(3) Contracting arrangements prohibited

(A) Prohibition

An officer or employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or an agent who has responsibilities with respect to education loans, shall not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to education loans.

(B) Exceptions

Nothing in this subsection shall be construed as prohibiting—

(i) an officer or employee of an institution who is not employed in the institution's financial aid office and who does not otherwise have responsibilities with respect to education loans, or an agent who does not have responsibilities with respect to education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans;

(ii) an officer or employee of the institution who is not employed in the institution's financial aid office but who has responsibility with respect to education loans as a result of a position held at the institution, or an agent who has responsibility with respect to education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans, if the institution has a written conflict of interest policy that clearly sets forth that officers, employees, or agents must recuse themselves from participating in any decision of the board regarding education loans at the institution; or

(iii) an officer, employee, or contractor of a lender, guarantor, or servicer of education loans from serving on a board of directors, or serving as a trustee, of an institution, if the institution has a written conflict of interest policy that the board member or trustee must recuse themselves from any decision regarding education loans at the institution.

(4) Interaction with borrowers

The institution shall not—

(A) for any first-time borrower, assign, through award packaging or other methods, the borrower's loan to a particular lender; or

(B) refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender or guaranty agency.

(5) Prohibition on offers of funds for private loans

(A) Prohibition

The institution shall not request or accept from any lender any offer of funds to be used for private education loans (as defined in section 1650 of title 15), including funds for an opportunity pool loan, to students in exchange for the institution providing concessions or promises regarding providing the lender with—

(i) a specified number of loans made, insured, or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42;

(ii) a specified loan volume of such loans; or

(iii) a preferred lender arrangement for such loans.

(B) Definition of opportunity pool loan

In this paragraph, the term ''opportunity pool loan'' means a private education loan made by a lender to a student attending the institution or the family member of such a student that involves a payment, directly or indirectly, by such institution of points, premiums, additional interest, or financial support to such lender for the purpose of such lender extending credit to the student or the family.

(6) Ban on staffing assistance

(A) Prohibition

The institution shall not request or accept from any lender any assistance with call center staffing or financial aid office staffing.

(B) Certain assistance permitted

Nothing in paragraph (1) shall be construed to prohibit the institution from requesting or accepting assistance from a lender related to—

(i) professional development training for financial aid administrators;

(ii) providing educational counseling materials, financial literacy materials, or debt management materials to borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing such materials; or

(iii) staffing services on a short-term, nonrecurring basis to assist the institution with financial aid-related functions during emergencies, including State-declared or federally declared natural disasters, federally declared national disasters, and other localized disasters and emergencies identified by the Secretary.

(7) Advisory board compensation

Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to education loans or other student financial aid of

the institution, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, shall be prohibited from receiving anything of value from the lender, guarantor, or group of lenders or guarantors, except that the employee may be reimbursed for reasonable expenses incurred in serving on such advisory board, commission, or group.

(f) Institutional requirements for teach-outs

(1) In general

In the event the Secretary initiates the limitation, suspension, or termination of the participation of an institution of higher education in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 under the authority of subsection (c)(1)(F) or initiates an emergency action under the authority of subsection (c)(1)(G) and its prescribed regulations, the Secretary shall require that institution to prepare a teach-out plan for submission to the institution's accrediting agency or association in compliance with section 1099b(c)(3) of this title, the Secretary's regulations on teach-out plans, and the standards of the institution's accrediting agency or association.

(2) Teach-out plan defined

In this subsection, the term ''teach-out plan'' means a written plan that provides for the equitable treatment of students if an institution of higher education ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency or association, an agreement between institutions for such a teach-out plan.

(g) Inspector General report on gift ban violations

The Inspector General of the Department shall—

(1) submit an annual report to the authorizing committees identifying all violations of an institution's code of conduct that the Inspector General has substantiated during the preceding year relating to the gift ban provisions described in subsection (e)(2); and

(2) make the report available to the public through the Department's website.

(h) Preferred lender list requirements

(1) In general

In compiling, maintaining, and making available a preferred lender list as required under subsection (a)(27), the institution will—

(A) clearly and fully disclose on such preferred lender list—

(i) not less than the information required to be disclosed under section 1019b(a)(2)(A) of this title;

(ii) why the institution has entered into a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and

(iii) that the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list;

(B) ensure, through the use of the list of lender affiliates provided by the Secretary under paragraph (2), that—

(i) there are not less than three lenders of loans made under part B that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list; and

(ii) the preferred lender list under this paragraph—

(I) specifically indicates, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list; and

(II) if a lender is an affiliate of another lender on the preferred lender list, describes the details of such affiliation;

(C) prominently disclose the method and criteria used by the institution in selecting lenders with which to enter into preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers, including—

(i) payment of origination or other fees on behalf of the borrower;

(ii) highly competitive interest rates, or other terms and conditions or provisions of loans under this subchapter and part C of subchapter I of chapter 34 of title 42 or private education loans;

(iii) high-quality servicing for such loans; or

(iv) additional benefits beyond the standard terms and conditions or provisions for such loans;

(D) exercise a duty of care and a duty of loyalty to compile the preferred lender list under this paragraph without prejudice and for the sole benefit of the students attending the institution, or the families of such students;

(E) not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in loan certification under this subchapter and part C of subchapter I of chapter 34 of title 42 for those borrowers who choose a lender that is not included on the preferred lender list; and

(F) comply with such other requirements as the Secretary may prescribe by regulation.

(2) Lender affiliates list

(A) In general

The Secretary shall maintain and regularly update a list of lender affiliates of all eligible lenders, and shall provide such list to institutions for use in carrying out paragraph (1)(B).

(B) Use of most recent list

An institution shall use the most recent list of lender affiliates provided by the Secretary under subparagraph (A) in carrying out paragraph (1)(B).

(i) Definitions

For the purpose of this section:

(1) Agent

The term ''agent'' has the meaning given the term in section 1019 of this title.

(2) Affiliate

The term ''affiliate'' means a person that controls, is controlled by, or is under common control with another person. A person controls, is controlled by, or is under common control with another person if—

(A) the person directly or indirectly, or acting through one or more others, owns, controls, or has the power to vote five percent or more of any class of voting securities of such other person;

(B) the person controls, in any manner, the election of a majority of the directors or trustees of such other person; or

(C) the Secretary determines (after notice and opportunity for a hearing) that the person directly or indirectly exercises a controlling interest over the management or policies of such other person's education loans.

(3) Education loan

The term ''education loan'' has the meaning given the term in section 1019 of this title.

(4) Eligible institution

The term ''eligible institution'' means any such institution described in section 1002 of this title.

(5) Officer

The term ''officer'' has the meaning given the term in section 1019 of this title.

(6) Preferred lender arrangement

The term ''preferred lender arrangement'' has the meaning given the term in section 1019 of this title.

(j) Construction

Nothing in the amendments made by the Higher Education Amendments of 1992 shall be construed to prohibit an institution from recording, at the cost of the institution, a hearing referred to in subsection (b)(2), subsection (c)(1)(D), or subparagraph (A) or (B)(i) of subsection (c)(2), of this section to create a record of the hearing, except the unavailability of a recording shall not serve to delay the completion of the proceeding. The Secretary shall allow the institution to use any reasonable means, including stenographers, of recording the hearing.

(Pub. L. 89–329, title IV, §487, as added Pub. L. 99–498, title IV, §407(a), Oct. 17, 1986, 100 Stat. 1488; amended Pub. L. 101–239, title II, §§2003(c)(2), 2006(c), Dec. 19, 1989, 103 Stat. 2114, 2118; Pub. L. 101–542, title II, §205, Nov. 8, 1990, 104 Stat. 2387; Pub. L. 102–26, §2(c)(3), Apr. 9, 1991, 105 Stat. 124; Pub. L. 102–325, title IV, §490, July 23, 1992, 106 Stat. 625; Pub. L. 103–208, §2(h)(42), (43), Dec. 20, 1993, 107 Stat. 2478; Pub. L. 105–244, title I, §102(b)(4), title IV, §489(a), (b)(1), (c), Oct. 7, 1998, 112 Stat. 1622, 1750, 1751; Pub. L. 106–113, div. B, §1000(a)(4) [title III, §314], Nov. 29, 1999, 113 Stat. 1535, 1501A–266; Pub. L. 110–315, title IV, §493(a)(1)(A), (b)–(d), Aug. 14, 2008, 122 Stat. 3308, 3309–3317; Pub. L. 111–39, title IV, §407(b)(8), July 1, 2009, 123 Stat. 1952.)

REFERENCES IN TEXT

Title IV, referred to in subsec. (d), means title IV of the Higher Education Act of 1965, Pub. L. 89–329, which is classified generally to this subchapter and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of title IV to the Code, see Tables.

The Higher Education Amendments of 1992, referred to in subsec. (j), is Pub. L. 102–325, July 23, 1992, 106 Stat. 448. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 1001 of this title and Tables.

PRIOR PROVISIONS

A prior section 1094, Pub. L. 89–329, title IV, §487, as added Pub. L. 96–374, title IV, §451(a), Oct. 3, 1980, 94 Stat. 1451; amended Pub. L. 99–272, title XVI, §16034, Apr. 7, 1986, 100 Stat. 356, related to program participation agreements, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2009—Subsec. (a)(23)(A). Pub. L. 111–39, §407(b)(8)(A), made technical amendment to reference in original act which appears in text as reference to section 1973gg–2(b) of title 42.

Subsec. (c)(1)(A)(i), (F), (H). Pub. L. 111–39, §407(b)(8)(B), substituted ''students receive'' for ''students receives'' in subpar. (A)(i) and ''paragraph (3)(B)'' for ''paragraph (2)(B)'' in subpars. (F) and (H).

Subsec. (f)(1). Pub. L. 111–39, §407(b)(8)(C), substituted ''1099b(c)(3)'' for ''1099b(c)(4)''.

Subsec. (g)(1). Pub. L. 111–39, §407(b)(8)(D), substituted ''subsection (e)(2)'' for ''subsection (f)(2)''.

2008—Subsec. (a)(23)(C), (D). Pub. L. 110–315, §493(a)(1)(A)(i), realigned margins of subpar. (C) and added subpar. (D).

Subsec. (a)(24) to (29). Pub. L. 110–315, §493(a)(1)(A)(ii), added pars. (24) to (29).

Subsec. (c)(1)(A)(i). Pub. L. 110–315, §493(b), inserted before semicolon at end '', except that the Secretary may modify the requirements of this clause with respect to institutions of higher education that are foreign institutions, and may waive such requirements with respect to a foreign institution whose students receives less than $500,000 in loans under this subchapter and part C of subchapter I of chapter 34 of title 42 during the award year preceding the audit period''.

Subsecs. (d) to (h). Pub. L. 110–315, §493(c)(2), added subsecs. (d) to (h). Former subsecs. (d) and (e) were redesignated (i) and (j), respectively.

Subsec. (i). Pub. L. 110–315, §493(c)(1), (d), redesignated subsec. (d) as (i), substituted ''Definitions'' for ''Definition of eligible institution'' in heading, added pars. (1) to (3), inserted par. (4) designation and heading before definition of ''eligible institution'', and added pars. (5) and (6).

Subsec. (j). Pub. L. 110–315, §493(c)(1), redesignated subsec. (e) as (j).

1999—Subsec. (a)(23)(C). Pub. L. 106–113 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''This paragraph shall apply to elections as defined in section 431(1) of title 2, and includes the election for Governor or other chief executive within such State).''

1998—Subsec. (a)(3)(B) to (D). Pub. L. 105–244, §489(a)(1), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: ''the appropriate State review entity designated under subpart 1 of part G of this subchapter;''.

Subsec. (a)(4). Pub. L. 105–244, §489(a)(2), substituted ''subsection (c)'' for ''subsection (b)''.

Subsec. (a)(9). Pub. L. 105–244, §489(a)(3), substituted ''part B or C'' for ''part B''.

Subsec. (a)(14)(A), (B). Pub. L. 105–244, §489(a)(4)(A), (B), substituted ''part B or C'' for ''part B''.

Subsec. (a)(14)(C). Pub. L. 105–244, §489(a)(4)(C), added subpar. (C).

Subsec. (a)(15). Pub. L. 105–244, § 489(a)(5), substituted ''the State agencies'' for ''State review entities''.

Subsec. (a)(18). Pub. L. 105–244, § 489(a)(6), amended par. (18) generally. Prior to amendment, par. (18) required institutions to cause an annual compilation to be prepared of revenues and expenses relating to men's and women's sports.

Subsec. (a)(21). Pub. L. 105–244, § 489(a)(7), amended par. (21) generally. Prior to amendment, par. (21) read as follows: ''The institution will meet the requirements established by the Secretary, State postsecondary review entities, and accrediting agencies pursuant to part G of this subchapter.''

Subsec. (a)(23). Pub. L. 105–244, § 489(b)(1), added par. (23).

Subsec. (c)(1)(A)(i). Pub. L. 105–244, § 489(c)(1)(A), substituted ''clauses (ii) and (iii)'' for ''clause (ii)'' and ''appropriate State agency notifying the Secretary under'' for ''State review entities referred to in'' and struck out ''or'' after semicolon.

Subsec. (c)(1)(A)(iii). Pub. L. 105–244, § 489(c)(1)(B), (C), added cl. (iii).

Subsec. (c)(4). Pub. L. 105–244, § 489(c)(2), struck out '', after consultation with each State review entity designated under subpart 1 of part G of this subchapter,'' after ''shall publish''.

Subsec. (c)(5). Pub. L. 105–244, § 489(c)(3), substituted ''State agencies notifying the Secretary'' for ''State review entities designated''.

Subsec. (d). Pub. L. 105–244, § 102(b)(4), substituted ''section 1002'' for ''section 1088''.

1993—Subsec. (a)(2). Pub. L. 103–208, § 2(h)(42), struck out '', or for completing or handling the Federal Student Assistance Report'' after ''amount of such assistance''.

Subsec. (c)(1)(F). Pub. L. 103–208, § 2(h)(43), substituted ''participation in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 of an eligible institution,'' for ''eligibility for any program under this subchapter and part C of subchapter I of chapter 34 of title 42 of any otherwise eligible institution,''.

1992—Subsec. (a). Pub. L. 102–325, § 490(f)(1), substituted ''subpart 4'' for ''subpart 3''.

Subsec. (a)(2). Pub. L. 102–325, § 490(f)(2), struck out ''provided for in section 1090(e) of this title'' after ''Report''.

Subsec. (a)(3). Pub. L. 102–325, § 490(a)(1), inserted before period at end '', together with assurances that the institution will provide, upon request and in a timely fashion, information relating to the administrative capability and financial responsibility of the institution to—'' and added subpars. (A) to (D).

Subsec. (a)(8). Pub. L. 102–325, § 490(a)(2), substituted ''application (A)'' for ''application,'' inserted '', and'' after ''advertisements'', and added subpar. (B).

Subsec. (a)(13) to (22). Pub. L. 102–325, § 490(a)(3), added pars. (13) to (22).

Subsec. (b)(2). Pub. L. 102–325, § 490(b)(1), struck out ''on the record'' after ''for a hearing''.

Subsec. (c)(1). Pub. L. 102–325, § 490(b)(2)(A), substituted ''shall'' for ''is authorized to'' in introductory provisions.

Subsec. (c)(1)(A)(i). Pub. L. 102–325, § 490(c), substituted ''a financial audit of an eligible institution with regard to the financial condition of the institution in its entirety, and a compliance audit of such institution'' for ''a financial and compliance audit of an eligible institution,'' and ''on at least an annual basis'' for ''at least once every 2 years'' and inserted ''and shall be available to cognizant guaranty agencies, eligible lenders, State agencies, and the State review entities referred to in subpart 1 of part G of this subchapter'' after ''submitted to the Secretary''.

Subsec. (c)(1)(B). Pub. L. 102–325, § 490(d)(1), inserted before semicolon at end '', including any matter the Secretary deems necessary to the sound administration of the financial aid programs, such as the pertinent actions of any owner, shareholder, or person exercising control over an eligible institution''.

Subsec. (c)(1)(C). Pub. L. 102–325, § 490(d)(3), added subpar. (C). Former subpar. (C) redesignated (E).

Subsec. (c)(1)(D). Pub. L. 102–325, § 490(d)(3), added subpar. (D). Former subpar. (D) redesignated (F).

Pub. L. 102–325, § 490(b)(2)(B), struck out ''on the record'' after ''opportunity for hearing''.

Subsec. (c)(1)(E). Pub. L. 102–325, § 490(d)(2), redesignated subpar. (C) as (E). Former subpar. (E) redesignated (G).

Subsec. (c)(1)(F). Pub. L. 102–325, § 490(d)(2), redesignated subpar. (D) as (F). Former subpar. (F) redesignated (H).

Pub. L. 102–325, § 490(b)(2)(C), struck out ''on the record'' after ''opportunity for a hearing''.

Subsec. (c)(1)(G). Pub. L. 102–325, § 490(d)(2), redesignated subpar. (E) as (G). Former subpar. (G) redesignated (I).

Subsec. (c)(1)(H). Pub. L. 102–325, § 490(d)(2), (4), redesignated subpar. (F) as (H) and substituted ''a third party servicer'' for ''an individual or an organization''.

Subsec. (c)(1)(I). Pub. L. 102–325, § 490(d)(2), (5), redesignated subpar. (G) as (I) and substituted ''a third party servicer'' for ''an individual or an organization''.

Subsec. (c)(2). Pub. L. 102–325, § 490(d)(8), added par. (2). Former par. (2) redesignated (3).

Pub. L. 102–325, § 490(b)(2)(D), struck out ''on the record'' after ''opportunity for a hearing'' in subpars. (A) and (B)(i).

Subsec. (c)(3). Pub. L. 102–325, § 490(d)(7), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Pub. L. 102–325, § 490(d)(6), inserted '', after consultation with each State review entity designated under subpart 1 of part G of this subchapter,'' after ''shall publish''.

Subsec. (c)(4). Pub. L. 102–325, § 490(d)(7), redesignated par. (3) as (4).

Subsec. (c)(5) to (7). Pub. L. 102–325, § 490(d)(9), added pars. (5) to (7).

Subsec. (d). Pub. L. 102–325, § 490(f)(3), substituted ''section 1088'' for ''section 1085(a)''.

Subsec. (e). Pub. L. 102–325, § 490(e), added subsec. (e).

1991—Subsec. (a)(11). Pub. L. 102–26 substituted ''whose students receive financial assistance pursuant to section 1091(d) of this title,'' for ''which admits students on the basis of their ability to benefit from the education or training provided by such institution (as determined under section 1091(d) of this title),''.

1990—Subsec. (a)(12). Pub. L. 101–542 added par. (12).

1989—Subsec. (a)(11). Pub. L. 101–239, § 2003(c)(2), added par. (11).

Subsec. (c)(1)(D). Pub. L. 101–239, § 2006(c)(2), substituted '', any regulation'' for ''or any regulation'' and inserted ''or any applicable special arrangement, agreement, or limitation,''.

Subsec. (c)(1)(E) to (G). Pub. L. 101–239, § 2006(c)(3), added subpars. (E) to (G).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, § 493(a)(1)(B), Aug. 14, 2008, 122 Stat. 3309, provided that: ''The amendment made by subparagraph (A) [amending this section] with respect to section 487(a)(26) of the Higher Education Act of 1965 [20 U.S.C. 1094(a)(26] (as added by subparagraph (A)) shall apply with respect to any disciplinary proceeding conducted by an institution on or after the day that is one year after the date of enactment of this Act [Aug. 14, 2008].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–26 applicable to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after July 1, 1991, see section 2(d)(1) of Pub. L. 102–26, set out as a note under section 1085 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 2003(c)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1078–1 of this title] shall apply with respect to periods of enrollment beginning on or after January 1, 1990.''

EFFECTIVE DATE

Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub. L. 99–498, set out as a note under section 1001 of this title.

Subsec. (a)(10) of this section applicable only to periods of enrollment beginning on or after July 1, 1987, see section 407(b) of Pub. L. 99–498, set out as a note under section 1091 of this title.

REGULATION PROHIBITED

Pub. L. 105–244, title IV, § 489(b)(2), Oct. 7, 1998, 112 Stat. 1751, provided that: ''No officer of the executive branch is authorized to instruct the institution in the manner in which the amendment made by this subsection [amending this section] is carried out.''

§ 1094a. Regulatory relief and improvement

(a) Quality Assurance Program

(1) In general

The Secretary is authorized to select institutions for voluntary participation in a Quality Assurance Program that provides participating institutions with an alternative management approach through which individual schools develop and implement their own comprehensive systems, related to processing and disbursement of student financial aid, verification of student financial aid application data, and entrance and exit interviews, thereby enhancing program integrity within the student aid delivery system.

(2) Criteria and consideration

The Quality Assurance Program authorized by this section shall be based on criteria that include demonstrated institutional performance, as determined by the Secretary, and shall take into consideration current quality assurance goals, as determined by the Secretary. The selection criteria shall ensure the participation of a diverse group of institutions of higher education with respect to size, mission, and geographical distribution.

(3) Waiver

The Secretary is authorized to waive for any institution participating in the Quality Assurance Program any regulations dealing with reporting or verification requirements in this subchapter and part C of subchapter I of chapter 34 of title 42 that are addressed by the institution's alternative management system, and may substitute such quality assurance reporting as the Secretary determines necessary to ensure accountability and compliance with the purposes of the programs under this subchapter and part C of subchapter I of chapter 34 of title 42. The Secretary shall not modify or waive any statutory requirements pursuant to this paragraph.

(4) Determination

The Secretary is authorized to determine—

(A) when an institution that is unable to administer the Quality Assurance Program shall be removed from such program; and

(B) when institutions desiring to cease participation in such program will be required to complete the current award year under the requirements of the Quality Assurance Program.

(5) Review and evaluation

The Secretary shall review and evaluate the Quality Assurance Program conducted by each participating institution and, on the basis of that evaluation, make recommendations regarding amendments to this chapter and part C of subchapter I of chapter 34 of title 42 that will streamline the administration and enhance the integrity of Federal student assistance programs. Such recommendations shall be submitted to the authorizing committees.

(b) Regulatory improvement and streamlining experiments

(1) In general

The Secretary shall continue the voluntary participation of any experimental sites in existence as of July 1, 2007, unless the Secretary determines that such site's participation has not been successful in carrying out the purposes of this section. Any experimental sites approved by the Secretary prior to such date that have not been successful in carrying out the purposes of this section shall be discontinued not later than June 30, 2010.

(2) Report

The Secretary shall review and evaluate the experience of institutions participating as experimental sites and shall, on a biennial basis, submit a report based on the review and evaluation to the authorizing committees. Such report shall include—

(A) a list of participating institutions and the specific statutory or regulatory waivers granted to each institution;

(B) the findings and conclusions reached regarding each of the experiments conducted; and

(C) recommendations for amendments to improve and streamline this chapter and part C of subchapter I of chapter 34 of title 42, based on the results of the experiment.

(3) Selection

(A) In general

The Secretary is authorized to periodically select a limited number of additional institutions for voluntary participation as experimental sites to provide recommendations to the Secretary on the impact and effectiveness of proposed regulations or new management initiatives.

(B) Waivers

The Secretary is authorized to waive, for any institution participating as an experimental site under subparagraph (A), any requirements in this subchapter and part C of subchapter I of chapter 34 of title 42, including requirements related to the award process and disbursement of student financial aid (such as innovative delivery systems for modular or compressed courses, or other innovative systems), verification of student financial aid application data, entrance and exit interviews, or other management procedures or processes as determined in the negotiated rulemaking process under section 1098a of this title, or regulations prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, that will bias the results of the experiment, except that the Secretary shall not waive any provisions with respect to award rules (other than an award rule related to an experiment in modular or compressed schedules), grant and loan maximum award amounts, and need analysis requirements unless the waiver of such provisions is authorized by another provision under this subchapter and part C of subchapter I of chapter 34 of title 42.

(4) Determination of success

For the purposes of paragraph (1), the Secretary shall make a determination of success regarding an institution's participation as an experimental site based on—

(A) the ability of the experimental site to reduce administrative burdens to the institution, as documented in the Secretary's biennial report under paragraph (2), without creating costs for the taxpayer; and

(B) whether the experimental site has improved the delivery of services to, or otherwise benefitted, students.

(c) "Current award year" defined

For purposes of this section, the term ''current award year'' means the award year during which the participating institution indicates the institution's intention to cease participation.

(Pub. L. 89–329, title IV, § 487A, as added Pub. L. 102–325, title IV, § 491, July 23, 1992, 106 Stat. 629; amended Pub. L. 105–244, title IV, § 490, Oct. 7, 1998, 112 Stat. 1751; Pub. L. 110–315, title I, § 103(b)(13), title IV, § 494, Aug. 14, 2008, 122 Stat. 3090, 3318; Pub. L. 111–39, title IV, § 407(b)(9), July 1, 2009, 123 Stat. 1952.)

AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111–39, § 407(b)(9)(A), substituted ''Any experimental sites'' for ''Any activities'' and ''June 30, 2010'' for ''June 30, 2009''.

Subsec. (b)(4). Pub. L. 111–39, § 407(b)(9)(B), added par. (4).

2008—Subsec. (a)(5). Pub. L. 110–315, § 103(b)(13), substituted ''authorizing committees'' for ''Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives''.

Subsec. (b)(1). Pub. L. 110–315, § 494(1), amended par. (1) generally. Prior to amendment, text read as follows: ''The Secretary may continue any experimental sites in existence on October 7, 1998. Any activities approved by the Secretary prior to October 7, 1998, that are inconsistent with this section shall be discontinued not later than June 30, 1999.''

Subsec. (b)(2). Pub. L. 110–315, § 494(2), added introductory provisions and struck out former introductory provisions which read as follows: ''The Secretary shall review and evaluate the experience of institutions participating as experimental sites during the period of 1993 through 1998 under this section (as such section was in effect on the day before October 7, 1998), and shall submit a report based on this review and evaluation to the Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives not later than 6 months after October 7, 1998. Such report shall include—''.

Subsec. (b)(3)(A). Pub. L. 110–315, § 494(3)(A), substituted ''The'' for ''Upon the submission of the report required by paragraph (2), the'' and inserted ''periodically'' after ''authorized to''.

Subsec. (b)(3)(B). Pub. L. 110–315, § 494(3)(D), inserted '', including requirements related to the award process and disbursement of student financial aid (such as innovative delivery systems for modular or compressed courses, or other innovative systems), verification of student financial aid application data, entrance and exit interviews, or other management procedures or processes as determined in the negotiated rulemaking process under section 1098a of this title'' before '', or regulations prescribed'', ''(other than an award rule related to an experiment in modular or compressed schedules)'' after ''award rules'', and ''unless the waiver of such provisions is authorized by another provision under this subchapter and part C of subchapter I of chapter 34 of title 42'' before period at end.

Pub. L. 110–315, § 494(3)(B), (C), redesignated subpar. (C) as (B) and struck out former subpar. (B). Text of former subpar. (B) read as follows: ''Prior to approving any additional experimental sites, the Secretary shall consult with the Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives and shall provide to such Committees—

''(i) a list of institutions proposed for participation in the experiment and the specific statutory or regulatory waivers proposed to be granted to each institution;

''(ii) a statement of the objectives to be achieved through the experiment; and

''(iii) an identification of the period of time over which the experiment is to be conducted.''

Subsec. (b)(3)(C). Pub. L. 110–315, § 494(3)(C), redesignated subpar. (C) as (B).

1998—Pub. L. 105–244 amended section catchline and text generally. Prior to amendment, section authorized a Quality Assurance Program for institutions to develop and implement systems for verifying student financial aid application data.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

§ 1094b. Assignment of identification numbers

The Secretary shall assign to each participant in title IV programs, including institutions, lenders, and guaranty agencies, a single Department of Education identification number to be used to identify its participation in each of the title IV programs.

(Pub. L. 89–329, title IV, § 487B, as added Pub. L. 102–325, title IV, § 491, July 23, 1992, 106 Stat. 630.)

REFERENCES IN TEXT

Title IV, referred to in text, means title IV of Pub. L. 89–329, as added by Pub. L. 99–498, which is classified generally to this subchapter and part C of subchapter I of chapter 34 of Title 42, The Public Health and Welfare.

§ 1095. Transfer of allotments

In order to offer an arrangement of types of aid, including institutional and State aid which best fits the needs of each individual student, an institution may (1) transfer a total of 25 percent of the institutions allotment under section 1087bb of this title to the institution's allotment under section 1070b–3 of this title or section 2752 of title 42 (or both); (2) transfer 25 percent of the institution's allotment under section 2752 of title 42 to the institution's allotment under section 1070b–3 or 1087bb of this title (or both); and (3) transfer 25 percent of the institution's allotment under section 1070b–3 of this title to the institution's allotment under section 2752 of title 42. Funds transferred to an institution's allotment under another section may be used as a part of and for the same purposes as funds allotted under that section. The Secretary shall have no control over such transfer, except as specifically authorized, except for the collection and dissemination of information.

(Pub. L. 89–329, title IV, § 488, as added Pub. L. 99–498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1490; amended Pub. L. 100–50, § 15(14), June 3, 1987, 101 Stat. 357; Pub. L. 102–325, title IV, § 492, July 23, 1992, 106 Stat. 630; Pub. L. 110–315, title IV, § 494A, Aug. 14, 2008, 122 Stat. 3319.)

PRIOR PROVISIONS

A prior section 1095, Pub. L. 89–329, title IV, § 488, as added Pub. L. 96–374, title IV, § 451(a), Oct. 3, 1980, 94 Stat. 1452, related to transfer of allotments, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2008—Pub. L. 110–315 struck out ''and'' after semicolon in par. (1), substituted ''section 1070b–3 or 1087bb of this title (or both); and'' for ''section 1070b–3 of this title.'' in par. (2), and added par. (3).

1992—Pub. L. 102–325 inserted first two sentences and struck out former first sentence which read as follows: ''Up to 10 percent of the allotment of an eligible institution for a fiscal year under section 1070b–3 of this title or 2752 of title 42, may be transferred to, and used for the purposes of, the institution's allotment under the other section within the discretion of such institution in order to offer an arrangement of types of aid, including institutional and State aid, which best fits the needs of each individual student.''

1987—Pub. L. 100–50 substituted ''section 2752 of title 42'' for ''section 2756 of title 42''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 to this section, relating to transfers of allotments, applicable with respect to funds provided for award years beginning on or after July 1, 1993, see section 498 of Pub. L. 102–325, set out as a note under section 1088 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

§ 1095a. Wage garnishment requirement

(a) Garnishment requirements

Notwithstanding any provision of State law, a guaranty agency, or the Secretary in the case of loans made, insured or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42 that are held by the Secretary, may garnish the disposable pay of an individual to collect the amount owed by the individual, if he or she is not currently making required repayment under a repayment agreement with the Secretary, or, in the case of a loan guaranteed under part B of this subchapter on which the guaranty agency received reimbursement from the Secretary under section 1078(c) of this title, with the guaranty agency holding the loan, as appropriate, provided that—

(1) the amount deducted for any pay period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted with the written consent of the individual involved;

(2) the individual shall be provided written notice, sent by mail to the individual's last known address, a minimum of 30 days prior to the initiation of proceedings, from the guaranty agency or the Secretary, as appropriate, informing such individual of the nature and amount of the loan obligation to be collected, the intention of the guaranty agency or the Secretary, as appropriate, to initiate proceedings to collect the debt through deductions from pay, and an explanation of the rights of the individual under this section;

(3) the individual shall be provided an opportunity to inspect and copy records relating to the debt;

(4) the individual shall be provided an opportunity to enter into a written agreement with the guaranty agency or the Secretary, under terms agreeable to the Secretary, or the head of the guaranty agency or his designee, as appropriate, to establish a schedule for the repayment of the debt;

(5) the individual shall be provided an opportunity for a hearing in accordance with subsection (b) of this section on the determination of the Secretary or the guaranty agency, as appropriate, concerning the existence or the amount of the debt, and, in the case of an individual whose repayment schedule is established other than by a written agreement pursuant to paragraph (4), concerning the terms of the repayment schedule;

(6) the employer shall pay to the Secretary or the guaranty agency as directed in the withholding order issued in this action, and shall be liable for, and the Secretary or the guaranty agency, as appropriate, may sue the employer in a State or Federal court of competent jurisdiction to recover, any amount that such employer fails to withhold from wages due an employee following receipt of such employer of notice of the withholding order, plus attorneys' fees, costs, and, in the court's discretion, punitive damages, but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph;

(7) if an individual has been reemployed within 12 months after having been involun-

tarily separated from employment, no amount may be deducted from the disposable pay of such individual until such individual has been reemployed continuously for at least 12 months; and

(8) an employer may not discharge from employment, refuse to employ, or take disciplinary action against an individual subject to wage withholding in accordance with this section by reason of the fact that the individual's wages have been subject to garnishment under this section, and such individual may sue in a State or Federal court of competent jurisdiction any employer who takes such action. The court shall award attorneys' fees to a prevailing employee and, in its discretion, may order reinstatement of the individual, award punitive damages and back pay to the employee, or order such other remedy as may be reasonably necessary.

(b) Hearing requirements

A hearing described in subsection (a)(5) of this section shall be provided prior to issuance of a garnishment order if the individual, on or before the 15th day following the mailing of the notice described in subsection (a)(2) of this section, and in accordance with such procedures as the Secretary or the head of the guaranty agency, as appropriate, may prescribe, files a petition requesting such a hearing. If the individual does not file a petition requesting a hearing prior to such date, the Secretary or the guaranty agency, as appropriate, shall provide the individual a hearing under subsection (a)(5) of this section upon request, but such hearing need not be provided prior to issuance of a garnishment order. A hearing under subsection (a)(5) of this section may not be conducted by an individual under the supervision or control of the head of the guaranty agency, except that nothing in this sentence shall be construed to prohibit the appointment of an administrative law judge. The hearing official shall issue a final decision at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing.

(c) Notice requirements

The notice to the employer of the withholding order shall contain only such information as may be necessary for the employer to comply with the withholding order.

(d) No attachment of student assistance

Except as authorized in this section, notwithstanding any other provision of Federal or State law, no grant, loan, or work assistance awarded under this subchapter and part C of subchapter I of chapter 34 of title 42, or property traceable to such assistance, shall be subject to garnishment or attachment in order to satisfy any debt owed by the student awarded such assistance, other than a debt owed to the Secretary and arising under this subchapter and part C of subchapter I of chapter 34 of title 42.

(e) "Disposable pay" defined

For the purpose of this section, the term ''disposable pay'' means that part of the compensation of any individual from an employer remaining after the deduction of any amounts required by law to be withheld.

(Pub. L. 89–329, title IV, § 488A, as added Pub. L. 102–164, title VI, § 605(a), Nov. 15, 1991, 105 Stat. 1066; amended Pub. L. 105–244, title IV, § 490A, Oct. 7, 1998, 112 Stat. 1753; Pub. L. 109–171, title VIII, § 8024, Feb. 8, 2006, 120 Stat. 180.)

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–171 substituted ''15 percent'' for ''10 percent''.

1998—Subsecs. (d), (e). Pub. L. 105–244 added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

§ 1096. Administrative expenses

(a) Amount of payments

From the sums appropriated for any fiscal year for the purpose of the program authorized under subpart 1 of part A of this subchapter, the Secretary shall reserve such sums as may be necessary to pay to each institution with which he has an agreement under section 1094 of this title, an amount equal to $5 for each student at that institution who receives assistance under subpart 1 of part A of this subchapter. In addition, an institution which has entered into an agreement with the Secretary under subpart 3 of part A of this subchapter or part C of subchapter I of chapter 34 of title 42, or under part D of this subchapter shall be entitled for each fiscal year which such institution disburses funds to eligible students under any such part to a payment for the purpose set forth in subsection (b) of this section. The payment for a fiscal year shall be payable from each such allotment by payment in accordance with regulations of the Secretary and shall be equal to 5 percent of the institution's first $2,750,000 of expenditures plus 4 percent of the institution's expenditures greater than $2,750,000 and less than $5,500,000, plus 3 percent of the institution's expenditures in excess of $5,500,000 during the fiscal year from the sum of its grants to students under subpart 3 of part A of this subchapter, its expenditures during such fiscal year under part C of subchapter I of chapter 34 of title 42 for compensation of students, and the principal amount of loans made during such fiscal year from its student loan fund established under part D of this subchapter, excluding the principal amount of any such loans which the institution has referred under section 1087cc(a)(4)(B) of this title. In addition, the Secretary shall provide for payment to each institution of higher education an amount equal to 100 percent of the costs incurred by the institution in implementing and operating the immigration status verification system under section 1091(g) of this title.

(b) Purpose of payments

(1) The sums paid to institutions under this part are for the sole purpose of administering

the programs described in subsection (a) of this section.

(2) If the institution enrolls a significant number of students who are (A) attending the institution less than full time, or (B) independent students, the institution shall use a reasonable proportion of the funds available under this section for financial aid services during times and in places that will most effectively accommodate the needs of such students.

(Pub. L. 89–329, title IV, § 489, as added Pub. L. 99–498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1491; amended Pub. L. 99–603, title I, § 121(b)(7), Nov. 6, 1986, 100 Stat. 3391; Pub. L. 100–50, § 15(15), June 3, 1987, 101 Stat. 357; Pub. L. 102–325, title IV, §§ 446(c), 493, July 23, 1992, 106 Stat. 567, 630; Pub. L. 103–208, § 2(h)(44), (k)(6), Dec. 20, 1993, 107 Stat. 2478, 2486; Pub. L. 110–315, title IV, § 494B, Aug. 14, 2008, 122 Stat. 3319; Pub. L. 111–39, title IV, § 407(b)(10), July 1, 2009, 123 Stat. 1953.)

PRIOR PROVISIONS

A prior section 1096, Pub. L. 89–329, title IV, § 489, as added Pub. L. 96–374, title IV, § 451(a), Oct. 3, 1980, 94 Stat. 1453; amended Pub. L. 97–35, title V, § 537(a)(2), Aug. 13, 1981, 95 Stat. 456, related to administrative expenses, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–39 substituted ''has referred under section 1087cc(a)(4)(B)'' for ''has agreed to assign under section 1087cc(a)(6)(B)'' and ''1091(g)'' for ''1091(h)''.

2008—Subsec. (b)(1). Pub. L. 110–315 substituted ''administering'' for ''offsetting the administrative costs of''.

1993—Subsec. (a). Pub. L. 103–208, § 2(k)(6), repealed Pub. L. 102–325, § 446(c). See 1992 Amendment note below.

Pub. L. 103–208, § 2(h)(44), substituted ''1091(h) of this title'' for ''1091(c) of this title''.

1992—Subsec. (a). Pub. L. 102–325, § 493(a)(3), substituted ''subpart 3'' for ''subpart 2'' in two places.

Pub. L. 102–325, § 493(a)(1), (2), struck out ''(other than section 2756a of title 42)'' before '', or under part D'' in second sentence and struck out fourth sentence which read as follows: ''The payment for a fiscal year for the purpose of subsection (b) of this section with respect to section 2756a of title 42 shall be payable from each allotment under part C of subchapter I of chapter 34 of title 42 in accordance with regulations of the Secretary, and shall be 10 percent of the institution's expenditures during such fiscal year under such section.''

Pub. L. 102–325, § 446(c), which directed amendment identical to amendment by Pub. L. 102–325, § 493(a)(1), (2), above, was repealed by Pub. L. 103–208, § 2(k)(6).

Subsec. (b). Pub. L. 102–325, § 493(b), designated existing provisions as par. (1) and added par. (2).

1987—Subsec. (a). Pub. L. 100–50 made technical amendment to reference to section 2756a of title 42 to correct reference to corresponding section of original Act, requiring no change in text.

1986—Subsec. (a). Pub. L. 99–603 inserted provision directing the Secretary to pay the costs incurred by institutions of higher education in implementing and operating the immigration status verification system under section 1091(c) of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 446(c) of Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of this title.

Amendment by section 493 of Pub. L. 102–325, relating to payments for administrative expenses, applicable with respect to funds provided for award years beginning on or after July 1, 1993, see section 498(7) of Pub. L. 102–325, set out as a note under section 1088 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as a note under section 502 of Title 42, The Public Health and Welfare.

§ 1096a. Repealed. Pub. L. 102–325, title IV, § 494, July 23, 1992, 106 Stat. 631

Section, Pub. L. 89–329, title IV, § 489A, as added Pub. L. 102–164, title VI, § 606, Nov. 15, 1991, 105 Stat. 1068, related to data matching.

§ 1097. Criminal penalties

(a) In general

Any person who knowingly and willfully embezzles, misapplies, steals, obtains by fraud, false statement, or forgery, or fails to refund any funds, assets, or property provided or insured under this subchapter and part C of subchapter I of chapter 34 of title 42 or attempts to so embezzle, misapply, steal, obtain by fraud, false statement or forgery, or fail to refund any funds, assets, or property, shall be fined not more than $20,000 or imprisoned for not more than 5 years, or both, except if the amount so embezzled, misapplied, stolen, obtained by fraud, false statement, or forgery, or failed to be refunded does not exceed $200, then the fine shall not be more than $5,000 and imprisonment shall not exceed one year, or both.

(b) Assignment of loans

Any person who knowingly and willfully makes any false statement, furnishes any false information, or conceals any material information in connection with the assignment of a loan which is made or insured under this subchapter and part C of subchapter I of chapter 34 of title 42 or attempts to so make any false statement, furnish any false information, or conceal any material information in connection with such assignment shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) Inducements to lend or assign

Any person who knowingly and willfully makes an unlawful payment to an eligible lender under part B of this subchapter or attempts to make such unlawful payment as an inducement to make, or to acquire by assignment, a loan insured under such part shall, upon convic-

tion thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both.

(d) Obstruction of justice

Any person who knowingly and willfully destroys or conceals any record relating to the provision of assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 or attempts to so destroy or conceal with intent to defraud the United States or to prevent the United States from enforcing any right obtained by subrogation under this part, shall upon conviction thereof, be fined not more than $20,000 or imprisoned not more than 5 years, or both.

(Pub. L. 89–329, title IV, § 490, as added Pub. L. 99–498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1491; amended Pub. L. 102–325, title IV, § 495, July 23, 1992, 106 Stat. 631.)

PRIOR PROVISIONS

A prior section 1097, Pub. L. 89–329, title IV, § 490, as added Pub. L. 96–374, title IV, § 451(a), Oct. 3, 1980, 94 Stat. 1453, related to criminal penalties, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

1992—Pub. L. 102–325 amended section generally, inserting provisions relating to attempted offenses, wherever appearing, and in subsec. (a) inserting provisions relating to failure to refund and substituting provisions relating to $20,000 and $5,000 fines for provisions relating to $10,000 and $1,000 fines, respectively, in subsec. (b) substituting provisions relating to $10,000 fines for provisions relating to $1,000 fines, in subsec. (c) substituting provisions relating to $10,000 fines for provisions relating $1,000 fines, and in subsec. (d) substituting provisions relating to $20,000 fines for provisions relating to $10,000 fines.

§ 1097a. Administrative subpoenas

(a) Authority

To assist the Secretary in the conduct of investigations of possible violations of the provisions of this subchapter and part C of subchapter I of chapter 34 of title 42, the Secretary is authorized to require by subpoena the production of information, documents, reports, answers, records, accounts, papers, and other documentary evidence pertaining to participation in any program under this subchapter and part C of subchapter I of chapter 34 of title 42. The production of any such records may be required from any place in a State.

(b) Enforcement

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may request the Attorney General to invoke the aid of any court of the United States where such person resides or transacts business for a court order for the enforcement of this section.

(Pub. L. 89–329, title IV, § 490A, as added Pub. L. 105–244, title IV, § 490B, Oct. 7, 1998, 112 Stat. 1754.)

EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

§ 1098. Advisory Committee on Student Financial Assistance

(a) Establishment and purpose

(1) There is established in the Department an independent Advisory Committee on Student Financial Assistance (hereafter in this section referred to as the ''Advisory Committee'') which shall provide advice and counsel to the authorizing committees and to the Secretary on student financial aid matters.

(2) The purpose of the Advisory Committee is—

(A) to provide extensive knowledge and understanding of the Federal, State, and institutional programs of postsecondary student assistance;

(B) to provide technical expertise with regard to systems of needs analysis and application forms;

(C) to make recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students;

(D) to provide knowledge and understanding of early intervention programs, and to make recommendations that will result in early awareness by low- and moderate-income students and families—

(i) of their eligibility for assistance under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(ii) to the extent practicable, of their eligibility for other forms of State and institutional need-based student assistance;

(E) to make recommendations that will expand and improve partnerships among the Federal Government, States, institutions of higher education, and private entities to increase the awareness and the total amount of need-based student assistance available to low- and moderate-income students; and

(F) to collect information on Federal regulations, and on the impact of Federal regulations on student financial assistance and on the cost of receiving a postsecondary education, and to make recommendations to help streamline the regulations for institutions of higher education from all sectors.

(b) Independence of Advisory Committee

In the exercise of its functions, powers, and duties, the Advisory Committee shall be independent of the Secretary and the other offices and officers of the Department. Notwithstanding Department of Education policies and regulations, the Advisory Committee shall exert independent control of its budget allocations, expenditures and staffing levels, personnel decisions and processes, procurements, and other administrative and management functions. The Advisory Committee's administration and management shall be subject to the usual and customary Federal audit procedures. Reports, publications, and other documents of the Advisory Committee, including such reports, publications, and documents in electronic form, shall not be subject to review by the Secretary. The recommendations of the Committee shall not be subject to review or approval by any officer in the executive branch, but may be submitted to

the Secretary for comment prior to submission to the authorizing committees in accordance with subsection (f) of this section. The Secretary's authority to terminate advisory committees of the Department pursuant to section 1233g(b)[1] of this title ceased to be effective on June 23, 1983.

(c) Membership

(1) The Advisory Committee shall consist of 11 members appointed as follows:

(A) Four members shall be appointed by the President pro tempore of the Senate, of whom two members shall be appointed from recommendations by the Majority Leader of the Senate, and two members shall be appointed from recommendations by the Minority Leader of the Senate.

(B) Four members shall be appointed by the Speaker of the House of Representatives, of whom two members shall be appointed from recommendations by the Majority Leader of the House of Representatives, and two members shall be appointed from recommendations by the Minority Leader of the House of Representatives.

(C) Three members shall be appointed by the Secretary, of whom at least one member shall be a student.

(2) Each member of the Advisory Committee, with the exception of a student member, shall be appointed on the basis of technical qualifications, professional experience, and demonstrated knowledge in the fields of higher education, student financial aid, financing post-secondary education, and the operations and financing of student loan guarantee agencies.

(3) The appointment of a member under subparagraph (A) or (B) of paragraph (1) shall be effective upon publication of such appointment in the Congressional Record.

(d) Functions of the Committee

The Advisory Committee shall—

(1) develop, review, and comment annually upon the system of needs analysis established under part E of this subchapter;

(2) monitor, apprise, and evaluate the effectiveness of student aid delivery and recommend improvements;

(3) recommend data collection needs and student information requirements which would improve access and choice for eligible students under this subchapter and part C of subchapter I of chapter 34 of title 42 and assist the Department of Education in improving the delivery of student aid;

(4) assess the impact of legislative and administrative policy proposals;

(5) review and comment upon, prior to promulgation, all regulations affecting programs under this subchapter and part C of subchapter I of chapter 34 of title 42, including proposed regulations;

(6) recommend to the authorizing committees and to the Secretary such studies, surveys, and analyses of student financial assistance programs, policies, and practices, including the special needs of low-income, disadvantaged, and nontraditional students, and the means by which the needs may be met;

(7) review and comment upon standards by which financial need is measured in determining eligibility for Federal student assistance programs;

(8) appraise the adequacies and deficiencies of current student financial aid information resources and services and evaluate the effectiveness of current student aid information programs;

(9) provide an annual report to the authorizing committees that provides analyses and policy recommendations regarding—

(A) the adequacy of need-based grant aid for low- and moderate-income students; and

(B) the postsecondary enrollment and graduation rates of low- and moderate-income students;

(10) develop and maintain an information clearinghouse to help institutions of higher education understand the regulatory impact of the Federal Government on institutions of higher education from all sectors, in order to raise awareness of institutional legal obligations and provide information to improve compliance with, and to reduce the duplication and inefficiency of, Federal regulations; and

(11) make special efforts to advise Members of Congress and such Members' staff of the findings and recommendations made pursuant to this paragraph.

(e) Operations of the Committee

(1) Each member of the Advisory Committee shall be appointed for a term of 4 years, except that, of the members first appointed—

(A) 4 shall be appointed for a term of 1 year;

(B) 4 shall be appointed for a term of 2 years; and

(C) 3 shall be appointed for a term of 3 years,

as designated at the time of appointment by the Secretary.

(2) Any member appointed to fill a vacancy occurring prior to the expiration of the term of a predecessor shall be appointed only for the remainder of such term. A member of the Advisory Committee serving on August 14, 2008, shall be permitted to serve the duration of the member's term, regardless of whether the member was previously appointed to more than one term.

(3) No officers or full-time employees of the Federal Government shall serve as members of the Advisory Committee.

(4) The Advisory Committee shall elect a Chairman and a Vice Chairman from among its members.

(5) Six members of the Advisory Committee shall constitute a quorum.

(6) The Advisory Committee shall meet at the call of the Chairman or a majority of its members.

(f) Submission to Department for comment

The Advisory Committee may submit its proposed recommendations to the Department of Education for comment for a period not to exceed 30 days in each instance.

(g) Compensation and expenses

Members of the Advisory Committee may each receive reimbursement for travel expenses inci-

[1] See References in Text note below.

dent to attending Advisory Committee meetings, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, for persons in the Government service employed intermittently.

(h) Personnel and resources

(1) The Advisory Committee may appoint such personnel as may be determined necessary by the Chairman without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no individual so appointed shall be paid in excess of the rate authorized for GS–18 of the General Schedule. The Advisory Committee may appoint not more than 1 full-time equivalent, nonpermanent, consultant without regard to the provisions of title 5. The Advisory Committee shall not be required by the Secretary to reduce personnel to meet agency personnel reduction goals.

(2) In carrying out its duties under this chapter and part C of subchapter I of chapter 34 of title 42, the Advisory Committee shall consult with other Federal agencies, representatives of State and local governments, and private organizations to the extent feasible.

(3)(A) The Advisory Committee is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality information, suggestions, estimates, and statistics for the purpose of this section and each such department, bureau, agency, board, commission, office, independent establishment, or instrumentality is authorized and directed, to the extent permitted by law, to furnish such information, suggestions, estimates, and statistics directly to the Advisory Committee, upon request made by the Chairman.

(B) The Advisory Committee may enter into contracts for the acquisition of information, suggestions, estimates, and statistics for the purpose of this section.

(4) The Advisory Committee is authorized to obtain the services of experts and consultants without regard to section 3109 of title 5 and to set pay in accordance with such section.

(5) The head of each Federal agency shall, to the extent not prohibited by law, cooperate with the Advisory Committee in carrying out this section.

(6) The Advisory Committee is authorized to utilize, with their consent, the services, personnel, information, and facilities of other Federal, State, local, and private agencies with or without reimbursement.

(i) Availability of funds

In each fiscal year not less than $800,000, shall be available from the amount appropriated for each such fiscal year from salaries and expenses of the Department for the costs of carrying out the provisions of this section.

(j) Special analyses and activities

The Advisory Committee shall—

(1) monitor and evaluate the modernization of student financial aid systems and delivery processes and simplifications, including recommendations for improvement;

(2) assess the adequacy of current methods for disseminating information about programs under this subchapter and part C of subchapter I of chapter 34 of title 42 and recommend improvements, as appropriate, regarding early needs assessment and information for first-year secondary school students;

(3) assess and make recommendations concerning the feasibility and degree of use of appropriate technology in the application for, and delivery and management of, financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, as well as policies that promote use of such technology to reduce cost and enhance service and program integrity, including electronic application and reapplication, just-in-time delivery of funds, reporting of disbursements and reconciliation;

(4) conduct a review and analysis of regulations in accordance with subsection (*l*); and

(5) conduct a study in accordance with subsection (m).

(k) Term of Committee

Notwithstanding the sunset and charter provisions of the Federal Advisory Committee Act or any other statute or regulation, the Advisory Committee shall be authorized until October 1, 2014.

(*l*) Review and analysis of regulations

(1) Recommendations

The Advisory Committee shall make recommendations to the Secretary and the authorizing committees for consideration of future legislative action regarding redundant or outdated regulations consistent with the Secretary's requirements under section 1099c–2 of this title.

(2) Review and analysis of regulations

(A) Review of current regulations

To meet the requirements of subsection (d)(10), the Advisory Committee shall conduct a review and analysis of the regulations issued by Federal agencies that are in effect at the time of the review and that apply to the operations or activities of institutions of higher education from all sectors. The review and analysis may include a determination of whether the regulation is duplicative, is no longer necessary, is inconsistent with other Federal requirements, or is overly burdensome. In conducting the review, the Advisory Committee shall pay specific attention to evaluating ways in which regulations under this subchapter and part C of subchapter I of chapter 34 of title 42 affecting institutions of higher education (other than institutions described in section 1002(a)(1)(C) of this title), that have received in each of the two most recent award years prior to August 14, 2008, less than $200,000 in funds through this subchapter and part C of subchapter I of chapter 34 of title 42, may be improved, streamlined, or eliminated.

(B) Review and collection of future regulations

The Advisory Committee shall—

(i) monitor all Federal regulations, including notices of proposed rulemaking, for their impact or potential impact on higher education; and

(ii) provide a succinct description of each regulation or proposed regulation that is generally relevant to institutions of higher education from all sectors.

(C) Maintenance of public website

The Advisory Committee shall develop and maintain an easy to use, searchable, and regularly updated website that—

(i) provides information collected in subparagraph (B);

(ii) provides an area for the experts and members of the public to provide recommendations for ways in which the regulations may be streamlined; and

(iii) publishes the study conducted by the National Research Council of the National Academy of Sciences under section 1106 of the Higher Education Opportunity Act.

(3) Consultation

(A) In general

In carrying out the review, analysis, and development of the website required under paragraph (2), the Advisory Committee shall consult with the Secretary, other Federal agencies, relevant representatives of institutions of higher education, individuals who have expertise and experience with Federal regulations, and the review panels described in subparagraph (B).

(B) Review panels

The Advisory Committee shall convene not less than two review panels of representatives of the groups involved in higher education, including individuals involved in student financial assistance programs under this subchapter and part C of subchapter I of chapter 34 of title 42, who have experience and expertise in the regulations issued by the Federal Government that affect all sectors of higher education, in order to review the regulations and to provide recommendations to the Advisory Committee with respect to the review and analysis under paragraph (2). The panels shall be made up of experts in areas such as the operations of the financial assistance programs, the institutional eligibility requirements for the financial assistance programs, regulations not directly related to the operations or the institutional eligibility requirements of the financial assistance programs, and regulations for dissemination of information to students about the financial assistance programs.

(4) Periodic updates to the authorizing committees

The Advisory Committee shall—

(A) submit, not later than two years after the completion of the negotiated rulemaking process required under section 1098a of this title resulting from the amendments to this chapter and part C of subchapter I of chapter 34 of title 42 made by the Higher Education Opportunity Act, a report to the authorizing committees and the Secretary detailing the review panels' findings and recommendations with respect to the review of regulations; and

(B) provide periodic updates to the authorizing committees regarding—

(i) the impact of all Federal regulations on all sectors of higher education; and

(ii) suggestions provided through the website for streamlining or eliminating duplicative regulations.

(5) Additional support

The Secretary and the Inspector General of the Department shall provide such assistance and resources to the Advisory Committee as the Secretary and Inspector General determine are necessary to conduct the review and analysis required by this subsection.

(m) Study of innovative pathways to baccalaureate degree attainment

(1) Study required

The Advisory Committee shall conduct a study of the feasibility of increasing baccalaureate degree attainment rates by reducing the costs and financial barriers to attaining a baccalaureate degree through innovative programs.

(2) Scope of study

The Advisory Committee shall examine new and existing programs that promote baccalaureate degree attainment through innovative ways, such as dual or concurrent enrollment programs, changes made to the Federal Pell Grant program, simplification of the needs analysis process, compressed or modular scheduling, articulation agreements, and programs that allow two-year institutions of higher education to offer baccalaureate degrees.

(3) Required aspects of the study

In performing the study described in this subsection, the Advisory Committee shall examine the following aspects of such innovative programs:

(A) The impact of such programs on baccalaureate attainment rates.

(B) The degree to which a student's total cost of attaining a baccalaureate degree can be reduced by such programs.

(C) The ways in which low- and moderate-income students can be specifically targeted by such programs.

(D) The ways in which nontraditional students can be specifically targeted by such programs.

(E) The cost-effectiveness for the Federal Government, States, and institutions of higher education to implement such programs.

(4) Consultation

(A) In general

In performing the study described in this subsection, the Advisory Committee shall consult with a broad range of interested parties in higher education, including parents, students, appropriate representatives of sec-

ondary schools and institutions of higher education, appropriate State administrators, administrators of dual or concurrent enrollment programs, and appropriate Department officials.

(B) Consultation with the authorizing committees

The Advisory Committee shall consult on a regular basis with the authorizing committees in carrying out the study required by this subsection.

(5) Reports to authorizing committees

(A) Interim report

The Advisory Committee shall prepare and submit to the authorizing committees and the Secretary an interim report, not later than one year after August 14, 2008, describing the progress made in conducting the study required by this subsection and any preliminary findings on the topics identified under paragraph (2).

(B) Final report

The Advisory Committee shall, not later than three years after August 14, 2008, prepare and submit to the authorizing committees and the Secretary a final report on the study, including recommendations for legislative, regulatory, and administrative changes based on findings related to the topics identified under paragraph (2).

(Pub. L. 89–329, title IV, § 491, as added Pub. L. 99–498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1492; amended Pub. L. 100–50, § 15(16)–(18), June 3, 1987, 101 Stat. 357; Pub. L. 102–325, title IV, § 496, July 23, 1992, 106 Stat. 631; Pub. L. 103–208, § 2(h)(45), (46), Dec. 20, 1993, 107 Stat. 2478; Pub. L. 105–244, title IV, § 490C, Oct. 7, 1998, 112 Stat. 1754; Pub. L. 110–315, title IV, § 494C, Aug. 14, 2008, 122 Stat. 3319; Pub. L. 111–39, title IV, § 407(b)(11), July 1, 2009, 123 Stat. 1953.)

REFERENCES IN TEXT

Section 1233g of this title, referred to in subsec. (b), was repealed by Pub. L. 103–382, title II, § 212(a)(2), Oct. 20, 1994, 108 Stat. 3913.

The Federal Advisory Committee Act, referred to in subsec. (k), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Higher Education Opportunity Act, referred to in subsec. (*l*)(4)(A), is Pub. L. 110–315, Aug. 14, 2008, 122 Stat. 3078. Section 1106 of the Act is not classified to the Code. For complete classification of such Act to the Code, see Short Title of 2008 Amendment note set out under section 1001 of this title and Tables.

PRIOR PROVISIONS

A prior section 1098, Pub. L. 89–329, title IV, § 491, as added Pub. L. 96–374, title IV, § 451(a), Oct. 3, 1980, 94 Stat. 1454; amended Pub. L. 98–79, § 11, Aug. 15, 1983, 97 Stat. 484, related to a National Commission on Student Financial Assistance, prior to the general revision of this part by Pub. L. 99–498.

Another prior section 491 of Pub. L. 89–329 amended former section 403 of this title.

AMENDMENTS

2009—Subsec. (*l*)(2)(A). Pub. L. 111–39 made technical amendment to reference in original act which appears in text as reference to August 14, 2008.

2008—Subsec. (a)(1). Pub. L. 110–315, § 494C(b), substituted ''authorizing committees'' for ''Congress''.

Subsec. (a)(2)(D) to (F). Pub. L. 110–315, § 494C(a)(1), added subpars. (D) to (F).

Subsec. (b). Pub. L. 110–315, § 494C(b), substituted ''authorizing committees'' for ''Congress''.

Subsec. (c). Pub. L. 110–315, § 494C(a)(2), added subsec. (c) and struck out former subsec. (c) relating to appointment and qualifications of Advisory Committee members.

Subsec. (d)(6). Pub. L. 110–315, § 494C(a)(3)(A), (b), substituted ''authorizing committees'' for ''Congress'' and struck out '', but nothing in this section shall authorize the committee to perform such studies, surveys, or analyses'' before semicolon.

Subsec. (d)(9) to (11). Pub. L. 110–315, § 494C(a)(3)(B)–(D), added pars. (9) and (10) and redesignated former par. (9) as (11).

Subsec. (e)(1). Pub. L. 110–315, § 494C(a)(4)(A), substituted ''4 years'' for ''3 years'' in introductory provision.

Subsec. (e)(2). Pub. L. 110–315, § 494C(a)(4)(B), substituted ''A member of the Advisory Committee serving on August 14, 2008, shall be permitted to serve the duration of the member's term, regardless of whether the member was previously appointed to more than one term.'' for ''A member of the Advisory Committee shall, upon request, continue to serve after the expiration of a term until a successor has been appointed. A member of the Advisory Committee may be reappointed to successive terms on the Advisory Committee.''

Subsec. (j)(1). Pub. L. 110–315, § 494C(a)(5)(A), inserted ''and simplifications'' after ''delivery processes'' and struck out ''including the implementation of a performance-based organization within the Department, and report to Congress regarding such modernization on not less than an annual basis,'' before ''including recommendations for improvement''.

Subsec. (j)(4), (5). Pub. L. 110–315, § 494C(a)(5)(B), added pars. (4) and (5) and struck out former pars. (4) and (5) which read as follows:

''(4) assess the implications of distance education on student eligibility and other requirements for financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, and make recommendations that will enhance access to postsecondary education through distance education while maintaining access, through on-campus instruction at eligible institutions, and program integrity; and

''(5) make recommendations to the Secretary regarding redundant or outdated provisions of and regulations under this chapter, consistent with the Secretary's requirements under section 1099c–2 of this title.''

Subsec. (k). Pub. L. 110–315, § 494C(a)(6), substituted ''2014'' for ''2004''.

Subsecs. (*l*), (m). Pub. L. 110–315, § 494C(a)(7), added subsecs. (*l*) and (m).

1998—Subsec. (b). Pub. L. 105–244, § 490C(1), substituted '', expenditures and staffing levels'' for ''and expenditures'' in second sentence and inserted ''Reports, publications, and other documents of the Advisory Committee, including such reports, publications, and documents in electronic form, shall not be subject to review by the Secretary.'' after third sentence.

Subsec. (e)(3) to (6). Pub. L. 105–244, § 490C(2), added par. (3) and redesignated former pars. (3) to (5) as (4) to (6), respectively.

Subsec. (g). Pub. L. 105–244, § 490C(3), substituted ''Members of the Advisory Committee may each'' for

''(1) Members of the Advisory Committee who are officers or full-time employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States; but they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, for persons in the Government service employed intermittently.

''(2) Members of the Advisory Committee who are not officers or full-time employees of the United States may each''.

Subsec. (h)(1). Pub. L. 105–244, § 490C(4), inserted ''determined'' after ''as may be'' and inserted at end ''The

Advisory Committee may appoint not more than 1 full-time equivalent, nonpermanent, consultant without regard to the provisions of title 5. The Advisory Committee shall not be required by the Secretary to reduce personnel to meet agency personnel reduction goals.''

Subsec. (i). Pub. L. 105–244, § 490C(5), substituted ''$800,000'' for ''$750,000''.

Subsec. (j). Pub. L. 105–244, § 490C(6), amended heading and text of subsec. (j) generally. Prior to amendment, text read as follows: ''The committee shall—

''(1) monitor and evaluate the program modifications resulting from the enactment of the Higher Education Amendments of 1992, especially as such amendments relate to the need analysis;

''(2) monitor and evaluate the implementation, pursuant to section 1090 of this title, of a Free Application for Federal Student Aid and the process for determining eligibility and awards for programs under this subchapter and part C of subchapter I of chapter 34 of title 42, including a simplified reapplication process;

''(3) assess the adequacy of current methods for disseminating information about programs under this subchapter and part C of subchapter I of chapter 34 of title 42 and recommend improvements, as appropriate, regarding early needs assessment and information for first-year high school students; and

''(4) assess the adequacy of methods of monitoring student debt burden.''

Subsec. (k). Pub. L. 105–244, § 490C(7), substituted ''2004'' for ''1998''.

Subsec. (*l*). Pub. L. 105–244, § 490C(8), struck out heading and text of subsec. (*l*) which directed Advisory Committee to conduct a study of means of simplifying all aspects of loan programs under part B of this subchapter.

1993—Subsec. (d)(1). Pub. L. 103–208, § 2(h)(45), struck out ''sections 1070a–1 through 1070a–5 of this title and'' after ''established under''.

Subsec. (h)(1). Pub. L. 103–208, § 2(h)(46), substituted ''subchapter III'' for ''subtitle III'' before ''of chapter 53 of such title''.

1992—Subsec. (b). Pub. L. 102–325, § 496(a), inserted after first sentence ''Notwithstanding Department of Education policies and regulations, the Advisory Committee shall exert independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions. The Advisory Committee's administration and management shall be subject to the usual and customary Federal audit procedures.''

Subsec. (d)(3). Pub. L. 102–325, § 496(b)(1), struck out ''and in assessing the impact of legislative and administrative policy proposals'' after ''student aid''.

Subsec. (d)(4) to (9). Pub. L. 102–325, § 496(b)(2)–(6), added par. (4), redesignated former pars. (4) to (7) as (5) to (8), respectively, and added par. (9).

Subsec. (h)(4). Pub. L. 102–325, § 496(c), substituted ''without regard to'' for ''in accordance with'' and inserted before period at end ''and to set pay in accordance with such section''.

Subsec. (i). Pub. L. 102–325, § 496(d), substituted ''$750,000'' for ''$500,000''.

Subsecs. (j) to (*l*). Pub. L. 102–325, § 496(e), added subsecs. (j) to (*l*) and struck out former subsec. (j), which related to special institutional lender study.

1987—Subsec. (b). Pub. L. 100–50, § 15(16), inserted at end ''The Secretary's authority to terminate advisory committees of the Department pursuant to section 1233g(b) of this title ceased to be effective on June 23, 1983.''

Subsec. (i). Pub. L. 100–50, § 15(17), substituted ''In each fiscal year not less than $500,000'' for ''An amount, not to exceed $500,000 in any fiscal year''.

Subsec. (j). Pub. L. 100–50, § 15(18), added subsec. (j).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as a note under section 1001 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 1098a. Regional meetings and negotiated rulemaking

(a) Meetings

(1) In general

The Secretary shall obtain public involvement in the development of proposed regulations for this subchapter and part C of subchapter I of chapter 34 of title 42. The Secretary shall obtain the advice of and recommendations from individuals and representatives of the groups involved in student financial assistance programs under this subchapter and part C of subchapter I of chapter 34 of title 42, such as students, legal assistance organizations that represent students, institutions of higher education, State student grant agencies, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies.

(2) Issues

The Secretary shall provide for a comprehensive discussion and exchange of information concerning the implementation of this subchapter and part C of subchapter I of chapter 34 of title 42 through such mechanisms as regional meetings and electronic exchanges of information. The Secretary shall take into account the information received through such mechanisms in the development of proposed regulations and shall publish a summary of such information in the Federal Register together with such proposed regulations.

(b) Draft regulations

(1) In general

After obtaining the advice and recommendations described in subsection (a)(1) of this section and before publishing proposed regulations in the Federal Register, the Secretary shall prepare draft regulations implementing this subchapter and part C of subchapter I of chapter 34 of title 42 and shall submit such

regulations to a negotiated rulemaking process. Participants in the negotiations process shall be chosen by the Secretary from individuals nominated by groups described in subsection (a)(1) of this section, and shall include both representatives of such groups from Washington, D.C., and industry participants. The Secretary shall select individuals with demonstrated expertise or experience in the relevant subjects under negotiation, reflecting the diversity in the industry, representing both large and small participants, as well as individuals serving local areas and national markets. The negotiation process shall be conducted in a timely manner in order that the final regulations may be issued by the Secretary within the 360-day period described in section 1232(e) of this title.

(2) Expansion of negotiated rulemaking

All regulations pertaining to this subchapter and part C of subchapter I of chapter 34 of title 42 that are promulgated after October 7, 1998, shall be subject to a negotiated rulemaking (including the selection of the issues to be negotiated), unless the Secretary determines that applying such a requirement with respect to given regulations is impracticable, unnecessary, or contrary to the public interest (within the meaning of section 553(b)(3)(B) of title 5), and publishes the basis for such determination in the Federal Register at the same time as the proposed regulations in question are first published. All published proposed regulations shall conform to agreements resulting from such negotiated rulemaking unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from such agreements. Such negotiated rulemaking shall be conducted in accordance with the provisions of paragraph (1), and the Secretary shall ensure that a clear and reliable record of agreements reached during the negotiations process is maintained.

(c) Applicability of Federal Advisory Committee Act

The Federal Advisory Committee Act shall not apply to activities carried out under this section.

(d) Authorization of appropriations

There are authorized to be appropriated in any fiscal year or made available from funds appropriated to carry out this part in any fiscal year such sums as may be necessary to carry out the provisions of this section, except that if no funds are appropriated pursuant to this subsection, the Secretary shall make funds available to carry out this section from amounts appropriated for the operations and expenses of the Department of Education.

(Pub. L. 89–329, title IV, § 492, as added Pub. L. 102–325, title IV, § 497, July 23, 1992, 106 Stat. 633; amended Pub. L. 105–244, title IV, § 490D, Oct. 7, 1998, 112 Stat. 1755; Pub. L. 110–315, title IV, § 494D, Aug. 14, 2008, 122 Stat. 3324; Pub. L. 111–39, title IV, § 407(b)(12), July 1, 2009, 123 Stat. 1953.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (c), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111–39, § 407(b)(12)(A), substituted ''regulations for this subchapter and part C of subchapter I of chapter 34 of title 42. The'' for ''regulations for parts B, F, and G of this subchapter. The''.

Subsec. (a)(2). Pub. L. 111–39, § 407(b)(12)(B), substituted ''The Secretary shall provide'' for text from beginning of par. (2) through ''provide'', resulting in text identical to that after execution of the amendment by Pub. L. 105–244, § 490D(a)(2)(A). See 1998 Amendment note below.

2008—Subsec. (a)(1). Pub. L. 110–315, § 494D(a)(1), inserted ''State student grant agencies,'' after ''institutions of higher education,''.

Subsec. (a)(2). Pub. L. 110–315, § 494D(a)(2), struck out '', as amended by the Higher Education Amendments of 1998'' before ''through such mechanisms''.

Subsec. (b)(1). Pub. L. 110–315, § 494D(b), struck out ''as amended by the Higher Education Amendments of 1998'' before ''and shall submit'', substituted ''The Secretary'' for ''To the extent possible, the Secretary'', and inserted ''with demonstrated expertise or experience in the relevant subjects under negotiation,'' after ''select individuals''.

1998—Subsec. (a)(1). Pub. L. 105–244, § 490D(a)(1)(C), substituted ''The Secretary shall obtain the advice of and recommendations from'' for ''Such meetings shall include''.

Pub. L. 105–244, § 490D(a)(1)(B), which directed the substitution of ''this subchapter and part C of subchapter I of chapter 34 of title 42;'' for ''parts B, F, and G of this subchapter,'', could not be executed because ''parts B, F, and G of this subchapter,'' does not appear in text.

Pub. L. 105–244, § 490D(a)(1)(A), struck out ''convene regional meetings to'' before ''obtain public involvement''.

Subsec. (a)(2). Pub. L. 105–244, § 490D(a)(2)(B)–(D), substituted ''this subchapter and part C of subchapter I of chapter 34 of title 42'' for ''parts B, F, and G of this subchapter'', ''1998 through such mechanisms as regional meetings and electronic exchanges of information'' for ''1992'', and ''through such mechanisms in'' for ''at such meetings in''.

Pub. L. 105–244, § 490D(a)(2)(A), which directed substitution of ''The'' for ''During such meetings the'', was executed by making the substitution for ''During such meetings, the'' before ''Secretary shall provide'', to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 105–244, § 490D(b), designated existing provisions as par. (1), inserted par. (1) heading, substituted ''obtaining the advice and recommendations described in subsection (a)(1) of this section'' for ''holding regional meetings'', ''this subchapter and part C of subchapter I of chapter 34 of title 42'' for ''parts B, F, and G of this subchapter'', ''1998'' for ''1992'', ''360-day'' for ''240-day'', and ''section 1232(e)'' for ''section 1232(g)'', struck out ''The Secretary shall follow the guidance provided in sections 305.82–4 and 305.85–5 of chapter 1, Code of Federal Regulations, and any successor recommendation, regulation, or law.'' after ''rulemaking process.'' and ''participating in the regional meetings'' after ''nominated by groups'', and added par. (2).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see sec-

tion 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

INAPPLICABILITY OF MASTER CALENDAR AND NEGOTIATED RULEMAKING REQUIREMENTS

This section inapplicable to amendments made by section 309 of Pub. L. 112–74, or to any regulations promulgated under such amendments, see section 309(h) of Pub. L. 112–74, set out as a note under section 1089 of this title.

This section inapplicable to amendments made by title V of Pub. L. 112–25 or to any regulations promulgated under such amendments, see section 504 of Pub. L. 112–25, set out as a note under section 1089 of this title.

This section inapplicable to amendments made by section 1860(a)(2) of Pub. L. 112–10 or to any regulations promulgated under such amendments, see section 1860(c) of Pub. L. 112–10, set out as a note under section 1089 of this title.

This section inapplicable to amendments made by title IV of Pub. L. 111–39 or to any regulations promulgated under such amendments, see section 409 of Pub. L. 111–39, set out as a note under section 1089 of this title.

This section inapplicable to amendments made by section 402(a) of Pub. L. 110–315 or to any regulations promulgated under such amendments, see section 402(b) of Pub. L. 110–315, set out as a note under section 1089 of this title.

This section inapplicable to amendments made by Pub. L. 110–227 or to any regulations promulgated under such amendments, see section 11 of Pub. L. 110–227, set out as a note under section 1089 of this title.

§ 1098b. Authorization of appropriations for administrative expenses

There are authorized to be appropriated such sums as may be necessary for fiscal year 1993 and for each succeeding fiscal year thereafter for administrative expenses necessary for carrying out this subchapter and part C of subchapter I of chapter 34 of title 42, including expenses for staff personnel, program reviews, and compliance activities.

(Pub. L. 89–329, title IV, § 493, as added Pub. L. 102–325, title IV, § 497, July 23, 1992, 106 Stat. 634.)

§ 1098c. Repealed. Pub. L. 110–315, title IV, § 494E, Aug. 14, 2008, 122 Stat. 3324

Section, Pub. L. 89–329, title IV, § 493A, as added Pub. L. 105–244, title IV, § 490E, Oct. 7, 1998, 112 Stat. 1756, related to Year 2000 requirements at the Department of Education.

§ 1098d. Procedures for cancellations and deferments for eligible disabled veterans

The Secretary, in consultation with the Secretary of Veterans Affairs, shall develop and implement a procedure to permit Department of Veterans Affairs physicians to provide the certifications and affidavits needed to enable disabled veterans enrolled in the Department of Veterans Affairs health care system to document such veterans' eligibility for deferments or cancellations of student loans made, insured, or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42. Not later than 6 months after October 7, 1998, the Secretary and the Secretary of Veterans Affairs jointly shall report to Congress on the progress made in developing and implementing the procedure.

(Pub. L. 89–329, title IV, § 493B, as added Pub. L. 105–244, title IV, § 490F, Oct. 7, 1998, 112 Stat. 1758.)

EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

§ 1098e. Income-based repayment

(a) Definitions

In this section:

(1) Excepted PLUS loan

The term ''excepted PLUS loan'' means a loan under section 1078–2 of this title, or a Federal Direct PLUS Loan, that is made, insured, or guaranteed on behalf of a dependent student.

(2) Excepted consolidation loan

The term ''excepted consolidation loan'' means a consolidation loan under section 1078–3 of this title, or a Federal Direct Consolidation Loan, if the proceeds of such loan were used to the discharge the liability on an excepted PLUS loan.

(3) Partial financial hardship

The term ''partial financial hardship'', when used with respect to a borrower, means that for such borrower—

(A) the annual amount due on the total amount of loans made, insured, or guaranteed under part B or C (other than an excepted PLUS loan or excepted consolidation loan) to a borrower as calculated under the standard repayment plan under section 1078(b)(9)(A)(i) or 1087e(d)(1)(A) of this title, based on a 10-year repayment period; exceeds

(B) 15 percent of the result obtained by calculating, on at least an annual basis, the amount by which—

(i) the borrower's, and the borrower's spouse's (if applicable), adjusted gross income; exceeds

(ii) 150 percent of the poverty line applicable to the borrower's family size as determined under section 9902(2) of title 42.

(b) Income-based repayment program authorized

Notwithstanding any other provision of this chapter and part C of subchapter I of chapter 34 of title 42, the Secretary shall carry out a program under which—

(1) a borrower of any loan made, insured, or guaranteed under part B or C (other than an excepted PLUS loan or excepted consolidation loan) who has a partial financial hardship (whether or not the borrower's loan has been submitted to a guaranty agency for default aversion or had been in default) may elect, during any period the borrower has the partial financial hardship, to have the borrower's aggregate monthly payment for all such loans not exceed the result described in subsection (a)(3)(B) divided by 12;

(2) the holder of such a loan shall apply the borrower's monthly payment under this subsection first toward interest due on the loan, next toward any fees due on the loan, and then toward the principal of the loan;

(3) any interest due and not paid under paragraph (2)—

(A) shall, on subsidized loans, be paid by the Secretary for a period of not more than 3 years after the date of the borrower's election under paragraph (1), except that such period shall not include any period during which the borrower is in deferment due to an economic hardship described in section 1085(*o*) of this title; and

(B) be capitalized—

(i) in the case of a subsidized loan, subject to subparagraph (A), at the time the borrower—

(I) ends the election to make income-based repayment under this subsection; or

(II) begins making payments of not less than the amount specified in paragraph (6)(A); or

(ii) in the case of an unsubsidized loan, at the time the borrower—

(I) ends the election to make income-based repayment under this subsection; or

(II) begins making payments of not less than the amount specified in paragraph (6)(A);

(4) any principal due and not paid under paragraph (2) shall be deferred;

(5) the amount of time the borrower makes monthly payments under paragraph (1) may exceed 10 years;

(6) if the borrower no longer has a partial financial hardship or no longer wishes to continue the election under this subsection, then—

(A) the maximum monthly payment required to be paid for all loans made to the borrower under part B or C (other than an excepted PLUS loan or excepted consolidation loan) shall not exceed the monthly amount calculated under section 1078(b)(9)(A)(i) or 1087e(d)(1)(A) of this title, based on a 10-year repayment period, when the borrower first made the election described in this subsection; and

(B) the amount of time the borrower is permitted to repay such loans may exceed 10 years;

(7) the Secretary shall repay or cancel any outstanding balance of principal and interest due on all loans made under part B or C (other than a loan under section 1078–2 of this title or a Federal Direct PLUS Loan) to a borrower who—

(A) at any time, elected to participate in income-based repayment under paragraph (1); and

(B) for a period of time prescribed by the Secretary, not to exceed 25 years, meets 1 or more of the following requirements—

(i) has made reduced monthly payments under paragraph (1) or paragraph (6);

(ii) has made monthly payments of not less than the monthly amount calculated under section 1078(b)(9)(A)(i) or 1087e(d)(1)(A) of this title, based on a 10-year repayment period, when the borrower first made the election described in this subsection;

(iii) has made payments of not less than the payments required under a standard repayment plan under section 1078(b)(9)(A)(i) or 1087e(d)(1)(A) of this title with a repayment period of 10 years;

(iv) has made payments under an income-contingent repayment plan under section 1087e(d)(1)(D) of this title; or

(v) has been in deferment due to an economic hardship described in section 1085(*o*) of this title;

(8) a borrower who is repaying a loan made under part B or C pursuant to income-based repayment may elect, at any time, to terminate repayment pursuant to income-based repayment and repay such loan under the standard repayment plan; and

(9) the special allowance payment to a lender calculated under section 1087–1(b)(2)(I) of this title, when calculated for a loan in repayment under this section, shall be calculated on the principal balance of the loan and on any accrued interest unpaid by the borrower in accordance with this section.

(c) Eligibility determinations

The Secretary shall establish procedures for annually determining the borrower's eligibility for income-based repayment, including verification of a borrower's annual income and the annual amount due on the total amount of loans made, insured, or guaranteed under part B or C (other than an excepted PLUS loan or excepted consolidation loan), and such other procedures as are necessary to effectively implement income-based repayment under this section. The Secretary shall consider, but is not limited to, the procedures established in accordance with section 1087e(e)(1) of this title or in connection with income sensitive repayment schedules under section 1078(b)(9)(A)(iii) or 1078–3(b)(1)(E) of this title.

(d) Special rule for married borrowers filing separately

In the case of a married borrower who files a separate Federal income tax return, the Secretary shall calculate the amount of the borrower's income-based repayment under this section solely on the basis of the borrower's student loan debt and adjusted gross income.

(e) Special terms for new borrowers on and after July 1, 2014

With respect to any loan made to a new borrower on or after July 1, 2014—

(1) subsection (a)(3)(B) shall be applied by substituting ''10 percent'' for ''15 percent''; and

(2) subsection (b)(7)(B) shall be applied by substituting ''20 years'' for ''25 years''.

(Pub. L. 89–329, title IV, § 493C, as added Pub. L. 110–84, title II, § 203(a), Sept. 27, 2007, 121 Stat. 792; amended Pub. L. 110–153, § 2, Dec. 21, 2007, 121 Stat. 1824; Pub. L. 110–315, title IV, § 494F, Aug. 14, 2008, 122 Stat. 3324; Pub. L. 111–152, title II, § 2213, Mar. 30, 2010, 124 Stat. 1081.)

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–152 added subsec. (e).

2008—Subsec. (b)(1). Pub. L. 110–315 substituted ''or had been in default'' for ''or is already in default''.

2007—Subsec. (d). Pub. L. 110–153 added subsec. (d).

EFFECTIVE DATE

Section effective July 1, 2009, see section 203(c)(1) of Pub. L. 110–84, set out as an Effective Date of 2007 Amendment note under section 1078–3 of this title.

§ 1098f. Deferral of loan repayment following active duty

(a) Deferral of loan repayment following active duty

In addition to any deferral of repayment of a loan made under this subchapter and part C of subchapter I of chapter 34 of title 42 pursuant to section 1078(b)(1)(M)(iii), 1087e(f)(2)(C), or 1087dd(c)(2)(A)(iii) of this title, a borrower of a loan under this subchapter and part C of subchapter I of chapter 34 of title 42 who is a member of the National Guard or other reserve component of the Armed Forces of the United States, or a member of such Armed Forces in a retired status, is called or ordered to active duty, and is enrolled, or was enrolled within six months prior to the activation, in a program of instruction at an eligible institution, shall be eligible for a deferment during the 13 months following the conclusion of such service, except that a deferment under this subsection shall expire upon the borrower's return to enrolled student status.

(b) Active duty

Notwithstanding section 1088(d) of this title, in this section, the term ''active duty'' has the meaning given such term in section 101(d)(1) of title 10, except that such term—

(1) does not include active duty for training or attendance at a service school; but

(2) includes, in the case of members of the National Guard, active State duty.

(Pub. L. 89–329, title IV, § 493D, as added Pub. L. 110–84, title II, § 204, Sept. 27, 2007, 121 Stat. 795.)

EFFECTIVE DATE

Section effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as an Effective Date of 2007 Amendment note under section 1070a of this title.

§ 1098g. Exemption from State disclosure requirements

Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) [and 42 U.S.C. 2751 et seq.] shall not be subject to any disclosure requirements of any State law.

(Pub. L. 97–320, title VII, § 701(b), Oct. 15, 1982, 96 Stat. 1538.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in text, is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to this subchapter and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

CODIFICATION

Section was formerly classified to section 1099 of this title.

Section was enacted as part of the Garn-St Germain Depository Institutions Act of 1982, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

EFFECTIVE DATE

Section effective both with respect to loans made prior to and after Oct. 15, 1982, see section 701(c) of Pub. L. 97–320, set out as an Effective Date of 1982 Amendment note under section 1603 of Title 15, Commerce and Trade.

PART F–1—HIGHER EDUCATION RELIEF OPPORTUNITIES FOR STUDENTS

CODIFICATION

Part was formerly set out as a note set out under section 1070 of this title.

§ 1098aa. Short title; findings; reference

(a) Short title

This part may be cited as the ''Higher Education Relief Opportunities for Students Act of 2003''.

(b) Findings

The Congress finds the following:

(1) There is no more important cause than that of our nation's defense.

(2) The United States will protect the freedom and secure the safety of its citizens.

(3) The United States military is the finest in the world and its personnel are determined to lead the world in pursuit of peace.

(4) Hundreds of thousands of Army, Air Force, Marine Corps, Navy, and Coast Guard reservists and members of the National Guard have been called to active duty or active service.

(5) The men and women of the United States military put their lives on hold, leave their families, jobs, and postsecondary education in order to serve their country and do so with distinction.

(6) There is no more important cause for this Congress than to support the members of the United States military and provide assistance with their transition into and out of active duty and active service.

(c) Reference

References in this part to ''the Act'' are references to the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

(Pub. L. 108–76, § 1, Aug. 18, 2003, 117 Stat. 904.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (c), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, which is classified generally to this chapter and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

CODIFICATION

Section was formerly set out in a note under section 1070 of this title.

Section was enacted as part of the Higher Education Relief Opportunities for Students Act of 2003, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

SENSE OF CONGRESS

Pub. L. 110–93, § 1, Sept. 30, 2007, 121 Stat. 999, provided that: ''It is the sense of Congress that—

''(1) the Higher Education Relief Opportunities for Students Act of 2003 [this part] addresses the unique situations that active duty military personnel and other affected individuals may face in connection with their enrollment in postsecondary institutions and their Federal student loans; and

''(2) the provisions authorized by such Act should be made permanent, thereby allowing the Secretary of Education to continue providing assistance to active duty service members and other affected individuals and their families.''

§ 1098bb. Waiver authority for response to military contingencies and national emergencies

(a) Waivers and modifications

(1) In general

Notwithstanding any other provision of law, unless enacted with specific reference to this section, the Secretary of Education (referred to in this part as the ''Secretary'') may waive or modify any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the Act [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.] as the Secretary deems necessary in connection with a war or other military operation or national emergency to provide the waivers or modifications authorized by paragraph (2).

(2) Actions authorized

The Secretary is authorized to waive or modify any provision described in paragraph (1) as may be necessary to ensure that—

(A) recipients of student financial assistance under title IV of the Act who are affected individuals are not placed in a worse position financially in relation to that financial assistance because of their status as affected individuals;

(B) administrative requirements placed on affected individuals who are recipients of student financial assistance are minimized, to the extent possible without impairing the integrity of the student financial assistance programs, to ease the burden on such students and avoid inadvertent, technical violations or defaults;

(C) the calculation of ''annual adjusted family income'' and ''available income'', as used in the determination of need for student financial assistance under title IV of the Act for any such affected individual (and the determination of such need for his or her spouse and dependents, if applicable), may be modified to mean the sums received in the first calendar year of the award year for which such determination is made, in order to reflect more accurately the financial condition of such affected individual and his or her family;

(D) the calculation under section 484B(b)(2) of the Act (20 U.S.C. 1091b(b)(2)) of the amount a student is required to return in the case of an affected individual may be modified so that no overpayment will be required to be returned or repaid if the institution has documented (i) the student's status as an affected individual in the student's file, and (ii) the amount of any overpayment discharged; and

(E) institutions of higher education, eligible lenders, guaranty agencies, and other entities participating in the student assistance programs under title IV of the Act that are located in areas that are declared disaster areas by any Federal, State or local official in connection with a national emergency, or whose operations are significantly affected by such a disaster, may be granted temporary relief from requirements that are rendered infeasible or unreasonable by a national emergency, including due diligence requirements and reporting deadlines.

(b) Notice of waivers or modifications

(1) In general

Notwithstanding section 1232 of this title and section 553 of title 5, the Secretary shall, by notice in the Federal Register, publish the waivers or modifications of statutory and regulatory provisions the Secretary deems necessary to achieve the purposes of this section.

(2) Terms and conditions

The notice under paragraph (1) shall include the terms and conditions to be applied in lieu of such statutory and regulatory provisions.

(3) Case-by-case basis

The Secretary is not required to exercise the waiver or modification authority under this section on a case-by-case basis.

(c) Impact report

The Secretary shall, not later than 15 months after first exercising any authority to issue a waiver or modification under subsection (a), report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate on the impact of any waivers or modifications issued pursuant to subsection (a) on affected individuals and the programs under title IV of the Act [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.], and the basis for such determination, and include in such report the Secretary's recommendations for changes to the statutory or regulatory provisions that were the subject of such waiver or modification.

(d) No delay in waivers and modifications

Sections 482(c) and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the waivers and modifications authorized or required by this part.

(Pub. L. 108–76, § 2, Aug. 18, 2003, 117 Stat. 904.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsecs. (a) and (c), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to this subchapter and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

CODIFICATION

Section was formerly set out in a note under section 1070 of this title.

Section was enacted as part of the Higher Education Relief Opportunities for Students Act of 2003, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

§ 1098cc. Tuition refunds or credits for members of armed forces

(a) Sense of Congress

It is the sense of Congress that—

(1) all institutions offering postsecondary education should provide a full refund to students who are affected individuals for that portion of a period of instruction such student was unable to complete, or for which such individual did not receive academic credit, because he or she was called up for active duty or active service; and

(2) if affected individuals withdraw from a course of study as a result of such active duty or active service, such institutions should make every effort to minimize deferral of enrollment or reapplication requirements and should provide the greatest flexibility possible with administrative deadlines related to those applications.

(b) Definition of full refund

For purposes of this section, a full refund includes a refund of required tuition and fees, or a credit in a comparable amount against future tuition and fees.

(Pub. L. 108–76, § 3, Aug. 18, 2003, 117 Stat. 906.)

CODIFICATION

Section was formerly set out in a note under section 1070 of this title.

Section was enacted as part of the Higher Education Relief Opportunities for Students Act of 2003, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

§ 1098dd. Use of professional judgment

A financial aid administrator shall be considered to be making a necessary adjustment in accordance with section 1087tt(a) of this title if the administrator makes adjustments with respect to the calculation of the expected student or parent contribution (or both) of an affected individual, and adequately documents the need for the adjustment.

(Pub. L. 108–76, § 4, Aug. 18, 2003, 117 Stat. 906.)

CODIFICATION

Section was formerly set out in a note under section 1070 of this title.

Section was enacted as part of the Higher Education Relief Opportunities for Students Act of 2003, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

§ 1098ee. Definitions

In this part:

(1) Active duty

The term ''active duty'' has the meaning given such term in section 101(d)(1) of title 10, except that such term does not include active duty for training or attendance at a service school.

(2) Affected individual

The term ''affected individual'' means an individual who—

(A) is serving on active duty during a war or other military operation or national emergency;

(B) is performing qualifying National Guard duty during a war or other military operation or national emergency;

(C) resides or is employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency; or

(D) suffered direct economic hardship as a direct result of a war or other military operation or national emergency, as determined by the Secretary.

(3) Military operation

The term ''military operation'' means a contingency operation as such term is defined in section 101(a)(13) of title 10.

(4) National emergency

The term ''national emergency'' means a national emergency declared by the President of the United States.

(5) Serving on active duty

The term ''serving on active duty during a war or other military operation or national emergency'' shall include service by an individual who is—

(A) a Reserve of an Armed Force ordered to active duty under section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10 or any retired member of an Armed Force ordered to active duty under section 688 of such title, for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; and

(B) any other member of an Armed Force on active duty in connection with such war, operation, or emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

(6) Qualifying National Guard duty

The term ''qualifying National Guard duty during a war or other military operation or national emergency'' means service as a member of the National Guard on full-time National Guard duty (as defined in section 101(d)(5) of title 10) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, in connection with a war, another military operation, or a national emergency declared by the President and supported by Federal funds.

(Pub. L. 108–76, § 5, Aug. 18, 2003, 117 Stat. 906.)

CODIFICATION

Section was formerly set out in a note under section 1070 of this title.

Section was enacted as part of the Higher Education Relief Opportunities for Students Act of 2003, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

§ 1099. Transferred

CODIFICATION

Section, Pub. L. 97–320, title VII, § 701(b), Oct. 15, 1982, 96 Stat. 1538, which related to exemption from State

disclosure requirements, was transferred to section 1098g of this title.

PART G—PROGRAM INTEGRITY

CODIFICATION

Pub. L. 105–244, title IV, § 491(1), Oct. 7, 1998, 112 Stat. 1758, added heading and struck out former heading.

This part was added as part H of title IV of Pub. L. 89–329 by Pub. L. 102–325, title IV, § 499, July 23, 1992, 106 Stat. 634. The letter designation of this part was changed from ''H'' to ''G'' for codification purposes. See Codification note preceding section 1087a of this title.

SUBPART 1—STATE ROLE

CODIFICATION

Subpart 1 of part H of title IV of the Higher Education Act of 1965, comprising this subpart, was originally added to Pub. L. 89–329, title IV, by Pub. L. 102–325, title IV, § 499, July 23, 1992, 106 Stat. 635, and amended by Pub. L. 103–208, Dec. 20, 1993, 107 Stat. 2457. Subpart 1 is shown herein, however, as having been added by Pub. L. 105–244, title IV, § 491(2), Oct. 7, 1998, 112 Stat. 1759, without reference to those intervening amendments because of the extensive revision of subpart 1 by Pub. L. 105–244.

§ 1099a. State responsibilities

(a) State responsibilities

As part of the integrity program authorized by this part, each State, through one State agency or several State agencies selected by the State, shall—

(1) furnish the Secretary, upon request, information with respect to the process for licensing or other authorization for institutions of higher education to operate within the State;

(2) notify the Secretary promptly whenever the State revokes a license or other authority to operate an institution of higher education; and

(3) notify the Secretary promptly whenever the State has credible evidence that an institution of higher education within the State—

(A) has committed fraud in the administration of the student assistance programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42; or

(B) has substantially violated a provision of this subchapter and part C of subchapter I of chapter 34 of title 42.

(b) Institutional responsibility

Each institution of higher education shall provide evidence to the Secretary that the institution has authority to operate within a State at the time the institution is certified under subpart 3 of this part.

(Pub. L. 89–329, title IV, § 495, as added Pub. L. 105–244, title IV, § 491(2), Oct. 7, 1998, 112 Stat. 1758.)

PRIOR PROVISIONS

Prior sections 1099a to 1099a–3 were omitted in the general amendment of this subpart by Pub. L. 105–244.

Section 1099a, Pub. L. 89–329, title IV, § 494, as added Pub. L. 102–325, title IV, § 499, July 23, 1992, 106 Stat. 635, authorized State postsecondary review program.

Section 1099a–1, Pub. L. 89–329, title IV, § 494A, as added Pub. L. 102–325, title IV, § 499, July 23, 1992, 106 Stat. 635, related to State postsecondary review entity agreements.

Section 1099a–2, Pub. L. 89–329, title IV, § 494B, as added Pub. L. 102–325, title IV, § 499, July 23, 1992, 106 Stat. 637, related to Federal reimbursement of State postsecondary review costs.

Section 1099a–3, Pub. L. 89–329, title IV, § 494C, as added Pub. L. 102–325, title IV, § 499, July 23, 1992, 106 Stat. 637; amended Pub. L. 103–208, § 2(i)(1), (2), Dec. 20, 1993, 107 Stat. 2478, related to functions of State review entities.

SUBPART 2—ACCREDITING AGENCY RECOGNITION

CODIFICATION

Pub. L. 105–244, title IV, § 492(a)(1), Oct. 7, 1998, 112 Stat. 1759, substituted ''RECOGNITION'' for ''APPROVAL'' in heading.

§ 1099b. Recognition of accrediting agency or association

(a) Criteria required

No accrediting agency or association may be determined by the Secretary to be a reliable authority as to the quality of education or training offered for the purposes of this chapter and part C of subchapter I of chapter 34 of title 42 or for other Federal purposes, unless the agency or association meets criteria established by the Secretary pursuant to this section. The Secretary shall, after notice and opportunity for a hearing, establish criteria for such determinations. Such criteria shall include an appropriate measure or measures of student achievement. Such criteria shall require that—

(1) the accrediting agency or association shall be a State, regional, or national agency or association and shall demonstrate the ability and the experience to operate as an accrediting agency or association within the State, region, or nationally, as appropriate;

(2) such agency or association—

(A)(i) for the purpose of participation in programs under this chapter and part C of subchapter I of chapter 34 of title 42, has a voluntary membership of institutions of higher education and has as a principal purpose the accrediting of institutions of higher education; or

(ii) for the purpose of participation in other programs administered by the Department of Education or other Federal agencies, has a voluntary membership and has as its principal purpose the accrediting of institutions of higher education or programs;

(B) is a State agency approved by the Secretary for the purpose described in subparagraph (A); or

(C) is an agency or association that, for the purpose of determining eligibility for student assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, conducts accreditation through (i) a voluntary membership organization of individuals participating in a profession, or (ii) an agency or association which has as its principal purpose the accreditation of programs within institutions, which institutions are accredited by another agency or association recognized by the Secretary;

(3) if such agency or association is an agency or association described in—

(A) subparagraph (A)(i) of paragraph (2), then such agency or association is separate

and independent, both administratively and financially of any related, associated, or affiliated trade association or membership organization;

(B) subparagraph (B) of paragraph (2), then such agency or association has been recognized by the Secretary on or before October 1, 1991; or

(C) subparagraph (C) of paragraph (2) and such agency or association has been recognized by the Secretary on or before October 1, 1991, then the Secretary may waive the requirement that such agency or association is separate and independent, both administratively and financially of any related, associated, or affiliated trade association or membership organization upon a demonstration that the existing relationship has not served to compromise the independence of its accreditation process;

(4)(A) such agency or association consistently applies and enforces standards that respect the stated mission of the institution of higher education, including religious missions, and that ensure that the courses or programs of instruction, training, or study offered by the institution of higher education, including distance education or correspondence courses or programs, are of sufficient quality to achieve, for the duration of the accreditation period, the stated objective for which the courses or the programs are offered; and

(B) if such agency or association has or seeks to include within its scope of recognition the evaluation of the quality of institutions or programs offering distance education or correspondence education, such agency or association shall, in addition to meeting the other requirements of this subpart, demonstrate to the Secretary that—

(i) the agency or association's standards effectively address the quality of an institution's distance education or correspondence education in the areas identified in paragraph (5), except that—

(I) the agency or association shall not be required to have separate standards, procedures, or policies for the evaluation of distance education or correspondence education institutions or programs in order to meet the requirements of this subparagraph; and

(II) in the case that the agency or association is recognized by the Secretary, the agency or association shall not be required to obtain the approval of the Secretary to expand its scope of accreditation to include distance education or correspondence education, provided that the agency or association notifies the Secretary in writing of the change in scope; and

(ii) the agency or association requires an institution that offers distance education or correspondence education to have processes through which the institution establishes that the student who registers in a distance education or correspondence education course or program is the same student who participates in and completes the program and receives the academic credit;

(5) the standards for accreditation of the agency or association assess the institution's—

(A) success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, consideration of course completion, and job placement rates;

(B) curricula;

(C) faculty;

(D) facilities, equipment, and supplies;

(E) fiscal and administrative capacity as appropriate to the specified scale of operations;

(F) student support services;

(G) recruiting and admissions practices, academic calendars, catalogs, publications, grading and advertising;

(H) measures of program length and the objectives of the degrees or credentials offered;

(I) record of student complaints received by, or available to, the agency or association; and

(J) record of compliance with its program responsibilities under this subchapter and part C of subchapter I of chapter 34 of title 42 based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and such other information as the Secretary may provide to the agency or association;

except that subparagraphs (A), (H), and (J) shall not apply to agencies or associations described in paragraph (2)(A)(ii) of this subsection;

(6) such an agency or association shall establish and apply review procedures throughout the accrediting process, including evaluation and withdrawal proceedings, which comply with due process procedures that provide—

(A) for adequate written specification of—

(i) requirements, including clear standards for an institution of higher education or program to be accredited; and

(ii) identified deficiencies at the institution or program examined;

(B) for sufficient opportunity for a written response, by an institution or program, regarding any deficiencies identified by the agency or association to be considered by the agency or association—

(i) within a timeframe determined by the agency or association; and

(ii) prior to final action in the evaluation and withdrawal proceedings;

(C) upon the written request of an institution or program, for an opportunity for the institution or program to appeal any adverse action under this section, including denial, withdrawal, suspension, or termination of accreditation, taken against the institution or program, prior to such action becoming final at a hearing before an appeals panel that—

(i) shall not include current members of the agency's or association's underlying

decisionmaking body that made the adverse decision; and

(ii) is subject to a conflict of interest policy;

(D) for the right to representation and participation by counsel for an institution or program during an appeal of the adverse action;

(E) for a process, in accordance with written procedures developed by the agency or association, through which an institution or program, before a final adverse action based solely upon a failure to meet a standard or criterion pertaining to finances, may on one occasion seek review of significant financial information that was unavailable to the institution or program prior to the determination of the adverse action, and that bears materially on the financial deficiencies identified by the agency or association;

(F) in the case that the agency or association determines that the new financial information submitted by the institution or program under subparagraph (E) meets the criteria of significance and materiality described in such subparagraph, for consideration by the agency or association of the new financial information prior to the adverse action described in such subparagraph becoming final; and

(G) that any determination by the agency or association made with respect to the new financial information described in subparagraph (E) shall not be separately appealable by the institution or program;

(7) such agency or association shall notify the Secretary and the appropriate State licensing or authorizing agency within 30 days of the accreditation of an institution or any final denial, withdrawal, suspension, or termination of accreditation or placement on probation of an institution, together with any other adverse action taken with respect to an institution; and

(8) such agency or association shall make available to the public, upon request, and to the Secretary, and the State licensing or authorizing agency a summary of any review resulting in a final accrediting decision involving denial, termination, or suspension of accreditation, together with the comments of the affected institution.

(b) "Separate and independent" defined

For the purpose of subsection (a)(3) of this section, the term ''separate and independent'' means that—

(1) the members of the postsecondary education governing body of the accrediting agency or association are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) among the membership of the board of the accrediting agency or association there shall be one public member (who is not a member of any related trade or membership organization) for each six members of the board, with a minimum of one such public member, and guidelines are established for such members to avoid conflicts of interest;

(3) dues to the accrediting agency or association are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(4) the budget of the accrediting agency or association is developed and determined by the accrediting agency or association without review or resort to consultation with any other entity or organization.

(c) Operating procedures required

No accrediting agency or association may be recognized by the Secretary as a reliable authority as to the quality of education or training offered by an institution seeking to participate in the programs authorized under this subchapter and part C of subchapter I of chapter 34 of title 42, unless the agency or association—

(1) performs, at regularly established intervals, on-site inspections and reviews of institutions of higher education (which may include unannounced site visits) with particular focus on educational quality and program effectiveness, and ensures that accreditation team members are well-trained and knowledgeable with respect to their responsibilities, including those regarding distance education;

(2) monitors the growth of programs at institutions that are experiencing significant enrollment growth;

(3) requires an institution to submit for approval to the accrediting agency a teach-out plan upon the occurrence of any of the following events:

(A) the Department notifies the accrediting agency of an action against the institution pursuant to section 1094(f) of this title;

(B) the accrediting agency acts to withdraw, terminate, or suspend the accreditation of the institution; or

(C) the institution notifies the accrediting agency that the institution intends to cease operations;

(4) requires that any institution of higher education subject to its jurisdiction which plans to establish a branch campus submit a business plan, including projected revenues and expenditures, prior to opening the branch campus;

(5) agrees to conduct, as soon as practicable, but within a period of not more than 6 months of the establishment of a new branch campus or a change of ownership of an institution of higher education, an on-site visit of that branch campus or of the institution after a change of ownership;

(6) requires that teach-out agreements among institutions are subject to approval by the accrediting agency or association consistent with standards promulgated by such agency or association;

(7) makes available to the public and the State licensing or authorizing agency, and submits to the Secretary, a summary of agency or association actions, including—

(A) the award of accreditation or reaccreditation of an institution;

(B) final denial, withdrawal, suspension, or termination of accreditation of an institution, and any findings made in connection with the action taken, together with the of-

ficial comments of the affected institution; and

(C) any other adverse action taken with respect to an institution or placement on probation of an institution;

(8) discloses publicly whenever an institution of higher education subject to its jurisdiction is being considered for accreditation or reaccreditation; and

(9) confirms, as a part of the agency's or association's review for accreditation or reaccreditation, that the institution has transfer of credit policies—

(A) that are publicly disclosed; and

(B) that include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education.

(d) Length of recognition

No accrediting agency or association may be recognized by the Secretary for the purpose of this chapter and part C of subchapter I of chapter 34 of title 42 for a period of more than 5 years.

(e) Initial arbitration rule

The Secretary may not recognize the accreditation of any institution of higher education unless the institution of higher education agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action.

(f) Jurisdiction

Notwithstanding any other provision of law, any civil action brought by an institution of higher education seeking accreditation from, or accredited by, an accrediting agency or association recognized by the Secretary for the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42 and involving the denial, withdrawal, or termination of accreditation of the institution of higher education, shall be brought in the appropriate United States district court.

(g) Limitation on scope of criteria

Nothing in this chapter and part C of subchapter I of chapter 34 of title 42 shall be construed to permit the Secretary to establish criteria for accrediting agencies or associations that are not required by this section. Nothing in this chapter and part C of subchapter I of chapter 34 of title 42 shall be construed to prohibit or limit any accrediting agency or association from adopting additional standards not provided for in this section. Nothing in this section shall be construed to permit the Secretary to establish any criteria that specifies, defines, or prescribes the standards that accrediting agencies or associations shall use to assess any institution's success with respect to student achievement.

(h) Change of accrediting agency

The Secretary shall not recognize the accreditation of any otherwise eligible institution of higher education if the institution of higher education is in the process of changing its accrediting agency or association, unless the eligible institution submits to the Secretary all materials relating to the prior accreditation, including materials demonstrating reasonable cause for changing the accrediting agency or association.

(i) Dual accreditation rule

The Secretary shall not recognize the accreditation of any otherwise eligible institution of higher education if the institution of higher education is accredited, as an institution, by more than one accrediting agency or association, unless the institution submits to each such agency and association and to the Secretary the reasons for accreditation by more than one such agency or association and demonstrates to the Secretary reasonable cause for its accreditation by more than one agency or association. If the institution is accredited, as an institution, by more than one accrediting agency or association, the institution shall designate which agency's accreditation shall be utilized in determining the institution's eligibility for programs under this chapter and part C of subchapter I of chapter 34 of title 42.

(j) Impact of loss of accreditation

An institution may not be certified or recertified as an institution of higher education under section 1002 of this title and subpart 3 of this part or participate in any of the other programs authorized by this chapter and part C of subchapter I of chapter 34 of title 42 if such institution—

(1) is not currently accredited by any agency or association recognized by the Secretary;

(2) has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency; or

(3) has withdrawn from accreditation voluntarily under a show cause or suspension order during the preceding 24 months, unless such order has been rescinded by the same accrediting agency.

(k) Religious institution rule

Notwithstanding subsection (j) of this section, the Secretary shall allow an institution that has had its accreditation withdrawn, revoked, or otherwise terminated, or has voluntarily withdrawn from an accreditation agency, to remain certified as an institution of higher education under section 1002 of this title and subpart 3 of this part for a period sufficient to allow such institution to obtain alternative accreditation, if the Secretary determines that the reason for the withdrawal, revocation, or termination—

(1) is related to the religious mission or affiliation of the institution; and

(2) is not related to the accreditation criteria provided for in this section.

***(l)* Limitation, suspension, or termination of recognition**

(1) If the Secretary determines that an accrediting agency or association has failed to apply effectively the criteria in this section, or is otherwise not in compliance with the requirements of this section, the Secretary shall—

(A) after notice and opportunity for a hearing, limit, suspend, or terminate the recognition of the agency or association; or

(B) require the agency or association to take appropriate action to bring the agency or association into compliance with such requirements within a timeframe specified by the Secretary, except that—

(i) such timeframe shall not exceed 12 months unless the Secretary extends such period for good cause; and

(ii) if the agency or association fails to bring the agency or association into compliance within such timeframe, the Secretary shall, after notice and opportunity for a hearing, limit, suspend, or terminate the recognition of the agency or association.

(2) The Secretary may determine that an accrediting agency or association has failed to apply effectively the standards provided in this section if an institution of higher education seeks and receives accreditation from the accrediting agency or association during any period in which the institution is the subject of any interim action by another accrediting agency or association, described in paragraph (2)(A)(i), (2)(B), or (2)(C) of subsection (a) of this section, leading to the suspension, revocation, or termination of accreditation or the institution has been notified of the threatened loss of accreditation, and the due process procedures required by such suspension, revocation, termination, or threatened loss have not been completed.

(m) Limitation on Secretary's authority

The Secretary may only recognize accrediting agencies or associations which accredit institutions of higher education for the purpose of enabling such institutions to establish eligibility to participate in the programs under this chapter and part C of subchapter I of chapter 34 of title 42 or which accredit institutions of higher education or higher education programs for the purpose of enabling them to establish eligibility to participate in other programs administered by the Department of Education or other Federal agencies.

(n) Independent evaluation

(1) The Secretary shall conduct a comprehensive review and evaluation of the performance of all accrediting agencies or associations which seek recognition by the Secretary in order to determine whether such accrediting agencies or associations meet the criteria established by this section. The Secretary shall conduct an independent evaluation of the information provided by such agency or association. Such evaluation shall include—

(A) the solicitation of third-party information concerning the performance of the accrediting agency or association; and

(B) site visits, including unannounced site visits as appropriate, at accrediting agencies and associations, and, at the Secretary's discretion, at representative member institutions.

(2) The Secretary shall place a priority for review of accrediting agencies or associations on those agencies or associations that accredit institutions of higher education that participate most extensively in the programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42 and on those agencies or associations which have been the subject of the most complaints or legal actions.

(3) The Secretary shall consider all available relevant information concerning the compliance of the accrediting agency or association with the criteria provided for in this section, including any complaints or legal actions against such agency or association. In cases where deficiencies in the performance of an accreditation agency or association with respect to the requirements of this section are noted, the Secretary shall take these deficiencies into account in the recognition process. The Secretary shall not, under any circumstances, base decisions on the recognition or denial of recognition of accreditation agencies or associations on criteria other than those contained in this section. When the Secretary decides to recognize an accrediting agency or association, the Secretary shall determine the agency or association's scope of recognition. If the agency or association reviews institutions offering distance education courses or programs and the Secretary determines that the agency or association meets the requirements of this section, then the agency shall be recognized and the scope of recognition shall include accreditation of institutions offering distance education courses or programs.

(4) The Secretary shall maintain sufficient documentation to support the conclusions reached in the recognition process, and, if the Secretary does not recognize any accreditation agency or association, shall make publicly available the reason for denying recognition, including reference to the specific criteria under this section which have not been fulfilled.

(*o*) Regulations

The Secretary shall by regulation provide procedures for the recognition of accrediting agencies or associations and for the appeal of the Secretary's decisions. Notwithstanding any other provision of law, the Secretary shall not promulgate any regulation with respect to the standards of an accreditation agency or association described in subsection (a)(5).

(p) Rule of construction

Nothing in subsection (a)(5) shall be construed to restrict the ability of—

(1) an accrediting agency or association to set, with the involvement of its members, and to apply, accreditation standards for or to institutions or programs that seek review by the agency or association; or

(2) an institution to develop and use institutional standards to show its success with respect to student achievement, which achievement may be considered as part of any accreditation review.

(q) Review of scope changes

The Secretary shall require a review, at the next available meeting of the National Advisory Committee on Institutional Quality and Integrity, of any change in scope undertaken by an agency or association under subsection (a)(4)(B)(i)(II) if the enrollment of an institution that offers distance education or correspondence education that is accredited by such agency or association increases by 50 percent or more within any one institutional fiscal year.

(Pub. L. 89–329, title IV, § 496, as added Pub. L. 102–325, title IV, § 499, July 23, 1992, 106 Stat. 641; amended Pub. L. 103–208, § 2(i)(3)–(8), Dec. 20, 1993, 107 Stat. 2478, 2479; Pub. L. 105–244, title I, § 102(b)(5), title IV, § 492(a)(2)–(d), Oct. 7, 1998, 112 Stat. 1622, 1759, 1760; Pub. L. 110–315, title IV, § 495, Aug. 14, 2008, 122 Stat. 3324; Pub. L. 111–39, title IV, § 408(1), July 1, 2009, 123 Stat. 1953.)

AMENDMENTS

2009—Subsec. (a)(6)(G). Pub. L. 111–39 substituted semicolon for period at end.

2008—Subsec. (a)(4). Pub. L. 110–315, § 495(1)(A), added par. (4) and struck out former par. (4) which read as follows: ''such agency or association consistently applies and enforces standards that ensure that the courses or programs of instruction, training, or study offered by the institution of higher education, including distance education courses or programs, are of sufficient quality to achieve, for the duration of the accreditation period, the stated objective for which the courses or the programs are offered;''.

Subsec. (a)(5)(A). Pub. L. 110–315, § 495(1)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''success with respect to student achievement in relation to the institution's mission, including, as appropriate, consideration of course completion, State licensing examinations, and job placement rates;''.

Subsec. (a)(6). Pub. L. 110–315, § 495(1)(C), added par. (6) and struck out former par. (6) which read as follows: ''such agency or association shall apply procedures throughout the accrediting process, including evaluation and withdrawal proceedings, that comply with due process, including—

''(A) adequate specification of requirements and deficiencies at the institution of higher education or program being examined;

''(B) notice of an opportunity for a hearing by any such institution;

''(C) the right to appeal any adverse action against any such institution; and

''(D) the right to representation by counsel for any such institution;''.

Subsec. (c)(1). Pub. L. 110–315, § 495(2)(A), inserted '', including those regarding distance education'' after ''their responsibilities''.

Subsec. (c)(2) to (8). Pub. L. 110–315, § 495(2)(B)–(D), added pars. (2), (3), and (7), redesignated former pars. (2) to (6) as (4) to (8), respectively, and struck out former par. (7) which read as follows: ''maintains and makes publicly available written materials regarding standards and procedures for accreditation, appeal procedures, and the accreditation status of each institution subject to its jurisdiction; and''.

Subsec. (c)(9). Pub. L. 110–315, § 495(2)(E), (F), added par. (9).

Subsec. (g). Pub. L. 110–315, § 495(3), inserted at end ''Nothing in this section shall be construed to permit the Secretary to establish any criteria that specifies, defines, or prescribes the standards that accrediting agencies or associations shall use to assess any institution's success with respect to student achievement.''

Subsec. (*o*). Pub. L. 110–315, § 495(4), inserted at end ''Notwithstanding any other provision of law, the Secretary shall not promulgate any regulation with respect to the standards of an accreditation agency or association described in subsection (a)(5).''

Subsecs. (p), (q). Pub. L. 110–315, § 495(5), added subsecs. (p) and (q).

1998—Pub. L. 105–244, § 492(a)(2), substituted ''Recognition'' for ''Approval'' in section catchline.

Subsec. (a). Pub. L. 105–244, § 492(b)(1), (2), substituted ''Criteria'' for ''Standards'' in heading and ''criteria'' for ''standards'' wherever appearing in introductory provisions.

Subsec. (a)(4). Pub. L. 105–244, § 492(b)(3), substituted ''offered by the institution'' for ''at the institution'' and inserted '', including distance education courses or programs,'' after ''higher education''.

Subsec. (a)(5). Pub. L. 105–244, § 492(b)(4)(A), (H), substituted ''for accreditation'' for ''of accreditation'' in introductory provisions and ''(A), (H), and (J)'' for ''(G), (H), (I), (J), and (L)'' in concluding provisions.

Subsec. (a)(5)(A) to (G). Pub. L. 105–244, § 492(b)(4)(C), (E), added subpar. (A) and redesignated former subpars. (A) to (F) as (B) to (G), respectively. Former subpar. (G) redesignated (H).

Subsec. (a)(5)(H). Pub. L. 105–244, § 492(b)(4)(F), substituted ''measures of program length'' for ''program length and tuition and fees in relation to the subject matters taught''.

Pub. L. 105–244, § 492(b)(4)(C), redesignated subpar. (G) as (H).

Pub. L. 105–244, § 492(b)(4)(B), struck out subpar. (H) which read as follows: ''measures of program length in clock hours or credit hours;''.

Subsec. (a)(5)(I). Pub. L. 105–244, § 492(b)(4)(B), (D), redesignated subpar. (K) as (I) and struck out former subpar. (I) which read as follows: ''success with respect to student achievement in relation to its mission, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates;''.

Subsec. (a)(5)(J). Pub. L. 105–244, § 492(b)(4)(G), inserted ''record of'' before ''compliance'', substituted ''based on the most recent student loan default rate data provided by the Secretary, the'' for '', including any'', and inserted ''any'' after ''reviews, and''.

Pub. L. 105–244, § 492(b)(4)(B), (D), redesignated subpar. (L) as (J) and struck out former subpar. (J) which read as follows: ''default rates in the student loan programs under this subchapter and part C of subchapter I of chapter 34 of title 42, based on the most recent data provided by the Secretary;''.

Subsec. (a)(5)(K), (L). Pub. L. 105–244, § 492(b)(4)(D), redesignated subpars. (K) and (L) as (I) and (J), respectively.

Subsec. (a)(7). Pub. L. 105–244, § 492(b)(5), substituted ''State licensing or authorizing agency'' for ''State postsecondary review entity''.

Subsec. (a)(8). Pub. L. 105–244, § 492(b)(6), substituted ''State licensing or authorizing agency'' for ''State postsecondary review entity of the State in which the institution of higher education is located''.

Subsec. (c). Pub. L. 105–244, § 492(c)(1), substituted ''recognized by the Secretary'' for ''approved by the Secretary'' in introductory provisions.

Subsec. (c)(1). Pub. L. 105–244, § 492(c)(2), substituted ''(which may include unannounced site visits)'' for ''(at least one of which inspections at each institution that provides vocational education and training shall be unannounced),''.

Subsec. (d). Pub. L. 105–244, § 492(d)(1), substituted ''recognition'' for ''approval'' in heading and ''recognized'' for ''approved'' in text.

Subsec. (f). Pub. L. 105–244, § 492(d)(2), substituted ''recognized'' for ''approved''.

Subsec. (g). Pub. L. 105–244, § 492(d)(3), substituted ''criteria'' for ''standards'' in heading and ''establish criteria'' for ''establish standards'' in text.

Subsec. (j). Pub. L. 105–244, § 102(b)(5), substituted ''section 1002'' for ''section 1088'' in introductory provisions.

Subsec. (k). Pub. L. 105–244, §§ 102(b)(5), 492(d)(4)(A), amended subsec. (k) identically, substituting ''section 1002'' for ''section 1088'' in introductory provisions.

Subsec. (k)(2). Pub. L. 105–244, § 492(d)(4)(B), substituted ''criteria'' for ''standards''.

Subsec. (*l*). Pub. L. 105–244, § 492(d)(5), substituted ''recognition'' for ''approval'' in heading, added par. (1), and struck out former par. (1) which read as follows: ''The Secretary shall limit, suspend, or terminate the approval of an accrediting agency or association if the Secretary determines, after notice and opportunity for a hearing, that the accrediting agency or association has failed to apply effectively the standards or operate according to the procedures provided in this section.''

Subsec. (n)(1). Pub. L. 105–244, § 492(d)(6)(A), substituted ''criteria'' for ''standards'' in introductory provisions.

Subsec. (n)(3). Pub. L. 105–244, § 492(d)(6)(A), (B), substituted ''criteria'' for ''standards'' in two places, ''recognition process'' for ''approval process'', and ''recognition or denial of recognition'' for ''approval or disapproval'', and inserted at end ''When the Secretary decides to recognize an accrediting agency or association, the Secretary shall determine the agency or association's scope of recognition. If the agency or association reviews institutions offering distance education courses or programs and the Secretary determines that the agency or association meets the requirements of this section, then the agency shall be recognized and the scope of recognition shall include accreditation of institutions offering distance education courses or programs.''

Subsec. (n)(4). Pub. L. 105–244, § 492(d)(6)(C), added par. (4) and struck out former par. (4) which read as follows: ''The Secretary shall maintain sufficient documentation to support the conclusions reached in the approval process, and, upon disapproval of any accreditation agency or association, shall make publicly available the reason for such disapproval, including reference to the specific standards under this section which have not been fulfilled.''

1993—Subsec. (a)(2)(A)(i). Pub. L. 103–208, § 2(i)(3), inserted ''of institutions of higher education'' after ''membership''.

Subsec. (a)(3)(A). Pub. L. 103–208, § 2(i)(4), substituted ''subparagraph (A)(i)'' for ''subparagraph (A)''.

Subsec. (a)(5). Pub. L. 103–208, § 2(i)(5), substituted a semicolon for the period at end of subpar. (L) and inserted after subpar. (L) the following: ''except that subparagraphs (G), (H), (I), (J), and (L) shall not apply to agencies or associations described in paragraph (2)(A)(ii) of this subsection;''.

Subsec. (c). Pub. L. 103–208, § 2(i)(6), substituted ''as a reliable authority as to the quality of education or training offered by an institution seeking to participate in the programs authorized under this subchapter and part C of subchapter I of chapter 34 of title 42'' for ''for the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42''.

Subsec. (*l*)(2). Pub. L. 103–208, § 2(i)(7), substituted ''institution'' for ''institutution'' and ''association, described in paragraph (2)(A)(i), (2)(B), or (2)(C) of subsection (a) of this section, leading to the suspension'' for ''association leading to the suspension''.

Subsec. (n)(1)(B). Pub. L. 103–208, § 2(i)(8), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''site visits at both the accrediting agency or association and member institutions, including unannounced visits where appropriate.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as an Effective Date of 1992 Amendment note under section 1001 of this title.

STUDY OF TRANSFER OF CREDITS

Pub. L. 105–244, title VIII, § 804, Oct. 7, 1998, 112 Stat. 1806, which directed the Secretary of Education to conduct a study regarding the treatment of the transfer of credits from one institution of higher education to another and to report to Congress, not later than one year after Oct. 7, 1998, was repealed by Pub. L. 110–315, title IX, § 931(1), Aug. 14, 2008, 122 Stat. 3456.

SUBPART 3—ELIGIBILITY AND CERTIFICATION PROCEDURES

§ 1099c. Eligibility and certification procedures

(a) General requirement

For purposes of qualifying institutions of higher education for participation in programs under this subchapter and part C of subchapter I of chapter 34 of title 42, the Secretary shall determine the legal authority to operate within a State, the accreditation status, and the administrative capability and financial responsibility of an institution of higher education in accordance with the requirements of this section.

(b) Single application form

The Secretary shall prepare and prescribe a single application form which—

(1) requires sufficient information and documentation to determine that the requirements of eligibility, accreditation, financial responsibility, and administrative capability of the institution of higher education are met;

(2) requires a specific description of the relationship between a main campus of an institution of higher education and all of its branches, including a description of the student aid processing that is performed by the main campus and that which is performed at its branches;

(3) requires—

(A) a description of the third party servicers of an institution of higher education; and

(B) the institution to maintain a copy of any contract with a financial aid service provider or loan servicer, and provide a copy of any such contract to the Secretary upon request;

(4) requires such other information as the Secretary determines will ensure compliance with the requirements of this subchapter and part C of subchapter I of chapter 34 of title 42 with respect to eligibility, accreditation, administrative capability and financial responsibility; and

(5) provides, at the option of the institution, for participation in one or more of the programs under part B or C of this subchapter.

(c) Financial responsibility standards

(1) The Secretary shall determine whether an institution has the financial responsibility required by this subchapter and part C of subchapter I of chapter 34 of title 42 on the basis of whether the institution is able—

(A) to provide the services described in its official publications and statements;

(B) to provide the administrative resources necessary to comply with the requirements of this subchapter and part C of subchapter I of chapter 34 of title 42; and

(C) to meet all of its financial obligations, including (but not limited to) refunds of institutional charges and repayments to the Sec-

retary for liabilities and debts incurred in programs administered by the Secretary.

(2) Notwithstanding paragraph (1), if an institution fails to meet criteria prescribed by the Secretary regarding ratios that demonstrate financial responsibility, then the institution shall provide the Secretary with satisfactory evidence of its financial responsibility in accordance with paragraph (3). Such criteria shall take into account any differences in generally accepted accounting principles, and the financial statements required thereunder, that are applicable to for-profit, public, and nonprofit institutions. The Secretary shall take into account an institution's total financial circumstances in making a determination of its ability to meet the standards herein required.

(3) The Secretary shall determine an institution to be financially responsible, notwithstanding the institution's failure to meet the criteria under paragraphs (1) and (2), if—

(A) such institution submits to the Secretary third-party financial guarantees that the Secretary determines are reasonable, such as performance bonds or letters of credit payable to the Secretary, which third-party financial guarantees shall equal not less than one-half of the annual potential liabilities of such institution to the Secretary for funds under this subchapter and part C of subchapter I of chapter 34 of title 42, including loan obligations discharged pursuant to section 1087 of this title, and to students for refunds of institutional charges, including funds under this subchapter and part C of subchapter I of chapter 34 of title 42;

(B) such institution has its liabilities backed by the full faith and credit of a State, or its equivalent;

(C) such institution establishes to the satisfaction of the Secretary, with the support of a financial statement audited by an independent certified public accountant in accordance with generally accepted auditing standards, that the institution has sufficient resources to ensure against the precipitous closure of the institution, including the ability to meet all of its financial obligations (including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary); or

(D) such institution has met standards of financial responsibility, prescribed by the Secretary by regulation, that indicate a level of financial strength not less than those required in paragraph (2).

(4) If an institution of higher education that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree fails to meet the criteria imposed by the Secretary pursuant to paragraph (2), the Secretary shall waive that particular requirement for that institution if the institution demonstrates to the satisfaction of the Secretary that—

(A) there is no reasonable doubt as to its continued solvency and ability to deliver quality educational services;

(B) it is current in its payment of all current liabilities, including student refunds, repayments to the Secretary, payroll, and payment of trade creditors and withholding taxes; and

(C) it has substantial equity in school-occupied facilities, the acquisition of which was the direct cause of its failure to meet the criteria.

(5) The determination as to whether an institution has met the standards of financial responsibility provided for in paragraphs (2) and (3)(C) shall be based on an audited and certified financial statement of the institution. Such audit shall be conducted by a qualified independent organization or person in accordance with standards established by the American Institute of Certified Public Accountants. Such statement shall be submitted to the Secretary at the time such institution is considered for certification or recertification under this section. If the institution is permitted to be certified (provisionally or otherwise) and such audit does not establish compliance with paragraph (2), the Secretary may require that additional audits be submitted.

(6)(A) The Secretary shall establish requirements for the maintenance by an institution of higher education of sufficient cash reserves to ensure repayment of any required refunds.

(B) The Secretary shall provide for a process under which the Secretary shall exempt an institution of higher education from the requirements described in subparagraph (A) if the Secretary determines that the institution—

(i) is located in a State that has a tuition recovery fund that ensures that the institution meets the requirements of subparagraph (A);

(ii) contributes to the fund; and

(iii) otherwise has legal authority to operate within the State.

(d) Administrative capacity standard

The Secretary is authorized—

(1) to establish procedures and requirements relating to the administrative capacities of institutions of higher education, including—

(A) consideration of past performance of institutions or persons in control of such institutions with respect to student aid programs; and

(B) maintenance of records; and

(2) to establish such other reasonable procedures as the Secretary determines will contribute to ensuring that the institution of higher education will comply with administrative capability required by this subchapter and part C of subchapter I of chapter 34 of title 42.

(e) Financial guarantees from owners

(1) Notwithstanding any other provision of law, the Secretary may, to the extent necessary to protect the financial interest of the United States, require—

(A) financial guarantees from an institution participating, or seeking to participate, in a program under this subchapter and part C of subchapter I of chapter 34 of title 42, or from one or more individuals who the Secretary determines, in accordance with paragraph (2), exercise substantial control over such institution, or both, in an amount determined by the Secretary to be sufficient to satisfy the insti-

tution's potential liability to the Federal Government, student assistance recipients, and other program participants for funds under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(B) the assumption of personal liability, by one or more individuals who exercise substantial control over such institution, as determined by the Secretary in accordance with paragraph (2), for financial losses to the Federal Government, student assistance recipients, and other program participants for funds under this subchapter and part C of subchapter I of chapter 34 of title 42, and civil and criminal monetary penalties authorized under this subchapter and part C of subchapter I of chapter 34 of title 42.

(2)(A) The Secretary may determine that an individual exercises substantial control over one or more institutions participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42 if the Secretary determines that—

(i) the individual directly or indirectly controls a substantial ownership interest in the institution;

(ii) the individual, either alone or together with other individuals, represents, under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who have, individually or in combination with the other persons represented or the individual representing them, a substantial ownership interest in the institution; or

(iii) the individual is a member of the board of directors, the chief executive officer, or other executive officer of the institution or of an entity that holds a substantial ownership interest in the institution.

(B) The Secretary may determine that an entity exercises substantial control over one or more institutions participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42 if the Secretary determines that the entity directly or indirectly holds a substantial ownership interest in the institution.

(3) For purposes of this subsection, an ownership interest is defined as a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution or institution's parent corporation. An ownership interest may include, but is not limited to—

(A) a sole proprietorship;

(B) an interest as a tenant-in-common, joint tenant, or tenant by the entireties;

(C) a partnership; or

(D) an interest in a trust.

(4) The Secretary shall not impose the requirements described in subparagraphs (A) and (B) of paragraph (1) on an institution that—

(A) has not been subjected to a limitation, suspension, or termination action by the Secretary or a guaranty agency within the preceding 5 years;

(B) has not had, during its 2 most recent audits of the institutions conduct of programs under this subchapter and part C of subchapter I of chapter 34 of title 42, an audit finding that resulted in the institution being required to repay an amount greater than 5 percent of the funds the institution received from programs under this subchapter and part C of subchapter I of chapter 34 of title 42 for any year;

(C) meets and has met, for the preceding 5 years, the financial responsibility standards under subsection (c) of this section; and

(D) has not been cited during the preceding 5 years for failure to submit audits required under this subchapter and part C of subchapter I of chapter 34 of title 42 in a timely fashion.

(5) For purposes of section 1094(c)(1)(G) of this title, this section shall also apply to individuals or organizations that contract with an institution to administer any aspect of an institution's student assistance program under this subchapter and part C of subchapter I of chapter 34 of title 42.

(6) Notwithstanding any other provision of law, any individual who—

(A) the Secretary determines, in accordance with paragraph (2), exercises substantial control over an institution participating in, or seeking to participate in, a program under this subchapter and part C of subchapter I of chapter 34 of title 42;

(B) is required to pay, on behalf of a student or borrower, a refund of unearned institutional charges to a lender, or to the Secretary; and

(C) willfully fails to pay such refund or willfully attempts in any manner to evade payment of such refund,

shall, in addition to other penalties provided by law, be liable to the Secretary for the amount of the refund not paid, to the same extent with respect to such refund that such an individual would be liable as a responsible person for a penalty under section 6672(a) of title 26 with respect to the nonpayment of taxes.

(f) Actions on applications and site visits

The Secretary shall ensure that prompt action is taken by the Department on any application required under subsection (b) of this section. The personnel of the Department of Education may conduct a site visit at each institution before certifying or recertifying its eligibility for purposes of any program under this subchapter and part C of subchapter I of chapter 34 of title 42. The Secretary shall establish priorities by which institutions are to receive site visits, and shall, to the extent practicable, coordinate such visits with site visits by States, guaranty agencies, and accrediting bodies in order to eliminate duplication, and reduce administrative burden.

(g) Time limitations on, and renewal of, eligibility

(1) General rule

After the expiration of the certification of any institution under the schedule prescribed under this section (as this section was in effect prior to October 7, 1998), or upon request for initial certification from an institution not previously certified, the Secretary may certify the eligibility for the purposes of any program authorized under this subchapter and part C of subchapter I of chapter 34 of title 42

of each such institution for a period not to exceed 6 years.

(2) Notification

The Secretary shall notify each institution of higher education not later than 6 months prior to the date of the expiration of the institution's certification.

(3) Institutions outside the United States

The Secretary shall promulgate regulations regarding the recertification requirements applicable to an institution of higher education outside of the United States that meets the requirements of section 1002(a)(1)(C) of this title and received less than $500,000 in funds under part B of this subchapter for the most recent year for which data are available.

(h) Provisional certification of institutional eligibility

(1) Notwithstanding subsections (d) and (g) of this section, the Secretary may provisionally certify an institution's eligibility to participate in programs under this subchapter and part C of subchapter I of chapter 34 of title 42—

(A) for not more than one complete award year in the case of an institution of higher education seeking an initial certification; and

(B) for not more than 3 complete award years if—

(i) the institution's administrative capability and financial responsibility is being determined for the first time;

(ii) there is a complete or partial change of ownership, as defined under subsection (i) of this section, of an eligible institution; or

(iii) the Secretary determines that an institution that seeks to renew its certification is, in the judgment of the Secretary, in an administrative or financial condition that may jeopardize its ability to perform its financial responsibilities under a program participation agreement.

(2) Whenever the Secretary withdraws the recognition of any accrediting agency, an institution of higher education which meets the requirements of accreditation, eligibility, and certification on the day prior to such withdrawal, the Secretary may, notwithstanding the withdrawal, continue the eligibility of the institution of higher education to participate in the programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42 for a period not to exceed 18 months from the date of the withdrawal of recognition.

(3) If, prior to the end of a period of provisional certification under this subsection, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may terminate the institution's participation in programs under this subchapter and part C of subchapter I of chapter 34 of title 42.

(i) Treatment of changes of ownership

(1) An eligible institution of higher education that has had a change in ownership resulting in a change of control shall not qualify to participate in programs under this subchapter and part C of subchapter I of chapter 34 of title 42 after the change in control (except as provided in paragraph (3)) unless it establishes that it meets the requirements of section 1002 of this title (other than the requirements in subsections (b)(5) and (c)(3)[1]) and this section after such change in control.

(2) An action resulting in a change in control may include (but is not limited to)—

(A) the sale of the institution or the majority of its assets;

(B) the transfer of the controlling interest of stock of the institution or its parent corporation;

(C) the merger of two or more eligible institutions;

(D) the division of one or more institutions into two or more institutions;

(E) the transfer of the controlling interest of stock of the institutions to its parent corporation; or

(F) the transfer of the liabilities of the institution to its parent corporation.

(3) An action that may be treated as not resulting in a change in control includes (but is not limited to)—

(A) the sale or transfer, upon the death of an owner of an institution, of the ownership interest of the deceased in that institution to a family member or to a person holding an ownership interest in that institution; or

(B) another action determined by the Secretary to be a routine business practice.

(4)(A) The Secretary may provisionally certify an institution seeking approval of a change in ownership based on the preliminary review by the Secretary of a materially complete application that is received by the Secretary within 10 business days of the transaction for which the approval is sought.

(B) A provisional certification under this paragraph shall expire not later than the end of the month following the month in which the transaction occurred, except that if the Secretary has not issued a decision on the application for the change of ownership within that period, the Secretary may continue such provisional certification on a month-to-month basis until such decision has been issued.

(j) Treatment of branches

(1) A branch of an eligible institution of higher education, as defined pursuant to regulations of the Secretary, shall be certified under this subpart before it may participate as part of such institution in a program under this subchapter and part C of subchapter I of chapter 34 of title 42, except that such branch shall not be required to meet the requirements of sections 1002(b)(1)(E) and 1002(c)(1)(C) of this title prior to seeking such certification. Such branch is required to be in existence at least 2 years after the branch is certified by the Secretary as a branch campus participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42, prior to seeking certification as a main campus or free-standing institution.

(2) The Secretary may waive the requirement of section 1001(a)(2) of this title for a branch

[1] See References in Text note below.

that (A) is not located in a State, (B) is affiliated with an eligible institution, and (C) was participating in one or more programs under this subchapter and part C of subchapter I of chapter 34 of title 42 on or before January 1, 1992.

(k) Treatment of teach-outs at additional locations

(1) In general

A location of a closed institution of higher education shall be eligible as an additional location of an eligible institution of higher education, as defined pursuant to regulations of the Secretary, for the purposes of a teach-out described in section 1094(f) of this title, if such teach-out has been approved by the institution's accrediting agency.

(2) Special rule

An institution of higher education that conducts a teach-out through the establishment of an additional location described in paragraph (1) shall be permitted to establish a permanent additional location at a closed institution and shall not be required—

(A) to meet the requirements of sections 1002(b)(1)(E) and 1002(c)(1)(C) of this title for such additional location; or

(B) to assume the liabilities of the closed institution.

(Pub. L. 89–329, title IV, § 498, as added Pub. L. 102–325, title IV, § 499, July 23, 1992, 106 Stat. 647; amended Pub. L. 103–208, § 2(i)(9)–(14), Dec. 20, 1993, 107 Stat. 2479, 2480; Pub. L. 105–244, title I, § 102(a)(6)(B), (b)(6), (7), title IV, § 493(a)–(c)(1), (d)–(h), Oct. 7, 1998, 112 Stat. 1618, 1622, 1761–1763; Pub. L. 110–315, title IV, § 496, Aug. 14, 2008, 122 Stat. 3327; Pub. L. 111–39, title IV, § 408(2), July 1, 2009, 123 Stat. 1953.)

REFERENCES IN TEXT

Subsections (b)(5) and (c)(3), referred to in subsec. (i)(1), originally meant subsections (b)(5) and (c)(3) of section 1088 of this title, see 1998 Amendment note below for subsec. (i)(1). Pub. L. 105–244, title I, § 101(c), Oct. 7, 1998, 112 Stat. 1617, amended section 1088 by striking out subsecs. (b) and (c) and redesignating subsecs. (e) and (f) as (b) and (c), respectively. Section 1002 of this title does not contain a subsec. (b)(5) or (c)(3), but provisions similar to those appearing in former subsecs. (b)(5) and (c)(3) of section 1088 are contained in subsecs. (b)(1)(E) and (c)(1)(C) of section 1002.

AMENDMENTS

2009—Subsec. (c)(2). Pub. L. 111–39 substituted ''for-profit'' for ''for profit''.

2008—Subsec. (d)(1)(B). Pub. L. 110–315, § 496(1), inserted ''and'' after semicolon.

Subsec. (k). Pub. L. 110–315, § 496(2), added subsec. (k).

1998—Subsec. (b)(1). Pub. L. 105–244, § 493(a)(1), substituted ''financial responsibility, and administrative capability'' for ''and capability''.

Subsec. (b)(3). Pub. L. 105–244, § 493(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''requires a description of third party servicers of an institution of higher education, together with a copy of any contract with the institution of higher education and a financial aid service provider or loan servicer; and''.

Subsec. (b)(5). Pub. L. 105–244, § 493(a)(3), (4), added par. (5).

Subsec. (c)(2). Pub. L. 105–244, § 493(b)(1)(B), inserted '', public,'' after ''for profit'' in second sentence.

Pub. L. 105–244, § 493(b)(1)(A), which directed amendment of first sentence by substituting ''regarding ratios that demonstrate financial responsibility,'' for ''with respect to operating losses, net worth, asset-to-liabilities ratios, or operating fund deficits'', was executed by making the substitution for text which read ''asset-to-liabilities ratios'' rather than ''asset to liabilities ratios'', to reflect the probable intent of Congress.

Subsec. (c)(3)(A). Pub. L. 105–244, § 493(b)(2), inserted ''that the Secretary determines are reasonable'' after ''Secretary third-party financial guarantees''.

Subsec. (c)(4). Pub. L. 105–244, § 493(b)(3)(A), substituted ''criteria'' for ''ratio of current assets to current liabilities'' in introductory provisions.

Subsec. (c)(4)(C). Pub. L. 105–244, § 493(b)(3)(B), substituted ''criteria'' for ''current operating ratio requirement''.

Subsec. (e)(6). Pub. L. 105–244, § 493(c)(1), added par. (6).

Subsec. (f). Pub. L. 105–244, § 493(d), substituted ''and site visits'' for ''; site visits and fees'' in heading, ''may'' for ''shall'' in second sentence, and ''shall establish'' for ''may establish'' and ''shall, to the extent practicable, coordinate'' for ''may coordinate'' in third sentence, and struck out at end ''The Secretary may charge reasonable fees to cover the expenses of certification and site visits and, to the extent permitted by appropriations Acts, may retain such fees to cover such expenses.''

Subsec. (g). Pub. L. 105–244, § 493(e), amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows:

''(1) The eligibility for the purposes of any program authorized under this subchapter and part C of subchapter I of chapter 34 of title 42 of any institution that is participating in any such program on July 23, 1992, shall expire in accordance with the schedule prescribed by the Secretary in accordance with paragraph (2), but not later than 5 years after July 23, 1992.

''(2) The Secretary shall establish a schedule for the expiration of the eligibility for purposes of any such program of all institutions of higher education within the 5-year period specified in paragraph (1). Such schedule shall place a priority for the expiration of the certification of institutions on those that meet the following criteria:

''(A) institutions subject to review by a State post-secondary review entity pursuant to subpart 1 of this part; or

''(B) other categories of institutions which the Secretary deems necessary.

''(3) After the expiration of the certification of any institution under the schedule prescribed under this subsection, or upon request for initial certification from an institution not previously certified, the Secretary may certify the eligibility for the purposes of any program authorized under this subchapter and part C of subchapter I of chapter 34 of title 42 of each such institution for a period not to exceed 4 years.''

Subsec. (h)(2). Pub. L. 105–244, § 493(f), substituted ''the recognition'' for ''the approval'' and ''of recognition'' for ''of approval''.

Subsec. (i)(1). Pub. L. 105–244, § 102(b)(6), substituted ''section 1002'' for ''section 1088''.

Subsec. (i)(4). Pub. L. 105–244, § 493(g), added par. (4).

Subsec. (j)(1). Pub. L. 105–244, § 493(h), inserted ''after the branch is certified by the Secretary as a branch campus participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42,'' after ''2 years''.

Pub. L. 105–244, § 102(b)(7)(A), substituted ''sections 1002(b)(1)(E) and 1002(c)(1)(C)'' for ''sections 1088(b)(5) and 1088(c)(3)''.

Subsec. (j)(2). Pub. L. 105–244, § 102(a)(6)(B), (b)(7)(B), amended par. (2) identically, substituting ''section 1001(a)(2)'' for ''section 1141(a)(2)''.

1993—Subsec. (c)(2). Pub. L. 103–208, § 2(i)(9)(A), inserted at end ''Such criteria shall take into account any differences in generally accepted accounting prin-

ciples, and the financial statements required thereunder, that are applicable to for profit and nonprofit institutions. The Secretary shall take into account an institution's total financial circumstances in making a determination of its ability to meet the standards herein required.''

Subsec. (c)(3). Pub. L. 103–208, § 2(i)(9)(B), substituted ''The Secretary shall determine'' for ''The Secretary may determine'' in introductory provisions.

Subsec. (c)(3)(C). Pub. L. 103–208, § 2(i)(9)(C), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''such institution establishes to the satisfaction of the Secretary, with the support of a report of an independent certified public accountant prepared under generally accepted accounting principles, that the institution is a going concern capable of meeting all of its financial obligations, including (but not limited to) refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary; or''.

Subsec. (c)(4) to (6). Pub. L. 103–208, § 2(i)(9)(D), (E), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (f). Pub. L. 103–208, § 2(i)(10), inserted after second sentence ''The Secretary may establish priorities by which institutions are to receive site visits, and may coordinate such visits with site visits by States, guaranty agencies, and accrediting bodies in order to eliminate duplication, and reduce administrative burden.''

Subsec. (h)(1)(B)(iii). Pub. L. 103–208, § 2(i)(11), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''the Secretary determines that the institution is, in the judgment of the Secretary, in an administrative or financial condition that may jeopardize its ability to perform its responsibilities under its program participation agreement.''

Subsec. (i)(1). Pub. L. 103–208, § 2(i)(12), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purpose of certifying the eligibility of an institution, an eligible institution of higher education that has a change in ownership resulting in a change in control shall not be considered to be the same institution (except as provided in paragraph (3)) and shall be considered a new institution for the purpose of establishing eligibility, except that such institution shall not be required (under section 1088(b)(5) or 1088(c)(3) of this title) to be in existence for 2 years prior to seeking such certification unless such institution was in existence as a branch for less than 2 years.''

Subsec. (i)(3)(A). Pub. L. 103–208, § 2(i)(13), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the death of an owner of an institution, when the owner's interest is sold or transferred to either a family member or a current stockholder of the corporation; or''.

Subsec. (j)(1). Pub. L. 103–208, § 2(i)(14), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purposes of this subchapter and part C of subchapter I of chapter 34 of title 42, a branch of an eligible institution, as defined pursuant to regulations of the Secretary, is a separate institution of higher education and shall separately meet all the requirements of this subchapter and part C of subchapter I of chapter 34 of title 42, except that such institution shall not be required (under section 1088(b)(5) or 1088(c)(3) of this title) to be in existence for 2 years prior to seeking such certification unless such institution was in existence as a branch for less than 2 years.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by sections 102(a)(6)(B), (b)(6), (7) and 493(a), (b), (d)–(h) of Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

Pub. L. 105–244, title IV, § 493(c)(2), Oct. 7, 1998, 112 Stat. 1762, provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to any unpaid refunds that were first required to be paid to a lender or to the Secretary on or after 90 days after the date of enactment of this Act [Oct. 7, 1998].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE

Subpart effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as an Effective Date of 1992 Amendment note under section 1001 of this title.

§ 1099c–1. Program review and data

(a) General authority

In order to strengthen the administrative capability and financial responsibility provisions of this subchapter and part C of subchapter I of chapter 34 of title 42, the Secretary—

(1) shall provide for the conduct of program reviews on a systematic basis designed to include all institutions of higher education participating in programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42;

(2) shall give priority for program review to institutions of higher education that are—

(A) institutions with a cohort default rate for loans under part B of this subchapter in excess of 25 percent or which places such institutions in the highest 25 percent of such institutions;

(B) institutions with a default rate in dollar volume for loans under part B of this subchapter which places the institutions in the highest 25 percent of such institutions;

(C) institutions with a significant fluctuation in Federal Stafford Loan volume, Federal Direct Stafford/Ford Loan volume, or Federal Pell Grant award volume, or any combination thereof, in the year for which the determination is made, compared to the year prior to such year, that are not accounted for by changes in the Federal Stafford Loan program, the Federal Direct Stafford/Ford Loan program, or the Pell Grant program, or any combination thereof;

(D) institutions reported to have deficiencies or financial aid problems by the State licensing or authorizing agency, or by the appropriate accrediting agency or association;

(E) institutions with high annual dropout rates; and

(F) such other institutions that the Secretary determines may pose a significant risk of failure to comply with the administrative capability or financial responsibility provisions of this subchapter and part C of subchapter I of chapter 34 of title 42; and

(3) shall establish and operate a central data base of information on institutional accredita-

tion, eligibility, and certification that includes—

(A) all relevant information available to the Department;

(B) all relevant information made available by the Secretary of Veterans Affairs;

(C) all relevant information from accrediting agencies or associations;

(D) all relevant information available from a guaranty agency; and

(E) all relevant information available from States under subpart 1 of this part.

(b) Special administrative rules

In carrying out paragraphs (1) and (2) of subsection (a) of this section and any other relevant provisions of this subchapter and part C of subchapter I of chapter 34 of title 42, the Secretary shall—

(1) establish guidelines designed to ensure uniformity of practice in the conduct of program reviews of institutions of higher education;

(2) make available to each institution participating in programs authorized under this subchapter and part C of subchapter I of chapter 34 of title 42 complete copies of all review guidelines and procedures used in program reviews;

(3) permit the institution to correct or cure an administrative, accounting, or recordkeeping error if the error is not part of a pattern of error and there is no evidence of fraud or misconduct related to the error;

(4) base any civil penalty assessed against an institution of higher education resulting from a program review or audit on the gravity of the violation, failure, or misrepresentation;

(5) inform the appropriate State and accrediting agency or association whenever the Secretary takes action against an institution of higher education under this section, section 1099c of this title, or section 1082 of this title;

(6) provide to an institution of higher education an adequate opportunity to review and respond to any program review report and relevant materials related to the report before any final program review report is issued;

(7) review and take into consideration an institution of higher education's response in any final program review report or audit determination, and include in the report or determination—

(A) a written statement addressing the institution of higher education's response;

(B) a written statement of the basis for such report or determination; and

(C) a copy of the institution's response; and

(8) maintain and preserve at all times the confidentiality of any program review report until the requirements of paragraphs (6) and (7) are met, and until a final program review is issued, other than to the extent required to comply with paragraph (5), except that the Secretary shall promptly disclose any and all program review reports to the institution of higher education under review.

(c) Data collection rules

The Secretary shall develop and carry out a plan for the data collection responsibilities described in paragraph (3) of subsection (a) of this section. The Secretary shall make the information obtained under such paragraph (3) readily available to all institutions of higher education, guaranty agencies, States, and other organizations participating in the programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42.

(d) Training

The Secretary shall provide training to personnel of the Department, including criminal investigative training, designed to improve the quality of financial and compliance audits and program reviews conducted under this subchapter and part C of subchapter I of chapter 34 of title 42.

(e) Special rule

The provisions of section 3403(b) of this title shall not apply to Secretarial determinations made regarding the appropriate length of instruction for programs measured in clock hours.

(Pub. L. 89–329, title IV, § 498A, as added Pub. L. 102–325, title IV, § 499, July 23, 1992, 106 Stat. 652; amended Pub. L. 103–208, § 2(i)(15), Dec. 20, 1993, 107 Stat. 2480; Pub. L. 105–244, title IV, § 494, Oct. 7, 1998, 112 Stat. 1763; Pub. L. 110–315, title IV, § 497, Aug. 14, 2008, 122 Stat. 3328.)

AMENDMENTS

2008—Subsec. (b)(6) to (8). Pub. L. 110–315 added pars. (6) to (8).

1998—Subsec. (a)(2). Pub. L. 105–244, § 494(1)(A)(i), substituted ''shall'' for ''may'' in introductory provisions.

Subsec. (a)(2)(C). Pub. L. 105–244, § 494(1)(A)(ii), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''institutions with a significant fluctuation in Federal Stafford Loan volume or Federal Pell Grant awards, or both, in the year for which the determination is made compared to the year prior to such year;''.

Subsec. (a)(2)(D). Pub. L. 105–244, § 494(1)(A)(iii), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''institutions reported to have deficiencies or financial aid problems by the appropriate State postsecondary review entity designated under subpart 1 of this part or by the appropriate accrediting agency or association;''.

Subsec. (a)(2)(E). Pub. L. 105–244, § 494(1)(A)(iv), inserted ''and'' after the semicolon.

Subsec. (a)(2)(F), (G). Pub. L. 105–244, § 494(1)(A)(v), added subpar. (F) and struck out former subpars. (F) and (G) which read as follows:

''(F) any institution which is required to be reviewed by a State postsecondary review entity pursuant to subpart 1 of this part under section 1099a–3(b) of this title; and

''(G) such other institutions as the Secretary deems necessary; and''.

Subsec. (a)(3)(A). Pub. L. 105–244, § 494(1)(B), inserted ''relevant'' after ''all''.

Subsec. (b). Pub. L. 105–244, § 494(2), amended heading and text of subsec. (b). Prior to amendment, text read as follows:

''(1) In carrying out paragraphs (1) and (2) of subsection (a) of this section, the Secretary shall establish guidelines designed to ensure uniformity of practice in the conduct of program reviews of institutions of higher education.

''(2) The Secretary shall review the regulations of the Department and the application of such regulations to ensure the uniformity of interpretation and application of the regulations.''

1993—Subsec. (e). Pub. L. 103–208 struck out comma after ''title''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

§ 1099c–2. Review of regulations

(a) Review required

The Secretary shall review each regulation issued under this subchapter and part C of subchapter I of chapter 34 of title 42 that is in effect at the time of the review and applies to the operations or activities of any participant in the programs assisted under this subchapter and part C of subchapter I of chapter 34 of title 42. The review shall include a determination of whether the regulation is duplicative, or is no longer necessary. The review may involve one or more of the following:

(1) An assurance of the uniformity of interpretation and application of such regulations.

(2) The establishment of a process for ensuring that eligibility and compliance issues, such as institutional audit, program review, and recertification, are considered simultaneously.

(3) A determination of the extent to which unnecessary costs are imposed on institutions of higher education as a consequence of the applicability to the facilities and equipment of such institutions of regulations prescribed for purposes of regulating industrial and commercial enterprises.

(b) Regulatory and statutory relief for small volume institutions

The Secretary shall review and evaluate ways in which regulations under and provisions of this chapter and part C of subchapter I of chapter 34 of title 42 affecting institution of higher education (other than institutions described in section 1002(a)(1)(C) of this title), that have received in each of the two most recent award years prior to October 7, 1998, less than $200,000 in funds through this subchapter and part C of subchapter I of chapter 34 of title 42, may be improved, streamlined, or eliminated.

(c) Consultation

In carrying out subsections (a) and (b) of this section, the Secretary shall consult with relevant representatives of institutions participating in the programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42.

(Pub. L. 89–329, title IV, § 498B, as added Pub. L. 105–244, title IV, § 495, Oct. 7, 1998, 112 Stat. 1764; amended Pub. L. 110–315, title IV, § 498, Aug. 14, 2008, 122 Stat. 3328.)

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–315 struck out subsec. (d) which required the Secretary to submit reports to Congress.

EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

PART H—COMPETITIVE LOAN AUCTION PILOT PROGRAM

CODIFICATION

This part was added as part I of title IV of Pub. L. 89–329 by Pub. L. 110–84, title VII, § 701, Sept. 27, 2007, 121 Stat. 808. The letter designation of this part was changed from ''I'' to ''H'' for codification purposes. See Codification note preceding section 1087a of this title.

§ 1099d. Competitive loan auction pilot program

(a) Definitions

In this section:

(1) Eligible Federal PLUS Loan

The term ''eligible Federal PLUS Loan'' means a loan described in section 1078–2 of this title made to a parent of a dependent student who is a new borrower on or after July 1, 2009.

(2) Eligible lender

The term ''eligible lender'' has the meaning given the term in section 1085 of this title.

(b) Pilot program

The Secretary shall carry out a pilot program under which the Secretary establishes a mechanism for an auction of eligible Federal PLUS Loans in accordance with this subsection. The pilot program shall meet the following requirements:

(1) Planning and implementation

During the period beginning on September 27, 2007, and ending on June 30, 2009, the Secretary shall plan and implement the pilot program under this subsection. During the planning and implementation, the Secretary shall consult with other Federal agencies with knowledge of, and experience with, auction programs, including the Federal Communication Commission and the Department of the Treasury.

(2) Origination and disbursement; applicability of section 1078–2

Beginning on July 1, 2009, the Secretary shall arrange for the origination and disbursement of all eligible Federal PLUS Loans in accordance with the provisions of this subsection and the provisions of section 1078–2 of this title that are not inconsistent with this subsection.

(3) Loan origination mechanism

The Secretary shall establish a loan origination auction mechanism that meets the following requirements:

(A) Auction for each State

The Secretary administers an auction under this paragraph for each State, under which eligible lenders compete to originate eligible Federal PLUS Loans under this paragraph at all institutions of higher education within such State.

(B) Prequalification process

The Secretary establishes a prequalification process for eligible lenders

desiring to participate in an auction under this paragraph that contains, at a minimum—

(i) a set of borrower benefits and servicing requirements each eligible lender shall meet in order to participate in such an auction;

(ii) an assessment of each such eligible lender's capacity, including capital capacity, to participate effectively; and

(iii) a commitment from such eligible lender that, if the lender has a winning bid under subparagraph (F), the lender will enter into the agreement required under subparagraph (G).

(C) Timing and origination

Each State auction takes place every 2 years, and the eligible lenders with the winning bids for the State are the only eligible lenders permitted to originate eligible Federal PLUS Loans made under this paragraph for the cohort of students at the institutions of higher education within the State until the students graduate from or leave the institutions of higher education.

(D) Bids

Each eligible lender's bid consists of the amount of the special allowance payment (after the application of section 1087–1(b)(2)(I)(v) of this title) the eligible lender proposes to accept from the Secretary with respect to the eligible Federal PLUS Loans made under this paragraph in lieu of the amount determined under section 1087–1(b)(2)(I) of this title.

(E) Maximum bid

The maximum bid allowable under this paragraph shall not exceed the amount of the special allowance payable on eligible Federal PLUS Loans made under this paragraph computed under section 1087–1(b)(2)(I) of this title (other than clauses (ii), (iii), (iv), and (vi) of such section), except that for purposes of the computation under this subparagraph, section 1087–1(b)(2)(I)(i)(III) of this title shall be applied by substituting ''1.79 percent'' for ''2.34 percent''.

(F) Winning bids

The winning bids for each State auction shall be the 2 bids containing the lowest and the second lowest proposed special allowance payments, subject to subparagraph (E).

(G) Agreement with Secretary; compliance

(i) Agreement

Each eligible lender having a winning bid under subparagraph (F) shall enter into an agreement with the Secretary under which the eligible lender—

(I) agrees to originate eligible Federal PLUS Loans under this paragraph to each borrower who—

(aa) seeks an eligible Federal PLUS Loan under this paragraph to enable a dependent student to attend an institution of higher education within the State;

(bb) is eligible for an eligible Federal PLUS Loan; and

(cc) elects to borrow from the eligible lender; and

(II) agrees to accept a special allowance payment (after the application of section 1087–1(b)(2)(I)(v) of this title) from the Secretary with respect to the eligible Federal PLUS Loans originated under subclause (I) in the amount proposed in the second lowest winning bid described in subparagraph (F) for the applicable State auction.

(ii) Compliance

If an eligible lender with a winning bid under subparagraph (F) fails to enter into the agreement required under clause (i), or fails to comply with the terms of such agreement, the Secretary may sanction such eligible lender through one or more of the following:

(I) The assessment of a penalty on such eligible lender for any eligible Federal PLUS Loans that such eligible lender fails to originate under this paragraph in accordance with the agreement required under clause (i), in the amount of the additional costs (including the amounts of any increase in special allowance payments) incurred by the Secretary in obtaining another eligible lender to originate such eligible Federal PLUS Loans. The Secretary shall collect such penalty by—

(aa) reducing the amount of any payments otherwise due to such eligible lender from the Secretary by the amount of the penalty; or

(bb) requesting any other Federal agency to reduce the amount of any payments due to such eligible lender from such agency by the amount of the penalty, in accordance with section 3716 of title 31.

(II) A prohibition of bidding by such lender in other auctions under this section.

(III) The limitation, suspension, or termination of such eligible lender's participation in the loan program under part B.

(IV) Any other enforcement action the Secretary is authorized to take under part B.

(H) Sealed bids; confidentiality

All bids are sealed and the Secretary keeps the bids confidential, including following the announcement of the winning bids.

(I) Eligible lender of last resort

(i) In general

In the event that there is no winning bid under subparagraph (F), the students at the institutions of higher education within the State that was the subject of the auction shall be served by an eligible lender of last resort, as determined by the Secretary.

(ii) Determination of eligible lender of last resort

Prior to the start of any auction under this paragraph, eligible lenders that desire

to serve as an eligible lender of last resort shall submit an application to the Secretary at such time and in such manner as the Secretary may determine. Such application shall include an assurance that the eligible lender will meet the prequalification requirements described in subparagraph (B).

(iii) Geographic location

The Secretary shall identify an eligible lender of last resort for each State.

(iv) Notification timing

The Secretary shall not identify any eligible lender of last resort until after the announcement of all the winning bids for a State auction for any year.

(v) Maximum special allowance

The Secretary is authorized to set a special allowance payment that shall be payable to a lender of last resort for a State under this subparagraph, which special allowance payment shall be kept confidential, including following the announcement of winning bids. The Secretary shall set such special allowance payment so that it incurs the lowest possible cost to the Federal Government, taking into consideration the lowest bid that was submitted in an auction for such State and the lowest bid submitted in a similar State, as determined by the Secretary.

(J) Guarantee against losses

Each eligible Federal PLUS Loan originated under this paragraph shall be insured by a guaranty agency in accordance with part B, except that, notwithstanding section 1078(b)(1)(G) of this title, such insurance shall be in an amount equal to 99 percent of the unpaid principal and interest due on the loan.

(K) Loan fees

The Secretary shall not collect a loan fee under section 1087–1(d) of this title with respect to an eligible Federal Plus Loan originated under this paragraph.

(L) Consolidation

(i) In general

An eligible lender who is permitted to originate eligible Federal PLUS Loans for a borrower under this paragraph shall have the option to consolidate such loans into 1 loan.

(ii) Notification

In the event a borrower with eligible Federal PLUS Loans made under this paragraph wishes to consolidate the loans, the borrower shall notify the eligible lender who originated the loans under this paragraph.

(iii) Limitation on eligible lender option to consolidate

The option described in clause (i) shall not apply if—

(I) the borrower includes in the notification in clause (ii) verification of consolidation terms and conditions offered by an eligible lender other than the eligible lender described in clause (i); and

(II) not later than 10 days after receiving such notification from the borrower, the eligible lender described in clause (i) does not agree to match such terms and conditions, or provide more favorable terms and conditions to such borrower than the offered terms and conditions described in subclause (I).

(iv) Consolidation of additional loans

If a borrower has a Federal Direct PLUS Loan or a loan made on behalf of a dependent student under section 1078–2 of this title and seeks to consolidate such loan with an eligible Federal PLUS Loan made under this paragraph, then the eligible lender that originated the borrower's loan under this paragraph may include in the consolidation under this subparagraph a Federal Direct PLUS Loan or a loan made on behalf of a dependent student under section 1078–2 of this title, but only if—

(I) in the case of a Federal Direct PLUS Loan, the eligible lender agrees, not later than 10 days after the borrower requests such consolidation from the lender, to match the consolidation terms and conditions that would otherwise be available to the borrower if the borrower consolidated such loans in the loan program under part C; or

(II) in the case of a loan made on behalf of a dependent student under section 1078–2 of this title, the eligible lender agrees, not later than 10 days after the borrower requests such consolidation from the lender, to match the consolidation terms and conditions offered by an eligible lender other than the eligible lender that originated the borrower's loans under this paragraph.

(v) Special allowance on consolidation loans that include loans made under this paragraph

The applicable special allowance payment for loans consolidated under this paragraph shall be equal to the lesser of—

(I) the weighted average of the special allowance payment on such loans, except that in calculating such weighted average the Secretary shall exclude any Federal Direct PLUS Loan included in the consolidation; or

(II) the result of—

(aa) the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period; plus

(bb) 1.59 percent.

(vi) Interest payment rebate fee

Any loan under section 1078–3 of this title consolidated under this paragraph shall not be subject to the interest payment rebate fee under section 1078–3(f) of this title.

(c) Required initial evaluation

The Secretary and Secretary of the Treasury shall jointly conduct an evaluation, in consultation with the Office of Management and Budget, the Congressional Budget Office, and the Comptroller General, of the pilot program carried out by the Secretary under this section. The evaluation shall determine—

(1) the extent of the savings to the Federal Government that are generated through the pilot program, compared to the cost the Federal Government would have incurred in operating the PLUS loan program under section 1078–2 of this title in the absence of the pilot program;

(2) the number of lenders that participated in the pilot program, and the extent to which the pilot program generated competition among lenders to participate in the auctions under the pilot program;

(3) the number and volume of loans made under the pilot program in each State;

(4) the effect of the transition to and operation of the pilot program on the ability of—

(A) lenders participating in the pilot program to originate loans made through the pilot program smoothly and efficiently;

(B) institutions of higher education participating in the pilot program to disburse loans made through the pilot program smoothly and efficiently; and

(C) parents to obtain loans made through the pilot program in a timely and efficient manner;

(5) the differential impact, if any, of the auction among the States, including between rural and non-rural States; and

(6) the feasibility of using the mechanism piloted to operate the other loan programs under part B of this subchapter.

(d) Reports

(1) In general

The Secretary and the Secretary of the Treasury shall submit to the authorizing committees—

(A) not later than September 1, 2010, a preliminary report regarding the findings of the evaluation described in subsection (c);

(B) not later than September 1, 2012, an interim report regarding such findings; and

(C) not later than September 1, 2013, a final report regarding such findings.

(2) Contents

The Secretary shall include, in each report required under subparagraphs (A), (B), and (C) of paragraph (1), any recommendations, that are based on the findings of the evaluation under subsection (c), for—

(A) improving the operation and administration of the auction; and

(B) improving the operation and administration of other loan programs under part B.

(Pub. L. 89–329, title IV, § 499, as added Pub. L. 110–84, title VII, § 701, Sept. 27, 2007, 121 Stat. 808; amended Pub. L. 110–315, title IV, § 499, Aug. 14, 2008, 122 Stat. 3328.)

AMENDMENTS

2008—Subsec. (b)(3)(B)(iii). Pub. L. 110–315, § 499(1)(A), added cl. (iii).

Subsec. (b)(3)(G). Pub. L. 110–315, § 499(1)(B), added subpar. (G) and struck out former subpar. (G). Text of former subpar. (G) read as follows: ''Each eligible lender having a winning bid under subparagraph (F) enters into an agreement with the Secretary under which the eligible lender—

''(i) agrees to originate eligible Federal PLUS Loans under this paragraph to each borrower who—

''(I) seeks an eligible Federal PLUS Loan under this paragraph to enable a dependent student to attend an institution of higher education within the State;

''(II) is eligible for an eligible Federal PLUS Loan; and

''(III) elects to borrow from the eligible lender; and

''(ii) agrees to accept a special allowance payment (after the application of section 1087–1(b)(2)(I)(v) of this title) from the Secretary with respect to the eligible Federal PLUS Loans originated under clause (i) in the amount proposed in the second lowest winning bid described in subparagraph (F) for the applicable State auction.''

Subsec. (b)(3)(J). Pub. L. 110–315, § 499(1)(C), added subpar. (J) and struck out former subpar. (J). Text of former subpar. (J) read as follows: ''The Secretary guarantees the eligible Federal PLUS Loans made under this paragraph against losses resulting from the default of a parent borrower in an amount equal to 99 percent of the unpaid principal and interest due on the loan.''

Subsecs. (c), (d). Pub. L. 110–315, § 499(2), added subsecs. (c) and (d).

EFFECTIVE DATE

Section effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as an Effective Date of 2007 Amendment note under section 1070a of this title.

PART I—TRANSFERRED

CODIFICATION

Part J of title IV of Pub. L. 89–329, comprising this part, was redesignated part F of title III of Pub. L. 89–329 by Pub. L. 110–315, title III, § 316(a)(2), Aug. 14, 2008, 122 Stat. 3185, and transferred to part F (§ 1067q) of subchapter III of this chapter.

§ 1099e. Transferred

CODIFICATION

Section, Pub. L. 89–329, title IV, § 499A, as added Pub. L. 110–84, title VIII, § 802, Sept. 27, 2007, 121 Stat. 817, which related to investment in historically Black colleges and universities and other minority-serving institutions, was transferred to section 1067q of this title.

SUBCHAPTER V—DEVELOPING INSTITUTIONS

CODIFICATION

Title V of the Higher Education Act of 1965, comprising this subchapter, was originally enacted by Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1254; amended Pub. L. 90–35, June 29, 1967, 81 Stat. 81; Pub. L. 90–83, Sept. 11, 1967, 81 Stat. 195; Pub. L. 90–247, Jan. 2, 1968, 81 Stat. 783; Pub. L. 90–575, Oct. 16, 1968, 82 Stat. 1014; Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 121; Pub. L. 92–318, June 23, 1972, 86 Stat. 235; Pub. L. 93–380, Aug. 21, 1974, 88 Stat. 484; Pub. L. 94–482, Oct. 12, 1976, 90 Stat. 2081; Pub. L. 95–43, June 15, 1977, 91 Stat. 213; Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2143; Pub. L. 96–49, Aug. 13, 1979, 93 Stat. 351; Pub. L. 96–88, Oct. 17, 1979, 93 Stat. 668; Pub. L. 96–374, Oct. 3, 1980, 94 Stat. 1367; Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 357; Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322; Pub. L. 98–558, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99–386, Aug. 22, 1986, 100 Stat. 821; Pub. L. 99–498, Oct. 17, 1986, 100 Stat. 1268; Pub. L. 100–50, June 3, 1987, 101 Stat. 335; Pub. L. 101–226, Dec. 12, 1989, 103 Stat. 1928; Pub. L. 102–325, July