

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)<sup>1</sup> 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 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 non-profit student loan insurance program which is

<sup>1</sup> See References in Text note below.