

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

Pub. L. 104-208, div. A, title I, §101(e) [title VI, §602(b)(1)(B)], Sept. 30, 1996, 110 Stat. 3009-233, 3009-284, 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.

Pub. L. 103-66, title IV, §4046(c), Aug. 10, 1993, 107 Stat. 363, 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

Pub. L. 102-408, title III, §306(c), Oct. 13, 1992, 106 Stat. 2086, 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

Pub. L. 105-78, title VI, §609(f), Nov. 13, 1997, 111 Stat. 1523, 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 find-

ings 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 continues 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 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.

PUBLICITY THROUGH COMMUNICATIONS MEDIA OF AVAILABILITY OF DEFAULT REDUCTION PROGRAM

Pub. L. 101-239, title II, §2005(b), Dec. 19, 1989, 103 Stat. 2118, 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”.