

dent 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 attempting 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 con-

cerning 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