

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

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 subsection (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 ar-

rangements 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.