

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 de-

fault 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 default 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—