

§ 292f. Default of borrower**(a) Conditions for payment to beneficiary****(1) In general**

Upon default by the borrower on any loan covered by Federal loan insurance pursuant to this subpart, and after a substantial collection effort (including, subject to subsection (h) of this section, commencement and prosecution of an action) as determined under regulations of the Secretary, 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 his 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, except that, if the insurance beneficiary including any servicer of the loan is not designated for “exceptional performance”, as set forth in paragraph (2), the Secretary shall pay to the beneficiary a sum equal to 98 percent of the amount of the loss sustained by the insured upon that loan.

(2) Exceptional performance**(A) Authority**

Where the Secretary determines that an eligible lender, holder, or servicer has a compliance performance rating that equals or exceeds 97 percent, the Secretary shall designate that eligible lender, holder, or servicer, as the case may be, for exceptional performance.

(B) Compliance performance rating

For purposes of subparagraph (A), a compliance performance rating is determined with respect to compliance with due diligence in the disbursement, servicing, and collection of loans under this subpart for each year for which the determination is made. Such rating shall be equal to the percentage of all due diligence requirements applicable to each loan, on average, as established by the Secretary, with respect to loans serviced during the period by the eligible lender, holder, or servicer.

(C) Annual audits for lenders, holders, and servicers

Each eligible lender, holder, or servicer desiring a designation under subparagraph (A) shall have an annual financial and compliance audit conducted with respect to the loan portfolio of such eligible lender, holder, or servicer, by a qualified independent organization from a list of qualified organizations identified by the Secretary and in accordance with standards established by the Secretary. The standards shall measure the lender's, holder's, or servicer's compliance with due diligence standards and shall include a defined statistical sampling technique designed to measure the performance rating of the eligible lender, holder, or servicer for the purpose of this section. Each eligible lender, holder, or servicer shall submit the audit required by this section to the Secretary.

(D) Secretary's determinations

The Secretary shall make the determination under subparagraph (A) based upon the audits submitted under this paragraph and any information in the possession of the Secretary or submitted by any other agency or office of the Federal Government.

(E) Quarterly compliance audit

To maintain its status as an exceptional performer, the lender, holder, or servicer shall undergo a quarterly compliance audit at the end of each quarter (other than the quarter in which status as an exceptional performer is established through a financial and compliance audit, as described in subparagraph (C)), and submit the results of such audit to the Secretary. The compliance audit shall review compliance with due diligence requirements for the period beginning on the day after the ending date of the previous audit, in accordance with standards determined by the Secretary.

(F) Revocation authority

The Secretary shall revoke the designation of a lender, holder, or servicer under subparagraph (A) if any quarterly audit required under subparagraph (E) is not received by the Secretary by the date established by the Secretary or if the audit indicates the lender, holder, or servicer has failed to meet the standards for designation as an exceptional performer under subparagraph (A). A lender, holder, or servicer receiving a compliance audit not meeting the standard for designation as an exceptional performer may reapply for designation under subparagraph (A) at any time.

(G) Documentation

Nothing in this section shall restrict or limit the authority of the Secretary to require the submission of claims documentation evidencing servicing performed on loans, except that the Secretary may not require exceptional performers to submit greater documentation than that required for lenders, holders, and servicers not designated under subparagraph (A).

(H) Cost of audits

Each eligible lender, holder, or servicer shall pay for all the costs associated with the audits required under this section.

(I) Additional revocation authority

Notwithstanding any other provision of this section, a designation under subparagraph (A) may be revoked at any time by the Secretary if the Secretary determines that the eligible lender, holder, or servicer has failed to maintain an overall level of compliance consistent with the audit submitted by the eligible lender, holder, or servicer under this paragraph or if the Secretary asserts that the lender, holder, or servicer may have engaged in fraud in securing designation under subparagraph (A) or is failing to service loans in accordance with program requirements.

(J) Noncompliance

A lender, holder, or servicer designated under subparagraph (A) that fails to service

loans or otherwise comply with applicable program regulations shall be considered in violation of the Federal False Claims Act.

(b) Subrogation

Upon payment by the Secretary 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) exceeds the amount of the loss, the excess shall be paid over to the insured. The Secretary may sell without recourse to eligible lenders (or other entities that the Secretary determines are capable of dealing in such loans) notes or other evidence of loans received through assignment under the first sentence.

(c) Forbearance

Nothing in this section or in this subpart shall be construed to preclude any forbearance for the benefit of the 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.

(d) Reasonable care and diligence regarding loans

Nothing in this section or in this subpart shall be construed to excuse the eligible lender or holder of a federally insured loan from exercising reasonable care and diligence in the making of loans under the provisions of this subpart and from exercising a substantial effort in the collection of loans under the provisions of this subpart. If the Secretary, after reasonable notice and opportunity for hearing to an eligible lender, finds that the lender has failed to exercise such care and diligence, to exercise such substantial efforts, to make the reports and statements required under section 292e(a)(3) of this title, or to pay the required Federal loan insurance premiums, he shall disqualify that lender from obtaining further Federal insurance on loans granted pursuant to this subpart until he 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, exercise substantial effort, or comply with such requirements, as the case may be.

(e) Definitions

For purposes of this section:

(1) The term "insurance beneficiary" means the insured or its authorized assignee in accordance with section 292e(c) of this title.

(2) The term "amount of the loss" means, with respect to a loan, unpaid balance of the principal amount and interest on such loan, less the amount of any judgment collected pursuant to default proceedings commenced by the eligible lender or holder involved.

(3) The term "default" includes only such defaults as have existed for 120 days.

(4) The term "servicer" means any agency acting on behalf of the insurance beneficiary.

(f) Reductions in Federal reimbursements or payments for defaulting borrowers

The Secretary shall, after notice and opportunity for a hearing, cause to be reduced Federal reimbursements or payments for health services under any Federal law to borrowers who are practicing their professions and have defaulted on their loans insured under this subpart in amounts up to the remaining balance of such loans. Procedures for reduction of payments under the Medicare program are provided under section 1395ccc of this title. Notwithstanding such section 1395ccc of this title, any funds recovered under this subsection shall be deposited in the insurance fund established under section 292i of this title.

(g) Conditions for discharge of debt in bankruptcy

Notwithstanding any other provision of Federal or State law, a debt that is a loan insured under the authority of this subpart may be released by a discharge in bankruptcy under any chapter of title 11, only if such discharge is granted—

(1) after the expiration of the seven-year period beginning on the first date when repayment of such loan is required, exclusive of any period after such date in which the obligation to pay installments on the loan is suspended;

(2) upon a finding by the Bankruptcy Court that the nondischarge of such debt would be unconscionable; and

(3) upon the condition that the Secretary shall not have waived the Secretary's rights to apply subsection (f) of this section to the borrower and the discharged debt.

(h) Requirement regarding actions for default

(1) In general

With respect to the default by a borrower on any loan covered by Federal loan insurance under this subpart, the Secretary shall, under subsection (a) of this section, require an eligible lender or holder to commence and prosecute an action for such default unless—

(A) in the determination of the Secretary—

(i) the eligible lender or holder has made reasonable efforts to serve process on the borrower involved and has been unsuccessful with respect to such efforts, or

(ii) prosecution of such an action would be fruitless because of the financial or other circumstances of the borrower;

(B) for such loans made before November 4, 1988, the loan involved was made in an amount of less than \$5,000; or

(C) for such loans made after November 4, 1988, the loan involved was made in an amount of less than \$2,500.

(2) Relationship to claim for payment

With respect to an eligible lender or holder that has commenced an action pursuant to subsection (a) of this section, the Secretary shall make the payment required in such subsection, or deny the claim for such payment, not later than 60 days after the date on which the Secretary determines that the lender or holder has made reasonable efforts to secure a

judgment and collect on the judgment entered into pursuant to this subsection.

(3) State court judgments

With respect to any State court judgment that is obtained by a lender or holder against a borrower for default on a loan insured under this subpart and that is subrogated to the United States under subsection (b) of this section, any United States attorney may register such judgment with the Federal courts for enforcement.

(i) Inapplicability of Federal and State statute of limitations on actions for loan collection

Notwithstanding any other provision of Federal or State law, there shall be no limitation on the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action may be initiated or taken by the Secretary, the Attorney General, or other administrative head of another Federal agency, as the case may be, for the repayment of the amount due from a borrower on a loan made under this subpart that has been assigned to the Secretary under subsection (b) of this section.

(j) School collection assistance

An institution or postgraduate training program attended by a borrower may assist in the collection of any loan of that borrower made under this subpart which becomes delinquent, including providing information concerning the borrower to the Secretary and to past and present lenders and holders of the borrower's loans, contacting the borrower in order to encourage repayment, and withholding services in accordance with regulations issued by the Secretary under section 292n(a)(7) of this title. The institution or postgraduate training program shall not be subject to section 1692g of title 15 for purposes of carrying out activities authorized by this section.

(July 1, 1944, ch. 373, title VII, §707, as added Pub. L. 102-408, title I, §102, Oct. 13, 1992, 106 Stat. 2002; amended Pub. L. 103-43, title XX, §2014(a)(2), June 10, 1993, 107 Stat. 215; Pub. L. 105-392, title I, §§142(a), (b), 144(a), Nov. 13, 1998, 112 Stat. 3579, 3581.)

REFERENCES IN TEXT

The Federal False Claims Act, referred to in subsec. (a)(2)(J), probably means the False Claims Act which was the popular name for sections 231, 232, 233, and 235 of former Title 31, Money and Finance. Sections 231, 232, 233, and 235 were repealed by Pub. L. 97-258, §5(b), Sept. 13, 1982, 96 Stat. 1084, and reenacted by the first section thereof as sections 3729 to 3731 of Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 292f, act July 1, 1944, ch. 373, title VII, §706, as added Oct. 12, 1976, Pub. L. 94-484, title II, §204, 90 Stat. 2249, authorized contracts under this subchapter without regard to certain provisions, prior to the general revision of this subchapter by Pub. L. 102-408.

Another prior section 292f, act July 1, 1944, ch. 373, title VII, §707, as added July 30, 1956, ch. 779, §2, 70 Stat. 720; amended Oct. 5, 1961, Pub. L. 87-395, §8(d), 75 Stat. 827; Sept. 24, 1963, Pub. L. 88-129, §2(a), 77 Stat. 164; Nov. 18, 1971, Pub. L. 92-157, title I, §102(k)(2)(A), 85 Stat. 437, provided for recapture of payments relating to grants for construction of health research facilities, prior to

repeal by Pub. L. 94-484, title II, §201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 707 of act July 1, 1944, was classified to section 292g of this title prior to the general revision of this subchapter by Pub. L. 102-408.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-392, §142(a), designated existing provisions as par. (1), inserted heading, substituted “determined, except that, if the insurance beneficiary including any servicer of the loan is not designated for ‘exceptional performance’, as set forth in paragraph (2), the Secretary shall pay to the beneficiary a sum equal to 98 percent of the amount of the loss sustained by the insured upon that loan.” for “determined.”, struck out at end “Not later than one year after October 13, 1992, the Secretary shall establish performance standards for lenders and holders of loans under this subpart, including fees to be imposed for failing to meet such standards.”, and added par. (2).

Subsec. (e)(4). Pub. L. 105-392, §142(b), added par. (4).

Subsec. (g). Pub. L. 105-392, §144(a), substituted “Notwithstanding any other provision of Federal or State law, a debt that is a loan insured” for “A debt which is a loan insured” in introductory provisions.

1993—Subsec. (g)(1). Pub. L. 103-43, §2014(a)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “after the expiration of the five-year period beginning on the first date, as specified in subparagraphs (B) and (C) of section 292d(a)(2) of this title, when repayment of such loan is required;”.

Subsec. (j). Pub. L. 103-43, §2014(a)(2)(B), added subsec. (j).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-392, title I, §142(c), Nov. 13, 1998, 112 Stat. 3581, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to loans submitted to the Secretary for payment on or after the first day of the sixth month that begins after the date of enactment of this Act [Nov. 13, 1998].”

Pub. L. 105-392, title I, §144(b), Nov. 13, 1998, 112 Stat. 3581, provided that: “The amendment made by subsection (a) [amending this section] shall apply to any loan insured under the authority of subpart I of part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) that is listed or scheduled by the debtor in a case under title XI, United States Code [Title 11, Bankruptcy], filed—

“(1) on or after the date of enactment of this Act [Nov. 13, 1998]; or

“(2) prior to such date of enactment in which a discharge has not been granted.”

§ 292g. Risk-based premiums

(a) Authority

With respect to a loan made under this subpart on or after January 1, 1993, the Secretary, in accordance with subsection (b) of this section, shall assess a risk-based premium on an eligible borrower and, if required under this section, an eligible institution that is based on the default rate of the eligible institution involved (as defined in section 292o of this title).

(b) Assessment of premium

Except as provided in subsection (d)(2) of this section, the risk-based premium to be assessed under subsection (a) of this section shall be as follows:

(1) Low-risk rate

With respect to an eligible borrower seeking to obtain a loan for attendance at an eligible institution that has a default rate of not to exceed five percent, such borrower shall be as-