

(1) The term “active duty” has the meaning given such term in section 101(18) of title 37, except that such term does not include active duty for training.

(2) The term “Persian Gulf conflict” means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(July 1, 1944, ch. 373, title VII, §705, as added Pub. L. 102-408, title I, §102, Oct. 13, 1992, 106 Stat. 1996; amended Pub. L. 103-43, title XX, §2014(a)(1), June 10, 1993, 107 Stat. 215; Pub. L. 105-244, title I, §102(a)(13)(A), Oct. 7, 1998, 112 Stat. 1620; Pub. L. 105-392, title I, §141(a)(1), (2), Nov. 13, 1998, 112 Stat. 3578.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in subsec. (a)(2)(C), is Pub. L. 87-293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (a)(2)(C), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I of the Act is classified generally to subchapter I (§4951 et seq.) of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

PRIOR PROVISIONS

A prior section 292d, act July 1, 1944, ch. 373, title VII, §704, formerly §799A, as added Nov. 2, 1970, Pub. L. 91-519, title II, §207, 84 Stat. 1355; amended Nov. 18, 1971, Pub. L. 92-157, title I, §110(2), 85 Stat. 461; July 12, 1974, Pub. L. 93-348, title I, §105, 88 Stat. 347; renumbered §704, Oct. 12, 1976, Pub. L. 94-484, title II, §201(c), 90 Stat. 2247; Nov. 4, 1988, Pub. L. 100-607, title VI, §§620(c), 628(3), 629(b)(2), 102 Stat. 3141, 3145, 3146, prohibited discrimination on the basis of sex, prior to the general revision of this subchapter by Pub. L. 102-408. See section 295m of this title.

Another prior section 292d, act July 1, 1944, ch. 373, title VII, §705, as added July 30, 1956, ch. 779, §2, 70 Stat. 718; amended Aug. 27, 1958, Pub. L. 85-777, §1(b), 72 Stat. 933; Oct. 5, 1961, Pub. L. 87-395, §8(b), (d), 75 Stat. 827; Oct. 17, 1962, Pub. L. 87-838, §4(b), 76 Stat. 1074; Sept. 24, 1963, Pub. L. 88-129, §§2(a), 3(a), 77 Stat. 164, 173; Aug. 9, 1965, Pub. L. 89-115, §2(b), 79 Stat. 448; Aug. 16, 1968, Pub. L. 90-490, title IV, §401(b), 82 Stat. 789; Nov. 18, 1971, Pub. L. 92-157, title I, §102(k)(1), (2)(A), 85 Stat. 437, related to applications for grants for construction of health research facilities, providing for time of filing, eligibility, recommendation and approval and requirement of findings, conditional approval, and matters considered, prior to repeal by Pub. L. 94-484, title II, §201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 705 of act July 1, 1944, was classified to section 292e of this title prior to the general revision of this subchapter by Pub. L. 102-408.

AMENDMENTS

1998—Subsec. (a)(2)(C). Pub. L. 105-392 added cl. (x), redesignated former cl. (x) as (xi) and substituted “(x)” for “(ix)”, and substituted “(xi)” for “(x)” in concluding provisions.

Pub. L. 105-244 substituted “section 1002(a)” for “section 1088(a)” in cl. (i).

1993—Subsec. (a)(2)(H), (I). Pub. L. 103-43 redesignated subpar. (I) as (H) and struck out former subpar. (H) which read as follows: “notwithstanding the provisions of the Fair Debt Collection Practices Act, authorizes an institution or postgraduate training program attended by the borrower to assist in the collection of any loan that becomes delinquent, including providing

information concerning the borrower to the Secretary and to past and present lenders and holders of the borrower’s loans; and”.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105-392, title I, §141(a)(3), Nov. 13, 1998, 112 Stat. 3578, provided that: “The amendments made by this subsection [amending this section] shall apply with respect to services provided on or after the first day of the third month that begins after the date of the enactment of this Act [Nov. 13, 1998].”

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 Title 20, Education.

§ 292e. Certificate of loan insurance; effective date of insurance

(a) In general

(1) Authority for issuance of certificate

If, upon application by an eligible lender, made upon such form, containing such information, and supported by such evidence as the Secretary may require, and otherwise in conformity with this section, the Secretary finds that the applicant has made a loan to an eligible borrower which is insurable under the provisions of this subpart, he may issue to the applicant a certificate of insurance covering the loan and setting forth the amount and terms of the insurance.

(2) Effective date of insurance

Insurance evidenced by a certificate of insurance pursuant to subsection (a)(1) shall become effective upon the date of issuance of the certificate, except that the Secretary is authorized, in accordance with regulations, to issue commitments with respect to proposed loans, or with respect to lines (or proposed lines) of credit, submitted by eligible lenders, and in that event, upon compliance with subsection (a)(1) by the lender, the certificate of insurance may be issued effective as of the date when any loan, or any payment by the lender pursuant to a line of credit, to be covered by such insurance is made to a student described in section 292d(a)(1) of this title. Such insurance shall cease to be effective upon 60 days’ default by the lender in the payment of any installment of the premiums payable pursuant to section 292g of this title.

(3) Certain agreements for lenders

An application submitted pursuant to subsection (a)(1) shall contain—

(A) an agreement by the applicant to pay, in accordance with regulations, the premiums fixed by the Secretary pursuant to section 292g of this title; and

(B) an agreement by the applicant that if the loan is covered by insurance the applicant will submit such supplementary reports and statements during the effective period of the loan agreement, upon such forms, at such times, and containing such information as the Secretary may prescribe by or pursuant to regulation.

(b) Authority regarding comprehensive insurance coverage

(1) In general

In lieu of requiring a separate insurance application and issuing a separate certificate of

insurance for each loan made by an eligible lender as provided in subsection (a), the Secretary may, in accordance with regulations consistent with section 292a of this title, issue to any eligible lender applying therefor a certificate of comprehensive insurance coverage which shall, without further action by the Secretary, insure all insurable loans made by that lender, on or after the date of the certificate and before a specified cutoff date, within the limits of an aggregate maximum amount stated in the certificate. Such regulations may provide for conditioning such insurance, with respect to any loan, upon compliance by the lender with such requirements (to be stated or incorporated by reference in the certificate) as in the Secretary's judgment will best achieve the purpose of this subsection while protecting the financial interest of the United States and promoting the objectives of this subpart, including (but not limited to) provisions as to the reporting of such loans and information relevant thereto to the Secretary and as to the payment of initial and other premiums and the effect of default therein, and including provision for confirmation by the Secretary from time to time (through endorsement of the certificate) of the coverage of specific new loans by such certificate, which confirmation shall be incontestable by the Secretary in the absence of fraud or misrepresentation of fact or patent error.

(2) Lines of credit beyond cutoff date

If the holder of a certificate of comprehensive insurance coverage issued under this subsection grants to a borrower a line of credit extending beyond the cutoff date specified in that certificate, loans or payments thereon made by the holder after that date pursuant to the line of credit shall not be deemed to be included in the coverage of that certificate except as may be specifically provided therein; but, subject to the limitations of section 292a of this title, the Secretary may, in accordance with regulations, make commitments to insure such future loans or payments, and such commitments may be honored either as provided in subsection (a) or by inclusion of such insurance in comprehensive coverage under this subsection for the period or periods in which such future loans or payments are made.

(c) Assignment of insurance rights

The rights of an eligible lender arising under insurance evidenced by a certificate of insurance issued to it under this section may be assigned by such lender, subject to regulation by the Secretary, only to—

- (1) another eligible lender (including a public entity in the business of purchasing student loans); or
- (2) the Student Loan Marketing Association.

(d) Effect of refinancing or consolidation of obligations

The consolidation of the obligations of two or more federally insured loans obtained by a borrower in any fiscal year into a single obligation evidenced by a single instrument of indebtedness or the refinancing of a single loan 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), 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 the loans thus consolidated are covered by a single comprehensive certificate issued under subsection (b), the Secretary may amend that certificate accordingly.

(e) Rule of construction regarding consolidation of debts and refinancing

Nothing in this section shall be construed to preclude the lender and the borrower, by mutual agreement, from consolidating all of the borrower's loans insured under this subpart into a single instrument (or, if the borrower obtained only 1 loan insured under this subpart, refinancing the loan 1 time) under the terms applicable to an insured loan made at the same time as the consolidation. The lender or loan holder should provide full information to the borrower concerning the advantages and disadvantages of loan consolidation or refinancing. Nothing in this section shall be construed to preclude the consolidation of the borrower's loans insured under this subpart under section 1078-3 of title 20. Any loans insured pursuant to this subpart that are consolidated under section 1078-3 of title 20 shall not be eligible for special advance payments under section 1087-1 of title 20.

(July 1, 1944, ch. 373, title VII, §706, as added Pub. L. 102-408, title I, §102, Oct. 13, 1992, 106 Stat. 2000; amended Pub. L. 105-392, title I, §145, Nov. 13, 1998, 112 Stat. 3581.)

PRIOR PROVISIONS

A prior section 292e, act July 1, 1944, ch. 373, title VII, §705, as added Oct. 12, 1976, Pub. L. 94-484, title II, §204, 90 Stat. 2248; amended Nov. 9, 1978, Pub. L. 95-623, §11(f), 92 Stat. 3456; Aug. 13, 1981, Pub. L. 97-35, title XXVII, §2718, 95 Stat. 914, related to establishment and maintenance of records and annual financial reports and audits, prior to the general revision of this subchapter by Pub. L. 102-408.

Another prior section 292e, act July 1, 1944, ch. 373, title VII, §706, as added July 30, 1956, 779, §2, 70 Stat. 719; amended Oct. 5, 1961, Pub. L. 87-395, §8(c), (d), 75 Stat. 827; Sept. 24, 1963, Pub. L. 88-129, §2(a), 77 Stat. 164; Aug. 16, 1968, Pub. L. 90-490, title IV, §402, 82 Stat. 789; Nov. 18, 1971, Pub. L. 92-157, title I, §102(k)(2)(A), (B), 85 Stat. 437, limited amount of grant available for construction of health research facilities, including provisions relating to its maximum, reservation of amount, manner of payment, and exclusion of amounts granted by certain other funds, prior to repeal by Pub. L. 94-484, title II, §201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 706 of act July 1, 1944, was classified to section 292f of this title prior to the general revision of this subchapter by Pub. L. 102-408.

Another prior section 706 of act July 1, 1944, was classified to section 230 of this title prior to repeal by act Apr. 27, 1956, ch. 211, §5(e), 70 Stat. 117.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105-392, §145(1), in heading, substituted "refinancing or consolidation" for "consolidation" and, in first sentence, substituted "indebtedness or the refinancing of a single loan" for "indebtedness".

Subsec. (e). Pub. L. 105-392, §145(2), in heading, substituted "debts and refinancing" for "debts", in first sentence, substituted "all of the borrower's loans in-

sured under this subpart into a single instrument (or, if the borrower obtained only 1 loan insured under this subpart, refinancing the loan 1 time)” for “all of the borrower’s debts into a single instrument”, and in second sentence, substituted “consolidation or refinancing” for “consolidation”.

§ 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), 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 tech-

nique 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