

**§ 1087. Repayment by Secretary of loans of bankrupt, deceased, or disabled borrowers; treatment of borrowers attending schools that fail to provide a refund, attending closed schools, or falsely certified as eligible to borrow**

**(a) Repayment in full for death and disability**

**(1) In general**

If a student borrower who has received a loan described in subparagraph (A) or (B) of section 1078(a)(1) of this title dies or becomes permanently and totally disabled (as determined in accordance with regulations of the Secretary), or if a student borrower who has received such a loan is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months then the Secretary shall discharge the borrower's liability on the loan by repaying the amount owed on the loan. The Secretary may develop such safeguards as the Secretary determines necessary to prevent fraud and abuse in the discharge of liability under this subsection. Notwithstanding any other provision of this subsection, the Secretary may promulgate regulations to reinstate the obligation of, and resume collection on, loans discharged under this subsection in any case in which—

(A) a borrower received a discharge of liability under this subsection and after the discharge the borrower—

- (i) receives a loan made, insured, or guaranteed under this subchapter; or
- (ii) has earned income in excess of the poverty line; or

(B) the Secretary determines the reinstatement and resumption to be necessary.

**(2) Disability determinations**

A borrower who has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected condition and who provides documentation of such determination to the Secretary of Education, shall be considered permanently and totally disabled for the purpose of discharging such borrower's loans under this subsection, and such borrower shall not be required to present additional documentation for purposes of this subsection.

**(b) Payment of claims on loans in bankruptcy**

The Secretary shall pay to the holder of a loan described in section 1078(a)(1)(A) or (B), 1078-1,<sup>1</sup> 1078-2, 1078-3, or 1078-8 of this title, the amount of the unpaid balance of principal and interest owed on such loan—

- (1) when the borrower files for relief under chapter 12 or 13 of title 11;
- (2) when the borrower who has filed for relief under chapter 7 or 11 of such title commences an action for a determination of dischargeability under section 523(a)(8)(B) of such title; or

(3) for loans described in section 523(a)(8)(A) of such title, when the borrower files for relief under chapter 7 or 11 of such title.

**(c) Discharge**

**(1) In general**

If a borrower who received, on or after January 1, 1986, a loan made, insured, or guaranteed under this part and the student borrower, or the student on whose behalf a parent borrowed, is unable to complete the program in which such student is enrolled due to the closure of the institution or if such student's eligibility to borrow under this part was falsely certified by the eligible institution or was falsely certified as a result of a crime of identity theft, or if the institution failed to make a refund of loan proceeds which the institution owed to such student's lender, then the Secretary shall discharge the borrower's liability on the loan (including interest and collection fees) by repaying the amount owed on the loan and shall subsequently pursue any claim available to such borrower against the institution and its affiliates and principals or settle the loan obligation pursuant to the financial responsibility authority under subpart 3 of part H. In the case of a discharge based upon a failure to refund, the amount of the discharge shall not exceed that portion of the loan which should have been refunded. The Secretary shall report to the authorizing committees annually as to the dollar amount of loan discharges attributable to failures to make refunds.

**(2) Assignment**

A borrower whose loan has been discharged pursuant to this subsection shall be deemed to have assigned to the United States the right to a loan refund up to the amount discharged against the institution and its affiliates and principals.

**(3) Eligibility for additional assistance**

The period of a student's attendance at an institution at which the student was unable to complete a course of study due to the closing of the institution shall not be considered for purposes of calculating the student's period of eligibility for additional assistance under this subchapter.

**(4) Special rule**

A borrower whose loan has been discharged pursuant to this subsection shall not be precluded from receiving additional grants, loans, or work assistance under this subchapter for which the borrower would be otherwise eligible (but for the default on such discharged loan). The amount discharged under this subsection shall be treated the same as loans under section 1087ee(a)(5) of this title.

**(5) Reporting**

The Secretary shall report to consumer reporting agencies with respect to loans which have been discharged pursuant to this subsection.

**(d) Repayment of loans to parents**

If a student on whose behalf a parent has received a loan described in section 1078-2 of this

<sup>1</sup> See References in Text note below.

title dies, then the Secretary shall discharge the borrower's liability on the loan by repaying the amount owed on the loan.

(Pub. L. 89-329, title IV, § 437, as added Pub. L. 99-498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1414; amended Pub. L. 102-325, title IV, § 428, July 23, 1992, 106 Stat. 551; Pub. L. 103-208, § 2(c)(63)-(65), Dec. 20, 1993, 107 Stat. 2469; Pub. L. 105-244, title IV, § 431, Oct. 7, 1998, 112 Stat. 1709; Pub. L. 109-171, title VIII, § 8012, Feb. 8, 2006, 120 Stat. 166; Pub. L. 110-315, title I, § 103(b)(7), title IV, §§ 432(b)(4), 437(a), (b), Aug. 14, 2008, 122 Stat. 3089, 3246, 3257, 3258; Pub. L. 111-39, title IV, § 402(e)(1), July 1, 2009, 123 Stat. 1942.)

#### REFERENCES IN TEXT

Section 1078-1 of this title, referred to in subsec. (b), was repealed by Pub. L. 103-66, title IV, § 4047(b)-(d), Aug. 10, 1993, 107 Stat. 364, eff. July 1, 1994, except with respect to loans provided under that section as it existed prior to Aug. 10, 1993. Subsequently, a new section 1078-1, relating to voluntary flexible agreements with guaranty agencies, was enacted by Pub. L. 105-244, title IV, § 418, Oct. 7, 1998, 112 Stat. 1691.

#### PRIOR PROVISIONS

A prior section 1087, Pub. L. 89-329, title IV, § 437, as added Pub. L. 90-575, title I, § 113(a), Oct. 16, 1968, 82 Stat. 1020; amended Pub. L. 92-318, title I, § 132D(a), June 23, 1972, 86 Stat. 263; Pub. L. 94-482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2133; Pub. L. 96-374, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1503, related to repayment of loans by Secretary, prior to the general revision of this part by Pub. L. 99-498.

#### AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111-39 substituted “Secretary), or if” for “Secretary),, or if” in introductory provisions and inserted “the reinstatement and resumption to be” after “determines” in subpar. (B).

2008—Subsec. (a). Pub. L. 110-315, § 437(a)(3), which directed insertion of “The Secretary may develop such safeguards as the Secretary determines necessary to prevent fraud and abuse in the discharge of liability under this subsection. Notwithstanding any other provision of this subsection, the Secretary may promulgate regulations to reinstate the obligation of, and resume collection on, loans discharged under this subsection in any case in which—

“(A) a borrower received a discharge of liability under this subsection and after the discharge the borrower—

“(i) receives a loan made, insured, or guaranteed under this subchapter; or

“(ii) has earned income in excess of the poverty line; or

“(B) the Secretary determines necessary.”

at the end of subsec. (a), was executed by making the insertion at the end of par. (1) to reflect the probable intent of Congress, notwithstanding the addition of par. (2) prior to the effective date of this amendment.

Pub. L. 110-315, § 437(a)(1), (2), designated existing provisions as par. (1), inserted par. (1) heading, and inserted “, or if a student borrower who has received such a loan is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months” after “of the Secretary).”

Subsec. (a)(2). Pub. L. 110-315, § 437(b), added par. (2).

Subsec. (c)(1). Pub. L. 110-315, § 103(b)(7), substituted “authorizing committees” for “Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate”.

Subsec. (c)(5). Pub. L. 110-315, § 432(b)(4), substituted “consumer reporting agencies” for “credit bureaus”.

2006—Pub. L. 109-171, § 8012(1), in section catchline, substituted “schools that fail to provide a refund, attending closed schools, or falsely certified as eligible to borrow” for “closed schools or falsely certified as eligible to borrow”.

Subsec. (c)(1). Pub. L. 109-171, § 8012(2), inserted “or was falsely certified as a result of a crime of identity theft” after “falsely certified by the eligible institution” in first sentence.

1998—Subsec. (c)(1). Pub. L. 105-244 inserted “or if the institution failed to make a refund of loan proceeds which the institution owed to such student’s lender,” after “falsely certified by the eligible institution,” and inserted at end “In the case of a discharge based upon a failure to refund, the amount of the discharge shall not exceed that portion of the loan which should have been refunded. The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate annually as to the dollar amount of loan discharges attributable to failures to make refunds.”

1993—Subsec. (b). Pub. L. 103-208, § 2(c)(63), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “If the collection of a loan described in subparagraph (A) or (B) of section 1078(a)(1) of this title or sections 1078-1, 1078-2, 1078-3, or 1078-8 of this title is stayed in any action under title 11, the Secretary shall repay the unpaid balance of principal and interest owed on the loan.”

Subsec. (c)(1). Pub. L. 103-208, § 2(c)(64), substituted “If a borrower” for “If a student borrower”, “under this part and the student borrower, or the student on whose behalf a parent borrowed, is unable” for “under this part is unable”, and “in which such student is enrolled” for “in which the borrower is enrolled”.

Subsec. (c)(4). Pub. L. 103-208, § 2(c)(65), inserted at end “The amount discharged under this subsection shall be treated the same as loans under section 1087ee(a)(5) of this title.”

1992—Pub. L. 102-325 amended section generally, substituting subsecs. (a) to (d) for former subsecs. (a) and (b) which related to repayment by Secretary of loans of bankrupt, deceased, or disabled borrowers.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-39, title IV, § 402(e)(2), July 1, 2009, 123 Stat. 1943, provided that: “The amendments made by paragraph (1) [amending this section] shall be effective as if enacted as part of the amendments in section 437(a) of the Higher Education Opportunity Act (Public Law 110-315) [amending this section], and shall take effect on July 1, 2010.”

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-315, title IV, § 437(c), Aug. 14, 2008, 122 Stat. 3258, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on July 1, 2010.”

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109-171, set out as a note under section 1002 of this title.

#### 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.

#### 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.

**§ 1087-0. Repealed. Pub. L. 105-244, title IV, § 432, Oct. 7, 1998, 112 Stat. 1710**

Section, Pub. L. 89-329, title IV, § 437A, as added Pub. L. 102-325, title IV, § 429, July 23, 1992, 106 Stat. 552; amended Pub. L. 103-208, § 2(c)(66)-(68), Dec. 20, 1993, 107 Stat. 2469, related to debt management options.

**EFFECTIVE DATE OF REPEAL**

Repeal effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

**§ 1087-1. Special allowances**

**(a) Findings**

In order to assure (1) that the limitation on interest payments or other conditions (or both) on loans made or insured under this part, do not impede or threaten to impede the carrying out of the purposes of this part or do not cause the return to holders of loans to be less than equitable, (2) that incentive payments on such loans are paid promptly to eligible lenders, and (3) that appropriate consideration of relative administrative costs and money market conditions is made in setting the quarterly rate of such payments, the Congress finds it necessary to establish an improved method for the determination of the quarterly rate of the special allowances on such loans, and to provide for a thorough, expeditious, and objective examination of alternative methods for the determination of the quarterly rate of such allowances.

**(b) Computation and payment**

**(1) Quarterly payment based on unpaid balance**

A special allowance shall be paid for each of the 3-month periods ending March 31, June 30, September 30, and December 31 of every year and the amount of such allowance paid to any holder with respect to any 3-month period shall be a percentage of the average unpaid balance of principal (not including unearned interest added to principal) of all eligible loans held by such holder during such period.

**(2) Rate of special allowance**

(A) Subject to subparagraphs (B), (C), (D), (E), (F), (G), (H), and (I) and paragraph (4), the special allowance paid pursuant to this subsection on loans shall be computed (i) by determining the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 3-month period, (ii) by subtracting the applicable interest rate on such loans from such average, (iii) by adding 3.10 percent to the resultant percent, and (iv) by dividing the resultant percent by 4. If such computation produces a number less than zero, such loans shall be subject to section 1077a(i) of this title.

(B)(i) The quarterly rate of the special allowance for holders of loans which were made or purchased with funds obtained by the holder from the issuance of obligations, the income from which is exempt from taxation under title 26 shall be one-half the quarterly rate of the special allowance established under subparagraph (A), except that, in determining the rate for the purpose of this clause, subparagraph (A)(iii) shall be applied by sub-

stituting “3.5 percent” for “3.10 percent”. Such rate shall also apply to holders of loans which were made or purchased with funds obtained by the holder from collections or default reimbursements on, or interests or other income pertaining to, eligible loans made or purchased with funds described in the preceding sentence of this subparagraph or from income on the investment of such funds. This subparagraph shall not apply to loans which were made or insured prior to October 1, 1980.

(ii) The quarterly rate of the special allowance set under clause (i) of this subparagraph shall not be less than 9.5 percent minus the applicable interest rate on such loans, divided by 4.

(iii) No special allowance may be paid under this subparagraph unless the issuer of such obligations complies with subsection (d) of this section.

(iv) Notwithstanding clauses (i) and (ii), the quarterly rate of the special allowance for holders of loans which are financed with funds obtained by the holder from the issuance of obligations originally issued on or after October 1, 1993, or refunded after September 30, 2004, the income from which is excluded from gross income under title 26, shall be the quarterly rate of the special allowance established under subparagraph (A), (E), (F), (G), (H), or (I) as the case may be. Such rate shall also apply to holders of loans which were made or purchased with funds obtained by the holder from collections or default reimbursements on, or interest or other income pertaining to, eligible loans made or purchased with funds described in the preceding sentence of this subparagraph or from income on the investment of such funds.

(v) Notwithstanding clauses (i) and (ii), the quarterly rate of the special allowance shall be the rate determined under subparagraph (A), (E), (F), (G), (H), or (I) of this paragraph, or paragraph (4), as the case may be, for a holder of loans that—

(I) were made or purchased with funds—

(aa) obtained from the issuance of obligations the income from which is excluded from gross income under title 26 and which obligations were originally issued before October 1, 1993; or

(bb) obtained from collections or default reimbursements on, or interest or other income pertaining to, eligible loans made or purchased with funds described in division (aa), or from income on the investment of such funds; and

(II) are—

(aa) financed by such an obligation that, after September 30, 2004, has matured or been retired or defeased;

(bb) refinanced after September 30, 2004, with funds obtained from a source other than funds described in subclause (I) of this clause; or

(cc) sold or transferred to any other holder after September 30, 2004.

(vi) Notwithstanding clauses (i), (ii), and (v), but subject to clause (vii), the quarterly rate of the special allowance shall be the rate de-