

ods of enrollment beginning on or after October 1, 1992;

“(13) that the changes made in section 438 [20 U.S.C. 1087-1] shall apply with respect to loans for which the first disbursement is made on or after October 1, 1992;

“(14) that the changes in section 439(d)(1) [20 U.S.C. 1087-2(d)(1)], relating to facilities loans, shall apply with respect to applications received on or after July 1, 1992; and

“(15) that the changes in the designation or names of loans or programs under part B is [sic] effective with respect to applications or other documents (used in making such loans) that are printed after the date of enactment of this Act.

“(b) NEW BORROWERS.—For purposes of the section, the term ‘new borrower’ means, with respect to any date, an individual who on that date has no outstanding balance of principal or interest owing on any loan made, insured, or guaranteed under part B of title IV of the Act [20 U.S.C. 1071 et seq.]”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 2002(a)(2) of Pub. L. 101-239 applicable to any loan made, insured, or guaranteed under this part or part E of this subchapter, including a loan made before Dec. 19, 1989, and amendment effective Jan. 1, 1990, but inapplicable with respect to any portion of a period of deferment granted to a borrower under section 1077(a)(2)(C)(i), 1078(b)(1)(M)(i), or 1087dd(c)(2)(A)(i) of this title for service in a medical internship or residency program completed prior to Dec. 19, 1989, see section 2002(a)(4) of Pub. L. 101-239, set out as a note under section 1077 of this title.

Pub. L. 101-239, title II, §2002(b)(2), Dec. 19, 1989, 103 Stat. 2112, provided that: “The amendments made by this subsection [amending this section] shall apply with respect to loans made before, on, or after the date of enactment of this Act [Dec. 19, 1989].”

Amendment by section 2004(b)(1), (3) of Pub. L. 101-239 applicable with respect to loans made to cover the cost of instruction for periods of enrollment beginning on or after Jan. 1, 1990, see section 2004(c) of Pub. L. 101-239, set out as a note under section 1077 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 11(a) of Pub. L. 100-369 applicable with respect to loans made, insured or guaranteed under this part on, before, or after June 3, 1987, see section 11(b) of Pub. L. 100-369, set out as a note under section 1077 of this title.

Amendment by section 5(b)(2) of Pub. L. 100-369 effective with respect to loans made on or after Oct. 1, 1988, and amendment by section 7(c) of Pub. L. 100-369 effective July 18, 1988, see section 13(b) of Pub. L. 100-369, set out as a note under section 1091 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENTS

Pub. L. 100-203, title III, §3002(b)(1)-(3), Dec. 22, 1987, 101 Stat. 1330-38, provided in part that the amendments by section 3002(b)(1)-(3) of Pub. L. 100-203 are effective Sept. 30, 1989.

Amendment by section 10(b) of Pub. L. 100-50 applicable with respect to loans made, insured or guaranteed under this part on, before, or after June 3, 1987, see section 11(b) of Pub. L. 100-369, set out as an Effective Date of 1988 Amendment note under section 1077 of this title.

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 effective Oct. 17, 1987, with subsection (b)(1)(M) (except cls. (viii), (ix), and (x)) applicable only to loans to new borrowers made to cover the costs of instruction for periods of enrollment beginning on or after July 1, 1987, or disbursed on or after July 1, 1987, subsection (b)(1)(A) and (B) applicable with respect only to loans disbursed on or after Jan. 1, 1987, or made

to cover the costs of instruction for periods of enrollment beginning on or after Jan. 1, 1987, and subsection (b)(1)(H) applicable with respect only to loans for which the borrower files an application on or after July 1, 1987, see section 402(b) of Pub. L. 99-498, set out as a note under section 1071 of this title.

#### CONSTRUCTION OF 2006 AMENDMENT

Pub. L. 109-171, title VIII, §8007(e), Feb. 8, 2006, 120 Stat. 161, provided that: “Nothing in the amendments made by this section [amending this section and sections 1087e, 1087dd, and 1088 of this title] shall be construed to authorize any refunding of any repayment of a loan.”

#### REVIEW OF INDUCEMENTS LIMITATIONS

Pub. L. 110-227, §5(c), May 7, 2008, 122 Stat. 746, provided that: “Within 90 days after the date of enactment of this Act [May 7, 2008], the Secretary of Education shall review, and as necessary revise, the Department of Education’s regulations concerning prohibited guaranty agency inducements to eligible lenders (34 CFR 682.401(e)) to ensure that such agencies do not engage in improper inducements in the expansion of operations of the lender-of-last-resort program as authorized by the amendments made by this section [amending this section]. The Secretary shall submit a report on the review and revision required by this subsection to the Committee on Education and Labor [now Committee on Education and the Workforce] of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 180 days after such date of enactment.”

#### GUARANTEED STUDENT LOAN FAMILY CONTRIBUTION SCHEDULE FOR THE PERIODS OF INSTRUCTION BEGINNING AFTER JUNE 30, 1983

Pub. L. 97-301, §9, Oct. 13, 1982, 96 Stat. 1403, as amended by Pub. L. 98-79, §4(b), Aug. 15, 1983, 97 Stat. 481; Pub. L. 98-511, title VII, §707(7), (8), Oct. 19, 1984, 98 Stat. 2407, 2408; Pub. L. 99-272, title XVI, §16018(b), Apr. 7, 1986, 100 Stat. 348; Pub. L. 99-498, title IV, §408(a)(6), (7), Oct. 17, 1986, 100 Stat. 1495, specified that the family contribution schedule for specific periods of instruction through June 30, 1988, for loans made, insured, or guaranteed under this part be the family contribution schedule for such loans for the period of instruction from July 1, 1982, through June 30, 1983, and required the family contribution schedule for the period of instruction from July 1, 1982, through June 30, 1983, to be modified by the Secretary of Education for use for each of the specific periods of instruction to reflect the most recent and relevant data, prior to repeal by Pub. L. 99-498, title IV, §408(b), Oct. 17, 1986, 100 Stat. 1495, effective with respect to any academic year beginning on or after July 1, 1988, Pub. L. 97-301.

### § 1078-1. Voluntary flexible agreements with guaranty agencies

#### (a) Voluntary agreements

##### (1) Authority

Subject to paragraph (2),<sup>1</sup> the Secretary may enter into a voluntary, flexible agreement with a guaranty agency under this section, in lieu of agreements with a guaranty agency under subsections (b) and (c) of section 1078 of this title. The Secretary may waive or modify any requirement under such subsections, except that the Secretary may not waive—

(A) any statutory requirement pertaining to the terms and conditions attached to student loans or default claim payments made to lenders;

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

(B) the prohibitions on inducements contained in section 1078(b)(3) of this title; or

(C) the Federal default fee required by section 1078(b)(1)(H) of this title and the second sentence of section 1078-8(h) of this title.

**(2) Eligibility**

During fiscal years 1999, 2000, and 2001, the Secretary may enter into a voluntary, flexible agreement with not more than 6 guaranty agencies that had 1 or more agreements with the Secretary under subsections (b) and (c) of section 1078 of this title as of the day before October 7, 1998. Beginning in fiscal year 2002, any guaranty agency or consortium thereof may enter into a voluntary flexible agreement with the Secretary.

**(3) Report required**

**(A) In general**

The Secretary, in consultation with the guaranty agencies operating under voluntary flexible agreements, shall report on an annual basis to the authorizing committees regarding the program outcomes that the voluntary flexible agreements have had with respect to—

- (i) program integrity and program and cost efficiencies, delinquency prevention, and default aversion, including a comparison of such outcomes to such outcomes for each guaranty agency operating under an agreement under subsection (b) or (c) of section 1078 of this title;
- (ii) consumer education programs described in section 1083a of this title; and
- (iii) the availability and delivery of student financial aid.

**(B) Contents**

Each report described in subparagraph (A) shall include—

- (i) a description of each voluntary flexible agreement and the performance goals established by the Secretary for each agreement;
- (ii) a list of—
  - (I) guaranty agencies operating under voluntary flexible agreements;
  - (II) the specific statutory or regulatory waivers provided to each such guaranty agency; and
  - (III) any other waivers provided to other guaranty agencies under paragraph (1);
- (iii) a description of the standards by which each guaranty agency's performance under the guaranty agency's voluntary flexible agreement was assessed and the degree to which each guaranty agency achieved the performance standards;
- (iv) an analysis of the fees paid by the Secretary, and the costs and efficiencies achieved under each voluntary flexible agreement; and
- (v) an identification of promising practices for program improvement that could be replicated by other guaranty agencies.

**(b) Terms of agreement**

An agreement between the Secretary and a guaranty agency under this section—

(1) shall be developed by the Secretary, in consultation with the guaranty agency, on a case-by-case basis;

(2) may only include provisions—

(A) specifying the responsibilities of the guaranty agency under the agreement, with respect to—

- (i) administering the issuance of insurance on loans made under this part on behalf of the Secretary;
- (ii) monitoring insurance commitments made under this part;
- (iii) default aversion activities;
- (iv) review of default claims made by lenders;
- (v) payment of default claims;
- (vi) collection of defaulted loans;
- (vii) adoption of internal systems of accounting and auditing that are acceptable to the Secretary, and reporting the result thereof to the Secretary in a timely manner, and on an accurate, and auditable basis;
- (viii) timely and accurate collection and reporting of such other data as the Secretary may require to carry out the purposes of the programs under this subchapter;
- (ix) monitoring of institutions and lenders participating in the program under this part; and
- (x) informational outreach to schools and students in support of access to higher education;

(B) regarding the fees the Secretary shall pay, in lieu of revenues that the guaranty agency may otherwise receive under this part, to the guaranty agency under the agreement, and other funds that the guaranty agency may receive or retain under the agreement, except that in no case may the cost to the Secretary of the agreement, as reasonably projected by the Secretary, exceed the cost to the Secretary, as similarly projected, in the absence of the agreement;

(C) regarding the use of net revenues, as described in the agreement under this section, for such other activities in support of postsecondary education as may be agreed to by the Secretary and the guaranty agency;

(D) regarding the standards by which the guaranty agency's performance of the agency's responsibilities under the agreement will be assessed, and the consequences for a guaranty agency's failure to achieve a specified level of performance on 1 or more performance standards;

(E) regarding the circumstances in which a guaranty agency's agreement under this section may be ended in advance of the agreement's expiration date;

(F) regarding such other businesses, previously purchased or developed with reserve funds, that relate to the program under this part and in which the Secretary permits the guaranty agency to engage; and

(G) such other provisions as the Secretary may determine to be necessary to protect the United States from the risk of unreasonable loss and to promote the purposes of this part;

(3) shall provide for uniform lender participation with the guaranty agency under the terms of the agreement; and

(4) shall not prohibit or restrict borrowers from selecting a lender of the borrower's choosing, subject to the prohibitions and restrictions applicable to the selection under this chapter.

**(c) Public notice**

**(1) In general**

The Secretary shall publish in the Federal Register a notice to all guaranty agencies that sets forth—

(A) an invitation for the guaranty agencies to enter into agreements under this section; and

(B) the criteria that the Secretary will use for selecting the guaranty agencies with which the Secretary will enter into agreements under this section.

**(2) Agreement notice**

The Secretary shall notify the members of the authorizing committees not later than 30 days prior to concluding an agreement under this section. The notice shall contain—

(A) a description of the voluntary flexible agreement and the performance goals established by the Secretary for the agreement;

(B) a list of participating guaranty agencies and the specific statutory or regulatory waivers provided to each guaranty agency;

(C) a description of the standards by which each guaranty agency's performance under the agreement will be assessed; and

(D) a description of the fees that will be paid to each participating guaranty agency.

**(3) Waiver notice**

The Secretary shall notify the members of the authorizing committees not later than 30 days prior to the granting of a waiver pursuant to subsection (a)(2)<sup>1</sup> to a guaranty agency that is not a party to a voluntary flexible agreement.

**(4) Public availability**

The text of any voluntary flexible agreement, and any subsequent revisions, and any waivers related to section 1078(b)(3) of this title that are not part of such an agreement, shall be readily available to the public.

**(5) Modification notice**

The Secretary shall notify the members of the authorizing committees 30 days prior to any modifications to an agreement under this section.

**(d) Termination**

At the expiration or early termination of an agreement under this section, the Secretary shall reinstate the guaranty agency's prior agreements under subsections (b) and (c) of section 1078 of this title, subject only to such additional requirements as the Secretary determines to be necessary in order to ensure the efficient transfer of responsibilities between the agreement under this section and the agreements under subsections (b) and (c) of section 1078 of this title, and including the guaranty agency's compliance with reserve requirements under sections 1072 and 1078 of this title.

(Pub. L. 89-329, title IV, § 428A, as added Pub. L. 105-244, title IV, § 418, Oct. 7, 1998, 112 Stat. 1691; amended Pub. L. 109-171, title VIII, § 8014(b)(3), (f), Feb. 8, 2006, 120 Stat. 169, 170; Pub. L. 110-315, title I, § 103(b)(5), title IV, § 423, Aug. 14, 2008, 122 Stat. 3089, 3231.)

REFERENCES IN TEXT

Paragraph (2) of subsec. (a) of this section, referred to in subsecs. (a)(1) and (c)(3), was struck out by Pub. L. 109-171, § 8014(f)(2), and par. (3) was redesignated (2). See 2006 Amendment note below.

PRIOR PROVISIONS

A prior section 1078-1, Pub. L. 89-329, title IV, § 428A, as added Pub. L. 99-498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1384; amended Pub. L. 100-50, § 10(n), (o)(1), (p)(1), (q), (r)(1), June 3, 1987, 101 Stat. 343, 344; Pub. L. 100-369, §§ 3-5(a), (b)(3), July 18, 1988, 102 Stat. 835, 836; Pub. L. 101-239, title II, § 2003(a)(1), (b)(1), (c)(1), Dec. 19, 1989, 103 Stat. 2112, 2114; Pub. L. 101-508, title III, § 3006(b), Nov. 5, 1990, 104 Stat. 1388-28; Pub. L. 102-26, § 2(c)(1), Apr. 9, 1991, 105 Stat. 123; Pub. L. 102-325, title IV, § 417, July 23, 1992, 106 Stat. 529; Pub. L. 103-208, § 2(c)(29)-(32), Dec. 20, 1993, 107 Stat. 2465, 2466, related to Federal supplemental loans for students, prior to repeal by Pub. L. 103-66, title IV, § 4047(b), (d), Aug. 10, 1993, 107 Stat. 364, effective July 1, 1994.

Another prior section 1078-1, Pub. L. 89-329, title IV, § 428A, as added Pub. L. 94-482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2120; amended Pub. L. 95-43, § 1(a)(30)-(32), June 15, 1977, 91 Stat. 216; Pub. L. 96-374, title IV, § 412(e), (f), title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1416, 1417, 1503; Pub. L. 97-35, title V, § 535(e), Aug. 13, 1981, 95 Stat. 455, related to student loan insurance programs, prior to the general amendment of this part by Pub. L. 99-498.

AMENDMENTS

2008—Subsec. (a)(3). Pub. L. 110-315, § 423, added par. (3).

Subsec. (c)(2), (3). Pub. L. 110-315, § 103(b)(5)(A), (B), substituted "members of the authorizing committees" for "Chairperson and the Ranking Minority Member of the Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives".

Subsec. (c)(5). Pub. L. 110-315, § 103(b)(5)(C), substituted "members of the authorizing committees" for "Chairperson and the Ranking Minority Members of the Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives".

2006—Subsec. (a)(1)(B). Pub. L. 109-171, § 8014(f)(1), struck out "unless the Secretary determines that such a waiver is consistent with the purposes of this section and is limited to activities of the guaranty agency within the State or States for which the guaranty agency serves as the designated guarantor" before "or".

Subsec. (a)(1)(C). Pub. L. 109-171, § 8014(b)(3), added subpar. (C).

Subsec. (a)(2), (3). Pub. L. 109-171, § 8014(f)(2), (3), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: "If the Secretary grants a waiver pursuant to paragraph (1)(B), any guaranty agency doing business within the affected State or States may request, and the Secretary shall grant, an identical waiver to such guaranty agency under the same terms and conditions (including service area limitations) as govern the original waiver."

Subsec. (a)(4). Pub. L. 109-171, § 8014(f)(4), struck out par. (4), which required the Secretary to report to congressional committees regarding the impact that the voluntary flexible agreements had on program integrity, program and cost efficiencies, and the availability and delivery of student financial aid.

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**

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

**§ 1078-2. Federal PLUS loans**

**(a) Authority to borrow**

**(1) Authority and eligibility**

Prior to July 1, 2010, a graduate or professional student or the parents of a dependent student shall be eligible to borrow funds under this section in amounts specified in subsection (b), if—

(A) the graduate or professional student or the parents do not have an adverse credit history as determined pursuant to regulations promulgated by the Secretary;

(B) in the case of a graduate or professional student or parent who has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining funds under this subchapter, such graduate or professional student or parent has completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this subchapter obtained by fraud; and

(C) the graduate or professional student or the parents meet such other eligibility criteria as the Secretary may establish by regulation, after consultation with guaranty agencies, eligible lenders, and other organizations involved in student financial assistance.

**(2) Terms, conditions, and benefits**

Except as provided in subsections (c), (d), and (e), loans made under this section shall have the same terms, conditions, and benefits as all other loans made under this part.

**(3) Special rules**

**(A) Parent borrowers**

Whenever necessary to carry out the provisions of this section, the terms “student” and “borrower” as used in this part shall include a parent borrower under this section.

**(B)(i) Extenuating circumstances**

An eligible lender may determine that extenuating circumstances exist under the regulations promulgated pursuant to paragraph (1)(A) if, during the period beginning January 1, 2007, and ending December 31, 2009, an applicant for a loan under this section—

(I) is or has been delinquent for 180 days or fewer on mortgage loan payments or on medical bill payments during such period; and

(II) does not otherwise have an adverse credit history, as determined by the lender in accordance with the regulations promulgated pursuant to paragraph (1)(A), as such regulations were in effect on the day before May 7, 2008.

**(ii) Definition of mortgage loan**

In this subparagraph, the term “mortgage loan” means an extension of credit to a bor-

rower that is secured by the primary residence of the borrower.

**(iii) Rule of construction**

Nothing in this subparagraph shall be construed to limit an eligible lender’s authority under the regulations promulgated pursuant to paragraph (1)(A) to determine that extenuating circumstances exist.

**(b) Limitation based on need**

Any loan under this section may be counted as part of the expected family contribution in the determination of need under this subchapter, but no loan may be made to any graduate or professional student or any parent under this section for any academic year in excess of (A) the student’s estimated cost of attendance, minus (B) other financial aid as certified by the eligible institution under section 1078(a)(2)(A) of this title. The annual insurable limit on account of any student shall not be deemed to be exceeded by a line of credit under which actual payments to the borrower will not be made in any year in excess of the annual limit.

**(c) PLUS loan disbursement**

All loans made under this section shall be disbursed in accordance with the requirements of section 1078-7 of this title and shall be disbursed by—

(1) an electronic transfer of funds from the lender to the eligible institution; or

(2) a check copayable to the eligible institution and the graduate or professional student or parent borrower.

**(d) Payment of principal and interest**

**(1) Commencement of repayment**

Repayment of principal on loans made under this section shall commence not later than 60 days after the date such loan is disbursed by the lender, subject to deferral—

(A)(i) during any period during which the parent borrower or the graduate or professional student borrower meets the conditions required for a deferral under section 1077(a)(2)(C) or 1078(b)(1)(M) of this title; and

(ii) upon the request of the parent borrower, during any period during which the student on whose behalf the loan was borrowed by the parent borrower meets the conditions required for a deferral under section 1077(a)(2)(C)(i)(I) or 1078(b)(1)(M)(i)(I) of this title; and

(B)(i) in the case of a parent borrower, upon the request of the parent borrower, during the 6-month period beginning on the later of—

(I) the day after the date the student on whose behalf the loan was borrowed ceases to carry at least one-half the normal full-time academic workload (as determined by the institution); or

(II) if the parent borrower is also a student, the day after the date such parent borrower ceases to carry at least one-half such a workload; and

(ii) in the case of a graduate or professional student borrower, during the 6-month period beginning on the day after the date such student ceases to carry at least one-