

amount required under this subsection or subsection (h), the total amount required to be returned under paragraph (1) shall be reduced by the amount of such excess reserve funds returned.

(5) Definition of reserve funds

The term “reserve funds” when used with respect to a guaranty agency—

(A) includes any reserve funds in cash or liquid assets held by the guaranty agency, or held by, or under the control of, any other entity; and

(B) does not include buildings, equipment, or other nonliquid assets.

(Pub. L. 89–329, title IV, § 422, as added Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1354; amended Pub. L. 100–203, title III, §§ 3001(a), 3002(a), Dec. 22, 1987, 101 Stat. 1330–36, 1330–38; Pub. L. 102–325, title IV, §§ 412, 416(p)(8), July 23, 1992, 106 Stat. 511, 527; Pub. L. 103–66, title IV, §§ 4041(a), (2)(A), 4042, Aug. 10, 1993, 107 Stat. 354, 357; Pub. L. 103–208, § 2(c)(1), Dec. 20, 1993, 107 Stat. 2460; Pub. L. 105–33, title VI, § 6101(a), Aug. 5, 1997, 111 Stat. 648; Pub. L. 105–244, title IV, § 412, Oct. 7, 1998, 112 Stat. 1673.)

CODIFICATION

Amendment by Pub. L. 103–208 (which was effective as if included in Pub. L. 102–325) was executed to this section as amended by Pub. L. 102–325 and Pub. L. 103–66, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 1072, Pub. L. 89–329, title IV, § 422, Nov. 8, 1965, 79 Stat. 1236; Pub. L. 89–752, § 11, Nov. 3, 1966, 80 Stat. 1243; Pub. L. 90–575, title I, § 114(b), (c), Oct. 16, 1968, 82 Stat. 1021, 1022; Pub. L. 94–482, title I, § 127(a), Oct. 12, 1976, 90 Stat. 2100; Pub. L. 95–43, § 1(a)(11)–(13), June 15, 1977, 91 Stat. 213, 214; Pub. L. 95–561, title XIII, § 1322(a), Nov. 1, 1978, 92 Stat. 2363; Pub. L. 96–374, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1503; Pub. L. 99–272, title XVI, § 16011, Apr. 7, 1986, 100 Stat. 339, authorized advances to establish or strengthen reserve funds of State and nonprofit private loan insurance programs, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–244, § 412(1), substituted “section 1078(c)(9)(E)” for “section 1078(c)(10)(E)” in concluding provisions.

Subsec. (c)(6)(B)(i). Pub. L. 105–244, § 412(2)(A), substituted “written, electronic,” for “written”.

Subsec. (c)(7)(A). Pub. L. 105–244, § 412(2)(B), struck out “during the transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part D of this subchapter” after “lender-of-last-resort”.

Subsec. (c)(7)(B). Pub. L. 105–244, § 412(2)(C), substituted “section 1078(c)(9)(F)(v)” for “section 1078(c)(10)(F)(v)”.

Subsec. (g)(1). Pub. L. 105–244, § 412(3), struck out “or the program authorized by part D of this subchapter” after “program authorized by this part” in first and second sentences.

Subsec. (i). Pub. L. 105–244, § 412(4), added subsec. (i). 1997—Subsec. (h). Pub. L. 105–33 added subsec. (h).

1993—Subsec. (c)(7). Pub. L. 103–66, § 4041(a)(2)(A), substituted “to a guaranty agency—” and subpars. (A) and (B) for “to a guaranty agency in accordance with section 1078(c)(10)(F)(v) of this title in order to assist the agency in meeting its immediate cash needs and ensure the uninterrupted payment of default claims by lenders.”

Subsec. (c)(7)(B). Pub. L. 103–208 substituted a period for semicolon at end. See Codification note above.

Subsec. (g). Pub. L. 103–66, § 4042, added subsec. (g). 1992—Subsec. (a)(2). Pub. L. 102–325, § 412(1), inserted at end “Except as provided in section 1078(c)(10)(E) or (F) of this title, such unencumbered non-Federal portion shall not be subject to recall, repayment, or recovery by the Secretary.”

Subsec. (c)(5), (7). Pub. L. 102–325, § 416(p)(8), substituted “Except as provided in paragraph (7), advances” for “Advances” in par. (5) and added par. (7).

Subsecs. (e), (f). Pub. L. 102–325, § 412(2), added subsecs. (e) and (f).

1987—Subsec. (e). Pub. L. 100–203, § 3002(a), struck out subsec. (e) which related to reduction of excess cash reserves.

Pub. L. 100–203, § 3001(a), added subsec. (e).

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.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title III, § 3002(a), Dec. 22, 1987, 101 Stat. 1330–38, provided that the amendment made by that section is effective Sept. 30, 1989.

§ 1072a. Federal Student Loan Reserve Fund

(a) Establishment

Each guaranty agency shall, not later than 60 days after October 7, 1998, deposit all funds, securities, and other liquid assets contained in the reserve fund established pursuant to section 1072 of this title into a Federal Student Loan Reserve Fund (in this section and section 1072b of this title referred to as the “Federal Fund”), which shall be an account of a type selected by the agency, with the approval of the Secretary.

(b) Investment of funds

Funds transferred to the Federal Fund shall be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities selected by the guaranty agency, with the approval of the Secretary. Earnings from the Federal Fund shall be the sole property of the Federal Government.

(c) Additional deposits

After the establishment of the Federal Fund, a guaranty agency shall deposit into the Federal Fund—

(1) all amounts received from the Secretary as payment of reinsurance on loans pursuant to section 1078(c)(1) of this title;

(2) from amounts collected on behalf of the obligation of a defaulted borrower, a percentage amount equal to the complement of the reinsurance percentage in effect when payment under the guaranty agreement was made—

(A) with respect to the defaulted loan pursuant to sections 1078(c)(6)(A)¹ and 1078–6(a)(1)(B) of this title; and

(B) with respect to a loan that the Secretary has repaid or discharged under section 1087 of this title;

¹ See References in Text note below.

(3) insurance premiums collected from borrowers pursuant to sections 1078(b)(1)(H) and 1078-8(h) of this title;

(4) all amounts received from the Secretary as payment for supplemental preclaims activity performed prior to October 7, 1998;

(5) 70 percent of amounts received after October 7, 1998, from the Secretary as payment for administrative cost allowances for loans upon which insurance was issued prior to October 7, 1998; and

(6) other receipts as specified in regulations of the Secretary.

(d) Uses of funds

Subject to subsection (f), the Federal Fund may only be used by a guaranty agency—

(1) to pay lender claims pursuant to sections 1078(b)(1)(G), 1078(j), and 1087 of this title; and

(2) to pay into the Agency Operating Fund established pursuant to section 1072b of this title (in this section and section 1072b of this title referred to as the “Operating Fund”) a default aversion fee in accordance with section 1078(l) of this title.

(e) Ownership of Federal Fund

The Federal Fund, and any nonliquid asset (such as a building or equipment) developed or purchased by the guaranty agency in whole or in part with Federal reserve funds, regardless of who holds or controls the Federal reserve funds or such asset, shall be considered to be the property of the United States, prorated based on the percentage of such asset developed or purchased with Federal reserve funds, which property shall be used in the operation of the program authorized by this part, as provided in subsection (d). The Secretary may restrict or regulate the use of such asset only to the extent necessary to reasonably protect the Secretary’s prorated share of the value of such asset. The Secretary may direct a guaranty agency, or such agency’s officers or directors, to cease any activity involving expenditures, use, or transfer of the Federal Fund administered by the guaranty agency that the Secretary determines is a misapplication, misuse, or improper expenditure of the Federal Fund or the Secretary’s share of such asset.

(f) Transition

(1) In general

In order to establish the Operating Fund, each guaranty agency may transfer not more than 180 days’ cash expenses for normal operating expenses (not including claim payments) as a working capital reserve as defined in Office of Management and Budget Circular A-87 (Cost Accounting Standards) from the Federal Fund for deposit into the Operating Fund for use in the performance of the guaranty agency’s duties under this part. Such transfers may occur during the first 3 years following the establishment of the Operating Fund. However, no agency may transfer in excess of 45 percent of the balance, as of September 30, 1998, of the agency’s Federal Fund to the agency’s Operating Fund during such 3-year period. In determining the amount that may be transferred, the agency shall ensure that sufficient funds remain in the Federal Fund to pay lender

claims within the required time periods and to meet the reserve recall requirements of this section and subsections (h) and (i) of section 1072 of this title.

(2) Special rule

A limited number of guaranty agencies may transfer interest earned on the Federal Fund to the Operating Fund during the first 3 years after October 7, 1998, if the guaranty agency demonstrates to the Secretary that—

(A) the cash flow in the Operating Fund will be negative without the transfer of such interest; and

(B) the transfer of such interest will substantially improve the financial circumstances of the guaranty agency.

(3) Repayment provisions

Each guaranty agency shall begin repayment of sums transferred pursuant to this subsection not later than the start of the fourth year after the establishment of the Operating Fund, and shall repay all amounts transferred not later than 5 years from the date of the establishment of the Operating Fund. With respect to amounts transferred from the Federal Fund, the guaranty agency shall not be required to repay any interest on the funds transferred and subsequently repaid. The guaranty agency shall provide to the Secretary a reasonable schedule for repayment of the sums transferred and an annual financial analysis demonstrating the agency’s ability to comply with the schedule and repay all outstanding sums transferred.

(4) Prohibition

If a guaranty agency transfers funds from the Federal Fund in accordance with this section, and fails to make scheduled repayments to the Federal Fund, the agency may not receive any other funds under this part until the Secretary determines that the agency has made such repayments. The Secretary shall pay to the guaranty agency any funds withheld in accordance with this paragraph immediately upon making the determination that the guaranty agency has made all such repayments.

(5) Waiver

The Secretary may—

(A) waive the requirements of paragraph (3), but only with respect to repayment of interest that was transferred in accordance with paragraph (2); and

(B) waive paragraph (4);

for a guaranty agency, if the Secretary determines that there are extenuating circumstances (such as State constitutional prohibitions) beyond the control of the agency that justify such a waiver.

(6) Extension of repayment period for interest

(A) Extension permitted

The Secretary shall extend the period for repayment of interest that was transferred in accordance with paragraph (2) from 2 years to 5 years if the Secretary determines that—

(i) the cash flow of the Operating Fund will be negative as a result of repayment as required by paragraph (3);

(ii) the repayment of the interest transferred will substantially diminish the financial circumstances of the guaranty agency; and

(iii) the guaranty agency has demonstrated—

(I) that the agency is able to repay all transferred funds by the end of the 8th year following the date of establishment of the Operating Fund; and

(II) that the agency will be financially sound on the completion of repayment.

(B) Repayment of income on transferred funds

All repayments made to the Federal Fund during the 6th, 7th, and 8th years following the establishment of the Operating Fund of interest that was transferred shall include the sums transferred plus any income earned from the investment of the sums transferred after the 5th year.

(7) Investment of Federal funds

Funds transferred from the Federal Fund to the Operating Fund for operating expenses shall be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities selected by the guaranty agency, with the approval of the Secretary.

(8) Special rule

In calculating the minimum reserve level required by section 1078(c)(9)(A) of this title, the Secretary shall include all amounts owed to the Federal Fund by the guaranty agency in the calculation.

(Pub. L. 89-329, title IV, §422A, as added Pub. L. 105-244, title IV, §413(a), Oct. 7, 1998, 112 Stat. 1674; amended Pub. L. 110-315, title IV, §438(a)(1), Aug. 14, 2008, 122 Stat. 3258.)

REFERENCES IN TEXT

Section 1078(c)(6)(A) of this title, referred to in subsec. (c)(2)(A), was redesignated section 1078(c)(6)(A)(i) of this title by Pub. L. 109-171, title VIII, §8014(d)(3)(A), (B), Feb. 8, 2006, 120 Stat. 170.

AMENDMENTS

2008—Subsec. (d)(1). Pub. L. 110-315 substituted “and 1087” for “1087, and 1087-2(q)”.

EFFECTIVE DATE

Section 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.

§ 1072b. Agency Operating Fund

(a) Establishment

Each guaranty agency shall, not later than 60 days after October 7, 1998, establish a fund designated as the Operating Fund.

(b) Investment of funds

Funds deposited into the Operating Fund shall be invested at the discretion of the guaranty agency in accordance with prudent investor standards.

(c) Additional deposits

After the establishment of the Operating Fund, the guaranty agency shall deposit into the Operating Fund—

(1) the loan processing and issuance fee paid by the Secretary pursuant to section 1078(f) of this title;

(2) 30 percent of amounts received after October 7, 1998, from the Secretary as payment for administrative cost allowances for loans upon which insurance was issued prior to October 7, 1998;

(3) the account maintenance fee paid by the Secretary in accordance with section 1087h of this title;

(4) the default aversion fee paid in accordance with section 1078(l) of this title;

(5) amounts remaining pursuant to section 1078(c)(6)(B)¹ of this title from collection on defaulted loans held by the agency, after payment of the Secretary’s equitable share, excluding amounts deposited in the Federal Fund pursuant to section 1072a(c)(2) of this title; and

(6) other receipts as specified in regulations of the Secretary.

(d) Uses of funds

(1) In general

Funds in the Operating Fund shall be used for application processing, loan disbursement, enrollment and repayment status management, default aversion activities (including those described in section 1072(h)(8) of this title), default collection activities, school and lender training, financial aid awareness and related outreach activities, compliance monitoring, and other student financial aid related activities, as selected by the guaranty agency.

(2) Special rule

The guaranty agency may, in the agency’s discretion, transfer funds from the Operating Fund to the Federal Fund for use pursuant to section 1072a of this title. Such transfer shall be irrevocable, and any funds so transferred shall become the sole property of the United States.

(3) Definitions

For purposes of this subsection:

(A) Default collection activities

The term “default collection activities” means activities of a guaranty agency that are directly related to the collection of the loan on which a default claim has been paid to the participating lender, including the due diligence activities required pursuant to regulations of the Secretary.

(B) Default aversion activities

The term “default aversion activities” means activities of a guaranty agency that are directly related to providing collection assistance to the lender on a delinquent loan, prior to the loan’s being legally in a default status, including due diligence activities required pursuant to regulations of the Secretary.

(C) Enrollment and repayment status management

The term “enrollment and repayment status management” means activities of a

¹ See References in Text note below.