

§ 682.405

of the principal amount of loans originated. Beginning October 1, 2003, the fee is 0.40 percent.

(k) *Default aversion fee*—(1) *General*. If a guaranty agency performs default aversion activities on a delinquent loan in response to a lender's request for default aversion assistance on that loan, the agency receives a default aversion fee. The fee may not be paid more than once on any loan. The lender's request for assistance must be submitted to the guaranty agency no earlier than the 60th day and no later than the 120th day of the borrower's delinquency. A guaranty agency may not restrict a lender's choice of the date during this period on which the lender submits a request for default aversion assistance.

(2) *Amount of fees transferred*. No more frequently than monthly, a guaranty agency may transfer default aversion fees from the Federal Fund to its Operating Fund. The amount of the fees that may be transferred is equal to—

(i) One percent of the unpaid principal and accrued interest owed on loans that were submitted by lenders to the agency for default aversion assistance; minus

(ii) One percent of the unpaid principal and accrued interest owed by borrowers on default claims that—

(A) Were paid by the agency for the same time period for which the agency transferred default aversion fees from its Federal Fund; and

(B) For which default aversion fees have been received by the agency.

(3) *Calculation of fee*. (i) For purposes of calculating the one percent default aversion fee described in paragraph (k)(2)(i) of this section, the agency must use the total unpaid principal and accrued interest owed by the borrower as of the date the default aversion assistance request is submitted by the lender.

(ii) For purposes of paragraph (k)(2)(ii) of this section, the agency must use the total unpaid principal and accrued interest owed by the borrower as of the date the agency paid the default claim.

(4) *Prohibition against conflicts*. If a guaranty agency contracts with an outside entity to perform any default aversion activities, that outside entity may not—

(i) Hold or service the loan; or
(ii) Perform collection activities on the loan in the event of default within 3 years of the claim payment date.

(1) *Other terms*. The reinsurance agreement contains other terms and conditions that the Secretary finds necessary to—

(1) Promote the purposes of the FFEL programs and to protect the United States from unreasonable risks of loss;

(2) Ensure proper and efficient administration of the loan guarantee program; and

(3) Ensure that due diligence will be exercised in the collection of loans.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9119, Feb. 19, 1993; 59 FR 25746, May 17, 1994; 59 FR 61429, Nov. 30, 1994; 60 FR 31411, June 15, 1995; 61 FR 60486, Nov. 27, 1996; 64 FR 18980, Apr. 16, 1999; 64 FR 58628, Oct. 29, 1999]

§ 682.405 Loan rehabilitation agreement.

(a) *General*. (1) A guaranty agency that has a basic program agreement must enter into a loan rehabilitation agreement with the Secretary. The guaranty agency must establish a loan rehabilitation program for all borrowers with an enforceable promissory note for the purpose of rehabilitating defaulted loans so that the loan may be purchased, if practicable, by an eligible lender and removed from default status.

(2) A loan is considered to be rehabilitated only after the borrower has made one voluntary reasonable and affordable full payment each month and the payment is received by a guaranty agency or its agent within 15 days of the scheduled due date for 12 consecutive months in accordance with this section, and the loan has been sold to an eligible lender.

(3) After the loan has been rehabilitated, the borrower regains all benefits of the program, including any remaining deferment eligibility under section 428(b)(1)(M) of the Act, from the date of the rehabilitation.

(4) A borrower who wishes to rehabilitate a loan on which a judgment

has been entered must sign a new promissory note prior to the sale of the loan to an eligible lender.

(b) *Terms of agreement.* In the loan rehabilitation agreement, the guaranty agency agrees to ensure that its loan rehabilitation program meets the following requirements at all times:

(1) A borrower may request the rehabilitation of the borrower's defaulted FFEL loan held by the guaranty agency. The borrower must make one on-time voluntary full payment each month for 12 consecutive months to be eligible to have the defaulted loans rehabilitated. For purposes of this section, "full payment" means a reasonable and affordable payment agreed to by the borrower and the agency. The required amount of such monthly payment may be no more than is reasonable and affordable based upon the borrower's total financial circumstances. Voluntary payments are those made directly by the borrower regardless of whether there is a judgment against the borrower, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution. A guaranty agency must attempt to secure a lender to purchase the loan at the end of the twelve-(12)-month payment period.

(i) For purposes of this section, the determination of reasonable and affordable must—

(A) Include a consideration of the borrower's and spouse's disposable income and reasonable and necessary expenses including, but not limited to, housing, utilities, food, medical costs, work-related expenses, dependent care costs and other Title IV repayment;

(B) Not be a required minimum payment amount, e.g. \$50, if the agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. The agency must include documentation in the borrower's file of the basis for the determination if the monthly reasonable and affordable payment established under this section is less than \$50.00 or the monthly accrued interest on the loan, whichever is greater. However, \$50.00 may not be the minimum payment for a borrower if the agency determines that a smaller

amount is reasonable and affordable; and

(C) Be based on the documentation provided by the borrower or other sources including, but not be limited to—

(1) Evidence of current income (e.g., proof of welfare benefits, Social Security benefits, child support, veterans' benefits, Supplemental Security Income, Workmen's Compensation, two most recent pay stubs, most recent copy of U.S. income tax return, State Department of Labor reports);

(2) Evidence of current expenses (e.g., a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(3) A statement of the unpaid balance on all FFEL loans held by other holders.

(ii) The agency must include any payment made under §682.401(b)(4) in determining whether the 12 consecutive payments required under paragraph (b)(1) of this section have been made.

(iii) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (b)(1)(i)(C) of this section.

(iv) A guaranty agency must provide the borrower with a written statement confirming the borrower's reasonable and affordable payment amount, as determined by the agency, and explaining any other terms and conditions applicable to the required series of payments that must be made before a borrower's account can be considered for repurchase by an eligible lender. The statement must inform borrowers of the effects of having their loans rehabilitated (e.g. credit clearing, possibility of increased monthly payments). The statement must inform the borrower of the amount of the collection costs to be added to the unpaid principal at the time of the sale. The collection costs may not exceed 18.5 percent of the unpaid principal and accrued interest at the time of the sale.

(v) A guaranty agency must provide the borrower with an opportunity to object to terms of the rehabilitation of the borrower's defaulted loan.

(2) The guaranty agency must report to all national credit bureaus within 90 days of the date the loan was rehabilitated that the loan is no longer in a default status and that the default is to be removed from the borrower's credit history.

(3) An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans made under the same loan type and provides for the borrower to make monthly payments at least as great as the average of the 12 consecutive monthly payments received by the guaranty agency. For the purposes of the maximum loan repayment period, the lender must treat the first payment made under the 12 consecutive payments as the first payment under the applicable maximum repayment term, as defined under sections 682.209(a) or (h).

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(Authority: 20 U.S.C. 1078-6)

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§ 682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.

(a) A guaranty agency may make a claim payment from the Federal Fund and receive a reinsurance payment on a loan only if—

(1) The lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the agency;

(2) With respect to the reinsurance payment on the portion of a loan represented by a single disbursement of loan proceeds—

(i) The check for the disbursement was cashed within 120 days after disbursement; or

(ii) The proceeds of the disbursement made by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii) (B) and (C) have been released from the restricted account maintained by the school within 120 days after disbursement;

(3) The lender provided an accurate collection history and an accurate pay-

ment history to the guaranty agency with the default claim filed on the loan showing that the lender exercised due diligence in collecting the loan through collection efforts meeting the requirements of § 682.411, including collection efforts against each endorser;

(4) The loan was in default before the agency paid a default claim filed thereon;

(5) The lender filed a default claim thereon with the guaranty agency within 90 days of default;

(6) The lender resubmitted a properly documented default claim to the guaranty agency not later than 60 days from the date the agency had returned that claim due solely to inadequate documentation, except that interest accruing beyond the 30th day after the date the guaranty agency returned the claim is not reinsured unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to the 30th day;

(7) The lender satisfied all conditions of guarantee coverage set by the agency, unless the agency reinstated guarantee coverage on the loan following the lender's failure to satisfy such a condition pursuant to written policies and procedures established by the agency;

(8) The agency paid or returned to the lender for additional documentation a default claim thereon filed by the lender within 90 days of the date the lender filed the claim or, if applicable, the additional documentation, except that interest accruing beyond the 60th day after the date the lender originally filed the claim is not reinsured;

(9) The agency submitted a request for the payment on a form required by the Secretary no later than 45 days following payment of a default claim to the lender;

(10) The loan was legally enforceable by the lender when the agency paid a claim on the loan to the lender;

(11) The agency exercised due diligence in collection of the loan in accordance with § 682.410(b)(6);

(12) The agency and lender, if applicable, complied with all other Federal requirements with respect to the loan including—

(i) Payment of origination fees;