

§ 60.30

holder must provide the borrower with a written notice of the refund payment.

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[48 FR 38988, Aug. 26, 1983, as amended at 57 FR 28795, June 29, 1992]

Subpart D—The Lender and Holder

§ 60.30 Which organizations are eligible to apply to be HEAL lenders and holders?

(a) A HEAL lender may make and hold loans under the HEAL program.

(b) The following types of organizations are eligible to apply to the Secretary to be HEAL lenders:

(1) A financial or credit institution (including a bank, savings and loan association, credit union, or insurance company) which is subject to examination and supervision in its capacity as a lender by an agency of the United States or of the State in which it has its principal place of business;

(2) A pension fund approved by the Secretary;

(3) An agency or instrumentality of a State;

(4) A HEAL school; and

(5) A private nonprofit entity, designated by the State, regulated by the State, and approved by the Secretary.

(c) The following types of organizations are eligible to apply to the Secretary to be HEAL holders:

(1) Public entities in the business of purchasing student loans;

(2) The Student Loan Marketing Association (popularly known as “Sallie Mae”); and

(3) Other eligible lenders.

(d) HEAL holders must comply with any provisions in the regulations required of HEAL lenders including, but not limited to, provisions regarding applications, contracts, and due diligence.

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§ 60.31 The application to be a HEAL lender or holder.

(a) In order to be a HEAL lender or holder, an eligible organization must submit an application to the Secretary annually.

(b) In determining whether to enter into an insurance contract with an applicant and what the terms of that contract should be, the Secretary may consider the following criteria:

(1) Whether the applicant is capable of complying with the requirements in the HEAL regulations applicable to lenders and holders;

(2) The amount and rate of loans which are currently delinquent or in default, if the applicant has had prior experience with similar Federal or State student loan programs; and

(3) The financial resources of the applicant.

(c) The applicant must develop and follow written procedures for making, servicing and collecting HEAL loans. These procedures must be reviewed during the biennial audit required by § 60.42(d). If the applicant uses procedures more stringent than those required by §§ 60.34 and 60.35 for its other loans of comparable dollar value, on which it has no Federal, State, or other third party guarantee, it must include those more stringent procedures in its written procedures for servicing and collecting its HEAL loans.

(d) The applicant must submit sufficient materials with his or her application to enable the Secretary to fairly evaluate the application in accordance with these criteria.

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§ 60.32 The HEAL lender or holder insurance contract.

(a)(1) If the Secretary approves an application to be a HEAL lender or holder, the Secretary and the lender or holder must sign an insurance contract. Under this contract, the lender or holder agrees to comply with all the laws, regulations, and other requirements applicable to its participation in the HEAL program and the Secretary agrees to insure each eligible HEAL loan held by the lender or holder against the borrower’s default, death, total and permanent disability, bankruptcy under chapter 11 or 13 of the Bankruptcy Act, or bankruptcy under chapter 7 of the Bankruptcy Act when

the borrower files a complaint to determine the dischargeability of the HEAL loan. The Secretary's insurance covers 100 percent of the lender's or holder's losses on both unpaid principal and interest, except to the extent that a borrower may have a defense on the loan other than infancy.

(2) HEAL insurance, however, is not unconditional. The Secretary issues HEAL insurance on the implied representations of the lender that all the requirements for the initial insurability of the loan have been met. HEAL insurance is further conditioned upon compliance by the holder of the loan with the HEAL statute and regulations, the lender's or holder's insurance contract, and its own loan management procedures set forth in writing pursuant to § 60.31(c). The contract may contain a limit on the duration of the contract and the number or amount of HEAL loans a lender may make or hold. Each HEAL lender has either a standard insurance contract or a comprehensive insurance contract with the Secretary, as described below.

(b) *Standard insurance contract.* A lender with a standard insurance contract must submit to the Secretary a borrower's loan application for HEAL insurance on each loan that the lender determines to be eligible. The Secretary notifies the lender whether the loan is or is not insurable, the amount of the insurance, and the expiration date of the insurance commitment. A loan which has been disbursed under a standard contract of insurance prior to the Secretary's approval of the application is considered not to have been insured.

(c)(1) *Comprehensive insurance contract.* A lender with a comprehensive insurance contract may disburse a loan without submitting an individual borrower's loan application to the Secretary for approval. All eligible loans made by a lender with this type of contract are insured immediately upon disbursement.

(2) The Secretary will revoke the comprehensive contract of any lender who utilizes procedures which are inconsistent with the HEAL statute and regulations, the lender's insurance contract, or its own loan management procedures set forth in writing pursuant

to § 60.31(c), and require that such lenders disburse HEAL loans only under a standard contract. When the Secretary determines that the lender is in compliance with the HEAL statute and regulations and its own loan management procedures set forth in writing pursuant to § 60.31(c), the lender may reapply for a comprehensive contract.

(3) In providing comprehensive contracts, the Secretary shall give priority to eligible lenders that:

(i) Make loans to students at interest rates below the rates prevailing during the period involved; or

(ii) Make loans under terms that are otherwise favorable to the student relative to the terms under which eligible lenders are generally making loans during the period involved.

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§ 60.33 Making a HEAL loan.

The loan-making process includes the processing of necessary forms, the approval of a borrower for a loan, determination of a borrower's creditworthiness, the determination of the loan amount (not to exceed the amount approved by the school), the explanation to a borrower of his or her responsibilities under the loan, the execution of the promissory note, and the disbursement of the loan proceeds. A lender may rely in good faith upon statements of an applicant and the HEAL school contained in the loan application papers, except where those statements are in conflict with information obtained from the report on the applicant's credit history, or other information available to the lender. Except where the statements are in conflict with information obtained from the applicant's credit history or other information available to the lender, a lender making loans to nonstudent borrowers may rely in good faith upon statements by the borrower and authorizing officials of internship, residency, or other programs for which a borrower may receive a deferment.

(a) *Processing of forms.* Before making a HEAL loan, a lender must determine