

furnished is a result of an alleged identity theft as defined in § 682.402(e)(14).

(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, 1080a, 1082, 1087)

[64 FR 58630, Oct. 29, 1999, as amended at 64 FR 58965, Nov. 1, 1999; 72 FR 62006, Nov. 1, 2007]

**§ 682.412 Consequences of the failure of a borrower or student to establish eligibility.**

(a) The lender shall immediately send to the borrower a final demand letter meeting the requirements of § 682.411(f) when it learns and can substantiate that the borrower or the student on whose behalf a parent has borrowed, without the lender or school's knowledge at the time the loan was made, provided false or erroneous information or took actions that caused the student or borrower—

(1) To be ineligible for all or a portion of a loan made under this part;

(2) To receive a Stafford loan subject to payment of Federal interest benefits as provided under § 682.301 for which he or she was ineligible; or

(3) To receive loan proceeds for a period of enrollment from which he or she has withdrawn or been expelled prior to the first day of classes or during which he or she failed to attend school and has not paid those funds to the school or repaid them to the lender.

(b) The lender shall neither bill the Secretary for nor be entitled to interest benefits on a loan after it learns that one of the conditions described in paragraph (a) of this section exists with respect to the loan.

(c) In the final demand letter transmitted under paragraph (a) of this section, the lender shall demand that within 30 days from the date the letter is mailed the borrower repay in full any principal amount for which the borrower is ineligible and any accrued interest, including interest and all special allowance paid by the Secretary.

(d) If the borrower repays the amounts described in paragraph (c) of this section within the 30-day period, the lender shall—

(1) On its next quarterly interest billing submitted under § 682.305, refund to

the Secretary the interest benefits and special allowance repaid by the borrower and all other interest benefits and special allowance previously paid by the Secretary on the ineligible portion of the loan; and

(2) Treat that payment of the principal amount of the ineligible portion of the loan as a prepayment of principal.

(e) If a borrower fails to comply with the terms of a final demand letter described in paragraph (a) of this section, the lender shall treat the entire loan as in default, and—

(1) With its next quarterly interest billing submitted under § 682.305, refund to the Secretary the amount of the interest benefits received from the Secretary on the ineligible portion of the loan, whether or not repaid by the borrower; and

(2) Within the time specified in § 682.406(a)(5), file a default claim thereon with the guaranty agency for the entire unpaid balance of principal and accrued interest.

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(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9120, Feb. 19, 1993; 60 FR 61757, Dec. 1, 1995; 64 FR 58632, Oct. 29, 1999]

**§ 682.413 Remedial actions.**

(a)(1) The Secretary requires a lender and its third-party servicer administering any aspect of the FFEL programs under a contract with the lender to repay interest benefits and special allowance or other compensation received on a loan guaranteed by a guaranty agency, pursuant to paragraph (a)(2) of this section—

(i) For any period beginning on the date of a failure by the lender or servicer, with respect to the loan, to comply with any of the requirements set forth in § 682.406(a)(1)–(a)(6), (a)(9), and (a)(12);

(ii) For any period beginning on the date of a failure by the lender or servicer, with respect to the loan, to meet a condition of guarantee coverage established by the guaranty agency, to the date, if any, on which the guaranty

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agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency;

(iii) For any period in which the lender or servicer, with respect to the loan, violates the requirements of subpart C of this part; and

(iv) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under § 682.302(d).

(2) For purposes of this section, a lender and any applicable third-party servicer shall be considered jointly and severally liable for the repayment of any interest benefits and special allowance paid as a result of a violation of applicable requirements by the servicer in administering the lender's FFEL programs.

(3) For purposes of paragraph (a)(2) of this section, the relevant third-party servicer shall repay any outstanding liabilities under paragraph (a)(2) of this section only if—

(i) The Secretary has determined that the servicer is jointly and severally liable for the liabilities; and

(ii) (A) The lender has not repaid in full the amount of the liability within 30 days from the date the lender receives notice from the Secretary of the liability;

(B) The lender has not made other satisfactory arrangements to pay the amount of the liability within 30 days from the date the lender receives notice from the Secretary of the liability; or

(C) The Secretary is unable to collect the liability from the lender by offsetting the lender's bill to the Secretary for interest benefits or special allowance, if—

(1) The bill is submitted after the 30 day period specified in paragraph (a)(3)(ii)(A) of this section has passed; and

(2) The lender has not paid, or made satisfactory arrangements to pay, the liability.

(b)(1) The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender, third-party servicer, if applicable, or the agency failed to meet the requirements of § 682.406(a).

(2) The Secretary may require a guaranty agency to repay reinsurance pay-

ments received on a loan or to assign FFEL loans to the Department if the agency fails to meet the requirements of § 682.410.

(c)(1) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guaranty agency or third-party servicer administering any aspect of the FFEL programs under a contract with the guaranty agency, that makes an incomplete or incorrect statement in connection with any agreement entered into under this part or violates any applicable Federal requirement:

(i) Require the agency to return payments made by the Secretary to the agency.

(ii) Withhold payments to the agency.

(iii) Limit the terms and conditions of the agency's continued participation in the FFEL programs.

(iv) Suspend or terminate agreements with the agency.

(v) Impose a fine on the agency or servicer. For purposes of assessing a fine on a third-party servicer, a repeated mechanical systemic unintentional error shall be counted as one violation, unless the servicer has been cited for a similar violation previously and had failed to make the appropriate corrections to the system.

(vi) Require repayment from the agency and servicer pursuant to paragraph (c)(2) of this section, of interest, special allowance, and reinsurance paid on Consolidation loan amounts attributed to Consolidation loans for which the certification required under § 682.206(f)(1) is not available.

(vii) Require repayment from the agency or servicer, pursuant to paragraph (c)(2) of this section, of any related payments that the Secretary became obligated to make to others as a result of an incomplete or incorrect statement or a violation of an applicable Federal requirement.

(2) For purposes of this section, a guaranty agency and any applicable third-party servicer shall be considered jointly and severally liable for the repayment of any interest benefits, special allowance, reinsurance paid, or other compensation on Consolidation

loan amounts attributed to Consolidation loans as specified in § 682.413(c)(1)(vi) as a result of a violation by the servicer administering any aspect of the FFEL programs under a contract with that guaranty agency.

(3) For purposes of paragraph (c)(2) of this section, the relevant third-party servicer shall repay any outstanding liabilities under paragraph (c)(2) of this section only if—

(i) The Secretary has determined that the servicer is jointly and severally liable for the liabilities; and

(ii) (A) The guaranty agency has not repaid in full the amount of the liability within 30 days from the date the guaranty agency receives notice from the Secretary of the liability;

(B) The guaranty agency has not made other satisfactory arrangements to pay the amount of the liability within 30 days from the date the guaranty agency receives notice from the Secretary of the liability; or

(C) The Secretary is unable to collect the liability from the guaranty agency by offsetting the guaranty agency's first reinsurance claim to the Secretary, if—

(1) The claim is submitted after the 30-day period specified in paragraph (c)(3)(ii)(A) of this section has passed; and

(2) The guaranty agency has not paid, or made satisfactory arrangements to pay, the liability.

(d)(1) The Secretary follows the procedures described in 34 CFR part 668, subpart G, applicable to fine proceedings against schools, in imposing a fine against a lender, guaranty agency, or third-party servicer. References to "the institution" in those regulations shall be understood to mean the lender, guaranty agency, or third-party servicer, as applicable, for this purpose.

(2) The Secretary also follows the provisions of section 432(g) of the Act in imposing a fine against a guaranty agency or lender.

(e)(1)(i) The Secretary's decision to require repayment of funds, withhold funds, or to limit or suspend a lender, guaranty agency, or third party servicer from participation in the FFEL Program or to terminate a lender or third party from participation in the FFEL Program does not become

final until the Secretary provides the lender, agency, or servicer with written notice of the intended action and an opportunity to be heard. The hearing is at a time and in a manner the Secretary determines to be appropriate to the resolution of the issues on which the lender, agency, or servicer requests the hearing.

(ii) The Secretary's decision to terminate a guaranty agency's participation in the FFEL Program after September 24, 1998 does not become final until the Secretary provides the agency with written notice of the intended action and provides an opportunity for a hearing on the record.

(2)(i) The Secretary may withhold payments from an agency or suspend an agreement with an agency prior to giving notice and an opportunity to be heard if the Secretary finds that emergency action is necessary to prevent substantial harm to Federal interests.

(ii) The Secretary follows the notice and show cause procedures described in § 682.704 applicable to emergency actions against lenders in taking an emergency action against a guaranty agency.

(3) The Secretary follows the procedures in 34 CFR 30.20–30.32 in collecting a debt by offset against payments otherwise due a guaranty agency or lender.

(f) Notwithstanding paragraphs (a)–(e) of this section, the Secretary may waive the right to require repayment of funds by a lender or agency if in the Secretary's judgment the best interests of the United States so require. The Secretary's waiver policy for violations of § 682.406(a)(3) or (a)(5) is set forth in appendix D to this part.

(g) The Secretary's final decision to require repayment of funds or to take other remedial action, other than a fine, against a lender or guaranty agency under this section is conclusive and binding on the lender or agency.

(h) In any action to require repayment of funds or to withhold funds from a guaranty agency, or to limit, suspend, or terminate a guaranty agency based on a violation of § 682.401(e), if the Secretary finds that the guaranty agency provided or offered the payments or activities listed in § 682.401(e)(1), the Secretary applies a

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rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans or to secure FFEL loan volume. To reverse the presumption, the guaranty agency must present evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.

NOTE TO §682.413: A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1, 1097)

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**§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.**

(a) *Records.* (1)(i) The guaranty agency shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(1)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every 10 business days. Any reference to a guaranty agency under this section includes a third-party servicer that administers any aspect of the FFEL programs under a contract with the guaranty agency, if applicable.

(ii) The agency shall maintain—

(A) All documentation supporting the claim filed by the lender;

(B) Notices of changes in a borrower's address;

(C) A payment history showing the date and amount of each payment received from or on behalf of the borrower by the guaranty agency, and the amount of each payment that was attributed to principal, accrued interest, and collection costs and other charges, such as late charges;

(D) A collection history showing the date and subject of each communication between the agency and the borrower or endorser relating to collection of a defaulted loan, each communication between the agency and a credit

bureau regarding the loan, each effort to locate a borrower whose address was unknown at any time, and each request by the lender for default aversion assistance on the loan;

(E) Documentation regarding any wage garnishment actions initiated by the agency on the loan;

(F) Documentation of any matters relating to the collection of the loan by tax-refund offset; and

(G) Any additional records that are necessary to document its right to receive or retain payments made by the Secretary under this part and the accuracy of reports it submits to the Secretary.

(2) A guaranty agency must retain the records required for each loan for not less than 3 years following the date the loan is repaid in full by the borrower, or for not less than 5 years following the date the agency receives payment in full from any other source. However, in particular cases, the Secretary may require the retention of records beyond these minimum periods.

(3) A guaranty agency shall retain a copy of the audit report required under §682.410(b) for not less than five years after the report is issued.

(4)(i) The guaranty agency shall require a participating lender to maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(4)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status.

(ii) The lender shall keep—

(A) A copy of the loan application if a separate application was provided to the lender;

(B) A copy of the signed promissory note;

(C) The repayment schedule;

(D) A record of each disbursement of loan proceeds;

(E) Notices of changes in a borrower's address and status as at least a half-time student;

(F) Evidence of the borrower's eligibility for a deferment;

(G) The documents required for the exercise of forbearance;

(H) Documentation of the assignment of the loan;