

§ 682.422

§ 682.422 Guaranty agency repayment of funds transferred from the Federal Fund.

(a) *General.* A guaranty agency must begin repayment of money transferred from the Federal Fund not later than the start of the 4th year after the agency establishes its Operating Fund. All amounts transferred must be repaid not later than five years after the date the Operating Fund is established.

(b) *Extension for repaying the interest transferred—(1) General.* The Secretary may extend the period for repayment of interest transferred from the Federal Fund from two years to five years if the Secretary determines that the cash flow of the Operating Fund will be negative if the transferred interest had to be repaid earlier or the repayment of the interest would substantially diminish the financial circumstances of the agency.

(2) *Agency eligibility for an extension.* To receive an extension, the agency must demonstrate that it will be able to repay all transferred funds by the end of the 8th year following the date of establishment of the Operating Fund and that the agency will be financially sound upon the completion of repayment.

(3) *Repayment of interest earned on transferred funds.* If the Secretary extends the period for repayment of interest transferred from the Federal Fund for a guaranty agency, the agency must repay the amount of interest during the 6th, 7th, and 8th years following the establishment of the Operating Fund. In addition to repaying the amount of interest, the guaranty agency must also pay to the Secretary any income earned after the 5th year from the investment of the transferred amount. In determining the amount of income earned on the transferred amount, the Secretary uses the average investment income earned on the agency's Operating Fund.

(c) *Consequences if a guaranty agency fails to repay transfers from the Federal Fund.* If a guaranty agency fails to make a scheduled repayment to the Federal Fund, the agency may not receive any other Federal funds until it becomes current in making all sched-

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uled payments, unless the Secretary waives this restriction.

(Authority: 20 U.S.C. 1072-1)

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§ 682.423 Guaranty agency Operating Fund.

(a) *Establishment and control.* A guaranty agency must establish and maintain an Operating Fund in an account separate from the Federal Fund. Except for funds that have been transferred from the Federal Fund, the Operating Fund is considered the property of the guaranty agency. During periods in which the Operating Fund contains funds transferred from the Federal Fund, the Operating Fund may be used only as permitted by §§ 682.410(a)(2) and 682.418.

(b) *Deposits.* The guaranty agency must deposit into the Operating Fund—

(1) Amounts authorized by the Secretary to be transferred from the Federal Fund;

(2) Account maintenance fees;

(3) Loan processing and issuance fees;

(4) Default aversion fees;

(5) 30 percent of administrative cost allowances received on or after October 1, 1998 for loans upon which insurance was issued before October 1, 1998;

(6) The portion of the amounts collected on defaulted loans that remains after the Secretary's share of collections has been paid and the complement of the reinsurance percentage has been deposited into the Federal Fund;

(7) The agency's share of the payoff amounts received from the consolidation or rehabilitation of defaulted loans; and

(8) Other receipts as authorized by the Secretary.

(c) *Uses.* A guaranty agency may use the Operating Fund for—

(1) Guaranty agency-related activities, including—

(i) Application processing;

(ii) Loan disbursement;

(iii) Enrollment and repayment status management;

(iv) Default aversion activities;

(v) Default collection activities;

(vi) School and lender training;

(vii) Financial aid awareness and related outreach activities; and

- (viii) Compliance monitoring; and
- (2) Other student financial aid-related activities for the benefit of students, as selected by the guaranty agency.

(Authority: 20 U.S.C. 1072-2)

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Subpart E—Federal Guaranteed Student Loan Programs

§ 682.500 Circumstances under which loans may be guaranteed by the Secretary.

(a) The Secretary may guarantee all—

(1) FISL, Federal SLS, and Federal PLUS loans made by lenders located in a State in which no State or private nonprofit guaranty agency has in effect an agreement with the Secretary under § 682.401 to serve as guarantor in that State;

(2) Federal Consolidation loans made by the Student Loan Marketing Association and Federal Consolidation loans made by any other lender that has applied for and been denied guarantee coverage on Consolidation loans by the guaranty agency that guarantees the largest dollar volume of FFEL loans made by the lender; and

(3) FISL, Federal SLS, Federal PLUS, and Federal Consolidation loans made by lenders located in a State in which a guaranty agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Secretary may guarantee FISL, Federal SLS, Federal PLUS and Federal Consolidation loans made by a lender located in a State where a guaranty agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only for—

(1) A student who does not meet the agency's residency requirements;

(2) A lender who is not able to obtain a guarantee from the guaranty agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements;

(3) With the approval of the guaranty agency, a student who has previously

received from the same lender a FISL loan that has not been repaid; or

(4) All students at a school located in the State if the Secretary finds that—

(i) No single guaranty agency program is reasonably accessible to students at that school as compared to students at other schools during a comparable period of time; and

(ii) Guaranteeing loans made in the State to students attending that school would significantly increase the access of students at that school to FFEL Program loans. The Secretary may guarantee loans made to those students by a lender in that State if—

(A) The guaranty agency does not recognize the school as being eligible, but the school is eligible under the FISL program; or

(B) A majority of the persons enrolled at the school meet the conditions of student eligibility for FISL loans but are not recognized as eligible under the guaranty agency program.

(c) For purposes of paragraph (b) of this section, a lender is considered to be located in the same State as a school if the lender—

(1) Has an origination relationship with the school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for guaranteeing loans under the Federal FFEL programs, the Secretary may require the lender to submit evidence of circumstances that would justify loan guarantees under the provisions of this section.

(e) With regard to a school lender that has entered into an agreement with the Secretary under § 682.600, the Secretary denies loan guarantees on the basis of this section only if the Secretary first determines that all eligible students at that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies