

this section [amending this section, section 1078 of this title, and provisions set out as a note under section 1078-1 of this title] shall be effective July 1, 1991, except that the amendment made by subsection (b) [amending section 1078 of this title] shall be effective upon enactment.”

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99-498, see section 27 of Pub. L. 100-50, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1986, with subsec. (d)(5) of this section effective 30 days after Oct. 17, 1986, see section 402(b) of Pub. L. 99-498, set out as a note under section 1071 of this title.

WAIVER OF MITIGATING CIRCUMSTANCES REQUIREMENT FOR STUDENT LOAN INSURANCE PROGRAM ELIGIBILITY

Pub. L. 115-141, div. H, title III, §314, Mar. 23, 2018, 132 Stat. 752, provided that:

“(a) IN GENERAL.—For the purpose of carrying out section 435(a)(2) of the Higher Education Act of 1965 (20 U.S.C. 1085(a)(2)), the Secretary of Education may waive the requirements under sections 435(a)(5)(A)(i) and 435(a)(5)(A)(ii) of such Act (20 U.S.C. 1085(a)(5)(A)(i) and 20 U.S.C. 1085(a)(5)(A)(ii))—

“(1) for an institution of higher education that offers an associate degree, is a public institution, and is located in an economically distressed county, defined as a county that ranks in the lowest 5 percent of all counties in the United States based on a national index of county economic status; and

“(2) for an institution—

“(A) that is a public institution of higher education or a Tribal College or University (as defined in section 316(b) of such Act (20 U.S.C. 1059c[(b)])); and

“(B) whose fall enrollment for the most recently completed academic year was comprised of a majority of students who are Indian (as defined in such section) or Alaska Natives (as defined in section 317(b) of such Act (20 U.S.C. 1059d(b))[]).

“(b) APPLICABILITY.—Subsection (a) shall apply to an institution of higher education that otherwise would be ineligible to participate in a program under part A of title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq.] on or after the date of enactment of this Act [Mar. 23, 2018] due to the application of section 435(a)(2) of the Higher Education Act of 1965 (20 U.S.C. 1085(a)(2)).

“(c) COVERAGE.—This section shall be in effect for the period covered by this Act [div. H of Pub. L. 115-141, 132 Stat. 696] and for the succeeding fiscal year.”

DEFINITION OF INSTITUTION OF HIGHER EDUCATION

Pub. L. 102-325, title IV, §427(b)(2), July 23, 1992, 106 Stat. 549, provided that: “With respect to reference in any other provision of law to the definition of institution of higher education contained in section 435(b) of the Act [former 20 U.S.C. 1085(b)], such provision shall be deemed to refer to section 481(a) of the Act [former 20 U.S.C. 1088(a)].”

§ 1086. Delegation of functions

(a) In general

An eligible lender or guaranty agency that contracts with another entity to perform any of the lender's or agency's functions under this subchapter, or otherwise delegates the performance of such functions to such other entity—

(1) shall not be relieved of the lender's or agency's duty to comply with the requirements of this subchapter; and

(2) shall monitor the activities of such other entity for compliance with such requirements.

(b) Special rule

A lender that holds a loan made under this part in the lender's capacity as a trustee is responsible for complying with all statutory and regulatory requirements imposed on any other holder of a loan made under this part.

(Pub. L. 89-329, title IV, §436, as added Pub. L. 99-498, title IV, §402(a), Oct. 17, 1986, 100 Stat. 1413; amended Pub. L. 105-244, title IV, §430, Oct. 7, 1998, 112 Stat. 1709.)

PRIOR PROVISIONS

A prior section 1086, Pub. L. 89-329, title IV, §436, as added Pub. L. 89-752, §12, Nov. 3, 1966, 80 Stat. 1244; amended Pub. L. 90-575, title I, §116(b)(5), Oct. 16, 1968, 82 Stat. 1024; Pub. L. 94-482, title I, §127(a), Oct. 12, 1976, 90 Stat. 2132; Pub. L. 96-374, title XIII, §1391(a)(1), Oct. 3, 1980, 94 Stat. 1503, related to a District of Columbia student loan insurance program, prior to the general revision of this part by Pub. L. 99-498.

AMENDMENTS

1998—Pub. L. 105-244 amended section catchline and text generally. Prior to amendment, section authorized establishment of a District of Columbia student loan insurance program.

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.

§ 1087. Repayment by Secretary of loans of bankrupt, deceased, or disabled borrowers; treatment of borrowers attending schools that fail to provide a refund, attending closed schools, or falsely certified as eligible to borrow

(a) Repayment in full for death and disability

(1) In general

If a student borrower who has received a loan described in subparagraph (A) or (B) of section 1078(a)(1) of this title dies or becomes permanently and totally disabled (as determined in accordance with regulations of the Secretary), or if a student borrower who has received such a loan is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months then the Secretary shall discharge the borrower's liability on the loan by repaying the amount owed on the loan. The Secretary may develop such safeguards as the Secretary determines necessary to prevent fraud and abuse in the discharge of liability under this subsection. Notwithstanding any other provision of this subsection, the Secretary may promulgate regulations to reinstate the obligation of, and resume collection on, loans discharged under this subsection in any case in which—

(A) a borrower received a discharge of liability under this subsection and after the discharge the borrower—

(i) receives a loan made, insured, or guaranteed under this subchapter; or

(ii) has earned income in excess of the poverty line; or

(B) the Secretary determines the reinstatement and resumption to be necessary.

(2) Disability determinations

A borrower who has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected condition and who provides documentation of such determination to the Secretary of Education, shall be considered permanently and totally disabled for the purpose of discharging such borrower's loans under this subsection, and such borrower shall not be required to present additional documentation for purposes of this subsection.

(3) Automatic income monitoring

(A) In general

The Secretary shall establish and implement, with respect to any borrower described in subparagraph (B), procedures to—

(i) use return information disclosed under section 6103(l)(13) of title 26, pursuant to approval provided under section 1098h of this title, to determine the borrower's continued eligibility for the loan discharge described in subparagraph (B);

(ii) allow the borrower, at any time, to opt out of disclosure under such section 6103(l)(13) and instead provide such information as the Secretary may require to determine the borrower's continued eligibility for such loan discharge; and

(iii) provide the borrower with an opportunity to update the return information so disclosed before determination of such borrower's continued eligibility for such loan discharge.

(B) Applicability

Subparagraph (A) shall apply—

(i) to each borrower of a loan that is discharged due to the total and permanent disability (within the meaning of this subsection) of the borrower; and

(ii) during the period beginning on the date on which such loan is so discharged and ending on the first day on which such loan may no longer be reinstated.

(b) Payment of claims on loans in bankruptcy

The Secretary shall pay to the holder of a loan described in section 1078(a)(1)(A) or (B), 1078-1,¹ 1078-2, 1078-3, or 1078-8 of this title, the amount of the unpaid balance of principal and interest owed on such loan—

(1) when the borrower files for relief under chapter 12 or 13 of title 11;

(2) when the borrower who has filed for relief under chapter 7 or 11 of such title commences an action for a determination of dischargeability under section 523(a)(8)(B) of such title; or

(3) for loans described in section 523(a)(8)(A) of such title, when the borrower files for relief under chapter 7 or 11 of such title.

(c) Discharge

(1) In general

If a borrower who received, on or after January 1, 1986, a loan made, insured, or guaran-

teed under this part and the student borrower, or the student on whose behalf a parent borrowed, is unable to complete the program in which such student is enrolled due to the closure of the institution or if such student's eligibility to borrow under this part was falsely certified by the eligible institution or was falsely certified as a result of a crime of identity theft, or if the institution failed to make a refund of loan proceeds which the institution owed to such student's lender, then the Secretary shall discharge the borrower's liability on the loan (including interest and collection fees) by repaying the amount owed on the loan and shall subsequently pursue any claim available to such borrower against the institution and its affiliates and principals or settle the loan obligation pursuant to the financial responsibility authority under subpart 3 of part H. In the case of a discharge based upon a failure to refund, the amount of the discharge shall not exceed that portion of the loan which should have been refunded. The Secretary shall report to the authorizing committees annually as to the dollar amount of loan discharges attributable to failures to make refunds.

(2) Assignment

A borrower whose loan has been discharged pursuant to this subsection shall be deemed to have assigned to the United States the right to a loan refund up to the amount discharged against the institution and its affiliates and principals.

(3) Eligibility for additional assistance

The period of a student's attendance at an institution at which the student was unable to complete a course of study due to the closing of the institution shall not be considered for purposes of calculating the student's period of eligibility for additional assistance under this subchapter.

(4) Special rule

A borrower whose loan has been discharged pursuant to this subsection shall not be precluded from receiving additional grants, loans, or work assistance under this subchapter for which the borrower would be otherwise eligible (but for the default on such discharged loan). The amount discharged under this subsection shall be treated the same as loans under section 1087ee(a)(5) of this title.

(5) Reporting

The Secretary shall report to consumer reporting agencies with respect to loans which have been discharged pursuant to this subsection.

(d) Repayment of loans to parents

If a student on whose behalf a parent has received a loan described in section 1078-2 of this title dies, then the Secretary shall discharge the borrower's liability on the loan by repaying the amount owed on the loan.

(Pub. L. 89-329, title IV, § 437, as added Pub. L. 99-498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1414; amended Pub. L. 102-325, title IV, § 428, July 23, 1992, 106 Stat. 551; Pub. L. 103-208,

¹ See References in Text note below.

§2(c)(63)–(65), Dec. 20, 1993, 107 Stat. 2469; Pub. L. 105–244, title IV, §431, Oct. 7, 1998, 112 Stat. 1709; Pub. L. 109–171, title VIII, §8012, Feb. 8, 2006, 120 Stat. 166; Pub. L. 110–315, title I, §103(b)(7), title IV, §§432(b)(4), 437(a), (b), Aug. 14, 2008, 122 Stat. 3089, 3246, 3257, 3258; Pub. L. 111–39, title IV, §402(e)(1), July 1, 2009, 123 Stat. 1942; Pub. L. 116–91, §5, Dec. 19, 2019, 133 Stat. 1193.)

REFERENCES IN TEXT

Section 1078–1 of this title, referred to in subsec. (b), was repealed by Pub. L. 103–66, title IV, §4047(b)–(d), Aug. 10, 1993, 107 Stat. 364, eff. July 1, 1994, except with respect to loans provided under that section as it existed prior to Aug. 10, 1993. Subsequently, a new section 1078–1, relating to voluntary flexible agreements with guaranty agencies, was enacted by Pub. L. 105–244, title IV, §418, Oct. 7, 1998, 112 Stat. 1691.

PRIOR PROVISIONS

A prior section 1087, Pub. L. 89–329, title IV, §437, as added Pub. L. 90–575, title I, §113(a), Oct. 16, 1968, 82 Stat. 1020; amended Pub. L. 92–318, title I, §132D(a), June 23, 1972, 86 Stat. 263; Pub. L. 94–482, title I, §127(a), Oct. 12, 1976, 90 Stat. 2133; Pub. L. 96–374, title XIII, §1391(a)(1), Oct. 3, 1980, 94 Stat. 1503, related to repayment of loans by Secretary, prior to the general revision of this part by Pub. L. 99–498.

AMENDMENTS

2019—Subsec. (a)(3). Pub. L. 116–91 added par. (3).

2009—Subsec. (a)(1). Pub. L. 111–39 substituted “Secretary, or if” for “Secretary,., or if” in introductory provisions and inserted “the reinstatement and resumption to be” after “determines” in subpar. (B).

2008—Subsec. (a). Pub. L. 110–315, §437(a)(3), which directed insertion of “The Secretary may develop such safeguards as the Secretary determines necessary to prevent fraud and abuse in the discharge of liability under this subsection. Notwithstanding any other provision of this subsection, the Secretary may promulgate regulations to reinstate the obligation of, and resume collection on, loans discharged under this subsection in any case in which—

“(A) a borrower received a discharge of liability under this subsection and after the discharge the borrower—

“(i) receives a loan made, insured, or guaranteed under this subchapter; or

“(ii) has earned income in excess of the poverty line; or

“(B) the Secretary determines necessary.”

at the end of subsec. (a), was executed by making the insertion at the end of par. (1) to reflect the probable intent of Congress, notwithstanding the addition of par. (2) prior to the effective date of this amendment.

Pub. L. 110–315, §437(a)(1), (2), designated existing provisions as par. (1), inserted par. (1) heading, and inserted “, or if a student borrower who has received such a loan is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months” after “of the Secretary).”.

Subsec. (a)(2). Pub. L. 110–315, §437(b), added par. (2).

Subsec. (c)(1). Pub. L. 110–315, §103(b)(7), substituted “authorizing committees” for “Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate”.

Subsec. (c)(5). Pub. L. 110–315, §432(b)(4), substituted “consumer reporting agencies” for “credit bureaus”.

2006—Pub. L. 109–171, §8012(1), in section catchline, substituted “schools that fail to provide a refund, attending closed schools, or falsely certified as eligible to borrow” for “closed schools or falsely certified as eligible to borrow”.

Subsec. (c)(1). Pub. L. 109–171, §8012(2), inserted “or was falsely certified as a result of a crime of identity theft” after “falsely certified by the eligible institution” in first sentence.

1998—Subsec. (c)(1). Pub. L. 105–244 inserted “or if the institution failed to make a refund of loan proceeds which the institution owed to such student’s lender,” after “falsely certified by the eligible institution,” and inserted at end “In the case of a discharge based upon a failure to refund, the amount of the discharge shall not exceed that portion of the loan which should have been refunded. The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate annually as to the dollar amount of loan discharges attributable to failures to make refunds.”

1993—Subsec. (b). Pub. L. 103–208, §2(c)(63), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “If the collection of a loan described in subparagraph (A) or (B) of section 1078(a)(1) of this title or sections 1078–1, 1078–2, 1078–3, or 1078–8 of this title is stayed in any action under title 11, the Secretary shall repay the unpaid balance of principal and interest owed on the loan.”

Subsec. (c)(1). Pub. L. 103–208, §2(c)(64), substituted “If a borrower” for “If a student borrower”, “under this part and the student borrower, or the student on whose behalf a parent borrowed, is unable” for “under this part is unable”, and “in which such student is enrolled” for “in which the borrower is enrolled”.

Subsec. (c)(4). Pub. L. 103–208, §2(c)(65), inserted at end “The amount discharged under this subsection shall be treated the same as loans under section 1087ee(a)(5) of this title.”

1992—Pub. L. 102–325 amended section generally, substituting subsecs. (a) to (d) for former subsecs. (a) and (b) which related to repayment by Secretary of loans of bankrupt, deceased, or disabled borrowers.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–39, title IV, §402(e)(2), July 1, 2009, 123 Stat. 1943, provided that: “The amendments made by paragraph (1) [amending this section] shall be effective as if enacted as part of the amendments in section 437(a) of the Higher Education Opportunity Act (Public Law 110–315) [amending this section], and shall take effect on July 1, 2010.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title IV, §437(c), Aug. 14, 2008, 122 Stat. 3258, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on July 1, 2010.”

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

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.

DISCHARGING THE FEDERAL STUDENT LOAN DEBT OF TOTALLY AND PERMANENTLY DISABLED VETERANS

Memorandum of President of the United States, Aug. 21, 2019, 84 F.R. 44677, provided:

Memorandum for the Secretary of Education [and] the Secretary of Veterans Affairs

Since our Founding, the United States has been blessed with men and women willing to serve in defense of our Nation and our ideals. Many of those answering the call to serve make the ultimate sacrifice for their country, and many others carry physical and emotional scars for the rest of their lives.

The Higher Education Act of 1965 [20 U.S.C. 1001 et seq.], as amended by the Higher Education Opportunity Act in 2008 and other acts (Higher Education Act), honors veterans who are totally and permanently disabled as a result of their service to the Nation by providing for the discharge of their Federal student loan debt. Borrowers who have been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected condition and who provide documentation of that determination to the Secretary of Education are entitled to the discharge of such debt.

For the last decade, veterans seeking loan discharges have been required to submit an application to the Secretary of Education with proof of their disabilities obtained from the Department of Veterans Affairs. The process has been overly complicated and difficult, and prevented too many of our veterans from receiving the relief for which they are eligible. This has inflicted significant hardship and serious harm on these veterans and has frustrated the intent of the Congress that their Federal student loan debt be discharged.

Only half of the approximately 50,000 totally and permanently disabled veterans who currently qualify for the discharge of their Federal student loan debt have availed themselves of the benefits provided to them by the Higher Education Act. This has created a serious and critical problem for disabled veterans, who must deal with the day-to-day consequences of their service-connected injuries, and for our military, as readiness and recruitment suffer when we do not take care of our veterans. There is a pressing need to quickly and effectively resolve this problem. Therefore, my Administration will take prompt action to ensure that all totally and permanently disabled veterans are able to obtain, with minimal burden, the Federal student loan debt discharges to which they are legally entitled.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, and to express the gratitude of our Nation for the service of our totally and permanently disabled veterans, I hereby direct the following:

SECTION 1. Policy. It shall be the policy of the Federal Government to facilitate—in a manner that is quick, efficient, and minimally burdensome—the discharge of Federal student loan debt for totally and permanently disabled veterans.

SEC. 2. Directive to the Secretaries of Education and Veterans Affairs. (a) The Secretary of Education is hereby directed to develop as soon as practicable a process, consistent with applicable law, to facilitate the swift and effective discharge of the Federal student loan debt of totally and permanently disabled veterans pursuant to section 437 of the Higher Education Act, 20 U.S.C. 1087; section 455 of the Higher Education Act, 20 U.S.C. 1087e; and section 464 of the Higher Education Act, 20 U.S.C. 1087dd. To the maximum extent feasible and consistent with applicable law, the process developed by the Secretary of Education should account for and make use of disability determinations made available to the Secretary of Education by the Department of Veterans Affairs.

(b) The Secretaries of Education and Veterans Affairs (Secretaries) shall take appropriate action to implement the policy set forth in section 1 of this memorandum as expeditiously as possible. To that end, the Secretaries shall consider all pathways for the Department of Veterans Affairs to share disability determinations with the Department of Education, so that veterans may be relieved of the burdensome administrative impediments to Federal student loan debt discharge.

SEC. 3. Definitions. As used in this memorandum:

(a) the term “Federal student loan debt” means liability to repay Federal Family Education Loan (FFEL) Program loans, William D. Ford Federal Direct Loan (Direct Loan) Program loans, and Federal Perkins Loans.

(b) the term “discharge” means discharge of FFEL Program loans and Direct Loan Program loans and cancellation of Federal Perkins Loans.

SEC. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Education is hereby authorized and directed to publish this memorandum in the Federal Register.

DONALD J. TRUMP.

§ 1087-0. Repealed. Pub. L. 105-244, title IV, § 432, Oct. 7, 1998, 112 Stat. 1710

Section, Pub. L. 89-329, title IV, § 437A, as added Pub. L. 102-325, title IV, § 429, July 23, 1992, 106 Stat. 552; amended Pub. L. 103-208, § 2(c)(66)-(68), Dec. 20, 1993, 107 Stat. 2469, related to debt management options.

EFFECTIVE DATE OF REPEAL

Repeal 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.

§ 1087-1. Special allowances

(a) Findings

In order to assure (1) that the limitation on interest payments or other conditions (or both) on loans made or insured under this part, do not impede or threaten to impede the carrying out of the purposes of this part or do not cause the return to holders of loans to be less than equitable, (2) that incentive payments on such loans are paid promptly to eligible lenders, and (3) that appropriate consideration of relative administrative costs and money market conditions is made in setting the quarterly rate of such payments, the Congress finds it necessary to establish an improved method for the determination of the quarterly rate of the special allowances on such loans, and to provide for a thorough, expeditious, and objective examination of alternative methods for the determination of the quarterly rate of such allowances.

(b) Computation and payment

(1) Quarterly payment based on unpaid balance

A special allowance shall be paid for each of the 3-month periods ending March 31, June 30, September 30, and December 31 of every year and the amount of such allowance paid to any holder with respect to any 3-month period shall be a percentage of the average unpaid balance of principal (not including unearned