

## PART 681—HEALTH EDUCATION ASSISTANCE LOAN PROGRAM

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### Subpart A—General Program Description

#### § 681.1 What is the HEAL program?

(a) The Health Education Assistance Loan (HEAL) program is a program of Federal insurance of educational loans that were made to graduate students in the fields of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, chiropractic, health administration, and clinical psychology. The basic purpose of the program is to encourage lenders to make loans to students in these fields who desire to borrow money to pay for their educational costs. In addition, certain nonstudents (such as doctors serving as interns or residents) could borrow in order to pay the current interest charges accruing on earlier HEAL loans. By taking a HEAL loan, the borrower is obligated to repay the lender or holder the full amount of the money borrowed, plus all interest which accrues on the loan.

(b) HEAL loans were made by schools, banks, credit unions, State agencies, and other institutions eligible as lenders under § 681.30. HEAL school eligibility is described in § 681.50.

(c) The Secretary insures each lender or holder for the losses of principal and interest it may incur in the event that a borrower dies; becomes totally and

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permanently disabled; files for bankruptcy under chapter 11 or 13 of the Bankruptcy Act; files for bankruptcy under chapter 7 of the Bankruptcy Act and files a compliant to determine the dischargeability of the HEAL loan; or defaults on his or her loan. In these instances, if the lender or holder has complied with all HEAL statutes and regulations and with the lender's or holder's insurance contract, then the Secretary pays the amount of the loss to the lender or holder and the borrower's loan is assigned to the Secretary. Only after assignment does the Secretary become the holder of the HEAL loan and the Secretary will use all collection methods legally authorized to obtain repayment of the HEAL loan, including, but not limited to, reporting the borrower's default on the loan to consumer credit reporting agencies, certifying the debt for offset in the Treasury Offset Program (TOP), using available methods to locate the debtor, utilizing administrative wage garnishment, and referring the debt to the Department of Justice for litigation.

(d) Any person who knowingly makes a false statement or misrepresentation in a HEAL loan transaction, bribes or attempts to bribe a Federal official, fraudulently obtains a HEAL loan, or commits any other illegal action in connection with a HEAL loan is subject to possible fine and imprisonment under Federal statute.

(e) In counting the number of days allowed to comply with any provisions of these regulations, Saturdays, Sundays, and holidays are to be included. However, if a due date falls on a Saturday, Sunday, or Federal holiday, the due date is the next Federal work day.

**Subpart B—The Borrower**

**§ 681.5 Who is an eligible student borrower?**

To receive a HEAL loan, a student must satisfy the following requirements:

(a) He or she must be a citizen, national, or lawful permanent resident of the United States, permanent resident of the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, the Fed-

erated States of Micronesia, the Commonwealth of the Northern Mariana Islands, or American Samoa, or lawful permanent resident of the Commonwealth of Puerto Rico, the Virgin Islands or Guam;

(b) He or she must be enrolled or accepted for enrollment at a HEAL school in a course of study that leads to one of the following degrees:

- (1) Doctor of Medicine.
- (2) Doctor of Osteopathic Medicine.
- (3) Doctor of Dentistry or equivalent degree.
- (4) Doctor of Veterinary Medicine or equivalent degree.
- (5) Doctor of Optometry or equivalent degree.
- (6) Doctor of Podiatric Medicine or equivalent degree.
- (7) Bachelor or Master of Science in Pharmacy or equivalent degree.
- (8) Graduate or equivalent degree in Public Health.
- (9) Doctor of Chiropractic or equivalent degree.
- (10) Doctoral degree in Clinical Psychology.
- (11) Masters or doctoral degree in Health Administration.

(c) He or she must be carrying or plan to carry, during the period for which the loan is intended, the normal work load of a full-time student, as determined by the school. The student's work load may include any combination of courses, work experience, research or special studies that the school considers sufficient to classify the student as full time.

(d) If currently enrolled in school, he or she must be in good standing, as determined by the school.

(e)(1) In the case of a pharmacy student, he or she must have satisfactorily completed 3 years of training toward the pharmacy degree. These 3 years of training may have been taken at the pharmacy school or at a different school whose credits are accepted on transfer by the pharmacy school.

(2) The Doctor of Pharmacy degree is considered to be an equivalent degree if it is taken in a school that does not require the Bachelor or Master of Science in pharmacy as a prerequisite for the Doctor of Pharmacy degree.

(f) In the case of a medical, dental or osteopathic student enrolled in a 6-

year program that the student may enter directly from secondary school, the student must be enrolled in the last 4 years of the program.

(g) He or she must agree that all funds received under the proposed loan will be used solely for tuition, other reasonable educational expenses, including fees, books, supplies and equipment, and laboratory expenses, reasonable living expenses, reasonable transportation costs (only to the extent that they are directly related to the borrower's education), and the HEAL insurance premium.

(h) He or she must require the loan to pursue the course of study at the school. This determination of the maximum amount of the loan will be made by the school, applying the considerations in § 681.51(f).

(i) If required under section 3 of the Military Selective Service Act to present himself for and submit to registration under such section, he must have presented himself and submitted to registration under such section.

**§ 681.6 Who is an eligible nonstudent borrower?**

To receive a HEAL loan, a person who is not a student must satisfy all of the following requirements:

(a) He or she must have received a HEAL loan prior to August 13, 1981, for which he or she is required to make payments of interest, but not principal, during the period for which the new loan is intended. This may be the grace period or a period of internship, residency, or deferment.

(b) He or she must continue to meet the citizenship, nationality, or residency qualifications required of student borrowers.

(c) He or she must agree that all funds received under the proposed loan will be used solely for payment of currently accruing interest on HEAL loans and the HEAL insurance premium.

(d) If required under section 3 of the Military Selective Service Act to present himself for and submit to registration under such section, he must have presented himself and submitted to registration under such section.

**§ 681.7 The loan application process.**

(a)(1)(i) A student seeking a HEAL loan applies to a participating lender for a HEAL loan by submitting an application form supplied by the school.

(ii) The applicant must fill out the applicant sections of the form completely and accurately.

(2) The student applicant must have been informed of the Federal debt collection policies and procedures in accordance with the Health and Human Services (HHS) Claims Collection Regulation (45 CFR part 30) prior to the student receiving the loan. The applicant must sign a certification statement attesting that the applicant has been notified of the actions the Federal Government can take in the event that the applicant fails to meet the scheduled payments. This signed statement must be maintained by the school and the lender or holder as part of the borrower's official record.

(3) A student applicant must have his or her school complete a portion of the application providing information relating to:

(i) The applicant's eligibility for the loan;

(ii) The cost of his or her education; and

(iii) The total financial resources that are actually available to the applicant for his or her costs of education for the period covered by the proposed HEAL loan, as determined in accordance with § 681.51(f), and other student aid that the applicant has received or will receive for the period covered by the proposed HEAL loan.

(4) The student applicant must certify on the application that the information provided reflects the applicant's total financial resources actually available for his or her costs of education for the period covered by the proposed HEAL loan and the applicant's total indebtedness, and that the applicant has no other financial resources that are available to the applicant or that the applicant will receive for the period covered by the proposed HEAL loan.

(5) A student applicant must certify on the application that if required under section 3 of the Military Selective Service Act to present himself for and submit to registration under such

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section, he has presented himself and submitted to registration under such section.

(b) The applicant pursuing a full-time course of study at an institution of higher education that is a “participating school” in the Guaranteed Student Loan Program but is not pursuing a course of study listed in § 681.5(b), applies for a HEAL loan as a nonstudent under paragraph (c) of this section.

(c)(1)(i) A nonstudent seeking a HEAL loan applies to a participating lender for a HEAL loan by submitting an application form supplied by the lender.

(ii) The applicant must fill out the applicant sections of the form completely and accurately.

(2) The nonstudent applicant must have been informed of the Federal debt collection policies and procedures in accordance with HHS’ Claims Collection Regulation (45 CFR part 30) prior to the nonstudent receiving the loan. The applicant must sign a certification statement attesting that the applicant has been notified of the actions the Federal Government can take in the event that the applicant fails to meet the scheduled payments. This signed statement will be maintained by the lender or holder as part of the borrower’s official record.

(3) A nonstudent applicant must have his or her employer or institution, whichever is relevant, certify on the application that the applicant is:

(i) Enrolled as a full-time student in an eligible school, as described in § 681.12;

(ii) A participant in an accredited internship or residency program, as described in § 681.11(a);

(iii) A member of the Armed Forces of the United States;

(iv) A Peace Corps volunteer;

(v) A member of the National Health Service Corps; or

(vi) A full-time VISTA volunteer under Title I of the Domestic Volunteer Service Act of 1973.

(4) The nonstudent applicant seeking a HEAL loan during the grace period applies to the lender directly.

(5) A nonstudent applicant must certify on the application that if required under section 3 of the Military Selective Service Act to present himself for

and submit to registration under such section, he has presented himself and submitted to registration under such section.

(6) The nonstudent applicant must have certified on the application that the information provided reflects the applicant’s total financial resources and indebtedness.

(Approved by the Office of Management and Budget under control numbers 0915-0038 and 1845-0125)

### § 681.8 What are the borrower’s major rights and responsibilities?

(a) *The borrower’s rights.* (1) Once the terms of the HEAL loan have been established, the lender or holder may not change them without the borrower’s consent.

(2) The lender must provide the borrower with a copy of the completed promissory note when the loan is made. The lender or holder must return the original note to the borrower when the loan is paid in full.

(3) A lender must disburse HEAL loan proceeds as described in § 681.33(f).

(4) The lender or holder must provide the borrower with a copy of the repayment schedule before repayment begins.

(5) If the loan is sold from one lender or holder to another lender or holder, or if the loan is serviced by a party other than the lender or holder, the buyer must notify the borrower within 30 days of the transaction.

(6) The borrower does not have to begin repayment until 9 full months after leaving school or an accredited internship or residency program as described in § 681.11.

(7) The borrower is entitled to deferment from repayment of the principal and interest installments during periods described in § 681.12.

(8) The borrower may prepay the whole or any portion of the loan at any time without penalty.

(9) The lender or holder must allow the borrower to repay a HEAL loan according to a graduated repayment schedule.

(10) The borrower’s total loan obligation is cancelled in the event of death or total and permanent disability.

(11) To assist the borrower in avoiding default, the lender or holder may

grant the borrower forbearance. Forbearance, including circumstances in which the lender or holder must grant forbearance, is more fully described in § 681.37.

(12) Any borrower who received a fixed interest rate HEAL loan in excess of 12 percent per year could have entered into an agreement with the lender which made this loan for the reissuance of the loan in accordance with section 739A of the Public Health Service Act (the Act).

(b) *The borrower's responsibilities.* (1) The borrower must pay any insurance premium that the lender may require as more fully described in § 681.14.

(2) The borrower must pay all interest charges on the loan as required by the lender or holder.

(3) The borrower must immediately notify the lender or holder in writing in the event of:

- (i) Change of address;
- (ii) Change of name; or
- (iii) Change of status that authorizes deferment.

(4) The borrower must repay the loan in accordance with the repayment schedule.

(5) A borrower may not have a HEAL loan discharged in bankruptcy during the first 5 years of the repayment period. This prohibition against the discharge of a HEAL loan applies to bankruptcy under *any* chapter of the Bankruptcy Act, including Chapter 13. A borrower may have a HEAL loan discharged in bankruptcy after the first 5 years of the repayment period only upon a finding by the Bankruptcy Court that the non-discharge of such debt would be unconscionable and upon the condition that the Secretary shall not have waived his or her rights to reduce any Federal reimbursements or Federal payments for health services under any Federal law in amounts up to the balance of the loan.

(6) If the borrower fails to make payments on the loan on time, the total amount to be repaid by the borrower may be increased by additional interest, late charges, attorney's fees, court costs, and other collection charges. In addition, the Secretary may offset amounts attributable to an unpaid loan from reimbursements or payment for health services provided under any

Federal law to a defaulted borrower practicing his or her profession.

(Approved by the Office of Management and Budget under control number 1845-0125)

### Subpart C—The Loan

#### § 681.10 How much can be borrowed?

(a) *Student borrower.* An eligible student may borrow an amount to be used solely for expenses, as described in § 681.5(g), incurred or to be incurred over a period of up to an academic year and disbursed in accordance with § 681.33(f). The maximum amount he or she may receive for that period shall be determined by the school in accordance with § 681.51(f) within the following limitations:

(1) A student enrolled in a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry or podiatric medicine may borrow up to \$80,000 under this part. The amount received may not exceed \$20,000 in any academic year.

(2) A student enrolled in a school of public health, pharmacy, or chiropractic, or a graduate program in health administration, clinical psychology, or allied health, may borrow up to \$50,000 under this part. The amount received may not exceed \$12,500 per academic year.

(3) For purposes of this paragraph, an academic year means the traditional approximately 9-month September-to-June annual session. For the purpose of computing academic year equivalents for students who, during a 12-month period, attend for a longer period than the traditional academic year, the academic year will be considered to be 9 months in length.

(4) The student's estimated cost of attendance shall not exceed the estimated cost of attendance of all students in like circumstances pursuing a similar curriculum at that school.

(b) *Non-student borrower.* An eligible nonstudent may borrow amounts under this authority with the following restrictions:

(1) In no case may an eligible nonstudent borrower receive a loan that is greater than the sum of the HEAL insurance premium plus the interest that is expected to accrue and must be paid on the borrower's HEAL loans during

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the period for which the new loan is intended.

(2) An eligible nonstudent in the field of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, or podiatric medicine may borrow up to \$80,000 under this part including loans obtained while the borrower was a student. The loan amount may not exceed \$20,000 in any 12-month period.

(3) An eligible nonstudent in the field of pharmacy, public health, chiropractic, health administration, or clinical psychology may borrow up to \$50,000 under this part including loans obtained while the borrower was a student. The loan amount received under this part may not exceed \$12,500 in any 12-month period.

### §681.11 Terms of repayment.

(a) *Commencement of repayment.* (1) The borrower's repayment period begins the first day of the 10th month after the month he or she ceases to be a full-time student at a HEAL school. The 9-month period before the repayment period begins is popularly called the "grace period."

(i) *Postponement for internship or residency program.* However, if the borrower becomes an intern or resident in an accredited program within 9 full months after leaving school, then the borrower's repayment period begins the first day of the 10th month after the month he or she ceases to be an intern or resident. For a borrower who receives his or her first HEAL loan on or after October 22, 1985, this postponement of the beginning of the repayment period for participation in an internship or residency program is limited to 4 years.

(ii) *Postponement for fellowship training or educational activity.* For any HEAL loan received on or after October 22, 1985, if the borrower becomes an intern or resident in an accredited program within 9 full months after leaving school, and subsequently enters into a fellowship training program or an educational activity, as described in §681.12(b)(1) and (2), within 9 months after the completion of the accredited internship or residency program or prior to the completion of such program, the borrower's repayment period begins on the first day of the 10th

month after the month he or she ceases to be a participant in the fellowship training program or educational activity. Postponement of the commencement of the repayment period for either activity is limited to 2 years.

(iii) *Non-student borrower.* If a nonstudent borrower obtains another HEAL loan during the grace period or period of internship, residency, or deferment (as defined in §681.12), the repayment period on this loan begins when repayment on the borrower's other HEAL loans begins or resumes.

(2) An accredited internship or residency program must be approved by one of the following accrediting agencies:

(i) Accreditation Council for Graduate Medical Education.

(ii) Council on Optometric Education.

(iii) Commission on Accreditation of Dental and Dental Auxiliary Programs.

(iv) American Osteopathic Association.

(v) Council on Podiatry Education.

(vi) American Council on Pharmaceutical Education.

(vii) Council on Education for Public Health.

(viii) American College of Veterinary Surgeons.

(ix) Council on Chiropractic Education.

(b) *Length of repayment period.* In general, a lender or holder must allow a borrower at least 10 years, but not more than 25 years, to repay a loan calculated from the beginning of the repayment period. A borrower must fully repay a loan within 33 years from the date that the loan is made.

(1) For a HEAL borrower who received any HEAL loan prior to October 22, 1985, periods of deferment (as described in §681.12) are not included when calculating the 10 to 25 or 33 year limitations.

(2) For a borrower who receives his or her first HEAL loan on or after October 22, 1985, periods of deferment (as described in §681.12) are included when calculating the 33 year limitation, but are not included when calculating the 10 to 25 year limitation.

(c) *Prepayment.* The borrower may prepay the whole or any part of the loan at any time without penalty.

(d) *Minimum annual payment.* During each year of repayment, a borrower's payments to all holders of his or her HEAL loans must total the interest that accrues during the year on all of the loans, unless the borrower, in the promissory note or other written agreement, agrees to make payments during any year or any repayment period in a lesser amount.

(e) *Repayment schedule agreement.* At least 30 and not more than 60 days before the commencement of the repayment period, a borrower must contact the holder of the loan to establish the precise terms of repayment. The borrower may select a monthly repayment schedule with substantially equal installment payments or a monthly repayment schedule with graduated installment payments that increase in amount over the repayment period. If the borrower does not contact the lender or holder and does not respond to contacts from the lender or holder, the lender or holder may establish a monthly repayment schedule with substantially equal installment payments, subject to the terms of the borrower's HEAL note.

(f) *Supplemental repayment agreement.*

(1) A lender or holder and a borrower may enter into an agreement supplementing the regular repayment schedule agreement. Under a supplemental repayment agreement, the lender or holder agrees to consider that the borrower has met the terms of the regular repayment schedule as long as the borrower makes payments in accordance with the supplemental schedule.

(2) The purpose of a supplemental repayment agreement is to permit a lender or holder, at its option, to offer a borrower a repayment schedule based on other than equal or graduated payments. (For example, a supplemental repayment agreement may base the amount of the borrower's payments on his or her income.)

(3) The supplemental schedule must contain terms which, according to the Secretary, do not unduly burden the borrower and do not extend the Secretary's insurance liability beyond the number of years specified in paragraph (b) of this section. The supplemental

schedule must be approved by the Secretary prior to the start of repayment.

(4) The lender or holder may establish a supplemental repayment agreement over the borrower's objection only if the borrower's written consent to enter into a supplemental agreement was obtained by the lender at the time the loan was made.

(5) A lender or holder may assign a loan subject to a supplemental repayment agreement only if it specifically notifies the buyer of the terms of the supplemental agreement. In such cases, the loan and the supplemental agreement must be assigned together.

(6) As authorized by section 525 of the Consolidated Appropriations Act, 2014, any repayment plan available under part B of title IV of the HEA (the Federal Family Education Loan Program (FFELP)) is available for servicing, collecting, or enforcing HEAL loans. Such repayment plans are set forth in 34 CFR part 682, and in particular in §§ 682.102, 682.209, and 682.215.

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#### § 681.12 Deferment.

(a) After the repayment period has commenced, installments of principal and interest need not be paid during any period:

(1) During which the borrower is pursuing a full-time course of study at a HEAL school or at an institution of higher education that is a "participating school" in the William D. Ford Federal Direct Loan Program;

(2) Up to 4 years during which the borrower is a participant in an accredited internship or residency program, as described in § 681.11(a)(2). For a borrower who receives his or her first HEAL loan on or after October 22, 1985, this total of 4 years for an internship or residency program includes any period of postponement of the repayment period, as described in § 681.11(a)(1);

(3) Up to 3 years during which the borrower is a member of the Armed Forces of the United States;

(4) Up to 3 years during which the borrower is in service as a volunteer under the Peace Corps Act;

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(5) Up to 3 years during which the borrower is a member of the National Health Service Corps; or

(6) Up to 3 years during which the borrower is a full-time volunteer under title I of the Domestic Volunteer Service Act of 1973.

(b) For any HEAL loan received on or after October 22, 1985, after the repayment period has commenced, installments of principal and interest need not be paid during any period for up to 2 years during which the borrower is a participant in:

(1) A fellowship training program, which:

(i) Is directly related to the discipline for which the borrower received the HEAL loan;

(ii) Begins within 12 months after the borrower ceases to be a participant in an accredited internship or residency program, as described in §681.11(a)(2), or prior to the completion of the borrower's participation in such program;

(iii) Is a full-time activity in research or research training or health care policy;

(iv) Is not a part of, an extension of, or associated with an internship or residency program, as described in §681.11(a)(2);

(v) Pays no stipend or one which is not more than the annual stipend level established by the Public Health Service for the payment of uniform levels of financial support for trainees receiving graduate and professional training under Public Health Service grants, as in effect at the time the borrower requests the deferment; and

(vi) Is a formally established fellowship program which was not created for a specific individual; or

(2) A full-time educational activity at an institution defined by section 435(b) of the HEA which:

(i) Is directly related to the discipline for which the borrower received the HEAL loan;

(ii) Begins within 12 months after the borrower ceases to be a participant in an accredited internship or residency program, as described in §681.11(a)(2), or prior to the completion of the borrower's participation in such program;

(iii) Is not a part of, an extension of, or associated with an internship or

residency program, as described in §681.11(a)(2); and

(iv) Is required for licensure, registration, or certification in the State in which the borrower intends to practice the discipline for which the borrower received the HEAL loan.

(c)(1) To receive a deferment, including a deferral of the onset of the repayment period (see §681.11(a)), a borrower must at least 30 days prior to, but not more than 60 days prior to, the onset of the activity and annually thereafter, submit to the lender or holder evidence of his or her status in the deferment activity and evidence that verifies deferment eligibility of the activity (with the full expectation that the borrower will begin the activity). It is the responsibility of the borrower to provide the lender or holder with all required information or other information regarding the requested deferment. If written evidence that verifies eligibility of the activity and the borrower for the deferment, including a certification from an authorized official (*e.g.*, the director of the fellowship activity, the dean of the school, etc.), is received by the lender or holder within the required time limit, the lender or holder must approve the deferment. The lender or holder may rely in good faith upon statements of the borrower and the authorized official, except where those statements or other information conflict with information available to the lender or holder. When those verification statements or other information conflict with information available to the lender or holder, to indicate that the applicant fails to meet the requirements for deferment, the lender or holder may not approve the deferment until those conflicts are resolved.

(2) For those activities described in paragraphs (b)(1) or (b)(2) of this section, the borrower may request that the Secretary review a decision by the lender or holder denying the deferment by sending to the Secretary copies of the application for deferment and the lender's or holder's denial of the request. However, if information submitted to the lender or holder conflicts with other information available to the lender or holder, to indicate that the

borrower fails to meet the requirements for deferment, the borrower may not request a review until such conflicts have been resolved. During the review process, the lender or holder must comply with any requests for information made by the Secretary. If the Secretary determines that the fellowship or educational activity is eligible for deferment and so notifies the lender or holder, the lender or holder must approve the deferment.

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#### § 681.13 Interest.

(a) *Rate.* At the lender's option, the interest rate on the HEAL loan may be calculated on a fixed rate or on a variable rate basis. However, whichever method is selected must continue over the life of the loan, except where the loan is consolidated with another HEAL loan.

(1) For all loans made on or after October 22, 1985, for each calendar quarter, the Secretary determines the maximum annual HEAL interest rate by determining the average of the bond equivalent rates reported for the 91-day U.S. Treasury bills auctioned for the preceding calendar quarter, adding 3 percentage points, and rounding that amount to the next higher one-eighth of 1 percent.

(2) Interest that is calculated on a fixed rate basis is determined for the life of the loan during the calendar quarter in which the loan is executed. It may not exceed the rate determined for that quarter by the Secretary under paragraph (a)(1) of this section.

(3) Interest that is calculated on a variable rate basis varies every calendar quarter throughout the life of the loan as the market price of U.S. Treasury bills changes. For any quarter it may not exceed the rate determined by the Secretary under paragraph (a)(1) of this section.

(4) The Secretary announces the rate determined under paragraph (a)(1) of this section on a quarterly basis through a notice published on the Department's student aid Web site at [www.ifap.ed.gov](http://www.ifap.ed.gov).

(b) *Compounding of interest.* Interest accrues from the date the loan is dis-

bursed until the loan is paid in full. Unpaid accrued interest shall be compounded not more frequently than semiannually and added to principal. However, a lender or holder may postpone the compounding of interest before the beginning of the repayment period or during periods of deferment or forbearance and add interest to principal at the time repayment of principal begins or resumes.

(c) *Payment.* Repayment of principal and interest is due when the repayment period begins. A lender or holder must permit a borrower to postpone paying interest before the beginning of the repayment period or during a period of deferment or forbearance. In these cases, payment of interest begins or resumes on the date repayment of principal begins or resumes.

(d) *Usury laws.* No provision of any Federal or State law that limits the rate or amount of interest payable on loans shall apply to a HEAL loan.

#### § 681.14 The insurance premium.

(a) *General.* (1) The Secretary insures each lender or holder for the losses of principal and interest it may incur in the event that a borrower dies; becomes totally and permanently disabled; files for bankruptcy under chapter 11 or 13 of the Bankruptcy Act; files for bankruptcy under chapter 7 of the Bankruptcy Act and files a complaint to determine the dischargeability of the HEAL loan; or defaults on his or her loan. For this insurance, the Secretary charges the lender an insurance premium. The insurance premium is due to the Secretary on the date of disbursement of the HEAL loan.

(2) The lender may charge the borrower an amount equal to the cost of the insurance premium. The cost of the insurance premium may be charged to the borrower by the lender in the form of a one-time special charge with no subsequent adjustments required. The lender may bill the borrower separately for the insurance premium or may deduct an amount attributable to it from the loan proceeds before the loan is disbursed. In either case, the lender must clearly identify to the borrower the amount of the insurance premium and the method of calculation.

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(3) If the lender does not pay the insurance premium on or before 30 days after disbursement of the loan, a late fee will be charged on a daily basis at the same rate as the interest rate that the lender charges for the HEAL loan for which the insurance premium is past due. The lender may not pass on this late fee to the borrower.

(4) HEAL insurance coverage ceases to be effective if the insurance premium is not paid within 60 days of the disbursement of the loan.

(5) Except in cases of error, premiums are not refundable by the Secretary, and need not be refunded by the lender to the borrower, even if the borrower graduates or withdraws from the school, defaults, dies or becomes totally and permanently disabled.

(b) *Rate.* The rate of the insurance premium shall not exceed the statutory maximum. The Secretary announces changes in the rate of the insurance premium through a notice published on the Department's student aid Web site: *www.ifap.ed.gov*.

(c) *Method of calculation*—(1) *Student borrowers.* For loans disbursed prior to July 22, 1986, the lender must calculate the insurance premium on the basis of the number of months beginning with the month following the month in which the loan proceeds are disbursed to the student borrower and ending 9 full months after the month of the student's anticipated date of graduation. For loans disbursed on or after July 22, 1986, the insurance premium shall be calculated as a one-time flat rate on the principal of the loan at the time of disbursement.

(2) *Non-student borrowers.* For loans disbursed prior to July 22, 1986, the lender must calculate the insurance premium for nonstudent borrowers on the basis of the number of months beginning with the month following the month in which the loan proceeds are disbursed to the borrower and ending at the conclusion of the month preceding the month in which repayment of principal is expected to begin or resume on the borrower's previous HEAL loans. For loans disbursed on or after July 22, 1986, the insurance premium shall be calculated as a one-time flat rate on the principal of the loan at the time of disbursement.

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(3) *Multiple installments.* In cases where the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement.

### § 681.15 Other charges to the borrower.

(a) *Late charges.* If the borrower fails to pay all of a required installment payment or fails to provide written evidence that verifies eligibility for the deferment of the payment within 30 days after the payment's due date, the lender or holder will require that the borrower pay a late charge. A late charge must be equal to 5 percent of the unpaid portion of the payment due.

(b) *Collection charges.* The lender or holder may also require that the borrower pay the holder of the note for reasonable costs incurred by the holder or its agent in collecting any installment not paid when due. These costs may include attorney's fees, court costs, telegrams, and long-distance phone calls. The holder may not charge the borrower for the normal costs associated with preparing letters and making personal and local telephone contacts with the borrower. A service agency's fee for normal servicing of a loan may not be passed on to the borrower, either directly or indirectly. No charges, other than those authorized by this section, may be passed on to the borrower, either directly or indirectly, without prior approval of the Secretary.

(c) *Other loan making costs.* A lender may not pass on to the borrower any cost of making a HEAL loan other than the costs of the insurance premium.

### § 681.16 Power of attorney.

Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a disbursement check on behalf of a borrower. The borrower must personally endorse the check and may not authorize anyone else to endorse it on his or her behalf.

### § 681.17 Security and endorsement.

(a) A HEAL loan must be made without security.

(b) With one exception, it must also be made without endorsement. If a borrower is a minor and cannot under State law create a legally binding obligation by his or her own signature, a lender may require an endorsement by another person on the borrower's HEAL note. For purposes of this paragraph, an "endorsement" means a signature of anyone other than the borrower who is to assume either primary or secondary liability on the note.

**§ 681.18 Consolidation of HEAL loans.**

HEAL loans may be consolidated as permitted in 34 CFR 685.220.

**§ 681.19 Forms.**

All HEAL forms are approved by the Secretary and may not be changed without prior approval by the Secretary. HEAL forms shall not be signed in blank by a borrower, a school, a lender or holder, or an agent of any of these. The Secretary may prescribe who must complete the forms, and when and to whom the forms must be sent. All HEAL forms must contain a statement that any person who knowingly makes a false statement or misrepresentation in a HEAL loan transaction, bribes or attempts to bribe a Federal official, fraudulently obtains a HEAL loan, or commits any other illegal action in connection with a HEAL loan is subject to possible fine and imprisonment under Federal statute.

**§ 681.20 The Secretary's collection efforts after payment of a default claim.**

After paying a default claim on a HEAL loan, the Secretary attempts to collect from the borrower and any valid endorser in accordance with the Federal Claims Collection Standards (4 CFR parts 101 through 105), the Office of Management and Budget Circular A-129, issued January 2013, and the Department's Claims Collection Regulation (34 CFR parts 30, 31, and 34). The Secretary attempts collection of all unpaid principal, interest, penalties, administrative costs, and other charges or fees, except in the following situations:

(a) *The borrower has a valid defense on the loan.* The Secretary refrains from collection against the borrower or en-

dorser to the extent of any defense that the Secretary concludes is valid. Examples of a valid defense include infancy or proof of repayment in part or in full.

(b) *A school owes the borrower a refund for the period covered by the loan.* In this situation, the Secretary refrains from collection to the extent of the unpaid refund if the borrower assigns to the Secretary the right to receive the refund.

(c) *The school or lender or holder is the subject of a lawsuit or Federal administrative proceeding.* In this situation, if the Secretary determines that the proceeding involves allegations that, if proven, would provide the borrower with a full or partial defense on the loan, then the Secretary may suspend collection activity on all or part of a loan until the proceeding ends. The Secretary suspends collection activity only for so long as the proceeding is being energetically prosecuted in good faith and the allegations that relate to the borrower's defense are reasonably likely to be proven.

(d) *The borrower dies or becomes totally and permanently disabled.* In this situation, the Secretary terminates all collection activity against the borrower. The Secretary follows the procedures and standards in 34 CFR 685.213 and 34 CFR 685.212(a) to determine if the borrower is totally and permanently disabled. If the borrower dies or becomes totally and permanently disabled, the Secretary also terminates all collection activity against any endorser.

**§ 681.21 Refunds.**

(a) *Student authorization.* By applying for a HEAL loan, a student authorizes a participating school to make payment of a refund that is allocable to a HEAL loan directly to the original lender (or to a subsequent holder of the loan note, if the school has knowledge of the holder's identity).

(b) *Treatment by lenders or holders.* (1) A holder of a HEAL loan must treat a refund payment received from a HEAL school as a downward adjustment in the principal amount of the loan.

(2) When a lender receives a school refund check for a loan it no longer holds, the lender must transfer that payment to the holder of the loan and

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either inform the borrower about the refund check and where it was sent or, if the borrower's address is unknown, notify the current holder that the borrower was not informed. The current holder must provide the borrower with a written notice of the refund payment.

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### Subpart D—The Lender and Holder

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

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

(b) The following types of organizations were 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; and

(4) 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) Navient (formerly known as the Student Loan Marketing Association, or "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.

#### § 681.31 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 ap-

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plicant 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 servicing and collecting HEAL loans. These procedures must be reviewed during the biennial audit required by § 681.42(d). If the applicant uses procedures more stringent than those required by §§ 681.34 and 681.35 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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#### § 681.32 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 § 681.31(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 § 681.31(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 § 681.31(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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#### § 681.33 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 that all required forms have been completed by the borrower, the HEAL school, the lender, and the authorized official for an internship, a residency, or other deferment activity.

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(b) *Approval of borrower.* A lender may make a HEAL loan only to an eligible student or nonstudent borrower.

(c) *Lender determination of the borrower's creditworthiness.* The lender may make HEAL loans only to an applicant that the lender has determined to be creditworthy. This determination must be made at least once for each academic year during which the applicant applies for a HEAL loan. An applicant will be determined to be "creditworthy" if he or she has a repayment history that has been satisfactory on any loans on which payments have become due. The lender may not determine that an applicant is creditworthy if the applicant is currently in default on any loan (commercial, consumer, or educational) until the delinquent account is made current or satisfactory arrangements are made between the affected lender(s) and the HEAL applicant. The lender must obtain documentation, such as a letter from the authorized official(s) of the affected lender(s) or a corrected credit report indicating that the HEAL applicant has taken satisfactory actions to bring the account into good standing. It is the responsibility of the HEAL loan applicant to assure that the lender receives each such documentation. No loan may be made to an applicant who is delinquent on any Federal debt until the delinquent account is made current or satisfactory arrangements are made between the affected agency and the HEAL applicant. The lender must receive a letter from the authorized Federal official of the affected Federal agency stating that the borrower has taken satisfactory actions to bring the account into good standing. It is the responsibility of the loan applicant to assure that the lender has received each such letter. The absence of any previous credit, however, is not an indication that the applicant is not creditworthy and is not to be used as a reason to deny the status of creditworthy to an applicant. The lender must determine the creditworthiness of the applicant using, at a minimum, the following:

(1) A report of the applicant's credit history obtained from an appropriate consumer credit reporting agency, which must be used in making the de-

terminations required by paragraph (c) of this section; and

(2) For student applicants only, the certification made by the applicant's school under § 681.51(e).

(d) *Determination of loan amount.* A lender may not make a HEAL loan in an amount that exceeds the permissible annual and aggregate maximums described in § 681.10.

(e) *Promissory note.* (1) Each loan must be evidenced by a promissory note approved by the Secretary. A lender must obtain the Secretary's prior approval of the note form before it makes a HEAL loan evidenced by a promissory note containing any deviation from the provisions of the form most currently approved by the Secretary. The lender must give the borrower a copy of each executed note.

(2) The lender must explain to the borrower that the loan must be repaid and that the loan proceeds may be applied toward educational expenses only.

(f) *Disbursement of HEAL loan.* (1) A lender must disburse HEAL loan proceeds:

(i) To a student borrower, by means of a check or draft payable jointly to the student borrower and the HEAL school. Except where a lender is also a school, a lender must mail the check or draft to the school. A lender may not disburse the loan proceeds earlier than is reasonably necessary to meet the cost of education for the period for which the loan is made.

(ii) To a nonstudent borrower, by means of a check or draft payable to the borrower. However, when a previous loan is held by a different lender, the current lender must make the HEAL loan disbursement check or draft payable jointly to the borrower and the holder of the previous HEAL loan for which interest is payable.

(2) Effective July 1, 1987, a lender must disburse the HEAL loan proceeds in two or more installments unless the loan is intended to cover a period of no more than one-half an academic year. The amount disbursed at one time must correspond to the borrower's educational expenses for the period for which the disbursement is made, and must be indicated by the school on the borrower's application. If the loan is

intended for more than one-half an academic year, the school must indicate on the borrower's application both the approximate dates of disbursement and the amount the borrower will need on each such date. In no case may the lender disburse the proceeds earlier than is reasonably necessary to meet the costs of education for the period for which the disbursement or the loan is made.

(g) If the lender determines that the applicant is not creditworthy, pursuant to paragraph (c) of this section, the lender must not approve the HEAL loan request. If the applicant is a student, the lender must notify the applicant and the applicant's school named on the application form of the denial of a HEAL loan, stating the reason for the denial.

(h) The lender must report a borrower's HEAL indebtedness to one or more national credit bureaus within 120 days of the date the final disbursement on the loan is made.

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#### § 681.34 HEAL loan account servicing.

HEAL loan account servicing involves the proper maintenance of records, and the proper review and management of accounts. Generally accepted account servicing standards ensure that collections are received and accounted for, delinquent accounts are identified promptly, and reports are produced comparing actual results to previously established objectives.

(a) *Borrower inquiries.* A lender or holder must respond on a timely basis to written inquiries and other communications from a borrower and any endorser of a HEAL loan.

(b) *Conversion of loan to repayment status.* (1) At least 30 and not more than 60 days before the commencement of the repayment period, the lender or holder must contact the borrower in writing to establish the terms of repayment. Lenders or holders may not charge borrowers for the additional interest or other charges, penalties, or fees that accrue when a lender or holder does not contact the borrower within this time period and a late conversion results.

(2) Terms of repayment are established in a written schedule that is made a part of, and subject to the terms of, the borrower's original HEAL note.

(3) The lender or holder may not surrender the original promissory note to the borrower until the loan is paid in full. At that time, the lender or holder must give the borrower the original promissory note.

(c) *Borrower contacts.* The lender or holder must contact each borrower to request updated contact information for the borrower and to notify the borrower of the balance owed for principal, interest, insurance premiums, and any other charges or fees owed to the lender, at least every 6 months from the time the loan is disbursed. The lender or holder must use this notice to remind the borrower of the option, without penalty, to pay all or part of the principal and accrued interest at any time.

(d) *Skip-tracing.* If, at any time, the lender or holder is unable to locate a borrower, the lender or holder must initiate skip-tracing procedures as described in § 682.411.

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#### § 681.35 HEAL loan collection.

A lender or holder must exercise due diligence in the collection of a HEAL loan with respect to both a borrower and any endorser. In order to exercise due diligence, a lender or holder must implement the following procedures when a borrower fails to honor his or her payment obligations:

(a) When a borrower is delinquent in making a payment, the lender or holder must remind the borrower within 15 days of the date the payment was due by means of a written contact. If payments do not resume, the lender or holder must contact both the borrower and any endorser at least 3 more times at regular intervals during the 120-day delinquent period following the first missed payment of that 120-day period. The second demand notice for a delinquent account must inform the borrower that the continued delinquent status of the account will be reported to consumer credit reporting agencies

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if payment is not made. Each of the required four contacts must consist of at least a written contact which has an address correction request on the envelope. The last contact must consist of a telephone contact, in addition to the required letter, unless the borrower cannot be contacted by telephone. The lender or holder may choose to substitute a personal contact for a telephone contact. A record must be made of each attempt to contact and each actual contact, and that record must be placed in the borrower's file. Each contact must become progressively firmer in tone. If the lender or holder is unable to locate the borrower and any endorser at any time during the period when the borrower is delinquent, the lender or holder must initiate the skip-tracing procedures described in § 681.34(d).

(b) When a borrower is 90 days delinquent in making a payment, the lender or holder must immediately request preclaim assistance from the Department's servicer. The Secretary does not pay a default claim if the lender or holder fails to request preclaim assistance.

(c) Prior to the filing of a default claim, a lender or holder must use, at a minimum, collection practices that are at least as extensive and effective as those used by the lender or holder in the collection of its other loans. These practices must include, but need not be limited to:

(1) Using collection agents, which may include its own collection department or other internal collection agents;

(2) Immediately notifying an appropriate consumer credit reporting agency regarding accounts overdue by more than 60 days; and

(3) Commencing and prosecuting an action for default unless:

(i) In the determination of the Secretary that:

(A) The lender or holder has made reasonable efforts to serve process on the borrower involved and has been unsuccessful in these efforts; or

(B) Prosecution of such an action would be fruitless because of the financial or other circumstances of the borrower;

(ii) For loans made before November 4, 1988, the loan involved was made in an amount of less than \$5,000; or

(iii) For loans made on or after November 4, 1988, the loan involved was made in an amount of less than \$2,500.

(d) If the Secretary's preclaim assistance locates the borrower, the lender or holder must implement the loan collection procedures described in this section. When the Secretary's preclaim assistance is unable to locate the borrower, a default claim may be filed by the lender as described in § 681.40. The Secretary does not pay a default claim if the lender or holder has not complied with the HEAL statute and regulations or the lender's or holder's insurance contract.

(e) If a lender or holder does not sue the borrower, it must send a final demand letter to the borrower and any endorser at least 30 days before a default claim is filed.

(f) If a lender or holder sues a defaulted borrower or endorser, it may first apply the proceeds of any judgment against its reasonable attorney's fees and court costs, whether or not the judgment provides for these fees and costs.

(g) *Collection of chapter 7 bankruptcies.*

(1) If a borrower files for bankruptcy under chapter 7 of the Bankruptcy Act and does not file a complaint to determine the dischargeability of the HEAL loan, the lender or holder is responsible for monitoring the bankruptcy case in order to pursue collection of the loan after the bankruptcy proceedings have been completed.

(i) For any loan for which the lender or holder had not begun to litigate against the borrower prior to the imposition of the automatic stay, the period of the automatic stay is to be considered as an extended forbearance authorized by the Secretary, in addition to the 2-year period of forbearance which lenders and holders are authorized to grant without prior approval from the Secretary. Only periods of delinquency following the date of receipt (as documented by a date stamp) of the discharge of debtor notice (or other written notification from the court or the borrower's attorney of the end of the automatic stay imposed by the Bankruptcy Court) can be included in

determining default, as described in § 681.40(c)(1)(i). The lender or holder must attempt to reestablish repayment terms with the borrower in writing no more than 30 days after receipt of the discharge of debtor notice (or other written notification from the court or the borrower's attorney of the end of the automatic stay imposed by the Bankruptcy Court), in accordance with the procedures followed at the end of a forbearance period. If the borrower fails to make a payment as scheduled, the lender or holder must attempt to obtain repayment through written and telephone contacts in accordance with the intervals established in paragraph (a)(1) of this section, and must perform the other HEAL loan collection activities required in this section, before filing a default claim.

(ii) For any loan for which the lender or holder had begun to litigate against the borrower prior to the imposition of the automatic stay, the lender or holder must, upon written notification from the court or the borrower's attorney that the bankruptcy proceedings have been completed, either resume litigation or treat the loan in accordance with paragraph (g)(1)(i) of this section.

(2) If the lender or holder has not received written notification of discharge within 12 months of the date that the borrower filed for bankruptcy, the lender or holder must contact the court and the borrower's attorney (if known) within 30 days to determine if the bankruptcy proceedings have been completed. If no response is received within 30 days of the date of these contacts, the lender or holder must resume its collection efforts, in accordance with paragraph (g)(1) of this section. If a written response from the court or the borrower's attorney indicates that the bankruptcy proceedings are still underway, the lender or holder is not to pursue further collection efforts until receipt of written notice of discharge, except that follow-up in accordance with this paragraph must be done at least once every 12 months until the bankruptcy proceedings have been completed. A lender or holder may utilize PACER (Public Access to Court Electronic Records) in place of

contact with the court and/or borrower's attorney.

(3) If, despite the lender or holder's compliance with required procedures, a loan subject to the requirements of paragraph (g)(1) of this section is discharged, the lender or holder must file a claim with the Secretary within 10 days of the initial date of receipt (as documented by a date stamp) of written notification of the discharge from the court or the borrower's attorney, in accordance with the procedures set forth in § 681.40(c)(4). The lender or holder also must file with the bankruptcy court an objection to the discharge of the HEAL loan, and must include with the claim documentation showing that the bankruptcy proceedings were handled properly and expeditiously (*e.g.*, all documents sent to or received from the bankruptcy court, including evidence which shows the period of the bankruptcy proceedings).

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**§ 681.36 Consequence of using an agent.**

The delegation of functions to a servicing agency or other party does not relieve a lender or holder of its responsibilities under the HEAL program.

**§ 681.37 Forbearance.**

(a) *Forbearance* means an extension of time for making loan payments or the acceptance of smaller payments than were previously scheduled to prevent a borrower from defaulting on his or her payment obligations. A lender or holder must notify each borrower of the right to request forbearance.

(1) Except as provided in paragraph (a)(2) of this section, a lender or holder must grant forbearance whenever the borrower is temporarily unable to make scheduled payments on a HEAL loan and the borrower continues to repay the loan in an amount commensurate with his or her ability to repay the loan. Any circumstance which affects the borrower's ability to repay the loan must be fully documented.

(2) If the lender or holder determines that the default of the borrower is inevitable and that forbearance will be ineffective in preventing default, the

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lender or holder may submit a claim to the Secretary rather than grant forbearance. If the Secretary is not in agreement with the determination of the lender or holder, the claim will be returned to the lender or holder as disapproved and forbearance must be granted.

(b) A lender or holder must exercise forbearance in accordance with terms that are consistent with the 25- and 33-year limitations on the length of repayment (described in §681.11) if the lender or holder and borrower agree in writing to the new terms. Each forbearance period may not exceed 6 months.

(c) A lender or holder may also exercise forbearance for periods of up to 6 months in accordance with terms that are inconsistent with the minimum annual payment requirement if the lender or holder complies with the requirements listed in paragraphs (c)(1) through (4) of this section. Subsequent renewals of the forbearance must also be documented in accordance with the following requirements:

(1) The lender or holder must reasonably believe that the borrower intends to repay the loan but is currently unable to make payments in accordance with the terms of the loan note. The lender or holder must state the basis for its belief in writing and maintain that statement in its loan file on that borrower.

(2) Both the borrower and an authorized official of the lender or holder must sign a written agreement of forbearance.

(3) If the agreement between the borrower and lender or holder provides for forbearance of all payments, the lender or holder must contact the borrower at least every 3 months during the period of forbearance in order to remind the borrower of the outstanding obligation to repay.

(4) The total period of forbearance (with or without interruption) granted by the lender or holder to any borrower must not exceed 2 years. However, when the borrower and the lender or holder believe that there are bona fide reasons why this period should be extended, the lender or holder may request a reasonable extension beyond the 2-year period from the Secretary.

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This request must document the reasons why the extension should be granted. The lender or holder may grant the extension for the approved time period if the Secretary approves the extension request.

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### § 681.38 Assignment of a HEAL loan.

A HEAL note may not be assigned except to another HEAL lender or organization as specified in §681.30 and except as provided in §681.40. In this section “seller” means any kind of assignor and “buyer” means any kind of assignee.

(a) *Procedure.* A HEAL note assigned from one lender or holder to another must be subject to a blanket endorsement together with other HEAL notes being assigned or must individually bear effective words of assignment. Either the blanket endorsement or the HEAL note must be signed and dated by an authorized official of the seller. Within 30 days of the transaction, the buyer must notify the following parties of the assignment:

(1) The Secretary; and

(2) The borrower. The notice to the borrower must contain a clear statement of all the borrower’s rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller subsequent to receipt of the notice.

(b) *Risks assumed by the buyer.* Upon acquiring a HEAL loan, a new holder assumes responsibility for the consequences of any previous violations of applicable statutes, regulations, or the terms of the note except for defects under §681.41(d). A HEAL note is not a negotiable instrument, and a subsequent holder is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the previous holder, the borrower can also assert the defense against the new holder. In this situation, if the new holder files a default claim on a loan, the Secretary denies the default claim to the extent of the borrower’s defense. Furthermore, when a new holder files a claim on a HEAL loan, it must provide

the Secretary with the same documentation that would have been required of the original lender.

(c) *Warranty.* Nothing in this section precludes the buyer of a HEAL loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of insurable loss, if any, on a claim filed on the loan. The warranty may only cover reductions which are attributable to an act or failure to act of the seller or other previous holder. The warranty may not cover matters for which the buyer is charged with responsibility under the HEAL regulations.

(d) *Bankruptcy.* If a lender or holder assigns a HEAL loan to a new holder, or a new holder acquires a HEAL loan under 20 U.S.C. 1092a (the Combined Payment Plan authority), and the previous holder(s) subsequently receives court notice that the borrower has filed for bankruptcy, the previous holder(s) must forward the bankruptcy notice to the purchaser within 10 days of the initial date of receipt, as documented by a date stamp, except that if it is a chapter 7 bankruptcy with no complaint for dismissal, the previous holder(s) must file the notice with the purchaser within 30 days of the initial date of receipt, as documented by a date stamp. The previous holder(s) also must file a statement with the court notifying it of the change of ownership. Notwithstanding the above, the current holder will not be held responsible for any loss due to the failure of the prior holder(s) to meet the deadline for giving notice if such failure occurs after the current holder purchased the loan.

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#### § 681.39 Death and disability claims.

(a) *Death.* The Secretary will discharge a borrower's liability on the loan in accordance with section 738 of the Act upon the death of the borrower. The holder of the loan may not attempt to collect on the loan from the borrower's estate or any endorser. The holder must secure a certification of death or whatever official proof is conclusive under State law. The holder

must return to the sender any payments in accordance with § 685.212(a) received from the estate of the borrower or paid on behalf of the borrower after the date of death.

(b) *Disability.* The Secretary will discharge a borrower's liability on the loan in accordance with 34 CFR 685.213.

#### § 681.40 Procedures for filing claims.

(a) A lender or holder must file an insurance claim on a form approved by the Secretary. The lender or holder must attach to the claim all documentation necessary to litigate a default, including any documents required to be submitted by the Federal Claims Collection Standards, and which the Secretary may require. Failure to submit the required documentation and to comply with the HEAL statute and regulations or the lender's or holder's insurance contract will result in a claim not being honored. The Secretary may deny a claim that is not filed within the period specified in this section. The Secretary requires for all claims at least the following documentation:

- (1) The original promissory note;
- (2) An assignment to the United States of America of all right, title, and interest of the lender or holder in the note;
- (3) The loan application;
- (4) The history of the loan activities from the date of loan disbursement through the date of claim, including any payments made; and
- (5) A Borrower Status Form (HEAL-508), documenting each deferment granted under § 681.12 or a written statement from an appropriate official stating that the borrower was engaged in an activity for which he or she was entitled to receive a deferment at the time the deferment was granted.

(b) The Secretary's payment of a claim is contingent upon receipt of all required documentation and an assignment to the United States of America of all right, title, and interest of the lender or holder in the note underlying the claim. The lender or holder must warrant that the loan is eligible for HEAL insurance.

(c) In addition, the lender or holder must comply with the following requirements for the filing of default,

death, disability, and bankruptcy claims:

(1) *Default claims.* *Default* means the persistent failure of the borrower to make a payment when due or to comply with other terms of the note or other written agreement evidencing a loan under circumstances where the Secretary finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay the loan. In the case of a loan repayable (or on which interest is payable) in monthly installments, this failure must have persisted for 120 days. In the case of a loan repayable (or on which interest is payable) in less frequent installments, this failure must have persisted for 180 days. If, for a particular loan, an automatic stay is imposed on collection activities by a Bankruptcy Court, and the lender or holder receives written notification of the automatic stay prior to initiating legal proceedings against the borrower, the 120- or 180-day period does not include any period prior to the end of the automatic stay.

(i) If a lender or holder determines that it is not appropriate to commence and prosecute an action against a default borrower pursuant to § 681.35(c)(3), it must file a default claim with the Secretary within 30 days after a loan has been determined to be in default.

(ii) If a lender files suit against a defaulted borrower and does not pursue collection of the judgment obtained as a result of the suit, it must file a default claim with the Secretary within 60 days of the date of issuance of the judgment. If a lender or holder files suit against a defaulted borrower, and pursues collection of the judgment obtained as a result of the suit, these collection activities must begin within 60 days of the date of issuance of the judgment. If the lender or holder is unable to collect the full amount of principal and interest owed, a claim must be filed within 30 days of completion of the post-judgment collection activities. In either case, the lender or holder must assign the judgment to the Secretary as part of the default claim.

(iii) In addition to the documentation required for all claims, the lender or holder must submit with its default claim at least the following:

- (A) Repayment schedule(s);
- (B) A collection history, if any;
- (C) A final demand letter;
- (D) The original or a copy of all correspondence relevant to the HEAL loan to or from the borrower (whether received by the original lender, a subsequent holder, or an independent servicing agent);
- (E) A claims collection litigation report; and
- (F) If the defaulted borrower filed for bankruptcy under chapter 7 of the Bankruptcy Act and did not file a complaint to determine the dischargeability of the loan, all documents sent to or received from the bankruptcy court, including evidence which shows the period of the bankruptcy proceedings.

(iv) If a lender or holder files a default claim on a loan and subsequently receives written notice from the court or the borrower's attorney that the borrower has filed for bankruptcy under chapter 11 or 13 of the Bankruptcy Act, or under chapter 7 with a complaint to determine the dischargeability of the loan, the lender or holder must file that notice with the Secretary within 10 days of the lender or holder's initial date of receipt, as documented by a date stamp. If the borrower is declaring bankruptcy under chapter 7 of the Bankruptcy Act, and has not filed a complaint to determine the dischargeability of the loan, the lender or holder must file the written notice with the Secretary within 30 days of the lender's or holder's initial date of receipt, as documented by a date stamp. If the Secretary has not paid the claim at the time the lender or holder receives that notice, upon receipt of the notice, the lender or holder must file with the bankruptcy court a proof of claim, if applicable, and an objection to the discharge or compromise of the HEAL loan. If the Secretary has paid the claim, the lender or holder must file a statement with the court notifying it that the loan is owned by the Secretary.

(2) *Death claims.* A lender or holder must file a death claim with the Secretary within 30 days after the lender or holder obtains documentation that a borrower is dead. In addition to the documentation required for all claims,

the lender or holder must submit with its death claim those documents which verify the death, including an official copy of the Death Certificate.

(3) *Disability claims.* A lender or holder must file a disability claim with the Secretary within 30 days after it has been notified that the Secretary has determined a borrower to be totally and permanently disabled. In addition to the documentation required for all claims, the lender or holder must submit with its claim evidence of the Secretary's determination that the borrower is totally and permanently disabled.

(4) *Bankruptcy claims.* For a bankruptcy under chapter 11 or 13 of the Bankruptcy Act, or a bankruptcy under chapter 7 of the Bankruptcy Act when the borrower files a complaint to determine the dischargeability of the HEAL loan, the current holder must file a claim with the Secretary within 10 days of the initial date of receipt of court notice or written notice from the borrower's attorney that the borrower has filed for bankruptcy under chapter 11 or chapter 13, or has filed a complaint to determine the dischargeability of the HEAL loan under chapter 7. The initial date of receipt of the written notice must be documented by a date stamp. The lender or holder must file with the bankruptcy court a proof of claim, if applicable, and an objection to the discharge or compromise of the HEAL loan. In addition to the documentation required for all claims, with its claim the lender or holder must submit to the Secretary at least the following:

- (i) Repayment schedule(s);
- (ii) A collection history, if any;
- (iii) A proof of claim, where applicable;
- (iv) An assignment to the United States of America of its proof of claim, where applicable;
- (v) All pertinent documents sent to or received from the bankruptcy court;
- (vi) A statement of any facts of which the lender is aware that may form the basis for an objection to the bankrupt's discharge or an exception to the discharge;
- (vii) The notice of the first meeting or creditors, or an explanation as to why this is not included;

(viii) In cases where there is defective service, a declaration or affidavit attesting to the fact that the lender or holder was not directly served with the notice of meeting of creditors. This declaration or affidavit must also indicate when and how the lender or holder learned of the bankruptcy; and

(ix) In cases where there is defective service due to the borrower's failure to list the proper creditor, a copy of the letter sent to the borrower at the time of purchase of the HEAL loan by the current holder, or a sample letter with documentation indicating when the letter was sent to the borrower.

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**§ 681.41 Determination of amount of loss on claims.**

(a) *General rule.* HEAL insurance covers the unpaid balance of principal and interest on an eligible HEAL loan, less the amount of any judgment collected pursuant to default proceedings commenced by the eligible lender or holder involved. In determining whether to approve an insurance claim for payment, the Secretary considers legal defects affecting the initial validity or insurability of the loan. The Secretary also deducts from a claim any amount that is not a legally enforceable obligation of the borrower except to the extent that the defense of infancy applies. The Secretary further considers whether all holders of the loan have complied with the requirements of the HEAL regulations, including those concerned with the making, servicing, and collecting of the loan, the timely filing of claims, and the submission of documents with a claim.

(b) *Special rules for loans acquired by assignment.* If a claim is filed by a lender or holder that obtained a loan by assignment, that lender or holder is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. In particular, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

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(c) *Special rules for loans made by school lenders.* (1) If the loan for which a claim is filed was originally made by a school and the claim is filed by that school, the Secretary deducts from the claim an amount equal to any unpaid refund that the school owes the borrower.

(2) If the loan for which a claim is filed was originally made by a school but the claim is filed by another lender or holder that obtained the note by assignment, the Secretary deducts from the claim an amount equal to any unpaid refund that the school owed the borrower prior to the assignment.

(d) *Circumstances under which defects in claims may be cured or excused.* The Secretary may permit a lender or holder to cure certain defects in a specified manner as a condition for payment of a default claim. The Secretary may excuse certain defects if the holder submitting the default claim satisfies the Secretary that the defect did not contribute to the default or prejudice the Secretary's attempt to collect the loan from the borrower. The Secretary may also excuse certain defects if the defect arose while the loan was held by another lender or holder and the holder submitting the default claim satisfies the Secretary that the assignment of the loan was an arm's length transaction, that the present holder did not know of the defect at the time of the sale and that the present holder could not have become aware of the defect through an examination of the loan documents.

(e) *Payment of insured interest.* The payment on an approved claim covers the unpaid principal balance and interest that accrues through the date the claim is paid, except:

(1) If the lender or holder failed to submit a claim within the required period after the borrower's default; death; total and permanent disability; or filing of a petition in bankruptcy under chapter 11 or 13 of the Bankruptcy Act, or under chapter 7 where the borrower files a complaint to determine the dischargeability of the HEAL loan; the Secretary does not pay interest that accrued between the end of that period and the date the Secretary received the claim.

(2) If the Secretary returned the claim to the lender or holder for additional documentation necessary for the approval of the claim, the Secretary pays interest only for the first 30 days following the return of the claim to the lender or holder.

**§ 681.42 Records, reports, inspection, and audit requirements for HEAL lenders and holders.**

(a) *Records.* (1) A lender or holder must keep complete and accurate records of each HEAL loan which it holds. The records must be organized in a way that permits them to be easily retrievable and allows the ready identification of the current status of each loan. The required records include:

- (i) The loan application;
- (ii) The original promissory note;
- (iii) The repayment schedule agreement;
- (iv) Evidence of each disbursement of loan proceeds;
- (v) Notices of changes in a borrower's address and status as a full-time student;
- (vi) Evidence of the borrower's eligibility for a deferment;
- (vii) The borrower's signed statement describing his or her rights and responsibilities in connection with a HEAL loan;
- (viii) The documents required for the exercise of forbearance;
- (ix) Documentation of the assignment of the loan; and
- (x) Evidence of a borrower's creditworthiness, including the borrower's credit report.

(2) The lender or holder must maintain for each borrower a payment history showing the date and amount of each payment received on the borrower's behalf, and the amounts of each payment attributable to principal and interest. A lender or holder must also maintain for each loan a collection history showing the date and subject of each communication with a borrower or endorser for collection of a delinquent loan. Furthermore, a lender or holder must keep any additional records which are necessary to make any reports required by the Secretary.

(3) A lender or holder must retain the records required for each loan for not less than 5 years following the date the

loan is repaid in full by the borrower. However, in particular cases the Secretary may require the retention of records beyond this minimum period. A lender or holder must keep the original copy of an unpaid promissory note, but may store all other records in microform or computer format.

(4) The lender or holder must maintain accurate and complete records on each HEAL borrower and related school activities required by the HEAL program. All HEAL records shall be maintained under security and protected from fire, flood, water leakage, other environmental threats, electronic data system failures or power fluctuations, unauthorized intrusion for use, and theft.

(b) *Reports.* A lender or holder must submit reports to the Secretary at the time and in the manner required by the Secretary.

(c) *Inspections.* Upon request, a lender or holder must afford the Secretary, the Comptroller General of the United States, and any of their authorized representatives access to its records in order to assure the correctness of its reports.

(d) The lender or holder must comply with the Department's biennial audit requirements of section 705 of the Act.

(e) Any lender or holder who has information which indicates potential or actual commission of fraud or other offenses against the United States, involving these loan funds, must promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

(Approved by the Office of Management and Budget under control numbers 1845-0125 and 1845-0126)

**§ 681.43 Limitation, suspension, or termination of the eligibility of a HEAL lender or holder.**

(a) The Secretary may limit, suspend, or terminate the eligibility under the HEAL program of an otherwise eligible lender or holder that violates or fails to comply with any provision of the Act, these regulations, or agreements with the Secretary concerning the HEAL program. Prior to terminating a lender or holder's participation in the program, the Secretary will provide the entity an opportunity for a

hearing in accordance with the procedures under paragraph (b) of this section.

(b)(1) The Secretary will provide any lender or holder subject to termination with a written notice, sent by certified mail, specifying his or her intention to terminate the lender or holder's participation in the program and stating that the entity may request, within 30 days of the receipt of this notice, a formal hearing. If the entity requests a hearing, it must, within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(i) The request for a hearing is untimely (*i.e.*, fails to meet the 30-day requirement);

(ii) The lender or holder does not provide a statement of material, factual issues in dispute within the 90-day required period; or

(iii) The statement of factual issues in dispute is frivolous or inconsequential.

(2) In the event that the Secretary denies a hearing, the Secretary will send a written denial, by certified mail, to the lender or holder setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the lender or holder will be terminated from participation in the program. An entity will be permitted to reapply for participation in the program when it demonstrates, and the Secretary agrees, that it is in compliance with all HEAL requirements.

(c) This section does not apply to a determination that a HEAL lender fails to meet the statutory definition of an "eligible lender."

(d) This section also does not apply to administrative action by the Department of Education based on any alleged violation of:

(1) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR part 100;

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(2) Title IX of the Education Amendments of 1972, which is governed by 34 CFR part 106;

(3) The Family Educational Rights and Privacy Act of 1974 (section 444 of the General Education Provisions Act, as amended), which is governed by 34 CFR part 99; or

(4) Title XI of the Right to Financial Privacy Act of 1978, Public Law 95–630 (12 U.S.C. 3401–3422).

(Approved by the Office of Management and Budget under control number 0915–0144)

### Subpart E—The School

#### § 681.50 Which schools are eligible to be HEAL schools?

(a) In order to participate in the HEAL program, a school must enter into a written agreement with the Secretary. In the agreement, the school promises to comply with provisions of the HEAL law and the HEAL regulations. For initial entry into this agreement and for the agreement to remain in effect, a school must satisfy the following requirements:

(1)(i) The school must be legally authorized within a State to conduct a course of study leading to one of the following degrees:

- (A) Doctor of Medicine.
- (B) Doctor of Osteopathic Medicine.
- (C) Doctor of Dentistry or equivalent degree.
- (D) Bachelor or Master of Science in Pharmacy or equivalent degree.
- (E) Doctor of Optometry or equivalent degree.
- (F) Doctor of Veterinary Medicine or equivalent degree.
- (G) Doctor of Podiatric Medicine or equivalent degree.
- (H) Graduate or equivalent degree in Public Health.
- (I) Doctor of Chiropractic or equivalent degree.
- (J) Doctoral degree of Clinical Psychology.
- (K) Masters or doctoral degree in Health Administration.

(ii) For the purposes of this section, the term “State” includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the

Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

(2)(i) The school must be accredited by a recognized agency approved for that course of study by the Secretary of Education, as described in paragraph (a)(2)(ii) of this section, except where a school is not eligible for accreditation solely because it is too new. A new school is eligible if the Secretary of Education determines that it can reasonably expect to be accredited before the beginning of the academic year following the normal graduation date of its first entering class. The Secretary of Education makes this determination after consulting with the appropriate accrediting agency and receiving reasonable assurance to that effect.

(ii) The approved accrediting agencies are:

- (A) Liaison Committee on Medical Education.
- (B) American Osteopathic Association, Bureau of Professional Education.
- (C) American Dental Association, Commission on Dental Accreditation.
- (D) American Veterinary Medical Association, Council on Education.
- (E) American Optometric Association, Council on Optometric Education.
- (F) American Podiatric Medical Association, Council on Podiatric Medical Education.
- (G) Accreditation Council for Pharmacy Education.
- (H) Council on Education for Public Health.
- (I) Council on Chiropractic Education, Commission on Accreditation.
- (J) Accrediting Commission on Accreditation of Healthcare Management Education.
- (K) American Psychological Association, Committee on Accreditation.

(b) If a HEAL school undergoes a change of controlling ownership or form of control, its agreement automatically expires at the time of that change. The school must enter into a new agreement with the Secretary in order to continue its participation in the HEAL program.

**§ 681.51 The student loan application.**

When the student completes his or her portion of the student loan application and submits it to the school, the school must do the following:

(a) Accurately and completely fill out its portion of the HEAL application;

(b) Verify, to the best of its ability, the information provided by the student on the HEAL application, including, but not limited to, citizenship status and Social Security number. To comply with this requirement, the school may request that the student provide a certified copy of his or her birth certificate, his or her naturalization papers, and an original Social Security card or copy issued by the Federal Government, or other documentation that the school may require. The school must assure that the applicant's I-151 or I-551 is attached to the application, if the applicant is required to possess such identification by the United States;

(c) Certify that the student is eligible to receive a HEAL loan, according to the requirements of § 681.5;

(d) Review the financial aid transcript from each institution previously attended by the applicant on at least a half-time basis to determine whether the applicant is in default on any loans or owes a refund on any grants. The school may not approve the HEAL application or disburse HEAL funds if the borrower is in default on any loans or owes a refund on any educational grants, unless satisfactory arrangements have been made between the borrower and the affected lender or school to resolve the default or the refund on the grant. If the financial aid transcript has been requested, but has not been received at the time the applicant submits his or her first HEAL application, the school may approve the application and disburse the first HEAL installment prior to receipt of the transcript. Each financial aid transcript must include at least the following data:

(1) Student's name;

(2) Amounts and sources of loans and grants previously received by the student for study at an institution of higher education;

(3) Whether the student is in default on any of these loans, or owes a refund on any grants;

(4) Certification from each institution attended by the student that the student has received no financial aid, if applicable; and

(5) From each institution attended, the signature of an official authorized by the institution to sign such transcripts on behalf of the institution;

(e) State that it has no reason to believe that the borrower may not be willing to repay the HEAL loan;

(f) Make reasonable determinations of the maximum loan amount approvable, based on the student's circumstances. The student applicant determines the amount he or she wishes to borrow, up to this maximum amount. Only then may the school certify an eligible application. In determining the maximum loan amount approvable, the school will calculate the difference between:

(1) The total financial resources available to the applicant for his or her costs of education for the period covered by the proposed HEAL loan, and other student aid that the applicant has received or will receive during the period covered by the proposed HEAL loan. To determine the total financial resources available to the applicant for his or her costs of education for the period covered by the proposed HEAL loan (including familial, spousal, or personal income or other financial assistance that the applicant has received or will receive), the school must consider information provided through one of the national need analysis systems or any other procedure approved by the Secretary of Education, in addition to any other information which the school has regarding the student's financial situation. The school may make adjustments to the need analysis information only when necessary to accurately reflect the applicant's actual resources, and must maintain in the borrower's record documentation to support the basis for any adjustments to the need analysis information; and

(2) The costs reasonably necessary for each student to pursue the same or similar curriculum or program within the same class year at the school for the period covered by the proposed

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HEAL loan, using a standard student budget. The school must maintain in its general office records the criteria used to develop each standard student budget. Adjustments to the standard student budget may be made only to the extent that they are necessary for the student to complete his or her education, and documentation must be maintained in the borrower's record to support the basis for any adjustments to the standard student budget.

(g) Comply with the requirements of § 681.61.

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**§ 681.52 The student's loan check.**

(a) When a school receives from a HEAL lender a loan disbursement check or draft payable jointly to the school and to one of its students, it must:

(1) If the school receives the instrument after the student is enrolled, obtain the student's endorsement, retain that portion of funds due the school, and disburse the remaining funds to the student.

(2) If the school receives the instrument before the student is enrolled, it must, prior to endorsing the instrument, send the instrument to the student to endorse and return to the school. The school may then retain that portion of funds then due the school but must hold the remaining funds for disbursement to the student at the time of enrollment. However, if the student is unable to meet other educational expenses due before the time of enrollment, the school may obtain the student's endorsement and disburse to the student that portion of funds required to meet these other educational expenses.

(b) If a school determines that a student does not plan to enroll, the school must return a loan disbursement check or draft to the lender within 30 days of this determination.

**§ 681.53 Notification to lender or holder of change in enrollment status.**

Each school must notify the holder of a HEAL loan of any change in the student's enrollment status within 30 days following the change in status. Each notice must contain the student's full

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name under which the loan was received, the student's current name (if different), the student's Social Security number, the date of the change in the enrollment status, or failure to enroll as scheduled for any academic period as a full-time student, the student's latest known permanent and temporary addresses, and other information which the school may decide is necessary to identify or locate the student. If the school does not know the identity of the current holder of the HEAL loan, it must notify the HEAL Program Office of a change in the student's enrollment status. This notification is not required for vacation periods and leaves of absence or other temporary interruptions which do not exceed one academic term.

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**§ 681.54 Payment of refunds by schools.**

A participating school must pay that portion of a refund that is allocable to a HEAL loan directly to the original lender (or to a subsequent holder of the loan note, if the school has knowledge of the holder's identity). At the same time, the school must provide to the borrower written notice that it is doing so.

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**§ 681.55 Administrative and fiscal procedures.**

Each school must establish and maintain administrative and fiscal procedures necessary to achieve the following objectives:

(a) Proper and efficient administration of the funds received from students who have HEAL loans;

(b) Protection of the rights of students under the HEAL program;

(c) Protection of the United States from unreasonable risk of loss due to defaults; and

(d) Compliance with applicable requirements for HEAL schools.

**§ 681.56 Records.**

(a) In addition to complying with the requirements of section 739(b) of the

Act, each school must maintain an accurate, complete, and easily retrievable record with respect to each student who has a HEAL loan. The record must contain all of the following information:

(1) Student's name, address, academic standing and period of attendance;

(2) Name of the HEAL lender, amount of the loan, and the period for which the HEAL loan was intended;

(3) If a noncitizen, documentation of the student's alien registration status;

(4) Amount and source of other financial assistance received by the student during the period for which the HEAL loan was made;

(5) Date the school receives the HEAL check or draft and the date it either gives it to the student or returns it to the lender (if the school is not the lender);

(6) Date the school disburses the loan to a student (if the school is the lender);

(7) Date the school signs the loan check or draft (if the school is a copayee);

(8) Amount of tuition, fees and other charges paid by the student to the school for the academic period covered by the loan and the dates of payment;

(9) Photocopy of each HEAL check or draft received by the student;

(10) Documentation of each entrance interview, including the date of the entrance interview and the signature of the borrower indicating that the entrance interview was conducted;

(11) Documentation of the exit interview, including the date of the exit interview and the signature of the borrower indicating that the exit interview was conducted, or documentation of the date that the school mailed exit interview materials to the borrower if the borrower failed to report for the exit interview;

(12) A photocopy made by the school of the borrower's I-151 or I-551, if the borrower is required to possess such identification by the United States, or other documentation, if obtained by the school, to verify citizenship status and Social Security number (*e.g.*, a certified copy of the borrower's birth certificate or a photocopy made by the school of the borrower's original Social

Security card or copy issued by the Federal Government);

(13) Documentation of the calculations made which compare the financial resources of the applicant with the cost of his or her education at the school;

(14) Copy(s) of the borrower's financial aid transcript(s);

(15) The standard budget used for the student, and documentation to support the basis for any deviations made to the standard budget;

(16) Copies of all correspondence between the school and the borrower or between the school and the lender or its assignee regarding the loan;

(17) Copy of each form used by the school in connection with the loan; and

(18) Expected postgraduate destination of borrower.

(b) The school must maintain the record for not less than 5 years following the date the student graduates, withdraws or fails to enroll as a full-time student. The school may store the records in microform or computer format.

(c) The school must comply with the Department's biennial audit requirements of section 705 of the Act.

(d) The school must develop and follow written procedures for the receipt, verification of amount, and disbursement of HEAL checks or drafts. These procedures must be maintained in the school's policies and procedures manuals or other general office records.

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#### § 681.57 Reports.

A school must submit reports to the Secretary at the times and in the manner the Secretary may reasonably prescribe. The school must retain a copy of each report for not less than 5 years following the report's completion, unless otherwise directed by the Secretary. A school must also make available to a HEAL lender or holder, upon the lender's or holder's request, the name, address, postgraduate destination and other reasonable identifying information for each of the school's students who has a HEAL loan.

(Approved by the Office of Management and Budget under control number 1845-0125)

**§ 681.58**

**§ 681.58 Federal access to school records.**

For the purposes of audit and examination, a HEAL school must provide the Secretary of Education, the Comptroller General of the United States, and any of their authorized representatives access to the records that the school is required to keep and to any documents and records pertinent to the administration of the HEAL program.

**§ 681.59 Records and Federal access after a school is no longer a HEAL school.**

In the event a school ceases to participate in the HEAL program, the school (or its successor, in the case of a school which undergoes a change in ownership) must retain all required HEAL records and provide the Secretary of Education, the Comptroller General of the United States, and any of their authorized representatives access to them.

**§ 681.60 Limitation, suspension, or termination of the eligibility of a HEAL school.**

(a) The Secretary may limit, suspend, or terminate the eligibility under the HEAL program of an otherwise eligible school that violates or fails to comply with any provision of the Act, these regulations, or agreements with the Secretary concerning the HEAL program. Prior to terminating a school's participation in the program, the Secretary will provide the school an opportunity for a hearing in accordance with the procedures under paragraph (b) of this section.

(b)(1) The Secretary will provide any school subject to termination with a written notice, sent by certified mail, specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 30 days of the receipt of this notice, a formal hearing. If the school requests a hearing, it must, within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metro-

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politan area. The Secretary will deny a hearing if:

(i) The request for a hearing is untimely (*i.e.*, fails to meet the 30-day requirement);

(ii) The school does not provide a statement of material, factual issues in dispute within the 90-day required period; or

(iii) The statement of factual issues in dispute is frivolous or inconsequential.

(2) In the event that the Secretary denies a hearing, the Secretary will send a written denial, by certified mail, to the school setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the school will be terminated from participation in the program. A school will be permitted to re-apply for participation in the program when it demonstrates, and the Secretary agrees, that it is in compliance with all HEAL requirements.

(c) This section does not apply to a determination that a HEAL school fails to meet the statutory definition of an "eligible school."

(d) This section does not apply to administrative action by the Department of Education based on any alleged violation of the Family Educational Rights and Privacy Act of 1974 (section 444 of the General Education Provisions Act, as amended), as governed by 34 CFR part 99.

(Approved by the Office of Management and Budget under control number 0915-0144)

**§ 681.61 Responsibilities of a HEAL school.**

(a) A HEAL school is required to carry out the following activities for each HEAL applicant or borrower:

(1) Conduct and document an entrance interview with each student (individually or in groups) no later than prior to the loan recipient's first HEAL disbursement in each academic year that the loan recipient obtains a HEAL loan. The school must inform the loan recipient during the entrance interview of his or her rights and responsibilities under a HEAL loan, including the consequences for noncompliance with those responsibilities, and must gather

personal information which would assist in locating the loan recipient should he or she depart from the school without receiving an exit interview. A school may meet this requirement through correspondence where the school determines that a face-to-face meeting is impracticable.

(2) Conduct and document an exit interview with each HEAL loan recipient (individually or in groups) within the final academic term of the loan recipient's enrollment prior to his or her anticipated graduation date or other departure date from the school. The school must inform the loan recipient in the exit interview of his or her rights and responsibilities under each HEAL loan, including the consequences for noncompliance with those responsibilities. The school must also collect personal information from the loan recipient which would assist the school or the lender or holder in skiptracing activities and to direct the loan recipient to contact the lender or holder concerning specific repayment terms and options. A copy of the documentation of the exit interview, including the personal information collected for skiptracing activities, and any other information required by the Secretary regarding the exit interview must be sent to the lender or holder of each HEAL loan within 30 days of the exit interview. If the loan recipient departs from the school prior to the anticipated date or does not receive an exit interview, the exit interview information must be mailed to the loan recipient by the school within 30 days of the school's knowledge of the departure or the anticipated departure date, whichever is earlier. The school must request that the loan recipient forward any required information (*e.g.*, skiptracing information, request for deferment, etc.) to the lender or holder. The school must notify the lender or holder of the loan recipient's departure at the same time it mails the exit interview material to the loan recipient.

(3) Verify the accuracy and completeness of information provided by each student on the HEAL loan application, particularly in regard to the HEAL eligibility requirements, by comparing the information with previous loan applications or other records or informa-

tion provided by the student to the school. Notify the potential lender of any discrepancies which were not resolved between the school and the student.

(4) Develop and implement procedures relating to check receipt and release which keep these functions separate from the application preparation and approval process and assure that the amount of the HEAL loan check(s) does(do) not exceed the approved total amount of the loan and the statutory maximums. Checks must not be cashed without the borrower's personal endorsement. Documentation of these procedures and their usage shall be maintained by the school.

(5) Maintain accurate and complete records on each HEAL borrower and related school activities required by the HEAL program. All HEAL records shall be properly safeguarded and protected from environmental threats and unauthorized intrusion for use and theft.

(6) Maintain documentation of the criteria used to develop the school's standard student budgets in the school's general records, readily available for audit purposes, and maintain in each HEAL borrower's record a copy of the standard budget which was actually used in the determination of the maximum loan amount approvable for the student, as described in § 681.51.

(7) Notify the lender or its assignee of any changes in the student's name, address, status, or other information pertinent to the HEAL loan not more than 30 days after receiving information indicating such a change.

(b) Any school which has information which indicates potential or actual commission of fraud or other offenses against the United States involving these loan funds must promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

(c) The school will be considered responsible and the Secretary may seek reimbursement from any school for the amount of a loan in default on which the Secretary has paid an insurance claim, if the Secretary finds that the school did not comply with the applicable HEAL statute and regulations, or

its written agreement with the Secretary. The Secretary may excuse certain defects if the school satisfies the Secretary that the defect did not contribute to the default or prejudice the Secretary's attempt to collect the loan from the borrower.

(d) A school is authorized to withhold services from a HEAL borrower who is in default on a HEAL loan received while enrolled in that school, except in instances where the borrower has filed for bankruptcy. Such services may include, but are not limited to academic transcripts and alumni services. Defaulted HEAL borrowers who have filed for bankruptcy shall provide court documentation that verifies the filing for bankruptcy upon the request of the school. Schools will also supply this information to the Secretary upon request. All academic and financial aid transcripts that are released on a defaulted HEAL borrower must indicate on the transcript that the borrower is in default on a HEAL loan. It is the responsibility of the borrower to provide the school with documentation from the lender, holder, or Department when a default has been satisfactorily resolved, in order to obtain access to services that are being withheld, or to have the reference to default removed from the academic and financial aid transcripts.

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## PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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