

the family contribution schedule for the period of instruction from July 1, 1982, through June 30, 1983, to be modified by the Secretary of Education for use for each of the specific periods of instruction to reflect the most recent and relevant data, prior to repeal by Pub. L. 99-498, title IV, § 408(b), Oct. 17, 1986, 100 Stat. 1495, effective with respect to any academic year beginning on or after July 1, 1988, Pub. L. 97-301.

§ 1078-1. Voluntary flexible agreements with guaranty agencies

(a) Voluntary agreements

(1) Authority

Subject to paragraph (2),¹ the Secretary may enter into a voluntary, flexible agreement with a guaranty agency under this section, in lieu of agreements with a guaranty agency under subsections (b) and (c) of section 1078 of this title. The Secretary may waive or modify any requirement under such subsections, except that the Secretary may not waive—

(A) any statutory requirement pertaining to the terms and conditions attached to student loans or default claim payments made to lenders;

(B) the prohibitions on inducements contained in section 1078(b)(3) of this title; or

(C) the Federal default fee required by section 1078(b)(1)(H) of this title and the second sentence of section 1078-8(h) of this title.

(2) Eligibility

During fiscal years 1999, 2000, and 2001, the Secretary may enter into a voluntary, flexible agreement with not more than 6 guaranty agencies that had 1 or more agreements with the Secretary under subsections (b) and (c) of section 1078 of this title as of the day before October 7, 1998. Beginning in fiscal year 2002, any guaranty agency or consortium thereof may enter into a voluntary flexible agreement with the Secretary.

(3) Report required

(A) In general

The Secretary, in consultation with the guaranty agencies operating under voluntary flexible agreements, shall report on an annual basis to the authorizing committees regarding the program outcomes that the voluntary flexible agreements have had with respect to—

(i) program integrity and program and cost efficiencies, delinquency prevention, and default aversion, including a comparison of such outcomes to such outcomes for each guaranty agency operating under an agreement under subsection (b) or (c) of section 1078 of this title;

(ii) consumer education programs described in section 1083a of this title; and

(iii) the availability and delivery of student financial aid.

(B) Contents

Each report described in subparagraph (A) shall include—

(i) a description of each voluntary flexible agreement and the performance goals

established by the Secretary for each agreement;

(ii) a list of—

(I) guaranty agencies operating under voluntary flexible agreements;

(II) the specific statutory or regulatory waivers provided to each such guaranty agency; and

(III) any other waivers provided to other guaranty agencies under paragraph (1);

(iii) a description of the standards by which each guaranty agency's performance under the guaranty agency's voluntary flexible agreement was assessed and the degree to which each guaranty agency achieved the performance standards;

(iv) an analysis of the fees paid by the Secretary, and the costs and efficiencies achieved under each voluntary flexible agreement; and

(v) an identification of promising practices for program improvement that could be replicated by other guaranty agencies.

(b) Terms of agreement

An agreement between the Secretary and a guaranty agency under this section—

(1) shall be developed by the Secretary, in consultation with the guaranty agency, on a case-by-case basis;

(2) may only include provisions—

(A) specifying the responsibilities of the guaranty agency under the agreement, with respect to—

(i) administering the issuance of insurance on loans made under this part on behalf of the Secretary;

(ii) monitoring insurance commitments made under this part;

(iii) default aversion activities;

(iv) review of default claims made by lenders;

(v) payment of default claims;

(vi) collection of defaulted loans;

(vii) adoption of internal systems of accounting and auditing that are acceptable to the Secretary, and reporting the result thereof to the Secretary in a timely manner, and on an accurate, and auditable basis;

(viii) timely and accurate collection and reporting of such other data as the Secretary may require to carry out the purposes of the programs under this subchapter;

(ix) monitoring of institutions and lenders participating in the program under this part; and

(x) informational outreach to schools and students in support of access to higher education;

(B) regarding the fees the Secretary shall pay, in lieu of revenues that the guaranty agency may otherwise receive under this part, to the guaranty agency under the agreement, and other funds that the guaranty agency may receive or retain under the agreement, except that in no case may the cost to the Secretary of the agreement, as

¹ See References in Text note below.

reasonably projected by the Secretary, exceed the cost to the Secretary, as similarly projected, in the absence of the agreement;

(C) regarding the use of net revenues, as described in the agreement under this section, for such other activities in support of postsecondary education as may be agreed to by the Secretary and the guaranty agency;

(D) regarding the standards by which the guaranty agency's performance of the agency's responsibilities under the agreement will be assessed, and the consequences for a guaranty agency's failure to achieve a specified level of performance on 1 or more performance standards;

(E) regarding the circumstances in which a guaranty agency's agreement under this section may be ended in advance of the agreement's expiration date;

(F) regarding such other businesses, previously purchased or developed with reserve funds, that relate to the program under this part and in which the Secretary permits the guaranty agency to engage; and

(G) such other provisions as the Secretary may determine to be necessary to protect the United States from the risk of unreasonable loss and to promote the purposes of this part;

(3) shall provide for uniform lender participation with the guaranty agency under the terms of the agreement; and

(4) shall not prohibit or restrict borrowers from selecting a lender of the borrower's choosing, subject to the prohibitions and restrictions applicable to the selection under this chapter.

(c) Public notice

(1) In general

The Secretary shall publish in the Federal Register a notice to all guaranty agencies that sets forth—

(A) an invitation for the guaranty agencies to enter into agreements under this section; and

(B) the criteria that the Secretary will use for selecting the guaranty agencies with which the Secretary will enter into agreements under this section.

(2) Agreement notice

The Secretary shall notify the members of the authorizing committees not later than 30 days prior to concluding an agreement under this section. The notice shall contain—

(A) a description of the voluntary flexible agreement and the performance goals established by the Secretary for the agreement;

(B) a list of participating guaranty agencies and the specific statutory or regulatory waivers provided to each guaranty agency;

(C) a description of the standards by which each guaranty agency's performance under the agreement will be assessed; and

(D) a description of the fees that will be paid to each participating guaranty agency.

(3) Waiver notice

The Secretary shall notify the members of the authorizing committees not later than 30

days prior to the granting of a waiver pursuant to subsection (a)(2)¹ to a guaranty agency that is not a party to a voluntary flexible agreement.

(4) Public availability

The text of any voluntary flexible agreement, and any subsequent revisions, and any waivers related to section 1078(b)(3) of this title that are not part of such an agreement, shall be readily available to the public.

(5) Modification notice

The Secretary shall notify the members of the authorizing committees 30 days prior to any modifications to an agreement under this section.

(d) Termination

At the expiration or early termination of an agreement under this section, the Secretary shall reinstate the guaranty agency's prior agreements under subsections (b) and (c) of section 1078 of this title, subject only to such additional requirements as the Secretary determines to be necessary in order to ensure the efficient transfer of responsibilities between the agreement under this section and the agreements under subsections (b) and (c) of section 1078 of this title, and including the guaranty agency's compliance with reserve requirements under sections 1072 and 1078 of this title.

(Pub. L. 89-329, title IV, §428A, as added Pub. L. 105-244, title IV, §418, Oct. 7, 1998, 112 Stat. 1691; amended Pub. L. 109-171, title VIII, §8014(b)(3), (f), Feb. 8, 2006, 120 Stat. 169, 170; Pub. L. 110-315, title I, §103(b)(5), title IV, §423, Aug. 14, 2008, 122 Stat. 3089, 3231.)

Editorial Notes

REFERENCES IN TEXT

Paragraph (2) of subsec. (a) of this section, referred to in subsecs. (a)(1) and (c)(3), was struck out by Pub. L. 109-171, §8014(f)(2), and par. (3) was redesignated (2). See 2006 Amendment note below.

PRIOR PROVISIONS

A prior section 1078-1, Pub. L. 89-329, title IV, §428A, as added Pub. L. 99-498, title IV, §402(a), Oct. 17, 1986, 100 Stat. 1384; amended Pub. L. 100-50, §10(n), (o)(1), (p)(1), (q), (r)(1), June 3, 1987, 101 Stat. 343, 344; Pub. L. 100-369, §§3-5(a), (b)(3), July 18, 1988, 102 Stat. 835, 836; Pub. L. 101-239, title II, §2003(a)(1), (b)(1), (c)(1), Dec. 19, 1989, 103 Stat. 2112, 2114; Pub. L. 101-508, title III, §3006(b), Nov. 5, 1990, 104 Stat. 1388-28; Pub. L. 102-26, §2(c)(1), Apr. 9, 1991, 105 Stat. 123; Pub. L. 102-325, title IV, §417, July 23, 1992, 106 Stat. 529; Pub. L. 103-208, §2(c)(29)-(32), Dec. 20, 1993, 107 Stat. 2465, 2466, related to Federal supplemental loans for students, prior to repeal by Pub. L. 103-66, title IV, §4047(b), (d), Aug. 10, 1993, 107 Stat. 364, effective July 1, 1994.

Another prior section 1078-1, Pub. L. 89-329, title IV, §428A, as added Pub. L. 94-482, title I, §127(a), Oct. 12, 1976, 90 Stat. 2120; amended Pub. L. 95-43, §1(a)(30)-(32), June 15, 1977, 91 Stat. 216; Pub. L. 96-374, title IV, §412(e), (f), title XIII, §1391(a)(1), Oct. 3, 1980, 94 Stat. 1416, 1417, 1503; Pub. L. 97-35, title V, §535(e), Aug. 13, 1981, 95 Stat. 455, related to student loan insurance programs, prior to the general amendment of this part by Pub. L. 99-498.

AMENDMENTS

2008—Subsec. (a)(3). Pub. L. 110-315, §423, added par. (3).

Subsec. (c)(2), (3). Pub. L. 110-315, §103(b)(5)(A), (B), substituted “members of the authorizing committees” for “Chairperson and the Ranking Minority Member of the Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives”.

Subsec. (c)(5). Pub. L. 110-315, §103(b)(5)(C), substituted “members of the authorizing committees” for “Chairperson and the Ranking Minority Members of the Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives”.

2006—Subsec. (a)(1)(B). Pub. L. 109-171, §8014(f)(1), struck out “unless the Secretary determines that such a waiver is consistent with the purposes of this section and is limited to activities of the guaranty agency within the State or States for which the guaranty agency serves as the designated guarantor” before “; or”.

Subsec. (a)(1)(C). Pub. L. 109-171, §8014(b)(3), added subpar. (C).

Subsec. (a)(2), (3). Pub. L. 109-171, §8014(f)(2), (3), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: “If the Secretary grants a waiver pursuant to paragraph (1)(B), any guaranty agency doing business within the affected State or States may request, and the Secretary shall grant, an identical waiver to such guaranty agency under the same terms and conditions (including service area limitations) as govern the original waiver.”

Subsec. (a)(4). Pub. L. 109-171, §8014(f)(4), struck out par. (4), which required the Secretary to report to congressional committees regarding the impact that the voluntary flexible agreements had on program integrity, program and cost efficiencies, and the availability and delivery of student financial aid.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2006 AMENDMENT

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

EFFECTIVE DATE

Section effective Oct. 1, 1998, see section 3 of Pub. L. 105-244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

§ 1078-2. Federal PLUS loans

(a) Authority to borrow

(1) Authority and eligibility

Prior to July 1, 2010, a graduate or professional student or the parents of a dependent student shall be eligible to borrow funds under this section in amounts specified in subsection (b), if—

(A) the graduate or professional student or the parents do not have an adverse credit history as determined pursuant to regulations promulgated by the Secretary;

(B) in the case of a graduate or professional student or parent who has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining funds under this subchapter, such graduate or professional student or parent has completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this subchapter obtained by fraud; and

(C) the graduate or professional student or the parents meet such other eligibility criteria as the Secretary may establish by reg-

ulation, after consultation with guaranty agencies, eligible lenders, and other organizations involved in student financial assistance.

(2) Terms, conditions, and benefits

Except as provided in subsections (c), (d), and (e), loans made under this section shall have the same terms, conditions, and benefits as all other loans made under this part.

(3) Special rules

(A) Parent borrowers

Whenever necessary to carry out the provisions of this section, the terms “student” and “borrower” as used in this part shall include a parent borrower under this section.

(B)(i) Extenuating circumstances

An eligible lender may determine that extenuating circumstances exist under the regulations promulgated pursuant to paragraph (1)(A) if, during the period beginning January 1, 2007, and ending December 31, 2009, an applicant for a loan under this section—

(I) is or has been delinquent for 180 days or fewer on mortgage loan payments or on medical bill payments during such period; and

(II) does not otherwise have an adverse credit history, as determined by the lender in accordance with the regulations promulgated pursuant to paragraph (1)(A), as such regulations were in effect on the day before May 7, 2008.

(ii) Definition of mortgage loan

In this subparagraph, the term “mortgage loan” means an extension of credit to a borrower that is secured by the primary residence of the borrower.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to limit an eligible lender’s authority under the regulations promulgated pursuant to paragraph (1)(A) to determine that extenuating circumstances exist.

(b) Limitation based on need

Any loan under this section may be counted as part of the expected family contribution in the determination of need under this subchapter, but no loan may be made to any graduate or professional student or any parent under this section for any academic year in excess of (A) the student’s estimated cost of attendance, minus (B) other financial aid as certified by the eligible institution under section 1078(a)(2)(A) of this title. The annual insurable limit on account of any student shall not be deemed to be exceeded by a line of credit under which actual payments to the borrower will not be made in any year in excess of the annual limit.

(c) PLUS loan disbursement

All loans made under this section shall be disbursed in accordance with the requirements of section 1078-7 of this title and shall be disbursed by—

(1) an electronic transfer of funds from the lender to the eligible institution; or

(2) a check copayable to the eligible institution and the graduate or professional student or parent borrower.