

paragraph (1) [amending this section] shall apply with respect to loans for which the first day of delinquency occurs on or after the date of enactment of this Act [Oct. 7, 1998].”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective on reorganization effective date as defined in section 1087-3(h) of this title, see section 101(e) [title VI, §602(b)(1)(B)] of Pub. L. 104-208, set out as a note under section 1078-3 of this title.

EFFECTIVE DATE OF 1993 AMENDMENTS

Amendments by section 2(c)(55), (60)(B) of Pub. L. 103-208 applicable with respect to determination (and appeals from determinations) of cohort default rates for fiscal year 1989 and any succeeding fiscal year, amendments by section 2(c)(56)–(58), (61) of Pub. L. 103-208 effective, except as otherwise provided, as if included in the Higher Education Amendments of 1992, Pub. L. 102-325, amendment by section 2(c)(59) of Pub. L. 103-208 effective on and after 30 days after Dec. 20, 1993, amendment by section 2(c)(60)(A) of Pub. L. 103-208 effective on and after Oct. 1, 1994, and amendment by section 2(c)(62) effective on and after Dec. 20, 1993, see section 5(a), (b)(2), (3), (7), (8) of Pub. L. 103-208, set out as a note under section 1051 of this title.

Amendment by section 4046(b)(1) of Pub. L. 103-66 effective July 1, 1994, see section 4046(c) of Pub. L. 103-66, set out as a note under section 1078-3 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-26, §2(d)(1), Apr. 9, 1991, 105 Stat. 124, provided that: “The amendments made by this section [amending this section and sections 1078-1, 1088, 1091, 1094, and 1141 of this title] shall apply to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after July 1, 1991.”

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title III, §3004(d), Nov. 5, 1990, 104 Stat. 1388-27, provided that: “The amendments made by this section [amending this section, section 1078 of this title, and provisions set out as a note under section 1078-1 of this title] shall be effective July 1, 1991, except that the amendment made by subsection (b) [amending section 1078 of this title] shall be effective upon enactment.”

EFFECTIVE DATE OF 1987 AMENDMENT

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

EFFECTIVE DATE

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

WAIVER OF MITIGATING CIRCUMSTANCES REQUIREMENT FOR STUDENT LOAN INSURANCE PROGRAM ELIGIBILITY

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

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

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

“(2) for an institution—

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

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

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

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

DEFINITION OF INSTITUTION OF HIGHER EDUCATION

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

§ 1086. Delegation of functions

(a) In general

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

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

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

(b) Special rule

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

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

Editorial Notes

PRIOR PROVISIONS

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

AMENDMENTS

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see sec-

tion 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

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

(a) Repayment in full for death and disability

(1) In general

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

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

- (i) receives a loan made, insured, or guaranteed under this subchapter; or
- (ii) has earned income in excess of the poverty line; or

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

(2) Disability determinations

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

(3) Automatic income monitoring

(A) In general

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

- (i) use return information disclosed under section 6103(l)(13) of title 26, pursuant to approval provided under section 1098h of this title, to determine the borrower's continued eligibility for the loan discharge described in subparagraph (B);
- (ii) allow the borrower, at any time, to opt out of disclosure under such section

6103(l)(13) and instead provide such information as the Secretary may require to determine the borrower's continued eligibility for such loan discharge; and

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

(B) Applicability

Subparagraph (A) shall apply—

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

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

(b) Payment of claims on loans in bankruptcy

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

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

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

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

(c) Discharge

(1) In general

If a borrower who received, on or after January 1, 1986, a loan made, insured, or guaranteed under this part and the student borrower, or the student on whose behalf a parent borrowed, is unable to complete the program in which such student is enrolled due to the closure of the institution or if such student's eligibility to borrow under this part was falsely certified by the eligible institution or was falsely certified as a result of a crime of identity theft, or if the institution failed to make a refund of loan proceeds which the institution owed to such student's lender, then the Secretary shall discharge the borrower's liability on the loan (including interest and collection fees) by repaying the amount owed on the loan and shall subsequently pursue any claim available to such borrower against the institution and its affiliates and principals or settle the loan obligation pursuant to the financial responsibility authority under subpart 3 of part H. In the case of a discharge based upon a failure to refund, the amount of the discharge shall not exceed that portion of the loan which should have been refunded. The Secretary shall report to the authorizing committees annually as to the dollar amount of loan discharges attributable to failures to make refunds.

¹ See References in Text note below.