

Subsec. (c)(3)(C). Pub. L. 103–208, §2(i)(9)(C), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “such institution establishes to the satisfaction of the Secretary, with the support of a report of an independent certified public accountant prepared under generally accepted accounting principles, that the institution is a going concern capable of meeting all of its financial obligations, including (but not limited to) refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary; or”.

Subsec. (c)(4) to (6). Pub. L. 103–208, §2(i)(9)(D), (E), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (f). Pub. L. 103–208, §2(i)(10), inserted after second sentence “The Secretary may establish priorities by which institutions are to receive site visits, and may coordinate such visits with site visits by States, guaranty agencies, and accrediting bodies in order to eliminate duplication, and reduce administrative burden.”

Subsec. (h)(1)(B)(iii). Pub. L. 103–208, §2(i)(11), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “the Secretary determines that the institution is, in the judgment of the Secretary, in an administrative or financial condition that may jeopardize its ability to perform its responsibilities under its program participation agreement.”

Subsec. (i)(1). Pub. L. 103–208, §2(i)(12), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “For the purpose of certifying the eligibility of an institution, an eligible institution of higher education that has a change in ownership resulting in a change in control shall not be considered to be the same institution (except as provided in paragraph (3)) and shall be considered a new institution for the purpose of establishing eligibility, except that such institution shall not be required (under section 1088(b)(5) or 1088(c)(3) of this title) to be in existence for 2 years prior to seeking such certification unless such institution was in existence as a branch for less than 2 years.”

Subsec. (i)(3)(A). Pub. L. 103–208, §2(i)(13), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the death of an owner of an institution, when the owner’s interest is sold or transferred to either a family member or a current stockholder of the corporation; or”.

Subsec. (j)(1). Pub. L. 103–208, §2(i)(14), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “For the purposes of this subchapter, a branch of an eligible institution, as defined pursuant to regulations of the Secretary, is a separate institution of higher education and shall separately meet all the requirements of this subchapter, except that such institution shall not be required (under section 1088(b)(5) or 1088(c)(3) of this title) to be in existence for 2 years prior to seeking such certification unless such institution was in existence as a branch for less than 2 years.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by sections 102(a)(6)(B), (b)(6), (7) and 493(a), (b), (d)–(h) of Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

Pub. L. 105–244, title IV, §493(c)(2), Oct. 7, 1998, 112 Stat. 1762, provided that: “The amendment made by paragraph (1) [amending this section] shall be effective with respect to any unpaid refunds that were first required to be paid to a lender or to the Secretary on or after 90 days after the date of enactment of this Act [Oct. 7, 1998].”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE

Subpart effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as an Effective Date of 1992 Amendment note under section 1001 of this title.

§ 1099c–1. Program review and data

(a) General authority

In order to strengthen the administrative capability and financial responsibility provisions of this subchapter, the Secretary—

(1) shall provide for the conduct of program reviews on a systematic basis designed to include all institutions of higher education participating in programs authorized by this subchapter;

(2) shall give priority for program review to institutions of higher education that are—

(A) institutions with a cohort default rate for loans under part B of this subchapter in excess of 25 percent or which places such institutions in the highest 25 percent of such institutions;

(B) institutions with a default rate in dollar volume for loans under part B of this subchapter which places the institutions in the highest 25 percent of such institutions;

(C) institutions with a significant fluctuation in Federal Stafford Loan volume, Federal Direct Stafford/Ford Loan volume, or Federal Pell Grant award volume, or any combination thereof, in the year for which the determination is made, compared to the year prior to such year, that are not accounted for by changes in the Federal Stafford Loan program, the Federal Direct Stafford/Ford Loan program, or the Pell Grant program, or any combination thereof;

(D) institutions reported to have deficiencies or financial aid problems by the State licensing or authorizing agency, or by the appropriate accrediting agency or association;

(E) institutions with high annual dropout rates; and

(F) such other institutions that the Secretary determines may pose a significant risk of failure to comply with the administrative capability or financial responsibility provisions of this subchapter; and

(3) shall establish and operate a central data base of information on institutional accreditation, eligibility, and certification that includes—

(A) all relevant information available to the Department;

(B) all relevant information made available by the Secretary of Veterans Affairs;

(C) all relevant information from accrediting agencies or associations;

(D) all relevant information available from a guaranty agency; and

(E) all relevant information available from States under subpart 1 of this part.

(b) Special administrative rules

In carrying out paragraphs (1) and (2) of subsection (a) and any other relevant provisions of this subchapter, the Secretary shall—

(1) establish guidelines designed to ensure uniformity of practice in the conduct of program reviews of institutions of higher education;

(2) make available to each institution participating in programs authorized under this subchapter complete copies of all review guidelines and procedures used in program reviews;

(3) permit the institution to correct or cure an administrative, accounting, or record-keeping error if the error is not part of a pattern of error and there is no evidence of fraud or misconduct related to the error;

(4) base any civil penalty assessed against an institution of higher education resulting from a program review or audit on the gravity of the violation, failure, or misrepresentation;

(5) inform the appropriate State and accrediting agency or association whenever the Secretary takes action against an institution of higher education under this section, section 1099c of this title, or section 1082 of this title;

(6) provide to an institution of higher education an adequate opportunity to review and respond to any program review report and relevant materials related to the report before any final program review report is issued;

(7) review and take into consideration an institution of higher education's response in any final program review report or audit determination, and include in the report or determination—

(A) a written statement addressing the institution of higher education's response;

(B) a written statement of the basis for such report or determination; and

(C) a copy of the institution's response; and

(8) maintain and preserve at all times the confidentiality of any program review report until the requirements of paragraphs (6) and (7) are met, and until a final program review is issued, other than to the extent required to comply with paragraph (5), except that the Secretary shall promptly disclose any and all program review reports to the institution of higher education under review.

(c) Data collection rules

The Secretary shall develop and carry out a plan for the data collection responsibilities described in paragraph (3) of subsection (a). The Secretary shall make the information obtained under such paragraph (3) readily available to all institutions of higher education, guaranty agencies, States, and other organizations participating in the programs authorized by this subchapter.

(d) Training

The Secretary shall provide training to personnel of the Department, including criminal investigative training, designed to improve the quality of financial and compliance audits and program reviews conducted under this subchapter.

(e) Special rule

The provisions of section 3403(b) of this title shall not apply to Secretarial determinations made regarding the appropriate length of instruction for programs measured in clock hours.

(Pub. L. 89-329, title IV, § 498A, as added Pub. L. 102-325, title IV, § 499, July 23, 1992, 106 Stat. 652; amended Pub. L. 103-208, § 2(i)(15), Dec. 20, 1993, 107 Stat. 2480; Pub. L. 105-244, title IV, § 494, Oct. 7, 1998, 112 Stat. 1763; Pub. L. 110-315, title IV, § 497, Aug. 14, 2008, 122 Stat. 3328.)

Editorial Notes**AMENDMENTS**

2008—Subsec. (b)(6) to (8). Pub. L. 110-315 added pars. (6) to (8).

1998—Subsec. (a)(2). Pub. L. 105-244, § 494(1)(A)(i), substituted “shall” for “may” in introductory provisions.

Subsec. (a)(2)(C). Pub. L. 105-244, § 494(1)(A)(ii), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “institutions with a significant fluctuation in Federal Stafford Loan volume or Federal Pell Grant awards, or both, in the year for which the determination is made compared to the year prior to such year;”.

Subsec. (a)(2)(D). Pub. L. 105-244, § 494(1)(A)(iii), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “institutions reported to have deficiencies or financial aid problems by the appropriate State postsecondary review entity designated under subpart 1 of this part or by the appropriate accrediting agency or association;”.

Subsec. (a)(2)(E). Pub. L. 105-244, § 494(1)(A)(iv), inserted “and” after the semicolon.

Subsec. (a)(2)(F), (G). Pub. L. 105-244, § 494(1)(A)(v), added subpar. (F) and struck out former subpars. (F) and (G) which read as follows:

“(F) any institution which is required to be reviewed by a State postsecondary review entity pursuant to subpart 1 of this part under section 1099a-3(b) of this title; and

“(G) such other institutions as the Secretary deems necessary; and”.

Subsec. (a)(3)(A). Pub. L. 105-244, § 494(1)(B), inserted “relevant” after “all”.

Subsec. (b). Pub. L. 105-244, § 494(2), amended heading and text of subsec. (b). Prior to amendment, text read as follows:

“(1) In carrying out paragraphs (1) and (2) of subsection (a) of this section, the Secretary shall establish guidelines designed to ensure uniformity of practice in the conduct of program reviews of institutions of higher education.

“(2) The Secretary shall review the regulations of the Department and the application of such regulations to ensure the uniformity of interpretation and application of the regulations.”

1993—Subsec. (e). Pub. L. 103-208 struck out comma after “title”.

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

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102-325, except as otherwise provided, see section 5(a) of Pub. L. 103-208, set out as a note under section 1051 of this title.

§ 1099c–2. Review of regulations**(a) Review required**

The Secretary shall review each regulation issued under this subchapter that is in effect at the time of the review and applies to the operations or activities of any participant in the programs assisted under this subchapter. The review shall include a determination of whether the regulation is duplicative, or is no longer necessary. The review may involve one or more of the following:

(1) An assurance of the uniformity of interpretation and application of such regulations.

(2) The establishment of a process for ensuring that eligibility and compliance issues, such as institutional audit, program review, and recertification, are considered simultaneously.

(3) A determination of the extent to which unnecessary costs are imposed on institutions of higher education as a consequence of the applicability to the facilities and equipment of such institutions of regulations prescribed for purposes of regulating industrial and commercial enterprises.

(b) Regulatory and statutory relief for small volume institutions

The Secretary shall review and evaluate ways in which regulations under and provisions of this chapter affecting institution of higher education (other than institutions described in section 1002(a)(1)(C) of this title), that have received in each of the two most recent award years prior to October 7, 1998, less than \$200,000 in funds through this subchapter, may be improved, streamlined, or eliminated.

(c) Consultation

In carrying out subsections (a) and (b), the Secretary shall consult with relevant representatives of institutions participating in the programs authorized by this subchapter.

(Pub. L. 89–329, title IV, § 498B, as added Pub. L. 105–244, title IV, § 495, Oct. 7, 1998, 112 Stat. 1764; amended Pub. L. 110–315, title IV, § 498, Aug. 14, 2008, 122 Stat. 3328.)

Editorial Notes**AMENDMENTS**

2008—Subsec. (d). Pub. L. 110–315 struck out subsec. (d) which required the Secretary to submit reports to Congress.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE**

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

PART I—COMPETITIVE LOAN AUCTION PILOT PROGRAM**Editorial Notes****CODIFICATION**

Part I of title IV of the Higher Education Act of 1965, Pub. L. 89–329, which comprises this part, was formerly classified to part H of this subchapter. See Codification note preceding section 1087a of this title.

PRIOR PROVISIONS

A prior part I (§ 1099e), consisting of part J of title IV of Pub. L. 89–329, which related to investment in historically Black colleges and universities and other minority-serving institutions, was redesignated part F of title III of Pub. L. 89–329 and transferred to part F (§ 1067q) of subchapter III of this chapter.

§ 1099d. Competitive loan auction pilot program**(a) Definitions**

In this section:

(1) Eligible Federal PLUS Loan

The term “eligible Federal PLUS Loan” means a loan described in section 1078–2 of this title made to a parent of a dependent student who is a new borrower on or after July 1, 2009.

(2) Eligible lender

The term “eligible lender” has the meaning given the term in section 1085 of this title.

(b) Pilot program

The Secretary shall carry out a pilot program under which the Secretary establishes a mechanism for an auction of eligible Federal PLUS Loans in accordance with this subsection. The pilot program shall meet the following requirements:

(1) Planning and implementation

During the period beginning on September 27, 2007, and ending on June 30, 2009, the Secretary shall plan and implement the pilot program under this subsection. During the planning and implementation, the Secretary shall consult with other Federal agencies with knowledge of, and experience with, auction programs, including the Federal Communication Commission and the Department of the Treasury.

(2) Origination and disbursement; applicability of section 1078–2

Beginning on July 1, 2009, the Secretary shall arrange for the origination and disbursement of all eligible Federal PLUS Loans in accordance with the provisions of this subsection and the provisions of section 1078–2 of this title that are not inconsistent with this subsection.

(3) Loan origination mechanism

The Secretary shall establish a loan origination auction mechanism that meets the following requirements:

(A) Auction for each State

The Secretary administers an auction under this paragraph for each State, under which eligible lenders compete to originate eligible Federal PLUS Loans under this paragraph at all institutions of higher education within such State.

(B) Prequalification process

The Secretary establishes a prequalification process for eligible lenders desiring to participate in an auction under this paragraph that contains, at a minimum—

(i) a set of borrower benefits and servicing requirements each eligible lender