

Sec. 682.304 Methods for computing interest benefits and special allowance.

(a) General. The Secretary pays a lender interest benefits and special allowance on eligible loans on a quarterly basis. These calendar quarters end on March 31, June 30, September 30, and December 31 of each year. A lender may use either the average daily balance method or the actual accrual method to determine the amount of interest benefits payable on a lender's loans. A lender shall use the average daily balance method to determine the balance on which the Secretary computes the amount of special allowance payable on its loans

(b) Average daily balance method for interest benefits. (1) Under this method, the lender adds the unpaid principal balance outstanding on all loans qualifying for interest benefits at each actual interest rate for each day of the quarter, divides the sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The Secretary computes the interest benefits due on all qualified loans at each actual interest rate by multiplying the average daily balance thereof by the actual interest rate, multiplying this result by the number of days in the quarter, and then dividing this result by the actual number of days in the year.

(c) Actual accrual method for interest benefits. (1) Under this method, the lender computes the total unpaid principal balance outstanding on all qualified loans at each actual interest rate on each day of the quarter, multiplies this result by the actual interest rate, and divides this result by the actual number of days in the year, or, alternatively, 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(2) The interest benefits due for a quarter equal the sum of the daily interest benefits due, computed under paragraph (c)(1) of this section, for each day of the quarter.

(d) Average daily balance method for special allowance. (1) To compute the average daily balance outstanding for purposes of special allowance, the lender adds the unpaid principal balance outstanding on all qualified loans at each applicable interest rate for each day of the quarter, divides this sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for the quarter for qualifying loans at each applicable interest rate.

(2) The Secretary computes the special allowance payable to a lender based upon the average daily balance computed by the lender under paragraph (d) (1) of this section.

(Authority: 20 U.S.C. 1082, 1087-1)

Sec. 682.305 Procedures for payment of interest benefits and special allowance.

(a) General. (1) To receive payments of interest benefits and special allowance, a lender must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary.

(2) The lender shall report, on the quarterly report required by paragraph (a) (1) of this section, the amount of origination fees it was authorized to collect and the amount of those fees refunded to borrowers during the quarter covered by the report.

(3) The Secretary reduces the amount of interest benefits and special allowance payable to the lender by the amount of origination fees the lender was authorized to collect during the quarter under Sec. 682.202(c), whether or not the lender actually collected that amount. The Secretary increases the amount of

interest benefits and special allowance payable to the lender by the amount of origination fees refunded to borrowers during the quarter under Sec. 682.202(c).

(4) If an originating lender sells or otherwise transfers a loan to a new holder, the originating lender remains liable to the Secretary for payment of the origination fees. The Secretary will not pay interest benefits or special allowance to the new holder or pay reinsurance to the guaranty agency until the origination fees are paid to the Secretary.

(b) Penalty interest. (1)(i) If the Secretary does not pay interest benefits or the special allowance within 30 days after the Secretary receives an accurate, timely, and complete request for payment from a lender, the Secretary pays the lender penalty interest.

(ii) The payment of interest benefits or special allowance is deemed to occur, for purposes of this paragraph, when the Secretary-

(A) Authorizes the Treasury Department to pay the lender;

(B) Credits the payment due the lender against a debt that the Secretary determines is owed the Secretary by the lender; or

(C) Authorizes the Treasury Department to pay the amount due by the lender to another Federal agency for credit against a debt that the Federal agency has determined the lender owes.

(2) Penalty interest is an amount that accrues daily on interest benefits and special allowance due to the lender. The penalty interest is computed by-

(i) Multiplying the daily interest rate applicable to loans on which payment for interest benefits was requested, by the amount of interest benefits due on those loans for each interest rate;

(ii) Multiplying the daily special allowance rate applicable to loans on which special allowance was requested by the amount of special allowance due on those loans for each interest rate and special allowance category;

(iii) Adding the results of paragraphs (b)(2)(i) and (ii) of this section to determine the gross penalty interest to be paid for each day that penalty interest is due; (iv) Dividing the results of paragraph (b)(2)(iii) of this

section by the gross amount of interest benefits and special allowance due to obtain the average penalty interest rate; (v) Multiplying the rate obtained in paragraph (b)(2)(iv) of this section by the total amount of reduction to gross interest benefits and special allowance due (e.g., origination fees or other debts owed to the Federal Government);

(vi) Subtracting the amount calculated in paragraph (b) (2) (v) of this section from the amount calculated under paragraph (b) (2) (iii) of this section to obtain the net amount of penalty interest due per day; and

(vii) Multiplying the amount calculated in paragraph (b) (2) (vi) of this section by the number of days calculated under paragraph (b) (3) of this section.

(3) The Secretary pays penalty interest for the period-

(i) Beginning on the later of-

(A) The 31st day after the final day of the quarter covered by the request for payment; or

(B) The 31st day after the Secretary's receipt of an accurate, timely, and complete request for payment from the lender; and

(ii) Ending on the day the Secretary pays the interest benefits and the special allowance at issue, in accordance with paragraph (b) (1) (ii) of this section.

(4) A request for interest benefits and special allowance is considered timely only if it is received by the Secretary within 90 days following the end of the quarter to which the request pertains.

(5) A request for interest benefits and special allowance is not considered accurate and complete if it-

(i) Requests payments to which the lender is not entitled under Secs. 682.300 through 682.302;

(ii) Includes loans that the Secretary, in writing, has directed that the lender exclude from the request;

(iii) Does not contain all information required by the Secretary or contains conflicting information; or

(iv) Is not provided and certified on the form and in the manner prescribed by the Secretary.

(c) Independent audits. (1) A lender shall arrange for an independent annual

compliance audit conducted by a qualified independent organization or person.
(2) The audit required under paragraph (c) (1) of this section must-
(i) Examine the lender's compliance with the Act and applicable regulations;
(ii) Examine the lender's financial management of its FFEL program activities;
(iii) Be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO's) Government Auditing Standards. Procedures for audits are contained in an audit guide developed by and available from the Office of the Inspector General of the Department;
(iv) Be conducted at least annually and be submitted to the Secretary within six months of the end of the audit period. The initial audit must be of the lender's first fiscal year that begins after July 23, 1992, and must be submitted within six months of the end of the audit period. Each subsequent audit must cover the lender's activities for the period beginning no later than the end of the period covered by the preceding audit;

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(v) With regard to a lender that is a governmental entity, the audit required by this paragraph must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G; and
(vi) With regard to a lender that is a nonprofit organization, the audit required by this paragraph must be conducted in accordance with OMB Circular A-133, Audit of Institutions of Higher Education and Other Nonprofit Institutions, as incorporated in 34 CFR 74.61(h)(3). If a nonprofit lender meets the criteria in Circular A-133 for choosing the option for a program-specific audit, and so chooses, the program-specific audit must meet the requirements in paragraphs (c) (1) through (c)(2)(iv) of this section.
(vii) The Secretary may determine that a lender has met the requirements of paragraph (c) of this section if the lender has been audited in accordance with 31 U.S.C. 7502 for other purposes, the lender submits the results of the audit to the Office of Inspector General, and the Secretary determines that the audit meets the requirements of this paragraph.

(Approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9119, Feb. 19, 1993; 59 FR 61428, Nov. 30, 1994; 60 FR 31411, June 15, 1995]

Subpart D--Administration of the Federal Family Education Loan Programs by a Guaranty Agency

Sec. 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) Records. (1)(i) The guaranty agency shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(1)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every 10 business days. Any reference to a guaranty agency under this section includes a third-party servicer that administers any aspect of the FFEL programs under a contract with the guaranty agency, if applicable.
(ii) The agency shall maintain-
(A) All documentation supporting the claim filed by the lender;
(B) Notices of changes in a borrower's address;
(C) A payment history showing the date and amount of each payment received from or on behalf of the borrower by the guaranty agency, and the amount of each

payment that was attributed to principal, accrued interest, and collection costs and other charges, such as late charges;

(D) A collection history showing the date and subject of each communication between the agency and the borrower or endorser relating to collection of a defaulted loan, each communication between the agency and a credit bureau regarding the loan, each effort to locate a borrower whose address was unknown at any time, and each request by the lender for preclaims and supplemental preclaims assistance on the loan;

(E) Documentation regarding any wage garnishment actions initiated by the agency on the loan;

(F) Documentation of any matters relating to the collection of the loan by tax-refund offset; and

(G) Any additional records that are necessary to document its right to receive or retain payments made by the Secretary under this part and the accuracy of reports it submits to the Secretary.

(2) The guaranty agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible in accordance with the agency's write-off procedures. However, in particular cases the Secretary may require the retention of records beyond this minimum period. For the purpose of this section, the term "paid in full" includes loans paid by the Secretary due to the borrower's death (or student's death in the case of a PLUS loan), the borrower's permanent and total disability or bankruptcy, the discharge of the borrower's loan obligation because of attendance at a closed school, or because the student's eligibility to borrow had been falsely certified by the school.

(3) A guaranty agency shall retain a copy of the audit report required under Sec. 682.410(b) for not less than five years after the report is issued.

(4)(i) The guaranty agency shall require a participating lender to maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(3)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status.

(ii) The lender shall keep-

(A) A copy of the loan application;

(B) A copy of the signed promissory note, including the repayment instrument;

(C) The repayment schedule;

(D) A record of each disbursement of loan proceeds;

(E) Notices of changes in a borrower's address and status as at least a half-time student;

(F) Evidence of the borrower's eligibility for a deferment;

(G) The documents required for the exercise of forbearance;

(H) Documentation of the assignment of the loan;

(I) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs;

(J) A collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan, each communication other than regular reports by the lender showing that an account is current, between the lender and a credit bureau regarding the loan, each effort to locate a borrower whose address is unknown at any time, and each request by the lender for preclaims assistance on the loan; and

(K) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted under this part.

(iii) Except as provided in paragraph (a)(4)(iv) of this section, a lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases, the Secretary or the guaranty agency may require the retention of records beyond this minimum period.

(iv) A lender shall retain a copy of the audit report required under Sec. 682.305(c) for not less than five years after the report is issued.

(5)(i) A guaranty agency or lender may store the records specified in paragraphs (a) (4) (ii) (C)-(K) of this section in accordance with 34 CFR 668.24(d) (3) (i)

through (iv).

(ii) A lender or guaranty agency holding a promissory note shall retain the original note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guaranty agency shall either return the original note to the borrower or notify the borrower under an alternate procedure that is acceptable under State law that the loan is paid in full, and retain a copy for the prescribed period.

(iii) Either the lender or guaranty agency shall retain the original loan application or, until the loan is fully repaid, the promissory note.

(b) Reports. A guaranty agency shall accurately complete and submit to the Secretary the following reports:

(1) A report concerning the status of the agency's reserve fund and the operation of the agency's loan guarantee program at the time and in the manner that the Secretary may reasonably require. The Secretary does not pay the agency any funds, the amount of which are determined by reference to data in the report, until a complete and accurate report is received.

(2) Annually, for each State in which it operates, a report of the total guaranteed loan volume, default volume, and default rate for each of the following categories of originating lenders on all loans guaranteed after December 31, 1980:

(i) Schools.

(ii) State or private nonprofit lenders.

(iii) Commercial financial institutions (banks, savings and loan associations, and credit unions).

(iv) All other types of lenders.

(3) By July 1 of each year, a report on-

(i) Its eligibility criteria for schools and lenders;

(ii) Its procedures for the limitation, suspension, and termination of schools and lenders;

(iii) Any actions taken in the preceding 12 months to limit, suspend, or terminate the participation of a school or lender in the agency's program; and

(iv) The steps the agency has taken to ensure its compliance with Sec.

682.410(c), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

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(4) Information consisting of those extracts from its computer data base, and supplied in the medium and the format, prescribed in the Stafford, SLS, and PLUS Loan Tape Dump Procedures (ED Forms 1070 and 1071).

(5) Any other information concerning its loan insurance program requested by the Secretary.

(c) Inspection requirements. (1) For purposes of examination of records, references to an institution in 34 CFR 68.24(f) (1) through (3) shall mean a guaranty agency or its agent.

(2) A guaranty agency shall require in its agreement with a lender or in its published rules or procedures that the lender or its agent give the Secretary or the Secretary's designee and the guaranty agency access to the lender's records for inspection and copying in order to verify the accuracy of the information provided by the lender pursuant to Sec. 682.401(b) (21) and (22), and the right of the lender to receive or retain payments made under this part, or to permit the Secretary or the agency to enforce any right acquired by the Secretary or the agency under this part.

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(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082, 1087)

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Subpart E--Federal Guaranteed Student Loan Programs

Sec. 682.515 Records, reports, and inspection requirements for Federal GSL program lenders.

(a) Records. (1) A lender shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in Sec. 682.414(a)(3)(ii). The records must be maintained in a system that allows ready identification of each loan's current status.

(2) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(3)(i) The lender may store the records specified in Sec. 682.414(a) (3) (ii) (C)-(K) on microfilm, optical disk, or other machine readable format.

(ii) The holder of the promissory note shall retain the original note and repayment instrument until the loan is fully repaid. At that time the holder shall return the original note and repayment instrument to the borrower and retain copies for the prescribed period.

(iii) The lender shall retain the original or a copy of the loan application.

(b) Reports. A lender shall submit reports to the Secretary at the time and in the manner that the Secretary reasonably may require.

(c) Inspections. Upon request, a lender or its agent shall cooperate with the Secretary, the Department's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews. This cooperation must include-

(1) Providing timely access for examination and copying to the records (including computerized records) required by applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to lender personnel associated with the lender's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution may not-

(i) Refuse to supply any relevant information; (ii) Refuse to permit interviews with those personnel that do not include the presence of representatives of the lender's management; and

(iii) Refuse to permit personnel interviews with those personnel that are not recorded by the lender.

(Approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1077, 1078-1, 1078-2, 1078-3, 1079, 1080, 1082)

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