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Title 20 - EDUCATION

CHAPTER 28 - HIGHER EDUCATION RESOURCES AND STUDENT ASSISTANCE

SUBCHAPTER IV - STUDENT ASSISTANCE

Part B - Federal Family Education Loan Program

Sec. 1082 - Legal powers and responsibilities

From the U.S. Government Printing Office, [www.gpo.gov](http://www.gpo.gov)**§1082. Legal powers and responsibilities****(a) General powers**

In the performance of, and with respect to, the functions, powers, and duties, vested in him by this part, the Secretary may—

(1) prescribe such regulations as may be necessary to carry out the purposes of this part, including regulations applicable to third party servicers (including regulations concerning financial responsibility standards for, and the assessment of liabilities for program violations against, such servicers) to establish minimum standards with respect to sound management and accountability of programs under this part, except that in no case shall damages be assessed against the United States for the actions or inactions of such servicers;

(2) sue and be sued in any court of record of a State having general jurisdiction or in any district court of the United States, and such district courts shall have jurisdiction of civil actions arising under this part without regard to the amount in controversy, and action instituted under this subsection by or against the Secretary shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in that office; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Secretary or property under the Secretary's control and nothing herein shall be construed to except litigation arising out of activities under this part from the application of sections 509, 517, 547, and 2679 of title 28;

(3) include in any contract for Federal loan insurance such terms, conditions, and covenants relating to repayment of principal and payment of interest, relating to the Secretary's obligations and rights to those of eligible lenders, and borrowers in case of default, and relating to such other matters as the Secretary determines to be necessary to assure that the purposes of this part will be achieved; and any term, condition, and covenant made pursuant to this paragraph or pursuant to any other provision of this part may be modified by the Secretary, after notice and opportunity for a hearing, if the Secretary finds that the modification is necessary to protect the United States from the risk of unreasonable loss;

(4) subject to the specific limitations in this part, consent to modification, with respect to rate of interest, time of payment of any installment of principal and interest or any portion thereof, or any other provision of any note or other instrument evidencing a loan which has been insured by the Secretary under this part;

(5) enforce, pay, or compromise, any claim on, or arising because of, any such insurance or any guaranty agreement under section 1078(c) of this title; and

(6) enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption.

**(b) Financial operations responsibilities**

The Secretary shall, with respect to the financial operations arising by reason of this part prepare

annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31. The transactions of the Secretary, including the settlement of insurance claims and of claims for payments pursuant to section 1078 of this title, and transactions related thereto and vouchers approved by the Secretary in connection with such transactions, shall be final and conclusive upon all accounting and other officers of the Government. The Secretary may not enter into any settlement of any claim under this subchapter and part C of subchapter I of chapter 34 of title 42 that exceeds \$1,000,000 unless—

- (1) the Secretary requests a review of the proposed settlement of such claim by the Attorney General; and
- (2) the Attorney General responds to such request, which may include, at the Attorney General's discretion, a written opinion related to such proposed settlement.

### **(c) Data collection**

#### **(1) Collection by category of loan**

(A) For loans insured after December 31, 1976, or in the case of each insurer after such earlier date where the data required by this subsection are available, the Secretary and all other insurers under this part shall collect and accumulate all data relating to (i) loan volume insured and (ii) defaults reimbursed or default rates according to the categories of loans listed in subparagraph (B) of this paragraph.

(B) The data indicated in subparagraph (A) of this paragraph shall be accumulated according to the category of lender making the loan and shall be accumulated separately for lenders who are (i) eligible institutions, (ii) State or private, nonprofit direct lenders, (iii) commercial financial institutions who are banks, savings and loan associations, or credit unions, and (iv) all other types of institutions or agencies.

(C) The Secretary may designate such additional subcategories within the categories specified in subparagraph (B) of this paragraph as the Secretary deems appropriate.

(D) The category or designation of a loan shall not be changed for any reason, including its purchase or acquisition by a lender of another category.

#### **(2) Collection and reporting requirements**

(A) The Secretary shall collect data under this subsection from all insurers under this part and shall publish not less often than once every fiscal year a report showing loan volume guaranteed and default data for each category specified in subparagraph (B) of paragraph (1) of this subsection and for the total of all lenders.

(B) The reports specified in subparagraph (A) of this paragraph shall include a separate report for each insurer under this part including the Secretary, and where an insurer insures loans for lenders in more than one State, such insurer's report shall list all data separately for each State.

#### **(3) Institutional, public, or nonprofit lenders**

For purposes of clarity in communications, the Secretary shall separately identify loans made by the lenders referred to in clause (i) and loans made by the lenders referred to in clause (ii) of paragraph (1)(B) of this subsection.

### **(d) Delegation**

#### **(1) Regional offices**

The functions of the Secretary under this part listed in paragraph (2) of this subsection may be delegated to employees in the regional office of the Department.

#### **(2) Delegable functions**

The functions which may be delegated pursuant to this subsection are—

- (A) reviewing applications for loan insurance under section 1079 of this title and issuing

contracts for Federal loan insurance, certificates of insurance, and certificates of comprehensive insurance coverage to eligible lenders which are financial or credit institutions subject to examination and supervision by an agency of the United States or of any State;

(B) receiving claims for payments under section 1080(a) of this title, examining those claims, and pursuant to regulations of the Secretary, approving claims for payment, or requiring lenders to take additional collection action as a condition for payment of claims; and

(C) certifying to the central office when collection of defaulted loans has been completed, compromising or agreeing to the modification of any Federal claim against a borrower (pursuant to regulations of the Secretary issued under subsection (a) of this section), and recommending litigation with respect to any such claim.

#### **(e) Use of information on borrowers**

Notwithstanding any other provision of law, the Secretary may provide to eligible lenders, and to any guaranty agency having a guaranty agreement under section 1078(c)(1) of this title, any information with respect to the names and addresses of borrowers or other relevant information which is available to the Secretary, from whatever source such information may be derived.

#### **(f) Audit of financial transactions**

##### **(1) Comptroller General and Inspector General authority**

The Comptroller General and the Inspector General of the Department of Education shall each have the authority to conduct an audit of the financial transactions of—

(A) any guaranty agency operating under an agreement with the Secretary pursuant to section 1078(b) of this title;

(B) any eligible lender as defined in section 1085(d)(1) of this title;

(C) a representative sample of eligible lenders under this part, upon the request of either of the authorizing committees, with respect to the payment of the special allowance under section 1087-1 of this title in order to evaluate the program authorized by this part.

##### **(2) Access to records**

For the purpose of carrying out this subsection, the records of any entity described in subparagraph (A), (B), (C), or (D) <sup>1</sup> of paragraph (1) shall be available to the Comptroller General and the Inspector General of the Department of Education. For the purpose of section 716(c) of title 31, such records shall be considered to be records to which the Comptroller General has access by law, and for the purpose of section 6(a)(4) of the Inspector General Act of 1978, such records shall be considered to be records necessary in the performance of functions assigned by that Act to the Inspector General.

##### **(3) "Record" defined**

For the purpose of this subsection, the term "record" includes any information, document, report, answer, account, paper, or other data or documentary evidence.

##### **(4) Audit procedures**

In conducting audits pursuant to this subsection, the Comptroller General and the Inspector General of the Department of Education shall audit the records to determine the extent to which they, at a minimum, comply with Federal statutes, and rules and regulations prescribed by the Secretary, in effect at the time that the record was made, and in no case shall the Comptroller General or the Inspector General apply subsequently determined standards, procedures, or regulations to the records of such agency, lender, or Authority.

#### **(g) Civil penalties**

##### **(1) Authority to impose penalties**

Upon determination, after reasonable notice and opportunity for a hearing, that a lender or a guaranty agency—

- (A) has violated or failed to carry out any provision of this part or any regulation prescribed under this part, or
- (B) has engaged in substantial misrepresentation of the nature of its financial charges,

the Secretary may impose a civil penalty upon such lender or agency of not to exceed \$25,000 for each violation, failure, or misrepresentation.

## **(2) Limitations**

No civil penalty may be imposed under paragraph (1) of this subsection unless the Secretary determines that—

- (A) the violation, failure, or substantial misrepresentation referred to in that paragraph resulted from a violation, failure, or misrepresentation that is material; and
- (B) the lender or guaranty agency knew or should have known that its actions violated or failed to carry out the provisions of this part or the regulations thereunder.

## **(3) Correction of failure**

A lender or guaranty agency has no liability under paragraph (1) of this subsection if, prior to notification by the Secretary under that paragraph, the lender or guaranty agency cures or corrects the violation or failure or notifies the person who received the substantial misrepresentation of the actual nature of the financial charges involved.

## **(4) Consideration as single violation**

For the purpose of paragraph (1) of this subsection, violations, failures, or substantial misrepresentations arising from a specific practice of a lender or guaranty agency, and occurring prior to notification by the Secretary under that paragraph, shall be deemed to be a single violation, failure, or substantial misrepresentation even if the violation, failure, or substantial misrepresentation affects more than one loan or more than one borrower, or both. The Secretary may only impose a single civil penalty for each such violation, failure, or substantial misrepresentation.

## **(5) Assignees not liable for violations by others**

If a loan affected by a violation, failure, or substantial misrepresentation is assigned to another holder, the lender or guaranty agency responsible for the violation, failure, or substantial misrepresentation shall remain liable for any civil money penalty provided for under paragraph (1) of this subsection, but the assignee shall not be liable for any such civil money penalty.

## **(6) Compromise**

Until a matter is referred to the Attorney General, any civil penalty under paragraph (1) of this subsection may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the Secretary shall consider the appropriateness of the penalty to the resources of the lender or guaranty agency subject to the determination; the gravity of the violation, failure, or substantial misrepresentation; the frequency and persistence of the violation, failure, or substantial misrepresentation; and the amount of any losses resulting from the violation, failure, or substantial misrepresentation. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the lender or agency charged, unless the lender or agency has, in the case of a final agency determination, commenced proceedings for judicial review within 90 days of the determination, in which case the deduction may not be made during the pendency of the proceeding.

**(h) Authority of the Secretary to impose and enforce limitations, suspensions, and terminations****(1) Imposition of sanctions**

(A) If the Secretary, after a reasonable notice and opportunity for hearing to an eligible lender, finds that the eligible lender—

(i) has substantially failed—

(I) to exercise reasonable care and diligence in the making and collecting of loans under the provisions of this part,

(II) to make the reports or statements under section 1078(a)(4) of this title, or

(III) to pay the required loan insurance premiums to any guaranty agency, or

(ii) has engaged in—

(I) fraudulent or misleading advertising or in solicitations that have resulted in the making of loans insured or guaranteed under this part to borrowers who are ineligible; or

(II) the practice of making loans that violate the certification for eligibility provided in section 1078 of this title,

the Secretary shall limit, suspend, or terminate that lender from participation in the insurance programs operated by guaranty agencies under this part.

(B) The Secretary shall not lift any such limitation, suspension, or termination until the Secretary is satisfied that the lender's failure under subparagraph (A)(i) of this paragraph or practice under subparagraph (A)(ii) of this paragraph has ceased and finds that there are reasonable assurances that the lender will—

(i) exercise the necessary care and diligence,

(ii) comply with the requirements described in subparagraph (A)(i), or

(iii) cease to engage in the practices described in subparagraph (A)(ii),

as the case may be.

**(2) Review of sanctions on lenders**

(A) The Secretary shall review each limitation, suspension, or termination imposed by any guaranty agency pursuant to section 1078(b)(1)(U) of this title within 60 days after receipt by the Secretary of a notice from the guaranty agency of the imposition of such limitation, suspension, or termination, unless the right to such review is waived in writing by the lender. The Secretary shall uphold the imposition of such limitation, suspension, or termination in the student loan insurance program of each of the guaranty agencies under this part, and shall notify such guaranty agencies of such sanction—

(i) if such review is waived; or

(ii) if such review is not waived, unless the Secretary determines that the limitation, suspension, or termination was not imposed in accordance with requirements of such section.

(B) The Secretary's review under this paragraph of the limitation, suspension, or termination imposed by a guaranty agency pursuant to section 1078(b)(1)(U) of this title shall be limited to—

(i) a review of the written record of the proceedings in which the guaranty agency imposed such sanctions; and

(ii) a determination as to whether the guaranty agency complied with section 1078(b)(1)(U) of this title and any notice and hearing requirements prescribed in regulations of the Secretary under this part.

(C) The Secretary shall not lift any such sanction until the Secretary is satisfied that the lender

has corrected the failures which led to the limitation, suspension, or termination, and finds that there are reasonable assurances that the lender will, in the future, comply with the requirements of this part. The Secretary shall notify each guaranty agency of the lifting of any such sanction.

### **(3) Review of sanctions on eligible institutions**

(A) The Secretary shall review each limitation, suspension, or termination imposed by any guaranty agency pursuant to section 1078(b)(1)(T) of this title within 60 days after receipt by the Secretary of a notice from the guaranty agency of the imposition of such limitation, suspension, or termination, unless the right to such review is waived in writing by the institution. The Secretary shall uphold the imposition of such limitation, suspension, or termination in the student loan insurance program of each of the guaranty agencies under this part, and shall notify such guaranty agencies of such sanctions—

- (i) if such review is waived; or
- (ii) if such review is not waived, unless the Secretary determines that the limitation, suspension, or termination was not imposed in accordance with requirements of such section.

(B) The Secretary's review under this paragraph of the limitation, suspension, or termination imposed by a guaranty agency pursuant to section 1078(b)(1)(T) of this title shall be limited to—

- (i) a review of the written record of the proceedings in which the guaranty agency imposed such sanctions; and
- (ii) a determination as to whether the guaranty agency complied with section 1078(b)(1)(T) of this title and any notice and hearing requirements prescribed in regulations of the Secretary under this part.

(C) The Secretary shall not lift any such sanction until the Secretary is satisfied that the institution has corrected the failures which led to the limitation, suspension, or termination, and finds that there are reasonable assurances that the institution will, in the future, comply with the requirements of this part. The Secretary shall notify each guaranty agency of the lifting of any such sanction.

### **(i) Authority to sell defaulted loans**

In the event that all other collection efforts have failed, the Secretary is authorized to sell defaulted student loans assigned to the United States under this part to collection agencies, eligible lenders, guaranty agencies, or other qualified purchaser on such terms as the Secretary determines are in the best financial interests of the United States. A loan may not be sold pursuant to this subsection if such loan is in repayment status.

### **(j) Authority of Secretary to take emergency actions against lenders**

#### **(1) Imposition of sanctions**

If the Secretary—

- (A) receives information, determined by the Secretary to be reliable, that a lender is violating any provision of this subchapter and part C of subchapter I of chapter 34 of title 42, any regulation prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, or any applicable special arrangement, agreement, or limitation;
- (B) determines that immediate action is necessary to prevent misuse of Federal funds; and
- (C) determines that the likelihood of loss outweighs the importance of following the limitation, suspension, or termination procedures authorized in subsection (h) of this section;

the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to the lender (by registered mail, return receipt requested), take emergency action to stop the issuance of guarantee commitments and the payment of interest benefits and special allowance

to the lender.

**(2) Length of emergency action**

An emergency action under this subsection may not exceed 30 days unless a limitation, suspension, or termination proceeding is initiated against the lender under subsection (h) of this section before the expiration of that period.

**(3) Opportunity to show cause**

The Secretary shall provide the lender, if it so requests, an opportunity to show cause that the emergency action is unwarranted.

**(k) Program of assistance for borrowers**

**(1) In general**

The Secretary shall undertake a program to encourage corporations and other private and public employers, including the Federal Government, to assist borrowers in repaying loans received under this subchapter and part C of subchapter I of chapter 34 of title 42, including providing employers with options for payroll deduction of loan payments and offering loan repayment matching provisions as part of employee benefit packages.

**(2) Publication**

The Secretary shall publicize models for providing the repayment assistance described in paragraph (1) and each year select entities that deserve recognition, through means devised by the Secretary, for the development of innovative plans for providing such assistance to employees.

**(3) Recommendation**

The Secretary shall recommend to the appropriate committees in the Senate and House of Representatives changes to statutes that could be made in order to further encourage such efforts.

**(l) Uniform administrative and claims procedures**

**(1) In general**

The Secretary shall, by regulation developed in consultation with guaranty agencies, lenders, institutions of higher education, secondary markets, students, third party servicers and other organizations involved in providing loans under this part, prescribe standardized forms and procedures regarding—

- (A) origination of loans;
- (B) electronic funds transfer;
- (C) guaranty of loans;
- (D) deferments;
- (E) forbearance;
- (F) servicing;
- (G) claims filing;
- (H) borrower status change and anticipated graduation date; and
- (I) cures.

**(2) Special rules**

(A) The forms and procedures described in paragraph (1) shall include all aspects of the loan process as such process involves eligible lenders and guaranty agencies and shall be designed to minimize administrative costs and burdens (other than the costs and burdens involved in the transition to new forms and procedures) involved in exchanges of data to and from borrowers, schools, lenders, secondary markets, and the Department.

(B) Nothing in this paragraph shall be construed to limit the development of electronic forms and procedures.

**(3) Simplification requirements**

Such regulations shall include—

(A) standardization of computer formats, forms design, and guaranty agency procedures relating to the origination, servicing, and collection of loans made under this part;

(B) authorization of alternate means of document retention, including the use of microfilm, microfiche, laser disc, compact disc, and other methods allowing the production of a facsimile of the original documents;

(C) authorization of the use of computer or similar electronic methods of maintaining records relating to the performance of servicing, collection, and other regulatory requirements under this chapter and part C of subchapter I of chapter 34 of title 42; and

(D) authorization and implementation of electronic data linkages for the exchange of information to and from lenders, guarantors, institutions of higher education, third party servicers, and the Department of Education for student status confirmation reports, claim filing, interest and special allowance billing, deferment processing, and all other administrative steps relating to loans made pursuant to this part where using electronic data linkage is feasible.

**(4) Additional recommendations**

The Secretary shall review regulations prescribed pursuant to paragraph (1) and seek additional recommendations from guaranty agencies, lenders, institutions of higher education, students, secondary markets, third party servicers and other organizations involved in providing loans under this part, not less frequently than annually, for additional methods of simplifying and standardizing the administration of the programs authorized by this part.

**(m) Common forms and formats****(1) Common guaranteed student loan application form and promissory note****(A) In general**

The Secretary, in cooperation with representatives of guaranty agencies, eligible lenders, and organizations involved in student financial assistance, shall prescribe common application forms and promissory notes, or master promissory notes, to be used for applying for loans under this part.

**(B) Requirements**

The forms prescribed by the Secretary shall—

(i) use clear, concise, and simple language to facilitate understanding of loan terms and conditions by applicants; and

(ii) be formatted to require the applicant to clearly indicate a choice of lender.

**(C) Free application form**

For academic year 1999–2000 and succeeding academic years, the Secretary shall prescribe the form developed under section 1090 of this title as the application form under this part, other than for loans under sections 1078–2 and 1078–3 of this title.

**(D) Master promissory note****(i) In general**

The Secretary shall develop and require the use of master promissory note forms for loans made under this part and part C of this subchapter. Such forms shall be available for periods of enrollment beginning not later than July 1, 2000. Each form shall allow eligible borrowers to receive, in addition to initial loans, additional loans for the same or subsequent periods of enrollment through a student confirmation process approved by the Secretary. Such forms shall be used for loans made under this part or part C of this subchapter as directed by the



Secretary. Unless otherwise notified by the Secretary, each institution of higher education that participates in the program under this part or part C may use a master promissory note for loans under this part and part C.

**(ii) Consultation**

In developing the master promissory note under this subsection, the Secretary shall consult with representatives of guaranty agencies, eligible lenders, institutions of higher education, students, and organizations involved in student financial assistance.

**(iii) Sale; assignment; enforceability**

Notwithstanding any other provision of law, each loan made under a master promissory note under this subsection may be sold or assigned independently of any other loan made under the same promissory note and each such loan shall be separately enforceable in all Federal and State courts on the basis of an original or copy of the master promissory note in accordance with the terms of the master promissory note.

**(E) Perfection of security interests in student loans**

**(i) In general**

Notwithstanding the provisions of any State law to the contrary, including the Uniform Commercial Code as in effect in any State, a security interest in loans made under this part, on behalf of any eligible lender (as defined in section 1085(d) of this title) shall attach, be perfected, and be assigned priority in the manner provided by the applicable State's law for perfection of security interests in accounts, as such law may be amended from time to time (including applicable transition provisions). If any such State's law provides for a statutory lien to be created in such loans, such statutory lien may be created by the entity or entities governed by such State law in accordance with the applicable statutory provisions that created such a statutory lien.

**(ii) Collateral description**

In addition to any other method for describing collateral in a legally sufficient manner permitted under the laws of the State, the description of collateral in any financing statement filed pursuant to this subparagraph shall be deemed legally sufficient if it lists such loans, or refers to records (identifying such loans) retained by the secured party or any designee of the secured party identified in such financing statement, including the debtor or any loan servicer.

**(iii) Sales**

Notwithstanding clauses (i) and (ii) and any provisions of any State law to the contrary, other than any such State's law providing for creation of a statutory lien, an outright sale of loans made under this part shall be effective and perfected automatically upon attachment as defined in the Uniform Commercial Code of such State.

**(2) Common deferment form**

The Secretary, in cooperation with representatives of guaranty agencies, institutions of higher education, and lenders involved in loans made under this part, shall prescribe a common deferment reporting form to be used for the processing of deferments of loans made under this subchapter and part C of subchapter I of chapter 34 of title 42.

**(3) Common reporting formats**

The Secretary shall promulgate standards including necessary rules, regulations (including the definitions of all relevant terms), and procedures so as to require all lenders and guaranty agencies to report information on all aspects of loans made under this part in uniform formats, so as to

permit the direct comparison of data submitted by individual lenders, servicers, or guaranty agencies.

#### **(4) Electronic forms**

Nothing in this section shall be construed to limit the development and use of electronic forms and procedures.

### **(n) Default reduction management**

#### **(1) Authorization**

There are authorized to be appropriated \$25,000,000 for fiscal year 1999 and each of the four succeeding fiscal years, for the Secretary to expend for default reduction management activities for the purposes of establishing a performance measure that will reduce defaults by 5 percent relative to the prior fiscal year. Such funds shall be in addition to, and not in lieu of, other appropriations made for such purposes.

#### **(2) Allowable activities**

Allowable activities for which such funds shall be expended by the Secretary shall include the following: (A) program reviews; (B) audits; (C) debt management programs; (D) training activities; and (E) such other management improvement activities approved by the Secretary.

#### **(3) Plan for use required**

The Secretary shall submit a plan, for inclusion in the materials accompanying the President's budget each fiscal year, detailing the expenditure of funds authorized by this section to accomplish the 5 percent reduction in defaults. At the conclusion of the fiscal year, the Secretary shall report the Secretary's findings and activities concerning the expenditure of funds and whether the performance measure was met. If the performance measure was not met, the Secretary shall report the following:

- (A) why the goal was not met, including an indication of any managerial deficiencies or of any legal obstacles;
- (B) plans and a schedule for achieving the established performance goal;
- (C) recommended legislative or regulatory changes necessary to achieve the goal; and
- (D) if the performance standard or goal is impractical or infeasible, why that is the case and what action is recommended, including whether the goal should be changed or the program altered or eliminated.

This report shall be submitted to the Appropriations Committees of the House of Representatives and the Senate and to the authorizing committees.

### **(o) Consequences of guaranty agency insolvency**

In the event that the Secretary has determined that a guaranty agency is unable to meet its insurance obligations under this part, the holder of loans insured by the guaranty agency may submit insurance claims directly to the Secretary and the Secretary shall pay to the holder the full insurance obligation of the guaranty agency, in accordance with insurance requirements no more stringent than those of the guaranty agency. Such arrangements shall continue until the Secretary is satisfied that the insurance obligations have been transferred to another guarantor who can meet those obligations or a successor will assume the outstanding insurance obligations.

### **(p) Reporting requirement**

All officers and directors, and those employees and paid consultants of eligible institutions, eligible lenders, guaranty agencies, loan servicing agencies, accrediting agencies or associations, State licensing agencies or boards, and entities acting as secondary markets (including the Student Loan Marketing Association), who are engaged in making decisions as to the administration of any

program or funds under this subchapter and part C of subchapter I of chapter 34 of title 42 or as to the eligibility of any entity or individual to participate under this subchapter and part C of subchapter I of chapter 34 of title 42, shall report to the Secretary, in such manner and at such time as the Secretary shall require, on any financial interest which such individual may hold in any other entity participating in any program assisted under this subchapter and part C of subchapter I of chapter 34 of title 42.

(Pub. L. 89–329, title IV, §432, as added Pub. L. 99–498, title IV, §402(a), Oct. 17, 1986, 100 Stat. 1401; amended Pub. L. 100–50, §10(x), (y), June 3, 1987, 101 Stat. 346; Pub. L. 101–239, title II, §2006(a), Dec. 19, 1989, 103 Stat. 2118; Pub. L. 102–325, title IV, §425, July 23, 1992, 106 Stat. 543; Pub. L. 103–208, §2(k)(2), (3), Dec. 20, 1993, 107 Stat. 2485; Pub. L. 104–66, title I, §1042(e), Dec. 21, 1995, 109 Stat. 716; Pub. L. 105–244, title IV, §427, Oct. 7, 1998, 112 Stat. 1702; Pub. L. 106–554, §1(a)(1) [title III, §311], Dec. 21, 2000, 114 Stat. 2763, 2763A–46; Pub. L. 109–171, title VIII, §8014(j), Feb. 8, 2006, 120 Stat. 171; Pub. L. 110–315, title I, §103(b)(6), title IV, §433, Aug. 14, 2008, 122 Stat. 3089, 3247; Pub. L. 111–39, title IV, §402(f)(9), July 1, 2009, 123 Stat. 1944.)

#### REFERENCES IN TEXT

Subparagraph (D) of paragraph (1) of subsec. (f), referred to in subsec. (f)(2), was repealed by Pub. L. 105–244, title IV, §427(a)(3), Oct. 7, 1998, 112 Stat. 1702.

The Inspector General Act of 1978, referred to in subsec. (f)(2), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### PRIOR PROVISIONS

A prior section 1082, Pub. L. 89–329, title IV, §432, Nov. 8, 1965, 79 Stat. 1246; Pub. L. 90–460, §3(d), Aug. 3, 1968, 82 Stat. 638; Pub. L. 93–604, title VII, §705(a), Jan. 2, 1975, 88 Stat. 1964; Pub. L. 94–482, title I, §127(a), Oct. 12, 1976, 90 Stat. 2127; Pub. L. 96–88, title III, §301(b)(2), Oct. 17, 1979, 93 Stat. 678; Pub. L. 96–374, title IV, §416(c), title XIII, §1391(a)(1), Oct. 3, 1980, 94 Stat. 1421, 1503; Pub. L. 99–272, title XVI, §16024, Apr. 7, 1986, 100 Stat. 351, related to functions, powers, and duties of Secretary, prior to the general revision of this part by Pub. L. 99–498.

#### AMENDMENTS

**2009**—Subsec. (b). Pub. L. 111–39, §402(f)(9)(A), made technical amendment to reference in original act which appears in text as reference to section 1078 of this title.

Subsec. (m)(1)(B). Pub. L. 111–39, §402(f)(9)(B), in cl. (i), inserted "and" at end and, in cl. (ii), substituted period for "; and".

**2008**—Subsec. (b). Pub. L. 110–315, §433(a), inserted at end "The Secretary may not enter into any settlement of any claim under this subchapter and part C of subchapter I of chapter 34 of title 42 that exceeds \$1,000,000 unless—" and pars. (1) and (2).

Subsec. (f)(1)(C). Pub. L. 110–315, §103(b)(6)(A), substituted "either of the authorizing committees" for "the Committee on Education and the Workforce of the House of Representatives or the Committee on Labor and Human Resources of the Senate".

Subsec. (m)(1)(D)(i). Pub. L. 110–315, §433(b), inserted at end "Unless otherwise notified by the Secretary, each institution of higher education that participates in the program under this part or part C may use a master promissory note for loans under this part and part C."

Subsec. (n)(3). Pub. L. 110–315, §103(b)(6)(B), substituted "authorizing committees" for "Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate" in concluding provisions.

**2006**—Subsec. (l)(1)(H). Pub. L. 109–171 inserted "and anticipated graduation date" after "status change".

**2000**—Subsec. (m)(1)(D)(iv). Pub. L. 106–554, §1(a)(1) [title III, §311(1)], struck out heading and text of cl. (iv). Text read as follows: "Notwithstanding the provisions of any State law to the contrary, including the Uniform Commercial Code as in effect in any State, a security interest in loans made under this part created on behalf of any eligible lender as defined in section 1085(d) of this title may be perfected either through the taking of possession of such loans (which can be through taking possession of an original or copy of the

master promissory note) or by the filing of notice of such security interest in such loans in the manner provided by such State law for perfection of security interests in accounts."

Subsec. (m)(1)(E). Pub. L. 106-554, §1(a)(1) [title III, §311(2)], added subpar. (E).

**1998**—Subsec. (f)(1)(B). Pub. L. 105-244, §427(a)(1), substituted "section 1085(d)(1)" for "section 1085(d)(1)(D), (F), or (H)".

Subsec. (f)(1)(C). Pub. L. 105-244, §427(a)(2), substituted "and the Workforce" for "and Labor" and a period for "; and" at end.

Subsec. (f)(1)(D). Pub. L. 105-244, §427(a)(3), struck out subpar. (D) which read as follows: "any Authority required to file a plan for doing business under section 1087-1(d) of this title."

Subsec. (k)(3). Pub. L. 105-244, §427(b), substituted "The Secretary" for "Within 1 year after July 23, 1992, the Secretary".

Subsec. (m)(1)(A). Pub. L. 105-244, §427(c)(1)(A), substituted "common application forms and promissory notes, or master promissory notes," for "a common application form and promissory note".

Subsec. (m)(1)(B). Pub. L. 105-244, §427(c)(1)(B), substituted "The forms" for "The form" in introductory provisions and struck out cl. (iii) which read as follows: "permit, to the maximum extent practicable, application for any loan under this part."

Subsec. (m)(1)(C). Pub. L. 105-244, §427(c)(1)(C), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: "The Secretary shall approve a form for use not later than 360 days after July 23, 1992."

Subsec. (m)(1)(D). Pub. L. 105-244, §427(c)(1)(D), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: "Nothing in this section shall be construed to limit the development of electronic forms and procedures."

Subsec. (m)(4). Pub. L. 105-244, §427(c)(2), added par. (4).

Subsec. (n)(1). Pub. L. 105-244, §427(d)(1), substituted "1999" for "1993".

Subsec. (n)(3). Pub. L. 105-244, §427(d)(2), substituted "and the Workforce" for "and Labor" in concluding provisions.

Subsec. (p). Pub. L. 105-244, §427(e), struck out "State postsecondary reviewing entities designated under subpart 1 of part G of this subchapter," after "agencies or boards,".

**1995**—Subsec. (b). Pub. L. 104-66 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "The Secretary shall, with respect to the financial operations arising by reason of this part—

"(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31; and

"(2) maintain with respect to insurance under this part an integral set of accounts and prepare financial statements in accordance with generally accepted accounting principles, which shall be audited annually by the General Accounting Office in conformity with generally accepted Government auditing standards except that the transactions of the Secretary, including the settlement of insurance claims and of claims for payments pursuant to section 1078 of this title, and transactions related thereto and vouchers approved by the Secretary in connection with such transactions, shall be final and conclusive upon all accounting and other officers of the Government."

**1993**—Subsec. (h)(2)(A), (3)(A). Pub. L. 103-208 amended directory language of Pub. L. 102-325, §425(d)(1). See 1992 Amendment notes below.

**1992**—Subsec. (a)(1). Pub. L. 102-325, §425(a), inserted before semicolon at end ", including regulations applicable to third party servicers (including regulations concerning financial responsibility standards for, and the assessment of liabilities for program violations against, such servicers) to establish minimum standards with respect to sound management and accountability of programs under this part, except that in no case shall damages be assessed against the United States for the actions or inactions of such servicers".

Subsecs. (a)(3), (g)(1). Pub. L. 102-325, §425(b)(1), (2), struck out "on the record" after "for a hearing".

Subsec. (g)(2). Pub. L. 102-325, §425(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "No civil penalty may be imposed under paragraph (1) of this subsection unless it is determined that the violation, failure, or substantial misrepresentation referred to in that paragraph resulted from—

"(A)(i) a clear and consistent pattern or practice of violations, failures, or substantial misrepresentations in which the lender or guaranty agency did not maintain procedures reasonably adapted

to avoid the violation, failure, or substantial misrepresentation;

"(ii) gross negligence; or

"(iii) willful actions on the part of the lender or guaranty agency; and

"(B) the violation, failure, or substantial misrepresentation is material."

Subsec. (g)(3). Pub. L. 102–325, §425(c)(2), substituted "notification by the Secretary under that paragraph" for "the institution of an action under that paragraph".

Subsec. (g)(4). Pub. L. 102–325, §425(c)(3), inserted ", and occurring prior to notification by the Secretary under that paragraph," after "guaranty agency" and substituted "or both. The" for "or both, and the".

Subsec. (h)(2)(A). Pub. L. 102–325, §425(d)(1), as amended by Pub. L. 103–208, §2(k)(2), in second sentence substituted "The Secretary shall uphold the imposition of such limitation, suspension, or termination in the student loan insurance program of each of the guaranty agencies under this part, and shall notify such guaranty agencies of such sanction" for "The Secretary shall disqualify such lender from participation in the student loan insurance program of each of the guaranty agencies under this part, and notify such guaranty agencies of such disqualification".

Pub. L. 102–325, §425(b)(3), in first sentence struck out ", in accordance with sections 556 and 557 of title 5," after "The Secretary shall".

Subsec. (h)(2)(B), (C). Pub. L. 102–325, §425(d)(2), (3), added subpar. (B), redesignated former subpar. (B) as (C), and substituted "sanction" for "disqualification" in two places.

Subsec. (h)(3)(A). Pub. L. 102–325, §425(d)(4), as amended by Pub. L. 103–208, §2(k)(3), in second sentence substituted "The Secretary shall uphold the imposition of such limitation, suspension, or termination in the student loan insurance program of each of the guaranty agencies under this part, and shall notify such guaranty agencies of such sanctions" for "The Secretary shall disqualify such institution from participation in the student loan insurance program of each of the guaranty agencies under this part, and notify such guaranty agencies of such disqualification".

Pub. L. 102–325, §425(b)(4), in first sentence struck out ", in accordance with sections 556 and 557 of title 5," after "The Secretary shall".

Subsec. (h)(3)(B), (C). Pub. L. 102–325, §425(d)(5), (6), added subpar. (B), redesignated former subpar. (B) as (C), and substituted "sanction" for "disqualification" in two places.

Subsecs. (k) to (p). Pub. L. 102–325, §425(e), added subsecs. (k) to (p).

**1989**—Subsec. (j). Pub. L. 101–239 added subsec. (j).

**1987**—Subsec. (f)(4). Pub. L. 100–50, §10(x), added par. (4).

Subsec. (g)(2)(A)(i), (B). Pub. L. 100–50, §10(y), substituted "misrepresentation" for "representation".

#### **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 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 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.

#### **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.

*[1 See References in Text note below.](#)*