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Title 34 – Education

Subtitle B – Regulations of the Offices of the Department of Education

Chapter VI – Office of Postsecondary Education, Department of Education

Part 682 – Federal Family Education Loan (FFEL) Program

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

Agency

Authority: 20 U.S.C. 1071-1087-4, unless otherwise noted. Section 682.410 also issued under 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1080a, 1082, 1087, 1091a, and 1099.

Source: 57 FR 60323, Dec. 18, 1992, unless otherwise noted.

§ 682.405 Loan rehabilitation agreement.

(a) General.

- (1) A guaranty agency that has a basic program agreement must enter into a loan rehabilitation agreement with the Secretary. The guaranty agency must establish a loan rehabilitation program for all borrowers with an enforceable promissory note for the purpose of rehabilitating defaulted loans, except for loans for which a judgment has been obtained, loans on which a default claim was filed under § 682.412, and loans on which the borrower has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance, so that the loan may be purchased, if practicable, by an eligible lender and removed from default status.
- (2) A loan is considered to be rehabilitated only after—
 - (i) The borrower has made and the guaranty agency has received nine of the ten qualifying payments required under a monthly repayment agreement.
 - (A) A qualifying payment is—
 - (1) Made voluntarily;
 - (2) In the full amount required; and
 - (3) Received within 20 days of the due date for the payment, and
 - (B) All nine payments are received within a 10-month period that begins with the month in which the first required due date falls and ends with the ninth consecutive calendar month following that month, and
 - (ii) The loan has been sold to an eligible lender or assigned to the Secretary.
- (3)
 - (i) If a borrower's loan is being collected by administrative wage garnishment while the borrower is also making monthly payments on the same loan under a loan rehabilitation agreement, the guaranty agency must continue collecting the loan by administrative wage garnishment until the borrower makes five qualifying monthly payments under the rehabilitation agreement, unless the guaranty agency is otherwise precluded from doing so under § 682.410(b)(9).

- (ii) After the borrower makes the fifth qualifying monthly payment, the guaranty agency must, unless otherwise directed by the borrower, suspend the garnishment order issued to the borrower's employer.
- (iii) A borrower may only obtain the benefit of a suspension of administrative wage garnishment while also attempting to rehabilitate a defaulted loan once.
- (4) After the loan has been rehabilitated, the borrower regains all benefits of the program, including any remaining deferment eligibility under section 428(b)(1)(M) of the Act, from the date of the rehabilitation. Effective for any loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.
- (b) **Terms of agreement.** In the loan rehabilitation agreement, the guaranty agency agrees to ensure that its loan rehabilitation program meets the following requirements at all times:
 - (1) A borrower may request rehabilitation of the borrower's defaulted loan held by the guaranty agency. In order to be eligible for rehabilitation of the loan, the borrower must voluntarily make at least 9 of the 10 payments required under a monthly repayment agreement.
 - (i) Each payment must be—
 - (A) Made voluntarily;
 - (B) For the full amount required;
 - (C) Received within 20 days of the due date for the payment; and
 - (D) Reasonable and affordable.
 - (ii) All 9 payments must be received within a 10-month period that begins with the month in which the first required due date falls and ends with the ninth consecutive calendar month following that month.
 - (iii) The guaranty agency initially considers the borrower's reasonable and affordable payment amount to be an amount equal to 15 percent of the amount by which the borrower's Adjusted Gross Income (AGI) exceeds 150 percent of the poverty guideline amount applicable to the borrower's family size and State, divided by 12, except that if this amount is less than \$5, the borrower's monthly rehabilitation payment is \$5.
 - (iv) The guaranty agency or its agents may calculate the payment amount based on information provided orally by the borrower or the borrower's representative and provide the borrower with a rehabilitation agreement using that amount. The guaranty agency must request documentation from the borrower to confirm the borrower's AGI and family size. If the borrower does not provide the guaranty agency or its agents with any documentation requested by the guaranty agency to calculate or confirm the reasonable and affordable payment amount, within a reasonable time deadline set by the guaranty agency or its agent, the rehabilitation agreement provided is null and void.
 - (v) The reasonable and affordable payment amount calculated under this section must not be—
 - (A) A required minimum loan payment amount (e.g., \$50) if the agency determines that a smaller amount is reasonable and affordable;
 - (B) A percentage of the borrower's total loan balance; or

- (C) Based on other criteria unrelated to the borrower's total financial circumstances.
- (vi) Within 15 business days of its determination of the borrower's loan rehabilitation payment amount, the guaranty agency must provide the borrower with a written rehabilitation agreement which includes the borrower's payment amount calculated under paragraph (b)(1)(iii), a prominent statement that the borrower may object orally or in writing to the payment amount, with the method and timeframe for raising such an objection, and an explanation of any other terms and conditions applicable to the required series of payments that must be made before the borrower's account can be considered for repurchase by an eligible lender or assignment to the Secretary (i.e., rehabilitated). To accept the agreement, the borrower must sign and return the agreement or accept the agreement electronically under a process provided by the agency. The agency may not impose any conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement. The written rehabilitation agreement must inform the borrower—
 - (A) Of the effects of having the loans rehabilitated (e.g., removal of the record of default from the borrower's credit history and return to normal repayment);
 - (B) Of the amount of any collection costs to be added to the unpaid principal of the loan when the loan is sold to an eligible lender or assigned to the Secretary, which may not exceed 16 percent of the unpaid principal and accrued interest on the loan at the time of the sale or assignment; and
 - (C) That the rehabilitation agreement is null and void if the borrower fails to provide the documentation required to confirm the monthly payment calculated under paragraph (b)(1)(iii) of this section.
- (vii) If the borrower objects to the monthly payment amount determined under paragraph (b)(1)(iii) of this section, the guaranty agency or its agents must recalculate the payment amount based solely on information provided on a form approved by the Secretary and, if requested, supporting documentation from the borrower and other sources, and must consider—
 - (A) The borrower's, and if applicable, the spouse's current disposable income, including public assistance payments, and other income received by the borrower and the spouse, such as welfare benefits, Social Security benefits, Supplemental Security Income, and workers' compensation. Spousal income is not considered if the spouse does not contribute to the borrower's household income;
 - (B) Family size as defined in § 682.215(a)(3); and
 - (C) Reasonable and necessary expenses, which include—
 - (1) Food;
 - (2) Housing;
 - (3) Utilities;
 - (4) Basic communication expenses;
 - (5) Necessary medical and dental costs;
 - (6) Necessary insurance costs;
 - (7) Transportation costs;

- (8) Dependent care and other work-related expenses;
 - (9) Legally required child and spousal support;
 - (10) Other title IV and non-title IV student loan payments; and
 - (11) Other expenses approved by the Secretary.
 - (viii) The guaranty agency must provide the borrower with a new written rehabilitation agreement confirming the borrower's recalculated reasonable and affordable payment amount within the timeframe specified in paragraph (b)(1)(vii) of this section. To accept the agreement, the borrower must sign and return the agreement or accept the agreement electronically under a process provided by the agency.
 - (ix) The agency must include any payment made under § 682.401(b)(1) in determining whether the 9 out of 10 payments required under paragraph (b)(1) of this section have been made.
 - (x) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (b)(1)(vii) of this section.
 - (xi) Except as provided in paragraph (c) of this section, during the rehabilitation period, the guaranty agency must limit contact with the borrower on the loan being rehabilitated to collection activities that are required by law or regulation and to communications that support the rehabilitation.
- (2)
- (i) For the purposes of this section, payment in the full amount required means payment of an amount that is reasonable and affordable, based on the borrower's total financial circumstances, as agreed to by the borrower and the agency. Voluntary payments are those made directly by the borrower and do not include payments obtained by Federal offset, garnishment, income or asset execution, or after a judgment has been entered on a loan. A guaranty agency must attempt to secure a lender to purchase the loan at the end of the 9- or 10-month payment period as applicable.
 - (ii) If the guaranty agency has been unable to sell the loan, the guaranty agency must assign the loan to the Secretary.
- (3) Upon the sale of a rehabilitated loan to an eligible lender or assignment to the Secretary—
- (i) The guaranty agency must, within 45 days of the sale or assignment—
 - (A) Provide notice to the prior holder of such sale or assignment, and
 - (B) Request that any consumer reporting agency to which the default was reported remove the record of default from the borrower's credit history.
 - (ii) The prior holder of the loan must, within 30 days of receiving the notification from the guaranty agency, request that any consumer reporting agency to which the default claim payment or other equivalent record was reported remove such record from the borrower's credit history.
- (4)

- (i) An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans of the same loan type as the rehabilitated loan and must permit the borrower to choose any statutorily available repayment plan for that loan type. The lender must treat the first payment made under the nine payments as the first payment under the applicable maximum repayment term, as defined under § 682.209(a) or (e). For Consolidation loans, the maximum repayment term is based on the balance outstanding at the time of loan rehabilitation.
 - (ii) The lender must not consider the purchase of a rehabilitated loan as entry into repayment or resumption of repayment for the purposes of interest capitalization under § 682.202(b).
- (c) A guaranty agency must make available to the borrower—
- (1) During the loan rehabilitation period, information about repayment plans, including the income-based repayment plan, that may be available to the borrower upon rehabilitating the defaulted loan and how the borrower can select a repayment plan after the loan is purchased by an eligible lender or assigned to the Secretary; and
 - (2) After the successful completion of the loan rehabilitation period, financial and economic education materials, including debt management information.

(Authority: 20 U.S.C. 1078-6)

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