

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h)(1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(U) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(U) of the Act and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the lender that the Secretary will review the guaranty agency's action to determine whether to disqualify the lender from further participation in the FFEL programs and affords the lender an opportunity—

(i) To waive the review and be disqualified immediately; or

(ii) To request a review.

(i) The Secretary's review of the guaranty agency's action is limited to whether the agency action was taken in accordance with procedures that were substantially the same as procedures applicable to the limitation, suspension, or termination of eligibility of a lender under the FISL Program (34 CFR part 682, subpart G).

(j) In the case of an action by an agency that limits or suspends a lender's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The lender has not corrected the violation. A violation is corrected if, among other things, the lender has satisfied fully all liabilities incurred by the lender as a result of the violation, including its liability to the Secretary, or the lender has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The lender has not provided satisfactory assurances to the agency of future compliance with program requirements; or

(3) The guaranty agency determines that special circumstances warrant disqualification of the lender from the FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the lender's eligibility to participate in the agency's program.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1082)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9119, Feb. 19, 1993; 64 FR 58965, Nov. 1, 1999]

§ 682.713 Disqualification review of limitation, suspension, and termination actions taken by guaranty agencies against a school.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guaranty agency against a school participating in the FFEL programs to determine if national disqualification is appropriate. Upon completion of the Secretary's review, the Secretary notifies the guaranty agency and the school of his decision by mail.

(b) The Secretary disqualifies a school from participation in the FFEL programs if—

(1) The school waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(T) of the Act.

(c)(1) Disqualification by the Secretary continues until the Secretary is satisfied that—

(i) The school has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the school will comply with the requirements of the FFEL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guaranty agency shall refer a limitation, suspension, or termination

action that it takes against a school to the Secretary within 30 days of its final decision to limit, suspend, or terminate the school's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a school's eligibility only when the guaranty agency's action is final, i.e., the institution is not entitled to any further appeals within the guaranty agency. A subsequent court challenge to an agency's action does not by itself affect the timing of the Secretary's review.

(f) The guaranty agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

- (1) The guaranty agency's letter initiating the action.
- (2) The school's response.
- (3) The transcript of the agency's hearing.
- (4) The decision of the agency's hearing officer.
- (5) The decision of the agency on appeal from the hearing officer's decision, if any.
- (6) The regulations and written procedures of the agency under which the action was taken.
- (7) The audit or program review report or documented basis that led to the action.
- (8) All other documents relevant to the action.

(g) The guaranty agency's referral notice to the Secretary regarding a limitation or suspension action must include—

- (1) The documents described in paragraph (f) of this section; and
- (2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h)(1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(T) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(T) of the Act, and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the school that the Secretary will review the guaranty agency's action to determine whether to disqualify the school from further participation in the FFEL programs and gives the school an opportunity within 30 days from the date the notice is mailed—

- (i) To waive the review and be disqualified immediately; or
- (ii) To request a review.

(i) The Secretary's review of the guaranty agency's action is limited to—

- (1) A review of the written record of the agency's proceedings; and
- (2) Whether the agency action was taken in accordance with procedures that were substantially the same as procedures established by the Secretary in 34 CFR part 668, subpart G.

(j) In the case of an action by an agency that limits or suspends a school's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

- (1) The school has not corrected the violation. A violation is corrected if, among other things, the school has fully satisfied all liabilities incurred by the school as a result of the violation, including its liability to the Secretary, or the school has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;
- (2) The school has not provided assurances satisfactory to the agency of future compliance with program requirements; or
- (3) The guaranty agency determines that special circumstances warrant disqualification of the school from the

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FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the school's eligibility to participate in the agency's program.

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Subpart H—Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations

§ 682.800 Prohibition against discrimination as a condition for receiving special allowance payments.

(a) For an Authority to receive special allowance payments on loans made or acquired with the proceeds of a tax-exempt obligation, the Authority or its agent may not engage in any pattern or practice that results in a denial of a borrower's access to loans under the FFEL programs because of the borrower's race, sex, color, religion, national origin, age, disability status, income, attendance at a particular institution within the area served by the Authority, length of the borrower's education program, or the borrower's academic year in school.

(b) The Secretary considers an Authority that makes or acquires loans guaranteed by an agency or organization that discriminates on one or more grounds listed in paragraph (a) of this section to have adopted a practice of denying access to loans on that ground unless the Authority makes provision for loan guarantees from other sources necessary to serve the borrowers excluded by that discriminatory policy.

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

[57 FR 60323, Dec. 18, 1992. Redesignated and amended at 64 FR 58636, Oct. 29, 1999]

34 CFR Ch. VI (7-1-02 Edition)

APPENDIXES A-B TO PART 682 [RESERVED]

APPENDIX C TO PART 682—PROCEDURES FOR CURING VIOLATIONS OF THE DUE DILIGENCE IN COLLECTION AND TIMELY FILING OF CLAIMS REQUIREMENTS APPLICABLE TO FISLP AND FEDERAL PLUS PROGRAM LOANS AND FOR REPAYMENT OF INTEREST AND SPECIAL ALLOWANCE OVERBILLINGS [BULLETIN L-77a]

NOTE: The following is a reprint of Bulletin L-77a, issued on January 7, 1983, with minor modifications made to reflect changes in the program regulations since that date. All references to "the date of this bulletin" refer to that date. All references made to the Federal Insured Student Loan Program (FISLP) shall be understood to include the Federal PLUS Program. The bulletin includes references to the 120- and 180-day default periods that used to apply to FFELP and PLUS Program loans. Public Law 99-272 established new default periods of 180 and 240 days (as set out in 34 CFR 682.200 of these regulations) for all new loans and many existing ones. Although the discussion in this appendix C refers to the 120- and 180-day default periods, it is equally applicable to the new 180- and 240-day default periods.

INTRODUCTION

This bulletin prescribes procedures for lenders to use (1) to cure violations of the requirements for due diligence in collection ("due diligence") and timely filing of claims under the Federal Insured Student Loan Program (FISLP), and (2) to repay interest and special allowance overbillings made on loans evidencing such violations. See 34 CFR 682.507, 682.511.¹ These procedures allow for the reinstatement of a lender's eligibility for interest and special allowance and claim payments on loans evidencing such violations, under specified circumstances. These procedures apply to loans for which the first day of the 120-day or 180-day default period occurred on or after October 21, 1979 (the effective date of the September 17, 1979 regulations), whether or not the loans have previously been submitted as claims to the Secretary.

The due diligence and timely filing requirements governing the FISLP were established in response to requests from some lenders for more detailed regulatory guidance on the proper handling of FISLP loans.