

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes

Origin: FED UP #4

Issue: FFEL - Eligible Lender

Regulatory Cite: 682.200(b)

Summary of Change: Revises the definition of lender to provide that loans held in trust are not considered part of the trustee lender's consumer credit function in determining whether the lender has exceeded the limit of one-half of the lender's combined consumer credit portfolio in the regulations. This provision is intended to clarify that loans held in trust by a lender are not considered part of the trustee lender's consumer credit function but are considered part of the beneficial holder's consumer credit function.

(1) Change (context):

§682.200 Definitions.

(b) * * * * *

Lender. (1) The term "eligible lender" is defined in section 435(d) of the Act, and in paragraphs (2)-(5) of this definition.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, or a credit union --

(i) The phrase "subject to examination and supervision" in section 435(d) of the Act means "subject to examination and supervision in its capacity as a lender";

(ii) The phrase "does not have as its primary consumer credit function the making or holding of loans made to students under this part" in section 435(d) of the Act means that the lender does not, or in the case of a bank holding company, the company's wholly-owned subsidiaries as a group do not at any time, hold FFEL Program loans that total more than one-half of the lender's or subsidiaries' combined consumer credit loan portfolio, including home mortgages held by the lender or its subsidiaries. For purposes of this paragraph, loans held in trust by a trustee lender are not considered part of the trustee lender's consumer credit function.

(2) Amendatory Language:

Section 682.200 is amended by adding in the definition of "Lender." at the end of paragraph (2)(ii) "For purposes of this paragraph, loans held in trust by a trustee lender are not considered part of the trustee lender's consumer credit function."

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No
Origin: ED
Issue: FFEL - Loan Limits
Regulatory Cite: §682.204

Summary of Change: The proposed change would clarify: (1) with one exception, a borrower who is enrolled in a one-year program of study may not borrow more than the amounts allowed under the first-year undergraduate annual loan limits, and (2) with one exception, a borrower who is enrolled in a two-year program of study may not borrow more than the amounts allowed under the second-year undergraduate loan limits.

(1) Change (context):

§682.204 Maximum loan amounts.

(a) Stafford Loan Program annual limits. (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) \$2,625 for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to \$2,625 as the--

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to \$2,625 as the lesser of the--

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year}}$$

(2) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) \$3,500 for a program whose length is at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$3,500 as the--

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) \$5,500 for a program whose length is at least an academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$5,500 as the--

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

(4) In the case of a student who has an associate or baccalaureate degree that is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Stafford Loan Program, in combination with any

amount borrowed under the Federal Direct Stafford/Ford Loan Program, may not exceed \$8,500.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or certificate, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) \$2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) \$5,500 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed \$5,500.

(8) Except as provided in paragraph (a)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(9) Except as provided in paragraph (a)(4) of this section-

(i) An undergraduate student who is enrolled in a program that is two academic years in length and who has not successfully completed the first year of the program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is two academic years in length and who has successfully completed the first year of the program may not borrow an amount for any academic year of study in the remaining portion of the program that exceeds the amounts in paragraph (a)(2) of this section.

* * * * *

(d) Additional eligibility under the Unsubsidized Stafford Loan Program. In addition to any amount borrowed under paragraphs (a) and (c) of this section, an independent

undergraduate student, graduate or professional student, and certain dependent undergraduate students under the conditions specified in Sec. 682.201(a)(3) may borrow additional amounts under the Unsubsidized Stafford Loan Program. The additional amount that such a student may borrow under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program, in addition to the amounts allowed under paragraphs (b) and (c) of this section for any academic year of study--

(1) In the case of a student who has not successfully completed the first year of a program of undergraduate education, may not exceed the following:

(i) \$4,000 for a program of study of at least a full academic year.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to \$4,000 as the--

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

(iii) For a program of study that is less than a full academic year in length, an amount that is the same ratio to \$4,000 as the lesser of--

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year}}$$

(2) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year of a program of undergraduate education may not exceed the following:

(i) \$4,000 for a program of study of at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$4,000 as the--

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

(3) In the case of a student who has successfully completed the second year of a program of undergraduate education, but has not completed the remainder of the program, may not exceed the following:

(i) \$5,000 for a program of study of at least a full academic year.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$5,000 as the--

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

(4) In the case of a student who has an associate or baccalaureate degree that is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (d)(3) of this section.

(5) In the case of a graduate or professional student, may not exceed \$10,000.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate may not exceed the following:

(i) \$4,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) \$5,000 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(iii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in a program necessary for a professional credential or a certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, \$5,000.

(7) Except as provided in paragraph (d)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(8) Except as provided in paragraph (d)(4) of this section-

(A) An undergraduate student who is enrolled in a program that is two academic years in length and who has not successfully completed the first year of the program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(B) An undergraduate student who is enrolled in a program that is two academic years in length and who has successfully completed the first year of the program may not borrow an amount for any academic year of study in the remaining portion of the program that exceeds the amounts in paragraph (d)(2) of this section.

(2) Amendatory Language:

Section 682.204 is amended by adding new paragraphs (a)(8), (a)(9), (d)(7), and (d)(8) to read as follows:

§682.204 Maximum loan amounts.

(a) Stafford Loan Program annual limits.

* * * * *

(8) Except as provided in paragraph (a)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(9) Except as provided in paragraph (a)(4) of this section-

(i) An undergraduate student who is enrolled in a program that is two academic years in length and who has not successfully completed the first year of the program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is two academic years in length and who has successfully completed the first year of the program may not borrow an amount for any academic year of study in the remaining portion of the program that exceeds the amounts in paragraph (a)(2) of this section.

* * * * *

(d) Additional eligibility under the Unsubsidized Stafford Loan Program.

* * * * *

(7) Except as provided in paragraph (d)(4) of this section, an undergraduate student who is enrolled in a program that is

one academic year in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(8) Except as provided in paragraph (d)(4) of this section-

(i) An undergraduate student who is enrolled in a program that is two academic years in length and who has not successfully completed the first year of the program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is two academic years in length and who has successfully completed the first year of the program may not borrow an amount for any academic year of study in the remaining portion of the program that exceeds the amounts in paragraph (d)(2) of this section.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No

Origin: FED UP #33

Issue: FFEL - Anticipated Graduation Date

Regulatory Cite: §682.209(a)(2)

Summary of Change: The proposed change would clarify that if a lender has already disclosed repayment terms to the borrower, it is not required to change the borrower's anticipated graduation date or last date of attendance if a new date reported by the school is in the same month and year as the most recent date reported by the school. This proposed change would codify, in part, existing Departmental policy.

(1) Change (context):

§682.209(a) Conversion of a loan to repayment status.

* * * * *

(3)(i) Except as provided in paragraphs (a)(4) and (5) of this section, for a Stafford loan the repayment period begins--

* * * * *

(iii) When determining the date that the student was no longer enrolled on at least a half-time basis, the lender must use a new date it receives from the school, unless the lender has already disclosed repayment terms to the borrower, and the new date is within the same month and year as the most recent date reported to the lender.

(2) Amendatory Language:

Section 682.209 is amended by adding a new paragraph (a)(3)(iii) to read as follows:

§682.209(a) Conversion of a loan to repayment status.

* * * * *

(3) * * * * *

(iii) When determining the date that the student was no longer enrolled on at least a half-time basis, the lender must use a new date it receives from the school, unless the lender has already disclosed repayment terms to the borrower, and the new date is within the same month and year as the most recent date reported to the lender.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes
Origin: FED UP #27
Issue: FFEL - Borrower Repayment Terms
Regulatory Cite: 682.209(a)(8)(iv)

Summary of Change: Removes the "written notice" requirement for the borrower to request the lender to extend the repayment period to a minimum of 5 years in cases where the borrower had previously requested a repayment period of less than 5 years.

(1) Change (context):

§682.209 Repayment of a loan.

(a) * * * * *

(8) * * * * *

(iv) The borrower may, prior to the beginning of the repayment period, request and be granted by the lender a repayment period of less than 5 years. Subject to paragraph (a)(8)(iii) of this section, a borrower who makes such a request ~~may, by written notice to~~ may notify the lender at any time ~~during the repayment period,~~ to extend the repayment period to a minimum of 5 years.

(2) Amendatory Language:

Section 682.209 is amended by revising paragraph (a)(8)(iv) to read as follows:

§682.209 Repayment of a loan.

(a) * * * * *

(8) * * * * *

(iv) The borrower may, prior to the beginning of the repayment period, request and be granted by the lender a repayment period of less than 5 years. Subject to paragraph (a)(8)(iii) of this section, a borrower who makes such a request may notify the lender at any time to extend the repayment period to a minimum of 5 years.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No
Origin: FED UP #53
Issue: FFEL - Forbearance Simplification
Regulatory Cite: §682.211(b)-(e)

Summary of Change: The proposed change would, to the extent permitted by law, eliminate the requirement that a borrower or endorser agree in writing to the terms of the forbearance. It also adds a requirement that, in most cases, the lender must promptly send a notice to the borrower or endorser confirming the terms of the forbearance.

Change:

§682.211 Forbearance.

* * * * *

(b) A lender may grant forbearance if—

(1) ~~t~~The lender and the borrower or endorser agree in writing to the terms of the forbearance, and, unless the agreement was in writing, or, the lender sends, promptly but within 30 days, a notice to the borrower or endorser confirming the terms of the forbearance; or

(2) ~~i~~In the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree ~~in writing~~ to the terms of the forbearance. If the lender and the borrower or endorser agree to the terms orally, the lender must notify the borrower or endorser of the terms in accordance with §682.208(c)(1).

(d) A guaranty agency may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after default but prior to claim payment. The terms of the forbearance agreement in this situation must include a new signed agreement to repay the debt.

(e) Except in the case of forbearance of interest payments during a deferment period if a forbearance involves the postponement of all payments, the lender must contact the borrower or endorser ~~by telephone or send a written notice to the borrower or endorser~~ at least once every ~~three~~ six months during the period of forbearance to inform ~~remind~~ the borrower or endorser of—

(1) ~~t~~The outstanding obligation to repay;

(2) The amount of interest that has accrued on the loan during the forbearance period;

(3) The estimated total amount of interest that will accrue on the loan for the full term of the forbearance; and

(4) The borrower's or endorser's option to discontinue the forbearance at any time.

* * * * *

(h) Mandatory forbearance.

* * * * *

(3) Written agreement. The terms of the forbearance must be agreed to in writing—

(i) By the lender and the borrower for a forbearance under paragraphs (h)(1) or (h)(2)(ii)(A) of this section; or

(ii) By the lender and the borrower or endorser for a forbearance under paragraph (h)(2)(i) of this section.

(~~3~~4) Documentation.

* * * * *

(2) Amendatory Language:

Section 682.211 is amended by:

- A. Revising paragraphs (b), (c), and (e).
- B. Redesignating paragraph (h)(3) as paragraph (h)(4).
- C. Adding a new paragraph (h)(3).

The revisions and addition read as follows:

§682.211 Forbearance.

* * * * *

(b) A lender may grant forbearance if—

(1) The lender and the borrower or endorser agree to the terms of the forbearance and, unless the agreement was in writing, the lender sends, within 30 days, a notice to the borrower or endorser confirming the terms of the forbearance; or

(2) In the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree to the terms of the forbearance. If the lender and the borrower or endorser agree to the terms orally, the lender must notify the borrower or endorser of the terms in accordance with §682.208(c)(1).

* * * * *

(e) Except in the case of forbearance of interest payments during a deferment period if a forbearance involves the postponement of all payments, the lender must contact the borrower or endorser at least once every six months during the period of forbearance to inform the borrower or endorser of—

(1) The outstanding obligation to repay;

(2) The amount of interest that has accrued on the loan during the forbearance period;

(3) The estimated total amount of interest that will accrue on the loan for the full term of the forbearance; and

(4) The borrower or endorser's option to discontinue the forbearance at any time.

* * * * *

(h) Mandatory forbearance.

* * * * *

(3) Written agreement. The terms of the forbearance must be agreed to in writing—

(i) By the lender and the borrower for a forbearance under paragraphs (h)(1) or (h)(2)(ii)(A) of this section; or

(ii) By the lender and the borrower or endorser for a forbearance under paragraph (h)(2)(i) of this section.

* * * * *

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No
Origin: 1/7/02 Suggestion
Issue: FFEL - Administrative Forbearances
Regulatory Cite: §682.211(f)

Summary of Change: The proposed change would expand a lender's authority to grant administrative forbearances for a local or national emergency, or a military mobilization.

(1) Change (context):

§682.211 Forbearance.

* * * * *

(f) A lender may grant forbearance, upon notice to the borrower or if applicable, the endorser, with respect to payments of interest and principal that are overdue or would be due -

(1) * * * * *

(10) For a period not to exceed 3 months ~~for a borrower who is affected by a natural disaster.~~ when the lender determines that a borrower's ability to make payments has been adversely affected by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization.

(2) Amendatory Language:

Section 682.211 is amended by:

A. Amending paragraph (f) introductory text by adding the words "or would be due" after the word "overdue".

B. Revising paragraph (f)(10).

The revisions read as follows:

§682.211 Forbearance.

* * * * *

(f) * * * * *

(10) For a period not to exceed 3 months when the lender determines that a borrower's ability to make payments has been adversely affected by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No

Origin: FED UP #52

Issue: FFEL - Disability Discharge on Consolidation Loans

Regulatory Cite: §682.402(a)-(b)

Summary of Change: The proposed change would permit a proportional discharge of a joint Consolidation loan if one of the borrowers would qualify for a discharge. It would also permit a proportional discharge if a PLUS loan had been included in the Consolidation loan and the student for whom the PLUS loan was obtained dies.

(1) Change (context):

§682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

(a) General. (1) Rules governing the payment of claims based on filing for relief in bankruptcy, and discharge of loans due to death, total and permanent disability, attendance at a school that closes, false certification by a school of a borrower's eligibility for a loan, and unpaid refunds by a school are set forth in this section.

(2) If a Consolidation loan was obtained jointly by a married couple, the amount of the Consolidation loan that is discharged if one of the borrowers dies or becomes totally and permanently disabled is equal to the portion of the outstanding

balance of the Consolidation loan attributable to any of that borrower's loans that would have been eligible for discharge.

(~~2~~3) If a PLUS loan was obtained by two parents as co-makers, ~~or a Consolidation loan was obtained by a married couple,~~ and only one of the borrowers dies, becomes totally and permanently disabled, has collection of his or her loan obligation stayed by a bankruptcy filing, or has that obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan unless that borrower would qualify for discharge of the loan under these regulations.

(~~3~~4) Except for a borrower's loan obligation discharged by the Secretary under the false certification discharge provision of paragraphs (e)(1)(ii) of this section, a loan qualifies for payment under this section and as provided in paragraph (h)(1)(iv) of this section, only to the extent that the loan is legally enforceable under applicable law by the holder of the loan.

(~~4~~5) For purposes of this section --

(i) The legal enforceability of a loan is conclusively determined on the basis of a ruling by a court or administrative tribunal of competent jurisdiction with respect to that loan, or a ruling with respect to another loan in a judgment that

collaterally estops the holder from contesting the enforceability of the loan;

(ii) A loan is conclusively determined to be legally unenforceable to the extent that the guarantor determines, pursuant to an objection presented in a proceeding conducted in connection with credit bureau reporting, tax refund offset, wage garnishment, or in any other administrative proceeding, that the loan is not legally enforceable; and

(iii) If an objection has been raised by the borrower or another party about the legal enforceability of the loan and no determination has been made under paragraph (a)(45) (i) or (ii) of this section, the Secretary may authorize the payment of a claim under this section under conditions the Secretary considers appropriate. If the Secretary determines in that or any other case that a claim was paid under this section with respect to a loan that was not a legally enforceable obligation of the borrower, the recipient of that payment must refund that amount of the payment to the Secretary.

(b) Death.

* * * * *

(6) In the case of a Federal Consolidation Loan that includes a Federal PLUS or Direct PLUS loan borrowed for a dependent who has died, the obligation of the borrower or any

endorser to make any further payments on the portion of the outstanding balance of the Consolidation Loan attributable to the Federal PLUS or Direct PLUS loan is discharged as of the date of the dependent's death.

(2) Amendatory Language:

Section 682.402 is amended by:

A. Redesignating paragraphs (a)(2) through (a)(4) as paragraphs (a)(3) through (a)(5), respectively.

B. Adding a new paragraph (a)(2).

C. Amending redesignated paragraph (a)(3) by removing the words "or a Consolidation loan was obtained by a married couple,".

D. Amending redesignated paragraph (a)(5)(iii) by removing the reference to paragraph "(a)(4)(i) or (ii)" and adding in its place "(a)(5)(i) or (ii)".

E. Adding a new paragraph (b)(6).

The revisions read as follows:

§682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

(a) ***

(2) If a Consolidation loan was obtained jointly by a married couple -

(i) The amount of the Consolidation loan that is discharged if one of the borrowers dies or becomes totally and permanently disabled is equal to the portion of the outstanding balance of the Consolidation loan attributable to any of that borrower's loans that would have been eligible for discharge.

(ii) If one of the borrowers has his or her loan obligation stayed by a bankruptcy filing or discharged in bankruptcy, the other borrower may receive a discharge under §682.402(f) in accordance with the provisions of the Bankruptcy Code.

* * * * *

(b) ***

* * * * *

(6) In the case of a Federal Consolidation Loan that includes a Federal PLUS or Direct PLUS loan borrowed for a dependent who has died, the obligation of the borrower or any endorser to make any further payments on the portion of the outstanding balance of the Consolidation Loan attributable to the Federal PLUS or Direct PLUS loan is discharged as of the date of the dependent's death.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes

Origin: ED - Additional Agenda Item

Issue: FFEL - Sovereign Immunity - Proofs of Claim

Regulatory Cite: 682.402(f)(4)

Summary of Change: The proposed changes clarify that State guaranty agencies that hold FFEL loans, may oppose the discharge of HEA student loans in bankruptcy by asserting that bankruptcy law does not supersede the State's immunity under the 11th Amendment to the Constitution from suit in Federal court. The proposed changes will ensure that no Department regulation would require a State agency that wished to oppose discharge by asserting sovereign immunity to take any action that would hinder or frustrate that intention. In addition, these changes are also designed to avoid future arguments that a State guarantor concedes the jurisdiction of the court if it accepts assignment of a proof of claim filed by a lender. The changes allow a State guarantor that intends to assert sovereign immunity to direct lenders under its guaranty program not to file a proof of claim. These changes are consistent with recent regulations promulgated for state institutions in the Federal Perkins Program.

(1) Change (context):

§682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(f) Bankruptcy-

* * * * *

(4) Proof of claim. (i) Except as provided in paragraph (f)(4) (ii) of this section, ~~Unless instructed otherwise by the guaranty agency, the lender~~ holder of the loan shall file a proof of claim with the bankruptcy court within -

~~(i)~~ (A) 30 days after the ~~lender~~ holder receives a notice of first meeting of creditors unless, in the case of a proceeding under chapter 7, the notice states that the borrower has no assets; or

~~(ii)~~ (B) 30 days after the ~~lender~~ holder receives a notice from the court stating that a chapter 7 no-asset case has been converted to an asset case.

(ii) A guaranty agency that is a State guaranty agency, and on that basis can assert immunity from suit in bankruptcy court, and that does not assign any loans affected by a bankruptcy filing to another guaranty agency—

(A) Is not required to file a proof of claim on a loan already held by the guaranty agency; and

(B) May direct lenders not to file proofs of claim on loans guaranteed by that agency.

(2) Amendatory Language:

Section 682.402 is amended by revising paragraph (f)(4) as follows:

§682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(f) Bankruptcy-

* * * * *

(4) Proof of claim. (i) Except as provided in paragraph (f)(4)(ii) of this section, the holder of the loan shall file a proof of claim with the bankruptcy court within -

(A) 30 days after the holder receives a notice of first meeting of creditors unless, in the case of a proceeding under chapter 7, the notice states that the borrower has no assets; or

(B) 30 days after the holder receives a notice from the court stating that a chapter 7 no-asset case has been converted to an asset case.

(ii) A guaranty agency that is a State guaranty agency, and on that basis can assert immunity from suit in bankruptcy court, and that does not assign any loans affected by a bankruptcy filing to another guaranty agency—

(A) Is not required to file a proof of claim on a loan already held by the guaranty agency; and

(B) May direct lenders not to file proofs of claim on loans guaranteed by that agency.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No

Origin: 1/7/02 suggestion

Issue: FFEL - Extend the time frame for guaranty agency review and payment of disability claims.

Regulatory Cite: 682.402(h)

Summary of Change: Currently, a guaranty agency must review and pay a disability claim within 45 days. The proposed change would increase this time period to 90 days.

(1) Change (context):

§682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(h) Payment of death, disability, closed school, false certification, and bankruptcy claims by the guaranty agency-

(1) General. (i) The guaranty agency shall review a death, disability, ~~or bankruptcy~~, closed school, or false certification claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with paragraphs (h) (2) and (h)(3) of this section, ~~--~~

(A) not later than 45 days after the claim was filed by the lender for death and bankruptcy claims; and-

(B) Not later than 90 days after the claim was filed by the lender for disability, closed school, or false certification claims.

* * * * *

(3) Payment of interest. If the guarantee covers unpaid interest, the amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

* * * * *

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation not to exceed--
(A) 45 days for death, ~~disability~~ or bankruptcy claims; or
(B) 90 days for disability, closed school, and or false certifications claims.

(2) Amendatory Language:

Section 682.402 is amended by revising paragraphs (h)(1)(i) and (h)(3)(iii) as follows:

§682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(h) Payment of death, disability, closed school, false certification, and bankruptcy claims by the guaranty agency--

(1) General. (i) The guaranty agency shall review a death, disability, bankruptcy, closed school, or false certification claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with paragraphs (h)(2) and (h)(3) of this section--

(A) Not later than 45 days after the claim was filed by the lender for death and bankruptcy claims; and

(B) Not later than 90 days after the claim was filed by the lender for disability, closed school, or false certification claims.

* * * * *

(3) * * * * *

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation not to exceed--

(A) 45 days for death or bankruptcy claims; or

(B) 90 days for disability, closed school, or false certification claims.