§ 1080. Default of student under Federal loan insurance program

(a) Notice to Secretary and payment of loss

Upon default by the student borrower on any loan covered by Federal loan insurance pursuant to this part, and prior to the commencement of suit or other enforcement proceedings upon security for that loan, the insurance beneficiary shall promptly notify the Secretary, and the Secretary shall if requested (at that time or after further collection efforts) by the beneficiary, or may on the Secretary’s own motion, if the insurance is still in effect, pay to the beneficiary the amount of the loss sustained by the insured upon that loan as soon as that amount has been determined. The “amount of the loss” on any loan shall, for the purposes of this subsection and subsection (b) of this section, be deemed to be an amount equal to the unpaid balance of the principal amount and accrued interest, including interest accruing from the date of submission of a valid default claim (as determined by the Secretary) to the date on which payment is authorized by the Secretary, reduced to the extent required by section 1075 (b) of this title. Such beneficiary shall be required to meet the standards of due diligence in the collection of the loan and shall be required to submit proof that the institution was contacted and other reasonable attempts were made to locate the borrower (when the location of the borrower is unknown) and proof that contact was made with the borrower (when the location is known). The Secretary shall make the determination required to carry out the provisions of this section not later than 90 days after the notification by the insurance beneficiary and shall make payment in full on the amount of the beneficiary’s loss pending completion of the due diligence investigation.

(b) Effect of payment of loss

Upon payment of the amount of the loss pursuant to subsection (a) of this section, the United States shall be subrogated for all of the rights of the holder of the obligation upon the insured loan and shall be entitled to an assignment of the note or other evidence of the insured loan by the insurance beneficiary. If the net recovery made by the Secretary on a loan after deduction of the cost of that recovery (including reasonable administrative costs and collection costs, to the extent set forth in regulations issued by the Secretary) exceeds the amount of the loss, the excess shall be paid over to the insured. The Secretary may, in attempting to make recovery on such loans, contract with private business concerns, State student loan insurance agencies, or State guaranty agencies, for payment for services rendered by such concerns or agencies in assisting the Secretary in making such recovery. Any contract under this subsection entered into by the Secretary shall provide that attempts to make recovery on such loans shall be fair and reasonable, and do not involve harassment, intimidation, false or misleading representations, or unnecessary communications concerning the existence of any such loan to persons other than the student borrower.

(c) Forbearance not precluded

Nothing in this section or in this part shall be construed to preclude any forbearance for the benefit of the student borrower which may be agreed upon by the parties to the insured loan and approved by the Secretary, or to preclude forbearance by the Secretary in the enforcement of the insured obligation after payment on that insurance. Any forbearance which is approved by the Secretary under this subsection with respect to the repayment of a loan, including a forbearance during default, shall not be considered as indicating that a holder of a federally insured loan has failed to exercise reasonable care and due diligence in the collection of the loan.

(d) Care and diligence required of holders

Nothing in this section or in this part shall be construed to excuse the holder of a federally insured loan from exercising reasonable care and diligence in the making and collection of loans under the
provisions of this part. If the Secretary, after a reasonable notice and opportunity for hearing to an eligible lender, finds that it has substantially failed to exercise such care and diligence or to make the reports and statements required under section 1078 (a)(4) of this title and section 1079 (a)(3) of this title, or to pay the required Federal loan insurance premiums, the Secretary shall disqualify that lender for further Federal insurance on loans granted pursuant to this part until the Secretary is satisfied that its failure has ceased and finds that there is reasonable assurance that the lender will in the future exercise necessary care and diligence or comply with such requirements, as the case may be.

(e) Default rate of lenders, holders, and guaranty agencies

(1) In general

The Secretary shall annually publish a list indicating the cohort default rate (determined in accordance with section 1085 (m) of this title) for each originating lender, subsequent holder, and guaranty agency participating in the program assisted under this part and an average cohort default rate for all institutions of higher education within each State.

(2) Regulations

The Secretary shall prescribe regulations designed to prevent an institution from evading the application to that institution of a cohort default rate through the use of such measures as branching, consolidation, change of ownership or control, or any similar device.

(3) Rate establishment and correction

The Secretary shall establish a cohort default rate for lenders, holders, and guaranty agencies (determined consistent with section 1085 (m) of this title), except that the rate for lenders, holders, and guaranty agencies shall not reflect any loans issued in accordance with section 1078 (j) of this title. The Secretary shall allow institutions, lenders, holders, and guaranty agencies the opportunity to correct such cohort default rate information.


Prior Provisions


Amendments

1998—Subsec. (a). Pub. L. 105–244 inserted “the institution was contacted and other” after “submit proof that” in third sentence.


Effective Date of 1998 Amendment


Study of Fraud-Based Defenses