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ABSTRACT The text is given of the amendments to part 177 of
 Title 45 of the Code of Federal Regulations, concerning the federal
 Guaranteed Student Loan program. Subpart A concerns the program's
 purpose and scope. Subpart B concerns general provisions:
 definitions, eligibility, permissible charges, refunds, and
 prohibited transactions. Subpart C addresss federal payments of
 interest and special allowance. Subpart D deals with guarantee agency
 programs: agreements; death, disability, and bankruptcy payments;
 federal advances for reserve fund and others; federal reinsurance;
 cost allowances; and records and inspection requirements. Subpart E
 concerns the federal Insured Student Loan Program (FISLP):
 circumstances and extent of insurance; issuance; limitations;
 premiums; repayment; deferment; diligence and forbearance; death,
 disability, and bankruptcy; cessation of lender collection; claims
 procedures and specifications; and reporting and inspection
 requirements. In Subpart F, requirements, standards, and payments for
 participating schools are outlined. Subpart G reviews limitation,
 suspension, or termination of lender eligibility under the Federal
 Insured Student Loan Program. (MSF)

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Regulations GUARANTEED STUDENT LOAN PROGRAM

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HE 012 381

Part 177 of Title 45 of the Code of Federal Regulations is amended to read as follows:

PART 177—GUARANTEED STUDENT LOAN PROGRAM

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Authority: Title IV, Part B, of the Higher Education Act of 1965, as amended (20 U.S.C. 1071-1087-4), unless otherwise noted.

Subpart A—Purpose and Scope

§ 177.100 The Guaranteed Student Loan Program

(a) The Guaranteed Student Loan Program (GSLP) makes low interest loans available to students to pay for their costs of attending postsecondary schools. Lenders loan their own funds, and the Federal Government or a guarantee agency insures against loss. The program has two parts: guarantee agency programs and the Federal Insured Student Loan Program (FISLP).

(1) State agencies or private nonprofit agencies guarantee loans and are reimbursed by the Commissioner for part or all of the insurance claims they pay to lenders. Guarantee agency programs must meet certain Federal requirements, but there may be

considerable variation among programs in such areas as loan maximums and student eligibility.

(2) The FISLP operates in States not served by guarantee agencies and in certain prescribed circumstances in which a guarantee agency program does not serve all eligible students in a State. The Commissioner directly insures lenders against losses on FISLP loans.

(b) *Participation in the GSLP.* (1) Banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State agencies may be lenders. The Student Loan Marketing Association and some State agencies purchase and hold loans and function as secondary markets.

(2) Most colleges, universities, and graduate and professional schools and many vocational, technical, and correspondence schools are eligible to participate as educational institutions.

(3) Students who meet certain requirements, including enrollment at a participating school, may borrow. Information for students about the GSLP is available on request from the U.S. Office of Education.

(4) All lenders, schools, and students must meet certain requirements in order to participate in the GSLP. These regulations contain all the eligibility requirements for the FISLP and Federal eligibility requirements for participation in guarantee agency programs. Each guarantee agency may establish additional requirements within these Federal limits.

(c) *Repayment.* The student who borrows under the GSLP is obligated to repay the lender the full amount borrowed, plus interest. Generally the Commissioner pays the interest while the student is in school and during certain other periods. The student pays the interest during the time he or she is repaying the loan. When a student leaves school or is enrolled less than half-time, a grace period begins. After the grace period, which may last from 9 to 12 months, the student generally begins repayment. In some cases repayment may be deferred for a time, but the student still is responsible for repaying the entire loan amount plus interest. The student's obligation to repay is cancelled only if the student dies or becomes totally and permanently disabled or if the loan is discharged in bankruptcy.

(d) *Default.* If a student defaults on a loan, the Commissioner or the guarantee agency pays the lender the amount of its loss. The student then owes the debt to the Commissioner or the guarantee agency. The Commissioner or the guarantee agency actively attempts to collect the debt.

(20 U.S.C. 1071 to 1087-4.)

§ 177.101 Guarantee agency programs.

(a) The Commissioner pays Federal interest benefits and special allowance to lenders on guarantee agency program loans. The Commissioner also pays a GSLP borrower's loan obligation if the borrower dies or

becomes totally and permanently disabled or if the loan is discharged in bankruptcy.

(b) The Commissioner pays 80 percent of a guarantee agency's default losses under a reinsurance agreement. If the guarantee agency meets additional requirements, the Commissioner pays up to 100 percent of the agency's default losses, depending on its default experience.

(c) The Commissioner encourages State agencies and private nonprofit agencies to establish adequate loan insurance programs. Federal loan advances are available to help start or strengthen an agency's reserve fund; which backs its loan guarantees. Additional Federal advances are available to help pay insurance claims. Administrative cost allowances are also available to the agencies.

(d) To operate as a guarantee agency under the GSLP and to qualify itself and its lenders for these benefits, an agency's program must meet the requirements under subparts B, C, D, and F.

(20 U.S.C. 1071, 1072, 1078-1, 1082, 1087, 1087-1.)

§ 177.102 Federal Insured Student Loan Program (FISLP).

(a) *Where does the FISLP operate?* The specific conditions under which the FISLP may operate in a State are given in § 177.500. In general, the FISLP is available—

(1) To all lenders in a State if there is no guarantee agency program; and

(2) To specific students and lenders who do not have reasonable access to the guarantee agency program operating in their State.

(b) *Payments to lenders.* Lenders qualify for the payment of Federal interest benefits and special allowance on FISLP loans. The Commissioner pays a borrower's loan obligation if the borrower dies or becomes totally and permanently disabled or if the loan is discharged in bankruptcy. The Commissioner also pays the lender's insurance claim if the borrower defaults.

(c) To qualify for Federal insurance and for interest and special allowance benefits, the lender must meet certain requirements established by law and these regulations.

(20 U.S.C. 1071 to 1087-4.)

§ 177.103 Applicability of subparts of this regulation.

Subpart B contains general provisions that are applicable to all GSLP participants. In addition, guarantee agency programs are subject to subparts C, D, and F, and the FISLP is subject to subparts C, E, F, and G. Schools are specifically addressed in subpart F.

(20 U.S.C. 1071 to 1087-4.)

§ 177.104 Prohibitions against discrimination.

This program is subject to the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on the basis of race, color or national origin*	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4)	45 CFR Part 80
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683)	45 CFR Part 86
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)	45 CFR Part 84
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 et seq.)	45 CFR Part 90
Discrimination in lending	The Equal Credit Opportunity Act, as amended (15 U.S.C. § 1691 et seq.)	12 CFR Part 202

(20 U.S.C. 1221e-3(a)(1))

Subpart B—General Provisions

§ 177.200 General definitions.

Academic year: (a) A period of time, typically eight or nine months, in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters or three quarters at a school using credit hours; or

(b) At least 900 clock hours of training for a program at a school using clock hours; or

(c) Eighteen months for a correspondence program.

Act: Title IV, Part B of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 et seq.).

Anticipated graduation date: The date indicated by the school, at the time the student applies for a GSLP loan, as the date on which he or she will graduate from that school.

Clock hour: A period of time that is the equivalent of—

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

Commercial lender: A commercial bank, savings and loan association, credit union, or mutual savings bank.

Commissioner: The U.S. Commissioner of Education or an official or employee of the Office of Education to whom the Commissioner has delegated authority.

Default: The failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the Commissioner or the pertinent guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for—

(a) 120 days for a loan repayable in monthly installments; or

(b) 180 days for a loan repayable in less frequent installments.

Disbursement: The transfer by a lender of funds to a borrower by means of issuing a check or draft payable to the order and requiring the personal endorsement of the borrower.

Due diligence: The utilization by a lender, in the making, servicing and collection of GSLP loans, of practices at least as extensive and forceful as those generally practiced by financial institutions for consumer loans. The procedures for establishing due diligence under the FISLP are described in §§ 177.509, 177.510, and 177.511. The procedures for establishing due diligence under a guarantee agency program are set forth by the guarantee agency.

Enrolled: The status of a student who—

(a) Has completed the registration requirements at the school he or she is attending and has commenced the attendance period; or

(b) Has been admitted into a correspondence study program and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the school.

Estimated cost of attendance: (a) Except as provided in paragraph (b) of this definition, the tuition and fees applicable to a student plus the school's estimate of other expenses reasonably related to attendance at that school, for the period for which the loan is sought. These costs include, but are not limited to, reasonable transportation and commuting costs, and costs for room, board, books, and supplies.

(b) For a student enrolled in a correspondence study program, only the contract price of the program. However, costs described in paragraph (a) of this definition that are incurred by the student for fulfilling a required period of residential training in connection with the correspondence study program may also be included in the estimated cost of attendance.

Estimated financial assistance: For the period for which a loan is sought, the estimated amount of assistance that a school is aware a student has been or will be awarded in Federal, State, or privately supported scholarship, grant, work, or loan programs. The following may not be considered financial assistance:

(a) Veterans' benefits.

(b) Students' benefits under Social Security.

(c) Resources or financial support from the student or the student's family.

Full-time student: (a) A student enrolled in an institution of higher education (other than a correspondence school) who is carrying a full-time academic workload as determined by the school, under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work experience, research, or special studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(b) A student enrolled in a vocational school (other than a correspondence school) who is carrying a workload of not less than 24 clock hours per week or 12 semester or quarter hours of instruction, or its equivalent.

Grace period: (a) A 9- to 12-month period before the borrower enters the repayment period. Unless a student is enrolled in a correspondence study program, the grace period begins on the day the student ceases

to be at least a half-time student at a participating school. The length of the grace period is determined by the lender for loans made under the FISLP and by the pertinent guarantee agency for loans insured under a guarantee agency program. The grace period for a student enrolled in a correspondence study program begins on the date specified in § 177.401(b)(8)(ii) or § 177.507(a)(2).

(b) If a borrower returns to or enrolls at a participating school on at least a half-time basis, except as limited by §§ 177.401(b)(8)(ii) or 177.507(a)(2), prior to the expiration of the grace period, the full grace period begins again when he or she again ceases to be at least a half-time student at a participating school.

Graduate or professional student: A student who—

(a) Is pursuing a program, or has a bachelor's degree and is enrolled in courses which are normally part of a program, leading to a graduate or professional degree or certificate at an institution of higher education; and

(b) Has successfully completed the equivalent of at least 3 years of full-time study at an institution of higher education either prior to entrance into the program or as part of the program itself.

Guarantee agency: A State or private nonprofit agency that administers a student loan insurance program.

Half-time student: An enrolled student who is carrying a half-time academic workload as determined by the school, and that amounts to at least one half the workload of a full-time student. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

Holder: An eligible lender in possession of a GSLP loan.

Institution of higher education: The requirements that a school must meet to satisfy the statutory definition of this term are set out in § 435(b) of the Act. The term includes public and private nonprofit degree granting institutions.

Lender: A lender, including a subsequent holder, that is—

(a) A National or State chartered bank, a mutual savings bank, a savings and loan association, or a credit union that—

(1) Is subject to examination and supervision in its capacity as a lender by an agency of the United States or of the State in which its principal place of operation is established; and

(2) Does not make or hold loans to students under the GSLP that total more than one-half of its consumer credit loan dollar volume, including home mortgages, unless it is a bank that is wholly owned by a State; or

(b) A pension fund as defined in the Employees Retirement Income Security Act; or

(c) An insurance company that is subject to examination and supervision by an agency of the United States or a State; or

(d) In any State, a single agency of the State or single private nonprofit agency designated by the State; or

(e) For purposes only of purchasing and holding loans made by other lenders under this program, the

Student Loan Marketing Association or an agency of any State functioning as a secondary market; or

(f) A participating school that—

(1) Is not a correspondence school. An eligible school that offers both correspondence study and non-correspondence study programs may be an eligible lender only for students enrolled in the non-correspondence study programs; and

(2) Employs at least one full-time financial aid administrator.

National of the United States: (a) A citizen of the United States.

(b) A person who, though not a citizen of the United States, owes permanent allegiance to the United States.

Nonprofit institution: A school, agency, organization or institution owned and operated by one or more nonprofit corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Origination: A special relationship between a school and a lender, in which the lender delegates to the school substantial functions or responsibilities normally performed by lenders before making loans. In this situation, the school is considered to have "originated" a loan made by the lender. The Commissioner determines that "origination" exists if—

(a) A school determines who will receive a loan and the amount of the loan; or

(b) The lender has the school verify the identity of the borrower or complete forms normally completed by the lender.

Participating school: A school that has entered into an agreement with the Commissioner under § 177.600 to participate in the GSLP.

School: (a) An educational institution that is—

(1) An institution of higher education or a vocational school; or

(2) With respect to students who are nationals of the United States, a school outside the States that is comparable to an institution of higher education or to a vocational school and that has been approved by the Commissioner for purposes of the GSLP.

(b) The term includes only those individual units or programs within a school that have been determined by the Commissioner to meet all the requirements for school eligibility.

(c) A school that employs or uses commissioned salespersons to promote the availability of the GSLP is not eligible to participate in the GSLP. For this purpose—

(1) A "commissioned salesperson" is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student enrollments, or student acceptances for enrollment; and

(2) "Promote the availability" means provide prospective or enrolled students with application forms, names of eligible lenders, or other information designed to encourage persons to finance their education with a GSLP loan. This term does not include providing general financial aid information to prospective or enrolled students.

School lender: Any participating school that has been approved as a lender and has entered into a contract of insurance under the FISLP or a guarantee agency program.

State: The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands and the government of the Northern Mariana Islands.

State lender: In any State, a State agency or a single, private nonprofit agency designated by the State that has been approved as a lender and has entered into a contract of insurance under the FISLP or a guarantee agency program.

Totally and permanently disabled: Unable to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death.

Vocational school: (a) A business or trade school, or technical institution, or other technical or vocational school that—

(1) Is in a State;

(2) Admits as a regular student only a person who—

(i) Has completed or left elementary or secondary school; and

(ii) Has demonstrated the ability to benefit from the training offered by the school under the provisions of § 177.603;

(3) Is legally authorized in each State in which it is physically located to provide, and provides within that State, a program of postsecondary vocational or technical education that—

(i) Is designed to provide occupational skills more advanced than those generally offered at the high school level and to fit individuals for useful employment in recognized occupations; and

(ii) Provides no less than 300 clock hours of classroom instruction or its equivalent, or in the case of a program offered by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion in not less than 6 months; and

(iii) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration;

(4) Has been in existence for 2 years or has been specially determined by the Commissioner to be a school meeting the other requirements of this paragraph and to be eligible to participate in the GSLP; and

(5)(i) Is accredited by a nationally recognized accrediting agency or association recognized by the Commissioner for this purpose; or

(ii) In the case of a public institution offering postsecondary vocational education, is approved by a State approval agency recognized by the Commissioner for this purpose; or

(iii) If the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit the type of school applying for eligibility, is approved by a State

approval agency recognized by the Commissioner for this purpose; or

(iv) If the Commissioner determines that there is no nationally recognized accrediting agency or association or State approval agency qualified to accredit or approve the type of school applying for eligibility, is approved by the Commissioner's Advisory Committee on Accreditation and Institutional Eligibility, in accordance with the standards of content, scope, and quality that the Committee prescribes for that purpose. A school that has been approved by the Committee must, in order to remain an eligible school, become accredited within 3 years after the Commissioner has designated a nationally recognized accrediting or State approval agency for the type of school applying for eligibility.

(b) For the purpose of this definition, the Commissioner publishes a list of nationally recognized accrediting agencies or associations and State approval agencies that the Commissioner has determined to be reliable authority as to the quality of education or training offered.

(20 U.S.C. 1071-1087-4; 1088; 1088a; 1088f.)

§ 177.201 Eligible student.

(a) A student is eligible to receive a GSLP loan if the student—

(1) Is enrolled or accepted for enrollment in a participating school as at least a half-time student;

(i) If currently enrolled, the student must be in good standing and maintaining satisfactory progress as determined by the school;

(ii) If enrolled or accepted for enrollment in a vocational school, the student must be attending neither elementary nor secondary school and have shown ability to benefit from the training offered as required under § 177.603;

(iii) If enrolled or accepted for enrollment in a school outside the United States, the student must be a National of the United States; and

(2) Meets one of the following qualifications:

(i) Is a National of the United States.

(ii) Is a permanent resident of the United States.

(iii) Is in the United States for other than a temporary purpose and can provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident.

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands; and

(3) If enrolled in a flight school program at a vocational school or an institution of higher education,

(i) Plans to pursue or is pursuing a full-time program leading to commercial flight ratings;

(ii) Has completed ground school training or is taking it concurrently with flight training;

(iii) Holds a private pilot's certificate or has sufficient flight hours to qualify for such certificate; and

(iv) Holds at least a Class-II medical certificate; and

(4) Except as provided in paragraph (c), is not in default on any National Defense or Direct Student

Loan made by the school in which the student is enrolled or is accepted for enrollment; and

(5) Except as provided in paragraph (c), is not in default on any GSLP loan received for attendance at that school; and

(6) Except as provided in paragraph (d), does not owe a refund on a Basic Grant, a Supplemental Grant, or a State Student Incentive Grant received for attendance at the school in which the student is enrolled or is accepted for enrollment.

(b) In determining whether a student is in default on a Guaranteed Student Loan, a school may rely on the student's written statement that he or she is not in default, unless the school has information to the contrary.

(c) A student who is in default on either a National Defense or Direct Student Loan or a Guaranteed Student Loan which was received for attendance at the same school may receive a Guaranteed Student Loan only under the following conditions:

(1) *Guaranteed Student Loan.* A student who is in default on a Guaranteed Student Loan may be eligible for a Guaranteed Student Loan if the Commissioner or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense or Direct Student Loan.* A student who is in default on a National Defense or Direct Student Loan may be eligible for a Guaranteed Student Loan if the student has made arrangements, satisfactory to the school, to repay the loan.

(3) The Commissioner considers a National Defense or Direct Student Loan or Guaranteed Student Loan that is discharged in bankruptcy to be in default for purposes of this section.

(d) A student who receives overpayment on a grant may receive a Guaranteed Student Loan under the following conditions:

(1) *Overpayment of a Basic Grant.* If the student is overpaid on a Basic Grant, that student may still be eligible for a Guaranteed Student Loan if—

(i) The student is otherwise eligible; and
(ii) The overpayment can be eliminated in the award period in which it occurred by adjusting the subsequent Basic Grant payments for that award period.

(2) *Overpayment of a Basic Grant due to school error.* If the student is overpaid as a result of school error, and the overpayment cannot be eliminated by adjusting subsequent Basic Grant payments in the award year, that student may still be considered eligible for a Guaranteed Student Loan if—
(i) The student is otherwise eligible; and
(ii) The student acknowledges in writing the amount of the Basic Grant overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment on a Supplemental Grant.* If the student is overpaid on a Supplemental Grant, that student may still be considered eligible for a Guaranteed Student Loan if—

(i) The student is otherwise eligible; and

(ii) An adjustment in subsequent financial aid payments (other than Basic Grants) eliminates the overpayment in the same award year in which it occurred.

(e) For purposes of this part—

(1) "Overpayment of a grant" means that a student received payment of a grant greater than the amount he or she was entitled to receive;

(2) "Basic Educational Opportunity Grant" means a grant authorized under Title IV-A-1 of the Higher Education Act of 1965;

(3) "National Defense Student Loan" means a loan made under Title II of the National Defense Education Act;

(4) "National Direct Student Loan" means a loan made under Title IV-E of the Higher Education Act of 1965;

(5) "State Student Incentive Grant" means a grant authorized under Title IV-A-3 of the Higher Education Act of 1965; and

(6) "Supplemental Grant" means a grant authorized under Title IV-A-2 of the Higher Education Act of 1965.

(20 U.S.C. 1077, 1078, 1085, 1088f.)

§ 177.202 Permissible charges to students.

(a) *Interest.*—(1) *Rate.* Exclusive of any insurance premium, the maximum rate of interest per year that may be charged a student on the unpaid principal balance of any GSLP loan may not exceed 7 percent. The unpaid principal balance of a loan may include capitalized interest under circumstances described in paragraph (a)(3) of this section.

(2) *Method of calculation.* The lender shall calculate the interest from the date of disbursement of funds to the borrower. In calculating the interest, the lender may use either of the following methods:

(i) The "Approximate Time-Ordinary Interest" method; or

(ii) The "Exact Time-Exact Interest" method. Use of the "Banker's Rule" ("Exact Time-Ordinary Interest") is prohibited because this method results in an actual rate in excess of the allowable maximum rate of interest.

(3) *Capitalizing interest.*—(i) *General.* (A) "Capitalization" means increasing the unpaid principal of a loan through the addition of accrued interest to the previously unpaid principal balance. This paragraph defines those conditions under which capitalization on a FISLP loan is authorized, for purposes of the special allowance, Federal interest benefits, and a borrower's liability to a lender, and thus the amount of the lender's loss on an insurance claim.

(B) *Guarantee agency programs.* For loans insured under guarantee agency programs, a lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance as authorized by guarantee agency policy.

(ii) *Instances in which interest on a FISLP loan may be capitalized.* "Capitalization" may take place in the following instances:

(A) If interest has accrued during the in-school or grace periods for a nonsubsidized loan and capitalization is authorized by promissory note.

(B) If interest has accrued during a period of authorized deferment for a nonsubsidized loan.

(C) If interest has accrued during a period of forbearance for a loan.

(D) If interest has accrued during the period from the date the first repayment installment was required until it was made. In cases (A)-(C) a lender may add the accrued interest to the principal only on the date repayment of principal is required to begin or resume. In case (D) a lender may add the accrued interest to the principal only on the date repayment of principal actually begins.

(4) *Payment.* (i) *For subsidized loans.* A borrower is not liable for any portion of the interest on a loan that is payable by the Commissioner. The lender may not collect or attempt to collect that portion of the interest from the borrower.

(ii) *For nonsubsidized loans.* Interest is normally payable by the borrower in installments over the life of the loan. However, a lender may permit a borrower to postpone payment of interest at certain times as described in paragraph (a)(3)(ii) of this section or under a guarantee agency's policy. This accrued interest may either be paid when payment of principal begins or resumes or may be capitalized.

(b) *Insurance premium.* (1) The term "insurance premium" covers those charges made by the guarantee agency or the Commissioner to the lender to insure the lender of a GSLP loan against losses it may suffer if the borrower defaults or is adjudicated a bankrupt on his or her loan. The insurance premium may also be used by the guarantee agency or the Commissioner to cover costs incurred in the administration of the applicable loan insurance program. Premiums may not be retained by the lender to cover the costs of making a loan or for any other purpose.

(2) Specific rules on insurance premiums, including the rate that may be charged the lender and passed on to the borrower, the method of calculation, refund requirements, etc., are contained in § 177.401(b)(12), for loans insured under State or private nonprofit loan insurance programs and § 177.506, for FISLP loans.

(c) *Late charges.* To the extent provided in the promissory note and permitted by State law, the lender may require that the borrower pay a late charge if the borrower fails to pay any or all of a required installment payment within 10 days after its due date or fails to provide written evidence that verifies eligibility for authorized deferment of the payment. The late charge may not exceed 5 cents for each dollar of each installment due or \$5 for each installment; whichever is less.

(d) *Collection charges.*—(1) *Permissible charges.* If provided in the note, the lender may also require that the borrower pay the lender for certain reasonable costs incurred by the lender or its agent in collecting any installment not paid when due. These costs may include attorney's fees, court costs, telegrams, and long-distance phone calls.

(2) *Non-permissible charges.* No charges other than those authorized by this section may be passed on to the borrower, either directly or indirectly. Examples of charges that are not permitted are as follows:

(i) Normal collection costs associated with preparing letters or notices or making personal contacts or local telephone calls.

(ii) Fees charged by a servicing or collection agency, to the extent they exceed permissible charges.

(iii) Loan origination fees.

(20 U.S.C. 1077, 1078, 1079, 1082, 1087-1.)

§ 177.203 Affidavit.

(a) No loan may be insured under this program unless the student has filed with the lender an affidavit. The student must state on the affidavit that the loan money will be used solely for costs of attendance at the school that student is or will be attending. The affidavit must—

(1) Be on a form provided or approved by the Commissioner;

(2) Be signed in the presence of a notary or other person who is legally authorized to administer oaths or affirmations and who does not take part in recruiting students for enrollment at the school that the student intends to attend or is attending;

(3) Contain the signature of the notary or other person and, as applicable, a seal or stamp.

(b) The student must file the affidavit with the lender. The lender shall retain a copy of the affidavit as required in both the Federal and guarantee agency programs.

(20 U.S.C. 1082, 1088g.)

§ 177.204 Treatment of refunds by lenders.

(a) A lender shall treat a payment of a borrower's refund received from a school as a credit against the amount owed by the borrower on the GSLP loan.

(b) If a lender receives from a school a refund payment on a loan that is no longer held by that lender, the lender shall—

(1) Transmit the amount of the refund payment to the holder to whom it assigned the loan, with an explanation of the payment's source; and

(2) Provide simultaneous written notice to the borrower that a payment has been transferred to the new holder.

(20 U.S.C. 1082.)

§ 177.205 Prohibited transactions.

(a)(1) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(i) Secure funds for making GSLP loans; or

(ii) Induce a lender to make loans to the students of a particular school or to any particular category of students.

(2) The following are examples of transactions which, if entered into for the purposes described in paragraph (a)(1) (i) or (ii) of this section, are prohibited:

(i) Cash payments by or on behalf of a school made to a lender or other party.

(ii) The maintaining of a compensating balance by or on behalf of a school with a lender.

(iii) Payments ostensibly made for other purposes.

(iv) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(v) Payment by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(vi) Purchase by or on behalf of a school of stock of the lender.

(b) Except when purchased by the Student Loan Marketing Association or an agency of any State functioning as a secondary market or in other circumstances approved by the Commissioner, notes, or any interest in notes, shall not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students at a school by a lender having common ownership with that school.

(c) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Commissioner, a school, or a lender with respect to a loan made to a student of a school having common ownership with the lender, may not pledge a loan made under the GSLP as security for any loan bearing aggregate interest and other charges in excess of the sum of 7 percent plus the rate of the then most recently prescribed special allowance under § 177.301.

(d) The prohibitions described in paragraphs (a), (b), and (c) of this section apply to any school or lender which would be a party to the proscribed transactions.

(e) The performance by a school of substantial functions or responsibilities normally performed by a lender which results in the school "originating" loans made by the lender is not a prohibited transaction.

(f) *Warranty.* (1) Nothing in this section shall preclude a buyer of loans made by a school from obtaining a warranty from the seller of those loans.

(2) The warranty may cover future reductions by the Commissioner or a guarantee agency in computing the amount of insurable loss, if any, on default claims filed on the loans where the reductions are attributable to an act or failure to act of the seller or previous holder.

(3) The warranty shall not cover matters for which a purchaser is charged with responsibility under this Part, such as due diligence in collecting loans.

(g) Section 440(d) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a loan insured under the GSLP shall, upon conviction thereof, be fined not more than \$1,000 or imprisoned not more than one year, or both.

(20 U.S.C. 1082.)

Subpart C—Federal Payments of Interest and Special Allowance

§ 177.300 Payment of interest benefits.

(a) *General.* The Commissioner pays to a GSLP lender a portion of the interest on a loan on behalf of an otherwise-eligible borrower. This payment is known as interest benefits.

(b) *Borrower eligibility.* (1) To qualify for interest benefits the borrower shall submit an application to the lender containing a statement from the borrower's school that certifies—

(i) The borrower's estimated cost of attendance; and

(ii) The borrower's estimated financial assistance.

(2) For the GSLP borrower whose loan was disbursed prior to November 1, 1978, eligibility for interest benefits was established by the law in force at the time the loan was disbursed.

(c) *Lender's report.* To receive payment of interest benefits, a lender shall submit periodic reports to the Commissioner. These reports must be in a form prescribed by the Commissioner. Based on these reports, the Commissioner determines the amount of interest benefits to pay the lender.

(d) *What interest may be paid?* Payment of interest benefits on a loan is limited to—

(1) The interest on the unpaid principal that accrues prior to the beginning of the repayment period for the loan. The repayment period for a GSLP loan begins on the day after the last day of the grace period, whether or not that date is scheduled by the mutual agreement of the lender and the borrower and whether or not repayment actually begins at that time;

(2) The interest that accrues on the unpaid principal during any period in which the borrower has an authorized deferment; and

(3) For loans made or for which a binding commitment was made prior to December 15, 1968, an amount equivalent to 3 percent per year on the unpaid principal amount during the repayment period (excluding any deferment period).

(e) *What interest cannot be paid?* Payment of interest benefits cannot include—

(1) Any interest on interest added to principal, except in cases in which interest may be capitalized as provided for in § 177.202(a);

(2) Any interest for which the borrower is not otherwise liable; or

(3) Any interest that is paid on behalf of the borrower by a guarantee agency.

(f)(1) *Termination of interest benefits.* The Commissioner's obligation to pay interest benefits on a loan generally terminates upon either—

(i) Determination of the borrower's death;

(ii) Determination of the borrower's total and permanent disability;

(iii) Adjudication of the borrower as a bankrupt; or

(iv) Default by the borrower.

(2) If the borrower dies or becomes totally and permanently disabled prior to the beginning of the repayment period, the Commissioner's obligation to pay interest benefits on the loan terminates not later

than 120 days following the lender's receipt of a request for a death or disability cancellation.

(20 U.S.C. 1078, 1082.)

§ 177.301 Special allowance payments to lenders.

(a) *General.* The Commissioner pays a special allowance to lenders on all GSLP loans. The special allowance is equal to a percentage of the average unpaid balance of principal, including capitalized interest, for all GSLP loans a lender has held during a 3-month period. The 3-month periods end (1) March 31; (2) June 30; (3) September 30; and (4) December 31 of each year.

(b) *Lender's reports.* To receive the special allowance payment, a lender shall submit periodic reports to the Commissioner stating the average unpaid balance of principal for all its GSLP loans. These reports must be in a form prescribed by the Commissioner.

(c) *How will the rate of special allowance be determined?*

(1) The percentage rate for the special allowance for a 3-month period is determined by—

(i) Subtracting 3.5 percent from the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the 3-month period;

(ii) Rounding the resulting percent upward to the nearest one-eighth of one percent; and

(iii) Dividing the resulting percent by 4.

(2) After the close of each 3-month period, the Commissioner announces the rate of the special allowance for that period.

(d) *How does the lender determine the average unpaid balance of principal?* (1) There are two methods a lender may use to determine the average unpaid balance of principal for purposes of the special allowance:

(i) *The average quarterly balance method.* Add the unpaid balance of principal of all loans outstanding on the first day of the 3-month period and the unpaid balance of principal of all loans outstanding on the last day of the period and divide by 2.

(ii) *The average daily balance method.* Add the unpaid balance of principal of all loans outstanding on each day of the 3-month period and divide by the number of days in that period.

(2) The lender may not change its method of determining the average unpaid balance of principal without the prior approval of the Commissioner.

(3) For the purpose of this determination, a loan is considered outstanding if—

(i) The borrower has not repaid the loan;

(ii) The lender has not received payment on a claim for loss on the loan; and

(iii) The lender has not been advised that the Commissioner or a guarantee agency has finally refused a claim for loss on the loan.

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

§ 177.302 Payment of interest benefits and special allowance to a lender that makes multiple installment loans.

(a) *General.* The Commissioner pays a lender that meets special criteria interest benefits and special allowance on the entire approved amount of a GSLP loan, even though only a portion of the loan has actually been paid to a borrower. For purposes of this payment, the interest benefits and special allowance begin to accrue on the date of disbursement of the first installment of the loan.

(b) *Which lenders are eligible for these payments?*

(1) A lender is eligible to receive the special interest and special allowance on a multiple installment loan if the lender—

(i) Is not a school or State agency;

(ii) Has made a binding commitment to make the entire amount of the loan; and

(iii) Is approved to receive these payments by the Commissioner.

(2) To be approved by the Commissioner, the lender must—

(i) Submit an application on a form provided or approved by the Commissioner;

(ii) Agree to disburse the loan in installments as prescribed in paragraph (c);

(iii) Have been making GSLP loans for at least six months;

(iv) Not have had its lending status limited, suspended, or terminated by the Commissioner or a guarantee agency during the three-year period prior to the date of its application; and

(v) Have made, or expect to make within a 12-month period, GSLP loans qualifying for interest benefits amounting to at least one-fourth of one percent of its total assets or \$100,000, whichever is less. The 12-month period must include the date on which the lender makes application for approval.

(3) If the Commissioner determines that a lender that is making multiple installment loans under this section is not properly administering the disbursement of the loans, the Commissioner withdraws his or her approval for the lender to receive the special payments of interest benefits and special allowance.

(c) *Multiple installment disbursement procedures.* A lender shall disburse multiple installment loans in accordance with the following requirements:

(1) Disbursement must be in two or more installments.

(2) No installment can exceed one-half of the loan.

(3) The interval between the first and second installment must be at least one-third of the enrollment period for which the loan is made. However, if the lender determines that the student needs the second installment sooner for the cost of attendance, the lender may disburse the second installment sooner. The lender must document in its records the reason for making an earlier disbursement. For purposes of this paragraph, the period of enrollment may not exceed 12 months.

(d) *Termination of special payments.* The Commissioner's obligation to pay interest benefits and special allowance on the undisbursed portion of a

multiple installment loan terminates on the date the lender determines that the borrower—

(1) Is no longer enrolled at least half-time at a participating school; or

(2) No longer desires undisbursed loan funds.

(20 U.S.C. 1078, 1082.)

§ 177.303 Penalty interest payments to lenders.

(a) *General.* If the Commissioner has not authorized the United States Department of the Treasury to pay either interest benefits or special allowance within 30 days after receipt of an accurate, timely and complete request for payment from any lender, the Commissioner pays that lender an increased payment known as penalty interest.

(b) *How is the amount of penalty interest determined?*

(1) Penalty interest is the daily interest that accrues on the special allowance and interest benefit payments otherwise due to the lender. The daily interest is computed at—

(i) The daily rate of 7 percent; plus

(ii) The annual rate of the special allowance for the 3-month period for which the interest benefits and special allowance are being paid.

(2) The Commissioner pays penalty interest for—

(i) The 31st day after receipt of the request for payment, or the 31st day after the final day of the period (or periods) covered by the request, whichever is later; and

(ii) Each succeeding day until the Commissioner authorizes payment. The day on which payment is authorized is also counted.

(20 U.S.C. 1087-1.)

Subpart D—Guarantee Agency Programs

§ 177.400 Agreements between a guarantee agency and the Commissioner.

(a) The Commissioner enters into agreements with a guarantee agency, enabling the agency to participate in the GSLP, if the Commissioner determines that the guarantee agency program meets the requirements of this subpart. Separate agreements, based on various requirements, are necessary for the agency to receive some or all of the benefits available to it.

(b) *Types of agreements.* There are six agreements. Specific requirements for each agreement, and additional requirements for receiving some benefits, are described in this subpart.

(1) *Basic agreement.* A guarantee agency must have a basic agreement to participate in the GSLP in any way. Under this agreement—

(i) Borrowers whose loans are insured may qualify for Federal interest benefits that are paid to the lender on the borrower's behalf;

(ii) Lenders may receive special allowance and penalty interest payments and, through the guarantee agency, death, disability, and bankruptcy claim payments;

(iii) The guarantee agency may apply for the primary administrative cost allowance, and for the agreements listed below.

(2) *Federal advances for reserve fund agreement.* A guarantee agency must have this agreement to receive Federal advances to help establish or strengthen the reserve fund that backs the agency's loan guarantees.

(3) *Additional Federal advances for claim payments agreement.* A guarantee agency must have this agreement to receive Federal advances to pay insurance claims.

(4) *Reinsurance agreement.* A guarantee agency must have a reinsurance agreement to receive reimbursement of 80 percent of its losses on default claims.

(5) *Supplemental reinsurance agreement.* A guarantee agency, with this agreement, receives reimbursement of up to 100 percent of its losses on default claims.

(6) *Secondary administrative cost allowance agreement.* A guarantee agency establishes this agreement by applying for and receiving the secondary administrative cost allowance.

(c) *Failure to comply with agreements.* If the Commissioner finds that a guarantee agency has made incomplete or incorrect statements in connection with an agreement, or has failed to comply with an agreement or with applicable Federal law or regulations, the Commissioner takes actions necessary to protect the interests of the United States. These actions may include—

(1) Withholding payments to the guarantee agency;

(2) Requiring reimbursement of payments; or

(3) Suspending or terminating an agreement.

(d) *Remedial actions.* (1)(i) The Commissioner or the guarantee agency may terminate any agreement upon 60 days written notice.

(ii) The Commissioner terminates an agreement only under circumstances described in paragraph (c) of this section.

(iii) Termination does not affect obligations incurred under the agreement before the effective date of the termination.

(2) The Commissioner's suspension or termination of an agreement, requirement of reimbursement, or withholding of payments is not final until the guarantee agency has been given reasonable notice of the intended action and an opportunity for a hearing. The Commissioner withholds payments or suspends an agreement prior to giving notice and opportunity for a hearing only if the Commissioner finds this emergency action necessary to prevent substantial harm to Federal interests.

(e) The Commissioner's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(f) All the agreements are subject to subsequent changes in the GSLP law or regulations.

(20 U.S.C. 1072, 1078, 1078-1, 1082, 1087, 1087-1.)

§ 177.401 Basic agreement.

(a) *General.* (1) The basic agreement is required for all participation by a guarantee agency in the GSLP. In this agreement, the guarantee agency assures the Commissioner that its program meets the requirements of paragraph (b) of this section and agrees to maintain

the administrative and fiscal standards of paragraph (c) of this section.

(2) The basic agreement shall contain other provisions, and be supported by any material, required by the Commissioner.

(b) *Program requirements.* The guarantee agency shall ensure, through its policies and the requirements that it imposes on participating lenders, schools, and students, that its program meets the requirements of this paragraph.

(1) *Aggregate loan limits.* The aggregate insured unpaid principal amount for all GSLP loans made to a student may not exceed—

(i) \$7,500 to an undergraduate student; or

(ii) \$15,000 to a graduate or professional student, including loans made to that student for undergraduate study.

(2) *Annual amounts.* (i) The maximum loan amount authorized for any one academic year must be at least \$1,000, but not more than \$2,500 to an undergraduate student and \$5,000 to a graduate or professional student. Exceptions to this rule for certain loans are contained in paragraph (b)(3) of this section.

(ii) If the program insures loans to half-time students, its loan maximum must be at least \$500 for a half-time student in any academic year.

(iii) A guarantee agency does not violate paragraphs (b)(2) (i) or (ii) of this section if it makes the maximum loan amounts listed in those paragraphs applicable to either of the following periods:

(A) A period that does not exceed 12 months; or

(B) A period in which the borrower earns the credits required by the borrower's school to advance in academic standing, as normally measured on an academic year basis (for example, from freshman to sophomore).

(iv) In no case may the amount of a loan exceed the student's estimated cost of attendance less estimated financial assistance.

(3) *Special rules for a loan made by a State lender or a loan made or originated by a school.* The maximum loan amount shall be further limited to—

(i) The lesser of \$2,500 or half the estimated cost of attendance, for a loan made by a State lender or made or originated by a school to a student who—

(A) Is enrolled in the first academic year of undergraduate study; and

(B) Was not previously enrolled in an undergraduate program; and

(ii) \$1,500 for a loan made or originated by a school to a student who is enrolled in the first academic year of undergraduate study and was not previously enrolled in an undergraduate program, unless the loan is to be disbursed in two or more installments. None of the installments may exceed one-half of the loan, and the interval between the first and second installments must be at least one-third of the academic period for which the loan is intended. However, a loan that is to be made for a single academic period of less than 5 months is not subject to these requirements. For purposes of this subparagraph, all loans made within a period of 90 days will be considered a single loan.

(4) *Student eligibility.* (i) A student in any year of study at a participating school shall be eligible for a loan.

(ii) Loans must be available to any student for at least 6 academic years of study or the equivalent.

(5) *Student responsibilities.* (i) The student shall promptly notify the lender of any change of address.

(ii) The student shall give the lender, as part of the loan application process—

(A) An affidavit, described in § 177.203, that the loan will be used for the cost of attendance;

(B) Information from the student that provides a basis for determining that the student qualifies as an eligible student;

(C) Information from the school that provides a basis for determining that the student qualifies as an eligible student; and

(D) Information concerning the student's outstanding GSLP loans.

(6) *Disbursement requirements.* (i) The lender shall disburse the loan funds by means of a check payable to the borrower or—if authorized by the borrower in writing, jointly to the borrower and the school that he or she is to attend. The check must require the personal endorsement of the borrower. For this purpose, a check is a draft drawn on a bank and payable on demand and deposit of the check by the borrower in his or her own account at a bank or other financial institution constitutes endorsement.

(ii) The borrower must personally endorse the check and may not authorize anyone else to endorse it on his or her behalf.

(iii) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a check on behalf of a borrower.

(iv) The lender may not disburse loan funds earlier than is reasonably necessary to meet the borrower's cost of attendance for the period for which the loan is intended.

(7) *School notification requirements.* For each loan insured, as a condition of insurance, the school that certified the borrower's enrollment shall be notified of the insurance, the amount of the loan, and the name of the lender.

This notification may be made either—

(i) By the lender or the guarantee agency informing the school of these facts no later than 30 days after the initial disbursement of the loan; or

(ii) By the lender sending all loan checks to the school for delivery to the borrower, except that this method may not be used if the school is not located in a State.

(8) *Commencement of repayment.* (i) Except for a borrower enrolled in a correspondence course or as provided in paragraph (b)(8)(iii) of this section, the borrower's repayment period begins no earlier than nine months nor later than one year after the date the borrower ceases to be at least—

(A) A full-time student, if the guarantee agency restricts its program to full-time students; or

(B) A half-time student, if the guarantee agency insures loans to part-time students.

(ii) *Exception for a correspondence student.* The repayment period begins not earlier than nine months nor later than one year after whichever of the following occurs first:

(A) The borrower completes the program.

(B) The borrower falls 60 days behind the due date for a scheduled assignment, according to the schedule required in § 177.604. However, the school may permit one restoration to in-school status for a student who falls 60 days behind the due date for a particular assignment if the student establishes in writing a desire to continue in the program and an understanding that the required lessons must be submitted on time.

(C) The expiration of a 60-day period following the latest allowable date established by the school for completing the program in the schedule required under § 177.604.

(iii) A borrower may request and be granted a repayment schedule that begins prior to the end of the established grace period. In this event, a borrower may not further utilize the 9- to 12-month grace period.

(iv) If conditions that justify a deferment of repayment exist at the expiration of the grace period, the deferment period commences at the expiration of the grace period. Regardless of when a deferment period begins, repayment of the loan begins or resumes after the deferment period is over without any additional grace period.

(9) *Length of repayment period.* In general, the lender must allow the borrower at least 5 years but not more than 10 years to repay a loan, calculated from the beginning of the repayment period. The borrower shall, however, fully repay the loan within 15 years after it is made. There are exceptions, however, to these rules:

(i) If the borrower receives a deferment or has been granted forbearance under procedures approved by the guarantee agency, the periods of deferment or forbearance are not counted in the 5-, 10-, and 15-year periods.

(ii) If the minimum annual repayment required in paragraph (b)(9)(v) of this section would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iii) During the grace period, the borrower may request and be granted by the lender a repayment period of less than 5 years. At any time and without the necessity of lender agreement, the borrower may have the total repayment period extended to a minimum of 5 years.

(iv) *Prepayment.* The borrower may prepay the whole or any part of the loan at any time without penalty.

(v) *Minimum annual payment.* During each year of the repayment period, the borrower's payments to all holders of his or her GSLP loans must total at least \$360 or the unpaid balance of all the loans including interest, whichever amount is less. There are, however, exceptions to this rule:

(A) If the borrower and lender agree, the amount paid may be less.

(B) If both the borrower and his or her spouse have GSLP loans, their combined annual payment must

meet this requirement. The provisions of paragraphs (b)(9)(v) (A) and (B) of this section may not result in an extension of the 10- and 15-year repayment period maximums, unless forbearance has been granted under procedures approved by the guarantee agency.

(10) *Deferment.* Once the repayment period begins principal payments are postponed during specified periods and under conditions described in § 177.508.

(11) *Interest.* (i) Exclusive of any insurance premium, the maximum interest on the unpaid principal balance of a loan may not exceed 7 percent. The unpaid principal balance of a loan may include capitalized interest to the extent authorized by the guarantee agency.

(ii) The borrower shall not be liable for any portion of the interest that is payable by the Commissioner, and the lender may not collect or attempt to collect that portion from the borrower.

(12) *Insurance premiums:* (i) The guarantee agency may charge an insurance premium to the lender on each loan. This insurance premium may be used only to insure loans and to cover costs incurred by the guarantee agency in the administration of its loan insurance program. The lender may pass this charge on to the borrower.

(ii) *Rate.* The insurance premium may not exceed one percent per year of the unpaid principal balance of the loan, excluding interest or other charges that may have been added to the principal.

(iii) *Refund requirements.* The length of time for which the premium is charged determines whether a refund must be made.

(A) If the insurance premium is charged for a period extending no longer than 1 year after the borrower's anticipated graduation date, the premium need not be refunded to the borrower even if the borrower graduates or withdraws from school, defaults, dies, becomes totally and permanently disabled, or is adjudicated a bankrupt prior to the anticipated graduation date.

(B) If the insurance premium is charged in advance for a period extending beyond 1 year after the anticipated graduation date, the insurance premium must be refunded to the borrower as required in paragraph (b)(12) (iv) of this section.

(iv) *Computation of refund.* (A) If the borrower graduates or withdraws from school before the anticipated graduation date, the amount of any insurance premium attributable to the repayment period shall be recomputed to take into account the declining principal balance of the loan. Any refund due the borrower as a result of this computation must be treated as prepayment of the insurance premium for later periods, if any premium will be required, or as a repayment of principal.

(B) If a borrower defaults, the amount of any insurance premium attributable to subsequent periods must be credited first to accrued interest and then to the principal balance of the loan.

(C) If the borrower prepays the entire unpaid balance of the loan, the amount of any insurance

premium attributable to subsequent periods of two or more years must be refunded to the borrower.

(13) *Insurance liability.* The guarantee agency must insure at least 80 percent of the unpaid principal balance of each loan insured.

(14) *Guarantee agency administration.* In the case of a State loan insurance program, the program shall be administered by a single State agency, or by one or more private nonprofit institutions or organizations under supervision of a single State agency. For this purpose, "supervision" includes setting policies and procedures for, and having full responsibility for, the operation of the program.

(15) *Loan assignment.* A loan may be assigned only to—

- (i) An eligible lender; or
- (ii) The guarantee agency, in the case of a borrower's default, death, total and permanent disability, or adjudication as a bankrupt.

"Assigned" means any kind of transfer, including transfer as security.

(c) *Administrative and fiscal standards required of the guarantee agency.*—(1) *Establishment of procedures.* To enter into a basic agreement, the guarantee agency shall establish administrative and fiscal procedures that the Commissioner may require to ensure proper administration of the agency's loan insurance program.

(2) *Dissemination of standards and procedures.* The guarantee agency shall establish and disseminate to concerned parties its standards and procedures for—

- (i) School and lender participation in its program;
- (ii) Limitation, suspension, or termination of school and lender participation;
- (iii) Approval of forbearance;
- (iv) Timely filing of default, death, disability, and bankruptcy claims by lenders; and
- (v) Due diligence in making, servicing and collecting loans.

(3) *Due diligence.* The guarantee agency shall ensure that due diligence, including resort to litigation as appropriate, will be exercised by lenders in making, servicing, and collecting loans. The guarantee agency also shall exercise due diligence, including resort to litigation as appropriate, in collecting loans on which default claims have been paid. "Due diligence" is defined in § 177.200.

(20 U.S.C. 1078, 1082; 42 U.S.C. 5055(e).)

§177.402 Death, disability, and bankruptcy payments.

(a) *Loans made prior to December 15, 1968.* If a borrower who received a loan covered by a reinsurance agreement prior to December 15, 1968 dies or becomes totally and permanently disabled, the Commissioner reimburses the agency under the provisions of the reinsurance agreement. The agency is not required to seek to recover the amount of its loss from the borrower or the borrower's estate.

(b) *Loans made after December 14, 1968.* (1) If a borrower who received a loan after December 14, 1968 dies or becomes totally and permanently disabled, the Commissioner cancels the borrower's obligation by paying the lender the amount owed. If a borrower is

adjudicated a bankrupt, the Commissioner pays the amount owed. The Commissioner cancels these loans whether the holder of the loan is a lender or the guarantee agency.

(2) Any further reference in this section to death and disability claims relates only to loans made after December 14, 1968. Reference to bankruptcy claims relates to all loans, whenever they were made.

(c) The procedures in § 177.514 for determining whether a borrower has died, is totally and permanently disabled, or has been adjudicated a bankrupt, and for handling the loans of such borrowers, apply to guarantee agency programs with the following modifications:

(1) The references to the Commissioner in § 177.514(a) and (c)(2) shall be understood to mean the guarantee agency if the loan is held by a lender.

(2) References to the FISLP shall be understood to mean the guarantee agency program.

(3) References to the lender shall be understood to mean the guarantee agency if the loan is held by a guarantee agency.

(d) No death, disability, or bankruptcy claim may be paid if the loan is not considered insurable by the guarantee agency or if a default claim for that loan previously has been disapproved by the guarantee agency.

(e) *Claim procedures for loans held by a lender.* (1) *Claim submission.* (i) The lender shall submit evidence that the borrower has died, become totally and permanently disabled, or been adjudicated a bankrupt to the guarantee agency. The agency shall return to the lender any submission that is not accurate and complete.

(ii) After determining that a claim is valid the guarantee agency may pay the lender the amount authorized by paragraph (e)(2) of this section. The Commissioner periodically reimburses the guarantee agency for these payments:

(2) *Amount of claim payment.* The Commissioner determines the amount of the loss to be paid the lender according to the standards used to determine claim payments under the FISLP. These are found in § 177.517 (a)(2)(ii), (a)(3), and (b), with the following modifications:

(i) References to FISLP insurance shall be understood to mean guarantee agency insurance.

(ii) Paragraph (b)(1)(ii) of § 177.517 shall be understood to mean the period prescribed by the guarantee agency.

(iii) References to the Commissioner shall be understood to mean the guarantee agency in paragraphs (b)(1) (iii) and (iv) of § 177.517.

(f) *Claim procedures for loans held by the guarantee agency.*

(1) The Commissioner pays a death, disability, or bankruptcy claim on a loan held by the guarantee agency after payment of a default claim to the lender only if—

(i) The borrower dies, becomes totally and permanently disabled, or is adjudicated a bankrupt within 15 years of the date the loan was made, exclusive of periods of deferment or periods of

forbearance granted by the lender that extend the 15-year period:

(ii) The guarantee agency has not written off the loan as uncollectible; and

(iii) The guarantee agency exercised due diligence in the collection of the loan until the borrower died, became totally and permanently disabled, or was adjudicated a bankrupt.

(2) *Amount of claim payment.* (i) The Commissioner pays the guarantee agency the amount owed on the loan, including accrued interest. The Commissioner pays interest that accrues for a period of up to 60 days from the date the guarantee agency determines that the borrower is dead, totally and permanently disabled, or adjudicated a bankrupt until the guarantee agency submits the claim to the Commissioner. The amount of the payment is reduced by the amount of any reinsurance claim paid by the Commissioner for the loan, less any subsequent reimbursement to the Commissioner from amounts collected from or on behalf of the borrower.

(ii) If the guarantee agency receives any payments from or on behalf of the borrower on a loan on which the Commissioner paid a bankruptcy claim, the guarantee agency shall submit 100 percent of these payments to the Commissioner.

(3) If a loan that the Commissioner has paid as a bankruptcy claim under this paragraph is not discharged in bankruptcy it will be treated as a default. The guarantee agency shall pay to the Commissioner the difference between the amount received from the Commissioner as a bankruptcy claim and the amount it would have received as a default claim. In determining the difference, the guarantee agency shall take into account any payments made by or on behalf of the borrower that the agency would have retained on a default claim but submitted to the Commissioner under paragraph (f)(2)(ii) of this section.

(20 U.S.C. 1082, 1087.)

§ 177.403 Federal advances for reserve fund.

(a) *General.*—(1) *State guarantee agencies.* The Commissioner may make an advance to a State guarantee agency to help establish or strengthen the reserve fund that backs the agency's loan guarantees.

(2) *Private nonprofit guarantee agencies.* The Commissioner may make an advance to one or more private nonprofit guarantee agencies that operate in a State if, for a fiscal year—

(i) There is no State guarantee agency that has a basic agreement; and

(ii) The Commissioner consults the chief executive officer of the State and finds it unlikely that the State will have a student loan insurance program that year.

(3) The Commissioner may make an advance both to a State guarantee agency and to one or more private nonprofit guarantee agencies if the Commissioner finds that the advances are necessary so that students in each participating school have access to a guarantee agency program.

(b) *Application.* The guarantee agency must apply to the Commissioner in order to receive the advance. The

application must be submitted in the manner and form and contain information that the Commissioner

(c) *Formula for State's allotment.* The amount available for each State is determined according to the formula in section 422(b) (2) and (3) of the Act.

(d) *Method and prerequisites for payment.* (1) The Commissioner advances a smaller amount for a State than the maximum authorized if the Commissioner finds that the maximum amount is not needed. The Commissioner bases this finding on the expected demand for loans in the State and other relevant factors.

(2) To receive an advance the guarantee agency must demonstrate to the Commissioner that, unless the advance is made, the agency will be unable to assure its lenders that it could guarantee all eligible loans that lenders intend to make within the next two years. In evaluating a request for an advance, the Commissioner will consider—

(i) The extent to which the reserve fund is currently committed to back loan guarantees and

(ii) The likelihood that the additional advance will result in greater loan accessibility for eligible students. This demonstration is not required of an agency for the first two years of its operation if the agency first entered into a basic agreement after September 30, 1976 or was not carrying on an active loan insurance program on that date.

(e) *Matching requirement.* The agency must match an advance by the Commissioner with an equal amount from non-Federal sources, which may include the unencumbered non-Federal portion of a reserve fund. The term "unencumbered non-Federal portion" is defined in section 422(a)(2) of the Act.

(f) *Terms and conditions of advance.* The Commissioner makes the advance on terms and conditions specified in an agreement between the Commissioner and the guarantee agency, that includes the following provisions:

(1) The guarantee agency shall maintain a separate account within its reserve fund, to which it shall credit the advance (and required matching funds) plus other sums that are—

(i) Appropriated by a State for loan insurance purposes;

(ii) Received by the guarantee agency as loan insurance premiums;

(iii) Received by the guarantee agency through gift, grant, or other means for loan insurance purposes;

(iv) Collected on defaulted loans, including reinsurance payments by the Commissioner; or

(v) Derived from investment of these funds.

(2) The fund to which advances are credited may be used only to—

(i) Guarantee loans to students covered by the guarantee agency program;

(ii) Pay insurance claims;

(iii) Refund overpayment of insurance premiums; or

(iv) Refund advances or reinsurance payments made by the Commissioner.

However, there is one exception to this rule: Loan insurance premiums and interest or investment

earnings of the fund may also be used for payments necessary for the proper administration of the guarantee agency's program.

(3) Loan insurance premiums may not be used to provide lenders with a greater yield or for making incentive payments to lenders.

(4) The guarantee agency shall invest the fund only in low-risk securities, and shall exercise the judgment and care in this investment that persons of prudence exercise in the permanent disposition of, rather than speculation with, their own funds.

(5) The Commissioner may require the guarantee agency to repay part or all of the advance when the Commissioner finds that the funds advanced are no longer required for the guarantee agency to maintain an adequate reserve. In making this finding, the Commissioner considers—

(i) The maturity and solvency of the reserve fund; and

(ii) The agency's requirements for new loan guarantees, based on its prior experience.

(20 U.S.C. 1072, 1082.)

§ 177.404 Additional Federal advances for claim payments.

(a) *General.*—(1) *State guarantee agencies.* To the extent that funds are appropriated by Congress for this purpose, the Commissioner makes an advance to a State guarantee agency that has a reinsurance agreement. The advance may be used only to pay insurance claims.

(2) *Private nonprofit guarantee agencies.* (i) The Commissioner may make an advance to one or more private nonprofit guarantee agencies in a State in a fiscal year only if the agency has a reinsurance agreement and, for that fiscal year—

(A) The State does not have a guarantee agency program; and

(B) The Commissioner consults the chief executive officer of the State and finds it unlikely that the State will have such a program that year.

(ii) A private nonprofit agency shall—

(A) Agree to establish at least one office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agree to encourage maximum commercial lender participation within the State, and to conduct periodic visits to at least the major lenders within the State;

(C) Agree that its insurance will not be denied any student because of his or her choice of schools or lack of need; and

(D) Certify that it is not an eligible educational institution and that it does not have substantial affiliation with an eligible educational institution.

(b) *Application.* The guarantee agency must apply in order to receive an initial advance. The application must be submitted as prescribed by the Commissioner. A subsequent advance does not require an additional application by the agency but does require submission of the data required to compute the amount of the advance

(c) *Number of payments.* (1) *Established agencies.* (i) If the guarantee agency, before October 12, 1976 was actively carrying on a program for which it had a basic agreement in effect, an advance may be made to that agency for each of three consecutive calendar years.

(ii) The agency may request the date of the first advance. The Commissioner authorizes the subsequent advances for payment on the same day of the year that the initial advance was made.

(iii) An additional advance may be made to a private nonprofit agency only if the agency continues to qualify under paragraph (a).

(2) *New agencies.* (i) If the guarantee agency enters into a basic agreement on or after October 12, 1976, or if the agency was not actively carrying on a program covered by a basic agreement on or before that date, an advance may be made to that agency for each of five consecutive calendar years.

(ii) The guarantee agency may request the date of the first advance. The Commissioner authorizes the subsequent advances for payment on the same day of the year that the initial advance was made.

(iii) An additional advance may be made to a private nonprofit agency only if the agency continues to qualify under paragraph (a).

(d) *Amount of advance.* The amount of the advance is determined according to the formula in § 422(c)(2) of the Act.

(e) *Terms and conditions of the advance.* The Commissioner makes an advance on terms and conditions specified in an agreement between the Commissioner and the guarantee agency that includes the following:

(1) The guarantee agency shall maintain a separate account within its reserve fund to which it shall credit the advance.

(2) The guarantee agency shall use the earnings, if any, on investment of the advance only for paying insurance claims.

(3) The guarantee agency shall repay the advance when the total amount advanced exceeds 20 percent of the guarantee agency's outstanding insurance obligation. The guarantee agency shall repay the excess over 20 percent to the Commissioner at the beginning of the next fiscal year. For this purpose, a guarantee agency's "outstanding insurance obligation" is the total principal amount of loans covered by the agency's basic agreement minus—

(i) The total principal amount of loans that have been fully repaid by the borrower, the guarantee agency, or the Commissioner; and

(ii) Loans that have been cancelled.
In the case of a private nonprofit guarantee agency, these amounts are determined separately for each State for which the agency has received an advance under this section.

(20 U.S.C. 1072, 1082.)

§ 177.405 Federal reinsurance agreement.

(a) The Commissioner may enter into a reinsurance agreement with a guarantee agency that has a basic agreement. Under a reinsurance agreement, the Commissioner will reimburse the guarantee agency for

80 percent of its losses on GSLP loans. This agreement is a prerequisite for the supplemental reinsurance agreement under which the Commissioner reimburses the guarantee agency for up to 100 percent of its losses.

(1) *Definition of losses.* In this section, "losses" means the amount the agency pays a lender for a default claim minus payments made by, or on behalf of, the borrower after the lender's claim is paid and before the Commissioner reimburses the agency. Losses may include unpaid principal and accrued interest.

(2) *Exclusion.* Death and disability claims on loans made after December 14, 1968, are not covered by the reinsurance agreement. Claims on loans to borrowers adjudicated bankrupt also are not covered. Those claims are paid under § 177.402.

(b) The Commissioner will enter into a reinsurance agreement only if the agreement would be consistent with any State laws or regulations, and agreements between lenders and the guarantee agency, regarding the maintenance of the guarantee agency's reserve fund.

(c) The Commissioner may find that there is a Federal interest in other aspects of the guarantee agency's operations and may review those operations in deciding whether to enter into or extend a reinsurance agreement.

(d) In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has terminated, whether to make a subsequent agreement, the Commissioner may consider the adequacy of—

(1) The lenders' and the guarantee agency's efforts to collect defaulted loans; and

(2) The guarantee agency's efforts to provide GSLP loans for all eligible borrowers.

(e) Losses on loans that are covered by a reinsurance agreement and were outstanding when the reinsurance agreement was entered into are covered by the agreement only if the default occurs after that time or, if later, after the effective date of the agreement.

(f) *Terms and conditions.* The agreement must contain terms and conditions that the Commissioner finds necessary to promote the purposes of the GSLP and to protect the United States from unreasonable loss, including the following terms and conditions:

(1) The guarantee agency shall assure the Commissioner that, for every reinsurance claim it submits—

(i) The terms of the loan comply with all Federal requirements;

(ii) All reasonable efforts have been made by the lender that submitted the default claim to collect the loan;

(iii) The loan was in default before the lender was paid for the claim; and

(iv) The agency will make all reasonable efforts to collect the loan after the Commissioner pays the reinsurance claim.

(2) The Commissioner prescribes the documentation required to receive payment, and the manner in which

payment is made. The Commissioner may subtract amounts owed by the guarantee agency from amounts owed to the guarantee agency.

(3) An amount equal to each reinsurance payment shall be credited promptly by the agency to its reserve fund.

(4) Payments made by the borrower to the guarantee agency on a defaulted loan after the Commissioner has paid a reinsurance claim on that loan may be applied first to reduce either the principal or interest owed. The borrower's payments may be applied to other charges, such as late charges or attorney's fees, only after the repayment of all principal and interest. If the borrower's repayment schedule or actual payments result in payments that are too small to pay the interest as it accrues, the guarantee agency shall review the borrower's financial situation at least every six months. If feasible, the agency shall adjust the distribution of each payment between principal and interest so that the principal will be paid within a reasonable time.

(5) The guarantee agency shall pay the Commissioner an equitable share of any payment made by or on behalf of a defaulted borrower after the Commissioner has reimbursed the agency.

(6) Unless the Commissioner approves otherwise, the guarantee agency shall submit the Commissioner's equitable share of borrower payments to the Commissioner within 60 days of its receipt of the payments.

(7) There is no other subrogation of the United States to the rights of the guarantee agency on any loan that is subject to this agreement.

(8) Nothing in a reinsurance agreement shall be construed to keep a lender from granting forbearance to a borrower under published criteria of the guarantee agency.

(g) The "Commissioner's equitable share" of borrower payments is defined in § 428(c)(6) of the Act, and is calculated for a complete fiscal year.

(1) The term "overhead" used in that definition includes space and utilities costs.

(2) By December 31 of the succeeding fiscal year, the guarantee agency must submit to the Commissioner, in a manner prescribed by the Commissioner, information concerning its total borrower payments received and its total administrative costs of collection of loans and preclaims assistance for default prevention incurred during the fiscal year. If this submission shows that the guarantee agency has not paid all of the "Commissioner's equitable share" of borrower payments to the Commissioner for the fiscal year, the guarantee agency must at that time pay the additional amount due to the Commissioner.

(20 U.S.C. 1078, 1082.)

§ 177.406 Supplemental Federal reinsurance.

(a) The Commissioner may enter into a supplemental reinsurance agreement annually with a guarantee agency that has a reinsurance agreement and that meets the conditions of this section.

(b) *Amount of supplemental reinsurance payments.*

(1) The Commissioner reimburses a guarantee agency

having supplemental reinsurance for 100 percent of its losses, with the following exceptions:

(i) *When reinsurance claims paid by the Commissioner to a guarantee agency for any fiscal year reach 5 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Commissioner's reinsurance liability on a claim subsequently paid for that fiscal year will be 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) *When reinsurance claims paid by the Commissioner to a guarantee agency for any fiscal year reach 9 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Commissioner's reinsurance liability on a claim subsequently paid for that fiscal year will be 80 percent of the amount of the unpaid principal balance plus accrued interest.

(2) *Exception for a new guarantee agency.* For a guarantee agency that entered into a basic agreement after September 30, 1976, or was not actively carrying on a program covered by a basic agreement on October 1, 1976, the Commissioner pays 100 percent of its losses for five consecutive fiscal years beginning with the first year of its operation. The Commissioner monitors programs of this type and, if an agency does not prudently administer its program, the Commissioner may determine that it does not continue to qualify for this exception.

(c) *Definitions.* (1) "Losses" is defined in § 177.405(a).

(2) For purposes of this section, the "amount of loans in repayment" means the original principal amount of all loans insured by the agency minus—

(i) The original principal amount of loans on which—
(A) The borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made;

or
(C) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the agency for insurance claims on loans.

(d) *Program requirements.* To enter into a supplemental reinsurance agreement, a guarantee agency program must meet the following conditions:

(1) *Annual amounts.* The maximum annual loan amount must be \$2,500 for an undergraduate student, and \$5,000 for a graduate or professional student, who is carrying at least a half-time workload in an academic year.

(2) *Aggregate loan limits.* The agency shall insure an aggregate unpaid principal amount of \$7,500 for an undergraduate student or \$15,000 for a graduate or professional student. The \$15,000 limit includes loans made to the borrower prior to the borrower's becoming a graduate or professional student.

(3) *Extent of insurance.* The agency shall insure 100 percent of the unpaid principal of loans made by lenders under its program.

(4) *School eligibility.* Except in the case of correspondence schools, the agency's eligibility

criteria for schools may not be more stringent than those of the FISLP. However, the agency may exclude a school if—

(i) The school's eligibility is limited, suspended, or terminated by the Commissioner under Part 168, or by the agency under comparable standards and procedures; or

(ii) There is a State constitutional prohibition affecting a school's eligibility.

(5) *Out-of-State schools.* The agency shall insure loans made to students who are legal residents of the State where the agency operates, but who attend out-of-State schools. In insuring these loans, the agency shall not impose any restrictions not applicable to legal residents of that State who attend in-State schools.

(6) *School lender provisions.* (i) The agency shall provide that a school may be a lender under reasonable criteria unless—

(A) The school's lending eligibility has been limited, suspended or terminated by the Commissioner under § 177.611 or subpart G of these regulations or by the agency under comparable criteria and procedures; or

(B) There is a State constitutional prohibition affecting the school's lending eligibility.

(ii) The agency may not insure loans made by school lenders that are not located in the geographic area that the agency serves.

(7) *Reports.* The agency shall agree to report to the Commissioner by July 1 of each year regarding—

(i) Its school lender eligibility criteria;

(ii) Its procedures for the limitation, suspension, and termination of school lenders;

(iii) A list of all schools that applied for lender eligibility in the preceding 12 months, and a summary of the actions taken on the applications; and

(iv) A list of all eligible school lenders under the agency's program.

(e) *Terms and conditions.* The supplemental reinsurance agreement will contain, at a minimum, the following terms and conditions, in addition to other provisions of the basic agreement or the reinsurance agreement that the Commissioner includes:

(1) *Adherence to qualifying standards.* The agency shall assure that the program requirements of paragraph (d) of this section are continuously met.

(2) *Reports and records.* The agency shall make reports and keep records that the Commissioner reasonably requires. It shall give the Commissioner access to those records to verify their correctness.

(3) *Application of payments.* If a borrower makes payments on a loan after the Commissioner has paid a reinsurance claim on that loan, the agency shall return to the Commissioner an equitable share of the payments. The "Commissioner's equitable share" is defined in § 428(c)(6) of the Act and is calculated for a complete fiscal year.

(i) The term "overhead" used in that definition includes space and utilities costs.

(ii) By December 31 of the succeeding fiscal year, the guarantee agency must submit to the Commissioner, in a manner prescribed by the Commissioner,

information concerning its total borrower payments received and its total administrative costs of collections of loans and preclaims assistance for default prevention incurred during the fiscal year. If this submission shows that the guarantee agency has not paid all of the "Commissioner's equitable share" of borrower payments to the Commissioner for the fiscal year, the guarantee agency must at that time pay the additional amount due to the Commissioner.

(4) An agreement is renewed only if the agency's program complies with all the terms of the agreement and all pertinent provisions of these regulations.

(5) Before the Commissioner pays a supplemental reinsurance claim, the guarantee agency must give the Commissioner a statement of its "amount of loans in repayment" at the end of the preceding fiscal year. The method for determining this amount is given in paragraph (c)(2) of this section.

(20 U.S.C. 1078, 1078-1.)

§ 177.407 Administrative cost allowances for guarantee agencies.

(a) *General.* To the extent that funds are appropriated by Congress in any fiscal year for this purpose, the Commissioner may make payments to a guarantee agency having a basic agreement for the primary and secondary administrative cost allowances.

(1) *Total payments.* Payments of allowances to a guarantee agency for any fiscal year made under paragraphs (b) and (c) of this section do not exceed, for each allowance, one-half of 1 percent of the total principal amount of loans for which the guarantee agency issued insurance during that fiscal year.

(i) If the amount appropriated for any fiscal year is insufficient to pay all guarantee agencies the full amounts for which they would otherwise be eligible, payments to all agencies are proportionately reduced.

(ii) In the event of such an insufficiency, if additional funds become available for making payments for that fiscal year, additional payments are distributed on the same basis as they were reduced.

(2) *Application.* The guarantee agency shall submit an application for each allowance to the Commissioner by January 1 of the fiscal year for which it is requesting the allowance. The application must contain information and assurances that the Commissioner reasonably requires, including the following—

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs that will be eligible for payments under this section (categorized by the types of costs listed in paragraph (a)(3)(i) of this section);

(iii) Assurances that sufficient administrative and fiscal procedures, including an annual independent audit or, if a State guarantee agency is subject to State audit procedures not under its control, a biennial independent audit, will be used to ensure that the administrative allowances are used in accordance with the provisions of this section, and that the audit

report will be made available to the Commissioner on request;

(iv) Assurances that the guarantee agency will furnish any further information, including estimates, that the Commissioner may reasonably require to carry out the provisions of this section;

(v) For the primary allowance application only, an estimate of the total amount of new loan volume expected to be insured during the fiscal year; and

(vi) For the secondary allowance only, assurance that the agency's program—

(A) Meets all the requirements for a supplemental reinsurance agreement; and

(B) Insures loans for students who are not legal residents of the State, but who are attending participating schools in the State other than correspondence schools, without imposing any restrictions not imposed on legal residents of the State who attend schools in the State other than correspondence schools.

(3) *Definitions.* (i) The terms "administrative costs of promotion of commercial lender participation", "administrative costs of collection of loans" and "administrative costs of preclaim assistance for default prevention," as used in paragraphs (b) and (c) of this section, are defined in section 428(f)(3) of the Act.

(ii) The term "overhead costs", used in those definitions includes space and utilities costs.

(b) *Primary allowance.*—(1) *Basic qualification.* The agency must have a basic agreement.

(2) *Use of funds.* The primary allowance must be used by the agency to meet administrative costs not taken into account by the agency under the formula for determining the "Commissioner's equitable share" of borrower payments made after the Commissioner has paid reinsurance claims to the agency.

(i) Except as provided in paragraph (b)(2)(ij) of this section for new agencies, each guarantee agency that receives payments under this paragraph shall apply the payments according to the following distribution—

(A) Not less than one-fourth toward the administrative costs of promotion of commercial lender participation;

(B) Not less than one-half toward the administrative costs of collection of loans and of preclaim assistance for default prevention; and

(C) The balance toward other administrative costs related to the student loan insurance program of the guarantee agency.

(ii) If a guarantee agency enters into a basic agreement after September 30, 1977, or was not actively carrying on its insurance program on October 1, 1977—

(A) The spending minimum described in paragraph (b)(2)(i) of this section for the administrative costs of collection of loans and preclaim assistance for default prevention does not apply during the first fiscal year in which the agency is eligible to receive the advance; and

(B) The spending minimum for these costs is 20 percent of the total primary allowance for each of the next two fiscal years.

(c) *Secondary allowance.* (1) Payment of the secondary allowance is made in addition to payment of the primary allowance.

(2) *Basic qualification.* The agency must have a reinsurance agreement.

(3) *Use of funds.* These payments may be used by the agency only to meet administrative costs of promotion of commercial lender participation, administrative costs of collection of loans, administrative costs of preclaim assistance for default prevention, and other administrative costs related to the student loan insurance program of the guarantee agency. Also, these payments must be used to meet only administrative costs not taken into account by the agency under the formula for determining the "Commissioner's equitable share" of borrower payments made after the Commissioner has paid reinsurance claims to the agency.

(4) The Commissioner's payment of the secondary allowance establishes an agreement between the Commissioner and the guarantee agency with respect to the assurances contained in the application.

(20 U.S.C. 1078, 1078-1, 1082.)

§ 177.408 Records, reports, and inspection requirements for guarantee agency programs.

(a) *Records.* (1) A guarantee agency shall keep the records specifically required by this section and the records necessary to make reports required by this subpart. The guarantee agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible. For the purposes of this section, the term "paid in full" includes loans paid by the Commissioner on account of the borrower's death, permanent and total disability, or discharge in bankruptcy. These records must be as complete and accurate as is necessary to document fully the agency's reports.

(2) The guarantee agency shall require participating lenders to keep records on guaranteed loans as prescribed by the Commissioner. These shall include complete and accurate records of each loan account, showing each transaction and affording ready identification of the borrower's status. A lender shall retain records of a loan for at least five years from the date the loan has been paid in full by the borrower or the lender has been reimbursed for a loss on the loan by the guarantee agency. The Commissioner may, in particular cases, require the retention of records beyond this 5-year minimum period.

(3) Guarantee agencies and lenders may store records in microfilm or computer format. However, the lender or guarantee agency holding a promissory note shall retain the actual note until the loan is paid in full or determined by the guarantee agency to be uncollectible. When repayment is complete, the lender or guarantee agency shall return the actual note to the borrower and retain a copy for the prescribed period. If a loan is written off as uncollectible, the original note need not be retained, but a copy must be retained for the prescribed period.

(b) *Reports.* (1) The agency shall submit reports to the Commissioner upon request concerning the status

of its reserve funds, and the operations of its loan insurance program.

(2) The agency shall submit to the Commissioner, at least annually, a report of the total insured loan volume and default volume and rate on all loans insured after December 31, 1976, and on loans insured earlier if data is available, for each of the following categories of lenders:

(i) Schools.

(ii) State or private nonprofit direct lenders.

(iii) Commercial financial institutions (banks, savings and loan associations, or credit unions).

(iv) All other types of institutions or agencies. Loan volume and default data shall be reported according to the category of original lender, not subsequent holder. If a guarantee agency operates in more than one State, a separate report must be submitted for each State of operation.

(3) The agency shall submit to the Commissioner its application forms, promissory notes, regulations, and statements of procedures and standards—including standards for due diligence and timely claims filing—as well as other materials that substantially affect the operation of the agency's program, whenever requested to do so by the Commissioner and whenever changes or new materials are proposed. The Commissioner reviews these materials for administrative and fiscal sufficiency and for conformance to statutory and regulatory provisions.

(4) Lenders shall submit to the agency the information necessary for the agency to complete its reports to the Commissioner.

(5) The agency shall submit, or require its lenders to submit, upon the Commissioner's request, information the Commissioner needs to determine the amount of interest and special allowance to be paid on the agency's insured loans.

(c) *Inspections.* (1) A guarantee agency shall give the Commissioner, or other agencies of the government designated by the Commissioner, access to its records in order to assure the accuracy of the reports described in paragraph (b) of this section.

(2) A guarantee agency shall provide in its agreement with a lender or in its statements of procedures that the lender shall give the Commissioner, or other agencies of the government designated by the Commissioner, and the agency access to the lender's records in order to assure the accuracy of the reports required under paragraphs (b) (4) and (5) of this section.

(20 U.S.C. 1072, 1078, 1082.)

Subpart E—Federal Insured Student Loan Program

§ 177.500 Circumstances under which loans may be insured under the FISLP.

(a) The Commissioner may insure all loans made by lenders located in a State in which—

(1) No guarantee agency program is operating; or

(2) A guarantee agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Commissioner may insure loans made by a lender located in a State where a guarantee agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only under the following conditions:

(1) The Commissioner may insure loans to those students who do not meet the agency's residency requirements.

(2) The Commissioner may insure all loans made by a lender if the lender is not able to obtain the insurance of the guarantee agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements.

(3) The Commissioner may insure further loans to a student, with the approval of the guarantee agency, if that student has previously received a FISLP loan from the same lender that has not been repaid.

(4) If the Commissioner finds that—

(i) No single guarantee agency program is reasonably accessible to students at one school, as compared to students at other schools over a comparable period of time; and

(ii) Insuring loans made in the State to students attending that school would significantly increase the access of students at that school to GSLP loans, the Commissioner may insure loans made to those students by a lender in that State. This paragraph would apply if—

(A) The guarantee agency in a State did not recognize a school as being eligible but the school was eligible under the FISLP; or

(B) A majority of the persons enrolled at the school met the conditions of student eligibility for FISLP loans, but were not recognized as eligible students under the guarantee agency program.

(c) For purposes of paragraphs (a) and (b) of this section, a lender is considered to be located in the same State as a school if the lender—

(1) Has a relationship with the school such that the school will be considered to have originated loans made to students at that school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for insuring loans under the FISLP, the Commissioner may require the lender to submit evidence that the conditions described in this section exist.

(e) The Commissioner only denies loan insurance, because of this section, to a school lender which has entered into an agreement with the Commissioner under § 177.601 if the Commissioner first determines that all eligible students at that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies and surveys which the Commissioner considers satisfactory.

(20 U.S.C. 1071, 1073.)

§ 177.501 Extent of Federal insurance under the FISLP.

(a) *General rule.* Except as provided in paragraph (b) of this section, the Commissioner's insurance liability of any FISLP loan is 100 percent of the unpaid balance of principal and, to the extent permitted under § 177.517, accrued interest.

(b) *Special provisions for State lenders.* (1) Except as described in paragraph (b)(2) of this section, for loans insured after the date described in paragraph (b)(4) of this section, the Commissioner's insurance liability is less than 100 percent under the following conditions:

(i) *When all default claims paid by the Commissioner to a State lender for any fiscal year reach 5 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Commissioner's insurance liability on a claim subsequently paid for that fiscal year will be 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) *When all default claims paid by the Commissioner to a State lender for any fiscal year reach 9 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Commissioner's insurance liability on a claim subsequently paid for that fiscal year will be 80 percent of the amount of the unpaid principal balance plus accrued interest.

(2) The potential reduction in insurance liability does not apply to a State lender during the first Federal fiscal year of its operation as a lender under the FISLP, and during each of the four succeeding fiscal years.

(3) For purposes of this section, the "amount of loans in repayment" means the original principal amount of all loans insured by the Commissioner minus—

(i) The original principal amount of loans on which—

(A) The borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the Commissioner for insurance claims on loans.

(4) The applicable date for purposes of paragraph (b) of this section is—

(i) The 90th day after the adjournment of the next regular session of the legislature of the State in which the lender is operating that convenes after October 12, 1976; or

(ii) The date one year from that 90th day if the primary source of lending capital for the lender is the sale of bonds, and the constitution of the State in which the lender is operating prohibits a pledge of the State's credit as security against the bonds.

(5) For purposes of this paragraph, payments by the Commissioner on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(20 U.S.C. 1075.)

§ 177.502 The application to be a lender under the FISLP.

(a) *General.* To participate in the FISLP, a lender must submit an application to the Commissioner. The Commissioner responds to the lender's request to participate in the FISLP within 30 days of receipt of an application.

(b) *Criteria for evaluating an application.* In determining whether to enter into an insurance contract with an applicant and what the terms of that contract should be, the Commissioner may consider the following criteria:

- (1) Whether the applicant is capable of complying with these regulations as they apply to lenders.
- (2) Whether the applicant is capable of implementing adequate procedures for making, servicing and collecting loans.
- (3) If the applicant has had prior experience with a similar Federal, State or private nonprofit student loan program, the amount and rate of loans that are currently delinquent or in default under that program.
- (4) The financial resources of the applicant.
- (5) In the case of a school that is seeking approval as a lender, its accreditation status with the preferred condition being accreditation.

(c) The Commissioner may require an applicant to submit sufficient materials with its application so that the Commissioner may fairly evaluate it in accordance with these criteria.

(d) *Denial of participation.* (1) If the Commissioner decides not to approve the application for an insurance contract, the reason for the decision is included in the Commissioner's response.

(2) The Commissioner provides an opportunity for the lender to meet with a designated Office of Education official if the lender wishes to appeal the Commissioner's decision.

(3) However, the Commissioner need not explain the reasons for the denial, or grant the lender an opportunity to appeal, if the lender submits its application within 6 months of a previous denial.

(20 U.S.C. 1082.)

§ 177.503 The FISLP lender insurance contract.

(a) *Approval of insurance contract.* (1) If the Commissioner approves a lender's application to be a FISLP lender, the Commissioner and the lender sign an insurance contract. No loan is insured unless covered by an insurance contract.

(2) In general, under an insurance contract the lender agrees to comply with all laws, regulations and other requirements applicable to its participation as a lender in the FISLP, and the Commissioner agrees to insure each eligible FISLP loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Commissioner's insurance liability is the amount of unpaid principal and interest, except for certain loans made by a State lender as provided in § 177.501(b).

(4) The contract may contain a limit on the duration of the contract and the number or amount of FISLP loans a lender may make or hold.

(b)(1) Except as otherwise approved by the Commissioner, an insurance contract with a school lender shall limit the loans made by that school lender which will be covered by Federal loan insurance to those made to students—

(i) Who are in attendance at that school; or

(ii) Who are in attendance at other schools under the same ownership or who are employees, or dependents of employees, of that school lender or those other schools, under circumstances the Commissioner considers appropriate for insurance.

(2) A limit imposed under paragraph (a)(4) of this section on a school lender which makes loans to students in attendance at other schools under the same ownership, or to employees or dependents of employees of those other schools, may be imposed on a school-by-school basis.

(20 U.S.C. 1079, 1082.)

§ 177.504 Issuance of Federal loan insurance.

(a) *Application for insurance.* A lender having an insurance contract shall submit an application to the Commissioner for Federal loan insurance on each intended loan that the lender determines to be eligible for insurance. The application shall be on a form prescribed by the Commissioner. The Commissioner notifies the lender whether the loan is or is not insurable and the amount of the insurance. No disbursement on a loan made prior to the Commissioner's approval of that loan is insurable.

(b) *Conditions of insurance coverage.* The Commissioner issues FISLP insurance in reliance on the implied representations of the lender that all requirements for the initial insurability of the loan have been met. As described in § 177.517, the continuance of the FISLP insurance is conditioned upon compliance by all holders of the loan with these regulations. The delegation of functions to a servicing agency or another party does not relieve the lender of its responsibilities in the making, servicing, and collection of a FISLP loan.

(20 U.S.C. 1079, 1082.)

§ 177.505 Limitations on maximum loan amounts.

(a) *Annual amounts.* The Commissioner does not insure a loan that would exceed the student's estimated cost of attendance for the academic period for which the loan is intended less estimated financial assistance awarded for that period. In addition, the total amount a student may borrow in any academic year of study may not exceed—

(1) \$2,500, to a student who has not successfully completed a program of undergraduate study, but no more than—

(i) The lesser of \$2,500 or half the estimated cost of attendance, for a loan made by a State lender or made or originated by a school to a student who—

(A) Is enrolled in the first academic year of undergraduate study; and

(B) Was not previously enrolled in an undergraduate program.

(ii) \$1,500, for a loan made or originated by a school to a student who is enrolled in the first academic year

of undergraduate study and was not previously enrolled in an undergraduate program, unless the loan is to be disbursed in two or more installments. None of the installments may exceed one-half of the loan, and the interval between the first and second installments must be at least one-third of the academic period for which the loan is intended. However, a loan that is to be made to cover the expenses of a single academic period of less than 5 months is not subject to these requirements. For purposes of this subparagraph, all loans made within a period of 90 days will be considered a single loan; and

(2) \$5,000, to a graduate or professional student.

(b) *Aggregate loan limits.* The Commissioner does not insure a loan in an amount which, together with the unpaid principal amount of all other GSLP loans to the student, would result in an aggregate loan amount in excess of—

(1) \$7,500, in the case of any undergraduate student;

or

(2) \$15,000, in the case of any graduate or professional student, including loans for undergraduate study.

(c) *Limitation on loan to a student enrolled in a correspondence course.* The Commissioner does not insure a loan to a student pursuing a correspondence course which exceeds the amount of the contract price of the course. If a correspondence course includes a period of required resident training, the Commissioner insures additional loan amounts to cover the estimated cost of attendance for that portion of the course.

(20 U.S.C. 1075, 1078, 1079, 1082.)

§ 177.506 Insurance premiums.

(a) *General.* The Commissioner charges each lender an insurance premium for each loan that is insured.

(b) *Rate.* The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

(c) *Method of calculation.* (1) The lender shall calculate the insurance premium on the basis of the number of months beginning with the month following the month that funds are disbursed to the borrower and ending 12 months after the borrower's anticipated date of graduation from the school for attendance at which the loan is sought.

(2) *For multiple installments.* In cases where the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement from the month following the month that the disbursement is made.

(d) *Method of payment.* (1) The Commissioner may bill the lender for the insurance premium, or may require the lender to pay the insurance premium at the time of disbursement. At the Commissioner's discretion, the Commissioner may collect the insurance premium by offsetting it against amounts payable by the Commissioner to the lender.

(2) Insurance coverage on a FISLP loan ceases to be effective when the lender fails to pay the insurance premium within 60 days of the date payment is due. The Commissioner may, however, excuse late payment

of an insurance premium, and reinstate the insurance on a loan, if the Commissioner is satisfied that—

(i) The loan is not in default and the borrower is not delinquent in making installment payments; or

(ii) The loan is in default, or the borrower is delinquent, under circumstances where the borrower has entered the repayment period without the lender's knowledge.

(e) *Collection from borrowers.* The lender may pass along the cost of the insurance premium to the borrower in the form of a one-time charge. The lender may bill the borrower for the insurance premium or may deduct the amount from the loan proceeds. The lender must clearly identify to the borrower the amount of insurance premium and the method of calculation.

(f) *Refund provisions.* The premium is not refundable by the Commissioner, and is not refunded by the lender to the borrower, even if the borrower graduates or withdraws from school, defaults, dies, becomes totally and permanently disabled, or is adjudicated a bankrupt prior to the anticipated graduation date.

(20 U.S.C. 1077, 1079, 1082.)

§ 177.507 Repayment of loans.

(a) *Commencement of repayment.* (1) Except for a borrower enrolled in a correspondence course, or as provided in paragraph (a)(3) of this section, a borrower's repayment period begins not earlier than 9 months nor later than one year after the date the borrower ceases to be at least a half-time student at a participating school. This 9–12 month period is commonly called the "grace period."

(2) *Exception for a correspondence student.* The repayment period begins not earlier than 9 months nor later than one year after whichever of the following occurs first:

(i) The borrower completes the program.

(ii) The borrower falls 60 days behind the due date for a scheduled assignment, according to the schedule required in § 177.604. However, the school may permit one restoration to in-school status for a borrower who falls 60 days behind the due date for a particular assignment if the borrower establishes in writing a desire to continue in the program and an understanding that the required lessons must be submitted on time.

(iii) The expiration of a 60-day period following the latest allowable date established by the school in the schedule required under § 177.604 for completing the program.

(3) A borrower may request and be granted a repayment schedule that begins prior to the end of the established grace period. In this event, a borrower may not further utilize the grace period.

(4) If conditions that justify a deferment of repayment exist at the expiration of the grace period, the deferment period commences at the expiration of the grace period. Regardless of when a deferment period begins, repayment of the loan begins or resumes after the deferment period is over, without any additional grace period.

(b) *Length of repayment period.* In general, a lender shall allow a borrower at least 5 years, but not more than 10 years, to repay a loan, calculated from the beginning of the repayment period. The borrower shall, however, fully repay a loan within 15 years after it is made. There are exceptions, however, to these rules:

(1) If the borrower receives an authorized deferment or has been granted forbearance, as described in § 177.512(c), the periods of deferment or forbearance are excluded from determinations of the 5-, 10-, and 15-year periods.

(2) If the minimum annual repayment required in paragraph (d) would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(3) During the grace period, the borrower may request and be granted by the lender a repayment period of less than five years. At any time and without the necessity of lender agreement the borrower may have the total repayment period extended to a minimum of five years.

(c) *Prepayment.* The borrower may prepay the whole or any part of a loan at any time without penalty.

(d) *Minimum annual payment.* (1) During each year of the repayment period, a borrower's payments to all holders of his or her GSLP loans must total at least \$360 or the unpaid balance of all loans, including interest, whichever amount is less. There are, however, two exceptions to this rule:

(i) If the borrower and the lender agree, the amount paid may be less.

(ii) If both the borrower and his or her spouse have GSLP loans, their combined annual payment must meet this requirement.

(2) The provisions of subparagraphs (1) (i) and (ii) may not result in an extension of the 10- and 15-year repayment period maximums, unless forbearance has been approved under § 177.512(c).

(e) *Borrower failure to enroll on at least a half-time basis.* If a lender disburses a FISLP loan and later learns that the borrower has not been or will not be a student enrolled on at least a half-time basis at a participating school during the period for which the loan was intended, the lender shall—

(1) Cease billing the Commissioner for interest payments on the borrower's behalf, since no further interest benefits on that loan are payable;

(2) Notify the borrower that full payment of the loan is immediately due. If necessary, the lender may allow the borrower to repay the loan in installments; and

(3) Attempt to collect from the borrower the amount of any interest already paid on the borrower's behalf by the Commissioner and offset any amount collected on the lender's next billing for Federal interest benefits.

(f) *Repayment schedule agreement.* When a lender learns that a borrower is no longer enrolled at a participating school on at least a half-time basis, the lender must promptly contact the borrower to establish the precise terms of repayment. The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment

period. If a graduated repayment schedule is established, it may not provide for any single installment that is more than 3 times greater than any other installment.

(g) *Supplemental repayment agreement.* (1) For a loan made by a school lender, the lender and the borrower may enter into an agreement supplementing the regular repayment schedule agreement under paragraph (f) of this section. Under a supplemental repayment agreement, the lender agrees that the borrower is deemed to meet the terms of the regular repayment schedule as long as the borrower makes payments in accordance with a separate schedule. However, the regular schedule must provide for equal installments.

(2) The purpose of a supplemental repayment agreement is to extend the 10- and 15-year repayment period maximums and to permit a lender to offer a borrower a repayment schedule based on other than equal or graduated payments. For example, a supplemental repayment agreement may base the amount of the borrower's payment on the borrower's income.

(3) The agreement and separate schedule must contain terms that the Commissioner believes do not unduly burden the borrower and do not subject the Commissioner to undue liability. A lender and borrower may not enter into a supplemental repayment agreement unless the lender has obtained the Commissioner's prior approval of its terms.

(4) The borrower may not insist upon the establishment of a supplemental repayment agreement. The lender may not insist upon the establishment of a supplemental repayment agreement unless the borrower's written consent to enter into an agreement of this type was obtained by the lender at the time the loan was made.

(5) A lender may assign a loan subject to a supplemental repayment agreement only if the buyer agrees to accept the loan subject to the terms of the supplemental agreement.

(6) For purposes of the special allowance, interest benefits during a deferment period; and the determination of the amount of loss on an insurance claim, the unpaid principal balance of the loan is based on the regular repayment agreement.

(20 U.S.C. 1077, 1078, 1079, 1082.)

§ 177.508 Deferment.

(a) *Borrower eligibility.* (1) Once the repayment period has commenced, a borrower is entitled to have periodic installment payments of principal deferred during authorized periods. Except as provided in paragraph (c)(4) of this section, a period of authorized deferment begins when the condition entitling a borrower to deferment first exists. Interest accrues and is paid by the borrower during these periods unless the borrower was originally eligible for Federal interest benefits. The borrower shall provide to the lender all documentation required to establish eligibility for a specific type of deferment.

(2) A deferment cannot be denied by a lender when the borrower meets the eligibility criteria, even though

the borrower may be delinquent, but not in default, in making required installment payments. The 120- or 180-day period required to establish a default does not run during a deferment period. When the deferment period expires, a borrower resumes the delinquent status that existed when the deferment period began.

(3) A borrower whose loan is in default is not eligible for a deferment unless the borrower has made satisfactory arrangements with the lender to bring the account current.

(b) *Authorized deferments.* Deferment is authorized during periods when a borrower is engaged in one of the following activities:

(1) Full-time study at a participating school, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

(2) Study under a graduate fellowship program approved by the Commissioner, as described in paragraph (d) of this section.

(3) Up to 3 years of active duty service in the United States Armed Forces.

(4) Up to 3 years of volunteer service under the Peace Corps Act.

(5) Up to 3 years of service as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs).

(6) Pursuing a course of study under a rehabilitation training program for disabled individuals that is approved by the Commissioner.

(7) Conscientiously seeking but unable to find full-time employment in the United States over a single period of up to twelve months, as described in paragraph (c)(1) of this section.

(c)(1) *Basic eligibility for an unemployment deferment.* (i) For purposes of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least 3 months.

(ii) A borrower is entitled to the deferment whether or not he or she has been previously employed. If previously employed, the borrower is entitled to a deferment regardless of the circumstances under which the employment ended.

(iii) An unemployment deferment is not justified if the borrower has sought employment only in kinds of positions or at salary and responsibility levels for which he or she feels qualified by virtue of education or previous experience.

(2) *Submission of request.* To receive an unemployment deferment, a borrower shall request the deferment in writing to the holder of the loan. To continue the deferment for more than 6 months, the borrower shall submit a second request by the end of that period. Each request must be signed and dated and contain the following:

(i) A statement from the borrower describing his or her conscientious search for full-time employment.

(ii) The borrower's latest permanent home address and, if applicable, the borrower's latest temporary address.

(iii) Certification that the borrower has registered with a public or private employment agency, if one is accessible, specifying its name and address.

(iv) The borrower's agreement to promptly notify the lender when he or she becomes employed full-time.

(3) *Lender's approval or disapproval of request.* (i) The lender must review the borrower's request and notify the borrower of its decision within one month after receipt of the request.

(ii) The lender may rely upon the written statements provided by the borrower, unless the lender has information to the contrary.

(iii) If the lender is satisfied that the borrower has conscientiously searched for full-time employment and otherwise meets the requirements for an unemployment deferment, the lender shall approve the request.

(iv) If the borrower's request does not justify an unemployment deferment, the lender may grant the borrower forbearance if authorized under § 177.512.

(4) *When the unemployment deferment begins:* An unemployment deferment begins—

(i) On the date that the lender approves the request; or

(ii) On a date not in excess of 60 days prior to the lender's approval, if the unemployment existed at the earlier date.

(5) *When the unemployment deferment ends:* An unemployment deferment ends on the earliest of—

(i) The date the lender learns that the borrower has become employed full-time;

(ii) One month after the date when a certification of unemployment deferment eligibility is due from the borrower but has not been received; or

(iii) 12 months after the commencement of the deferment period.

(d) *Graduate fellowship deferment.* (1) To qualify for a deferment for study under a graduate fellowship program, a borrower must be enrolled in a program that has the Commissioner's approval. To be approved by the Commissioner, the program must—

(i) Provide sufficient financial support to fellows to allow for full-time study for at least six months;

(ii) Require, prior to the award of that financial support, a written statement from each applicant which explains the applicant's objectives; and

(iii) Require a graduate fellow to submit periodic reports, projects, or other evidence of the graduate fellow's progress.

(2) In addition, the borrower must—

(i) Hold at least a baccalaureate degree conferred by an institution of higher education;

(ii) Be engaged in full-time study, that may be independent of an educational or cultural institution, in an academic or professional subject area for which the borrower has shown an interest and ability;

(iii) Have been recommended by an institution of higher education for acceptance into the graduate fellowship program.

(20 U.S.C. 1077, 1078, 1082; 42 U.S.C. 5055(e).)

§ 177.509 Due diligence in making and disbursing a loan.

(a) *General.* (1) The loan-making process includes the processing of necessary forms, the approval of a borrower for a loan, the determination of the loan amount, the explanation to a borrower of the

borrower's responsibilities under the loan, the completion by the borrower of the promissory note, and the disbursement of the loan proceeds.

(2) Except as may be authorized by the Commissioner, a lender may not delegate its loan-making functions except to a school with whom the lender has an origination relationship. If an origination relationship exists, the lender may rely in good faith upon statements of the borrower contained in the loan application, but may not rely upon statements made by the school in the application. A non-school lender which does not have an origination relationship with a school may rely in good faith upon statements of both the borrower and the school which are contained in the application. A school lender may rely in good faith upon statements made by the borrower in the loan application.

(b) *Processing of forms.* Before making a loan, a lender must, subject to paragraph (a)(2) of this section, determine that all required forms have been accurately completed by the borrower, the school, and the lender. A lender must not ask the borrower to sign any form before all information requested of the borrower on that form has been supplied.

(c) *Approval of borrower and determination of loan amount.*

(1) A lender may make a loan only to an eligible student. To the extent authorized in paragraph (a)(2) of this section, the lender may make this determination based on the information provided by the school and the borrower on the application form.

(2) In determining the amount of the loan to be made, within the limitations of § 177.505, the lender should review the data on cost of attendance, and on other amounts of financial aid that have been awarded to the student for the intended loan period, which is provided on the application form. In no case may the loan amount exceed the student's estimated cost of attendance for the academic period for which the loan is intended less estimated financial assistance.

(d) *Borrower interview.* (1) Before making an initial loan to a student, a lender should meet personally with the student in order to ensure that the student understands his or her rights and responsibilities under the loan.

(2) In particular, the lender should explain to the student that the loan must be repaid and that the loan funds may only be applied toward educational expenses.

(e) *Promissory note.* (1) The lender shall obtain from the borrower an executed promissory note for each loan as proof of the borrower's indebtedness.

(2) The Commissioner periodically makes an approved promissory note form available to FISLP lenders. Except as specified in paragraph (e)(3) of this section, a lender, without the Commissioner's prior approval, may not add any clauses to, or modify any of the provisions of, the most current promissory note provided by the Commissioner.

(3) At the lender's option the following provision may be included in the promissory note: "The maker agrees to execute a repayment schedule not later than

120 days prior to the beginning of the repayment period."

(4) The lender must give the borrower a copy of each executed note.

(f) *Security and endorsement.* (1) A FISLP loan must be made without security.

(2) With one exception, a FISLP loan must be made without endorsement. If a borrower is a minor and cannot under applicable local law create a legally binding obligation by his or her own signature, a lender may require an endorsement by another person on the borrower's FISLP note. For purposes of this paragraph, "endorsement" means a signature of any party—other than the borrower—who is to assume either primary or secondary liability on the note.

(g) *Loan disbursement.* (1) A lender may not disburse a loan prior to the issuance of the insurance commitment by the Commissioner. The lender shall disburse loan funds by means of a check payable to the borrower or, if authorized by the borrower in writing, jointly to the borrower and the school that he or she is to attend. The check must require the personal endorsement of the borrower. Deposit of the check in the borrower's account at a bank or other financial institution constitutes endorsement for purposes of this paragraph.

(i) Unless the borrower attends a school not in a State or if the lender is also a school, a lender shall mail the check to the school, to the attention of the school official named on the loan application for delivery to the borrower. The lender may not mail the check to the school earlier than is reasonably necessary to meet the cost of attendance for the period for which the loan is made and in no case, without the Commissioner's approval, earlier than 30 days prior to the date on which the student is scheduled to enroll.

(ii) If a borrower is attending a school located outside a State (a foreign school), the lender must send the check to the borrower directly. Within 30 days of the disbursement, the lender must notify the school of the amount of the loan insured.

(iii) A school lender may not disburse a loan to a student earlier than is reasonably necessary to meet the cost of attendance for the period for which the loan is made. If a student fails to enroll at that school during the academic period for which the loan was made, the Commissioner pays subsequent insurance, interest benefits, and special allowance claims only on amounts disbursed to the student that are reasonably necessary for travel from the student's residence to the school.

(2) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a disbursement check on behalf of a borrower. The borrower shall personally endorse the check and may not authorize anyone else to endorse it on his or her behalf.

(3) For purposes of the FISLP, a check is a draft drawn on a bank and payable on demand.

(4) *Late disbursements:* (i) Under certain circumstances a lender, with the prior approval of the Commissioner, may disburse a FISLP loan after a

borrower has ceased to be enrolled on at least a half-time basis. The approval of late disbursements includes both the approval of disbursements to be made after the expiration date of the insurance commitment and the approval of disbursements to be made prior to the expiration date of the insurance commitment but after the borrower has ceased to be enrolled on at least a half-time basis.

(ii) Approval of late disbursements may be granted only when the Commissioner is satisfied that the loan proceeds will be used for the educational expenses of the period of enrollment for which the loan was made. (20 U.S.C. 1077, 1080, 1082, 1083, 1085.)

§ 177.510 Due diligence in servicing a loan.

(a) *Borrower inquiries.* A lender shall respond on a timely basis to written inquiries and other communications from a borrower and any endorser of a loan.

(b) *Conversion of a loan to repayment status.* (1)(i) When a lender learns that a borrower is no longer enrolled at a participating school on at least a half-time basis, the lender shall promptly contact the borrower in order to establish the terms of repayment.

(ii) If the lender has exercised the option of including the provision authorized by § 177.509(e)(3) in the promissory note, it must provide a repayment schedule to the borrower not later than 150 days prior to the beginning of the repayment period.

(2) When establishing repayment terms, the lender should take into consideration the financial obligations and the current and potential income of the borrower. The lender should design a repayment schedule that retires the loan obligation as soon as possible, as permitted under § 177.507, without leading to default caused by the borrower's inability to make payments.

(3) Terms of repayment must be established by using an OE Form 1171 (Promissory Note-Installment), or a similar instrument, that is provided to the borrower and made a part of, and subject to the terms of, the borrower's original promissory note. A disclosure statement consistent with Federal Regulation Z, Truth-in-Lending, is an acceptable repayment schedule. The borrower's signature is not required on the instrument.

(4) The lender shall retain the original promissory note until the loan is paid in full. Within 30 days, the lender shall give the borrower the original promissory note and the repayment instrument.

(20 U.S.C. 1080, 1082, 1085.)

§ 177.511 Due diligence in collecting a loan.

(a) *General.* (1) A lender must exercise due diligence in the collection of a FISLP loan with respect to both a borrower and any endorser. In order to exercise due diligence, a lender, except as provided in paragraph (a)(2) of this section, shall implement the following procedures when a borrower fails to honor his or her payment obligation.

(2) Paragraphs (b) through (f) shall not apply—

(i) After it has been determined, or while a lender is seeking to have a determination made, that a borrower has died, become totally and permanently disabled, or

been adjudicated a bankrupt, as set forth in § 177.514; or

(ii) After it has been determined that any of the conditions for filing a default claim without previous collection efforts exist, as set forth in §§ 177.515 and 177.517(e).

(b) *Initial delinquency.* (1) When a borrower is delinquent in making a payment, the lender shall remind the borrower within 15 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender must attempt to contact both the borrower and any endorser at least 3 more times at regular intervals during the rest of the 4-month period that started on the due date of the delinquent payment. These contacts should become progressively more forceful in tone.

(2) If the lender has exercised the option of including the provision authorized by § 177.509(e)(3) in the promissory note, and the lender has complied with § 177.510(b)(1)(ii), the lender shall follow the procedures in paragraph (b)(1) of this section to attempt to cure a borrower's delinquency in executing the repayment schedule.

(c) *Skip-tracing assistance.* Whenever a lender does not know the borrower's current address, even while the borrower is in school, the lender shall attempt to locate the borrower through normal commercial collection techniques, including contacting any endorser or other individuals named on the borrower's loan application. If these efforts are unsuccessful, the lender shall attempt to learn the borrower's current address through use of the Office of Education's skip-tracing assistance. The Commissioner does not pay insurance on a default claim if the lender did not know the borrower's address but failed to request this skip-tracing assistance. If the lender obtains knowledge of the borrower's address prior to filing a default claim, the lender must attempt to contact the borrower.

(d) *Pre-claim assistance.* When a borrower is 60 days delinquent in making payment, or executing a repayment schedule in accordance with a provision in the promissory note authorized by § 177.509(e)(3), the lender must request pre-claim assistance from the Office of Education. This pre-claim assistance consists of a series of letters being sent to the borrower, urging the borrower to contact the lender and begin or resume payments. The Commissioner does not pay insurance on a default claim if the lender failed to request this pre-claim assistance.

(e) *Final demand letter.* A lender must send a final demand letter to the borrower and any endorser at least 30 days before the lender files a default claim. The lender must allow the borrower or endorser at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower or endorser whose address is unknown.

(f) *Litigation.* (1) If the borrower's loan is in default and the lender determines that the borrower or endorser has the ability to repay the loan, the lender may bring suit against the borrower or the endorser to recover the amount of the unpaid principal and

interest together with reasonable attorney's fees. Prior to bringing suit the lender shall—

(i) Obtain the Commissioner's approval. A lender may seek the Commissioner's approval to bring suit in anticipation that the lender's collection efforts will be unsuccessful. The Commissioner will normally approve a lender's request to bring suit if the Commissioner is satisfied that the borrower or endorser has the ability to repay the loan and that the collection efforts required by this section have been, or will be, made prior to the lender's bringing suit;

(ii) Notify the borrower or endorser that the Commissioner's approval to bring suit has been obtained, and that suit will be brought unless the borrower or endorser cures the default; and

(iii) Indicate to the borrower or endorser that the lender will seek a judgment under which the borrower or endorser will be legally liable for payment of reasonable attorney's fees and court costs in addition to the unpaid principal and interest. The lender shall mail the notice to the borrower or endorser by certified mail, return receipt requested.

(2) The lender may bring suit if the borrower or endorser does not meet the terms of the lender's demand for payment within 10 days following the date of delivery of the notice to the borrower or endorser indicated on the receipt.

(3) A lender may first apply the proceeds of any judgment against its reasonable attorney's fees and court costs, whether or not the judgment provides for these fees and costs.

(20 U.S.C. 1080, 1082, 1085.)

§ 177.512 Forbearance.

(a) The Commissioner encourages a lender under the FISLP to grant forbearance for the benefit of a borrower in order to prevent a borrower from defaulting on his or her payment obligations.

"Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or accepting smaller payments than were previously scheduled. A lender may grant forbearance under paragraph (b) or (c) of this section whenever poor health or other personal problems affect the borrower's ability to make scheduled payments. If payments of interest are forborne they may be added to the principal amount of the loan obligation on the date that repayment begins or resumes or at the end of the period of forbearance.

(b) A lender may grant forbearance on terms that are consistent with the minimum annual payment requirement and the 10- and 15-year limitations on length of repayment if the lender and the borrower agree in writing to the new terms.

(c) A lender may also grant forbearance for a period of up to one year at a time on terms that are inconsistent with the minimum annual repayment requirement and the 10- and 15-year limitations on length of repayment if the lender complies with these requirements:

(1) The lender must reasonably believe that the borrower intends to repay the loan but is currently unable to make payments in accordance with the

terms of the loan note. The lender shall state the basis for its belief in writing and maintain that statement in its loan file on that borrower.

(2) Both the borrower and an authorized official of the lender shall sign a written agreement of forbearance.

(3) If the agreement between the borrower and lender provides for postponement of all payments, the lender shall contact the borrower at least every 3 months during the period of forbearance in order to remind the borrower of the outstanding obligation to repay.

(20 U.S.C. 1080, 1082.)

§ 177.513 Assignment of a FISLP loan.

(a) *General.* A FISLP note may not be assigned except to another eligible lender. In this section "seller" means any kind of assignor, "buyer" means any kind of assignee, and "assignment" means any kind of transfer, including assignment as security.

(b) *Procedure.* (1) A FISLP note assigned from one lender to another must be subject to a blanket endorsement together with other FISLP notes being assigned or must individually bear effective words of assignment. Either the blanket endorsement or the note must be signed and dated by an authorized official of the seller.

(2) The buyer must—

(i) Notify the Commissioner of the assignment; and

(ii) Ensure that the borrower is notified if the assignment results in the borrower being required to make installment payments, or direct other matters connected with the loan, to a party other than the party whom the borrower dealt with before the assignment. The buyer must include in the notice to the borrower a clear statement of all the borrower's rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller or any prior holder of the loan subsequent to receipt of the notice.

(c)(1) *Risks assumed by the buyer.* Upon acquiring a FISLP loan, a new holder assumes responsibility for the consequences of any previous violation of applicable statutes or regulations or the terms of the note. A FISLP note is not a negotiable instrument, and a subsequent holder is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the original holder, the borrower can also assert the defense against the new holder. If the new holder files a default claim on a loan, the Commissioner denies the default claim if there was a legal defect affecting the initial validity or insurability of the loan and to the extent of the borrower's legal defenses. Furthermore, when a new holder files a claim on a FISLP loan, it must provide the Commissioner with the same documentation that would have been required of the original lender.

(2) *Special additional rules for assignment of loans made or originated by a school.* The buyer shall not be entitled to rely upon the statements provided by a school in the making or origination of a loan by the school. In addition, the Commissioner considers any

unpaid tuition refund that was due to the borrower under § 177.608 before the assignment from a school that made or originated the loan as having been paid to the subsequent holder on the borrower's behalf.

(d) *The Commissioner's approval.* (1) The approval of the Commissioner is required prior to the assignment of a note to any eligible lender which has not entered into a FISLP insurance contract with the Commissioner. The Commissioner approves such an assignment only if the Commissioner is satisfied that one of the parties to the assignment will comply with all the requirements applicable to lenders under the GSLP regulations.

(2) Any arrangement where the loan is assigned to an eligible lender that would hold the loan in trust must receive the Commissioner's prior approval. A lender that holds a loan as a trustee assumes responsibility for complying with all applicable statutory and regulatory requirements imposed on a holder of a loan.

(e) *Warranty.* (1) Nothing in this section precludes the buyer of a FISLP loan from obtaining a warranty from the seller covering certain future reductions by the Commissioner in computing the amount of insurable loss, if any, on a claim filed on the loan.

(2) The warranty may only cover reductions which are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters that the buyer is responsible for under the GSLP regulations.

(20 U.S.C. 1079, 1080, 1082.)

§ 177.514 Death, disability, and bankruptcy.

(a) *Death.* (1) If a borrower dies, the borrower's obligation to make any further payments of principal and interest on a FISLP loan is cancelled.

(2) The lender may not attempt to collect on the loan from the borrower's estate or any endorser.

(3) The lender may make a determination that the borrower has died on the basis of a death certificate or other proof of death which is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan is cancelled only upon a determination by the Commissioner on the basis of other evidence that the Commissioner finds conclusive.

(4) The lender shall return to the sender any payments received from the estate of the borrower or paid on behalf of the borrower after the date of death.

(b) *Disability.* (1) If a borrower is determined to be totally and permanently disabled, the borrower's obligation to make any further payments of principal and interest on a FISLP loan is cancelled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed prior to his or her loan application unless the borrower's conditions has substantially deteriorated since he or she submitted the loan application.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender may not attempt to collect on the loan from the borrower or

any endorser. The lender shall promptly request that the borrower or his or her representative obtain a certification from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, on a form provided by the Commissioner, that the borrower is totally and permanently disabled. If the form is not submitted to the lender within 60 days of the date the lender requested it, the lender may resume collection unless the physician has notified the lender that a longer period of time is required to make the determination.

(3) If the lender receives a certification from a physician, as described in paragraph (b)(2) of this section, that the borrower is totally and permanently disabled, the lender must return to the borrower any payments that it may have received from or on behalf of the borrower after being notified that the borrower claims to be totally and permanently disabled.

(c) *Bankruptcy.* (1) If a borrower has been adjudicated a bankrupt, the Commissioner will assume the borrower's liability for unpaid principal and interest.

(2) Once a lender determines that a borrower has been adjudicated a bankrupt, the lender may not attempt to collect on the loan and must file a bankruptcy claim with the Commissioner.

(3) The lender may determine that a borrower has been adjudicated a bankrupt upon receipt of notice of the first meeting of creditors from the bankruptcy court.

(4) If the loan obligation is not discharged in bankruptcy, the Commissioner shall treat the claim as a default claim. The lender shall not be required to repurchase the loan.

(20 U.S.C. 1082, 1087.)

§ 177.515 Cessation of lender collection activity in certain cases.

(a) Whether or not a FISLP loan has entered the repayment period or the borrower is eligible for deferment, a lender shall cease collection activity on the loan, and file a default claim with the Commissioner within 60 days, after the lender determines that any of the following conditions exist:

(1) The school in which the borrower enrolled terminated its teaching activities involving that borrower during the academic period covered by the loan.

(2) The Commissioner—

(i) Has instituted an action to limit, suspend, or terminate the eligibility of the school in which the borrower was enrolled for the academic period covered by the loan, or the eligibility of any lender that has held the loan; and

(ii) Has directed that a claim be filed on the loan.

(3)(i) A school or a lender is the subject of a lawsuit or Federal administrative proceeding and the Commissioner determines that the proceeding involves allegations that, if proven, would entitle the borrower to refuse to repay all or a portion of the loan, or to obtain a judgment to recover payments made on the loan; and

(ii) The Commissioner has directed that a claim be filed on the loan.

(b)(1) If the Commissioner finds that a determination made by a lender under this section is correct, the Commissioner pays the default claim as otherwise provided for under these regulations.

(2) If the Commissioner finds that the lender's determination is not correct, the Commissioner refuses payment and the lender shall resume normal collection activity on the loan.

(c) A lender may not, as a result of a default claim filed with the Commissioner under this section, make a report to any credit bureau or other third party concerning the borrower's failure to repay his or her loan.

(20 U.S.C. 1080, 1082.)

§ 177.516 Procedures for filing claims.

(a) A lender may file an insurance claim for any of the following reasons:

(1) The loan is in default. A loan is not in default until the 120-day or, if applicable, the 180-day period, described in the definition of "default" in § 177.200, has elapsed. The 120- or 180-day period begins as follows:

(i) If the borrower fails to make an installment payment when due, the 120- or 180-day period begins the day after the due date of that installment.

(ii)(A) If the lender has exercised the option (under § 177.509(e)(3)) of including a provision in the promissory note which requires the borrower to execute a repayment schedule not later than 120 days prior to the beginning of the repayment period, and the borrower has not executed a schedule by that date, despite compliance by the lender with § 177.516(b)(1)(ii), the 120-day period begins 120 days prior to the beginning of the repayment period.

(B) If the lender has exercised the option under § 177.509(e)(3) but sends the borrower the repayment schedule later than 150 days prior to the beginning of the repayment period, but prior to the beginning of the repayment period, the 120-day period begins 30 days after the lender actually sends the borrower the repayment schedule.

(iii) If the lender has not exercised the option of including a provision in the promissory note which requires the borrower to execute a repayment schedule not later than 120 days before the beginning of the repayment period, and the borrower cannot be located or, by the beginning of the repayment period, has not executed a schedule sent to him or her by the lender, the 120- or 180-day period begins on the first day of the repayment period.

(iv) If the borrower enters the repayment period without the lender's knowledge, the 120- or 180-day period begins on the day the lender discovers that the borrower has entered the repayment period.

(2) Any of the conditions for filing a default claim without collection efforts exist, as set forth in §§ 177.515 and 177.517(e).

(3) The borrower has died.

(4) The borrower is totally and permanently disabled.

(5) The borrower has been adjudicated a bankrupt.

(b) *Filing a claim application.* A lender shall file an insurance claim on a form provided by the Commissioner. The lender shall attach to the claim all documentation that the Commissioner may require. Failure to submit the required documentation may result in a claim not being honored. The Commissioner may also deny a claim that is not filed on time.

(c) *Documentation required for all FISLP claims.* The Commissioner requires the following documentation for all claims:

(1) The original promissory note.

(2) The loan application.

(3) A payment history, as described in § 177.519(a)(1)(ix), if any payments have been made.

(4) A collection history, as described in § 177.519(a)(1)(x), if the loan has entered the repayment period.

(d) *Assignment of note.* The Commissioner's payment of a claim is contingent upon receipt of an assignment to the United States of America of all right, title, and interest of the lender in the note underlying the claim. The lender shall agree to reimburse the Commissioner for any overpayments of interest or special allowance that the Commissioner may have made for the loan.

(e) *Specific procedures applicable to the individual claim categories.* A lender must also comply with the following requirements for filing default, death, disability, and bankruptcy claims:

(1) *Default claims.* (i) Unless a lender has notified the Commissioner that it has filed suit against the defaulted borrower, after obtaining the Commissioner's approval for the suit, it must file a default claim with the Commissioner within 90 days after the loan has been determined to be in default, or the lender has determined that any of the conditions for filing a default claim without collection efforts exist, as set forth in §§ 177.515 and 177.517(e). If the loan is in default under circumstances where the borrower has entered repayment without the lender's knowledge, the 90-day period for filing begins after the 120- or 180-day default period following the lender's discovery that the borrower has entered the repayment period.

(ii) In addition to the documentation required for all claims, the lender must submit with its default claim the following:

(A) The repayment schedule.

(B) A collection history, as described in § 177.519(a)(1)(x).

(C) A copy of the final demand letter, if required under § 177.511.

(D) The original or a copy of all personal correspondence addressed to or from, or on behalf of, the borrower relevant to the amount owed by the borrower, whether that correspondence involved the original lender, a subsequent holder, or an independent servicing agency.

(E) Evidence of the lender's requests to the Office of Education for pre-claim assistance and, if a request was required under § 177.511(c), skip-tracing assistance.

(F) For a loan made by a school lender, whether or not the claim is filed by the school, a statement indicating whether the borrower enrolled at the school for the academic period for which the loan was intended and, if not, the amount of the loan that was reasonably necessary for the borrower's travel from his or her residence to the school.

(iii) If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the borrower's bankruptcy, the lender shall promptly forward that notice to the Office of Education. The lender may not file a proof of claim with the bankruptcy court in this situation.

(2) *Death claims.* A lender shall file a death claim with the Commissioner within 60 days after the lender determines that a borrower is dead. In addition to the documentation required for all claims, the lender shall submit with its death claim those documents which formed the basis for its determination of death.

(3) *Disability claims.* A lender shall file a disability claim with the Commissioner within 60 days after it receives a certification from a licensed physician that a borrower is totally and permanently disabled. In addition to the documentation required for all claims, the lender shall submit with its disability claim a copy of the certification.

(4) *Bankruptcy claims.* A lender shall file a bankruptcy claim with the Commissioner within 60 days after the lender receives a notice of the first meeting of creditors in a borrower's bankruptcy proceeding. In addition to the documentation required for all claims, the lender shall submit with its claim to the Commissioner the following:

(i) The repayment schedule, if the loan has entered into the repayment period.

(ii) An assignment to the United States of America of its proof of claim.

(iii) All pertinent documents sent to or received from the bankruptcy court.

(iv) A statement of any facts of which the lender is aware that may form the basis for an objection to the bankrupt's discharge or an exception to the discharge.

(20 U.S.C. 1080, 1082, 1087.)

§ 177.517 Determination of amount of loss on claims.

(a) The amount of loss to be paid on a claim depends upon the type of claim involved.

(1) *Default claims.* The amount of loss to be paid on a default claim depends upon the date the Office of Education received the application for insurance commitment on the loan. If the application was received—

(i) Prior to July 1, 1972, or between August 19, 1972, and February 28, 1973, the amount of loss to be paid on the claim shall be equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) Between July 1 and August 18, 1972, or after February 28, 1973, the amount of loss to be paid on the claim shall be equal to the unpaid balance of the principal and interest. The unpaid principal amount of the loan may include capitalized interest.

(2) *Death and total and permanent disability claims.* The amount of loss to be paid on a death or disability

claim depends upon the date the loan was disbursed. If the loan was disbursed—

(i) Prior to December 15, 1968, the amount of loss to be paid on the claim shall be equal to the unpaid balance of the original principal loan amount disbursed, or

(ii) After December 14, 1968, the amount of loss to be paid shall be equal to the unpaid balance of the principal and interest. The unpaid principal amount may include capitalized interest.

(3) *Bankruptcy claims.* The amount of loss to be paid on these claims shall be equal to the unpaid balance of the principal and interest. The unpaid principal amount of the loan may include capitalized interest.

(b) *Payment of insured interest.* (1) When FISLP insurance covers unpaid interest, the payment on an approved claim covers the unpaid interest that accrues during the following periods:

(i) Before the beginning of the repayment period for a loan that does not qualify for Federal interest benefits, whether or not the accrued interest was added to the principal amount of the loan on the date upon which repayment of the first installment of principal fell due.

(ii) During the period before the claim is filed, not to exceed the period permitted under paragraph (e) of § 177.516 for filing the claim.

(iii) During a period not to exceed 30 days following the return of the claim to the lender by the Commissioner for additional documentation necessary for the claim to be approved by the Commissioner.

(iv) During the period required by the Commissioner to approve the claim and to authorize payment.

(2) When FISLP insurance covers unpaid interest, the Commissioner also pays the unpaid interest that accrues during other periods which are tied to the type of claim involved:

(i) The payment on a default claim covers unpaid interest that accrues through the date of default.

(ii) The payment on a bankruptcy claim covers unpaid interest that accrues before the receipt by the lender of the notice of the first meeting of creditors from the bankruptcy referee.

(iii) The payment on a death claim covers unpaid interest that accrues before the lender determines that the borrower is dead.

(iv) The payment on a disability claim covers unpaid interest that accrues before the lender receives a certification from a physician that the borrower is totally and permanently disabled.

(c) *Factors affecting the insurability of a loan.* (1) In determining whether to approve an insurance claim for payment, the Commissioner considers legal defects affecting the initial validity or insurability of the loan.

(2) The Commissioner also deducts from a claim any amount that is not a legally enforceable obligation of the borrower except to the extent that the defense of infancy applies.

(3) The Commissioner further considers whether all holders of the loan have complied with the requirements of the FISLP regulations, including those concerned with the making, servicing, and collecting of a loan, the timely filing of a claim, and the submission of documents with a claim.

(4) The Commissioner does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Commissioner.

(d) *Special rules for a loan acquired by assignment.* If a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. In particular, the Commissioner deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(e) *Special rules for loans made by school lenders.* (1) If the loan for which a claim is filed was originally made by a school and the claim is filed by that school, the Commissioner deducts from the claim—

- (i) An amount equal to any unpaid refund that the school owes the borrower under § 177.608; or
- (ii) An amount attributable to any portion of the program of study that the student was unable to complete because the school terminated its teaching activities during the period of time for which the student obtained a FISLP loan. If this situation occurs, the lender shall immediately file a default claim with the Commissioner. The Commissioner reimburses the lender in an amount which bears the same ratio to the total amount of the claim as the amount of the educational services that the student received before the school terminated its teaching activities bears to the total services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activities.

(2) If the loan for which a claim is filed was originally made by a school but the claim is filed by another lender that obtained the note by assignment, the Commissioner deducts from the claim—

- (i) An amount equal to any unpaid refund that the school owed the borrower under § 177.608 prior to the assignment of the loan to a subsequent holder;
- (ii) An amount attributable to any portion of the program of study that the student was unable to complete because the school terminated its teaching activities during the period of time for which the student obtained a FISLP loan. If this situation occurs, the lender shall immediately file a default claim with the Commissioner. The Commissioner reimburses the lender in an amount which bears the same ratio to the total amount of the claim as the amount of the educational services that the student received before the school terminated its teaching activities bears to the total services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activities.

(f) *Special rules for a loan originated by a school.* For purposes of this section, a loan which is originated by a school shall be treated in accordance with paragraph (e)(1) of this section as if it were a loan made and still held by a school.

(g) *Circumstances under which defects in claims may be cured or excused.* (1) The Commissioner may permit a lender to cure certain defects in a specified manner as a condition for payment of a default claim.

(2) The Commissioner may excuse certain defects—

- (i) If the holder submitting the default claim satisfies the Commissioner that the defect did not contribute to the default or prejudice the Commissioner's attempt to collect on the loan from the borrower; or
- (ii) If the defect arose while the holder submitting the default claim was holding the loan but the Commissioner had previously found that the holder had procedures in effect sufficient to ensure that such a defect would not normally arise.

(3) The Commissioner may also excuse certain defects if the Commissioner is satisfied that—

- (i) The defect arose while the loan was held by another lender;
- (ii) The assignment of the loan was an arm's length transaction;
- (iii) The present holder did not know of the defect at the time of the assignment; and
- (iv) (A) The present holder could not have become aware of the defect through an examination of the loan documents; or

(B) The present holder had relied on a finding by the Commissioner that the lender holding the loan when the defect arose had procedures in effect sufficient to ensure that such a defect would not normally arise.

(20 U.S.C. 1080, 1082.)

§ 177.518 The Commissioner's collection efforts after payment of a default claim.

After paying a default claim on a FISLP loan, the Commissioner attempts to collect from the borrower and any valid endorser in accordance with the Federal Claims Collection Standards (4 CFR Parts 101-105). The Commissioner attempts collection of all unpaid principal and accrued interest, except in the following situations:

(a) *The borrower has a valid defense on the loan.* In this situation, the Commissioner refrains from collection against the borrower or endorser to the extent of any defense that either may have.

(b) *A school owes the borrower a refund for the period covered by the loan.* In this situation, the Commissioner refrains from collection to the extent of the unpaid refund calculated under § 177.608 if the borrower assigns to the Commissioner the right to receive the refund and the borrower agrees in writing to pay the Commissioner the remaining portion of his or her indebtedness on the loan.

(c) *The school attended by the borrower closed during the academic period covered by the loan.*

(1) In this situation, the Commissioner refrains from collection against the borrower or endorser to the extent that the borrower would have had a defense on the loan if the loan was—

- (i) Made by the school;
- (ii) Part of the same transaction as the student's enrollment at the school; and

(iii) Paid to the school in consideration for the educational services that were to be provided by the school.

(2) As a condition of this forgiveness the borrower must—

(i) Assign to the Commissioner the right to receive any refund that the school owes the borrower under § 177.608; and

(ii) Agree in writing to pay the Commissioner the remaining portion of his or her indebtedness on the loan.

(d) *A school or lender is the subject of a lawsuit or Federal administrative proceeding.* In this situation, if the Commissioner determines that the proceeding involves allegations that, if proven, would provide the borrower with a full or partial defense on the loan, then the Commissioner may suspend collection activity on all or part of a loan until the proceeding ends. The Commissioner suspends collection activity only for so long as the Commissioner believes that the proceeding is being energetically prosecuted in good faith and that the allegations that relate to the borrower's defense are reasonably likely to be proven. When a final resolution is reached, the Commissioner collects from the borrower to the extent appropriate.

(e) *A school or lender is the subject of a limitation, suspension, or termination action by the Commissioner.* In this situation, if the Commissioner determines that the final outcome of the action could provide the borrower with a full or partial defense on the loan, then the Commissioner may suspend collection activity pending the final resolution of the action. When a final resolution is reached, the Commissioner collects from the borrower to the extent appropriate.

(f) *The borrower dies, becomes totally and permanently disabled, or has the FISLP loan discharged in bankruptcy.* In this situation, the Commissioner terminates all collection activity against the borrower. If the borrower dies or becomes totally and permanently disabled the Commissioner also terminates all collection activity against any valid endorser. However, if the borrower's obligation is discharged in bankruptcy the Commissioner continues to attempt to collect the loan from any valid endorser.

(20 U.S.C. 1080, 1082.)

§ 177.519 Records, reports, and inspection requirements for FISLP lenders.

(a) *Records.* (1) A lender shall keep complete and accurate records of each FISLP loan which it holds. The records must be organized in a way that permits ready identification of the current status of each loan. The required records include—

- (i) The loan application;
- (ii) The original promissory note, including the repayment instrument, until it is paid, after which a copy is required;
- (iii) The repayment schedule;
- (iv) A record of each disbursement of loan proceeds;
- (v) Notices of changes in a borrower's address and status as at least a half-time student;

(vi) Evidence of the borrower's eligibility for a deferment;

(vii) The documents required for the exercise of forbearance;

(viii) Documentation of the assignment of the loan;

(ix) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amounts attributable to principal and interest;

(x) A collection history showing the date and subject of each communication with the borrower or endorser for collection of a delinquent loan; and

(xi) Any additional records as specifically required by these regulations which are necessary to document the validity of an insurance claim or to make any reports required by the Commissioner under these regulations.

(2)(i) A lender shall retain the records required for each loan for not less than 5 years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Commissioner may require the retention of records beyond this minimum period.

(ii) The lender may store records in microfilm or computer format. However, the holder of a promissory note must retain the original note and repayment instrument until the loan is fully repaid. At that time the lender shall return the original note and repayment instrument to the borrower, and retain copies for the prescribed period.

(b) *Reports.* A lender shall submit reports to the Commissioner at the time and in the manner the Commissioner may reasonably require, including but not limited to the following:

(1) The Lender's Manifest for FISLP loans.

(2) The Lender's Request for Payment of Interest on Student Loans.

(3) The Lender's Annual Report on Guaranteed Student Loans Outstanding.

(c) *Inspections.* Upon request, a lender shall afford the Secretary of Health, Education, and Welfare, the Comptroller General of the United States, and any of their authorized representatives access to its records in order to assure the correctness of its reports.

(20 U.S.C. 1077, 1078, 1079, 1080, and 1082.)

Subpart F—Requirements, Standards, and Payments for Participating Schools

§ 177.600 Participation agreement between an eligible school and the Commissioner.

(a) *General.* Participation of a school in the GSLP means that the school's students are eligible to receive GSLP loans. To participate in the GSLP, under either the FISLP or a guarantee agency program, a school must—

(1) Establish its basic eligibility as an institution of higher education or a vocational school, as defined in § 177.200; through certification by the Division of Eligibility and Agency Evaluation, Bureau of Higher and Continuing Education, Office of Education; and

(2) Enter into a written agreement with the Commissioner. The agreement must be signed by an

appropriate official of the school on a form provided by the Commissioner.

(b) *Terms of the agreement.* In the agreement, the school promises to comply with the applicable provisions of—

- (1) The Act and the GSLP regulations;
- (2) 45 CFR Part 168 (General Provisions Relating to Student Assistance Programs); and
- (3) 45 CFR Part 178 (Student Consumer Information Services).

(c) *Time to respond.* The Commissioner responds to a school's request for an agreement to participate in the GSLP within 30 days after receiving the request.

(d) *Denial or limitation of participation.* (1) If the Commissioner decides not to approve a request for an agreement or approves only limited participation in the GSLP by the school, the reason for the decision is included in the response.

(2) The Commissioner provides an opportunity for the school to meet with a designated Office of Education official, if the school wishes to appeal a decision involving either—

- (i) Denial of an agreement for participation; or
- (ii) Approval of an agreement that limits the school's participation.

(3) The Commissioner does not, however, grant an opportunity for appeal or give reasons for denying the participation, or approving only the limited participation, of a school if the school submits its request within 6 months of a previous denial or limited approval.

(e) *Change in ownership or form of control.* A GSLP participation agreement automatically terminates when a school changes its ownership or form of control. The termination is effective at the time the change occurs. A new agreement must be signed and approved by the Commissioner for the school to participate under the new ownership or form of control.

(f) *Foreign schools.* A school outside the States shall be required to comply with the provisions of these regulations only to the extent determined by the Commissioner.

(20 U.S.C. 1082, 1088f-1.)

§ 177.601 Agreement between the Commissioner and a school that makes or originates loans.

(a) *General.* A school must have an agreement with the Commissioner in order to make or originate GSLP loans under either the FISLP or a guarantee agency program. The definition of origination is in § 177.200.

(b) *Terms of the agreement.* An agreement to allow a school to either make or originate loans contains the following terms:

(1) The school will not make or originate loans which would be outstanding to more than 50 percent of its undergraduates in attendance at that school on at least a half-time basis. An exception to this rule, however, is contained in paragraph (d) of this section.

(2) The school will not make or originate a loan for an academic period to an undergraduate student who has not previously obtained a loan that was made or originated by the school until the student provides the

school with evidence of denial of a loan by a commercial lender for the same academic period. Evidence acceptable for this purpose is described in paragraph (c) of this section.

(3) The school will inform any student who seeks to obtain a loan to be made or originated by that school that he or she must first make a good faith effort to obtain a loan from a commercial lender. In determining whether a school has complied with this requirement, the Commissioner may take into consideration any patterns reflected by the letters of denial or students' sworn statements referred to in paragraph (c) of this section that indicate that the school has not given sufficient counseling to students to first seek loans from a commercial lender. An example of an unacceptable pattern would be if all denials of loans to a school's students were made by a small number of lenders.

(4) The school will not make or originate a loan for an academic year in excess of the lesser of \$2,500 or half the estimated cost of attendance to a student who—

- (i) Is in the first academic year of study as an undergraduate; and
- (ii) Was not previously enrolled in an undergraduate program.

(5) Loans that the school makes or originates will be disbursed in multiple installments in accordance with the disbursement requirements in § 177.401(b)(3)(ii) and § 177.505(a)(1)(ii) if—

- (i) The loan amount exceeds \$1,500 for the academic year;
- (ii) The borrower is in the first academic year of study as an undergraduate; and
- (iii) The borrower was not previously enrolled in an undergraduate program.

(c) *Establishing a loan denial by a commercial lender.*

(1) To ensure under paragraph (b)(2) of this section that a student has sought and been denied a loan from a commercial lender for an academic period, the school shall obtain from the student—

- (i) A written statement from a commercial lender indicating that the lender denied the student a loan for that academic period; or
- (ii) The student's sworn statement indicating both the refusal of a loan by a commercial lender and that lender's refusal to provide a written statement of the denial.

(2) If the student's sworn statement is used to establish the denial of a loan, that statement must include—

- (i) The name of the lender that denied the loan;
- (ii) The approximate date on which the loan was denied;
- (iii) The name of the official who communicated the denial to the student; and
- (iv) The student's signature. The statement must be signed by the student in the presence of a notary or other person who is legally authorized to administer oaths or affirmations and who does not take part in the recruiting of students for enrollment at the school.

The notary or other person must sign the statement and, if appropriate, affix his or her seal or stamp.

(3) The refusal of a lender to make a loan to a student for the entire amount requested by the student constitutes a denial of a loan, if the school determines that the student is eligible for a loan of that amount. If the denial is based upon the student's inability to obtain the entire amount requested, the school may either—

- (i) Make or originate a loan to that student for the entire amount; or
- (ii) Supplement the loan that the commercial lender is willing to make with a second loan to the student.

(d) *Waiver of the 50 percent lending limit.* A school may request a waiver of the 50 percent lending limit under paragraph (b)(1) of this section if adherence to that limit would create a substantial hardship to the school's present or prospective students. The Commissioner determines whether to grant the school a waiver after considering the following:

(1) The extent to which the school provides, and expects to continue providing, educational opportunities to economically disadvantaged students, as measured by the percentage of these students enrolled at the school who—

- (i) Fall within the "low-income family" category used by the Bureau of the Census;
- (ii) Would not be able to enroll, or continue their enrollment, at that school without a GSLP loan made or originated by the school; and
- (iii) Would not be able to obtain a comparable education at another school.

(2) The extent to which the school offers academic programs that—

- (i) Are unique in the geographical area the school serves; and
- (ii) Would not be available to some students if the school adhered to the 50 percent lending limit.

(3) The quality of the school's—

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(e) *Schools that previously made or originated loans.*

A school that is making or originating loans on the effective date of these regulations shall enter into an agreement with the Commissioner in order to continue this activity. The agreement must be submitted within 90 days of that effective date.

(20 U.S.C. 1075, 1078, 1082, 1083.)

§ 177.602 Providing information to prospective students.

(a) *General.* (1) A school shall present each of its prospective students with a complete and accurate statement containing information about the school. The statement must be in written form and must be presented to the prospective student prior to the time that he or she becomes obligated to pay the school any tuition or fees.

(2) The statement provided by the school must include information pertaining to—

- (i) The school's current academic or training programs in which the student has expressed interest;
- (ii) The school's faculty in those programs; and

(iii) The school's facilities relating to those programs.

(b) *Providing employment data.* In addition to the information required by paragraph (a) of this section, a school that offers programs or courses of study designed to prepare students for a particular vocational, trade or career field (e.g., truck driving, teaching or pharmacy) shall provide a prospective student in that field with a written statement regarding the employment of students previously enrolled in those programs or courses.

(1) The employment information must include data regarding the percentage of previously enrolled students who entered positions of employment directly related to their enrollment at the school and data regarding the average starting salaries of those students.

(2) The school may provide the prospective student with the most recent comparable regional or national statistical student employment data in lieu of the information about the school's own students if—

(i) After reasonable effort, the school cannot obtain meaningful data on the employment of its own students; or

(ii) The data the school possesses regarding its own students is more than 3 years old and cannot, after a reasonable effort, be updated.

(3) To the extent that information is available, the school should provide a prospective student with information regarding the long range prospects for employment in the particular vocational, trade or career field that the student intends to prepare for at the school.

(20 U.S.C. 1082, 1085, 1088f-1.)

§ 177.603 Admissions criteria for a vocational, trade or career program.

Before obligating a prospective student to pay any tuition or fees for a program or course of study designed to prepare a student for a particular vocational, trade or career field, a school must—

(a) Evaluate the prospective student's abilities by means of an examination or other appropriate criteria; and

(b) Determine that there is a substantial and reasonable basis to conclude that the prospective student has the ability to benefit from the instruction or training to be provided by the school.

(20 U.S.C. 1082, 1085, 1088f-1.)

§ 177.604 Correspondence school schedule requirements.

(a) *General.* A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students. This schedule must be given to a prospective student prior to that person's enrollment.

(b) *Information in the schedule.* The school shall include the following information in its schedule:

- (1) The number of lessons in the course.
- (2) The intervals at which lessons are to be submitted.
- (3) The date by which the course is to be completed.

(4) The period of time within which any resident training must be completed.

(c) *Additional requirements.* The schedule must conform to the requirements set forth in paragraph (a)(3)(ii) of the definition of "vocational school" in § 177.200.

(20 U.S.C. 1082.)

§ 177.605 Certifications by a participating school in connection with a student loan application.

A school shall accurately and completely fill out its portion of a student's loan application. The information requested of the school pertains to the following:

(a) The student's eligibility for a loan determined in accordance with § 177.201.

(b) The student's estimated cost of attendance for the period for which the loan is sought.

(c) The student's estimated financial assistance for the period for which the loan is sought.

(20 U.S.C. 1077, 1078, 1085, 1088f.)

§ 177.606 Administrative cost allowance to participating schools.

(a) *General.* The Commissioner pays an administrative cost allowance to a participating school when funds for this purpose are appropriated by Congress. The administrative cost allowance payment is based on the number of students enrolled at the school who receive a GSLP loan during the award period.

(b) *How the amount of payment is determined.* (1) If funds are sufficient, each school is paid not more than \$10 for each student who receives a GSLP loan for a period of enrollment beginning in an award period.

(2) If appropriated funds for any fiscal year are insufficient to pay the full \$10, payments are proportionately reduced.

(3) If additional funds become available for any fiscal year in which payments were reduced, the allowances are proportionately increased.

(c) *Student count.* For purposes of determining the number of GSLP borrowers enrolled at a school, no student can be counted more than once in the same award period.

(d) *Award period.* For the purpose of this section, "award period" means a 12-month period beginning on July 1 of each calendar year.

(e) *Use of the administrative cost allowance funds.* A school that receives an administrative cost allowance payment shall use those funds first to provide consumer information in accordance with 45 CFR Part 178, Student Consumer Information Services, and then to pay for additional costs of administering student financial aid programs under Title IV of the Higher Education Act of 1965.

(f) *Applying for the administrative cost allowance.* To receive the administrative cost allowance payment, a school must submit an application on a form and within the time limit prescribed by the Commissioner. The school submits the application only in a fiscal year when funds to make the payment have been appropriated by Congress.

(20 U.S.C. 1078, 1082.)

§ 177.607 The student's loan check.

(a) *Purpose.* This section establishes rules for how a school must process a student's GSLP loan check. The school must also comply with any rules for processing a loan check contained in 45 CFR Part 168 (General Provisions Relating to Student Assistance Programs). The rules in this section do not apply to a loan issued by a school lender if the student is attending the school that made the loan.

(b) *General.* (1) Except in the case of a loan check for a student attending a school outside a State (a foreign school), a check issued by a FISLP lender is sent directly to the school where the student is enrolled or will be enrolling.

(2) A loan check issued by a lender under a guarantee agency program may also be sent directly to the school where the student is enrolled or will be enrolling.

(3) A loan check that is sent directly to the school is payable either jointly to the school and the student or only to the student.

(4) Generally, the school may only release a check to a student who has maintained eligibility for the loan by enrolling or continuing enrollment on at least a half-time basis. Exceptions to this rule are contained in paragraphs (f) and (g) of this section.

(c) *A check made payable to the student.* When a school receives a loan check that is payable to one of its students, the school shall process the check as follows:

(1) If the school receives the check after the student enrolls for the academic period for which the loan is intended, the school must promptly deliver the check to the student.

(2) If the school receives the check before the student enrolls for the academic period for which the loan is intended, the school must hold the check and deliver it to the student at the time of the student's enrollment. If after receiving a check for a student, the school determines that the student has not enrolled as expected, the school must return the check to the lender within 30 days of this determination.

(d) *A jointly payable check.* When a school receives a loan check that is made jointly payable to the school and the student, the school shall process the check as follows:

(1) If the school receives the check after the student enrolls for the academic period for which the loan is intended, the school must either—

(i) Endorse the check on its own behalf and deliver it to the student; or

(ii) Obtain the student's endorsement, and—

(A) Retain that portion of the loan proceeds that the student currently owes the school for educational costs as described in paragraph (e) of this section; and

(B) Promptly give the remaining funds to the student.

(2) If the school receives the check before the student enrolls for the academic period for which the loan is intended, the school must hold the check until the student enrolls and then follow the procedures described in paragraph (d)(1) of this section. If after

receiving a check for a student, the school determines that the student has not enrolled as expected, the school must return the check to the lender within 30 days of this determination.

(e) *Retaining student loan proceeds.* A school may only retain loan proceeds covering costs of attendance owed to the school over that part of the academic year for which substantially all of the school's students have been billed, unless the student requests in writing that the school retain additional loan proceeds in order to assist in budgeting his or her funds for the remainder of the academic year.

(f) *Return of a check received during the loan period.* If the school receives a loan check for a student during the academic period for which the loan was intended and the school determines that the student enrolled on at least a half-time basis but is no longer enrolled on at least that basis, the school must return the check to the lender within 30 days. If the student owes the school money for costs of attendance incurred during the period for which the loan was intended, the school should advise the student that the lender may, in accordance with § 177.509(g)(4) or similar rules established by the guarantee agency, redisburse funds in certain circumstances.

(g) *A check received after the loan period ends.* If a school receives a loan check for a student after the academic period for which the loan was intended, the school shall process the check as follows:

(1) If the check is made payable only to the student, the school must return the check to the lender within 30 days of receipt of the check. If the student owes the school money for costs of attendance (e.g., tuition or other fees) that are directly payable to the school for the academic period for which the loan was intended, the school should advise the student that the lender may, in accordance with § 177.509(g)(4) or similar rules established by the guarantee agency, redisburse funds in certain circumstances after the loan period has ended.

(2) In the case of a check that is jointly payable to the school and the student, the school must—

(i) If the student does not owe the school money for costs of attendance described in paragraph (g)(1) of this section, return the check to the lender within 30 days of receipt of the check; or

(ii) If the student does owe the school money for costs of attendance described in paragraph (g)(1) of this section—

(A) First, obtain the student's endorsement;

(B) Retain any loan proceeds that are owed the school by the student; and

(C) Return any remaining funds to the lender within 30 days of receipt of the check. If the student either refuses to endorse the check or cannot be located, the school must return the check to the lender within 30 days of receipt of the check.

(3) If the student owes a party other than the school (e.g., a landlord) money for costs of attendance incurred during the period for which the loan was intended, the school should advise the student that the lender may, in accordance with § 177.509(g)(4) or

similar rules established by the guarantee agency, redisburse funds in certain circumstances after the loan period has ended.

(20 U.S.C. 1078, 1082.)

§ 177.608 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which it will make a refund of unearned tuition, fees and room and board charges to a student who receives a GSLP loan and—

(i) Does not enroll for the academic period for which the loan was intended; or

(ii) Does not complete the academic period for which a loan was made.

(2) The school shall state its refund policy clearly in writing. The school shall include in its refund policy the procedure a student would follow to obtain a refund.

(3) The school shall provide the written statement containing its refund policy to a prospective student prior to the student's acceptance for initial enrollment. The school shall also make its refund policy known to currently enrolled students. If the school changes its refund policy, the school shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* In determining whether a school's refund policy is fair and equitable, the Commissioner considers the following factors:

(1) Whether the refund policy takes into consideration the period for which tuition, fees and room and board charges were paid.

(2) Whether the refund policy takes into consideration the length of time the student was enrolled at the school.

(3) Whether the refund policy takes into consideration the kind and amount of instruction, equipment and other services—

(i) Provided to the student over the period for which tuition, fees, and room and board charges were paid; and

(ii) Provided to the student over the period of time for which the student was enrolled.

(4) Whether the refund policy produces refunds in reasonable and equitable amounts when—

(i) The length of time the student was enrolled, and

(ii) The kind and amount of instruction and equipment and other services provided are compared with the period for which tuition, fees and room and board charges were paid. However, a school may retain reasonable fees, not to exceed \$100, for the period for which tuition and other fees were required, to cover application, enrollment, registration, and other similar charges.

(5) Whether the refund policy provides that all monies paid the school by the student, except for the "reasonable fees" referred to in paragraph (b)(4) of this section, will be refunded, if the student notifies the school of his or her decision not to enroll prior to the 60th day before the scheduled date of enrollment.

(6) Whether the refund policy provides that the school will refund all monies paid by the student in excess of the following charges if the student notifies the school of his or her decision not to enroll during

the 60-day period prior to the scheduled date of enrollment at the school:

- (i) A deposit payment toward tuition for the student's first enrollment at that school that does not exceed 10 percent of the tuition for the academic period for which the GSLP loan was intended.
- (ii) A deposit payment for room and board that does not exceed 10 percent of the total charges to the student for these services during the period for which the GSLP loan was intended.
- (7) Whether the refund policy of the school is mandated by State law.
- (8) Whether, in the case of an accredited school, the Commissioner has approved the refund policy requirements of the applicable accrediting agency.

(20 U.S.C. 1082, 1088f-1(a)(2).)

§ 177.609 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school must determine the date (to include day, month and year) on which a student withdraws from the school for the purpose of—

- (1) Calculating the amount of a refund due the student; and
- (2) Reporting that the student has left the school.
- (b) *The withdrawal date.* The school shall establish the date of a student's withdrawal as follows:
 - (1) Generally, the student's withdrawal date is the earlier of—
 - (i) The date the student notifies the school of his or her withdrawal; or
 - (ii) The date the school determines that a student has withdrawn.

Paragraphs (b)(2) and (b)(3) of this section contain additional rules applicable to particular situations.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the date of the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is normally 60 days after the due date of a required lesson that the student failed to submit in accordance with the schedule for lessons established by the school under § 177.604. However, if the student establishes in writing, within the 60-day period, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may grant that student a restoration to in-school status. However, the school may not grant the student more than one restoration to in-school status on this basis.

(c) *Leaves of absence.* A student who is absent from school and who has been granted a leave of absence by the school, in accordance with this paragraph, is not considered to have withdrawn from school for purposes of this section. A school may grant a leave of absence to a student provided—

- (1) The student has made a written request to be granted a leave of absence;
- (2) The leave of absence involves no additional charges by the school to the student;
- (3) The leave of absence does not—

- (i) Exceed 60 days; or
- (ii) Exceed six months if either of the following circumstances exists:
 - (A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence; or
 - (B) The absence is requested because of the student's medically determinable condition. In this case, the student must provide the school with a recommendation from a physician for a leave of absence longer than 60 days; and
- (4) The student has not previously been granted a leave of absence by the school. Additional leaves of absence for a student must be approved by the Commissioner.

(20 U.S.C. 1082, 1088f-1(a)(2).)

§ 177.610 Payment of a refund to a lender.

(a) *General.* (1) By applying for a GSLP loan, a student authorizes the school to pay directly to the lender that portion of his or her refund from the school that is allocable to that loan.

(2) A school shall pay that portion of the student's refund that is allocable to a GSLP loan to—

- (i) The original lender; or
- (ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity.

(3) When the school pays refund monies to a lender, on behalf of a student, the school shall provide simultaneous written notice to a student of this action.

(b) *Calculating what portion of the refund to allocate to the loan.* (1) In determining what portion of a student's refund for an academic period is allocable to a GSLP loan received by the student for the same academic period, the school must make provision for the refund requirements of other forms of financial assistance which the student has received.

(2) Except as may be otherwise provided in 45 CFR Part 168 (General Provisions Relating to Student Assistance Programs), the portion of the refund that is determined to be allocable to the GSLP loan must not be less than the amount derived using the following formula:

$$\frac{\text{Portion of refund allocable to GSLP loan}}{\text{Total refund}} = \frac{\text{Amount of GSLP loan}}{\text{Estimated cost of attendance, as defined in § 177.200}}$$

(c) *Timely payment of refund.* A school shall pay each refund that is due in accordance with the following:

(1) Within 40 days after the date of the student's withdrawal from the school, as determined in accordance with § 177.609(b); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence (see § 177.609(c)), within 40 days after the last day of that leave of absence.

(d) *Transition requirements.* In the event of a school's closure, termination, or suspension of operations, or change in ownership, the school or its successors shall make provision for compliance with the requirements of this section with regard to students who obtained loans for periods of attendance at the school prior to the school's change in status.

(20 U.S.C. 1082, 1088f-1(a)(2).)

§ 177.611 Termination of a school's lending eligibility.

(a) *General.* The Commissioner terminates a school's eligibility to make GSLP loans, under the FISLP or a guarantee agency program, if the school reaches the 15 percent limit on loan defaults described in paragraph (b) of this section.

(b) *The 15 percent limit.* (1) The Commissioner terminates a school's eligibility to make GSLP loans if, during each of the two most recent consecutive one-year periods for which data is available, the total amount of loans described in paragraph (b)(1)(i) of this section equals or is greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section.

(i) The original principal amount of loans the school has ever made that went into default.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status, that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination required by this section, the Commissioner considers the status of all loans made by the school, whether the loans are held by the school or a subsequent holder.

(c) *Exception based on hardship.* The Commissioner does not terminate a school's lending eligibility under paragraph (a) of this section if the Commissioner determines that the termination would result in a hardship condition for the school or its students. The Commissioner makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will cause the school's loan delinquency rate to improve within the next year. Examples of these improvements include the following:

(i) Adopting more efficient collection procedures.

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students based on—

(i) the extent to which the school provides, and expects to continue to provide, educational opportunities to economically disadvantaged students,

as measured by the percentage of students enrolled at the school who—

(A) Fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll, or continue their enrollment, at that school without a GSLP loan from the school; and

(C) Would not be able to obtain a comparable education at another school.

(ii) The extent to which the school offers academic programs that—

(A) Are unique in the geographical area the school serves; and

(B) Would not be available to some students if they could not obtain loans from the school.

(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) *Termination procedures.* The Commissioner does not terminate the lending eligibility of a school under this section until the school has been notified of the impending action and has had an opportunity for a hearing.

(1) *The termination notice.* An Office of Education official designated by the Commissioner begins a termination action by sending a notice to the school. The notice is sent by certified mail with a return receipt requested. In the notice, the designated official—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed effective date of the termination as the next October 1;

(iii) Informs the school that it has 15 days to do the following—

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraph (a) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request a hearing to show why the school should not be terminated.

(2) *If a hearing is not requested.* If the school does not request a hearing but submits written material, the designated official considers that material and notifies the school as to whether the termination action will be taken.

(3) *The hearing.* The designated official schedules the date and place of a hearing for a school that has requested a hearing. The date of the hearing is at least 15 days from the date that the designated official received the request.

(i) A presiding officer (defined in § 177.701) conducts the hearing.

(ii) The presiding officer considers all written material presented before the hearing and any other material presented during the hearing.

(iii) The presiding officer determines if termination of the school's lending eligibility is warranted.

(4) *Review of a termination of a school's lending eligibility.* The decision of the presiding officer, or of the designated official, in the event that the school has submitted written material but has not requested a hearing, is subject to review by the Commissioner.

(e) *Reinstatement of lending eligibility.* (1) A school that has its lending eligibility terminated under this section may not make further GSLP loans unless it has entered into a new lending agreement with the Commissioner under § 177.601.

(2) A new agreement may not take effect until at least one year after a school's lending eligibility has been terminated under this section.

(f) *Schools under the same ownership.* If a school makes loans to students in attendance at other schools under the same ownership, the Commissioner may make the determinations required by this section by—

- (1) Treating all the schools as one; or
- (2) Treating each school on a school-by-school basis.

(20 U.S.C. 1082, 1085.)

§ 177.612 Records, reports, and inspection requirements for participating schools.

(a) *General.* (1) Each school shall establish and maintain proper administrative and fiscal procedures and all necessary records, as set forth in these regulations and 45 CFR Part 168 (the General Provisions Relating to Student Assistance Programs), in order to—

- (i) Protect the rights of students;
- (ii) Protect the United States from unreasonable risk of loss due to defaults; and
- (iii) Comply with any specific requirements in these regulations and 45 CFR Part 168.

(2) Each school shall submit such reports, as prescribed by the Commissioner, as are necessary to comply with these regulations and 45 CFR Part 168. This requirement includes the timely completion and submission of the Student Confirmation Report (SCR).

(3) When a school becomes aware of a change in the enrollment status of a student who has received a GSLP loan because that student has graduated, withdrawn or ceased to be enrolled at least half-time, the school should report the change directly to the lender if—

- (i) The enrollment change is one that would normally be reported on the next SCR; and
- (ii) The school does not expect to submit its next SCR to the Commissioner within the next 60 days.

(b) *Loan record requirements.* In addition to records required by 45 CFR Part 168, for each loan received by its students a school shall maintain a record of—

- (1) The name of the student borrower;
- (2) The name of the lender;
- (3) The amount of the loan;
- (4) The period for which the loan is intended;
- (5) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;
- (6) The amount of tuition and fees paid by the student for that period;
- (7) The date the student pays those tuition and fees;

(8) The date the school receives each loan check, if the loan check is disbursed through the school and the school itself is not the lender;

(9) The date the school gives each loan check to the student, unless disbursement is made directly to the student by a lender;

(10) The date the school endorses each loan check, if the school is a co-payee;

(11) The date(s) of disposition of the loan proceeds, if the school is a co-payee and the student endorses the check before the school does; and

(12) A record of the student's job placement, if the school provides employment placement service and the student has used the service.

(c) *Retention requirement for records and reports.*

(1) Unless otherwise directed by the Commissioner, the school shall keep all records required under these regulations for 5 years, following the date a student—

- (i) Graduates;
- (ii) Withdraws; or
- (iii) Fails to enroll on at least a half-time basis for an academic period for which a GSLP loan was received.

(2) Unless otherwise directed by the Commissioner, the school shall also keep, for 5 years after their completion, copies of reports and other forms utilized by the school related to GSLP loans.

(3) In the event of the closure, termination, suspension or change of ownership of a participating school, that school or its successor must make provision for the retention of the records and reports required by these regulations and for access to these records and reports for purposes of paragraph (d) of this section.

(4) Records and reports may be kept on microfilm or computer format.

(d) *Federal audits.* For purposes of audit and examination, the school shall give the Secretary of Health, Education, and Welfare, the Comptroller General of the United States, or any of their duly authorized representatives access to records required by these regulations and by Part 168 and to any other pertinent books, documents, papers and records.

(e) *Non-Federal audits.* (1) The school shall, in conformance with 45 CFR part 168, audit or have audited under its direction, all of the school's GSLP transactions to determine a minimum—

- (i) The fiscal integrity of financial transactions and reports; and
- (ii) Whether the transactions are in compliance with the applicable laws and regulations.

(2) Audits shall be performed in accordance with the Department of Health, Education, and Welfare's "Audit Guide for the Guaranteed Student Loan Program."

(3) The school shall have an audit performed at least once every two years. Each audit must cover the entire period of time that elapsed since the last audit that was performed.

(4) The school shall submit the audit report to the appropriate regional office of the Department of Health, Education, and Welfare's Audit Agency for review.

(20 U.S.C. 1082, 1083.)

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility Under the Federal Insured Student Loan Program

§ 177.700 Purpose and scope.

(a) This subpart establishes rules for the limitation, suspension, or termination of the eligibility of an otherwise eligible lender to participate in the FISLP. These rules apply to a lender that violates any provision of the FISLP statute or any regulation, special arrangement, agreement, or limitation prescribed under the FISLP.

(b) This subpart does not apply to a determination that an organization fails to meet the definition of "lender" in § 177.200, nor to a school's loss of lending eligibility due to its default experience under § 177.611.

(c) This subpart also does not apply to administrative action by the Department of Health, Education, and Welfare based on any alleged violation of—

(1) Title VI of the Civil Rights Act of 1964, which is governed by 45 CFR Parts 80 and 81;

(2) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 45 CFR Part 86; or

(3) The Family Educational Rights and Privacy Act of 1974 (§ 438 of the General Education Provisions Act, as amended) which is governed by 45 CFR Part 99.

(20 U.S.C. 1080, 1082, 1088f-1.)

§ 177.701 Definitions of terms used in this subpart.

Designated OE official: An official of the U.S. Office of Education to whom the Commissioner has delegated the responsibility for initiating and pursuing limitation, suspension, and termination procedures.

Limitation: The continuation of a lender's eligibility, subject to compliance with special conditions set by the Commissioner as a result of a limitation or termination proceeding.

Presiding officer: An impartial person who has no prior involvement with the facts giving rise to a limitation, suspension or termination proceeding, and who is selected by the Commissioner to conduct a hearing.

Suspension: The removal of a lender's eligibility for a specified period of time or until the lender meets certain requirements.

Termination: The removal of a lender's eligibility for an indefinite period of time.

(20 U.S.C. 1080, 1082, 1088f-1.)

§ 177.702 Effect on prior participation.

Limitation, suspension, or termination proceedings do not affect a lender's responsibilities, or rights to benefits and claim payments, that are based on the lender's prior participation in the program, except as provided in § 177.709.

(20 U.S.C. 1080, 1082, 1088f-1.)

§ 177.703 Informal compliance procedure.

(a) If the Commissioner receives a complaint, or other information that the Commissioner believes to

be reliable, indicating that a lender may be violating applicable laws, regulations, special arrangements, agreements, or limitations, the Commissioner may give the lender a reasonable opportunity to—

(1) Respond to the complaint or other information;

(2) Show that the matter has been corrected; or

(3) Submit an acceptable plan to correct the violation and prevent its recurrence.

(b) Limitation, suspension or termination procedures need not be delayed during the informal compliance procedure under paragraph (a) of this section if the Commissioner believes—

(1) The delay would harm the FISLP; or

(2) The informal compliance procedure would not correct the alleged violation.

(20 U.S.C. 1080, 1082, 1088f-1.)

§ 177.704 Emergency action.

(a) The Commissioner, through a designated OE official, may take emergency action to stop issuing insurance commitments to a lender if the designated OE official—

(1) Receives information, which the official believes to be reliable, that the lender is violating applicable laws, regulations, special arrangements, agreements, or limitations;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government or students; and

(3) Determines that the likelihood of loss outweighs the importance of following the procedures for limitation, suspension, or termination.

(b) The designated OE official begins an emergency action by notifying the lender, by certified mail with return receipt requested, of the action and the reasons for it. The effective date of the action is the date that the notice is mailed.

(c) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that period expires. In that event, the emergency action may be extended until the completion of the proceeding, including any appeal that may be made to the Commissioner.

(d) If a limitation, suspension, or termination proceeding is begun, the Commissioner provides the lender, upon request, an opportunity to demonstrate that the emergency action is unwarranted.

(20 U.S.C. 1080, 1082, 1088f-1.)

§ 177.705 Suspension proceedings.

(a) *Scope and consequences.* A suspension removes a lender's eligibility under the FISLP for a period of time. That period does not exceed 60 days from the effective date of the suspension unless—

(1) The lender and the designated OE official agree to an extension, if the lender has not requested a hearing; or

(2) The designated OE official begins a limitation or termination proceeding.

(b) *Procedure.* (1) The designated OE official begins a suspension proceeding by sending a notice to the lender by certified mail with return receipt requested. In the notice, the designated OE official—

(i) Informs the lender of the Commissioner's intent to suspend the lender's eligibility, cites the consequences of that action, and identifies the alleged violations on which that action is based;

(ii) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the lender that the suspension will not take effect on the date specified in the notice if the designated OE official receives, at least five days before that date, a request for a hearing or written material showing why the suspension should not take place; and

(iv) Asks the lender to voluntarily correct the alleged violation(s).

(2) If the lender does not request a hearing but submits written material the designated OE official considers that material and notifies the lender that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the lender requests a hearing by the time specified in paragraph (b)(1)(iii) of this section the designated OE official sets the date and place. The date is at least 15 days after the designated OE official receives the request. No suspension takes place until a hearing is held.

(4) A presiding officer conducts the hearing and a written record of the hearing is made.

(5) At the hearing, the presiding officer shall consider any written material presented before the hearing and all other evidence presented during the hearing.

(6) If the presiding officer concludes that the suspension is warranted, the presiding officer issues an initial decision suspending the lender's eligibility.

(7) The Commissioner reviews the initial decision of the presiding officer and issues a final decision. The Commissioner adopts the initial decision unless it is clearly unsupported by the evidence.

(c) Notice of the suspension is promptly mailed to the lender. The suspension takes effect either on the date that the initial decision notice is mailed to the lender or on the original proposed effective date stated in the notice of intent, whichever is later.

(d) If the designated OE official begins a limitation or termination proceeding before the suspension period ends, the suspension period may be extended until the completion of that proceeding, including any appeal to the Commissioner.

(20 U.S.C. 1080, 1082, 1088f-1).

§ 177.706 Limitation or termination proceedings.

(a) *Scope and consequences.* A limitation or termination either—

(1) Limits in a specified manner the eligibility of a lender to participate in the FISLP; or

(2) Removes the eligibility of a lender to make any new FISLP loans.

(b) *Procedure.* (1) The designated OE official begins a limitation or termination proceeding, whether or not a suspension proceeding has begun, by sending the lender a notice by certified mail with return receipt requested. In the notice, the designated OE official—

(i) Informs the lender of the Commissioner's intent to limit or terminate the lender's eligibility, cites the consequences of that action, identifies the alleged violations on which that action is based, and in the case of a limitation states the limits which may be imposed;

(ii) Specifies the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the lender that the limitation or termination will not take effect on the date specified in the notice if the designated OE official receives, at least 5 days before that date, a request for a hearing or written material showing why the limitation or termination should not take place; and

(iv) Asks the lender to voluntarily correct the alleged violation(s).

(2) If the lender does not request a hearing but submits written material the OE official considers that material and notifies the lender that either—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the lender requests a hearing by the time specified in paragraph (b)(1)(iii) of this section the designated OE official sets the date and place. The date is at least 15 days after the designated OE official receives the request. No proposed limitation or termination takes place until after a hearing is held.

(4) A presiding officer conducts the hearing, and a written record of the hearing is made.

(5) At the hearing the presiding officer shall consider any written material presented before the hearing and all other evidence presented during the hearing.

(6) If the presiding officer concludes that limitation or termination is warranted the presiding officer issues an initial decision that limits or terminates the lender's eligibility.

(7) If a termination action is brought against a lender, and the presiding officer believes a limitation to be more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating its eligibility.

(c) *Expedited hearings.* With the approval of the presiding officer and the consent of the designated OE official and the lender any time schedule specified in this section may be shortened.

(20 U.S.C. 1080, 1082, 1088f-1.)

§ 177.707 Initial and final decisions.

(a) The presiding officer issues an initial decision in any limitation, suspension, or termination proceeding based on findings of fact and conclusions of law. The presiding officer shall base findings of fact only on evidence considered at the hearing and matters given official notice. The presiding officer's initial decision is mailed promptly to the lender.

(b) In a suspension proceeding, the Commissioner reviews the presiding officer's initial decision and issues a final decision. The Commissioner adopts the initial decision unless it is clearly unsupported by the evidence.

(c)(1) In a limitation or termination proceeding, the presiding officer's initial decision automatically becomes the Commissioner's final decision 20 days after it is issued unless, within that 20-day period, the lender or designated OE official appeals the decision to the Commissioner.

(2) Within a period of time specified by the Commissioner the appealing party may submit additional written material including exceptions to the initial decision, proposed findings and conclusions, and supporting briefs and statements. The Commissioner sets a time by which the opposing party shall respond. Any party submitting material to the Commissioner shall provide a copy to each party that participated in the hearing.

(3) The presiding officer's initial decision limiting or terminating the lender's eligibility does not take effect pending the appeal, unless the Commissioner determines that a stay of the effective date would seriously and adversely affect the FISLP or students.

(4) After an appeal the Commissioner issues a final decision affirming, modifying, or reversing the initial decision, including a statement of reasons for the Commissioner's decision.

(20 U.S.C. 1080, 1082, 1088f-1.)

§ 177.708 Verification of mailing dates.

The Office of Education's mailing dates are verified by the original receipts from the U.S. Postal Service.

(20 U.S.C. 1080, 1082, 1088f-1.)

§ 177.709 Effect of suspension or termination proceeding.

After the effective date of a lender's suspension or termination, the Commissioner does not insure new loans made by that lender. Also, the Commissioner may prohibit the lender from making further disbursements on a loan for which an insurance commitment already has been issued.

(20 U.S.C. 1080, 1082, 1088f-1.)

§ 177.710 Limitation.

A limitation may include—

(a) A limit on the number or total amount of FISLP loans that a lender may make, purchase, or hold;

(b) A limit on the number or total amount of FISLP loans a lender may make to students at a particular school; and

(c) Other reasonable requirements or conditions.

(20 U.S.C. 1080, 1082, 1088f-1.)

§ 177.711 Reimbursements, refunds, and offsets.

(a) The Commissioner, designated OE official, or presiding officer may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Commissioner or to designated recipients of any funds that the lender improperly received, withheld, disbursed, or caused to be disbursed. Corrective action may, for example, relate to—

(1) Interest benefits, special allowance, or other claims paid by the Commissioner; or

(2) Required refunds to students, in the case of a school lender.

(c) If a final decision requires a lender to reimburse or make any payment to the Commissioner, the Commissioner may offset these claims against any benefits or claims due the lender.

(20 U.S.C. 1080, 1082, 1088f-1.)

§ 177.712 Reinstatement after termination.

(a) A lender whose eligibility has been terminated may file a request for reinstatement of its eligibility. This request may not, however, be filed within 18 months of the effective date of the termination.

(b) The reinstatement request must be in writing and must show that the lender has corrected the violation(s) on which its termination was based and meets all qualifications for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 45 CFR Part 168, General Provisions Relating to Student Assistance Programs, may not be reinstated as a FISLP lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) The Commissioner, within 60 days of receiving the reinstatement request—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e)(1) If the Commissioner denies the lender's request or allows reinstatement subject to limitation(s) the lender, upon request, will be granted an opportunity, including a meeting, to show why it should be fully reinstated.

(2) A lender that is reinstated with limitations may participate in the FISLP under the limitations pending this appeal.

(20 U.S.C. 1080, 1082, 1088f-1.)

§ 177.713 Removal of limitation.

(a) A lender may request removal of the Commissioner's limitation imposed under these regulations no sooner than 12 months after the effective date of the limitation.

(b) The request must be in writing and show that the lender has corrected the violation(s) on which the limitation was based.

(c) The Commissioner, within 60 days of receiving the request, either—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d) If the Commissioner denies the request or establishes other limitations the lender, upon request, is given an opportunity including a meeting to show why its eligibility should be fully reinstated.

(e) A lender may continue to participate in the FISLP under the limitations pending this appeal.

(20 U.S.C. 1080, 1082, 1088f-1.)