

**DEPARTMENT OF EDUCATION****34 CFR Part 682**

RIN 1840-AC35

**Federal Family Education Loan Program****AGENCY:** Department of Education.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL regulations govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan Program. The Secretary is proposing to make changes to the due diligence requirements for lenders and guaranty agencies participating in the FFEL Program.

**DATES:** Comments must be received on or before November 5, 1996.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Pamela A. Moran, U.S. Department of Education, Post Office Box 23272, Washington, DC 20026-3272. Comments may also be sent through the internet to [due\\_diligence@ed.gov](mailto:due_diligence@ed.gov).

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

**FOR FURTHER INFORMATION CONTACT:** Ron Streets, Program Specialist, Loans Branch, Policy Development Division, Policy, Training, and Analysis Service, U.S. Department of Education, 600 Independence Avenue, S.W. (room 3053, ROB-3), Washington, DC 20202-5449. Telephone: (202) 708-8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:****Background**

The Secretary is proposing to amend 34 CFR Part 682 of the Department's regulations to improve the administration and the integrity of the FFEL Program. By improving program efficiency, these proposed regulations will reduce burden for lenders and improve the collection of outstanding FFEL loans and potential liabilities owed to the Secretary.

**Proposed Regulatory Changes**

The Secretary proposes to amend the following sections of the regulations to reflect changes needed to improve the due diligence provisions in the FFEL Program.

**Section 682.401 Basic Program Agreement**

The Secretary proposes to amend § 682.401(b)(27) by codifying the interpretation outlined in the Department's Dear Colleague Letter 95-G-286 dated November 1995, to permit guaranty agencies to retain collection costs totaling up to 18.5 percent of the outstanding principal and accrued interest of a defaulted FFEL loan that is repaid by a consolidation loan as long as their collection costs are included in the payoff amount certified by the guaranty agency.

**Section 682.404 Federal Reinsurance Agreement**

The Secretary proposes to amend § 682.404(a)(2)(ii) by requiring guaranty agencies to offer preclaims assistance to lenders no later than the 75th day of delinquency. Currently, the regulations do not include an explicit deadline by which the guaranty agencies must provide this service and some agencies have not provided preclaims assistance on a timely basis. This proposal would create uniformity in the treatment of delinquent borrowers and ensure that preclaims is initiated early enough to successfully avert default.

This section is also amended to require guaranty agencies, as part of their preclaims assistance to lenders, to provide counseling and written consumer information to the borrower by the 100th day of delinquency informing the borrower of the option to consolidate student loans under the FFEL Program or the Federal Direct Consolidation Loan Program to avoid default. The Secretary believes that providing this information to delinquent borrowers during the preclaims assistance process will help reduce defaults by ensuring that borrowers have information regarding

consolidation when it is critically needed. Failure of the agency to provide this information would constitute a violation of due diligence in servicing a loan.

This section is further amended to require that payments made by a borrower on a defaulted loan to a guaranty agency must be first applied to the agency's collection costs attributable to that payment on the loan and then to reinsured interest and principal. This amendment will ensure that the borrower remains responsible for paying collection costs as required by section 484A(b) of the Higher Education Act of 1965, as amended. The Secretary also solicits particular comment on whether a guaranty agency should be allowed to apply the borrower's payment to incidental charges such as late charges first, after collection charges, rather than only after all principal and interest as is currently the case.

**Section 682.410 Fiscal, Administrative, and Enforcement Requirements**

The Secretary proposes to amend § 682.410(b)(2) that governs the amount of collection charges guaranty agencies may charge the borrower. These regulations propose to require guaranty agencies to assess a defaulted borrower the same amount of collection charges assessed by the Department for loans held by the Department. The collection rate currently assessed by the Department is 25 percent. The Secretary believes that standardization of collection costs across the industry will both reduce confusion and ensure equitable treatment for borrowers whose FFEL loans are guaranteed by multiple guaranty agencies. The Secretary will inform guaranty agencies annually what the applicable rate is in sufficient time for agencies to make necessary system changes. However, the Secretary solicits additional comment on whether agencies should be provided with the flexibility to assess less than the Department's collection rate if the agency's actual costs of collection support this.

The Secretary also proposes to amend § 682.410(b)(6)(vii)(A) that currently provides guaranty agencies the option of either initiating wage garnishment or instituting a civil suit against the borrower whose loans have defaulted. These proposed regulations remove that option and instead require that guaranty agencies initiate wage garnishment proceedings if the borrower has sufficient income. If the agency determines that the borrower has insufficient income to satisfy the debt by garnishment, but has assets from

which the debt can be satisfied, the guaranty agency will be required to assign the debt to the Department so the Secretary can file a civil suit against the borrower. The Department intends to litigate assigned accounts through the Department of Justice in order to place a lien against the borrower's assets to satisfy the debt. The Secretary believes that this change will result in more effective collection of defaulted loans across the country because guaranty agencies have had varying success in collecting loans through litigation.

*Section 682.411 Due Diligence by Lenders in the Collection of Guaranty Agency Loans*

The Secretary proposes to amend § 682.411(c) to expand the length of time from 1–10 days delinquent to 1–15 days delinquent that lenders will have to send the first written notice or collection letter to a delinquent borrower. This change will afford the lender additional time to receive payments from a delinquent borrower before it has to send out the first warning of delinquency to that borrower. This reduces the lender's burden of beginning the due diligence process prematurely for delinquent borrowers whose payments are received within the maximum proposed 15-day period.

The Secretary also proposes to amend § 682.411(d)(2) to modify the requirements for the two collection letters that must be sent to a borrower during the period of 16–180 days delinquent (16–240 days delinquent for a loan repayable in installments less frequently than monthly) to include additional warnings to the borrower that the guaranty agency may: (1) Institute proceedings to offset other payments made by the federal government to the borrower; and (2) assign the loan to the federal government for litigation against the borrower.

*Section 682.413 Remedial Actions*

Section 682.413(b) is amended to expand the possible remedial action available to the Secretary if a guaranty agency fails to meet the requirements of § 682.410 to include mandatory assignment of FFEL loans to the Department at the Secretary's discretion. Currently the only penalty available to the Secretary is loss of reinsurance. The Secretary does not believe that this is always in the best interest of the program.

**Executive Order 12866**

*1. Assessment of Costs and Benefits*

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the Order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

*2. Clarity of the Regulations*

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A “section” is preceded by the symbol “S” and a numbered heading; for example, § 682.413 Remedial action.) (4) Is the description of the regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the regulations? (5) What else could the

Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue S.W. (Room 5100, FB-10), Washington, DC 20202–2241.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

According to the U.S. Small Business Administration Size Standards, small entities affected by these regulations are lenders with assets below \$100,000,000. Two provisions of these regulations affect small (and large) lenders. The first could provide a positive economic benefit to small (and large) lenders by providing additional flexibility for regulatory compliance. This provision does not impose a significant adverse economic impact. The second provision would impose minor economic costs on small (and large) lenders by requiring them to modify two letters sent to delinquent borrowers. These letters are required by existing regulations. These additional costs would not have a significant adverse economic impact. This activity would protect the Federal fiscal interest as well as the interests of the borrowers under the programs.

The Secretary particularly requests comments from small lenders on whether the proposed changes would have a significant economic impact on them.

**Paperwork Reduction Act of 1995**

Section 682.411 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

**Collection of Information: Federal Family Education Loan Program**

These regulations strengthen the collectibility of delinquent FFEL loans by participating lenders. Monies collected under these regulations enable new and continuing students to borrow to help defray the cost of education.

The public reporting and recordkeeping burden for this collection of information is estimated to be 3,398.31 hours in order to make the necessary system changes to: (1) add additional warnings to the existing collection letters sent to delinquent borrowers and (2) increasing the period

of time lenders will have to send the first written notice or collection letter to a delinquent borrower. This is a one-time activity.

The estimated burden for incorporating the additional warning paragraphs into the existing collection letters was calculated as follows:

Respondents .....	5,829
Responses .....	× 1
Hours per re-spondent.	× 0.083 (5 minutes)

Annual reporting burden.	483.81 hours
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The estimated burden associated with expanding the window regarding when the first collection letter is sent to a delinquent borrower was calculated as follows:

Respondents ...	5,829
Responses .....	× 1
Hours per re-spondent.	× 0.5 (30 Minutes)

Annual re- porting burden.	2,914.50 hours
Total annual burden hours=	3,398.31

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have a practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the

Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

#### Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3053, Regional Office Building 3, 7th and D Streets, S.W., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except federal holidays.

#### Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

#### List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 31, 1996.

Richard W. Riley,  
*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

The Secretary proposes to amend part 682 of title 34 of the Code of Federal Regulations as follows:

### PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

2. Section 682.401 is amended by revising paragraph (b)(27) to read as follows:

#### § 682.401 Basic program agreement.

\* \* \* \* \*

(b) \* \* \*

(27) *Collection Charges and Late Fees on Defaulted FFEL loans being Consolidated.* (i) A guaranty agency may add collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest to a defaulted

FFEL Program loan that is included in a Federal Consolidation loan.

(ii) When returning the proceeds from the consolidation of a defaulted loan to the Secretary, a guaranty agency may only retain the amount added to the borrower's balance pursuant to paragraph (b)(27)(i) of this section.

\* \* \* \* \*

3. Section 682.404 is amended by revising paragraph (a)(2)(ii) and paragraph (f) to read as follows:

#### § 682.404 Federal reinsurance agreement.

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(ii) *Preclaims assistance* means collection assistance made available to the lender by the guaranty agency no later than the 75th day of delinquency. This assistance must include collection activities that are at least as forceful as the level of preclaims assistance performed by the guaranty agency as of October 16, 1990, and involves the initiation by the guaranty agency of at least 3 collection activities, one of which is a letter designed to encourage the borrower to begin or resume repayment. As part of their preclaims assistance, guaranty agencies must provide counseling and written consumer information to the borrower by the 100th day of delinquency informing the borrower of the borrower's option to consolidate the defaulted loan under the FFEL Program or the Federal Direct Consolidation Loan Program to avoid default. Failure of the agency to provide this information constitutes a violation of the guaranty agency's obligation to perform due diligence in collecting a loan; and

\* \* \* \* \*

(f) *Application of borrower payments.* A payment made to a guaranty agency by a borrower must be applied first to the collection costs due only for the amount collected in the particular payment month on the loan and then to reinsured interest and then to principal. The borrower's payments may be applied to other incidental charges, such as late charges, only after the repayment of all principal and interest.

\* \* \* \* \*

4. Section 682.410 is amended by revising paragraphs (b)(2) and (b)(6)(vii)(A) to read as follows:

#### § 682.410 Fiscal, administrative, and enforcement requirements.

\* \* \* \* \*

(b) \* \* \*

(2) *Collection charges.* Whether or not provided for in the borrower's promissory note, the guaranty agency

shall charge a borrower an amount equal to reasonable costs incurred by the agency in collecting a loan on which the agency has paid a default or bankruptcy claim. These costs may include, but are not limited to, all attorney's fees, collection agency charges, and court costs. The amount charged a borrower must equal the amount the same borrower would be charged for the cost of collection if the loan was held by the U.S. Department of Education.

\* \* \* \* \*

(6) \* \* \*

(vii) \* \* \*

(A) Except as provided in paragraph (b)(6)(vii)(B) of this section, during this period but not sooner than 30 days after sending the notice described in paragraph (b)(5)(vi) of this section, the agency shall initiate proceedings to offset the borrower's state and federal income tax refunds and other payments made by the federal government to a borrower, and shall initiate wage garnishment proceedings against the borrower by the 225th day. If the agency determines that the borrower has insufficient income to satisfy the debt through wage garnishment, but has assets from which the debt can be satisfied, the agency shall assign the loan to the Department by the 545th day.

\* \* \* \* \*

5. Section 682.411 is amended by revising paragraphs (c) and (d) to read as follows:

**§ 682.411 Due diligence by lenders in the collection of guaranty agency loans.**

\* \* \* \* \*

(c) *1-15 days delinquent:* Except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan, the lender during this period shall send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency. The notice or collection letter sent during this period must include, at a minimum, information for the borrower regarding loan consolidation, forbearance and other available options to avoid default.

(d) *16-180 days delinquent (16-240 days delinquent for a loan repayable in installments less frequent than monthly):* (1) Unless exempted under paragraph (d)(4) of this section, during this period the lender shall engage in at least four diligent efforts to contact the borrower by telephone and send at least four collection letters urging the borrower to make the required payments on the loan. At least one of the diligent efforts to contact the borrower by phone must occur before, and another one must occur after, the 90th day of delinquency.

(2) At least two of the collection letters required under paragraph (d)(1)

of this section must warn the borrower that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus, and that the agency may institute proceedings to offset the borrower's state and federal income tax refunds and other payments made by the federal government to a borrower or to garnish the borrower's wages, or assign the loan to the federal government for litigation against the borrower.

\* \* \* \* \*

6. Section 682.413 is amended by redesignating paragraph (b) as paragraph (b)(1) and adding a new paragraph (b)(2) to read as follows:

**§ 682.413 Remedial actions.**

\* \* \* \* \*

(b)(1) The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender, third-party servicer, if applicable, or the agency fails to meet the requirements of § 682.406(a).

(2) The Secretary may require a guaranty agency to repay reinsurance payments received on a loan or to assign FFEL loans to the Department if the agency fails to meet the requirements of § 682.410.

\* \* \* \* \*

[FR Doc. 96-22812 Filed 9-5-96; 8:45 am]

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