

### § 681.30

either inform the borrower about the refund check and where it was sent or, if the borrower's address is unknown, notify the current holder that the borrower was not informed. The current holder must provide the borrower with a written notice of the refund payment.

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### Subpart D—The Lender and Holder

#### § 681.30 Which organizations are eligible to apply to be HEAL lenders and holders?

(a) A HEAL lender may hold loans under the HEAL program.

(b) The following types of organizations were eligible to apply to the Secretary to be HEAL lenders:

(1) A financial or credit institution (including a bank, savings and loan association, credit union, or insurance company) which 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 it has its principal place of business;

(2) A pension fund approved by the Secretary;

(3) An agency or instrumentality of a State; and

(4) A private nonprofit entity, designated by the State, regulated by the State, and approved by the Secretary.

(c) The following types of organizations are eligible to apply to the Secretary to be HEAL holders:

(1) Public entities in the business of purchasing student loans;

(2) Navient (formerly known as the Student Loan Marketing Association, or "Sallie Mae"); and

(3) Other eligible lenders.

(d) HEAL holders must comply with any provisions in the regulations required of HEAL lenders including, but not limited to, provisions regarding applications, contracts, and due diligence.

#### § 681.31 The application to be a HEAL lender or holder.

(a) In order to be a HEAL lender or holder, an eligible organization must submit an application to the Secretary annually.

(b) In determining whether to enter into an insurance contract with an ap-

### 34 CFR Ch. VI (7-1-18 Edition)

plicant and what the terms of that contract should be, the Secretary may consider the following criteria:

(1) Whether the applicant is capable of complying with the requirements in the HEAL regulations applicable to lenders and holders;

(2) The amount and rate of loans which are currently delinquent or in default, if the applicant has had prior experience with similar Federal or State student loan programs; and

(3) The financial resources of the applicant.

(c) The applicant must develop and follow written procedures for servicing and collecting HEAL loans. These procedures must be reviewed during the biennial audit required by § 681.42(d). If the applicant uses procedures more stringent than those required by §§ 681.34 and 681.35 for its other loans of comparable dollar value, on which it has no Federal, State, or other third party guarantee, it must include those more stringent procedures in its written procedures for servicing and collecting its HEAL loans.

(d) The applicant must submit sufficient materials with his or her application to enable the Secretary to fairly evaluate the application in accordance with these criteria.

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#### § 681.32 The HEAL lender or holder insurance contract.

(a)(1) If the Secretary approves an application to be a HEAL lender or holder, the Secretary and the lender or holder must sign an insurance contract. Under this contract, the lender or holder agrees to comply with all the laws, regulations, and other requirements applicable to its participation in the HEAL program and the Secretary agrees to insure each eligible HEAL loan held by the lender or holder against the borrower's default, death, total and permanent disability, bankruptcy under chapter 11 or 13 of the Bankruptcy Act, or bankruptcy under chapter 7 of the Bankruptcy Act when the borrower files a complaint to determine the dischargeability of the HEAL loan. The Secretary's insurance covers 100 percent of the lender's or holder's

losses on both unpaid principal and interest, except to the extent that a borrower may have a defense on the loan other than infancy.

(2) HEAL insurance, however, is not unconditional. The Secretary issues HEAL insurance on the implied representations of the lender that all the requirements for the initial insurability of the loan have been met. HEAL insurance is further conditioned upon compliance by the holder of the loan with the HEAL statute and regulations, the lender's or holder's insurance contract, and its own loan management procedures set forth in writing pursuant to § 681.31(c). The contract may contain a limit on the duration of the contract and the number or amount of HEAL loans a lender may make or hold. Each HEAL lender has either a standard insurance contract or a comprehensive insurance contract with the Secretary, as described below.

(b) *Standard insurance contract.* A lender with a standard insurance contract must submit to the Secretary a borrower's loan application for HEAL insurance on each loan that the lender determines to be eligible. The Secretary notifies the lender whether the loan is or is not insurable, the amount of the insurance, and the expiration date of the insurance commitment. A loan which has been disbursed under a standard contract of insurance prior to the Secretary's approval of the application is considered not to have been insured.

(c)(1) *Comprehensive insurance contract.* A lender with a comprehensive insurance contract may disburse a loan without submitting an individual borrower's loan application to the Secretary for approval. All eligible loans made by a lender with this type of contract are insured immediately upon disbursement.

(2) The Secretary will revoke the comprehensive contract of any lender who utilizes procedures which are inconsistent with the HEAL statute and regulations, the lender's insurance contract, or its own loan management procedures set forth in writing pursuant to § 681.31(c), and require that such lenders disburse HEAL loans only under a standard contract. When the Secretary determines that the lender is

in compliance with the HEAL statute and regulations and its own loan management procedures set forth in writing pursuant to § 681.31(c), the lender may reapply for a comprehensive contract.

(3) In providing comprehensive contracts, the Secretary shall give priority to eligible lenders that:

(i) Make loans to students at interest rates below the rates prevailing during the period involved; or

(ii) Make loans under terms that are otherwise favorable to the student relative to the terms under which eligible lenders are generally making loans during the period involved.

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#### § 681.33 Making a HEAL loan.

The loan-making process includes the processing of necessary forms, the approval of a borrower for a loan, determination of a borrower's creditworthiness, the determination of the loan amount (not to exceed the amount approved by the school), the explanation to a borrower of his or her responsibilities under the loan, the execution of the promissory note, and the disbursement of the loan proceeds. A lender may rely in good faith upon statements of an applicant and the HEAL school contained in the loan application papers, except where those statements are in conflict with information obtained from the report on the applicant's credit history, or other information available to the lender. Except where the statements are in conflict with information obtained from the applicant's credit history or other information available to the lender, a lender making loans to nonstudent borrowers may rely in good faith upon statements by the borrower and authorizing officials of internship, residency, or other programs for which a borrower may receive a deferment.

(a) *Processing of forms.* Before making a HEAL loan, a lender must determine that all required forms have been completed by the borrower, the HEAL school, the lender, and the authorized official for an internship, a residency, or other deferment activity.

§ 681.33

34 CFR Ch. VI (7-1-18 Edition)

(b) *Approval of borrower.* A lender may make a HEAL loan only to an eligible student or nonstudent borrower.

(c) *Lender determination of the borrower's creditworthiness.* The lender may make HEAL loans only to an applicant that the lender has determined to be creditworthy. This determination must be made at least once for each academic year during which the applicant applies for a HEAL loan. An applicant will be determined to be "creditworthy" if he or she has a repayment history that has been satisfactory on any loans on which payments have become due. The lender may not determine that an applicant is creditworthy if the applicant is currently in default on any loan (commercial, consumer, or educational) until the delinquent account is made current or satisfactory arrangements are made between the affected lender(s) and the HEAL applicant. The lender must obtain documentation, such as a letter from the authorized official(s) of the affected lender(s) or a corrected credit report indicating that the HEAL applicant has taken satisfactory actions to bring the account into good standing. It is the responsibility of the HEAL loan applicant to assure that the lender receives each such documentation. No loan may be made to an applicant who is delinquent on any Federal debt until the delinquent account is made current or satisfactory arrangements are made between the affected agency and the HEAL applicant. The lender must receive a letter from the authorized Federal official of the affected Federal agency stating that the borrower has taken satisfactory actions to bring the account into good standing. It is the responsibility of the loan applicant to assure that the lender has received each such letter. The absence of any previous credit, however, is not an indication that the applicant is not creditworthy and is not to be used as a reason to deny the status of creditworthy to an applicant. The lender must determine the creditworthiness of the applicant using, at a minimum, the following:

(1) A report of the applicant's credit history obtained from an appropriate consumer credit reporting agency, which must be used in making the de-

terminations required by paragraph (c) of this section; and

(2) For student applicants only, the certification made by the applicant's school under § 681.51(e).

(d) *Determination of loan amount.* A lender may not make a HEAL loan in an amount that exceeds the permissible annual and aggregate maximums described in § 681.10.

(e) *Promissory note.* (1) Each loan must be evidenced by a promissory note approved by the Secretary. A lender must obtain the Secretary's prior approval of the note form before it makes a HEAL loan evidenced by a promissory note containing any deviation from the provisions of the form most currently approved by the Secretary. The lender must give the borrower a copy of each executed note.

(2) The lender must explain to the borrower that the loan must be repaid and that the loan proceeds may be applied toward educational expenses only.

(f) *Disbursement of HEAL loan.* (1) A lender must disburse HEAL loan proceeds:

(i) To a student borrower, by means of a check or draft payable jointly to the student borrower and the HEAL school. Except where a lender is also a school, a lender must mail the check or draft to the school. A lender may not disburse the loan proceeds earlier than is reasonably necessary to meet the cost of education for the period for which the loan is made.

(ii) To a nonstudent borrower, by means of a check or draft payable to the borrower. However, when a previous loan is held by a different lender, the current lender must make the HEAL loan disbursement check or draft payable jointly to the borrower and the holder of the previous HEAL loan for which interest is payable.

(2) Effective July 1, 1987, a lender must disburse the HEAL loan proceeds in two or more installments unless the loan is intended to cover a period of no more than one-half an academic year. The amount disbursed at one time must correspond to the borrower's educational expenses for the period for which the disbursement is made, and must be indicated by the school on the borrower's application. If the loan is

intended for more than one-half an academic year, the school must indicate on the borrower's application both the approximate dates of disbursement and the amount the borrower will need on each such date. In no case may the lender disburse the proceeds earlier than is reasonably necessary to meet the costs of education for the period for which the disbursement or the loan is made.

(g) If the lender determines that the applicant is not creditworthy, pursuant to paragraph (c) of this section, the lender must not approve the HEAL loan request. If the applicant is a student, the lender must notify the applicant and the applicant's school named on the application form of the denial of a HEAL loan, stating the reason for the denial.

(h) The lender must report a borrower's HEAL indebtedness to one or more national credit bureaus within 120 days of the date the final disbursement on the loan is made.

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#### § 681.34 HEAL loan account servicing.

HEAL loan account servicing involves the proper maintenance of records, and the proper review and management of accounts. Generally accepted account servicing standards ensure that collections are received and accounted for, delinquent accounts are identified promptly, and reports are produced comparing actual results to previously established objectives.

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

(b) *Conversion of loan to repayment status.* (1) At least 30 and not more than 60 days before the commencement of the repayment period, the lender or holder must contact the borrower in writing to establish the terms of repayment. Lenders or holders may not charge borrowers for the additional interest or other charges, penalties, or fees that accrue when a lender or holder does not contact the borrower within this time period and a late conversion results.

(2) Terms of repayment are established in a written schedule that is made a part of, and subject to the terms of, the borrower's original HEAL note.

(3) The lender or holder may not surrender the original promissory note to the borrower until the loan is paid in full. At that time, the lender or holder must give the borrower the original promissory note.

(c) *Borrower contacts.* The lender or holder must contact each borrower to request updated contact information for the borrower and to notify the borrower of the balance owed for principal, interest, insurance premiums, and any other charges or fees owed to the lender, at least every 6 months from the time the loan is disbursed. The lender or holder must use this notice to remind the borrower of the option, without penalty, to pay all or part of the principal and accrued interest at any time.

(d) *Skip-tracing.* If, at any time, the lender or holder is unable to locate a borrower, the lender or holder must initiate skip-tracing procedures as described in § 682.411.

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#### § 681.35 HEAL loan collection.

A lender or holder must exercise due diligence in the collection of a HEAL loan with respect to both a borrower and any endorser. In order to exercise due diligence, a lender or holder must implement the following procedures when a borrower fails to honor his or her payment obligations:

(a) When a borrower is delinquent in making a payment, the lender or holder must remind the borrower within 15 days of the date the payment was due by means of a written contact. If payments do not resume, the lender or holder must contact both the borrower and any endorser at least 3 more times at regular intervals during the 120-day delinquent period following the first missed payment of that 120-day period. The second demand notice for a delinquent account must inform the borrower that the continued delinquent status of the account will be reported to consumer credit reporting agencies

**§ 681.35**

**34 CFR Ch. VI (7-1-18 Edition)**

if payment is not made. Each of the required four contacts must consist of at least a written contact which has an address correction request on the envelope. The last contact must consist of a telephone contact, in addition to the required letter, unless the borrower cannot be contacted by telephone. The lender or holder may choose to substitute a personal contact for a telephone contact. A record must be made of each attempt to contact and each actual contact, and that record must be placed in the borrower's file. Each contact must become progressively firmer in tone. If the lender or holder is unable to locate the borrower and any endorser at any time during the period when the borrower is delinquent, the lender or holder must initiate the skip-tracing procedures described in § 681.34(d).

(b) When a borrower is 90 days delinquent in making a payment, the lender or holder must immediately request preclaim assistance from the Department's servicer. The Secretary does not pay a default claim if the lender or holder fails to request preclaim assistance.

(c) Prior to the filing of a default claim, a lender or holder must use, at a minimum, collection practices that are at least as extensive and effective as those used by the lender or holder in the collection of its other loans. These practices must include, but need not be limited to:

(1) Using collection agents, which may include its own collection department or other internal collection agents;

(2) Immediately notifying an appropriate consumer credit reporting agency regarding accounts overdue by more than 60 days; and

(3) Commencing and prosecuting an action for default unless:

(i) In the determination of the Secretary that:

(A) The lender or holder has made reasonable efforts to serve process on the borrower involved and has been unsuccessful in these efforts; or

(B) Prosecution of such an action would be fruitless because of the financial or other circumstances of the borrower;

(ii) For loans made before November 4, 1988, the loan involved was made in an amount of less than \$5,000; or

(iii) For loans made on or after November 4, 1988, the loan involved was made in an amount of less than \$2,500.

(d) If the Secretary's preclaim assistance locates the borrower, the lender or holder must implement the loan collection procedures described in this section. When the Secretary's preclaim assistance is unable to locate the borrower, a default claim may be filed by the lender as described in § 681.40. The Secretary does not pay a default claim if the lender or holder has not complied with the HEAL statute and regulations or the lender's or holder's insurance contract.

(e) If a lender or holder does not sue the borrower, it must send a final demand letter to the borrower and any endorser at least 30 days before a default claim is filed.

(f) If a lender or holder sues a defaulted borrower or endorser, it 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.

(g) *Collection of chapter 7 bankruptcies.*

(1) If a borrower files for bankruptcy under chapter 7 of the Bankruptcy Act and does not file a complaint to determine the dischargeability of the HEAL loan, the lender or holder is responsible for monitoring the bankruptcy case in order to pursue collection of the loan after the bankruptcy proceedings have been completed.

(i) For any loan for which the lender or holder had not begun to litigate against the borrower prior to the imposition of the automatic stay, the period of the automatic stay is to be considered as an extended forbearance authorized by the Secretary, in addition to the 2-year period of forbearance which lenders and holders are authorized to grant without prior approval from the Secretary. Only periods of delinquency following the date of receipt (as documented by a date stamp) of the discharge of debtor notice (or other written notification from the court or the borrower's attorney of the end of the automatic stay imposed by the Bankruptcy Court) can be included in

determining default, as described in § 681.40(c)(1)(i). The lender or holder must attempt to reestablish repayment terms with the borrower in writing no more than 30 days after receipt of the discharge of debtor notice (or other written notification from the court or the borrower's attorney of the end of the automatic stay imposed by the Bankruptcy Court), in accordance with the procedures followed at the end of a forbearance period. If the borrower fails to make a payment as scheduled, the lender or holder must attempt to obtain repayment through written and telephone contacts in accordance with the intervals established in paragraph (a)(1) of this section, and must perform the other HEAL loan collection activities required in this section, before filing a default claim.

(ii) For any loan for which the lender or holder had begun to litigate against the borrower prior to the imposition of the automatic stay, the lender or holder must, upon written notification from the court or the borrower's attorney that the bankruptcy proceedings have been completed, either resume litigation or treat the loan in accordance with paragraph (g)(1)(i) of this section.

(2) If the lender or holder has not received written notification of discharge within 12 months of the date that the borrower filed for bankruptcy, the lender or holder must contact the court and the borrower's attorney (if known) within 30 days to determine if the bankruptcy proceedings have been completed. If no response is received within 30 days of the date of these contacts, the lender or holder must resume its collection efforts, in accordance with paragraph (g)(1) of this section. If a written response from the court or the borrower's attorney indicates that the bankruptcy proceedings are still underway, the lender or holder is not to pursue further collection efforts until receipt of written notice of discharge, except that follow-up in accordance with this paragraph must be done at least once every 12 months until the bankruptcy proceedings have been completed. A lender or holder may utilize PACER (Public Access to Court Electronic Records) in place of

contact with the court and/or borrower's attorney.

(3) If, despite the lender or holder's compliance with required procedures, a loan subject to the requirements of paragraph (g)(1) of this section is discharged, the lender or holder must file a claim with the Secretary within 10 days of the initial date of receipt (as documented by a date stamp) of written notification of the discharge from the court or the borrower's attorney, in accordance with the procedures set forth in § 681.40(c)(4). The lender or holder also must file with the bankruptcy court an objection to the discharge of the HEAL loan, and must include with the claim documentation showing that the bankruptcy proceedings were handled properly and expeditiously (*e.g.*, all documents sent to or received from the bankruptcy court, including evidence which shows the period of the bankruptcy proceedings).

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**§ 681.36 Consequence of using an agent.**

The delegation of functions to a servicing agency or other party does not relieve a lender or holder of its responsibilities under the HEAL program.

**§ 681.37 Forbearance.**

(a) *Forbearance* means an extension of time for making loan payments or the acceptance of smaller payments than were previously scheduled to prevent a borrower from defaulting on his or her payment obligations. A lender or holder must notify each borrower of the right to request forbearance.

(1) Except as provided in paragraph (a)(2) of this section, a lender or holder must grant forbearance whenever the borrower is temporarily unable to make scheduled payments on a HEAL loan and the borrower continues to repay the loan in an amount commensurate with his or her ability to repay the loan. Any circumstance which affects the borrower's ability to repay the loan must be fully documented.

(2) If the lender or holder determines that the default of the borrower is inevitable and that forbearance will be ineffective in preventing default, the

### § 681.38

lender or holder may submit a claim to the Secretary rather than grant forbearance. If the Secretary is not in agreement with the determination of the lender or holder, the claim will be returned to the lender or holder as disapproved and forbearance must be granted.

(b) A lender or holder must exercise forbearance in accordance with terms that are consistent with the 25- and 33-year limitations on the length of repayment (described in §681.11) if the lender or holder and borrower agree in writing to the new terms. Each forbearance period may not exceed 6 months.

(c) A lender or holder may also exercise forbearance for periods of up to 6 months in accordance with terms that are inconsistent with the minimum annual payment requirement if the lender or holder complies with the requirements listed in paragraphs (c)(1) through (4) of this section. Subsequent renewals of the forbearance must also be documented in accordance with the following requirements:

(1) The lender or holder 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 or holder must 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 or holder must sign a written agreement of forbearance.

(3) If the agreement between the borrower and lender or holder provides for forbearance of all payments, the lender or holder must 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.

(4) The total period of forbearance (with or without interruption) granted by the lender or holder to any borrower must not exceed 2 years. However, when the borrower and the lender or holder believe that there are bona fide reasons why this period should be extended, the lender or holder may request a reasonable extension beyond the 2-year period from the Secretary.

### 34 CFR Ch. VI (7-1-18 Edition)

This request must document the reasons why the extension should be granted. The lender or holder may grant the extension for the approved time period if the Secretary approves the extension request.

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### § 681.38 Assignment of a HEAL loan.

A HEAL note may not be assigned except to another HEAL lender or organization as specified in §681.30 and except as provided in §681.40. In this section “seller” means any kind of assignor and “buyer” means any kind of assignee.

(a) *Procedure.* A HEAL note assigned from one lender or holder to another must be subject to a blanket endorsement together with other HEAL notes being assigned or must individually bear effective words of assignment. Either the blanket endorsement or the HEAL note must be signed and dated by an authorized official of the seller. Within 30 days of the transaction, the buyer must notify the following parties of the assignment:

(1) The Secretary; and

(2) The borrower. The notice to the borrower must contain 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 subsequent to receipt of the notice.

(b) *Risks assumed by the buyer.* Upon acquiring a HEAL loan, a new holder assumes responsibility for the consequences of any previous violations of applicable statutes, regulations, or the terms of the note except for defects under §681.41(d). A HEAL 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 previous holder, the borrower can also assert the defense against the new holder. In this situation, if the new holder files a default claim on a loan, the Secretary denies the default claim to the extent of the borrower’s defense. Furthermore, when a new holder files a claim on a HEAL loan, it must provide

the Secretary with the same documentation that would have been required of the original lender.

(c) *Warranty*. Nothing in this section precludes the buyer of a HEAL loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of insurable loss, if any, on a claim filed on the loan. The warranty may only cover reductions which are attributable to an act or failure to act of the seller or other previous holder. The warranty may not cover matters for which the buyer is charged with responsibility under the HEAL regulations.

(d) *Bankruptcy*. If a lender or holder assigns a HEAL loan to a new holder, or a new holder acquires a HEAL loan under 20 U.S.C. 1092a (the Combined Payment Plan authority), and the previous holder(s) subsequently receives court notice that the borrower has filed for bankruptcy, the previous holder(s) must forward the bankruptcy notice to the purchaser within 10 days of the initial date of receipt, as documented by a date stamp, except that if it is a chapter 7 bankruptcy with no complaint for dismissal, the previous holder(s) must file the notice with the purchaser within 30 days of the initial date of receipt, as documented by a date stamp. The previous holder(s) also must file a statement with the court notifying it of the change of ownership. Notwithstanding the above, the current holder will not be held responsible for any loss due to the failure of the prior holder(s) to meet the deadline for giving notice if such failure occurs after the current holder purchased the loan.

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#### § 681.39 Death and disability claims.

(a) *Death*. The Secretary will discharge a borrower's liability on the loan in accordance with section 738 of the Act upon the death of the borrower. The holder of the loan may not attempt to collect on the loan from the borrower's estate or any endorser. The holder must secure a certification of death or whatever official proof is conclusive under State law. The holder

must return to the sender any payments in accordance with § 685.212(a) received from the estate of the borrower or paid on behalf of the borrower after the date of death.

(b) *Disability*. The Secretary will discharge a borrower's liability on the loan in accordance with 34 CFR 685.213.

#### § 681.40 Procedures for filing claims.

(a) A lender or holder must file an insurance claim on a form approved by the Secretary. The lender or holder must attach to the claim all documentation necessary to litigate a default, including any documents required to be submitted by the Federal Claims Collection Standards, and which the Secretary may require. Failure to submit the required documentation and to comply with the HEAL statute and regulations or the lender's or holder's insurance contract will result in a claim not being honored. The Secretary may deny a claim that is not filed within the period specified in this section. The Secretary requires for all claims at least the following documentation:

- (1) The original promissory note;
- (2) An assignment to the United States of America of all right, title, and interest of the lender or holder in the note;
- (3) The loan application;
- (4) The history of the loan activities from the date of loan disbursement through the date of claim, including any payments made; and
- (5) A Borrower Status Form (HEAL-508), documenting each deferment granted under § 681.12 or a written statement from an appropriate official stating that the borrower was engaged in an activity for which he or she was entitled to receive a deferment at the time the deferment was granted.

(b) The Secretary's payment of a claim is contingent upon receipt of all required documentation and an assignment to the United States of America of all right, title, and interest of the lender or holder in the note underlying the claim. The lender or holder must warrant that the loan is eligible for HEAL insurance.

(c) In addition, the lender or holder must comply with the following requirements for the filing of default,



death, disability, and bankruptcy claims:

(1) *Default claims.* *Default* means the persistent failure of the borrower to make a payment when due or to comply with other terms of the note or other written agreement evidencing a loan under circumstances where the Secretary finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay the loan. In the case of a loan repayable (or on which interest is payable) in monthly installments, this failure must have persisted for 120 days. In the case of a loan repayable (or on which interest is payable) in less frequent installments, this failure must have persisted for 180 days. If, for a particular loan, an automatic stay is imposed on collection activities by a Bankruptcy Court, and the lender or holder receives written notification of the automatic stay prior to initiating legal proceedings against the borrower, the 120- or 180-day period does not include any period prior to the end of the automatic stay.

(i) If a lender or holder determines that it is not appropriate to commence and prosecute an action against a default borrower pursuant to § 681.35(c)(3), it must file a default claim with the Secretary within 30 days after a loan has been determined to be in default.

(ii) If a lender files suit against a defaulted borrower and does not pursue collection of the judgment obtained as a result of the suit, it must file a default claim with the Secretary within 60 days of the date of issuance of the judgment. If a lender or holder files suit against a defaulted borrower, and pursues collection of the judgment obtained as a result of the suit, these collection activities must begin within 60 days of the date of issuance of the judgment. If the lender or holder is unable to collect the full amount of principal and interest owed, a claim must be filed within 30 days of completion of the post-judgment collection activities. In either case, the lender or holder must assign the judgment to the Secretary as part of the default claim.

(iii) In addition to the documentation required for all claims, the lender or holder must submit with its default claim at least the following:

- (A) Repayment schedule(s);
- (B) A collection history, if any;
- (C) A final demand letter;
- (D) The original or a copy of all correspondence relevant to the HEAL loan to or from the borrower (whether received by the original lender, a subsequent holder, or an independent servicing agent);
- (E) A claims collection litigation report; and
- (F) If the defaulted borrower filed for bankruptcy under chapter 7 of the Bankruptcy Act and did not file a complaint to determine the dischargeability of the loan, all documents sent to or received from the bankruptcy court, including evidence which shows the period of the bankruptcy proceedings.

(iv) If a lender or holder files a default claim on a loan and subsequently receives written notice from the court or the borrower's attorney that the borrower has filed for bankruptcy under chapter 11 or 13 of the Bankruptcy Act, or under chapter 7 with a complaint to determine the dischargeability of the loan, the lender or holder must file that notice with the Secretary within 10 days of the lender or holder's initial date of receipt, as documented by a date stamp. If the borrower is declaring bankruptcy under chapter 7 of the Bankruptcy Act, and has not filed a complaint to determine the dischargeability of the loan, the lender or holder must file the written notice with the Secretary within 30 days of the lender's or holder's initial date of receipt, as documented by a date stamp. If the Secretary has not paid the claim at the time the lender or holder receives that notice, upon receipt of the notice, the lender or holder must file with the bankruptcy court a proof of claim, if applicable, and an objection to the discharge or compromise of the HEAL loan. If the Secretary has paid the claim, the lender or holder must file a statement with the court notifying it that the loan is owned by the Secretary.

(2) *Death claims.* A lender or holder must file a death claim with the Secretary within 30 days after the lender or holder obtains documentation that a borrower is dead. In addition to the documentation required for all claims,

the lender or holder must submit with its death claim those documents which verify the death, including an official copy of the Death Certificate.

(3) *Disability claims.* A lender or holder must file a disability claim with the Secretary within 30 days after it has been notified that the Secretary has determined a borrower to be totally and permanently disabled. In addition to the documentation required for all claims, the lender or holder must submit with its claim evidence of the Secretary's determination that the borrower is totally and permanently disabled.

(4) *Bankruptcy claims.* For a bankruptcy under chapter 11 or 13 of the Bankruptcy Act, or a bankruptcy under chapter 7 of the Bankruptcy Act when the borrower files a complaint to determine the dischargeability of the HEAL loan, the current holder must file a claim with the Secretary within 10 days of the initial date of receipt of court notice or written notice from the borrower's attorney that the borrower has filed for bankruptcy under chapter 11 or chapter 13, or has filed a complaint to determine the dischargeability of the HEAL loan under chapter 7. The initial date of receipt of the written notice must be documented by a date stamp. The lender or holder must file with the bankruptcy court a proof of claim, if applicable, and an objection to the discharge or compromise of the HEAL loan. In addition to the documentation required for all claims, with its claim the lender or holder must submit to the Secretary at least the following:

- (i) Repayment schedule(s);
- (ii) A collection history, if any;
- (iii) A proof of claim, where applicable;
- (iv) An assignment to the United States of America of its proof of claim, where applicable;
- (v) All pertinent documents sent to or received from the bankruptcy court;
- (vi) 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;
- (vii) The notice of the first meeting or creditors, or an explanation as to why this is not included;

(viii) In cases where there is defective service, a declaration or affidavit attesting to the fact that the lender or holder was not directly served with the notice of meeting of creditors. This declaration or affidavit must also indicate when and how the lender or holder learned of the bankruptcy; and

(ix) In cases where there is defective service due to the borrower's failure to list the proper creditor, a copy of the letter sent to the borrower at the time of purchase of the HEAL loan by the current holder, or a sample letter with documentation indicating when the letter was sent to the borrower.

(Approved by the Office of Management and Budget under control numbers 1845-0125 and 1845-0127)

**§ 681.41 Determination of amount of loss on claims.**

(a) *General rule.* HEAL insurance covers the unpaid balance of principal and interest on an eligible HEAL loan, less the amount of any judgment collected pursuant to default proceedings commenced by the eligible lender or holder involved. In determining whether to approve an insurance claim for payment, the Secretary considers legal defects affecting the initial validity or insurability of the loan. The Secretary 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. The Secretary further considers whether all holders of the loan have complied with the requirements of the HEAL regulations, including those concerned with the making, servicing, and collecting of the loan, the timely filing of claims, and the submission of documents with a claim.

(b) *Special rules for loans acquired by assignment.* If a claim is filed by a lender or holder that obtained a loan by assignment, that lender or holder is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. In particular, the Secretary 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.

**§ 681.42**

**34 CFR Ch. VI (7-1-18 Edition)**

(c) *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 Secretary deducts from the claim an amount equal to any unpaid refund that the school owes the borrower.

(2) If the loan for which a claim is filed was originally made by a school but the claim is filed by another lender or holder that obtained the note by assignment, the Secretary deducts from the claim an amount equal to any unpaid refund that the school owed the borrower prior to the assignment.

(d) *Circumstances under which defects in claims may be cured or excused.* The Secretary may permit a lender or holder to cure certain defects in a specified manner as a condition for payment of a default claim. The Secretary may excuse certain defects if the holder submitting the default claim satisfies the Secretary that the defect did not contribute to the default or prejudice the Secretary's attempt to collect the loan from the borrower. The Secretary may also excuse certain defects if the defect arose while the loan was held by another lender or holder and the holder submitting the default claim satisfies the Secretary that the assignment of the loan was an arm's length transaction, that the present holder did not know of the defect at the time of the sale and that the present holder could not have become aware of the defect through an examination of the loan documents.

(e) *Payment of insured interest.* The payment on an approved claim covers the unpaid principal balance and interest that accrues through the date the claim is paid, except:

(1) If the lender or holder failed to submit a claim within the required period after the borrower's default; death; total and permanent disability; or filing of a petition in bankruptcy under chapter 11 or 13 of the Bankruptcy Act, or under chapter 7 where the borrower files a complaint to determine the dischargeability of the HEAL loan; the Secretary does not pay interest that accrued between the end of that period and the date the Secretary received the claim.

(2) If the Secretary returned the claim to the lender or holder for additional documentation necessary for the approval of the claim, the Secretary pays interest only for the first 30 days following the return of the claim to the lender or holder.

**§ 681.42 Records, reports, inspection, and audit requirements for HEAL lenders and holders.**

(a) *Records.* (1) A lender or holder must keep complete and accurate records of each HEAL loan which it holds. The records must be organized in a way that permits them to be easily retrievable and allows the ready identification of the current status of each loan. The required records include:

- (i) The loan application;
- (ii) The original promissory note;
- (iii) The repayment schedule agreement;
- (iv) Evidence of each disbursement of loan proceeds;
- (v) Notices of changes in a borrower's address and status as a full-time student;
- (vi) Evidence of the borrower's eligibility for a deferment;
- (vii) The borrower's signed statement describing his or her rights and responsibilities in connection with a HEAL loan;
- (viii) The documents required for the exercise of forbearance;
- (ix) Documentation of the assignment of the loan; and
- (x) Evidence of a borrower's creditworthiness, including the borrower's credit report.

(2) The lender or holder must maintain for each borrower a payment history showing the date and amount of each payment received on the borrower's behalf, and the amounts of each payment attributable to principal and interest. A lender or holder must also maintain for each loan a collection history showing the date and subject of each communication with a borrower or endorser for collection of a delinquent loan. Furthermore, a lender or holder must keep any additional records which are necessary to make any reports required by the Secretary.

(3) A lender or holder must 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. However, in particular cases the Secretary may require the retention of records beyond this minimum period. A lender or holder must keep the original copy of an unpaid promissory note, but may store all other records in microform or computer format.

(4) The lender or holder must maintain accurate and complete records on each HEAL borrower and related school activities required by the HEAL program. All HEAL records shall be maintained under security and protected from fire, flood, water leakage, other environmental threats, electronic data system failures or power fluctuations, unauthorized intrusion for use, and theft.

(b) *Reports.* A lender or holder must submit reports to the Secretary at the time and in the manner required by the Secretary.

(c) *Inspections.* Upon request, a lender or holder must afford the Secretary, 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.

(d) The lender or holder must comply with the Department's biennial audit requirements of section 705 of the Act.

(e) Any lender or holder who has information which indicates potential or actual commission of fraud or other offenses against the United States, involving these loan funds, must promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

(Approved by the Office of Management and Budget under control numbers 1845-0125 and 1845-0126)

**§ 681.43 Limitation, suspension, or termination of the eligibility of a HEAL lender or holder.**

(a) The Secretary may limit, suspend, or terminate the eligibility under the HEAL program of an otherwise eligible lender or holder that violates or fails to comply with any provision of the Act, these regulations, or agreements with the Secretary concerning the HEAL program. Prior to terminating a lender or holder's participation in the program, the Secretary will provide the entity an opportunity for a

hearing in accordance with the procedures under paragraph (b) of this section.

(b)(1) The Secretary will provide any lender or holder subject to termination with a written notice, sent by certified mail, specifying his or her intention to terminate the lender or holder's participation in the program and stating that the entity may request, within 30 days of the receipt of this notice, a formal hearing. If the entity requests a hearing, it must, within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(i) The request for a hearing is untimely (*i.e.*, fails to meet the 30-day requirement);

(ii) The lender or holder does not provide a statement of material, factual issues in dispute within the 90-day required period; or

(iii) The statement of factual issues in dispute is frivolous or inconsequential.

(2) In the event that the Secretary denies a hearing, the Secretary will send a written denial, by certified mail, to the lender or holder setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the lender or holder will be terminated from participation in the program. An entity will be permitted to reapply for participation in the program when it demonstrates, and the Secretary agrees, that it is in compliance with all HEAL requirements.

(c) This section does not apply to a determination that a HEAL lender fails to meet the statutory definition of an "eligible lender."

(d) This section also does not apply to administrative action by the Department of Education based on any alleged violation of:

(1) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR part 100;

**§ 681.50**

**34 CFR Ch. VI (7–1–18 Edition)**

(2) Title IX of the Education Amendments of 1972, which is governed by 34 CFR part 106;

(3) The Family Educational Rights and Privacy Act of 1974 (section 444 of the General Education Provisions Act, as amended), which is governed by 34 CFR part 99; or

(4) Title XI of the Right to Financial Privacy Act of 1978, Public Law 95–630 (12 U.S.C. 3401–3422).

(Approved by the Office of Management and Budget under control number 0915–0144)

**Subpart E—The School**

**§ 681.50 Which schools are eligible to be HEAL schools?**

(a) In order to participate in the HEAL program, a school must enter into a written agreement with the Secretary. In the agreement, the school promises to comply with provisions of the HEAL law and the HEAL regulations. For initial entry into this agreement and for the agreement to remain in effect, a school must satisfy the following requirements:

(1)(i) The school must be legally authorized within a State to conduct a course of study leading to one of the following degrees:

- (A) Doctor of Medicine.
- (B) Doctor of Osteopathic Medicine.
- (C) Doctor of Dentistry or equivalent degree.
- (D) Bachelor or Master of Science in Pharmacy or equivalent degree.
- (E) Doctor of Optometry or equivalent degree.
- (F) Doctor of Veterinary Medicine or equivalent degree.
- (G) Doctor of Podiatric Medicine or equivalent degree.
- (H) Graduate or equivalent degree in Public Health.
- (I) Doctor of Chiropractic or equivalent degree.
- (J) Doctoral degree of Clinical Psychology.
- (K) Masters or doctoral degree in Health Administration.

(ii) For the purposes of this section, the term “State” includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the

Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

(2)(i) The school must be accredited by a recognized agency approved for that course of study by the Secretary of Education, as described in paragraph (a)(2)(ii) of this section, except where a school is not eligible for accreditation solely because it is too new. A new school is eligible if the Secretary of Education determines that it can reasonably expect to be accredited before the beginning of the academic year following the normal graduation date of its first entering class. The Secretary of Education makes this determination after consulting with the appropriate accrediting agency and receiving reasonable assurance to that effect.

(ii) The approved accrediting agencies are:

- (A) Liaison Committee on Medical Education.
- (B) American Osteopathic Association, Bureau of Professional Education.
- (C) American Dental Association, Commission on Dental Accreditation.
- (D) American Veterinary Medical Association, Council on Education.
- (E) American Optometric Association, Council on Optometric Education.
- (F) American Podiatric Medical Association, Council on Podiatric Medical Education.
- (G) Accreditation Council for Pharmacy Education.
- (H) Council on Education for Public Health.
- (I) Council on Chiropractic Education, Commission on Accreditation.
- (J) Accrediting Commission on Accreditation of Healthcare Management Education.
- (K) American Psychological Association, Committee on Accreditation.

(b) If a HEAL school undergoes a change of controlling ownership or form of control, its agreement automatically expires at the time of that change. The school must enter into a new agreement with the Secretary in order to continue its participation in the HEAL program.