

Issue Paper 10
Session 1: January 12 -14, 2015

Issue: Revise 34 CFR 682.410(b), regarding the charging of collection costs by a guaranty agency to a defaulted borrower who responds within 60 days to the initial notice sent by the guaranty agency after it pays a default claim and acquires the loan from the lender.

Statutory cites: §§428F(a) and 484A(a) of the Higher Education Act of 1965, as amended

Regulatory cites: 34 CFR 682.410(b)

Summary of issue:

Recently the Department of Education (Department) learned that some guaranty agencies in the Federal Family Education Loan (FFEL) Program were improperly charging collection costs to defaulted borrowers who promptly enter into a repayment agreement, including a loan rehabilitation agreement, and who honor that agreement. In Dear Colleague Letter GEN-15-14 (July 10, 2015), we addressed this issue and clearly explained that the Department’s regulations do not allow guaranty agencies to charge collection costs to a defaulted borrower who enters into a repayment agreement (including a loan rehabilitation agreement under 34 CFR 682.405) with the guaranty agency within 60 days of receiving the agency’s initial notice. In DCL GEN-15-14, we restated the Department’s longstanding interpretation that the regulations bar a guaranty agency from charging collection costs to a defaulted borrower who responds within 60 days to the initial notice sent by the guaranty agency after it pays a default claim and acquires the loan from the lender; who enters into a repayment agreement, including a rehabilitation agreement; and who honors that agreement.

To codify the Department’s longstanding interpretation of the regulations, we propose revising 34 CFR 682.410(b), regarding the charging of collection costs by a guaranty agency to a defaulted borrower who responds within 60 days to the initial notice sent by the guaranty agency after it pays a default claim and acquires the loan from the lender.

Section 682.410(b) was adopted in 1992 and has remained substantially unchanged since then. We propose this revision to reflect the Department’s clear and consistent position that 34 CFR 682.410(b) directs and permits the guarantor to charge collection costs only to a defaulter who fails, within the initial “notice and opportunity to resolve” period, to enter into a repayment agreement and honor that agreement. As explained in DCL GEN 15-14, the Department itself charges collection costs only to those defaulted borrowers whose loans it places with collection agencies and the Department places debts with collection contractors, with minor exceptions, only after the defaulter has failed to enter into a repayment agreement within the initial notice and opportunity to resolve period. The Seventh Circuit Court of Appeals has recently upheld the Department’s interpretation of these regulations; the

interpretation is being challenged in a separate lawsuit, now pending. This change will further clarify and codify the Department's existing position.