

Issue Paper 7
Session 3: February 12-15, 2018

Issue: Guaranty Agency Collection Fees

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

Regulatory cites: 34 CFR 682.202(b), 682.405(b), and 682.410(b)(2)

Summary of Changes: Prospectively bars guaranty agencies from charging collection costs to a defaulted borrower who enters into a repayment agreement with the guaranty agency within 60 days of receiving notice of default from the agency.

Prospectively bars guaranty agencies from capitalizing interest on a loan that is sold following the completion of loan rehabilitation.

Changes: See regulatory text below.

§ 682.202 Permissible charges by lenders to borrowers.

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(b) Capitalization. (1) Except as provided in §682.405(b)(4), a lender may add accrued interest and unpaid insurance premiums or Federal default fees to the borrower's unpaid principal balance in accordance with this section. This increase in the principal balance of a loan is called "capitalization."

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§ 682.405 Loan rehabilitation agreement.

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(b) Terms of agreement. In the loan rehabilitation agreement, the guaranty agency agrees to ensure that its loan rehabilitation program meets the following requirements at all times:

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(4)(i) An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans of the same loan type as the rehabilitated loan and must permit the borrower to choose any statutorily available repayment plan for that loan type. The lender must treat the first payment made under the nine payments as the first payment under the applicable maximum repayment term, as defined under § 682.209(a) or (e). For Consolidation loans, the maximum repayment term is based on the balance outstanding at the time of loan rehabilitation.

(ii) The purchase of a rehabilitated loan is not considered a borrower's entry into repayment or resumption of repayment for the purposes of interest capitalization under § 682.202(b).

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§ 682.410 Fiscal, administrative, and enforcement requirements.

(b) Administrative requirements –

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(2) Collection charges. (i) Whether or not provided for in the borrower's promissory note and subject to any limitation on the amount of those costs in that note, the guaranty agency ~~shall~~ may 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 unless, within the 60-day period following the initial notice described in paragraph (b)(6)(ii) of this section, the borrower enters into an acceptable repayment agreement, including a rehabilitation agreement, and honors that agreement, in which case the guaranty agency will must not charge a borrower any collection costs.

(ii) An acceptable repayment agreement may include an agreement described in § 682.200(b) (Satisfactory repayment arrangement), § 682.405, or paragraph (b)(5)(ii)(D) of this section. An acceptable repayment agreement constitutes a repayment arrangement or agreement on repayment terms satisfactory to the guaranty agency, under this section.

(iii) These costs under this paragraph (b)(2) may include, but are not limited to, all attorney's fees, collection agency charges, and court costs. Except as provided in §§ 682.401(b)(18)(i) and 682.405(b)(1)(~~iv~~)(B), the amount charged a borrower must equal the lesser of—

(A) The amount the same borrower would be charged for the cost of collection under the formula in 34 CFR 30.60; or

(B) 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.

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(4) *Capitalization of unpaid interest.* The guaranty agency ~~shall~~ must capitalize any unpaid interest due the lender from the borrower on the loan at the time the agency pays a default claim to the lender, but shall must not capitalize any unpaid interest thereafter.

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