



August 30, 2018

Mr. Jean-Didier Gaina  
U.S. Department of Education  
400 Maryland Avenue, SW  
Mail Stop 294-20  
Washington, DC 20202

Submitted via email to [www.regulations.gov](http://www.regulations.gov)

RE: Docket ID ED-2018-OPE-0027

Dear Mr. Gaina:

As the trade associations representing the majority of student loan providers (guaranty agencies, lenders and servicers) in the Federal Family Education Loan (FFEL) program, we thank you for the opportunity to participate in the 2017-18 negotiated rulemaking activities to establish a Federal standard for evaluating and a process for adjudicating borrowers defenses to repayment for loans first disbursed on or after July 1, 2019. The committee also addressed prospective revisions to FFEL program regulations specific to when a guaranty agency may impose collection costs when a borrower enters into a satisfactory repayment arrangement within 60 days of the notice of default sent to the borrower. We understand the complexity of the borrower defense to repayment provisions, and we share the Department's commitment for an equitable solution that protects both borrowers and taxpayers. We also remain committed to helping borrowers understand the final process and to ensure it is as efficient and expeditious as possible.

Our attached comments focus on the provisions specific to the FFEL program along with recommendations for borrower parity and clarity in defense to repayment situations. Our closed school comments are extensive to ensure there is a timeframe during which a borrower can request an appeal of a denied closed school discharge by the guarantor. We also have proposed language to clarify that non-defaulted borrowers be afforded the same opportunity for an appeal option.

Thank you for this opportunity and we remain committed to working with the Department in the implementation of these regulations and development of those to come.

Sincerely,

Consumer Bankers Association (CBA)  
Education Finance Council (EFC)  
National Council of Higher Education Resources (NCHER)  
Student Loan Servicing Alliance (SLSA)

cc: Annmarie Weisman

## **Affirmative and Defensive Claims for Loans Made Prior to July 1, 2019**

### **Comment**

There appears to be an inconsistency between the preamble discussion and the text of the proposed rule regarding the treatment of loans made prior to July 1, 2019. The preamble on page 37243 states that under the Department's 2015 interpretation borrowers can raise defenses to repayment in affirmative cases. The preamble also states on page 37244 that "And these proposed regulations would not eliminate the opportunity for Corinthian or other students with loans first disbursed prior to July 1, 2019, to seek debt relief under the 2015 interpretation of the regulation." We assume this policy applies to all Direct Consolidation Loans, including Direct Consolidation Loans that consolidate FFELP loans.

However, the proposed regulation itself (§685.206(c)(1)) states: "(c)(1) In any proceeding to collect on a Direct Loan first disbursed prior to July 1, 2019, the borrower may assert as a borrower defense to repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law. These proceedings include, but are not limited to, the following: (i) Tax refund offset proceedings under 26 U.S.C. 6402(d), 31 U.S.C. 3716 and 3720A. (ii) Wage garnishment proceedings under section 488A of the Act or under 31 U.S.C. 3720D and 34 CFR part 34. (iii) Salary offset proceedings for Federal employees under 34 CFR part 31, 5 U.S.C. 5514, and 31 U.S.C. 3716. (iv) Consumer reporting proceedings under 31 U.S.C. 3711(e)."

This inconsistency needs to be addressed. We believe the policy rationale for continuing to accept affirmative claims outweighs any negative effects. Borrowers should not have to default to be able to assert a borrower defense claim. By defaulting, the borrower's credit would be impaired, making it more difficult to secure employment and rent an apartment. Additionally, the borrower would be ineligible for Title IV aid, which could very well mean the borrower will be unable to secure the skills and/or credentials needed to improve their job opportunities. The borrowers would also be subject to incurring collection costs. In addition, service members could face the risk of losing their security clearance. It seems to us that it would be best to resolve the borrower defense claim prior to the time the borrower is subject to the adverse default consequences, particularly because complete borrower defense relief is not assured. Also, and as pointed out in the NPRM, "lessons learned from the recent mortgage crisis raise concerns that limiting borrower defense eligibility to defensive claims could lead some relief-seeking borrowers to strategically default." For these reasons, we recommend that the inconsistency be resolved and that the Department should continue to allow affirmative claims.

### **Proposed Change**

Revise proposed section §685.206(c)(1) as follows:

~~(c)(1) In any proceeding to collect on a~~ For a Direct Loan first disbursed prior to July 1, 2019, the borrower may assert as a borrower defense to repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law. ~~These proceedings include, but are not limited to, the following: (i) Tax refund offset proceedings under 26 U.S.C. 6402(d), 31 U.S.C. 3716 and 3720A. (ii) Wage garnishment proceedings under section 488A of the Act or under 31 U.S.C. 3720D and 34 CFR part 34. (iii) Salary offset proceedings for Federal~~

employees under 34 CFR part 31, 5 U.S.C. 5514, and 31 U.S.C. 3716. (iv) Consumer reporting proceedings under 31 U.S.C. 3711(e).

### **Affirmative and Defensive Claims for Loans Made On or After July 1, 2019**

#### **Comment**

For Direct Loans first disbursed on or after July 1, 2019, the NPRM contains two alternative approaches: Alternative A, under which a borrower may assert a defense to repayment “defensive” claim as part of a proceeding related to certain actions by the Department to collect on a Direct Loan; and Alternative B, under which the Department would accept both affirmative and defensive claims. The preamble to the NPRM states that the Department is interested in comments regarding these alternatives. For the same reasons set forth above in connection with the proposed rule applicable to loans made prior to July 1, 2019, we support Alternative B. Additionally, Alternative A may create disparate treatment of borrowers equally impacted by the same incident of misrepresentation. For example, some impacted borrowers enrolled in an income-driven repayment plan due to concerns about preventing loan default will sacrifice the opportunity to raise a defense claim, while classmates who forgo making payment and default will benefit by the ability to raise a defense claim. This disparate treatment seems unjustified if the sole purpose is to discourage incidences of unsubstantiated claims.

We also understand that there may be a need to discourage frivolous affirmative claims, as explained in the preamble, and could support a mechanism to discourage them in circumstances where there is no current collection action. In this regard, the proposal to impose a time limit on the filing of an affirmative defense to repayment claim seems to make sense.

### **Explanation of the Treatment of Pending Borrower Defense Claims**

#### **Comment**

The Department should explain what policy will apply to borrowers whose borrower defense applications are submitted prior to the effective date of the final rule but are not yet approved on that date, including borrowers of FFELP loans who have requested pre-approval of their application prior to applying for a Direct Consolidation Loan.

### **Payment Postponement for Preliminary Review and Consolidation**

**Cite: §§ 682.211, 682.410, 685.205**

#### **Comment**

Page 37251 proposes to rescind forbearance in the November 1, 2016 final rule which was intended to provide relief from collection for a FFELP borrower that files a defense claim. The discussion on page 37255 indicates that ED is planning to retain the opportunity for FFELP borrowers to consolidate into the Direct Loan Program to seek relief under the federal standard that ED will use for Direct Consolidation Loans first disbursed on and after July 1, 2019. Depending on the standard adopted by ED (i.e., Alternative A or B), the final regulation should contain authority for loan holders and servicers to provide borrowers relief from collection while ED makes a preliminary determination of whether relief might be available under the new federal standard.

**Proposed Change**

§682.211(f)

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(17) Upon being notified by the Secretary that the borrower has made a borrower defense claim related to a loan that the borrower intends to consolidate into the Direct Loan Program for the purpose of seeking relief in accordance with § 685.206. The administrative forbearance may be granted in yearly increments or for a period designated by the Secretary until the loan is consolidated or until the lender is notified by the Secretary to discontinue the forbearance.

§682.410(b)(6)

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(viii) Upon notification by the Secretary that the borrower has made a borrower defense claim related to a loan that the borrower intends to consolidate into the Direct Loan Program for the purpose of seeking relief in accordance with § 685.206, the guaranty agency may suspend all collection activities on the affected loan for the period designated by the Secretary.

§685.205(b)

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(11) Periods necessary for the Secretary to determine the borrower’s eligibility for discharge under § 685.206.

**Rationale**

Expand the circumstances under which forbearance relief may be granted to a borrower to include periods of time when a borrower defense has been asserted and is under review, as well as provide guaranty agencies the directive to stop collection activity on defaulted borrowers seeking borrower defense discharge relief.

**Early Implementation of Administrative Forbearance (if necessary) and Suspension of Collection Activities**

**Cite: §§682.211(f)(17) and 682.410(b)(6)**

**Comment**

If the Department is planning to continue the prequalification/consolidation process before the effective date of the final regulations, consideration should be given to permit early implementation of the new administrative forbearance under §682.211(f)(17) and suspension of collection activities under §682.410(b)(6). Absent the new authority to grant administrative forbearance, discretionary forbearance can be used to suspend servicing and collection; however, discretionary forbearance requires a borrower’s request and agreement to the terms of the forbearance and may be subject to a loan holder’s cumulative maximum forbearance limit which if exhausted would leave no other remedy to provide a borrower relief.

**Rationale**

Early implementation of §682.211(f)(17) and §682.410(b)(6) would be more efficient and provide a necessary benefit for borrowers that are pursuing borrower defense to repayment discharge. Specific to forbearance, it will help borrowers who may have reached the loan holder’s cumulative maximum limit while ED makes a discharge eligibility determination.

## **Operational Considerations to ED - Prequalification/Consolidation Process**

### **Comment**

We believe ED should continue with the prequalification/consolidation process and offer some operational suggestions for consideration:

1. The process should be very clear to a borrower that upon ED's determination that a borrower is pre-qualified for a discharge, that the borrower must take action to apply for and consolidate under a Direct Consolidation loan before the discharge can occur. ED may want to consider incorporating Direct Consolidation loan application information in its discharge communications to borrowers about the process.
2. The process should clearly address how the administrative forbearance will be handled when a loan is pre-qualified for a discharge by ED. Although we anticipate that the loan will remain in forbearance until the loan is consolidated, there may be instances where a borrower elects not to consolidate, in which case the process should include steps to communicate to the servicer when the borrower should resume making monthly payments.
3. In order to prevent a loan from unnecessarily remaining in forbearance, ED may want to consider adopting a designated time frame (e.g., similar to the 120-day time frame for a borrower seeking a TPD discharge), to require a borrower to apply for a Direct Consolidation loan when the borrower is notified that a loan is pre-qualified for a discharge. If ED determines that the borrower did not apply in such time frame, ED will notify the loan holder to resume the status in place prior to the borrower applying for discharge. In this case, we would expect ED to make clear that such a borrower could still apply for a Direct Consolidation loan at a future date.
4. The process should address handling defaulted loans undergoing involuntary payments (i.e., administrative wage garnishment, Treasury Offset payments), and whether the involuntary payments should continue or prospectively cease when a borrower makes a borrower defense claim. Since the outcome of this decision can impact a borrower's loan discharge amount, it should be clearly communicated to ensure consistency between the Perkins, FFEL and Direct Loan Programs. The decided procedure should be developed so as to not encourage multiple claims for the purpose of avoiding authorized or required collection activities.

## **Forbearance and the Meaning of the Phrase "Interest that accrues during this period is not capitalized"**

### **Comment**

One of the issue papers discussed by the committee for the Borrower Defense Negotiated Rulemaking (i.e., Issue Paper 2), contained a proposal to develop a framework for processing borrower defense claims, which included the use of forbearance. ED drafted regulatory language for the forbearance which contained the phrase "Interest that accrues during the forbearance period or during the suspension of collection activity is not capitalized." During the January 9, 2018 committee meeting, federal negotiators were asked to clarify whether the phrase "is not capitalized" means during and at the end of the forbearance, or whether it means the unpaid interest may "never" be capitalized for the remaining life of the loan. Both federal negotiators advised the committee that the language "is not capitalized" means that capitalization does not occur during and at the end of the forbearance, but if a

subsequent capitalization status occurs, (e.g., another forbearance, deferment, or if the borrower defaults), unpaid interest, including interest that was not previously capitalized, would be capitalized. A discussion of this topic is on pages 159 to 160 of the transcript for Session 2.

We have thoroughly researched the legislative and regulatory history for the meaning of the phrase “is not capitalized” which was codified November 1, 1999 to implement sections 428(c)(3)(D)(ii) and 428H(e)(7) of the Higher Education Act as amended by the Higher Education Amendments of 1998 (P.L. 105-244) enacted October 7, 1998. FFELP industry participants that negotiated this regulation documented the implementation of the provision with the understanding that capitalization of interest may not occur during the forbearance period, but that subsequent status changes that permit unpaid interest to be capitalized could occur which would include the interest that was not previously capitalized. To our knowledge there is no record in regulatory or sub-regulatory history that interprets the phrase “is not capitalized”, which is used in multiple places in the regulations, to prevent certain periods of interest from capitalizing over the life of the loan. As such, any new policy interpretation of the phrase “is not capitalized” would have to be carefully analyzed and new functionality developed prospectively to ensure standardized servicing.

We appreciate your understanding and request that the final rule memorialize the discussion of the meaning of “is not capitalized” to reflect that capitalization of interest, not previously capitalized, may occur as part of a subsequent capitalization status.

### **FFEL Closed School Discharge**

**Cite: §682.402(d)**

#### **Comment**

The proposed regulations change “student” to “borrower” in the beginning of §682.402(d)(3)(i). We agree with that change but wonder whether there should continue to be a reference to the student to account for a student, rather than the parent, making a claim that would impact the parent PLUS loan. Our question is based on the fact that “(or the student)” appears later in the provision, and also on question 19 on the Closed School Discharge application, which asks “Did you (or, for a parent PLUS borrower, the student) make any monetary claim with, or receive any payment from, the closed school or any third party (see definition in Section 5) in connection with enrollment or attendance at the school?”

#### **Proposed Change**

§682.402(d)(3)(i)

(i) Whether the borrower (or student for whom a parent received a PLUS loan) has made a claim with respect to the school’s closing with any third party, such as the holder of a performance bond or a tuition recovery program, and if so, the amount of any payment received by the borrower (or student) or credited to the borrower’s loan obligation;

#### **Rationale**

For consistency with language in the provision and also with the Closed School Discharge application that implements the regulation.

**Comment**

The proposed regulations do not provide a time frame for a borrower to request an appeal of a closed school discharge denied by the guaranty agency. We propose a 30-day timeframe be added during which collection activity continues to be suspended. We also propose that if the borrower submits a request after the 30-day period, the guaranty agency would still submit the appeal to the Secretary.

**Proposed Change**

§682.402(d)(6)(ii) – add new (G) and re-designate (H) to (I), (I) to (J), and (J) to (K), respectively.

(G)(1) If the borrower requests a review of the agency’s decision described in paragraph (d)(6)(ii)(F), the borrower must submit a written request to the agency within 30 days after the agency’s notification that the borrower does not qualify for a discharge. If the borrower fails to request a review, the agency shall resume collection.

(2) If the borrower submits a written request to the agency for review after the deadline established in (d)(6)(ii)(G)(1), the agency will submit the appeal to the Secretary. Collection of the loan will continue during the Secretary’s review of the borrower’s appeal.

**Rationale**

We believe the regulations should include a defined time frame in which a borrower can appeal a closed school discharge denial; it should not be left open-ended. Establishing a 30-day time period aligns with the time period allowed for an appeal of a False Certification denial. If a borrower submits an appeal after the deadline, the guaranty agency should still accept it and forward it to the Secretary. However, unlike with a timely request, collection of the loan would continue during the Secretary’s review.

**Comment**

It is not clear that there is an appeal option for non-defaulted borrowers under the proposed regulations. We recommend adding language to more explicitly state that non-defaulted borrowers are afforded the same appeal opportunity as defaulted borrowers. We acknowledge that this is likely to be a small population for FFELP but feel it’s necessary to provide clear regulations that result in equitable treatment of borrowers.

**Proposed Change**

§682.402(d)(6)(ii) – re-designate (G) as (H), revise clause (2).

(GH) Upon receipt of a closed school discharge claim filed by a lender, the agency must review the borrower’s completed application in light of the information available from the records of the agency and from other sources, including other guaranty agencies, state authorities, and cognizant accrediting associations, and must take the following actions—

(1) . . .

(2) If the agency determines that the borrower does not qualify for a discharge, the agency must, not later than 90 days after the agency received the claim, return the claim to the lender with an explanation of the reason for its determination. The lender must then take the action outlined in (d)(7)(v).

§682.402(d)(7)(v)

(d)(7)(v) Within 30 days after being notified by the guaranty agency that the borrower's request for a closed school discharge has been denied, the lender ~~shall~~ must continue to suspend collection activity resume collection and notify the borrower of the reasons for the denial and how the borrower may ask the Secretary to review the decision. If the borrower fails to request a review within 30 days after the notification, ~~the lender~~ must resume collection. The lender shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity, and may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

**Rationale**

Under the proposed rules, a guaranty agency is responsible for notifying a defaulted borrower of the option for review by the Secretary. For equitable treatment of borrowers, the same opportunity should be afforded to non-defaulted borrowers who are denied discharge by the guaranty agency. Since the guaranty agency would have returned the denied claim to the lender, it becomes the lender's responsibility to inform the borrower of the appeal option and submit any appeal to the Secretary.

**Comment**

Section (d)(6)(ii)(H) needs to be revised to align with the proposed regulatory change in §682.410(b)(4) that limits when a guaranty agency is allowed to capitalize accrued interest.

**Proposed Change**

§682.402(d)(6)(ii)(H), re-designated as (I)

~~(H)~~ if a borrower fails to submit the completed application described in paragraph (d)(3) of this section within 60 days of being notified of that option, the lender or guaranty agency must resume collection, ~~and~~ The lender must be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. ~~The lender or guaranty agency and~~ and may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

**Rationale**

Consistency with proposed regulation change in §682.410(b)(4).

**Comment**

The actions to be taken by the guaranty agency after the Secretary renders the appeal decision on a denied closed school discharge are not clearly defined. We suggest clarifying language below to specifically delineate: 1) that the decision is final, and 2) that non-defaulted borrowers have an appeal option, and 3) what actions are to be taken by the guaranty agency and lender when the appeal is approved or denied by the Secretary.

**Proposed Change**

§682.402(d)(6)(ii)(J), re-designated as (K)

~~(K)~~(1) Within 30 days after receiving the borrower's request for review of ~~it's~~ the agency's decision that

the borrower did not qualify for a discharge under paragraph (d)(6)(ii)(F) or paragraph (d)(7)(v) of this section, the agency or lender, as applicable, must forward the borrower's discharge request and all relevant documentation to the Secretary.

(2) After reviewing the documents provided by the agency or lender, the Secretary notifies the agency or lender (as applicable) and the borrower of the final decision on the borrower's application for a discharge. If the Secretary determines that a defaulted the borrower is not eligible for a discharge under paragraph (d) of this section, within 30 days after being informed of the Secretary's decision, the agency must take the actions described in paragraph (d)(6)(ii)(H) of this section as applicable resume collection. If the Secretary determines that a non-defaulted borrower is not eligible for a discharge under paragraph (d) of this section, within 30 days of being informed of the Secretary's decision, the lender must resume collection, is deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity, and may capitalize, in accordance with §682.202(b), any interest accrued and not paid during the period.

(3) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (d) of this section, the agency must, within 30 days after being informed of the Secretary's decision, take the actions required under paragraphs (d)(6)(ii)(E) and (d)(6)(ii)(G)(1) of this section and the lender must take the actions in paragraph (d)(7)(iii) and (iv) of this section, as applicable.

§682.402(d)(7)(iii)

(iii) The lender shall file a closed school claim with the guaranty agency in accordance with §682.402(g) no later than 60 days after the lender receives the borrower's ~~written request and sworn statement~~ completed application described in paragraph (d)(3) of this section or notification from the Secretary of approval through the appeal process. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender shall forward the payment to the guaranty agency within 30 days of its receipt. The lender shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

#### **Rationale**

To more clearly delineate that non-defaulted borrowers also have an appeal option and outline the actions a guaranty agency and lender take when such an appeal is approved or denied by the Secretary.

#### **Comment**

Technical correction needed to §682.402(d)(7)(ii) to reflect the terminology change from using "written request and sworn statement" to "completed application."

#### **Proposed Change**

§682.402(d)(7)(ii)

(ii) If the borrower fails to submit the ~~written request and sworn statement~~ completed application described in paragraph (d)(3) of this section within 60 days after being notified of that option, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity. The lender may capitalize, in accordance with §682.202(b)(2), any interest accrued and not paid during the period.

### **FFEL False Certification Discharge**

**Cite: §682.402(e)(6)(iii)**

#### **Comment**

The Secretary proposes to rescind the 2016 revision to §682.402(e)(6)(iii); however, we believe the 2016 revision to this section should be maintained.

#### **Proposed Change**

§682.402 (e)(6)(iii)

If the borrower fails to submit the written request and sworn statement described in paragraph (e)(3) of this section within 60 days of being notified of that option, the guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. ~~The agency may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.~~

#### **Rationale**

In accordance with the proposed changes to §682.410(b)(4), a guaranty agency must capitalize any unpaid interest due on the loan at the time the agency pays a default claim to the lender but must not capitalize any unpaid interest thereafter. Therefore, language permitting accrued unpaid interest to be capitalized by a guaranty agency in 682.402(e)(6)(iii) must be stricken.

### **Collection Charges**

**Cite: §682.410(b)(2)**

#### **Comment**

The preamble narrative seems to imply that collection costs are not assessed if the borrower enters into a repayment agreement with the guaranty agency within 60 days from "receipt" of the initial notice. The proposed regulatory language is less specific.

Page 37246

*"Prohibit 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."*

Page 37247

*"(6) restrictions on guaranty agencies from charging collection costs to a default borrower who enters into a repayment agreement with the guaranty agency within 60 days of receiving notice of default from the agency, and from....."*

*“Finally, the Department proposes to prohibit guaranty agencies from charging collection costs to borrowers who, within 60 days of receiving notice of default, enter into an acceptable repayment arrangement, including....”*

*“.....may not assess collection costs to a borrower who enters into an acceptable repayment agreement, including a rehabilitation agreement, and honors that agreement, within 60 days of receiving notice of default.”*

*“The changes we propose regarding collection costs for borrowers who enter into an acceptable repayment arrangement, including a loan rehabilitation plan, within 60 days of receiving notice of default were not included in the 2016 final regulation.”*

The following change to the proposed regulatory language is recommended to clarify that the 60 day-period begins when the guaranty agency “sends” the initial notice described in paragraph (b)(6)(ii).

### **Proposed Change**

§682.410(b)(2)

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 may charge a borrower an amount equal to the 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~~ after the guaranty agency sends 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 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) The costs under this paragraph (b)(2) include, but are not limited to, all attorneys' fees, collection agency charges, and court costs. Except as provided in §§ 682.401(b)(18)(i) and 682.405(b)(1)(vi)(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.

### **Rationale**

A guaranty agency sends the initial notice of default to the last known address of the borrower. The 60-day requirement must be based on when the notice is “sent” since it is required to be sent to the last known address of the borrower. The regulatory language provided in the proposed changes to 682.402(b)(2) seems to imply the 60-period begins when the notice is sent. However, the preamble language seems to imply a different timeline. The receipt of the notice by the borrower is problematic since the guaranty agency cannot determine when a borrower receives a notice; however, a guaranty agency does know when it sends a notice. The additional language added to the paragraph will provide clear intent of the regulation.

**Trigger Event/Effective Date**

Suggested Trigger Event

Initial notice of default sent on or after 7/1/2019