

(1) The consolidation will not result in terms less favorable to the borrower than if no consolidation had occurred, and

(2) The Federal Government does not, as a result of the consolidation, become liable for any payment of principal or interest for a Guaranteed Student Loan under the provisions of section 439(o) of the Higher Education Act of 1965.

(Approved by the Office of Management and Budget under control number 0915-0108)

[48 FR 38988, Aug. 26, 1983, as amended at 57 FR 28795, June 29, 1992]

#### § 60.19 Forms.

All HEAL forms are approved by the Secretary and may not be changed without prior approval by the Secretary. HEAL forms shall not be signed in blank by a borrower, a school, a lender or holder, or an agent of any of these. The Secretary may prescribe who must complete the forms, and when and to whom the forms must be sent. All HEAL forms must contain a statement that any person who knowingly makes a false statement or misrepresentation in a HEAL loan transaction, bribes or attempts to bribe a Federal official, fraudulently obtains a HEAL loan, or commits any other illegal action in connection with a HEAL loan is subject to possible fine and imprisonment under Federal statute.

[52 FR 747, Jan. 8, 1987, as amended at 57 FR 28795, June 29, 1992]

#### § 60.20 The Secretary's collection efforts after payment of a default claim.

After paying a default claim on a HEAL loan, the Secretary attempts to collect from the borrower and any valid endorser in accordance with the Federal Claims Collection Standards (4 CFR parts 101 through 105), the Office of Management and Budget Circular A-129, issued May 9, 1985, and the Department's Claims Collection Regulation (45 CFR part 30). The Secretary attempts collection of all unpaid principal, interest, penalties, administrative costs, and other charges or fees, except in the following situations:

(a) *The borrower has a valid defense on the loan.* The Secretary refrains from

collection against the borrower or endorser to the extent of any defense that the Secretary concludes is valid. Examples of a valid defense include expiration of the statute of limitations and infancy.

(b) *A school owes the borrower a refund for the period covered by the loan.* In this situation, the Secretary refrains from collection to the extent of the unpaid refund if the borrower assigns to the Secretary the right to receive the refund.

(c) *The school or lender or holder is the subject of a lawsuit or Federal administrative proceeding.* In this situation, if the Secretary determines that the proceeding involves allegations that, if proven, would provide the borrower with a full or partial defense on the loan, then the Secretary may suspend collection activity on all or part of a loan until the proceeding ends. The Secretary suspends collection activity only for so long as the proceeding is being energetically prosecuted in good faith and the allegations that relate to the borrower's defense are reasonably likely to be proven.

(d) *The borrower dies or becomes totally and permanently disabled.* In this situation, the Secretary terminates all collection activity against the borrower. If the borrower dies or becomes totally and permanently disabled, the Secretary also terminates all collection activity against any endorser.

[48 FR 38988, Aug. 26, 1983, as amended at 52 FR 747, Jan. 8, 1987; 57 FR 28795, June 29, 1992]

#### § 60.21 Refunds.

(a) *Student authorization.* By applying for a HEAL loan, a student authorizes a participating school to make payment of a refund that is allocable to a HEAL loan directly to the original lender (or to a subsequent holder of the loan note, if the school has knowledge of the holder's identity).

(b) *Treatment by lenders or holders.* (1) A holder of a HEAL loan must treat a refund payment received from a HEAL school as a downward adjustment in the principal amount of the loan.

(2) When a lender receives a school refund check for a loan it no longer holds, the lender must transfer that payment to the holder of the loan and either inform the borrower about the

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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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[48 FR 38988, Aug. 26, 1983, as amended at 57 FR 28795, June 29, 1992]

**Subpart D—The Lender and Holder**

**§ 60.30 Which organizations are eligible to apply to be HEAL lenders and holders?**

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

(b) The following types of organizations are 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;

(4) A HEAL school; and

(5) 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) The Student Loan Marketing Association (popularly known as "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.

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**42 CFR Ch. I (10-1-00 Edition)**

**§ 60.31 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 applicant 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 making, servicing and collecting HEAL loans. These procedures must be reviewed during the biennial audit required by § 60.42(d). If the applicant uses procedures more stringent than those required by §§ 60.34 and 60.35 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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**§ 60.32 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