

# 42 U.S. Code § 292f

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## Default of borrower

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### **(a) Conditions for payment to beneficiary**

#### **(1) In general**

Upon default by the borrower on any loan covered by Federal loan insurance pursuant to this subpart, and after a substantial collection effort (including, subject to subsection (h), commencement and prosecution of an action) as determined under regulations of the Secretary, the insurance beneficiary shall promptly notify the Secretary and the Secretary shall, if requested (at that time or after further collection efforts) by the beneficiary, or may on his own motion, if the insurance is still in effect, pay to the beneficiary the amount of the loss sustained by the insured upon that loan as soon as that amount has been determined, except that, if the insurance beneficiary including any servicer of the loan is not designated for “exceptional performance”, as set forth in paragraph (2), the Secretary shall pay to the beneficiary a sum equal to 98 percent of the amount of the loss sustained by the insured upon that loan.

#### **(2) Exceptional performance**

##### **(A) Authority**

Where the Secretary determines that an eligible lender, holder, or servicer has a compliance performance rating that equals or exceeds 97 percent, the Secretary shall designate that eligible lender, holder, or servicer, as the case may be, for exceptional performance.

##### **(B) Compliance performance rating**

For purposes of subparagraph (A), a compliance performance rating is determined with respect to compliance with due diligence in the disbursement, servicing, and collection of loans under this subpart for each year for which the determination is made. Such rating shall be equal to the percentage of all due diligence requirements applicable to each loan, on average, as established by the Secretary, with respect to loans serviced during the period by the eligible lender, holder, or servicer.

##### **(C) Annual audits for lenders, holders, and servicers**

Each eligible lender, holder, or servicer desiring a designation under subparagraph (A) shall have an annual financial and compliance audit conducted with respect to the loan portfolio of such eligible lender, holder, or servicer, by a qualified independent organization from a list of qualified organizations identified by the Secretary and in accordance with standards established by the Secretary. The standards shall measure the lender’s, holder’s, or servicer’s compliance with due diligence standards and shall include a defined statistical sampling technique designed to measure the performance rating of the eligible lender, holder, or servicer for the purpose of this section. Each eligible lender, holder, or servicer shall submit the audit required by this section to the Secretary.

##### **(D) Secretary’s determinations**

The Secretary shall make the determination under subparagraph (A) based upon the audits submitted under this paragraph and any information in the possession of the Secretary or submitted by any other

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agency or office of the Federal Government.

#### **(E) Quarterly compliance audit**

To maintain its status as an exceptional performer, the lender, holder, or servicer shall undergo a quarterly compliance audit at the end of each quarter (other than the quarter in which status as an exceptional performer is established through a financial and compliance audit, as described in subparagraph (C)), and submit the results of such audit to the Secretary. The compliance audit shall review compliance with due diligence requirements for the period beginning on the day after the ending date of the previous audit, in accordance with standards determined by the Secretary.

#### **(F) Revocation authority**

The Secretary shall revoke the designation of a lender, holder, or servicer under subparagraph (A) if any quarterly audit required under subparagraph (E) is not received by the Secretary by the date established by the Secretary or if the audit indicates the lender, holder, or servicer has failed to meet the standards for designation as an exceptional performer under subparagraph (A). A lender, holder, or servicer receiving a compliance audit not meeting the standard for designation as an exceptional performer may reapply for designation under subparagraph (A) at any time.

#### **(G) Documentation**

Nothing in this section shall restrict or limit the authority of the Secretary to require the submission of claims documentation evidencing servicing performed on loans, except that the Secretary may not require exceptional performers to submit greater documentation than that required for lenders, holders, and servicers not designated under subparagraph (A).

#### **(H) Cost of audits**

Each eligible lender, holder, or servicer shall pay for all the costs associated with the audits required under this section.

#### **(I) Additional revocation authority**

Notwithstanding any other provision of this section, a designation under subparagraph (A) may be revoked at any time by the Secretary if the Secretary determines that the eligible lender, holder, or servicer has failed to maintain an overall level of compliance consistent with the audit submitted by the eligible lender, holder, or servicer under this paragraph or if the Secretary asserts that the lender, holder, or servicer may have engaged in fraud in securing designation under subparagraph (A) or is failing to service loans in accordance with program requirements.

#### **(J) Noncompliance**

A lender, holder, or servicer designated under subparagraph (A) that fails to service loans or otherwise comply with applicable program regulations shall be considered in violation of the Federal False Claims Act.

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