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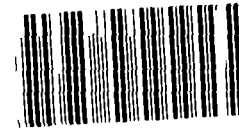
United States General Accounting Office 130444

Briefing Report to the Chairman,  
Subcommittee on Postsecondary  
Education, Committee on Education  
and Labor  
House of Representatives

July 1986

**DEFAULTED  
STUDENT LOANS**

**Guaranty Agencies'  
Collection Practices and  
Procedures**



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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

HUMAN RESOURCES  
DIVISION

July 17, 1986

B-204708

The Honorable William D. Ford  
Chairman, Subcommittee on  
Postsecondary Education  
Committee on Education and Labor  
House of Representatives

Dear Mr. Chairman:

This briefing report is a preliminary response to your request that we review the methods by which the Department of Education and state or private nonprofit loan guaranty agencies protect the federal government's interest when collecting defaulted student loans under the Guaranteed Student Loan Program. As part of this review, we sent questionnaires to the 58 guaranty agencies that administer this program on behalf of the Department. Our purpose was to obtain information on these agencies' organizations and the policies and procedures they follow when collecting defaulted loans.

We are providing this information now so that the Subcommittee can use it in preparing for the conference with the Senate on the reauthorization of the Higher Education Act of 1965, as amended. We are continuing fieldwork at eight guaranty agencies, the results of which will be reported later this year.

As agreed with your office, we have summarized information on seven specific areas based on our questionnaire results. These areas relate to the (1) functions performed by or on behalf of the guaranty agencies; (2) use of standardized collection procedures; (3) specific collection practices used; (4) use of private collection agencies; (5) litigation procedures used; (6) extent to which administrative offsets, such as seizure of income tax refunds and wage garnishments are used; and (7) guaranty agencies' opinions as to their most successful collection techniques. The information in this report was provided by the 58 guaranty agencies and was not verified by GAO. Appendix II provides the agencies' detailed responses to all items included in the questionnaire. Key results from each of the seven areas follow.

### GUARANTY AGENCIES' FUNCTIONS

All guaranty agencies perform at least five major functions: preclaims assistance to lenders, processing of claims from lenders, collections, preparation of forms for the Department of Education, and litigation of defaulters. The functions are performed in house, by another state agency, under contract to a private firm, or through a combination of these. None of these functions, however, are performed totally in house by all agencies.

### STANDARDIZED COLLECTION PROCEDURES

All guaranty agencies said they have standard procedures for collecting defaulted student loans. These procedures, however, are often less stringent than those proposed in draft regulations now being finalized by the Department. For example, compared to the five Department proposals for notifying, attempting to contact by phone, and taking legal action against defaulters, in four areas, the agencies' procedures are often less stringent.

### PRACTICES AFFECTING FEDERAL COSTS

The agencies differ in how they credit defaulter payments to the outstanding balance of the individual's account. The Department's current regulations permit an agency to post payments to the principal or the interest of the loan first. Twenty-nine percent of the agencies stated they apply defaulter payments to the principal first. This practice results in less interest being assessed to the defaulter, which in turn results in less money being returned to the federal government. The Department's proposed regulations would require that payments be applied to interest first.

The Department's current regulations also require that any payments made to a guaranty agency by or on behalf of a defaulter on a reinsured loan are to be shared with the Department. The agencies vary in their treatment of collections with regard to the Department's share. For example, all agencies consider defaulter payments to reduce interest or principal on loans as subject to this sharing requirement. Not all agencies, however, consider charges to a defaulter for court costs, late payment fees, or attorney's fees as subject to this sharing.

### USE OF PRIVATE COLLECTION CONTRACTORS

Eighty-six percent of the agencies use private collection contractors to assist them in their collection efforts. The agencies used an average of 5 collection contractors, ranging from 1 to 20 contractors per agency.

**USE AND EFFECTIVENESS OF LITIGATION**

Ninety-one percent of the agencies contract out litigation to collect from defaulters. Twenty-nine percent of the agencies stated that they have had problems in obtaining legal judgments against defaulters, and 79 percent said they have difficulty enforcing judgments. These figures are significant because the Department is proposing that guaranty agencies be required to institute a civil suit after borrowers have been in default for 225 days. If adopted, this proposal could, therefore, result in a proliferation of legal actions producing unobtainable or unenforceable judgments.

**ADMINISTRATIVE OFFSETS AND WAGE GARNISHMENTS**

Guaranty agencies use a wide range of administrative offsets or wage garnishment procedures, but their use is limited by state law. For example, 55 percent of the agencies stated they are legally authorized to garnish state employees' wages, and 75 percent of these agencies stated they must first obtain a legal judgment against the borrower.

**SUCCESSFUL COLLECTION TECHNIQUES**

The successful collection techniques cited most frequently by guaranty agencies were reporting defaulters to credit bureaus (16 agencies); using private collection contractors (14 agencies); and having personal telephone contacts with borrowers (14 agencies).

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We did not obtain official comments on this briefing report from the Department of Education, but we did discuss the information contained in it with cognizant program officials and considered their views in developing the document. We plan to distribute this briefing report to other interested congressional committees and members, the Secretary of Education, and the guaranty agencies and make copies available to others on request. Should you need additional information on this document, please call me on 275-5365.

Sincerely yours,



William J. Gainer  
Associate Director

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### ABBREVIATIONS

GAO	General Accounting Office
GSL	guaranteed student loan
IRS	Internal Revenue Service

**DEFAULTED STUDENT LOANS:**  
**GUARANTY AGENCIES' COLLECTION**  
**PRACTICES AND PROCEDURES**

**BACKGROUND**

The Guaranteed Student Loan Program is the largest federal program providing financial assistance to students seeking a postsecondary education. It began operations in 1965 and has expanded rapidly in recent years. Under this program, various lenders, such as commercial banks, savings and loan associations, and state agencies, make low-interest loans to students under the protection of guarantees issued by 58 state or private nonprofit agencies.<sup>1</sup> Through the end of fiscal year 1985, the program had provided more than \$59 billion in student loans. During fiscal year 1985 alone, 3.8 million loans totaling \$8.9 billion were made through the program.

The guaranty agency is responsible for administering the program within the state, encouraging program participation by lenders, and verifying that lenders use due diligence to collect on all claims filed under the guarantee provisions. "Due diligence" is defined as practices at least as extensive and forceful as those generally practiced by financial institutions. The agency also issues guarantees on qualifying loans. When a borrower fails to repay the loan due to death, disability, bankruptcy, or default, the guaranty agency pays the lenders' claims. The agency also collects insurance premiums from lenders and attempts to collect directly from the borrowers' loans on which the agency has paid default claims.

Once the guaranty agency pays a defaulted claim to a lender, it begins a series of actions to obtain repayment from a borrower. Agencies generally use a series of written notices--called demand letters--to try and get the borrower to repay. These letters are usually supplemented by attempts to contact the borrower by phone to reinforce the need for payment.

The Department of Education has the authority for administering the program. This includes establishing program guidelines; approving the participation of lenders, guaranty agencies, and schools; and overseeing the operations of guaranty agencies and lenders. The Department makes interest and special allowance payments directly to lenders and makes reinsurance payments to guaranty agencies after agencies pay lender claims.

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<sup>1</sup>In total, 47 organizations serve as the guaranty agencies for 58 separate reporting units under the program. The number of guaranty agencies differs from the number of reporting units because two large nonprofit agencies serve as the designated guarantor for more than one state.

It also reimburses guaranty agencies for a portion of their administrative costs and provides advances to help strengthen program reserves and pay lenders' claims. To partially offset program costs, the Department collects origination fees collected by lenders from borrowers. The Department also receives a portion of the guaranty agencies' defaulted loan collections that the Department reinsured. The retention of this portion of defaulted receipts is commonly referred to as the "Secretary's equitable share."

#### OBJECTIVE, SCOPE, AND METHODOLOGY

The Chairman, Subcommittee on Postsecondary Education, House Committee on Education and Labor, asked GAO to review how the Department of Education and the guaranty agencies are protecting the federal government's interest in collecting defaulted student loans under the Guaranteed Student Loan Program. As part of that review, we sent and received from all 58 guaranty agencies that administer this program (see app. I) a questionnaire we developed. Our objective was to obtain information on the agencies' organization and the practices and procedures they follow for collecting defaulted student loans.

As arranged with your office, we are providing this briefing report now so that the Subcommittee can use the information in preparing for the conference with the Senate on the reauthorization of the Higher Education Act of 1965, as amended. We agreed to address seven questions relating to the questionnaire results. A summary of the results for all items included in the questionnaire is attached (see app. II). The seven questions are:

- What functions are performed by or on behalf of the guaranty agencies in administering the Guaranteed Student Loan Program?
- Do guaranty agencies have standardized collection procedures and what steps are taken to locate defaulters?
- What specific collection practices are used that affect federal costs?
- How extensively do guaranty agencies use private collection contractors, including how are contracts awarded and how are contractors compensated and evaluated?
- How extensively do the guaranty agencies use litigation against defaulters, including who performs litigation, what factors influence the decision to litigate, and what difficulties are encountered in obtaining and enforcing judgments?



--What administrative offset and wage garnishment procedures are allowed by state law/regulations and used by guaranty agencies?

--What do the guaranty agencies consider to be their most successful collection techniques?

Overall, the questionnaire we developed contained 126 questions and 450 variables and was divided into four major sections: organization, policies and procedures, bankruptcy, and studies/audits. The questions used covered such areas as staffing, training, size of defaulted portfolio, techniques used to locate defaulted borrowers, use of private collection agencies, and how litigation is conducted.

We developed the questions from a number of sources. We first reviewed the program legislation, regulations, and proposed legislation and regulations that pertain to the guaranty agencies. We next held discussions with officials from the (1) Department of Education, (2) guaranty agencies, and (3) National Council of Higher Education Loan Programs, Inc., including the Council's nationwide Default Committee. We also reviewed studies and reports by others outside the Department on issues related to our work.

The responses received from the 58 agencies were self-reported and not verified by GAO. We are continuing to do fieldwork at eight guaranty agencies, the results of which will be reported later this year. The information obtained from these site visits will supplement the questionnaire results.

**QUESTION 1**

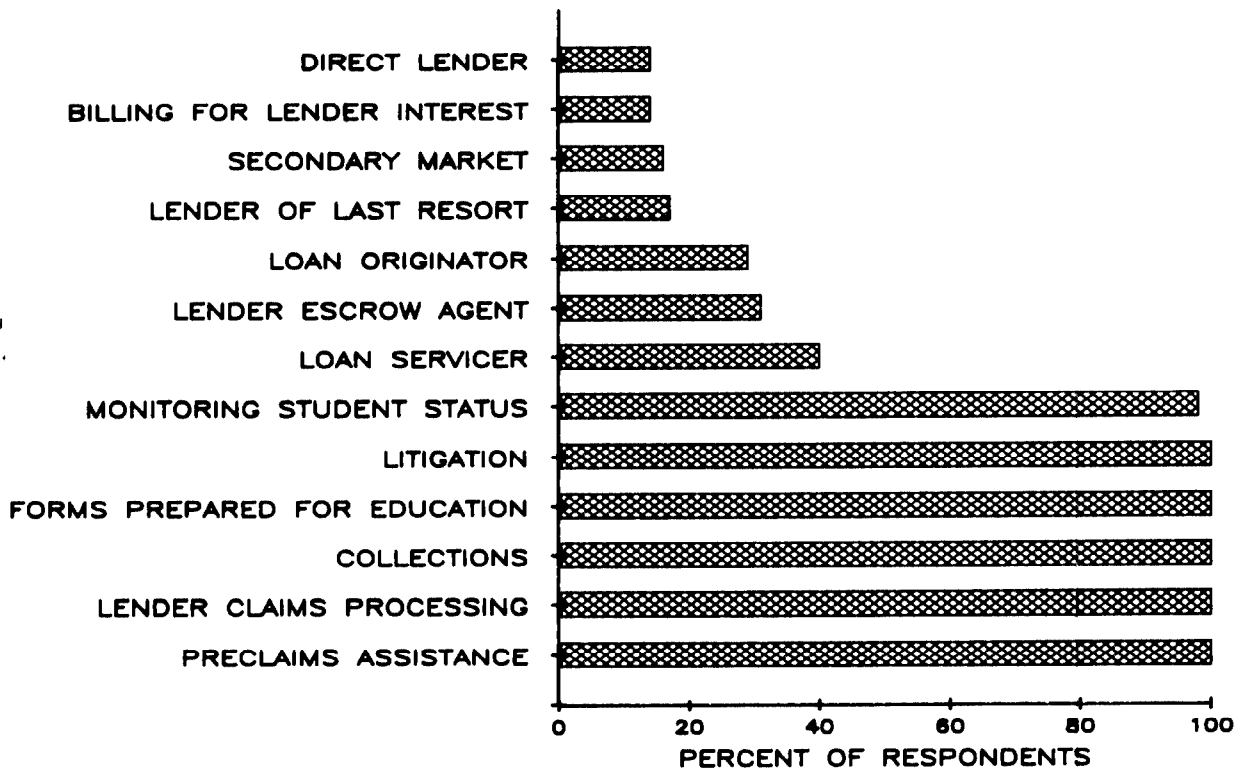
**WHAT FUNCTIONS ARE PERFORMED BY OR ON BEHALF OF GUARANTY AGENCIES IN ADMINISTERING THE GUARANTEED STUDENT LOAN PROGRAM?**

All guaranty agencies perform many functions in administering this program on behalf of the Department of Education. These functions may be done in house, by another state agency, under contract to a private firm, or through a combination of these. (These functions are listed below and defined in app. III.)

All the guaranty agencies reported that they perform the following: (1) preclaims assistance to lenders, (2) processing of claims from lenders, (3) collections, (4) preparation of forms required by the Department, and (5) litigation against defaulters. In addition, a sixth function, monitoring of student enrollment status, was performed by all but one agency.

We identified seven other functions, which the results showed were performed to a lesser extent. The following chart shows the functions performed by or on behalf of the guaranty agencies.

**FUNCTIONS PERFORMED BY OR FOR GUARANTY AGENCIES**



The following table further details the six functions performed by all guaranty agencies, except as noted, and who performs each function. As shown, none of these six functions were done totally in house by all agencies. For example, taking legal action against defaulters was performed in house by only 22 percent of the agencies.

<u>SIX FUNCTIONS PERFORMED BY OR FOR ALL 58 GUARANTY AGENCIES</u>			
<u>Function</u>	<u>Percentage performed by</u>		
	<u>In house</u>	<u>Other state agency</u>	<u>External source</u>
Preclaims assistance to lenders	74	0	28
Processing claims from lenders	79	0	24
Collections	74	16	86
Monitoring student enrollment status <sup>a</sup>	70	2	32
Preparing forms for the Department	81	0	24
Litigation against defaulters	22	31	83

<sup>a</sup>Only one agency said it did not perform this function.

## QUESTION 2

### DO GUARANTY AGENCIES HAVE STANDARDIZED COLLECTION PROCEDURES AND WHAT STEPS ARE TAKEN TO LOCATE DEFAULTERS?

The Department of Education's regulations (34 C.F.R. 682.401(c)(3)) require that guaranty agencies exercise due diligence--including litigation as appropriate--in attempting to collect defaulted loans. These regulations allow the agencies to establish their own standards for collections. The Department recently proposed draft regulations (published Sept. 4, 1985) that would standardize agency collection procedures.

The Department's draft regulations require that guaranty agencies follow five major steps in attempting to collect from a defaulter. These steps begin from the date the agency paid a default claim submitted by a lender. The five steps are:

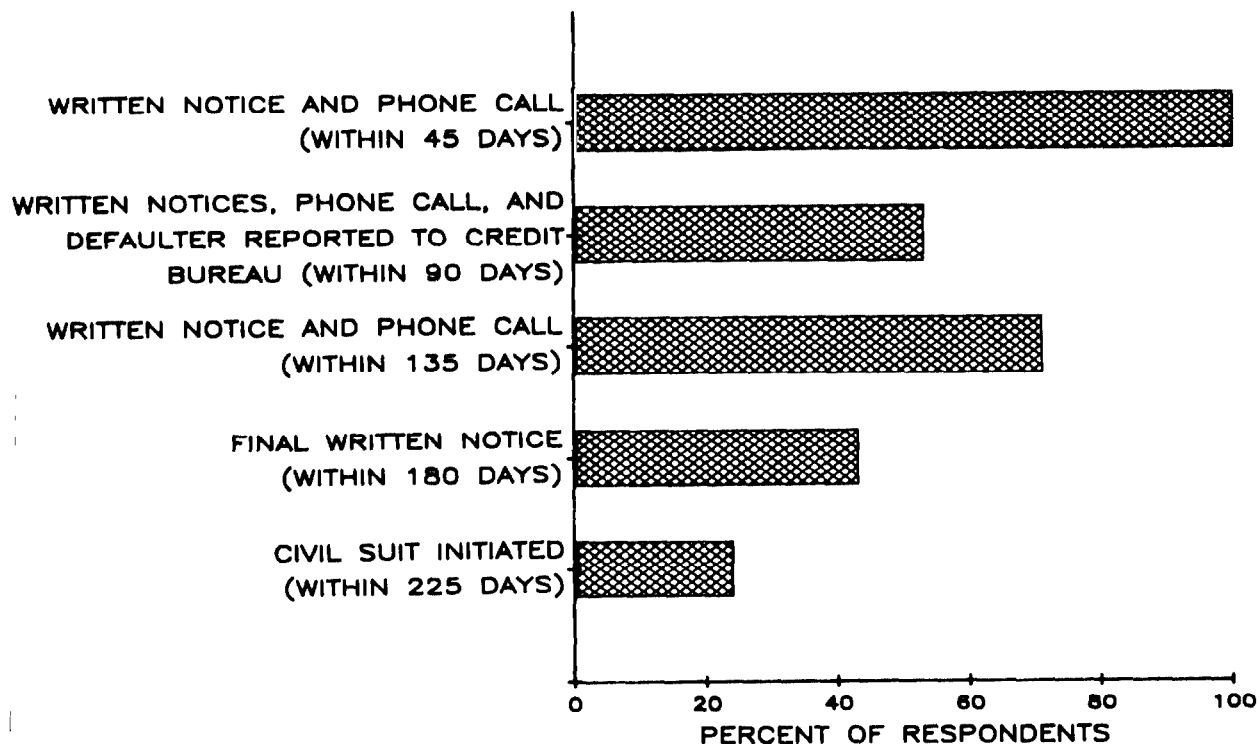
- Written notice and attempt to contact by phone within 45 days.
- Written notice, attempt to contact by phone, and reporting of defaulter to credit bureau within 90 days.
- Written notice and attempt to contact by phone within 135 days.
- Final written notice within 180 days.
- Institute civil suit within 225 days.

We asked the guaranty agencies (1) whether they had established collection procedures, (2) whether their procedures were as stringent as those the Department proposed, and (3) what steps they take to contact defaulted borrowers who cannot be readily located.

All guaranty agencies stated that they had established due diligence procedures in accordance with the current regulations. By and large these agency procedures are less stringent than those proposed by the Department. In fact, there was only one procedure that all agencies said their requirements currently meet or exceed, which was to send an initial written notice and then attempt to contact the defaulter by phone within 45 days.

The chart on the opposite page shows the percentage of agencies whose procedures are at least equal to the Department's five major proposed standards.

## GUARANTY AGENCIES WHOSE COLLECTION PROCEDURES AT LEAST EQUAL PROPOSED DEPARTMENTAL PROCEDURES



### Locating borrowers

A major task for guaranty agencies is their efforts to locate the defaulter--commonly referred to as skip-tracing. Agencies may have a variety of methods available to them to locate defaulted borrowers. As a result, we asked the agencies to cite what sources of assistance they use, including (1) the Internal Revenue Service (IRS), (2) credit bureaus, (3) state organizations or agencies, and (4) other sources.

### IRS skip-tracing service

The most frequently cited source was the IRS skip-tracing service. This service allows the Department of Education to request from IRS a defaulter's address from the individual's latest federal tax return. The Department then provides that address to the guaranty agency. Eighty-four percent of the agencies use this service. When asked how useful this service is, however, only 16 percent of those using the service believed it was useful to any great extent.

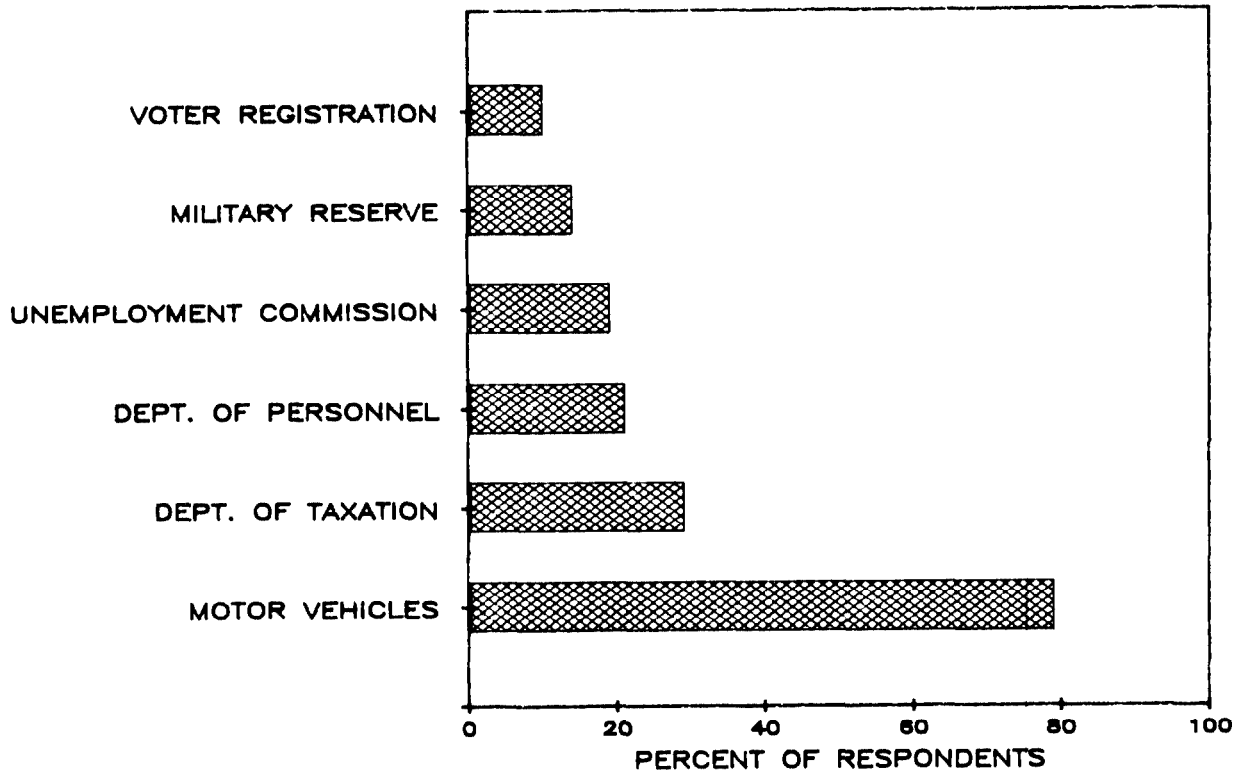
### Credit bureau reports

Agencies can also use credit bureau data to obtain a defaulter's address, as well as data on an individual's employment and credit history. Seventy-four percent of the agencies stated they use credit bureau reports for skip-tracing, and 33 percent of those using such reports considered them useful to a great extent.

### State organizations/agencies used to locate defaulters

Guaranty agencies may also use a number of state organizations or agencies to help locate defaulted borrowers. The graph below illustrates that the source that the guaranty agencies said they used most frequently was the motor vehicle department (79 percent). According to the guaranty agencies, the remaining sources listed, such as state taxation (29 percent) and state personnel (21 percent) were used to a much lesser extent.

## STATE ORGANIZATIONS THAT HELP LOCATE DEFAULTERS

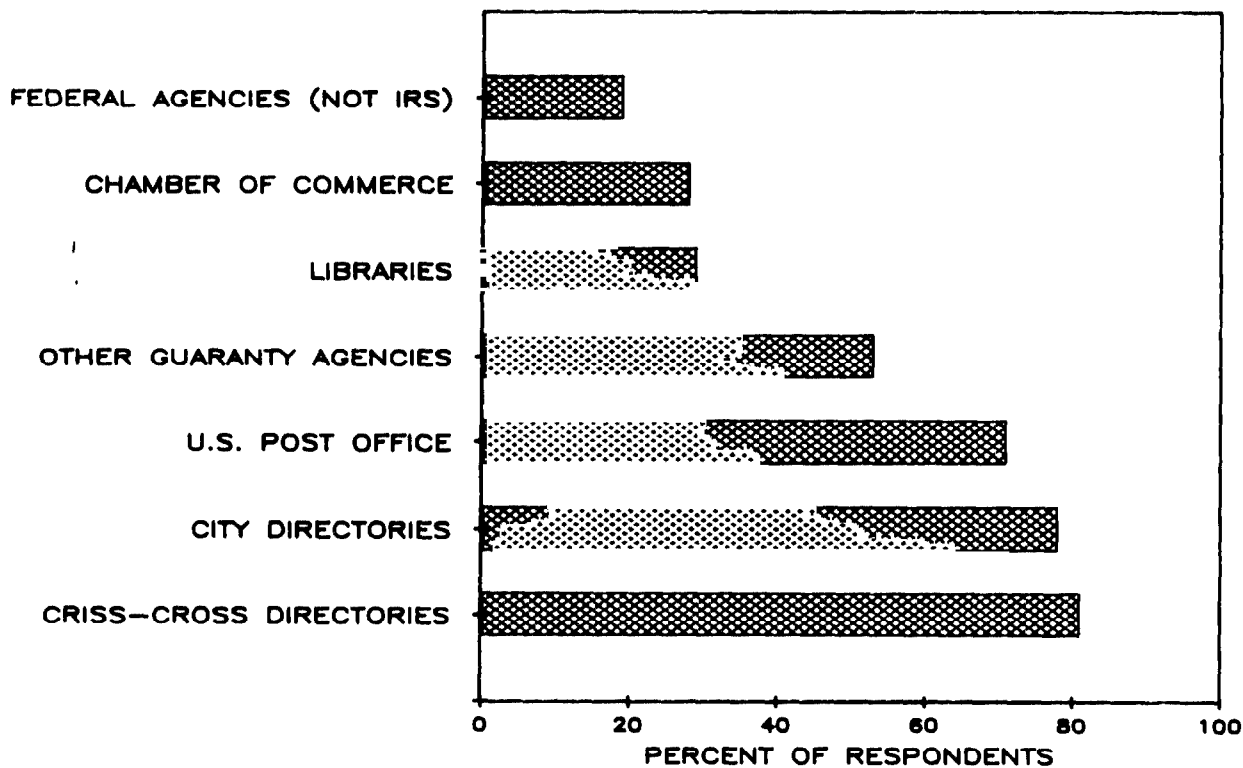


Fourteen percent of the agencies said they do not contact any of the state organizations listed above.

### Other sources of information

In addition to the resources discussed above, guaranty agencies reported that they use other federal and local sources to locate defaulters. The most frequently cited other source was criss-cross directories (81 percent), followed closely by city directories (78 percent) and the U.S. post office (71 percent). Criss-cross directories are reference books that list individuals by street address and may include telephone numbers. City directories are also reference books that, in addition to address information, may include such things as employment information, including length of employment, and whether those listed own or rent their dwelling. Guaranty agencies may also use libraries (29 percent), especially when they may not have their own criss-cross or city directories, since many libraries have these reference books. Examples of the other federal agencies that the guaranty agencies said they used (19 percent) included the Departments of Defense and Education and the Social Security Administration. The following graph shows the responses to the other federal or local sources that the guaranty agencies used to locate defaulters.

## OTHER INFORMATION SOURCES USED TO LOCATE DEFAULTERS



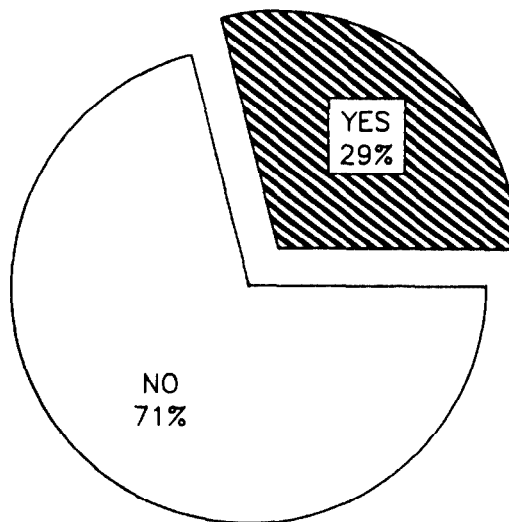
**QUESTION 3**

**WHAT SPECIFIC COLLECTION PRACTICES ARE USED THAT AFFECT FEDERAL COSTS?**

Since guaranty agencies may establish their own collection practices and procedures, we asked them several questions about the methods they used that may affect federal costs. We wanted to know such things as whether they (1) continue to accrue interest on the defaulter's outstanding loan balance after the default claim has been paid to a lender and (2) apply defaulter payments to the principal or interest of the loan first. When successful in collecting, the agencies can make the defaulter pay any interest that is added to the principal amount of the loan, or they can forgive all or part of the interest. We also asked the agencies what types of receipts they considered subject to the Secretary's equitable share.

All agencies said they continue to accrue interest after the default claim has been paid. Twenty-nine percent stated they apply defaulter payments to the principal of the loan first rather than to any interest owed. This practice results in less interest being assessed to the defaulter, which would have, in turn, been later shared on a reinsured loan with the Department. The Department's current regulations permit payments received by guaranty agencies to be applied to either principal or interest first, although its proposed regulations would require that payments be applied to accrued interest first.

**GUARANTY AGENCIES WHOSE  
LOAN PAYMENTS ARE GENERALLY  
APPLIED FIRST TO THE PRINCIPAL**

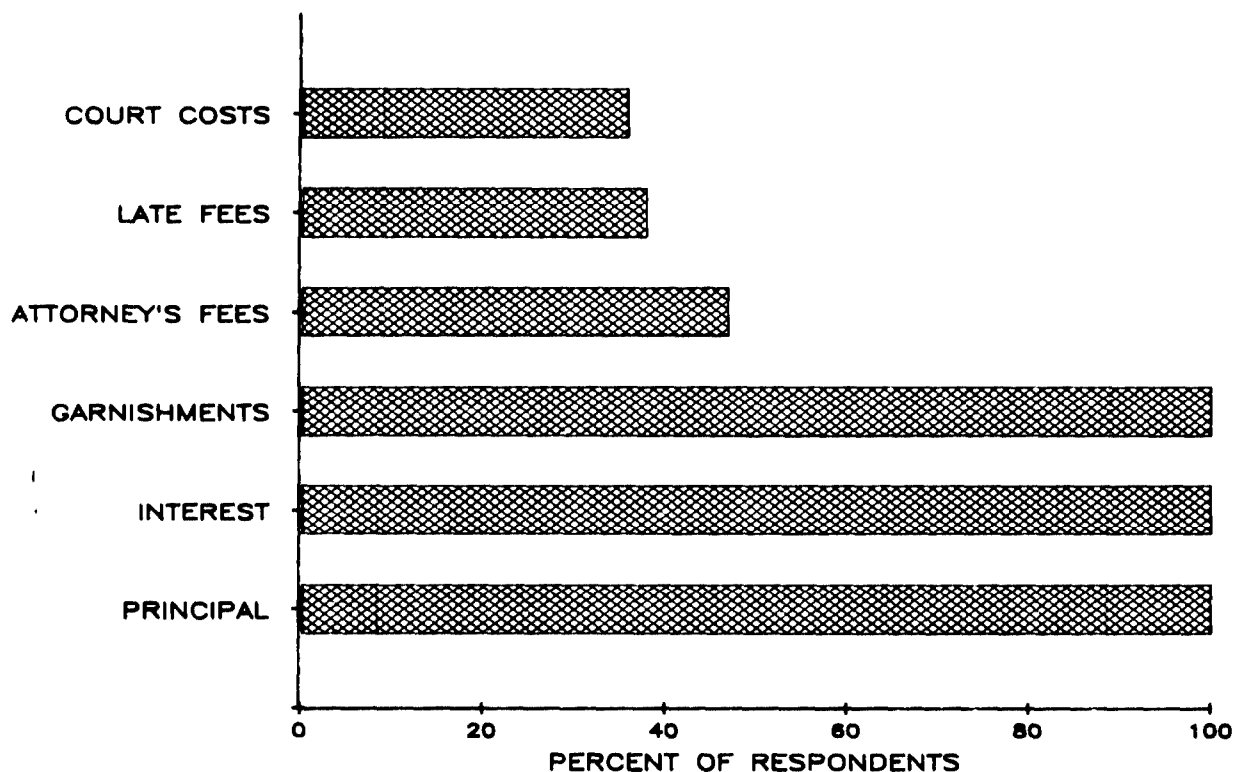




Guaranty agencies do not consider all types of receipts from defaulters subject to the Secretary's equitable share. All agencies consider loan principal, interest, and wage garnishments subject to be shared with the Department. Other receipts--such as attorney's fees (47 percent), late payment fees (38 percent), and other court costs (36 percent) paid by a defaulter--are less likely to be considered subject to the Secretary's equitable share. The Department's regulations state that any payment made by or on behalf of a defaulter on a reinsured loan is subject to the Secretary's equitable share.

The following graph illustrates the extent to which guaranty agencies consider various monies collected to be subject to the Secretary's equitable share.

### COLLECTIONS CONSIDERED SUBJECT TO THE SECRETARY'S EQUITABLE SHARE



**QUESTION 4**

**HOW EXTENSIVELY DO GUARANTY AGENCIES USE PRIVATE COLLECTION CONTRACTORS, INCLUDING HOW ARE CONTRACTS AWARDED AND HOW ARE CONTRACTORS COMPENSATED AND EVALUATED?**

Guaranty agencies have the option of performing their collection activity in house, contracting out the collection function, or using a combination of both methods. To obtain a better understanding of how extensively the agencies use private collectors, we asked them whether they used such contractors. If they did, we then asked how many contractors they use and how long they have used contractors. Finally, we asked

- how contracts are awarded,
- how contractors are compensated,
- what practices contractors followed, such as accruing and collecting of interest, and
- how they evaluated contractor performance.

**Most agencies use collection contractors**

Eighty-six percent of the agencies stated they use contractors to help collect defaulted loans. These agencies said they used

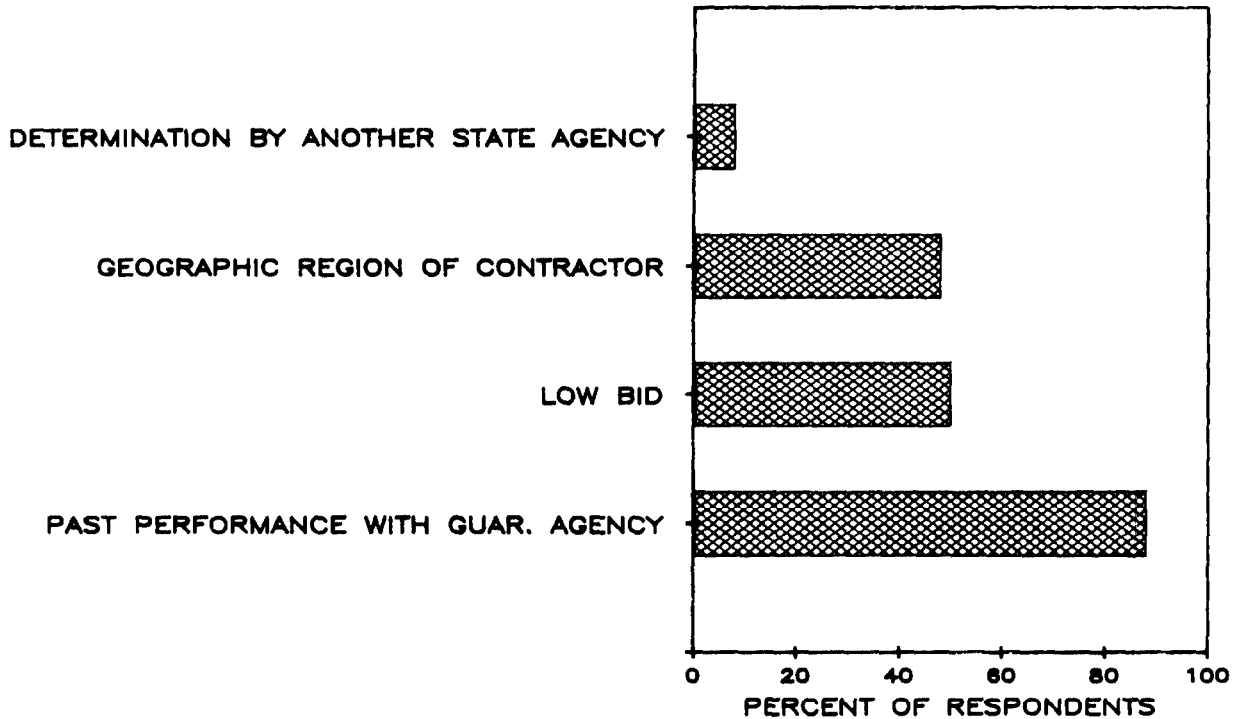
- an average of 5 contractors each, with a range from 1 to 20, and
- the services of collection contractors for an average of 9 years, with a range from 1 to 22 years.

**Contracts generally awarded on the basis of past successful performance**

Agencies may award contracts by considering several factors. The factor cited most often (88 percent) was based upon past performance or proven success with the collector on earlier contracts. Of the agencies, 50 percent base their decision to contract with collection agencies on which contractor has the lowest bid. In addition, 48 percent consider the geographic location or region of the contractor as a factor in deciding to award their contracts.

The following chart illustrates the methods the agencies use to award their contracts (more than one reason could be cited).

## FACTORS CONSIDERED WHEN AWARDING CONTRACTS TO PRIVATE COLLECTION AGENCIES



### Collection contractors paid on a percentage basis

All but one of the agencies using contractors paid them on a percentage of the total dollars collected. The remaining agency paid a flat fee of \$5 per account per month for servicing. The lowest percentage being paid to contractors ranged from 10 to 30 percent, with an average of 22 percent. The highest percentage being paid ranged from 23 to 50 percent, with an average of 33 percent.

Contractors may also be allowed to retain their contract fee before forwarding their collections to the guaranty agency. In fact, 68 percent of the agencies allow all their contractors to retain their fee first.

**Contract features for accrual  
of interest and performance  
incentives vary**

Collection contractors may use varying practices, as permitted, by the guaranty agency. The contractors may accrue interest on the outstanding balance of the defaulter's loan and collect such interest for the loans that they are assigned. In addition, the agencies may use performance standards in their contracts to provide incentives for exceeding performance by the contractors. To obtain an understanding of whether the above practices and contract features may be used, we asked the guaranty agencies to specify whether all, some, or none of their contractors/contracts employed these practices and procedures.

For the 50 agencies using collection contractors, 62 percent stated that all their contractors continue to accrue interest on the outstanding balance of a defaulter's loan and collect such interest while the loans are assigned to the contractors. The other 38 percent said that some, but not all, of their contractors continue to accrue and collect interest on the defaulted accounts. Only 36 percent of the agencies stated that at least some of their contracts contained performance standards. Thirty-three percent of the agencies using performance standards provided for incentive fees for exceeding the standards.

The following table indicates the selected practices and features of collection contractors as discussed above.

<b><u>PRACTICES OF PRIVATE COLLECTION CONTRACTORS AND SELECTED CONTRACT FEATURES</u></b>			
<b><u>Contract feature</u></b>	<b>Percentage of contractors/contracts</b>		
	<b><u>All</u></b>	<b><u>Some</u></b>	<b><u>None</u></b>
Contractors continue to accrue interest	62	38	-
Contractors collect accrued interest	62	38	-
Contracts contain performance standards	34	2	64
Contracts contain incentive fee for exceeding the standards	-	33	67

## Methods used to evaluate contractors

Guaranty agencies may use several methods of evaluating a contractor's performance. For example, they can compare the ratio of dollars collected to dollars outstanding in assigned accounts or can make on-site visits to the collection contractor's place of business. If an agency is displeased with a contractor's performance, it can cancel the contract.

We wanted to know whether and how the agencies conduct their evaluation process. We asked the agencies (1) how they evaluate a contractor's performance, (2) whether they make onsite visits, and (3) have they canceled any collection contracts because of poor performance.

All 50 of the agencies having collection contracts did some type of evaluation of the effectiveness of collection contractors. The most frequently cited method (by 96 percent of these agencies) was comparing the ratio of dollars collected to dollars outstanding in assigned accounts. Forty percent also compared the number of borrowers in repayment to number of borrowers assigned.

Conducting site visits is another way of monitoring a contractor's performance. Seventy-four percent of the agencies said they make site visits to the collection contractors. Two agencies that do not currently make site visits said they will start doing so later this year.

For those making site visits, 70 percent said they visited contractors on a semiannual or annual basis. Another 27 percent said their visits were not conducted on any regularly scheduled basis. Thirty-nine percent of the agencies not making site visits stated they had no agency staff to do the visits, while another 31 percent believed such visits were unnecessary.

Fifty-eight percent of the agencies said that they had canceled at least one contract for poor performance. When asked how many contracts they had canceled in the past 5 years, the average response was two contracts, with a range from zero to four contracts.

**QUESTION 5**

**HOW EXTENSIVELY DO THE GUARANTY AGENCIES USE LITIGATION AGAINST DEFAULTERS, INCLUDING WHO PERFORMS THIS LITIGATION, WHAT FACTORS INFLUENCE THE DECISION TO LITIGATE, AND WHAT DIFFICULTIES ARE ENCOUNTERED IN OBTAINING AND ENFORCING JUDGMENTS?**

The threat of litigation can be a powerful tool in getting defaulters to repay their loans. Although a defaulter may never be taken to court in an attempt to obtain a legal judgment to enforce repayment, the possibility of such an experience may make a defaulter come forward to repay a loan. As stated earlier, all guaranty agencies said they take legal action against defaulters if needed.

The use of litigation is a significant factor, considering that the Department's proposed regulations, if adopted, would require that guaranty agencies institute legal proceedings against any defaulter who does not agree to repay. These proceedings would occur within 225 days after the guaranty agency had paid the default claim submitted by the lender.

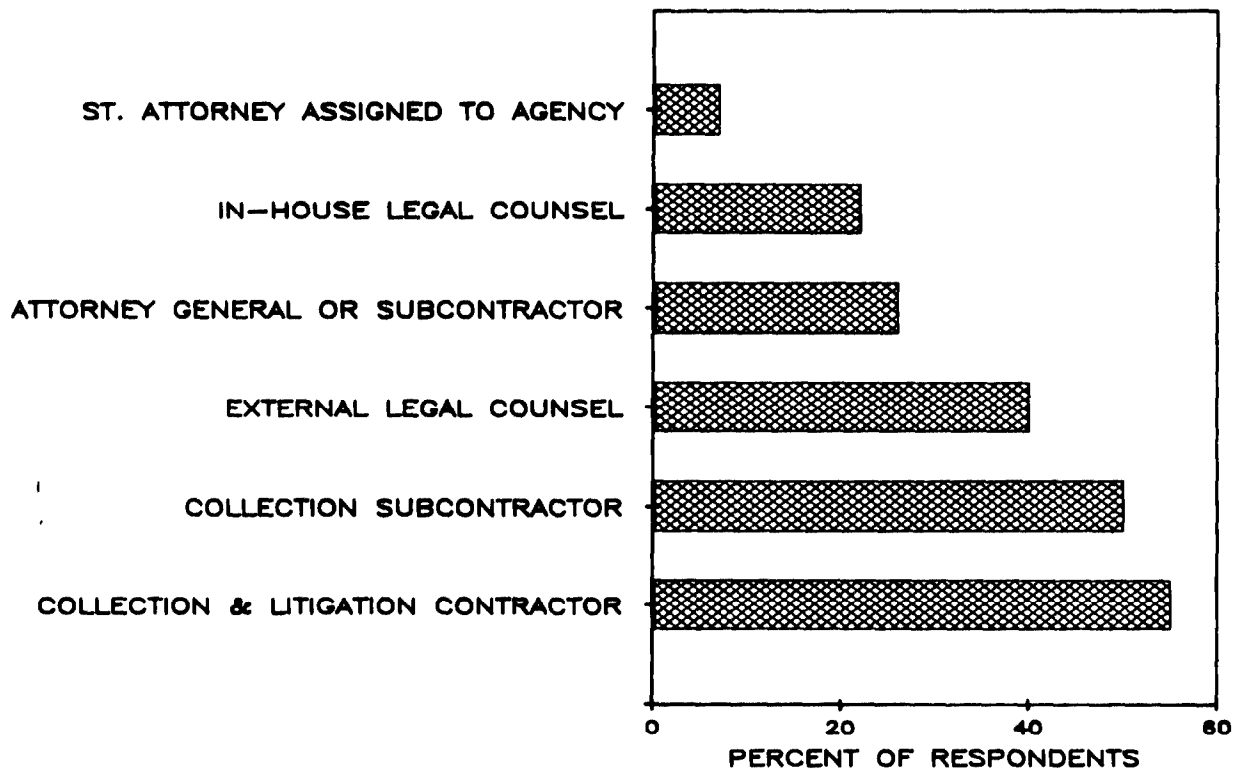
As with the collections function, guaranty agencies may take legal action against defaulters in house, contracting out this function, or a combination of both methods. To determine how litigation is used, we asked the agencies

- who performed the function,
- what factors influence their decision to litigate, and
- whether they have encountered problems in obtaining and enforcing legal judgments against defaulters.

Litigation performed  
by many parties

The litigation of defaulted loans is handled by many parties. We listed different entities that might conduct litigation and asked the agencies to check off the ones they used. The two entities most frequently cited were external collection firms who collect and litigate directly (55 percent) and external collection firms who collect and subcontract the litigation to another firm (50 percent). In addition, 40 percent of the agencies said they use external legal counsel (a law firm) that does not perform collection activities. Twenty-six percent of the agencies also use the state attorney general or attorneys under subcontract with the attorney general.

**WHO PROVIDES LITIGATION SERVICES  
TO GUARANTY AGENCIES?**



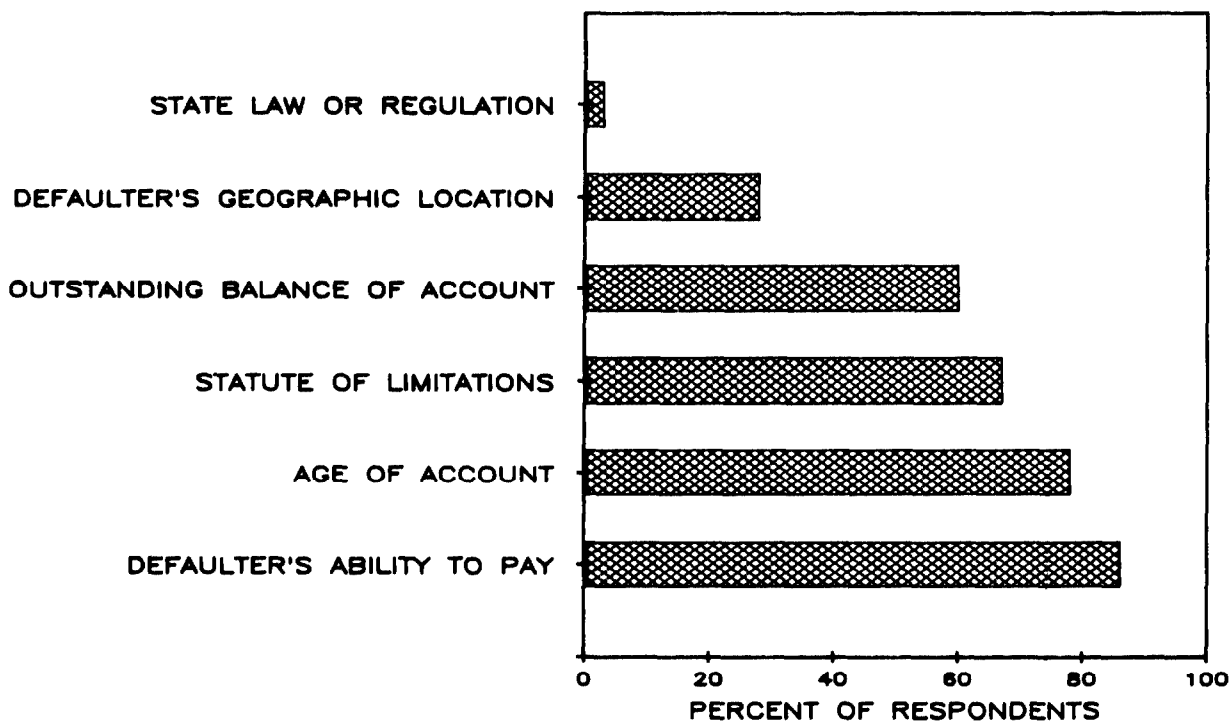
**Several factors considered before litigating**

Several factors may influence a guaranty agency's decision to litigate. The most frequently cited reason was the defaulter's ability but unwillingness to pay (86 percent). The next most cited reasons were how long the account had been in default or age of account (78 percent) and the need to act before the expiration of the statute of limitations (67 percent).

For 60 percent of the agencies, the defaulter's outstanding balance is also a factor to consider in deciding whether to pursue litigation. The average minimum outstanding balance considered before initiating litigation was \$1,003, while the dollar range cited ranged from \$50 to \$10,000.

The chart below shows the frequency with which various motivations to litigate came into play.

**FACTORS THAT INFLUENCE A GUARANTY AGENCY'S DECISION TO INITIATE LITIGATION**



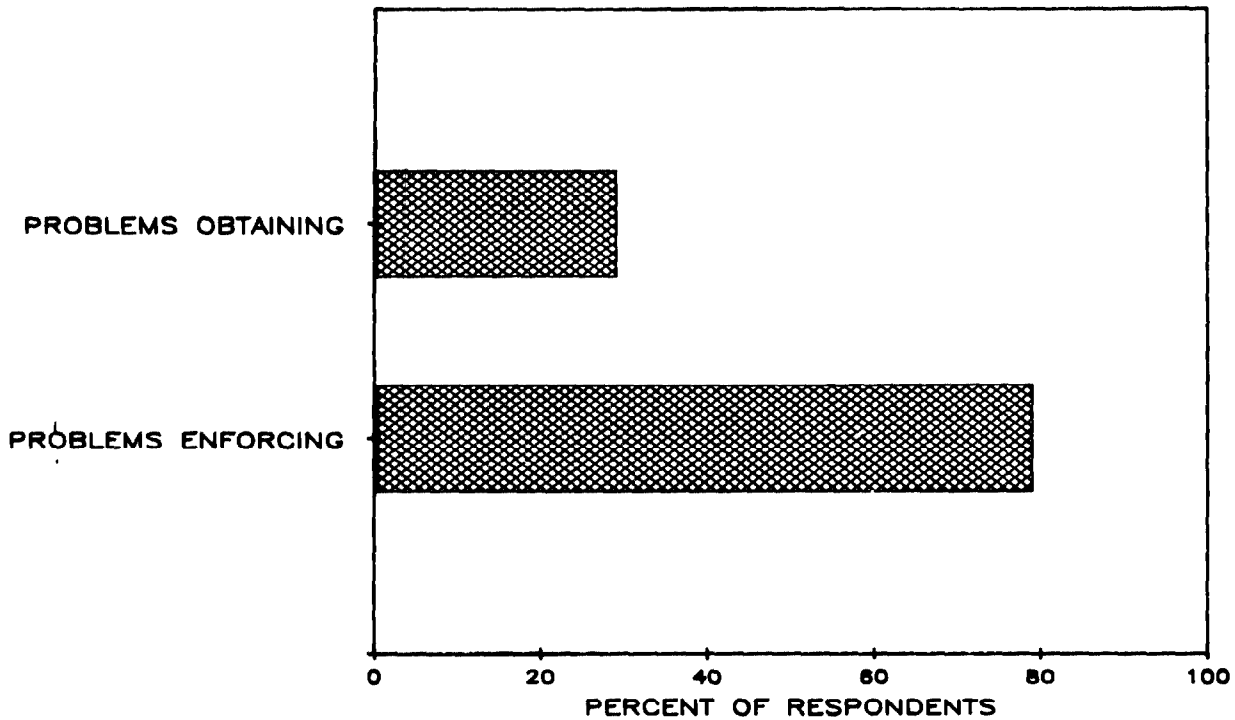


**Difficulties encountered  
in obtaining and enforcing  
judgments**

When an agency decides to use litigation, it attempts to obtain a legal judgment against the defaulter. Once a judgment is obtained, the agency then can enforce the judgment in order to obtain repayment.

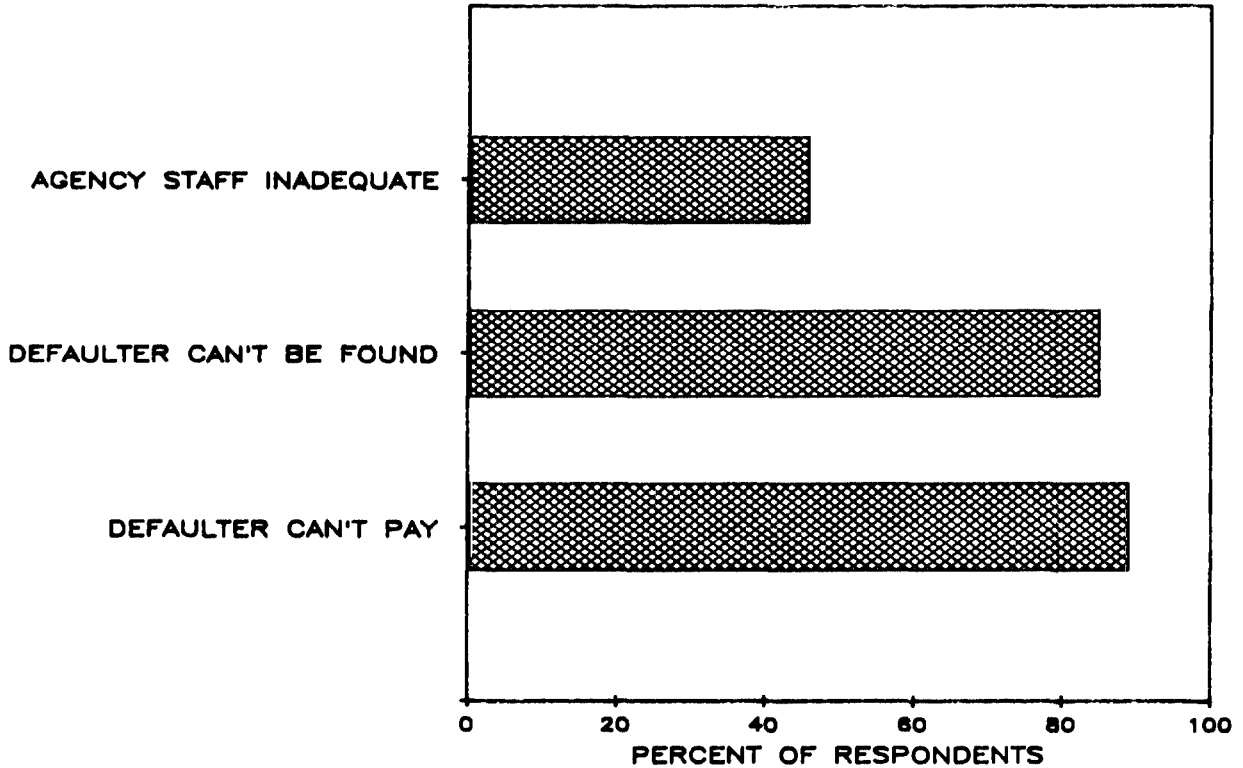
As shown in the first of two charts that follow, 29 percent of all the agencies have had problems in obtaining judgments. Of the agencies that had problems, the majority stated that the main problem was that the courts were overloaded. In addition, this first chart also shows that once a judgment is obtained, 79 percent of the agencies had problems enforcing it.

**GUARANTY AGENCIES THAT HAVE  
DIFFICULTY OBTAINING AND  
ENFORCING JUDGMENTS**



The second chart shows that the major problem in enforcing judgments (cited by 89 percent of the agencies) was the defaulter's inability to repay. Eighty-five percent of the agencies stated another problem was the inability to locate the defaulter.

## WHAT ARE THE PROBLEMS IN ENFORCING JUDGMENTS?



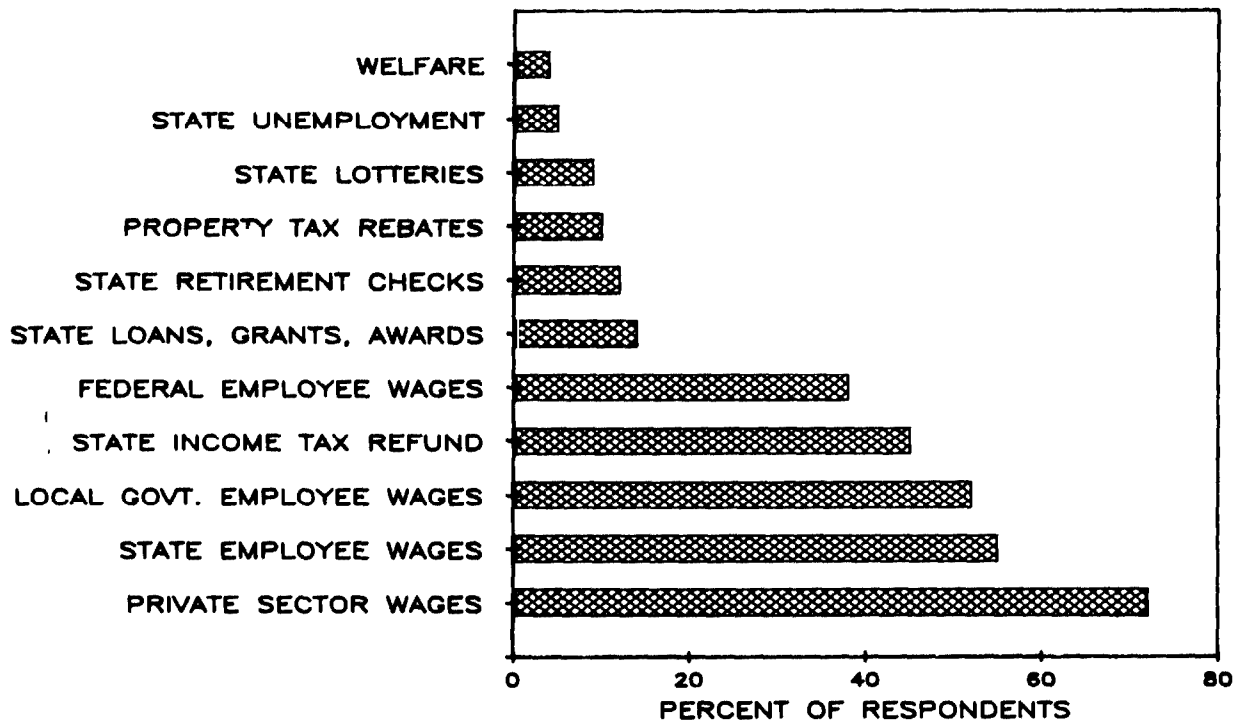
**QUESTION 6**

**WHAT ADMINISTRATIVE OFFSET AND WAGE GARNISHMENT PROCEDURES ARE ALLOWED BY STATE LAW/REGULATIONS AND USED BY GUARANTY AGENCIES?**

Other collection tools available to agencies are administrative offsets and wage garnishment. Examples of administrative offsets are the seizure of (1) state income tax refunds, (2) property tax rebates, and (3) state lottery winnings. Offsets may not require a legal judgment against the defaulter before an offset can occur, whereas wage garnishments may require a legal judgment first, although procedures can vary from state to state.

The chart below shows the extent to which the agencies said their agency's state law/regulations allow them to offset or garnish various sources of income. For example, 55 percent of the agencies are allowed to garnish the wages of state employees.

**PERCENTAGE OF GUARANTY AGENCIES THAT CAN OFFSET OR GARNISH VARIOUS SOURCES OF INCOME**



Of those that indicated they are allowed to use these procedures, most stated they use them, but a legal judgment is required in many cases--especially for wage garnishments. For

instance, garnishing the wages of state employees requires a legal judgment, according to 75 percent of the agencies that can use this procedure.

The table below shows the results for those agencies allowed to use these alternatives and whether they (1) use them and (2) need a judgment first.

<u>Source of income</u>	<u>Percentages</u>	
	<u>Use?</u>	<u>Judgment required?</u>
Wages due federal employees	96	86
Wages due state employees	94	75
Wages due city/county employees	93	90
Wages due private sector employees	91	95
State unemployment compensation	67	-
State income tax refund	92	15
Homestead/property tax rebates	100	17
Welfare, Aid to Families with Dependent Children, etc.	50	-
Other state loans, grants or scholarships	100	-
State lotteries	60	40
State retirement checks	100	43

Twenty-eight percent of the agencies stated they had problems obtaining offsets and garnishments. Examples of these problems included the (1) the defaulter could not be located and (2) the defaulter's employer would not allow the guaranty agency to garnish any wages.

**QUESTION 7**

**WHAT DO GUARANTY AGENCIES CONSIDER TO BE THEIR MOST SUCCESSFUL COLLECTION TECHNIQUES?**

When asked what they consider to be their most successful collection techniques (more than one technique could be cited), 55 agencies responded. The most frequently cited techniques were reporting defaulted loans to credit bureaus (16 agencies), using collection contractors (14 agencies), and making personal telephone contacts with the borrowers (14 agencies).

The table shows the techniques listed as most successful by the agencies.

<b><u>COLLECTION TECHNIQUES CONSIDERED MOST SUCCESSFUL BY THE AGENCIES<sup>a</sup></u></b>	
<b><u>Technique</u></b>	<b><u>Number of agencies citing technique</u></b>
Reporting defaulted loans to credit bureaus	16
Use of collection contractors	14
Personal telephone contact with borrower	14
Litigation/threat of litigation	7
Long-term payment arrangements	6
IRS tax offsets	6
State income tax offsets	6
Wage garnishments	5

<sup>a</sup>We did not list techniques for which there were less than five respondents.

LISTING OF GUARANTY AGENCIES

<u>State</u>	<u>Guaranty agency</u>
Alabama	Alabama Commission on Higher Education
Alaska	Alaska Commission on Postsecondary Education
American Samoa <sup>a</sup>	Pacific Islands Education Loan Program
Arizona <sup>a</sup>	Arizona Educational Loan Program
Arkansas	Student Loan Guarantee Foundation of Arkansas
California	California Student Aid Commission
Colorado	Colorado Guaranteed Student Loan Program
Connecticut	Connecticut Student Loan Foundation
Delaware	Delaware Guaranteed Student Loan Program
District of Columbia <sup>b</sup>	Higher Education Assistance Foundation
Florida	Florida Student Financial Assistance Commission
Georgia	Georgia Higher Education Assistance Corporation
Guam <sup>a</sup>	Pacific Islands Education Loan Program
Hawaii <sup>a</sup>	Hawaii Educational Loan Program
Idaho	Student Loan Fund of Idaho, Inc.
Illinois	Illinois State Scholarship Commission
Indiana	State Student Assistance Commission of Indiana
Iowa	Iowa College Aid Commission
Kansas <sup>b</sup>	Higher Education Assistance Foundation
Kentucky	Kentucky Higher Education Assistance Authority
Louisiana	Governor's Special Commission on Educational Services
Maine	Maine Guaranteed Student Loan Program
Maryland	Maryland Higher Education Loan Corporation
Massachusetts	Massachusetts Higher Education Assistance Corporation

<u>State</u>	<u>Guaranty agency</u>
Michigan	Michigan Department of Education; Michigan Higher Education Assistance Authority
Minnesota <sup>b</sup>	Higher Education Assistance Foundation
Mississippi	Mississippi Guarantee Student Loan Agency--Board of Trustees of State Institutions of Higher Learning
Missouri	Missouri Department of Higher Education
Montana	Montana Guaranteed Student Loan Program
Nebraska <sup>b</sup>	Higher Education Assistance Foundation
Nevada	Nevada Guaranteed Student Loan Program
New Hampshire	New Hampshire Higher Education Assistance Foundation
New Jersey	New Jersey Higher Education Assistance Authority
New Mexico	New Mexico Student Loan Guarantee Corporation
New York	New York State Higher Education Services Corporation
North Carolina	North Carolina State Education Assistance Authority
North Dakota	North Dakota Guaranteed Student Loan Program
Northern Marianas <sup>a</sup>	Pacific Islands Education Loan Program
Ohio	Ohio Student Loan Commission
Oklahoma	Oklahoma State Regents for Higher Education
Oregon	Oregon State Scholarship Commission
Pennsylvania	Pennsylvania Higher Education Assistance Agency
Puerto Rico	Puerto Rico Higher Education Assistance Corporation
Rhode Island	Rhode Island Higher Education Assistance Authority
South Carolina	South Carolina State Education Assistance Authority
South Dakota	South Dakota Education Assistance Corporation
Tennessee	Tennessee Student Assistance Corporation
Texas	Texas Guaranteed Student Loan Corporation

<u>State</u>	<u>Guaranty agency</u>
Trust Territories <sup>a</sup>	Pacific Islands Education Loan Program
Utah	Utah Higher Education Assistance Authority
Vermont	Vermont Student Assistance Corporation
Virginia	Virginia State Education Assistance Authority
Virgin Islands	Virgin Islands Guaranteed Student Loan Program
Washington	Washington Student Loan Guaranty Association
West Virginia <sup>b</sup>	Higher Education Assistance Foundation
Wisconsin	Wisconsin Higher Education Corporation
Wyoming <sup>b</sup>	Higher Education Assistance Foundation

<sup>a</sup>The United Student Aid Funds, Inc., a private nonprofit organization, is the designated guaranty agency. This agency also guarantees loans for lenders in states where it is not the designated guaranty agency and reports these activities separately to the Department of Education.

<sup>b</sup>The Higher Education Assistance Foundation, a private nonprofit organization, is the designated guaranty agency.



SUMMARY OF RESPONSES

TO GAO QUESTIONNAIRE

Note: Unless otherwise indicated, all 58 agencies answered the question and percentage breakdowns total 100. In some cases, questions and written answers have been paraphrased for clarity or brevity. Where "no" answers were the obverse of "yes" answers, we display only the positive answers. Where agencies could reply in more than one category, percentages may total more than 100. Responses were as of February-May 1986.

I. ORGANIZATION

Organization of agency

1. What type of organization best describes your guaranty agency?

	<u>No.</u>	<u>Percent</u>
State agency/board/department/public authority	34	58.6
Private nonprofit agency	22	37.9
Public nonprofit corporation	2	3.4

Note: 6 agencies designated the Higher Education Assistance Foundation as their guarantor; 7 agencies designated the United Student Aid Funds, Inc.; and 45 agencies operated as their own guarantor.

2. How long has your agency participated in the GSL Program as authorized by the Higher Education Act of 1965?

	<u>No.</u>	<u>Percent</u>
5 years or less	8	13.8
Over 5 to 10 years	23	39.7
Over 10 to 15 years	3	5.2
Over 15 to 20 years	7	12.1
Over 20 years	17	29.3

3. Which of the following functions are performed by or on behalf of your agency and by whom? (All agencies had to respond to each category. If performed, the agency could cite one or more sources.)

Function	How performed							
	Total		In house		Other state agency		Other external source	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Preclaims assistance	58	100.0	43	74.1	0	-	16	27.6
Processing of claims from lenders	58	100.0	46	79.3	0	-	14	24.1
Collections	58	100.0	43	74.1	9	15.5	50	86.2
Monitoring of student enrollment status	57	98.3	40	70.2	1	1.8	18	31.6
Preparation of forms 1130, 1189, 1189-1, 1189-2, and 1189-3	58	100.0	47	81.0	0	-	14	24.1
Litigation of defaulters	58	100.0	13	22.4	18	31.0	48	82.8
Escrow agent for lender	18	31.0	17	94.4	0	-	1	5.6
Direct lender	8	13.8	4	50.0	3	37.5	1	12.5
Agency lender of last resort	10	17.2	4	40.0	3	30.0	3	30.0
Loan origination	17	29.3	15	88.2	0	-	2	11.8
Loan servicing	23	39.7	18	78.3	0	-	5	21.7
Secondary market	9	15.5	4	44.4	5	55.6	1	11.1
Lender interest and special allowance billing (form 799)	8	13.8	7	87.5	0	-	3	37.5
Other (billings for secondary market)	1	1.7	1	100.0	0	-	0	-

4. How many personnel were involved in collection functions compared to total agency personnel in the fiscal year ending September 30, 1985?

	<u>Full time</u>	<u>Part time</u>	<u>Total</u>
<u>Personnel, by length of employment and time status</u>			
Total agency staff	<u>3,708</u>	<u>805</u>	<u>4,513</u>
Total for collection functions	472	158	630
Supervisory and others (including those who monitor private collection agencies, etc.) by length of employment:			
0 to 1 year	34	6	40
1 to 5 years	88	9	97
Over 5 years	61	8	69
Collectors for in-house collection activities by length of employment:			
0 to 1 year	83	91	174
1 to 5 years	165	42	207
Over 5 years	41	2	43
<u>Personnel, by time status and numbers</u>			
Supervisory collection personnel	183	23	206
Mean	3.2	0.4	3.6
Median	2.0	0	2.0
Range (low-high)	0-26	0-4	0-30
In-house collection personnel	289	135	424
Mean	5.0	2.3	7.3
Median	2.0	0	3.0
Range (low-high)	0-42	0-66	0-68
Total collection personnel	472	158	630
Mean	8.1	2.7	10.8
Median	5.0	0	5.5
Range (low-high)	0-66	0-66	0-82
Total agency personnel	3,708	805	4,513
Mean	63.9	13.9	77.8
Median	24	0	26
Range (low-high)	0-500	0-575	0-1,038

Agencies by no. and kind of personnel

<u>No. of personnel</u>	<u>Kind of personnel (no. of agencies)</u>			<u>Total agency</u>
	<u>Collection</u>			
	<u>Supervisory</u>	<u>In house</u>	<u>Total</u>	
0-5	47	42	29	16
6-10	7	6	15	1
11-15	2	4	4	2
16-20	0	1	2	6
21-25	1	0	2	4
26-30	1	0	0	4
31-35	0	0	0	3
36-40	0	1	1	2
41-45	0	2	0	0
46-50	0	0	1	0
More than 50	0	2	4	20

## 5. Do collections personnel ever perform other functions for the agency?

	<u>No.</u>	<u>Percent</u>
Yes	21	36.2
No	37	63.8

6. What types of other functions do collection personnel perform?  
(21 agencies responded in one or more categories.)

	<u>No.</u>	<u>Percent</u>
Preclaims assistance	13	61.9
Processing of lender claims	9	42.9
Legal activities	10	47.6
Pre-default assistance for secondary market	3	14.3
Collections for secondary market	1	4.8
Other	2	9.5

7. What is the total number and dollar amount of defaulted student loan accounts serviced and/or assigned by your agency as of September 30, 1985?

<u>Account status</u>	<u>No. of accounts</u>	<u>Dollar value</u>
Serviced internally (38 agencies responded)	599,913	\$1,673,480,000
Mean	15,787	44,038,947
Median	3,764	11,238,500
Range (low-high)	561-151,786	855,000-420,494,000
Assigned to private collection agency (49 agencies responded)	329,765	838,593,000
Mean	6,730	17,114,142
Median	1,771	4,387,000
Range (low-high)	4-70,071	8,000-163,279,000
Assigned to private law firms for litigation/collection (32 agencies responded)	163,274	427,139,000
Mean	5,102	13,348,093
Median	656	1,674,500
Range (low-high)	4-92,973	6,000-220,392,000

Organization of in-house collection unit

8. Does your agency have an in-house collection unit for routine activities, i.e., telephoning defaulters, forwarding demand letters, etc.?

	<u>No.</u>	<u>Percent</u>
Yes	43	74.1
No	15	25.9

9. To what extent does your agency hire collectors who have had prior experience in collection activities? (43 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Very great	8	18.6
Great	9	20.9
Moderate	12	27.9
Some	6	14.0
Little or none	8	18.6

10. How are your in-house collectors trained? (43 agencies responded in one or more categories.)

	<u>No.</u>	<u>Percent</u>
On-the-job training	43	100.0
Classroom training by agency	16	37.2
Classroom training outside agency	4	9.3
No training	0	-

11. What is the average number of default accounts assigned to each in-house collector? (Of the 43 agencies responding, 6 are under the Higher Education Assistance Foundation, which has consolidated the 6 agencies' in-house activities into 1 unit; therefore, 38 responded to this question only.)

<u>Accounts</u>	<u>No.</u>	<u>Percent</u>
0-100	0	-
101-200	1	2.6
201-300	2	5.3
301-400	3	7.9
401-500	3	7.9
Over 500	29	76.3
Mean	15,787 per agency	
Median	3,674 per agency	
Range (low-high)	561-151,786 per agency	

Note: In addition, we have estimated that the average number of accounts per in-house collector is 1,680. This number is based on an estimated 357 full time equivalent collectors working on 599,913 accounts.

12. What office hours do you require in-house collectors to work? (43 agencies responded in one or more categories.)

	<u>No.</u>	<u>Percent</u>
Normal office hours	41	95.3
Evening hours	26	60.5
Saturday	15	34.9
Sunday	0	-

## II. COLLECTION POLICY AND PROCEDURES

### Operating criteria and policy

13. Do you have specific state laws and legal opinions dealing with the following types of loan operations? Where you have laws or legal opinions, do they impact on GSL collection procedures? (All agencies responded to each category.)

	<u>Applicable laws/opinions?</u>			
	<u>Yes, have</u>		<u>Yes, impact on GSL collection procedures</u>	
	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>
On GSL collection activities	10	17.2	10	100.0
On other state loan collection activities	25	43.1	23	92.0
Other--not specific to loans but have some impact on GSL collections	29	50.0	26	89.7

14. To what extent are the laws and opinions helpful?

<u>Help/hinder</u>	<u>No.</u>	<u>Percent</u>
Very helpful	13	22.4
Somewhat helpful	9	15.5
Neither helpful nor a hindrance	11	19.0
Somewhat a hindrance <sup>a</sup>	6	10.3
Very much a hindrance <sup>a</sup>	1	1.7
Not applicable	18	31.0

<sup>a</sup>Hindrances included no or inadequate garnishment laws, vague litigation laws, not allowed to hire private attorneys, administrative offset by state attorney general only, and provisions of the Fair Debt Collection Practices Act.

15. Do state regulations (exclusive of guaranty agency regulations) impact on your collection procedures?

	<u>No.</u>	<u>Percent</u>
Yes	18	31.0
No	40	69.0

16. To what extent are state regulations helpful? (18 agencies responded)

<u>Help/hinder</u>	<u>No.</u>	<u>Percent</u>
Very helpful	5	27.8
Somewhat helpful	5	27.8
Neither helpful nor a hindrance	2	11.1
Somewhat a hindrance <sup>a</sup>	6	33.3

<sup>a</sup>Hindrances included regulations limiting litigation and garnishment and vague regulations on debt collection practices and rights of consumers.

17. Has your agency established due diligence criteria/procedures in accordance with 34 C.F.R 682.401(c)(3) on how to collect loans on which a default claim has been paid?

All 58 agencies responded that they had procedures; 8 said they were not in writing, 2 said they were being rewritten, and 1 said procedures were being written for the first time.

18. Are your current criteria/procedures equal to or better than the following proposed due diligence criteria/procedures (included in the Department of Education's Notice of Proposed Rulemaking issued on September 4, 1985). (All agencies responded to each category.)

<u>Proposed procedure</u>	<u>No.</u>	<u>Percent</u>
Written notice and phone call to borrower within 45 days	58	100.0
Written notice, phone call, and report to credit bureau within 90 days	31	53.4
Written notice, phone call within 135 days	41	70.7
Final notice within 180 days	25	43.1
Institute civil suit within 225 days	14	24.1

19. Does your agency have a procedure to identify fraudulent student loans?

	<u>No.</u>	<u>Percent</u>
Yes	45	77.6
No	13	22.4

20. Is your agency considering such a procedure? (13 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes	7	53.8
No	6	46.2

21. To what extent does your agency consider fraudulent student loans to be a problem?

<u>Extent</u>	<u>No.</u>	<u>Percent</u>
Very great	0	-
Great	0	-
Moderate	7	12.1
Some	29	50.0
Little or none	22	37.9

22. Does your agency allow lenders to repurchase defaulted student loans?

	<u>No.</u>	<u>Percent</u>
Yes	57	98.3
No	1	1.7



23. Which of the following conditions would result in a lender repurchasing a defaulted student loan? (57 agencies responded in one or more categories.)

	<u>No.</u>	<u>Percent</u>
Borrower has rectified the default status of the loan	36	63.2
Error by the lender, school, or guaranty agency	56	98.2
Defective or missing documentation	37	64.9
Other <sup>a</sup>	5	8.8

<sup>a</sup>One agency allowed repurchase of a rehabilitated loan that had been in repayment 12-18 months; one allowed repurchase of reaffirmed bankruptcies; one allowed repurchase upon arrangements between student and lender; one allowed lender to repurchase nondischargeable debt after bankruptcy; and one allowed repurchase upon request of lender or borrower.

24. Does your agency refinance defaulted student loans for borrowers once the agency has reimbursed the lender?

	<u>No.</u>	<u>Percent</u>
Yes	28	48.3
No	30	51.7

25. How does your agency refinance defaulted student loans? (28 agencies responded in one or more categories.)

	<u>No.</u>	<u>Percent</u>
Issuance of a new promissory note with terms, conditions, and interest rates that may vary from the original promissory note	2	7.1
Establishment of a repayment schedule by the guaranty agency without the necessity of completing a promissory note	18	64.3
Through a revision of the original repayment schedule under the terms of the existing promissory note at the time of claim payment	12	42.9

26. Does your agency require lenders to obtain a comaker/cosigner on each loan?

	<u>No.</u>	<u>Percent</u>
Yes	3	5.2
No	55	94.8

System used to locate borrowers

27. Does your agency utilize credit bureaus in performing skip-tracing activities on defaulted student loans?

	<u>No.</u>	<u>Percent</u>
Yes	43	74.1
No	15	25.9

28. To what extent are credit bureau reports useful in locating skips? (43 agencies responded.)

<u>Extent</u>	<u>No.</u>	<u>Percent</u>
Very great	5	11.6
Great	9	20.9
Moderate	11	25.6
Some	18	41.9
Little or none	0	-

29. Does your agency utilize the IRS skip-tracing services?

	<u>No.</u>	<u>Percent</u>
Yes	49	84.5
No	9	15.5

30. To what extent is the IRS skip-tracing program useful? (49 agencies responded.)

<u>Extent</u>	<u>No.</u>	<u>Percent</u>
Very great	3	6.1
Great	5	10.2
Moderate	34	69.4
Some	5	10.2
Little or none	2	4.1

31. What state organizations/agencies does your agency contact to locate defaulted borrowers? (Agencies could cite one or more categories.)

<u>State source</u>	<u>No.</u>	<u>Percent</u>
State personnel records	12	20.7
State tax records	17	29.3
State motor vehicle department	46	79.3
State unemployment commission	11	19.0
State military reserves	8	13.8
State voter registrations	6	10.3
Other	7	12.1
No contacts	8	13.8
Not available for use by agency	1	1.7

32. What other sources does your agency use to locate defaulted borrowers? (Agencies could cite one or more categories.)

	<u>No.</u>	<u>Percent</u>
Libraries	17	29.3
Chambers of commerce	16	27.6
Criss-cross directories	47	81.0
Other state guaranty agencies	31	53.4
Federal agencies other than IRS <sup>a</sup>	11	19.0
Private investigators	3	5.2
Post offices	41	70.7
City directories	45	77.6
Other <sup>b</sup>	20	34.5

<sup>a</sup>Other federal sources included the Immigration Service, Department of Defense locator services, Social Security Administration, licensing boards, and Department of Education.

<sup>b</sup>Other sources included loan application references, collection agencies specializing in skip-tracing, neighbors, friends, family, professional organizations, alumni offices, and newspapers.

33. Do you normally notify defaulted borrowers in repayment of the dollar amount and due date of each payment?

	<u>No.</u>	<u>Percent</u>
Yes	53	91.4
No	5	8.6

34. What is considered to be a collection subject to the Secretary's equitable share? (Agencies could cite one or more categories.)

<u>Category</u>	<u>No.</u>	<u>Percent</u>
Principal	58	100.0
Purchased interest from lender	58	100.0
Interest accrued by your agency	58	100.0
Late fees, charges assessed by agency	22	37.9
Attorney's fees	27	46.6
Other court costs	21	36.2
Garnishments (wages, tax refunds and rebates, personal assets, etc.)	58	100.0

35. Does your agency continue to accrue interest after the default claim has been paid?

	<u>No.</u>	<u>Percent</u>
Yes	58	100.0
No	0	-

36. When you receive a payment from a defaulter, do you apply the payment to the principal of the loan first?

	<u>No.</u>	<u>Percent</u>
Yes	17	29.3
No	41	70.7

37. Is your agency allowed to use the following collection alternatives on defaulted loans? Has it used them? (All agencies responded to each category.)

<u>Collection alternative</u>	<u>Yes, agency is allowed to use it</u>		<u>Yes, agency has used it</u>	
	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>
Forbearance	30	51.7	29	96.7
Deferment	26	44.8	25	96.2
Forgiveness	4	6.9	1	25.0
Cancellation	9	15.5	6	66.7
Compromise	51	87.9	48	94.1
Write-off	47	81.0	39	83.0
Pursuance of comakers and/or cosigners obtained by lenders	54	93.1	52	96.3
Reporting defaulters to schools	47	81.0	45	95.7
Requesting schools to withhold transcripts on defaulted borrowers	35	60.3	31	88.6
Litigation	58	100.0	58	100.0
Other <sup>a</sup>	5	8.6	5	100.0

<sup>a</sup>Included suspension of collection for a limited time, termination of employment for state workers, and reporting to credit bureaus.

#### Use of private collection contractors

38. Does your agency use private collection contractors?

	<u>No.</u>	<u>Percent</u>
Yes	50	86.2
No	8	13.8

39. How many private collection contractors were you using as of September 30, 1985? (50 agencies responded.)

	<u>No. of contractors</u>
Total used by 50 agencies	265
Per agency:	
Mean	5.3
Median	4.5
Range (low-high)	1-20

40. How do you award contracts to private collection contractors? (50 agencies responded in one or more categories.)

	<u>No.</u>	<u>Percent</u>
Geographic region	24	48.0
Proven success with guaranty agency	44	88.0
Low bid	25	50.0
Determined by another agency within state	4	8.0
Other <sup>a</sup>	18	36.0

<sup>a</sup>Other bases included proven success with schools, prior GSL experience, competitive bidding, and laws governing choice of contractor.

41. Are private collection contractors compensated on a percentage of total dollars collected? (50 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes	49	98.0
No	1	2.0

42. What is the range of percentage rates currently paid to contractors? (49 agencies responded.)

	<u>Percent paid</u>	
	<u>Lowest</u>	<u>Highest</u>
Mean	22.4	32.9
Median	25	30
Range (low-high)	10-30	23-50

**43. Why do these percentage rates differ? (49 agencies responded in one or more categories.)**

<u>Reason for difference</u>	<u>No.</u>	<u>Percent</u>
Based on dollar amount of assigned accounts	2	4.1
Based on the type of assigned accounts (i.e., the more difficult the account, the higher the commission rate)	21	42.9
Economic conditions at time contracts were awarded	20	40.8
Other <sup>a</sup>	19	38.8
Rates do not differ	6	12.2

<sup>a</sup>Included use of a sliding scale based on the amount of the placement block collected, higher rates for accounts needing litigation, rates negotiated through competitive bidding, and age of account.

**44. Do you use other methods of compensating collection contractors? (50 agencies responded.)**

	<u>No.</u>	<u>Percent</u>
Yes	1	2.0
No	49	98.0

**45. What other methods do you use to compensate collection contractors?**

One agency responded, stating that it used a flat fee of \$5 per account per month for servicing.

**46. How many years has your agency used private collection contractors? (50 agencies responded.)**

	<u>Years</u>
Mean	8.7
Median	8
Range (low-high)	1-22

**47. How are accounts assigned to collection contractors? (50 agencies responded in one or more categories.)**

<u>How assigned</u>	<u>No.</u>	<u>Percent</u>
In-state vs. out-of-state	28	56.0
Dollar size of the accounts	5	10.0
Skip accounts	8	16.0
Alphabetically	4	8.0
Geographical locations within state	9	18.0
Prior performance	40	80.0
Other <sup>a</sup>	25	50.0

<sup>a</sup>Included assigning accounts randomly, after quarterly evaluations of recovery rates, by age of account, and equally to gauge contractor performance.

**48. Are these contractors compensated for resolving an account as uncollectible (due to death, disability, bankruptcy, inability to pay, unlocatable, etc.)? (50 agencies responded.)**

	<u>No.</u>	<u>Percent</u>
Yes	1	2.0
No	49	98.0

**49. How often do contractors normally report and forward their collections to your agency? (50 agencies responded.)**

<u>Frequency</u>	<u>No.</u>	<u>Percent</u>
Weekly	17	34.0
Biweekly	11	22.0
Monthly	20	40.0
Quarterly	0	-
Other	2	4.0

**50. Does the collection contractor continue to accrue interest while the account is assigned to the contractor? (50 agencies responded.)**

	<u>No.</u>	<u>Percent</u>
Yes, all contractors	31	62.0
Yes, some contractors	19	38.0
No	0	-

51. Does the contractor actually collect the accrued interest? (50 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes, all contractors	31	62.0
Yes, some contractors	19	38.0
No	0	-

52. Do contractors retain their fee/percentage of their collections before forwarding them to your agency? (50 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes, all contractors	34	68.0
Yes, some contractors	3	6.0
No	13	26.0

53. Do the collection contracts contain performance standards? (50 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes, all contracts	17	34.0
Yes, some contracts	1	2.0
No	32	64.0

54. Do the collection contracts contain incentive fees for exceeding the standards? (18 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes, all contracts	0	-
Yes, some contracts	6	33.3
No	12	66.7

55. How do you evaluate the effectiveness of the collection contractors? (50 agencies responded in one or more categories.)

<u>Basis for evaluation</u>	<u>No.</u>	<u>Percent</u>
Ratio of collected dollars to dollars outstanding in assigned accounts	48	96.0
Ratio of borrowers in repayment to borrowers assigned	20	40.0
No evaluation	0	-
Other <sup>a</sup>	17	34.0

<sup>a</sup>Included accuracy and completeness of accounting records, ratio of collected dollars to date of placed and assigned dollars, age of account, ratio of net recovered dollars to dollars placed, number of accounts canceled and returned as uncollectible, and servicing of accounts.



56. Do you make on-site visits to the collection contractors? (50 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes	37	74.0
No <sup>a</sup>	13	26.0

<sup>a</sup>Two agencies planned to begin making visits in 1986.

57. How often do you normally visit the collection contractors? (37 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Monthly	0	-
Quarterly	1	2.7
Semiannually	16	43.2
Annually	10	27.0
No regularly scheduled basis	10	27.0

58. What conditions influence your decision not to make on-site visits to contractors? (13 agencies responded in one or more categories.)

	<u>No.</u>	<u>Percent</u>
No agency staff	5	38.5
No travel funds	3	23.1
No agency procedures	2	15.4
Evaluation considered unnecessary	4	30.8
Other <sup>a</sup>	6	46.2

<sup>a</sup>Included no time or authorization for site visits, performance monitored through in house reports and reports provided by contractors, and visits unnecessary because of limited number of accounts placed with contractors.

59. Have you ever canceled a contract based on poor performance? (50 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes	29	58.0
No	21	42.0

60. How many collection contracts have you canceled in the last 5 years? (29 agencies responded.)

	<u>No. of contracts</u>
Total for agencies responding	57
Mean	2.0
Median	2.0
Range (low-high)	0-4

61. Do you grant to collection contractors the right to exercise the following collection alternatives? (50 agencies responded to each category.)

<u>Collection alternative</u>	<u>Granted to contractors</u>		<u>Requires prior agency approval before contractor uses it</u>	
	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>
Forbearance	13	26.0	1	7.7
Deferment	5	10.0	1	20.0
Forgiveness	0	-	0	-
Cancellation	1	2.0	1	100.0
Compromise	37	74.0	35	94.6
Write-off	5	10.0	5	100.0
Pursuance of comakers and/or cosigners obtained by lenders	47	94.0	5	10.6
Litigation	40	80.0	39	97.5
Other	2	4.0	0	-

#### Use of litigation

62. Who handles the litigation of defaulted loans? (Agencies could cite one or more categories.)

<u>Responsible</u>	<u>No.</u>	<u>Percent</u>
In-house legal counsel	13	22.4
State attorney general or attorneys under subcontract with state attorney general	15	25.9
State attorney assigned to guaranty agency	4	6.9
External legal counsel (law firm) that does not perform collection activities	23	39.7
External collection firm that collects and litigates directly	32	55.2
External collection firm that collects and subcontracts litigation to another firm	29	50.0

63. What factors influence your decision to initiate litigation? (Agencies could cite one or more categories.)

	<u>No.</u>	<u>Percent</u>
Geographic location	16	27.6
Outstanding balance (only 15 agencies specified a minimum dollar amount):	35	60.3
Mean	\$1,003	
Median	\$200	
Range (low-high)	\$50-10,000	
Ability to pay	50	86.2
Age of account	45	77.6
Statute of limitations	39	67.2
Required by state law/agency regulation	2	3.4
Other <sup>a</sup>	9	15.5

<sup>a</sup>Included availability of a current address, assets of borrower, criminal prosecution, refusals, decided by private collection agencies, and uncooperative borrowers.

64. When is litigation normally initiated? (Agencies could cite one or more categories.)

<u>When initiated</u>	<u>No.</u>	<u>Percent</u>
Immediately upon payment of default claim to the lender	2	3.4
When all collection efforts are exhausted and litigation is determined to be warranted	53	91.4
Within a specified time after payment of claim	11	19.0
Other <sup>a</sup>	3	5.2

<sup>a</sup>Included when litigation becomes a reasonable alternative, when assets are located and borrower refuses to pay, and when borrower is unwilling to make regular payments

65. Does your state have a statute of limitations on defaulted student loans?

	<u>No.</u>	<u>Percent</u>
Yes	44	75.9
No	14	24.1

66. What is your statute of limitations? (44 agencies responded. Because 4 did not know the number of years, the analysis is based on 40 responses.)

	<u>Years</u>
Mean	8.7
Median	6
Range (low-high)	3-30

67. What problems, other than number of years, are associated with the statute of limitations? (44 agencies responded in one or more categories.)

<u>Problem</u>	<u>No.</u>	<u>Percent</u>
Lead time required by attorney general	2	4.5
Caseload of attorney general	3	6.8
Low priority assigned by attorney general	3	6.8
Other	2	4.5
None	38	86.4

68. What steps are taken to avoid exceeding the statute of limitations? (44 agencies responded in one or more categories.)

<u>Steps</u>	<u>No.</u>	<u>Percent</u>
Stagger the number of accounts in collection so that older accounts are worked first	7	15.9
Review accounts nearing their expiration dates	21	47.7
Other <sup>a</sup>	24	54.5

<sup>a</sup>Included administrative offset of state income tax refund, reviewing inventory of accounts to identify old accounts, and referring old accounts to attorney general for judgment.

69. Have you had problems obtaining judgments?

	<u>No.</u>	<u>Percent</u>
Yes	17	29.3
No	41	70.7

70. What problems have you experienced in obtaining judgments? (17 agencies responded in one or more categories.)

<u>Problems</u>	<u>No.</u>	<u>Percent</u>
Courts overloaded	9	52.9
Attorney general's workload	4	23.5
Low priority given default cases by courts	2	11.8
Low priority given default cases by attorney general	1	5.9
Other <sup>a</sup>	6	35.3

<sup>a</sup>Included locating attorneys in certain geographic locations, low rate of reimbursement by state agency to litigation contractor, locating borrowers and obtaining service of summons, and requirement that suit be initiated in debtor's county of residence.

71. Have you had problems enforcing judgments?

	<u>No.</u>	<u>Percent</u>
Yes	46	79.3
No	12	20.7

72. What problems have you experienced in enforcing judgments? (46 agencies responded in one or more categories.)

	<u>No.</u>	<u>Percent</u>
Borrower cannot be located	39	84.8
Inability of borrower to pay	41	89.1
Inadequate staff of agency/contractor to enforce judgments	21	45.7
Other <sup>a</sup>	5	10.9

<sup>a</sup>Included borrower changes jobs and refuses to pay, cannot enforce against federal employees and persons living on tribal land and overseas, refusal of some states to honor judgments obtained in other states, and borrower has no unprotected assets.

Use of litigation - by contract/agreement

73. Does your agency contract for litigation (including agreements with the state attorney general)?

	<u>No.</u>	<u>Percent</u>
Yes	53 <sup>a</sup>	91.4
No	5	8.6

<sup>a</sup>Includes 6 agencies that litigated through the state attorney general only. A 54th agency that used private attorneys and collection agencies also answered yes, but declined to answer questions in the litigation section.

74. How are litigation contracts awarded? (53 responded in one or more categories.)

	<u>No.</u>	<u>Percent</u>
Geographic region	33	62.3
Proven success with guaranty agency	30	56.6
Low bid	20	37.7
Determined by another agency within state	2	3.8
Other <sup>a</sup>	16	30.2

<sup>a</sup>Included competitive bidding, evaluation by committee, part of collection agency contract, handled by state attorney general, and board of directors' decision.

75. Are litigation contractors compensated on a percentage of total dollars collected? (53 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes	45	84.9
No	8	15.1

76. What is the range of percentage rates currently paid to litigation contractors? (45 agencies responded.)

	<u>Percent paid</u>	
	<u>Lowest</u>	<u>Highest</u>
Mean	29.8	33.5
Median	28	30
Range (low-high)	17-40	23-43

77. Why do these percentage rates differ? (45 agencies responded in one or more categories.)

<u>Reason rates differ</u>	<u>No.</u>	<u>Percent</u>
Based on dollar amounts of assigned accounts	3	6.7
Based on type of accounts assigned (i.e., the more difficult the account, the higher the commission rate)	5	11.1
Economic conditions at time contracts were awarded	16	35.6
Other <sup>a</sup>	15	33.3
Rates do not differ	11	24.4

<sup>a</sup>Included minimum negotiated price, bid process, and fees differ by geographic region.

78. Do you use other methods of compensating litigation contractors? (53 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes	11	20.8
No	42	79.2

**79. What other methods do you use to compensate litigation contractors? (11 agencies responded; the method each stated it used was as follows.)**

- Hourly rate (of \$70) for general collection and bankruptcy advice that did not generate collection of loan amounts from borrower
- Payment of actual legal charges
- Hourly fee for successful litigation
- Litigation with private collection contractors, resulting in same percentage as a routine collection
- \$70 per hour for defense of bankruptcy cases where dischargeability of loan was asserted
- Attorney general's office is paid a pro rata share of its costs to collect
- Monthly billing for legal services broken down by account and time
- Agency reimbursed for wages and overhead
- Hourly rate
- Contingency fee
- Flat rate for specified services

**80. How are accounts assigned to litigation contractors? (53 agencies responded in one or more categories.)**

	<u>No.</u>	<u>Percent</u>
In-state vs. out-of-state	33	62.3
Dollar size of the accounts	10	18.9
Skip accounts	2	3.8
Alphabetically	2	3.8
Geographical location within state	13	24.5
Other <sup>a</sup>	27	50.9

<sup>a</sup>Other responses included past performance, referred by collection agency, random assignment, all assigned to attorney general, second placement based on prior assignment, and single contractor subcontracts for litigation and garnishment.

**81. How often do contractors normally report and forward their collections to your agency? (53 agencies responded.)**

	<u>No.</u>	<u>Percent</u>
Weekly	16	30.2
Biweekly	1	1.9
Monthly	27	50.9
Quarterly	0	-
Other <sup>a</sup>	9	17.0

<sup>a</sup>Included twice monthly, upon receipt, as received by the attorney general, and daily.

82. How many years has your agency used litigation contractors? (53 agencies responded.)

	<u>Years</u>
Mean	7.9
Median	6
Range (low-high)	1-22

83. Do your litigation contracts contain performance standards? (53 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes, all contracts	10	18.9
Yes, some contracts	1	1.9
No	42	79.2

84. Does the litigation contractor continue to accrue interest while the account is assigned to the contractor? (53 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes, all contractors	38	71.7
Yes, some contractors	14	26.4
No	1	1.9

85. Does the litigation contractor actually collect the accrued interest? (53 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes, all contractors	35	66.0
Yes, some contractors	15	28.3
No	3	5.7

86. Do the litigation contractors retain their fee/percent of their collections before forwarding them to your agency? (53 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes, all contractors	29	54.7
Yes, some contractors	2	3.8
No	22	41.5



87. Do the litigation contracts contain incentive fees for exceeding the standards? (53 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes, all contracts	1	1.9
Yes, some contracts	0	-
No	52	98.1

88. How do you evaluate the effectiveness of the litigation contractors? (53 agencies responded in one or more categories.)

<u>Basis for evaluation</u>	<u>No.</u>	<u>Percent</u>
Ratio of collected dollars to dollars outstanding in assigned accounts	38	71.7
Number of borrowers in repayment to number of borrowers assigned	8	15.1
No evaluation	9	17.0
Other <sup>a</sup>	18	34.0

<sup>a</sup>Included accuracy and completeness of bookkeeping and accounting methods, tied to collection agency contract evaluation, and speed of obtaining judgment and cost of services.

89. Do you make on-site visits to the litigation contractors? (53 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes	33	62.3
No	20	37.7

90. How often do you normally visit the litigation contractors? (33 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Monthly	2	6.1
Quarterly	0	-
Semiannually	17	51.5
Annually	1	3.0
No regularly scheduled basis	13	39.4

91. What conditions control your decision not to make on-site visits to litigation contractors? (20 agencies responded in one or more categories.)

	<u>No.</u>	<u>Percent</u>
No agency staff	4	20.0
No travel funds	4	20.0
No agency procedures	1	5.0
Evaluation unnecessary	11	55.0
Other <sup>a</sup>	5	25.0

<sup>a</sup>Included no time and authorization and handled by attorney general.

92. Have you ever canceled a litigation contract based on poor performance? (53 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes	12	22.6
No	41	77.4

93. How many litigation contracts have you canceled in the last 5 years? (12 agencies responded.)

	<u>No. of contracts</u>
Total for agencies responding	62
Mean	5.1
Median	3
Range (low-high)	1-25

94. Do you grant to litigation contractors the right to exercise each of the following collection alternatives and if so, is prior approval from your agency necessary? (53 agencies responded to each category.)

<u>Collection alternative</u>	<u>Granted to contractor</u>		<u>Prior approval necessary</u>	
	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>
Forbearance	18	34.0	9	50.0
Deferment	5	9.4	3	60.0
Forgiveness	2	3.8	2	100.0
Cancellation	5	9.4	5	100.0
Compromise	41	77.4	39	95.1
Write-off	9	17.0	8	88.9
Pursuance of comakers and/or cosigners obtained by lenders	46	86.8	9	19.6
Other <sup>a</sup>	4	7.5	2	50.0

<sup>a</sup>Included postpone payments, garnish wages, property, etc. (through legal process only), and request termination of state employees.

Use of administrative offset and garnishment

95. Listed below are several administrative offset/garnishment procedures that might be used by your agency. Indicate whether or not each is available for use and if so, if they are used, and if judgments are required. (All agencies responded to each category.)

<u>Sources of income</u>	<u>Of agencies responding</u>					
	<u>State law/ regulations allow use</u>		<u>Actually used</u>		<u>Judgment required</u>	
	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>
Wages due federal employees	22	37.9	21	95.5	19	86.4
Wages due state employees	32	55.2	30	93.8	24	75.0
Wages due city/ county employees	30	51.7	28	93.3	27	90.0
Wages due private sector employees	42	72.4	38	90.5	40	95.2
State unemployment compensation	3	5.2	2	66.7	0	-
State income tax refund	26	44.8	24	92.3	4	15.4
Homestead/property tax rebates	6	10.3	6	100.0	1	16.7
Welfare, Aid to Fami- lies with Dependent Children, etc.	2	3.4	1	50.0	0	-
Other state loans, grants, or scholarships	8	13.8	8	100.0	0	-
State lotteries	5	8.6	3	60.0	2	40.0
State retirement checks	7	12.1	7	100.0	3	42.9
Other <sup>a</sup>	4	6.9	4	100.0	3	75.0

<sup>a</sup>Included participation in IRS offset program and obtaining offsets against bank accounts, real property, and selected personal property.

96. Have you had problems obtaining offsets and garnishments?

	<u>No.</u>	<u>Percent</u>
Yes	16	27.6
No	42	72.4

**97. What problems have you experienced in obtaining offsets and garnishments? (16 agencies responded.)**

Problems encountered in obtaining garnishments most commonly cited were:

- Borrower could not be located
- Borrower employed in a job on which wages could not be garnished
- Employer would not cooperate with garnishment procedures
- Cumbersome procedures required (garnishing payroll each time a check issued, i.e., weekly, etc.)
- Lack of enforcement by officials
- Lack of cooperation by federal agencies in responding to requests from states

**98. Does your agency ever list defaulted student loans with credit bureaus?**

	<u>No.</u>	<u>Percent</u>
Yes	49	84.5
No	9	15.5

**99. With how many credit bureaus does your agency list accounts? (49 agencies responded.)**

	<u>Credit bureaus</u>	
	<u>Nationwide</u>	<u>Local</u>
Mean	2.1	0.2
Median	2	0
Range (low-high)	0-5	0-2

**100. When are accounts listed with credit bureaus? (49 agencies responded in one or more categories.)**

<u>Listed when</u>	<u>No.</u>	<u>Percent</u>
Loan initially is disbursed by lender	5	10.2
Loan goes into repayment at lender	3	6.1
Lender requests preclaims assistance	2	4.1
Claim is paid by agency	44	89.8
Defaulter fails to make payment to agency	21	42.9
Other <sup>a</sup>	20	40.8

<sup>a</sup>Included any time there is activity on account, 30 days after the claim is paid and there is no response by defaulter, and when lender files default claim.

## III. PROCESSING BANKRUPTCY CLAIMS (UNDER CHAPTERS 7 AND 13)

101. When does your agency accept bankruptcy claims from lenders? (Agencies could cite one or more categories.)

<u>Accepted when</u>	<u>No.</u>	<u>Percent</u>
Borrower makes oral or written notification to lender of bankruptcy petition	17	29.3
Lender receives written notification of bankruptcy from bankruptcy court	51	87.9
Lender files "proof of claim"	29	50.0
Lender receives written notification of discharge of the debt	17	29.3
Other <sup>a</sup>	4	6.9
Agency does not accept bankruptcy claims from lenders	0	-

<sup>a</sup>Included within 60 days of lender notification of bankruptcy; after lender's receipt of notification of discharge, upon determination of 5 years in repayment, upon receipt of adversary proceeding notice, or if creditors have not met (under chapter 7); and upon receipt of notice of first creditors' meeting or if loan is included in plan approved by court (under chapter 13).

102. Do you have any different lender procedures for chapter 13 bankruptcies (wage earner plan) vs. chapter 7 (straight bankruptcies) prior to paying the claim?

	<u>No.</u>	<u>Percent</u>
Yes	29	50.0
No	29	50.0

103. Does your agency have a specified time limit in which the lenders must file bankruptcy claims following receipt of bankruptcy notices?

	<u>No.</u>	<u>Percent</u>
Yes	54	93.1
No	4	6.9

**104. What penalties do you impose for failure to meet that time?  
(54 agencies responded in one or more categories.)**

<u>Penalty</u>	<u>No.</u>	<u>Percent</u>
Denial of claim interest after the specified time period has lapsed	42	77.8
Denial of the principal amount of the claim	40	74.1
Other <sup>a</sup>	4	7.4
None	2	3.7

<sup>a</sup>Included denial of claim and voiding of guaranty.

**105. What documentation do you require from lenders filing a bankruptcy claim? (Agencies could cite one or more categories.)**

	<u>No.</u>	<u>Percent</u>
Notification of first meeting of creditors	57	98.3
Proof of claim	35	60.3
Listing of creditors	18	31.0
Notice of discharge	21	36.2
Other <sup>a</sup>	8	13.8

<sup>a</sup>Included original note of claim form, receipt of stay notice if received first, all account material and notes, and notice of assignment of claim and order of substitution.

**106. Does your agency protest the inclusion of guaranteed student loans in bankruptcy proceedings when the loan falls within the 5-year nondischargeability provision of the bankruptcy law prior to settlement of the bankruptcy proceeding by the referee?**

	<u>No.</u>	<u>Percent</u>
Never	24	41.4
Sometimes	5	8.6
Always	29	50.0

Note: Several agencies added comments that included: not legally permissible to protest the inclusion of any loans if debtor requests a finding of undue hardship; loan assumed to be nondischargeable upon advice of counsel; not discharged as self-executing; pursue after disclosure; and seek reaffirmation of debt through bankrupt's attorney prior to discharge.

107. What are your criteria for protest? (For the five agencies that answered "sometimes" to question 106, they could respond in one or more categories.)

	<u>No.</u>	<u>Percent</u>
Geographical considerations (in-state vs. out-of-state)	2	40.0
Outstanding balance	1	20.0
Other <sup>a</sup>	4	80.0

<sup>a</sup>Included debtor's ability to pay, whenever issue is raised by debtor, and discharge due to hardship and fair settlement under chapter 13.

108. When the borrower petitions the court to consider the guaranteed student loan as a dischargeable debt in the bankruptcy proceedings due to financial hardships, does your agency protest that action?

	<u>No.</u>	<u>Percent</u>
In no cases	3	5.2
In some cases	31	53.4
In all cases	24	41.4

109. What are your criteria for protest? (For the 31 agencies that answered "in some cases" to question 108, they could respond in one or more categories.)

	<u>No.</u>	<u>Percent</u>
Geographical considerations (in-state vs. out-of-state)	23	74.2
Outstanding balance	21	67.7
Financial condition of borrowers	27	87.1
Other <sup>a</sup>	3	9.7

<sup>a</sup>Included invalid hardship claims and only if loan had been in repayment for 5 years.

110. Who handles bankruptcy proceedings following the purchase of the loan from the lender? (Agencies could cite one or more categories.)

<u>Responsible</u>	<u>No.</u>	<u>Percent</u>
Internal operations personnel	39	67.2
In-house legal counsel	26	44.8
State attorney general (also includes attorney physically assigned to agency)	13	22.4
External legal counsel	21	36.2
External collection firm	3	5.2
Attorney(s) under subcontract with state attorney general	6	10.3



111. Do lenders repurchase accounts that were withdrawn or excluded from the bankruptcy petition?

	<u>No.</u>	<u>Percent</u>
Never	28	48.3
Sometimes	30	51.7
Always	0	-

Note: Several agencies provided comments, including that bankers "never" under chapter 7 and "sometimes" repurchase these under chapter 13; and "never" repurchase these if the account was 120 days or more past due.

112. When the borrower receives a favorable court decision regarding inclusion of the guaranteed student loan in the bankruptcy proceedings under the hardship provision, does your agency appeal that decision?

	<u>No.</u>	<u>Percent</u>
Never	31	53.4
Sometimes	26	44.8
Always	1	1.7

113. What is your "collection success rate" on accounts that were considered nondischargeable and currently serviced by your agency?

<u>Collection success rate (percent)</u>	<u>No.</u>	<u>Percent</u>
0-20	5	8.6
21-40	6	10.3
41-60	6	10.3
61-80	5	8.6
81-100	0	-
Information unavailable	36	62.1

114. Does your agency allow borrowers who have been discharged in bankruptcy proceedings to borrow additional GSL funds?

	<u>No.</u>	<u>Percent</u>
Yes	45	77.6
No	13	22.4

Note: Several agencies provided comments that included "yes," unless the borrower's proven default was due to his or her failure to perform to the loan's terms; and if "satisfactory arrangements" are made and meet certain criteria.

**IV. STUDIES BY AGENCIES; EXTERNAL STUDIES AND AUDITS OF AGENCIES;  
MISCELLANEOUS**

115. Does your agency perform any statistical studies of defaulted borrowers by the following categories? (Agencies could cite one or more categories.)

<u>Category of study</u>	<u>No.</u>	<u>Percent</u>
Type of schools attended	40	69.0
Income level	8	13.8
Other <sup>a</sup>	9	15.5
None	16	27.6

<sup>a</sup>Included lender categories, demographics within states by unemployment rates and schools attended, age of student, default characteristics, type of school and type of program, dependency status, and grade level.

116. Are the studies available for distribution outside of your agency? (42 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes	16	38.1
No	26	61.9

117. Has your agency made procedural or regulatory changes as a result of those studies? (42 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes	19	45.2
No	23	54.8

118. Did your agency investigate or perform a study of whether to conduct collection activities in house or by contract?

	<u>No.</u>	<u>Percent</u>
Yes	43	74.1
No	15	25.9

119. What did the investigation or study conclude to be the best collection method? (43 agencies responded.)

<u>Collection method</u>	<u>No.</u>	<u>Percent</u>
In house	6	14.0
Through collection agencies/law firms	3	7.0
Combination of both	33	76.7
Other <sup>a</sup>	1	2.3

<sup>a</sup>One agency responded that it is currently studying the best method to use.

120. On what did you base your decision? (43 agencies responded in one or more categories.)

<u>Basis</u>	<u>No.</u>	<u>Percent</u>
Cost	34	79.1
Effectiveness	38	88.4
Availability/nonavailability of state resources	17	39.5
Higher priority for use of staff in other agency functions	15	34.9
Other <sup>a</sup>	1	2.3

<sup>a</sup>One agency responded that it is currently studying the best method to use.

121. Other than the Department of Education's Program Review and Inspector General reviews, is your agency regularly audited?

	<u>No.</u>	<u>Percent</u>
Yes	58	100.0
No	0	-

122. Who conducts audits of your agency? (All agencies could respond in one or more categories.)

<u>Performed by</u>	<u>No.</u>	<u>Percent</u>
State auditor	24	41.4
Certified public accounting firms	43	74.1
Other <sup>a</sup>	4	6.9

<sup>a</sup>Other types of audits were conducted by state bank examiners, internal auditors, and GAO.

Note: The question included a request for the dates of last review. We did not analyze the responses because the dates varied widely.

123. What does your agency consider to be the most successful technique (not considering the costs to implement it) in your collection activities? (55 agencies responded and listed one or more of the following techniques, shown in order of frequency in parenthesis, as being the most successful in default collections.)

- Reporting to credit bureaus (16)
- Using contractors for collection (14)
- Personal contact by telephone (14)
- Aggressive use of litigation (7)
- Long-term payment arrangements (6)
- IRS offset program (6)
- State income tax offset (6)
- Garnishment of wages (5)
- Preclaims assistance (3)
- Demand letters (3)
- Collecting from cosigners (3)
- Skip-tracing techniques (3)
- Monthly statements (2)
- Automation of collection unit (1)
- Ability to achieve full payment from second placement of accounts (1)

124. Do you consider the technique (listed in response to question 123) to be cost effective? (55 agencies responded.)

	<u>No.</u>	<u>Percent</u>
Yes	55	100.0
NO	0	-

125. What additional comments or insights do you have on the collection of defaulted loans?

- Increase contact with schools and lenders to locate borrowers.
- Exchange data with IRS and Social Security Administration.
- Need immediate feedback on employment status in order to seek garnishment.
- Need federal garnishment law applicable to state guaranteed loans.
- Require annual contact between lender and borrower.
- Return to former policy of considering account paid in full if defaulter pays amount equal or greater than default purchase amount.
- Ask borrower's race, sex, marital status or spouse on loan application.
- Department of Education should accept forms completed by Veterans Administration on disability cases.
- Require cosigners on all loans.
- Schools and lenders should increase their publicity to borrowers on the effects of default and its consequences.
- Expand to lenders IRS skip-tracing ability before default occurs.
- Minimize conditions that allow borrowers not to make payments.
- Relentlessly follow up on broken promises.
- Close the chapter 13 bankruptcy loophole.

126. Do you want to receive a summary of responses to this questionnaire?

	<u>No.</u>	<u>Percent</u>
Yes	58	100.0
No	0	-

**DEFINITIONS OF FUNCTIONS**  
**THAT MAY BE PERFORMED BY OR**  
**ON BEHALF OF GUARANTY AGENCIES**

- |     |                                     |  |
|-----|-------------------------------------|--|
| 1.  | <u>Direct lender</u>                | makes loans directly to a borrower.  |
| 2.  | <u>Billing for lender interest</u>  | bills the Department on behalf of a lender for interest and special allowance.   |
| 3.  | <u>Secondary market</u>             | purchases loans outstanding from another lender.   |
| 4.  | <u>Lender of last resort</u>        | makes loans to a borrower who cannot otherwise obtain a loan.  |
| 5.  | <u>Loan originator</u>              | the activities that must be undertaken by or on behalf of a lender during the loan-making process.                                 |
| 6.  | <u>Lender escrow agent</u>          | receives on behalf of the borrowers the proceeds of loans disbursed by lenders for the purpose of redistributing to the borrowers. |
| 7.  | <u>Loan servicer</u>                | responding to borrower inquiries and establishing repayment schedules.   |
| 8.  | <u>Monitoring student status</u>    | periodic check with school to see if borrower is still in attendance.  |
| 9.  | <u>Litigation</u>                   | initiating legal proceedings to enforce repayment.   |
| 10. | <u>Forms prepared for Education</u> | submitting Departmental forms 1130 and 1189 series that detail guaranty agency activity.   |
| 11. | <u>Collections</u>                  | obtaining payments from a borrower.  |
| 12. | <u>Lender claims processing</u>     | processing a lender claim when borrower fails to repay due to default, death, disability, or bankruptcy.                           |
| 13. | <u>Preclaims assistance</u>         | helping the lender in getting a delinquent borrower to repay before the borrower goes into default.                                |

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