



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE INSPECTOR GENERAL

ED-OIG/A07-D0027

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Chief Operating Officer
Federal Student Aid
U.S. Department of Education
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FEB 10 2005

Sally Stroup
Assistant Secretary for Postsecondary Education
Office of Postsecondary Education
1990 K Street NW, Room 7115
Washington, DC 20006

Dear Ms. Shaw and Ms. Stroup:

This final audit report (Control Number ED-OIG/A07-D0027) presents the results of our audit of Direct Consolidation Loans. Our objective was to determine if the Department of Education (Department) takes appropriate action when loan verification certificates (LVCs) are delayed or denied by loan holders in the Federal Family Education Loan (FFEL) Program. Our audit covered the period July 1, 2002, through June 30, 2003.

We provided the Department with the draft of this report on December 22, 2004. In its response, dated January 27, 2005, the Department agreed with the findings and provided planned actions which addressed each of the recommendations. We have summarized the planned actions following each finding, and the response in its entirety is attached as Attachment F.

BACKGROUND

Section 455(g) of the Higher Education Act of 1965, as amended (HEA), provides for loan consolidation in the William D. Ford Federal Direct Loan (Direct Loan) Program. Under Section 428C(b)(5) of the HEA, if an eligible borrower in the FFEL Program applies for a Direct Consolidation Loan, the borrower is entitled to receive that loan:

In the event that a borrower is unable to obtain a consolidation loan from a lender with an agreement under subsection (a)(1), or is unable to obtain a consolidation loan with income-sensitive repayment terms acceptable to the borrower from such a lender, the Secretary shall offer any such borrower who applies for it, a direct consolidation loan.

A borrower is eligible for a Direct Consolidation Loan if –

. . . at the time the borrower applies for such a loan, the borrower meets the following requirements:

- (i) The borrower either—
 - (A) Has an outstanding balance on a Direct Loan; or
 - (B) Has an outstanding balance on an FFEL loan and asserts either—
 - (1) That the borrower is unable to obtain an FFEL consolidation loan; or
 - (2) That the borrower is unable to obtain an FFEL consolidation loan with income-sensitive repayment terms acceptable to the borrower and is eligible for the income contingent repayment plan under the Direct Loan Program. . . . (34 CFR 685.220(d)(1))

During our audit period, Federal Student Aid (FSA) contracted with Electronic Data Systems Corporation (EDS) for Direct Consolidation Loan support. To obtain a Direct Consolidation Loan, a borrower submits an application that identifies the loans that he or she wishes to consolidate. The assertion required for the borrower's eligibility, under 34 C.F.R. § 685.220(d)(1)(i)(B), is made when the borrower signs the Direct Consolidation Loan application:

If my student loans are in a grace or repayment period and if none of the loans I am consolidating is a Direct Loan Program loan, I further certify that I have sought and been unable to obtain a Federal Consolidation Loan from a FFEL Program lender, or a lender would not provide me with a Federal Consolidation Loan with income-sensitive repayment terms acceptable to me. If I have parent PLUS loans and none of the loans I am consolidating is a Direct Loan Program loan, I further certify that I have sought and been unable to obtain a Federal Consolidation Loan from a FFEL Program lender. If, however, I am consolidating jointly with my spouse, only one borrower, my spouse or I, must have sought a Federal Consolidation Loan from a FFEL Program lender.

After receiving a borrower's application for a Direct Consolidation Loan, EDS sends an LVC to each of the borrower's loan holders, to ensure that EDS has all the information required to determine each loan's eligibility for consolidation and its payoff balance. Under 34 C.F.R. § 685.220(f)(1)(i), the loan holder must—

. . . complete and return the Secretary's request for certification of the amount owed within 10 business days of receipt or, if it is unable to provide the certification, provide to the Secretary a written explanation of the reasons for its inability to provide the certification.

We determined that loan holders either failed to return LVCs timely or returned LVCs incomplete for 47,021 of the 436,761 Direct Consolidation Loan applications received from July 1, 2002, through June 30, 2003 (10.8 percent).

AUDIT RESULTS

The Department's procedures do not ensure that all of an applicant's eligible loans will be consolidated in a Direct Consolidation Loan. When a loan holder fails to return an LVC timely, or fails to provide all the information requested on the LVC, the Department does not take effective action to ensure that the applicant's loan is consolidated. In addition, the Department provides inappropriate guidance to applicants when their loan holders fail to return LVCs timely or complete.

Finding 1 The Department's Procedures Do Not Ensure Complete and Timely Consolidation for Eligible Borrowers

The Department's procedures do not ensure that all of an applicant's eligible loans will be consolidated in a Direct Consolidation Loan. The Department—

- Has not provided clear sub-regulatory guidance about the requirements for a FFEL Program loan holder's return of a Direct Loan LVC,
- Does not take adverse administrative actions to address loan holders' non-compliance with LVC requirements, and
- Has not established any alternative method for consolidating a loan for which an LVC has not been received.

As we noted in the background section, we determined that loan holders either failed to return LVCs timely or returned LVCs incomplete for 47,021 of the 436,761 Direct Consolidation Loan applications received from July 1, 2002, through June 30, 2003 (10.8 percent). The following table provides additional details about loan holders' responses to LVCs, and the effect of their responses:

Table 1:

	Applications with—			All Other Applications	Total Applications
	Incomplete LVCs	Untimely LVCs	Incomplete & Untimely		
Funded	2,502	18,953	572	295,635	317,662
Not Funded	7,018	17,174	802	94,105	119,099
Total	9,520	36,127	1,374	389,740	436,761
Percent Funded	26.3%	52.5%	41.6%	75.9%	72.7%
With Denied Loan	9.2%	37.0%	11.1%		
Without Denied Loan	17.1%	15.5%	30.5%		

As Table 1 shows, when LVCs are returned incomplete or untimely, a significantly lower percentage of applicants receive fully funded Direct Consolidation Loans. For example, only 2,502 of 9,520 applications for which one or more LVCs were returned incomplete (26.3

percent) resulted in a Direct Consolidation Loan, and of the 9,520 applications, only 9.2% included the loan(s) for which the loan holder had originally sent an incomplete LVC.

The Department's procedures have resulted in additional costs for applicants, the Department, and loan holders. Applicants often submit one or more additional applications after being denied a Direct Consolidation Loan, and each new application must be logged into the system, documents must be imaged, and new LVCs must be generated. Loan holders that complied previously, and returned LVCs, must now complete and return another LVC.

We also found that funded applications for which LVCs were returned untimely or incomplete took, on average, 20 days longer to process, from application to initial funding, than did funded applications for which all LVCs were returned timely and complete. These delays were often the result of multiple requests for LVCs (either mailing more than one LVC to the same loan holder or providing another type of manual intervention). Furthermore, additional work is often required to adjust payoff amounts to account for additional interest accruals and payments made on underlying loans during the delay.

Dear Colleague Letters Fail to Adequately Clarify the Requirements for Completing and Returning a Direct Consolidation Loan LVC

From the beginning of our audit period until our fieldwork was completed, the Department issued two Dear Colleague Letters that reminded FFEL Program loan holders of their obligation to respond within 10 business days to the LVCs they receive. The Dear Colleague Letters were issued on January 24, 2003 (GEN-03-02, see Attachment A) and February 17, 2004 (FP-04-02, see Attachment B). Although the February 2004 letter provided guidance specific to LVCs generated for FFEL Consolidations, the letter did not clearly limit its applicability and may have led recipients to believe they could refuse to complete a Direct Loan LVC if they determine that a borrower was ineligible for the consolidation loan.

For the Direct Consolidation Loan applications received by the Department from July 2002 through June 2003, we identified 65 loan holders that refused to return information required on the LVC, citing either the single-holder rule or asserting that the applicant was otherwise ineligible for a Direct Consolidation Loan. The single-holder rule does not apply to Direct Consolidation Loans. The requirements for the single-holder rule are provided in Section 428C(b)(1)(A) of the HEA. Under that section, certain FFEL Program lenders agree that they—

. . . will make a consolidation loan to an eligible borrower (on request of that borrower) only if the borrower certifies that the borrower has no other application pending for a loan under this section and (i) the lender holds an outstanding loan of that borrower which is selected by the borrower for consolidation under this section, except that this clause shall not apply in the case of a borrower with multiple holders of loans under this part, or (ii) the borrower certifies that the borrower has sought and has been unable to obtain a consolidation loan with income-sensitive repayment terms from the holders of the outstanding loans of that borrower (which are so selected for consolidation)

This rule applies only to FFEL Program loan holders, for the purpose of making FFEL Consolidation Loans. The HEA provides separate requirements for consolidating a FFEL Program loan into a Direct Consolidation Loan, at Section 428C(b)(5), as cited in the Background section.

The Department's Dear Colleague Letters do not explain the differences in the two programs' requirements or state specifically that the single-holder rule does not apply to applicants for Direct Consolidation Loans. Though we were informed by Office of Postsecondary Education (OPE) Policy, Planning and Innovation staff that the second Dear Colleague Letter (FP-04-02) was intended only to address procedures for making FFEL Program Consolidation Loans, the letter's language is ambiguous, and may be misinterpreted by FFEL Program loan holders to justify refusing to return Direct Loan LVCs based on the single-holder rule. The letter did not explicitly limit its applicability to FFEL consolidation. The Dear Colleague Letter states—

In Dear Colleague Letter GEN-03-02 (January 2003), we reminded loan holders of the regulatory requirements to respond to requests from another lender (FFEL or Direct Loans) for certification of the status of a loan included on a borrower's application for a consolidation loan.

The regulations allow a loan holder to provide the requesting lender with a written explanation as to why it cannot provide the certification. This option addresses situations in which the loan holder has a technical problem in providing the information within the 10-day timeframe (such as a computer malfunction) or where the loan holder simply does not have information on the borrower's loan. Loan holders also can provide a written explanation if they believe that they are the single holder of the borrower's FFEL loans and that the borrower thus does not qualify for a consolidation loan from the requesting lender.

The Department's instructions on its Direct Loan consolidation web site clearly state that the loan holder should not make determinations about an applicant's eligibility:

The regulations governing a borrower's eligibility for a Direct Consolidation Loan are different than those governing borrower eligibility for FFEL Program loans. A FFEL loan holder (or a school in the case of Federal Perkins Loans) is not responsible for determining if a borrower is eligible for a Direct Consolidation Loan. The Department makes this determination.

Nevertheless, some loan holders justify their return of incomplete Direct Loan LVCs by asserting that the applicant was ineligible for a Direct Consolidation Loan. The loan holder is not responsible for determining a borrower's eligibility for a Direct Consolidation Loan and does not have the information needed to make that determination.

No Adverse Administrative Action Taken Against Loan Holders That Failed to Return Completed LVCs

During our review we identified many examples of FFEL Program loan holders that delayed or failed to return completed Direct Consolidation Loan LVCs. Attachment C provides a list of the FFEL loan holders with the highest incidences of returning LVCs untimely or incomplete. We were informed by EDS staff that the Department follows up regularly with loan holders that have failed to return an LVC, to remind or encourage them to complete and return the LVC. However, the Department has not initiated adverse administrative actions against any of the listed loan holders, or any other loan holders, that continue to delay or fail to return completed Direct Loan LVCs.

Both of the Dear Colleague Letters we described previously address the consequences of the failure of a FFEL Program loan holder to respond to an LVC from another FFEL Program loan holder. However, only the first of the two letters (GEN-03-02, see Attachment A) describes the consequences of a loan holder's failure to return a Direct Loan LVC. After citing FFEL and Direct Loan regulations requiring the return of FFEL and Direct Loan LVCs within 10 business days, the letter goes on to state, "Failure to comply with this requirement could result in a lender being subject to fines or other sanctions consistent with 34 CFR 682, Subpart G."

The Dear Colleague Letters provide additional guidance specific to FFEL LVCs. The January 2003 Dear Colleague letter requested FFEL consolidation lenders to inform the Department's regional lender review staff of FFEL LVCs not returned. The February 2004 letter cited the importance of returning FFEL LVCs in a timely manner and stated—

Accordingly, we have begun to take enforcement action against lenders that fail to meet these requirements. Also, we anticipate that guaranty agencies will take appropriate action if they become aware that a lender in its guaranty program is failing to comply with this requirement.

Consolidation lenders that do not receive loan certification information within 10 business days or that question the propriety of the loan holder's written explanation should continue to inform their FSA regional lender review staff of such matters so that we can follow up with the loan holder and, if necessary, take appropriate remedial action.

FSA Lender Review managers stated that they have received and investigated complaints from FFEL consolidation lenders. Both the Direct Loan Consolidation director and FSA Lender Review regional managers confirmed that no lenders have been referred for enforcement action as a result of non-compliance with requirements to complete and return Direct Loan LVCs.

No Alternatives to LVCs

The procedures currently used by the Department do not allow the inclusion of a loan in a Direct Consolidation Loan without the receipt of an LVC from the loan holder. If a loan holder fails to

return a completed LVC, the Department either cancels the Direct Consolidation Loan application or excludes the uncertified loan(s) from the applicant's consolidation.

Neither the HEA nor regulations prohibit the Department from including an applicant's loan in a Direct Consolidation Loan without an LVC. The HEA does not address the use of LVCs, and requirements for LVCs in regulations only address a loan holder's responsibility to return LVCs. As such, the Department is not prevented from obtaining a loan's payoff amount from another source, when a loan holder fails to provide a timely or complete LVC, and using that alternate payoff amount to consolidate the loan.

By using an alternate source to determine a loan's payoff amount, the Department can ensure that eligible applicants are able to obtain timely, complete Direct Consolidation Loans, even when a loan holder refuses to provide information required on the LVC. For example, the Department could obtain an alternate payoff amount from the National Student Loan Data System (NSLDS) or by asking an applicant to provide his or her most recent bill from the lender.

Under the Department's regulations, using an alternate source would not result in the payment of an inaccurate payoff amount. Under 34 C.F.R. § 685.220(f)(4) and (5), a loan holder is required to return any excess payoff funds it receives from the Department and to notify the Department of the amount due if the funds it receives are insufficient to discharge the loan.

Recommendations

We recommend that the Chief Operating Officer for FSA and the Assistant Secretary for Postsecondary Education—

- 1.1 Issue clear guidance to loan holders, describing the loan holders' statutory and regulatory responsibilities to complete and return timely Direct Consolidation Loan LVCs. At a minimum, the guidance needs to inform loan holders that the single-holder rule, in Section 428C(b)(1)(A) of the HEA, does not affect a borrower's eligibility for a Direct Consolidation Loan, and that loan holders are required to provide the information requested on the Direct Loan LVC, regardless of the lender's assessment of the borrower's eligibility for a Direct Consolidation Loan.
- 1.2 Initiate and pursue adverse administrative actions, under 34 C.F.R. Part 682, Subpart G, against loan holders that fail to comply with the Department's regulations for the return of Direct Loan LVCs.
- 1.3 Implement alternate methods for determining applicants' payoff amounts, to ensure that applicants' loans are consolidated, even if the applicants' loan holders fail to provide the information requested on the LVC.

Auditee Response

Working with OPE and the Office of the General Counsel, FSA has developed a letter that will be sent to loan holders that have not been timely in responding to LVCs. The letter will remind

the holders of the statutory and regulatory requirements related to LVCs and the potential consequences of failing to comply with the rules.

FSA's Borrower Services has notified its contractor to refer cases of noncompliance to FSA's Financial Partners Service, which is preparing procedures to receive and initiate administrative actions. Also, FSA will begin to use the National Student Loan Data System (NSLDS) to determine applicants' payoff amounts if loan holders fail to respond to the LVC.

Finding 2 Department Provides Inappropriate Guidance to Consolidation Applicants

The Department has authorized EDS to send one of two servicer letters to borrowers when their loan holders fail to return timely, complete LVCs. The two letters provide inappropriate guidance. Both letters effectively delay or deny consolidation to borrowers who cannot convince their loan holders to complete and return LVCs. A statement in one of the letters conflicts with regulations, because it reflects a requirement that, in order for a borrower to receive a Direct Consolidation Loan, the borrower's loan holder must have a record of the borrower's attempt to obtain a FFEL Consolidation Loan.

The two letters are described below:

- **Delayed Certification Letter (BCR letter, see Attachment D).** When an LVC is not returned within 26 days from the date it was sent to the loan holder, this letter is sent to the borrower. The letter gives the applicant three options: (1) contact the loan holder and "request" that the LVC be completed and returned, (2) remove the loan from the consolidation, or (3) cancel the application. If the applicant does not respond to the letter within 15 days of the date it is sent, the application is cancelled.
- **Un-Certifiable Loan Notification Letter (CNC letter, see Attachment E).** When an LVC is returned by a loan holder that refuses to provide the information requested on the LVC, this letter is sent to the borrower. The letter informs the borrower that the loan holder refuses to provide the verification because it has no record of an attempt by the borrower to obtain a FFEL Consolidation loan from it. This letter gives the borrower four options, three of which require the borrower to contact the lender(s) and "tell them they must complete" and return the LVC. The fourth option asks the applicant to contact EDS if he or she needs more information or wants to cancel the Direct Consolidation Loan application. The borrower is advised to respond within 21 days or the consolidation will proceed without the unverified loans.

Servicer Letters Instruct Borrowers to Tell Loan Holders to Complete LVCs

Both the BCR and CNC servicer letters require the applicants to contact their loan holders and either direct or persuade those loan holders to provide information requested on the LVC. The letters indicate that the Department "cannot include" the unverified loans in the applicant's consolidation if the applicant is not successful.

This guidance is inappropriate because it does not reflect applicable requirements in the HEA and in the Department’s regulations. As cited in this report’s Background section, under 34 C.F.R. § 685.220(f)(1)(i), the Department requires lenders to provide the information requested on the LVC within 10 business days. Requirements in Section 428C(b)(5) of the HEA and in 34 C.F.R. § 685.220(d)(1) do not require a borrower to convince his or her loan holder to provide information as a criterion for determining whether that applicant is entitled or eligible for a Direct Consolidation Loan. The effect of the BCR and CNC letters is to delay or deny consolidation to eligible, entitled applicants.

Position That Eligibility Cannot Be Determined Based on the Borrower’s Assertion Conflicts with Regulations

The CNC servicer letter contains guidance that conflicts with requirements in the Department’s regulations. The letter states—

. . . According to your loan holder, they have no record that you attempted to obtain a Federal Consolidation Loan through them.

According to our guidelines, in some instances when you attempt to obtain a Direct Consolidation Loan, you must first check with your FFEL lender that makes consolidation loans before you can obtain a Direct Consolidation Loan.

Specifically: If you have student loans that are in the grace or repayment period and none of the loans you are consolidating are Direct Loan Program loans, you must have been unable to obtain:

- a Federal Consolidation Loan from a FFEL lender; or
- a Federal Consolidation Loan with income-sensitive repayment terms that are acceptable to you.

The eligibility criteria in Section 428C(b)(5) of the HEA and applicable regulations do not require an applicant to check with his or her loan holder before applying for a Direct Consolidation Loan, or that the applicant’s loan holder maintain documentation of that contact. Under 34 C.F.R. § 685.220(d)(1)(i)(B)(2), a borrower is only required to assert that he or she “is unable to obtain a FFEL consolidation loan with income-sensitive repayment terms acceptable to the borrower and is eligible for the income contingent repayment plan under the Direct Loan Program. . . .” Direct contact with the loan holder is not the only way a borrower may satisfy this requirement: he or she may base the assertion on review of the lender’s materials, use of a calculator on the lender’s web site, past experience with the lender, or any other criteria the borrower determines is relevant.

The preamble for the final regulations, published December 1, 1994, verifies that the intent of the language in 34 CFR 685.220(d)(1)(i)(B) is to require only a written assertion to meet this eligibility criteria:

Comments: Some commenters suggested that documentation be required to prove that a borrower is unable to obtain a Federal Consolidation Loan, or one

with income-sensitive terms satisfactory to the borrower. Others suggested that the phrase “* * * acceptable to the borrower” be deleted since it gives broad discretion to any FFEL borrower, eligible for ICR under Direct Loans, to apply for a Direct Consolidation Loan.

Discussion: On the Direct Loan Consolidation Application and Promissory Note, the borrower certifies that he or she meets the eligibility criteria to consolidate under the Direct Loan Program. The Secretary believes that this certification is sufficient documentation and that requiring further documentation would be unnecessarily burdensome. The phrase “acceptable to the borrower” is statutory. (59 FR 61683)

The guidance in the CNC letter increases the burden on the applicant by requiring him or her to initiate a contact with his or her loan holder, so that the loan holder may document the applicant’s decision. The borrower has already made the required assertion on his or her application. No further assertion or proof is required under the HEA or under the regulations.

Recommendation

We recommend the Chief Operating Officer for FSA—

- 2.1 Stop sending the BCR and CNC letters, and any letters containing similar guidance, to applicants for Direct Consolidation Loans.

Auditee Response

FSA’s contractor has been instructed to stop sending the BCR and CNC letters and any other letters containing similar guidance.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of our audit was to determine if the Department takes appropriate action when LVCs are delayed or denied by FFELP holders. To accomplish our objective, we

- Reviewed applicable requirements in the HEA and regulations.
- Interviewed FSA staff and OPE staff.
- Reviewed policy guidance issued during the period July 2002, through September 2004, concerning completion of LVCs.
- Interviewed EDS staff.
- Analyzed Department procedures and policies relating to Direct Consolidation Loans.
- Analyzed data from the Direct Loan system to estimate the effects of delayed and incomplete LVCs on borrowers and their abilities to obtain a Direct Consolidation Loan for applications received July 1, 2002, through June 30, 2003.

To achieve our objective, we relied on data obtained from EDS' electronic Direct Loan consolidation data system to determine the number of LVCs delayed or denied. We tested the accuracy, authenticity, and completeness of the data by comparing the data to contemporaneous reports submitted to the Department by EDS of the numbers of applications received and performed additional analyses of application receipt dates, certification, and correspondence records. In addition, we randomly selected a sample of servicer letter recipients to verify the information contained in EDS' Direct Loan consolidation database agreed with the information contained in the Imaging system. The 436,761 applications we obtained from the database was less than the 470,134 applications reported as received from July 2002 – June-2003 because the contemporaneous reports included applications before being edited for acceptance and some data was missing for some applications sent BCR or CNC letters. We were able to derive some missing data from other records and determined that our findings and recommendations would not be affected if the numbers of applications or unreturned/untimely LVCs were slightly understated. Therefore, we concluded that the data contained in these systems were sufficiently reliable to be used in meeting the audit's objective.

We performed on-site fieldwork at EDS' offices in Montgomery, Alabama from October 15, 2003, through October 17, 2003. We conducted interviews with Department staff in Washington D.C. from April 13, 2004 through April 15, 2004. We conducted additional analyses in our Kansas City office. A final exit conference was held on October 6, 2004. We conducted the audit in accordance with generally accepted government auditing standards appropriate to the scope of the audit described above.

STATEMENT ON INTERNAL CONTROLS

To perform our audit, we gained an understanding of the Department's process for Direct Loan consolidation, as applicable to our audit. However we did not perform an assessment of the Department's internal control structure, because such an assessment was not necessary to meet the audit objective.

ADMINISTRATIVE MATTERS

Corrective actions proposed and implemented by your office will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System (AARTS). ED policy requires that you develop a final corrective action plan (CAP) for our review in the automated system within 30 days of the issuance of this report. The CAP should set forth the specific action items, and targeted completion dates, necessary to implement final corrective actions on the findings and recommendations contained in this final audit report.

In accordance with the Inspector General Act of 1978, as amended, the Office of Inspector General is required to report to Congress twice a year on the audits that remain unresolved after six months from the date of issuance.

In accordance with the Freedom of Information Act (5 U.S.C. § 552), reports issued by the Office of Inspector General are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

We appreciate the cooperation given us during this review. If you have any questions, please call Janice Keeney, Assistant Regional Inspector General for Audit, at 816-268-0500 or Richard J. Dowd, Regional Inspector General for Audit, at 312-886-6503.

Sincerely,

A handwritten signature in black ink that reads "Helen Lew". The signature is written in a cursive, flowing style.

Helen Lew

Assistant Inspector General for Audit Services

Attachments

Publication Date: January 2003

DCL ID: GEN-03-02

Federal Family Education Loan (FFEL) Program loan holders must respond to Consolidation Loan verification requests within 10 business days.

Posted on 01-24-2003

January 2003

GEN-03-02

G-03-334

L-03-238

SUBJECT: Federal Family Education Loan (FFEL) Program loan holders must respond to Consolidation Loan verification requests within 10business days.

Dear Colleague:

It has come to our attention that some FFEL loan holders may not be complying with regulatory requirements to respond to requests from another lender (FFEL or Direct Loans) for certification of loan status for a loan included on a borrower's application for a consolidation loan. Under the FFEL Consolidation Program, 34 CFR 682.209(j) states:

(j) Certification on loans to be repaid through consolidation. Within 10 business days after receiving a written request for a certification from a lender under 682.206(f), a holder shall either provide the requesting lender the certification or, if it is unable to certify to the matters described in that paragraph, provide the requesting lender and the guarantor on the loan at issue with a written explanation of the reasons for its inability to provide the certification.

Under the Direct Loan Consolidation Program, 34 CFR 685.220(f)(1)(i) states -

(f) Origination of a consolidation loan.(1)(i) The holder of a loan that a borrower wishes to consolidate into a Direct Loan shall complete and return the Secretary's request for certification of the amount owed within 10 business days of receipt or, if it is unable to provide the certification, provide to the Secretary a written explanation of the reasons for its inability to provide the certification.

This is an important obligation that every loan holder must fulfill in order to ensure that a borrower's Consolidation loan is processed in a timely fashion. Loan holders must, within 10business days after receiving a request for loan certification, provide the requesting lender with the requested certification information or a reason why it is unable to provide the information. Failure to comply with this requirement could result in a lender being subject to fines or other sanctions consistent with 34 CFR 682, Subpart G.

Requesting lenders who do not receive loan certification information or responses informing them why that information is not being provided from a loan holder in a timely manner, should inform their FSA regional lender review staff, so that the Department can follow up with the loan holder.

We hope that this information helps you fully comply with the requirements of the Federal student loan programs.

Sincerely,

Jeffrey Andrade
Deputy Assistant Secretary
Postsecondary Education

Publication Date: February 2004

DCL ID: FP-04-02

Mandatory timely completion of Loan Verification Certificates (LVC)

Posted on 02-17-2004

February 2004

FP-04-02

Subject: Mandatory timely completion of Loan Verification Certificates (LVC)

Summary: This letter reminds lenders in the Federal Family Education Loan (FFEL) Program of the regulatory requirements related to the timely completion and return of Loan Verification Certificates (LVC) in support of a borrower's application for a consolidation loan from another lender.

Dear Colleague:

In Dear Colleague Letter GEN-03-02 (January 2003), we reminded loan holders of the regulatory requirements to respond to requests from another lender (FFEL or Direct Loans) for certification of the status of a loan included on a borrower's application for a consolidation loan. In accordance with 34 CFR 682.209(j), a loan holder has 10 business days after receiving a written request for an LVC to provide the requesting lender with a completed LVC or, if it is unable to certify, a written explanation as to the reason why the holder is unable to provide the information.

The regulations allow a loan holder to provide the requesting lender with a written explanation as to why it cannot provide the certification. This option addresses situations in which the loan holder has a technical problem in providing the information within the 10-day timeframe (such as a computer malfunction) or where the loan holder simply does not have information on the borrower's loan. Loan holders also can provide a written explanation if they believe that they are the single holder of the borrower's FFEL loans and that the borrower thus does not qualify for a consolidation loan from the requesting lender. In this instance, the written explanation sent by the loan holder to the requesting lender must provide information to support this claim, such as a printout provided by a guaranty agency from NSLDS that shows that the lender is the only holder or a statement from the guaranty agency that it has reviewed the borrower's NSLDS records and has determined that a single lender is the holder of all FFEL loans for that borrower. It is not the borrower's responsibility to demonstrate to the loan holder that multiple lenders hold his or her loans.

In addition, a loan holder is not required to provide the requested loan information when:

- there is a judgment against the borrower on the loan that the borrower wants to consolidate;
- a loan has been sold; or
- a loan is more than 270 days delinquent and a default claim has been submitted to a guaranty agency.

As explained in this letter, there are only a few acceptable reasons why a loan holder would not be required to return the LVC within 10 business days, and the desire to simply hold on to a borrower's loan at the borrower's expense is

not one of those reasons. Any continued failure on the part of loan holders to respond in a timely manner to requests for LVCs will be considered a violation of the regulations.

As stated in DCL GEN 03-02, the timely certification of information, as required by the regulations, is an important obligation that every loan holder must fulfill in order to ensure that a borrower's consolidation loan application can be processed in a timely manner. Accordingly, we have begun to take enforcement action against lenders that fail to meet these requirements. Also, we anticipate that guaranty agencies will take appropriate action if they become aware that a lender in its guaranty program is failing to comply with this requirement.

Consolidation lenders that do not receive loan certification information within 10 business days or that question the propriety of the loan holder's written explanation should continue to inform their FSA regional lender review staff of such matters so that we can follow up with the loan holder and, if necessary, take appropriate remedial action.

We thank you for your cooperation. If you have any questions on the issues discussed in this letter, please contact Victoria Bateman by email at victoria.bateman@ed.gov or by phone at (202) 377-3301.

Sincerely,

Sally L. Stroup
Assistant Secretary for
Postsecondary Education

FFEL Holders With Highest Incidence of Untimely or Incomplete Certifications
(At Least 100 Untimely or Incomplete Certifications and 10% Certifications Mailed)
For Direct Consolidation Loan Applications Received 7/1/2002 - 6/30/2003

<u>FEEL Holder Name in EDS Database</u>	<u>LVCs Mailed</u>	<u>Where VCs Were Returned</u>			
		<u>Untimely</u>		<u>Incomplete</u>	
		<u>Num.</u>	<u>Perct.</u>	<u>Num.</u>	<u>Perct.</u>
ACS	7,177	1,557	22%	253	4%
ACS/AFSA-NDSL	1,809	266	15%		
AELMAC/Southwest Student Loan Services	1,072	380	35%		
AES Graduate Services	1,026	551	54%	1	0%
AES/PHEEA	674	449	67%	1	0%
AFSA - NDSL	1,809	304	17%		
American Student Assistance	1,158	375	32%	1	0%
Brazos Higher Education	1,237	155	13%	34	3%
Citibank Student Loan Center (Citicorp)	6,649	876	13%	255	4%
Colorado Student Loan Program	3,003	443	15%		
Edsouth/Educational Funding Of The South, Inc.	1,239	418	34%		
Educaid	823	497	60%	3	0%
Education Financial Services (EFS)	1,276	272	21%		
Georgia Student Finance Authority (GSFA)	689	100	15%		
Great Lakes Educational Loan Services, Inc.	531	132	25%		
Great Lakes Higher Education Corp.-GA	1,543	153	10%	4	0%
IDAPP	621	384	62%		
Illinois Student Assistance Commission (ISAC)	7,337	873	12%		
Iowa Student Loan Liquidity Corporation	856	235	27%	1	0%
M.H.E.A.A.-M.G.A	3,615	729	20%		
Michigan Higher Education Student Loans	196	133	68%		
Missouri Coordinating Board Higher Ed.	4,862	1,915	39%	1	0%
Missouri Higher Education Loan Authority (MOHELA)	1,388	219	16%	142	10%
National Student Loan Program	3,079	372	12%		
Nelnet	2,104	398	19%		
New Jersey Higher Education Assistance	1,302	273	21%	1	0%
New Mexico Educ. Assist. Foundation	2,149	284	13%	1	0%
New Mexico Student Loan Guarantee	3,276	919	28%		
New York State Higher Education Services	15,759	2,385	15%	1	0%
Pennsylvania Higher Ed. Assist. Agency-GA (PHEEA)	6,601	774	12%	3	0%
Regions Bank	558	311	56%		
SLMA/Loan Servicing Center/Florida (Sallie Mae)	29,555	0	0%	9,528	32%
SLMA/Loan Servicing Center/Pa (Sallie Mae)	1,107	0	0%	324	29%
SLSC - PHEEA	5,331	996	19%	156	3%
South Carolina Student Loans	1,021	113	11%	79	8%
Student Loan Guarantee Fnd. Of Arkansas	1,817	288	16%		
Suntech, Incorporated	1,682	186	11%	2	0%
Suntrust Bank	360	120	33%	4	1%
Tennessee Student Assistance Corporation (TSAC)	2,098	812	39%		
Wells Fargo Education Financial Services	3,601	586	16%	3	0%



Ltr: 175
 Pkg: BCR
 Sys Gen
 Revised: Rel. 7.02
 Trigger: Certification not returned by loan holder in a timely manner

NAME
 ADDRESS1
 ADDRESS2
 CITY, STATE ZIP

DATE

Borrower Account Number: 123456789

Dear Borrower,

Thank you for your participation in the Direct Consolidation Loan Program. This letter is to provide you with the status of your Direct Consolidation Loan application.

Your Loan Holder Has Not Responded

We are processing your Direct Consolidation Loan application/promissory note, but have been unable to verify the loan balance(s) needed to pay off your account(s). The holder of your loan(s) listed below has not responded to our requests for verification.

Loan Holder: LOAN HOLDER NAME
 Phone Number:PHONE NUMBER

<u>Account #</u>	<u>Loan Type</u>
99999999999999999999	PLUS
33333333333333333333	NON-PLUS

Unless we receive the pay-off amount(s) from your loan holder(s), we cannot include the loan(s) in your Direct Consolidation Loan. Please help us obtain this information.

Your Options

Option 1: You may contact your loan holder directly and request that the "Federal Direct Conolidation Loan Verification Certificate" be completed and returned to the address on the certificate.

Option 2: You may remove the unverified loan(s) from the conolidation. Contact us, and we will continue the consolidation process for the eligible loans that have been verified.

Option 3: You may cancel your loan application

Immediate Attention Required

We encourage you to take the necessary action immediately. If we do not hear from you within 15 calendar days of the date of this letter, we will cancel your application. If your application is cancelled, you must reapply if you wish to receive a Direct Consolidation Loan.

Continue Making Payments

Continue making your monthly loan payments (if required to do so) until you receive written notification that your loan(s) are consolidated.

If you are having difficulty making your loan payments, contact your current loan holder(s) for ways to postpone payments. Ask specifically about your “deferment” or “forbearance” options.

Our Contact Information

Please contact us if you need assistance or have questions:

- **E-mail** loan_consolidation@mail.ed.gov
- **Web** www.loanconsolidation.ed.gov
- **Phone** 1-800-557-7392 (1-800-557-7395 TDD for the hearing impaired)
 8AM to 8PM (EST), Monday through Friday
- **Mail** U.S. Department of Education
 Consolidation Department
 P.O. Box 242800
 Louisville, KY 40224-2800

Thank you for your assistance.

Consolidation Department
Loan Consolidation Center



Ltr: 354
 Pkg: CNC
 Online CSR generated letter
 New: Rel. 7.0
 Trigger: Loan holder will not certify loans because the borrower has not tried to consolidate the loans through the loan holder

NAME
 ADDRESS1
 ADDRESS2
 CITY, STATE ZIP

DATE

Borrower Account Number: 123456789

Dear Borrower,

This letter is to update you as to the status of your Direct Consolidation Loan application and to inform you of the action(s) that you need to take. We have not been able to verify the loan amounts needed to pay off your loan balance.

You May Need to Check with Your Loan Holder Before We Can Continue to Process Your Federal Direct Consolidation Loan

The Federal Family Education Loan (FFEL) Program loan holder(s) identified below has not provided us with a verification of the amount and status of your loans. According to your loan holder, they have no record that you attempted to obtain a Federal Consolidation Loan through them.

According to our guidelines, in some instances when you attempt to obtain a Direct Consolidation Loan, you must first check with your FFEL lender that makes consolidation loans before you can obtain a Direct Consolidation Loan.

Specifically: If you have student loans that are in the grace or repayment period and none of the loans you are consolidating are Direct Loan Program loans, you must have been unable to obtain:

- a Federal Consolidation Loan from a FFEL lender; or
- a Federal Consolidation Loan with income-sensitive repayment terms that are acceptable to you.

If you are consolidating jointly with your spouse, only one of you must meet the requirements described above.

We cannot include the loan(s) listed below in your Direct Consolidation Loan unless we receive the verified pay-off amount of these loans from your loan holder.

Loan Holder: [Loan Holder Name]
 Phone Number: (000) 000 - 0000

Account Number
 XXXXXXXXXXXXX

Loan Type
 X

You Have Four Options

1. If you believe that you do not have to meet the requirements described above because you are consolidating at least one Direct Loan or are consolidating at least one loan that is in an in-school period, you should contact your loan holder, and tell them they must complete the "Loan Verification Certificate" and return it to us at the address shown on the certificate.
2. If you believe that you have met the requirements described above, you should contact your loan holder, and tell them they must complete the "Loan Verification Certificate" and return it to us at the address shown on the certificate.
3. If the requirement described above applies to you, you must contact a FFEL lender to discuss your options for obtaining a Federal Consolidation Loan through them. If you are then unable to obtain a Federal Consolidation Loan through them, or are unable to obtain a loan with income-sensitive repayment terms that are acceptable to you, tell them they must complete the "Loan Verification Certificate" and to return it to us at the address shown on the certificate.
4. If you need more information, or wish to cancel your Direct Consolidation Loan application, contact us using the information provided below.

You Need to Respond Within 21 Days

We encourage you to take the necessary action(s) as soon as possible. If we do not receive the needed verifications from your loan holder, or do not hear from you within 21 days of the date of this letter, we will process your Direct Consolidation Loan application without these loans.

You Need to Continue Making Payments

Continue making your monthly loan payments (if you are required to do so) on all of your student loans until you receive written notification that your loan(s) has been successfully consolidated. If you are having difficulty making your loan payments, contact your current loan holder(s) to find out how you might be able to temporarily postpone making payments until the consolidation loan is finalized. Ask specifically about deferment or forbearance options.

If You Need Assistance

Please contact us if you need assistance or have any questions:

- **E-mail** loan_consolidation@mail.eds.com
- **Web** www.loanconsolidation.ed.gov
- **Phone** 1-800-557-7392 (TDD for the hearing impaired: 1-800-557-7395)
8AM to 8PM (EST), Monday through Friday
- **Mail** U.S. Department of Education
Consolidation Department
P.O. Box 1723
Montgomery, AL 36102-1723

Thank you for your interest in the Federal Direct Consolidation Loan Program.

Consolidation Department
Loan Origination Center



UNITED STATES DEPARTMENT OF EDUCATION

ED/OIG/A07-D0027

Attachment F

MEMORANDUM

DATE: Januray 27, 2005

TO: Richard J. Dowd
Regional Inspector General for Audit
Office of the Inspector General

FROM: Theresa S. Shaw s/s
Chief Operating Officer
Federal Student Aid

Sally L. Stroup s/s
Assistant Secretary for Postsecondary Education
Office of Postsecondary Education

SUBJECT: Response to Audit "Direct Consolidation Loans," (Control Number ED-OIG/A07-D0027)

Thank you for providing us with an opportunity to respond to the draft report of the results of the Office of Inspector General's (OIG's) audit of Direct Consolidation Loans.

As you know based on our comments at the exit conference, we agree with your findings that the Department's procedures and guidance to loan holders have not ensured complete and timely consolidations for all eligible borrowers.

We have addressed each of your report's recommendations. We have developed a letter that will be sent to loan holders that have failed to respond to loan verification certificates (LVCs) in a timely manner. This letter addresses your concerns that the Department clarify the statutory and regulatory requirements for loan holders to complete and return timely LVCs. The letter informs loan holders that have not been timely in responding to LVCs of the potential consequences of their failure to comply with these rules. Also, we will pursue adverse administrative actions against loan holders that willfully fail to comply with the Department's regulations for the return of Direct Loan LVCs.

Page 2 – Richard J. Dowd

We have responded to each of your recommendations in greater detail in the attachment to this memorandum. Once again, thank you for providing us with this opportunity to comment.

Attachment

cc: Helen Lew, Office of Inspector General
Pat Howard, Office of Inspector General
Sue Szabo, Borrower Services, Federal Student Aid
Matt Fontana, Financial Partners Services, Federal Student Aid
Jeff Baker, Policy Liaison & Implementation Staff, Federal Student Aid
David Bergeron, Office of Postsecondary Education

Recommendation 1.1: Issue clear guidance to loan holders, describing the loan holders' statutory and regulatory responsibilities to complete and return timely Direct Consolidation Loan LVCs. At a minimum, the guidance needs to inform loan holders that the single-holder rule in Section 428C(b)(1)(A) of the HEA does not affect a borrower's eligibility for a Direct Consolidation Loan, and that loan holders are required to provide the information requested on the Direct Loan LVC, regardless of the lender's assessment of the borrower's eligibility for a Direct Consolidation Loan.

Response: Working with the Office of Postsecondary Education (OPE) and the Office of the General Counsel (OGC), Federal Student Aid (FSA) has developed a letter that will be sent to loan holders that fail to respond to loan verification certificates (LVCs) in a timely manner. This letter will remind loan holders of the statutory and regulatory requirements related to LVCs. The letter will inform loan holders that have not been timely in responding to LVCs of the potential consequences of failing to comply with these rules.

Recommendation 1.2: Initiate and pursue adverse administrative actions, under 34 CFR Part 682, Subpart G, against loan holders that fail to comply with the Department's regulations for the return of Direct Loan LVCs.

Response: FSA's Borrower Services has notified its contractor to implement procedures to be followed to refer cases of noncompliance to FSA's Financial Partners Services for administrative action. FSA's Financial Partners Services is preparing procedures to receive and initiate administrative action(s) against non-compliant loan holders referred by Borrower Services.

Recommendation 1.3: Implement alternate methods for determining applicants' payoff amounts to ensure that applicants' loans are consolidated, even if the applicants' loan holders fail to provide the information requested on the LVC.

Response: To ensure eligible applicants' loans are consolidated, we will begin to use the National Student Loan Data System (NSLDS) to determine applicants' payoff amounts if the applicants' loan holders fail to provide the information requested on the LVC.

Recommendation 2.1: Stop sending the BCR and CNC letters, and any letters containing similar guidance to applicants for Direct Consolidation Loans.

Response: FSA's contractor has been instructed to stop sending the BCR and CNC letters, and any letters containing similar guidance to applicants for Direct Consolidation Loans.