

**Proposed Regulatory Language
"Contextual Format"
Loans Committee**

Origin: ED

Issue: FFEL - Institutional Preferred Lenders

Regulatory Cite: §§682.212 and 682.603

Summary of Change: Provide limits and conditions on an institution's development and use of a list of preferred or recommended list of lenders in the FFEL Program to protect a borrower's choice of lender as provided by the HEA.

Tentative Agreement: No

Change:

§682.212 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to-

- (1) Secure funds for making loans; or
- (2) Induce a lender to make loans to either the students or the parents of students of a particular school or particular category of students or their parents.

(b) The following are examples of transactions that, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

- (1) Cash payments by or on behalf of a school made to a lender or other party.
- (2) The maintaining of a compensating balance by or on behalf of a school with a lender.
- (3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.
- (4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(5) Purchase by or on behalf of a school of stock of the lender.

(6) Payments ostensibly made for other purposes.

(c) Except when purchased by ~~the Student Loan Marketing Association~~, an agency of any State functioning as a secondary market or in any other circumstances approved by the Secretary, notes, or any interest in notes, may not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from ~~the Student Loan Marketing Association~~ or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or lender (with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with that lender), may not use a loan made under the FFEL programs as collateral for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the most recently prescribed special allowance under §682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school, lender, or other party that would participate in a proscribed transaction.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the loan seller a warranty that—

(1) Covers future reductions by the Secretary or a guaranty agency in computing the amount of loss payable on default claims filed on the loans, if the reductions are attributable to an act, or failure to act, on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a FFEL loan shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than one year, or both.

(h) (1) A School may not provide or make available a list of recommended or suggested lenders in print or any other medium or form for use by the school's students or their parents that—

(i) Is used to deny or otherwise impede a borrower's choice of lender;

(ii) Except as provided in (h)(3) of this section, contains fewer than three lenders who will make loans to borrowers or students attending the school; and

(iii) Includes lenders that have offered, or have been solicited to offer, financial or other benefits to the school or its borrowers in exchange for inclusion on the list or any promise that a certain number of loan applications will be sent to the lender by the school or its students.

(2) A school that provides or makes available a list of recommended or suggested lenders must—

(i) Disclose to prospective borrowers as part of a list the method and criteria used by the school in selecting any lender to choose the lenders that it are recommended or suggested;

(ii) Provide comparative information to prospective borrowers about interest rates and benefits offered by the lenders;

(ii)(iii) Include a prominent statement in any information related to its list of lenders advising prospective borrowers that they are not required to use one of the school's recommended or suggested lenders;

(iii) For first-time borrowers, Not assign, through award packaging or other methods, a borrower's loan to a particular lender; and

(iv) Not cause unnecessary certification processing delays for borrowers who use a lender that has not been recommended or suggested by the school.

(3) A school may include fewer than three suggested or recommended lenders in its list if fewer than 150 borrowers receiving loans for attendance at the school entered repayment in the school's most recent cohort default rate data.

§ 682.603 Certification by a participating school in connection with a loan application.

(a) A school shall certify that the information it provides in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made on the application by the student borrower.

(b) The information to be provided by the school about the borrower making application for the loan pertains to—

(1) The borrower's eligibility for a loan, as determined in accordance with §682.201 and §682.204;

(2) For a subsidized Stafford loan, the student's eligibility for interest benefits as determined in accordance with §682.301; and

(3) The schedule for disbursement of the loan proceeds, which must reflect the delivery of the loan proceeds as set forth in §682.604(c).

(c) Except as provided in paragraph (e) of this section, in certifying a loan, a school must certify a loan for the lesser of the borrower's request or the loan limits determined under §682.204.

(d) A school may not certify a Stafford or PLUS loan application, or combination of loan applications, for a loan amount that—

(1) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in §682.204; or

(2) Exceeds the student's estimated cost of attendance, less—

(i) The student's estimated financial assistance for that period; and

(ii) In the case of a Subsidized Stafford loan ~~that is eligible for interest benefits~~, the borrower's expected family contribution for that period.

~~(e) A school may refuse to certify a Stafford or PLUS loan application or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the borrower in writing, provided~~In certifying loans, a school—

~~(1) (1) May not refuse to certify, or delay certification, of a Stafford or PLUS loan based on the borrower's selection of a particular lender or guaranty agency;~~

~~(2) May not, for first-time borrowers, assign through award packaging or other methods, a borrower's loan to a particular lender; and~~

~~(23) May refuse to certify a Stafford or PLUS loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the borrower in writing, provided—~~

~~(1i)~~ The determination is made on a case-by-case basis;

~~(2ii)~~ The documentation supporting the determination is retained in the student's file; and

~~(34) The school does not~~May not, under subsections (1), and (2), and (3) engage in any pattern or practice that results in a denial of a borrower's access to FFEL loans because of the borrower's race, sex, color, religion, national origin,

age, handicapped status, or income, or selection of a particular lender or guaranty agency.

**Proposed Regulatory Language
"Contextual Format"
Loans Committee**

Origin: ED

Issue: FFEL - Prohibited Inducements

Regulatory Cite: §§682.200, 682.209, 682.401, 682.406,
682.413, 682.705, and 682.706

Summary of Change: Provide additional detail beyond the statutory language of §§ 435(d)(5) and 428(b)(3) of the HEA by specifying prohibited activities that may not be used by lenders or guaranty agencies to secure loan applications or loan volume in the FFEL Program. Also reference activities of lenders and guaranty agencies that are permissible because they are comparable to the support provided to Direct Loan schools by the Department of Education. The detailed prohibitions reflect guidance provided by the Department in "Dear Colleague" Letters published in 1989 and 1995, ~~and~~ other guidance provided in response to individual inquiries received by the Department since the prohibitions were first enacted into law, and modifications to that guidance.

Tentative Agreement: No

Change:

§682.200 Definitions.

(b) * * *

Lender. (1) * * *

(5) ~~Inducements-~~ The term "eligible lender" does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has directly or through an agent, employee or contractor-

(i) Except as provided in subsection (iii), offered directly or indirectly points, premiums, payments, or other inducements to any school or other party to secure

applications for FFEL loans or to secure FFEL loan volume, which includes but ~~is~~ are not limited to—

(A) Payments or offerings of other benefits, including prizes or additional financial aid funds ~~or prizes~~, to a prospective ~~student, parent, or Consolidation Loan borrower~~ in exchange for applying for or accepting a FFEL loan from the lender;

(B) Payments or other benefits to a school or any school-affiliated organization ~~directly or indirectly affiliated with the school~~ in exchange for FEEL Loan applications, or application referrals, ~~or application processing rights~~, a specified volume or dollar amount of loans made, or placement on a school's list of recommended or suggested lenders;

(C) Payments or other benefits provided to a school or ~~any school-affiliated~~ organization under a practice or policy that such payments or other benefits are provided to the school or organization to secure applications for FFEL loans or to secure FFEL loan volume; ~~directly or indirectly affiliated with the school explicitly provided for in an agreement or other documentation; specifically tied to loan applications, application referrals, or application processing rights;~~

(D) Payments or other benefits provided to a student at a school who acts as the lender's representative to secure FFEL loan ~~applicant~~s applications from individual prospective ~~b~~orrowers, ~~or to a loan solicitor or sales representative who visits campuses to secure loan applicants;~~

(E) Payments or other benefits to a loan solicitor or sales representative of a lender who visits schools to solicit individual prospective borrowers to apply for FFEL loans ~~with~~from the lender;

(~~E~~-F) Payment of referral or processing fees to another lender ~~that exceed reasonable compensation for the administrative handling and marketing of FFEL loans availability~~availability by the referring or processing lender ~~lender~~, or that are based on volume or dollar amount of FFEL loans made;

(FG) Payment of conference or training registration, transportation, and lodging costs for an employee of a school or school-affiliated organization an employee of an organization directly or indirectly affiliated with a school;

(HG) Payment of entertainment expenses for employees of a school or a school-affiliated employees of an organization directly or indirectly affiliated with a school, including private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation, and other gratuities related to lender-sponsored social activities; and

(H) Providing below market terms of financing or below market rates for loan origination and servicing to a participating FFEL school lender.

(I) Undertaking philanthropic activities including providing scholarships, grants, restricted gifts or financial contributions in exchange for FFEL loan applications or application referrals, or specified volume or dollar amount of FFEL loans made, or placement on a school's list of recommended or suggested lenders.

(ii) For these purposes, an school-affiliated organization that is directly or indirectly affiliated with a school is defined as a school-affiliated organization in section 682.200. The term "applications" includes the FreeFederal Application for Federal Student Financial Aid (FAFSA), and FFEL loan master promissory notes, and FFEL consolidation loan application and promissory notes. The term "other benefits" includes, but is not limited to, preferential rates for or access to the lender's other financial products, computer hardware or non-loan processing or non-financial aid related computer software at below market rental or purchase cost, contributions to institutional scholarship funds, and printing and distribution of college catalogs and other materials at reduced or no cost. , and the placement of lender employees or contractors at the school, except on an occasional, short term emergency basis.

(iii) Notwithstanding paragraph (i) of this subsection, A a lender, in carrying out its role in the FFEL program and in attempting to provide better service, may provide—

(A) Assistance to a school that is comparable to the kinds of assistance provided by the Department of Education to a school in the William D. Ford Direct Loan Program as identified by the Secretary in a public announcement, such as a notice in the Federal Register.

(B) Staffing services to a school as a third-party servicer or otherwise on an occasional, short-term, emergency basis to assist the school with financial aid related functions;

(C) Support of and participation in a school's or a guaranty agency's student aid and financial literacy related outreach activities;

(D) ~~The cost of~~ Meals, refreshments, and receptions that are scheduled in conjunction with meeting, training, or conference events if those meals, refreshments, or receptions events are open to all meeting or conference attendees;

(E) Meals and refreshments, reasonable as to cost, nature, and amount, that are provided in connection with lender-sponsored training of program participants;

(~~E~~F) Toll-free telephone numbers for use by schools or others to obtain information about FFEL program loans and free data transmission service, ~~or~~ for use by schools to electronically submit applicant loan processing information or student status confirmation data;

(~~G~~F) A reduced origination fee in accordance with §682.202(c);

(~~H~~G) A reduced interest rate as provided under the Act;

(~~I~~H) Payment of Federal default fees in accordance with the Act ~~a non discriminatory manner~~;

(~~J~~I) Other benefits to a borrower under a repayment incentive program that requires, at a minimum, one or more scheduled payments to receive or retain the benefit; and

(~~K~~J) Items of a nominal value to schools, schools-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising or to ~~creation of~~ good will.

(~~iii~~iv) Conducted unsolicited mailings to a student or a student's parents of FFEL loan application forms, except to a student who previously has received a FFEL loan from the lender or to a student's parent who previously has received a FFEL loan from the lender;

(~~iii~~iv) Offered, directly or indirectly, a FFEL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

(~~iv~~vi) Engaged in fraudulent or misleading advertising with respect to its FFEL program loan activities.

~~(vii) Presumptions— (a) For purposes of any action to enforce the limitations included in paragraph(5), the Secretary applies a rebuttable presumption that the payments or activities listed in (5)(i) were offered or provided to secure applications for FFEL loans.~~

~~(b) For purposes of any action to enforce the limitations included in paragraph(5), the Secretary applies a rebuttable presumption that the payments or activities listed in paragraph (5)(ii) were not offered or provided to secure applications for FFEL loans.~~

682.401 Basic program agreement.

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(e) ~~Prohibited inducements—.~~ (1) A guaranty agency may not directly or through an agent or contractor—

(i) Except as provided in paragraph (3) of this subsection, offer directly or indirectly from any fund or assets available to the guaranty agency, any premium, payment, or other inducement to a student or a student's parents, any prospective borrower of a FFEL loan, or to a school or school-affiliated organization or an employee of or student of a school, or an entity or individual affiliated with a school or school-affiliated organization, to secure applications for FFEL loans, ~~except that a guaranty agency is not prohibited from providing assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of,~~

the Federal Direct Loan Program; which includes, but is not limited to—

(A) Payments or offerings of other benefits, including prizes or —additional financial aid funds,—or prizes, to a prospective borrower student or parent borrower in exchange for processing a loan using the agency’s loan guarantee;

(B) Payments or other benefits, including additional prizes or additional financial aid funds under any title IV or State or private programs, to a school based on the school’s voluntary or coerced agreement to use the guaranty agency for processing loans, or a specified volume of loans, using the agency’s loan guarantee;

(C) Payments or other benefits to a school or any school-affiliated organization, directly or indirectly affiliated with a school, or to any individual in exchange for FFEL loan —applications ,or application referrals, or application processing rights,— a specified volume or dollar amount of FFEL— loans, or the placement of a lender that uses the agency’s loan guarantee on a school’s list of recommended or suggested lenders; and

(D) Payments or other benefits provided to a school or any school- affiliated organization not explicitly provided for in an agreement or other documentation; under a practice or policy that such payments or other benefits are provided to the school or organization to secure applications for FFEL loans or to secure FFEL loan volume for the guaranty agency or a lender that uses the agency’s loan guarantee; organization directly or indirectly affiliated with a school not specifically tied to loan applications, loan referrals, or application processing rights;

(E) Payment of entertainment expenses for school employees or employees of school-affiliated organizations—directly or indirectly affiliated with a school, including private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation or other gratuities related to any social activity sponsored by the guaranty agency or a lender participating in the agency’s program; —and

(F) Undertaking philanthropic activities including providing scholarships, grants, restricted gifts or financial contributions in exchange for FFEL loan

applications or application referrals, a specified volume or dollar amount of FFEL loans using the agency's loan guarantee, or the placement of a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders.

(ii) As used in section (e) for these purposes, ~~an~~ a school-affiliated organization ~~directly or indirectly affiliated with a school~~ is defined as a school-affiliated organization in section 682.200. ~~At~~The term "applications" includes the ~~Free~~Federal Application for ~~Financial~~Federal Student ~~Aid~~ (FAFSA), FFEL loan master promissory notes, and FFEL consolidation loan application and promissory notes. The term ~~o~~"other benefits" includes, but ~~are~~is not limited to, preferential rates for or access to a guaranty agency's products and services, computer hardware or non-loan processing or non-financial aid related computer software at below market rental or purchase cost, ~~contributions to institutional scholarship funds,~~ and the printing and distribution of college catalogs and other non-counseling or non-student financial aid related materials at reduced or no cost., ~~and the placement of guaranty agency employees or contractors at the school except on an occasional, short-term emergency basis.~~

(iii) Assess additional costs or deny benefits otherwise provided to schools and lenders participating in the agency's program on the basis of the lender's or school's failure to agree to participate in, or to provide a specified volume of loan applications or loan volume+ to the agency's program or to place a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders.

(2) Subject to paragraphs (1)(i), (ii), and (iii), a guaranty agency is not prohibited from providing -

(i) Assistance to a school that is comparable to that provided by the Department of Education to a school in the William D. Ford Direct Loan Program, as identified by the Secretary in a public announcement such as a notice in the Federal Register; ~~which includes—~~

(ii) Staffing services to a school as a third-party servicer or otherwise on an occasional, short-term, or emergency basis to assist in carrying out the school's

financial aid related functions or assist the school in resolving identified compliance-related issues;

(iii) Reasonable costs for light meals and refreshments that are reasonable in cost and provided in connection associated with guaranty agency provided training of program participants and elementary, secondary, and postsecondary school personnel and with workshops and forums customarily used by the agency to fulfill its responsibilities under the Act;

(iv) Reasonable costs of Meals, refreshments and receptions that are scheduled in conjunction with training, meeting or conference events if those meals, refreshments, and receptions events are open to all training, meeting or conference attendees;

(v) Travel and lodging costs that are reasonable as to cost, location, and duration to facilitate the attendance of school staff in training or service facility tours that they would otherwise not be able to undertake, or to participate in the activities of an agency's governing board, a standing official advisory committee, or in support of other official activities of the agency;

(vi) Toll-free telephone numbers for use by schools or others to obtain information about FFEL program loans and free data transmission services for use by schools to electronically submit applicant loan processing information or student status confirmation data; and

(vii) Payment of Federal default fees in accordance with the Act a non-discriminatory manner.

(viii) Items of nominal value to schools, school-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising, or to create good will

(3)(i) Offer, directly or indirectly, any premium, incentive payment, or other inducement to any lender, or any person acting as an agent, employee, or independent contractor of any lender or other guaranty agency to administer or market FFEL loans, other than unsubsidized Stafford loans or subsidized Stafford loans made under a guaranty agency's lender-of-last-resort program, in an effort to secure the guaranty agency as an insurer of FFEL

loans. Examples of prohibited inducements include, but are not limited to—

(A) Compensating lenders or their representatives for the purpose of securing loan applications for guarantee;

(B) Performing functions normally performed by lenders without appropriate compensation;

(C) Providing equipment or supplies to lenders at below market cost or rental; or

(D) Offering to pay a lender, that does not hold loans guaranteed by the agency, a fee for each application forwarded for the agency's guarantee.

(ii) For the purposes of this section, the terms "premium", "inducement", and "incentive" do not include services directly related to the enhancement of the administration of the FFEL Program the guaranty agency generally provides to lenders that participate in its program. However, the terms "premium", "inducement", and "incentive" do apply to other activities specifically intended to secure a lender's participation in the agency's program.

(~~3-4~~) Mail or otherwise distribute unsolicited loan applications to students enrolled in a secondary school or a postsecondary institution, or to parents of those students, unless the potential borrower has previously received loans insured by the guaranty agency;

(~~4~~5) Conduct fraudulent or misleading advertising concerning loan availability.

~~(6) Presumptions— (a) For purposes of any action to enforce the prohibition on inducements included in paragraph (c), the Secretary applies a rebuttable presumption that the payments or activities listed in paragraph (c)(1) were offered or provided to secure applications for FFEL Loans or guarantees.~~

~~(b) For purposes of any action to enforce the prohibition on inducements included in paragraph (c), the Secretary applies a rebuttable presumption that the payments or activities listed in paragraph (c)(2) were not offered or provided to secure applications for loans or guarantees.~~

682.209 Repayment of a loan.

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(k) If a borrower receives a loan from a school or a school-affiliated organization or if the lender making the loan offered or provided an improper inducement as defined in 34 CFR 682.200(b)(“Lender”)(5)(i) to the borrower’s school or any other party in connection with the making of the loan or the proceeds of the loan are used to pay tuition and fee charges to a school that refers loan applicants to the lender or the school is affiliated with the lender by common control, contract or business arrangement, any lender holding such loan is subject to all claims and defenses that the borrower could assert against the school with respect to such loan.

682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.

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(d) A guaranty agency may not make a claim payment from the Federal Fund or receive a reinsurance payment on a loan if the lender offered or provided an improper inducement as defined in 34 CFR 682.200(b)(“Lender”)(5)(i) to any school or other party in connection with the making of the loan.

682.413 Remedial actions.

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(h) In any action to require repayment of funds or to withhold funds from a guaranty agency, or to limit, suspend, or terminate a guaranty agency based on a violation of 34 CFR 682.401(e), if the Secretary finds that the guaranty agency provided or offered the payments or activities listed in 34 CFR 682.401(e)(1), the Secretary applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans or to secure FFEL loan volume unless the

guaranty agency presents evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.

682.705 Suspension proceedings.

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(c) In any action to suspend a lender based on a violation of the prohibitions in section 435(d)(5) of the Act, if the Secretary, the designated department official, or hearing official finds that the lender provided or offered the payments or activities listed in 34 CFR 682.200(b)(“Lender”)(5)(i), the Secretary or the official applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans or to secure FFEL loan volume unless the lender presents evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.

682.706 Limitation or termination proceedings.

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(d) In any action to limit or terminate a lender’s eligibility based on a violation of the prohibitions in section 435(d)(5) of the Act, if the Secretary, the designated department official or hearing official finds that the lender provided or offered the payments or activities listed in 34 CFR 682.200(b)(“Lender”)(5)(i), the Secretary or the official applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans unless the lender presents evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.