

**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.

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) 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 to choose the lenders that 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~~ing~~ processing delays for borrowers who use a lender that has not been recommended or suggested by the school.

§ 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 studentborrower.

(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 and 682.401(e)

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 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.

Change:

§682.200 Definitions.

(b) * * *

Lender. (1) * * *

(5) 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) 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 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 FFEL 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 applicants applications from individual prospective borrowers, 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 withfrom 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 availabilityavailability 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, a 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. 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) A lender 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 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 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) Toll-free telephone numbers for use by schools or others to obtain information about FFEL program loans, or for use by schools to electronically submit applicant loan processing information or student status confirmation data;

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

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

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

(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

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

~~(iiiv)~~ 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;

~~(iiiv)~~ 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

~~(iivi)~~ 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.

* * * * *

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

(i) 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, a prospective borrower of a FFEL loan, or an employee of or student of a school, or an entity or individual affiliated with a school, 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 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) For these purposes, an school-affiliated organization 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 FinancialFederal Student -Aid (FAFSA) and FFEL loan master promissory notes. The term "other benefits" includes, but areis not limited to, preferential rates for or access to a guaranty agency's products and services, computer hardware 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) 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 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 sponsored 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, or 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;

(45) 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 (e), the Secretary applies a rebuttable presumption that the payments or activities listed in paragraph(e)(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 (e), the Secretary applies a rebuttable presumption that the payments or activities listed in paragraph (e)(2) were not offered or provided to secure applications for loans or guarantees.