Issue Paper 1
Proposed Regulatory Language
Team I – General/Lender Loan Issues

Origin:	HEOA §422
Issue:	Determining Borrower Eligibility for In-School Deferment
Statutory cites:	§428(b)(1)(Y)
Regulatory cites:	§§682.210(c)(1) and 685.204(b)(1)
DCL GEN-08-12 cite:	Page 133

Summary of issue:

The HEOA amended the provisions specifying the documentation that may be used for determining a borrower's eligibility for an in-school deferment by adding a provision that allows a lender to confirm a borrower's half-time enrollment status through use of the Department's National Student Loan Data System (NSLDS), if this confirmation is requested by the school the borrower is attending.

The new option for determining eligibility for an in-school deferment is in addition to the other methods that were specified in §428(b)(1)(Y) prior to the change made by the HEOA. A lender may still determine a borrower's eligibility for an in-school deferment based on receipt of a deferment request from the borrower, receipt of a loan application that documents the borrower's deferment eligibility, or receipt of student status information documenting the borrower's half-time enrollment status.

The HEOA also added a requirement that lenders provide certain information to a borrower when granting a deferment on an unsubsidized Stafford Loan. Specifically, a lender must provide the borrower with information to assist the borrower in understanding the impact of interest capitalization on the borrower's loan principal and on the total amount of interest to be paid over the life of the loan.

These new requirements also apply in the Direct Loan Program.

Issue Paper 2
Proposed Regulatory Language
Team I – General/Lender Loan Issues

Origin:	HEOA §422
Issue:	Borrower Notification When the Transfer, Sale, or Assignment of a Loan Results in a Change in the Party to Whom Payments Must be Sent
Statutory cites:	§428(b)(2)(F)(i)
Regulatory cites:	§682.208(e)
DCL GEN-08-12 cite:	Page 133

Summary of issue:

The HEOA amended §428(b)(2)(F)(i) of the HEA by adding additional information that must be provided to a borrower if the sale, transfer, or assignment of a loan results in a change in the identity of the party to whom the borrower must send payments or direct any communications. Prior to enactment of the HEOA, the HEA required that a borrower be notified of the sale or other transfer, the identity of the transferee, the name and address of the party to whom subsequent payments or communications must be sent, and the telephone numbers of both the transferor and the transferee. The HEOA added the following information that must be provided to the borrower:

(1) The effective date of the transfer of the loan;

(2) The date on which the current loan servicer (as of the date of the notice to the borrower) will stop accepting payments; and

(3) The date on which the new loan servicer will begin accepting payments.

Issue Paper 3
Proposed Regulatory Language
Team I – General/Lender Loan Issues

Origin:	HEOA §§422 and 436
Issue:	Lender and Guaranty Agency Prohibited Inducements
Statutory cites:	§§428(b)(3) and 435(d)(5)
Regulatory cites:	§§682.200(b) (definition of "Lender") and 682.401(e)
DCL GEN-08-12 cite:	Page 134

Summary of issue:

The HEA prohibits FFEL program lenders and guaranty agencies from providing, directly or indirectly, payments, premiums, or other inducements to secure loan applications or loan guarantees, conducting unsolicited mailings of FFEL loan applications (except to borrowers who had previously received loans through the lender or guaranty agency), and engaging in fraudulent or misleading advertising.

The Department published detailed regulations implementing these restrictions on November 1, 2007. These regulations became effective on July 1, 2008.

The HEOA amended the prohibited inducement provisions governing lenders and guaranty agencies.

The provisions governing a guaranty agency now –

- Prohibit the agency from offering, directly or indirectly, premiums, payments, stock or other securities, prizes, travel, entertainment expenses, tuition payment or reimbursement, or any other inducement to –
    - Any school or its employees to secure applicants for FFEL loans; or
    - Any lender, or any agency, employee, or independent contractor of any lender or guaranty agency, to administer or market FFEL loans (except for lender-of-last resort loans made by the agency) for the purpose of securing the agency's designation as guarantor;
- Specify that prohibited unsolicited mailings of student loan application forms to students or their families include those made through postal and electronic means and include students in secondary and postsecondary schools and the family members of such students;
- Prohibit the agency from performing, or paying someone else to perform, a FFEL school–required function, except for borrower exit counseling; and
- Specify that prohibited fraudulent and misleading advertising includes advertising regarding the terms and conditions of loans as well as loan availability.

The provisions governing an eligible lender now prohibit a lender from –

- Offering points, premiums, payments (including payments for referrals and for processing or finders fees), prizes, stock or other securities, travel, entertainment expenses, tuition payments or reimbursement, information technology equipment at

below-market value, additional financial aid funds, or other inducements to any school or school employee in order to secure loan applicants;

- Entering into any type of consulting arrangement or other contract with a school employee who works in the school's financial aid office or another employee who is responsible for student loans to secure services for the lender, or paying such an employee for serving on a lender advisory board, commission, or group, except that the lender may reimburse an employee serving on a board, commission or group for reasonable expenses incurred resulting from such service;
- Performing, or paying someone else to perform, FFEL school-required functions, except for borrower exit counseling;
- Paying or providing other benefits to a student at an institution to act as the lender's representative to secure loan applications from individual prospective borrowers unless the student is otherwise employed by the lender and the employment is disclosed;
- Offering, directly or indirectly, a FFEL loan to induce a prospective borrower to purchase an insurance policy or other product; and
- Engaging in fraudulent or misleading advertising.

The prohibited inducement provisions for lenders also apply the same conditions on unsolicited mailings as those that apply to a guaranty agency.

Issue Paper 4
Proposed Regulatory Language
Team I – General/Lender Loan Issues

Origin:	HEOA §422
Issue:	Lender Forbearance and Borrower Contact Requirements
Statutory cites:	§428(c)(3)(C)
Regulatory cites:	§682.211
DCL GEN-08-12 cite:	Page 119

Summary of issue:

Lenders are encouraged to grant forbearance of repayment to borrowers (or endorsers) who do not otherwise qualify for a deferment to prevent the borrower or endorser from becoming delinquent or defaulting on a student loan. Forbearance can take the form of a temporary cessation of all payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than those originally scheduled. Most borrowers who request forbearance choose to temporarily cease making all payments. The lender is authorized to capitalize any accrued, unpaid interest during the forbearance period.

Currently, a lender is required to engage in periodic contact with a FFEL borrower who is in forbearance only if the forbearance involves the postponement of all payments. In that case, under 34 CFR 682.211(e), the lender must contact the borrower at least every six months during the forbearance period and inform the borrower (or endorser) of –

- The outstanding obligation to repay;
- The amount of the unpaid principal balance and any unpaid interest that has accrued on the loan;
- The fact that interest will accrue on the loan for the full term of the forbearance, and
- The borrower's or endorser's option to discontinue the forbearance at any time.

The HEOA added a new provision that requires a lender, at the time any forbearance is granted, to provide information to assist the borrower in understanding the impact of the capitalization of accrued, unpaid interest during the forbearance period. The lender is also required to contact the borrower at least once every six months during the forbearance period and provide the following information –

- The amount of unpaid principal and the amount of accrued interest since the borrower was last provided with this information by the lender;
- A reminder that interest will continue to accrue on the loan during the forbearance period;
- The amount of interest that will be capitalized and the date that capitalization will take place;
- The borrower's option to pay the accrued interest before it is capitalized; and
- The borrower's option to end the forbearance at any time.

Issue Paper 5
Proposed Regulatory Language
Team I – General/Lender Loan Issues

Origin:	HEOA §422
Issue:	Applicability of the Servicemembers Civil Relief Act to FFEL and Direct Loan Borrowers, and Related FFEL Lender Special Allowance Payment Calculations
Statutory cites:	§§428(d) and 438(g)
Regulatory cites:	§§682.202, 682.302, and 685.202
DCL GEN-08-12 cite:	Page 120

Summary of issue:

The HEOA amended §428(d) of the HEA to specify that FFEL and Direct Loan program loans are subject to the provision in section 207 of the Servicemembers Civil Relief Act (50 U.S.C. 527) (the SCRA) that limits the interest rate on a borrower's loans to six percent during periods in which the borrower is on active duty military service. Previously, FFEL and Direct Loan program loans were not subject to the interest rate limitation of the SCRA.

To receive the benefit of the SCRA's interest rate limitation, a borrower must contact the holder of the borrower's loans in writing to request the interest rate adjustment, and must provide the holder with a copy of the borrower's military orders.

The HEOA also added a provision to §438 of the HEA specifying that for any FFEL Program loan first disbursed on or after July 1, 2008 that is subject to the six percent interest rate limit of the SCRA, the interest rate used to calculate the lender's special allowance payment is the rate that is determined in accordance with the SCRA.

Issue Paper 6
Proposed Regulatory Language
Team I – General/Lender Loan Issues s

Origin:	HEOA §§422 and 426
Issue:	Guaranty Agency Notifications to Borrowers in Default; Financial and Economic Literacy for Rehabilitated Borrowers
Statutory cites:	§§428(k) and 428F(c)
Regulatory cites:	§§682.410(b)(5), 682.410(b)(6), and 682.405 [add new 682.405(c)]
DCL GEN-08-12 cite:	Pages 120 and 121

Summary of issue:

The HEOA added new provisions to the HEA that require guaranty agencies to provide certain information to borrowers who are in default, and to borrowers who have rehabilitated defaulted loans.

Guaranty agency notifications to borrowers in default

The HEOA amended §428(k) of the HEA to require a guaranty agency that has received a default claim from a lender to send at least two separate notices to the defaulted borrower explaining in simple and understandable terms –

- The options that are available to the borrower to remove the borrower's loan from default, and
- The fees and conditions associated with each option.

*Financial and economic literacy for rehabilitated borrower*s

The HEOA added a new provision to §428F that requires a guaranty agency to make financial and economic education materials available to any borrower who has rehabilitated a defaulted loan. The HEOA does not define "financial and economic education materials."

Issue Paper 7
Proposed Regulatory Language
Team I – General/Lender Loan Issues

Origin:	HEOA §424
Issue:	PLUS Loan Deferments and Interest Capitalization
Statutory cites:	§428B(d)
Regulatory cites:	§§682.202(b), 682.209(a)(2), 682.210, 685.202(b), 685.204, and 685.207(d)
DCL GEN-08-12 cite:	Page 120

Summary of issue:

The HEOA modified earlier changes to the provisions governing PLUS loan repayment and interest capitalization that were made by the Ensuring Continued Access to Student Loans Act (ECASLA). The changes made by the HEOA apply to PLUS borrowers in both the FFEL and Direct Loan programs.

PLUS loan deferments

A PLUS loan enters repayment 60 days after the loan has been fully disbursed. The ECASLA amended the HEA to give parent PLUS borrowers the option of postponing repayment of PLUS loans first disbursed on or after July 1, 2008 until six months after the student on whose behalf the PLUS loan was obtained ceased to be enrolled on at least a half-time basis. (Prior to the ECASLA, eligibility to defer repayment of a PLUS loan while the student was in school was limited to borrowers with an outstanding balance on a FFEL Program loan made before July 1, 1993 or who had an outstanding balance on such a loan when they obtained a loan after that date.) The ECASLA did not provide graduate or professional student PLUS borrowers with the option of postponing repayment for six months after they cease to be enrolled at least half time.

The HEOA further amended the HEA to authorize a 6-month post-enrollment deferment for graduate or professional student PLUS borrowers and for parent PLUS borrowers who are also students. For PLUS loans first disbursed on or after July 1, 2008 –

- A parent PLUS borrower is eligible for deferment, upon the request of the borrower, during –
    - Any period when the student on whose behalf the PLUS loan was obtained is enrolled at least half time; and
    - During the 6-month period beginning on the later of the day after the student on whose behalf the PLUS loan was obtained ceases to be enrolled at least half time or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled at least half time.
- A graduate or professional student PLUS borrower is eligible for deferment during the 6-month period after he or she ceases to be enrolled at least half time.

These deferments are in addition to the deferments already available to PLUS borrowers under §§427(a)(2)(C), 428(b)(1)(M), and 455(f) of the HEA.

PLUS loan interest capitalization

The HEOA removed the interest capitalization provisions in §428B(d)(2) of the HEA that were added by the ECASLA and restored the pre-ECASLA language.

The ECASLA modified §428B(d)(2) of the HEA to require that interest on a PLUS loan that accrued from the date of the first disbursement until 60 days after the final disbursement be capitalized for parent PLUS borrowers who did not choose to postpone repayment until six months after the student ceased to be enrolled at least half time, and for all graduate and professional student PLUS borrowers.

For parent PLUS borrowers who deferred repayment while the student was in school and during the 6-month post-enrollment period (and for all PLUS borrowers during authorized deferment periods), the ECASLA provided that, if agreed upon by the borrower and the lender, interest that accrued prior to the beginning of the repayment period and during the postponement of repayment or deferment period could be paid by the borrower monthly or quarterly, or be capitalized by the lender no more frequently than quarterly.

The HEOA amended §428B(d)(2) of the HEA so that it now states, as it did prior to the ECASLA, that if agreed upon by the borrower and the lender, interest that accrues on a PLUS loan during a deferment period may be paid monthly or quarterly, or capitalized no more frequently than quarterly. Prior to the ECASLA, §428B(d)(2) of the HEA did not address the capitalization of interest that accrues from the date of the first loan disbursement until the date the loan enters repayment. Section 428B(d)(2) of the HEA as amended by the HEOA also does not address capitalization of interest that accrues during this period.

Issue Paper 8
Proposed Regulatory Language
Team I – General/Lender Loan Issues

Origin:	HEOA §425
Issue:	Consolidation Loan Borrower Eligibility and Applicant Disclosures
Statutory cites:	§§428C(a)(3)(B)(i), 428C(b)(5), and 428C(b)(1)(F)
Regulatory cites:	§§682.201(e), 682.205, and 685.220(d)
DCL GEN-08-12 cite:	Page 135

Summary of issue:

Borrower eligibility

The HEA specifies the conditions under which a FFEL-only borrower may consolidate a Stafford, PLUS or Consolidation loan into a Direct Consolidation Loan. The HEOA expanded those conditions to include consolidation of FFEL loans (including a single FFEL consolidation loan) into a Direct Consolidation Loan to permit a borrower performing active duty military service to receive the new Direct Loan "no interest accrual" benefit under §455(o) of the HEA. This benefit, which applies to loans first disbursed on or after October 1, 2008, provides that interest will not accrue on a borrower's Direct Loan for a period of up to 60 months while the borrower is performing eligible active duty military service.

FFEL consolidation loan applicant disclosures

The HEOA established new disclosures that a lender must provide to a prospective borrower, in simple and understandable terms, at the time the lender provides a Consolidation Loan application to the borrower. These disclosures are intended to ensure that borrowers are aware of benefits of their current loans, including loan forgiveness, cancellation, and deferments, that may be lost by consolidating. The lender must also advise the borrower that he or she is not obligated to take a Consolidation Loan simply by applying. Information must also be provided on available repayment plans, the ability to cancel or prepay the loan, the fact that certain borrower benefits may differ among FFEL consolidation lenders, and the consequences of default.

Issue Paper 9
Proposed Regulatory Language
Team I – General/Lender Loan Issues

Origin:	HEOA §426
Issue:	Consumer Credit Reporting After Loan Rehabilitation; Eligibility for Loan Rehabilitation
Statutory cites:	§§428F(a)(1)(A) and (a)(5)
Regulatory cites:	§§682.405(a) [add new (5)], 682.405(b)(3), and 685.211(f) [add new (4)]
DCL GEN-08-12 cite:	Page 121

Summary of issue:

The HEOA added a new consumer credit agency reporting requirement to the provisions in §428F(a)(1)(A) governing the sale of previously defaulted FFEL Program loans that have been rehabilitated. Upon the sale of a rehabilitated loan to an eligible lender, the guaranty agency or other holder of the previously defaulted loan must request that any consumer reporting agency to which the guaranty agency or other holder, as applicable, reported the default remove the default from the borrower's credit history. This requirement also applies to rehabilitated loans held by the Department. This statutory provision is effectively similar to the existing regulatory requirement for guaranty agencies in 34 CFR 682.405(b)(3).

The HEOA also added a provision to §428F(a) that prohibits a FFEL or Direct Loan borrower from rehabilitating a defaulted loan more than once. Prior this change, the HEA prohibited Perkins Loan borrowers from rehabilitating a defaulted loan more than once, but did not include a comparable restriction for FFEL and Direct Loan borrowers.

Issue Paper 10
Proposed Regulatory Language
Team I – General/Lender Loan Issues

Origin:	HEOA §454
Issue:	FFEL and Direct Loan Teacher Loan Forgiveness
Statutory cites:	§§428J and 460
Regulatory cites:	§§682.216 [as redesignated by final regulations issued on October 23, 2008] and 685.217
DCL GEN-08-12 cite:	Page 123

Summary of issue:

The HEOA amended the sections of the HEA that authorize loan forgiveness of up to $17,500 for FFEL and Direct Loan borrowers who teach for five years in low-income elementary or secondary schools and meet certain other requirements. Specifically, the HEOA –

(1) Expanded the loan forgiveness eligibility requirements to provide that a borrower may qualify for forgiveness by teaching at a low-income school or at a location that is operated by an educational service agency and that has been designated by the Secretary of Education as an eligible location for teacher loan forgiveness purposes. Previously, the law authorized loan forgiveness only for teaching service that was performed at a school.

(2) Removed a provision stating that a borrower could not receive loan forgiveness under both §428J of the HEA (teacher loan forgiveness for FFEL borrowers) and §460 of the HEA (teacher loan forgiveness for Direct Loan borrowers) and amended the provisions that prohibited a borrower from receiving benefits under the FFEL or Direct Loan teacher loan forgiveness programs and benefits under the AmeriCorps program. The law now specifies that a borrower may not receive, for the same teaching service, benefits under both §428J and §460. In addition, a borrower may not receive, for the same service, benefits under §428J or §460 and –

- Loan forgiveness under the new Loan Forgiveness Program for Service in Areas of National Need in §428K of the HEA (for FFEL and Direct Loan borrowers) that was authorized by the HEOA;
- Loan forgiveness under the Public Service Loan Forgiveness Program for Direct Loan borrowers in §455(m) of the HEA; or
- Benefits under subtitle D of Title I of the National and Community Service Act of 1990 (the AmeriCorps Program).

Prior to this change, the law did not prohibit a borrower from receiving loan forgiveness in both the FFEL and Direct Loan programs for the same teaching service.

Issue Paper 11
Proposed Regulatory Language
Team I – General/Lender Loan Issues

Origin:	HEOA §434
Issue:	Required Education Loan Borrower Disclosures by FFEL Lenders
Statutory cites:	§433
Regulatory cites:	§682.205
DCL GEN-08-12 cite:	Page 127

Summary of issue:

FFEL lenders are required to disclose to borrowers, using simple and understandable terms, certain information about a loan at the time of or before disbursement of the loan, and at or prior to the beginning of the repayment period on the loan. These disclosures and notices may be provided to the borrower by written or electronic means.

The HEOA amended these existing borrower disclosure requirements for lenders and added new disclosure requirements for borrowers who are in repayment and are having difficulty making payments, or for borrowers who are delinquent.

Amended disclosures before disbursement

The amended disclosures that are required before the disbursement of a loan include –

- A disclosure to unsubsidized Stafford Loan borrowers and student PLUS borrowers explaining –
    - That the borrower has the option to pay interest accruing on the loan while the borrower is a student; and
    - If the borrower does not pay the interest while in school, when and how often the interest on the loan will be capitalized.
- A disclosure to parent PLUS borrowers explaining –
    - That the parent has the option to defer payment on the loan while the student for whom they borrowed is enrolled at least half time;
    - If the parent does not pay interest accruing on the loan while the student is enrolled, when and how often interest will be capitalized; and
    - That the parent may be eligible for a deferment if the parent is enrolled at least half-time in an institution of higher education.
- A description of the types of repayment plans available.
- A statement summarizing the circumstances in which a borrower may obtain forbearance on the loan.
- An explanation of any costs the borrower may incur during repayment or in collection of the loan, including fees that the borrower may be charged such as late payment fees and collection costs.

In addition to the above disclosures, the HEOA made minor technical changes to the existing requirement for a separate notification from the FFEL lender to the borrower at the time the borrower is notified of the approval of the FFEL loan. This notification must summarize, in simple and understandable terms, the borrower's rights and responsibilities with respect to the loan, including a statement as to the consequences of default and the fact that a default will be reported to consumer reporting agencies.

Amended disclosures before repayment

The new amended disclosures that are required before repayment include –

- The scheduled date repayment is to begin or the date a deferment for a PLUS borrower under §428B(d)(1)of the HEA is scheduled to end.
- Information on loan repayment benefits offered for the loans, including –
    - Whether the lender offers benefits contingent on repayment behavior, such as a reduction in interest rate for automatic payment from a checking account or payroll deduction, or after a specific number of payments;
    - If the lender offers a benefit, any limitations on that benefit;
    - Information on the reasons that a borrower could lose eligibility for those benefits;
    - The impact of any interest rate reduction benefit on the borrower's pay off amount and time for repayment, and examples of the impact.
- A description of all the repayment plans available and a statement that the borrower can change plans during any point in repayment.
- If the borrower has paid interest on the loan, how much interest has already been paid.
- The nature of any fees which may accrue or be charged to the borrower in the repayment period.
- A description of the options by which the borrower may avoid or be removed from default as well as any fees associated with those options.
- Additional resources available to the borrower where the borrower may receive advice and assistance on loan repayment, including the Department's Student Loan Ombudsman, non profit organizations and counselors.

New disclosures required during repayment for loans for which the first payment is due on or after July 1, 2009

Lenders must provide a bill or statement corresponding to each installment time period in which a payment is due and must include, in simple and understandable terms –

- The original principal amount of the borrower's loan;
- The borrower's current balance, as of the time of the bill/statement;
- The interest rate on the loan;
- The total amount paid in interest on the loan;

- The aggregate amount the borrower has paid, including the amount paid in interest, the amount paid in fees, and the amount paid against the principal balance;
- A description of each fee charged for the most recently preceding installment time period;
- The date by which the borrower needs to make a payment to avoid additional fees and the amount of such payment and fees;
- The lender's or servicer's address and toll-free phone number for payment and billing errors; and
- A reminder that the borrower may change repayment plans, a list of the plans available, a link to the Department's website to obtain a more detailed description of the repayment plans, and directions for the borrower to follow to request a change in plans.

New disclosures for borrowers having difficulty making payments

A lender must provide the following information, in simple and understandable terms, to borrowers who have notified the lender that they are having difficulty making their payments –

- A description of the repayment plans available, including how to request a change in repayment plans;
- A description of the requirements for obtaining forbearance, including costs associated with forbearance; and
- A description of the options available to avoid default and any fees/costs associated with those options.

New disclosures required during delinquency for borrowers whose loans become delinquent on or after July 1, 2009

A lender must provide the following information, in simple and understandable terms, to borrowers who are 60 days delinquent –

- The date on which the loan will default if no payment is made;
- The minimum payment the borrower must make to avoid default;
- A description of the options available to avoid default and any fees or costs associated with those options, including forbearance and deferment and the requirements associated with each;
- Discharge options to which the borrower may be entitled; and
- Additional resources where the borrower can receive advice and assistance on loan repayment, including the Department's Student Loan Ombudsman.

The HEOA eliminated a statutory provision that assured the guaranty agency and lender that reinsurance and insurance coverage would not be abrogated if a lender failed in its obligation to comply with the disclosure requirements. The HEA continues to specifically authorize the Secretary to limit, suspend or terminate a lender's participation to make loans under the FFEL program if it fails to comply with these disclosure requirements.

Issue Paper 12
Proposed Regulatory Language
Team I – General/Lender Loan Issues

Origin:	HEOA §435
Issue:	Consumer Education Information Provided by Guaranty Agencies
Statutory cites:	§433A [new section]
Regulatory cites:	§682.401 [add new 682.401(g)]
DCL GEN-08-12 cite:	Page 135

Summary of issue:

The HEOA added a new §433A to the HEA that requires each guaranty agency to work with the schools that it serves to develop and make available high-quality materials and programs to provide training to students and families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high interest loans to pay for postsecondary education, and how budgeting and financial management relate to the Title IV student loan programs. The programs and materials must be in formats that are simple and understandable to students and their families, and must be provided before, during, and after a student's enrollment at an institution of higher education.

A guaranty agency may use existing activities, programs and materials to meet the requirements of the new provision, and may provide similar programs and materials to an institution that offers loans only through the Direct Loan Program.

In addition, lenders and loan servicers may provide schools with outreach and financial literacy information that is consistent with the requirements of new §433A.

Issue Paper 13
Proposed Regulatory Language
Team I – General/Lender Loan Issues

Origin:	HEOA §436
Issue:	New Audit Requirement for FFEL School Lenders and Eligible Lender Trustees (ELTs) Originating FFEL Loans for an Institution or School-Affiliated Organization
Statutory cites:	§435(d)(8)
Regulatory cites:	§§682.305(c) and 682.601(a)(7)
DCL GEN-08-12 cite:	Page 136

Summary of issue:

The HEA provides that a FFEL school lender must submit an annual lender compliance audit to the Department for any fiscal year in which the school engages in loan-making activities. These requirements are reflected in 34 CFR 682.601(a)(7). FFEL school lenders and institutions and school-affiliated organizations in an arrangement with a trustee lender must also –

- Use all proceeds from special allowance payments (SAP) received from ED, interest payments from borrowers, and any proceeds from the sale or other disposition of loans made, for need-based grant programs, and
- Ensure that the payments or proceeds used to make need-based grants are being used to supplement, not supplant, grant funds that would otherwise be made available by the school to its students.

In addition, a FFEL school lender must use no more than a reasonable portion of the payments or proceeds for direct administrative costs incurred by the school to perform activities required of a school lender.

The HEOA amended section 435(d)(8) of the HEA to specify that the annual compliance audit of the school lender or trustee lender include a determination that the lender is complying with the requirements governing the use of payments and proceeds.

Issue Paper 14
Proposed Regulatory Language
Team I – General/Lender Loan Issues

Origin:	HEOA §437
Issue:	Loan Discharges Based on Total and Permanent Disability
Statutory cites:	§§437(a), 464(c)(1)(F), and 464(k)
Regulatory cites:	§§674.9, 674.51(s), 674.61(b), 682.200(b), 682.201, 682.402(c), 685.200, and 685.213
DCL GEN-08-12 cite:	Page 132

Summary of issue:

The HEOA made several changes to the provisions in the HEA that authorize the discharge of a Title IV loan based on the borrower's total and permanent disability. These changes apply to borrowers in the FFEL, Direct Loan, and Federal Perkins Loan programs. Specifically, the HEOA –

(1) Modified the standard for determining that a borrower is totally and permanently disabled for loan discharge purposes. The HEA now provides for the discharge of a borrower's Title IV loans if the borrower –

- Becomes totally and permanently disabled as determined in accordance with the Department's regulations, or
- Is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that (1) can be expected to result in death, (2) has lasted for a continuous period of not less than 60 months, or (3) can be expected to last for a continuous period of not less than 60 months

(2) Established a separate standard for determining that certain veterans are totally and permanently disabled. A borrower who has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected condition and who provides documentation of that determination to the Department is considered permanently and totally disabled for the purpose of discharging his or her loans, and is not required to provide any additional documentation to establish eligibility for discharge.

(3) Authorized the Department to develop safeguards to prevent fraud and abuse in connection with the discharge of loans based on the borrower's death or total and permanent disability.

(4) Authorized the Department to issue regulations to reinstate a borrower's obligation to repay a loan that was discharged due to total and permanent disability if the borrower later –

- Receives another Title IV loan,
- Earns income in excess of the poverty line, or
- For any other reason the Department determines necessary.

Prior to the changes made by the HEOA, the HEA specified only that a borrower qualified for discharge of a Title IV loan if he or she became totally and permanently disabled "as determined in accordance with regulations of the Secretary." Under the Department's regulations, to be considered totally and permanently disabled a borrower must be unable to work and earn money because of an illness or injury that is expected to continue indefinitely or result in death.

The HEOA provision establishing a separate total and permanent disability standard for certain veterans has already been implemented. The Department has consulted with the Department of Veterans Affairs (VA) to identify the specific types of VA determinations that will establish a borrower's eligibility for discharge based on the new standard, and plans to issue guidance in the near future on procedures for processing total and permanent disability loan discharge requests from veterans who provide the appropriate documentation.

Issue Paper 15
Proposed Regulatory Language
Team I – General/Lender Loan Issues

Origin:	HEOA §120
Issue:	Required Education Loan Borrower Disclosures by lenders
Statutory cites:	New addition to Title I – sections 151-154
Regulatory cites:	New Part 601
DCL GEN-08-12 cite:	Page 39

Summary of issue:

The HEOA added new sections to the HEA requiring lenders to make specific disclosures to borrowers of both title IV loans (FFEL, Direct Loan, and Federal Perkins loans) and private education loans. Revised disclosure requirements for FFEL loans under section 433 of the HEA are discussed in a separate issue paper. The required lender disclosures to borrowers of private education loans are based on section 128(e)(1) of the Truth-in-Lending Act (TILA) and are governed by the Board of Governors of the Federal Reserve System.

The new sections of the HEA contain new definitions, and require new annual lender reporting to institutions and the Secretary, and a new annual lender submission to the Secretary of a certification of lender compliance.

The primary governing definitions include –

- *Education loan* – any FFEL, Direct Loan, or private education loan.
- *Private education loan* – has the meaning given the term in section 140 of the TILA and means a loan provided by a private educational lender that is not a title IV loan, is issued expressly for the postsecondary education expenses of the borrower regardless of whether the loan is provided through the educational institution that the student attends or directly to the borrower from the private educational lender, and does not include an extension of credit under an open end consumer mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.
- *Covered institution* – any institution of higher education, as that term is defined in section 102 of the HEA, which receives any Federal funding or assistance.
- *Institution-affiliated organization* – any organization that is directly or indirectly related to a covered institution, and is engaged in the practice of recommending or endorsing education loans for students attending such covered institution or the families of such students. Such an organization may include an alumni organization, athletic organization, foundation, or social, academic, or professional organization of a covered institution.
- *Lender* – an eligible lender in the FFEL program, the Department for the purpose of the Direct Loan program, and a private educational lender as defined in section 140 of the TILA

- *Preferred lender arrangement* – an arrangement or agreement between a lender and a covered institution, or an institution-affiliated organization of such covered institution, under which the lender provides or otherwise issues education loans to students attending the covered institution or the families of such students, and that involves the covered institution or institution-affiliated organization recommending, promoting, or endorsing the lender's education loan products.

A lender is required to report annually to covered institutions or institution-affiliated organizations with which it has preferred lender arrangements information required by the Secretary for each type of FFEL program loan it plans to offer under that preferred lender arrangement for attendance at that institution during the next award year.

FFEL Lenders also must report annually to the Department –

- Any reasonable expenses paid or provided to any agent of a covered institution who is employed in the financial aid office or has responsibility pertaining to education loans or other student financial aid and who is serving on a lender advisory board, commission, or group established by a lender or group of lenders; and
- Any similar expense paid or provided to an agent of an institution-affiliated organization who is involved in recommending, promoting or endorsing education loans.

The report must include a description of the activity for which expenses were paid and the dates of that activity; the amount paid for each instance and the name of the agent paid or for whom expenses were provided.

Finally, a lender is required to certify its compliance with the requirements of this new section as put forward in the HEOA, and any FFEL lender with a preferred lender arrangement must certify its compliance with the requirements of the HEA. A lender's compliance with this new section must be reported as part of its annual compliance audit.

Note: The lender-specific responsibilities in Section 152(b) and the definitions of the terms "eligible lender," "lender," and "private education loan," will be addressed by Team I – General/Lender Loan Issues. The remaining provisions in Sections 151-155 will be addressed by Team II – School-Based Loan Issues.