

**Issue 1**  
**Team I – General/Lender Loan Issues**  
**Proposed Regulatory Language (Contextual Format)**

**Origin:** HEOA §422  
**Issue:** Determining Borrower Eligibility for In-School Deferment  
**Statutory cites:** §428(b)(1)(Y)  
**Regulatory cites:** §§682.201(a), 682.210(c)(1), and 685.204(b)(1)  
**DCL GEN-08-12 cite:** Page 133

**Summary of change:**

(1) Adds a provision to reflect an HEOA notification requirement for borrowers who are granted a deferment on an unsubsidized loan. (2) Amends the regulations governing the approved methods for granting in-school deferments in the FFEL and Direct Loan programs to include the use of the Department's National Student Loan Data System.

**Change:**

**§682.210 Deferment.**

(a) *General.* (1)(i) A borrower is entitled to have periodic installment payments of principal deferred during authorized periods after the beginning of the repayment period, pursuant to paragraph (b) and paragraphs (s) through (v) of this section.

(ii) With the exception of a deferment authorized under paragraph (o) of this section, a borrower may continue to receive a specific type of deferment that is limited to a maximum period of time only if the total amount of time that the borrower has received the deferment does not exceed the maximum time period allowed for the deferment.

(2) \* \* \*

(3)(i) Interest accrues and is paid by =

(A) The Secretary during the deferment period for a subsidized Stafford loan and for all or a portion of a Consolidation loan that qualifies for interest benefits under §682.301; or

(B) The borrower during the deferment period and, as applicable, the post-deferment grace period, on all other loans.

~~the borrower during the deferment period and the post-deferment grace period, if applicable, unless interest accrues and is paid by the Secretary for a Stafford loan and for all or a portion of a qualifying Consolidation loan that meets the requirements under §682.301.~~

(ii) A borrower who is responsible for payment of interest during a deferment period must be notified by the lender at the time the deferment is granted that the borrower has the option to pay the accruing interest or cancel the deferment and continue paying on the loan. The lender must also provide information on the impact of capitalization of

accrued, unpaid interest on loan principal and on the total amount of interest to be paid over the life of the loan.

\* \* \* \* \*

(c) *In-school deferment.* (1) Except as provided in paragraph (c)(5) of this section, the lender processes a deferment for full-time study or half-time study at a school, when—

(i) The borrower submits a request and supporting documentation for a deferment;

(ii) The lender receives information from the borrower's school about the borrower's eligibility in connection with a new loan; ~~or~~

(iii) The lender receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower's enrollment status supports eligibility for a deferment; or

(iv) The lender confirms a borrower's half-time enrollment status through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending.

~~(2) The lender must notify the borrower that a deferment has been granted based on paragraph (c)(1)(ii) or (iii) of this section and that the borrower has the option to pay interest that accrues on an unsubsidized FFEL Proam loan or to cancel the deferment and continue paying on the loan. The lender must include in the notice an explanation of the consequences of these options.~~

~~(3)~~(2) \* \* \*

~~(4)~~(3) \* \* \*

~~(5)~~(4) \* \* \*

\* \* \* \* \*

**§685.204 Deferment.**

(a) \* \* \*

(b) Except as provided in paragraphs (d) and (g) of this section, a Direct Loan borrower is eligible for a deferment during any period during which the borrower meets any of the following requirements:

(1)(i) The borrower—

(A) Is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible school the borrower is attending;

(B) \* \* \*

(C) \* \* \*

(ii) \* \* \*

(iii)(A) For the purpose of paragraph (b)(1)(i)(A) of this section, the Secretary processes a deferment when—

(1) The borrower submits a request to the Secretary along with documentation verifying the borrower's eligibility;

(2) The Secretary receives information from the borrower's school indicating that the borrower is eligible to receive a new loan; ~~or~~

(3) The Secretary receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis; or

(4) The Secretary confirms a borrower's half-time enrollment status through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending.

(B)(1) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(1)(iii)(A)(2), ~~or~~(3) or (4) of this section, the borrower has the option to continue paying on the loan.

(2) If the borrower elects to cancel the deferment and continue paying on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest. The Secretary will provide information to assist the borrower in understanding the impact of capitalization of accrued, unpaid interest on the borrower's loan principal and on the total amount of interest to be paid over the life of the loan.

\* \* \* \* \*

**Issue 2**  
**Team I – General/Lender Loan Issues**  
**Proposed Regulatory Language (Contextual Format)**

**Origin:** HEOA §422  
**Issue:** Borrower Notification Upon Transfer, Sale, or Assignment of a Loan  
**Statutory cites:** §428(b)(2)(F)(i)  
**Regulatory cites:** §682.208(e)  
**DCL GEN-08-12 cite:** Page 133

**Summary of change:**

Amends the existing regulations by adding three additional HEOA-required informational items that must be provided to a borrower when the transfer, sale, or assignment of a loan results in a change in the identity of the party to whom payments and communication must be sent.

**Change:**

**§682.208 Due diligence in servicing a loan.**

\* \* \* \* \*

(e)(1) If the assignment or transfer of a Stafford, PLUS, SLS, or Consolidation loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide, either jointly or separately, a notice to the borrower of—

- (i) The assignment;
- (ii) The identity of the assignee;
- (iii) The name and address of the party to whom subsequent payments or communications must be sent; ~~and~~

(iv) The telephone numbers of both the assignor and the assignee;

(v) The effective date of the assignment or transfer of the loan;

(vi) The date on which the current loan servicer will stop accepting payments; and

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

(2) If the assignor and assignee separately provide the notice required by paragraph (e)(1) of this section, each notice must indicate that a corresponding notice will be sent by the other party to the assignment.

(3) For purposes of this paragraph, the term “assigned” is defined in §682.401(b)(17)(ii).

(4) The assignee, or the assignor on behalf of the assignee, shall notify the guaranty agency that guaranteed the loan within 45 days of the date the assignee acquires a legally enforceable right to receive payment from the borrower on the loan of—

(i) The assignment; and

(ii) The name and address of the assignee, and the telephone number of the assignee that can be used to obtain information about the repayment of the loan.

(5) The requirements of this paragraph (e), as to borrower notification, apply if the borrower is in a grace period or has entered the repayment period.

\* \* \* \* \*

**Issue 3**  
**Team I – General/Lender Loan Issues**  
**Proposed Regulatory Language (Contextual Format)**

**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 change:**

Amends existing regulations to include changes to the lender and guaranty agency prohibited inducement requirements as required by the HEOA.

**Change:**

**§682.200 Definitions.**

(a) \* \* \*

(b) The following definitions also apply to this part:

\* \* \* \* \*

*Lender.* (1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(4) \* \* \*

(5)(i) 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 or contractor—

(A) Except as provided in paragraph (5)(ii) of this definition, offered, directly or indirectly, points, premiums, payments (including payments for referrals, finder fees or processing fees), or other inducements to any school, any employee of a school, or any other party to secure applications for FFEL loans or to secure FFEL loan volume. This includes but is not limited to—

(1) Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective borrower or to a school or school employee in exchange for applying for or accepting a FFEL loan from the lender;

(2) Payments or other benefits, including payments of stock or other securities, tuition payments or reimbursements, to a school, a school employee, any school-affiliated organization, or to any other individual in exchange for FFEL loan applications, application referrals, or a specified volume or dollar amount of loans made, or placement on a school's list of recommended or suggested lenders;

(3) Payments or other benefits provided to a student at a school who acts as the lender's representative to secure FFEL loan applications from individual prospective borrowers, unless the student is also employed by the lender for other purposes and discloses that employment to school administrators and to prospective borrowers.

(4) 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 from the lender;

(5) Payment to another lender or any other party, including a school, a school employee, or a school-affiliated organization or its employees, of referral fees, finder fees or processing fees, except those processing fees necessary to comply with Federal or State law;

(6) ~~Solicitation of~~ Compensation to an employee of a school's financial aid office or other employee who has responsibilities with respect to student loans or other financial aid provided by the school or compensation to a school-affiliated organization or its employees, to serve on a lender's advisory board, ~~committee~~ commission or other group established by the lender, except that the lender may reimburse the employee for reasonable expenses incurred in providing the service; and/or payment of costs incurred on behalf of an employee of a school or school-affiliated organization to serve on a lender's advisory board or committee;

(7) Payment of conference or training registration, ~~travel~~ transportation, and lodging costs for an employee of a school or school-affiliated organization;

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

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

(10) Performance of, or payment to another third party to perform, any school function required under title IV, except that the lender may perform exit counseling as provided in §682.604(g), ~~Staffing services to a school,~~ and may provide services ~~provided~~ to participating foreign schools at the direction of the Secretary, as a third-party servicer. ~~or otherwise on more than a short-term, emergency basis, and which is non-recurring, to assist a school with financial aid related functions.~~

(11) Any type of consulting arrangement or other contract with an employee of a financial aid office at a school, or an employee of a school who otherwise has responsibilities with respect to student loans or other financial aid provided by the school under which the employee would provide services to the lender.

(B) Conducted unsolicited mailings, by postal or electronic means, of student loan application forms to ~~a student~~ enrolled in secondary schools or postsecondary institutions or to family members of such students ~~a student's parents of FFEL loan application forms,~~ except to a student or borrower 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;~~

(C) 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

(D) Engaged in fraudulent or misleading advertising with respect to its FFEL loan activities.

(ii) Notwithstanding paragraph (5)(i) of this definition, a lender, in carrying out its role in the FFEL program and in attempting to provide better service, may provide—

(A) ~~Technical Assistance~~ ~~assistance~~ to a school that is comparable to the kinds of ~~technical~~ assistance provided to a school by the Secretary under the Direct Loan program, as identified by the Secretary in a public announcement, such as a notice in the Federal Register;

(B) Support of and participation in a school's or a guaranty agency's student aid and financial literacy-related outreach activities, excluding in-person ~~school-required initial~~ ~~or~~ exit counseling, as long as the name of the entity that developed and paid for any materials is provided to the participants and the lender does not promote its student loan or other products;

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

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

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

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

(G) Payment of Federal default fees in accordance with the Act;

(H) Purchase of a loan made by another lender at a premium;

(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 or under a loan forgiveness program for public service or other targeted purposes approved by the Secretary, provided these benefits are not marketed to secure loan applications or loan guarantees;

(J) 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; and

(K) Other services as identified and approved by the Secretary through a public announcement, such as a notice in the Federal Register.

(iii) For the purposes of paragraph (5) of this definition—

(A) The term “school-affiliated organization” is defined in §682.200.



(B) The term “applications” includes the Free Application for Federal Student Aid (FAFSA), FFEL loan master promissory notes, and FFEL consolidation loan application and promissory notes.

(C) The term “other benefits” includes, but is not limited to, preferential rates for or access to the lender's other financial products, information technology equipment, ~~computer hardware~~ or non-loan processing or non-financial aid-related computer software at below market rental or purchase cost, and printing and distribution of college catalogs and other materials at reduced or no cost.

~~(D) The term “emergency basis” for the purpose of staffing services to a school under paragraph (i)(A)(10) of this section means a state or Federally declared natural disaster, a Federally declared national disaster, and other localized disasters and emergencies identified by the Secretary.~~

#### **§682.401 Basic program agreement.**

\* \* \* \* \*

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

(i) Except as provided in paragraph (e)(2) of this section, offer directly or indirectly from any fund or assets available to the guaranty agency, any premium, payment, stock or other securities, tuition payment or reimbursement or other inducement to any prospective borrower of an FFEL loan, or to a school or school-affiliated organization or an employee of a school or school-affiliated organization, to secure applications for FFEL loans. This includes, but is not limited to—

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

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

(C) Payments or other benefits to a school or any school-affiliated organization, or to any individual 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;

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

(E) 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; and

(F) Performance of, or payment to another third party to perform, any school required function required under title IV, except that the guaranty agency may provide exit counseling as provided for in §682.604(g), ~~Staffing services to a school, and may provide except for~~ services ~~provided~~ to participating foreign schools at the direction of the Secretary, as a third-party servicer. ~~or otherwise on more than a short-term, emergency basis, which is non-recurring, to assist the institution with financial aid-related functions.~~

(ii) 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 the agency's program, 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.

(iii) 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; ~~and~~

(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.;

(E) Providing or reimbursing travel or entertainment expenses;

(F) Providing or reimbursing tuition payments or expenses; and

(G) Offering prizes, or providing the payment of stocks or other securities.

(iv) 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.

(v) Conduct fraudulent or misleading advertising concerning loan availability, terms or conditions.

(2) Notwithstanding paragraph (e)(1)(i), (ii), and (iii) of this section, a guaranty agency is not prohibited from providing—

(i) Technical Assistance ~~assistance~~ to a school that is comparable to ~~that~~ the technical assistance provided by the Secretary to a school under the Direct Loan Program, as

identified by the Secretary in a public announcement, such as a notice in the Federal Register;

(ii) Default aversion activities approved by the Secretary under section 422(h)(4)(B) and 433A of the Act;

(iii) Student aid and financial-literacy related outreach activities, excluding in-person school-required initial ~~and exit~~ counseling, as long as the name of the entity that developed and paid for any materials is provided to participants and the guaranty agency does not promote its student loan or other products; but a guaranty agency may promote benefits provided under other Federal or State programs administered by the guaranty agency;

(iv) Meals and refreshments that are reasonable in cost and provided in connection 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;

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

(vi) ~~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~~ Reimbursement of reasonable expense incurred by school staff to attend training, 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;

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

(viii) Payment of Federal default fees in accordance with the Act;

(ix) 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;

(x) Loan forgiveness programs for public service and other targeted purposes approved by the Secretary, provided the programs are not marketed to secure loan applications or loan guarantees; and

(xi) Other services as identified and approved by the Secretary through a public announcement, such as a notice in the Federal Register.

(3) For the purposes of this section—

(i) The term “school-affiliated organization” is defined in §682.200.

(ii) The term “applications” includes the FAFSA, FFEL loan master promissory notes, and FFEL consolidation loan application and promissory notes.

(iii) The terms “other benefits” includes, but is not limited to, preferential rates for or access to a guaranty agency's products and services, information technology equipment,

~~computer hardware~~ or non-loan processing or non-financial aid related computer software at below market rental or purchase cost, and the printing and distribution of college catalogs and other non-counseling or non-student financial aid-related materials at reduced or not costs.

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

~~(v) The term “emergency basis” for the purpose of staffing services to a school under paragraph (e)(1)(i)(F) of this section means a State or Federally declared natural disaster, a Federally declared national disaster, and other localized disasters and emergencies identified by the Secretary.~~

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**Issue 4**  
**Team I – General/Lender Loan Issues**  
**Proposed Regulatory Language (Contextual Format)**

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

**Summary of change:**

Amends existing regulations to incorporate additional borrower contact and disclosure requirements for FFEL lenders granting forbearance as required by the HEOA.

**Change:**

**§682.211 Forbearance.**

\* \* \* \* \*

~~(e)(1) Except in the case of forbearance of interest payments during a deferment period, if a forbearance involves the postponement of all payments, At the time of granting a borrower or endorser forbearance, the lender must –~~

(i) Provide the borrower or endorser with information to assist the borrower in understanding the impact of capitalization of interest on the borrower's loan principal and total interest to be paid over the life of the loan, and

~~(ii) the lender must contact~~ Contact the borrower or endorser at least once every ~~six months~~ 180 days during the period of forbearance to inform the borrower or endorser of—

~~(1)(A)~~ (A) The outstanding obligation to repay;

~~(2)(B)~~ (B) The amount of the unpaid principal balance and any ~~unpaid~~ interest that has accrued on the loan since the last statement provided to the borrower;

~~(3)(C)~~ (C) The fact that interest will accrue on the loan for the full term of the forbearance; ~~and~~

(D) The amount of interest that will be capitalized and the date the capitalization will occur;

(E) The option of the borrower or endorser to pay the interest that has accrued before the interest is capitalized; and

~~(4)(F)~~ (F) The borrower's or endorser's option to discontinue the forbearance at any time.

\* \* \* \* \*

**Issue 5**  
**Team I – General/Lender Loan Issues**  
**Proposed Regulatory Language (Contextual Format)**

**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 change:**

Amends current interest rate regulations to provide that FFEL and Direct Loan program loans are now subject to the interest rate limitation of the Servicemembers Civil Relief Act, and makes a related change in the regulations governing the calculation of special allowance payments for FFEL Program loans.

**Change:**

**§682.202 Permissible charges by lenders to borrowers.**

The charges that lenders may impose on borrowers, either directly or indirectly, are limited to the following:

(a) *Interest.* The applicable interest rates for FFEL Program loans are given in paragraphs (a)(1) through (a)(4) and (a)(8) of this section.

- (1) \* \* \*
- (2) \* \* \*
- (3) \* \* \*
- (4) \* \* \*
- (5) \* \* \*
- (6) \* \* \*
- (7) \* \* \*

(8) *Applicability of the Servicemembers Civil Relief Act (50 U.S.C 527, sec. 207).* Notwithstanding paragraphs (a)(1) through (a)(4) of this section, effective August 14, 2008, upon the loan holder’s receipt of the borrower’s written request and a copy of the borrower’s military orders, the maximum interest rate that may be charged the borrower while the borrower is on active duty military service is 6 percent on FFEL Program loans made prior to the servicemember entering such active duty status.

\* \* \* \* \*

**§682.302 Payment of special allowance on FFEL loans.**

(a) *General.* The Secretary pays a special allowance to a lender on an eligible FFEL loan. The special allowance is a percentage of the average unpaid principal balance of a loan, including capitalized interest computed in accordance with paragraphs (c) and (f) of this section. Special allowance is also paid on the unpaid accrued interest of a loan covered by §682.215(b)(7) computed in the same manner as in paragraphs (c) and (f), as applicable, except for this purpose the applicable interest rate shall be deemed to be zero.

\* \* \* \* \*

(h) Calculation of Special Allowance Payments for Loans Subject to the Servicemembers Civil Relief Act (50 U.S.C. 527, sec. 207). For FFEL Program loans first disbursed on or after July 1, 2008 that are subject to the interest rate limit under the Servicemembers Civil Relief Act, special allowance is calculated in accordance with paragraphs (c) and (f) of this section, except the applicable interest rate for this purpose shall be 6 percent.

**§685.202 Charges for which Direct Loan Program borrowers are responsible.**

(a) *Interest* —(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(4) Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, sec.207). Notwithstanding paragraphs (a)(1) through (a)(3) of this section, effective August 14, 2008, upon the Secretary’s receipt of a borrower’s written request and a copy of the borrower’s military orders, the maximum interest rate that will be charged the borrower while the borrower is on active duty military service is 6 percent on Direct Loan program loans made prior to the servicemember entering such active duty status.

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**Issue 6**  
**Team I – General/Lender Loan Issues**  
**Proposed Regulatory Language (Contextual Format)**

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

**Summary of change:**

Adds provisions that require guaranty agencies to (1) make financial literacy and economic education materials available to a borrower who has rehabilitated a defaulted loan, and (2) notify borrowers of the available options for removing a loan from default after a guaranty agency has paid a default claim.

**Change:**

**§682.405 Loan rehabilitation agreement.**

\* \* \* \* \*

(c) A guaranty agency must make available financial and economic education materials, including debt management information, to any borrower who has rehabilitated a defaulted loan in accordance with paragraph (a)(2) of this section.

**§682.410 Fiscal, administrative, and enforcement requirements.**

\* \* \* \* \*

(b) *Administrative requirements* —(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(4) \* \* \*

(5) Reports to consumer reporting agencies~~Credit bureau reports~~. (i) After the completion of the procedures in paragraph (b)(5)(ii) of this section, the guaranty agency shall, after it has paid a default claim, report promptly, but not less than sixty days after completion of the procedures in paragraph (b)(6)(v) of this section, and on a regular basis, to all national ~~credit bureaus~~consumer reporting agencies—

(A) The total amount of loans made to the borrower and the remaining balance of those loans;

(B) The date of default;

(C) Information concerning collection of the loan, including the repayment status of the loan;



(D) Any changes or corrections in the information reported by the agency that result from information received after the initial report; and

(E) The date the loan is fully repaid by or on behalf of the borrower or discharged by reason of the borrower's death, bankruptcy, total and permanent disability, or closed school or false certification.

(ii) The guaranty agency, after it pays a default claim on a loan but before it reports the default to a ~~credit bureau~~ consumer reporting agency or assesses collection costs against a borrower, shall, within the timeframe specified in paragraph (b)(6)(v) of this section, provide the borrower with—

(A) Written notice that meets the requirements of paragraph (b)(5)(vi) of this section regarding the proposed actions;

(B) An opportunity to inspect and copy agency records pertaining to the loan obligation;

(C) An opportunity for an administrative review of the legal enforceability or past-due status of the loan obligation; and

(D) An opportunity to enter into a repayment agreement on terms satisfactory to the agency.

(iii) The procedures set forth in 34 CFR 30.20–30.33 (administrative offset) satisfy the requirements of paragraph (b)(5)(ii) of this section.

(iv)(A) In response to a request submitted by a borrower, after the deadlines established under agency rules, for access to records, an administrative review, or for an opportunity to enter into a repayment agreement, the agency shall provide the requested relief but may continue reporting the debt to ~~credit bureaus~~ consumer reporting agencies until it determines that the borrower has demonstrated that the loan obligation is not legally enforceable or that alternative repayment arrangements satisfactory to the agency have been made with the borrower.

(B) The deadline established by the agency for requesting administrative review under paragraph (b)(5)(ii)(C) of this section must allow the borrower at least 60 days from the date the notice described in paragraph (b)(5)(ii)(A) of this section is sent to request that review.

(v) An agency may not permit an employee, official, or agent to conduct the administrative review required under this paragraph if that individual is—

(A) Employed in an organizational component of the agency or its agent that is charged with collection of loan obligations; or

(B) Compensated on the basis of collections on loan obligations.

(vi) The notice sent by the agency under paragraph (b)(5)(ii)(A) of this section must—

(A) Advise the borrower that the agency has paid a default claim filed by the lender and has taken assignment of the loan;

(B) Identify the lender that made the loan and the school for attendance at which the loan was made;

(C) State the outstanding principal, accrued interest, and any other charges then owing on the loan;

(D) Demand that the borrower immediately begin repayment of the loan;

(E) Explain the rate of interest that will accrue on the loan, that all costs incurred to collect the loan will be charged to the borrower, the authority for assessing these costs, and the manner in which the agency will calculate the amount of these costs;

(F) Notify the borrower that the agency will report the default to all national ~~credit bureaus~~consumer reporting agencies to the detriment of the borrower's credit rating;

(G) Explain the opportunities available to the borrower under agency rules to request access to the agency's records on the loan, to request an administrative review of the legal enforceability or past-due status of the loan, and to reach an agreement on repayment terms satisfactory to the agency to prevent the agency from reporting the loan as defaulted to ~~credit bureaus~~consumer reporting agencies and provide deadlines and method for requesting this relief;

(H) Unless the agency uses a separate notice to advise the borrower regarding other proposed enforcement actions, describe specifically any other enforcement action, such as offset against Federal or state income tax refunds or wage garnishment that the agency intends to use to collect the debt, and explain the procedures available to the borrower prior to those other enforcement actions for access to records, for an administrative review, or for agreement to alternative repayment terms;

(I) Describe the grounds on which the borrower may object that the loan obligation as stated in the notice is not a legally enforceable debt owed by the borrower;

(J) Describe any appeal rights available to the borrower from an adverse decision on administrative review of the loan obligation;

(K) Describe any right to judicial review of an adverse decision by the agency regarding the legal enforceability or past-due status of the loan obligation; ~~and~~

(L) Describe the collection actions that the agency may take in the future if those presently proposed do not result in repayment of the loan obligation, including the filing of a lawsuit against the borrower by the agency and assignment of the loan to the Secretary for the filing of a lawsuit against the borrower by the Federal Government; ~~and~~

(M) Inform the borrower of the options that are available to the borrower to remove the loan from default, including an explanation of the fees and conditions associated with each option.

(vii) As part of the guaranty agency's response to a borrower who appeals an adverse decision resulting from the agency's administrative review of the loan obligation, the agency must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

(6) *Collection efforts on defaulted loans.* (i) A guaranty agency must engage in reasonable and documented collection activities on a loan on which it pays a default

claim filed by a lender. For a non-paying borrower, the agency must perform at least one activity every 180 days to collect the debt, locate the borrower (if necessary), or determine if the borrower has the means to repay the debt.

~~(v)~~(ii) Within 45 days after paying a lender's default claim, the agency must send a notice to the borrower that contains the information described in paragraph (b)(5)(ii) of this section. During this time period, the agency also must notify the borrower, either in the notice containing the information described in paragraph (b)(5)(ii) of this section, or in a separate notice, that if he or she does not make repayment arrangements acceptable to the agency, the agency will promptly initiate procedures to collect the debt. The agency's notification to the borrower must state that the agency may administratively garnish the borrower's wages, file a civil suit to compel repayment, offset the borrower's State and Federal income tax refunds and other payments made by the Federal Government to the borrower, assign the loan to the Secretary in accordance with §682.409, and take other lawful collection means to collect the debt, at the discretion of the agency. The agency's notification must include a statement that borrowers may have certain legal rights in the collection of debts, and that borrowers may wish to contact counselors or lawyers regarding those rights.

~~(vi)~~(iii) Within a reasonable time after all of the information described in paragraph (b)(6)~~(v)~~(ii) of this section has been sent, the agency must send at least one notice informing the borrower that the default has been reported to all national ~~credit~~ bureaus~~consumer reporting agencies~~ (if that is the case) and that the borrower's credit rating may thereby have been damaged.

(iv) The agency must send a notice informing the borrower of the options that are available to remove the loan from default, including an explanation of the fees and conditions associated with each option. This notice must be sent upon conclusion of the period for requesting an administrative review as specified in paragraph (b)(5)(iv)(B) of this section or, if the borrower has requested an administrative review, upon conclusion of the administrative review.

~~(ii)~~(v) A guaranty agency must attempt an annual Federal offset against all eligible borrowers. If an agency initiates proceedings to offset a borrower's State or Federal income tax refunds and other payments made by the Federal Government to the borrower, it may not initiate those proceedings sooner than 60 days after sending the notice described in paragraph (b)(5)(ii)(A) of this section.

~~(iii)~~(vi) A guaranty agency must initiate administrative wage garnishment proceedings against all eligible borrowers, except as provided in paragraph (b)(6)~~(iv)~~(vii) of this section, by following the procedures described in paragraph (b)(9) of this section.

~~(iv)~~(vii) A guaranty agency may file a civil suit against a borrower to compel repayment only if the borrower has no wages that can be garnished under paragraph (b)(9) of this section, or the agency determines that the borrower has sufficient attachable assets or income that is not subject to administrative wage garnishment that can be used to repay the debt, and the use of litigation would be more effective in collection of the debt.

\* \* \* \* \*

**Issue 7**  
**Team I – General/Lender Loan Issues**  
**Proposed Regulatory Language (Contextual Format)**

**Origin:** HEOA §424  
**Issue:** PLUS Loan Deferments and Interest Capitalization  
**Statutory cites:** §428B(d)  
**Regulatory cites:** §§682.202(b), 682.210, 682.211, 685.202(b), 685.204, and 685.205

**Summary of change:**

(1) Amends interest capitalization provisions to cover capitalization of PLUS interest that accrues from the date of the first disbursement until the loan enters repayment; (2) added provisions to cover new deferments for PLUS borrowers with loans first disbursed on or after July 1, 2008; (3) adds a new administrative forbearance provision to allow for alignment of repayment for borrowers with PLUS loans first disbursed before and after July 1, 2008.

**Change:**

**§ 682.202 Permissible charges by lenders to borrowers.**

\* \* \* \* \*

(b) *Capitalization.* (1) A lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance in accordance with this section. This increase in the principal balance of a loan is called “capitalization.”

(2) Except as provided in paragraph (b)(4) and (b)(5) of this section, a lender may capitalize interest payable by the borrower that has accrued—

(i) For the period from the date the first disbursement was made to the beginning date of the in-school period or, for a PLUS loan, for the period from the date the first disbursement was made to the date repayment of principal is scheduled to begin;

(ii) For the in-school or grace periods, or for a period needed to align repayment of an SLS with a Stafford loan, if capitalization is expressly authorized by the promissory note (or with the written consent of the borrower);

(iii) For a period of authorized deferment;

(iv) For a period of authorized forbearance; or

(v) For the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under paragraphs (b)(2)(ii) through (iv) of this section no more frequently than quarterly. Capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accrued interest under paragraph (b)(2) (i) and (v) of this section only on the date repayment of principal is scheduled to begin.

(4)(i) For unsubsidized Stafford loans disbursed on or after October 7, 1998 and prior to July 1, 2000, the lender may capitalize the unpaid interest that accrues on the loan according to the requirements of section 428H(e)(2) of the Act.

(ii) For Stafford loans first disbursed on or after July 1, 2000, the lender may capitalize the unpaid interest—

- (A) When the loan enters repayment;
- (B) At the expiration of a period of authorized deferment;
- (C) At the expiration of a period of authorized forbearance; and
- (D) When the borrower defaults.

(5) For Consolidation loans, the lender may capitalize interest as provided in paragraphs (b)(2) and (b)(3) of this section, except that the lender may capitalize the unpaid interest for a period of authorized in-school deferment only at the expiration of the deferment.

(6) For any borrower in an in-school or grace period or the period needed to align repayment, deferment, or forbearance status, during which the Secretary does not pay interest benefits and for which the borrower has agreed to make payments of interest, the lender may capitalize past due interest provided that the lender has notified the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

### **§682.210 Deferment.**

\* \* \* \* \*

(c) *In-school deferment.* (1) Except as provided in paragraph (c)(5) of this section, the lender processes a deferment for full-time study or half-time study at a school, when—

- (i) The borrower submits a request and supporting documentation for a deferment;
- (ii) The lender receives information from the borrower's school about the borrower's eligibility in connection with a new loan; ~~or~~
- (iii) The lender receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower's enrollment status supports eligibility for a deferment; or

(iv) The lender confirms a borrower's half-time enrollment status through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending.

(2) The lender must notify the borrower that a deferment has been granted based on paragraph (c)(1)(ii), ~~or~~ (iii) or (iv) of this section and that the borrower has the option to pay interest that accrues on an unsubsidized FFEL Program loan or to cancel the deferment and continue paying on the loan. The lender must include in the notice an explanation of the consequences of these options.

(3) The lender must consider a deferment granted on the basis of a certified loan application or other information certified by the school to cover the period lasting until the anticipated graduation date appearing on the application, and as updated by notice or Student Status Confirmation Report update to the lender from the school or guaranty agency, unless and until it receives notice that the borrower has ceased the level of study (*i.e.*, full-time or half-time) required for the deferment.

(4) In the case of a FFEL borrower, the lender shall treat a certified loan application or other form certified by the school or for multiple holders of a borrower's loans, shared data from the Student Status Confirmation Report, as sufficient documentation for an in-school student deferment for any outstanding FFEL loan previously made to the borrower that is held by the lender.

(5) A borrower serving in a medical internship or residency program, except for an internship in dentistry, is prohibited from receiving or continuing a deferment on a Stafford, or a PLUS (unless based on the dependent's status) SLS, or Consolidation loan under paragraph (c) of this section.

\* \* \* \* \*

(v) In-school deferments for PLUS loan borrowers with loans first disbursed on or after July 1, 2008. (1)(i) A student PLUS borrower is entitled to a deferment on a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If a lender grants an in-school deferment to a student PLUS borrower based on §682.210(c)(1)(ii), (iii), or (iv), the deferment period for a PLUS loan first disbursed on or after July 1, 2008 includes the 6-month post-enrollment period described in paragraph (v)(1)(i) of this section. The notice required by §682.210(c)(2) must inform the borrower that the in-school deferment on a PLUS loan first disbursed on or after July 1, 2008 will end six months after the day the borrower ceases to be enrolled on at least a half-time basis.

(2) Upon the request of the borrower, an eligible parent PLUS borrower is entitled to a deferment on a PLUS loan first disbursed on or after July 1, 2008 –

(i) During the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) During the 6-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

### **§682.211 Forbearance.**

\* \* \* \* \*

(f) A lender may grant forbearance, upon notice to the borrower or if applicable, the endorser, with respect to payments of interest and principal that are overdue or would be due—

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(4) \* \* \*

(5) \* \* \*

(6) \* \* \*

(7) \* \* \*

(8) \* \* \*

(9) \* \* \*

(10) \* \* \*

(11) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized; ~~or~~

(12) For a period not to exceed 3 months when the lender determines that a borrower's ability to make payments has been adversely affected by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization; ~~;~~

(13) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower's eligibility for loan forgiveness under the income-based repayment program. The lender must notify the borrower that the requirement to make payments on the loans for which forgiveness was requested has been suspended pending approval of the forgiveness by the guaranty agency; ~~;~~

(14) For a period of delinquency at the time a borrower makes a change to the repayment plan; ~~;~~ or

(15) For PLUS loans first disbursed before July 1, 2008, to align repayment with a borrower's PLUS loans that were first disbursed on or after July 1, 2008. The notice specified in the introductory language to paragraph (f) must inform the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

\* \* \* \* \*

**§685.202 Charges for which Direct Loan Program borrowers are responsible.**

\* \* \* \* \*

(b) *Capitalization.* (1) The Secretary may add unpaid accrued interest to the borrower's unpaid principal balance. This increase in the principal balance of a loan is called "capitalization."

(2) For a Direct Unsubsidized Loan or a Direct Unsubsidized Consolidation Loan that qualifies for a grace period under the regulations that were in effect for consolidation applications received before July 1, 2006, or for a Direct PLUS Loan, the Secretary may capitalizes the unpaid interest that accrues on the loan when the borrower enters repayment.

\* \* \* \* \*

**§ 685.204 Deferment.**

\* \* \* \* \*

(b) Except as provided in paragraphs (d) and (g) of this section, a Direct Loan borrower is eligible for a deferment during any period during which the borrower meets any of the following requirements:

(1)(i) The borrower—

(A) Is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible school the borrower is attending;

(B) \* \* \*

(C) \* \* \*

(ii) \* \* \*

(iii)(A) For the purpose of paragraph (b)(1)(i)(A) of this section, the Secretary processes a deferment when—

(1) The borrower submits a request to the Secretary along with documentation verifying the borrower's eligibility;

(2) The Secretary receives information from the borrower's school indicating that the borrower is eligible to receive a new loan; ~~or~~

(3) The Secretary receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis; or

(4) The Secretary confirms a borrower's half-time enrollment status through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending.

(B)(1) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(1)(iii)(A)( 2 ), ~~or~~(3) or (4) of this section, the borrower has the option to continue paying on the loan.

\* \* \* \* \*



(g) In-school deferments for Direct PLUS Loan borrowers with loans first disbursed on or after July 1, 2008. (1)(i) A student Direct PLUS Loan borrower is entitled to a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If the Secretary grants an in-school deferment to a student Direct PLUS Loan borrower based on §682.204(b)(1)(iii)(A)(2), (3), or (4), the deferment period for a Direct PLUS Loan first disbursed on or after July 1, 2008 includes the 6-month post-enrollment period described in paragraph (g)(1)(i) of this section.

(2) Upon the request of the borrower, an eligible parent Direct PLUS Loan borrower is eligible for a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008

=

(i) During the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) During the 6-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

~~(g)~~(h) \* \* \*

~~(h)~~(i)(1) To receive a deferment, except as provided under paragraph (b)(1)(i)(A) of this section, the borrower must request the deferment and provide the Secretary with all information and documents required to establish eligibility for the deferment. In the case of a deferment granted under paragraph (e)(1) of this section, a borrower's representative may request the deferment and provide the required information and documents on behalf of the borrower.

(2) After receiving a borrower's written or verbal request, the Secretary may grant a deferment under paragraphs (b)(1)(i)(B), (b)(1)(i)(C), (b)(2)(i), (b)(3)(i), (e)(1), and (f)(1) of this section if the Secretary confirms that the borrower has received a deferment on a Perkins or FFEL Loan for the same reason and the same time period.

(3) The Secretary relies in good faith on the information obtained under paragraph ~~(h)~~(i)(2) of this section when determining a borrower's eligibility for a deferment, unless the Secretary, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. The Secretary resolves any discrepant information before granting a deferment under paragraph ~~(h)~~(i)(2) of this section.

(4) If the Secretary grants a deferment under paragraph ~~(h)~~(i)(2) of this section, the Secretary notifies the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan.

\* \* \* \* \*

**§685.205 Forbearance.**

\* \* \* \* \*

(b) *Administrative forbearance.* In certain circumstances, the Secretary grants forbearance without requiring documentation from the borrower. These circumstances include but are not limited to—

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(4) \* \* \*

(5) \* \* \*

(6) \* \* \*

(7) \* \* \*

(8) A period during which the Secretary has authorized forbearance due to a national military mobilization or other local or national emergency; ~~or~~

(9) A period of up to 60 days necessary for the Secretary to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized; or

(10) For Direct PLUS Loans first disbursed before July 1, 2008, to align repayment with a borrower's Direct PLUS Loans that were first disbursed on or after July 1, 2008. The Secretary notifies the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

\* \* \* \* \*

**Issue 8**  
**Team I – General/Lender Loan Issues**  
**Proposed Regulatory Language (Contextual Format)**

**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 [new paragraph (i)], 682.206(f), and 685.220(d)  
**DCL GEN-08-12 cite:** Page 135

**Summary of change:**

(1) Amends borrower eligibility regulations to allow FFEL borrowers to consolidate into the Direct Loan Program to take advantage of the no interest accrual benefit for active duty servicemembers; (2) amends lender disclosure regulations to include additional disclosure requirements specific to consolidation loans as required by the HEOA; (3) adds a new provision to require a lender to provide a reasonable period within which a consolidation loan applicant may cancel the loan.

**Change:**

**§682.201 Eligible borrowers.**

\* \* \* \* \*

(e) A borrower's eligibility to receive a Consolidation loan terminates upon receipt of a Consolidation loan except that—

(1) Eligible loans received prior to the date a Consolidation loan was made and loans received during the 180-day period following the date a Consolidation loan was made, may be added to the Consolidation loan based on the borrower's request received by the lender during the 180-day period after the date the Consolidation loan was made;

(2) A borrower who receives an eligible loan before or after the date a Consolidation loan is made may receive a subsequent Consolidation loan;

(3) A Consolidation loan borrower may consolidate an existing Consolidation loan if the borrower has at least one other eligible loan made before or after the existing Consolidation loan that will be consolidated;

(4) If the consolidation loan has been submitted to the guaranty agency for default aversion, the borrower may obtain a subsequent consolidation loan under the Federal Direct Consolidation Loan Program for purposes of obtaining an income contingent repayment plan; and

(5) A FFEL borrower may consolidate his or her loans (including a FFEL Consolidation Loan) into the Federal Direct Consolidation Loan Program for the purpose of using the Public Service Loan Forgiveness Program, or the no accrual of interest benefit for active duty service.

## §682.205 Disclosure requirements for lenders.

\* \* \* \* \*

(i) Separate disclosure for Consolidation Loans. At the time the lender provides an application for a Consolidation Loan to a prospective borrower, it must disclose to the prospective borrower, in simple and understandable terms –

(1) Whether consolidation will result in a loss of loan benefits, including but not limited to loan forgiveness, cancellation, deferment, or a reduced interest rate on FFEL or Direct Loans repaid through consolidation;

(2) If a borrower is repaying a Federal Perkins Loan with the consolidation loan, that the borrower will lose-

(i) The interest-free periods available on the Perkins Loan while the borrower is enrolled in-school at least half-time, in the grace period, or in a deferment period; and

(ii) The cancellation benefits on the Perkins Loan. The lender must provide to the borrower a list of the Perkins Loan cancellation benefits that would not be available on the Consolidation Loan.

(3) The repayment plans available to the borrower;

(4) The borrower's options to prepay the consolidation loan, to pay the loan on a shorter repayment schedule, and to change repayment plans;

(5) That the borrower benefit programs for a consolidation loan vary among lenders;

(6) The consequences of default on the consolidation loan; and

(7) That applying for the consolidation loan does not obligate the borrower to agree to take the consolidation loan, and the process and deadline by which the borrower may cancel the consolidation loan.

## §682.206 Due diligence in making a loan.

\* \* \* \* \*

(f) Additional requirements for Consolidation loans. (1) Prior to ~~disbursement~~ making any payments to pay off a loan with the proceeds of a Consolidation Loan, the lender shall –

(i) ~~obtain~~ Obtain from the holder of each loan to be consolidated a certification with respect to the loan held by the holder that –

(i)(A) The Loan is a legal, valid, and binding obligation of the borrower;

(i)(B) The loan was made and serviced in compliance with applicable laws and regulations; and

(i)(C) In the case of a FFEL loan, that the guarantee on the loan is in full force and effect; and

(ii) Consistent with the requirements of §682.205(i)(7), notify the borrower, upon receipt of all information necessary to make the consolidation loan, of the borrower’s option to cancel the consolidation loan, and the deadline by which the borrower must notify the lender that he or she wishes to cancel the loan. The lender must provide no less than five business days for the borrower to cancel the loan.

(2) The Consolidation loan lender may rely in good faith on the certification provided under paragraph (f)(1)(i) of this section by the holder of a loan to be consolidated.

**§685.220 Consolidation**

\* \* \* \* \*

(d) *Eligibility for a Direct Consolidation Loan.* (1) A borrower may obtain a Direct Consolidation Loan if the borrower meets the following requirements:

(i) At the time the borrower applies for a Direct Consolidation Loan, the borrower either—

(A) Has an outstanding balance on a Direct Loan; or

(B) Has an outstanding balance on an FFEL loan and—

(1) The borrower is unable to obtain a FFEL consolidation loan;

(2) The borrower is unable to obtain a FFEL consolidation loan with income-sensitive repayment terms acceptable to the borrower;

(3) The borrower wishes to use the Public Service Loan Forgiveness Program or the no accrual of interest benefit for active duty service;

(4) The borrower has an FFEL Consolidation Loan that is in default or has been submitted to the guaranty agency by the lender for default aversion, and the borrower wants to consolidate the FFEL Consolidation Loan into the Direct Loan Program for the purpose of obtaining an income contingent repayment plan; or

(5) The borrower has a FFEL Consolidation Loan and the borrower wants to consolidate that loan into the Direct Loan Program for purposes of using the Public Service Loan Forgiveness Program or the no accrual of interest benefit for active duty service.

\* \* \* \* \*

**Issue 9**  
**Team I – General/Lender Loan Issues**  
**Proposed Regulatory Language (Contextual Format)**

**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), 682.405(b)(3), and 685.211(f)  
**DCL GEN-08-12 cite:** Page 121

**Summary of change:**

(1) Adds a new consumer credit reporting requirement after a defaulted loan has been rehabilitated; (2) amends regulations governing loan rehabilitation to provide that a FFEL or Direct Loan borrower may rehabilitate a defaulted loan only once.

**Change:**

**§682.405 Loan rehabilitation agreement.**

(a) *General.* (1) \* \* \*

(2) \* \* \*

(3) After the loan has been rehabilitated, the borrower regains all benefits of the program, including any remaining deferment eligibility under section 428(b)(1)(M) of the Act, from the date of the rehabilitation. The borrower may rehabilitate each loan only once.

(b) *Terms of agreement.* In the loan rehabilitation agreement, the guaranty agency agrees to ensure that its loan rehabilitation program meets the following requirements at all times:

(1) A borrower may request rehabilitation of the borrower's defaulted loan held by the guaranty agency. In order to be eligible for rehabilitation of the loan, the borrower must voluntarily make at least nine of the ten payments required under a monthly repayment agreement.

(i) Each of which payment is—

(A) Made voluntarily,

(B) In the full amount required, and

(C) Received within 20 days of the due date for the payment, and

(ii) All nine payments are received within a ten-month period that begins with the month in which the first required due date falls and ends with the ninth consecutive calendar month following that month.

(iii) For the purposes of this section, the determination of reasonable and affordable by the guaranty agency or its agents must—

(A) Include a consideration of the borrower's and spouse's disposable income and reasonable and necessary expenses including, but not limited to, housing, utilities, food, medical costs, work-related expenses, dependent care costs and other Title IV repayment;

(B) Not be a required minimum payment amount, e.g. \$50, if the agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. The agency must include documentation in the borrower's file of the basis for the determination if the monthly reasonable and affordable payment established under this section is less than \$50 or the monthly accrued interest on the loan, whichever is greater. However, \$50 may not be the minimum payment for a borrower if the agency determines that a smaller amount is reasonable and affordable; and

(C) Be based on the documentation provided by the borrower or other sources including, but not be limited to—

(1) Evidence of current income (e.g., proof of welfare benefits, Social Security benefits, child support, veterans' benefits, Supplemental Security Income, Workmen's Compensation, two most recent pay stubs, most recent copy of U.S. income tax return, State Department of Labor reports);

(2) Evidence of current expenses (e.g., a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(3) A statement of the unpaid balance on all FFEL loans held by other holders.

(iv) The agency must include any payment made under §682.401(b)(4) in determining whether the nine out of ten payments required under paragraph (b)(1) of this section have been made.

(v) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (b)(1)(iii)(C) of this section.

(vi) A guaranty agency must provide the borrower with a written statement confirming the borrower's reasonable and affordable payment amount, as determined by the agency, and explaining any other terms and conditions applicable to the required series of payments that must be made before a borrower's account can be considered for repurchase by an eligible lender. The statement must inform borrowers of the effects of having their loans rehabilitated (e.g., credit clearing, possibility of increased monthly payments). The statement must inform the borrower of the amount of the collection costs to be added to the unpaid principal at the time of the sale. The collection costs may not exceed 18.5 percent of the unpaid principal and accrued interest at the time of the sale.

(vii) A guaranty agency must provide the borrower with an opportunity to object to terms of the rehabilitation of the borrower's defaulted loan.

(2) For the purposes of this section, payment in the full amount required means payment of an amount that is reasonable and affordable, based on the borrower's total financial circumstances, as agreed to by the borrower and the agency. Voluntary payments are those made directly by the borrower and do not include payments obtained by Federal offset, garnishment, income or asset execution, or after a judgment has been

entered on a loan. A guaranty agency must attempt to secure a lender to purchase the loan at the end of the 9- or 10-month payment period as applicable.

(3) No later than 45 days after the date of the sale of a rehabilitated loan to an eligible lender, the guaranty agency and any other holder that reported the default must request that any consumer reporting agency to which the default was reported remove the record of the default from the borrower's credit history. ~~report to all national credit bureaus within 90 days of the date the loan was rehabilitated that the loan is no longer in a default status and that the default is to be removed from the borrower's credit history.~~

(4) An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans of the same loan type as the rehabilitated loan and must permit the borrower to choose any statutorily available repayment plan for that loan type. The lender must treat the first payment made under the nine payments as the first payment under the applicable maximum repayment term, as defined under §682.209(a) or (h). For Consolidation loans, the maximum repayment term is based on the balance outstanding at the time of loan rehabilitation.

#### **§685.211 Miscellaneous repayment provisions.**

(f) *Rehabilitation of defaulted loans.* (1) A defaulted Direct Loan, except for a loan on which a judgment has been obtained, is rehabilitated if the borrower makes nine voluntary, reasonable, and affordable monthly payments within 20 days of the due date during ten consecutive months. The amount of such a payment is determined on the basis of the borrower's total financial circumstances. If a defaulted loan is rehabilitated, the Secretary instructs any ~~credit bureau~~ consumer reporting agency to which the default was reported to remove the default from the borrower's credit history.

(2) A defaulted Direct Loan on which a judgment has been obtained may not be rehabilitated.

(3) A Direct Loan obtained by fraud for which the borrower has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance may not be rehabilitated.

(4) A defaulted Direct Loan may only be rehabilitated once.



**Issue 10**  
**Team I – General/Lender Loan Issues**  
**Proposed Regulatory Language (Contextual Format)**

**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 change:**

Amends redesignated §682.216 and §685.217 to (1) provide that teachers who are employed by eligible educational service agencies are eligible for loan forgiveness, (2) define educational service agency, and (3) incorporate other HEOA changes related to receipt of double benefits for the same teaching service.

**Change:**

**§682.215 Teacher loan forgiveness program.**

(a) *General.* (1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph on the borrower's subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

(2) The borrower must have been employed by an eligible elementary or secondary school or educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years. For teaching service performed by an employee of an eligible elementary or secondary school, at least one of which was the academic years must have been after the 1997–1998 academic year, in certain eligible elementary or secondary schools that serve low-income families. For teaching service performed by an employee of an eligible educational service agency, only service performed on or after August 14, 2008 may be counted toward the required five consecutive complete academic years.

(3) All borrowers eligible for teacher loan forgiveness may receive loan forgiveness of up to a combined total of \$5,000 on the borrower's eligible FFEL and Direct Loan Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of \$17,500 on the borrower's eligible FFEL and Direct Loan Program loans ~~if if~~ the borrower ~~taught~~ was employed for five consecutive years ~~as =~~

(i) At an eligible secondary school as a highly qualified mathematics or science teacher ~~in an eligible secondary school,~~ or at an eligible educational service agency as a highly qualified teacher of mathematics or science to secondary school students; or

(ii) At an eligible elementary or secondary school or educational service agency as a special education teacher, ~~in an eligible elementary or secondary school, the borrower may receive loan forgiveness of up to a combined total of \$17,500 on the borrower's eligible FFEL and Direct Loan Program loans.~~

(5) The loan for which the borrower is seeking forgiveness must have been made prior to the end of the borrower's fifth year of qualifying teaching service.

(b) *Definitions.* The following definitions apply to this section:

*Academic year* means one complete school year at the same school, or two complete and consecutive half years at different schools, or two complete and consecutive half years from different school years at either the same school or different schools. Half years exclude summer sessions and generally fall within a twelve-month period. For schools that have a year-round program of instruction, a minimum of nine months is considered an academic year.

*Educational service agency* means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act.

*Elementary school* means a public or nonprofit private school that provides elementary education as determined by State law or the Secretary if that school is not in a State.

*Full-time* means the standard used by a State in defining full-time employment as a teacher. For a borrower teaching in more than one school, the determination of full-time is based on the combination of all qualifying employment.

*Highly qualified* means highly qualified as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

*Secondary school* means a public or nonprofit private school that provides secondary education as determined by State law or the Secretary if the school is not in a State.

*Teacher* means a person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including Special Education teachers.

(c) *Borrower eligibility.* (1) A borrower ~~may obtain loan forgiveness under this program if he or she~~ who has been employed at an elementary or secondary school or educational service agency as a full-time teacher for five consecutive complete academic years, at least one of which was after the 1997–1998 academic year, may obtain loan forgiveness under this program if the ~~in an~~ elementary or secondary school or educational service agency ~~that~~—

(i) Is in a school district that qualifies for funds under title I of the Elementary and Secondary Education Act of 1965, as amended;

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's or educational service agency's total enrollment is made up of children who qualify for services provided under title I; and

(iii) Is listed in the *Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits*. If this directory is not available before May 1 of any year, the previous year's directory may be used. The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs Education (BIA/BIE) or operated on Indian reservations by Indian tribal groups under contract with the BIA/BIE to qualify as schools serving low-income students.

(2) If the school or educational service agency at which the borrower is employed meets the requirements specified in paragraph (c)(1) of this section for at least one year of the borrower's five consecutive complete academic years of teaching and ~~the school~~ fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that borrower.

(3) In the case of a borrower whose five consecutive complete years of qualifying teaching service began before October 30, 2004, the borrower—

(i) May receive up to \$5,000 of loan forgiveness if the borrower—

(A) Demonstrated knowledge and teaching skills in reading, writing, mathematics, and other areas of the elementary school curriculum, as certified by the chief administrative officer of the eligible elementary school or educational service agency that employed in which the borrower ~~was employed~~; or

(B) Taught in a subject area that is relevant to the borrower's academic major as certified by the chief administrative officer of the eligible secondary school or educational service agency that employed in which the borrower ~~was employed~~.

(ii) May receive up to \$17,500 of loan forgiveness if the borrower—

(A) Taught mathematics or science on a full-time basis ~~in at~~ an eligible secondary school, or taught mathematics or science to secondary school students on a full-time basis at an eligible educational service agency, and was a highly qualified mathematics or science teacher; or

(B) Taught as a special education teacher on a full-time basis to children with disabilities ~~in at~~ an eligible elementary or secondary school or educational service agency and was a highly qualified special education teacher whose special education training corresponded to the children's disabilities and who has demonstrated knowledge and teaching skills in the content areas of the elementary or secondary school curriculum.

(4) In the case of a borrower whose five consecutive years of qualifying teaching service began on or after October 30, 2004, the borrower—

(i) May receive up to \$5,000 of loan forgiveness if the borrower taught full time ~~in at~~ an eligible elementary or secondary school or educational service agency and was a highly qualified elementary or secondary school teacher.

(ii) May receive up to \$17,500 of loan forgiveness if the borrower—

(A) Taught mathematics or science on a full-time basis ~~in~~at an eligible secondary school, or taught mathematics or science on a full-time basis to secondary school students at an eligible educational service agency, and was a highly qualified mathematics or science teacher; or

(B) Taught as a special education teacher on a full-time basis to children with disabilities ~~in~~at an eligible elementary or secondary school or educational service agency and was a highly qualified special education teacher whose special education training corresponded to the children's disabilities and who has demonstrated knowledge and teaching skills in the content areas of the elementary or secondary school curriculum.

(5) To qualify for loan forgiveness as a highly qualified teacher, the teacher must have been a highly qualified teacher for all five years of eligible teaching service.

(6) For teacher loan forgiveness applications received by the loan holder on or after July 1, 2006, a teacher in a private, non-profit elementary or secondary school who is exempt from State certification requirements (unless otherwise applicable under State law) may qualify for loan forgiveness under paragraphs (c)(3)(ii) or (c)(4) of this section if—

(i) The private school teacher is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in applicable grade levels and subject areas;

(ii) The competency tests are recognized by 5 or more States for the purposes of fulfilling the highly qualified teacher requirements under section 9101 of the Elementary and Secondary Education Act of 1965; and

(iii) The private school teacher achieves a score on each test that equals or exceeds the average passing score for those 5 states.

(7) The academic year may be counted as one of the borrower's five consecutive complete academic years if the borrower completes at least one-half of the academic year and the borrower's employer considers the borrower to have fulfilled his or her contract requirements for the academic year for the purposes of salary increases, tenure, and retirement if the borrower is unable to complete an academic year due to—

(i) A return to postsecondary education, on at least a half-time basis, that is directly related to the performance of the service described in this section;

(ii) A condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601, *et seq.* ); or

(iii) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code.

(8) A borrower's period of postsecondary education, qualifying FMLA condition, or military active duty as described in paragraph (c)(7) of this section, including the time necessary for the borrower to resume qualifying teaching no later than the beginning of the next regularly scheduled academic year, does not constitute a break in the required five consecutive years of qualifying teaching service.

(9) A borrower who was employed as a teacher by ~~taught in~~ more than one qualifying school and/or qualifying educational service agency during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

(10) A borrower is not eligible for teacher loan forgiveness on a defaulted loan unless the borrower has made satisfactory repayment arrangements to re-establish title IV eligibility, as defined in §682.200.

(11) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under =

(i) 34 CFR 685.215;

(ii) ~~subtitle~~ Subtitle D of title I of the National and Community Service Act of 1990;

(iii) 34 CFR 685.219; or

(iv) Section 428K of the Act.

(d) *Forgiveness amount.* (1) A qualified borrower is eligible for forgiveness of up to \$5,000, or up to \$17,500 if the borrower meets the requirements of paragraphs (c)(3)(ii) or (c)(4)(ii) of this section. The forgiveness amount is deducted from the aggregate amount of the borrower's subsidized or unsubsidized Federal Stafford or Federal Consolidation Loan obligation that is outstanding after the borrower completes his or her fifth consecutive complete academic year of teaching as described in paragraph (c) of this section. Only the outstanding portion of the consolidation loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan, an eligible Direct Subsidized Loan, or an eligible Direct Unsubsidized Loan qualifies for loan forgiveness under this section.

(2) A borrower may not receive more than a total of \$5,000, or \$17,500 if the borrower meets the requirements of paragraphs (c)(3)(ii) or (c)(4)(ii) of this section, in loan forgiveness for outstanding principal and accrued interest under both this section and under section 34 CFR 685.217.

(3) The holder does not refund payments that were received from or on behalf of a borrower who qualifies for loan forgiveness under this section.

\* \* \* \* \*

### **§685.217 Teacher loan forgiveness program.**

(a) *General.* (1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph on the borrower's subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan

balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

(2) The borrower must have been employed by an eligible elementary or secondary school or educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years; For teaching service performed by an employee of an eligible elementary or secondary school, at least one of which was the academic years must have been after the 1997–1998 academic year; ~~in certain eligible elementary or secondary schools that serve low-income families.~~ For teaching service performed by an employee of an eligible educational service agency, only service performed on or after August 14, 2008 may be counted toward the required five consecutive complete academic years.

(3) All borrowers eligible for teacher loan forgiveness may receive loan forgiveness of up to a combined total of \$5,000 on the borrower's eligible FFEL and Direct Loan Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of \$17,500 on the borrower's eligible FFEL and Direct Loan Program loans ~~if if~~ the borrower ~~taught~~ was employed for five consecutive years ~~as~~ —

(i) At an eligible secondary school as a highly qualified mathematics or science teacher ~~in an eligible secondary school,~~ or at an eligible educational service agency as a highly qualified teacher of mathematics or science to secondary school students; or

(ii) At an eligible elementary or secondary school or educational service agency as a highly qualified special education teacher; ~~in an eligible elementary or secondary school, the borrower may receive loan forgiveness of up to a combined total of \$17,500 on the borrower's eligible FFEL and Direct Loan Program loans.~~

(5) The loan for which the borrower is seeking forgiveness must have been made prior to the end of the borrower's fifth year of qualifying teaching service.

(b) *Definitions.* The following definitions apply to this section:

*Academic year* means one complete school year at the same school, or two complete and consecutive half years at different schools, or two complete and consecutive half years from different school years at either the same school or different schools. Half years exclude summer sessions and generally fall within a twelve-month period. For schools that have a year-round program of instruction, a minimum of nine months is considered an academic year.

*Educational service agency* means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act.

*Elementary school* means a public or nonprofit private school that provides elementary education as determined by State law or the Secretary if that school is not in a State.

*Full-time* means the standard used by a State in defining full-time employment as a

teacher. For a borrower teaching in more than one school, the determination of full-time is based on the combination of all qualifying employment.

*Highly qualified* means highly qualified as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

*Secondary school* means a public or nonprofit private school that provides secondary education as determined by State law or the Secretary if the school is not in a State.

*Teacher* means a person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including Special Education teachers.

(c) *Borrower eligibility.* (1) A borrower ~~may obtain loan forgiveness under this program if he or she~~who has been employed at an elementary or secondary school or educational service agency as a full-time teacher for five consecutive complete academic years, at least one of which was after the 1997–1998 academic year, may obtain loan forgiveness under this program if the ~~in an~~ elementary or secondary school or educational service agency ~~that~~—

(i) Is in a school district that qualifies for funds under title I of the Elementary and Secondary Education Act of 1965, as amended;

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's or educational service agency's total enrollment is made up of children who qualify for services provided under title I; and

(iii) Is listed in the *Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits*. If this directory is not available before May 1 of any year, the previous year's directory may be used. The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs Education (BIA/BIE) or operated on Indian reservations by Indian tribal groups under contract with the BIA/BIE to qualify as schools serving low-income students.

(2) If the school or educational service agency at which the borrower is employed meets the requirements specified in paragraph (c)(1) of this section for at least one year of the borrower's five consecutive complete academic years of teaching and ~~the school failed~~ fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that borrower.

(3) In the case of a borrower whose five consecutive complete years of qualifying teaching service began before October 30, 2004, the borrower—

(i) May receive up to \$5,000 of loan forgiveness if the borrower—

(A) Demonstrated knowledge and teaching skills in reading, writing, mathematics, and other areas of the elementary school curriculum, as certified by the chief administrative officer of the eligible elementary school or educational service agency that employed in which the borrower ~~was employed~~; or

(B) Taught in a subject area that is relevant to the borrower's academic major as certified by the chief administrative officer of the eligible secondary school or educational service agency that employed in which the borrower ~~was employed~~.

(ii) May receive up to \$17,500 of loan forgiveness if the borrower—

(A) Taught mathematics or science on a full-time basis ~~in~~at an eligible secondary school, or taught mathematics or science to secondary school students on a full-time basis at an eligible educational service agency, and was a highly qualified mathematics or science teacher; or

(B) Taught as a special education teacher on a full-time basis to children with disabilities ~~in~~at an eligible elementary or secondary school or educational service agency and was a highly qualified special education teacher whose special education training corresponded to the children's disabilities and who has demonstrated knowledge and teaching skills in the content areas of the elementary or secondary school curriculum.

(4) In the case of a borrower whose five consecutive years of qualifying teaching service began on or after October 30, 2004, the borrower—

(i) May receive up to \$5,000 of loan forgiveness if the borrower taught full time in an eligible elementary or secondary school or educational service agency and was a highly qualified elementary or secondary school teacher.

(ii) May receive up to \$17,500 of loan forgiveness if the borrower—

(A) Taught mathematics or science on a full-time basis ~~in~~at an eligible secondary school, or taught mathematics or science on a full-time basis to secondary school students at an eligible educational service agency, and was a highly qualified mathematics or science teacher; or

(B) Taught as a special education teacher on a full-time basis to children with disabilities ~~in~~at an eligible elementary or secondary school or educational service agency and was a highly qualified special education teacher whose special education training corresponded to the children's disabilities and who has demonstrated knowledge and teaching skills in the content areas of the elementary or secondary school curriculum.

(5) To qualify for loan forgiveness as a highly qualified teacher, the teacher must have been a highly qualified teacher for all five years of eligible teaching service.

(6) For teacher loan forgiveness applications received by the Secretary on or after July 1, 2006, a teacher in a private, non-profit elementary or secondary school who is exempt from State certification requirements unless otherwise applicable under State law may qualify for loan forgiveness under paragraphs (c)(3)(ii) or (c)(4) of this section if—

(i) The private school teacher is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in applicable grade levels and subject areas;

(ii) The competency tests are recognized by 5 or more States for the purposes of fulfilling the highly qualified teacher requirements under section 9101 of the Elementary and Secondary Education Act of 1965; and

(iii) The private school teacher achieves a score on each test that equals or exceeds the average passing score for those 5 states.

(7) The academic year may be counted as one of the borrower's five consecutive complete academic years if the borrower completes at least one-half of the academic year and the borrower's employer considers the borrower to have fulfilled his or her contract



requirements for the academic year for the purposes of salary increases, tenure, and retirement if the borrower is unable to complete an academic year due to—

(i) A return to postsecondary education, on at least a half-time basis, that is directly related to the performance of the service described in this section;

(ii) A condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601, *et seq.*); or

(iii) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code.

(8) If a borrower meets the requirements of paragraph (c)(7) of this section, the borrower's period of postsecondary education, active duty, or qualifying FMLA condition including the time necessary for the borrower to resume qualifying teaching no later than the beginning of the next regularly scheduled academic year, does not constitute a break in the required five consecutive years of qualifying teaching service.

(9) A borrower who was employed as a teacher by ~~teaches in~~ more than one qualifying school and/or qualifying educational service agency during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

(10) A borrower is not eligible for teacher loan forgiveness on a defaulted loan unless the borrower has made satisfactory repayment arrangements to re-establish title IV eligibility, as defined in §685.200(b).

(11) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under —

(i) 34 CFR 682.216;

(ii) ~~subtitle~~ Subtitle D of title I of the National and Community Service Act of 1990;

(iii) 34 CFR 685.219; or

(iv) Section 428K of the Act.

(d) *Forgiveness amount.* (1) A qualified borrower is eligible for forgiveness of up to \$5,000, or up to \$17,500 if the borrower meets the requirements of paragraphs (c)(3)(ii) or (c)(4)(ii) of this section. The forgiveness amount is deducted from the aggregate amount of the borrower's Direct Subsidized Loan or Direct Unsubsidized Loan or Direct Consolidation Loan obligation that is outstanding after the borrower completes his or her fifth consecutive complete academic year of teaching as described in paragraph (c) of this section. Only the outstanding portion of the Direct Consolidation Loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan, an eligible Direct Subsidized Loan, or an eligible Direct Unsubsidized Loan qualifies for loan forgiveness under this section.

(2) A borrower may not receive more than a total of \$5,000, or \$17,500 if the

borrower meets the requirements of paragraphs (c)(3)(ii) or (c)(4)(ii) of this section, in loan forgiveness for outstanding principal and accrued interest under both this section and under section 34 CFR 682.215.

(3) The Secretary does not refund payments that were received from or on behalf of a borrower who qualifies for loan forgiveness under this section.

\* \* \* \* \*

**Issue 11**  
**Team I – General/Lender Loan Issues**  
**Proposed Regulatory Language (Contextual Format)**

**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 change:**

Amends existing regulations to include all new disclosures by FFEL lenders to borrowers as required by the HEOA.

**Change:**

**§682.205 Disclosure requirements for lenders.**

(a) *Initial disclosure statement.* (1) A lender must disclose the information described in paragraph (a)(2) of this section to a borrower, in simple and understandable terms, before or at the time of the first disbursement on a Federal Stafford or Federal PLUS loan. The information given to the borrower must prominently and clearly display, in bold type, a clear and concise statement that the borrower is receiving a loan that must be repaid.

(2) The lender shall provide the borrower with—

(i) The lender's name;

(ii) A toll-free telephone number accessible from within the United States that the borrower can use to obtain additional loan information;

(iii) The address to which correspondence with the lender and payments should be sent;

(iv) Notice that the lender may sell or transfer the loan to another party and, if it does, that the address and identity of the party to which correspondence and payments should be sent may change;

(v) The principal amount of the loan;

(vi) The amount of any charges, including the origination fee if applicable, and the ~~insurance premium~~ **Federal default fee**, to be collected by the lender before or at the time of each disbursement on the loan, and an explanation of whether those charges are to be deducted from the proceeds of the loan or paid separately by the borrower or paid by the lender;

(vii) The actual interest rate;

(viii) The annual and aggregate maximum amounts that may be borrowed;

(ix) A statement that information concerning the loan, including the date of disbursement and the amount of the loan, will be reported to a each national credit bureau consumer reporting agency;

(x) An explanation of when repayment of the loan is required and when the borrower is required to pay the interest that accrues on the loan, and a description of the types of repayment plans available;

(xi) The minimum and maximum number of years in which the loan must be repaid and the minimum amount of required annual payments;

(xii) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(xiii) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;

(xiv) A statement describing the circumstances under which repayment of the loan or interest that accrues on the loan may be deferred;

(xv) A statement of availability of the Department of Defense program for repayment of loans on the basis of military service, as provided for in 10 U.S.C. 2171.

(xvi) The definition of “default” found in §682.200, and the consequences to the borrower of a default, including a statement concerning likely litigation, a statement that the default will be reported to a each national credit bureau consumer reporting agency, and statements that the borrower will be liable for substantial collection costs, that the borrower's Federal and State income tax refund may be withheld to pay the debt, that the borrower's wages may be garnished or offset, and that the borrower will be ineligible for additional Federal student financial aid, as well as for assistance under most Federal benefit programs;

(xvii) An explanation of the possible effects of accepting the loan on the student's eligibility for other forms of student financial assistance;

(xviii) An explanation of any costs the borrower may incur during repayment in the making or in the collection of the loan, including any fees the borrower may be charged; and

(xix) In the case of a Stafford or student PLUS loan, a statement that the loan proceeds will be transmitted to the school for delivery to the borrower;

(xx) A statement of the total cumulative balance, including the loan applied for, owed to that lender, and an estimate of, or information that will allow the borrower to estimate, the projected monthly payment amount based on that cumulative outstanding balance.

(xxi) For unsubsidized or student PLUS borrowers, an explanation that the borrower may pay the interest while in school; and if the interest is not paid by the borrower while in school, when and how often the interest will be capitalized;

(xxii) For parent PLUS borrowers, an explanation that the parent may defer payment on the loan while the student on whose behalf the parent borrowed is enrolled at least half-time; and if the parent does not pay interest while the student on whose behalf the parent borrowed is in school, when and how often interest will be capitalized, and that the

parent may be eligible for a deferment on the loan if the parent is enrolled at least half-time;

(xxiii) A statement summarizing the circumstances in which a borrower may obtain forbearance on the loan;

(xiv) A description of the options available for forgiveness of the loan and the requirements to obtain that forgiveness;

(3) With the exception of paragraphs (a)(2)(i) through (a)(2)(iii), (a)(2)(v) through (a)(2)(vii), and (a)(2)(xx) of this section, a lender's disclosure requirements are met if it provides the borrower with either—

(i) The borrower's rights and responsibilities statement approved by the Secretary under paragraph (b) of this section; or

(ii) The plain language disclosure approved by the Secretary under paragraph (g) of this section for subsequent loans made under a Master Promissory Note.

(b) *Separate statement of borrower rights and responsibilities.* In addition to the disclosures required by paragraph (a) of this section, the lender must provide the borrower with a separate written statement, using simple and understandable terms, at or prior to the time of the first disbursement that summarizes the rights and responsibilities of the borrower with respect to the loan. The statement must also warn the borrower about the consequences described in paragraph (a)(2)(xvi) of this section if the borrower defaults on the loan, and that the default will be reported to each national consumer reporting agency. The Borrower's Rights and Responsibilities statement approved by the Secretary satisfies this requirement.

(c) ~~Disclosure of repayment~~ *Repayment information.* (1) Disclosures at or prior to repayment. The lender must disclose the information described in paragraph (c)(2) of this section, in simple and understandable terms, in a statement provided to the borrower at or prior to the beginning of the repayment period. In the case of a Federal Stafford ~~or Federal SLS~~ loan, the disclosures required by this paragraph must be made not less than 30 days nor more than 240-150 days before the first payment on the loan is due from the borrower. If the borrower enters the repayment period without the lender's knowledge, the lender must provide the required disclosures to the borrower immediately upon discovering that the borrower has entered the repayment period.

(2) The lender shall provide the borrower with—

(i) The lender's name, a toll-free telephone number accessible from within the United States that the borrower can use to obtain additional loan information, and the address to which correspondence with the lender and payments should be sent;

(ii) The scheduled date the repayment period is to begin, or a deferment under §682.210(v) is to end, if applicable;

(iii) The estimated balance, including the estimated amount of interest to be capitalized, owed by the borrower as of the date upon which the repayment period is to begin, a deferment under §682.210(v), if applicable, is to end, or the date of the disclosure, whichever is later;

- (iv) The actual interest rate on the loan;
- (v) An explanation of any fees that may accrue or be charged to the borrower during the repayment period;
- (vi) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments based on the repayment schedule selected by the borrower;
- (vii) Except in the case of a Consolidation loan, an explanation of any special options the borrower may have for consolidating or refinancing the loan and of the availability and terms of such other options;
- (viii) The estimated total amount of interest to be paid on the loan, assuming that payments are made in accordance with the repayment schedule; and if interest has been paid, the amount of interest paid;
- (ix) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;
- (x) Information on any special loan repayment terms offered on the loan, including terms that are contingent on repayment behavior such as a reduction in the interest rate on the loan if the borrower makes a specified number of payments, and any other special terms available to the borrower that would reduce the amount or length of repayment; and at the request of the borrower, an explanation of the effect of a reduced interest rate on the borrower's payoff amount and time for repayment;
- (xi) If the lender provides a repayment benefit, any limitations on that benefit, any circumstances in which the borrower could lose that benefit, and whether and how a borrower may regain eligibility for a repayment benefit;
- (xii) A description of all the repayment plans available to the borrower and a statement that the borrower may change plans during the repayment period;
- (xiii) A description of the options available to the borrower to avoid or be removed from default, as well as any fees associated with those options; and
- (xiv) Any additional resources, including nonprofit organizations, advocates and counselors, including the Department of Education's Student Loan Ombudsman, the lender is aware of where the borrower may obtain additional advice and assistance on loan repayment.

(3) Required disclosures during repayment. In addition to the disclosures required in (1), the lender must provide the borrower of a FFEL loan with a bill or statement that corresponds to each payment installment time period in which a payment is due that includes in simple and understandable terms –

- (i) The original principal amount of the borrower's loan;
- (ii) The borrower's current balance, as of the time of the bill or statement;
- (iii) The interest rate on the loan;
- (iv) The total amount of interest paid by the borrower;

(v) The total amount paid by the borrower on the loan, and separately identifying the amount the borrower has paid in interest on the loan, the amount of fees the borrower has paid on the loan, and the amount paid against the balance in principal;

(vi) A description of each fee the borrower has been charged for the most recent preceding installment time period;

(vii) The date by which a payment must be made to avoid additional fees and the amount of that payment and fees;

(viii) The lender's or servicer's address and toll-free telephone number for payments and billing error purposes; and

(ix) A reminder that the borrower may change repayment plans, a list of repayment plans available, a link to the Department of Education's website for repayment plan information, and directions on how the borrower may request a change in repayment plans from the lender.

(4) Required disclosures for borrowers having difficulty making payments. The lender shall provide a borrower who has notified the lender that he or she is having difficulty making payments with –

(i) A description of the repayment plans available to the borrower, and how the borrower may request a change in repayment plans;

(ii) A description of the requirements for obtaining forbearance on the loan and any costs associated with a forbearance; and

(iii) A description of the options available to the borrower to avoid default and any costs associated with those options.

(5) Required disclosures for borrowers who are 60-days delinquent in making payments on a loan. The lender shall provide to a borrower who is 60 days delinquent in making required payments with a notice of –

(i) The date on which the loan will default if no payment is made;

(ii) The minimum payment the borrower must make to avoid default, including payment sufficient to bring the loan current or payment in full;

(iii) A description of the options available to the borrower to avoid default, including deferment and forbearance and any costs associated with those options;

(iv) Any options for discharging the loan that may be available to the borrower; and

(v) Any additional resources, including nonprofit organizations, advocates and counselors, including the Department of Education's Student Loan Ombudsman, the lender is aware of where the borrower may obtain additional advice and assistance on loan repayment.

(d) Exception to disclosure requirement. In the case of a **Federal Unsubsidized loan or a Federal PLUS loan**, the lender is not required to provide the information in paragraph (c)(2)(viii) of this section if the lender, instead of that disclosure, provides the borrower with sample projections of the monthly repayment amounts assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the

borrower or student on whose behalf the loan is made is in school. Sample projections must disclose the cost to the borrower of principal and interest, interest only, and capitalized interest. The lender may rely on the PLUS promissory note and associated materials approved by the Secretary for purposes of complying with this section.

(e) *Borrower may not be charged for disclosures.* The lender must provide the information required by this section at no cost to the borrower.

(f) *Method of disclosure.* Any disclosure of information by a lender under this section may be through written or electronic means.

(g) *Plain language disclosure.* The plain language disclosure text, as approved by the Secretary, must be provided to a borrower in conjunction with subsequent loans taken under a previously signed Master Promissory Note. The requirements of paragraphs (a) and (b) of this section are satisfied for subsequent loans if the borrower is sent the plain language disclosure text and an initial disclosure containing the information required by paragraphs (a)(2)(i) through (iii), (a)(2)(v), (a)(2)(vi), (a)(2)(vii), and (a)(2)(~~xx~~)(xxiii) of this section.

(h) *Notice of availability of income-sensitive and income-based repayment options.*  
 (1) At the time of offering a borrower a loan and at the time of offering a borrower repayment options, the lender must provide the borrower with a notice that informs the borrower of the availability of income-sensitive and, except for parent PLUS borrowers and Consolidation Loan borrowers whose Consolidation Loan paid off one or more parent PLUS Loans, income-based repayment plans. This information may be provided in a separate notice or as part of the other disclosures required by this section. The notice must inform the borrower—

(i) That the borrower is eligible for income-sensitive repayment and may be eligible for income-based repayment, including through loan consolidation;

(ii) Of the procedures by which the borrower can elect income-sensitive or income-based repayment; and

(iii) Of where and how the borrower may obtain more information concerning income-sensitive and income-based repayment plans.

(i) Separate disclosure for Consolidation Loans. At the time the lender provides an application for a Consolidation Loan to a prospective borrower, it must disclose to the prospective borrower, in simple and understandable terms –

(1) Whether consolidation will result in a loss of loan benefits, including but not limited to loan forgiveness, cancellation, deferment, or a reduced interest rate on FFEL or Direct Loans repaid through consolidation;

(2) If a borrower is repaying a Federal Perkins Loan with the consolidation loan, that the borrower will lose-

(i) The interest-free periods available on the Perkins Loan while the borrower is enrolled in-school at least half-time, in the grace period, or in a deferment period; and



(ii) The cancellation benefits on the Perkins Loan. The lender must provide to the borrower a list of the Perkins Loan cancellation benefits that would not be available on the Consolidation Loan.

(3) The repayment plans available to the borrower;

(4) The borrower's options to prepay the consolidation loan, to pay the loan on a shorter repayment schedule, and to change repayment plans;

(5) That the borrower benefit programs for a consolidation loan vary among lenders;

(6) The consequences of default on the consolidation loan; and

(7) That applying for the consolidation loan does not obligate the borrower to agree to take the consolidation loan, and the process and deadline by which the borrower may cancel the consolidation loan.

**Issue 12**  
**Team I – General/Lender Loan Issues**  
**Proposed Regulatory Language (Contextual Format)**

**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 change:**

Adds a new provision requiring guaranty agencies to work with schools to develop consumer education materials and make these materials available to students and their families before, during, and after the student's enrollment.

**Change:**

**§682.401 Basic program agreement.**

\* \* \* \* \*

(g)(1) A guaranty agency must work with schools that participate in its program to develop and make available high-quality educational materials and programs to provide training to students and their 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.

(2) The materials and programs described in paragraph (g)(1) of this section must be in formats that are simple and understandable to students and their families, and must be made available to students and their families by the guaranty agency before, during, and after a student's enrollment at an institution of higher education.

(3) A guaranty agency may provide similar programs and materials to an institution that participates only in the William D. Ford Federal Direct Loan Program.

(4) A lender or loan servicer may also provide an institution with outreach and financial literacy information consistent with the requirements of paragraphs (g)(1) and (2) of this section.

**Issue 13**  
**Team I – General/Lender Loan Issues**  
**Proposed Regulatory Language (Contextual Format)**

**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 change:**

(1) Amends current lender audit requirements to cover a lender serving as a trustee on behalf of a school or school-affiliated organization to originate Stafford Loans for the school or school-affiliated organization, and (2) incorporates into the trustee and school lender audit requirements a review of the school's use of payments and proceeds from the loans for need-based grant programs, and of the school or trustee lender's use of a reasonable portion of those payments and proceeds for direct administrative expenses.

**Change:**

**§682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.**

\* \* \* \* \*

(c) *Independent audits.* (1) A lender (other than a school lender or a lender in its capacity as trustee on behalf of a school or school-affiliated organization for the purpose of originating loans) originating or holding more than \$5 million in FFEL loans during its fiscal year, and a school lender under §682.601 that originates or holds any FFEL loans during its fiscal year, must submit an independent annual compliance audit for that year, conducted by a qualified independent organization or person. The Secretary may, following written notice, suspend the payment of interest benefits and special allowance to a lender that does not submit its audit within the time period prescribed in paragraph (c)(2) ~~or of~~ this section.

(2) The audit required under paragraph (c)(1) of this section must—

- (i) Examine the lender's compliance with the Act and applicable regulations;
- (ii) Examine the lender's financial management of its FFEL program activities;

(iii) Be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO's) *Government Auditing Standards*. Procedures for audits are contained in an audit guide developed by and available from the Office of the Inspector General of the Department;

(iv) Be conducted at least annually and be submitted to the Secretary within six months of the end of the audit period. The initial audit must be of the lender's first fiscal

year that begins after July 23, 1992, and must be submitted within six months of the end of the audit period. Each subsequent audit must cover the lender's activities for the period beginning no later than the end of the period covered by the preceding audit;

(v) With regard to a lender that is a governmental entity or a nonprofit organization, the audit required by this paragraph must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR §§74.26 and 80.26, as applicable; and

(vi) With regard to a school that makes or originates loans, the audit requirements are in 34 CFR §682.601(a)(7); and

(vii) With regard to a lender serving as a trustee for the purpose of originating loans for a school or school-affiliated organization, the audit must include a determination that

=

(A) Except as provided in paragraph (c)(2)(vii)(B), the school used all proceeds from special allowance payments, interest subsidies received from the Department, and any proceeds from the sale or other disposition of the loans originated through the lender for need-based grant programs and that those grants supplemented, but did not supplant, other Federal or non-Federal funds otherwise available to be used to make need-based grants to its students, and

(B) The lender used no more than a reasonable portion of payments and proceeds from the loans for direct administrative expenses.

~~(vii)~~(3) The Secretary may determine that a lender has met the requirements of paragraph (c) of this section if the lender has been audited in accordance with 31 U.S.C. 7502 for other purposes, the lender submits the results of the audit to the Office of Inspector General, and the Secretary determines that the audit meets the requirements of this paragraph

\* \* \* \* \*

**§682.601 Rules for a school that makes or originates loans.**

(a) *General.* To make or originate loans under the FFEL program, a school—

(1) Must employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending the school;

(2) Must not be a home study school;

(3) Must not—

(i) Make a loan to any undergraduate student;

(ii) Make a loan other than a Federal Stafford loan to a graduate or professional student; or

(iii) Make a loan to a borrower who is not enrolled at that school;

(4) Must award any contract for financing, servicing, or administration of FFEL loans on a competitive basis;

(5) Must offer loans that carry an origination fee or an interest rate, or both, that are less than the fee or rate authorized under the provisions of the Act;

(6) Must not have a cohort default rate, as calculated under subpart M of 34 CFR part 668, greater than 10 percent;

(7) Must, for any fiscal year beginning on or after July 1, 2006 in which the school engages in activities as an eligible lender, submit an annual compliance audit that satisfies the following requirements:

(i) With regard to a school that is a governmental entity or a nonprofit organization, the audit must be conducted in accordance with §682.305(c)(2)(v) and chapter 75 of title 31, United States Code, and in addition, during years when the student financial aid cluster (as defined in Office of Management and Budget Circular A-133, Appendix B, Compliance Supplement) is not audited as a “Major Program” (as defined under 31 U.S.C. 7501) must, without regard to the amount of loans made, include in such audit the school's lending activities as a Major Program.

(ii) With regard to a school that is not a governmental entity or a nonprofit organization, the audit must be conducted annually in accordance with §682.305(c)(2)(i) through (iii);

(iii) With regard to any school, the audit must include a determination that –

(A) Except as provided in paragraphs (a)(8) and (b) of this section, the school used all payments and proceeds from the loans for need-based grant programs;

(B) The school met the requirements of (c) of this section in making the need-based grants; and

(C) The school used no more than a reasonable portion of payments and proceeds from the loans for direct administrative expenses.

(8) Must use any proceeds from special allowance payments and interest payments from borrowers, interest subsidy payments, and any proceeds from the sale or other disposition of loans (exclusive of return of principal, any financing costs incurred by the school to acquire funds to make the loans, and the cost of charging origination fees or interest rates at less than the fees or rates authorized under the HEA) for need-based grants; and

(9) Must have met the requirements to be an eligible lender as of February 7, 2006, and must have made one or more FFEL program loans on or before April 1, 2006.

(b) An eligible school lender may use a portion of the proceeds described in paragraph (a)(8) of this section for reasonable and direct administrative expenses. Reasonable and direct administrative expenses are those that are incurred by the school and are directly related to the school's performance of actions required of the school under the Act or the regulations in this part. Reasonable and direct administrative expenses do not include financing and similar costs such as costs paid by the school to obtain funding to make FFEL loans, the cost of paying Federal default fees on behalf of borrowers, or the cost of providing origination fees or interest rates at less than the fee or rate authorized under the provisions of the Act.

(c) An eligible school lender must ensure that the proceeds described in paragraph (a)(8) of this section are used to supplement, and not to supplant, non-Federal funds that would otherwise be used for need-based grant programs.

**Issue 14**  
**Team I – General/Lender Loan Issues**  
**Proposed Regulatory Language (Contextual Format)**

**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

**Summary of change:**

Amends the regulations governing total and permanent disability loan discharges to reflect the changes made by the HEOA.

**Change:**

**§674.9 Student eligibility.**

A student at an institution of higher education is eligible to receive a loan under the Federal Perkins Loan program for an award year if the student—

\* \* \* \* \*

(g)(~~1~~) In the case of a borrower whose prior loan under title IV of the Act was discharged after a final determination of total and permanent disability, ~~—~~

(1) ~~obtains~~ Obtains a certification from a physician that the borrower is able to engage in substantial gainful activity;

(2) Signs a statement acknowledging that any new Federal Perkins Loan ~~or NDSL~~ the borrower received cannot be discharged in the future on the basis of any present impairment, unless that condition substantially deteriorates; and

(3) If the borrower requests a new Federal Perkins Loan within five years of the date that any previous title IV loan was discharged due to a total and permanent disability in accordance with §674.61(b)(3)(i) on or after July 1, 2010, resumes repayment on the previously discharged loan in accordance with §674.61(b)(4)(ii) before receiving the new loan.

~~(3) In the case of a borrower whose previous loan under title IV of the HEA was discharged due to a total and permanent disability on or after July 1, 2001 and before July 1, 2002, meets the requirements of (g)(1) and (g)(2) of this section. If the borrower applies for another loan within three years from the date the borrower became totally and permanently disabled, as certified by the physician, the borrower must reaffirm the previously discharged loan before receiving the new loan; and~~

(h) In the case of a borrower whose previous loan under title IV of the HEA was conditionally discharged based on an initial determination that the borrower was totally and permanently disabled, the borrower must—

(1) Comply with the requirements of paragraphs ~~(h)(1)~~(g)(1) and (2) of this section; and

(2) Sign a statement acknowledging that—

(i) The loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge or when a new loan is made, unless that impairment substantially deteriorates; and

(ii) Collection activity will resume on any loan in a conditional discharge period, ~~as described in §674.61(b)(9).~~

(i) Does not have any loans under title IV of the HEA on which collection activity has been suspended based on a conditional determination that the borrower was totally and permanently disabled. If a borrower applies for a loan under title IV of the HEA during the conditional discharge period ~~described in §§674.61(b), 682.402(e), or 685.213(a)~~, the suspension of collection activity must be ended before the borrower becomes eligible to receive any additional loans.

\* \* \* \* \*

**§674.51 Special definitions.**

The following definitions apply to this subpart:

\* \* \* \* \*

(\*) Substantial gainful activity: A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

(s) Total and permanent disability: The condition of an individual who =

(1) is-Is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death. engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that –

(i) Can be expected to result in death;

(ii) Has lasted for a continuous period of not less than 60 months; or

(iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

[NOTE: Team II is proposing to add other new terms to §674.51. Based on those additions, a paragraph letter will be assigned to the new definition of “substantial gainful activity” and current paragraph (s) will be redesignated at a later date.]

**§ 674.61 Discharge for death or disability.**

(a) \* \* \*

(b) Total and permanent disability as defined in §674.51(s)(1) —

(1) General. A borrower's Defense, NDSL, or Perkins loan is discharged if the borrower becomes totally and permanently disabled, as defined in §674.51(s)(1), and satisfies the additional eligibility requirements contained in this section.



(2) *Discharge application process for borrowers who have a total and permanent disability as defined in §674.51(s)(1).* (i) To qualify for discharge of a Defense, NDSL, or Perkins loan based on a total and permanent disability as defined in §674.51(s)(1), a borrower must submit a discharge application approved by the Secretary to the institution that holds the loan.

(ii) The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in §674.51(s)(1).

(iii) The borrower must submit the application to the institution within 90 days of the date the physician certifies the application.

(iv) Upon receiving the borrower's complete application, the institution must suspend collection activity on the loan and inform the borrower that—

(A) The institution will review the application and assign the loan to the Secretary for an eligibility determination if the institution determines that the certification supports the conclusion that the borrower is totally and permanently disabled, as defined in §674.51(s)(1);

(B) The institution will resume collection on the loan if the institution determines that the certification does not support the conclusion that the borrower is ~~not~~ totally and permanently disabled; and

(C) If the Secretary discharges the loan based on a determination that the borrower is totally and permanently disabled, as defined in §674.51(s)(1), the Secretary will reinstate the borrower's obligation to repay the loan, with interest charged from the date of the discharge, if within five years after the date the Secretary granted the discharge the borrower~~institution concludes that the certification and other evidence submitted by the borrower supports the borrower's eligibility for a total and permanent disability discharge, to remain eligible for the final discharge, the borrower must, from the date the physician completes and certifies the borrower's total and permanent disability on the application until the date the borrower receives a final disability discharge—~~

(1) ~~Not receive~~Has annual earnings from employment that exceed 100 percent of the poverty line for ~~a family of two~~the borrower's family size, as determined in accordance with the Community Service Block Grant Act; or

(2) ~~Not receive~~Receives a Teacher Education Assistance for College and Higher Education (TEACH) Grant or a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that ~~does not include~~s any loans ~~on which the borrower is seeking a discharge~~that were not discharged; and

(3) ~~Must ensure that the full amount of any Title IV loan disbursement made to the borrower on or after the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.~~

(v) If, after reviewing the borrower's application, the institution determines that the application is complete and supports the conclusion that the borrower is totally and permanently disabled as defined in §674.51(s)(1), the institution must assign the loan to the Secretary.

(vi) At the time the loan is assigned to the Secretary, the institution must notify the borrower that the loan has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan.

(3) *Secretary's ~~initial~~ eligibility determination.* (i) If the Secretary determines that the borrower is totally and permanently disabled as defined in §674.51(s)(1), the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower that the loan has been discharged. ~~will be in a conditional discharge status for a period of up to three years, beginning on the date the physician certified the borrower's total and permanent disability on the discharge application.~~ The notification to the borrower ~~identifies~~ explains the terms and conditions ~~of the conditional discharge period~~ under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph ~~(b)(2)(iv)(C)~~ (b)(4) of this section.

(ii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower ~~meets the criteria for a total and permanent disability discharge in paragraph (e)(4)(i) of this section~~ is totally and permanently disabled as defined in §674.51(s)(1), the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(4) *Eligibility requirements* Conditions for reinstatement of a loan after a total and permanent disability discharge. (i) ~~A borrower meets the eligibility criteria for a discharge of a loan based on a total and permanent disability if, from the date the physician certifies the borrower's discharge application, through the end of the three year conditional discharge period~~ The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(3)(i) of this section if within five years after the date the Secretary granted the discharge, the borrower —

(A) ~~The borrower's~~ Has annual earnings from employment ~~do not~~ that exceed 100 percent of the poverty line for ~~a family of two~~ the borrower's family size, as determined in accordance with the Community Service Block Grant Act; or

(B) ~~The borrower does not receive~~ Receives a new TEACH Grant or a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that ~~does not~~ includes any loans that ~~are in a conditional discharge status~~ were not discharged.; and

~~(C) The borrower ensures that the full amount of any title IV loan disbursement received after the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.~~

(ii) If a borrower's obligation to repay a loan is reinstated, the Secretary requires the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the loan was reinstated.

~~(ii)(5) Borrower's responsibilities after a total and permanent disability discharge.~~ During the ~~conditional discharge~~ five-year period described in paragraph (b)(4)(i) of this section, the borrower or, if applicable, the borrower's representative—

~~(A) Is not required to make any payments on the loan;~~

~~(B) Is not considered past due or in default on the loan, unless the loan was past due or in default at the time the conditional discharge was granted;~~

~~(C)(i)~~ Must promptly notify the Secretary of any changes in address or phone number;

~~(D)(ii)~~ Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph ~~(b)(2)(C)(i)(A)~~ of this section, or if the borrower's family size changes; and

~~(E)(iii)~~ Must provide the Secretary, upon request, with ~~additional documentation or information related to~~ the borrower's ~~eligibility for a discharge under this section~~ annual earnings from employment.

~~(iii) If, at any time during or at the end of the three-year conditional discharge period, the Secretary determines that the borrower does not continue to meet the eligibility criteria for a total and permanent disability discharge, the Secretary ends the conditional discharge period and resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the Secretary's initial eligibility determination described in paragraph (b)(3) of this section through the end of the conditional discharge period.~~

~~(iv)~~ (6) Secretary's right to require additional documentation. The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as defined in §674.51(s)(1). As part of ~~this the~~ Secretary's review of the borrower's discharge application, ~~or at any time during the application process or during or at the end of the conditional discharge period,~~ the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the ~~applicant~~ borrower.

~~(5)(7)~~ *Payments received after the physician's certification of total and permanent disability.* (i) If, after the date the physician completes and certifies the borrower's loan discharge application, the institution receives any payments from or on behalf of the borrower on or attributable to a loan that was assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the institution must forward those payments to the Secretary for crediting to the borrower's account.

(ii) At the same time that the institution forwards the payment, it must notify the borrower that there is no obligation to make payments on the loan ~~while it is conditionally discharged~~ prior to ~~a final~~ the Secretary's determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(iii) When the Secretary makes a ~~final~~ determination to discharge the loan, the Secretary returns any payments received on the loan after the date the physician completed and certified the borrower's loan discharge application to the person who made the payments on the loan.

(c) Total and permanent disability discharges for veterans —

(1) General. A veteran's Defense, NDSL, or Perkins loan may be discharged if the veteran is totally and permanently disabled, as defined in §674.51(s)(2).

(2) Discharge application process for veterans who have a total and permanent disability as defined in §674.51(s)(2). (i) To qualify for discharge of a Defense, NDSL, or Perkins loan based on a total and permanent disability as defined in §674.51(s)(2), a veteran must submit a discharge application approved by the Secretary to the institution that holds the loan.

(ii) The veteran must submit with the application documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran may not be required to provide any additional documentation related to the veteran's disability.

(iii) Upon receiving the veteran's completed application and the required documentation from the Department of Veterans Affairs, the institution must suspend collection activity on the loan and inform the veteran that—

(A) The institution will review the application and submit the application and supporting documentation to the Secretary for an eligibility determination if the documentation from the Department of Veterans Affairs indicates that the veteran is totally and permanently disabled as defined in §674.51(s)(2);

(B) The institution will resume collection on the loan if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in §674.51(s)(2); and

(C) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in §674.51(s)(2), but the documentation indicates that the veteran may be totally and permanently disabled as defined in §674.51(s)(1), the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in §674.61(b).

(v) If the documentation from the Department of Veterans Affairs indicates that the veteran is totally and permanently disabled as defined in §674.51(s)(2), the institution must submit a copy of the veteran's application and the documentation from the Department of Veterans Affairs to the Secretary. At the time the application and documentation are submitted to the Secretary, the institution must notify the veteran that the veteran's discharge request has been referred to the Secretary for determination of discharge eligibility and that no payments are due on the loan.

(vi) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in §674.51(s)(2), the institution must resume collection on the loan.

(4) Secretary's determination of eligibility. (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as defined in §674.51(s)(2), the Secretary notifies the institution of this determination, and the institution must –

(A) Discharge the veteran's obligation to make further payments on the loan; and

(B) Return to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(ii) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as defined in §674.51(s)(2), the Secretary notifies the institution of this determination, and the institution must resume collection on the loan.

~~(e)~~(d) \* \* \*

~~(d)~~(e) \* \* \*

## §682.200 Definitions.

(a) \* \* \*

(b) The following definitions also apply to this part:

Substantial gainful activity: A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

*Totally and permanently disabled.* The condition of an individual who

~~(1) is Is~~ unable to ~~work and earn money because of an injury or illness that is expected to continue indefinitely or result in death.~~ engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that –

(i) Can be expected to result in death;

(ii) Has lasted for a continuous period of not less than 60 months; or

(iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

## §682.201 Eligible borrowers.

(a) \* \* \*

(4)(i) Reaffirms any FFEL loan amount on which there has been a total cessation of collection activity, including all principal, interest, collection costs, legal court costs, attorney fees and late charges that have accrued on that amount up to the date of reaffirmation.

(ii) For purposes of this section, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(A) Signing a new promissory note that includes the same terms and conditions as the original note signed by the borrower or repayment schedule; or

(B) Making a payment on the loan.

(5) The suspension of collection activity has been lifted from any loan on which collection activity had been suspended based on a conditional determination that the borrower was totally and permanently disabled ~~under §682.402(e).~~

(6) In the case of a borrower whose prior loan under title IV of the Act was discharged after a final determination of total and permanent disability, the student must—

(i) Obtain certification from a physician that the borrower is able to engage in substantial gainful activity;

(ii) Sign a statement acknowledging that the FFEL loan the borrower receives cannot be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates; and

(iii) If the borrower requests a new FFEL loan within five years of the date that any previous title IV loan was discharged due to a total and permanent disability in accordance with §682.402(c)(3)(ii) on or after July 1, 2010, resumes repayment on the previously discharged loan in accordance with §682.402(c)(4)(ii) before receiving the new loan.

~~(iii) In the case of a borrower whose previous loan under title IV of the Act was discharged due to a total and permanent disability on or after July 1, 2001 and before July 1, 2002, meets the requirements of paragraphs (a)(6)(i) and (a)(6)(ii) of this section. If the borrower applies for another loan within three years from the date that the borrower became totally and permanently disabled, as certified by the physician, the borrower must reaffirm the previously discharged loan before receiving the new loan.~~

(7) In the case of a borrower whose prior loan under title IV of the HEA was conditionally discharged based on an initial determination that the borrower was totally and permanently disabled, the borrower must—

(i) Comply with the requirements of paragraphs (a)(6)(i) and (a)(6)(ii) of this section; and

(ii) Sign a statement acknowledging that—

(A) The loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge or when the new loan is made unless that impairment substantially deteriorates; and

(B) Collection activity will resume on any loans in a conditional discharge period, ~~as described in paragraph 682.402(e)(16).~~

\* \* \* \* \*

**§682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.**

\* \* \* \* \*

(c)(1) *Total and permanent disability.* (i) A borrower's loan is discharged if the borrower becomes totally and permanently disabled, as defined in §682.200(b), and satisfies the additional eligibility requirements contained in this section.

(ii) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the borrower's loan discharge application is processed in accordance with paragraphs (c)(2) through (c)(7) of this section.

(iii) For veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the veteran's loan discharge application is processed in accordance with paragraphs (c)(8) and (c)(9) of this section.

(2) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b).* After being notified by the borrower or the borrower's representative that the borrower claims

to be totally and permanently disabled, the lender promptly requests that the borrower or the borrower's representative submit a discharge application to the lender, on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term defined in §682.200(b). The borrower must submit the application to the lender within 90 days of the date the physician certifies the application. If the lender and guaranty agency approve the discharge claim, under the procedures described in paragraph (c)(~~5~~)(7) of this section, the guaranty agency must assign the loan to the Secretary.

(3) *Secretary's ~~initial~~ eligibility determination.* (i) If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower ~~meets the criteria for a total and permanent disability discharge~~ is totally and permanently disabled, as ~~defined~~ described in paragraph (1) of the definition of that term in §682.200(b), the borrower is considered totally and permanently disabled as of the date the physician completes and certifies the borrower's application.

(ii) Upon making ~~an initial~~ a determination that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term defined in §682.200(b), the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower that the loan has been discharged. ~~will be in a conditional discharge status for a period of up to three years and that no payments are due on the loan.~~ Any payments received after the date the physician completed and certified the borrower's loan discharge application are returned to the person who made the payments on the loan. The notification to the borrower ~~identifies~~ explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, of the conditional discharge as specified in paragraph (c)(4)(i) of this section. ~~The conditional discharge period begins on the date the physician certified on the application that the borrower is totally and permanently disabled, as defined in §682.200(b).~~

(iii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), ~~meets the criteria for a total and permanent disability discharge in paragraph (c)(4)(i) of this section,~~ the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(4) ~~Eligibility requirements~~ Conditions for reinstatement of a loan after a total and permanent disability discharge. (i) ~~A borrower meets the eligibility criteria for a discharge of a loan based on total and permanent disability if, from the date the physician certifies the borrower's application, through the end of the three-year conditional discharge period~~ The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (c)(3)(ii) of this section if, within five years after the date the Secretary granted the discharge, the borrower —



(A) ~~The borrower's~~ Has annual earnings from employment ~~do not that~~ exceed 100 percent of the poverty line for ~~a family of two~~ the borrower's family size, as determined in accordance with the Community Service Block Grant Act; or

(B) ~~The borrower does not receive~~ Receives a new TEACH Grant or a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that ~~does not include~~ s any loans that ~~are in a conditional discharge status~~ were not discharged; and

~~(C) The borrower ensures that the full amount of any title IV loan disbursement on any loan received prior to the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.~~

(i) If a borrower's obligation to repay a loan is reinstated, the Secretary requires the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the loan was reinstated.

(ii) (5) Borrower's responsibilities after a total and permanent disability discharge. During the conditional five-year discharge period described in paragraph (c)(4)(i) of this section, the borrower or, if applicable, the borrower's representative—

~~(A) Is not required to make any payments on the loan;~~

~~(B) Is not considered delinquent or in default on the loan, unless the loan was past due or in default at the time the conditional discharge was granted;~~

~~(C) (i) Must promptly notify the Secretary of any changes in address or phone number;~~

~~(D) (ii) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(4)(i)(A) of this section, or if the borrower's family size changes; and~~

~~(E) (iii) Must provide the Secretary, upon request, with additional documentation or information related to of the borrower's eligibility for a discharge under this section annual earnings from employment.~~

~~(iii) If the borrower satisfies the criteria for a total and permanent disability discharge during and at the end of the conditional discharge period, the balance of the loan is discharged at the end of the conditional discharge period and any payments received after the physician completed and certified the borrower's loan discharge application are returned to the person who made the payments on the loan.~~

~~(iv) If, at any time during or at the end of the three-year conditional discharge period, the Secretary determines that the borrower does not continue to meet the eligibility criteria for a total and permanent disability discharge, the Secretary ends the conditional discharge period and resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the Secretary's initial eligibility determination described in paragraph (c)(3)(i) of this section through the end of the conditional discharge period.~~

(v) (6) Secretary's right to require additional documentation. The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary

determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b). As part of ~~this the Secretary's~~ review of the borrower's discharge application, or at any time during the application process or during or at the end of the conditional discharge period, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the ~~applicant~~borrower.

~~(5)(7)~~ Lender and guaranty agency responsibilities actions. (i) After being notified by a borrower or a borrower's representative that the borrower claims to be totally and permanently disabled, the lender must continue collection activities until it receives either the certification of total and permanent disability from a physician or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled, as defined described in paragraph (1) of the definition of that term in §682.200(b). Except as provided in paragraph (c)~~(5)(7)~~(iii) of this section, after receiving the physician's certification or letter the lender may not attempt to collect from the borrower or any endorser.

(ii) The lender must submit a disability claim to the guaranty agency if the borrower submits a certification by a physician and the lender makes a determination that the certification supports the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b). ~~meets the criteria for a total and permanent disability discharge, as specified in paragraph (c)(4)(i) of this section.~~

(iii) If the lender determines that a borrower who claims to be totally and permanently disabled is not totally and permanently disabled, as defined described in paragraph (1) of the definition of that term in §682.200(b), or if the lender does not receive the physician's certification of total and permanent disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)~~(5)(7)~~(i) of this section, the lender must resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

(iv) The guaranty agency must pay a claim submitted by the lender if the guaranty agency has reviewed the application and determined that it is complete and that it supports the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b). ~~meets the criteria for a total and permanent disability discharge, as specified in paragraph (c)(4)(i) of this section.~~

(v) If the guaranty agency does not pay the disability claim, the guaranty agency must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the borrower that the application for a disability discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may

capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

(vi) If the guaranty agency pays the disability claim, the lender must notify the borrower that—

(A) The loan will be assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan; and

(B) If the Secretary discharges the loan based on a determination that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the Secretary will reinstate the borrower's obligation to repay the loan, with interest charged from the date of the discharge, if within five years after the date the Secretary granted the discharge ~~To remain eligible for the discharge from the date the physician completes and certifies the borrower's total and permanent disability on the application until the borrower receives a final disability discharge,~~ the borrower—

(1) ~~Cannot have~~ Receives annual earnings from employment that exceed 100 percent of the poverty line for ~~a family of two~~ the borrower's family size, as determined in accordance with the Community Services Block Grant; or

(2) Receives a ~~Cannot receive any~~ TEACH Grant or a new Title IV loans, except for a FFEL or Direct Consolidation Loan that ~~does not include~~ any loans that were not discharged ~~on which the borrower is seeking a discharge;~~ and

~~(3) Must ensure that the full amount of any Title IV loan disbursement made to the borrower on or after the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.~~

(vii) After receiving a claim payment from the guaranty agency, the lender must forward to the guaranty agency any payments subsequently received from or on behalf of the borrower.

(viii) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.

(ix) The guaranty agency must assign the loan to the Secretary after the guaranty agency pays the disability claim.

(8) Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b) – General. After being notified by the veteran or the veteran's representative that the veteran claims to be totally and permanently disabled, the lender promptly requests that the veteran or the veteran's representative submit a discharge application to the lender, on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran may not be required to provide any additional documentation related to the veteran's disability.

(9) Lender and guaranty agency actions. (i) After being notified by a veteran or a veteran's representative that the veteran claims to be totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the lender must

continue collection activities until it receives the veteran's completed loan discharge application with the required documentation from the Department of Veterans Affairs, as described in paragraph (8) of this section. Except as provided in paragraph (c)(9)(iii) of this section, the lender may not attempt to collect from the veteran or any endorser after receiving the veteran's discharge application and documentation from the Department of Veterans Affairs.

(ii) If the veteran submits a completed loan discharge application with the required documentation from the Department of Veterans Affairs, and the documentation indicates that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the lender must submit a disability claim to the guaranty agency.

(iii) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the lender must –

(A) Resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

(B) Inform the veteran that he or she may reapply for a total and permanent disability discharge in accordance with the procedures described in §682.402(c)(2) through (c)(7), if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

(iv) If the documentation from the Department of Veterans Affairs indicates that the borrower is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the guaranty agency must submit a copy of the veteran's discharge application and supporting documentation to the Secretary, and must notify the veteran that the veteran's loan discharge request has been referred to the Secretary for a determination of discharge eligibility.

(v) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the guaranty agency does not pay the disability claim and must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the veteran that the application for a disability discharge has been denied, provide the basis for the denial, and inform the veteran that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

(vi) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as

described in paragraph (2) of the definition of that term in §682.200(b), the Secretary notifies the guaranty agency that the veteran is eligible for a total and permanent disability discharge. Upon notification by the Secretary that the veteran is eligible for a discharge, the guaranty agency pays the disability discharge claim and notifies the veteran that the veteran's obligation to make any further payments on the loan has been discharged. Upon receipt of the claim payment from the guaranty agency, the lender returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(vii) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the Secretary notifies the guaranty agency of this determination. Upon notification by the Secretary that the veteran is not eligible for a discharge, the guaranty agency and the lender must follow the procedures described in paragraph (9)(v) of this section.

(viii) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.

\* \* \* \* \*

### §685.200 Borrower eligibility.

(a) *Student Direct Subsidized or Direct Unsubsidized borrower.* (1) A student is eligible to receive a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a combination of these loans, if the student meets the following requirements:

(i) The student is enrolled, or accepted for enrollment, on at least a half-time basis in a school that participates in the Direct Loan Program.

(ii) The student meets the requirements for an eligible student under 34 CFR part 668.

(iii) In the case of an undergraduate student who seeks a Direct Subsidized Loan or a Direct Unsubsidized Loan at a school that participates in the Federal Pell Grant Program, the student has received a determination of Federal Pell Grant eligibility for the period of enrollment for which the loan is sought.

(iv) In the case of a borrower whose previous loan was cancelled due to total and permanent disability, the student—

(A) In the case of a borrower whose prior loan under title IV of the Act was discharged after a final determination of total and permanent disability, the borrower—

(1) Obtains a certification from a physician that the borrower is able to engage in substantial gainful activity; **and**

(2) Signs a statement acknowledging that the Direct Loan the borrower receives cannot be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates; **and**

**(3) If the borrower requests a new Direct Subsidized Loan or Direct Unsubsidized Loan within five years of the date that any previous title IV loan was discharged due to a total and permanent disability in accordance with §685.213(b)(2)(ii) on or after July 1, 2010, resumes repayment on the previously discharged loan in accordance with §685.213.(b)(3)(ii)(A) before receiving the new loan.**

~~(B) In the case of a borrower whose prior loan under title IV of the Act was discharged on or after July 1, 2001 and before July 1, 2002 after a final determination of total and permanent disability, the borrower—~~

~~(1) Complies with the requirements of paragraph (a)(1)(iv)(A) of this section; and~~

~~(2) If the borrower applies for another loan within three years from the date that the borrower became totally and permanently disabled, as certified by the physician, reaffirms the previously discharged loan before receiving the new loan. For the purposes of this paragraph, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower signing a new promissory note that includes the same terms and conditions as the original note signed by the borrower, making a payment on the loan, or signing a repayment agreement.~~

~~(C)~~(B) In the case of a borrower whose prior loan under title IV of the Act was conditionally discharged based on an initial determination that the borrower was totally and permanently disabled—

(1) The suspension of collection activity on the prior loan has been lifted;

(2) The borrower complies with the requirements in paragraphs (a)(1)(iv)(A)(I) and (2) of this section;

(3) The borrower signs a statement acknowledging that the loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge or when the new loan is made, unless that impairment substantially deteriorates; and

(4) The borrower signs a statement acknowledging that the suspension of collection activity on the prior loan will be lifted.

(v) \* \* \*

\* \* \* \* \*

**§685.213 Total and permanent disability discharge.**

(a) *General.* (1) A borrower's Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in §682.200(b), and satisfies the additional eligibility requirements contained in this section.

(2) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the borrower's loan discharge application is process in accordance with paragraph (b) of this section.

(3) For veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), the veteran's loan discharge application is process in accordance with paragraph (c) of this section.

(b) Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b).

(1) Borrower application for discharge. To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit a discharge application to the Secretary on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term defined in §682.200(b). The borrower must submit the application to the Secretary within 90 days of the date the physician certifies the application. Upon receipt of the borrower's application, the Secretary notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge.

~~(2) Upon receipt of the borrower's application, the Secretary notifies the borrower that—~~

~~(i) No payments are due on the loan; and~~

~~(ii) The borrower, in order to remain eligible for the discharge from the date the physician completes and certifies the borrower's total and permanent disability on the application until the date the borrower receives a final disability discharge—~~

~~(A) Not receive annual earnings from employment that exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;~~

~~(B) Not receive a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that does not include any loans on which the borrower is seeking a discharge; and~~

~~(C) Must ensure that the full amount of any Title IV loan disbursement on any loan received prior to the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.~~

~~(e)(2) *Initial determination*~~ *Determination of eligibility.* ~~(1)(i)~~ If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term defined in §682.200(b), the borrower is considered totally and permanently disabled as of the date the physician completes and certifies the borrower's application.

~~(2)(ii)~~ Upon making ~~an initial a~~ determination that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term defined in §682.200(b), the Secretary discharges the borrower's obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date the physician completed and certified the borrower's loan discharge application. ~~will be in a conditional discharge status for a period of up to three years and that no payments are due on the loan.~~ The notification to the borrower ~~identifies~~ explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as of the conditional discharge period specified in paragraph ~~(d)(1)(b)(3)(i)~~ of this section. ~~The conditional discharge period begins on the date the physician certifies on the application that the borrower is totally and permanently disabled, as defined in §682.200(b).~~

~~(3)(iii)~~ If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in §682.200(b), ~~meets the criteria for a total and permanent disability discharge in paragraph (d)(1) of this section,~~ the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

~~(d)(3) *Eligibility requirements*~~ *Conditions for reinstatement of a loan after a total and permanent disability discharge.* ~~(1)(i) A borrower meets the eligibility requirements for a discharge of a loan based on total and permanent disability if, from the date the physician certified the borrower's discharge application, through the end of the three-year~~



~~conditional discharge period~~ The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(2)(i) of this section if, within five years after the date the Secretary granted the discharge, the borrower —

~~(i)(A) The borrower's~~ Has annual earnings from employment ~~do not that~~ exceed 100 percent of the poverty line for ~~a family of two~~ the borrower's family size, as determined in accordance with the Community Service Block Grant Act; ~~or~~

~~(ii)(B) The borrower does not receive~~ Receives a new TEACH Grant or a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that ~~does not include~~ s any loans that ~~are in a conditional discharge status~~ were not discharged; ~~and~~

~~(iii) The borrower ensures that the full amount of any Title IV loan disbursement on any loan received prior to the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.~~

(ii) If the borrower's obligation to repay the loan is reinstated, the Secretary requires the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the loan was reinstated.

~~(2)(4) Borrower's responsibilities after a total and permanent disability discharge.~~ During the ~~conditional five-year discharge~~ period described in paragraph (b)(3)(i) of this section, the borrower or, if applicable, the borrower's representative—

~~(i) Is not required to make any payments on the loan;~~

~~(ii) Is not considered delinquent or in default on the loan, unless the loan was past due or in default at the time the conditional discharge was granted;~~

~~(iii)(i) Must promptly notify the Secretary of any changes in address or phone number;~~

~~(iv)(ii) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (d)(1)(i)(b)(3)(i)(A) of this section,~~ or if the borrower's family size changes; and

~~(v)(iii) Must provide the Secretary, upon request, with additional documentation or information related to~~ of the borrower's ~~eligibility for a discharge under this section~~ annual earnings from employment.

~~(3) If the borrower satisfies the criteria for a total and permanent disability discharge during and at the end of the three year conditional discharge period, the Secretary —~~

~~(i) Discharges the obligation of the borrower and any endorser to make any further payments on the loan at the end of that period; and~~

~~(ii) Returns any payments received after the date the physician completed and certified the borrower's loan discharge application to the person who made the payments on the loan.~~

~~(4) If, at any time during or at the end of the three year conditional discharge period, the Secretary determines that the borrower does not continue to meet the eligibility criteria for a total and permanent disability discharge, the Secretary ends the conditional~~

~~discharge period and resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the Secretary's initial eligibility determination described in paragraph (c)(2) of this section through the end of the conditional discharge period.~~

(5) Secretary's right to require additional documentation. The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b). As part of ~~this~~ the Secretary's review of the borrower's discharge application, or at any time during the application process or during or at the end of the conditional discharge period, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the ~~applicant~~ borrower.

(c) Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b).

(1) Veteran's application for discharge. To qualify for a discharge of a Direct Loan based on a total and permanent disability as described in paragraph (2) of the definition of that term in §682.200(b), a veteran must submit a discharge application to the Secretary on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The Secretary does not require the veteran to provide any additional documentation related to the veteran's disability. Upon receipt of the veteran's application, the Secretary notifies the veteran that no payments are due on the loan while the Secretary determines the veteran's eligibility for discharge.

(2) Determination of eligibility. (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the Secretary discharges the veteran's obligation to make any further payments on the loan and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(ii)(A) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the Secretary notifies the veteran that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(B) The Secretary notifies the veteran that he or she may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraph (b) of this section if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

**Issue 15**  
**Team I – General/Lender Loan Issues**  
**Proposed Regulatory Language (Contextual Format)**

**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 change:**

Adds new part 601 (previously reserved) covering new required disclosures by lenders and schools related to FFEL and private education loans.

**Change:**

**PART 601—INSTITUTION AND LENDER REQUIREMENTS RELATING TO EDUCATION LOANS**

**Subpart A—General**

601.1 Scope.

601.2 Definitions

**Subpart B—Responsibilities of Covered Institutions and Institution-Affiliated Organizations**

601.10 Preferred lender arrangement disclosures.

601.11 Private education loan disclosures.

601.12 Use of institution and lender name.

**Subpart C—Loan Information to be Disclosed by Covered Institutions and Institution-Affiliated Organizations**

601.20 Providing information to students and families.

601.21 Annual report.

601.22 Code of conduct.

**Subpart D—Loan Information to be Disclosed by Institutions Participating in the William D. Ford Direct Loan Program**

601.30 Duties of institutions

**Subpart E—Lender Responsibilities**

601.40 Disclosure and reporting requirements for lenders.

**Subpart A—General**

**§601.1 Scope.** (Team II)

**§601.2 Definitions.**

The following definitions apply to terms used in this part:

*Agent:* (Team II)

*Covered Institution:* (Team II)

*Education Loan:* (Team II)

*Institution-affiliated organization:* (Team II)

*Lender:* (1) An eligible lender in the FFEL program, as defined in 34 CFR 682.2000(b);

(2) The Department in the Direct Loan program;

(3) In the case of a private educational loan, a private education lender as defined in section 140 of the Truth in Lending Act; and

(4) Any other person engaged in the business of securing, making, or extending education loans on behalf of the lender.

*Officer:* (Team II)

*Preferred lender arrangement:* (Team II)

*Private education loan:* As the term is defined in section 140 of the TILA, 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. A private education loan 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.

### **Subpart E—Lender Responsibilities**

#### **§601.40 Disclosure and reporting requirements for lenders.**

(a) *Disclosures to borrowers.* (1) A lender must, at or prior to disbursement of an education loan, provide the borrower, in writing, in clear and understandable terms, the disclosures required in § 682.205 (a), (b) and (j).

(2) A lender must, for each of its private education loans, comply with the disclosure requirements under section 128(e) of the Truth in Lending Act (15.U.S.C. 1638(e))

(b) *Reports to the Secretary.* Each FFEL lender must report annually to the Secretary

(1) Any reasonable expenses paid or provided to any agent of a covered institution who is employed in the financial aid office or has other responsibilities with respect to education loans or other student financial aid of the institution for service on a lender advisory board, commission or group established by a lender or group of lenders; or

(2) Any similar expenses paid or provided to any agent of an institution-affiliated organization who is involved in recommending, promoting, or endorsing education loans.

(3) The report required by this paragraph must include –

(i) The amount for each specific instance in which the lender provided expense;

(ii) The name of any agent described in paragraph (b)(1) to whom the expenses were paid or provided;

(iii) The dates of the activity for which the expenses were paid or provided; and

(iv) A brief description of the activity for which the expense were paid or provided.

(c) *Lender certification of compliance.* (1) Any FFEL lender participating in one or more preferred lender arrangements must annually certify to the Secretary, its compliance with the Higher Education Act, as amended; and

(2) If the lender is required to submit an audit under 34 C.F.R. 682.305(c), the lender's compliance with the requirements under this section must be reported on and attested to annually by the lender's auditor.

(3) A lender may comply with the certification requirements of this section if the certifications are provided as part of the annual audit required by 34 C.F.R 682.305(c).

(4) A lenders who is not required to submit an audit must submit the required certification at such time and in such manner as directed by the Secretary.

(d) *Annual lender report to covered institutions.* A FFEL lender with a preferred lender arrangement with a covered institution or an institution-affiliated organization must annually, on a date prescribed by the Secretary, provide to the institution or the institution-affiliated organization and to the Secretary, such information required by the Secretary in relation to the FFEL loans the lender plans to offer pursuant to that preferred lender arrangements for the next award year.