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Loan Notes

Courtesy of American Education Services

FINAL RULES PUBLISHED

On November 1, 2007, The U.S. Department of Education (ED) published Final Rules for the Federal Family Education Loan Program (FFELP) in the *Federal Register*, available at ifap.ed.gov. These Final Rules contain the final regulations based on the Notices of Proposed Rule Making (NPRMs) which resulted from negotiated rulemaking by the Loans and General Provisions Committees following the implementation of the provisions of the Higher Education Reconciliation Act of 2005 (HERA).

Included in the Final Rules are changes made as a result of the public comment period, as well as regulations that incorporate selected statutory changes made to the Higher Education Act of 1965, as amended, by the College Cost

Reduction and Access Act (CCRAA), which became Public Law 110-84 on September 27, 2007. For more information on the CCRAA, please see the December 2007 issue of *Loan Notes*, available at aesSuccess.org. Final Rules for the ACG/SMART Grant Programs were published in a separate *Federal Register* on October 29, 2007.

In addition to the subjects of Simplification of the Deferment Process, Accurate and Complete Copy of a Death Certificate, Total and Permanent Disability Discharges, Frequency of Capitalization, Certification of Electronic Signatures on MPNs, the Final Rules from the Loans Committee addressed the following:

CHANGES AFFECTING SCHOOLS

Loan Certification for Graduate or Professional Student PLUS Loan Borrowers

EFFECTIVE DATE:
July 1, 2008 unless implemented earlier by the school on or after November 1, 2007

Before certifying a Grad PLUS loan, the school must determine the borrower's eligibility for a Stafford loan. If the borrower is eligible for a Stafford loan but has not requested the maximum Stafford loan amount for which he or she is eligible, the school must provide a comparison of the terms and conditions of Stafford and PLUS loans. Regulations do not specify the method that a school must use to (1) notify a Grad PLUS borrower of his or her eligibility for a Stafford loan, (2) provide the comparative information between Stafford and PLUS loans, and (3) offer the opportunity to request a Stafford loan. The only requirement is that this information must be provided prior to the loan being certified. ED clarifies that if this information is included in an award letter which is provided to the student prior to the loan being certified, this would satisfy the requirement.

Entrance Loan Counseling for Graduate or Professional Student PLUS Loan Borrowers

EFFECTIVE DATE:
July 1, 2008 unless implemented earlier by the school on or after November 1, 2007

A school must ensure that entrance counseling is conducted with each Grad PLUS borrower prior to its release of the first disbursement, unless the student has received a prior Federal PLUS loan or Direct PLUS loan. Schools must provide certain information to Grad PLUS borrowers who have received prior Stafford loans and certain information to borrowers who have not received prior Stafford loans. However, the regulations do not prohibit schools from exceeding the minimum entrance counseling requirement. If a school, for example, finds that providing comprehensive entrance counseling to all Grad PLUS borrowers is more cost effective than providing the limited counseling required by the regulations, a school may provide the comprehensive counseling to all Grad PLUS borrowers.

Exit Loan Counseling for Graduate or Professional Student PLUS Loan Borrowers

EFFECTIVE DATE:
July 1, 2008 unless implemented earlier by the school on or after November 1, 2007

Exit counseling has been modified for Stafford loan borrowers who have received a combination of Stafford and Grad PLUS loans. Exit counseling must inform the student borrower who obtained Stafford and Grad PLUS loans of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who obtained Stafford and PLUS loans for attendance at the same school or in the same program of study at the same school.



American Education Services

CHANGES AFFECTING SCHOOLS

Maximum Length of the Loan Period

EFFECTIVE DATE:
July 1, 2008

The 12-month maximum loan period for annual loan limits and the 12-month maximum period for a loan guarantee will be eliminated. This change is intended to allow a school to certify a single loan for students in shorter, non-term, or nonstandard term programs. The change will also provide greater flexibility, for example, in rescheduling loan disbursements for students in non-term programs who withdraw and then return within the permitted 180-day period.

Preferred Lender Lists

EFFECTIVE DATE:
July 1, 2008

At its option, a school may provide students and parents with a list of recommended or suggested lenders. The requirements for the list were provided in the July 2007 *Loan Notes* article on the Notice of Proposed Rulemaking .

Schools providing a preferred lender list must provide comparative information to prospective borrowers about interest rates and other benefits offered by the lenders. ED anticipates that financial benefits offered by a lender to the school’s student and parent borrowers will be a key factor in a school’s evaluation of lenders for its preferred lender list. However, ED does not believe that financial benefits should be the only factor that the school can consider. ED considers it appropriate for a school to consider the quality of a lender’s customer service in loan origination and loan servicing, its effectiveness in providing consumer information, counseling, and debt management services, and its delinquency and default prevention efforts.

ED plans to develop a model to collect and distribute required comparative lender benefit information. This model will be submitted to the community for comments on the proposed content, format, and use of the form. Currently, there is no estimated date for the availability of the form.

According to the Final Rules, schools must update any lender list along with any accompanying information at least annually.

Final Rules changed proposed regulations by removing the requirement that a lender offer the same benefits for all borrowers at the school, since this provision could have resulted in a loss of borrower benefits.

FINAL RULES DEFINE ‘AFFILIATED LENDERS’ AS:

- The lenders are under the ownership or control of the same entity or individuals.
- The lenders are wholly or partly owned subsidiaries of the same parent company.
- The directors, trustees, or general partners (or individuals exercising similar functions) of one of the lenders constitute a majority of the persons holding similar positions with the other lender.

ED does not interpret the lender affiliation provision to include entities that are involved in post-disbursement activities which a school has no ability to monitor or control.

CHANGES AFFECTING LENDERS

False Certification Discharge as a result of Identity Theft

Upon receipt of a valid identity theft report or upon notification from a credit bureau that information furnished by the lender is a result of an alleged identity theft, as defined, a lender must suspend credit bureau reporting and may grant an administrative forbearance for 120 days in order for the lender to determine the enforceability of the loan.

- EFFECTIVE DATE: July 1, 2008
unless implemented earlier by the lender on or after November 1, 2007

If the lender determines that the loan does not qualify for a False Certification Discharge as a result of Identity Theft, but that the loan is unenforceable, the lender must discontinue billing for interest benefits and special allowance and notify the credit bureau of its determination.

- EFFECTIVE DATE: July 1, 2008

If, within 3 years of the lender’s receipt of a valid identity theft report, the lender receives (1) a judgment conclusively naming the borrower of the loan as a victim of a crime of identity theft by a perpetrator named in the verdict or judgment or (2) documentation, as defined in regulations, if the judicial determination of the crime does not expressly state that the loan was obtained as a result of the crime, the lender may submit a claim and receive interest benefits and special allowance payments that would have accrued on the loan.

- EFFECTIVE DATE: July 1, 2008
unless implemented earlier by the lender on or after November 1, 2007

CHANGES AFFECTING LENDERS

**Exhaustive List
of Permissible Activities
by a Lender**

EFFECTIVE DATE:
July 1, 2008

A lender, in carrying out its role in the FFELP and in attempting to provide better service may provide:

- Assistance to a school comparable to that provided by Direct Loan Program.
- Support of, and participation in, a school's or a guaranty agency's student aid and financial-literacy related outreach activities as long as the name of the entity that developed and paid for any materials is provided to participants and the lender does not promote its student loan or other products.
 - » Excludes in-person school required initial and exit counseling
- Meals, refreshments, and receptions that are reasonable in cost and scheduled in conjunction with training, meeting, or conference events and open to all attendees.
- Toll-free telephone numbers for use by schools/others to obtain information about FFELP loans and free data transmission services for use by schools to electronically submit applicant loan processing information or student status confirmation data.
- A reduced origination fee
- A reduced interest rate
- Payment of Federal default fees
- Purchase of a loan made by another lender at a premium.
- Other benefits to a borrower under a repayment incentive program that requires, at a minimum, one or more scheduled payment(s) to receive or retain the benefit or under a loan forgiveness program for public service or other targeted purposes approved by ED, provided these benefits are not marketed to secure loan applications or guarantees.
- Items of nominal value to schools, school-affiliated organizations, and borrowers for generalized marketing/advertising, or to create goodwill
- Other services as identified and approved by ED through a public announcement

**Examples
of Prohibited Activities
by a Lender**

EFFECTIVE DATE:
July 1, 2008

The term eligible lender does not include any lender that ED determines, after notice and opportunity for a hearing before a designated ED official, has, directly or through an agency or contractor offered, directly or indirectly, points, premiums, payments, or other inducements to any school or other party to secure applications for FFELP loans or to secure FFELP loan volume. This includes, but is not limited to:

- Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective borrower in exchange for applying for or accepting a FFELP loan from the lender
- Payments or other benefits:
 - » To a school, any school-affiliated organization or to any individual in exchange for FFELP 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.
 - » Provided to a student who acts as the lender's representative to secure FFELP loan applications from individual prospective borrowers.
 - » To a loan solicitor or sales representative of a lender who visits schools to solicit individual prospective borrowers to apply for FFELP loans from the lender.
- Payment to another lender or any other party of referral fees or processing fees, except those processing fees necessary to comply with Federal or State law.
- Solicitation of 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.
- Payment of conference or training registration, transportation, and lodging costs for an employee of a school or school-affiliated organization.
- Payment of defined entertainment expenses related to lender-sponsored activities for employees of a school or a school-affiliated organization.
- Philanthropic activities in exchange for FFELP loan applications or application referrals, or a specified volume or dollar amount of FFELP loans made, or placement on a school's list of recommended or suggested lenders.
- Staffing services to a school, except for services provided to participating foreign schools at the direction of ED, 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.
- Conducting unsolicited mailings to a student or a student's parents of FFELP loan application forms, except to a student or student's parent who previously received a FFELP loan from the lender.
- Offering, directly or indirectly, a FFELP loan to a prospective borrower to induce the purchase of an insurance policy or other product or service by the borrower or other person.
- Engaging in fraudulent or misleading advertising with respect to FFELP loan activities.

2007-2008 FEDERAL STUDENT AID HANDBOOK

Volume 3, 'Calculating Awards and Packaging,' of the 2007-2008 *Federal Student Aid Handbook* became available in August 2007 at ifap.ed.gov. Included in Volume 3 is a new chapter on calculating ACG and National SMART Grants.

While the FFELP community is addressing regulatory changes as a result of Final Rules and the College Cost Reduction and Access Act (CCRAA), there is also updated guidance from ED within Volume 3, Chapter 5, 'Stafford/PLUS Loan Periods and Amounts,' noted below:

PAGES	CHANGES MADE
3-77	ED clarifies that if a program uses standard terms, such as semesters, trimesters, or quarters, the loan period must (as opposed to may) coincide with one or more of its academic terms.
3-78	Although a school may simultaneously participate in both the FFEL and Direct Loan (DL) Programs, ED states in a sidebar that student or parent borrowers may not receive the same type of loan (i.e., Stafford or PLUS) for the same period of enrollment. For example, a student may not receive Stafford loans from both the FFELP and the Direct Loan Program at the same school for the same period of enrollment. However, a graduate/professional student may receive a Stafford loan from one program and a Grad PLUS loan from the other program for the same loan period. This contrasts with guidance from the 2006-2007 Handbook, which stated that "student or parent borrowers may not receive both a DL and an FFEL loan for the same period of enrollment."
3-85	For standard term programs, if a student is enrolled at the same grade level after a full academic year has elapsed, the student may be eligible for a new annual maximum loan amount. ED states in the sidebar that – if a student is maintaining satisfactory academic progress – a school is not permitted to have a general policy that limits the number of times that a student can receive the maximum annual loan limit at one grade level. This has changed from the 2006-2007 Handbook which states that a "school has the authority to set a limit on the number of times a student can receive the maximum annual loan amount at one grade level, provided that the policy is the same for all students in the program."
3-88	Guidance has been added, in a sidebar, on transferring from a graduate to an undergraduate program during an academic year. In this scenario, the undergraduate loan limit for the student's grade level applies but amounts previously borrowed at the graduate level within the same academic year do not count against the undergraduate annual loan limit. The total amount awarded for the academic year may not exceed the higher (grad/professional) annual loan limit.
3-90	ED has added a section on PLUS loan limits for Graduate and Professional students. The existing, i.e., pre-Final Rules, requirements for Grad PLUS borrowers are the same as parent borrowers plus the following two additional requirements: <ul style="list-style-type: none">• The student must complete the FAFSA.• The school must determine the student's maximum annual subsidized and/or unsubsidized Stafford loan amount. However, the student is not required to receive Stafford loan funds as a condition for being allowed to apply for or be awarded a Grad PLUS loan.
3-97	ED advises that beginning January 1, 2006, schools do not have to review, in NSLDS, the "unallocated" amounts attributed to a FFELP Consolidation loan when determining Stafford loan eligibility

EXTENSION OF WAIVERS AND MODIFICATIONS OF THE HEROES ACT

ED announced in the December 26, 2007 *Federal Register*, available at ifap.ed.gov, that they have extended the waivers and modifications of statutory and regulatory provisions under the Higher Education Relief Opportunities for Students (HEROES) Act of 2003. This extension will remain in effect until September 30, 2012 unless ED terminates or changes this action prior to that date.



CHANGES AFFECTING LENDERS

**Examples
of Prohibited Activities
by a Lender**

EFFECTIVE DATE:
July 1, 2008

School-affiliated organization is defined in regulations as “any organization that is directly or indirectly related to a school and includes, but is not limited to, alumni organizations, foundations, athletic organizations, and social, academic, and professional organizations.” In addition, ED clarifies that payments or inducements provided to school-affiliated organizations are only improper if undertaken to secure loan applications and/or loan volume. According to ED, the regulation does not affect contractual arrangements between the school-affiliated organizations and financial institutions to provide other non-student loan related services.

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

The term “emergency basis” for the purpose of staffing services to a school means a state- or Federally-declared natural disaster, a Federally-declared national disaster, and other localized disasters and emergencies identified by ED.

**Use of a Rebuttable
Presumption**

EFFECTIVE DATE:
July 1, 2008

If ED finds that a prohibited activity was provided by a lender, ED will presume it was an improper inducement for obtaining loan applications and/or loan volume. To reverse the presumption, the burden of proof is on the lender to present evidence that the activity was not provided in exchange for securing loan applications and/or loan volume.

INFORMATION ON THE FINAL RULES WILL CONTINUE IN THE MARCH 2008 ISSUE OF *LOAN NOTES*.

LOAN DISCHARGE APPLICATION FOR SURVIVORS OF ELIGIBLE PUBLIC SERVANTS & VICTIMS OF THE SEPTEMBER 11, 2001 TERRORIST ATTACKS

On November 9, 2007, ED published *Dear Colleague Letter* (DCL) GEN-07-08/FP-07-10 /CB-07-15 announcing the approval of a new loan discharge application for Federal Family Education Loan (FFEL), Direct, and Perkins Loan program borrowers who are the spouses or parents of eligible public servants or other eligible victims of the September 11, 2001 terrorist attacks.

The loan discharge was authorized under the **Third Higher Education Extension Act (THEAA)** of 2006. An eligible loan for the purpose of this discharge is any outstanding FFELP, Direct, or Perkins loan on which amounts were owed by the spouse or parent on September 11, 2001, or the outstanding portion of a Federal or Direct Consolidation loan incurred to pay off FFELP, Direct, or Perkins loan amounts that were owed on September 11, 2001. Amounts must still be owed on the day the discharge is requested. THEAA does not provide for the refund of payments made by

the borrower prior to the date of the loan discharge. Additional information about the discharge is available in the February/March 2007 issue of *Loan Notes*, available at aesSuccess.org.

The loan discharge application, which is available for immediate use, is available at aesSuccess.org, by selecting Manage Your Loans, and then clicking on Loan Discharge under “Can’t Make a Payment.”

CONTACT

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