

ISSUE

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# Loan Notes

Courtesy of American Education Services

## CONTINUATION OF THE HIGHER EDUCATION OPPORTUNITY ACT (HEOA)

This is the fifth and final in a series of articles addressing the provisions of the Higher Education Opportunity Act (HEOA), which reauthorized the Higher Education Act of 1965, as amended (HEA). This fifth article addresses statutory changes to school issues that become effective July 1, 2009 (unless otherwise noted). *Dear Colleague Letter* (DCL), GEN-08-12/FP-08-10, available at [www.ifap.ed.gov](http://www.ifap.ed.gov), also provides a summary of these and other HEOA provisions.

### Cohort Default Rate Calculation

**For Federal fiscal year 2009 (i.e. beginning on October 1, 2008 and ending on September 30, 2009) and beyond, a school's cohort default rate will be calculated using a three year period.**

As a result of this change, the cohort default rate will be the percentage of those borrowers who default before the end of the second Federal fiscal year following the Federal fiscal year in which the borrowers entered repayment. This is for any fiscal year in which 30 or more current and former students enter repayment on applicable Federal Family Education Loan Program (FFELP) or Direct Loans received for attendance at the school. For example, a cohort of 100 borrowers go into repayment in Federal fiscal year 2009 and 10 borrowers, in the cohort, default in Federal fiscal year 2010 and an additional 15 borrowers in the cohort default in Federal fiscal year 2011. The school's cohort default rate for Federal fiscal year 2009 is 25/100 or 25%.

#### LOW COHORT DEFAULT RATE BENEFITS:

**Effective for loans first disbursed on or after October 1, 2011,** a school with a cohort default rate for each of the three most recent fiscal years for which data is available is less than 15% may disburse FFELP loans in a single installment for any period of enrollment that is not more than one semester, one trimester, one quarter, or four months. Also effective for loans first disbursed on or after October 1, 2011, a school whose cohort default rate for each of the three most recent years for which data is available is less than 15% will not be required to delay delivery of the first disbursement of a loan to a first year, undergraduate student borrower until the borrower has completed 30 days of the course of study.

#### HIGH COHORT DEFAULT RATE SANCTIONS:

The school cohort default rate threshold percentage used to determine whether a school remains eligible to participate in the Federal Pell Grant, FFELP or Direct Loan programs increases from 25% to 30% for Federal fiscal year 2012 (**beginning on October 1, 2011 and ending on September 30, 2012**) and beyond.

There is a transition period during which no school sanctions will be taken based on the three-year calculated rate until after there have been three consecutive cohort years of such rates calculated. During the transition period, sanctions will be based on calculations made according to pre-HEOA provisions apply.

#### APPEALS:

**Effective August 14, 2008,** if a school files a successful extenuating mitigating circumstances appeal after two consecutive years of cohort default rates that equal or exceed the applicable cohort threshold percentage (25% or 30%), the U.S. Department of Education (ED) may not place the school in provisional certification status based solely on the school's cohort default rate.

**The HEOA also increases the cohort default rate participation rate index standard from .0375 to .0625, effective for federal fiscal years beginning on or after October 1, 2011.**

### SPECIAL NOTE: REALLOCATING FFELP OR "PUT"

The U.S. Department of Education (ED) has announced that reallocations of loan funds between subsidized and unsubsidized loans will be allowed as part of a Post-PUT process.

**More information on page 3**



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## Cohort Default Rate Calculation (cont.)

### DEFAULT PREVENTION PLANS:

If a school's cohort default rate equals or exceeds 30% for Federal fiscal year 2012 or after, the school must establish a default prevention task force to prepare a default prevention plan that includes all of the following:

- Identifies the factors causing the school's cohort default rate to exceed the threshold.
- Establishes measurable objectives and identifies steps to improve the school's cohort default rate.
- Specifies actions the school will take to improve student loan repayment, including loan repayment counseling.

This plan must be submitted to ED for review. ED also provides technical assistance to the school to promote improved student loan repayment by the school's borrowers.

If a school exceeds the cohort default rate threshold for two consecutive fiscal years, its default prevention management task force must review and revise its default management plan, which must then be resubmitted to ED. ED reviews the revised plan and may require additional measurable steps to be taken by the school as part of the plan to promote student loan repayment.

## In-State Tuition Rates for Armed Forces Members and Their Families

Effective for the first period of enrollment that begins after July 1, 2009, a school that is designated a public institution of higher education may not charge a member of the armed forces, his or her spouse, or his or her dependent children, tuition at a rate that is higher than the in-state tuition rate for residents of the state. The member of the armed forces must be on active duty for a period of more than 30 days and the member must have his or her domicile or permanent duty station in a state that receives assistance under the Higher Education Act. The school must allow the individual to continue to pay the in-state rate for as long as he or she is continuously enrolled, even if there is a subsequent change in the permanent duty station of the member to a location outside of the state.

For the purpose of this provision, the term "armed forces" means the Army, Navy, Air Force, Marine Corps or Coast Guard. "Active duty" is defined as performing full-time duty in the active military service of the U.S. Such term includes full-time training duty, annual training duty, and attendance, while in active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. **Such term does not include full-time National Guard duty.**

Please see the 2009-2010 FSA Handbook, Volume 2, Chapter 3, page 2-35 for additional information.

## Cost of Attendance (COA)

Effective July 1, 2010, when determining the room and board allowance for a student's COA, the school must only include a board allowance (not both room and board) if the student is living in housing located on a military base or in housing for which the student receives a basic allowance under Title 37 of the U.S. Code—Pay and Allowances of the Uniformed Services.

## Total Income

Effective July 1, 2010, ED is authorized to issue regulations that allow the data from the second preceding tax year (sometimes called "prior, prior year" data) to be used in order to simplify the FAFSA and the application process.

## Expected Family Contribution (EFC)

(Effective July 1, 2010)

### INCOME EARNED FROM WORK:

Any income earned from work under a school's cooperative education program will be excluded from the determination of EFC.

### UNTAXED INCOME AND BENEFITS:

The value of on-base military housing or the value of the basic allowance for housing determined under U.S. Code, Title 37, Section 403(b), that is received by parents, in the case of a dependent student, or by the student or student's spouse, in the case of an independent student, will be excluded from untaxed income and benefits.

### TOTAL INCOME:

Veterans' education benefits will be excluded from total income when determining a borrower's EFC.

## Estimated Financial Assistance (EFA)

Effective July 1, 2010, Veterans' education benefits will be excluded from EFA. Veterans' education benefits include, but are not limited to the following:

- U. S. Code, Title 10, Chapter 2:  
**Reserve Officer Training Corps scholarship**
- U. S. Code, Title 10, Chapter 106:  
**Selective Reserve**
- U. S. Code, Title 10, Chapter 107:  
**Selective Reserve Educational Assistance Program**
- U. S. Code, Title 37, Chapter 2:  
**Reserve Officer Training Corps Program**
- U. S. Code, Title 38, Chapter 30:  
**Montgomery GI Bill—active duty**
- U. S. Code, Title 38, Chapter 31:  
**Vocational Rehabilitation**
- U. S. Code, Title 38, Chapter 32:  
**Post-Vietnam Era Veterans' Educational Assistance Program**
- U. S. Code, Title 38, Chapter 35:  
**Dependents Educational Assistance Program**
- Public Law 97-376, Section 156:  
**Restored Entitlement Program for Survivors (or Quayle benefits)**
- Public Law 96-342, Section 903:  
**Educational Assistance Pilot Program**

## PROFESSIONAL JUDGMENT

The Higher Education Opportunity Act (HEOA) required, effective August 14, 2008, the U.S. Department of Education (ED) to disclose on a Student Aid Report (SAR) that the student may, on a case-by-case basis, qualify for an adjustment to the cost of attendance or to the values of the data elements required to calculate the expected family contribution (EFC). This disclosure by ED must include examples of special circumstances under which a student or family member may qualify for such an adjustment and additional information regarding the process for requesting an adjustment.

Although Section 479A of the Higher Education Act (HEA) does not limit a financial aid administrator's authority to make, on the basis of adequate documentation, adjustments to allow for the treatment of an individual with special circumstances, the HEA does give some examples of special circumstances. These examples include medical, dental, or nursing home expenses not covered by insurance, recent unemployment of a family member or an independent student, a student or family member who is a dislocated worker, and a change in housing status that results in an individual being homeless, among others.

According to *Dear Colleague Letter (DCL) GEN-09-04*, published by ED on April 2nd, 2009; professional judgment authority is particularly important for families who may be struggling during these difficult economic times. When families experience a layoff, face costly medical situations, or lose a house to foreclosure, the family may not consider requesting or may not know about the right to request an adjustment to one or more of the components that determine eligibility for financial aid. For this reason, ED is encouraging schools to reach out to current and prospective students and advise them to contact the financial aid office if there has been a change in the student's and/or family's financial circumstances. A changed circumstance certainly includes the loss of a job or a reduction in work hours or wages as well as the income loss associated with a prospective student's decision to leave the workforce or to reduce work hours in order to return to school.

When making the adjustments related to the student's or family's income, it is appropriate for the school to use information that realistically reflects the student's or family's current and near-term economic situation in the EFC calculation. The school should maintain verifiable third-party documentation of the changed circumstances in order to support the decision to use professional judgment. If the school, for example, decides—in response to an individual's job loss—to project income for the next 12-month period, the school should obtain adequate documentation of the individual's job loss.

ED also notes in the DCL that professional judgment must only be used to address special circumstances, which are conditions that differentiate an individual student from a class of students. A majority of a school's prospective students, for example, may leave the workforce or reduce work hours in order to return to school. The school's financial aid office may reach out to all prospective students in this category. Since it is not permissible to assume that every student in the category was affected in the same way, it would be appropriate for the school to assess and document how each individual student's situation was affected. Further guidance on using professional judgment is available in the 2009-2010 Federal Student Aid Handbook, Application and Verification Guide, pages 105 and 106.

On May 8th, 2009, ED posted DCL GEN-09-05 to provide an update on the use of professional judgment. In this DCL, ED advised that the U.S. Department of Labor has been working with the states to send letters to all recipients of unemployment insurance benefits in order to encourage the recipients to consider enrolling in postsecondary education and applying for financial aid.

Schools may use this letter from the state unemployment agency, or other evidence that a student is receiving unemployment benefits, to document that the income earned from work for that student is zero for the purpose of exercising professional judgment by adjusting data items. **If the school retains a letter, as described, or other evidence of an individual's current receipt of unemployment insurance benefits from a state unemployment office, ED will consider that to be adequate documentation for an adjustment to the data item(s).**

In implementing the subject letter only, unemployment benefits can also be considered by the school to be zero because ED, in consultation with the U.S. Department of Labor and the Office of Management and Budget, has determined that the maximum unemployment benefits available would not have a material impact on the expected family contribution (EFC) of an independent student. If the school has evidence that there are other members of the student's family who are receiving unemployment benefits, ED encourages the school to determine the totality of the family's economic situation and make any appropriate adjustments.

Unemployed individuals will be able to present the subject letter from a state unemployment agency for 90 days, from the issuance date of the letter, to an aid administrator for consideration under this updated guidance. However, the subject letter should not be accepted if the school knows that an applicant has already obtained other employment.

ED also states that it is aware that financial aid administrators may be reluctant to use professional judgment because ED has used the percentage of students for whom a professional judgment determination has been made as part of its risk-based model to select schools for program reviews. **Although ED will continue to monitor and enforce requirements for appropriate use of professional judgment, ED recognizes that appropriate use is likely to increase in the current economic environment. As a result, ED will make appropriate adjustments to its risk-based model for the 2008-2009 and the 2009-2010 award years.**

### FFELP LOANS SOLD OR "PUT" TO THE U.S. DEPARTMENT OF EDUCATION

The U.S. Department of Education (ED) has announced that reallocations of loan funds between subsidized and unsubsidized loans will be allowed as part of a Post-PUT process. However, the reallocation must result in a zero net balance change.

Requests for reallocation may be submitted immediately. The submission information is as follows:

**EMAIL ADDRESS:** MonetaryPriority1@acs-inc.com

**SUBJECT LINE:** Reallocations

**Please Note:** The subject line must include "Reallocations" in order to appropriately route the request.

## SPECIAL ALLOWANCE RATES FOR STAFFORD AND PLUS LOANS FOR THE QUARTER ENDING MARCH 31, 2009

**Please Note:** The applicable Special Allowance Rates for Consolidation Loans and for loans made or purchased with tax-exempt funds are available at [www.ifap.ed.gov](http://www.ifap.ed.gov)

**The Treasury Bill (T-bill) rate for the quarter ending March 31, 2009 averaged .23%. No loans, made or purchased with taxable funds, in the categories of SA, SB, SD, SE, SG, SJ, and SK will receive Special Allowance payments.**

For the quarter ending March 31, 2009, the U.S. Department of Education (ED) returned to its previous method to determine the average Commercial Paper (CP) Rate by using the previous day's CP Rate when a daily CP Rate was not available. As a result, the average rate used to compute special allowance for the subject quarter was .74%.

**When the special allowance formula results in a negative rate on a loan first disbursed on or after April 1, 2006, the lender must remit the excess interest to ED.**

Loan Interest Rate	Special Allowance Annual Rate+	Special Allowance Quarterly Rate+	LaRS (Lender Reporting System) Part III: Special Allowance Category Column E*
3.61%	0.00%	0.00%	CA
4.21%	0.00%	0.00%	CB
5.01% (PLUS)	0.00%	0.00%	CD
3.61% 6.80%	(1.13%) (4.32%)	(.2825%) (1.08%)	CE
4.21% 6.80%	(1.13%) (3.72%)	(.2825%) (.9300%)	CF
5.01% (PLUS) 8.50% (PLUS)	(1.63%) (5.12%)	(.4075%) (1.280%)	CH
6.00% 6.80%	(4.07%) (4.87%)	(1.0175%) (1.2175%)	CI
6.00% 6.80%	(3.47%) (4.27%)	(.8675%) (1.0675%)	CJ
8.50% (PLUS)	(5.97%)	(1.4925%)	CM

\* For a detailed explanation of the Special Allowance codes, please visit the *Common Manual* at [www.aessuccess.org](http://www.aessuccess.org). To access the Manual, click on 'Solutions for Lenders' on the left-hand side of the screen. Then click on 'Access financial aid publications' under the heading 'More Lender Solutions,' which is located in the middle column on the screen. Then select the *Common Manual*. The Special Allowance codes are located in Appendix A, figure A-5.

+ For entities approved as not-for-profit holders, Special Allowance payments will be based on another code that ED sets in the respective demographic profiles. Please see the March/April 2008 issue of Loan Notes for more information.

## RECENT GUIDANCE ON COMPLETION OF LOAN VERIFICATION CERTIFICATES

**In Dear Colleague Letter (DCL) FP-09-03 posted to the ifap website on April 3rd, 2009,** the U.S. Department of Education (ED) provides updated guidance for Federal Family Education Loan Program (FFELP) lenders and servicers regarding the completion and return of Loan Verification Certificates (LVCs) in conjunction with a borrower's application to consolidate a single FFELP Consolidation Loan into a Direct Consolidation Loan.

Under the statutory change to Section 428C(a)(3) of the Higher Education Act (HEA) by the College Cost Reduction and Access Act (CCRAA) and the Higher Education Opportunity Act (HEOA), **a borrower is permitted to consolidate a single FFELP Consolidation Loan into a Direct Consolidation Loan if the borrower meets one of the following conditions:**

- The FFELP Consolidation Loan was submitted for default aversion or the FFELP Consolidation Loan is in default and the borrower wants to obtain an income-based repayment schedule (or income-contingent repayment schedule).
- The borrower wants to use the Public Service Loan Forgiveness Program under the Federal Direct Loan Program (FDLP).
- The borrower wants to use the "no interest accrual" benefit for active duty service members under the FDLP. In order to be eligible, the FFELP Consolidation Loan must have repaid FFELP loans that were first disbursed on or after October 1, 2008.

As a result, all loan holders must return completed LVCs to the FDLP for any borrower who has applied to consolidate a FFELP Consolidation Loan (other than a joint Consolidation Loan) into the FDLP. **In other words, a loan holder may not refuse to complete and return an LVC for a borrower who has applied to consolidate in the FDLP based solely on the fact that the only loan to be consolidated is a single FFELP Consolidation Loan.**

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