



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

DATE: September 27, 2007

CPA-07-3

SUBJECT: Amendment to January 2000 Audit Guide, *Audits of Federal Student Financial Assistance Programs at Participating Institutions and Institution Servicers – Prohibited Inducements Paid by Lenders and Denying Students’ Access to Lenders and Guaranty Agencies of Their Choice.*

Dear Certified Public Accountant:

This letter amends the January 2000 Audit Guide, *Audits of Federal Student Financial Assistance Programs at Participating Institutions and Institution Servicers* (Audit Guide), published in January 2000, by adding procedures designed to identify (1) prohibited inducements paid by lenders in the Federal Family Education Loan (FFEL) program and (2) the denial of students’ access to FFEL lenders and guaranty agencies of their choice. The procedures described in this letter are mandatory for all audits conducted using the January 2000 Audit Guide for audits with field work starting on or after (or still being conducted) 15 calendar days after the date of this amendment.

Compliance Requirements

Section 432(m)(1)(B)(ii) of the Higher Education Act of 1965, as amended (HEA), allows a borrower to choose his or her lender at a school participating in the FFEL Program . This provision is reflected in regulations at 34 C.F.R. § 682.603(e)(3), which states that a school may not “engage in any pattern or practice that results in a denial of a borrower's access to FFEL loans because of the . . . selection of a particular lender or guaranty agency.”

Section 435(d)(5) of the HEA prohibits an eligible lender in the FFEL Program from offering or paying inducements in order to secure applicants for loans. This requirement is reflected in regulations at 34 C.F.R. § 682.200, in paragraph (5)(i) of the definition of “Lender,” which states that a lender may not offer

. . . directly or indirectly, points, premiums, payments, or other inducements, to any school or other party to secure applicants for FFEL loans, except that a lender is not prohibited from providing assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of, the Federal Direct Loan Program.

While lenders are prohibited from offering inducements to schools and individuals, current requirements in the HEA and supporting regulations do not prohibit schools, their officials, or their employees from accepting those inducements.

The U.S. Department of Education has issued guidance concerning prohibited inducements. It may be accessed on the internet at:

<http://ifap.ed.gov/eannouncements/0914FFELProhibitedInducementGuidance.html>

Required Procedures

To determine whether schools are denying students the right to select a lender or guaranty agency, the auditor must:

1. Obtain a written representation from management specifying (a) whether the school has a policy, pattern or practice of denying a borrower's access to FFEL loans because of the selection of a particular lender or guaranty agency, and (b) whether the school denied any student the right to select a particular lender or guaranty agency;
2. Obtain and review school's policies, websites, and communications with students related to the FFEL Program for statements on a student's choice of FFEL lender and processes for certifying applications for a lender chosen by a student. Interview school personnel responsible for processing FFEL applications to determine the school's pattern, practice, and any complaints related to a student's choice of lender;
3. Determine if the school has one or more preferred lenders. If so, determine if the school has certified and disbursed loans from lenders that are not preferred lenders. Obtain and review any listings and/or information provided to students about any preferred lender and determine and review the school's procedures for making loans to students who choose a lender that is not a preferred lender or guaranty agency; and
4. When examining records for other procedures required by the Audit Guide, identify any evidence of the school's refusal to certify a loan based on a student's selection of a particular lender or guaranty agency or on a student's failure to select a preferred lender or guaranty agency.

Any finding resulting from the application of procedures 1 through 4 must be reported as a finding in the auditor's report.

To determine whether a school has been offered or paid a prohibited inducement by a lender, the auditor also must:

5. Obtain a written representation from management specifying whether the school, its officials, or its employees received any points, premiums, payments, or other inducements from a lender to secure applicants for loans;
6. Obtain and examine records of any agreements between the school and lenders that are related, either directly or indirectly, to the lender's providing FFEL Program loans to the school's students; and

7. When examining records for other procedures required by the Audit Guide, identify any evidence of the school's receipt of prohibited inducements from lenders.

We are requiring performance of procedures 5 through 7 to identify situations involving lenders offering prohibited inducements. If the auditor finds that schools or school officials or employees accepted inducements from lenders that lenders are prohibited from making, they must report this finding as an "Other Matter" in the report's Schedule of Findings and Questioned Costs. Such a finding does not indicate non-compliance by the school, and as such, does not result in a qualified opinion on compliance for the school. It should not be referred to in the auditor's reports on compliance and internal controls for the school.

Contact for Questions

Questions about this letter may be directed to Kevin Winicker, Assistant Director, Non-Federal Audits, by e-mail to kevin.winicker@ed.gov, or by fax to Mr. Winicker at 202-245-7088.

Sincerely,

/s/

Keith West
Assistant Inspector General
for Audit