

U.S. Department of Education
Office of Inspector General



**LENDER COMPLIANCE ATTESTATION
ENGAGEMENT GUIDE**

**FOR LENDERS HOLDING FEDERAL FAMILY
EDUCATION LOAN PROGRAM LOANS**

January 2011



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Washington, DC

January 31, 2011

Dear Colleague:

This letter transmits the U.S. Department of Education's Attestation Engagement Guide, *Lender Compliance Attestation Engagement Guide for Lenders Holding Federal Family Education Loan Program Loans*. This guide supersedes the audit guide entitled *Compliance Audits (Attestation Engagements) for Lenders and Lender Servicers Participating in the Federal Family Education Loan Program*, issued in December 1996. Application of this guide is effective for fiscal years ending on or after June 30, 2011. Earlier application is recommended, but not required.

A lender (other than a school lender) holding more than \$5 million in FFEL Program loans during its fiscal year, and a school lender under 34 C.F.R. §682.601 that holds any FFEL Program loans during its fiscal year, must submit an independent annual compliance audit (compliance attestation engagement) for that year conducted by a qualified independent organization or person (34 C.F.R. §682.305(c)(1)).

Schools that hold any FFEL Programs loans must, for any fiscal year beginning on or after July 1, 2006, in which a school engages in activities as an eligible lender, submit a compliance audit that satisfies the requirements of 34 C.F.R. §682.601. The required audit must examine the lender's compliance with the HEA and regulations as well as examine the lender's financial management of its FFEL Program activities. The compliance audit attestation engagement requirement that applies to all school lenders does not include an exception based on the amount of the lender's loan volume each fiscal year as defined in 34 C.F.R. §682.305(c) for other eligible FFEL Program lenders.

All attestation engagements conducted to satisfy the annual compliance audit requirements, except for audits of lenders that are nonprofit or governmental organizations must be done in accordance with this guide. All FFEL Program lenders that hold more than \$5 million in FFEL Program loans and any school lender under 34 C.F.R. §682.305(c)(1) that holds any amount of FFEL Program loans must submit the full reporting package identified in this guide.

This guide is available to the public at our website:

<http://www2.ed.gov/about/offices/list/oig/nonfed/sfa.html>

All questions related to the use of this guide should be directed to the Non-Federal Audit Team at ognon-federalaudit@ed.gov.

Sincerely,

/s/

Keith West
Assistant Inspector General for Audit

Table of Contents

Section 1 – General Requirements		4
<hr/>		
1.1	Purpose and Background	4
1.2	Engagement Objectives	5
1.3	Engagement Scope	5
1.4	Multiple Lender IDs	6
1.5	Engagement Report Submission Dates	6
1.6	Confidential Commercial Information	6
1.7	Quality Control Reviews	7
1.8	References and Resources	7
1.9	Technical Assistance	8
Section 2 – Planning the Engagement		10
<hr/>		
2.1	Introduction	10
2.2	Management Assertions and Representations	10
2.3	Engagement Letter	10
2.4	Professional Standards	11
2.5	Materiality	11
2.6	Professional Judgment and Due Professional Care	11
2.7	Sampling	12
2.9	Consideration of Prior Audits, Attestation Engagements and Reviews	12
2.10	Fraud, Illegal Acts, or Abuse	12
Section 3 – Compliance Attestation Procedures For Standard And Combined Engagements		14
<hr/>		
3.1	Introduction	14
3.2	Lender’s Interest and Special Allowance Request and Report (LaRS)	14
3.3	Loan Records	15
3.4	Interest Benefits	17
3.5	Special Allowance Payments / Return of Excess Interest	19
3.6	Loan Sales, Purchases, and Transfers	25

3.8	Payment Processing	27
3.9	Due Diligence by Lenders in the Collection of Delinquent Loans	28
3.10	Timely Claim Filings.....	33
3.11	Curing Due-Diligence and Timely Filing Violations	35
3.12	Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization.....	37
Section 4 – Agreed Upon Procedures For Alternative and Combined Engagements		40
4.1	Introduction	40
4.2	Lender Servicer Compliance Attestation Engagement Report Requirements	40
4.3	Compilation of the Lender’s Interest and Special Allowance Request and Report (LaRS)	41
4.4	Lender Servicer Engagement Report.....	42
4.5	Lender Servicer Engagement Report Findings	43
Section 5 – Reporting		44
5.1	Engagement Report Package Requirements:	44
5.2	Schedule of Findings	46
5.3	Auditor’s Comments on the Resolution of Prior Engagement Findings	47
5.4	Reporting Package Submission	47
5.5	Corrective Action Plan.....	47
Attachments.....		49
	Attachment 1 - Illustrative Examination-Level Report on Compliance with Specified Requirements	49
	Attachment 2 - Illustrative Agreed-Upon Procedures Report.....	51
	Attachment 3 – Illustrative Agreed-Upon Procedures and Results Section	52
	Attachment 4 – Lender and Auditor Information Sheet.....	55
	Attachment 5 – Management’s Assertions and Representations.....	56
Appendix		58
	Appendix 1 –Additional Reporting for SAP at the 9.5 Percent Minimum Return Rate for FFEL Program Loans Acquired with Funds Derived from Eligible Tax-Exempt Financing Sources	58

Abbreviations and Acronyms

<u>Acronym</u>	<u>Definition</u>
AT	Statement on Standards for Attestation Engagements
C.F.R.	Code of Federal Regulations
DCL	Dear Colleague Letter
ED	U.S. Department of Education
ED-OIG	U.S. Department of Education, Office of Inspector General
ELT	Eligible Lender Trustee
FFEL Program	Federal Family Education Loan Program
FOIA	Freedom of Information Act
GAGAS	Generally Accepted Government Auditing Standards
HEA	Higher Education Act of 1965, as amended
HEOA	Higher Education Opportunity Act of 2008
HERA	Higher Education Reconciliation Act of 2005
LaRS	Lender's Interest and Special Allowance Request and Report
OIG	Office of Inspector General
OMB	Office of Management and Budget
SSCR	Student Status Confirmation Report

Section 1 – General Requirements

1.1 Purpose and Background

This compliance attestation engagement guide (Guide) provides the requirements for attestation engagements of lenders holding Federal Family Education Loan (FFEL) Program loans. This Guide supersedes the Audit Guide, *Compliance Audits (Attestation Engagements) For Lenders and Lender Servicers Participating In the Federal Family Education Loan Program* (December 1996), and is effective for compliance attestation engagements for fiscal years ending June 30, 2011, and thereafter. This guide uses the term “auditor” to identify the practitioner conducting the compliance attestation engagement.

1.1(A) Student Aid and Fiscal Responsibility Act (SAFRA)

The SAFRA of 2010 included in the Health Care and Education Reconciliation Act (HERA) of 2010, Pub. L. No. 111-152, provides that, after June 30, 2010, no new student loans will be made under the FFEL Program. Therefore, beginning July 1, 2010, all new subsidized and unsubsidized Stafford Loans made to students, PLUS loans made to parents and to graduate/professional students, and consolidation loans made to borrowers, will be made under the Federal Direct Student Loans (Direct Loan) program.

1.1(B) Higher Education Act (HEA)

Prior to July 1, 2010, institutions that are banks, schools, other financial institutions, governmental entities, or nonprofit organizations that meet the definition of an eligible lender in §435(d) of the Higher Education Act of 1965, as amended (HEA) (20 USC 1085(d)) could make loans under the FFEL Program. All lenders must comply with the requirements generally applicable to lenders. These lenders may continue to hold FFEL Program loans until they are repaid or a claim is paid on the loan.

1.1(C) Code of Federal Regulations (C.F.R.)

A lender (other than a school lender) holding more than \$5 million in FFEL Program loans during its fiscal year, and a school lender under 34 C.F.R. §682.601 that originates or holds any FFEL Program loans during its fiscal year, must submit an independent annual compliance audit (compliance attestation engagement) for that year conducted by a qualified independent organization or person (34 C.F.R. §682.305(c)(1)).

Schools that hold any FFEL Program loans must, for any fiscal year beginning on or after July 1, 2006, in which a school engages in activities as an eligible lender, submit a compliance audit that satisfies the requirements of 34 C.F.R. §682.601. The required audit must examine the lender’s compliance with the HEA and regulations as well as examine the lender’s financial management of its FFEL Program activities.

The compliance audit attestation engagement requirement that applies to all school lenders does not include an exception based on the amount of the lender’s loan volume each fiscal year as defined in 34 C.F.R. §682.305(c) for other eligible FFEL Program lenders.

1.2 Engagement Objectives

The engagement objective is to determine if the lender complied with legal requirements in the FFEL Program. The compliance attestation engagements assist ED in meeting its stewardship responsibilities by allowing ED to act upon noncompliance and internal control deficiencies noted in reports. The auditor's findings must contain adequate information to give reported matters perspective and to allow the entity to take necessary corrective action to resolve the finding.

1.3 Engagement Scope

All lender compliance attestation engagements are based on the entity's fiscal year and must be performed in accordance with this Guide, except for lenders that are subject to the requirements of Single Audit Act and OMB Circular A-133. All lender engagements require opinions on each management assertion.

1.3(A) Use of a Lender Servicer and Effect On Compliance Engagement

Lenders frequently engage lender servicers to administer certain aspects of the lender's FFEL Program functions. The nature of management's written assertions and the scope of the lender engagement will vary depending on whether the functions addressed by assertions in Section 3 of this Guide are carried out in whole or in part by a lender servicer(s) and whether the lender servicer(s) provides an attestation engagement report that meets the requirements of the FFEL Program Lender Compliance Attestation Engagement Guide.

When a lender uses a lender servicer(s) to service all or part of its FFEL Program loan portfolio, the lender's management may not be able to make all of the assertions required in Section 2 of this Guide. In those situations, ED will accept as meeting the lender compliance attestation engagement requirement an independent accountant's report(s) based on an alternative or combined engagement as discussed in Section 4 of this Guide. Section 4 of this Guide provides guidance on when the alternative or combined engagement would be acceptable and the requirements for such an engagement.

Please note that when the circumstances exist that would allow the alternative or combined engagement to be used, ED is not mandating such an engagement. If the lender management wants a standard engagement and is able to make the required assertions, it is free to make that choice.

Lender management must determine which of the following engagement types are required based upon the functions performed by the lender servicer(s) and the lender:

(1) Standard Engagement

When the lender services its entire FFEL Program loan portfolio, lender management must make all of the applicable assertions required in Section 3 of this Guide and a standard (examination-level) engagement must be performed.

(2) Alternative Engagement

When the entire FFEL Program loan portfolio of the lender is serviced by one or more lender servicers, and the lender elects to use the alternative engagement, the lender's management is required to make the assertions contained in Section 4 and an agreed-upon procedures (AUP) engagement must be performed.

(3) Combined Engagement

When part of the FFEL Program loan portfolio is serviced by the lender and part is serviced by one or more lender servicers and the lender elects to use the combined engagement, the lender's management is required to make the applicable assertions in Section 3 and the additional assertions in Section 4. Lender management is required to engage the auditor to perform a standard engagement (examination level attestation engagement) for the applicable Section 3 assertions and an alternative engagement (agreed upon procedures engagement) for the additional assertions in Section 4.

1.3 (B) Compliance Attestations

If a lender does not perform all of the functions addressed by a single assertion, that assertion must be modified but it must clearly distinguish responsibilities of the lender and the lender servicer.

If the scope of a compliance attestation engagement is restricted because the lender refused to furnish the appropriate written management assertions and/or management representations, the lender may be subject to the administrative actions listed in 34 C.F.R. §682.413 and 34 C.F.R. Subpart G.

1.4 Multiple Lender IDs

Some lenders submit information to the U.S. Department of Education under multiple lender IDs. This Guide allows one compliance attestation report for multiple lender IDs for the same lender. However, managements written assertions and the auditor's report must include all lender IDs that held loans during the fiscal year. A complete listing of lender IDs covered by the assertions must be provided with the report submission.

1.5 Engagement Report Submission Dates

Engagement reports are due six months following the entity's fiscal year end. The report package must be submitted electronically to the U.S. Department of Education. (See Section 5)

The Secretary has the authority under §432(g) of the HEA and 34 C.F.R. Part 682, Subpart G to impose a civil penalty against a lender or lender servicer and/or to limit, suspend, or terminate a lender's or lender servicer's participation in the FFEL Program for failure to comply with Federal requirements.

1.6 Confidential Commercial Information

The Freedom of Information Act (FOIA), 5 U.S.C. §522, gives any person the right to request access to records. All agencies of the U.S. Government are required to disclose records upon receiving a written request for them, unless one of the exemptions to the FOIA applies. One of the FOIA exemptions applies to records containing confidential commercial information, which, as defined by the FOIA, means trade

secrets and commercial or financial information that is privileged or confidential, because disclosure could reasonably be expected to cause substantial competitive harm.

If the auditor or the auditor's client believes that the compliance attestation documentation contains confidential commercial information, the auditor must take appropriate steps to identify that information in the engagement documentation, to protect its confidentiality. If the auditor is asked to submit the compliance attestation documentation to ED, and ED subsequently receives a request under FOIA for information that the auditor has designated as confidential commercial information, ED will make an independent determination of whether that information meets the criteria for exemption from release.

ED does not inform the auditor or the FFEL Program lender about FOIA requests that ED receives. However, if ED receives a FOIA request for documentation the auditor has identified as confidential commercial information, and ED concludes that it must be released under FOIA, to the extent permitted by law; ED will make a good faith effort to notify the auditor and provide the auditor, or FFEL Program lender, an opportunity to provide any additional pertinent information, prior to releasing any documentation.

1.7 Quality Control Reviews

The Inspector General Act of 1978, as amended, (5 U.S.C. App. §4(b)(1)(C)) authorizes ED-OIG to evaluate the quality of the compliance attestation engagements that are to be conducted in accordance with GAGAS. As part of such evaluations, the auditor must make all attest documentation available ED-OIG its representatives upon request. If ED-OIG determines that an engagement is substandard, ED-OIG may (i) refer the issue to the State Board of Accountancy where the engagement was performed and/or the auditor is licensed, and the American Institute of Certified Public Accountants (AICPA), or the State Society of Certified Public Accountants, if the auditor is a member; and/or (ii) initiate action to suspend or debar the auditor from conducting additional audits or attestation engagements for use by the Federal government. Also, ED program officials may require the lender to obtain and submit another compliance attestation engagement to replace the substandard one.

1.8 References and Resources

To perform the compliance attestation engagement, the auditor must be familiar with the following publications and resources:

- Title 34 C.F.R. Part 682
(<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>)
- Dear Partner (Colleague) Letters
(<http://ifap.ed.gov/ifap/byYear.jsp?type=dpclatters>)
- FFEL Special Allowance Rates
(<http://ifap.ed.gov/ifap/byYear.jsp?type=ffelspecrates>)
- FFEL Variable Interest Rates
(<http://ifap.ed.gov/ifap/byYear.jsp?type=ffelvarrates>)

- Dear Colleague Letter FP-07-01 FFEL Program Loans Eligible for 9.5 Percent Minimum Special Allowance Rate
(<http://ifap.ed.gov/dpclatters/FP0701.html>)
- Dear Colleague Letter FP-07-06 Audit Requirements for 9.5 Percent Minimum Special Allowance Payment Rate
(<http://ifap.ed.gov/dpclatters/FP0706.html>)
- Dear Colleague Letter FP 07-12 -Determination of Not-For-Profit Holder Status for SAP Billing
(<http://www.ifap.ed.gov/dpclatters/FP0712.html>)
- Dear Colleague Letter FP 08-07 Ensuring Continued Access To Student Loans Act of 2008
(<http://www.ifap.ed.gov/dpclatters/061908GEN0808.html>)
- Dear Colleague Letter FP 08-10 The Higher Education Opportunity Act
(<http://www.ifap.ed.gov/dpclatters/GEN0812FP0810.html>)
- Dear Colleague Letter GEN10-05 Enactment of the Student Aid Provisions of the Health Care and Education Reconciliation Act of 2010 (<http://www.ifap.ed.gov/dpclatters/GEN1005.html>)
- Dear CPA Letter 08-02 (<http://www2.ed.gov/about/offices/list/oig/nonfed/dearcpa0802.pdf>)
- Income-Based Repayment Plan
(http://www.fp.ed.gov/fp/attachments/activities_whatsnew/IBR_Bulletin.doc)
- Funds Remittance Guidance
(http://www.fp.ed.gov/fp/attachments/activities_whatsnew/FundsRemittance9.0.doc)
- LaRS forms/Lender servicer billings submitted/prepared during the fiscal year
- Loan records and supporting loan documents
- Student Status Confirmation Reports/Notification of change information
- Lender servicer's contract(s) with lenders

Requirements and procedures governing the FFEL Program are subject to change. The auditor must check and review regulations and ED guidance to ensure that the applicable requirements and regulations are used in the engagement.

1.9 Technical Assistance

Technical questions about applying the procedures in this Guide may be directed to the ED-OIG's Non-Federal Audit Team by email at aignon-federalaudit@ed.gov.

1.10 Subsequent Editions of and Amendments to this Guide

Subsequent editions of, and/or amendments to, this Guide may be issued to reflect revisions to the engagement procedures and guidance issued by ED. The auditor must use the most recent edition of and/or amendments to this Guide when conducting the engagement. Auditors must access the ED-OIG's Non-Federal Audit Teams website to determine if a subsequent edition of, and/or amendments to, this Guide have been issued. The ED-OIG's Non-Federal Audits Team webpage is:

<http://www.ed.gov/about/offices/list/oig/nonfed/sfa.html>

Section 2 – Planning the Engagement

2.1 Introduction

This section sets forth matters that the auditor must consider when planning the engagement. These include obtaining management assertions and representations, preparing the engagement letter, reference materials, and auditing standards applicable to the compliance attestation engagements performed under this Guide.

2.2 Management Assertions and Representations

Lender management must provide its assertions and representations in a letter to the auditor. The format and content of management's assertions and representations are set forth in Attachment 5. In its letter, the lender's management must assert that it complied with each of the requirements discussed in detail in Section 3. If the lender did not comply with one or more of the compliance requirements, the auditor must request that the lender management modify its assertions to disclose the noncompliance. Also, lender management must provide all the applicable management representations described in Statement on Standards for Attestation Engagements (AT) §601.68. The updated assertions must be included as part of the reporting package (Attachment 5).

2.3 Engagement Letter

An engagement letter between the lender and the auditor must be executed and must include the following:

- A statement that the engagement is to be performed in accordance with Generally Accepted Government Auditing Standards (GAGAS), AICPA Attestation Standards, and this Guide;
- A description of the scope of the engagement (i.e., the period for which the engagement is being performed);
- A statement that both parties understand that ED will use the auditor's report to evaluate the propriety of the Lender's activities under the FFEL Program;
- A statement that the lender must provide the auditor all required representations and assertions;
- A statement that the lender must provide the auditor access to all agreements, documents, and electronic files pertinent to the scope of the engagement;
- A statement that for the preceding five years the lender has not been limited, suspended, or terminated by ED nor had they been cited for failure to submit required audits/attestation engagements.

- A provision that the auditor is required to provide the Secretary of Education, ED-OIG, and their representatives, access to and copies of attest documentation (e.g., records, work papers, other documents), upon request; and
- A provision that the auditor must retain attest documentation and reports for a minimum of seven years after the date of issuance of the auditor's report(s) to the entity, unless a pertinent law or regulation provides for a longer retention period or the auditor is notified in writing by ED to extend the retention period.

2.4 Professional Standards

Auditors must comply with applicable provisions of the public accountancy law(s) and the rules of the jurisdiction(s) in which the auditor is licensed and where the engagement is conducted. In addition, the compliance examination-level attest engagement must be conducted in accordance with the most recent and applicable version of GAGAS issued by the Comptroller General of the United States, and the Statement on Standards for Attestation Engagements (AT) of the American Institute of Certified Public Accountants (AICPA). GAGAS must be used in conjunction with the AICPA's AT. GAGAS ¶6.05 identifies additional GAGAS for attest engagements that go beyond the requirements in the AICPA's AT. Auditors must comply with these additional GAGAS standards.

2.4(A) Compliance Attestation Engagements

The compliance examination-level attest engagement must be conducted in accordance with *Government Auditing Standards* (commonly referred to as generally accepted government auditing standards [GAGAS]), issued by the Comptroller General of the United States and the Statement on Standards for Attestation Engagements (AT) of the American Institute of Certified Public Accountants (AICPA). GAGAS must be used in conjunction with the AICPA's AT. GAGAS ¶6.05 identifies additional GAGAS for attest engagements that go beyond the requirements in the AICPA's AT. Auditors must comply with these additional GAGAS standards.

2.5 Materiality

The guidance provided in AT §601.36 and §601.37, concerning an auditor's consideration of materiality, must be followed for compliance engagements. Materiality for purposes of compliance assertions differs from materiality for financial reporting purposes. This engagement requires opinions on each management assertion. Therefore, materiality must be considered in relation to each individual management assertion. The auditor's considerations on materiality must be documented in the attest documentation.

2.6 Professional Judgment and Due Professional Care

Auditors must not ignore basic deficiencies in internal control, perform procedures mechanically (form over substance), or accept explanations for exceptions without acquiring adequate evidence. Auditors must exercise due care in planning, performing, and reporting on engagements. They must also exercise a proper degree of professional judgment, including reasonable care and professional skepticism; so that there is a reasonable degree of assurance that material noncompliance will be detected. (See GAGAS ¶3.31 through ¶3.39 and AT §101.39 through §101.41.)

2.7 Sampling

Many of the required procedures for the engagement, described in Section 3, provide for the use of a sample to test lender compliance. Unless the guidance for the required procedure provides otherwise, when designing a sample plan, auditors may refer to the AICPA's Statement on Auditing Standards (AU) § 350, Audit Sampling. Samples must be representative of the lender's FFEL Program portfolio and Lender IDs.

2.7(A) Sample Results

If material noncompliance exists, the auditor should consider sample results in the context of both individual management assertions about compliance and the Lender's FFEL Program portfolio. Sampling results must include information on the population, sample size, and error rate found in the sample. (Note: Sampling results from each universe must be analyzed separately.)

2.8 Consideration of Internal Control over Compliance

Relevant guidance for the consideration of internal control is provided in GAGAS ¶¶6.10 through ¶6.12 and AT §601.45 through §601.47. These standards state that the auditor must obtain an understanding of relevant portions of internal control over compliance sufficient to plan the engagement and to assess control risk for compliance with the specified requirements (that is, compliance requirements specified in Section 3 of this Guide). Auditors must document their understanding of the Lender's internal control using flowcharts, narrative, or other means, and must also document their assessment of control risk. Auditors must document and report all significant deficiencies and material weaknesses in internal control.

2.9 Consideration of Prior Audits, Attestation Engagements and Reviews

Auditors must obtain the lender's management to provide copies of all reports on prior audits and reviews of the lender, relating to its administration or servicing of any FFEL Program loans and matters covered in this Guide issued within the immediate two years prior to the engagement period, including: (i) audits conducted by ED-OIG, (ii) program reviews conducted by ED-Federal Student Aid (FSA), and (iii) audits and attestation engagements performed by auditors, and the resolution of any reported findings in any reports. The auditor must use this information in assessing risk and determining the nature, timing, and extent of substantive tests for engagements performed under this Guide.

2.10 Fraud, Illegal Acts, or Abuse

The auditor must be guided by GAGAS provisions covering fraud, illegal acts, or abuse including GAGAS ¶¶6.13 -6.14. In performing the engagement, the auditor must exercise due professional care when pursuing any indication of fraud, illegal acts, or abuse, so that potential future investigations or legal proceedings are not compromised. If any fraud, illegal act, or abuse related to the FFEL Program is detected, regardless of dollar value, the auditor must report this immediately to:

**Assistant Inspector General for Investigations
U. S. Department of Education
550 12th Street, S.W., 8108
Washington, DC 20202
Phone: (202) 245-6922**

Immediately after reporting the matter, the auditor must promptly prepare a separate written report concerning fraud, illegal acts, or abuse, or indications of such activities. The report must include all information required for reporting a finding as outlined in GAGAS ¶¶ 6.36 – 6.38. This report must be submitted to the ED OIG, either within 30 days after the date of discovery of the act, or within the time frame agreed to by the auditor and the ED OIG. The transmittal must request ED OIG to reply by letter or email to the auditor to acknowledge receipt of the report, and in their acknowledgement to (1) advise the auditor if he can also submit the separate written report with the compliance attestation engagement reports to the ED Financial Institution and Oversight Service office, and (2) whether the auditor can reflect the contents of the separate report in the compliance attestation engagement reports. You must retain the ED OIG acknowledgement in your attest documentation.

Section 3 – Compliance Attestation Procedures For Standard And Combined Engagements

3.1 Introduction

This section is to be used for standard and combined engagements as defined in Section 1.3(A). This section:

- Sets forth the specific assertions which management is required to make,
- Summarizes the compliance requirements related to each of these specific assertions, and
- Provides required procedures to test management assertions. However, the required procedures are not intended to supplant the auditor's judgment about the testing necessary for the auditor to report on the lender's compliance with the specified requirements. In some circumstances, the auditor may need to supplement the required procedures with other procedures, to satisfy the engagement objectives.

3.2 Lender's Interest and Special Allowance Request and Report (LaRS)

The LaRS is used by ED to calculate interest subsidies and special allowance payments due to lenders or monies owed to ED (for negative special allowance payments). It is also used to calculate origination fees and lender loan fees owed to ED as well as to obtain information about the lender's FFEL Program portfolio.

For lenders to receive payments of interest benefits and special allowance payments, quarterly reports must be submitted to ED on the LaRS. The lender must submit fully completed quarterly LaRS to ED even if the lender is not owed, or does not wish to receive interest benefits or special allowance payments from ED.

The LaRS is a five-part form:

Page 1 - The first page of the form identifies the lender by name and identification number and, if the lender uses a lender servicer to prepare the form, the lender servicer's name and identification number. It also requires that an official representative of the lender certify that the data reported is correct and that it conforms to the laws, regulations, and policies applicable to the FFEL Program.

Part I – Lender Origination and Lender Loan Fees - This part contains information on the amount of funds disbursed during the quarter and the amount of loan origination and lender loan fees due to ED.

Part II – Interest Benefits – This part contains information on the amount of interest benefits due to the lender on eligible loans.

Part III – Special Allowance – This part contains information for the lender to request special allowance payments from ED. The loan information must be separated according to loan type, applicable interest rate, and special allowance categories. ED calculates the amount of special allowance payments due to the lender based on this data.

Part IV – Loan Activity – This part contains information regarding any changes in principal amounts for each type of FFEL Program loan in the lender’s portfolio during the quarter.

Part V – Loan Portfolio Status – This part contains information regarding the status of the outstanding loan principal for each type of FFEL Program loan in the lender’s portfolio at the end of the quarter.

3.2(A) Required Management Assertion

The [Lender] complied with the LaRS reporting compliance requirements as described in Section 3.2 of ED’s Lender Compliance Attestation Engagement Guide.

3.2(B) Compliance Requirements

The lender is required to keep records necessary to support the amounts reported on the LaRS (34 C.F.R. §682.305(a) and 682.414). The LaRS must be submitted within 90 days after the end of the quarter to be considered timely. See 34 C.F.R. §682.414(a)(4)(ii) for more information.

3.2(C) Required Procedure

Select 2 (minimum sample) quarterly LaRS reports for the fiscal year under review for each Lender ID and reconcile data reported on the LaRS report to lender records to determine the completeness of the data submitted to the Department.

3.3 Loan Records

A lender is required to maintain current, complete, and accurate records of each loan that it holds. These loan records (files) form the basis for the information contained in the LaRS. The records must be maintained in a system that allows ready identification of each loan’s status. Except for the loan application and the promissory note, these records may be stored in microform, computer file, optical disk, CD-ROM, or other media formats provided that the means of storage meets the requirements in 34 C.F.R. §668.24(d)(3)(i) through (iv) (34 C.F.R. §682.414(a)).

3.3(A) Required Management Assertion

The [Lender] complied with the Loan Record compliance requirements as described in Section 3.3 of ED's Lender Compliance Attestation Engagement Guide.

3.3(B) Compliance Requirements

The lender must maintain the required records identified in 34 C.F.R. §682.414(a)(4)(ii) which are listed below:

- A copy of the loan application, if a separate application was provided to the lender
- A copy of the signed promissory note
- The repayment schedule
- A record of each disbursement of loan proceeds
- Notices of changes in a borrower's address and status as at least a half-time student
- Evidence of the borrower's eligibility for a deferment
- The documents required for the exercise of forbearance
- Documentation of the assignment of the loan
- A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs
- A collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan; each communication (other than regular reports by the lender showing that an account is current) between the lender and a credit bureau regarding the loan; each effort to locate a borrower whose address is unknown at any time; and each request by the lender for default aversion assistance on the loan
- Documentation of any Master Promissory Note confirmation process or processes
- Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted.

Note: Original Loan Applications and Promissory Notes. If the compliance attestation engagement sample includes loans that the lender no longer owns, such as loans that the lender sold to ED under the provisions of the Ensuring Continued Access To Student Loans Act (ECASLA), sold to another party, paid by consolidation, or assigned to a guaranty agency, the auditor may perform alternative procedures to obtain access to and review the original documents. The alternative procedures could include, but are not necessarily limited to, the review of: (1) a copy or image maintained by the lender or lender servicer

of the original document, or (2) a certified true copy, obtained from the entity that currently holds the original loan document, that may be compared to the lender's document.

3.3(C) Required Procedures

The following procedures are required:

Select a minimum sample of 60 loans and trace loan information from the lender's loan records to determine that the following records were maintained for each loan:

- (a) A copy of the loan application, if a separate application was provided to the lender
- (b) A copy of the signed promissory note
- (c) The repayment schedule
- (d) A record of each disbursement of loan proceeds
- (e) Notices of changes in a borrower's address and status as at least a half-time student
- (f) Evidence of the borrower's eligibility for a deferment
- (g) The documents required for the exercise of forbearance
- (h) Documentation of the assignment of the loan
- (i) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs
- (j) A collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan; each communication (other than regular reports by the lender showing that an account is current) between the lender and a credit bureau regarding the loan; each effort to locate a borrower whose address is unknown at any time; and each request by the lender for default aversion assistance on the loan
- (k) Documentation of any Master Promissory Note confirmation process or processes
- (l) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted.

3.4 Interest Benefits

ED pays the lender interest benefits on eligible FFEL Program loans (subsidized Stafford and certain consolidation loans) on behalf of a qualified borrower during certain periods. Generally, ED's obligation to pay interest benefits to a lender ceases when the eligible borrower enters repayment status and does not qualify for a deferment. Interest benefits to the lender also begin or terminate with certain other date-specific events enumerated in 34 C.F.R. §682.300(b)(2) and (c). The information needed for ED to calculate interest benefits is reported in Part II of the LaRS.

Payment of Interest Benefits

ED pays the lender interest benefits (see 34 C.F.R. § 682.202(a) for applicable FFEL Program interest rates) on eligible FFEL Program loans (subsidized Stafford and certain consolidation loans) on behalf of a qualified borrower during certain periods including:

- All periods prior to the beginning of the repayment period; and
- Any period when the borrower has an authorized deferment (34 C.F.R. §682.300).

Payment of Interest Benefits on Consolidation Loans

Consolidation loan borrowers qualify for interest benefits during authorized periods of deferment on the portion of the loan that does not represent Health Education Assistance Loans (HEAL) if the loan application was received by the lender on or after:

- January 1, 1993, but prior to August 10, 1993;
- August 10, 1993, but prior to November 13, 1997, if the loan consolidates only subsidized Stafford loans; or
- November 13, 1997, but prior to July 1, 2010, for the portion of the loan that repaid subsidized FFEL Program loans and Direct Subsidized Loans (34 C.F.R. §682.301(a)(3)).

Termination of Interest Benefits

Generally, ED's obligation to pay interest benefits to a lender ceases when the eligible borrower enters repayment status and does not qualify for a deferment. Interest benefits to the lender also begin or terminate with certain other date-specific events enumerated in 34 C.F.R. §682.300(b)(2) and (c).

Reporting of Interest Benefits

The information needed for ED to calculate interest benefits is reported in Part II of the LaRS. See 34 C.F.R. §682.202(a) for applicable interest rates for FFEL Program loans.

The HEOA amended §428(d) of HEA (20 USC 1078(d)) to specify that the requirement of the Servicemembers Civil Relief Act (50 USC App. 527) (SCRA), which limits the interest rate on a borrower's loan to 6 percent during the borrower's active duty military service, applies to FFEL Program loans. This change applies for periods of military service after August 13, 2008. The SCRA interest rate limit does not apply to an endorser to a PLUS loan made to a parent or graduate/professional student unless that individual is also performing eligible military service (50 USC App. 527).

Interest benefits due the lender may be calculated by using either the average daily balance or actual accrual methods in 34 C.F.R. §682.304(b) and (c).

Consolidation Loan Interest Payment Rebate Fee

Consolidation loan interest payment rebate fees are required on a monthly basis from lenders that hold Federal consolidation loans with first disbursements after October 1, 1993. The monthly rebate fee is .0875 percent (1.05 percent annualized) of the unpaid balance of the principal and the accrued unpaid interest on all Federal consolidation loans disbursed after October 1, 1993, and held by the lender on the last day of the month. For loans based on applications received during the period October 1, 1998

through January 31, 1999, inclusive, the monthly rebate fee is .05167 percent (0.62 percent annualized) of the unpaid balance of principal and accrued unpaid interest. Consolidation loan rebate fees (CLRF) are reported monthly using the FFEL Consolidation Loan Rebate Fee Report and Remittance Form (§428C(f) of the HEA (20 USC 1078-3(f))).

3.4(A) Required Management Assertion

The [Lender] complied with the Interest Benefits compliance requirements as described in Section 3.4 of ED's Lender Compliance Attestation Engagement Guide.

3.4(B) Compliance Requirements

The lender must: (1) assign the loan interest rate in accordance with 34 C.F.R. §682.202(a) and 50 USC App. 527; (2) bill interest only for periods specified in 34 C.F.R. §682.300 (b)(2) and not for interest covered under 34 C.F.R. §682.300 (c); (3) bill interest on consolidation loans in accordance with 34 C.F.R. §682.301(a)(3); (4) terminate interest billing in accordance with 34 C.F.R. §682.300(b) and (c); (5) calculate and submit CLRF in accordance with 20 USC 1078-3(f); and (6) calculate interest benefits in accordance with 34 C.F.R. §682.304(b) and (c).

3.4(C) Required Procedures

The following procedures are required:

- (1) Select a minimum sample of 60 loans and:
 - (a) Determine that the loans are assigned the correct interest rate in accordance with 34 C.F.R. §682.202(a) and 50 USC App. 527, and are reported in the correct interest rate category for LaRS.
 - (b) Review loan records, disbursement records, or other documentation to verify that interest is billed only for periods specified in 34 C.F.R. §682.300(b)(2) and is not billed for interest covered under 34 C.F.R. §682.300(c).
 - (c) Review the history files for any consolidation loans in the sample for which interest was billed, and verify that the loans qualified for interest payments.
 - (d) For consolidated loans subject to CLRF, verify that fees were calculated accurately and submitted on a monthly basis.
 - (e) Test the accuracy of the average daily balance or actual accrual calculations by recalculating amounts or by using reasonableness tests.

3.5 Special Allowance Payments / Return of Excess Interest

In addition to interest benefits, ED pays a special allowance to the lender on the average daily outstanding balance of eligible FFEL Program loans. ED will compute the special allowance payable to the lender based upon the average daily balance computed by the lender. The amount of each quarterly special allowance payment will vary according to the type of FFEL Program loan, the date the loan was disbursed, the loan period, and the loan status. The lender reports in Part III of the LaRS the average daily principal balance of those loans in each category qualifying for the payment. In addition, ED will calculate the amount of excess interest or negative special allowance owed to ED. ED computes the

special allowance payment due to the lender during processing of the LaRS (34 C.F.R. §682.304 through 682.305).

Loans Eligible for Special Allowance Payments

See 34 C.F.R. §682.302(b) for details on loans eligible for special allowance payments. Limitations on the payment of a special allowance for PLUS loans were eliminated by the Higher Education Reconciliation Act (HERA), (Pub. L. No. 109-171). Therefore, lenders may receive special allowance payments on PLUS loans that were first disbursed on or after January 1, 2000 and before July 1, 2006, for periods beginning April 1, 2006 (§438(b)(2)(I) of HEA (20 USC 1087-1(b)(2)(I)) and § 8006 of HERA). The average loan principal, including capitalized interest, is to be calculated using the average daily balance method defined in 34 C.F.R. §682.304(d).

Special Allowance Rates for Loans Made On or After October 1, 2007 but Prior to July 1, 2010

Except for certain loans made from funds derived from tax-exempt sources, the special allowance rate for any eligible loan, for which the first disbursement of principal was made on or after October, 1, 2007, is to be calculated according to the formulas described in:

- (a) §438(b)(2)(I)(vi)(I) of HEA (20 USC 1087-1(b)(2)(I)(vi)(I)) (34 C.F.R. §682.302(f)(1)) for a loan that is held by an entity that does not qualify as an “eligible not-for-profit holder,” or
- (b) §438(b)(2)(I)(vi)(II) of HEA (20 USC 1087-1(b)(2)(I)(vi)(II)) (34 C.F.R. §682.302(f)(2)) for a loan that is held by an entity that qualifies as an “eligible not-for-profit holder.”

An “eligible not-for-profit holder” is an eligible lender under §435(d) of the HEA (20 USC 1085(d)), other than a school lender, that is–

- A State, or a political subdivision, agency, authority or instrumentality of a State, including an entity eligible to issue bonds described in §144(b) of the Internal Revenue Code (Code), or in 26 C.F.R. §1.103-1,
- A not-for-profit entity described in §150(d)(2) of the Code that has not made the election described in §150(d)(3) of the Code to relinquish that status,
- A not-for-profit entity described in §501(c)(3) of the Code;
- A trustee acting on behalf of a governmental or non-profit entity listed above, without regard to whether that entity qualifies as an eligible lender under §435(d) in its own right (§435(p) of the HEA (20 USC 1085(p)).

Loans that are held by a governmental or non-profit entity that is an eligible lender under HEA § 435(d) may qualify for the higher special allowance rate, as may loans held by an eligible lender trustee on behalf of such an entity. Loans held by the entity or eligible lender trustee qualify for the higher rate only if the governmental or non-profit entity –

- On September 27, 2007, either acted as an eligible lender under HEA §435(d) (other than as a school lender), or was the sole beneficial owner of a FFEL Program loan that was eligible for special allowance payments;
- Is neither owned nor controlled, even in part, by a for-profit entity; and
- Remains the sole beneficial owner of such loans and the income from such loans (§435(p)(2) of HEA (20 USC 1085(p)(2))).

The grant of a security interest in a loan or its income, or the pledge of the loan or income as collateral, in order to secure a debt obligation issued by a governmental or non-profit entity, does not affect the not-for-profit eligibility status of that entity or of an eligible lender trustee to the extent acting on its behalf (§435(p)(2)(E) of HEA (20 USC 1085(p)(2)(E))).

An eligible lender trustee may not receive compensation in excess of reasonable and customary rates for serving as a trustee for a governmental or non-profit entity (§435(p)(2)(D) of HEA (20 USC 1085(p)(2)(D))).

Special Allowance Rate Payable on Loans Made or Purchased with Funds from the Issuance of Tax-Exempt Obligations

The special allowance rate payable on loans made or purchased from funds derived from tax-exempt obligations depends on the specific source of funds used to acquire the loan, whether specified events occurred after its acquisition, the date the loan was acquired, the rate payable on the loan when it was acquired, and the characteristics of the lender that acquired the loan (§438 of HEA (20 USC 1087-1)).

With limited exceptions, for HERA small lenders (see below), the special allowance rates for loans made on or after October 1, 2007, are the same for all loans, regardless of the source of funding, and differ only with respect to the status of the holder of the loan. Loans made before October 1, 2007, that were acquired with funds from tax-exempt obligations originally issued prior to October 1, 1993 receive a special allowance at one-half the rate otherwise payable, but not less than needed to provide, including the interest on the loan, an annualized return of 9.5 percent. (§438(b)(2)(B)(i), (ii), and (iv) of HEA (20 USC 1087-1(b)(2)(B)(i), (ii), and (iv))). This separate rate is referred to as the “9.5 percent floor.”

Loans acquired with funds from tax-exempt obligations originally issued on or after October 1, 1993 receive the same special allowance rate as loans acquired with funds from sources other than tax-exempt obligations. An obligation that was issued to obtain funds to make loans, or to acquire an interest in a loan (including an interest by pledge of the loan as collateral), is considered to have been originally issued on the date it was issued. A tax-exempt obligation that refunds, or is one of a series of tax-exempt refunding obligations, is considered to have been originally issued when the initial obligation was issued (§438(b)(2)(B)(iv) of HEA (20 USC 1087-1(b)(2)(B)(iv))). Only loans made or purchased from an eligible funding source specified in 34 C.F.R. §682.302(c)(3)(i) may qualify for the 9.5 percent floor. Those sources are funds obtained from:

- The proceeds of a tax-exempt obligation originally issued prior to October 1, 1993;
- Collections or default payments by a guarantor on a loan acquired with the proceeds of such an obligation;
- Interest or special allowance payments received on a loan acquired with the proceeds of such an obligation;
- The sale of a loan acquired with the proceeds of such an obligation; or
- The investment of the proceeds of such an obligation.

Claims for Special Allowance at The 9.5 Percent Floor

Special allowance at the 9.5 percent floor may be received on claims submitted for the quarter ending December 31, 2006, and thereafter only if the lender has submitted, and ED has accepted, a report of an audit conducted under a methodology prescribed for this purpose that identifies those loans that have been acquired from the eligible sources in the previous paragraph, and the lender has submitted, for each such claim, a management certification that SAP is claimed at that rate only on loans determined through that process to be eligible. (See Dear Colleague Letters FP-07-01 and FP-07-06.)

However, loans made from or purchased using these eligible sources do not qualify for the 9.5 percent floor if the loans were made or purchased after February 7, 2006 or, for loans made before that date and purchased after that date, did not qualify on that date for special allowance at the 9.5 percent floor. (§438(b)(2)(B)(vi) of HEA (20 USC 1087-1(b)(2)(B)(vi)); 34 C.F.R. §682.302(e)(4)).

These deadlines are deferred until December 31, 2010 with respect to a “HERA small lender,” a loan holder that on February 8, 2006, and during the quarter for which the special allowance is paid:

- Was a unit of state or local government or a private nonprofit entity;
- Was not owned or controlled by, or under common ownership with, a for-profit entity; and
- Held directly or through any subsidiary, affiliate, or trustee, a total unpaid balance of principal equal to or less than \$100 million on loans for which special allowances were paid under §438(b)(2)(B) in the most recent quarterly payment prior to September 30, 2005 (§438(b)(2)(B)(vii) of HEA (20 USC 1087-1(b)(2)(B)(vii)); 34 C.F.R. §682.302(e)(5)).

Loss of Eligibility for Special Allowance at The 9.5 Percent Floor

Loans that are eligible for the 9.5 percent floor may lose eligibility for that rate and revert to the usual rates for any loan that is:

- Pledged or otherwise transferred prior to October 1, 2004 from the tax-exempt obligation used to acquire the loan, unless either of the following applies –
 - The loan is pledged or transferred in consideration of funds listed in 34 C.F.R. §682.302(c)(3)(i) or from a tax-exempt refunding obligation, or

- The prior tax-exempt obligation used to acquire the loan is neither retired nor defeased with yield-restricted obligations;
- Financed by a tax-exempt obligation that, after September 30, 2004, has matured, been refunded, or is retired or defeased;
- Refinanced after September 30, 2004 with funds obtained from a source other than the funds listed in 34 C.F.R. §682.302(c)(3)(i);
- Sold or transferred to any other holder after September 30, 2004. (§438(b)(2)(B) of HEA (20 USC 1087-1(b)(2)(B)); 34 C.F.R. §s 682.302(e)(2) and (3)).

Termination of Special Allowance Payments on a Loan

Special allowance payments on eligible loans terminate when a date-specific event occurs and the loan is no longer eligible for the payment. These date-specific events are described in detail in 34 C.F.R. §682.302(d) and include the following:

- The date a borrower's loan is repaid;
- The date a borrower's loan check is returned uncashed to the lender;
- The date the lender receives payment on a claim for loss on the loan;
- The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;
- The 60th day after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all the required documentation on or before the 60th day;
- The 120th day after disbursement if the loan check has not been cashed on or before that date or if the loan proceeds disbursed by EFT have not been released from the restricted account maintained by the school on or before that date;
- The 30th day after the date the lender received a returned claim from the guaranty agency due solely to inadequate documentation on a loan submitted by the regulatory deadline for loss on the loan (unless the lender files a claim for loss on the loan with the guarantor, together with the required documentation prior to the 30th day); and
- The date on which the lender determines the loan is legally unenforceable based on receipt of an identity theft report under 34 C.F.R. §682.208(b)(3). (34 C.F.R. §682.302(d))

Loss of Interest and Special Allowance Payment Benefits

A lender can lose reinsurance coverage and interest and special allowance payment benefits due to violations of due diligence requirements on a loan (See Section 3.10 below). To reinstate reinsurance and other Federal payments on the loan, the violation has to be “cured” (See Section 3.12 below). See Appendix D of 34 C.F.R. part 682 for more information.

3.5(A) Required Management Assertion

The [Lender] complied with the Special Allowance Payments compliance requirements as described in Section 3.5 of ED’s Lender Compliance Attestation Engagement Guide, concerning Special Allowance Payments.

3.5(B) Compliance Requirements

The lender must: (1) bill special allowance only for eligible loans as defined in 34 C.F.R. §682.302(b); (2) terminate special allowance billing in accordance with 34 C.F.R. §682.302(d) and §682.302(e)(2) and (3); (3) calculate the average daily balance in accordance with 34 C.F.R. §682.304(d); and (4) bill special allowance for eligible loans made or purchased with funds derived from tax-exempt obligations in accordance with 34 C.F.R. §682.304 (e), (f), and (g).

3.5(C) Required Procedures

The following procedures are required:

Select a minimum sample of 60 loans and:

- (a) Determine if the lender is reporting loans in Part III of the LaRS by the proper special allowance category.
- (b) Determine if the lender is terminating special allowance billing on loan balances when a date-specific event specified in 34 C.F.R. §682.302(d) occurs and for disqualifying events (for termination of billing under the 9.5 percent floor) specified in HEA and 34 C.F.R. §682.302(e)(2) and (3).
- (c) Determine the accuracy of the average daily balance calculations as defined in 34 C.F.R. §682.304(d) by recalculating amounts.
- (d) Determine that loans included in the average daily balances do not include loans that are not eligible for special allowance payments.
- (e) Using the results of any audit conducted by or for the lender under Dear Colleague Letter FP-07-06 and accepted by ED, test that the lender is accurately reporting for the 9.5 percent floor only those loans that:
 - (i) were identified as a result of the audit as made or purchased with eligible sources of funds, or
 - (ii) if made or acquired by the lender after December 31, 2006, were made or purchased with funds obtained from repayments, sales, or interest or special allowance payments on loans that were established by such audit to be first-generation loans, as that term is used in Dear Colleague Letter FP 07-01, and

- (iii) unless held by a lender that qualifies for deferral until December 30, 2010:
 - (a) were made or purchased prior to February 8, 2006, and
 - (b) were eligible for 9.5 percent floor on February 8, 2006.
- (f) For loans made on or after October 1, 2007 through June 30, 2010, for which the lender claimed special allowance as an “eligible not-for-profit holder,” examine if the lender claimed special allowance on loans held as a trustee on behalf of another entity
 - (a) the claim was limited to loans to which a governmental or non-profit entity listed above held full beneficial ownership; and
 - (b) the lender was compensated at a rate in excess of that paid other eligible lender trustees holding FFEL Program loans, and if so, by what amount.

3.6 Loan Sales, Purchases, and Transfers

Loan sales, purchases, and transfers between eligible lenders entail special portfolio management risks and, therefore, require special controls. The lender must exercise due care in ensuring that gaps in servicing do not occur, possibly affecting the reinsurance of the loan.

If the assignment or transfer of ownership interest 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 the information required in 34 C.F.R. §682.208(e). Within 90 days of its acquisition of the loan, the purchasing lender shall report to at least one national credit bureau the information required in 34 C.F.R. §682.208(b)(2).

If an originating lender sells or otherwise transfers a loan to a new holder, ED will hold the originating lender liable for the payment of the origination and lender fees and will not pay interest benefits or a special allowance to the new holder or pay reinsurance to the guaranty agency until the origination fees are paid to ED (34 C.F.R. §682.305(a)(4)).

3.6(A) Required Management Assertion

The [Lender] complied with the Loan Sales, Purchases, and Transfers compliance requirements as described in Section 3.6 of ED’s Lender Compliance Attestation Engagement Guide.

3.6(B) Compliance Requirements

The lender must (1) comply with the notification requirements in 34 C.F.R. §682.208(e) and 34 C.F.R. §682.208(b)(2) upon assignment or transfer of ownership interest of a Stafford, PLUS, SLS, or Consolidation loan that results in a change in the identity of the party to whom the borrower must send subsequent payments and (2) pay all fees required by 34 C.F.R. §682.305(a)(4).

3.6(C) Required Procedures

The following procedures are required:

Select a minimum sample of 60 loans reported as purchased, sold, or transferred and:

- (a) Trace the principal amount of loans sold, purchased, or transferred as reported on LaRS to the bills of sale/purchase agreements and to lender records.
- (b) Determine if borrowers were notified with the required information.
- (c) Review the loan purchase/sales agreements and ascertain the terms of the agreements as to the day of sale, transfer of funds, and responsibility for loan origination and lender fees. Determine if the sale/purchase was conducted in accordance with these terms and the date-specific event was properly noted in the lender's records as to the start/end date of eligibility for interest benefits and special allowance.

3.7 Enrollment Reports

Schools are required to confirm and report to the National Student Loan Data System (NSLDS) the enrollment status of students who receive Federal student loans. This process is called Enrollment Reporting. Enrollment information is used to determine the borrower's eligibility for in-school status, deferment, interest subsidy, and grace period. Enrollment changes, such as a change from full-time to half-time status, graduation, withdrawal, or an approved leave of absence, are changes that need to be reported. The enrollment information is merged into the NSLDS database and reported to guarantors, lenders, and servicers of student loans.

Lenders must use the NSLDS data to make adjustments to each loan. The billing for interest benefits and special allowance payments relies on the timely and proper processing of student enrollment information, including timely conversion to repayment status. The conversion of a loan to repayment status is subject to a number of conditions as defined in 34 C.F.R. §682.209. Typically, Stafford loan borrowers begin repayment six months following the date on which the borrower is no longer enrolled on at least a half-time basis at a school. PLUS, SLS and consolidation loans go into repayment on the day the loan is disbursed, or if disbursed in multiple installments, on the date the loan is fully disbursed. The first payment is due within 60 days of the date the loan is fully disbursed (34 C.F.R. §682.209).

3.7(A) Required Management Assertion

The [Lender] complied with the Enrollment Report compliance requirements as described in Section 3.7 of ED's Lender Compliance Attestation Engagement Guide.

3.7(B) Compliance Requirements

The lender must (1) review and use enrollment report data to make adjustments to loan status, and (2) convert loans to repayment status in accordance with 34 C.F.R. §682.209.

3.7(C) Required Procedures

The following procedures are required:

Using the Enrollment Reports received during the audit period, select a sample of 60 loans (minimum sample size) and:

- (a) Trace loan status information from the Enrollment Reports to loan records and any lender discrepancy reports or other notifications of change information to determine if changes to student enrollment status were made accurately.
- (b) Determine whether conversions to repayment status were made within required time limits.

3.8 Payment Processing

Except for borrower payments made under an Income-Based Repayment (IBR) plan (see below), the lender may credit the entire payment amount first to any late charges accrued or collection costs, then to any outstanding interest, and then to any outstanding principal. Unless the borrower requests otherwise, if a prepayment equals or exceeds the established monthly payment amount, the lender must apply the prepayment to future installments and advance the next payment due date.

A borrower may prepay all or part of a loan at any time without a penalty. The lender must (1) inform the borrower in advance that any additional full payment amounts submitted without instructions as to their handling will be applied to future scheduled payments with the borrower's next scheduled payment due date advanced, or (2) provide a notification after the payment is received stating that the payment has been so applied and the due date of the borrower's next scheduled payment. Information related to the next scheduled payment due date need not be provided to a borrower making prepayments while in an in-school, grace, deferment, or forbearance period when payments are not due (34 C.F.R. §682.209(b)). Interest must be charged in accordance with 34 C.F.R. §682.202(a) and (b).

Income-Based Repayment (IBR)

Beginning July 1, 2009, the HEA provides an IBR plan that enables a borrower who has had a partial financial hardship to make a lower monthly payment with certain exceptions. The IBR plan has different rules for applying payments. For loans repaid under the IBR plan, the lender must apply payments in the order of (1) accrued interest, (2) collection costs, (3) late charges, and (4) loan principal. (See 34 C.F.R. §682.215)

3.8(A) Required Management Assertion

The [Lender] complied with the Payment Processing compliance requirements as described in Section 3.8 of ED's Lender Compliance Attestation Engagement Guide.

Lenders are required to engage in specific collection activities and meet specific claim-filing deadlines on delinquent loans.

3.8(B) Compliance Requirements

The lender must: (1) calculate interest and principal in accordance with 34 C.F.R. §682.202 (a) and (b), and (2) apply loan payments and prepayments in accordance with 34 C.F.R. §682.209(b) or the documented specific request of the borrower.

3.8(C) Required Procedures

The following procedures are required:

Select a sample of 60 loans (minimum sample size) from the universe of loans that are in repayment status and :

- (a) Determine if the borrower payments and prepayments were applied in accordance with payment application requirements.
- (b) Determine if the application of principal and interest were appropriately calculated and that the correct amount was applied to the individual borrower's loan balance.

3.9 Due Diligence by Lenders in the Collection of Delinquent Loans

Lenders are required to engage in specific collection activities and meet specific claim-filing deadlines on delinquent loans. In the case of a loan made to a borrower who is incarcerated, residing outside the United States or its territories, Mexico, or Canada, or whose telephone number is unknown, the lender may send a forceful collection letter instead of each telephone effort described below. There are also specific collection activities that must be performed before a lender can file a default claim on a loan with an endorser. The due diligence provisions preempt any State law, including State statutes, regulations, or rules that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of that section. (34 C.F.R. §682.411).

Definition of Delinquency - Delinquency on a loan begins on the first day after the due date of the first missed payment. The due date of the first payment is established by the lender but must follow the deadlines specified in 34 C.F.R. §682.209(a). If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment. A payment that is within \$5.00 of the amount normally required to advance the due date may advance the due date if the lender's procedures allow for that advancement (34 C.F.R. §682.411(b)).

Definition of Collection Activity - Collection activity with respect to a loan is defined as:

- Mailing or otherwise transmitting to the borrower at an address that the lender reasonably believes to be the borrower's current address, a collection letter or final demand letter that satisfies the timing and content requirements of 34 C.F.R. §682.411(c), (d), (e), or (f);
- Attempting telephone contact with the borrower;
- Conducting skip-tracing efforts, in accordance with 34 C.F.R. §682.411(h)(1) or (m)(1)(iii) to locate a borrower whose correct address or telephone number is unknown to the lender;
- Mailing or otherwise transmitting to the guaranty agency a request for default aversion assistance available from the agency on the loan at the time the request is transmitted; or
- Any telephone discussion or personal contact with the borrower so long as the borrower is apprised of the account's past-due status (34 C.F.R. §682.411(l)).

Gaps in Collection Activity

A lender/lender servicer may not permit the occurrence of a gap of more than 45 days (or 60 days in the case of a transfer) in collection activity on a loan (34 C.F.R. §682.411(j)).

Due Diligence Documentation

A lender is required to maintain complete and accurate records of each loan that it holds. In determining whether the lender met the due diligence compliance requirements pertaining to collection of delinquent loans, the documentation maintained must include a collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan; each communication (other than regular reports by the lender showing that an account is current) between the lender and a credit bureau regarding the loan; each effort to locate a borrower whose address is unknown at any time; and each request by the lender for default aversion assistance on the loan (34 C.F.R. §682.414(a)(4)).

Due-Diligence Requirements for Loans with Monthly and Less-than-Monthly Repayment Obligations

The required collection activities are described below. As part of one of the collection activities, the lender must provide the borrower with information on the availability of the Student Loan Ombudsman's office (34 C.F.R. §682.411).

1 to 15 Days Delinquent: One written notice or collection letter must be sent to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency (except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan.) The notice or collection letter sent during this period must include, at a minimum, a lender contact, a telephone number, and a prominent statement informing the borrower that assistance may be available if he or she is experiencing difficulty in making a scheduled repayment.

16 to 180 Days Delinquent (16-240 days delinquent for a loan repayable in installments less frequently than monthly): Unless exempted as set forth in 34 C.F.R. §682.411(d)(4), during this period the lender must engage in the following:

- At least four diligent telephone contacts (See definition of a "diligent telephone contact" below) urging the borrower to make the required payments on the loan. At least one of the telephone contacts must occur on or before the 90th day of delinquency and another one must occur after the 90th day of delinquency.
- At least four collection letters - at least two of which must warn the borrower that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus, and that the agency may institute proceedings to offset the borrower's State and Federal income tax refunds and other payments made by the Federal Government to the borrower, or to garnish the borrower's wages, or assign the loan to the Federal Government for litigation against the borrower.

Diligent Efforts for Telephone Contact

Diligent efforts for telephone contact are defined in 34 C.F.R. §682.411(m) as:

- A successful effort to contact the borrower by telephone;
- At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower's correct telephone number; or
- An unsuccessful effort to ascertain the borrower's correct telephone number, including but not limited to, a directory assistance inquiry as to the borrower's telephone number and sending a letter to or making a diligent effort to contact each reference, relative, and individual identified in the most recent loan application or most recent school certification for that borrower that the lender holds. The lender may contact a school official other than the financial aid administrator who reasonably may be expected to know the borrower's address.

Subsequent Payment or Information Obtained

Following the lender's receipt of a payment on the loan or a correct address for the borrower, the lender's receipt from the drawee of a dishonored check received as a payment on the loan, the lender's receipt of a correct telephone number for the borrower, or the expiration of an authorized deferment or forbearance period, the lender is required to engage only in the following activities (34 C.F.R. §682.411):

- For loans less than 91 days delinquent (121 days for a loan repayable in installments less frequently than monthly) - Two diligent efforts to contact the borrower by telephone.
- For loans 91-120 days delinquent (121-180 days for a loan repayable in installments less frequently than monthly) - One diligent effort to contact the borrower by telephone.
- For loans more than 120 days delinquent (180 days for a loan repayable in installments less frequently than monthly) - No additional diligent efforts to contact the borrower by telephone are required.
- 181-270 days delinquent (241-330 days for loans payable in installments less frequent than monthly) - During this period the lender must engage in efforts to urge the borrower to make the required payments on the loan. These efforts must, at a minimum, provide information to the borrower regarding options to avoid default and the consequences of defaulting on the loan.
- Final demand on or after the 241st day of delinquency (the 301st day for loans payable in installments less frequent than monthly) - The lender must send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. The lender must allow the borrower at least 30 days after the date the letter is mailed to respond and bring the loan out of default before filing a default claim on the loan.

Default Aversion Assistance

Default aversion assistance is collection assistance that a guarantor provides to supplement a lender's efforts to prevent default on a borrower's loan; however, it does not replace the lender's responsibility to

perform due diligence. Not earlier than the 60th day and no later than the 120th day of delinquency, a lender must request default aversion assistance from the guaranty agency that guarantees the loan (34 C.F.R. §682.404(k) and 411(i)).

Skip-Tracing Requirements

Skip tracing is the process by which lenders attempt to obtain corrected address or telephone information for borrowers for whom the lender does not have accurate information. Skip-tracing processes must meet regulatory time frames and minimum standards as outlined in 34 C.F.R. §682.411(h).

Unless the final demand letter (as specified in the Subsequent Payment or Information Obtained section above) has already been sent, the lender must begin to diligently attempt to locate the borrower through the use of effective commercial skip-tracing techniques within 10 days of its receipt of information indicating that it does not know the borrower's current address. These efforts must include, but are not limited to, sending a letter to or making a diligent effort to contact each endorser, relative, reference, individual, and entity identified in the borrower's loan file, including the schools the student attended. For this purpose, a lender's contact with a school official that might reasonably be expected to know the borrower's address may be with someone other than the financial aid administrator, and may be in writing or by telephone.

These efforts must be completed by the date of default with no gap of more than 45 days between attempts to contact those individuals or entities. Upon receipt of information indicating that it does not know the borrower's current address, the lender shall discontinue the collection efforts described in the Subsequent Payment or Information Obtained section.

If the lender is unable to ascertain the borrower's current address despite its performance of the activities described in the Subsequent Payment or Information Obtained section, the lender is excused thereafter from performance of the collection activities (with the exception of a request for default aversion assistance) unless it receives a communication indicating the borrower's address prior to the 241st day of delinquency (the 301st day for loans payable in less frequent installments than monthly).

Requirements for Loan Endorsers

Loan endorsers are required for PLUS loans to borrowers with an adverse credit history (34 C.F.R. §682.201(b)(4) and 682.201(c)(1)(vii)).

Before filing a default claim on a loan with an endorser, the lender must:

- Make a diligent effort to contact the endorser by telephone and send the endorser two letters advising the endorser of the delinquent status of the loan and urging the endorser to make the required payments on the loan.
- At least one letter must warn the endorser that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus.
- On or after the 241st day of delinquency (the 301st day for loans payable in installments less frequent than monthly) send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to a national credit bureau. The

lender must allow the endorser at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan (34 C.F.R. §682.411(n)).

Skip Tracing for Loan Endorsers

Unless the final demand letter specified in the paragraph above has already been sent, upon receiving information indicating that it does not know the endorser's current address or telephone number, the lender must diligently attempt to locate the endorser through the use of normal commercial skip-tracing techniques. This effort must include an inquiry to directory assistance (34 C.F.R. §682.411(n)(3)).

3.9(A) Required Management Assertion

The [Lender] complied with the Due Diligence compliance requirements as described in Section 3.9 of ED's Lender Compliance Attestation Engagement Guide.

3.9(B) Compliance Requirements

The lender must (1) engage in specific collection and claim filing activities for delinquent loans as required by 34 C.F.R. §682.411 and (2) maintain due diligence documentation required by 34 C.F.R. §682.414(a)(4).

3.9(C) Required Procedures

The following procedures are required:

Select a sample of 60 delinquent loans (minimum sample size) and:

- (1) For loans that were delinquent from 1 to 15 days:
 - (a) Determine if the lender's records document that the required written notice or collection letter was sent to the borrower.
 - (b) Determine if the written notice or collection letter contained the required information.
- (2) For loans that were delinquent between 16 to 180 days (16 to 240 days for loans repayable in installments less frequently than monthly):
 - (a) Determine if the lender's records document that the required telephone efforts were made and that the required collection letters were sent to the borrower.
 - (b) Determine if at least two of the letters warned the borrower of possible assignment of the loan to the guaranty agency, reporting the default to all national credit bureaus, offset of income tax refunds to garnish wages, and litigation against the borrower.
- (3) For loans that were delinquent from 181 to 270 days (241 to 331 days for loans payable in installments less frequently than monthly):
 - (a) Determine if the lender's records document the lender's efforts to urge the borrower to make the required payments on the loan

- (b) Determine that the lender efforts, at a minimum, provided information to the borrower regarding options to avoid default and the consequences of defaulting on the loan.
- (4) For loans that are 241 days delinquent (the 301st day for loans payable in installments less than monthly) determine if the lender sent the required final demand letter to the borrower.
- (5) For loans that have a loan endorser determine if the lender made a diligent effort to contact the endorser by phone, sent the required letters and final demand letter, if applicable, in accordance with requirements.
- (6) For loans where a final demand letter was not sent to the borrower:
 - (a) Determine if the lender's records document that the lender attempted to contact each endorser, relative, reference, individual and entity identified in the borrower's loan file within 10 days of receipt of information indicating that the lender did not know the borrower's current address.
 - (b) Determine that the skip tracing efforts were completed by the date of default with no gap of more than 45 days between attempts.
 - (c) Determine that the lender's skip tracing efforts for loan endorsers included an inquiry to directory assistance.
- (7) For delinquent or defaulted loans:
 - (a) Obtain and review the agreement the guaranty agency has with the lender(s) that establishes the time period for default aversion assistance and determine that default aversion assistance was requested by the lender as required.
 - (b) Determine that default aversion assistance was requested within the required timeframes.

3.10 Timely Claim Filings

Lenders are required to timely file claims with the guaranty agency for payment of death, disability, closed schools, false certification, bankruptcy and default claims. Each type of claim has a separate timely filing requirement (34 C.F.R. §682.402(g)(2) and 682.406(a)(5)). A lender has up to 3 years after the default claim filing deadline to successfully cure due-diligence violations that have rendered a loan un-reinsured (34 C.F.R. part 682, Appendix D). The lender is also required to maintain records to document the validity of a claim against a loan guaranty (34 C.F.R. §682.402(g)(1)).

3.10(A) Required Management Assertion

The [Lender] complied with the Timely Claim Filings compliance requirements as described in Section 3.10 of ED's Lender Compliance Attestation Engagement Guide.

Lenders are required to maintain records necessary to document the validity of a claim against a loan guaranty and to file claims with the guaranty agency timely.

3.10(B) Compliance Requirements

Records to Support a Claim

The lender is required to maintain records necessary to document the validity of a claim against a loan guaranty (34 C.F.R. §682.414(a)(4)(ii)). Items to be filed by the lender when making a claim to the guaranty agency include (34 C.F.R. §682.402(g)):

- The original or a true and exact copy of the promissory note.
- The loan application, if a separate loan application was provided to the lender.
- In the case of a death claim, an original or certified copy of the death certificate or other documentation supporting the discharge request that formed the basis for the determination of death.
- In the case of a disability claim, a copy of the certification of disability described in 34 C.F.R. §682.402(c)(2).
- In the case of a closed school claim, the documentation described in 34 C.F.R. §682.402(d)(3) or any other documentation as the Secretary may require.
- In the case of a false certification claim, the documentation described in 34 C.F.R. §682.402(e)(3).
- In the case of a bankruptcy claim:
 - Evidence that a bankruptcy petition has been filed and all pertinent documents sent to or received from the bankruptcy court by the lender;
 - An assignment to the guaranty agency of any proof of claim filed by the lender regarding the loan; and
 - A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower’s loan obligation in bankruptcy and all documents supporting those facts (34 C.F.R. §682.402(g)(1)(v)).

Timely Filing Requirements

TYPE OF CLAIM	TIMELY FILING REQUIREMENTS
Default	A lender must submit default claims to the guaranty agency within 90 days of the default.
Death or Disability	The lender must file a claim within 60 days of the date that the lender determines that a borrower (or the student on whose behalf a parent obtained a PLUS loan) has died, or when the lender

	determines that the borrower is totally and permanently disabled.
Closed School	The lender must file a claim within 60 days after the borrower submits to the lender the written request and sworn statement described in 34 C.F.R. section 682.402(d)(3) or after the lender is notified by the Secretary or the Secretary’s designee or by the guaranty agency to do so.
False Certification	The lender must file a claim with the guaranty agency within 60 days after the borrower submits to the lender the written and sworn statement described in 34 C.F.R. §683.402(e)(3) or after the lender is notified by the Secretary or the Secretary’s designee or by the guaranty agency to do so.
Bankruptcy	A lender must file a bankruptcy claim by the earlier of (1) 30 days after the date on which the lender receives notice of the first meeting of creditors or other information described in 34 C.F.R. § 682.402(f)(3); or (2) 15 days after the lender is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship, or if the lender secures an extension of time within which an answer may be filed, 25 days before the expiration of that period, whichever is later.

3.10(C) Required Procedures

The following procedures are required:

Select a minimum sample of 60 loans on which a claim was filed and:

- (a) Determine if the lender’s records document that a claim was filed with accurate claim payment information and in a timely manner with the guaranty agency.
- (b) Inquire from lender officials as to the type of claim filed and determine if the lender maintained the required documentation to support the particular type of claim.

3.11 Curing Due-Diligence and Timely Filing Violations

A due-diligence violation occurs when a lender does not perform a requirement (See III.N.9, “Special Tests and Provisions - Timely Claim Filings by Lenders or Lender servicers”) within the time frame specified. The time interval between collection activities is called a “gap”. If the gap between collection activities exceeds that permitted this creates a violation for which the lender may incur penalties, including loss of insurance and reinsurance on the loan (34 C.F.R. part 682, Appendix D).

Some examples of due-diligence violations include the lender’s failure to perform the following functions in a timely manner:

Sending the required collection letter(s), including the required final demand letter;

Making the required telephone contact or diligent effort to contact the borrower;

Requesting default aversion assistance from the guarantor;

Conducting skip tracing activity.

A timely filing violation occurs when a lender fails to submit default, death, disability, ineligible borrower, closed school, or false certification claims within the prescribed time frames.

Cures for Due-Diligence Violations

Violations of 6 days or less (21 days or less for a transfer) - There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer).

Two or fewer violations of 6 days or more (21 days or more for a transfer) and no gap of 46 days or more (61 days for a transfer) - Principal will be reinsured, but accrued interest, interest benefits, and special allowance payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default. However, the lender must complete all required activities before the claim filing deadline, except that a default aversion assistance request must be made before the 330th day of delinquency. If the lender fails to make the default aversion assistance request by the 330th day, the Secretary will not pay any accrued interest, interest benefits and special allowance for the most recent 270 days prior to the default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

Three violations of 6 days or more (21 days or more for a transfer) and no gap of 46 days or more (61 days for a transfer) - The lender must satisfy the requirements in 34 C.F.R. part 682, Appendix D, I.E.1, or receive a full payment or a new, signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary will not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

More than three violations of 6 days or more (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation - The lender must satisfy the requirement outlined in 34 C.F.R. part 682, Appendix D, I.D.1, for the reinsurance on the loan to be reinstated. The Secretary will not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated (34 C.F.R. part 682, Appendix D, I.C.3).

Cures for Timely Filing Violations - When a lender has a timely filing violation on a default claim, the guarantee on the loan may be reinstated through one of the following (34 C.F.R. part 682, Appendix D, I.E.1):

- The receipt of one full payment as defined in 34 C.F.R. part 682, Appendix D, I.A,
- The receipt of a new repayment agreement signed by the borrower, or
- Successful completion of the requirements in 34 C.F.R. part 682, Appendix D, I.E.1.

3.11(A) Required Management Assertion

The [Lender] complied with the Curing Due Diligence and Timely Filing Violations compliance requirements as described in Section 3.11 of ED's Lender Compliance Attestation Engagement Guide.

3.11(B) Compliance Requirements

The lender must comply with the requirements for curing due diligence and timely filing violations contained in 34 C.F.R. §682.411 and 34 C.F.R. part 682, Appendix D.

3.11(C) Required Procedures

The following procedures are required:

Select a minimum sample of 60 cured loans and:

- (a) Determine if the lender's records document that it performed the required cure procedures.
- (b) For cured loans for which the lender obtained a new repayment agreement, determine that the agreement meets the repayment period limitations of 34 C.F.R. §682.209(a)(8) and 682.209(h)(2).
- (c) For cured loans for which the lender obtained one full payment, obtain documentation of the payment and determine that the payment complied with the terms of the most current repayment schedule and was valid in accordance with 34 C.F.R. part 682, Appendix D, I.A.

3.12 Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization

An eligible lender in the FFEL Program may not hold a FFEL Program loan as a trustee for an institution of higher education or for an organization affiliated with an institution of higher education. There are some exceptions for eligible lenders serving as an Eligible Lender Trustee (ELT) for an institution or affiliated organization on September 30, 2006.

Section 435(d) of HEA (20 USC 1087(d)) was revised by the Third Higher Education Extension Act of 2006 (Pub. L. No. 109-292) so that, effective September 30, 2006, except as noted below, an eligible lender in the FFEL Program may not hold a FFEL Program loan as a trustee for an institution of higher education or for an organization affiliated with an institution of higher education.

An "institution of higher education" is any institution that meets the definition of that term in §§101 or 102 of HEA (20 USC 1001 or 1002). The term "school-affiliated organization" is defined in §34 C.F.R. §682.200, as any organization that is directly or indirectly related to a school, including alumni organizations, foundations, athletic organizations, and social, academic and professional organizations.

The prohibition on holding loans described above does not apply to an eligible lender that was serving as an Eligible Lender Trustee (ELT) for an institution or affiliated organization on September 30, 2006. For the purposes of implementing this restriction, serving as an ELT means that:

- a. A formal contract between the lender and institution or organization had been entered into by the ELT and the institution or affiliated organization for this purpose before September 30, 2006, and continues in effect or has been or is renewed after that date; and
- b. At least one loan was held in trust by the lender on behalf of the institution or the affiliated organization on September 30, 2006 ((§435(d)(7) of HEA (20 USC 1085(d)(7)); 34 C.F.R. §682.602).

Restrictions on Existing Eligible Lender Trustee Relationships

Effective January 1, 2007, and for loans first disbursed on or after that date, any eligible lender, institution, or affiliated organization operating under a previously established ELT relationship that continues in effect, must comply with the requirements of §435(d)(2) of HEA that govern FFEL Program school lenders, as specified below:

- a. The institution, whether directly involved in an ELT relationship or affiliated with an organization directly involved in an ELT relationship:
 - (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 institution.
 - (2) Must not be a home-study school.
 - (3) Must not have a cohort default rate greater than 10 percent.
 - (4) Must use any proceeds from interest payments from borrowers, interest subsidy payments, and special allowance payments on the loans made and held in trust, and any proceeds from the sale or other disposition of those loans for need-based grants if the institution receives any these proceeds directly or indirectly.
 - (5) Must ensure that the loans held by the eligible lender trustee for the institution are included in the required annual FFEL Program lender compliance attestation engagement.
- b. An organization affiliated with the institution must comply with all of the requirements applicable to the institution as noted above except for requirements a.(1), (2), and (3).
- c. The eligible lender acting as trustee must comply with all of the requirements applicable to the institution as noted above except for requirements in a.(1), (2), (3), and (4) (§435(d) of HEA (20 USC 1087(d); 34 C.F.R. §682.601 and 682.602).

ED has issued a Dear Colleague letter, GEN-06-21, which is available on the Internet at <http://www.ifap.ed.gov/dpccletters/attachments/GEN0621.pdf>, that provides guidance on this requirement.

3.12(A) Required Management Assertion

The [Lender] complied with the Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization compliance requirements as described in Section 3.12 of ED's Lender Compliance Attestation Engagement Guide.

3.12(B) Compliance Requirements

An eligible lender in the FFEL Program must not hold a FFEL Program loan as a trustee for an institution of higher education or for an organization affiliated with an institution of higher education in accordance with §435(d) of HEA (20 USC 1087(d). Eligible lenders serving as an Eligible Lender Trustee (ELT) for an institution or affiliated organization on September 30, 2006, may hold FFEL Program loans and must comply with the ELT provisions of §435(d) of HEA and 34 C.F.R. §682.602.

3.12(C) Required Procedures

The following procedures are required

- (1) Obtain written representation from management as to whether it has held loans, as a trustee, for an institution of higher education or for an organization affiliated with an institution of higher education, except as permitted by law.
- (2) If the representation provided by management indicates that it held loans for an institution of higher education, as a trustee, obtain all relevant agreements/contracts, and through review of these and the loan portfolio, determine if the exceptions provided for in the law apply.
- (3) For eligible lenders acting as trustees, select a sample of 60 loans (minimum sample size) disbursed after January 1, 2007, but prior to July 1, 2010, and test for compliance with the ELT provisions.

Section 4 – Agreed Upon Procedures For Alternative and Combined Engagements

4.1 Introduction

This section is to be used for alternative and combined engagements as defined in Section 1.3(A). This section:

- Provides guidance on when an alternative or combined engagement would be acceptable,
- Sets forth the specific assertions which management is required to make,
- Summarizes the compliance requirements related to each of these specific assertions, and
- Provides required procedures to test management assertions. However, the required procedures are not intended to supplant the auditor's judgment about the testing necessary for the auditor to report on the lender's compliance with the specified requirements. In some circumstances, the auditor may need to supplement the required procedures with other procedures, to satisfy the engagement objectives.

4.2 Lender Servicer Compliance Attestation Engagement Report Requirements

A prerequisite for the alternative or combined engagement is that the lender obtains from the lender servicer(s) an attestation engagement report that meets the requirements described below. If a report meeting these requirements cannot be obtained from the lender servicer, a standard engagement is required, with the lender's auditor performing examination procedures at the lender servicer, if necessary.

In order for a lender servicer's attestation engagement report to be acceptable for use as a basis for an alternative or combined engagement, it must meet all of the following requirements. The lender servicer's attestation engagement report must:

- (1) Cover the activities of the lender's portfolio. The engagement may be organization-wide or may be limited to certain lender portfolios; however, in this case, only the lenders whose portfolios are covered by the limited lender servicer engagement can use the report as a basis for an alternative or combined engagement;
- (2) Cover at least the same length of time as the lender's reporting period (i.e. 12 months);
- (3) End within six months of the lender's reporting period and be available for the lender's auditor to use during the lender engagement; and
- (4) Specify what lenders, function, and compliance requirements are covered.

When the lender elects to use the alternative or a combined engagement, lender management must prepare the written assertions, and must engage an auditor to perform the agreed-upon procedures that follow.

4.3 Compilation of the Lender's Interest and Special Allowance Request and Report (LaRS)

The LaRS form is used by ED to calculate interest subsidies and special allowance payments due to Lenders. It is also used to obtain information about the Lender's FFEL Program portfolio. For Lenders to receive payments of interest benefits and special allowance, quarterly reports must be submitted to ED on the LaRS form. The LaRS form must be submitted within 90 days of the quarter's end to be considered timely.

4.3 (A) Required Management Assertion

If the Lender prepares the LaRS form:

The information included in the LaRS forms submitted to ED during the year ended [m/d/y] pertaining to loans serviced by the [lender servicer(s)] agrees with the billing information provided by the [lender servicer(s)].

If the Lender Servicer prepares the LaRS form:

The LaRS forms submitted to ED during the year were prepared by [Lender Servicer].

4.3 (B) Compliance Requirements

The LaRS form is used by ED to calculate interest subsidies and special allowance payments due to FFEL Program lenders. It is also used to calculate origination fees and lender loan fees owed to ED as well as to obtain information about the lender's FFEL Program portfolio. For lenders to receive payments of interest benefits and special allowance, quarterly reports must be submitted to ED on the LaRS form. The lender must submit a fully completed quarterly LaRS to ED even if the Lender is not owed, or does not wish to receive interest benefits or special allowance payments from ED. See 34 C.F.R. §682.305 for more information.

The services provided by lender servicers vary from lender to lender. In some cases the lender servicer prepares the LaRS form for the lender based on the lender servicer records. In other cases the lender servicer provides information from which the lender prepares the LaRS form. The latter would always be the case when the lender uses more than one lender servicer and/or services part of its own portfolio. The lender would then need to combine the information from the lender servicer(s) and the portfolio that it services to prepare the LaRS form.

4.3(C) Required Procedures

If the Lender Prepares the LaRS Form:

Select 2 quarterly LaRS reports for each Lender ID and:

- (a) Compare the loan information in Part I though Part 5 reported on LaRS reports submitted during the year to the lender servicer's billing information.

- (b) Report any discrepancies as a finding on the Schedule of Findings.

If the Lender Servicer Prepares the LaRS Form:

- (1) Obtain the lender servicer contract(s), read and review to determine if it contains a provision to prepare the LaRS form for the lender.
- (2) Select 2 of the lender servicer's billings to the lender for each Lender ID and determine whether the billing included a servicer-prepared LaRS form.
- (3) Report any discrepancies as a finding on the Schedule of Findings.

4.4 Lender Servicer Engagement Report

4.4 (A) Required Management Assertion

The [lender servicer's] engagement report(s) meets the requirements in Section 4 of the Lender Compliance Attestation Engagement Guide for the alternative or combined engagement.

4.4 (B) Compliance Requirements

A lender servicer's engagement report must meet all of the requirements described above to be acceptable for use as a basis for an alternative or combined engagement.

4.4(C) Required Procedures

The following procedures are required:

Obtain and review all lender servicer(s) engagement report(s) obtained by the lender to satisfy the alternative engagement approach and ascertain that the report(s):

- (a) Includes a statement that the engagement was conducted in accordance with *Government Auditing Standards* and expresses an opinion on compliance with specified compliance requirements identified in Section II of this Guide that pertain to the functions carried out by the service organization;
- (b) Sets forth the scope of the engagement (organization-wide or limited to certain lenders);
- (c) Covers the same length of period as the lender's reporting period (generally 12 months) ending within 6 months of the end of the lender's reporting period;
- (d) Identifies what lenders, functions, and compliance requirements are covered by the engagement report;
- (e) Discloses whether the findings address the FFEL Program compliance requirement functions for which the lender has contracted the lender servicer to perform; and

- (f) The “Schedule of Findings” contains all the required attributes and elements as discussed in Section 5.2 of this Guide.
- (g) Report any discrepancies as a finding on the Schedule of Findings

4.5 Lender Servicer Engagement Report Findings

4.5 (A) Required Management Assertion

All instances of noncompliance reported in the lender servicer engagement report(s) that relate to a FFEL Program compliance requirement function for which the lender has contracted the lender servicer to perform have been disclosed in the lender’s engagement report.

4.5 (B) Compliance Requirements

The lender must disclose all noncompliance that is included as part of the lender servicer engagement reports or that which is disclosed in separate lender servicer communications.

4.5(C) Required Procedures

The following procedures are required:

- (1) Using the lender servicer contract(s) obtained in Step 4.3(C)(2) above, review the contracts and determine the FFEL Program compliance requirements the lender has contracted with the lender servicer(s) to perform.
- (2) Using the lender servicer engagement report(s) obtained in Step 4.3(C)(1) above, determine if there are findings of noncompliance for any compliance functions for which the lender has contracted with the lender servicer(s) to perform.
- (3) Report all findings of noncompliance identified in the report(s) that address any FFEL Program compliance requirement function for which the lender has contracted the lender servicer(s) to perform and include as an element.

Section 5 – Reporting

5.1 Engagement Report Package Requirements:

The contents of the engagement report package depends upon the type of engagement performed and whether the lender requests special allowance payments at the 9.5 percent minimum return rate for FFEL Program loans acquired with funds derived from eligible tax-exempt financing sources. Lenders that hold more than \$5 million in FFEL Program loans must submit an engagement report package.

5.1 (A) Standard Engagements

The report package for standard engagements must include:

- Examination-Level Report On Compliance With Specified Requirements (Attachment 1);
- Schedule of Findings;
- Summary Schedule on the Resolution of Prior Engagement Findings;
- Lender and Auditor Information Sheet (Attachment 4);
- Management Representations and Management Assertions (Attachment 5);
- Additional Reporting For 9.5 Percent Special Allowance Payments (if applicable) (Exhibit 1)
- Corrective Action Plan;
- Any separate report on fraud, illegal acts, or abuse submitted under the procedures in §2.10; and
- Any management letters issued to the lender concerning the engagement.

5.1 (B) Alternative Engagements

The report package for alternative engagements must include:

- Agreed-Upon Procedures Report (Attachment 2);
- Agreed-Upon Procedures and Results (Attachment 3);
- Lender Servicer Attestation Engagement Report;
- Summary Schedule on the Resolution of Prior Engagement Findings;

- Lender and Auditor Information Sheet (Attachment 4);
- Management Representations and Management Assertions (Attachment 5);
- Additional Reporting For 9.5 Percent Special Allowance Payments (if applicable) (Exhibit 1)
- Corrective Action Plan;
- Any separate report on fraud, illegal acts, or abuse submitted under the procedures in §2.10; and
- Any management letters issued to the lender concerning the engagement.

5.1 (C) Combined Engagements

The report package for standard engagements must include:

- Examination-Level Report On Compliance With Specified Requirements (Attachment 1);
- Schedule of Findings;
- Agreed-Upon Procedures Report (Attachment 2);
- Agreed-Upon Procedures and Results (Attachment 3);
- Lender Servicer Attestation Engagement Report;
- Summary Schedule on the Resolution of Prior Engagement Findings;
- Lender and Auditor Information Sheet (Attachment 4);
- Management Representations and Management Assertions (Attachment 5);
- Corrective Action Plan;
- Additional Reporting For 9.5 Percent Special Allowance Payments (if applicable) (Exhibit 1)
- Any separate report on fraud, illegal acts, or abuse submitted under the procedures in §2.10; and
- Any management letters issued to the lender concerning the engagement.

5.1 (D) Additional Reporting Required For Lenders That Request Special Allowance Payments at the 9.5 Percent Minimum Return Rate for FFEL Program Loans Acquired with Funds Derived from Eligible Tax-Exempt Financing Sources

Dear CPA Letter 08-02 provided that in accordance with the comprehensive resolution of issues related to proper billing of SAP at the 9.5 percent minimum return rate described in ED DCL FP-07-01 (<http://ifap.ed.gov/dpcletters/attachments/FP0701.pdf>), dated January 23, 2007, and a letter addressed to

individual lenders (a copy of which is attached to the DCL), lenders that seek to receive SAP at the 9.5 percent minimum return rate must submit with any billing the lender's certification that:

- (i) the lender has internal controls in place to monitor and ensure the accuracy of the claim for the 9.5 percent billings, and
- (ii) as part of the lender's regular annual compliance attestation engagement,, their independent auditor will attest to the effectiveness of these controls and the accuracy of the 9.5 percent billings.

The lender is also required to disclose to their independent auditors, and to their audit committee, all significant deficiencies in the design and operation of the internal controls that could adversely affect the accuracy of the information presented in the SAP billing, as well as any fraud, regardless of materiality, that involves management or any other employee connected to the information contained in the SAP billing.

Additional procedures and reports required for those lenders requesting special allowance payments at the 9.5 Percent minimum return rate for FFEL Program loans acquired with funds derived from eligible tax-exempt financing sources are included as part of this Guide in Appendix 1.

Note: The report packages submitted to ED must not contain any personally identifiable information. Personally identifiable information includes, but is not limited to, names of borrowers, SSNs, and borrowers' addresses.

5.2 Schedule of Findings

The Schedule of Findings identifies all of the auditor's findings of noncompliance, significant deficiencies, and material weaknesses. All noncompliance findings are to be reported regardless of materiality. For each finding, the auditor must identify the condition, criteria, cause, and effect or potential effect. The auditor must also make a recommendation for corrective action to the Lender. If corrective action is not necessary, the auditor must provide the reason.

If the lender servicer's report discloses noncompliance the auditor's engagement report and the supplemental schedule must disclose whether the findings address FFEL Program compliance requirement functions for which the lender has contracted the lender servicer to perform.

If there were no findings related to the FFEL Program compliance functions for which the lender has contracted the lender servicer to perform, a separate communication from the lender servicer to the lender must so state.

Each finding in the schedule must be numbered so that the findings may be referenced easily during audit resolution and follow-up.

Descriptions of findings must also include the following information if applicable:

- For each finding that is monetary in nature, the finding description must include information about the number of transactions affected and the monetary value (for the loan(s) to which the

finding is associated and the value of the finding to be reported) for each finding.

- The universe and sample size of the transactions tested. If the sample was expanded to evaluate the projected error rate statistically, the report must also include information about the sampling methodology, confidence level, precision, expected rate of occurrence, and estimated disallowance to the population, including the point estimate and lower and upper limits.

If there are no findings, the schedule includes only the auditor's statement that no instances of noncompliance with the requirements specified in Section 3 of the Lender Compliance Attestation Engagement Guide were detected during the engagement. A Schedule of Findings must be submitted with every compliance engagement report package, even if there are no findings. If a schedule is not submitted, or if a schedule is not prepared in accordance with guidance in this section, ED may reject the compliance engagement report package.

5.3 Auditor's Comments on the Resolution of Prior Engagement Findings

For subsequent engagements performed under this Guide, a Summary Schedule on the Resolution of Prior Engagement Findings must be included as part of every compliance engagement report package.

Obtain a Summary Schedule on the Resolution of Prior Engagement Findings from the Lender. The schedule must identify all prior findings, the status of their resolution, and the actions necessary for the Lender to resolve those unresolved findings. The Lender must refer to the finding using the number that was assigned in the prior engagement report. The Lender must also note if (i) all prior findings have been resolved, or (ii) there were no prior findings in the immediate prior engagement report.

Auditors must follow-up on prior engagement findings and perform procedures to assess the reasonableness of the Summary Schedule on the Resolution of Prior Engagement Findings prepared by the Lender. The auditor must report a current-year finding if the auditor concludes that the schedule materially misrepresents the status of any prior finding.

5.4 Reporting Package Submission

The reporting package must be transmitted by the submission deadlines described in §1.3. The Lender must submit the reporting package electronically, in a PDF format, to fios.complianceaudits@ed.gov with "Lender Compliance Attestation Engagement" in the subject line. Questions about the reporting package submission process may be directed to Jeffrey Burton, Audit Resolution Officer, Financial Institution Oversight Service, by email to Jeffrey.Burton@ed.gov.

5.5 Corrective Action Plan

If instances of noncompliance, significant deficiencies, or material weaknesses are identified in the Schedule of Findings, the Lender must submit a Corrective Action Plan with the report package, which addresses all findings contained in the report. The auditor must advise the Lender of this requirement.

The Corrective Action Plan must be submitted on the Lender's letterhead. It must identify each finding using the number the auditor assigned to it in the compliance attestation engagement report, and must be signed by the Lender official who was responsible for its preparation. That official must also provide his or her title, telephone and fax numbers and e-mail address. The Corrective Action Plan must include the

Lender's comments on findings and recommendations, actions taken or planned, and status of corrective actions on prior findings, all discussed below.

- **Comments on Findings and Recommendations.** The signing official must provide a statement of concurrence or non-concurrence with the findings and recommendations. If the signing official does not agree with a finding, they must explain why, and provide specific information to support their position.
- **Actions Taken or Planned.** The signing official must describe the actions the institution or lender servicer has taken, or plans to take, to correct the deficiencies identified in the compliance engagement report. For a planned action, the Corrective Action Plan must include a projected date for the completion of each major task. If the signing official does not believe a corrective action is required, he or she must state so and include an explanation.

Attachments

Attachment 1 - Illustrative Examination-Level Report on Compliance with Specified Requirements

We have examined management's assertions that [the Lender] complied with the specified compliance requirements regarding LaRS Reporting; Loan Records; Interest Benefits; Special Allowance Payments; Loan Sales, Purchases, and Transfers; Enrollment Reports; Payment Processing; Due Diligence in Collection of Delinquent Loans; Timely Claim Filings; Curing Due Diligence and Timely Filing Violations; and Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization; listed in Section 3 of the *Lender Compliance Attestation Engagement Guide*, during the year ended [specify]. [Lender's] management is responsible for [the Lender's] compliance with those requirements. Our responsibility is to express an opinion on the assertions based on our examination.

Our examination was conducted in accordance with the attestation standards applicable to attestation engagements established by the American Institute of Certified Public Accountants; standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the requirements contained in the *Lender Compliance Attestation Engagement Guide* issued by the U.S. Department of Education, Office of Inspector General; and accordingly, included examining, on a test basis, evidence supporting management's assertions and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

In our opinion, management's assertions referred to above are fairly stated, in all material respects, based on the requirements of the *Lender Compliance Attestation Engagement Guide*. Our examination does not provide a legal determination on [the Lender's] compliance with the specified requirements. [Note: If material noncompliance is found, the report must be appropriately modified.]

In accordance with *Government Auditing Standards*, we are required to report significant deficiencies in internal control, identifying those considered to be material weaknesses, violations of provisions of contracts or grant agreements, and abuse that could have a material effect on the [Lender's] compliance with the specified requirements regarding LaRS Reporting; Loan Records; Interest Benefits; Special Allowance Payments; Loan Sales, Purchases, and Transfers; Enrollment Reports; Payment Processing; Due Diligence in Collection of Delinquent Loans; Timely Claim Filings; Curing Due Diligence and Timely Filing Violations; and Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization; listed in Section 3 of the *Lender Compliance Attestation Engagement Guide* and any fraud and illegal acts that are more than inconsequential that come to our attention during our examination. We are also required to obtain the views of management on those matters. We performed our examination to express an opinion on whether management's assertions referred to above are fairly stated, in all material respects, and not for the purpose of expressing an opinion on internal control over the compliance requirements referred to above or on other compliance and other matters; accordingly, we

express no such opinions. Our examination disclosed certain findings that are required to be reported under *Government Auditing Standards* and those findings, along with the views of management are described in the attached Schedule of Findings.

This report is intended solely for the information and use of the U.S. Department of Education and the management of [the Lender] and is not intended to be and should not be used by anyone other than these specified parties.

[CPA Firm Signature]

[Date]

Attachment 2 - Illustrative Agreed-Upon Procedures Report

Independent Accountant's Report

To: [Lender]

We have performed the procedures enumerated below, which were agreed to by the [Lender] and the U.S. Department of Education, as set forth in the *Federal Family Education Loan Program (FFEL Program) Lender Compliance Attestation Engagement Guide*. We performed the procedures solely to assist the specified parties in evaluating the Lender's compliance with certain U.S. Department of Education requirements regarding the FFEL Program during the year ended [date].

Management of the [Lender] is responsible for [Lender's] compliance with those requirements. This agreed-upon procedures engagement was conducted in accordance with the attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. The sufficiency of the procedures is solely the responsibility of the U.S. Department of Education and the management of [Lender]. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

[See Attachment 3 for an illustrative reporting format of the agreed-upon procedures performed and the results of those procedures.]

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on [Lender's] compliance with *The Lender Compliance Attestation Engagement Guide*. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters may have come to our attention that would have been included in this report. Our procedures do not provide a legal determination of the [Lender's] compliance with the specified requirements.

This report is intended solely for the information and use of the U.S. Department of Education and the management of [Lender] and is not intended to be and must not be used by anyone other than these specified parties.

[CPA Firm Signature]

[Date]

Attachment 3 – Illustrative Agreed-Upon Procedures and Results Section

Agreed-Upon Procedures	Results
4.3 Compilation Of The Lender’s Interest and Special Allowance Request and Report (LaRS)	
<p><u>If the Lender Prepares The LaRS Form:</u></p> <p>(1) Select 2 quarterly LaRS reports for each Lender ID and:</p> <p>(a) Compare the loan information in Part I through Part 5 reported on LaRS reports submitted during the year to the lender servicer’s billing information.</p>	<p>The loan information agrees.</p> <p>Or</p> <p>The loan information does not agree (provide specifics).</p>
<p>(b) Not applicable for this schedule.</p>	
<p><u>If the Lender Servicer Prepares The LaRS Form:</u></p> <p>(2) Obtain the lender servicer contract(s), read and review to determine if it contains a provision to prepare the LaRS form for the lender.</p>	<p>Lender Servicer contract(s) contain provision(s) to prepare LaRS form for the lender.</p> <p>Of</p> <p>Lender Servicer contract(s) do not contain provision(s) to prepare LaRS form for the lender.</p>
<p>(3) Select 2 of the lender servicer’s billings to the lender for each Lender ID and determine whether the billing included a servicer-prepared LaRS form.</p>	<p>Lender Servicer’s billings included a servicer-prepared LaRS form.</p> <p>Of</p> <p>Lender Servicer’s billings did not include a servicer-prepared LaRS form.</p>
<p>(4) Not applicable for this schedule.</p>	

Agreed-Upon Procedures	Results
<p>4.4 Lender Servicer Engagement Report</p>	
<p>(1) Obtain and review all lender servicer(s) engagement report(s) obtained by the lender to satisfy the alternative engagement approach and ascertain that the report(s):</p> <p>(a) Includes a statement that the engagement was conducted in accordance with <i>Government Auditing Standards</i> and expresses an opinion on compliance with specified compliance requirements identified in Section II of this Guide that pertain to the functions carried out by the service organization;</p> <p>(b) Sets forth the scope of the engagement (organization-wide or limited to certain lenders);</p> <p>(c) Covers the same length of period as the lender's reporting period (generally 12 months) ending within 6 months of the end of the lender's reporting period;</p> <p>(d) Identifies what lenders, functions, and compliance requirements are covered by the engagement report;</p> <p>(e) Discloses whether the findings address the FFEL Program compliance requirement functions for which the lender has contracted the lender servicer to perform; and</p> <p>(f) The "Schedule of Findings" contains all the required attributes and elements as discussed in Section 5.2 of this Guide.</p> <p>(g) Not applicable for this schedule.</p>	<p>The lender servicer engagement report(s) met the requirements of Section 4.4 (1) (a)-(f) of the <i>Lender Compliance Attestation Engagement Guide</i>.</p> <p><i>Or</i></p> <p>The lender servicer engagement report(s) did not meet the requirements of Section 4.4 (1) (a)-(f) of the <i>Lender Compliance Attestation Engagement Guide</i>. <i>Specifically, the lender servicer engagement report did not [specify].</i></p>

Agreed-Upon Procedures	Results
4.5 Lender Servicer Engagement Report Findings	
(1) Not applicable for this schedule.	
(2) Using the lender servicer engagement report(s) obtained in Step 4.3(C)(2) , determine if there are findings of noncompliance for any compliance functions for which the lender has contracted with the lender servicer(s) to perform.	We identified findings of noncompliance for compliance functions performed by the lender servicer. Or We did not identify findings of noncompliance for compliance functions performed by the lender servicer.
(3) Not applicable for this schedule.	

Attachment 4 – Lender and Auditor Information Sheet

<u>Lender Information:</u>	
Lender Name:	
Lender ID Number(s):	
Telephone Number:	
Fax Number:	
President:	
Name of Contact Person and Title:	
<u>Lender Servicer Information:</u>	
Lender Servicers:	
Lender Servicer ID Numbers:	
<u>Audit Firm Information:</u>	
Type Of Engagement: (Standard, Alternative, or Combined)	
Name of Partner In Charge:	
Email Address:	
State in Which Licensed and CPA License Number (Home State):	
If Engagement Performed Outside of Home State, Name of Other State and CPA License Number in That State:	
Firm's Name:	
Street:	
City, State, Zip:	
Telephone and Fax Numbers:	

Attachment 5 – Management’s Assertions and Representations

[Lender’s Letterhead]

To: [Independent Public Auditor]

Assertions

The management of [the Lender] provides these assertions to the auditor because it is conducting an engagement of [the Lender’s] compliance with the U.S. Department of Education’s Lender Compliance Attestation Engagement Guide (Guide). The purpose of the compliance engagement is to express an opinion about whether [the Lender] has complied with the requirements, described in the following subsections of Section 3 of the Guide:

- §3.2 LaRS Reporting
- §3.3 Loan Records
- §3.4 Interest Benefits;
- §3.5 Special Allowance Payments;
- §3.6 Loan Sales, Purchases, and Transfers;
- §3.7 Enrollment Reports;
- §3.8 Payment Processing;
- §3.9 Due Diligence by Lenders in Collection of Delinquent Loans;
- §3.10 Timely Claim Filings;
- §3.11 Curing Due Diligence and Timely Claim Filing Violations;
- §3.12 Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization; and (if applicable)

Representations

We also represent that the management of [the Lender]—

- Acknowledges and accepts responsibility for its compliance with the specified requirements;
- Acknowledges and accepts responsibility for establishing an effective internal control structure over compliance;
- Has evaluated its compliance with the specified requirements or its controls for ensuring compliance and detecting noncompliance with requirements, as applicable;
- Asserts that, based on its evaluation of the requirements identified in Section 3 of the U.S. Department of Education’s Lender Compliance Attestation Engagement Guide, that [the Lender] is in compliance with those requirements and the internal controls relating to those requirements are effective;
- Has disclosed to you, the auditor, all known noncompliance;
- Has made available to you, the auditor, all documentation related to compliance with the specified requirements;
- Has disclosed any communications from regulatory agencies, internal auditors, and other auditors concerning possible noncompliance with the specified requirements, including communications received between the end of the period addressed in the written assertion and the date of the auditor’s report;
- Has disclosed any known noncompliance occurring subsequent to the period for which, or date we are making these assertions, [month/day/year]; and
- Has not provided any interpretations to you, the auditor, of compliance requirements that have varying interpretations.¹

The management of [the Lender] confirms that the assertions and representations provided in this document are true and accurate, to the best of its knowledge and belief.

Sincerely,

[Signature]

[Title]

[Date]

¹ Any additional assertions or representations to be made by management must be included.

Appendix

Appendix 1 –Additional Reporting for SAP at the 9.5 Percent Minimum Return Rate for FFEL Program Loans Acquired with Funds Derived from Eligible Tax-Exempt Financing Sources

Requirements

Dear CPA Letter 08-02 requires an examination-level attestation engagement performed in accordance with *Government Auditing Standards*, attestation standards established by the American Institute of Certified Public Accountants, and the certification required to be submitted under DCL FP-07-01, to express an opinion on the accuracy of billings and the effectiveness of internal control relating to their preparation that must be made in writing to the auditor by lender management and signed by the lender's CEO and CFO (see Attachment A for the specific assertions).

Description of Applicable Compliance Requirements

Special Allowance:

ED pays a special allowance to the lender on the average daily outstanding balance of eligible FFEL loans. ED computes the special allowance payable to the lender based upon the average daily balance computed by the lender. The amount of each quarterly special allowance payment will vary according to the type of FFEL program loan, the date the loan was disbursed, the loan period, the loan interest rate, and the loan status. The lender reports in Part III of the *Lender's Interest and Special Allowance Request and Report (LaRS/799)* the average daily principal balance of loans in each category qualifying for the special allowance payment. ED computes the payment due to the lender during processing of the LaRS [See 34 C.F.R. Sections 682.304 through 682.305].

Special Allowance and Tax-Exempt Obligations:

The special allowance rate payable on loans made or purchased from funds derived from tax-exempt obligations depends on the specific source of funds used to acquire the loan, whether specified events occurred after its acquisition, the date the loan was acquired, the rate payable on the loan when it was acquired, and the characteristics of the lender that acquired the loan. [See Section 438 of HEA (20 USC 1087-1); 34 C.F.R. Section 682.302]

Limitations on the 9.5 Percent Minimum Return Rate Loans:

The Higher Education Reconciliation Act of 2005 (HERA) and Taxpayer-Teacher Protection Act of 2004 amended the HEA. As a result of these amendments, the 9.5 percent minimum return rate does not apply to loans that are:

1. Financed by a tax-exempt obligation described in 34 C.F.R. Section 682.302(e)(2)(i) that, after September 30, 2004, has matured or been refunded, retired, or defeased;
2. Refinanced after September 30, 2004, with funds obtained from a source other than funds described in 34 C.F.R. Section 682.302(e)(2)(i) ;
3. Sold or transferred to any other holder after September 30, 2004.
4. Made or purchased on or after February 8, 2006; or
5. Not earning special allowance at the 9.5 percent minimum return rate as of February 8, 2006.

[See Section 438(b)(2)(B)(vi) of HEA (20 USC 1087-1(b)(2)(B)(vi)); 34 C.F.R. Sections 682.302(e)(2), (3) and (4); DCL FP-06-01, dated March 2006].

The HERA provides an exemption for restrictions 4 and 5 (above) to small lenders until December 31, 2010. A “HERA small lender” is a loan holder that on February 8, 2006, and during the quarter for which the special allowance is paid:

- Was a unit of state or local government or a private nonprofit entity;
- Was not owned or controlled by, or under common ownership with, a for-profit entity; and
- Held directly or through any subsidiary, affiliate, or trustee, a total unpaid balance of principal equal to or less than \$100 million on loans for which special allowances were paid under section 438(b)(2)(B) in the most recent quarterly payment prior to September 30, 2005 [See Section 438(b)(2)(B)(vii) of HEA (20 USC 1087-1(b)(2)(B)(vii)); 34 C.F.R. Section 682.302(e)(5); DCL FP-06-01].

As a result, loans made or purchased by a HERA small lender from eligible sources of funds between February 8, 2006 and December 31, 2010 can qualify for the 9.5 percent minimum return rate.

Lender’s Interest and Special Allowance Request and Reports:

Billings for SAP are made by lenders via the *Lender’s Interest and Special Allowance Request and Reports* (LaRS/799) filed using the Lender Reporting Systems. Loans are listed individually on this report. Two character alphabetic SAP category codes are assigned to categories of loans. Per applicable instructions, all loans billed for the 9.5 percent minimum return rate for FFEL Program loans acquired with funds derived from eligible tax-exempt financing sources, are identified with codes that have “X” as the first alphabetic character.

Termination of Special Allowance Payments on a Loan:

The lender is required to terminate the SAP on loan balances when a date-specific event described in 34 C.F.R. section 682.302(d) occurs, and the loan is no longer eligible for the payment. These date-specific events are described in detail in 34 C.F.R. Section 682.302(d) and include the following:

- The date a borrower's loan is repaid;
- The date a borrower's loan check is returned uncashed to the lender;
- The date the lender receives payment on a claim for loss on the loan;
- The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;
- The 60th day after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all the required documentation on or before the 60th day;
- The 120th day after disbursement if the loan check has not been cashed on or before that date or if the loan proceeds disbursed by EFT have not been released from the restricted account maintained by the school on or before that date;
- The 30th day after the date the lender received a returned claim from the guaranty agency due solely to inadequate documentation on a loan submitted by the regulatory deadline for loss on the loan (unless the lender files a claim for loss on the loan with the guarantor, together with the required documentation prior to the 30th day); or
- The date on which the lender determines the loan is legally unenforceable based on receipt of an identity theft report under 34 C.F.R. section 682.208(b)(3).

Minimum Required Procedures and Tests

Obtain Management Assertions

The auditor must obtain the written assertions from management contained in Attachment A.

In addition to written representations from lender management required under applicable attestation standards, the auditor must also obtain a representation that management has disclosed all known fraud, whether or not material, that involves management or any other employee connected to billings for SAP.

Accuracy of Billings:

For the purpose of rendering an opinion on the accuracy of billings at the 9.5 percent minimum rate of return, the following procedures must be performed by the auditor:

1. For loans included in Part III of the LaRS/799 reports submitted during the audit period for SAP at the 9.5 percent minimum return rate for loans, test that the lender is reporting such loans by the proper year, quarter, interest rate, and special allowance category. [These loans are loans identified with two character alphabetic SAP category codes with “X” as the first character.]
2. Test that the lender is accurately reporting for the 9.5 percent floor (i.e., minimum SAP) only those loans that—
 - were identified as a result of the special purpose audit conducted under the methodology prescribed in DCL FP-07-06, or
 - if made or acquired by a HERA small lender between December 31, 2006, and December 31, 2010, were made or purchased with funds obtained from repayments, sales, or interest or SAP on loans that were established by the special purpose audit to be first-generation loans, as that term is used in Dear Colleague Letter (DCL) FP 07-01 (for loans made or acquired after December 31, 2006, a lender’s records should indicate the funding source (e.g., 34 C.F.R. section 682.302(c)(3)(i)(A) through (E)) from which these loans derive eligibility for the 9.5 percent minimum rate of return),
 - were not subject to the disqualifying events specified in HEA and 34 C.F.R. sections 682.302(e)(2) and (3), or the date-specific events specified in 34 Section 682.302(d).
3. Test the accuracy of the average daily balance calculations as defined in 34 C.F.R. Section 682.304(d) by recalculating amounts or by reasonableness tests.

Effectiveness of Internal Control over Billings:

The auditor must evaluate the effectiveness of the lender’s internal control and test and evaluate the operating effectiveness of the controls in place to ensure that billings for SAP at the 9.5 percent minimum rate of return are accurate and conform to the compliance requirements listed above.

The procedures and tests described above are minimum requirements. The auditor should also perform any additional tests or procedures they deem necessary to render the required opinions. Tests and procedures under the Section 3 or 4 of the Lender Compliance Attestation Guide audits alone will not suffice to meet the requirements for the attestations required by this Appendix. However, in performing the attestation engagement required by this Appendix, these procedures may be coordinated or integrated with the procedures Lender Compliance Attestation Guide audits.

Reporting

An examination level opinion on compliance and an examination level opinion on the effectiveness of internal controls are required. All instances of noncompliance must be reported in a Schedule of Findings. With respect to internal controls, all significant deficiencies or material weaknesses in internal control must be reported.

The following attachments provide illustrative examples of the management assertions and auditor reports required by this Appendix. A copy of management's written assertions, addressed to the audit firm, on the lender's letterhead and signed by both the CEO and CFO, must be included in the reporting package. The auditor must retain the original as part of the audit documentation.

Attachment A – Lender Management Assertions

Attachment B– Examination Level Opinion on Compliance

Attachment C– Examination Level Opinion on the Effectiveness of Internal Controls

As noted above, the 9.5 percent special allowance payment report package should be submitted together with the lender's annual audit report as noted in Section 5.1 of this Guide.

Appendix 1 - Attachment A

Lender Management Assertions
[On the Letterhead of the Lender]

TO: [Name of Audit Firm]

We make the following assertions in relation to the *Special Allowance Billing and Payments Attestation Report Required For Lenders Participating in the Federal Family Education Loan Program and Requesting Special Allowance Payments at the 9.5 Percent Minimum Return Rate* submitted to the U.S. Department of Education as required for our organization being paid SAP at the 9.5 percent minimum return rate for FFEL program funds derived from eligible tax-exempt financing sources.

1. Accuracy of Billings

Assertion For Lenders That Are Not Small Lenders As Defined By HERA:

Loans included in Part III of the Lender's Interest and Special Allowance Request and Reports (LaRS/799) submitted by [the Lender] during the year ended [mm/dd/yyyy] for billings for special allowance payments for the [number of] quarter(s) for the period beginning mm/dd/yyyy and ending mm/dd/yyyy at the 9.5 percent minimum return rate were only for loans that are first-generation or second generation loans obtained from an eligible source, as described in the Department's DCL FP-07-01, identified in the special purpose audit and no others. Such billings were (1) eligible for the special allowance payments, (2) accurately reported by the proper year, quarter, interest rate, and special allowance category, and (3) accurately reported the average daily balance.

Assertion For Lenders That Are Small Lenders As Defined By HERA:

Loans included in Part III of the Lender's Interest and Special Allowance Request and Reports (LaRS/799) submitted by [the Lender] during the year ended [mm/dd/yyyy] for billings for special allowance payments for the [number of] quarter(s) for the period beginning mm/dd/yyyy and ending mm/dd/yyyy at the 9.5 percent minimum return rate were only for loans that are first-generation or second generation loans obtained from an eligible source, as described in the Department's DCL FP-07-01 and any new loans were originated from the proceeds of the eligible loans identified in the special purpose audit. Such billings were (1) eligible for the special allowance payments and (2) accurately reported by the proper year, quarter, interest rate, and special allowance category.

2. Effectiveness of Internal Control Over Billings

For the year ending [mm/dd/yy],[the Lender] had effective internal control to provide reasonable assurance that, loans billed for special allowance payments at the 9.5 percent minimum return rate were (1) eligible for special allowance at such rate and (2) accurately reported by the proper year, quarter, interest rate, and special allowance category.

Signature of Lender CEO

Signature of Lender CFO

Name of Lender CEO

Name of Lender CFO

Date Signed _____

Date Signed _____

Appendix 1 - Attachment B

**ILLUSTRATIVE REPORT ON THE EXAMINATION OF
LENDER MANAGEMENT'S COMPLIANCE WITH REQUIREMENTS
FOR LOANS BILLED FOR SPECIAL ALLOWANCE PAYMENTS
AT THE 9.5 PERCENT MINIMUM RETURN RATE**

Independent Accountant's Report

To: [Lender]

We have examined the [Lender's] compliance with requirements that loans billed for special allowance payments at the 9.5 percent minimum rate were (1) eligible for special allowance payments at such rate and (2) accurately reported by the proper year, quarter, interest rate, and special allowance category on LaRS/799 Reports *during the year ended [date] for billings for special allowance payments for the [number of] quarter(s) for the period beginning mm/dd/yyyy and ending [date].*

Management is responsible for [Lender's] compliance with those requirements. Our responsibility is to express an opinion on [Lender's] compliance based on our examination.

Our examination was made in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States; attestation standards established by the American Institute of Certified Public Accountants; ED Dear Colleague Letter FP-01, dated January 23, 2007; and ED Dear CPA Letter 08-02, dated September 26, 2008 and, accordingly, included examining, on a test basis, evidence about the entity's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination of the Lender's compliance with the specified requirements.

Our examination disclosed noncompliance with [compliance requirement(s)] applicable to [Lender] during the [period] ended [date]. The accompanying *Schedule of Findings and Questioned Costs* sets forth results indicating non-compliance with U.S. Department of Education requirements based on the conduct of these procedures. We considered these instances of noncompliance in forming our opinion. [Note: If noncompliance is not found, the report must be appropriately modified.]

In our opinion [Lender] complied, in all respects, with the aforementioned requirements for the year ended [date]. [Note: If significant deficiencies are found, the report must be appropriately modified.]

This report is intended solely for the information and use of the U.S. Department of Education and the management of [Lender] and is not intended to be and should not be used by anyone other than these specified parties.

[CPA Firm Signature]

[Date]

Appendix 1 - Attachment C

**ILLUSTRATIVE REPORT ON THE EXAMINATION OF LENDER
MANAGEMENT'S EFFECTIVENESS OF INTERNAL CONTROL OVER
COMPLIANCE WITH REQUIREMENTS FOR LOANS BILLED FOR SPECIAL
ALLOWANCE PAYMENTS AT THE 9.5 PERCENT MINIMUM RETURN RATE**

We have examined the effectiveness of [Lender's] internal control over compliance with requirements for loans billed for special allowance payments at the 9.5 percent minimum return rate that the loans were (1) eligible for special allowance at such rate and (2) accurately reported by the proper year, quarter, interest rate, and special allowance category for the year ended [date]. [Lender's] management is responsible for maintaining effective internal control over compliance with the requirements for loans billed at the 9.5 percent minimum return rate. Our responsibility is to express an opinion on the effectiveness of internal control based on our examination.

Our examination was made in accordance with Government Auditing Standards, issued by the Comptroller General of the United States, attestation standards established by the American Institute of Certified Public Accountants, U.S. Department of Education (ED) Dear Colleague Letter FP-01, dated January 23, 2007; and ED Dear CPA Letter 08-02, dated September 26, 2008 and, accordingly, included obtaining an understanding of internal control over compliance with requirements for loans billed for special allowance at the 9.5 percent minimum return rate, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

Because of inherent limitations in any internal control, misstatements due to error or fraud may occur and not be detected. Also, projections of any evaluation of the internal control over compliance with requirements for loans billed for special allowance payments at the 9.5 percent minimum return rate to future periods are subject to the risk that the internal control may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, [Lender] maintained, in all material respects, effective internal control over compliance with requirements that loans billed for special allowance payments at the 9.5 percent minimum return rate were (1) eligible for special allowance at such rate and (2) accurately reported by the proper year, quarter, interest rate, and special allowance category. [Note: If significant deficiencies are found, the report must be appropriately modified.]

This report is intended solely for the information and use of the U.S. Department of Education and the management of [Lender] and is not intended to be and should not be used by anyone other than these specified parties.

[CPA Firm Signature]

[Date]