

**U.S. Department of Education**  
Office of Inspector General



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**LENDER SERVICER FINANCIAL  
STATEMENT AUDIT AND COMPLIANCE  
ATTESTATION GUIDE**

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**FOR LENDER SERVICERS THAT SERVICE  
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 Servicer Financial Statement Audit and Compliance Attestation Engagement Guide for Lender Servicers Servicing 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.

Lenders participating in the Federal Family Education Loan (FFEL) Program frequently engage servicer organizations (servicers) to perform certain functions relating to the administration of that program. Third-party servicers that enter into contracts to administer any aspect of a participating lender's FFEL Program, as provided under Title 34 of the Code of Federal Regulation (C.F.R.) Part 682, are required to submit annual audited financial statements in accordance with 34 C.F.R. §668.23(d)(5). Additionally, Section 428(b)(1)(U) of the Higher Education Act of 1965, as amended and 34 C.F.R. §682.416(e) require all servicers to have an annual compliance audit performed by a non-federal auditor. All financial statement audits and compliance attestation engagements conducted to satisfy the statutory and regulatory requirements cited above, except for audits of lenders or servicers that are nonprofit or governmental organizations, must be done in accordance with the *Lender Servicer Financial Statement Audit and Compliance Attestation Guide* dated January 31, 2011. 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 must be directed to the Non-Federal Audit Team at [oiannon-federalaudit@ed.gov](mailto:oiannon-federalaudit@ed.gov).

Sincerely,

/s/

Keith West  
Assistant Inspector General for Audit

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## Abbreviations and Acronyms

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<b><u>Acronym</u></b>	<b><u>Definition</u></b>
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	Federal Family Education Loan
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
PCAOB	Public Company Accounting and Oversight Board
SAS	Statement on Auditing Standards
SEC	Securities and Exchange Commission

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## SECTION 1 – GENERAL REQUIREMENTS

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### **1.1 Purpose and Background**

This financial audit and compliance attestation engagement guide (Guide) provides the requirements for audits of third-party servicer organizations (servicers) that perform certain functions relating to the administration of the Federal Family Education Loan (FFEL) program on behalf of participating lenders. 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 financial audits and compliance attestation engagements for fiscal years ending June 30, 2011, and thereafter.

#### **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 Loan (Direct Loan) program.

#### **1.1(B) Higher Education Act (HEA)**

Section 487(c)(1)(C)(i) of the HEA of 1965, as amended, requires an annual compliance audit of a servicer with regard to any contract the servicer may have with an eligible school, lender or guaranty agency for administering or servicing any aspect of the Title IV programs.

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

Section 668.23(d)(5) of 34 C.F.R. requires a servicer that enters into a contract with a lender to administer any aspect of the lender's programs, as provided under 34 C.F.R. §682, must submit an audited financial statement annually.

In addition, 34 C.F.R. §682.416(e) requires that all servicers have an audit performed of the servicer's administration of the FFEL Program loan portfolio annually unless: (1) the servicer contracts with only one participating lender; and (2) the audit of that lender's participation involves every aspect of the servicer's administration of the FFEL Program loan portfolio.

## **1.2 Engagement Objectives**

The engagement objective is to determine if the servicer complied with legal requirements in the FFEL Program. The financial audit and compliance attestation engagements assist ED in meeting its stewardship responsibilities by allowing ED to act upon noncompliance and internal control deficiencies noted in auditor 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 servicer financial statement audits and compliance attestation engagements are based on the servicer's fiscal year and must be performed in accordance with this Guide, except for servicers that are nonprofit or government units that are subject to the Single Audit Act and OMB Circular A-133. All servicer compliance attestation engagements require opinions on required assertions from management. See Section 2.4 for professional standards applicable to the engagement.

### **1.3(A) Financial Statement Audit**

Per 34 C.F.R. §668.23(d)(5), a servicer that enters into a contract with a lender to administer any aspect of the lender's programs, as provided under 34 C.F.R. Part 682, must submit annually an audited financial statement. This financial statement must be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards (GAGAS) issued by the Comptroller General of the United States.

### **1.3(B) Compliance Attestation**

Per 34 C.F.R. §682.416(e) servicers that enter into a contract with a lender to administer any aspect of the lender's programs, as provided under 34 C.F.R. Part 682, must submit an independent audit that examines the servicer's compliance with the HEA and applicable regulations and examines the servicer's financial management of its FFEL Program activities. A compliance attestation engagement conducted in accordance with the requirements in this Guide will meet the compliance audit requirement of 34 C.F.R. Part 682. The compliance attestation engagement along with the financial statement audit (referred to above) must be submitted in accordance with the reporting requirements in Section 4 of this Guide.

If a lender servicer 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 servicer.

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

#### **1.4 Engagement Report Submission Dates**

Engagement reports are due six months following the servicer's fiscal year end. The report package must be submitted electronically to the U.S. Department of Education. (See Section 4)

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 servicer and/or to limit, suspend, or terminate a servicer's participation in the FFEL Program for failure to comply with Federal requirements.

#### **1.5 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 audit or 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 audit or 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 servicer about FOIA requests received. However, if ED receives a FOIA request for documentation the auditor had 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 servicer, an opportunity to provide any additional pertinent information, prior to releasing any documentation.

#### **1.6 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 financial statement audits and compliance attestation engagements that are to be conducted in accordance with GAGAS. As part of such evaluations, the auditor must make all documentation related to the engagement available to ED-OIG or our representatives upon request. If ED-OIG determines that an engagement is substandard, it 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 servicer to obtain and submit another financial statement audit or compliance attestation engagement to replace the substandard one.

### **1.7 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.access.gpo.gov/nara/C.F.R./C.F.R.-table-search.html>)
- 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=ffelspebrates>)
- FFEL Variable Interest Rates  
(<http://ifap.ed.gov/ifap/byYear.jsp?type=ffelvarrates>)
- Dear Colleague Letter FP-07-01 FFELP 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](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](http://www.fp.ed.gov/fp/attachments/activities_whatsnew/FundsRemittance9.0.doc))
- Lender's Interest and Special Allowance Request and Report (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
- 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.

### **1.8 Technical Assistance**

Technical questions about applying the procedures in this Guide may be directed to the OIG's Non-Federal Audit Team by email at [oignon-federalaudit@ed.gov](mailto:oignon-federalaudit@ed.gov).

### **1.9 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 webpage to determine if a subsequent edition of, and/or amendments to, this Guide have been issued. The ED-OIG's Non-Federal Audit webpage is:

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

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## SECTION 2 – PLANNING THE ENGAGEMENT

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### 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, and becoming familiar with reference materials and auditing standards applicable to the attestation engagements performed under this Guide.

### 2.2 Management Assertions and Representations

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

### 2.3 Engagement Letter

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

- A statement that the engagement is to be performed in accordance with auditing standards generally accepted in the United States of America, GAGAS, AICPA Attestation Standards, Public Company Accounting and Oversight Board (PCAOB) Standards (if applicable) 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 Servicer's activities under the FFEL Program;
- A statement that the lender servicer must provide the auditor all required representations and assertions;
- A statement that the servicer 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 servicer 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.

### **2.4(A) Financial Statement Audits**

Financial statement audits are required to be submitted per 34 C.F.R. §668.23(d)(5). The financial statement audits must be performed in accordance with GAGAS (which include the fieldwork and reporting standards of generally accepted auditing standards established by the American Institute of Certified Public Accountants (AICPA)), or if the lender servicer is an entity covered by the Sarbanes-Oxley Act of 2002, standards promulgated by the by the Public Company Accounting and Oversight Board (PCAOB) must be followed.

Entities that issue shares of stock that are publicly traded on a stock exchange are subject to regulation by the Securities and Exchange Commission (SEC) and the PCAOB. Audits of such publicly traded entities must meet the regulatory requirements of both the SEC and the PCAOB.

### **2.4(B) Compliance Attestation Engagements**

The compliance examination-level attestation engagement must be conducted in accordance with GAGAS, and the Statements on Standards for Attestation Engagements issued by the AICPA. GAGAS ¶6.05 identifies additional standards for attestation engagements that go beyond the requirements in the AICPA's attestation standards.

## **2.5 Materiality**

The guidance provided in the AICPA's attestation standards at AT §601.36 and §601.37, concerning an auditor's consideration of materiality, must be followed for compliance attestation 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 compliance attestation engagement, described in Section 3, provide for the use of a sample to test lender servicer 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 client's FFEL Program portfolios that are serviced.

## **2.8 Sample Results**

If material noncompliance exists, the auditor should consider sample results in the context of both individual management assertions about compliance and the FFEL Program portfolios that are serviced. 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.)

## **2.9 Consideration of Internal Control in a Financial Statement Audit**

In considering internal control in a financial statement audit, auditors should follow the requirements of AU §314 *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement*, and AU §318, *Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained*. The auditor's responsibility to communicate matters related to an entity's internal control over financial reporting identified in an audit of financial statements is contained in AU §325 *Communicating Internal Control Related Matters Identified in an Audit* (Statement on Auditing Standards (SAS) 115). If the lender servicer is an entity covered by the Sarbanes-Oxley Act of 2002, standards promulgated by the PCAOB must be followed.

## **2.10 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 servicer'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.

### **2.11 Consideration of Prior Audits, Attestation Engagements and Reviews**

Auditors must obtain from servicer's management to copies of all reports on prior audits and reviews of the servicer, not limited to the entity's role as a servicer, 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 OIG, (ii) program reviews conducted by Federal Student Aid (FSA), and (iii) audits and attestation engagements performed by auditors, and the resolution of any reported findings in any such kind of 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.

### **2.12 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 12<sup>th</sup> 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 Investigation Services, 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 Investigation Services. The transmittal must request ED-OIG Investigation Services 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 Oversight Service office, and (2) whether the auditor can reflect the contents of the separate report in the compliance attestation engagement reports. The auditor must retain the acknowledgement in the audit/attest documentation.

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## SECTION 3 – COMPLIANCE ATTESTATION

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### 3.1 Introduction

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 servicer'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 servicer to prepare the form, the 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 [Servicer] complied with the LaRS reporting compliance requirements on behalf of the [Servicer’s] clients, as described in Section 3.2 of ED’s *FFEL Program Lender Servicer Financial Statement Audit and Compliance Attestation 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 Procedures**

Select a sample of quarterly LaRS reports for the fiscal year under review and reconcile data reported on each quarterly LaRS report to the lender servicer 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 [Servicer] complied with the Loan Record compliance requirements on behalf of the [Servicer’s] clients, as described in Section 3.3 of ED’s *FFEL Program Lender Servicer Financial Statement Audit and Compliance Attestation Guide*.



### **3.3(B) Compliance Requirements**

The lender must maintain the required records are 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 audit sample includes loans that the lender no longer owns, such as loans that the lender 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 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 from the universe of lender client loans and review loan information from the servicer's 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
- (e) A record of each disbursement of loan proceeds
- (f) Notices of changes in a borrower's address and status as at least a half-time student
- (g) Evidence of the borrower's eligibility for a deferment
- (h) The documents required for the exercise of forbearance
- (i) Documentation of the assignment of the loan
- (j) 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
- (k) 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
- (l) Documentation of any Master Promissory Note confirmation process or processes
- (m) 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 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, 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 Higher Education Opportunity Act of 2008 (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 [Servicer] complied with the Interest Benefits compliance requirements on behalf of the [Servicer's] clients, as described in Section 3.5 of ED's *FFEL Program Lender Servicer Financial Statement Audit and Compliance Attestation 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 the consolidation loan interest payment rebate fee, 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) Section 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) Section 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 as 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. §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 60<sup>th</sup> 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 60<sup>th</sup> day
- The 120<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> day).
- 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 [Servicer] complied with the Special Allowance Payments compliance requirements on behalf of the [Servicer's] clients, as described in Section 3.5 of ED's *FFEL Program Lender Servicer Financial Statement Audit and Compliance Attestation 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:

- (1) Select a minimum sample of 60 loans and:
  - (a) Determine if loans in Part III of the LaRS are reported by the proper special allowance category
  - (b) Determine if special allowance billing on loan balances is terminated 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 accuracy of 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 —

- (i) the claim was limited to loans to which a governmental or non-profit entity listed above held full beneficial ownership; and
- (ii) 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 [Servicer] complied with the Loan Sales, Purchases, and Transfers compliance requirements on behalf of the [Servicer's] clients, as described in Section 3.6 of ED's *FFEL Program Lender Servicer Financial Statement Audit and Compliance Attestation 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:

- (1) Select minimum sample of 60 loans reported as purchased, sold, or transferred and:

- (a) Trace the principal amount of loans sold, purchase, 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 [Servicer] complied with the Enrollment Report compliance requirements on behalf of the [Servicer's] clients, as described in Section 3.7 of ED's *FFEL Program Lender Servicer Financial Statement Audit and Compliance Attestation 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:

- (1) Using the Enrollment Reports received during the audit period, select a minimum sample of 60 loans 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 [Servicer] complied with the Payment Processing compliance requirements on behalf of the [Servicer's] clients, as described in Section 3.8 of ED's *FFEL Program Lender Servicer Financial Statement Audit and Compliance Attestation Guide*.

#### **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 60 loans from the universe of lender clients 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. §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/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 §682.411(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 must 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 for 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 [Servicer] complied with the Due Diligence compliance requirements on behalf of the [Servicer's] clients, as described in Section 3.9 of ED's *FFEL Program Lender Servicer Financial Statement Audit and Compliance Attestation 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 minimum sample of 60 loans delinquent loans 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 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) and determine if the lender sent the required final demand letter to the borrower.
- (5) For loans that have a loan endorser and 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 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(A) Required Management Assertion**

The [Servicer] complied with the Timely Claim Filings compliance requirements on behalf of the [Servicer's] clients, as described in Section 3.10 of ED's *FFEL Program Lender Servicer Financial Statement Audit and Compliance Attestation Guide*.

#### **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***

<b>TYPE OF CLAIM</b>	<b>TIMELY FILING REQUIREMENTS</b>
<b>Default</b>	A lender must submit default claims to the guaranty agency within 90 days of the default.
<b>Death or Disability</b>	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.
<b>Closed School</b>	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. §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.
<b>False Certification</b>	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. §682.402(e)(3) or after the lender is notified by the Secretary or the Secretary’s designee or by the guaranty agency to do so.
<b>Bankruptcy</b>	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:

- (1) 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 due diligence and/or timely filing requirement within the time frame specified by regulations. 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 prescribed.

#### ***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 [Servicer] complied with the Curing Due Diligence and Timely Filing Violations compliance requirements on behalf of the [Servicer's] clients, as described in Section 3.11 of ED's *FFEL Program Lender Servicer Financial Statement Audit and Compliance Attestation 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**

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 an 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. (34 C.F.R. §682.602).

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 (7) (§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 [Servicer] complied with the Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization compliance requirements on behalf of the [Servicer's] clients, as described in Section 3.12 of ED's *FFEL Program Lender Servicer Financial Statement Audit and 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 minimum sample of loans disbursed after January 1, 2007, but prior to July 1, 2010, and test for compliance with the ELT provisions.

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## SECTION 4 – REPORTING

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### 4.1 Engagement Report Package Requirements

The report package for engagements must include:

- Independent Auditor’s Report on the Financial Statements (Please refer to applicable GAAS or PCAOB standards for illustrative reports);
- Basic Financial Statements;
- Report on Internal Control Over Financial Reporting Based on an Audit of Financial Statements Performed In Accordance With Government Auditing Standards (Please refer to applicable GAAS or PCAOB standards for illustrative reports);
- Examination-Level Report On Compliance With Specified Requirements Schedule of Findings (Attachment 1);
- Lender Servicer and Auditor Information Sheet (Attachment 2);
- Management Representations and Management Assertions (Attachment 3);
- Summary Schedule on the Resolution of Prior Engagement Findings;
- Corrective Action Plan;
- Any separate report on fraud, illegal acts, or abuse submitted under the procedures in Section 2.12; and
- Any management letters issued to the lender concerning this engagement.

<p><u>Note:</u> 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.</p>
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### 4.2 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 Servicer. If corrective action is not necessary, the auditor must provide the reason.

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:

- 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 loans(s) 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 Servicer Financial Statement Audit and Compliance Attestation 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.

#### **4.3 Auditor's Comments on the Resolution of Prior Engagement Findings**

For 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 Servicer. The schedule must identify all prior findings, the status of their resolution, and the actions necessary for the Servicer to resolve those unresolved findings. The Servicer must refer to the finding using the number that was assigned in the prior engagement report. The Servicer 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 Servicer. The auditor must report a current-year finding if the auditor concludes that the schedule materially misrepresents the status of any prior finding.

#### **4.4 Reporting Package Submission**

The reporting package must be transmitted by the submission deadlines described in Section 1.4. The Lender Servicer must submit the reporting package electronically, in a PDF format, to [fios.complianceaudits@ed.gov](mailto:fios.complianceaudits@ed.gov) with “Lender Servicer Financial Statement Audit and 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](mailto:jeffrey.burton@ed.gov).

#### **4.5 Corrective Action Plan**

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

The Corrective Action Plan must be submitted on the Servicer’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 Servicer 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 Servicer’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 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**

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

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**Independent Accountant’s Report**

We have examined management’s assertions that [the Servicer] 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 Servicer Financial Statement Audit and Compliance Attestation Guide*, during the year ended [specify]. [Servicer’s] management is responsible for [the Servicer’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 Servicer Financial Statement Audit and Compliance Attestation 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 Servicer Financial Statement Audit and Compliance Attestation Guide*. Our examination does not provide a legal determination on [the Servicer’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 [Servicer’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 the Collection of Delinquent Loans; Timely Claim Filings; Curing Due Diligence and

Timely Filing Violations; Consolidation Loans; and Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization listed in Section 3 of the *Lender Servicer Financial Statement Audit and Compliance Attestation 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 Servicer] and is not intended to be and must not be used by anyone other than these specified parties.

[CPA Firm Signature]

[Date]

## Attachment 2 – Lender Servicer and Auditor Information Sheet

<b>Lender Servicer Information:</b>	
Lender Servicer Name:	
Lender ID Number(s):	
Telephone Number:	
Fax Number:	
President:	
Name of Contact Person and Title:	
<b>Lender Client Information:</b>	
Lender Names:	
Lender ID Numbers:	
<b>Audit Firm Information:</b>	
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:	



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## **Attachment 3 – Management’s Assertions and Representations**

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[Servicer’s Letterhead]

To: [Independent Public Auditor]

### **Assertions**

The management of [the Servicer] provides these assertions to your firm because it is conducting an engagement of [the Servicer’s] compliance with the U.S. Department of Education’s *Lender Servicer Financial Statement Audit and Compliance Attestation Guide* (Guide). The purpose of the compliance engagement is to express an opinion about whether [the Servicer] 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 in the Collection of Delinquent Loans;
- §3.10 Timely Claim Filings;
- §3.11 Curing Due Diligence and Timely Claim Filing Violations; and
- §3.12 Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization

### **Representations**

We also represent that the management of [the Servicer]:

- 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 Servicer Financial Statement Audit and*

*Compliance Attestation Guide*, that [Servicer] 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.<sup>1</sup>

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The management of [Servicer] 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]

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<sup>1</sup> Any additional assertions or representations to be made by management must be included.