

**Proposed Regulatory Language
"Contextual Format"
Loans Committee**

Origin: ED
Issue: FFEL - Prohibited Inducements
Regulatory Cite: §§682.200 and 682.401(e)

Summary of Change: Provide additional detail beyond the statutory language of §§ 435(d)(5) and 428(b)(3) of the HEA by specifying prohibited activities used by lenders or guaranty agencies to secure loan applications or loan volume in the FFEL Program. Also reference activities of lenders and guaranty agencies that are permissible because they are comparable to the support provided to Direct Loan schools by the Department of Education. The detailed prohibitions reflect guidance provided by the Department in "Dear Colleague" Letters published in 1989 and 1995 and other guidance provided in response to individual inquiries received by the Department since the prohibitions were first enacted into law.

Change:

§682.200 Definitions.

(b) * * *

Lender. (1) * * *

(5) The term "eligible lender" does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has directly or through an agent, or contractor-

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(i) Offered directly or indirectly points, premiums, payments, or other inducements to any school or other party to secure applications for FFEL loans or to secure FFEL loan volume, which includes but is not limited to-

(A) Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective student, parent, or Consolidation Loan borrower in exchange for applying for or accepting a FFEL loan from the lender;

Deleted: or prizes

(B) Payments or other benefits to a school or any school-affiliated organization in exchange for FFEL Loan applications, or application referrals, a specified volume or dollar amount of loans made, or placement on a school's list of recommended or suggested lenders;

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(C) Payments or other benefits provided to a school or school-affiliated organization under a practice or policy that such payments or other benefits are provided to the school or organization to secure applications for FFEL loans or to secure FFEL loan volume;

Inserted: organization under a practice or policy that such payments or other benefits are provided to the school or organization to secure applications for FFEL loans or to secure FFEL loan volume; directly or indirectly affiliated with the school

(D) Payments or other benefits provided to a student at a school who acts as the lender's representative to secure FFEL loan applications from individual prospective borrowers. (E) Payments or other benefits to a loan solicitor or sales representative of a lender who visits schools to solicit individual prospective borrowers to apply for FFEL loans from the lender;

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(-F) Payment of referral or processing fees to another lender that exceed reasonable compensation for the administrative handling and marketing of FFEL loans by the referring or processing lender, or that are based on volume or dollar amount of FFEL loans made;

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(G) Payment of conference or training registration, transportation, and lodging costs for an employee of a school or school-affiliated organization

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(H) Payment of entertainment expenses for employees of a school or a school-affiliated organization, including private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation, and other gratuities related to lender-sponsored social activities; and

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(I) Undertaking philanthropic activities including providing scholarships, grants, restricted gifts or financial contributions in exchange for FFEL loan applications or application referrals, or specified volume or dollar amount of FFEL loans made, or placement on a school's list of recommended or suggested lenders.

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(ii) For these purposes, a school-affiliated organization is defined in section 682.200. The term "applications" includes the Free Application for Federal Student Aid (FAFSA) and FFEL loan master promissory notes. The term "other benefits" includes, but is not limited to, preferential rates for or access to the lender's other financial products, computer hardware or non-loan processing or non-financial aid related computer software at below market rental or purchase cost, and printing and distribution of college catalogs and other materials at reduced or no cost.

(iii) A lender may provide—

(A) Assistance to a school that is comparable to the kinds of assistance provided by the Department of Education to a school in the William D. Ford Direct Loan Program as identified by the Secretary in a notice in the Federal Register.

(B) Staffing services to a school as a third-party servicer or otherwise on an occasional, short-term, emergency basis to assist the school with financial aid related functions;

(C) Support of and participation in a school's or a guaranty agency's student aid related outreach activities;

(D) Meals, refreshments, and receptions that are scheduled in conjunction with meeting, training, or conference events if those meals, refreshments, or receptions are open to all meeting or conference attendees;

(E) Toll-free telephone numbers for use by schools or others to obtain information about FFEL program loans, or for use by schools to electronically submit applicant loan processing information or student status confirmation data;

(F) A reduced origination fee in accordance with §682.202(c);

(G) A reduced interest rate as provided under the Act;

(H) Payment of Federal default fees in accordance with the Act;

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Inserted: events are open to all meeting or conference attendees;¶ (E) Toll-free telephone numbers for use by schools or others to obtain information about FFEL program loans, or for use by schools to electronically submit applicant loan processing information or student status confirmation data;¶ (F) A reduced origination fee in accordance with §682.202(c);¶ (G) A reduced interest rate as provided under the Act;¶ (H) Payment of Federal default fees in

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Inserted: a non-discriminatory manner;¶ (I) Other benefits to a borrower under a repayment incentive program that requires, at a minimum, one or more

(I) Other benefits to a borrower under a repayment incentive program that requires, at a minimum, one or more scheduled payments to receive or retain the benefit; and

(J) Items of a nominal value to school-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising or to create good will.

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(iv) Conducted unsolicited mailings to a student or a student's parents of FFEL loan application forms, except to a student who previously has received a FFEL loan from the lender or to a student's parent who previously has received a FFEL loan from the lender;

(v) Offered, directly or indirectly, a FFEL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

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(vi) Engaged in fraudulent or misleading advertising with respect to its FFEL program loan activities.

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(vii) Presumptions- (a) For purposes of any action to enforce the limitations included in paragraph(5), the Secretary applies a rebuttable presumption that the payments or activities listed in (5) (i) were offered or provided to secure applications for FFEL loans.

(b) For purposes of any action to enforce the limitations included in paragraph(5), the Secretary applies a rebuttable presumption that the payments or activities listed in paragraph (5) (ii) were not offered or provided to secure applications for FFEL loans.

682.401 Basic program agreement.

* * * * *

(e) Prohibited inducements. (1) A guaranty agency may not directly or through an agent or contractor

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(i) Offer directly or indirectly from any fund or assets available to the guaranty agency, any premium, payment, or other inducement to a student or a student's parents, a

prospective borrower of a FFEL loan, or an employee of or an entity or individual affiliated with a school, to secure applications for FFEL loans, which includes, but is not limited to—

(A) Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective student or parent borrower in exchange for processing a loan using the agency's loan guarantee;

(B) Payments or other benefits, including prizes or additional financial aid funds under any title IV or State or private program, to a school based on the school's voluntary or coerced agreement to use the guaranty agency for processing loans, or a specified volume of loans, using the agency's loan guarantee;

(C) Payments or other benefits to a school or any school-affiliated organization, or to any individual in exchange for FFEL loan applications or application referrals, a specified volume or dollar amount of FFEL loans, or the placement of a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders; and

(D) Payments or other benefits provided to a school or school-affiliated organization under a practice or policy that such payments or other benefits are provided to the school or organization to secure applications for FFEL loans or to secure FFEL loan volume for the guaranty agency or a lender that uses the agency's loan guarantee;

(E) Payment of entertainment expenses for school employees or employees of school-affiliated organizations, including private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation or other gratuities related to any social activity sponsored by the guaranty agency or a lender participating in the agency's program; and

(F) Undertaking philanthropic activities including providing scholarships, grants, restricted gifts or financial contributions in exchange for FFEL loan applications or application referrals, a specified volume or dollar amount of FFEL loans using the agency's loan guarantee, or the placement of a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders.

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- Inserted: or prizes, to a prospective student or parent borrower in exchange for processing a loan using the agency's loan guarantee;
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- Deleted: not explicitly provided for in an agreement or other documentation;
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(iii) Include a prominent statement in any information related to its list of lenders advising prospective borrowers that they are not required to use one of the school's recommended or suggested lenders;

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explicitly provided for in an agreement or other documentation;

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explicitly provided for in an agreement or other documentation;

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specifically tied to loan applications, application referrals, or application processing rights;

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specifically tied to loan applications, application referrals, or application processing rights;

(D) Payments or other benefits provided to a student at a school who acts as the lender's representative to secure

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, or to a loan solicitor or sales representative who visits campuses to secure loan applicants;

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, or to a loan solicitor or sales representative who visits campuses to secure loan applicants;

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that exceed reasonable compensation for the administrative handling and marketing of

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availability by the referring or processing

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lender, or that are based on

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an employee of an organization directly or indirectly affiliated with a school;

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an employee of an organization directly or indirectly affiliated with a school;

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G) Payment of entertainment expenses for employees of a school or

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directly or indirectly affiliated with a school

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employees of an organization directly or indirectly affiliated with a school, including private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation, and other gratuities related to lender-sponsored social activities; and

(H) Providing below market terms of financing or below market rates for loan origination and servicing to a participating FFEL school lender.

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(H) Providing below market terms of financing or below market rates for loan origination and servicing to a participating FFEL school lender.

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organization directly or indirectly affiliated with a school not specifically tied to loan applications, loan referrals, or application processing rights;

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applications, loan referrals, or application processing rights;

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directly or indirectly affiliated with a school