

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

Origin: ED

Issue: FFEL - Institutional Preferred Lenders

Regulatory Cite: §§682.212 and 682.603

Summary of Change: Provide limits and conditions on an institution's development and use of a list of preferred or recommended list of lenders in the FFEL Program to protect a borrower's choice of lender as provided by the HEA.

Change:

§682.212 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to-

(1) Secure funds for making loans; or

(2) Induce a lender to make loans to either the students or the parents of students of a particular school or particular category of students or their parents.

(b) The following are examples of transactions that, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

(1) Cash payments by or on behalf of a school made to a lender or other party.

(2) The maintaining of a compensating balance by or on behalf of a school with a lender.

(3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(5) Purchase by or on behalf of a school of stock of the lender.

(6) Payments ostensibly made for other purposes.

(c) Except when purchased by an agency of any State functioning as a secondary market or in any other circumstances approved by the Secretary, notes, or any interest in notes, may not be sold or otherwise transferred at discount if the underlying loans were made—

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(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or lender (with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with that lender), may not use a loan made under the FFEL programs as collateral for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the most recently prescribed special allowance under §682.302.

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(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school, lender, or other party that would participate in a proscribed transaction.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the loan seller a warranty that—

(1) Covers future reductions by the Secretary or a guaranty agency in computing the amount of loss payable on default claims filed on the loans, if the reductions are attributable to an act, or failure to act, on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an

eligible lender as an inducement to make, or to acquire by assignment, a FFEL loan shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than one year, or both.

(h) (1) A School may not provide or make available a list of recommended or suggested lenders in print or any other medium or form for use by the school's students or their parents that—

(i) Is used to deny or otherwise impede a borrower's choice of lender;

(ii) Contains fewer than three lenders who will make loans to borrowers or students attending the school; and

(iii) Includes lenders that have offered, or have been solicited to offer, financial or other benefits to the school or its borrowers in exchange for inclusion on the list or any promise that a certain number of loan applications will be sent to the lender by the school or its students.

(2) A school that provides or makes available a list of recommended or suggested lenders must—

(i) Disclose to prospective borrowers as part of a list the method and criteria used by the school to choose the lenders that are recommended or suggested;

(ii) 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;

(iii) For first-time borrowers, not assign, through award packaging or other methods, a borrower's loan to a particular lender; and

(iv) Not cause unnecessary certification delays for borrowers who use a lender that has not been recommended or suggested by the school.

§ 682.603 Certification by a participating school in connection with a loan application.

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Inserted: (ii) Provide comparative information to prospective borrowers about interest rates and benefits offered by the lenders;¶

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Inserted: (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;¶ ... [1]

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(a) A school shall certify that the information it provides in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made on the application by the borrower.

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(b) The information to be provided by the school about the borrower making application for the loan pertains to—

(1) The borrower's eligibility for a loan, as determined in accordance with §682.201 and §682.204;

(2) For a subsidized Stafford loan, the student's eligibility for interest benefits as determined in accordance with §682.301; and

(3) The schedule for disbursement of the loan proceeds, which must reflect the delivery of the loan proceeds as set forth in §682.604(c).

(c) Except as provided in paragraph (e) of this section, in certifying a loan, a school must certify a loan for the lesser of the borrower's request or the loan limits determined under §682.204.

(d) A school may not certify a Stafford or PLUS loan application, or combination of loan applications, for a loan amount that—

(1) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in §682.204; or

(2) Exceeds the student's estimated cost of attendance, less—

(i) The student's estimated financial assistance for that period; and

(ii) In the case of a Subsidized Stafford loan, the borrower's expected family contribution for that period.

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(e) In certifying loans, a school—

Deleted: A school may refuse to certify a Stafford or PLUS loan application or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the borrower in writing, provided

(1) May not refuse to certify, or delay certification, of a Stafford or PLUS loan based on the borrower's selection of a particular lender or guaranty agency;

(2) May not, for first-time borrowers, assign through award packaging or other methods, a borrower's loan to a particular lender; and

(3) May refuse to certify a Stafford or PLUS loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the borrower in writing, provided—

(i) The determination is made on a case-by-case basis;

(ii) The documentation supporting the determination is retained in the student's file; and

(4) May not, under subsections (1), (2), and (3) engage in any pattern or practice that results in a denial of a borrower's access to FFEL loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, or income, or selection of a particular lender or guaranty agency.

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Inserted: (1) May not refuse to certify, or delay certification, of a Stafford or PLUS loan based on the borrower's selection of a particular lender or guaranty agency;

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