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GEN-08-03

March 26, 2008

Subject: Lender-of-Last-Resort Services in the Federal Family Education Loan Program.

Summary: This letter provides updated assistance for the implementation of a Lender-of-Last-Resort (LLR) program by a guaranty agency in the FFEL Program. Guaranty agencies are instructed to submit updated LLR rules and operating procedures to the Department for review and approval.

Dear Guaranty Agency Director:

During the last several weeks, the Department of Education (the Department) has been closely monitoring events in the financial markets, as well as announcements made by some participating Federal Family Education Loan (FFEL) lenders about their future participation in the FFEL Program. The Secretary is committed to timely access to FFEL loans for all eligible borrowers. The purpose of this letter is to ensure that all guaranty agencies are in compliance with section 428(j) of the Higher Education Act (HEA) and the implementing regulations at 34 CFR 682.401(c), and have in place approved, updated rules and operating procedures to provide FFEL LLR loans should they be needed. While the regulations specify that a guaranty agency's LLR program must serve all eligible students at any eligible school in the state in which the agency serves as the designated guarantor, such a program may be provided to students attending schools in states other than the one in which the agency serves as the designated guaranty agency.

Background

Section 428(j) of the HEA requires the guaranty agency, or a lender or lenders under an agreement with the guaranty agency, to serve as a lender of last resort for an eligible borrower who is otherwise unable to obtain a FFEL loan. A guaranty agency is required to consider any request from an eligible FFEL lender that wishes to serve in an LLR capacity.

The HEA specifies that a guaranty agency must establish rules and operating procedures for its LLR program. These rules and operating procedures must include –

- A description of the guaranty agency's LLR customer service provisions including the hours of operation during which a borrower can contact the guaranty agency to initiate an LLR loan;
- The timeline for issuing an LLR loan, which can be no longer than – and preferably would be much shorter than – 60 days after the borrower submits a completed application;

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- A provision stating that any additional eligibility requirements, beyond the statutory and regulatory requirements, will not be imposed on a student seeking an LLR loan;
- A provision describing what criteria will be used in determining whether a student has been denied a loan from no more than two eligible lenders that are currently originating loans in the FFEL program prior to qualifying for an LLR loan. This description should detail the efforts that will be taken to encourage potential borrowers toward known FFEL program participants;
- A provision that loans made under an agency's LLR program may not be less than \$200 or exceed the borrower's financial need, as determined under Part F of Title IV of the HEA, and;
- A provision as to how the guaranty agency will provide information on the availability of its LLR loans to the schools located in the state or states in which the agency serves as designated guaranty agency.

Guaranty Agency Submission of Updated LLR Program Policies and Procedures

The Department has a responsibility to ensure guaranty agencies have up to date, compliant LLR plans to meet their statutory obligations in the unlikely event they are needed. As a result, we are requesting that each guaranty agency provide the Department an updated and complete statement of its policies and procedures governing its LLR program, within 30 days of the date of this letter.

The agency's LLR rules and operating procedures must, at a minimum, address the following:

1. *Demonstration of the need for LLR loans and identification of the entity or entities serving as lender of last resort*
 - Before a guaranty agency implements its LLR program, it must survey all FFEL lenders with which the agency has an agreement, as well as any other FFEL lender that has expressed an interest, to identify a lender or lenders that will provide conventional FFEL loans to some or all eligible borrowers in the agency's designated state.
 - Pursuant to Section 428(j), where the need to issue an LLR loan becomes necessary, either the guaranty agency or an eligible lender shall issue a loan. A guaranty agency that enters into an LLR agreement with one or more FFEL lenders must provide, as part of its LLR rules and operating procedures submission to the Department, a copy of a written statement from each lender explaining why the lender is unwilling to make conventional FFEL loans, in general or specific cases, but is willing to make LLR FFEL loans.

Any agreement between a guaranty agency and a lender for LLR loan purposes must clearly state the scope and time frame of the lender's LLR commitment. Additionally, it must require the lender to notify the guaranty agency of its intent to terminate the LLR agreement at least 60 days prior to the effective date of the termination, and to fully disburse any loan first disbursed prior to that effective date.

If a guaranty agency identifies one or more lenders to make LLR loans in its program, it must explain the standards it used to select the LLR lenders and outline the steps it will take to ensure that the lender is prepared to continue making LLR loans under the agency's program. As part of its review process, the guaranty agency must examine the lender's financial and administrative capability to serve as an LLR lender.

- If the guaranty agency plans to make LLR loans directly, it must specifically state this in its updated LLR rules and operating procedures. The agency must also explain how it will capitalize such lending and how it will meet the administrative requirements to originate the LLR loans that it makes, including a discussion regarding total volume capacity. In addition, the procedures must indicate how the agency plans to service the LLR loans it makes. These capabilities include the agency's internal capacity to originate and/or service LLR loans, or its plan to contract with another entity to perform origination and/or servicing functions in a timely and accurate manner and in full compliance with program rules.

2. LLR Scope of Coverage

A guaranty agency's updated LLR rules and operating procedures must identify the types of loans that will be made available to eligible borrowers either by the guaranty agency or by the LLR lender(s). The plan must explicitly state whether, in addition to Stafford Loans made to students eligible for interest subsidy, other unsubsidized Federal Stafford and Federal PLUS loans will be made under the guaranty agency's LLR program.

3. LLR Operating Procedures

As part of its updated LLR rules and operating procedures, a guaranty agency must provide, and keep the Department updated, with:

- The name, telephone number, and postal and e-mail addresses of the guaranty agency's LLR contact person;
- A contact name or unit, telephone number, and postal and e-mail addresses for school and borrower access to the agency's LLR services if different than the agency LLR contact person;

- The operating hours for LLR services and the medium for providing those services (i.e.; telephone, in-person, electronic, etc);
- Application and loan processing procedures for LLR loans provided directly by the guaranty agency or through a FFEL lender, including the expected time it will take to originate and disburse an LLR loan from the time a student makes a request for LLR services;
- The process and documentation the agency will use for an eligible borrower to demonstrate that he or she has been unable to secure a FFEL loan, which must not require the borrower to submit loan denials from more than two FFEL lenders;
- A detailed outreach plan showing how the guaranty agency will provide information on the availability of its LLR loans and the process by which eligible borrowers can access these loans in the designated state; and
- The plan for providing appropriate counseling to recipients of LLR loans.

Reporting of LLR Program Implementation

Prior to the issuance of LLR loans by either the guaranty agency or an LLR lender, the agency must inform the Department of the following:

- The anticipated LLR dollar volume by type of loan;
- The number of LLR loans expected to be made;
- The originating entity or entities that will be making LLR loans;
- The borrowers' institution of attendance;
- The reason, if known, for the use of LLR program.

Note this information is in addition to regular reporting by a guaranty agency to the Department, including its reporting of loans to the Department's National Student Loan Data System (NSLDS).

Submission Instructions

As noted above, within 30 days of the date of this letter, each guaranty agency must submit to the Department, a copy of its complete, updated policies and procedures governing the agency's LLR program accompanied by a transmittal letter signed by the CEO of the guaranty agency.

These materials should be sent to the Department either as a PDF attachment emailed to Rosemary.Beavers@ed.gov or mailed or delivered to the address below:

Rosemary Beavers
Federal Student Aid
830 First Street, NE, Room 11114
Washington, DC 20202 (if using USPS) or 20002 (if using a commercial carrier)

Within 30 days of receipt of the policies and procedures, the Department will notify each guaranty agency of approval or whether modifications are needed. The Department also intends to closely monitor guaranty agency implementation of these policies and procedures.

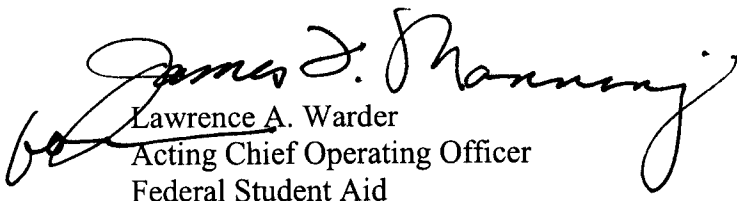
Federal Advances for Guaranty-Agency Originated LLR Loans

Within the context of the LLR program, questions have been raised regarding the Secretary's authority to advance capital funding. The Department is currently reviewing the specific criteria set forth in the statute and is examining the circumstances under which Federal advances could be provided to a guaranty agency. Should the need arise additional information and guidance will be issued by the Department. However, the use of any advance funding is separate from the statutory requirement that a guaranty agency have updated LLR rules and operating procedures in place. The Department's main focus at this time is to ensure program consistency.

We are, of course, committed to an open dialogue with the guaranty agency community on the issues related to the lender of last resort provisions. I wish to thank FFEL lenders, guaranty agencies, and schools for their efforts to ensure that eligible borrowers have access to Federal student loans to pursue their educational goals.

If you have any questions on the information provided in this letter, you may contact Jeff Baker of my staff at jeff.baker@ed.gov.

Sincerely,


Lawrence A. Warder
Acting Chief Operating Officer
Federal Student Aid