



LoanNotes

COURTESY OF
AMERICAN EDUCATION
SERVICES

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Final Rules - Part III

The U.S. Department of Education (ED) published Final Rules in the Federal Register dated October 28, 2009 on school-based loan issues, and October 29, 2009 on lender issues. Both Federal Registers are available at ifap.ed.gov. This article is the third in a series summarizing the changes set forth in these regulations.

PREFERRED LENDER ARRANGEMENT DISCLOSURES (PRIVATE EDUCATION LOANS)

A preferred lender arrangement is defined as an arrangement or agreement between a lender and a school or institution-affiliated organization of the school, e.g. an alumni, athletic, professional, academic or social organization, under which a lender provides education loans to students and the families of students attending the school and the school or institution-affiliated organization recommends, promotes, or endorses the education loan products of the lender. A preferred lender arrangement does not include arrangements or agreements with respect to Direct loans.

A preferred lender arrangement does not exist when the private education loan provided by the school or institution-affiliated organization of that school is any of the following:

- A loan funded by the school's or the institution-affiliated organization's own funds
- A loan funded by donor-directed contributions
- A loan made under Title VII or Title VIII of the Public Service Health Act
- A loan made under a State-funded financial aid program, if the terms and conditions of the loan include a loan forgiveness option for public service

A school or an institution-affiliated organization that participates in a preferred lender arrangement for private education loans, must disclose on its website and in all publications, mailings, or electronic messages or materials that describe or discuss private education loans, including a list of preferred lenders (see next page) all of the following information:

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- A statement that the prospective borrower may qualify for Title IV loan or grant funds
- The information that the Board of Governors of the Federal Reserve System requires to be disclosed under the Truth in Lending Act (TILA) for private education loans
Note: To meet this requirement, a school may rely upon the information it obtains from a private education loan lender on the lender's Private Education Loan Application and Solicitation Form [Application and Solicitation Disclosure or ASD].

Please direct school-specific questions regarding preferred lender arrangements to legal counsel.

PREFERRED LENDER LISTS (PRIVATE EDUCATION LOANS)

For any year in which a school has a preferred lender arrangement for private education loans, the school must compile, maintain, and make available to students and their families a list of the private education lenders that the school recommends.

This list must include at least two unaffiliated lenders. The school must state whether each lender is or is not affiliated with any other lender on their list. If a lender is an affiliate of another lender on the list, the details of that affiliation must be provided. To meet this requirement, schools may utilize the list of lender affiliates upon its publication by ED.

This preferred lender list must include a prominent statement describing the method and criteria that was used in selecting any lender that it recommends, and must explain why the school participates with each lender, particularly with respect to terms and conditions or provisions that are favorable to borrowers.

Schools must include a prominent statement advising prospective borrowers that they are not required to use one of the school's recommended lenders. Schools must exercise a duty of care and a duty of loyalty to compile the preferred lender list without prejudice and for the sole benefit of the students and their families, and not deny or otherwise impede a borrower's choice of lender or cause unnecessary certification delays for a borrower who chooses a lender that is not included on the preferred lender list.

A school must update their preferred lender list and any of the information accompanying it at least annually.

ALTERNATIVES TO PREFERRED LENDER LISTS

A school which chooses not to participate in a preferred lender arrangement, or finds itself unable to identify at least two unaffiliated lenders to include on a preferred lender list for private education loans, may use either of the following alternative methods to assist its students and their families in choosing a lender:

- Provide a neutral, comprehensive list of lenders that have made private education loans in the past to students and parents at the school in the past three to five years or an alternative time frame established by the school. The school or institution-affiliated organization may provide a comparison of the terms and conditions offered by these lenders. A school or institution-affiliated organization must ensure that no lender has provided a prohibited inducement to the school to secure loan applications.
- A referral to a website maintained by a third party entity containing a neutral list of private education loan lenders and the products each lender offers. The third party website must comply with all of the following:
 - » The listing of private education loan lenders is broad in scope.
 - » The third party Web site does not recommend or endorse any of the lenders on the list.
 - » The third party entity receives no payment from the private education loan lenders for placement on the list; nor do the lenders pay the third party entity a fee based on any loan volume generated.

In utilizing either of these methods, the school must not endorse any private education loan lender on the list; nor provide any additional information about a specific lender on that list. **The school must clearly state that a loan applicant is free to choose any lender that agrees to make loans for attendance at that school.**

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DISCLOSURE REQUIREMENTS WITHIN THE DIRECT LOAN PROGRAM

A school that participates in the Direct Loan Program must disclose the information provided on a Direct Loan model form, developed by ED or a comparable form developed by the school, to students attending or planning to attend the school and to the families of these students. If the school provides information regarding a private education loan to a prospective borrower, the school must concurrently provide the borrower with the information, identified by ED, as required on the model disclosure form. This information may include annual and aggregate loan limits, terms and conditions of Title IV loans, costs of borrowing Title IV loans, and the consequences of default, among other topics.

CODE OF CONDUCT

As part of their Program Participation Agreement, schools must develop, publish, administer, and enforce a code of conduct applicable to the school's agents. The term "agents" is defined as an officer or employee of a school or institution-affiliated organization. The code of conduct must be published prominently on a school's website and require that all of the school's agents who have responsibilities with respect to education loans be informed annually of the code's provisions.

Schools must establish a code of conduct if the school:

- Participates in any Title IV program
- Does not participate in any Title IV programs, but has a preferred lender arrangement with a private education loan lender

» DIRECT LOAN TRANSITION - QUESTIONS AND ANSWERS

With the implementation of Public Law 111-152, the Health Care and Education Reconciliation Act of 2010 (HCERA), the authority "to make or insure new loans" under the Federal Family Education Loan Program (FFELP) terminated after June 30, 2010. All Stafford, PLUS (parent or Grad), and Consolidation loans first disbursed on or after July 1, 2010 must be made under the Direct Loan program.

To assist schools with the transition to Direct Loans, the U. S. Department of Education (ED), has issued Dear Colleague Letter GEN-10-10 to address common implementation issues in a Question and Answer format. This document is available on the web at ifap.ed.gov.

To access this document, please click the link below, or type it into the address window of your web browser: ifap.ed.gov/dpcletters/GEN1010.html.

SPECIAL ALLOWANCE RATES FOR STAFFORD AND PLUS LOANS FOR THE QUARTER ENDING MARCH 31, 2010

A table containing the Special Allowance Rates for Stafford and PLUS loans for the quarter ending March 31, 2010 is now available on the AES website.

To access this document, please click the link below, or type it into the address window of your web browser: aessuccess.org/lenders/allowance_rates/index.shtml

Rehabilitation - Prior Holder Reporting Requirements

The Higher Education Opportunity Act (HEOA) amended section 428F(a)(1)(A) of the Higher Education Act to require the prior holder of the loan to request any consumer reporting agency to which the default claim payment or other relevant record was reported to remove such record from the borrower's credit history. This requirement must occur within 30 days of receiving notification of the rehabilitation from the guarantor, and is effective for rehabilitation notifications received on or after July 1, 2010.

To receive the rehabilitated loan information in an electronic format, your organization must ensure that appropriate contact information has been added to the National Council of Higher Education Loan Programs (NCHELP) Rehab Contact List which is currently posted on the NCHELP website. If contact information is not added to the NCHELP contact list, AES will provide the rehabilitated loan information in a paper report sent through the U.S. mail.

You may contact Mark Putman, NCHELP's Chief Technology Officer, at mputman@nchelp.org to add contact information to the NCHELP Rehab Contact list.

» ACCEPTABLE DEATH CERTIFICATE

As a reminder, the Final Rules, published in the Federal Register on November 1, 2007, permitted the lender to accept an original or certified copy of the borrower's or student's death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate. This Final Rule does not permit a lender to accept a death certificate submitted by facsimile as a valid certificate for claim filing and does not permit the lender to make a photocopy of a death certificate submitted by facsimile for claim submission. If you have any questions pertaining to this policy, please contact the Loan Assets Management Department at 800.892.7576.

» 2009 POVERTY GUIDELINES EXTENDED UNTIL AT LEAST MAY 31, 2010

In recent months, President Obama has periodically signed legislation to extend the 2009 poverty guidelines that were published by the U.S. Department of Health and Human Services in the Federal Register dated January 23, 2009. Initially, these guidelines were extended through March 1, 2010. However, subsequent legislation mandated further extensions, first to March 31, 2010, and then through at least May 31, 2010. As of this writing, new legislation is under consideration by the Congress which, if enacted, may extend these guidelines through the end of calendar year 2010.

Presently, the 2009 poverty guidelines have been extended through at least May 31, 2010.

Changes to Total and Permanent Disability Rules

Federal Regulations that were published on October 29, 2009, made significant changes to the terms and conditions of total and permanent disability discharges. These changes are effective July 1, 2010. To view a table with all of the new changes, as well as their terms and conditions, [CLICK HERE](#).

The table summarizes the differences between the total and permanent disability provisions for applications received by a loan holder prior to July 1, 2010 and those received on or after July 1, 2010. **If you have any questions pertaining to these changes, please contact the Loan Assets Management Department at 800.892.7576.**

Claim Filing Questions and Answers

PERIODICALLY, THE LOAN ASSETS MANAGEMENT DEPARTMENT RECEIVES QUESTIONS FROM LENDERS AND SERVICERS REGARDING CLAIM FILING REQUIREMENTS. THE FOLLOWING QUESTIONS AND ANSWERS ADDRESS SOME OF THE MORE COMMON ISSUES.

QUESTION:

How should a claim submitter calculate the “# Months Deferment/Forbearance” that must be recorded on the Claim Form?

ANSWER:

The claim submitter must determine the number of regular monthly installments deferred and forborne. The submitter must provide the higher or highest number when multiple loans are included in the claim and the use of deferment and/or forbearance differs. When there are overlapping periods of deferment/forbearance on multiple loans, the submitter must count those months only once and cannot include forbearance periods covering uninsured months. An example is provided below.

EXAMPLE:

Due Date 5/25/2006

Forbearance 05/25/2006 – 12/22/2006

Forbearance 12/27/2006 – 08/25/2007

Deferment 08/26/2007 -09/24/2008

The number of regular monthly installments DEFERRED are as follows:

Sept 25, 2007	March 25, 2008
Oct 25, 2007	April 25, 2008
Nov 25, 2007	May 25, 2008
Dec 25, 2007	June 25, 2008
Jan 25, 2008	July 25, 2008
Feb 25, 2008	August 25, 2008

TOTAL = 12 months

NOTE: The due date in effect during the deferment period was the 25th of the month. Thus, if the deferment begin date and end date did not overlap the 25th of the month, that month cannot be counted in the # of months of deferment. Therefore, in this example August 2007 and September 2008 cannot be counted in the number of months of deferment.

The number of regular monthly installments FORBORNE are as follows:

May 25, 2006	January 25, 2007
June 25, 2006	Feb 25, 2007
July 25, 2006	March 25, 2007
August 25, 2006	April 25, 2007
Sept 25, 2006	May 25, 2007
Oct 25, 2006	June 25, 2007
Nov 25, 2006	July 25, 2007
	Aug 25, 2007

TOTAL = 15

NOTE: The due date in effect during the forbearance period was the 25th of the month. Thus, if the forbearance begin date and end date did not overlap the 25th of the month, that month cannot be counted in the # of months of forbearance. Therefore, in this example, December 2006 cannot be counted in the number of months of forbearance.

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QUESTION:

What is the proper use of the 'PR'/'CR' collection activity codes?

ANSWER:

The 'PR' collection code is used to record the date that each monthly installment was paid. When reporting a 'PR' collection activity code in the Collection History of the Claim Form (Section IX), each monthly installment that is satisfied must be reported separately as an individual 'PR' code.

For example, the borrower's monthly payment amount equals \$50.00. The borrower makes a payment of \$100.00 on 10/02/2002 and a payment of \$75.00 on 11/02/2002. The Collection History must reflect two "PR" codes on 10/02/2002 and one 'PR' code on 11/02/2002.

The 'CR' code is used to record the date the lender/servicer receives notification that a payment to cover a monthly installment has been returned due to insufficient funds. When reporting a 'CR' collection activity code in the Collection History of the Claim Form, each monthly installment that was satisfied by a payment and was later reversed must be reported separately as an individual 'CR' code.

Building on the previous example, the \$100 payment made on 10/02/2002 was reversed on 10/15/2002. The \$75.00 payment made on 11/02/2002 was reversed on 11/15/2002. The Collection History must reflect two 'CR' codes on 10/15/2002 and one 'CR' code on 11/15/02. The total information reported in the Collection History would read as follows:

10/02/2002 - PR
10/02/2002 - PR
10/15/2002 - CR
10/15/2002 - CR
11/02/2002 - PR
11/15/2002 - CR

QUESTION:

What due diligence code should be reported to indicate receipt of email correspondence from the borrower to the lender/servicer?

ANSWER:

Incoming borrower correspondence, whether e-mail or conventional (i.e. U.S. mail), is not reported in Section IX of the Claim Form. While it is required that a lender/servicer respond as necessary to the incoming borrower correspondence, correspondence from the borrower is not considered a collection activity, and therefore, is not reported in Section IX of the Claim Form.

QUESTION:

What due diligence code should be reported when performing skiptracing activities to locate a reference?

ANSWER:

Code 'SA' (Contact attempted with reference or endorser by phone or a reference skiptracing activity) should be reported for all reference skiptrace activity.

QUESTION:

Are there IBR-related data elements that must be provided at the time of claim filing, even if the borrower has never been under an IBR plan?

ANSWER:

Yes. Certain fields must be populated in Section X (Income Based Repayment) of the Claim Form, even if the borrower has never been under an IBR plan. Those fields are:

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- Field 62-Loan ID
- Field 63-Standard-Standard \$
- Field 65-25-Year Forgiveness Begin Date
- Field 66-# Qualifying Forgiveness Months

Fields 62 and 63 must always be populated. Fields 65 and 66 must be populated if any qualifying payments have been made on or after 7/1/2009 and/or the borrower has been on an Economic Hardship deferment beginning on or after 7/1/2009. If field 65 is populated, field 66 must be populated, and vice versa. This data is required in order that it may be passed by the guarantor to any subsequent holder (e.g. resulting from loan rehabilitation) should the borrower apply and qualify for IBR at a later date.

Note: IBR data is never required for claims on Parent PLUS or Consolidation loans that include Parent PLUS. It is also never required for claims submitted due to Closed School, Death, False Certification, Identity Theft, or Ineligible Borrower.

QUESTION:

If data provided in fields 65 and 66 is the result of periods of Economic Hardship deferment, must field 68 (# Days HRD Def) also be populated?

ANSWER:

Not necessarily. Field 68 should only be populated if the borrower has been under an IBR plan. Consequently, if field 68 is populated, field 67 (IBR Start Date) must also be populated. While the number of months on an Economic Hardship deferment must be included in field 66 (# Qualifying Forgiveness Months), it should be noted that field 68 captures the number of days on an Economic Hardship deferment and is intended for a very specific purpose. Claim Form instructions state that field 68 must reflect "the number of days the loan was on an Economic Hardship deferment on or after the date in field 67". Data in field 68 is required in order that it may be passed by the guarantor to any subsequent holder (e.g. resulting from loan rehabilitation) so that the new loan holder has the necessary information to determine if any portion of the allotted 36-month period of subsidized interest allowed under IBR is remaining. Any periods of Economic Hardship deferment while the borrower is on an IBR plan are considered to have stopped the 36-month "clock."

If you have any questions regarding claim filing with AES, please contact the Loan Assets Management Department at 800.892.7576.

American Education Services (AES) was created to guarantee and service a variety of Federal Family Education Loan Program (FFELP) and private student loan products for lending partners throughout the nation. AES is a national leader in providing quality customer service to millions of student loan borrowers through its highly-trained and experienced customer service representatives. For more information, visit www.aesSuccess.org.

Pennsylvania Higher Education Assistance Agency conducts its student loan servicing activities nationally as American Education Services (AES) and FedLoan Servicing.



American Education Services

CONTACT

**BUSINESS DEVELOPMENT
& OPERATION/LOAN GUARANTY**
Mon - Fri, 7:30 am to 9:00 pm ET

**STUDENT/PARENT
GRANT & LOAN INQUIRIES**
800.692.7392
granthelp@aesSuccess.org
studentloans@aesSuccess.org

SCHOOL/LENDER INQUIRIES
800.443.0646
loanhelp@aesSuccess.org

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