OFFICE OF THE
STATE AUDITOR

March 21, 2017

Dear Audit Firm:

Attached is a request for proposal for audit services for the Utah Higher Education Assistance Authority (UHEAA) for the years ending June 30, 2017 through June 30, 2021. The audit services include financial audits, federal compliance (single audit major program) testing, and attestation (SOC 1 Type II) engagements. Offerors may submit proposals for the financial and single audit engagements, the attestation engagements, or all of the engagements.

Your proposal must be submitted to Jon Johnson, Audit Director, Office of the State Auditor, no later than 5:00 pm. MDT on April 24, 2017 as indicated on page 1 of the Request for Proposal. Selection of the contractor will be made by May 3, 2017 and will be posted on the contracting page of our website at auditor.utah.gov/about-us/contracting/.

To be considered in the solicitation process, the proposing independent auditing firm must meet the following minimum criteria, as applicable:

1. The firm must meet the Government Auditing Standards' continuing professional education, independence, peer review, and licensing requirements.

2. The firm must have significant experience in auditing government financial statements as well as the performance of federal compliance audits under the Single Audit Act.

3. The firm must have significant experience with attestation (SOC 1 Type II) engagements.

4. The firm must be able to meet the reporting deadlines described in the Request for Proposal.

We look forward to working with you as we continue our commitment to quality audits in a timely and professional manner by utilizing the excellent services the auditing profession has to offer.

Sincerely,

Jon T. Johnson

Jon T. Johnson, CPA
Audit Director
801-538-1359
jonjohnson@utah.gov

REQUEST FOR PROPOSAL
Utah Higher Education Assistance Authority Audits

OSA Solicitation No. 2017-UHEAA

PURPOSE OF REQUEST FOR PROPOSAL

The purpose of this request for proposal (RFP) is to enter into a contract with a qualified independent auditing firm (Contractor) to provide audit services.

This RFP is designed to provide interested offerors with sufficient basic information to submit proposals meeting minimum requirements. It is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability under any agreement.

BACKGROUND

The Office of the State Auditor (OSA) is required by law (*Utah Code* 67-3-1) to audit the State of Utah Comprehensive Annual Financial Report (CAFR) and its components. This requirement includes financial statement audits in accordance with generally accepted auditing standards and *Government Auditing Standards* for the following plan and programs which are under the direction of the Utah Higher Education Assistance Authority (UHEAA):

- Utah Educational Savings Plan (UESP), a component unit of the State of Utah
- Student Loan Guarantee Program (LGP), an enterprise fund of the State of Utah
- Student Loan Purchase Program (LPP), an enterprise fund of the State of Utah

In addition, the OSA performs a statewide single audit for all federal funds administered by the State of Utah and its various departments and agencies. In support of the OSA statewide single audit, this request for proposal includes single audit testing of the following major federal program at UHEAA.

- Federal Family Education Loan Program (FFELP) (Lenders and Guaranty Agencies, CFDA # 84.032)

Furthermore, a qualified auditing firm is being sought who can thoroughly understand UHEAA's operations and deliver the attestation (SOC 1 Type II) reports described in the Detailed Scope of Work section below.

For an overview and background information regarding UHEAA and the plan and programs listed above, see Attachment B of this RFP.

In addition, for an overview of the single audit major program testing, we have attached the 2016 Compliance Supplement pages for the FFELP Lenders and Guaranty Agencies as Attachment D. Actual single audit major program testing will need to comply with updated Compliance Supplement sections as issued by the Office of Management and Budget (OMB).

SUBMITTING YOUR PROPOSAL

NOTICE: By submitting a proposal in response to this RFP, the offeror is acknowledging that the requirements, scope of work, and evaluation process outlined in the RFP are fair, equitable, not unduly restrictive, understood, and agreed to. Any exceptions to the content of the RFP must be protested to the OSA prior to the closing date and time for submission of the proposal.

Proposals must be received by the submission deadline of April 24, 2017 no later than 5:00 p.m. MDT. Proposals received after the deadline will be late and ineligible for consideration.

The preferred method of submitting your proposal is electronically in PDF format to: jonjohnson@utah.gov. However, if you choose to submit hard copies, one original and four copies of your proposal must be submitted to the OSA at the address shown below:

Jon Johnson, CPA, Audit Director
Office of the State Auditor
Utah State Capitol Complex
East Office Building, Suite E310
Salt Lake City, Utah, 84114-2310

Selection of the Contractor will be made by May 3, 2017. Announcement of the awarded contract will be posted to the OSA website at http://auditor.utah.gov/about-us/contracting/.

LENGTH OF CONTRACT

The audit contract resulting from this RFP will cover the annual financial audits for each of the fiscal years ending June 30, 2017 through June 30, 2021, and the attestation (SOC 1 Type II) engagements listed in the Detailed Scope of Work section, subject to an annual performance evaluation, legislative appropriation, and the needs of UHEAA and the OSA.

The OSA reserves the right to review the contract on a regular basis regarding performance and cost analysis and may negotiate price and service elements during the term of the contract. The OSA will also consult with UHEAA's Audit Committee regarding these reviews.

STANDARD CONTRACT TERMS AND CONDITIONS

Any contract resulting from this RFP will include but not be limited to the Standard Terms and Conditions (see Attachment A). Exceptions and or additions to the Standard Terms and Conditions are strongly discouraged.

Exceptions and additions to the Standard Terms and Conditions must be submitted with the proposal. Exceptions, additions, service level agreements, etc. submitted after the date and time for receipt of proposals will not be considered. Website URLs, or information on website URLs, must not be requested in the RFP document and must not be submitted with a proposal. URLs provided with a proposal may result in that proposal being rejected as non-responsive. URLs are also prohibited from any language included in the final contract document.

The OSA retains the right to refuse to negotiate on exceptions should the exceptions be excessive or not in the best interest of the OSA, or if the negotiations could result in excessive costs to the OSA or could adversely impact existing time constraints.

DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION)

An oral presentation by an offeror to clarify a proposal may be required at the sole discretion of the OSA. However, the OSA may award a contract based on the initial proposals received without discussion with the offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the offerors' expense.

DETAILED SCOPE OF WORK

The audit services include financial audits, federal compliance (single audit major program testing), and attestation (SOC 1 Type II) engagements. Offerors may submit proposals for the financial and single audit engagements, the attestation engagements, or all of the engagements.

A. FINANCIAL AND SINGLE AUDIT ENGAGEMENTS

For the State of Utah Comprehensive Annual Financial Report (CAFR) and single audit purposes, the Contractor will function as a component auditor 1) issuing separate reports for the UESP, LGP, and LPP audits within the State of Utah group financial audit and 2) performing separate major program testing of FFELP for the statewide single audit. The OSA functions as the group auditor. The Contractor shall perform the following engagements:

1. Financial Reports – For each fiscal year ending June 30, 2017 through June 30, 2021, the Contractor shall audit the financial statements and records of the UESP, LGP and LPP and shall issue opinions on each of the financial statements and in-relation-to opinions on the supplementary combining schedules. UHEAA will prepare the financial statements in accordance with generally accepted accounting principles and the audit opinions shall be prepared in conformity with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards.*

2. Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters – For each fiscal year ending June 30, 2017 through June 30, 2021, the Contractor shall issue reports on internal control over financial reporting and on compliance and other matters in accordance with *Government Auditing Standards* for each of the audited financial statements.

3. Independent Auditor's Report on Compliance and Internal Control Over Compliance – The federal compliance testing and this report will be issued in support of the OSA's statewide single audit performed in accordance with the Single Audit Act; Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance); and the related OMB Compliance Supplement. FFELP (Lender and Guaranty Agencies - CFDA 84.032) also has an annual compliance audit required by the U.S. Department of Education in accordance with 34 CFR 682.305(c). This additional compliance audit requirement has been addressed by testing FFELP as a major program annually in the statewide single audit.

   Compliance Audit Waiver Request – UHEAA and the OSA are currently working on a request to the U.S. Department of Education to obtain a waiver exempting this additional audit requirement. It is unclear whether this waiver will be granted. This RFP anticipates that single audit major program testwork will be required for each year of the audit contract. If the waiver is obtained, the single audit major program testwork will likely only be required for the 2019 audit.

   The offeror's proposal should separately address the costs of the single audit major program testwork as if it will be needed for each year of the contract; however, such amounts, and the required testwork, will be removed from the contract for the years in which the waiver is obtained and the single audit testwork is not necessary. (FFELP was tested as a major program by the OSA in 2016 with no findings reported.)

4. Management Letter – As appropriate, the Contractor shall prepare a comprehensive management letter which includes the audit findings and recommendations relative to the internal control over financial reporting, compliance with laws and regulations, as applicable, and adherence to generally accepted accounting principles.

   The Contractor shall request written responses from UHEAA officials for each recommendation and shall include such responses in the report or management letter. If UHEAA declines the opportunity to respond, the Contractor shall so state in their report.

5. Reporting Deadlines – The financial audit reports—and single audit major program compliance and internal control reports, if applicable—must be completed and submitted by September 30th each year.

B. ATTESTATION ENGAGEMENTS

UHEAA is seeking a firm to perform examinations with the objective of providing a level of assurance as to the design, security, and operational effectiveness of the controls governing UHEAA's systems and services. The following attestation reports will be required:

- UHEAA's description of its Federal Family Education Loan Program (FFELP) student loan servicing operations.
- UHEAA's description of its CornerStone student loan servicing operations.
- UHEAA's description of its CornerStone information technology support services.

The attestation engagements must be performed in accordance with *Government Auditing Standards*. The CornerStone reports will be submitted to the U.S. Department of Education to satisfy OMB Circular A-123 requirements.

UHEAA uses a third party contractor loan servicing system on a remote basis to service the FFELP and CornerStone loan portfolios. The contractor loan servicing system has an attestation SOC 2 examination conducted annually of their operations and provides a copy of the report to UHEAA.

UHEAA also contracts with a third party for mailing services. The controls related to the third party contractors' processes and procedures are excluded from the scope of the reports in this RFP using the carve-out method of reporting.

1. Required Attestation Reports

   - FFELP student loan servicing operations for the period January 1, 2017 to December 31, 2017 and four years thereafter (five annual reports - 2017 through 2021).
   - CornerStone student loan servicing operations for the period July 1, 2017 to December 31, 2017 and two semi-annual reports for four years thereafter (nine semi-annual reports - 2017 through 2021).
   - CornerStone information technology support services for the period July 1, 2017 to June 30, 2018 and annual reports for three years thereafter (four annual reports – 2018 through 2021).

2. Control Objectives to be Tested

   The list of control objectives to be tested for each report listed above can be found in Attachment C.

3. Reporting Deadlines

   - FFELP reports: 90 days after end of reporting period.
   - CornerStone reports: 45 days after end of reporting period.

PROPOSAL REQUIREMENTS

Interested offerors may submit proposals for the financial and single audit engagements, the attestation (SOC 1 Type II) engagements, or all of the engagements. The offeror should include the following information in their proposal for the engagements.

A. Profile of the Independent Auditor

Provide general background information which includes:

1. The organization and size of the offeror, whether it is local, regional, national, or international in operations.

2. The location of the office from which the work is to be done and the number of professional staff, by staff level, employed at that office.

3. A positive statement that the following mandatory criteria are satisfied:

   (a) An affirmation that the offeror is properly licensed for practice as a certified public accountant in the State of Utah.

   (b) An affirmation that the offeror meets the independence requirements of the AICPA *Code of Professional Conduct* and the GAO *Government Auditing* Standards. The offeror should specifically address the offeror's ability to satisfy independence requirements related to audit staff participation in the following audits:

   - UESP – See AICPA Code of Professional Conduct - ET 1.240.070 – Section 529 Plans) and
   - UHEAA loan programs – including but not limited to:
     - Student Loan Guarantee Program.
     - State Board of Regents of the State of Utah Loan Purchase Program. (The Loan Purchase Program also does business as CornerStone and Complete Student Loan)

   (c) An affirmation that the offeror meets continuing professional education requirements contained in the *Government Auditing Standards*.

4. A copy of the offeror's most recent peer review report.

B. Offeror's Qualifications

1. Identify the audit partners, audit managers, field supervisors and other staff who will work on the audit, including staff from other than the local office. Résumés should be included which outline relevant experience and continuing professional education for the staff auditors up to the individual with final responsibility for the engagement.

2. Describe the recent local office auditing experience similar to the type of engagements requested, including single audit and attestation (SOC 1 Type II) engagement experience, as applicable.

3. All contractor personnel assigned to the CornerStone attestation (SOC 1 Type II) engagements will be required to successfully complete a Public Trust 6C level federal background investigation.

C. Offeror's Approach to the Engagements

Submit a general audit work plan to accomplish the scope defined in these guidelines. The audit work plan should demonstrate the offeror's understanding of the audit requirements and the audit tests and procedures to be applied in completing the audit plan. The plan must detail the expected number of audit hours, on an annual basis, for each fiscal year being audited. Financial audit, single audit testwork and attestation (SOC 1 Type II) engagements should be addressed separately. The plan must also identify the breakdown of total hours between staff, in-charges, and higher levels. The planned use of specialists, if any, should also be identified.

D. Time Requirements

Detail how the reporting deadline requirements of the audit will be met.

E. Comprehensive Not-To-Exceed Fee

Supply the billing rates, estimated number of billable hours, and a comprehensive "not-to-exceed" fee, inclusive of other billable expenses, travel, per diem and all other out-of-pocket expenses. **Offerors may**

submit proposals for the financial and single audit engagements, the attestation engagements, or all of the engagements.

The audit and attestation contracts may be awarded separately. Offerors should indicate any discounts offered if they are awarded both the audit and attestation contracts. Offerors should also indicate any unwillingness to accept only the audit or only the attestation contract.

The billing rates and estimated billable hour information requested above should be provided as follows:

- Separate amounts for each of the following:
  - financial audits
  - single audit major program testwork
  - attestation engagements
- Separate amounts for each of the five fiscal years being audited.

The comprehensive "not-to-exceed" fee information should be provided in the following format:

	Audit Engagements			Attestation Engagements								
Fiscal Year	LGP, LPP & UESP Financial Audits	Single Audit Major Program Testwork	Total for Audit Engagements	# of Reports	FFELP Student Loan Servicing Attestation	# of Reports	CornerStone Student Loan Servicing Attestation	# of Reports	CornerStone Information Technology Attestation	Total for Attestation Engagements	Discount, if any, for Being Awarded Both Audit and Attestation Engagements	Combined Total Not-to-Exceed Fee
2017			$	(1)		(1)		(0)		$		$
2018			$	(1)		(2)		(1)		$		$
2019			$	(1)		(2)		(1)		$		$
2020			$	(1)		(2)		(1)		$		$
2021			$	(1)		(2)		(1)		$		$

CONTRACTUAL ARRANGEMENTS

A. Compensation for Services

1. Billings for audit services are to be sent directly to the OSA.

2. Separate progress billings are allowed for time and expense incurred during the audit with the stipulation that progress billings cannot exceed 75% of the fees stated above. A statement of the current and cumulative hours incurred shall be submitted with each billing.

3. Final payment for audit services shall be made by the OSA upon completion of the audit, receipt of the required reports and any other information requested by the OSA, completion of the OSA's review of the reports and any work papers deemed necessary, and receipt of a statement of actual hours incurred and a final billing statement.

B. Significant Contract Provisions

As part of the contract to be awarded, the Contractor will be required to:

1. Retain all work papers and reports for a minimum of six years from the audit report release date, and make available all work papers, audit programs, and time control records associated with the audit during performance of the audit and/or at the completion of the audit for review by the OSA and for a verification of key personnel obligated in the proposal, or other reasonable and valid purposes. **The firm will be subject to the OSA work paper review process (done for all local government and OSA contract auditors). The results of that review will be added to the OSA website.** In addition, all work papers will be subject to disclosure under the Government Records and Management Act, Section 63G-2 of the *Utah Code*, as if they were OSA records.

2. Immediately inform both the OSA and UHEAA's Audit Committee regarding any indication of fraud or illegal acts that may come to their attention in connection with the audit.

3. Notify the OSA, in advance, of all opening and exit conferences between UHEAA and the Contractor, as well as all significant conferences concerning audit exceptions, accounting issues, internal control findings, or scope limitations. The Contractor must hold an exit conference with UHEAA.

4. Contractor may not assign, subcontract, or delegate any portion of the audit or attestation engagements without prior written authorization by the OSA.

5. Notify the OSA, in writing, prior to entering into a contract for auditing or non-auditing engagements with UHEAA or any other State agency, department or division.

6. Notify the OSA, in writing, prior to changes of partner, manager, supervisor or senior personnel obligated in the proposal.

7. Provide UHEAA with Letters of Engagement in accordance with professional standards to specify the responsibilities of the Contractor and UHEAA as they relate to the conduct of the audits. The terms of the Letters of Engagement shall be consistent with the terms of the contract. In the event there are inconsistencies, the terms of the contract shall govern and control. Copies of the Letters of Engagement must be sent to the OSA.

8. Carry and maintain liability insurance, add the State of Utah as an additional insured, and provide proof of this insurance to the OSA, as required by No. 16 of the Standard Terms and Conditions for Services (Attachment A).

EVALUATION OF PROPOSALS

A committee will evaluate proposals against the following weighted criteria:

% OF SCORING WEIGHT	EVALUATION CRITERIA
Mandatory	Licensing, independence, CPE, peer review, expected audit hours by staffing levels, and ability to meet audit deadlines.
20%	Technical Experience of the Independent Auditing Firm – Considering audit experience, as well as size and structure of the firm.
20%	Qualifications of Staff
25%	Responsiveness of the proposal in clearly stating an understanding of the audit services to be performed: (1) Appropriateness and adequacy of proposed procedures. (2) Reasonableness of time estimates and total audit hours. (3) Appropriateness of assigned staff levels.
35%	Cost of the Audit

Right to Reject – The OSA reserves the right to reject any and all proposals submitted and to request additional information from all proposing firms. Any contract awarded will be made to the independent auditing firm who, based on evaluation of all responses (applying all criteria and oral interviews if necessary), is

determined to be the best to perform the audit. The OSA may reject any proposal with a cost in excess of the fully-burdened cost for the OSA to perform the audit.

OTHER INFORMATION

For your information, listed below are the hours and amounts billed for previous audit work:

OSA 2016 Audits	UESP	LPP	LGP	Single Audit
Hours	189	588	295	826
Billed Amount	$11,115	$45,000	$22,500	$46,556

Attestation Engagements

- FFELP student loan servicing operations annual report – $42,000
- CornerStone student loan servicing operations semi-annual report – $56,000
- CornerStone information technology support services annual report – $79,000

The individuals listed below may be contacted for information. However, before making contact we request you review the prior year financial statements and auditor's reports for UESP, LGP, and LPP, as well as Attachment D relating to the single audit testwork for FFELP.

OSA:

Jon Johnson, CPA, Audit Director
Phone: 801-538-1359
Email: jonjohnson@utah.gov

UHEAA:

Paul Packard, CPA, CISA, Director of Accounting
Utah State Board of Regents
Phone: 801-321-7224
Email: ppackard@utahsbr.edu

STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR SERVICES
(with changes by the Office of the State Auditor (OSA) for items specific to this contract)

This is for a contract for services (including professional services) meaning the furnishing of labor, time, or effort by a contractor.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
   a) "**Confidential Information**" means information that is deemed as confidential under applicable state and federal laws, including personal information. The OSA reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
   b) "**Contract**" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" may include any purchase orders that result from this Contract.
   c) "**Contract Signature Page(s)**" means the State of Utah cover page(s) that the OSA and Contractor sign.
   d) "**Contractor**" means the individual or entity delivering the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
   e) "**Services**" means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services include, but are not limited to, all of the deliverable(s) (including supplies, equipment, or commodities) that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
   f) "**Proposal**" means Contractor's response to the OSA's Solicitation.
   g) "**Solicitation**" means the documents used by the OSA to obtain Contractor's Proposal.
   h) "**OSA**" means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
   i) "**State of Utah**" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
   j) "**Subcontractors**" means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.

2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Services performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.

4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the OSA to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal auditors, and OSA staff, access to all such records.

5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
   1. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
   2. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
   3. Contractor's failure to comply with this section will be considered a material breach of this Contract.

6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the OSA or the State of Utah, unless disclosure has been made to the OSA.

7. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the OSA or the State of Utah.

8. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the OSA and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation;

provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the OSA. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.

9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the OSA within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
12. **TERMINATION:** Unless otherwise stated in this Contract, this Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and is subject to the remedies listed below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon sixty (60) days written termination notice being given to the other party. The OSA and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved Services ordered prior to date of termination.

    Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the OSA or the State of Utah is limited to full payment for all Services properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract. In no event shall the OSA be liable to the Contractor for compensation for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the OSA's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the OSA for any damages or claims arising under this Contract.
13. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the OSA, if the OSA reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the OSA's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

    If a written notice is delivered under this section, the OSA will reimburse Contractor for the Services properly ordered until the effective date of said notice. The OSA will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
14. **SUSPENSION OF WORK:** Should circumstances arise which would cause the OSA to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by written notice. Contractor's responsibilities may be reinstated upon advance formal written notice from the OSA.
15. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the OSA's funds and used in the exercise of the OSA's essential functions as a State of Utah entity. Upon request, the OSA will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the OSA's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
16. **INSURANCE:** Contractor shall at all times during the term of this Contract, without interruption, carry and maintain commercial general liability insurance from an insurance company authorized to do business in the State of Utah. The limits of this insurance will be no less than one million dollars ($1,000,000.00) per occurrence and three million dollars ($3,000,000.00) aggregate. Contractor shall provide proof of the general liability insurance policy to the OSA within thirty (30) days of contract award. Contractor must add the State of Utah as an additional insured with notice of cancellation. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR SERVICES
(with changes by the Office of the State Auditor (OSA) for items specific to this contract)

17. **WORKERS' COMPENSATION INSURANCE:** Contractor shall maintain during the term of this Contract, workers' compensation insurance for all its employees as well as any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction. Contractor acknowledges that within thirty (30) days of contract award, Contractor must submit proof of certificate of insurance that meets the above requirements.
18. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the OSA and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the OSA, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The OSA and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.
19. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the OSA, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.
20. **ACCEPTANCE AND REJECTION:** The OSA shall have thirty (30) days after the performance of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the OSA.

    If Contractor delivers nonconforming Services, the OSA may, at its option and at Contractor's expense: (i) return the Services for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.
21. **INVOICING:** Contractor will submit invoices within thirty (30) days of Contractor's performance of the Services to the OSA. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the OSA will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Proposal or on its invoice. The OSA has the right to adjust or return any invoice reflecting incorrect pricing.
22. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail. If payment has not been made after sixty (60) days from the date a correct invoice is received by the OSA, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the OSA within ten (10) business days of receipt of final payment, shall release the OSA and the State of Utah from all claims and all liability to the Contractor. The OSA's payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the OSA or the State of Utah may have against Contractor.
23. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence. Contractor shall be liable for all reasonable damages to the OSA, the State of Utah, and anyone for whom the State of Utah may be liable as a result of Contractor's failure to timely perform the Services required under this Contract.
24. **CHANGES IN SCOPE:** Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.
25. **PERFORMANCE EVALUATION:** The OSA may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.
26. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract. Contractor shall be liable to the OSA and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
27. **REVIEWS:** The OSA reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the OSA.

STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR SERVICES
(with changes by the Office of the State Auditor (OSA) for items specific to this contract)

29. **REMEDIES:** Any of the following events will constitute cause for the OSA to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The OSA may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the OSA may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the OSA or the State of Utah; or (v) demand a full refund of any payment that the OSA has made to Contractor under this Contract for Services that do not conform to this Contract.
30. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The OSA may terminate this Contract after determining such delay will prevent successful performance of this Contract.
31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the OSA of any potential or actual misuse or misappropriation of Confidential Information.

    Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the OSA and the State of Utah, including anyone for whom the OSA or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

    Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the OSA or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.
32. **PUBLICITY:** Contractor shall submit to the OSA for written approval all advertising and publicity matters relating to this Contract. It is within the OSA's sole discretion whether to provide approval, which must be done in writing.
33. **CONTRACT INFORMATION:** Contractor shall provide information regarding job vacancies to the State of Utah Department of Workforce Services, which may be posted on the Department of Workforce Services website. Posted information shall include the name and contact information for job vacancies. This information shall be provided to the State of Utah Department of Workforce Services for the duration of this Contract. This requirement does not preclude Contractor from advertising job openings in other forums throughout the State of Utah.
34. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the OSA and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the OSA or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
35. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The OSA and Contractor agree that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically created or manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the OSA.
36. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
37. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
38. **PROCUREMENT ETHICS**: Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
39. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The OSA, after consultation with the Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the OSA appoints such an expert or panel, OSA and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
40. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and

conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the OSA or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.

41. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the OSA's right to enforce this Contract with respect to any default or defect in the Services that has not been cured.
42. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
43. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

Revised August 8, 2016
(OSA Revision date: September 9, 2016)

BACKGROUND AND OVERVIEW

FINANCIAL AND SINGLE AUDIT ENGAGEMENTS

The Utah Higher Education Assistance Authority (UHEAA) operates as a subsidiary of the State Board of Regents of the State of Utah under the guidance of an eleven member board of directors appointed by the Board Regents. UHEAA currently has 333 employees and operates the following programs:

- UHEAA Student Loan Purchase Program (LPP)
- UHEAA Student Loan Guarantee Program (LGP)
- Utah Educational Savings Plan (UESP)

LPP and LGP are enterprise funds of the State of Utah and were established in 1977. UESP is a component unit of the State of Utah and was established in 1996.

The three programs had the following information as of December 31, 2016:

	Assets	Net Position	Mid-Year Revenues	Mid-Year Operating Income
- LPP	$ 2.3 B	$ 297.3 M	$ 55.8 M	$ (461,000)
- LGP	$ 71.3 M	$ 66.9 M	$ 14.3 M	$ (6,000)

	Assets	Net Position	Mid-Year Additions	Mid-Year Change in Net Position
- UESP	$ 9.9 B	$ 9.9 B	$ 989.1 M	$ 705.8 M

LPP owns and services government guaranteed student loans issued under the Federal Family Education Loan Program (FFELP). The FFELP portfolio balance serviced by LPP consisted of approximately 177,000 accounts totaling $2.1 billion as of January 31, 2017.

LPP also provides student loan servicing as CornerStone Education Loan Services on behalf of the U.S. Department of Education (ED). The loan portfolio balance serviced for ED consisted of approximately 465,000 accounts totaling $4.7 billion as of January 31, 2017.

LGP operates as an ED authorized guarantor of FFELP loans with outstanding loan guarantees of $915 million as of January 31, 2017. As a guarantor, LGP makes claim payments to lenders on behalf of ED and receives reinsurance from ED to make future payments. December 31, 2016 mid-year claim payments and associated reinsurance totaled $12.1 million.

LGP also provides defaulted FFELP loan collection services on behalf of ED. The loan portfolio balance consisted of approximately 7,200 accounts totaling $121.4 million as of January 31, 2017.

Additional information about LPP and LGP can be found online at uheaa.org.

UESP operates as Utah's official nonprofit 529 college savings plan and is currently the fifth-largest 529 plan in the nation. UESP helps families save for higher education by offering numerous flexible low fee investment options. Assets under management consisted of more than 328,000 accounts totaling $9.9 billion as of December 31, 2016.

BACKGROUND AND OVERVIEW

Additional information about UESP can be found online at uesp.org.

Prior-year financial reports for LPP, LGP, and UESP may be viewed at the following links:

LGP: http://financialreports.utah.gov/saoreports/2016/16-14SLGP-fs&GASUtahHigherEducationAssistanceAuthority.pdf

LPP: http://financialreports.utah.gov/saoreports/2016/16-15SLPP-fs&GASStateBoardofRegentsoftheStateofUtah.pdf

UESP: http://financialreports.utah.gov/saoreports/2016/16-13UESP-fs&GASUtahEducationalSavingsPlan.pdf

ATTESTATION ENGAGEMENTS

UHEAA has recently contracted for the following attestation reports:

- FFELP student loan servicing operations for the period January 1, 2016 to December 31, 2016.
- CornerStone student loan servicing operations for the period July 1, 2016 to December 31, 2016.
- CornerStone information technology support services for the period July 1, 2015 to June 30, 2016.

Due to the sensitive nature of the information in these attestation reports, the reports can only be shared with RFP respondents via a secure method. To obtain copies of the reports, please contact Paul Packard via e-mail (ppackard@utahsbr.edu).

See Attachment C of this RFP for the Attestation SOC 1 Reports: Control Objectives to Be Tested.

ATTESTATION SOC 1 REPORTS: CONTROL OBJECTIVES TO BE TESTED

UHEAA FFELP Student Loan Servicing Operations SOC 1 Report:

- Control Objective 1: Physical Security: Controls provide reasonable assurance that physical access to computer equipment, storage media, data files, and program documentation is restricted to properly authorized individuals.

- Control Objective 2: Environmental Safeguards: Controls provide reasonable assurance that the environmental safeguards for the data center have been implemented.

- Control Objective 3: Logical Access: Controls provide reasonable assurance that logical access to programs and data is restricted to authorized users.

- Control Objective 4: Information Security: Controls provide reasonable assurance that access to financially significant information is restricted to authorized individuals.

- Control Objective 5: Program Change: Controls provide reasonable assurance that development of existing and new programs that interact with the loan servicing system are documented, authorized, tested, approved and properly implemented.

- Control Objective 6: Data Transmissions: Controls provide reasonable assurance that network connectivity to system provider is secured.

- Control Objective 7: Backup and Recovery: Controls provide reasonable assurance that backup and restoration procedures have been implemented for programs and data files.

- Control Objective 8: Firewall and Network Security: Controls provide reasonable assurance that access to the network is restricted.

- Control Objective 9: Loan Servicing System Inputs: Controls provide reasonable assurance that input is received from authorized sources and is completely and accurately input into the loan servicing system.

- Control Objective 10: Data Processing: Controls provide reasonable assurance that data is processed through the loan servicing system completely and accurately.

- Control Objective 11: Output Reports: Controls provide reasonable assurance that output reports and data files are produced and distributed completely and accurately.

- Control Objective 12: Negotiable Documents: Controls provide reasonable assurance that access to negotiable instruments is granted to authorized personnel and such documents are accounted for properly.

DEPARTMENT OF EDUCATION

CFDA 84.032 FEDERAL FAMILY EDUCATION LOANS (Guaranty Agencies)

I. PROGRAM OBJECTIVES

Non-profit and State guaranty agencies are established to guarantee student loans made by lenders and perform certain administrative and oversight functions under the Federal Family Education Loans (FFEL) program. FFEL program loans include Federal Stafford Loans (both subsidized and unsubsidized), Federal PLUS loans, and Federal Consolidation loans. The Department of Education (ED) provides reinsurance to the guaranty agency.

II. PROGRAM PROCEDURES

To participate in the FFEL program and to receive various payments and benefits incident to that participation, a guaranty agency enters into agreements with ED under which the guaranty agency agreed to comply with the applicable law and regulations. In general, guaranty agencies (1) establish and maintain a Federal Fund and the Agency Operating Fund; (2) collect on defaulted loans on which they have paid claims; (3) make timely claim payments to lenders; (4) make timely reinsurance filings with ED; (5) provide accurate and reliable reports to ED; (6) apply proper charges to defaulted borrowers; and (7) take proper enforcement measures with respect to lenders, lender servicers, and defaulted borrowers.

Section 428A of the Higher Education Act, as amended (HEA), allows ED to enter into Voluntary Flexible Agreements (VFA) with guaranty agencies to pilot alternatives to the current guaranty agency financing model or structure. Any guaranty agency or consortium of agencies may apply to enter into a VFA with ED (Section 428A(a)(3) of the HEA (20 USC 1078-1(a)(3))). VFA pilots are uniquely designed by each guaranty agency and may waive some of the compliance requirements. If a VFA exists, the auditor should review the VFA and determine (1) which of the compliance requirements below are applicable, and (2) what, if any, additional or alternative audit procedures should be performed to test compliance with the terms of the VFA.

The SAFRA Act, Title II of the Health Care and Education Reconciliation Act 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, can only be made under the Federal Direct Student Loans (Direct Loan) program (CFDA 84.268) and will not be handled by guaranty agencies.

Source of Governing Requirements

The FFEL program is authorized by the Higher Education Act (HEA) of 1965, as amended (20 USC 1071 to 1087-2). Program regulations are located at 34 CFR part 682.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this Federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements apply, and then determine which of the applicable requirements is likely to have a direct and material effect on the Federal program at the auditee. For each such requirement, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit.

A. *Activities Allowed or Unallowed*	*B.* *Allowable Costs/Cost Principles*	*C.* *Cash Management*	*E.* *Eligibility*	*F.* *Equipment and Real Property Management*	*G.* *Matching, Level of Effort, Earmarking*	*H.* *Period of Performance*	*I.* *Procurement and Suspension and Debarment*	*J.* *Program Income*	*L.* *Reporting*	*M.* *Subrecipient Monitoring*	*N.* *Special Tests and Provisions*
Y	N	N	N	N	N	N	N	N	Y	N	Y

A. Activities Allowed or Unallowed

The compliance requirements and suggested audit procedures for allowed and unallowed services are presented separately in III.N.9, "Special Tests and Provisions - Federal Fund and Agency Operating Fund."

L. Reporting

1. Financial Reporting – Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting

ED Form 2000, *Guaranty Agency Financial Report* (*OMB No. 1845-0026*) – Guaranty agencies submit this form monthly, monthly/quarterly, and annually. Instructions for this report are available at http://www.fp.ed.gov/attachments/fms_data_nslds/GAFRGuide092015.pdf

In determining which amounts to test on ED Form 2000, particular attention should be given to the September 30 amounts for current year defaults, current year collections, loans receivable and the sources and uses of funds in the Federal Fund (or equivalent line items pertaining to the Federal/Operating Funds for the September 30 report). Also, guaranty agencies are required to submit loan level detail information to the National Student Loan Data System (NSLDS) (*OMB No. 1845-0035*). When reviewing support for the above reports, the auditor should consider whether the relevant amounts in these reports reconcile with the NSLDS Extract submitted by the guaranty agency. (**Note**: There may be some differences between the ED Form 2000 and the NSLDS Extracts due to timing

factors (e.g., pulling of NSLDS Extract in third week vs. month end). Finally, ED may send edits back to the guaranty agency to be entered.)

The guaranty agency is required to submit loan-level detail data to the NSLDS. The NSLDS Enrollment Reporting Guide that describes this level of detail is available at http://www.ifap.ed.gov/nsldsmaterials/attachments/NewNSLDSEnrollmentReportingGuide.pdf .

Key Line Items - The following are identified as key data elements:

a. Social security number;

b. First name;

c. Date of birth;

d. Original school code;

e. Academic level;

f. Current school code;

g. Enrollment status code;

h. Enrollment status date;

i. Originating lender code;

j. Loan guarantee date;

k. Amount of guarantee;

l. Current holder lender code;

m. Date repayment entered;

n. Loan status code;

o. Loan status date;

p. Outstanding principal;

q. Amount of claim paid to lenders (principal and interest); and

r. Interest and fee amounts for loans in defaulted status.

ED sends edits back to the guaranty agency for disposition. Samples should be selected from the guaranty agency's NSLDS Extracts (**Note**: Guaranty Agencies may have changed to automated exchanges of data with schools and lenders; thus, hard copy documents may not exist. In this instance, auditors may only be able to trace to system information and not to supporting records.) (34 CFR section 682.414(b))

In addition to providing ED with information it needs to maintain its accounting and loan database records, data in the ED Form 2000 report are used for various purposes by ED. The use of this data is the subject of several other compliance requirements cited in III.N, "Special Tests and Provisions," which identify the need to test specific items in these reports. For audit efficiency, the auditor may want to test those requirements at the same time as this compliance requirement. The other compliance requirements are III.N.2, "Federal Reinsurance Rate," III.N.3, "Conditions of Reinsurance Coverage," III.N.4, "Death, Disability, Closed Schools, False Certifications, Unpaid Refunds, Bankruptcy, and Teacher Loan Forgiveness Claims," and III.N.9, "Federal Fund and Agency Operating Fund."

N. Special Tests and Provisions

1. Current Records

Compliance Requirement – The guaranty agency shall maintain current, complete, and accurate records for each loan that it holds. The records must be maintained in a system that allows ready identification of each loan's current status, including status date, updated at least once every 10 business days (34 CFR section 682.414(a)).

Audit Objective – Determine whether the guaranty agency's records are updated for information received from lenders, schools, borrowers, others, and NSLDS on a timely basis.

Suggested Audit Procedures

a. For a sample of loans, compare dates transactions or information was posted to the guaranty agency's system to the dates the source information was received.

b. Verify that the status date is not the date the claim was paid but the actual date of occurrence, i.e., date of death on NSLDS.

c. Identify whether any backlog exists that is over 10 days old.

2. Federal Reinsurance Rate

Compliance Requirement – The applicable Federal reinsurance rate for a loan depends on the amount of reinsurance claims paid to the guaranty agency during the year and the date the loan was made (34 CFR sections 682.404(a) and (b)).

In most cases, for loans made prior to October 1, 1993, when the total amount of reinsurance claims paid to the guaranty agency during a fiscal year is less than five percent of the amount of loans in repayment at the end of the preceding fiscal year, reinsurance is paid for 100 percent of the guaranty agency's losses. When the total amount of reinsurance claims paid to the guaranty agency during a fiscal year reaches five percent of the amount of loans in repayment at the end of the preceding fiscal year, the reinsurance subsequently paid to the guaranty agency during that fiscal year, drops to 90 percent. When the amount of claims reaches nine percent, the reinsurance drops to 80 percent. The reinsurance rate is 100 percent for loans: (1) made under an approved lender-of-last resort program, (2) transferred under a plan to transfer guarantees from an insolvent guaranty agency approved by ED, or (3) meeting the definition of exempt claims (34 CFR sections 682.404(a)(1)(iii) and (a)(2)(iii)).

For loans made from October 1, 1993 to September 30, 1998, the regular reinsurance rates drop to 98/88/78 percent, respectively. For loans made on or after October 1, 1998 the respective rates are 95/85/75 percent (Section 428(c)(1) of the HEA (20 USC 1078(c)(1))).

The Secretary uses the annual ED Form 2000 report for the previous September 30 to calculate the amount of loans in repayment at the end of the preceding fiscal year (34 CFR sections 682.404(a), (b), and (c)).

Past problem areas have been:

Guaranty agencies have:

a. Not established systems to verify a student's loan status with lender and school data through a reliable audit trail.

b. Established systems to determine loan status that rely on loan characteristic analysis or assumptions that are not adequately tested or verified.

c. Not established adequate procedures to ensure that lenders report and agencies properly record loans paid in full.

d. Not established adequate procedures to ensure that there is a system to reconcile the guaranty agency's repayment conversion dates to the lender's repayment conversion dates.

Audit Objective – Determine whether the data submitted to ED in the September 30 annual Form 2000 used to calculate loans in repayment is materially correct and supported by the books and records.

Suggested Audit Procedures

a. Compare the amounts of loans in repayment in the guaranty agency system at September 30 to the amount of loans in repayment derived from the September 30 ED Form 2000. Determine the propriety of any difference.

b. Select a sample of loans in in-school, deferment, forbearance, and repayment status from the guaranty agency's system. Verify the loan amount and loan status by contacting the current holder of the loan or schools to confirm the authenticity and status of the loans.

3. Conditions of Reinsurance Coverage

Compliance Requirement – A guaranty agency may make a payment from the Federal Fund and receive a reinsurance payment on a loan only if the requirements in 34 CFR sections 682.406 and 682.414 are met. The lender must provide the guaranty agency with documentation, as described in 34 CFR sections 682.406 and 682.414. Key items in that documentation include:

a. Evidence that the lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the guaranty agency, including documentation of:

(1) Timely conversion to repayment;

(2) Collection and payment histories;

(3) Beginning and ending dates of borrower deferments/forbearances;

(4) Required skip-tracing activities; and

(5) No 45-day gaps in collection activities (34 CFR sections 682.406, 682.411, and 682.414).

b. Evidence that the loan was actually in default before the guaranty agency paid a default claim (34 CFR section 682.406(a)(4)).

c. Evidence that the lender filed a default claim with the guaranty agency within 90 days of default (34 CFR section 682.406(a)(5)).

d. Evidence that the loan was legally enforceable by the lender when the guaranty agency paid the claim on the loan to the lender (34 CFR section 682.406(a)(10)).

e. Evidence that the lender provided an accurate collection history and an accurate payment history with the default claim showing that the lender exercised due diligence in collecting the loan that met the requirements of 34 CFR section 682.411 (34 CFR section 682.406(a)(3)).

f. Evidence that the lender satisfied all conditions of guarantee coverage set by the guaranty agency (34 CFR section 682.406(a)(7)).

g. Evidence that the guaranty agency submitted a request for payment to ED within 30 days of lender payment (34 CFR section 682.406(a)(9)).

The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender or the guaranty agency failed to meet these requirements (34 CFR sections 682.406 and 682.414).

Past problem areas have been:

The lender:

a. Did not exercise due diligence in collecting the loan in accordance with 34 CFR section 682.411 (34 CFR section 682.406(a)(3)).

b. Did not include adequate documentation evidencing: timely conversion to repayment, a detailed collection and detailed payment history, beginning or ending dates of borrowers' deferments/forbearances, performance of required skip-tracing activities, and no 45-day gaps in collection activities to support claim eligibility and the claim amount (34 CFR section 682.406(a)(3)).

c. Did not file a default claim with the guaranty agency within 90 days of default (34 CFR section 682.406(a)(5)).

   (**Note**: The guaranty agency shall reject the claim based on due diligence (34 CFR section 682.406(a)(3)) or timely filing violations (34 CFR section 682.406(a)(5)), unless it was cured by the lender in accordance with 34 CFR part 682, Appendix D (34 CFR section 682.406(b))).

d. Was paid interest beyond 30 days after a claim was returned for inadequate documentation for claims returned on or after July 1, 1996 (34 CFR section 682.406(a)(6)).

The guaranty agency:

a. Filed a request for payment of reinsurance later than 30 days following payment of a default claim to the lender (34 CFR section 682.406(a)(9)).

b. Did not pay the lender within 90 days of the date the lender filed the claim (34 CFR section 682.406(a)(8)).

Audit Objective – Determine whether loans for which reinsurance was paid met the requirements for reinsurance.

Suggested Audit Procedures

a. Select a sample of defaulted loans from the guaranty agency's ED Form 2000 reports.

b. Ascertain if, prior to paying claims, the guaranty agency determined that:

(1) The lender exercised due diligence in making, disbursing, and servicing the loan;

(2) The loan was legally enforceable;

(3) The loan was in default;

(4) The claim was timely filed;

(5) The lender provided an accurate collection and payment history showing that the lender exercised due diligence in collecting the loan; and

(6) The lender satisfied conditions of guaranty coverage set by the guaranty agency.

c. Ascertain that the guaranty agency:

(1) Filed a request for payment of reinsurance no later than 30 days following payment of a default claim to the lender; and

(2) Paid the lender or returned the claim to the lender for additional documentation within 90 days of the date the lender submitted the claim.

4. Death, Disability, Closed Schools, False Certification, Unpaid Refunds, Bankruptcy, and Teacher Loan Forgiveness Claims

Compliance Requirements – If an individual borrower dies or the student for whom a parent received a PLUS loan dies, the obligation of the borrower and any endorser to make any further payments on the loan is canceled, in accordance with 34 CFR section 682.402(b). A borrower may file an application for discharge due to total and permanent disability. Total and permanent disability discharges are approved in accordance with 34 CFR section 682.402(c). If a borrower files an application for discharge due to a closed school, the Secretary reimburses the holder of the loan in accordance with 34 CFR section 682.402(d). If a borrower's eligibility to receive a loan was falsely certified by an eligible school, the Secretary reimburses the holder of the loan and discharges the loan in accordance with 34 CFR section 682.402(e). The Secretary reimburses the holder of a loan for the amount of unpaid refunds under certain circumstances in accordance with 34 CFR sections 682.402(l) through (p). If a borrower files a petition for relief under the Bankruptcy Code, the Secretary reimburses the holder of the loan for unpaid principal and interest on the loan, in accordance with 34 CFR section 682.402(f). The rules applicable to joint consolidation loans to married borrowers and co-makers on a PLUS loan are in 34 CFR sections 682.402(a)(2) and (3).

A lender must file a death, disability, closed school, false certification, or bankruptcy claim within the period prescribed in 34 CFR section 682.402(g)(2). The guaranty agency shall review a death, disability, closed school, false certification, or bankruptcy

claim promptly and shall pay the lender in accordance with 34 CFR section 682.402(h). Guaranty agencies are required to take specific actions in bankruptcy proceedings in accordance with 34 CFR section 682.402(i). In accordance with 34 CFR section 682.402, the guaranty agency shall not request payment from ED until the lender's claim has been paid. A borrower or lender must file an unpaid refund application within the period prescribed in 34 CFR section 682.402(l). The guaranty agency shall review an unpaid refund claim promptly in accordance with 34 CFR section 682.402(l) and shall pay the lender in accordance with 34 CFR section 682.402(n).

If, after being employed full-time as a teacher for 5 consecutive academic years, a borrower applies for teacher loan forgiveness through the loan holder, the guaranty agency must determine if the borrower meets the eligibility requirements and pay the loan holder within 45 days (34 CFR sections 682.216(a) and (f)).

Audit Objectives – Determine whether death, disability, closed school, false certification, unpaid refund, bankruptcy, and teacher loan forgiveness claims met the requirements for the payment of such claims.

Suggested Audit Procedures

a. Select a sample of death, disability, closed school, false certification, unpaid refund, bankruptcy, and teacher loan forgiveness claims from the guaranty agency's ED Form 2000 reports.

b. Review claim documentation that supports the eligibility of the claims for payment.

5. Default Aversion Assistance

Compliance Requirements – Upon receipt of a complete request from a lender, received no earlier than day 60 and no later than day 120 of delinquency, a guaranty agency shall engage in default aversion activities designed to prevent the default by a borrower. Default aversion activities are activities of a guaranty agency that are directly related to providing collection assistance to the lender on a delinquent loan prior to the loan being legally in a default status (34 CFR section 682.404(a)(2)(ii)). In consideration of such efforts, the guaranty agency receives a default aversion fee (34 CFR section 682.404(j)).

Calculating the Fee – A guaranty agency may transfer a default aversion fee from its Federal Fund to its Operating Fund equal to 1 percent of the total unpaid principal and accrued interest owed on loans on which the lender requests default aversion assistance. However, if a loan on which the guaranty agency has received the default aversion fee is subsequently paid as a default claim, the guaranty agency must rebate funds to the Federal Fund by deducting the rebate funds from the default aversion fee calculation. The fees may be transferred from the Federal Fund to the Operating Fund no more frequently than monthly and may not be paid more than once on any loan (34 CFR section 682.404(j)).

Audit Objectives – Determine whether the guaranty agency performed default aversion activities in accordance with the requirements, whether loans on which the default aversion fee was received were qualified, and whether the fees were calculated accurately.

Suggested Audit Procedures

a. For a sample of loans, review documentation supporting that the loans qualified for and the guaranty agency performed the default aversion activities.

b. For a sample of default aversion fee transfers:

   (1) Verify that the default aversion fee was calculated accurately.

   (2) Verify that default aversion fees were not paid more than once on the same loan.

c. For a sample of defaulted loans, verify that the appropriate default aversion fees are returned to the Federal Fund.

6. Collection Efforts

Compliance Requirements – The guaranty agency must engage in certain collection activities within certain time frames as prescribed by 34 CFR section 682.410(b)(6) on a loan for which it pays a default claim filed by a lender. These collection activities include written notices, contacts with borrowers, wage garnishments, etc. If a guaranty agency contracts with another party to perform default aversion assistance activities and collect defaulted loans, the party that provides default aversion assistance on a loan may not perform collection activity on that loan within 3 years of the date the default claim is paid (34 CFR sections 682.404(j) and 682.410(b)(6)).

Audit Objectives – Determine whether the guaranty agency performed required collection procedures on defaulted loans and that the collection contractor did not perform collection activities within 3 years of the default claim payment on loans for which it performed default aversion assistance.

Suggested Audit Procedures

a. If the guaranty agency uses a collection contractor, review the contract to ascertain if the contract specified the required collection procedures to be followed for defaulted loans.

b. For a sample of defaulted loan accounts, review documentation that supports that prescribed collection activities were followed.

c. Verify that the collection contractor did not perform collection activity within the 3-year period on loans for which it performed default aversion assistance.

7. Federal Share of Borrower Payments

Compliance Requirement – If the borrower makes payments on a loan after the guaranty agency has paid a claim on that loan, the guaranty agency must pay the Secretary an equitable share of those payments.

The Secretary's equitable share is the portion of payments that remains after deducting:

a. The complement of the reinsurance percentage in effect when reinsurance was paid on the loan (see III.N.2, "Federal Reinsurance Rate," for the applicable reinsurance rate. The complement of the reinsurance percentage equals 100 minus the Federal reinsurance rate), and

b. 16 percent of borrower payments (34 CFR section 682.404(g)(1)(ii)).

A guaranty agency may not retain the equitable share on loans that have been repaid by a Federal Consolidation Loan.

For defaulted loans, which are repaid by a consolidation loan, under separate authority, agencies are allowed to retain only the amount of collection costs charged to the borrower and paid off by the consolidation loan. The amount that may be retained is as follows–

> The guaranty agency can charge up to 18.5 percent of the outstanding principal and interest on the defaulted loan; however, the Secretary is entitled to the lesser of actual collection costs charged or 8.5 percent of principal and interest outstanding on the defaulted loan, except that the guaranty agency may not retain any portion of the collection costs paid by a consolidation loan that exceed 45 percent of the agency's total collections on defaulted loans that year (34 CFR sections 682.401(b)(18) and 685.220(f)).

A guaranty agency is required to deposit into its Federal Fund all funds received on loans on which a claim has been paid, including default collections, within 48 hours (2 business days) of receipt of those funds, minus any portion that the agency is authorized to deposit into the Operating Fund. "Receipt of Funds" means actual receipt of funds by the guaranty agency or its agent, whichever is earlier (34 CFR section 682.419(b)(6)).

Audit Objective – Determine whether the Secretary's equitable share of borrower payments on defaulted loans is properly computed and deposited into the Federal Fund in a timely manner.

Suggested Audit Procedures

Test a sample of borrower payments on defaulted loans at the loan level to ascertain if the equitable share due ED was deposited into the Federal Fund in a timely manner.

8. Assignment of Defaulted Loans to ED

Compliance Requirement – Unless the Secretary notifies a guaranty agency in writing that other loans must be assigned to the Secretary, a guaranty agency must assign any loan that meets all of the following criteria as of April 15 of each year: (a) the unpaid principal balance is at least $100; (b) the loan, and any other loans held by the guaranty agency for that borrower, have been held by the agency for at least 5 years; (c) a payment has not been received on the loan in the last year; and (d) a judgment has not been entered on the loan against the borrower. The Secretary may also direct a guaranty agency to assign to ED certain categories of defaulted loans held by the guaranty agency as described in 34 CFR section 682.409. In determining whether mandatory assignment from a guaranty agency is required, the Secretary will review the adequacy of collection efforts. ED considers the guaranty agency's record of success in collecting its defaulted loans, the age of the loans, and the amount of any recent payments on the loans (Section 428(c)(8) of the HEA (20 USC 1078(c)(8)); 34 CFR section 682.409).

Audit Objective – Determine whether the guaranty agency assigned to ED all loans that meet the criteria.

Suggested Audit Procedures

Review the guaranty agency's aging of loans to ascertain if the guaranty agency is holding loans that should be assigned to ED.

9. Federal Fund and Agency Operating Fund

Compliance Requirements

Federal Fund

A guaranty agency shall deposit in the Federal Fund the following:

a. All amounts received from ED as payment of reinsurance or other claims on loans.

b. All funds received by the guaranty agency from any source on FFEL loans on which a claim has been paid minus the portion the agency is authorized to deposit in its Operating Fund (must be deposited within 48 hours of receipt).

c. Insurance premiums or federal default fees.

d. Amounts received for Supplemental Preclaim Assistance (SPA) activity performed prior to October 1, 1998.

e. Earnings from investments of the Federal Fund.

f. Other receipts as specified in regulations (34 CFR section 682.419(b)).

The Federal Fund may only be used for the following purposes:

a. To pay lender insurance claims.

b. To transfer default aversion fees into the Agency Operating Fund.

c. For other purposes listed in the regulations (34 CFR section 682.419(c)).

Agency Operating Fund

The guaranty agency shall deposit into the Operating Fund:

a. Account maintenance fees.

b. Default aversion fees.

c. The portion of the amounts collected on defaulted loans that remains after the Secretary's share of collections has been paid and the complement of the reinsurance percentage has been deposited into the Federal Fund (34 CFR section 682.423).

d. Other receipts as specified in regulations (34 CFR section 682.423(b)).

Funds in the Operating Fund may only be used for application processing, loan disbursement, enrollment and repayment status management, default aversion activities, default collection activities, school and lender training, financial aid awareness and related outreach activities, compliance monitoring, and other SFA-related activities for the benefit of students (34 CFR section 682.423(c)).

Past problem areas concerning fund revenue and expense have included:

a. Failure to credit funds received into the Federal Fund, including lock-box operations, within the specified period.

b. Unauthorized expenses paid from the Federal Fund assets.

c. Failure to report all credits to the Federal Fund on ED Form 2000.

d. Use of the Federal Funds for other programs (e.g., Leveraging Educational Assistance Partnerships (LEAP) and other State programs).

e. Commingling of funds.

Audit Objectives – Determine whether the guaranty agency credited the required amounts to the Federal and Operating Funds, and used the resources of each fund solely for authorized purposes.

Suggested Audit Procedures

a. Review revenue records to assure that amounts required to be credited to the Federal and Operating Funds were so credited. Review revenues and receipts that were not credited to the Federal or Operating Funds to assure that they were not inappropriately omitted.

b. Test expenditures to ascertain if they were made for allowable purposes.

c. Examine the general journal for unusual entries that impact the Federal or Operating funds.

10. Investments – Federal Fund

Compliance Requirement – Funds transferred to the Federal Fund shall be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities selected by the guaranty agency, with the approval of the Secretary (such as pooled investments as part of a State investment program). Earnings from the Federal Fund shall be the sole property of the Federal Government (Section 422A(b) of the HEA (20 USC 1072a(b)); DCLID: 99-G-316 which is available at http://www.ifap.ed.gov/dpcletters/doc0515_bodyoftext.htm).

Audit Objectives – Determine whether the agency invested Federal funds only in approved securities or other instruments and properly accounted for investment earnings.

Suggested Audit Procedures

a. Review investment activity during the period to ascertain that Federal Fund assets were invested in approved securities or other instruments.

b. Ascertain that earnings were deposited in the Federal Fund.

11. Collection Charges

Compliance Requirement – The guaranty agency must charge each defaulted borrower reasonable costs incurred by the agency for its default collection activities. The agency must charge these costs on defaulted loans whether acquired by a default or bankruptcy claim (34 CFR section 682.410(b)(2)). Costs of collection on defaulted loans include those direct costs of collection activities conducted after default on loans held by the agency, and indirect costs that are properly allocated to those same activities. Direct costs include the expenses listed in 34 CFR section 30.60(a), such as collection agency charges, court costs, and attorney fees.

Because HEA section 484A(b) makes the defaulter liable only for reasonable collection costs, and costs are reasonable only if they are based on actual collection expenses being incurred by the guaranty agency, the agency must ensure that the estimate is based on reliable data. A charge based on expense and recovery data incurred in the most recently completed and audited fiscal year of the guaranty agency can be reasonably expected to

predict actual costs being incurred in the year for which the charge is assessed. However, when changes that will affect that rate are reasonably expected in expenses or recoveries during the year for which the charge is computed, adjustments may be warranted.

The rate or amount to be charged the borrower to satisfy collection costs is the least of the following three rates:

a. The amount or rate, if any, specified in the borrower's note;

b. The rate determined by dividing the agency's expected expenses by its expected recoveries for the period at issue; or

c. The rate that would be charged if the loan were held by ED (through March 1, 2007—25 percent of the amount of principal and interest satisfied from a payment; thereafter, 24 percent of the amount.

An agency that is limited to the amount charged by ED must conform its charges to the limits in paragraph c, above, no later than the date on which it ordinarily implements any adjustment based on its annual assessment of costs and recoveries.

There are instances when collection charges may not be assessed to the borrower at the rate determined as specified above:

a. A guaranty agency may charge collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest on a defaulted FFELP loan that is paid off by a Federal Consolidation Loan. The guaranty agency must remit to the Secretary a portion of the collection charge equal to the lesser of the amount charged the borrower or 8.5 percent of the outstanding principal and interest of the loan. A guaranty agency must remit directly to the Secretary the entire amount of the collection charge with respect to each defaulted loan that is paid off with excess consolidation proceeds, as defined in 34 CFR section 682.401(b)((18)(iv) (34 CFR section 682.401(b)(18)). (See III.N.7, "Federal Share of Borrower Payments.")

b. Borrowers who make the required nine voluntary and on-time payments within 10 months and whose loans are then rehabilitated by sale to an eligible lender may not be charged more than 16 percent of the outstanding principal and interest on the loans being rehabilitated (20 USC 1078-6(a)(1)(D)(i)(II)(aa); 34 CFR section 682.405(b)(1)(vi)). A guaranty agency may not charge any collection costs to a borrower who timely enters into a loan rehabilitation agreement or other repayment agreement as discussed in paragraph c, below.

c. A guaranty agency may not charge collection costs to a borrower who enters into a loan rehabilitation agreement or other repayment agreement with the guaranty agency during the 60-day period after notice from the guaranty agency that the guaranty agency has paid a default claim and will report default status on the loan to national credit bureaus (34 CFR section 682.410(b)(5)(ii); Dear Colleague Letter GEN-15-14 (http://www.ifap.ed.gov/dpcletters/GEN1514.html)).

Audit Objective – To determine whether the guaranty agency charged appropriate costs for its default collection activities to borrowers on defaulted loans acquired by the guaranty agency either by payment of a default or bankruptcy claim.

Suggested Audit Procedures

a. Test a sample of defaulted loan accounts to determine whether the guaranty agency charged only for reasonable costs of collection.

b. Ascertain if the method used to calculate the amount charged (1) included only appropriate expenses of default collection activities, and (2) was limited to the amount prescribed by regulation.

12. Enforcement Action

Compliance Requirement – The guaranty agency shall take measures to ensure enforcement of all Federal, State and guaranty agency requirements and at a minimum, conduct biennial on-site program reviews of lenders and schools that meet criteria specified in 34 CFR section 682.410(c)(1) or are selected using an alternative methodology approved by the Secretary. The guaranty agency is required to use statistically valid techniques to calculate liabilities owed the Secretary that the review indicates may exist; demand prompt payment from the responsible party; and refer to the Secretary any case in which the payment of funds is not made within 60 days. A guaranty agency also is required to undertake or arrange for the prompt and thorough investigation of criminal or other programmatic misconduct by its program participants. It is responsible also for promptly reporting all of the allegations and indications of fraud or misconduct having a substantial basis in fact, and the scope, progress, and results of the agency's investigations (34 CFR section 682.410(c)).

Audit Objective – Determine whether the guaranty agency is carrying out program reviews and related enforcement activity in accordance with the above requirements.

Suggested Audit Procedures

a. Review the guaranty agency's procedures for selecting lenders and schools to review to ascertain if they meet the regulatory criteria or an alternative methodology approved by the Secretary.

b. Review the guaranty agency's program review guidance to ascertain if it is up-to-date and includes, when problems are found, a statistically valid method for determining liabilities due the Secretary.

c. Review program review reports to ascertain if amounts due the Secretary were identified and, if so, whether appropriate demand for payment and follow-up was conducted.

d. Through inquiry and review, determine whether the guaranty agency adopted procedures for reporting all allegations of misconduct having a substantial basis to ED. Review guaranty agency records on the follow-up of misconduct to determine whether ED was notified when appropriate.

13. Access to National Student Loan Data System (NSLDS)

Compliance Requirement – The Higher Education Opportunity Act (HEOA) (Pub. L. No. 110-315) amended Section 485B of HEA (20 USC 1092b) to establish principles for administering the NSLDS. The Secretary is required to ensure that the primary purpose of access to the system by guaranty agencies is for legitimate program operations and to take actions to maintain confidence in the NSLDS, including, at a minimum, developing standardized protocols for limiting access to the data system. NSLDS access and use requirements were issued by ED in Dear Colleague Letter GEN-05-06/FP-05-04 (http://www.ifap.ed.gov/dpcletters/GEN0506.html), *Access To and Use of NSLDS Information*, dated April 8, 2005 and expanded July 2009, in NSLDS Organization Access Process located at http://www.fp.ed.gov/nslds.html under NSLDS Access.

Each organization using the NSDLS is required to establish a Destination Point Administrator (DPA). The roles and responsibilities of the DPA are to ensure that authorized personnel use the NSLDS only for official government business. The responsibilities of the DPA include the following:

a. Ensuring that all users are aware of their responsibilities regarding access to NSLDS.

b. Monitoring the use and access of NSLDS data by all of the organization's users.

c. De-activating a User ID when the person to whom it was assigned is no longer with the organization or otherwise is no longer eligible to have access to NSLDS.

d. Ensuring that information in or received from the NSLDS is protected from access by or disclosure to unauthorized personnel.

Audit Objective – Determine whether the guaranty agency has established required controls and oversight regarding NSLDS access.

Suggested Audit Procedures

a. Review and evaluate the guaranty agency's established and documented controls over access to the NSLDS.

b. Verify that the entity removes NSLDS access when an employee terminates or is reassigned to a position not requiring NSLDS access.

14. Correct Handling of Loans Sold to the U.S. Department of Education

Compliance Requirement – The HEOA amended Section 459A of the HEA (20 USC 1087i-1) to provide that, once a loan is purchased by the Secretary, under the Secretary's temporary authority to purchase student loans (which expired July 1, 2010), the guaranty agency shall cease to have any obligations, responsibilities, or rights (including any rights to any payment) for the loan. The guaranty agency must update the NSLDS to report that the ED is now the holder of the loan (20 USC 1092b(a)(8)) and that no additional fees are requested. Guaranty agencies annually submit to ED Form 2000, *Guarantee Agency Financial Report*, (*OMB Number 1845-0026*). Line AR-7, Loans Transferred Out on that report shows the loans sold to ED. Also, line MR-15 shows the Secretary's fee for defaulted FFEL loans consolidated with Direct Loans and line MR-27 is the total receivable on these loans (see http://www.fp.ed.gov/attachments/fms_data_nslds/GAFRGuide092015.pdf) (Section 459A of the HEA (20 USC 1087i-1); 34 CFR section 682.414(b)(4)).

Audit Objective – Determine whether the guaranty agency/servicer has established and implemented controls and processes over loans that have been sold to ED.

Suggested Audit Procedures

a. Review and evaluate the guaranty agency's controls to ensure that, for loans purchased by ED, the NSLDS is updated and the entity no longer bills ED for any fees.

b. Select a sample of loans purchased by ED and trace to ensure the NSLDS was updated and the guaranty agency no longer billed ED for any fees. In doing this, the auditor should verify that the effective date that the loan was transferred out in the guarantor's system matches the loan purchase date.

c. Request the guaranty agency to provide the monthly totals of loan transfers to ED due to loans purchased by ED and verify that these were reflected in line AR-7 of Form 2000.

d. Review/verify amounts reported in lines MR-15 and MR-27 of ED Form 2000 to determine that the Secretary's share was accurately collected and reported.

IV. OTHER INFORMATION

Some "statewide" entities are defined to include a guaranty agency under the FFEL Program (CFDA 84.032). For such entities, this Part 4 section should be used to identify pertinent compliance requirements. Auditors for "statewide" entities that incorporate a guaranty agency must consider the provisions of 2 CFR section 200.518(b)(3) in determining major programs. When those provisions apply, coverage of the FFEL Program for a guaranty agency as a major program must be identified and reported on separately as a major program in the Summary of Auditor's Results Section of the Schedule of Findings and Questioned Costs, referring to the program as "CFDA 84.032 (FFEL - Guaranty Agencies)."

DEPARTMENT OF EDUCATION

CFDA 84.032 FEDERAL FAMILY EDUCATION LOANS (Lenders)

I. PROGRAM OBJECTIVES

Banks, schools, other financial institutions, governmental entities, or nonprofit organizations that meet the definition of an eligible lender in Section 435(d) of the Higher Education Act of 1965, as amended (HEA) (20 USC 1085(d)) may function as lenders under the Federal Family Education Loans (FFEL) program. All of these types of lenders must comply with the requirements generally applicable to lenders. However, there are additional compliance requirements that apply to schools as lenders.

II. PROGRAM PROCEDURES

Prior to July 1, 2010, eligible banks, savings and loan associations, credit unions, pension funds, insurance companies, and schools could make loans under the FFEL program (34 CFR section 682.101(a)). Under Section 435(d)(1) of the HEA (20 USC 1085(d)(1)), State agencies and nonprofit organizations also qualified as eligible lenders under certain conditions and for certain purposes. Schools that meet the requirements of 34 CFR section 682.601(a) could also make loans under the FFEL program. An eligible lender that holds loans as an eligible lender trustee for a school, or an organization affiliated with a school, and the school involved in such an arrangement are subject to certain restrictions on lending under Section 435(d)(7) of the HEA (20 USC 1085(d)(7)). These entities may continue to hold FFEL program loans until they are sold to another lender, repaid, or a claim is paid on the loan.

A lender (other than a school lender) holding more than $5 million in FFEL loans during its fiscal year, and a school lender under 34 CFR section 682.601 that holds any FFEL loans during its fiscal year, must submit an independent annual compliance audit for that year conducted by a qualified independent organization or person (34 CFR section 682.305(c)(1)). Governmental entities or nonprofit organizations that function as lenders under the FFEL program must meet this requirement by auditing the school lender activity as a major program (or, if applicable, as part of the Student Financial Aid (SFA) Cluster) as part of the entity's single audit under 2 CFR part 200, subpart F. (For Schools that are Lenders, see guidance in IV, "Other Information.")

The SAFRA Act, Title II of the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, provides that, after June 30, 2010, no new student loans will be made under the Federal Family Education Loan (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 Loans (Direct Loan) program (CFDA 84.268).

Source of Governing Requirements

The FFEL program is authorized by Title IV, Part B, of the HEA, as amended (20 USC 1071 through 1087-4). Program regulations are located at 34 CFR part 682.

Availability of Other Program Information

A number of documents contain guidance applicable to FFEL program lenders. They include:

a. Dear Partner (Colleague) Letters (http://ifap.ed.gov/ifap/byYear.jsp?type=dpcletters)

b. Electronic Announcement: http://www.ifap.ed.gov/eannouncements/123013LoanServInfoSAIGEnrollforLendersLenderServicersIBRPlanParticipation.html

c. FFEL Special Allowance Rates (http://ifap.ed.gov/ifap/byYear.jsp?type=ffelspecrates)

d. FFEL Variable Interest Rates (http://ifap.ed.gov/ifap/byYear.jsp?type=ffelvarrates)

e. Dear Colleague Letter FP-07-01 FFELP Loans Eligible for 9.5 Percent Minimum Special Allowance Rate (http://ifap.ed.gov/dpcletters/FP0701.html)

f. Dear Colleague Letter FP-07-06 Audit Requirements for 9.5 Percent Minimum Special Allowance Payment Rate (http://www.ifap.ed.gov/dpcletters/FP0706.html)

g. Dear Colleague Letter FP 07-12 -Determination of Not-For-Profit Holder Status for SAP Billing (http://www.ifap.ed.gov/dpcletters/FP0712.html)

h. Dear Colleague Letter FP 08-07 Ensuring Continued Access To Student Loans Act of 2008 (http://www.ifap.ed.gov/dpcletters/061908GEN0808.html)

i. Dear Colleague Letter FP 08-10 The Higher Education Opportunity Act (http://www.ifap.ed.gov/dpcletters/GEN0812FP0810.html)

j. Dear Colleague Letter FP 12-01 Loan Verification Certificate for Special Direct Consolidation Loans (http://www.ifap.ed.gov/dpcletters/FP1201.html)

k. Dear Colleague Letter FP 12-02 LIBOR-Based SAP under the Consolidated Appropriations Act, 2012 (http://www.ifap.ed.gov/dpcletters/FP1202.html)

l. Dear Colleague Letter FP 12-03 Corrections to GEN-11-19/FP-11-01 Revised Loan Discharge Application: Unpaid Refund (http://www.ifap.ed.gov/dpcletters/GEN1205.html)

m. Dear Colleague Letter GEN-12-01 Changes Made To The Title IV Student Aid Programs By The Recently Enacted Consolidated Appropriations Act, 2012 (http://www.ifap.ed.gov/dpcletters/GEN1201.html).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this Federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements apply, and then determine which of the applicable requirements is likely to have a direct and material effect on the Federal program at the auditee. For each such requirement, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit.

A. *Activities Allowed or Unallowed*	*B.* *Allowable Costs/Cost Principles*	*C.* *Cash Management*	*E.* *Eligibility*	*F.* *Equipment and Real Property Management*	*G.* *Matching, Level of Effort, Earmarking*	*H.* *Period of Performance*	*I.* *Procurement and Suspension and Debarment*	*J.* *Program Income*	*L.* *Reporting*	*M.* *Subrecipient Monitoring*	*N.* *Special Tests and Provisions*
N	N	N	N	N	Y	N	Y	N	Y	N	Y

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort* – Not Applicable

2.2 Level of Effort – *Supplement not Supplant*

For schools that are lenders, proceeds from special allowance payments and interest payments from borrowers, interest subsidies received from the U.S. Department of Education (ED), and any other proceeds from the sale of or other disposition of loans (exclusive of return of principal, any financing costs incurred by the school to acquire funds to make the loans, and the cost of charging origination fees or interest rates at less than the fees or rates authorized by the HEA) must be used to supplement, not to supplant, non-Federal funds that would otherwise be used for need-based grant programs (Section 435(d)(2)(C) of the HEA (20 USC 1085(d)(2(C)); 34 CFR section 682.601(c)).

3. Earmarking – Not Applicable

I. Procurement and Suspension and Debarment

For schools that are lenders (See III.N.10, "Special Tests and Provisions –Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization"), any contract awarded for financing, servicing, or administration of FFEL loans must be awarded on a competitive basis (Section 435(d)(2)(A)(iv) of the HEA (20 USC 1085(d)(2)(A)(iv)); 34 CFR section 682.601(a)(4)).

L. Reporting

1. Financial Reporting

a. SF-270, *Request for Advance or Reimbursement* – Not Applicable

b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

c. SF-425, *Federal Financial Report* – Not Applicable

d. *Lender's Interest and Special Allowance Request and Report (LaRS) (OMB No. 1845-0013)* – The LaRS is used by ED to calculate interest subsidies, special allowance payments due to lenders, and excess interest owed ED. It is also used 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 must be submitted within 90 days after the end of the quarter to be considered timely. Where testing of LaRS information is requested later in this program supplement, that testing can be done concurrently with this testing. See 34 CFR section 682.414(a)(4)(ii) for more information.

The LaRS is a five-part form with a cover page.

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. (As there are no new loans originated under the FFEL program, this part is limited to adjustments and cancellations of previously disbursed loans.)

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 and/or the amount of excess interest owed to ED, 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.

The information reported on the LaRS is subject to levels of edit checks for data reasonability during ED's processing of the payment request. In some cases, the form will be rejected and returned to the lender for correction. In other cases, ED notifies the lender that its submission failed to pass certain reasonability edits and instructs the lender to determine if the errors resulted in an incorrect payment of interest benefits or special allowance. The lender is further instructed by ED to make applicable adjustments to the affected loan balances on the next quarterly report. The lender is required to keep records necessary to support the amounts reported on the LaRS (34 CFR section 682.305(a)).

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

N. Special Tests and Provisions

1. Individual Record Review

Compliance Requirement – 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 CFR sections 668.24(d)(3)(i) through (iv) (34 CFR section 682.414(a)).

The required records are identified in 34 CFR section 682.414(a)(4)(ii) and 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, loans that were repaid by a consolidation loan or loans, 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 lender or 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.

Audit Objective – Determine whether the lender maintained current, complete and accurate loan records.

Suggested Audit Procedures

a. Trace loan information from the lender's summary records/ledgers to detailed loan records.

b. Test a sample of individual loan files and determine if the lender maintained the required documents and the information recorded in the detailed loan record agrees with the information in these documents and the summary records.

2. Interest Benefits

Compliance Requirements

Payment of Interest Benefits

ED pays the lender interest benefits (see 34 CFR section 682.202(a) for applicable FFEL interest rates) on eligible FFEL program loans (subsidized Stafford and certain consolidated loans) on behalf of a qualified borrower during certain loan statuses including:

a. All periods prior to the beginning of the repayment period;

b. Any period when the borrower has an authorized deferment (34 CFR section 682.300); and

c. During a period that does not exceed 3 consecutive years from the established repayment period start date on each loan under the income-based repayment plan and that excludes any period during which the borrower receives an economic hardship deferment, if the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's loan or on the qualifying portion of the borrower's Consolidation Loan.

Payment of Interest Benefits on Consolidated 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:

a. January 1, 1993, but prior to August 10, 1993;

b. August 10, 1993, but prior to November 13, 1997, if the loan consolidates only subsidized Stafford loans; or

c. November 13, 1997 but prior to July 1, 2010, for the portion of the loan that repaid subsidized FFEL loans and Direct Subsidized Loans (34 CFR section 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 CFR sections 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 CFR section 682.202(a) for applicable interest rates for FFEL program loans. The Service members 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 loans. This limitation applies to borrowers who were in military service as of August 14, 2008, but a borrower is not entitled to a refund of interest paid above the 6 percent rate prior to that date. 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). For any FFEL loan that is subject to the SCRA six percent interest rate limit, for those FFEL loans first disbursed on or after July 1, 2008, the applicable interest rate used in calculating the lender's special allowance payment is the SCRA-determined rate. Interest benefits due the lender may be calculated by using either the average daily balance or actual accrual methods in 34 CFR sections 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 (*OMB No. 1845-0046*) (Section 428C(f) of the HEA (20 USC 1078-3(f))).

Audit Objectives – Determine whether interest benefits were accurately calculated and billed to ED and that the CLRF were submitted on a monthly basis to ED.

Suggested Audit Procedures

a. Test that the loans are assigned the correct interest rate in accordance with 34 CFR section 682.202(a) and 50 USC App. 527, and are reported in the correct interest rate category in the LaRS.

b. Test that the lender begins and ends billings to ED for interest benefits on the appropriate day for loans in an in-school, grace, or authorized deferment period.

c. Review loan records, disbursement records, or other documentation to verify that interest is billed only for periods specified in 34 CFR section 682.300(b)(2) and is not billed for interest covered under 34 CFR section 682.300(c).

d. For consolidated loans on which the lender has claimed interest benefits, review the history files, and verify that the loans qualified for interest payments.

e. For consolidated loans subject to the consolidation loan interest payment rebate fee, verify that fees were calculated accurately and submitted on a monthly basis.

f. Test the accuracy of the average daily balance or actual accrual calculations by recalculating amounts or by reasonableness tests.

3. Special Allowance Payments

Compliance Requirement

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 loans. ED computes 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 on a loan 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 CFR sections 682.304 through 682.305).

Loans Eligible for Special Allowance Payments

See 34 CFR section 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). 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 (Section 438(b)(2)(I) of the HEA (20 USC 1087-1(b)(2)(I)). The average loan principal, including capitalized interest, is to be calculated using the average daily balance method defined in 34 CFR section 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 the HEA (20 USC 1087-1(b)(2)(I)(vi)(I)) (34 CFR section 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 the HEA (20 USC 1087-1(b)(2)(I)(vi)(II)) (34 CFR section 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 Section 435(d) of the HEA (20 USC 1085(d)), other than a school lender, that is–

a. A State, or a political subdivision, agency, authority or instrumentality of a State, including an entity eligible to issue bonds described in section 144(b) of the Internal Revenue Code (Code), or in 26 CFR section 1.103-1;

b. A not-for-profit entity described in section 150(d)(2) of the Code that has not made the election described in section 150(d)(3) of the Code to relinquish that status;

c. A not-for-profit entity described in section 501(c)(3) of the Code; or

d. 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 Section 435(d) in its own right (Section 435(p) of the HEA (20 USC 1085(p); 34 CFR section 682.302(f)(3)).

Loans that are held by a governmental or non-profit entity that is an eligible lender under Section 435(d) of the HEA 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 –

a. On September 27, 2007, either acted as an eligible lender under Section 435(d) of the HEA (other than as a school lender), or was the sole beneficial owner of a FFEL program loan that was eligible for special allowance payments;

b. Is neither owned nor controlled, even in part, by a for-profit entity; and

c. Remains the sole beneficial owner of such loans and the income from such loans (Section 435(p)(2) of the 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 of that entity or of an eligible lender trustee to the extent acting on its behalf (Section 435(p)(2)(E) of the 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 (Section 435(p)(2)(D) of the HEA (20 USC 1085(p)(2)(D))).

Note that a State is permitted to designate a not-for-profit entity that was not acting as an eligible lender under Section 435(d) of HEA on September 27, 2007, as a new "eligible not-for-profit holder" (34 CFR section 682.302(f)(3)).

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 (Section 438 of the 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. (Sections 438(b)(2)(B)(i), (ii), and (iv) of the 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 (Section 438(b)(2)(B)(iv) of the HEA (20 USC 1087-1(b)(2)(B)(iv))).

Only loans made or purchased from an eligible funding source specified in 34 CFR section 682.302(c)(3)(i) may qualify for the 9.5 percent floor. Those sources are funds obtained from:

a. The proceeds of a tax-exempt obligation originally issued prior to October 1, 1993;

b. Collections or default payments by a guarantor on a loan acquired with the proceeds of such an obligation;

c. Interest benefits or special allowance payments received on a loan acquired with the proceeds of such an obligation;

d. The sale of a loan acquired with the proceeds of such an obligation; or

e. The investment of the proceeds of such an obligation.

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. (Section 438(b)(2)(B)(vi) of the HEA (20 USC 1087-1(b)(2)(B)(vi)); 34 CFR section 682.302(e)(4)).

These deadlines were 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:

a. Was a unit of state or local government or a private nonprofit entity;

b. Was not owned or controlled by, or under common ownership with, a for-profit entity; and

c. 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 section 438(b)(2)(B) in the most recent quarterly payment prior to September 30, 2005(Section 438(b)(2)(B)(vii) of the HEA (20 USC 1087-1(b)(2)(B)(vii)); 34 CFR section 682.302(e)(5)).

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:

a. 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:

   (1) The loan is pledged or transferred in consideration of funds listed in 34 CFR section 682.302(c)(3)(i) or from a tax-exempt refunding obligation, or

   (2) The prior tax-exempt obligation used to acquire the loan is neither retired nor defeased with yield-restricted obligations;

b. Financed by a tax-exempt obligation that, after September 30, 2004, has matured, been refunded, or is retired or defeased;

c. Refinanced after September 30, 2004 with funds obtained from a source other than the funds listed in 34 CFR section 682.302(c)(3)(i);

d. Sold or transferred to any other holder after September 30, 2004.

Section 438(b)(2)(B) of the HEA (20 USC 1087-1(b)(2)(B)); 34 CFR sections 682.302(e)(2) and (3)).

Termination of Special Allowance Payments on a Loan

Special allowance payments on loan balances 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 CFR section 682.302(d) and include the following:

a. The date a borrower's loan is repaid;

b. The date a borrower's loan check is returned uncashed to the lender;

c. The date the lender receives payment on a claim for loss on the loan;

d. 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;

e. The 60th 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 60th day;

f. The 120th 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;

g. The 30th 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 30th day); and

h. The date on which the lender determines the loan is legally unenforceable based on receipt of an identity theft report under 34 CFR section 682.208(b)(3).

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 III.N.7, "Due Diligence by Lenders in the Collection of Delinquent Loans"). To reinstate reinsurance and other Federal payments on the loan, the violation has to be "cured" (see III.N.9, "Curing Due-Diligence and Timely Filing Violations"). See Appendix D to 34 CFR part 682 for more information.

Audit Objective – Determine whether special allowance payments were earned and reported properly.

Suggested Audit Procedures

a. Test that the lender is reporting all eligible loans in its portfolio in Part III of the LaRS by the proper year, quarter, interest rate, and special allowance category.

b. 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 lender is accurately reporting for the 9.5 percent floor only those loans that—

(1) were identified as a result of the audit as made or purchased with eligible sources of funds, or

(2) 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

(3) unless held by a lender that qualified 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.

c. Test that the lender is terminating special allowance requests on loan balances when a date-specific event specified in 34 CFR section 682.302(d) occurs, as documented in the borrower's file.

d. Test that the lender is terminating billing under the 9.5 percent floor when disqualifying events specified in HEA and 34 CFR sections 682.302(e)(2) and (3) occur.

e. Test the accuracy of the average daily balance calculations as defined in 34 CFR section 682.304(d) by recalculating amounts or by reasonableness tests.

f. Test a sample of loans included in the average daily balances to determine that the average daily balances do not include loans that are not eligible for special allowance payments.

g. 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 —

(1) the claim was limited to loans to which a governmental or non-profit entity listed above held full beneficial ownership; and

(2) the lender was compensated by the governmental or non-profit entity at a rate in excess of that paid other eligible lender trustees holding FFEL program loans, and if so, by what amount.

4. Loan Sales, Purchases, and Transfers Compliance Requirements

Compliance Requirement - 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. The lender must notify the borrower, either jointly with the other party or separately, of the transfer of the loan and the purchasing lender must notify the guaranty agency of the loan transfer (34 CFR section 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 CFR section 682.208(b)(2). In addition, the HEOA amended Section 428 (b)(2)(F) of the HEA (20 USC 1078(b)(2)(F)), which requires that a borrower be notified if the transfer, sale, or assignment of the borrower's loan will result in a change in the identity of the party to whom the borrower must send payments or direct any communications. After August 13, 2008, the borrower also must be advised of the effective date of the transfer of the loan, the date on which the current loan servicer (as of the date of the notice) will stop accepting payments, and the date on which the new loan servicer will begin accepting payments (20 USC 1078(b)(2)(F)). 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 CFR section 682.305(a)(4)).

Audit Objectives – Determine whether loan sales, purchases, and transfers were made in accordance with ED requirements and that accurate records of such transactions were maintained.

Suggested Audit Procedures

a. For a sample of loans, trace the principal amount of loans sold as reported on the LaRS to the bills of sale.

b. Review a sample of 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. Test that 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.

c. Select a sample of loans that were transferred to the lender during the audit period and verify that all applicable LaRS loan data, including beginning balances, was entered completely and accurately into the lender's system. Verify that all required supporting loan documentation was obtained and maintained.

d. Select a sample of loans that were transferred, sold, or assigned on or after August 14, 2008, and determine if the borrower was notified with the required information.

5. Enrollment Reports

Compliance Requirement – 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 for interest and special allowance billings on 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 CFR section 682.209. Typically, Stafford loan borrowers begin repayment 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at a school. PLUS 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 CFR section 682.209).

Audit Objective – Determine whether, upon receipt of Enrollment Reports or other notification of change information, the lender accurately and timely updated loan records for changes to student status, including conversion to repayment status.

Suggested Audit Procedures

a. Trace a sample of loans from the Enrollment Reports received during the period to loan records to determine if changes to student enrollment status were made accurately.

b. Determine whether conversions to repayment status were made within required time limits.

c. Obtain and review the error reports (manifests, in-school discrepancy reports, or out-of-school status reports), if any, generated by the lender that identify discrepancies between the Enrollment Reports and the lender's records.

d. For a sample of loans, trace student enrollment data to any interim status reports or other notification of change information that may have been received directly from the school.

6. Payment Processing

Compliance Requirement

Except in the case of payments made under an income-based repayment plan, 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. A borrower may prepay all or part of a loan at any time without a penalty. Unless the borrower requests otherwise, if a prepayment equals or exceeds the established monthly payment amount, the lender shall apply the prepayment to future installments and advance the next payment due date. 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 CFR section 682.209(b)). Interest must be charged in accordance with 34 CFR sections 682.202(a) and (b).

Income-Based Repayment Plan

The HEA provides an income-based repayment (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 (Section 428(b)(9)(A)(v) of the HEA (20 USC 1078(b)(9)(A)(v))).

Audit Objectives – Determine whether the lender (1) calculated interest and principal in accordance with 34 CFR sections 682.202 (a) and (b), and (2) applied loan payments and prepayments in accordance with 34 CFR section 682.209(b), or in the case of prepayments, with the documented specific request of the borrower.

Suggested Audit Procedures

a. Test whether the lender applied the borrower payments and prepayments to loan records in accordance with payment application requirements.

b. Test that application of principal and interest were appropriately calculated and that the correct amount was applied to the individual borrower's loan balance.

c. Test if prepayments were allocated in accordance with ED regulatory requirements or, if applicable, borrower instructions.

7. Due Diligence by Lenders in the Collection of Delinquent Loans

Compliance Requirement – 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 CFR section 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 CFR section 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 CFR section 682.411(b)).

Definition of Collection Activity – Collection activity with respect to a loan is defined as:

a. 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 CFR sections 682.411(c), (d), (e), or (f);

b. Attempting telephone contact with the borrower;

c. Conducting skip-tracing efforts, in accordance with 34 CFR sections 682.411(h)(1) or (m)(1)(iii) to locate a borrower whose correct address or telephone number is unknown to the lender;

d. 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

e. Any telephone discussion or personal contact with the borrower as long as the borrower is apprised of the account's past-due status (34 CFR section 682.411(l)(5)).

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 CFR section 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 CFR section 682.414(a)(4)).

Failure to Comply with Due-Diligence Regulations

Failure to comply with the Federal due-diligence regulations will result in the loss of reinsurance for the guaranty agency, the loss of a lender's right to receive an insurance payment from the guaranty agency's Federal Fund, and the lender's right to receive interest and special allowance (34 CFR part 682, Appendix D, paragraph I.B.3).

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 CFR section 682.411).

1 to 15 Days Delinquent: One written notice or collection letter should 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 CFR section 682.411(d)(4), during this period the lender shall engage in the following:

a. 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.

b. 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 CFR section 682.411(m) as:

a. A successful effort to contact the borrower by telephone;

b. 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

c. 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 CFR section 682.411):

a. *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.

b. *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.

c. *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.

d. *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.

e. *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 CFR section 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 CFR section 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 shall 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 shall 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 CFR sections 682.201(b)(4) and 682.201(c)(1)(vii)).

Before filing a default claim on a loan with an endorser, the lender must:

a. 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.

b. 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.

c. 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 shall 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 CFR section 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 CFR section 682.411(n)(3)).

Audit Objective – Determine if the lender complied with the due-diligence requirements for collection of delinquent loans, including the requirements for skip tracing or default aversion assistance.

Suggested Audit Procedures

a. Test a sample of loans that were delinquent from 1 to 15 days, verify that the lender's records document that the required written notice or collection letter was sent to the borrower. Verify that the letter contained the required information.

b. Test a sample of loans that were delinquent between 16 to 180 days (16 to 240 days for loans repayable in installments less frequently than monthly) verify that the lender's records document that the required telephone efforts were made and that the required collection letters were sent to the borrower. Verify that 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.

c. Test a sample of loans that were delinquent from 181 to 270 days (241 to 331 days for loans payable in installments less frequently than monthly) verify that the lender's records document the lender's efforts to urge the borrower to make the required payments on the loan and that the efforts, at a minimum, provided information to the borrower regarding options to avoid default and the consequences of defaulting on the loan.

d. Test a sample of loans that are 241 days delinquent (the 301st day for loans payable in installments less than monthly), verify that the lender sent the required final demand letter to the borrower.

e. *Loan Endorser Procedures*: Test a sample of the lender's records to verify that they document that 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.

f. *Skip-Tracing Procedures*: From the sample of delinquent loans where a final demand letter was not sent to the borrower, verify that 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. Verify that these efforts were completed by the date of default with no gap of more than 45 days between attempts. Verify that the lender's efforts for loan endorsers included an inquiry to directory assistance.

g. *Default Aversion Assistance*: Obtain and review the agreement the guaranty agency has with the lender that establishes the time period for default aversion assistance. From the population of delinquent or defaulted loans determine the loans where required default aversion assistance from the loan guaranty agency should have been requested by the lender. For a sample of the loans, verify that the lender's records document that default aversion assistance was requested within the required timeframes.

8. Timely Claim Filings by Lenders or Servicers

Compliance Requirement – Lenders are required to timely file claims with the guaranty agency for payment of death, disability, closed schools, false certification, bankruptcy and default claims. Each type of claim has a separate timely filing requirement (34 CFR sections 682.402(g)(2) and 682.406(a)(5)). A lender has up to 3 years after the default

claim filing deadline to successfully cure due-diligence violations that have rendered a loan un-reinsured (34 CFR part 682, Appendix D). The lender is also required to maintain records to document the validity of a claim against a loan guaranty (34 CFR sections 682.402(g)(1) and 682.414(a)(4)(iii)).

TYPE OF CLAIM	TIMELY FILING REQUIREMENTS
Default	A lender must submit default claims to the guaranty agency within 90 days of the default.
Death	A lender must submit 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.
Total and Permanent Disability	For claims prior to July 1, 2013, a lender must submit a claim within 60 days of the date that the lender determines that a borrower is totally and permanently disabled as described in 34 CFR section 682.200(b) (34 CFR Section 682.402(c)(1)). Effective July 1, 2010, for a borrower who is not a veteran, the lender must submit a disability claim to the guaranty agency within 60 days after the borrower submits a certification by a physician and the lender makes a determination that the certification supports the conclusion that the borrower is totally and permanently disabled as described in 34 CFR section 682.200(b) (34 CFR sections 682.402(c)(2) through (7); (see October 29, 2009, *Federal Register* (74 FR 55997)). Effective July 1, 2010, for borrower that is a veteran, the lender must submit a disability claim to the guaranty agency within 60 days after the veteran or veteran's representative submits a discharge application (on a form approved by the Secretary) along with documentation from the Department of Veterans Affairs (VA) showing that the VA has determined that the veteran is unemployable due to a service-connected disability and the lender makes a determination that the documentation supports the conclusion that the borrower is totally and permanently disabled as described in 34 CFR section 682.200(b) (34 CFR section 682.402(c)(8); (see October 29, 2009, *Federal Register* (74 FR 55997)). Effective July 1, 2013, if a borrower, who is not a veteran, notifies the lender that the borrower claims to be totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR section 682.200(b), the lender must direct the borrower to notify the Secretary of the borrower's intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify the Secretary (34 CFR section 682.402(c)(2)). After the Secretary receives the application described in 34 CFR section 682.402 (c)(2)(iv), the Secretary notifies the holders of the borrowers Title IV loans that the Secretary has received a total and permanent disability discharge application from the borrower. The holders of the loans must notify the applicable guaranty agencies that the total and permanent disability discharge application has been received (34 CFR section 682.402(c)(2)(vi)).

TYPE OF CLAIM	TIMELY FILING REQUIREMENTS
	The Secretary will notify the borrower and the borrower's lenders whether the application for a disability discharge has been approved and will direct each lender to submit a disability claim to the guaranty agency so the loan can be assigned to the Secretary. The lender must submit the claim to the guaranty agency within 60 days of the date the lender received notification from the Secretary that the borrower is totally and permanently disabled (34 CFR sections 682.402(c)(3)(iii) and 682.402 (g)(2)(ii)). Effective July 1, 2013, if the borrower, who is a veteran, notifies the lender that the borrower claims to be totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR section 682.200(b), the lender must direct the veteran to notify the Secretary of the veteran's intent to submit an application for total and permanent disability discharge and provide the veteran with the information needed to apply for a total and permanent discharge to the Secretary (34 CFR section 682.402(c)(9)). After the Secretary receives the application described in 34 CFR section 682.402 (c)(2)(iv), the Secretary notifies the holders of the veteran's Title IV loans that the Secretary has received a total and permanent disability discharge application from the borrower. The holders of the loans must notify the applicable guaranty agencies that the total and permanent disability discharge application has been received (34 CFR section 682.402(c)(9)(vi)). If the Secretary approves the veteran's total and permanent disability discharge application based on documentation from the Department of Veterans Affairs, the lender must submit a disability claim to the guaranty agency in accordance with 34 CFR section 402(g)(1) (34 CFR section 682.402(c)(9)(xii)(A)). The Secretary will notify the veteran and the veteran's lenders whether the application for a disability discharge has been approved and will direct each lender to submit a disability claim to the guaranty agency so the loan can be assigned to the Secretary. The lender must submit the claim to the guaranty agency within 60 days of the date the lender received notification from the Secretary that the veteran is totally and permanently disabled (34 CFR section 682.402(c)(9)(x) and 34 CFR 682.402 (g)(2)(ii)).
Closed School	The lender shall file a claim within 60 days after the borrower submits to the lender the written request and sworn statement described in 34 CFR section 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.
False Certification	The lender shall 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 CFR section 683.402(e)(3) or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so.

TYPE OF CLAIM	TIMELY FILING REQUIREMENTS
Bankruptcy	A lender shall 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 CFR section 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.

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 CFR section 682.414(a)(4)(ii)). Items to be filed by the lender when making a claim to the guaranty agency include (34 CFR section 682.402):

a. The original or a true and exact copy of the promissory note.

b. The loan application, if a separate loan application was provided to the lender.

c. 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.

d. In the case of a disability claim, a copy of the certification of disability described in 34 CFR section 682.402(c)(2).

e. In the case of a closed school claim, the documentation described in 34 CFR section 682.402(d)(3) or any other documentation as the Secretary may require.

f. In the case of a false certification claim, the documentation described in 34 CFR section 682.402(e)(3).

g. In the case of a bankruptcy claim:

(1) Evidence that a bankruptcy petition has been filed and all pertinent documents sent to or received from the bankruptcy court by the lender;
(2) An assignment to the guaranty agency of any proof of claim filed by the lender regarding the loan; and
(3) 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 CFR section 682.402(g)(1)(v)).

Audit Objective – Determine whether the lender complied with the documentation requirements and deadlines for timely filing of claims with the guaranty agency concerning death, disability, false certification, closed schools, bankruptcy, or default claims.

Suggested Audit Procedures

a. Select a sample from all loans on which a claim was filed and verify that 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. Using the same sample of claims, verify that the lender maintained the required documentation to support the particular type of claim.

9. Curing Due-Diligence and Timely Filing Violations

Compliance Requirement – A due-diligence violation occurs when a lender does not perform a requirement (see III.N.8, "Timely Claim Filings by Lenders or Servicers") within the time frame specified. The time interval between collection activities is called a "gap." If the gap between collection activities exceeds that permitted a due diligence violation has occurred and the lender may incur penalties, including loss of insurance and reinsurance on the loan (34 CFR section 682.411 and 34 CFR 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, closed school, or false certification claims within the prescribed time frames prescribed. See III.N.8, above, for timely filing requirements.

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 CFR 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 CFR 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 CFR 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 CFR part 682, Appendix D, I.E.1):

a. The receipt of one full payment as defined in 34 CFR part 682, Appendix D, I.A,

b. The receipt of a new repayment agreement signed by the borrower, or

c. Successful completion of the requirements in 34 CFR part 682, Appendix D, I.E.1.

Audit Objectives – Determine whether the lender complied with the cure procedures in 34 CFR part 682, Appendix D for loans with due-diligence or timely filing violations. Determine whether the information for cures was accurately reported on the LaRS.

Suggested Audit Procedures

a. Select a sample of cured loans identified on the LaRS and verify that 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, verify that the agreement meets the repayment period limitations of 34 CFR sections 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 verify that the payment complied with the terms of the most current repayment schedule and was valid in accordance with 34 CFR part 682, Appendix D, I.A.

10. Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization

Compliance Requirement – Section 435(d) of the 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 make or 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. An "institution of higher education" is any institution that meets the definition of that term in Sections 101 or 102 of the HEA (20 USC 1001 or 1002). The term "school-affiliated organization" is defined in section 34 CFR section 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 CFR section 682.602).

The prohibition on holding or making 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 ((Section 435(d)(7) of the HEA (20 USC 1085(d)(7)); 34 CFR section 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 Section 435(d)(2) of the HEA,

which includes special requirements for 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 have a cohort default rate greater than 10 percent.

(3) 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.

(4) Must ensure that the loans previously made or held by the eligible lender trustee for the institution are included in the required annual FFEL program lender compliance audit.

b. An organization affiliated with the institution must comply with all of the requirements applicable to the institution as noted above except for requirements in paragraphs 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 paragraphs a.(1), (2), (3), and (4) (Section 435(d) of the HEA (20 USC 1087(d); 34 CFR sections 682.601 and 682.602).

ED issued a Dear Colleague letter, GEN-06-21, which is available at http://www.ifap.ed.gov/dpcletters/attachments/GEN0621.pdf, that provides guidance on this requirement.

Audit Objective – Determine whether the lender complied with the ELT provisions.

Suggested Audit Procedures

a. Obtain written representation from management as to whether it has made or 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.

b. If the representation provided by management indicates that it made or held loans for an institution of higher education, as a trustee, obtain relevant agreements/contracts, and through review of these and the loan portfolio, determine if the exceptions provided for in the law apply.

c. In auditing the lender and in performing tests relating to other compliance, the auditor should be alert for information that indicates an inaccurate representation by management concerning this compliance requirement. Such indications should be reviewed to determine whether there is an issue of noncompliance.

d. For eligible lenders acting as trustees, test a sample of loans disbursed after January 1, 2007 but prior to July 1, 2010, for compliance with the ELT provisions.

IV. OTHER INFORMATION

Selection of Major Programs When the Entity is a School that is a Lender under the FFEL Program

Some schools hold loans under the FFEL program. Under the HEA and 34 CFR section 682.601(a)(7), for any fiscal year beginning on or after July 1, 2006, in which a school engages in activities as an eligible lender, the school must submit a compliance audit covering its activities as a lender. An audit conducted in accordance with 2 CFR part 200, subpart F, that treats the lender function as a major program, will satisfy that requirement.

If the SFA Cluster (see Part 5) was selected as a major program for a school that is also a lender under the FFEL program, the auditor must also include in the audit coverage, work sufficient to render an opinion, as part of an opinion on the SFA Cluster, on the school's compliance with the requirements set forth in this program supplement. Audit documentation must demonstrate sufficient audit coverage of the above compliance requirements to support that opinion, as well as the compliance requirements set forth in the SFA Cluster. When the SFA Cluster is audited as a major program for a school that is a lender, the program should be listed in the Summary of Auditor's Results Section of the Schedule of Findings and Questioned Costs as "SFA Cluster (including CFDA 84.032 FFEL - Lenders)."

For schools that are lenders, if the SFA Cluster is not selected as a major program, CFDA 84.032 must be covered as a separate major program using this program supplement. In such cases, the program should be listed in the Summary of Auditor's Results Section of the Schedule of Findings and Questioned Costs as "CFDA 84.032 - FFEL – Lenders."

Governmental Lenders Covered as Part of a Statewide Single Audit

Some "statewide" entities are defined to include a governmental lender under the FFEL program. For such entities, this program supplement should be used to identify pertinent compliance requirements. Auditors for such entities with large FFEL lending programs must consider the provisions of 2 CFR section 200.518(b)(3) in determining major programs. When those provisions apply, coverage of the FFEL program for a lender should be identified and reported on separately and listed as a major program in the Summary of Auditor's Results Section of the Schedule of Findings and Questioned Costs as "CFDA 84.032 - FFEL – Lenders."

Use of Third-Party Servicers

Some lenders (including schools that are lenders in the FFEL program) use third-party servicer organizations to perform some or many lender functions. Third-party servicer organizations are required to obtain a financial statement audit and compliance attestation engagement under the January 2011 *Lender Servicer Financial Statement Audit and Compliance Attestation Guide* (Lender Servicer Audit Guide), issued by ED. Auditors of lenders (including school lenders) may exclude coverage of compliance requirements performed by a third-party servicer, provided the auditor has determined that the third-party servicer has obtained an audit under the Lender Servicer Audit Guide for the entire audit period of the lender. If the third-party servicer has a different audit period, the auditor of the lender must determine that the most recently required audit of the third-party servicer under the Lender Servicer Audit Guide has been completed timely, and must obtain a representation from the third-party servicer that it has engaged (or will engage) an auditor to perform the required audit under the Lender Servicer Audit Guide for the immediate subsequent audit period. The auditor of the lender must confirm that the audit period of the prior third-party servicer audit, together with the audit period for the subsequent third-party servicer audit, covers the entire audit period of the lender/school lender audit. If the auditor excludes coverage of compliance requirements performed for a third-party servicer, the *Report on Compliance With Requirements Applicable to Each Major Program and on Internal Control Over Compliance* must clearly describe the compliance requirements for which coverage has been excluded, name the third-party servicer that performed those compliance requirements, state that that the third-party servicer has obtained an audit performed under the January 2011 Lender Servicer Audit Guide, issued by ED, and specify the period of that audit. Alternatively, the auditor may decide to use a third-party servicer's audit (attestation engagement) and rely on it in rendering an opinion on compliance. In such cases, the auditor should obtain the servicer's most recent compliance audit report and any other reports regarding servicer compliance. If the servicer's compliance audit report or other reports contain findings of noncompliance, the auditor should assess the effect of that noncompliance on the nature, timing, or extent of substantive tests to be conducted at the lender and/or the servicer organization, as well as reporting that information. The auditor must also adhere to pertinent generally accepted auditing standards relating to use of servicer organization audits and reliance on the work of other auditors.