#	Subject	Summary of Change to *Common Manual*	Type of Update	Effective Date
1195	Qualifying Teaching Service for the Teacher Loan Forgiveness Program	**13.9.A Teacher Loan Forgiveness Program** States that an eligible borrower who performed some or all of his or her service at an eligible education service agency may qualify for teacher loan forgiveness only if the 5 years of qualifying teaching service include service at an eligible education service agency performed after the 2007-2008 academic year.	Guarantor	Applications received on or after August 14, 2008.
1196	Lender Inducements	**3.4.C Permitted and Prohibited Inducements** States that a lender may provide staffing services to a school on a short-term, emergency, non-recurring basis to assist with financial aid-related functions and clarifies that a lender may participate in a school's entrance and exit counseling sessions within constraints. Clarifies the prohibition against lender payment of a finder's fee, lender payment of compensation for service on an advisory board, and the disclosures required of a student who acts as a lender's representative.	Federal	July 1, 2010.
1197	Lender Reporting Requirements Relating to Preferred Lender Arrangements	**3.5 Lender Reporting** Incorporates lender reporting requirements to the Department that apply if the lender has a preferred lender arrangement with a school or institution-affiliated organization.	Federal	July 1, 2010.
1198	90/10 Rule for Proprietary Schools	**4.1.A Establishing Eligibility** **4.1.D Loss of Eligibility** **4.3.A General School Financial Responsibility Standards** Updates the sanctions that apply to a proprietary school that fails to satisfy the 90/10 rule and clarifies the time frame in which loss of eligibility occurs for such a failure. Requires the school to report its noncompliance with the 90/10 rule to the Department within 45 days after the end of any fiscal year in which noncompliance occurs.	Federal	July 1, 2010.
1199	Private Education Loans	**4.1.A Establishing Eligibility** **4.2 Administrative Capability Standards** **4.4 Providing Information to Students** Requires a school to provide upon request the Private Loan Applicant Self-	Federal	July 1, 2010.

		Certification form and the data required to complete the form and to disclose certain information to a prospective borrower to whom the school provides information about a private education loan. Requires a school to report reasonable reimbursements received for service on a private education loan lender's advisory board to the Department.		
1200	Preferred Lender Arrangements	**4.4.A** **Recommended Lender Lists** Defines preferred lender arrangement, addresses a preferred lender list for private education loan lenders, and adds information about acceptable alternatives to providing a preferred lender list.	Federal	July 1, 2010.
1201	Exit Counseling	**4.4.D.** **Exit Counseling** Clarifies the additional information borrowers must receive during exit counseling.	Federal	Exit counseling provided by the school on or after August 14, 2008, for: • The terms and conditions of Title IV loans (e.g., deferment, forbearance, and cancellation). • The forgiveness or discharge benefits available to a FFELP borrower who consolidates his or her loan(s) into the FDLP. Exit counseling provided by the school on or after July 1, 2010, for: • Information about the borrower's obligation to repay the loan(s) even if he or she does not complete the program within the regular time for program completion. • The school's ability to provide the Department's publication that describes the federal student aid programs in a printed or electronic format.
1202	Eligible Borrower Reaffirmation	**5.3** **Prior Loan Written Off** **Appendix G** Clarifies the charges that may be capitalized as of the date of reaffirmation.	Federal	Discharge applications received by the holder on or after July 1, 2010.
1203	New Loan Eligibility after a Total and Permanent Disability Discharge	**5.4.A** **Conditional Discharge of a Prior Loan Due to Total and Permanent Disability** **5.4.B** **Final Discharge of a Prior Loan Due to Total and Permanent**	Federal	Total and permanent disability discharge applications received on or after July 1, 2010. Upon publication of the 09-10 FSA Handbook, Volume

		Disability **Figure 5-1** **6.15 School Certification of the Loan** **8.7 Delivering Loan Funds** **Appendix G** Incorporates the 3-year post-discharge monitoring period for regular total and permanent disability discharges and the documentation that must be obtained by a school for a borrower whose loan is discharged (the 3-year conditional or post-discharge monitoring period has been completed) and is receiving a subsequent new loan.		1, for the purpose of determining the borrower's eligibility for a new loan after a prior loan is discharged due to total and permanent disability.
1204	Borrower's Rights and Responsibilities	**7.6.A General Initial Disclosure Requirements** Clarifies lender-specific disclosures that are separate from the Borrower's Rights and Responsibilities statement or Plain Language Disclosure. Reinserts text requiring a lender to provide an explanation of the possible effects of accepting a loan on the student's eligibility for other forms of financial aid.	Federal	Initial disclosure information provided on or after July 1, 2010.
1205	Repayment Disclosures Exception for Invalid Address	**10.12 Lender Disclosures During Repayment** **12.1.A Lender Disclosure Requirements** Exempts a lender from sending required disclosures when the lender does not have a valid address for the borrower, unless the lender receives the borrower's valid address before the borrower becomes 241 days delinquent.	Federal	Valid borrower address received by a lender on or after July 1, 2010.
1206	Total and Permanent Disability - VA	**13.1.D Claim File Documentation** **13.2 Claim Returns** **13.3 Claim Purchase or Discharge Payment** **13.8.G Total and Permanent Disability** **Appendix G** Updates the standards for total and permanent disability discharge determinations for borrowers who are determined by the Veteran's Administration to be unemployable due to a service-connected disability.	Federal	Total and Permanent Disability – VA applications received by the lender on or after July 1, 2010, for the change in the guarantor's timeframe for claim processing. Total and Permanent Disability – VA applications received by the lender on or after August 14, 2008, for all other provisions.
1207	Total and Permanent Disability Discharge Based on Regular Determinations	**13.8.G Total and Permanent Disability** **Appendix G** Updates the standards for processing regular total and permanent disability determinations, including conditions that apply during the 3-year post-discharge monitoring period. Additionally, the glossary definition for "Disability" is deleted and a definition for "Temporarily	Federal	Total and Permanent Disability Discharge Applications received by the lender on or after July 1, 2010.

		Totally Disabled" is inserted in the glossary.		
1208	IBR for FFELP Consolidation of Defaulted Loan	**15.2 Borrower Eligibility and Underlying Loan Holder Requirements** Adds the Income-Based Repayment (IBR) option as a means by which a borrower with a defaulted loan may become eligible for a FFELP Consolidation loan.	Federal	Consolidation requests received by the lender on or after July 1, 2010.
1209	eNotification Package for Cohort Default Rate and Loan Record Detail Report Request	**16.1 Overview of Cohort Default Rates and Terminology** **16.3 School Draft Cohort Default Rates and Challenges** **16.4 School Official Cohort Default Rates, Adjustments, and Appeals** **16.4.B. School Appeals** **Appendix G** Explains the eCDR package as a process used by the Department to deliver cohort default rate information to schools. Clarifies a school's timelines for submission of challenges, adjustments, and appeals.	Federal	July 1, 2010.
1210	Cohort Default Rate Adjustments and Appeals	**16.4.A School Requests for Adjustments** **16.4.B School Appeals** Specifies that if the Department approves an uncorrected data adjustment, a new data adjustment, an erroneous data appeal, or an improper loan servicing appeal; the Department will recalculate the school's cohort default rate and electronically correct the rate that was publicly released. Clarifies that if the Department approves an average rate appeal, the school will not lose its Title IV eligibility.	Federal	July 1, 2010, for two-year cohorts calculated for fiscal year 2008 through fiscal year 2011.
1211	Definition of "Agent"	**Appendix G** Defines "agent" as an officer or employee of the school or an institution-affiliated organization, for the purposes of a school's Code of Conduct and preferred lender arrangements.	Federal	July 1, 2010.
1212	Administrative Standards	**4.2 Administrative Capability Standards** States that a school must establish and maintain records required for each title IV program.	Correction	Retroactive to the implementation of the *Common Manual*.

COMMON MANUAL - GUARANTOR POLICY PROPOSAL

Date: February 19, 2010

X	DRAFT	Comments Due	Mar 12
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: **Qualifying Teaching Service for the Teacher Loan Forgiveness Program**

AFFECTED SECTIONS: **13.9.A Teacher Loan Forgiveness Program**

POLICY INFORMATION: **1195/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: Applications received on or after August 14, 2008.

BASIS:
§682.216(a); *Federal Register* dated October 29, 2009, pp. 55995 and 55996.

CURRENT POLICY:
Current policy does not address that an eligible borrower may qualify for teacher loan forgiveness only if he or she performed at least one of the 5 years of qualifying teaching service after the 1997-1998 academic year at a qualifying elementary or secondary school.

Current policy also does not address that an eligible borrower who performed some or all of his or her service at an eligible education service agency may qualify for teacher loan forgiveness only if the 5 years of qualifying teaching service include service at an eligible education service agency performed after the 2007-2008 academic year.

REVISED POLICY:
Revised policy adds that an eligible borrower may qualify for teacher loan forgiveness only if he or she performed at least one of the 5 years of qualifying teaching service after the 1997-1998 academic year at a qualifying elementary or secondary school. This text was inadvertently removed from the Manual in Policy Proposal 1113 in Batch 158.

Revised policy also adds that an eligible borrower who performed some or all of his or her service at an eligible education service agency may qualify for teacher loan forgiveness only if the 5 years of qualifying teaching service include service at an eligible education service agency performed after the 2007-2008 academic year.

REASON FOR CHANGE:
This change is necessary to comply with final rules published in the October 29, 2009, *Federal Register*. This policy adds back into the Manual text that was inadvertently removed with the incorporation of Policy Proposal 1113 in Batch 158. While these words were in the policy proposal approved by the Board, the text was moved to a new location and not underlined, and as such, not incorporated into the 2009 version of the *Common Manual*.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Subsection 13.9.A, page 57, column 2, paragraph 3, as follows:

Eligibility Criteria

To be eligible for loan forgiveness under this program, a borrower must meet all of the following criteria:

- . . .
- The borrower must have been employed as a full-time teacher for 5 consecutive, complete academic years at a ~~qualifying school~~ *qualifying school* or location operated by an ~~educational service agency~~ eligible *educational service agency* (see definitions of *qualifying school* and ~~information regarding educational service agency~~ *educational service agency* ~~locations below~~ later in this Subsection) or a combination of these

entities, as certified by the chief administrative officer(s), at the *qualifying school*(s) or *educational service agencies*.

[HEA §428J(c)(3); §682.216(a); DCL GEN-08-12/FP-08-10]

- Any consecutive 5-year period of qualifying service may be counted for teacher loan forgiveness purposes.
- Teaching at a *qualifying school* may be counted toward the required 5 consecutive complete academic years only if at least one year of teaching service was after the 1997-1998 academic year.
- Teaching at an eligible *educational service agency* may be counted toward the required 5 consecutive complete academic years only if the 5-year period includes teaching service at an eligible education service agency after the 2007-2008 academic year.

See Section H.4 for information about a statutory or regulatory waiver authorized by the HEROES Act that may impact these requirements.

- . . .
- . . .
- . . .

PROPOSED LANGUAGE - COMMON BULLETIN:

Qualifying Teaching Service for the Teacher Loan Forgiveness Program

The *Common Manual* has been updated to clarify that an eligible borrower may qualify for teacher loan forgiveness only if he or she performed at least one of the 5 years of qualifying teaching service after the 1997-1998 academic year at a qualifying elementary or secondary school. This text was inadvertently removed from the Manual in Policy Proposal 1113 in Batch 158.

Revised policy also adds clarification from the final rules published in the October 29, 2009, *Federal Register*, that permits an eligible borrower who performed some or all of his or her service at an eligible education service agency to qualify for teacher loan forgiveness only if the 5 years of qualifying teaching service includes service at an eligible education service agency performed after the 2007-2008 academic year.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

An eligible borrower who performed some or all of his or her service at an eligible education service agency may qualify for teacher loan forgiveness only the 5 years of qualifying teaching service include service at an eligible education service agency performed after the 2007-2008 academic year.

School:

None.

Lender/Servicer:

A lender may need to update its counseling materials and teacher loan forgiveness processing procedures.

Guarantor:

A guarantor may need to update its counseling materials and teacher loan forgiveness processing procedures.

U.S. Department of Education:

The Department may need to update its counseling materials and teacher loan forgiveness processing procedures.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
October 26, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others

sa/edited-kk

COMMON MANUAL – FEDERAL POLICY PROPOSAL

Date: February 19, 2010

X	DRAFT	Comments Due	Mar 12
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: **Lender Inducements**

AFFECTED SECTIONS: **3.4.C Permitted and Prohibited Inducements**

POLICY INFORMATION: **1196/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: July 1, 2010.

BASIS:
§682.200(b), Definition of Lender, (5)(i) and (ii); *Federal Register* dated October 29, 2009, p. 55989; *Federal Register* October 28, 2009 p. 55632.

CURRENT POLICY:
Current policy does not include the newest provisions and regulatory clarifications regarding permissible lender activities and prohibited inducements.

REVISED POLICY:
Revised policy clarifies the following:

- The prohibition against offering points, premiums, payments, etc., to any school or employee of the school also applies to any individual or entity if that offer is made to secure FFELP loan applications.
- Any student who acts as a lender's representative must disclose this affiliation with the lender to school administrators and to prospective borrowers.
- The lender may not pay finders' fees to another lender or other party –now explicitly defined as a school, school employee, school-affiliated organization, or an employee of a school- affiliated organization – in addition to the existing prohibition against referral and processing fees.
- The lender may not compensate a school-affiliated organization or its employee for participation in on an advisory board, commission or group established by the lender.
- The lender is permitted to participate in the school's entrance and exit counseling sessions, within certain boundaries.

REASON FOR CHANGE:
This change is made to comply with Final Rules published October 28 and 29, 2009.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Subsection 3.4.C, page 10, column 1, paragraph 1, prior to the final bullet, as follows:

Permissible Activities

- . . .

  . . .

- Staffing services to a school on a short-term, emergency, non-recurring basis to assist a school with financial aid-related functions. Such services may not be provided in an effort to secure FFELP loan applications or loan volume. The term "emergency basis" for the purpose of providing staffing support means only in the instance of a state- or federally-declared natural disaster, a federally-declared national disaster, and other localized disasters and emergencies identified by the Department. [HEA §435(d)(5)(A); *Federal Register* October 28, 2009 p. 55632]

- Other services identified by the Department . . .

Prohibited Activities

The following activities are prohibited by federal regulations and may result in a loss of the lender's FFELP eligibility:

- . . .
- . . .
- Offering—directly or indirectly—points, premiums, payments (including payments for referrals and for processing or finder fees), prizes, stock or other securities, travel, entertainment expenses, tuition payment or reimbursement, the provision of information technology equipment at below-market value, additional financial aid funds, or other inducements to any school, ~~or~~ any employee of the school, or any individual or entity in order to secure applications for FFELP loans or to secure FFELP loan volume. This includes but is not limited to:
  - . . .
  - . . .
  - Payments or other benefits provided to a student at a postsecondary school who acts as the lender's representative to secure FFELP loan applications from individual prospective borrowers, unless the student is also employed by the lender for other purposes and the student ~~has made all appropriate disclosures regarding~~ discloses that employment ~~with the lender~~ to school administrators and prospective borrowers.
    [HEA §435(d)(5)(G); §682.200(b) definition of lender (5)(i)(A)(3)]
  - . . .
  - Payment to another lender or any other party, including a school, a school employee, or a school-affiliated organization or any of its employees of referral, finders', ~~fees~~ or processing fees, except those processing fees necessary to comply with federal or state law.
    [HEA §435(d)(5); §682.200(b) definition of lender (5)(i)(A)(5)]
  - Compensating a school financial aid office employee or a school employee who has responsibilities with respect to the school's student loans or other financial aid, or paying compensation to a school-affiliated organization or any of its employees for service on an advisory board, commission, or group established by a lender or group of lenders, except that a lender may reimburse such an employee for reasonable expenses incurred in providing that service.
    [HEA §435(d)(5)(D); §682.200(b) definition of lender (5)(i)(A)(6)]]
  - Payment of conference or training registration, travel ~~transportation~~, and lodging costs for an employee of a school or school-affiliated organization.
    [HEA §435(d)(5); §682.200(b) definition of lender (5)(i)(A)(7)]
  - . . .
  - . . .
  - ~~Staffing services to a school, except for services provided to participating foreign schools at the direction of the Department, as a third-party servicer or otherwise on more than a short-term, emergency, non-recurring basis to assist a school with financial aid-related functions. The term "emergency basis" for the purpose of providing staffing support means only in the instance of a state- or federally-declared natural disaster, a federally-declared national disaster, and other localized disasters and emergencies identified by the Department.~~

~~[HEA §435(d)(5)(A); §682.200(b)]~~

- Performing for a school or paying, on behalf of a school, another person to perform any function that the school is required to perform under any Title IV program~~.~~, with the following exceptions:

  - A lender may participate in person in a school's required entrance and exit counseling as long as the school's staff is in control of the counseling, whether in person or via electronic capabilities, and such counseling does not promote the products or services of any specific lender.

  - A lender may provide certain services to participating foreign schools at the direction of the Department as a third-party servicer.
    [HEA §435(d)(5)(E) and (F); HEA §487(e)(2)(B)(ii)(IV); §682.200(b) definition of lender (5)(~~ii)(B)(~~(i)(A)(10)]

- Conducting unsolicited mailings, by mail or electronically, of student loan application forms to ~~potential borrowers (i.e.,~~ a student~~s~~ enrolled in a secondary or postsecondary school~~s~~ or his or her ~~and their~~ family members~~)~~, unless the lender has previously made a FFELP loan to the student or the student's parent.
  [HEA §435(d)(5)(B); §682.200(b) definition of lender (5)(i)(B)]

- Entering into any type of consulting arrangement or other contract . . .
  [HEA §435(d)(5)(C); §682.200(b) definition of lender (5)(i)(A)(11)]

- . . .

- . . .

- . . .

- . . .

The references to "applications" above include~~s~~ the Free Application for Federal Student Aid (FAFSA) and FFELP Master Promissory Notes . . .

PROPOSED LANGUAGE - COMMON BULLETIN:

Revised Inducement Rules

The *Common Manual* has been revised to clarify the following:

- The prohibition against offering points, premiums, payments, etc. to any school or employee of the school also applies to any other individual or entity if that offer is made to secure FFELP loan applications.
- Any student who acts as a lender's representative to secure FFELP loan applications must disclose the affiliation with the lender to school administrators and to prospective borrowers.
- The lender may not pay finders fees to another lender or other party – now explicitly defined as a school, school employee, school-affiliated organization, or an employee of a school- affiliated organization – in addition to the existing prohibition against referral and processing fees.
- The lender may not compensate a school-affiliated organization or its employee for participation in an advisory board, commission, or group established by the lender.
- The lender is permitted to participate in the school's entrance and exit counseling sessions, within certain boundaries and may continue to provide certain support to foreign schools as directed by the Department.

Also, the provision that permits a lender to provide short-term emergency support to schools is moved to "Permitted Activities" and expanded to explain that such services may not be provided in an effort to secure FFELP loan applications or loan volume.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:
Borrower:
A borrower will receive more information regarding the provider of certain loan information and be able to make a better decision regarding the loan based on any inferred any bias that might apply to that advice.

School:
The school must examine its relationships and services with lenders to ensure it complies with the newest restrictions. The school may also benefit from the lender being able to provide entrance and exit counseling.

Lender/Servicer:
The lender may assist a school with loan counseling, but must restrict certain other activities. The lender should review current school-focused interactions to ensure its compliance and as applicable, amend agreements and procedures.

Guarantor:
The guarantor may be required to amend program review procedures.

U.S. Department of Education:
The Department may be required to amend program review procedures.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
February 11, 2010

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others

bg/edited-tmh

COMMON MANUAL – FEDERAL POLICY PROPOSAL

Date: February 19, 2010

X	DRAFT	Comments Due	Mar 12
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: **Lender Reporting Requirements Relating to Preferred Lender Arrangements**

AFFECTED SECTIONS: **3.5 Lender Reporting**

POLICY INFORMATION: **1197/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: July 1, 2010.

BASIS:
HEA §152(b)(1)(B) and (b)(2); HEA §153(b); §601.40(b) - (d).

CURRENT POLICY:
Current policy contains various reporting requirements with which a lender must comply, but does not include the reporting requirements for a lender that has a preferred lender arrangement with a school or an institution-affiliated organization.

REVISED POLICY:
Revised policy incorporates a new requirement that is applicable if a lender has a preferred lender arrangement with a school or an institution-affiliated organization. The lender must report to the Department on an annual basis each of the following:

- Any reasonable expenses for service on a lender advisory board, commission, or group established by a lender or group of lenders that were paid or provided to any agent of a school who is employed in the financial aid office or who has other responsibilities with respect to education loans or other student financial aid at the school.

- Any reasonable expenses paid or provided to any agent of an institution-affiliated organization who is involved in recommending, promoting, or endorsing education loans.

This report must include all of the following each time expenses are paid or provided by a lender:

- The amount of the expenses.

- The name of the agent at the school or school-affiliated organization.

- The date and a brief description of the activity.

Revised policy incorporates guidance that requires a lender provide to the school or institution-affiliated organization, as well as to the Department, information regarding each type of FFELP loan the lender plans to offer under the preferred lender arrangement to students or families of students attending that school for the next award year. The specific information the lender must provide will be determined by the Department and the Board of Governors of the Federal Reserve System.

Revised policy incorporates guidance that states if a lender is participating in one or more preferred lender arrangements, the lender must certify on an annual basis that it is in compliance with the Higher Education Act (HEA). If a lender is required to submit an annual audit, the auditor may provide this certification as part of that audit. If a lender is not required to submit an annual audit, the lender must submit this certification directly to the Department.

REASON FOR CHANGE:
This change is made to comply with Final Rules published in the *Federal Register* dated October 28, 2009.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Section 3.5, page 18, column 2, by adding a new subsection, as follows:

3.5.I
Reporting Information Relating to Preferred Lender Arrangements

A lender that has a preferred lender arrangement with a school or an institution-affiliated organization must report to the Department on an annual basis each of the following:

- Any reasonable expenses for service on a lender advisory board, commission, or group established by a lender or group of lenders that were paid or provided to any agent of a school who is employed in the financial aid office or who has other responsibilities with respect to education loans or other student financial aid at the school.

- Any reasonable expenses paid or provided to any agent of an institution-affiliated organization who is involved in recommending, promoting, or endorsing education loans.

[HEA §152(b)(1)(B); §601.40(b)(1) and (2)]

This report must include all of the following each time expenses are paid or provided by a lender:

- The amount of the expenses.

- The name of the agent at the school or institution-affiliated organization.

- The date and a brief description of the activity.

[HEA §152(b)(1)(B); §601.40(b)(3)]

A lender that has a preferred lender arrangement must provide to a school or institution-affiliated organization, as well as to the Department, information regarding each type of FFELP loan the lender plans to offer under the preferred lender arrangement to students or families of students attending that school for the next award year. The specific information the lender must provide will be determined by the Department and the Board of Governors of the Federal Reserve System.
[HEA §153(b); §601.40(d)]

If a lender is participating in one or more preferred lender arrangements, the lender must certify on an annual basis that it is in compliance with the requirements of the Higher Education Act (HEA). If a lender is required to submit an annual audit, the auditor may provide this certification as part of that audit (see Subsection 3.8.A). If a lender is not required to submit an annual audit, the lender must submit this certification directly to the Department.
[HEA §152(b)(2); §601.40(c)]

PROPOSED LANGUAGE - COMMON BULLETIN:
Lender Reporting Requirements Relating to Preferred Lender Arrangement
The *Common Manual* has been updated with changes from Final Rules dated October 28, 2009, that incorporate several new lender reporting requirements relating to preferred lender arrangements.

If a lender has a preferred lender arrangement with a school or an institution-affiliated organization, the lender must report to the Secretary on an annual basis each of the following:

- Any reasonable expenses for service on a lender advisory board, commission, or group established by a lender or group of lenders that were paid or provided to any agent of a school who is employed in the financial aid office or who has other responsibilities with respect to education loans or other student financial aid at the school.

- Any reasonable expenses paid or provided to any agent of an institution-affiliated organization who is involved in recommending, promoting, or endorsing education loans.

This report must include all of the following each time expenses are paid or provided by a lender:

- The amount of the expenses.
- The name of the agent at the school or institution-affiliated organization.
- The date and a brief description of the activity.

A lender must provide to the school or institution-affiliated organization, as well as to the Department, information regarding each type of FFELP loan the lender plans to offer under the preferred lender arrangement to students or families of students attending that school for the next award year. The specific information the lender must provide will be determined by the Department and the Board of Governors of the Federal Reserve System.

If a lender is participating in one or more preferred lender arrangements, the lender must certify on an annual basis that it is in compliance with the Higher Education Act (HEA). If a lender is required to submit an annual audit, the auditor may provide this certification as part of that audit. If a lender is not required to submit an annual audit, the lender must submit this certification directly to the Department.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
A borrower attending a school is provided more detailed information on the type of FFELP loans the school's preferred lenders will offer for the next award year.

School:
A school with a preferred lender arrangement is provided more detailed information on the type of FFELP loans the school's preferred lenders will offer its students and families for the next award year.

Lender/Servicer:
A lender will provide more detailed information to the Department regarding its preferred lender arrangements with schools and institution-affiliated organizations. A lender will provide more detailed information to the schools regarding the types of FFELP loans it plans to provide that school's students and families for the next award year.

Guarantor:
A guarantor may need to update its program review parameters.

U.S. Department of Education:
The Department may need to update its program review parameters.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
October 29, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: February 19, 2010

X	DRAFT	Comments Due	Mar 12
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: **90/10 Rule for Proprietary Schools**

AFFECTED SECTIONS: **4.1.A Establishing Eligibility**
4.1.D Loss of Eligibility
4.3.A General School Financial Responsibility Standards

POLICY INFORMATION: **1198/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: July 1, 2010.

BASIS:
§668.14(b)(16); §668.13(c)(1)(ii); §668.23(d)(4); §668.28; *Federal Register* dated October 29, 2009, pp. 55907 – 55910 and pp. 55936 – 55942; *Federal Register* dated August 21, 2009, pp. 42388 – 42391; 09-10 FSA Handbook, Volume 2, Chapter 1, p. 2-7.

CURRENT POLICY:
Current policy states that a proprietary school loses its eligibility to participate in all Title IV programs if the school fails to comply with the 90/10 rule. In addition, current policy states that a school has 90 days after the end of its most recently completed fiscal year to report to the Department and each applicable guarantor that it did not satisfy the 90/10 rule.

REVISED POLICY:
Revised policy states that a proprietary school's certification becomes provisional at the start of a fiscal year after the school fails to satisfy the 90/10 rule for the preceding fiscal year. The school's provisional certification ends on the expiration date of the school's program participation agreement or the date that the school loses its eligibility to participate in Title IV programs because the school failed to satisfy the 90/10 rule for two consecutive fiscal years. The school must report its failure to comply with the 90/10 rule within 45 days after the end of that fiscal year.

REASON FOR CHANGE:
This update is necessary to comply with the Final Rules published in the *Federal Register* dated October 29, 2009, which moved the 90/10 rule from institutional eligibility provisions to the program participation provisions.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Note: This Subsection is also being modified by proposals 1175 and 1182 in Batches 167 and 168, respectively, and by proposal 1199 in Batch 169.

Revise Subsection 4.1.A, page 2, column 1, paragraph 1, bullet 15, by adding a new bullet as follows:

> By entering into a Program Participation Agreement (PPA), the school agrees to comply with all requirements specified in statute and federal regulations, including, but not limited to:
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- The school will develop, publish, administer, and enforce a school code of conduct that meets the minimum requirements described in Subsection 4.1.E.
- A proprietary school will derive at least 10% of its revenue for each fiscal year from sources other than Title IV funds as calculated according to the formula for determining non-Title IV revenue in 34 CFR 668.28(a) and (b) or be subject to sanctions (see Subsection 4.1.D).

Revise Subsection 4.1.D, page 11, column 1, paragraph 1, as follows:

90/10 Rule for Proprietary Schools

Federal regulations stipulate that proprietary schools must receive no more than 90% of their revenues from Title IV funds. ~~If a school fails to meet this requirement, it is ineligible to participate in all Title IV student assistance programs.~~ This requirement is known as the 90/10 rule. The formula for determining the revenue percentages is found in 34 CFR ~~600.5(d)~~ 668.28(a) and (b).

~~The determination of whether a proprietary school meets this requirement is based on the school's most recently completed fiscal year. A~~ If a proprietary school ~~that~~ fails to satisfy the 90/10 rule during its most recently completed fiscal years, the school has no more than 45 days after the end of that fiscal year to report to the Department and each applicable guarantor that it did not satisfy the 90/10 rule for that period. A proprietary school's certification becomes provisional at the start of a fiscal year after the school fails to satisfy the 90/10 rule for the preceding fiscal year. The school's provisional certification ends on either of the following:

- The expiration date of the school's program participation agreement, in effect on the date that the school failed to satisfy the 90/10 rule.
- The date the school loses its eligibility to participate in Title IV programs. The school will lose its eligibility on the last day of ~~that~~ the second consecutive fiscal year for which the school failed to satisfy the 90/10 rule.

To regain eligibility to participate in Title IV programs, a proprietary school must demonstrate that it has complied with State licensing, accreditation, and the financial responsibility requirements for a minimum of two fiscal years after the end of the fiscal year in which the school became ineligible.
[§668.28(c)]

~~A school has 90 days after the end of its most recently completed fiscal year to report to the Department and each applicable guarantor that it did not satisfy the 90/10 rule for that period.~~

~~If a school determines that it did satisfy the 90/10 rule during its most recently completed fiscal year, it must have the independent certified public account who prepares its audited financial statement report on the accuracy of the school's calculation—based on performing an agreed-~~

~~upon procedure attestation engagement. The report must be included as part of the audited financial statement.~~
~~[§600.5(a)(8); §600.5(d)-(g); §600.40(a)(2); §668.15]~~

Revise Subsection 4.3.A, page 14, column 2, paragraph 1, last sentence as follows:

Financial Statements and Audit Requirements

Each year, a school is required to submit to the Department—for the school's most recently completed fiscal year—a financial statement prepared on an accrual basis according to generally accepted accounting principles.
[§668.23(a)(4); §668.23(d)(1) and (2)]

A proprietary school must disclose in a footnote to its financial statement the percentage of it revenues derived from Title IV programs during the covered fiscal year. The revenue percentage must be calculated in accordance with 34 CFR 668.28(a) and (b). The proprietary school must also include, in the footnote, the dollar amount of the numerator and of the denominator in the school's 90/10 calculation along with the individual revenue amounts by source (see Section 2 of Appendix C in subpart B of 34 CFR 668). The independent certified public account who prepares a proprietary school's audited financial statement must report on the accuracy of the school's calculation of the 90/10 components—based on performing an agreed-upon procedure attestation engagement.
[§668.23(d)(4); 09-10 FSA Handbook, Volume 2, Chapter 1, p. 2-7]
~~[§668.23(a)(4); §668.23(d)(1), (2), and (4)]~~

PROPOSED LANGUAGE - COMMON BULLETIN:
90/10 Rule for Proprietary Schools
The Manual has been revised to state that if a proprietary school fails to satisfy the 90/10 rule during its most recently completed fiscal year, the school has no more than 45 days after the end of that fiscal year to report to the Department and each applicable guarantor that it did not satisfy the 90/10 rule for that period. A proprietary school's certification becomes provisional at the start of a fiscal year after the school fails to satisfy the 90/10 rule for the preceding fiscal year. The school's provisional certification ends on either of the following:

- The date of the expiration date of the school's program participation agreement, in effect on the date that the school failed to satisfy the 90/10 rule.

- The date the school loses its eligibility to participate in Title IV programs. The school will lose its eligibility on the last day of the second consecutive fiscal year for which the school failed to satisfy the 90/10 rule.

To regain eligibility to participate in Title IV programs, a proprietary school must demonstrate that it has complied with State licensing, accreditation, and the financial responsibility requirements for a minimum of two fiscal years after the end of the fiscal year in which the school became ineligible.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
None.

School:
Instead of losing its eligibility to participate in Title IV programs, a proprietary school's certification becomes provisional at the start of the first fiscal year after the school fails to satisfy the 90/10 rule for the preceding fiscal year.

Lender/Servicer:
None.

Guarantor:
A guarantor may need to revise its program review criteria for a proprietary school.

U.S. Department of Education:
The Department may need to revise its program review criteria and application of sanctions for a proprietary school that fails to comply with the 90/10 rule.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
October 26, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others

om-ce/edited-aes

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: February 19, 2010

X	DRAFT	Comments Due	Mar 12
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: **Private Education Loans**

AFFECTED SECTIONS:
4.1.A Establishing Eligibility
4.2 Administrative Capability Standards
4.4 Providing Information to Students

POLICY INFORMATION: **1199/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: For administrative capability standards, August 14, 2008.

Private loan information provided by a school on or after July 1, 2010.

Borrower requests for private loan eligibility information received by a school on or after February 14, 2010.

BASIS:
§601.11; §668.14(b)(29); §668.16(d)(1) and (2); *Federal Register* dated October 28, 2009, pp. 55630-55631 and 55648; *Federal Register* dated July 28, 2009, p. 37445; *Federal Register* dated August 14, 2009, pp. 41226-41227; DCL GEN-10-01.

CURRENT POLICY:
Current policy does not address a school's requirements to provide certain information to students about private education loans, nor does it address a school's reporting requirements in cases when a school agent with financial aid responsibilities receives reasonable reimbursement for expenses incurred while serving on an advisory board or commission established by a private education loan lender or group of lenders.

REVISED POLICY:
Revised policy incorporates requirements for a school participating in the FFELP to provide certain information about a private education loan available to a student who is a private education loan applicant:

- As a condition of a school's Program Participation Agreement, a school must provide to an enrolled or admitted student, or to the parent of an enrolled or admitted student, upon request, the Private Education Loan Applicant Self-Certification form and the information required to complete the form. Upon the request of the student or parent, the school must also provide information about federal, state, and institutional financial aid.

- A school that provides information regarding a private education loan from a lender to a prospective borrower must provide information the Federal Reserve System requires to be disclosed under the Truth in Lending Act (TILA), a statement that the prospective borrower may qualify for Title IV loans and/or grant funds, and a statement that the terms and conditions of a Title IV loan may be more favorable than the provisions of a private education loan.

Revised policy also incorporates an administrative capability standard that requires a school to report annually to the Department the amount of reasonable expenses paid or provided by a private education loan lender or group of lenders, the name of the school agent who received the reimbursement, a brief description of each activity for which reimbursement was paid or provided, and the date that activity occurred.

The aforementioned reimbursements arise from reasonable expenses incurred by a school's agent who has responsibilities for education loans or financial aid, for that agent's service on an advisory board or commission established by a private education loan lender or a group of lenders. This permissible activity and the definition of reasonable expenses incurred by schools' agent for this purpose are addressed separately in Subsection 4.1.E as updated by policy proposal 1176 in Batch 167.

REASON FOR CHANGE:
This change is necessary to conform to statutory changes incorporated by the Higher Education Opportunity

Act (HEOA) and final rule changes published by the Department in the *Federal Register* dated October 28, 2009.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Note: This Subsection is also being modified by proposals 1175 and 1182 in Batches 167 and 168, respectively, and by proposal 1198 in Batch 169.

Revise Subsection 4.1.A, page 2, column 1, by adding a new bullet 4:

By entering into a Program Participation Agreement (PPA), the school agrees to comply with all requirements specified in statute and federal regulations, including, but not limited to:

- . . .
- . . .
- . . .
- Upon the request of an admitted or enrolled student or the parent of an admitted or enrolled student who is a private education loan applicant, the school must provide the student or parent with all of the following:
  - The Department's approved Private Education Loan Applicant Self-Certification form.
  - The information necessary to complete the form, if the school possesses the information.
  - Information about the availability of federal, state, and institutional financial aid.

  [§601.11(d); §668.14(b)(29)]

  For more information about the Private Education Loan Applicant Self-Certification form, see Subsection 4.4.E.

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Revise Section 4.2, page 12, column 2, paragraph 3, as follows:

A school must demonstrate that it is capable of adequately administering the FFELP by meeting the following additional requirements:

- . . .
- . . .
- . . .
- . . .
- . . .
- . . .
- A school must annually report to the Department the amount of any reasonable expenses that were paid or provided by a private education loan lender or group of lenders to an agent of the school with responsibilities for financial aid. The school must report all of the following:
  - The amount for each specific instance of reasonable expenses paid or provided. See subsection 4.1.E for more information about the standards for

determining reasonable expenses.

- The name of the agent with responsibilities for financial aid to whom the expenses were paid or provided.
- The dates of each activity for which the expenses were paid or provided.
- A brief description of each activity for which the expenses were paid or provided.

[§668.16(d)(1) and (2)]

Revise Section 4.4, page 27, column 2, by adding a new subsection at the end of Subsection 4.4.D, as follows:

4.4.E
Private Education Loan Information

A school or an institution-affiliated organization that provides information regarding a private education loan from a lender to a prospective borrower must provide all of the following disclosures to the prospective borrower, regardless of whether the school or the institution-affiliated organization participates in a preferred lender arrangement:

- The information that the Board of Governors of the Federal Reserve System (Federal Reserve Board) requires to be disclosed under the Truth in Lending Act (TILA). A school may rely upon the information it obtains from a private education loan lender on the Private Loan Application and Solicitation Model form approved by the Federal Reserve Board or in another format that contains the same information as on the model disclosure form. For more information about the Private Loan Application and Solicitation Model form, see the final rules published in the *Federal Register* dated August 14, 2009, Vol. 74, No. 156, pp. 41237 and 41238.
- A statement that the prospective borrower may qualify for Title IV loan or grant funds.
- A statement that the terms and conditions of Title IV loans may be more favorable than the provisions of private education loans.

[§601.11(a) and (b)]

In addition, a school or an institution-affiliated organization must ensure that information regarding private education loans is presented in such a manner as to be distinct from information regarding Title IV loans.
[§601.11(c)]

Private Education Loan Applicant Self-Certification Form

Upon the request of an admitted or enrolled student, or the parent of an admitted or enrolled student who is a private education loan applicant, including a student or parent who is an applicant for a private loan made by the school, the school must provide the applicant with all of the following:

- The Private Education Loan Applicant Self-Certification form in paper or electronic format. A school may provide the self-certification form by posting the form on its website or the school may provide the form directly to the applicant through the school's financial aid office or another designated office at the school. The school must provide the form to an applicant who requests it even if the private education loan for which the applicant is applying will be made by the school.
[§601.11(d); §668.14(b)(29)(i)]
- Information that is necessary for the student or parent to complete the form, if the school possesses the information, including all of the following:

- The student's cost of attendance (COA).
- The estimated amount of financial assistance (EFA) that the school expects the student to receive, including amounts used to replace the EFC.
- The amount that is the difference between the student's COA and EFA (i.e., unmet need).

[§601.11(d); §668.14(b)(29)(i)(A) through (C)]

A school is not required to update the information necessary for the student or parent to complete the form in a case when the information later changes. A school may, but is not required to, provide the self-certification form and the information necessary to complete the form directly to the private education loan lender.

- At the request of the applicant, information about the availability of federal, state and institutional financial aid.
[§668.14(b)(29)(ii)]

PROPOSED LANGUAGE - COMMON BULLETIN:

Private Education Loans

The *Common Manual* has been updated to include final rule changes published in the October 29, 2009, *Federal Register* and DCL GEN-10-01, that require a school to provide certain disclosures to a student or parent who is a private education loan applicant, and to report to the Department certain aspects of a school agent's activities with respect to a private education loan lender.

Private Education Loan Applicant Self-Certification Form

As a condition of a school's Program Participation Agreement, a school must provide to an enrolled or admitted student or to the parent of an enrolled or admitted student, including a student or parent who is an applicant for a private loan made by the school, all of the following:

- The Private Education Loan Applicant Self-Certification form in paper or electronic format. A school must provide the self-certification form upon the applicant's request by posting the form on its website or the school may provide the form directly to the applicant through the school's financial aid office or another designated office at the school. The school must provide the form to an applicant who requests it even if the private education loan for which the applicant is applying will be made by the school.
- Information that is necessary for the applicant to complete the form, if the school possesses the information, including all of the following:
  - The student's cost of attendance (COA).
  - The estimated amount of financial assistance (EFA) that the school expects the student to receive, including amounts used to replace the EFC.
  - The amount that is the difference between the student's COA and EFA (i.e., unmet need).

A school is not required to update the information necessary for the applicant to complete the form in a case when the information later changes. A school may, but is not required to, provide the self-certification form and the information necessary to complete the form to the private education loan lender.

In addition, at the request of the applicant, the school must discuss the availability of federal, state, and institutional financial aid.

Reasonable Reimbursements a School Agent Receives for Service on a Private Lender's Advisory Board

A school must annually report to the Department the amount of any reasonable expenses that were paid or provided by a private education loan lender or group of lenders to an agent of the school with responsibilities for financial aid. The school must report all of the following:

- The amount for each specific instance of reasonable expenses paid or provided. See subsection 4.1.E for more information about the standards for determining reasonable expenses.

- The name of the agent with responsibilities for financial aid to whom the expenses were paid or provided.

- The dates of each activity for which the expenses were paid or provided.

- A brief description of each activity for which the expenses were paid or provided.

The aforementioned reimbursements arise from reasonable expenses incurred by a school agent who has responsibilities for education loans or financial aid for that agent's service on an advisory board or commission established by a private education loan lender or group of lenders. This permissible activity, and the definition of reasonable expenses incurred by a school's agent for this purpose, are addressed separately in Subsection 4.1.E as updated by policy proposal 1176 in Batch 167.

Private Education Loan Information
A school or an institution-affiliated organization that provides information regarding a private education loan from a lender to a prospective borrower must provide all of the following disclosures to the prospective borrower, regardless of whether the school or the institution-affiliated organization participates in a preferred lender arrangement:

- The information the Federal Reserve System requires to be disclosed under the Truth in Lending Act (TILA). A school may rely upon the information it obtains from a private education loan lender on the Private Loan Application and Solicitation Model form approved by the Federal Reserve System or in another format that contains the same information as on the model disclosure form. For more information about the Private Loan Application and Solicitation Model form, see the final rules published by the Federal Reserve Board in the *Federal Register* dated August 14, 2009, Vol. 74, No. 156, pp. 41237 and 41238.

- A statement that the prospective borrower may qualify for Title IV loan or grant funds.

- A statement that the terms and conditions of Title IV loan may be more favorable than the provisions of private education loans.

In addition, a school or an institution-affiliated organization must ensure that information regarding private education loans is presented in such a manner as to be distinct from information regarding Title IV loans.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
A private education loan applicant will receive additional information that permits the applicant to make a more informed choice about his or her federal and private financial aid options.

School:
A school may be required to revise its internal financial aid policies and procedures to ensure that it provides the self-certification form, the information required on the form, and information about other financial aid options that are available at the school upon the request of a private education loan applicant. In addition, the school may be required to update its procedures to ensure that, when the school provides information about a private education loan from a lender, the school also provides the disclosures mandated by TILA and necessary statements about Title IV financial aid. The school may be required to establish procedures to ensure that data on reasonable reimbursements paid or provided to a school agent for service on an advisory board established by a private education loan lender or group of lenders is recorded and reported to the Department.

Lender/Servicer:
None for a FFELP lender or servicer.

Guarantor:
A guarantor may conduct training for schools that must comply with requirements relating to the disclosure and reporting of information about private education loans and private education loan lenders.

U.S. Department of Education:
The Department may be required to update its program review procedures for schools, and to develop a timeline and process for receiving reports from schools about reasonable reimbursements paid or provided to the school's agent(s) for service on an advisory board or commission established by a private education loan lender or group of lenders.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
October 29, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others

rbl/edited-aes

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: February 19, 2010

X	DRAFT	Comments Due	Mar 12
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: **Preferred Lender Arrangements**

AFFECTED SECTIONS: **4.4.A Recommended Lender Lists**

POLICY INFORMATION: **1200/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: July 1, 2010.

BASIS:
§601.2(b); §668.14(b)(28); §668.16(d)(1) and (2)(i)(A)-(D); *Federal Register* dated October 28, 2009, pp. 55629 and 55630; DCL GEN-08-06.

CURRENT POLICY:
Current policy does not define a preferred lender arrangement, or address the criteria required for schools when providing students with a preferred lender list of private education loans. Current policy also does not address acceptable alternatives to participating in a preferred lender arrangement for private education loans.

REVISED POLICY:
Revised policy defines a preferred lender arrangement, addresses a preferred lender list of private education loan lenders, and adds new information about acceptable alternatives to providing a preferred lender list. Because of the addition of new information about preferred lender arrangements the section about preferred lender lists is being reorganized to clarify and better illustrate the requirements for how a school creates a preferred lender list, the disclosures that a school must include on the list, and other disclosures required of a school that participates in a preferred lender arrangement.

REASON FOR CHANGE:
This change is necessary to comply with regulatory changes published in the October 28, 2009, *Federal Register*.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Section 4.4.A, page 19, column 1 as follows:

4.4.A
Preferred ~~Recommended~~ Lender Arrangements and Lists
A preferred lender arrangement is an agreement between a lender and a school or an institution-affiliated organization under which a lender issues loans to a school's students or a student's family and the school or institution-affiliated organization recommends, promotes, or endorses the lender's loans. A preferred lender arrangement does not include: [§601.2(b)]

- Arrangements or agreements with respect to loans made under the Federal Direct Loan Program.
- Arrangements or agreements with respect to loans that originate through the PLUS Loan auction pilot program.
- A private education loan made by a school or institution-affiliated organization to a student attending the school, provided the loan meets any one of the following conditions:
  - Funded by the school's or institution-affiliated organization's own funds.
  - Funded by donor-directed contributions.

- Made under title VII or title VIII of the Public Service Health Act.

- Made under a State-funded financial aid program, if the terms and conditions of the loan include a loan forgiveness option for public service.

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

- The maximum amounts of Title IV grant and loan aid available to students in an easy to understand format.
  [§668.10(a)(1)(i)]

- The information identified on a model disclosure form developed by the Department for each type of FFELP loan that is offered pursuant to a preferred lender arrangement. This information must be provided in a manner that allows for the student and his or her family to take the information into account before selecting a lender or applying for an education loan.
  [§601.10(c)(2); §668.10(a)(1)(ii)]

- A statement that the school is required to process FFELP loan documents from any eligible lender the student selects.
  [§668.10(a)(1)(iii)]

- The information identified on the Private Loan Application and Solicitation Model Form approved by the Federal Reserve Board for each type of private education loan that is offered pursuant to a preferred lender arrangement. This information must be provided in a manner that allows for the student and his or her family to take the information into account before selecting a lender or applying for an education loan. For more information about the Private Loan Application and Solicitation Model Form, see the final rules published by the Federal Reserve Board in the *Federal Register* dated August 14, 2009, Vol. 74, No. 156, pp. 41237 and 41238.
  [§601.10(c)(2); §668.10(a)(2)(i) and (ii)]

For any year in which a ~~A~~ school has a preferred lender arrangement, the school must compile, maintain, and make available ~~may provide~~ to a student and ~~their~~ his or her family ~~parents~~ a list of ~~recommended~~ FFELP or private education loan lenders that the school recommends, promotes, or endorses. ~~If a school chooses to provide such a list,~~ The list must:
[§668.14(b)(28)]

- ~~Not be used to deny or otherwise impede a borrower's choice of lender.~~

- Contain at least three unaffiliated FFELP lenders that will make FFELP loans to borrowers or students attending the school. If the school participates in a preferred lender arrangement for private education loans, the list must include at least two unaffiliated private education lenders. If any listed lender is an affiliate of any other listed lender, the school must provide the details of the affiliation. The lender affiliation provision does not include entities that are involved in post-disbursement activities, which a school has no ability to monitor or control. For the purposes of this subsection, a lender is affiliated with another lender if any of the following criteria applies:
  [§668.10(d)(2)]

  - . . .

  - . . .

  - . . .

- Not include lenders that have offered, or have offered in response to a solicitation by the school, financial or other benefits to the school in exchange for inclusion on the list or any promise that a certain number of loan applications will be sent to the lender by the school or its students.

- Disclose prominently the method and criteria used by the school in selecting any lender that it recommends
[§601.10(d)(3); §682.212(h)(2)(i)]

- Disclose why the school participates with each lender on the list, particularly with respect to terms and conditions or provisions that are favorable to the borrower.
[§601.10(d)(1)(ii)]

A school that provides a FFELP or private education loan preferred ~~recommended~~ lender list must do each of the following:

- ~~Disclose, as part of the list, the method and criteria used by the school in selecting any lender that it recommends.~~

- Provide comparative information to prospective borrowers about interest rates and other benefits offered by the lenders.

- Include a prominent statement in any information related to its list of lenders, advising prospective borrowers that they are not required to use one of the school's recommended lenders.
[§601.10(d)(1)(iii); 682.212(h)(2)(iii)]

- ~~For first-time borrowers, not assign, through award packaging or other methods, a borrower's loan to a particular lender.~~

- Exercise a duty of care and a duty of loyalty to compile the preferred lender list without prejudice and for the sole benefit of the students or their family.
[§601.10(d)(4)]

- Not deny or otherwise impede a borrower's choice of lender or cause unnecessary certification delays for borrowers who choose ~~use~~ a lender that that is not included on the preferred lender list ~~has not been recommended by the school~~.
[§601.10(d)(5)]

- Update any list of preferred ~~recommended~~ lenders and any information accompanying such a list no less often than annually.
[§682.212(h)]

A school that chooses not to ~~publish a recommended lender list~~ participate in a FFELP or private preferred lender arrangement, or that has not been able to identify ~~three or more~~ the requisite number of unaffiliated lenders to make loans to its students and parents under a preferred lender arrangement may provide alternative information to assist its students and/or parents with their choice of lender. The school may provide ~~either~~ any of the following:
[DCL GEN-08-06]

- The names of lenders that have indicated a willingness to make FFELP or private education loans to students and their parents for attendance at the school.

- A neutral, comprehensive list of lenders that have made FFELP or private education loans in the past three to five years (or some other time frame established by the school) to students and parents at the school and that have indicated a willingness to continue to make ~~FFELP~~ education loans, as long as the lenders did not provide any prohibited inducement to the school to secure loan applications. A school may provide a comparison of terms and conditions offered by the lenders on the loans being offered.

- A referral to a Web site maintained by a third party entity that contains a neutral list of

private education loan lenders and the products each lender offers. However, the school must ensure that third party Web site complies with all of the following:

- The listing of private education loan lenders is broad in scope.
- The third party Web site does not recommend or endorse any of the lenders on the list.
- The private education loan lenders on the list do not pay the third party entity for placement on the list or pay the third party entity a fee based on any loan volume generated.

When providing either type of lender information, the school must not provide any additional information about any lender on the list it offers, must make clear that it is not endorsing any lender, and must clearly state that the student and/or parent may choose any FFELP or private education loan lender that will make loans for attendance at that school.

PROPOSED LANGUAGE - COMMON BULLETIN:

Preferred Lender Arrangements and Lists

The *Common Manual* has been updated with clarifications from final rules published in the October 29, 2009, Federal Register concerning preferred lender arrangements and preferred lender lists. The updated section defines a preferred lender arrangement, addresses a preferred lender list of private education loan lenders, and adds new information about acceptable alternatives to providing a preferred lender list. Because of the addition of new information about preferred lender arrangements the section about preferred lender lists is being reorganized to clarify and better illustrate the requirements for how a school creates a preferred lender list, the disclosures that a school must include on the list, and other disclosures required of a school that participates in a preferred lender arrangement.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

A borrower may be advised of loan options by a school with a greater emphasis on how each option relates to the best interests of the borrower and student.

School:

The school may need to revise its procedures for providing disclosures relative to its participation in a preferred lender arrangement. A school that does not wish to participate in a preferred lender arrangement has more permissible options for providing students with information about their education loan lending options.

Lender/Servicer:

A lender may be required to respond to requests from schools for information about loan terms and conditions in preferred lender arrangements.

Guarantor:

A guarantor may be required to modify school program review standards

U.S. Department of Education:

The Department may be required to modify school program review standards.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:

CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:

December 5, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

PROPOSAL DISTRIBUTED TO:
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Interested Industry Groups and Others

bmf/edited-rrl

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: February 19, 2010

X	DRAFT	Comments Due	Mar 12
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: **Exit Counseling**

AFFECTED SECTIONS: **4.4.D Exit Counseling**

POLICY INFORMATION: **1201/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT:

Exit counseling provided by the school on or after August 14, 2008, for:

- The terms and conditions of Title IV loans (e.g., deferment, forbearance, and cancellation).
- The forgiveness or discharge benefits available to a FFELP borrower who consolidates his or her loan(s) into the FDLP.

Exit counseling provided by the school on or after July 1, 2010, for:

- Information about the borrower's obligation to repay the loan(s) even if he or she does not complete the program within the regular time for program completion.
- The school's ability to provide the Department's publication that describes the federal student aid programs in a printed or electronic format.

BASIS:

§485(b) of the Higher Education Act as amended by the Higher Education Opportunity Act (P.L. 110-315) (HEOA); §682.604(g); *Federal Register* dated October 28, 2009, p. 55640; DCL GEN-08-12/FP-08-10.

CURRENT POLICY:

Current policy states the information schools must provide any Stafford or Grad PLUS loan borrower during exit counseling.

REVISED POLICY:

Revised policy clarifies the additional information borrowers must receive during exit counseling:

- The forgiveness or discharge benefits available to a FFELP borrower who consolidates his or her loan into the FDLP.

- That the borrower must repay the loan even if he or she does not complete the program within the regular time for program completion.

Revised policy also explicitly states that the school may provide either a printed or electronic copy of the Department's publication that describes the federal student aid programs.

REASON FOR CHANGE:

These changes are necessary to incorporate statutory changes resulting from the HEOA and clarification provided in Final Rules published in the *Federal Register* dated October 28, 2009.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Subsection 4.4.D, page 27, column 1, bullet 2, as follows:

- . . .

- The terms and conditions under which the borrower may defer or forbear repayment, or obtain a full or partial discharge, forgiveness, or cancellation of the principal and interest <u>on a Title IV loan, including forgiveness or discharge benefits available to a FFELP borrower who consolidates his or her loan into the FDLP.</u>
  [HEA §485(b)(1)(A)(iv) and (v);§682.604(g)(2)(viii)]

Revise Subsection 4.4.D, page 27, column 2, bullet 1, as follows:

- The obligation to repay the full amount of the loan—even if the borrower has not completed the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services the borrower purchased from the school. (The school or the school designee must provide this information to all of the school's borrowers except those who receive a loan made or originated by the school).
  [§682.604(g)(2)(iv)]

- The availability of Title IV loan information in the National Student Loan Data System (NSLDS) and how it can be used to obtain information on the status of the borrower's loans. In addition, a school must ensure that the borrower is provided the NSLDS disclosure form developed by the Department.
  [HEA §485(b)(1)(A)(ix) and §485B(d)(3)]

- A printed or electronic copy of the Department's publication that describes the federal student aid programs.
  [HEA §485(b)(1)(A)(iv) and §485(d)(1)]

*NOTE: *As of this writing, the Department has not informed the FFELP community which of its publications it intends to use to fulfill the requirements described in the last two bullets above.*

PROPOSED LANGUAGE - COMMON BULLETIN:

Exit Counseling

The *Common Manual* has been revised to clarify information that a borrower must receive during exit counseling:

- The terms and conditions of a Title IV loan (e.g., deferment, forbearance, and cancellation).

- The forgiveness and discharge benefits available to a FFELP borrower who consolidates his or her loan(s) into the FDLP.

- That the borrower must repay the loan(s) even if he or she does not complete the program within the regular time for program completion.

Revised policy also explicitly states that the school may provide either a printed or electronic copy of the Department's publication that describes the federal student aid programs.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

A borrower will receive additional information about his or her loan repayment obligations and discharge options. A borrower will have more flexible options for accessing the Department's information about federal student aid opportunities.

School:

A school may need to review their exit counseling procedures and content.

Lender/Servicer:

None.

Guarantor:

A guarantor may need to update its program review procedures and exit counseling tools or presentations that it provides to assist schools in complying with exit counseling requirements.

U.S. Department of Education:
The Department may need to update its program review procedures and exit counseling tools that it provides to assist schools in complying with exit counseling requirements.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
October 26, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

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COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: February 19, 2010

X	DRAFT	Comments Due	Mar 12
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SUBJECT: **Eligible Borrower Reaffirmation**

AFFECTED SECTIONS: **5.3 Prior Loan Written Off**
Appendix G

POLICY INFORMATION: **1202/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: Discharge applications received by the holder on or after July 1, 2010.

BASIS:
§682.201(a)(4)(i); *Federal Register* published October 29, 2009, p. 55990.

CURRENT POLICY:
Current policy states that for the purpose of reaffirmation, the reaffirmed amount must include all principal and interest accrued on the written-off portion of the loan through the date on which the borrower reaffirms his or her commitment to repay the loan. It may also include collection costs, late charges, and legal costs. Any outstanding charges, such as interest, collection costs, late charges, or legal costs, may be capitalized as of the date the loan is reaffirmed.

REVISED POLICY:
Revised policy changes "legal costs" to "court costs" and adds "attorney fees" to the list of charges that may be reaffirmed.

REASON FOR CHANGE:
These changes are being made to comply with the changes provided in the Final Rules published in the *Federal Register* dated October 28, 2009, p. 55990.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Section 5.3, page 9, column 1, paragraph 4, as follows:

> The reaffirmed amount must include all principal and interest accrued on the written-off portion of the loan through the date on which the borrower reaffirms his or her commitment to repay the loan. It may also include collection costs, late charges, and ~~legal~~ court costs, and attorney fees. Any outstanding charges, such as interest, collection costs, late charges, ~~or legal~~ court costs, or attorney fees may be capitalized as of the date the loan is reaffirmed. [§682.201(a)(4)(i)~~ and (b)(2)~~; DCL 96-L-186/96-G-287, Q & A #4, #7, #8, #9, and #11]

Revise Appendix G, page 19, column 1, paragraph 1, as follows:

> **Reaffirmation:** A borrower's acknowledgment of a loan repayment obligation—including all principal, interest, collection costs, ~~legal~~ court costs, attorney fees, and late charges—in a legally binding manner.

PROPOSED LANGUAGE - COMMON BULLETIN:
Eligible Borrower Reaffirmation
The *Common Manual* has been updated to incorporate Final Rules dated October 29, 2009. For the purpose of reaffirmation of a loan, the reaffirmed amount includes attorney fees and the term "legal costs" was changed to "court costs."

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:

A borrower who reaffirms his or her loan will understand that the reaffirmed amount includes court costs and legal fees.

School:
None.

Lender/Servicer:
A lender may include court costs and attorney charges in the amount incurred by a borrower who reaffirms his or her loan.

Guarantor:
A guarantor may include court costs and attorney charges in the amount incurred by a borrower who reaffirms his or her loan.

U.S. Department of Education:
The Department may include court costs and attorney charges in the amount incurred by a borrower who reaffirms his or her loan.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
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PROPOSAL DISTRIBUTED TO:
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COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: February 19, 2010

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SUBJECT: **New Loan Eligibility after a Total and Permanent Disability Discharge**

AFFECTED SECTIONS:

5.4.A Conditional Discharge of a Prior Loan Due to Total and Permanent Disability
5.4.B Final Discharge of a Prior Loan Due to Total and Permanent Disability
Figure 5-1
6.15 School Certification of the Loan
8.7 Delivering Loan Funds
Appendix G

POLICY INFORMATION: **1203/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: Total and permanent disability discharge applications received on or after July 1, 2010.

Upon publication of the 09-10 FSA Handbook, Volume 1, for the purpose of determining the borrower's eligibility for a new loan after a prior loan is discharged due to total and permanent disability.

BASIS:
§682.200(b) definition of "substantial gainful activity"; §682.201(a)(6) and (7); *Federal Register* dated July 23, 2009, p. 36559; *Federal Register* dated October 29, 2009, pp. 55990-55991; *FSA Handbook*, Volume 1, Chapter 3, p.1-51.

CURRENT POLICY:
Current policy provides requirements that a borrower must meet to receive new loan funds after a prior loan or TEACH grant was initially discharged and placed in a 3-year conditional period based on the borrower's total and permanent disability. Also, current policy provides requirements that a borrower must meet to receive a new loan after receiving a final loan discharge for a prior loan based on the borrower's total and permanent disability. In order to receive a new loan after a prior loan was discharged, a borrower had to reaffirm any loan that had been discharged due to total and permanent disability on or after July 1, 2001, but before July 1, 2002, if the borrower applies for a new loan within 3 years from the date the borrower became totally and permanently disabled, as certified by a physician.

Current policy provides requirements that must be met before a school may certify and disburse new loan funds to a borrower whose prior loan received an initial or final discharge due to the borrower's total and permanent disability. Also, current policy defines "substantial gainful activity" as the ability to work and earn money.

REVISED POLICY:
Revised policy:

- Adds that a borrower whose prior loan received a final discharge and is placed in a 3-year post-discharge monitoring period due to a determination that the borrower is totally and permanently disabled must meet the same requirements as borrower whose loan was placed in a 3-year conditional period.

- Removes the requirement that in order to receive a new loan after a prior loan was discharged, a borrower had to reaffirm any loan that had been discharged due to total and permanent disability on or after July 1, 2001, but before July 1, 2002, if the borrower applies for a new loan within 3 years from the date the borrower became totally and permanently disabled, as certified by a physician.

- States that for a borrower who requests a new loan after prior loans are discharged following the 3-year post-discharge monitoring period, he or she only needs to obtain the physician certification once and the school should keep a copy of it in the borrower's file. However, the school must collect a new borrower acknowledgment from the borrower for each new loan he or she requests.

- Clarifies that a loan that is discharged due to total and permanent disability based on a determination by the U.S. Department of Veterans Affairs is not placed in a 3-year conditional discharge period or 3-year post-discharge monitoring period.

- Adds to the text and the glossary, the definition "substantial gainful activity" as a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both. "For profit" covers a self-employed individual who is not paid by an employer and does not refer to income from sources other than employment. Non-employment income will not be considered when determining whether a borrower is capable of substantial gainful activity.

REASON FOR CHANGE:
These changes are being made to update the Manual with preamble language from proposed rules published in the *Federal Register* dated July 23, 2009, final rules published in the *Federal Register* dated October 19, 2009, and the *FSA Handbook*, Volume 1, Chapter 3, p.1-51.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Note: Certain portions of Subsection 5.4.A were previously revised by Policy 1149 of Batch 162 that was approved by the Governing Board on November 19, 2009. For ease of reference, the text below is from the November 2009,* ICM *that incorporated the changes from Policy 1149.

Revise Subsection 5.4.A, page 9, column 2, paragraph 2, as follows:

5.4.A
Prior Loan in a Conditional Discharge or Post-Discharge Monitoring Period ~~of a Prior Loan~~ Due to Total and Permanent Disability

A borrower whose prior Title IV loan(s) is conditionally discharged ~~due to an initial determination that the borrower is totally and permanently disabled~~ or has been discharged and is in a 3-year post-discharge monitoring period due to a determination that the borrower is totally and permanently disabled, must do the following before a school may certify a new Stafford or PLUS loan for the borrower:

- Submit a request to the Department's Conditional Discharge Disability Unit indicating that the conditionally discharged loan(s), or loan(s) in a post-discharge monitoring period be returned to repayment.

- Advise the school that he or she has begun the process of returning the conditionally discharged loan(s) or loan(s) in a post-discharge monitoring period to repayment status ~~repayment has been initiated~~.

Before a school may certify a new loan for such a borrower ~~whose prior Title IV loan(s) is conditionally discharged due to an initial determination that the borrower is totally and permanently disabled~~, the school must confirm that the borrower has initiated the process to return the ~~conditionally discharged~~ loan(s) to repayment. The school also must determine whether the status of the loan (default or non-default) will trigger additional requirements before it certifies a new loan for the borrower. If the loan(s) was in default prior to being conditionally discharged or placed in a post-discharge monitoring period, the school may be required to document that the borrower has either made satisfactory repayment arrangements with the loan holder in order to reinstate Title IV eligibility or has rehabilitated the defaulted loan(s) (see Subsection 5.2.D).

A borrower must do the following before he or she is eligible to receive a new Stafford or PLUS loan:

- Obtain a physician's statement certifying that the borrower may now engage in "substantial gainful activity." ~~For these purposes, "substantial gainful activity" is defined as the ability to work and earn money.~~
[§682.201(a)(6)(i)]

- Sign a statement acknowledging that any loan that has been conditionally discharged or is in a post-discharge monitoring period may not be discharged due to the same or any disability existing at the time the borrower applied for a total and permanent disability discharge or when the new loan is made, unless the disabling condition substantially deteriorates to the extent that the definition of total and permanent disability is met.
  [§682.201(a)(6)(ii); §682.201(a)(7)(ii)(A)]

- Sign a statement acknowledging that collection activity will resume on any conditionally discharged loans or loans that are in a post-discharge monitoring period.
  [§682.201(a)(7)(ii)(B)]

- Acknowledge that he or she is once again subject to the terms of the TEACH Grant agreement.
  [§682.201(a)(6)(iii)]

The school must not deliver any new loan funds until it confirms that the loan holder has returned to repayment status the conditionally discharged loan(s) or loan(s) in a post-discharge monitoring period ~~has been returned to repayment~~.
[§682.201(a)(5)]

If the borrower receives a new TEACH grant or loan under the Perkins, FFELP, or Direct Loan Program (with the exception of a Consolidation loan that does not include any loans that are in a conditional discharge status) within 3 years from the date the physician completes and certifies the discharge application, the borrower's conditional discharge is terminated and the loan(s) is reinstated to the status it held prior to the initial discharge determination. If a TEACH grant or FFELP loan under the Perkins, FFELP, or Direct Loan Program was certified prior to the discharge date the physician certified the discharge application, any proceeds of such loan that are disbursed after the date of the physician's certification must be returned to the holder within 120 days of the disbursement date(s) to preserve the borrower's discharge eligibility.

If the borrower's conditional discharge is terminated, the Department reinstates collection activities on any loan on which collection activity had been previously suspended based on an initial determination of total and permanent disability. (See Subsection 13.8.G for more information regarding the total and permanent disability discharge and Appendix G for the definition of "totally and permanently disabled.")
[§682.402(c)(4)(i)(B) and (C)]

Note: A loan that is discharged due to total and permanent disability based on a determination by the U.S. Department of Veterans Affairs is not placed in a conditional discharge or post-discharge monitoring period. See Subsection 5.4.B.

▲ Schools and lenders are strongly encouraged to contact the guarantor if assistance is needed to determine or establish a borrower's eligibility after a total and permanent disability discharge.

Revise Subsection 5.4.B, page 10, column 1, page 10, paragraph 3, as follows:

5.4.B
Final Discharge of a Prior Loan Due to Total and Permanent Disability

This subsection applies to borrowers whose loan(s) was discharged and completed the 3-year conditional period, or the 3-year post-discharge monitoring period, as applicable.

A borrower who has received a discharge of a prior loan due to final determination that the borrower is totally and permanently disabled must do *all of the following* to be eligible to receive a new Stafford or PLUS loan:

- Obtain a physician's statement certifying that the borrower may now engage in "substantial gainful activity." ~~For these purposes, "substantial gainful activity" is defined as the ability to work and earn money~~

[§682.201(a)(6)(i)]

- Sign a statement acknowledging that any new loan the borrower receives may not be discharged due to the same or any disability existing at the time the new loan is made, unless the disabling condition substantially deteriorates to the extent that the definition of total and permanent disability is met.
[§682.201 (a)(6)(ii)]

- ~~Reaffirm any loan that had been discharged due to total and permanent disability on or after July 1, 2001, but before July 1, 2002, if the borrower applies for a new loan within 3 years from the date the borrower became totally and permanently disabled, as certified by a physician. The borrower must reaffirm the previously discharged loan before receiving a new loan.~~
~~[§682.201(a)(6)(iii)]~~

For the purpose of receiving a subsequent new loan after a prior loan is discharged due to total and permanent disability, a borrower must obtain the physician certification only once and the school should keep a copy of it in the student's file. However, the school must collect a new borrower acknowledgment statement from the borrower for each new loan he or she requests.
[FSA Handbook, Volume 1, Chapter 3, p. 1-51]

A borrower who has had a prior loan discharged due to total and permanent disability before July 1, 2001, is not required to reaffirm the discharged obligation. (See Subsection 13.8.G for more information regarding total and permanent disability discharge and Appendix G for the definition of "totally and permanently disabled."

▲ Schools and lenders are strongly encouraged to contact the guarantor if assistance is needed to determine or establish a borrower's eligibility after a total and permanent disability discharge.

Note: Certain portions of Figure 5-1 were previously revised by Policy 1149 of Batch 162 that was approved by the Governing Board on November 19, 2009. For ease of reference, the text below is from the November 2009,* ICM *that incorporated the changes from Policy 1149.

Revise Figure 5-1, page 11, row 3, as follows:

Conditional discharge or post-discharge monitoring period due to total and permanent disability

. . .

[2] To be eligible, the applicant must *(a)* obtain a physician's statement certifying that the borrower may now engage in substantial gainful activity and *(b)* sign a statement acknowledging that any new loan the borrower receives may not be discharged due to the same or any disability existing at the time the loan is made, unless the disabling condition substantially deteriorates to the extent that the definition of total and permanent disability is met~~, and *(c)* reaffirm any loan that had been discharged due to total and permanent disability on or after July 1, 2001, but before July 1, 2002, if the borrower applies for a new loan within three years from the date the borrower became totally and permanently disabled, as certified by a physician. The borrower must reaffirm the previously discharged loan before receiving a new loan~~.
[§682.201(a)(6)(i) through (iii); §682.402(c)]

[3] To be eligible, the applicant must *(a)* submit a request to the Department's Conditional Discharge Disability Unit indicating that the conditionally discharged loan(s) or loan(s) in a post-discharge monitoring period be returned to repayment and advise the school that the process of returning the conditionally discharged loan(s) to repayment has been initiated; *(b)* obtain a physician's statement certifying that the borrower may now engage in substantial gainful activity; *(c)* sign a statement acknowledging that any loan that has been conditionally

discharged may not be discharged due to the same or any disability existing at the time the borrower applied for a total and permanent disability discharge or when the new loan is made, unless the disabling condition substantially deteriorates to the extent that the definition of total and permanent disability is met; and *(d)* sign a statement acknowledging that collection activity will resume on any conditionally discharged loan~~s~~ or loan in a post-discharge monitoring period.
[§682.201(a)(5); §682.201(a)(6)(i); §682.201(a)(7)(ii)(A) and (B)]

Note: Certain portions of Section 6.15 were previously revised by Policy 1149 of Batch 162 that was approved by the Governing Board on November 19, 2009. For ease of reference, the text below is from the November 2009,* ICM *that incorporated the changes from Policy 1149.

Revise Section 6.15, page 44, column 1, paragraph 3, as follows:

6.15
School Certification of the Loan

In certifying a Stafford or PLUS loan, a school is required to make several determinations regarding the eligibility of the student—or the student and the parent in the case of a parent PLUS loan—and the maximum amount that may be borrowed (see Section 6.11). The school must ensure it does not certify an amount that would result in the borrower receiving more than the borrower's actual eligibility.
[§682.603(e)]

A school must certify the borrower's loan eligibility by the end of the loan period or the date on which the student ceases to be enrolled at least half time, whichever is earlier. If the school does not certify the loan by the earlier of these two dates, the loan cannot be disbursed. See Subsection 7.7.G for complete information regarding late disbursement.
[§668.164(g)(2)(ii)(A); §682.207(f)]

Before a school may certify a new loan for a borrower whose prior Title IV loan(s) is conditionally discharged or in a post-deferment monitoring period due to ~~an initial determination that the borrower is~~ a total~~ly~~ and permanent~~ly~~ disabilityed, the school must:

- ~~c~~Confirm that the borrower has initiated the process to return the~~o~~se ~~conditionally discharged~~ loan(s) to repayment. ~~The school also must~~

- ~~d~~Determine whether the status of the loan (default or non-default) will trigger additional requirements before it certifies a new loan for the borrower.

If the loan(s) was in default prior to being conditionally discharged or placed in a post-discharge monitoring period, the school may be required to document that the borrower has either made satisfactory repayment arrangements with the loan holder in order to reinstate Title IV eligibility or has rehabilitated the defaulted loan(s) (see Subsection 5.2.D). See Subsection 5.4.A for more information regarding borrower eligibility for a new loan when the borrower's prior loan(s) is conditionally discharged or placed in a post-discharge monitoring period.
[§682.201(a)(5)]

Note: Certain portions of Section 8.7 were previously revised by Policy 1149 of Batch 162 that was approved by the Governing Board on November 19, 2009. For ease of reference, the text below is from the November 2009,* ICM *that incorporated the changes from Policy 1149.

Revise Section 8.7, page 7, column 1, paragraph 3, as follows:

8.7
Delivering Loan Funds at Eligible Schools

The school must hold Stafford and PLUS loan proceeds until the student is enrolled in classes for the applicable payment period. (For more information on payment periods, see Section 6.3.) The school must deliver loan proceeds on a payment-period basis in substantially equal installments, with no installment exceeding one half of the loan amount. For a loan period that

consists of more than one payment period, the school must deliver loan proceeds at least once in each payment period. If a loan period consists of only one payment period, the school must deliver loan proceeds at least twice during that payment period (see Subsection 7.7.B, subheading "Exceptions to Multiple Disbursement Requirements").
[§668.164(b)(1); §682.604(c)(1), (6), and (7)]

A school must ensure that it does not deliver the proceeds of a Stafford loan or a Grad PLUS loan to a student who has lost his or her eligibility to receive the loan, or for whom the school never certified a loan. A school also must ensure that it does not deliver the proceeds of a parent PLUS loan to a student (to whom the parent borrower authorized the delivery of proceeds) if the student and/or the parent borrower has lost his or her eligibility to receive the loan, or if the school never certified a loan.

A school must not deliver any new loan funds to a borrower whose prior Title IV loan(s) is conditionally discharged or in a post-discharge monitoring period due to ~~a~~an initial determination that the borrower is totally and permanently disabled until it confirms that the ~~conditionally~~ discharged loan(s) has been returned to repayment.

Revise Appendix G, page 22, column 1, by adding a new paragraph 8, as follows:

Substantial gainful activity: A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both. "For profit" covers a self-employed individual who is not paid by an employer and does not refer to income from sources other than employment. Non-employment income will not be considered when determining whether a borrower is capable of substantial gainful activity.

PROPOSED LANGUAGE - COMMON BULLETIN:

New Loan Eligibility after a Total and Permanent Disability Discharge

The *Common Manual* has been updated to comply with Final Rules published October 29, 2009, and the FSA Handbook, Volume 1, Chapter 3, p. 1-51. These revisions:

- Adds that a borrower whose prior loan received a final discharged and is placed in a 3-year post-discharge monitoring period due to a determination that the borrower is totally and permanently disabled must meet the same requirements as those placed in a 3-year conditional period before he or she may receive new loan funds.

- Removes the requirement that in order to receive a new loan after a prior loan was discharged, a borrower had to reaffirm any loan that had been discharged due to total and permanent disability on or after July 1, 2001, but before July 1, 2002, if the borrower applies for a new loan within 3 years from the date the borrower became totally and permanently disabled, as certified by a physician.

- States that for a borrower who requests a new loan after a prior loan received a final discharge and if applicable, the borrower completed a 3-year post-discharge monitoring period, the borrower must obtain the physician certification only once and the school should keep a copy of it in the borrower's file. However, the school must collect a new borrower acknowledgment statement from the borrower for each new loan he or she requests.

- Clarifies that a loan that is discharged due to total and permanent disability based on a determination by the U.S. Department of Veterans Affairs is not placed in a 3-year conditional discharge or 3-year post-discharge monitoring period.

- Adds to the glossary, the definition of "substantial gainful activity" as a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both. "For profit" covers a self-employed individual who is not paid by an employer and does not refer to income from sources other than employment. Non-employment income will not be considered when determining whether a borrower is capable of substantial gainful activity.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

A borrower will need to meet the new definition of "substantial gainful activity" to receive a new loan after a prior loan received a final discharge and is in the 3-year post-discharge monitoring period and after completing the 3-year post-deferment monitoring period. A borrower will be aware that the borrower's total and permanent disability based on a determination by the U.S. Department of Veterans Affairs is not placed in a 3-year conditional discharge or 3-year post-discharge monitoring period. A borrower will be aware that he or she must obtain the physician certification only once; however, the borrower must submit a new borrower acknowledgment statement to the school for each new loan he or she receives after his or her prior loan has received a final discharge and if applicable, has completed the 3-year post-discharge monitoring period.

School:
A school will be aware that that a borrower's total and permanent disability based on a determination by the U.S. Department of Veterans Affairs is not placed in a 3-year conditional discharge or 3-year post-discharge monitoring period. A school will need to make sure it has processes and procedures in place for a borrower to receive a new loan when a borrower's prior loan is in a 3-year post-discharge monitoring period and when the borrower has completed a 3-year post-discharge monitoring period. A school will be aware that for a borrower to receive a new loan after a final discharge, he or she only needs to obtain the physician certification once and the school should keep a copy of it in the borrower's file. However, the school must collect a new borrower acknowledgment statement from the borrower for each new loan he or she requests.

Lender/Servicer:
None.

Guarantor:
A guarantor may need to update program review procedures.

U.S. Department of Education:
The Department may need to update program review procedures.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
October 27, 2009

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COMMON MANUAL – FEDERAL POLICY PROPOSAL

Date: February 19, 2010

X	DRAFT	Comments Due	Mar 12
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: **Borrower's Rights and Responsibilities**

AFFECTED SECTIONS: **7.6.A General Initial Disclosure Requirements**

POLICY INFORMATION: **1204/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: Initial disclosure information provided on or after July 1, 2010.

BASIS:
§682.205(a)(2)(xvii).

CURRENT POLICY:
Current policy contains the initial disclosures that a lender must provide to Stafford and PLUS loan borrowers, which includes the borrower's rights and responsibilities. The most recent version of the Federal Stafford and PLUS MPNs were revised after the passage of the Higher Education Opportunity Act (HEOA) of 2008 to incorporate all the general initial loan disclosures into the Borrower's Rights and Responsibilities statement as well as the Plain Language Disclosure. Current policy does not, however, clearly state the loan and lender-specific information a lender must provide to a borrower separate from the Borrower's Rights and Responsibilities statement or Plain Language Disclosure.

In addition, current policy does not contain the requirement that the lender provide an explanation of the possible effects of accepting a loan on the student's eligibility for other financial aid as part of the initial disclosure requirements. This was removed in proposal #1108 of Batch 158, which incorporated the HEOA statutory change to remove this provision.

REVISED POLICY:
Revised policy updates the initial lender disclosures to include language previously removed from the Manual based on a HEOA statutory change that states a lender must provide a borrower an explanation of the possible effects of accepting a loan on the student's eligibility for other forms of financial assistance.

Revised policy also updates the Manual to clearly identify the lender-specific disclosures that must be provided to a borrower at or before first disbursement of a loan separate from the Borrower's Rights and Responsibilities statement or Plain Language Disclosure.

REASON FOR CHANGE:
These changes are made to clearly state the specific information a lender must provide to a borrower separate from the Borrower's Rights and Responsibilities statement or Plain Language Disclosure. It is also necessary to re-insert the requirement that a lender include in its initial disclosure an explanation of the possible effects of accepting a loan on the student's eligibility for other financial aid. This requirement is being re-inserted because the Department retained the regulatory requirement in §682.205(a)(2)despite its having been stricken in statute.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Subection 7.6.A, page 10, column 1, paragraph 2, as follows:

7.6.A
General Initial Disclosure Requirements

At or before the first disbursement of a Stafford or PLUS loan, the lender must provide the borrower (at no cost to the borrower) with ~~the following~~ initial disclosure information in a written or electronic format. The following loan- and lender-specific information must be provided by the lender separate from the Borrower's Rights and Responsibilities statement or Plain Language Disclosure:

- A statement prominently and clearly displayed and in bold print that the borrower is receiving a loan that must be repaid.
- . . .
- . . .
- . . .
- . . .
- . . .
- A separate statement, in simple and understandable terms, that summarizes the borrower's rights and responsibilities with respect to the loan and the consequences of defaulting on the loan. The lender must provide the borrower with either the Borrower's Rights and Responsibilities statement or, in the case of each subsequent loan made using the multi-year feature of the Master Promissory Note, the Plain Language Disclosure, in order to meet the required disclosure of the following information:
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  - . . .
  - . . .
  - An explanation of the possible effects of accepting a loan on the student's eligibility for other financial aid.
  - . . .
  - . . .

PROPOSED LANGUAGE - COMMON BULLETIN:

Borrower's Rights and Responsibilities
The *Common Manual* has been updated to include in the initial lender disclosures language previously removed from the Manual that states a lender must provide a borrower an explanation of the possible effects of accepting a loan on the student's eligibility for other forms of financial assistance as part of the initial disclosure requirements.

The most recent versions of the Federal Stafford and PLUS MPNs were revised after the passage of the Higher Education Opportunity Act (HEOA) of 2008 to incorporate all the general initial loan disclosures into the Borrower's Rights and Responsibilities statement as well as the Plain Language Disclosure. The Manual has been updated to clearly identify the loan- and lender-specific disclosures that must be provided to a borrower at or before first disbursement of a loan separate from the Borrower's Rights and Responsibilities statement or Plain Language Disclosure.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
A borrower will receive information about the possible effects of accepting a loan on his or her eligibility for other forms of financial assistance as part of the initial disclosure requirements.

School:
None.

Lender/Servicer:
A lender must provide students with information about the possible effects of accepting a loan on his or her eligibility for other forms of financial assistance as part of the initial disclosure requirements, which can be satisfied by the information contained in the Borrower's Rights and Responsibilities and Plain Language Disclosure statement.

Guarantor:
A guarantor may need to update its program review procedures.

U.S. Department of Education:
The Department may need to update its program review procedures.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
October 29, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others

sf/edited-tmh

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: February 19, 2010

X	DRAFT	Comments Due	Mar 12
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: **Repayment Disclosures Exception for Invalid Address**

AFFECTED SECTIONS: **10.12 Lender Disclosures During Repayment**
12.1.A Lender Disclosure Requirements

POLICY INFORMATION: **1205/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: Valid borrower address received by a lender on or after July 1, 2010.

BASIS:
§682.205(j); Final Rule, *Federal Register* dated October 29, 2009, p. 55993.

CURRENT POLICY:
Current policy does not exempt a lender from sending the required disclosures during repayment when the lender does not have a valid address for the borrower.

REVISED POLICY:
Revised policy exempts a lender from sending the required disclosures when the lender does not have a valid address for the borrower. However, revised policy stipulates that if the lender receives the borrower's valid address before the borrower becomes 241 days delinquent, the lender must resume sending the required monthly installment bill or statement, as well as any other disclosure information not previously provided.

REASON FOR CHANGE:
This change is made to comply with the changes provided in Final Rules, *Federal Register* dated October 29, 2009.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Subsection 10.12, page 1, column 1 as follows:

Note: This section has been updated in proposal 1191 of Batch 168.

10.12
Lender Disclosures During Repayment

A lender must provide a borrower in repayment a bill or statement that corresponds to each installment period for which a payment is due and that includes, in simple and understandable terms, each of the following:

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- . . .
- . . .
- . . .
- . . .
- . . .
- . . .
- . . .

- . . .

Exception for Invalid Address

A lender is not required to send the disclosures listed above, including the bill or statement, if the lender does not have a valid address for the borrower. However, if the lender receives a valid address for the borrower before the borrower becomes 241 days delinquent, the lender must resume sending the required bill or statement, as well as any other disclosure information not previously provided.
[§682.205(j)]

Revise Subsection 12.1.A, page 1, column 2, paragraph 4 as follows:

12.1.A
Lender Disclosure Requirements

When a borrower is 60 days delinquent, the lender must provide a notice with all of the following information in simple and understandable terms:

- . . .
- . . .
- . . .
- . . .
- . . .

Exception for Invalid Address

A lender is not required to send the disclosures listed above if the lender does not have a valid address for the borrower. However, if the lender receives a valid address for the borrower before the borrower becomes 241 days delinquent, the lender must send the required information not previously provided.
[§682.205(j)]

PROPOSED LANGUAGE - COMMON BULLETIN:
Repayment Disclosures Exception for Invalid Address
The *Common Manual* has been revised to add an exception to the requirement that a lender send certain disclosures during repayment. The lender is exempt from sending the required disclosures if the lender does not have a valid address for the borrower. However, the policy stipulates that if the lender receives a valid address for the borrower before the borrower becomes 241 days delinquent, the lender must resume sending the required bill or statement, as well as any other disclosure information not previously provided.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:

A borrower for whom a lender does not have a valid address will not receive the required disclosures until the lender receives the borrower's valid address. If this occurs before the borrower's account becomes 241 days delinquent, the borrower will begin receiving the bill or statement, as well as the disclosure information not previously provided.

School:
None.

Lender/Servicer:
A lender is exempt from sending the disclosures required during repayment if the lender does not have a

borrower's valid address. However, should the lender become aware of the borrower's valid address before the borrower becomes 241 days delinquent, the lender must resume sending the required installment bill or statement, as well as any other disclosure information not previously provided.

Guarantor:
A guarantor may need to revise its program review procedures.

U.S. Department of Education:
The Department many need to revise its program review procedures.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
October 26, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

PROPOSAL DISTRIBUTED TO:
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COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: February 19, 2010

X	DRAFT	Comments Due	Mar 12
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SUBJECT: **Total and Permanent Disability - VA**

AFFECTED SECTIONS:
13.1.D Claim File Documentation
13.2 Claim Returns
13.3 Claim Purchase or Discharge Payment
13.8.G Total and Permanent Disability
Appendix G

POLICY INFORMATION: **1206/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: Total and Permanent Disability - VA applications received by the lender on or after July 1, 2010, for the change in the guarantor's timeframe for claim processing.

Total and Permanent Disability - VA applications received by the lender on or after August 14, 2008, for all other provisions.

BASIS:
§682.402(c)(1)(iii); §682.402(c)(8); DCL GEN-09-07/FP-09-05; *Federal Register* dated October 29, 2009, p. 55997 and pp. 55999 - 56000.

CURRENT POLICY:
Current policy does not state the separate standards and procedures for processing total and permanent disability discharge requests for a borrower who had been determined by the VA to be unemployable due to a service-connected disability.

REVISED POLICY:
Revised policy adds the separate standards for processing total and permanent disability discharge requests for a borrower who had been determined by the VA to be unemployable due to a service-connected disability.

REASON FOR CHANGE:
This change is necessary to comply with Final Rules published in the October 29, 2009, *Federal Register*.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Subsection 13.1.D, page 5, column 2, by adding a new 5th paragraph, as follows:

> *Total and Permanent Disability Claims - Regular*
> For a total and permanent disability claim, the lender must submit—in addition to the preceding items *1* through *5*—a completed Discharge Application: Total and Permanent Disability or other form(s) approved by the Department. The lender must also submit a record of any payments received after the date the physician completed and certified the discharge application.
> [§682.402(c)(5)(vii); §682.402(g)(1)(iv)]
>
> *Total and Permanent Disability Claims - VA*
> For a total and permanent disability claim, the lender must submit—in addition to the preceding items *1* through *5*—a Discharge Application: Total and Permanent Disability with Sections 1 and 3 completed by the borrower along with the documentation from the VA showing that the VA has determined the borrower to be unemployable due to a service-connected condition. The lender must also submit a record of any payments received on or after the effective date of the VA determination.
> [§682.402(c)(8); DCL GEN-09-07/FP-09-05]

Revise Section 13.2, page 7, column 1, paragraph 2, by adding a new bullet 2, as follows:

A guarantor will return (send back) a claim to the lender under certain circumstances. The guarantor will notify the lender of the reason for the return. Most claim returns occur for one or more of the following reasons:

- . . .
- . . .
- . . .
- . . .
- . . .

The guarantor is required to return the claim or discharge request to the lender within a specific number of days after receiving the claim or discharge request, as follows:

- 90 days for a default, total and permanent disability - regular, or closed school claim.
- 45 days for a total and permanent disability – VA.
- . . .
- . . .

[§682.402(d)(6)(ii)(G)(2); §682.402(e)(6)(iv) and (e)(7); §682.402(h)(1)(i); §682.402(h)(1(v)(A); §682.406(a)(8)]

Revise Section 13.3, page 8, column 2, paragraph 2, by adding a new bullet 2, as follows:

The guarantor is required to purchase an approved claim or discharge request, or return the claim or discharge request to the lender within a specific number of days after receiving the claim or discharge request, as follows:

- 90 days for a default, total and permanent disability - regular, or closed school claim
- 45 days for a total and permanent disability – VA.
- . . .
- . . .
- . . .

If the lender fails to provide complete documentation, or if the lender has committed one or more violations that warrant cancellation of the loan's guarantee (for any claim except a closed school or false certification discharge claim), the claim will be returned to the lender unpaid within the applicable time frame noted above. Closed school and false certification discharge claims are not subject to review for servicing violations.
[§682.402(d)(6)(ii)(G)(1); §682.402(e)(6)(iv) and (e)(7)(ii); §682.402(h)(1)(i); §682.402(h)(1)(v)(B); §682.402(l)(2)(ii); §682.402(n)(1); §682.406(a)(8)]

Revise Subsection 13.8.G, page 48, column 2, paragraph 2, as follows:

Discharge Requests Based on VA Determinations
A borrower is eligible for loan discharge due to total and permanent disability if the borrower provides documentation from the VA showing that the VA has determined the borrower to be unemployable due to a service-connected condition, and this documentation is acceptable to the U.S. Department of Education (the Department). The borrower is not required to provide

additional documentation to support the discharge; however, the borrower is required to complete Sections 1 and 3 ~~the appropriate sections~~ of the Discharge Application: Total and Permanent Disability.

If the lender believes the borrower qualifies for discharge based on its review of the VA disability documentation, the lender must forward the loan discharge application and VA documentation to the guarantor for review. If the documentation from the VA does not indicate that the borrower is eligible for discharge, the lender must notify the borrower that the discharge request had been denied, provide the reason for the denial, and advise the borrower that collections would be resume. The lender must also inform the borrower that he or she may reapply for a regular total and permanent disability discharge.

If the guarantor determines that the borrower meets the criteria for discharge based on its review of the VA documentation, the guarantor must forward the VA documentation and the loan discharge application to the Department for determination of the borrower's eligibility for loan discharge. If the guarantor determines based on its review of the VA documentation that the borrower is not eligible for discharge, the guarantor will return the loan discharge application and VA documentation to the lender with an explanation of the reason for the denial.

~~The borrower is not subject to the 3-year conditional period.~~ If the Department grants a final discharge based on a VA determination, it will notify the guarantor of the discharge. The guarantor will pay the disability claim and notify the lender. The lender will return ~~A~~any loan payments made on or after the effective date of the VA determination (that the borrower is unemployable due to a service-connected condition) ~~are refunded to the borrower~~. The borrower is not subject to the 3-year conditional period or post-discharge monitoring period. If the borrower has Title IV loans that were received prior to and on or after the effective date of the VA determination are also eligible for discharge including the underlying loans in a Consolidation loan.
[~~HEA§437(a);~~ §682.402(c)(8); DCL GEN-09-07/FP-09-05; Discharge Application: Total and Permanent Disability]

Revise Appendix G, page 23, column 1, by adding a new paragraph 4, as follows:

Totally and Permanently Disabled - VA: The condition of an individual who has been determined by the Secretary of Veterans Affairs (VA) to be unemployable due to a service-connected disability.

PROPOSED LANGUAGE - COMMON BULLETIN:

Total and Permanent Disability - VA

The *Common Manual* has been updated to add the separate standards and procedures for processing total and permanent disability discharge requests for borrowers who had been determined by the VA to be unemployable due to a service-connected disability.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:
None.

School:
None.

Lender/Servicer:
A lender may need to update its counseling materials and total and permanent disability processing procedures.

Guarantor:
A guarantor may need to update its counseling materials and total and permanent disability processing procedures.

U.S. Department of Education:
The Department may need to update its counseling materials and total and permanent disability processing procedures.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
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Interested Industry Groups and Others

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COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: February 19, 2010

X	DRAFT	Comments Due	Mar 12
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: **Total and Permanent Disability Discharge Based on Regular Determinations**

AFFECTED SECTIONS: **13.8.G Total and Permanent Disability**
Appendix G

POLICY INFORMATION: **1207/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: Total and Permanent Disability Discharge Applications received by the lender on or after July 1, 2010.

BASIS:
§682.200(b) definition of substantial gainful activity; §682.200(b) definition of totally and permanently disabled; §682.402(c)(2)-(7); *Federal Register* dated July, 23, 2010, p. 36559; *Federal Register* dated October 29, 2010, p. 55990 and pp. 55997-55999.

CURRENT POLICY:
Current policy states that a borrower, comaker, or endorser is considered totally and permanently disabled if he or she is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death. Current policy states that if the Department makes an initial determination that the borrower, comaker, or endorser is totally and permanently disabled, the borrower, comaker, or endorser is placed in a 3-year conditional period that will last for up to 3 years after the date the physician completed and certified the discharge application.

Also, current policy states that the Department may request additional medical evidence if the Department determines that the application does not conclusively prove that the borrower, comaker, or endorser is disabled and as part of this review or at any time through the end of the conditional discharge period, the Department may arrange for an additional review of the borrower's condition by an independent physician at no expense to the applicant. Further, current policy describes the conditions that must be met by the borrower, comaker, or endorser for him or her to receive a final total and permanent disability loan discharge at the end of the conditional period and information about repayment of the loan(s) if those conditions aren't met.

Further, current policy provides a glossary definition of "disability" that includes conditions that apply to total and permanent disability as well as conditions that apply to temporary total disability.

REVISED POLICY:
Revised policy states that a borrower, comaker, or endorser is considered totally and permanently disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death; has lasted for a continuous period of not less than 60 months; or can be expected to last for a continuous period of not less than 60 months. Also, revised policy states that "substantial gainful activity" is defined as a level of work performed for pay or profit that involves doing significant physical or mental activities, or combination of both. "For profit" is intended to cover self-employed individuals who are not paid by an employer. It does not refer to income from sources other than employment. Non-employment income will not be considered when determining whether a borrower is capable of substantial gainful activity.

Revised policy states that as part of the Department's review of the borrower's discharge application, the Department may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower. Revised policy states that if the Department makes a determination that the borrower, comaker, or endorser is totally and permanently disabled, the loan(s) is discharged and the borrower, comaker, or endorser is placed in a 3-year post-discharge monitoring period that will last for 3 years after the date the Department grants the discharge. If a borrower, comaker, or endorser received a TEACH Grant or Title IV loan prior to the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Department grants a discharge, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan

holder or to the Department, as applicable. The policy describes the conditions that must be met by the borrower, comaker, or endorser during the 3-year monitoring period to maintain the loan(s)' discharged status.

Further, revised policy deletes the glossary definition for "disability," and adds a definition for "temporarily totally disabled."

REASON FOR CHANGE:
These changes are being made to update the Manual with provisions from the preamble language of the proposed rules published in the *Federal Register* on July 23, 2009, and final rules published in the *Federal Register* on October 20, 2009.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise 13.8.G, page 48, column 2, paragraph 3, as follows:

Discharge Requests ~~Not~~ Based on ~~VA~~ Regular Determinations

If any party to a loan claims to be totally and permanently disabled, the lender must request that party to provide certification of the disability from a physician who is a doctor of medicine or osteopathy and is legally authorized to practice in a state. An eligible party includes any one of the following:

- A borrower.
- One of two comakers on a PLUS or Consolidation loan.
- An endorser, if the lender is pursuing collection activities against the endorser.

The borrower's, comaker's, or endorser's representative may provide the physican's certification if the borrower, comaker, or endorser is unable to do so. The borrower, comaker, or endorser, or his or her representative must submit a completed Discharge Application Total and Permanent Disability or other form(s) approved by the Department. The physician's certification must state that the borrower, comaker, or endorser is unable to ~~work and earn money because of an injury or illness that is expected to continue indefinitely or result in death~~ engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that meets any one of the following criteria:

- Can be expected to result in death.
- Has lasted for a continuous period of not less than 60 months.
- Is expected to last for a continuous period of not less than 60 months.

The borrower must submit the certification to the lender within 90 days of the date that the physician completed and certified the discharge application. If the borrower submits the discharge application after this 90-day time frame, the borrower must have the physician complete a new application and must submit the new application to the lender within 90 days of the physician's new certification.
[§682200(b); §682.402(c)(2); *Federal Register* dated July 23, 2009, p. 36559]

Revise 13.8.G, page 50, column 1, paragraph 2, as follows:

General Requirements for Total and Permanent Disability Loan Discharge

. . .

For these purposes, a borrower, comaker, or endorser is considered totally and permanently disabled if he or she is unable to ~~work and earn money because of an injury or illness that is expected to continue indefinitely or result in death~~ engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that meets any one of the following criteria:

- Can be expected to result in death.

- Has lasted for a continuous period of not less than 60 months.

- Is expected to last for a continuous period of not less than 60 months.

Substantial gainful activity is defined as a level of work performed for pay or profit that involves doing significant physical or mental activities, or combination of both. "For profit" is intended to cover self-employed individuals who are not paid by an employer. It does not refer to income from sources other than employment. Non-employment income will not be considered when determining whether a borrower is capable of substantial gainful activity. [§682.200(b); *Federal Register* dated July 23, 2009, p. 36559]

If a borrower, comaker, or endorser receives a new TEACH grant or a new Title IV loan ~~under the Federal Perkins Loan Program, the FFELP, or the Federal Direct Loan Program~~ (with the exception of a Consolidation loan that does not include any loans that are in a conditional discharge status or post-discharge monitoring period) during the 3-year conditional discharge period or the 3-year post-discharge monitoring period, as applicable ~~within 3 years of the date the physician completed and certified the discharge application stating that he or she is unable to work and earn money~~, the borrower, comaker, or endorser is not eligible for discharge on the loan on which he or she is a signatory or any loan made prior to that date. (See explanations of the terms "conditional discharge status" and "post-discharge monitoring period" later in this subsection under the subheading "Discharge Due to Total and Permanent Disability.") If a FFELP loan was certified prior to the date the physician certified the discharge application, any proceeds of the loan that will be or are disbursed after the date of the physician's certification must be canceled, or if the disbursement is made, must be returned to the holder within 120 days of the disbursement date(s) for the borrower to preserve his or her discharge eligibility. ~~The 3-year period, i.e., the conditional discharge period, begins on the date the physician completes and certifies the discharge application.~~

The lender must review its records for any new loan(s) or disbursements of prior loans made to the borrower, comaker, or endorser after the date the physician certified the discharge application stating that he or she is totally and permanently disabled. If the lender's records indicate (or the lender is otherwise aware) that a new loan(s) was made during the 3-year conditional discharge period or the 3-year post-discharge monitoring period, the lender must deny the discharge and inform the borrower, comaker, or endorser. If any FFELP loan was certified prior to the date the physician certified the discharge application, any proceeds of the loan that are disbursed after the date of the physician's certification must be returned to the holder within 120 days of the disbursement or the lender must deny the discharge and inform the borrower, comaker, or endorser. For information regarding a borrower's eligibility for a new loan(s) after the conditional period, see Section 5.4.
[§682.402(c)(45)~~(i)~~(B) and (C)~~; §682.402(c)(5)(vi)(B)~~]

If a borrower, comaker, or endorser received a TEACH Grant or Title IV loan prior to the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Department grants a discharge, the Department will suspend processing of the borrower's loan discharge request until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Department, as applicable.
[§682.402(c)(4)]

The Department may require the borrower to submit additional medical evidence if it determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled. As part of the Department's review of the borrower's discharge application, the Department may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.
[§682.402(c)(3)(iv)]

Discharge When Guarantee Is Lost

. . .

~~Conditional~~ Discharge Due to Total and Permanent Disability

Total and permanent disability loan discharge determinations made by the lender on or after July 1, 2002, and subsequently paid as a claim by the guarantor, may be permanently assigned to the Department. The Department then determines if the certification and information provided by the borrower, comaker, or endorser support the conclusion that he or she meets the criteria for a total and permanent disability loan discharge. If the Department determines that the certification and information provided by the borrower, comaker, or endorser do not support the conclusion that he or she meets the criteria for a total and permanent disability loan discharge, the Department notifies the borrower, comaker, or endorser that the application for a total and permanent disability loan discharge has been denied and that the loan is due and payable under the terms of the promissory note. [§682.402(c)(3)(iii)]

For total and permanent disability loan discharge applications received on or after July 1, 2002 through June 30, 2010, borrowers who meet certain eligibility criteria receive an initial disability determination and are placed in a 3-year conditional discharge status. For total and permanent disability loan discharge applications received on or after July 1, 2010, borrowers who meet certain eligibility criteria receive a loan discharge and are placed in a 3-year post-discharge monitoring period.

1. Conditional Discharge Status

If the Department makes an initial determination that the borrower, comaker, or endorser is totally and permanently disabled, the Department sends notification to the borrower, comaker, or endorser that the loan—or the comaker's or endorser's obligation on the loan—is in a conditional~~l~~y discharged status and that the conditional discharge period will last for up to 3 years after the date the physician completed and certified the discharge application.

. . .

. . .

2. Post-Discharge Monitoring Period

If the Department makes a determination that the borrower, comaker, or endorser is totally and permanently disabled, the Department notifies the borrower, comaker, or endorser that the loan—or the comaker's or endorser's obligation on the loan—is discharged and and that the loan is placed in a post-discharge monitoring period. The post-discharge monitoring period will last for 3 years after the date the Department grants the discharge. The Department's notification identifies the following conditions that apply during the 3-year post-discharge monitoring period:

- The disabled borrower, comaker, or endorser must promptly notify the Department of any changes in his or her address or phone number.

- The disabled borrower, comaker, or endorser must promptly notify the Department if his or her annual earnings from employment exceed 100 % of the poverty line for a family of two

- The disabled borrower, comaker, or endorser must provide the Department, upon request, with documentation of his or her annual earnings from employment

- The Department reinstates the borrower's, comaker's, or endorser's obligation to repay a loan that was discharged if any of the following apply to the disabled borrower, comaker, or endorser:

  - He or she has annual earnings from employment that exceed 100% of the poverty line for a family of two.

  - He or she receives a new TEACH Grant or a new Title IV loan, except for a FFEL or Direct Consolidation Loan that includes loans that were not

discharged.

- He or she fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the 3-year period following the discharge date is returned to the loan holder or to the Department, as applicable, within 120 days of the disbursement date.

[§682.402(c)(5)(i)(A-C); §682.402(c)(6)]

NSLDS Reporting during the Conditional and Post-discharge Period for Comade Loans

In cases where a comaker of a joint Consolidation or PLUS loan has applied for a total and permanent disability loan discharge, the lender must ensure accurate reporting to the guarantor for NSLDS purposes. The lender must report the correct status of the non-dischargeable portion to the guarantor for subsequent reporting to the NSLDS in a timely manner. The NSLDS currently reports joint Consolidation loans and comade PLUS loans under one primary borrower only. However, to ensure proper reporting during the conditional or post- discharge period, as applicable, the lender should report the non-dischargeable portion under the non-disabled borrower's name and the Social Security number (SSN) to the guarantor. If the borrower on record with the guarantor and the NSLDS is the disabled borrower, the guarantor's records and the NSLDS must be updated to reflect the non-disabled borrower as the borrower of record. If the discharge is denied, the lender may resume reporting the full balance of the loan under the borrower currently being reported. If a final discharge is granted, the lender continues to report the non-discharged portion or the Consolidation loan under the non-disabled borrower's name and SSN.

Revise Appendix G, page 7, column 1, paragraph 1, as follows:

~~**Disability:** A medically determined condition that renders a person unable to work and earn money, or, in some cases, to attend school. A borrower (or his spouse or dependent) is considered to be *temporarily totally disabled* if the condition is expected to be of a short and finite duration (see Section 11.17); a borrower is considered *totally and permanently disabled* if this condition is expected to continue for a long or indefinite period of time, or to result in death (see Subsection 13.8.G).~~

Revise Appendix G, page 22, column 2, by inserting a new paragraph 5, as follows:

Temporarily Totally Disabled: The condition of an individual who, though not totally and permanently disabled, is unable to work and earn money or attend school, during a period of at least 60 days needed to recover from injury or illness. With regard to a disabled dependent of a borrower, this term means a spouse or other dependent who, during a period of injury or illness, requires continuous nursing or similar services for a period of at least 90 days.

Revise Appendix G, page 23, column 1, paragraph 3, as follows:

Totally and Permanently Disabled--Regular: The condition of an individual who is unable to ~~work and earn money due to an injury or illness that is expected to continue indefinitely or result in death~~ engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death; has lasted for a continuous period of not less than 60 months; or can be expected to last for a continuous period of not less than 60 months.

PROPOSED LANGUAGE - COMMON BULLETIN:

Total and Permanent Disability Discharge Based on Regular Determinations

The Common Manual is being updated to reflect preamble language of the proposed rules published in the *Federal Register* on July 23, 2009, and final rules published in the *Federal Register* on October 20, 2009. The policy states that a borrower, comaker, or endorser is considered totally and permanently disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that meets any one of the following criteria:

- Can be expected to result in death.

- Has lasted for a continuous period of not less than 60 months.

- Is expected to last for a continuous period of not less than 60 months.

The policy states that "substantial gainful activity" is defined as a level of work performed for pay or profit that involves doing significant physical or mental activities, or combination of both. "For profit" is intended to cover self-employed individuals who are not paid by an employer. It does not refer to income from sources other than employment. Non-employment income will not be considered when determining whether a borrower is capable of substantial gainful activity.

Also, the policy states that as part of the Department's review of the borrower's discharge application, the Department may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower. If the Department makes a determination that the borrower, comaker, or endorser is totally and permanently disabled, the loan(s) is discharged and the borrower, comaker, or endorser is placed in a 3-year post-discharge monitoring period that will last for 3 years after the date the Department grants the discharge. If a borrower, comaker, or endorser received a TEACH Grant or Title IV loan prior to the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Department grants a discharge, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Department, as applicable. The policy describes the conditions that must be met by the borrower, comaker, or endorser during the 3-year monitoring period to maintain the loan(s)' discharged status and information about reinstatement of the loan(s) if those conditions aren't met.

The glossary definition of "disability" has been deleted and the definition of "temporarily totally disabled" as been added.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
A borrower will understand the new eligibility criteria and process for total and permanent disability loan discharge.

School:
A school may need to update its counseling materials for total and permanent disability discharge requirements and procedures.

Lender/Servicer:
A lender may need to update its counseling materials for total and permanent disability discharge requirements and procedures.

Guarantor:
A guarantor may need to update its counseling materials for total and permanent disability discharge requirements and procedures and its program review procedures.

U.S. Department of Education:
The Department may need to update its counseling materials for total and permanent disability discharge requirements and procedures and its program review procedures.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
October, 27, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others

ma/edited-chh

COMMON MANUAL – FEDERAL POLICY PROPOSAL

Date: February 19, 2010

X	DRAFT	Comments Due	Mar 12
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: **IBR for FFELP Consolidation of a Defaulted Loan**

AFFECTED SECTIONS: **15.2 Borrower Eligibility and Underlying Loan Holder Requirements**

POLICY INFORMATION: **1208/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: Consolidation requests received by the lender on or after July 1, 2010.

BASIS:
Federal Register dated October 29, 2009, p. 55990.

CURRENT POLICY:
Current policy does not include choosing income-based repayment (IBR) as an option by which a borrower with a defaulted loan may become eligible for a FFELP Consolidation loan.

REVISED POLICY:
Revised policy adds the IBR option as a means by which a borrower with a defaulted loan may become eligible for a FFELP Consolidation loan.

REASON FOR CHANGE:
This change is made to comply with Final Rules published October 29, 2009.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Section 15.2, page 3, column 1, paragraph 4, as follows:

> **15.2**
> **Borrower Eligibility and Underlying Loan Holder Requirements**
>
> To qualify for a Federal Consolidation loan, a borrower must meet the following eligibility criteria at the time he or she applies for the Consolidation loan:
>
> - . . .
>
> - If any Title IV loans being considered for consolidation are in default, the borrower must either make satisfactory repayment arrangements with the holder of each defaulted loan or agree to repay the consolidating lender under an income-sensitive or income-based repayment schedule. Satisfactory repayment arrangements for consolidation purposes are defined later in this section. The income-sensitive repayment schedule is described in Subsection 10.8.C; income-based repayment is described in Subsection 10.8.D.
> [§682.201(d)(1)(i)(A)(*3*)]

PROPOSED LANGUAGE - COMMON BULLETIN:
IBR for FFELP Consolidation of a Defaulted Loan
The *Common Manual* has been revised to add the income-based repayment option as a means by which a borrower with a defaulted loan may become eligible for a FFELP Consolidation loan.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
A borrower will have an additional means by which to consolidate a defaulted loan in FFELP.

School:
None.

Lender/Servicer:
The lender may need to amend policies regarding Consolidation loan eligibility.

Guarantor:
The guarantor may need to amend processes related to FFELP loan consolidation and defaulted loans, and program review processes.

U.S. Department of Education:
The Department may be required to amend program review processes.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

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February 15, 2010

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Interested Industry Groups and Others

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Date: February 19, 2010

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SUBJECT: **eNotification Package for Cohort Default Rate and Loan Record Detail Report Request**

AFFECTED SECTIONS:
16.1 Overview of Cohort Default Rates and Terminology
16.3 School Draft Cohort Default Rates and Challenges
16.4 School Official Cohort Default Rates, Adjustments, and Appeals
16.4.B School Appeals
Appendix G

POLICY INFORMATION: 1209/Batch 169

EFFECTIVE DATE/TRIGGER EVENT: July 1, 2010.

BASIS:
§668.185; §668.186; §668.204; §600.205; *Federal Register* dated July 28, 2009, pp.37447-37448; private guidance from Donna Bellflower of the Department, dated January 27, 2010; *Federal Student Aid Newsletter*, *FY 2008 Draft Cohort Default Rate,* dated February 2010.

CURRENT POLICY:
Current policy describes an electronic cohort default rate notification as the process by which the Department notifies a school of its draft and official cohort default rates and requires a school to request a copy of its loan record detail report within 15 days of receiving its official cohort default rate notification if the report is not provided. Current policy also states that the Department notifies a foreign school of its cohort default rates via mail.

REVISED POLICY:
Revised policy expands the explanation of the cohort default rate notification (eCDR) to include reference to the electronic process known as eCDR. The Department will publish and notify each school through its eCDR notification package official transmission date through an electronic message, which will also be posted on the Department's Website. The policy states that a school's loan record detail report is automatically included as part of the eCDR notification package, eliminating the need for a school to request a copy of the report and the associated 15-day deadline for requesting such report.

Revised policy also explains that the timeline for submitting challenges, adjustments, and appeals begins on the sixth business day following the successful transmission date of the eCDR package as posted on the Department's Website, and lasts for 45 days. If a school reports a transmission problem within 5 business days following the transmission, and the Department agrees that the problem was not caused by the school, then the timeline for challenges, adjustments, or appeals will be extended to account for retransmission of the eCDR notification package once the technical problem is resolved. The school's 45-day timeline for submitting a challenge, adjustment, or appeal will begin when the school receives the notification package, and all guarantors would be notified of the school's new timeline. If the school does not notify the Department of a transmission problem within the 5 business days following the transmission date of the eCDR package, the Department will not extend the timeline for submitting a challenge, adjustment or appeal.

Revised policy includes clarification that beginning with the official FY 2008 cohort default rate cycle in September 2010, Federal Student Aid will exclusively transmit the CDR notifications to foreign schools electronically through the eCDR process.

Revised policy also adds a glossary definition for an "Electronic Cohort Default Rate (eCDR) Notification Package (eCDR)" that explains this is the electronic process the Department uses to notify a domestic school of its cohort default rates. A definition for "Loan Record Detail Report (LRDR)" is also added. The LRDR is the report issued by the Department to schools that contains the detailed data used to calculate the school's draft or official cohort default rates.

REASON FOR CHANGE:

This change is required to comply with final rules published in the October 29, 2009 *Federal Register*, and preamble guidance published in the *Federal Register* dated July 28, 2009 pp. 37447-37448.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Section 16.1, page 1, column 2, paragraph 2, as follows:

16.1
Overview of Cohort Default Rates and Terminology

. . .

Cohort Default Rate Terminology

Following are terms used throughout this chapter, defined solely as they pertain to cohort default rates:

- *Cohort*: . . .

- *Cohort default rate notification*: The process by which the Department notifies a school of its draft and official cohort default rates. The department notifies a school of its cohort default rates as follows:

  - The Department uses an electronic cohort default rate (eCDR) process through …

  - The Department notifies a foreign school of its cohort default rates via mail. Starting with the official FY 2008 cohort default rate cycle in September 2010, the Department will exclusively transmit the CDR notification electronically. [*Cohort Default Rate Guide*; *Federal Student Aid Newsletter*, *FY 2008 Draft Cohort Default Rate,* dated February 2010.]

Revise Section 16.3, page 8, column 1, paragraph 1, as follows:

16.3
School Draft Cohort Default Rates and Challenges

~~Generally,~~ T~~t~~he Department notifies each school of ~~its~~ the scheduled transmittal date of its draft cohort default rate annually in February or March prior to the calculation of its official cohort default rate. The Department's notification to the school is electronic and is sent through the eCDR notification package process. This package includes the loan record detail report that supports the draft cohort default rate calculation. The draft rate is not considered public information and is provided only to the school and may not be otherwise released by the data manager. A school may challenge its draft cohort default rate based on criteria specified in federal regulations and must use a format that is acceptable to the Department. The format for a cohort default rate challenge is detailed in the Department's Cohort Default Rate guide. If the school's challenge does not comply with the requirements detailed in the Guide, the challenge may be denied.
[§668.185~~(a) and (b)~~; §668.204]

Revise Section 16.4, page 9, column 1, paragraph 3, as follows:

16.4
School Official Cohort Default Rates, Adjustments, and Appeals

Each year, approximately six months after the release of the draft cohort default rate and prior to September 30, the Department electronically notifies each school of its official cohort default rate through the eCDR notification package. A Loan Record Detail Report (LRDR) is included in the eCDR package if the school has one or more borrowers entering repayment or is subject to sanctions, or if the Department believes the school will have an official cohort default rate calculated as an average rate. Following notification, a list of official cohort

default rates for all FFELP-participating schools is published. The timeline for submitting challenges, adjustments, or appeals begins on the sixth business day following the successful transmission date of the eCDR package as posted on the Department's Website, and lasts for 45 days. If a school reports a problem with the receipt of the eCDR package within 5 business days following the transmission and the Department agrees that the problem was not caused by the school, then the timeline for challenges, adjustments, or appeals will be extended for that school to account for retransmission of the eCDR notification package once the technical problem is resolved. The school's 45-day timeline for submitting a challenge, adjustment or appeal will begin with the school's receipt of the eCDR package. If the school does not notify the Department of a transmission problem within the 5 business days following the transmission date of the eCDR package, the Department will not extend the timeline for submitting a challenge, adjustment or appeal. ~~of your If a school's official cohort default rate is greater than or equal to 10%, the Department will include a copy of the loan record detail report with the notification of the official rate. If a school's official cohort default rate is less than 10%, the school may request a copy of its loan record detail report. If a school plans to request an adjustment to its rate or submit an appeal of its official cohort default rate the school's request for a copy of the loan record detail report must be mailed to the Department within 15 days after the school receives its official cohort default rate notification~~.
[§668.186~~(a) and (b)~~ and §668.205]

Revise Subsection 16.4.B, page 11, column 1, paragraph 2, as follows:

16.4.B

. . .

Improper Loan Servicing or Collection Appeals

Any school may submit an improper loan servicing or collection appeal. . . .

A school may submit an improper loan servicing or collection appeal if both of the following criteria are met:

- . . .
- . . .
  - . . .
  - . . .
  - . . .
  - . . .
  - . . .

The timeline for submitting challenges, adjustments, and appeals begins on the sixth business day following the transmission date of the eCDR package as posted on the Department's Website and lasts for 45 days. ~~If the school intends to appeal its official cohort default rate based on improper loan servicing and collection rate~~ The Loan Record Detail Report (LRDR) is included in the eCDR package. The school has 5 business days from the transmission date of the eCDR package, as posted on the Department's Website to report any problem with receipt of the eCDR package. If the school reports a transmission problem within the 5-day period and the Department determines that the problem was not caused by the school, the timeline for submitting a challenge, adjustment or appeal will be extended for that school to account for retransmission of the eCDR notification package once the technical problem is resolved. The school's 45-day timeline for submitting a challenge, adjustment, or appeal will begin with the school's receipt of the eCDR package. If the school does not notify the Department of a transmission problem within the 5 business days following the transmission date of the eCDR package, the Department will not extend the timeline for submitting a challenge, adjustment or appeal. ~~and the loan record detail report was not~~

~~included with the official cohort default rate notice, the school must request the loan record detail report within 15 days after receiving that notice.~~ A school must request loan servicing records from the guarantor, with a copy of that request sent to the Department (unless the disputed loans have been assigned to the Department) within 15 days after receiving the loan record detail report. (Guarantors may charge for copies of loan servicing records.) Additional steps for the appeal process are detailed in the *Cohort Default Rate guide* and federal regulations.
[§668.186; §668.205; §668.193(c); *Cohort Default Rate Guide*]

Revise Appendix G, page 7, column 1, by inserting a new paragraph 5, as follows:

E

Electronic Cohort Default Rate Notification (eCDR) Package: The electronic process the Department uses to notify a domestic school of its cohort default rates. A school will receive a Loan Record Detail Report in the eCDR package if the school had one or more borrowers entering repayment in the applicable fiscal year or is subject to sanctions or the Department believes that the school will have an official cohort default rate calculated as an average. Beginning with the official FY 2008 cohort default rate cycle in September 2010, the Department will exclusively transmit the CDR notifications to foreign schools electronically through the eCDR process. See Chapter 16.

EFA: . . .

Revise Appendix G, page 15, column 1, by inserting a new paragraph 8, as follows:

Loan Proceeds: . . .

Loan Record Detail Report (LRDR): The report issued by the Department that contains the detailed data used to calculate the school's draft or official cohort default rate. See Chapter 16.

Loan Sale: . . .

PROPOSED LANGUAGE - COMMON BULLETIN:

Electronic Notification Package for Cohort Default Rate (eCDR) and Loan Record Detail Report Request

The *Common Manual* has been revised to incorporate provisions of the final rules published in the October 29, 2009, *Federal* Register that outlines the electronic eCDR process used by the Department to deliver cohort default rate information to schools. The eCDR package automatically includes a school's loan record detail report, eliminating the need for a school to request a copy of the report, and the associated 15-day timeline. The timeline for submitting challenges, adjustments, and appeals begins on the sixth business day following the successful transmission date of the eCDR package as posted on the Department's Website, and lasts for 45 days. If a school reports a transmission problem within 5 business days following the transmission, and the Department agrees that the problem was not caused by the school, then the timeline for challenges, adjustments, or appeals will be extended to account for retransmission of the eCDR notification package once the technical problem is resolved. The school's 45-day timeline for submitting a challenge, adjustment, or appeal will begin when the school receives the notification package, and all guarantors would be notified of the school's new timeline. If the school does not notify the Department of a transmission problem within the 5 business days following the transmission date of the eCDR package, the Department will not extend the timeline for submitting challenges, adjustments, and appeals.

Revised policy includes clarification that beginning with the official FY 2008 cohort default rate cycle in September 2010, the Department will exclusively transmit the CDR notifications to foreign schools electronically through the eCDR process.

The Manual is also revised to add a glossary definition for "Electronic Cohort Default Rate (eCDR) Notification Package" that explains that this is the electronic process the Department uses to notify a domestic school of its cohort default rates. A glossary definition for "Loan Record Detail Report (LRDR)" is also added. The LRDR is the report issued by the Department to schools that contains the detailed data used to calculate the school's draft or official cohort default rates.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower
None.

School:
A school will need to ensure successful receipt of their eCDR notification package and compliance with the 5 day notification guideline if the electronic rate is not received. A foreign school will need to ensure electronic receipt of the eCDR notification package.

Lender/Servicer:
None.

Guarantor:
A guarantor may be required to update its program review and Cohort Default Rate procedures for schools to adjust timelines for cohort appeals.

U.S. Department of Education:
The Department may be required to update its program review procedures for schools eCDR notification delivery and appeal timeframes.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
September 16, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others

om/edited-aes

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: February 19, 2010

X	DRAFT	Comments Due	Mar 12
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: **Cohort Default Rate Adjustments and Appeals**

AFFECTED SECTIONS: **16.4.A School Requests for Adjustments**
16.4.B School Appeals

POLICY INFORMATION: **1210/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: July 1, 2010, for two-year cohorts calculated for fiscal year 2008 through fiscal year 2011.

BASIS:
§668.191(c); §668.192(c); §668.193(f); §668.196(c); *Federal Register* dated October 28, 2009, p. 55633.

CURRENT POLICY:
Current policy specifies the situations in which a school may submit request for adjustment or an appeal of their cohort default rate, however current policy does not specify the action the Department will take if the appeal is successful.

REVISED POLICY:
Revised policy specifies that when the Department approves a request for adjustment based on uncorrected or new data, or an erroneous data appeal, it will recalculate the school's cohort default rate and electronically correct the rate that is publicly released. The revised policy also clarifies that when the Department approves an improper servicing appeal, it will use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of the school's cohort default rate and electronically correct the rate that is publicly released. Finally, if the Department approves an average rate appeal, the school will not lose its Title IV eligibility.

REASON FOR CHANGE:
The Manual is being updated to comply with regulatory changes published in the October 28, 2009, *Federal Register*, Vol. 74, No. 207.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Subsection 16.4.A, page 10, column 1, paragraph 1, bullets 1 & 2 as follows:

> Two options are available for schools to request an adjustment of their official cohort default rates:
>
> - **Uncorrected Data Adjustment**
> The uncorrected data adjustment is used to identify and correct data that has been included in the published, official cohort default rate ~~and that the school, guarantor, and Department agreed was incorrect in the draft cohort default rate calculation~~. The school may submit this type of adjustment request if it had, during the "draft" phase, submitted a timely challenge regarding data included in its draft cohort default rate and the guarantor agreed that the changes were necessary, but the revised data is not included in the official cohort default rate. The school must submit the uncorrected data adjustment request to the Department within 30 days after receiving the loan record detail report. <u>If the Department determines that incorrect data was used to calculate the cohort default rate, it will recalculate the cohort default rate based on the correct data and electronically correct the rate that is publicly released.</u> Additional instructions for this adjustment process are detailed in the *Cohort Default Rate Guide* and federal regulations.
> [§668.190; *Cohort Default Rate Guide*]
>
> - **New Data Adjustment**
> A school may request a new data adjustment if the loan data reported to the National

Student Loan Data System (NSLDS) is changed during the period between the calculation of the draft cohort default rate and the official rate, and if the school believes that the new, modified, or excluded data is inaccurate. However, the school may not submit the adjustment request to the Department if the guarantor does not concur that the data is inaccurate. The school must submit the new data adjustment request to the guarantor, with a copy to the Department (unless the disputed loans have been assigned to the Department), within 15 days after receiving the loan record detail report. If the Department determines that incorrect data was used to calculate the cohort default rate, it will recalculate the cohort default rate based on the correct data and electronically correct the rate that is publicly released. Additional steps for this adjustment process are detailed in the *Cohort Default Rate Guide* and federal regulations.
[§668.191; *Cohort Default Rate Guide*]

Revise Subsection 16.4.B, page 11, column 1, paragraph 1, as follows:

The school must submit a request for verification of data errors to the guarantor, with a copy to the Department (unless the disputed loans have been assigned to the Department), within 15 days after receiving its official cohort default rate notification. If the Department determines that incorrect data was used to calculate the cohort default rate, it will recalculate the cohort default rate based on the correct data and electronically correct the rate that is publicly released. Additional steps for this appeal process are detailed in the *Cohort Default Rate Guide* and federal regulations.
[§668.192(b) and (c); *Cohort Default Rate Guide*]

Revise Subsection 16.4.B, page 11, column 2, paragraph 1, as follows:

If the school intends to appeal its official cohort default rate based on improper loan servicing and collection and the loan record detail report was not included with the official cohort default rate notice, the school must request the loan record detail report within 15 days after receiving that notice. A school must request loan servicing records from the guarantor, with a copy of that request to the Department (unless the disputed loans have been assigned to the Department) within 15 days after receiving the loan record detail report. (Guarantors may charge for copies of loan servicing records.) Based on the Department's determination of the number of loans improperly serviced, it will use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of the school's cohort default rate, and electronically correct the rate that is publicly released. Additional steps for this appeal process are detailed in the *Cohort Default Rate Guide* and federal regulations.
[§668.193(c) and (f); *Cohort Default Rate Guide*]

Revise Subsection 16.4.B, page 12, column 2, paragraph 1, as follows:

The Department makes the initial determination that a school qualifies for an average rates appeal. Notice of that determination is included in the official cohort default rate notification. If the Department makes an initial determination that a school does not qualify for an average rates appeal and the school disagrees with that determination, the school must submit its appeal and all supporting documentation to the Department within 30 days after receiving the official cohort default rate notification. If the Department determines the school meets the requirements for the appeal, the school will not lose Title IV eligibility. Detailed instructions for this appeal process can be found in the *Cohort Default Rate Guide* and federal regulations.
[§668.196(b) and (c); *Cohort Default Rate Guide*]

PROPOSED LANGUAGE - COMMON BULLETIN:

Cohort Default Rate Adjustments and Appeals

The *Common Manual* has been updated to specify that when the Department approves a request for adjustment based on uncorrected or new data, or an erroneous data appeal, it will recalculate the school's cohort default rate and electronically correct the rate that is publicly released. When the Department approves an improper servicing appeal, it will use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of the school's cohort default rate and electronically correct the rate that is publicly released. Finally, if the Department approves an average rate appeal, the school will not lose its Title IV eligibility.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
None.

School:
A school will better understand how the Department responds to requests for cohort default rate data adjustments and appeal of rates.

Lender/Servicer:
None.

Guarantor:
None.

U.S. Department of Education:
The Department will need to update its process for responding to requests for cohort default rate data adjustments and appeal of rates.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

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COMMON MANUAL - FEDERAL POLICY PROPOSAL

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SUBJECT: **Definition of "Agent"**

AFFECTED SECTIONS: **Appendix G**

POLICY INFORMATION: **1211/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: July 1, 2010.

BASIS:
§601.2(b) Definition of Agent; *Federal Register* dated October 29, 2009, p. 55644; *Federal Register* dated July 28, 2009, pp. 37435 and 37433.

CURRENT POLICY:
Current policy does not define an agent of a school or an institution-affiliated organization.

REVISED POLICY:
Revised policy defines "agent" as an officer or employee of the school or an institution-affiliated organization, for the purposes of a school's Code of Conduct and preferred lender arrangements.

REASON FOR CHANGE:
This change is necessary to comply with regulatory changes published in the October 28, 2009, *Federal Register*, Vol. 74, No. 207.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Appendix G, page 1, column 2, by adding new paragraph 7 as follows:

> **Agent:** an officer or employee of a school or an institution-affiliated organization. This definition is applicable to the disclosure and reporting requirements for schools, institution-affiliated organizations, and lenders that provide, issue, recommend, promote, endorse, or provide information relating to FFELP and private education loans. See Section 4.4.A and 4.4.E.

PROPOSED LANGUAGE - COMMON BULLETIN:

Definition of "Agent"

The *Common Manual* has been updated to provide a glossary definition of "agent." For the purposes of a school's Code of Conduct and preferred lender arrangements, an agent is defined as an officer or employee of the school or an institution-affiliated organization.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
None.

School:
A school may need to revise its internal procedures for informing the school's agents about the provisions of its Code of Conduct.

Lender/Servicer:
None.

Guarantor:
A guarantor may be required to update its school program review procedures relating to a school's requirement to inform its agents about the provisions of the school's Code of Conduct.

U.S. Department of Education:
The Department may be required to update its school program review procedures relating to a school's requirement to inform its agents about the school's Code of Conduct.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
October 26, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others

bmf/edited-rrl

COMMON MANUAL - CORRECTION POLICY PROPOSAL

Date: February 19, 2010

X	DRAFT	Comments Due	Mar 12
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: **Administrative Capability Standards**

AFFECTED SECTIONS: **4.2 Administrative Capability Standards**

POLICY INFORMATION: **1212/Batch 169**

EFFECTIVE DATE/TRIGGER EVENT: Retroactive to the implementation of the *Common Manual*.

BASIS:
§668.16(d)(1).

CURRENT POLICY:
Current policy does not include, within the Section on Administrative Capability Standards, the requirement for a school to establish and maintain records as required for each Title IV program.

REVISED POLICY:
Revised policy states, in the Section on Administrative Capability Standards, that a school must establish and maintain records required for each Title IV program.

REASON FOR CHANGE:
This update is necessary to completely address a school's administrative capability standards.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Note: This section is also being modified by proposal 1199 in Batch 169.

Revise Section 4.2, page 12, column, paragraph 3, by adding a new final bullet as follows:

A school must demonstrate that it is capable of adequately administering the FFELP by meeting the following additional requirements:

- . . .
- . . .
- . . .
- . . .
- . . .
- . . .
- . . .
- <u>The school must establish and maintain records required under 34 CFR Part 668 (General Provisions) and as required for each Title IV program.</u>

PROPOSED LANGUAGE - COMMON BULLETIN:
Administrative Capability Standards
The *Common Manual* has been revised to state that an ongoing administrative capability standard is the requirement for a school to establish and maintain records required under 34 CFR Part 668 (General Provisions) and as required for each Title IV program.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:
Borrower:
None.

School:
None.

Lender/Servicer:
None.

Guarantor:
None.

U.S. Department of Education:
None.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
October 26, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

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