

#	Subject	Summary of Change to <i>Common Manual</i>	Type of Update	Effective Date
1041	Return of Ineligible Borrower Loan Funds	<p><b><u>5.16 Ineligible Borrowers</u></b>  <b><u>5.16.A Ineligibility Based on Borrower Error</u></b>  <b><u>5.16.B Ineligibility Based on School Error</u></b>  <b><u>8.9.B Return of Ineligible Borrower Loan Funds</u></b></p> <p>Aligns the Manual guidance regarding a borrower whose failure to begin attendance results in the school being required to return loan funds to the lender.</p>	Federal	School determinations that a student did not begin attendance on or after July 1, 2008, unless implemented earlier by the school on or after November 1, 2007.

Batch 150 trans

approved

# COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: August 21, 2008

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	with no changes	Aug 21

**SUBJECT:** Return of Ineligible Borrower Loan Funds

**AFFECTED SECTIONS:**

- 5.16 Ineligible Borrowers
- 5.16.A Ineligibility Based on Borrower Error
- 5.16.B Ineligibility Based on School Error
- 8.9.B Return of Ineligible Borrower Loan Funds

**POLICY INFORMATION:** 1041/Batch 150

**EFFECTIVE DATE/TRIGGER EVENT:** School determinations that a student did not begin attendance on or after July 1, 2008, unless implemented earlier by the school on or after November 1, 2007.

**BASIS:** §668.21; §682.604(d)(3)(i); preamble to the *Federal Register* dated November 1, 2007, pp. 62017-62018.

**CURRENT POLICY:**  
Current policy states that if the school is unable to document that a student attended classes during the payment period for which the loan is intended, the school must notify the lender of the student's withdrawal. Within 30 days of making this determination, the school must return any loan proceeds credited directly to the student's account and any proceeds delivered to the student or parent borrower and subsequently paid to the school.

Current policy states that if a school delivers loan proceeds to, or on behalf of, a student who did not attend classes during any payment period, the borrower is ineligible for those funds due to school error. The school must promptly repay those funds to the lender.

**REVISED POLICY:**  
Revised policy states that if FFELP loan funds were delivered to, or on behalf of, a student who did not begin attendance in the loan period, or payment period within the loan period, the borrower is ineligible for those funds. A student does not begin attendance if the school is unable to document the student's attendance in any class during a loan period, or during a payment period within the loan period.

Revised policy clarifies that a borrower is ineligible for loan funds due to school error if a school knew, or should have known, before the school delivered loan proceeds to, or on behalf of, a student that the student would not begin attendance during the loan period, or a payment period for which the loan funds were intended (e.g., the student notified the school that he or she would not attend or the school expelled the student). The school must repay those funds to the lender as soon as possible, but no later than 30 days after the date that the school becomes aware that the student will not, or did not, begin attendance.

Revised policy clarifies that the borrower is ineligible for loan funds due to borrower error if any of the following occurs:

- The school delivered loan funds to, or on behalf of, an otherwise eligible student as early as 10 days prior to the beginning of a loan period, and the school later learned that the student did not begin attendance in the first payment period.
- The school delivered loan funds to, or on behalf of, an otherwise eligible student as early as 10 days prior to a second or subsequent payment period in the loan period, and the school later learned that the student did not begin attendance in the second or subsequent payment period.
- The lender directly disbursed funds to a student enrolled in a study-abroad or foreign school program, and the student did not begin attendance in the loan period or payment period.

If the ineligible funds were the result of the borrower's error, the school must return to the lender all loan funds credited to the student's account at the school for the loan period or payment period, as applicable, that the student did not attend. The school must also return to the lender the amount of payments made directly by, or on behalf of, the student to the school for the loan period or payment period that the student did not attend, up to the total amount of the loan funds disbursed to the school. A school must return to the lender those funds for which it is responsible as soon as possible, but no later than 30 days after the date that the school becomes aware that the student will not, or did not, begin attendance.

The school is not responsible for returning ineligible loan funds that a lender disbursed or a school delivered directly to a borrower who received loan funds due to the borrower's error, including funds that a lender disbursed directly to a student enrolled in a study-abroad or foreign school program. In either case, upon learning that a student will not or did not begin attendance, the school must immediately notify the lender of the borrower's receipt of funds for which he or she was ineligible. The school should include in its notice to the lender the student's withdrawal date, if applicable.

The school's return of FFELP loan funds for which it is responsible is considered timely if the school does one of the following as soon as possible, but no later than 30 days after the date the school becomes aware that the student will not, or did not, begin attendance:

- Deposits or transfers the amount of funds to be returned into an account that the school maintains for federal funds.
- Initiates an electronic funds transfer (EFT) for the amount of returned funds.
- Initiates an electronic transaction that informs the lender to adjust the borrower's loan account for the amount of returned funds.
- Issues a check for the returned funds. In this case, the school's records must show that the lender's bank endorsed the check within 45 days after the date the school becomes aware that the student will not, or has not, begun attendance.

**REASON FOR CHANGE:**

This change is required to comply with final rule changes published in the November 1, 2007, *Federal Register*, pp. 62017-62018, 62027, and 62032.

**PROPOSED LANGUAGE - COMMON MANUAL:**

Revise Subsection 5.16 of the July 2008 *Common Manual*, page 18, column 2, paragraph 2, bullet 5, as follows:

**5.16  
Ineligible Borrowers**

A student for whom a Stafford or PLUS loan has been guaranteed is considered ineligible to receive the loan proceeds if any of the following occurs:

- The borrower or student provided false or erroneous information.
- The borrower or student did not qualify for all or a portion of the loan (see Section 5.1 for information regarding eligibility requirements).
- The borrower received federal interest benefits on a subsidized Stafford loan for which the borrower did not qualify.
- The borrower has been convicted of, or has pled guilty or *nolo contendere*, to a crime involving fraud in obtaining Title IV funds and has not repaid those funds in full.
- ~~The student withdrew prior to the first day of classes, or was expelled prior to the first day of classes, or failed to attend classes and the borrower did not repay loan proceeds received to either the school or the lender. The student did not begin~~

attendance in a loan period or payment period for which the loan funds were intended and the borrower did not repay loan proceeds he or she received to either the school or the lender. A student does not begin attendance if the school is unable to document the student's attendance in any class during a loan period or during a payment period within the loan period.

When a lender discovers or is notified by a school or guarantor at any time that a borrower was ineligible for any portion of a loan, the lender, in conjunction with the school and/or guarantor, must determine which party was responsible for the error: the borrower, the school, or the lender.

Revise Subsection 5.16.A, page 19, column 1, paragraph 2, as follows:

**5.16.A**  
**Ineligibility Based on Borrower Error**

In some situations, a borrower is considered ineligible for a loan due solely to his or her own error. The key factor in determining whether the borrower is solely responsible for his or her ineligibility is whether the borrower provided false or incorrect information in the loan process, misrepresented his or her eligibility, or otherwise acted in a way that caused the borrower to be ineligible for the loan. Examples of such misrepresentation are the misreporting of family size, income, or student or borrower default status.

~~Examples of situations in which a borrower is considered solely responsible for his or her ineligibility include, but are not limited to:~~

- ~~• Funds are delivered to a student or parent during the 10-day period prior to the first day of the first payment period in a loan period, but the student never attends classes, or withdraws, or is expelled prior to the first day of the first payment period and fails to pay those funds to the school or repay the funds to the lender.~~
- ~~• A borrower misrepresents his or her eligibility for a loan. Examples of such misrepresentation are the misreporting of family size, income, or student or borrower default status.~~

**Failure to Begin Attendance**

If FFELP loan funds were delivered to, or on behalf of, a student who did not begin attendance in a loan period or payment period for which the loan funds were intended, the borrower is ineligible for those funds. A student does not begin attendance if the school is unable to document the student's attendance in any class during a loan period, or during a payment period within the loan period. Below are examples of situations in which a borrower is considered ineligible for loan funds due to borrower error:

- The school delivered loan funds to, or on behalf of, an otherwise eligible student as early as 10 days prior to the beginning of a loan period and the school later learned that the student did not begin attendance in the loan period.
- The school delivered loan funds to, or on behalf of, an otherwise eligible student as early as 10 days prior to a second or subsequent payment period in the loan period and the school later learned that the student did not begin attendance in the second or subsequent payment period.
- The lender directly disbursed funds to a student enrolled in a study-abroad or foreign school program and the student did not begin attendance in the loan period or payment period.

~~If a school delivers funds to or on behalf of an otherwise eligible borrower student during the 10-day period prior to the first day of a second or subsequent payment period, and the student does not attend any classes in the second or subsequent payment period, or withdraws, or is expelled prior to the first day of the second or subsequent payment period, the school must~~

~~determine whether the borrower was eligible to receive the funds. If the school determines that the borrower was ineligible for the loan funds, the school must notify the lender of the borrower's receipt of ineligible funds (see Subsection 12.4.F for lender servicing requirements for ineligible loans). If the borrower was eligible for the funds, the school must adhere to the applicable requirements for the return of Title IV funds (see Section 9.5). The school will not be assessed any liability for delivering loan funds in this instance unless the school knew, or should have known, that the borrower was ineligible to receive the funds at the time they were delivered (see Subsection 5.16.B for more information about ineligibility due to school error). However, as soon as possible, but no later than 30 days after the date the school becomes aware that the student will not, or did not begin attendance, the school must return to the lender all loan funds credited to the student's account at the school and the amount of any payments made directly by, or on behalf of, the student to the school for the loan period or payment period, as applicable. See Subsection 8.9.B for more information about returning ineligible borrower loan funds.~~

For loan funds that a lender disbursed or a school delivered directly to a borrower for a loan period or a payment period in which the student did not begin attendance, the school is not responsible for returning the funds. However, upon learning that a student will not, or did not begin attendance, a school must immediately notify the lender of the borrower's receipt of funds for which he or she was not eligible, including loan funds that a lender disbursed directly to a student enrolled in a study-abroad or foreign school program. The school should include in its notice to the lender the student's withdrawal date, if applicable. For more information about required enrollment reporting, see Section 9.2.

The lender will issue a final demand letter to the borrower requiring the borrower to repay the full amount of the ineligible portion of the loan, including interest benefits and special allowance the lender billed to the Department. The lender must allow an ineligible borrower at least 30 days to respond from the date the final demand letter is mailed. If, at the end of the 30-day time frame, the borrower fails to comply with the terms of the final demand letter, the lender must treat the entire loan as though it were in default and file a claim payment request with the guarantor. See Subsection 12.4.F for more information about a lender's servicing requirements on ineligible loans due to borrower error.

When a borrower is solely responsible for his or her ineligibility, the borrower is not eligible for interest benefits, an in-school or grace period, or deferment on the ineligible loans(s). Additionally, the borrower may not have his or her Title IV eligibility reinstated by making satisfactory repayment arrangements on an ineligible amount. The borrower must fully repay the ineligible loan to regain Title IV eligibility. However, a borrower with an ineligible loan(s) may consolidate another eligible loan(s).  
[§682.201(d)(1)(i)(D); §682.201(d)(2)]

~~If it is determined that the borrower is solely responsible for the ineligibility of the funds, the lender must immediately mail the borrower a final demand letter and follow the ineligible borrower due diligence requirements outlined in subsection 12.4.F.  
[§682.208(f)]~~

Revise Subsection 5.16.B, page 19, column 2, paragraph 3, bullet 4, as follows:

**5.16.B**  
**Ineligibility Based on School Error**

In some cases, a borrower may receive loan funds for which he or she is ineligible due to a school error. These errors may include, but are not limited to:

- The school delivers funds to a borrower who has not maintained eligibility.
- The school certifies and delivers loan funds in excess of the borrower's eligibility.
- The school certifies and delivers loan funds to an ineligible borrower (for example, a borrower in default on another Title IV loan).

- The student fails to enroll in a course leading to a degree or certificate, and the course in which the student enrolls is not required for teacher certification or recertification in the state in which the school is located.
- The borrower misrepresents or misreports information that the school is required to verify, and the school fails to verify the information, resulting in the borrower's receipt of funds for which he or she is ineligible.
- The school knew that a student would not, or did not, begin attendance during the loan period or a payment period within the loan period before the school delivered loan proceeds to, or on behalf of, a student (e.g., the student notified the school that he or she would not attend or the school expelled the student).

~~If a borrower misrepresents or misreports information that the school is required to verify, and the school fails to verify the information, resulting in the borrower's receipt of funds for which he or she is ineligible, the ineligibility must be considered a school error regardless of any error made by the borrower. In this situation the school must repay the ineligible disbursed amount to the lender, plus any outstanding accrued interest. The amount paid to the lender must include the ineligible amount disbursed, but must not include any payment or prepayment made by the borrower prior to the date the school repays the ineligible funds. The school also must pay to the Department all interest and special allowance benefits paid to the lender from the date of disbursement to the date the school repays the funds. If the school refunds the interest and special allowance to the lender, the lender must make an appropriate adjustment on its next quarterly Lender's Interest and Special Allowance Request and Report (LaRS report).~~

Until the school repays the lender, the lender must continue to service the loan as an eligible FFELP loan. If the school is required to repay the entire loan amount, the school may request that the lender assign the loan to the school at the time the school returns the ineligible loan funds to the lender.

~~If the loan is assigned to the school, the loan becomes a legal obligation between the school and the borrower. The borrower remains eligible for benefits identified in the promissory note, including deferment and various repayment options; however, the school is prohibited from billing the Department for any interest benefits or special allowance payments, and the loan is no longer insured by the guarantor. The borrower then repays to the school all funds delivered based on the terms of the promissory note.~~

In these cases, the school must repay the ineligible disbursed amount plus outstanding accrued interest and interest benefits or special allowance payments that the Department paid to the lender. See Subsection 8.9.B for detailed information about returning ineligible loan funds due to school error.

Revise Subsection 8.9.B, page 19, column 1, paragraph 1, as follows:

**8.9.B**  
**Return of Ineligible Borrower Loan Funds**

~~If, for any other reason, the school is unable to document that the student attended classes during the payment period for which the loan is intended, the school must notify the lender of the student's withdrawal. Within 30 days of making this determination, the school must return any loan proceeds credited directly to the student's account and any proceeds delivered to the student or parent borrower and subsequently paid to the school.~~  
 {§682.604(d)(4)}

If FFELP loan funds have been delivered to, or on behalf of, a student who did not attend classes during the payment period for which the loan is intended begin attendance in a loan period, or payment period within the loan period, the borrower may be considered ineligible for those funds. A student did not begin attendance if the school is unable to document the

student's attendance in any class during a loan period, or during a payment period within the loan period. The determination of whether the ineligibility is due to borrower, or school, or lender error is contingent upon when the funds were delivered. See Section 5.16 for more information about ineligibility for loan funds due to borrower, school, or lender error.

[§668.21(c)]

~~If a school delivers loan proceeds to or on behalf of a student who did not attend classes during any payment period, the borrower is ineligible for those funds due to school error. The school must promptly repay those funds to the lender. The amount paid to the lender must include the amount disbursed that the borrower was ineligible to receive plus any outstanding accrued interest due to the lender, but must not include any payment or prepayment made by the borrower prior to the date the school repays the ineligible funds. The school also must repay to the Department any interest and special allowance benefits paid to the lender from the date of disbursement through the date the school repays the funds. If the school refunds subsidized interest and special allowance to the lender, the lender must make an appropriate adjustment on its next quarterly lender's Interest and Special Allowance Request and Report (LaRS report).~~

~~[§682.604(d)(3)]~~

~~If the school is required to repay the entire loan amount, the school may request that the lender assign the loan to the school using either the original or a true and exact copy of the promissory note at the time the school returns the loan funds to the lender. A lender must comply with the loan record retention requirements in subsection 3.4.A for any loan assigned to a school and for any remaining loans held by the lender that were originated under the same Master Promissory Note (MPN).~~

~~If a school delivers loan funds to or on behalf of an otherwise eligible student during the 10-day period prior to the beginning of the loan period, and the student does not attend any classes during the loan period, ceases to be enrolled at least half time, or is expelled prior to the start of the payment period, the borrower is ineligible for the funds due to borrower error. In this case, the school must notify the lender of the borrower's receipt of ineligible funds (see subsection 12.4.F for lender servicing requirements for ineligible loans).~~

### **Ineligibility Due to Borrower Error**

A borrower is considered ineligible for FFELP loan funds due to borrower error if any of the following occur:

- The school delivered loan funds to, or on behalf of, an otherwise eligible student as early as 10 days prior to the beginning of a loan period, and the school later learned that the student did not begin attendance in the loan period.
- The school delivered loan funds to, or on behalf of, an otherwise eligible student as early as 10 days prior to a second or subsequent payment period in the loan period, and the school later learned that the student did not begin attendance in the second or subsequent payment period.
- The lender directly disbursed funds to a study-abroad or foreign school student and the student did not begin attendance in the loan period or payment period.

The school will not be assessed any liability for delivering loan funds in this instance unless the school knew or should have known that the borrower was ineligible to receive the funds at the time they were delivered. However, the school must return to the lender all loan funds credited to the student's account at the school for the loan period or payment period, as applicable, that the student did not attend. The school must also return to the lender the amount of payments made directly by, or on behalf of, the student to the school for the loan period or payment period that the student did not attend, up to the total amount of the loan funds disbursed to the school. A school must return to the lender those funds for which it is responsible as soon as possible, but no later than 30 days after the date that the school becomes aware that the student will not, or has not, begun attendance.

~~[§682.604(d)(4)(i) and (ii); §668.21(a) and (b)]~~

For loan funds that a lender disbursed or a school delivered directly to a borrower for a loan period, or a payment period in which the student did not begin attendance, the school is not responsible for returning the funds. However, upon learning that a student will not, or did not, begin attendance, the school must immediately notify the lender of the borrower's receipt of funds for which he or she was ineligible, including loan funds that a lender disbursed directly to a student enrolled in study-abroad or foreign school program. A school should include in its notice to the lender the student's withdrawal date, if applicable. For information about a lender's servicing requirements on ineligible loans, see Subsection 12.4.F. [§668.21(a)(2)(ii)]

### **Ineligibility Due to School Error**

A borrower is ineligible for loan funds due to school error if a school knew, or should have known, that a student would not begin attendance during the loan period, or a payment period within the loan period, before the school delivered loan proceeds to, or on behalf of, a student (e.g., the student notified the school that he or she would not attend or the school expelled the student). The school must repay those funds to the lender as soon as possible, but no later than 30 days after the date that the school becomes aware that the student will not, or did not, begin attendance. The amount paid to the lender must include the amount disbursed that the borrower was ineligible to receive plus any outstanding accrued interest due to the lender, but must not include any payment or prepayment made by the borrower prior to the date the school repays the ineligible funds. The school also must repay to the Department any interest and special allowance benefits paid to the lender from the date of disbursement through the date the school repays the funds. If the school refunds subsidized interest and special allowance to the lender, the lender must make an appropriate adjustment on its next quarterly Lender's Interest and Special Allowance Request and Report (LaRS report). [§668.21(a)(iii) and (b); §682.604(d)(3)(i)]

If the school is required to repay the entire loan amount, the school may request that the lender assign the loan to the school using either the original or a true and exact copy of the promissory note at the time the school returns the loan funds to the lender. A lender must comply with the loan record retention requirements in Subsection 3.4.A for any loan assigned to a school and for any remaining loans held by the lender that were originated under the same Master Promissory Note (MPN).

### **Timely Return of Ineligible Loan Funds**

The school's return of FFELP loan funds for which it is responsible is considered timely if the school does one of the following as soon as possible, but no later than 30 days after the date the school becomes aware that the student will not, or did not, begin attendance:

- Deposits or transfers the amount of funds to be returned into an account that the school maintains for federal funds (see Section 8.1).
- Initiates an electronic funds transfer (EFT) for the amount of returned funds.
- Initiates an electronic transaction that informs the lender to adjust the borrower's loan account for the amount of returned funds.
- Issues a check for the returned funds. In this case, the school's records must show that the lender's bank endorsed the check within 45 days after the date the school becomes aware that the student will not, or has not, begun attendance. [§668.21(d)]

If a school delivers loan funds to or on behalf of an otherwise eligible student during the 10-day period prior to the first day of a second or subsequent payment period, and the student does not attend any classes in the second or subsequent payment period, ceases to be enrolled at least half time, or is expelled prior to the start of the payment period, the school must determine whether the borrower is ineligible for the funds (see section 5.16). If the school determines that the borrower was ineligible for the loan funds, the school must notify

~~the lender of the borrower's receipt of funds for which he or she was ineligible (see subsection 12.4.F for lender servicing requirements for such loans). If the school determines that the borrower was eligible for the funds, the school must adhere to the applicable return of title IV funds guidelines (see section 9.5). The school will not be assessed any liability for delivering loan funds in this instance unless the school knew or should have known that the borrower was ineligible to receive the funds at the time they were delivered. [§668.167(b); [§682.604(d)(3) and (4)]~~

~~For additional information about ineligible loan funds due to borrower, school, or lender error, see section 5.~~

**PROPOSED LANGUAGE - COMMON BULLETIN:**

**Failure to Begin Attendance and Return of Ineligible FFELP Funds**

The July 2008 update of the *Common Manual* has been revised to clarify that if FFELP loan funds were delivered to, or on behalf of, a student who did not begin attendance in a loan period, or payment period within the loan period, the borrower is ineligible for those funds. A student does not begin attendance if the school is unable to document the student's attendance in any class during a loan period, or during a payment period within the loan period.

Revised policy clarifies that a borrower is ineligible for loan funds due to school error if a school knew, or should have known, before the school delivered loan proceeds to, or on behalf of, a student that the student would not begin attendance during a loan period or a payment period for which the loan funds were intended (e.g., the student notified the school that he or she would not attend or the school expelled the student). The school must repay those funds to the lender as soon as possible, but no later than 30 days after the date that the school becomes aware that the student will not, or did not begin attendance.

A borrower is considered ineligible for FFELP loan funds due to borrower error if any of the following occur:

- The school delivered loan funds to, or on behalf of, an otherwise eligible student as early as 10 days prior to the beginning of a loan period, and the school later learned that the student did not begin attendance in the loan period.
- The school delivered loan funds to, or on behalf of, an otherwise eligible student as early as 10 days prior to a second or subsequent payment period in the loan period, and the school later learned that the student did not begin attendance in the second or subsequent payment period.
- The lender directly disbursed funds to a study-abroad or foreign school student and the student did not begin attendance in the loan period or payment period.

If the ineligible funds were the result of the borrower's error, the school must return to the lender all loan funds credited to the student's account at the school for the loan period or payment period, as applicable, that the student did not attend. The school must also return to the lender the amount of payments made directly by, or on behalf of, the student to the school for the loan period or payment period that the student did not attend, up to the total amount of the loan funds disbursed to the school. A school must return to the lender those funds for which it is responsible as soon as possible, but no later than 30 days after the date that the school becomes aware that the student will not, or did not begin attendance.

The school is not responsible for returning funds that the school delivered directly to a borrower who received loan funds due to borrower error. Similarly, the school is not responsible for returning loan funds that a lender disbursed directly to a student enrolled in a foreign school or study-abroad program. In either case, upon learning that a student will not or did not begin attendance, the school must immediately notify the lender of the borrower's receipt of funds for which he or she was ineligible. A school should include in its notice to the lender the student's withdrawal date, if applicable.

The school's return of FFELP loan funds for which it is responsible is considered timely if the school does one of the following as soon as possible, but no later than 30 days after the date the school becomes aware that the student will not or has not begun attendance:

- Deposits or transfers the amount of funds to be returned into an account that the school maintains for federal funds.

- Initiates an electronic funds transfer (EFT) for the amount of returned funds.
- Initiates an electronic transaction that informs the lender to adjust the borrower's loan account for the amount of returned funds.
- Issues a check for the returned funds. In this case, the school's records must show that the lender's bank endorsed the check within 45 days after the date the school becomes aware that the student will not or has not begun attendance.

**GUARANTOR COMMENTS:**

None.

**IMPLICATIONS:**

*Borrower:*

A borrower will be consistently required to repay loan funds that were directly disbursed or delivered to the borrower when a student does not begin attendance in a loan period or payment period and the school did not know that the student would not begin attendance.

*School:*

A school may need to review its procedures to ensure that all school offices that need to know are notified when a student will not, or does not begin attendance in a loan period, or payment period within the loan period, and to ensure timely return of funds based on the method of return.

*Lender/Service:*

A lender may receive more well-defined information about ineligible funds that are returned by the school and experience timelier return of funds.

*Guarantor:*

A guarantor may experience fewer cases that require the guarantor to investigate to determine responsibility for ineligible loan funds. A guarantor may also be required to update its school program review procedures.

*U.S. Department of Education:*

The Department may be required to update its school program review procedures. The Department may experience a timelier return of interest benefits and special allowance associated with ineligible funds.

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**To be completed by the Policy Committee**

**POLICY CHANGE PROPOSED BY:**

CM Policy Committee

**DATE SUBMITTED TO CM POLICY COMMITTEE:**

November 1, 2007

**DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:**

August 14, 2008

**PROPOSAL DISTRIBUTED TO:**

CM Policy Committee  
 CM Guarantor Designees  
 Interested Industry Groups and Others  
 CM Governing Board Representatives

**Comments Received From:**

AES/PHEAA, CSLF, EAC, FAME, GHEAC, Great Lakes, HESC, KHEAA, NASFAA, NCHELP, NSLP, OGSLP, SCSLC, SLMA, SLND, SLSA, TG, USA Funds, VSAC, and Wachovia.

**Responses to Comments**

Many of the commenters supported this proposal as written. Other commenters recommended wordsmithing, grammatical, or other non-substantive changes that were considered without comment. We appreciate the

review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

**COMMENT:**

One commenter noted that the terminology used in bullets 1 and 2 under the subheading *Failure to Begin Attendance* in Subsection 5.16.A does not align with that used in bullets 1 and 2 under the subheading *Ineligibility Due to Borrower Error* in Subsection 8.9.B.

**Response:**

The Committee thanks the commenter for noting this inadvertent inconsistency.

**Change:**

Proposed policy text in Subsection 8.9.B under the subheading *Ineligibility Due to Borrower Error*, bullets 1 and 2 have been revised as follows:

**Ineligibility Due to Borrower Error**

A borrower is considered ineligible for FFELP loan funds due to borrower error if any of the following occur:

- The school delivered loan funds to, or on behalf of, an otherwise eligible student ~~during the 10-day period~~ as early as 10 days prior to the beginning of the first payment period in a loan period, and the school later learned that the student did not begin attendance in the first payment period.
- The school delivered loan funds to, or on behalf of, an otherwise eligible student ~~during the 10-day period~~ as early as 10 days prior to a second or subsequent payment period in the loan period, and the school later learned that the student did not begin attendance in the second or subsequent payment period.

**COMMENT:**

One commenter requested a change to the Subsection 8.9.B, under the new subheading *Ineligibility Based on School Error*, paragraph 1, sentence 1:

The school knew, or should have known, that a student would not, or did not, begin attendance during the loan period or a payment period within the loan period before the school delivered loan proceeds to, or on behalf of, a student (e.g., the student notified the school that he or she would not attend or the school expelled the student).

The commenter stated that the added phrase aligns with existing policy text in 5.16.A, *Failure to Begin Attendance*, paragraph 2, which states, “The school will not be assessed any liability for delivering loan funds unless the school knew or should have known that the borrower was ineligible to receive the funds at the time they were delivered.”

The commenter expressed concern that, without this condition, schools may over-utilize their ability to assign error to the borrower.

**Response:**

The Committee agrees.

**Change:**

Subsection 8.9.B has been revised per the commenter’s request.

**COMMENT:**

One commenter questioned the meaning of the phrase “or on behalf of” when used to describe delivery of funds to the student in the Revised Policy and proposed policy text, for example, in Subsection 8.9.B:

If FFELP loan funds have been delivered to, *or on behalf of*, a student who did not begin attendance in a loan period, or payment period within the loan period, the borrower may be considered ineligible for those funds.

The commenter noted that the delivery of funds includes direct delivery to the student (or parent) and delivery to the student's school account and recommended striking all occurrences of this phrase for clarity.

**Response:**

The phrase the commenter questions is existing Manual text that was relocated within this proposal or used as a model for new text that addresses the final rule change. This phrase refers to the delivery of parent PLUS loan funds on behalf of a dependent student, as described in Subsection 6.15.D:

PLUS loans are available both to parent borrowers who wish to borrow *on behalf of their dependent undergraduate students*, and to graduate and professional student borrowers.

**Change:**

None.

**COMMENT:**

One commenter requested a revision to text in Subsection 5.16.A under the new subheading *Failure to Begin Attendance*, similar text in Subsection 8.9.B under the new subheading *Ineligibility due to Borrower Error*, and a coordinating change to the Revised Policy statement, as follows:

- The school delivered loan funds to, ~~or on behalf of,~~ an otherwise eligible student as early as 10 days prior to the beginning of the ~~first payment period in a loan period,~~ and the school later learned that the student did not begin attendance in the ~~first payment~~ period.
- ~~The school delivered loan funds to, or on behalf of, an otherwise eligible student as early as 10 days prior to a second or subsequent payment period in the loan period and the school later learned that the student did not begin attendance in the second or subsequent payment period.~~

The commenter stated that schools are aware of the meaning of "payment period" and that clarifying "within a loan period" is unnecessary and not entirely accurate. In some instances the payment period may also be the loan period.

**Response:**

The Committee agrees that the proposed policy text does not contemplate a loan period that contains a single payment period. However, the Committee also believes that it is important to retain existing text that applies this policy to funds that are delivered for a second or subsequent payment period in a loan period.

**Change:**

The proposed policy text in Subsections 5.16.A, 8.9.B, and the Revised Policy statement has been modified to read as follows:

- The school delivered funds to, or on behalf or, an otherwise eligible student as early as 10 days prior to the beginning of the ~~first payment period in a~~ loan period and the school later learned that the student did not begin attendance in the ~~first payment~~ loan period.
- The school delivered loan funds to, or on behalf of, an otherwise eligible student as early as 10 days prior to a second or subsequent payment period in the loan period and the school later learned that the student did not begin attendance in the second or subsequent payment period.

**COMMENT:**

One commenter stated that while the information addressed in this policy proposal touches on the topic of ineligible loans, the commenter believed it should also be presented as a stand-alone piece in Subsection 8.7.F.

**Response:**

The commenter's suggestion to add the information contained in this proposal to subsection 8.7.F, *Delivery to Borrowers in Special Circumstances*, constitutes a significant change that would warrant redistribution of this proposal to the community for further review. To expedite updating the Manual's text with final rule changes that were effective July 1, 2008, the Committee will consider the commenter's suggestion separately for

possible, future policy proposal development.

**Change:**

None at this time.

**COMMENT:**

One commenter requested that both the Basis and the Reason for Change include all page numbers in which the maximum loan period final rule change is referenced in the November 1, 2007, *Federal Register*.

**Response:**

The Committee agrees, with the exception of the commenter's requested change to the Basis. The Committee declines to include pp. 62027 and 62032 of the *Federal Register* in the Basis since that citation is redundant to the regulatory citations §668.21 and §682.604(d)(3)(i) that appear on those pages.

**Change:**

The Reason for Change now reflect references to pp. 62017-62018, 62027, and 62032 in the November 1, 2007, *Federal Register*. The Basis now reflects references to pp. 62017-62018 of the *Federal Register*.

jcs/edited-bb