

#	Subject	Summary of Change to <i>Common Manual</i>	Type of Update	Effective Date
1023 (originally distributed in Batch 149) Deferred for further development	Documentation Required for Last Name Changes	<p>3.5.F <u>Reporting Social Security Number, Date of Birth, and First Name Changes or Corrections</u></p> <p>9.1 <u>Reporting Social Security Number, Date of Birth, and First Name Changes or Corrections</u></p> <p>Establishes an industry standard that provides acceptable documentation for a change or correction to a borrower's last name.</p>	Guarantor	Last name change requests received by the school or lender on or after January 1, 2009, unless implemented earlier by the guarantor.
997 (originally distributed in Batches 146 and 149)	Servicing of a Consolidation Loan with Multiple Loan Records	<p>14.1.E <u>Violations and Cures Associated with Unsynchronized Servicing of a Consolidation Loan with Multiple Loan Records</u></p> <p>Clarifies that although the subsidized, unsubsidized, and HEAL portions of a single Consolidation loan may appear as separate loan records on the lender's system, the lender must ensure that the Consolidation loan is administered as a single Consolidation loan. If a lender fails to perform due diligence activities on a single payment due date and amount, the lender may incur due diligence violations and penalties sufficient to cause a loss of guarantee on the loan. Also clarifies what a lender may do to cure these violations.</p>	Guarantor	Claims filed by the lender on or after January 1, 2009, unless implemented earlier by the guarantor.
991 (originally distributed in Batches 146 and 149)	Servicing Parameters for a Consolidation Loan with Multiple Loan Records	<p>3.5.E <u>Reporting Loan Assignments, Sales, and Transfers</u></p> <p>11.1.A <u>General Deferment Eligibility Criteria</u></p> <p>11.19 <u>Forbearance</u></p> <p>12.4 <u>Due Diligence Requirements</u></p> <p>13.1.A <u>Claim Filing Requirements</u></p> <p>15.1.A <u>Agreement to Guarantee Federal Consolidation Loans</u></p>	Federal	Consolidation loan applications received by the lender on or after November 13, 1997.

		<p><u>15.2</u> <u>Borrower Eligibility and Underlying Loan Holder Requirements</u></p> <p><u>15.4</u> <u>Disbursement</u></p> <p><u>15.5.A</u> <u>Establishing the First Payment Due Date</u></p> <p><u>15.5.B</u> <u>Disclosing Repayment Terms</u></p> <p>Clarifies that although the subsidized, unsubsidized, and HEAL portions of a single Consolidation loan may appear as separate loan records on the lender's system, the lender must ensure that the Consolidation loan is administered as a single Consolidation loan. Due diligence must be performed at a loan level, and should the Consolidation loan default, all portions of the loan must default on the same date and be filed in the same claim or at least simultaneously with the guarantor.</p> <p>Clarifies that lenders and servicers are expected to maintain adequate internal controls and procedures to ensure that all portions of the single Consolidation loan remain synchronized throughout the life of the loan, and any re-synchronization occurs in a timely manner to ensure that the loan maintains a single due date and amount, and that the guarantor may examine the lender's controls, procedures, and servicing history during a program review.</p>		
1063	Alternatives to Recommended Lender Lists	<p><u>4.4.A</u> <u>Recommended Lender Lists</u></p> <p>Aligns the Manual with Departmental guidance that provides additional clarifications regarding alternatives to a school's recommended lender list, and how a school may provide important lender information to their FFELP applicants.</p>	Federal	Information provided by schools regarding lenders participating with the school on or after May 9, 2008.
1055 (originally distributed in Batch 151)	NSLDS Enrollment Reporting	<p><u>9.2.A</u> <u>National Student Loan Data System (NSLDS) Enrollment Reporting</u></p> <p>Updates information concerning a school that fails to provide updated enrollment data to the NSLDS in a timely manner. Adds technical information regarding the timing and format of the NSLDS Late</p>	Federal	Eligibility determinations made on or after July 1, 2007, unless implemented earlier by the school.

		Enrollment Reporting Notification. Defines the date that NSLDS "created" the school's Enrollment Reporting Roster File as the date and time stamp that the NSLDS enters into the Roster File's header record.		
1064	Regulatory and Statutory Waivers for Students, Borrowers, and Schools Affected by a Disaster	<u>H.4.C</u> <u>Higher Education Hurricane Relief Act Waivers</u> Aligns the Manual with regulatory and statutory waivers that are still in effect for students, borrowers, schools, and lenders affected by a hurricane or other disaster per Departmental guidance.	Federal	For the 3-month administrative forbearance, August 5, 1999. For the Title IV grant overpayment waiver, November 9, 2005. For all other waivers, February 24, 2004.
1065	Teacher Loan Forgiveness	<u>13.9.B</u> <u>Teacher Loan Forgiveness Program</u> Aligns the Manual with Departmental clarifying guidance that states in the case of a borrower who has taught more than 5 years, any consecutive 5-year period of qualifying service may be counted for teacher loan forgiveness purposes.	Correction	Teacher Loan Forgiveness discharge determinations made after October 8, 1998.
1066	Identity Theft	<u>13.8.E</u> <u>False Certification as a Result of the Crime of Identity Theft</u> Relocates current Manual text regarding the loss of insurance as a result of the crime of identity theft and the refunding of interest benefits and special allowance to a more appropriate subsection of the Manual.	Organizational	False Certification as a result of identity theft loan discharge claims processed by the lender on or after September 8, 2006.

COMMON MANUAL - GUARANTOR POLICY PROPOSAL

Date: November 20, 2008

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	With No Changes	Nov 20

SUBJECT: Servicing of a Consolidation Loan with Multiple Loan Records

AFFECTED SECTIONS: 14.1.E Violations and Cures Associated with Unsynchronized Servicing of a Consolidation Loan with Multiple Loan Records

POLICY INFORMATION: 997/Batch 153 (originally distributed in Batches 146 and 149)

EFFECTIVE DATE/TRIGGER EVENT: Claims filed by the lender on or after January 1, 2009, unless implemented earlier by the guarantor.

BASIS:

Emergency Student Loan Consolidation Act of 1997 (ESLCA) (P.L. 105-78); §682.102(e)(5); §682.209(a); §682.210; §682.211; §682.301(a)(3)(iii); §682.406(a)(1); §682, Appendix D.

CURRENT POLICY:

A Federal Consolidation loan made from an application received by the lender on or after November 13, 1997, is 1) eligible for interest subsidy during authorized periods of deferment on any portion of the Consolidation loan that paid an underlying subsidized FFELP loan or an underlying subsidized Direct loan, and 2) subject to a variable interest rate on any portion of the Consolidation loan that repaid a HEAL loan. Current policy does not specify what violations and penalties may be incurred if a lender separately services portions of a Consolidation loan and how a lender may cure those violations.

REVISED POLICY:

Revised policy clarifies that although the subsidized, unsubsidized, and HEAL portions of a single Consolidation loan may appear as separate loan records on the lender's system, the lender must ensure that the Consolidation loan is administered as a single Consolidation loan. Thus, the loan must be administered with a single payment due date and amount which must cover all separate records of the Consolidation loan. If the lender fails to perform due diligence activities on a single payment due date and amount/or fails to grant deferment or forbearance for the single Consolidation loan the lender records on its system as multiple, separate loan servicing records, the lender may incur due diligence violations and penalties sufficient to cause a loss of guarantee on the loan. Revised policy also clarifies what a lender may do to cure these violations.

REASON FOR CHANGE:

The change is being incorporated into the *Common Manual* to add clarity and policy guidance regarding violations, penalties, and cures associated with the servicing of a Consolidation loan that consists of multiple loan servicing records.

PROPOSED LANGUAGE - COMMON MANUAL:

Add a new Subsection 14.1.E, page 2, column 2, as follows:

14.1.E

Violations and Cures Associated with Unsynchronized Servicing of a Consolidation Loan with Multiple Loan Records

Although the subsidized, unsubsidized, and HEAL portions of a single Consolidation loan may appear as separate loan servicing records on the lender's system, the lender must ensure that the Consolidation loan is administered as a single Consolidation loan.

If the lender fails to perform due diligence activities on a single payment due date and amount, or fails to grant deferment or forbearance for the single Consolidation loan that contains multiple loan servicing records, the lender may incur due diligence violations sufficient to cause a loss of guarantee on the loan. If this occurs, due diligence activities will

be reviewed and penalties assessed in accordance with Sections 14.3 and 14.4. For purposes of assessing due diligence violations on an unsynchronized Consolidation loan, the servicing of the single Consolidation loan is reviewed as follows:

- If the guarantor cannot determine the correct due date or cannot confirm that the loan is in default, the claim may be returned to the lender. Refer to Section 13.2 for more information on claim returns.
- If the guarantor determines a loan to be otherwise eligible for claim payment, the guarantor may return the claim for the lender to make the necessary corrections and resubmit the claim to include all portions of the loan, the correct due date, and the 270 days of servicing detail. Upon receipt of the resubmitted claim, the guarantor will review the conversion to repayment and all due diligence activity based upon the correct due date. This includes reviewing due diligence activity performed on all portions of the single Consolidation loan.
- Based upon the due diligence review of the single Consolidation loan, penalties for any violations identified will be assessed in accordance with Section 14.3. or 14.4, as applicable.
- Depending upon the level of any penalty that may be assessed, the lender may cure the loan by following the appropriate procedure in Section 14.5 or 14.6, as applicable.

PROPOSED LANGUAGE - COMMON BULLETIN:

Servicing of a Consolidation Loan with Multiple Loan Servicing Records

The *Common Manual* has been revised to reflect that although the subsidized, unsubsidized, and HEAL portions of a single Consolidation loan may appear as separate loan records on the lender's system, the lender must ensure that the Consolidation loan is serviced as a single Consolidation loan. Thus, the loan must be serviced with a single payment due date and amount which must cover all separate records of the Consolidation loan. If the lender fails to perform due diligence activities on a single payment due date and amount, or fails to grant deferment or forbearance for the single Consolidation loan that contains multiple records, the lender may incur due diligence violations sufficient to cause a loss of guarantee on the loan. The lender may cure the loan by following the procedures in Section 14.5 or 14.6, as applicable.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

A borrower is ensured that his or her Consolidation loan will be serviced as a single loan.

School:

None.

Lender/Service:

A lender must ensure that a Consolidation loan is serviced as a single loan. A lender may need to modify servicing procedures for Consolidation loans.

Guarantor:

A guarantor may need to modify claim review procedures to ensure that a Consolidation loan is serviced as a single loan and to assess violations accordingly. A guarantor may need to modify program review parameters.

U.S. Department of Education:

The Department may need to modify program review parameters to ensure that a Consolidation loan is serviced as a single loan.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:

CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:

September 24, 2007

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

April 19, 2008, June 19, 2008, and November 13, 2008

PROPOSAL DISTRIBUTED TO:

CM Policy Committee

Community Workgroup comprised of representatives from American Education Services, USA Funds, SLSA, NCHELP and the Governing Board

CM Guarantor Designees

Interested Industry Groups and Others

CM Governing Board Representatives

Comments Received From (Batch 146):

AES/PHEAA, CFI, CSLF, EdFund, GHEAC, Great Lakes, HESAA, HESC, KHEAA, LOSFA, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments

Many of the commenters supported this proposal as written. Other commenters recommended wordsmithing changes that made no substantive changes to the policy but that added clarity to the proposed language. 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 recommended that this proposal be pulled and rewritten. The commenter states that the basis of this proposal is not supported by regulatory or statutory guidance. The commenter also states that the due diligence requirements for a Consolidation loan are no different than other FFEL loans. Each Consolidation loan should be reviewed based on required due diligence activities pursuant to regulatory and statutory guidelines. There is no basis to deny insurance on a Consolidation loan being serviced as separate segments simply because an event caused portions to be unsynchronized. As long as the Consolidation loan has been serviced utilizing reasonable and prudent care and there are no due diligence violations sufficient to lose guarantee, the loans should not lose insurance based on being unsynchronized.

Another commenter also recommended that this proposal be pulled from this batch. The commenter stated that the basis does not provide the regulatory guidance to support the proposed changes. The commenter also states that Chapter 14 sufficiently addresses actions or lack thereof that would result in violations or loss of guarantee based upon §682 Appendix D and DCL 96-L-186/96-G-287. Any proposed language regarding assessment of penalties should follow §682 Appendix D and other regulatory guidance in regards to evaluations of due diligence requirements and gaps in collection activity, especially in Subsections 1.A.(a) and II.2 of §682 Appendix D. In addition, the commenter stated that Subsection 14.1.E contradicts the guidance found in Subsection 14.3.C, Section 10.6, and Subsection 10.6.E. Section 10.6 provides guidance that repayment schedules should establish terms that retire the debt in a reasonable manner and satisfy regulatory requirements. Subsection 10.6.E provides examples of when terms may need to be adjusted, which may or may not include the end of a deferment or forbearance period. Subsection 14.3.C reflects regulatory guidance on what specific actions would incur penalties. Violation penalties are associated with the timing of establishing first payment due dates, not the content, accuracy, or timing of subsequent disclosures of terms. The commenter also states that the new Subsection 14.5.E is unnecessary. The violations and gaps for an entire Consolidation loan are no different than for other types of loans. The Consolidation loan should be serviced and therefore reviewed for due diligence violations as a single loan. Upon a due diligence review for missed activities, the cures for any violations or gaps identified in accordance with Appendix D would be the same as what is already spelled out in Section 14.5. The commenter goes on to say that they agree that most are making the effort to and should service Consolidation loans as one complete loan, but to come up with these penalties that are not specified in the regulations is too harsh. Multiple due dates may lead to extra collection activities. Also, even "out of sync" collection activity could be counted as an activity to prevent a gap under the definition and letter content requirements specified in the regulations. The intent of the regulations was to prevent lenders from doing next to no collections and then collecting the insurance on the loans. The Secretary wanted to make sure the lenders were making some efforts to collect the loans before paying insurance.

A third commenter feels that this proposal should be pulled and rewritten to base the loss of guarantee on the 46-day gap and at least one violation as defined in §682 Appendix D. The commenter asserts that what is relevant to whether or not a loan remains insurable is whether or not there was a 46-day gap between collection activities, failure to timely establish a first payment due date, or timely filing of a default claim. The commenter also suggested when recirculating the proposal, to eliminate the two examples as the relevant aspect is the 46-day servicing gap.

A fourth commenter cannot support the policy as written based on the basis used to justify the policy's premises. The commenter stated that they do not see how the Emergency Student Loan Consolidation Act of 1997 provides guarantors with the authority to cancel the guarantee based on the policies established in this proposal. The authority given to guarantors by this proposal seems excessive and not supported in regulation or statute. The commenter would rather see a policy that provides flexibility in resolving these accounts. For example, in Example 1 under Subsection 14.1.E, there is only a one-month difference in the borrower's due date. In this case, the guarantor may choose to follow-up with the lender/servicer and wait for the claim on the newer portion and pay both claims at the same time. This policy would not allow for this flexibility and dictates a revocation of the guarantee. Also, the action and penalty contained in Proposal 997 is not in agreement with the verbiage used in Proposal 991. Proposal 991 indicates that a guarantor "may" cancel the guarantee, yet the language throughout Proposal 997 indicates that the guarantee will be lost unless the policy is followed.

One commenter does not support the proposal as written because the commenter believes that there is no regulatory basis for penalizing a lack of synchronization in servicing portions of a Consolidation Loan with the loss of guarantee, unless the lack of synchronization resulted in a 46-day gap. The commenter states that clarification that the separate portions of the Consolidation Loan must be serviced as one loan is needed, and that any discussion should clearly state that a loss of guarantee could result from de-synchronization, if it results in a violation (e.g., a 46-day gap).

Another commenter requests that this proposal be removed from this batch. The commenter states that common policy should follow existing guidance as described in DCL 96-L-186, Q & A #47. The commenter states they disagree with the entire proposal because this policy is creating guidance that does not exist in regulation. A guarantor must not create new guidance informing lender when interest benefits and SAP ceases beyond DOE guidance.

One commenter stated that there is no regulatory basis for assessing violations against a lender who fails to service all components of the Consolidation loan as one as stated in the new language in Subsection 14.1.E.

Finally, one commenter does not support this proposal as written. The commenter states that although this is a Federal proposal, the regulatory cite provided does not support the provisions of the proposal regarding penalties and loss of guarantee. The commenter also states that there is no safe harbor or hold harmless clause for those who may be impacted by the retroactive date. While the commenter concurs that the underlying loans of a Consolidation loan should be administered as a single loan for servicing purposes, some FFELP participants may not have the systems or resources required to comply with, monitor, or enforce the provisions of this proposal.

Response:

In subsequent, detailed review of these issues and the commenters' concerns, the Committee concluded that the lack of synchronization would indeed produce serious due diligence violations. The Committee believes that a gap of 46 days or more would occur in a situation where multiple first payment due dates are established when converting the Consolidation loan to repayment. According to language provided in §682.102(e)(5) and §682.209(a), the payment of principal and interest on a Consolidation loan is due from the borrower within 60 days after the loan is disbursed and also within 60 days after the last day of a deferment or forbearance period. According to §682, Appendix D, in cases when reinsurance is lost due to a failure to timely establish a first payment due date, the earliest unexcused violation would be the 46th day after the date the first payment due date should have been established. Therefore, if a lender establishes separate and different first payment due dates for portions of the Consolidation loan, the lender has failed to establish "a first payment due date" in accordance with federal regulations since "a first payment due date" was not established for the single Consolidation loan. Under current rules, reinsurance would be lost on the 106th day (60 + 46) after the date the lender should have established the repayment start date and first payment due date on the Consolidation loan.

In situations where a deferment or forbearance is applied to only a portion of the loan or where multiple due dates are established as a result of the application of payments to the loan, the Committee believes the lender

has not complied with §682.210, §682.211, or §682.209. Regulatory guidance found in §682.210 and §682.211 provide that if a borrower qualifies for the deferment or the lender grants a forbearance, payments must be deferred or forborne on “the loan.” If a deferment or forbearance is applied only to a portion of the loan or to various portions of the loan in different ways, the lender has failed to grant the deferment or forbearance in accordance with federal regulations. Regulatory guidance found in §682.209 stipulates how payments and prepayments must be applied to the loan. The borrower may prepay the whole or any part of a loan at any time without penalty. If the prepayment amount equals or exceeds the “monthly payment amount” under the repayment established for “the loan,” the lender is required to apply the prepayment to future installments by advancing the next “payment due date,” on the loan unless the borrower requests otherwise. The lender must either inform the borrower in advance using a prominent statement in the borrower coupon book or billing statement that any additional full payment amounts submitted without instructions to the lender as to their handling will be applied to future scheduled payments with the borrower’s “next scheduled payment due date” advanced consistent with the number of additional payments received, or provide a notification to the borrower after the payments are received informing the borrower that the payments have been so applied and the date of the borrower’s “next scheduled payment due date”. Since the Consolidation loan permits multiple debts to be combined into “one monthly payment” and a single first and next payment due date regardless of how the payment is applied, the Consolidation loan can have only one payment due date. The Consolidation loan promissory note, a single note loan by construction, does not contemplate multiple loans derived from the consolidation process, and is itself crafted in the singular to reflect the singularity of the loan that derives from the note. If the lender does not administer the Consolidation loan as a single loan, then the lender has not complied with federal regulations - all written in the singular with respect to Consolidation loans - or the terms of the promissory note.

The commenters are correct that regulations do not specifically address the violation for errors regarding deferment, forbearance, or payment application. However, the Committee believes that if a lender fails to grant a deferment or forbearance for the single Consolidation loan in accordance with federal regulations, and/or records multiple due dates to the borrower, the lender incurs due diligence violations sufficient to result in a loss of interest benefits and special allowance. Certainly, federal regulations stipulate that the loan loses eligibility for interest benefits on the date that it loses its guarantee and eligibility for reinsurance payment. The Common Manual guarantors believe that substantive disparities in the servicing of the separate loan records for a single Consolidation loan comprise sufficient violations to result in a loss of guarantee, and thus, of course, the commiserate loss of reinsurability. The Committee believes these errors are serious since the borrower did not benefit from the temporary cessation of payments for the entire loan when a forbearance was granted, did not obtain the full entitled benefit of the deferment for the single Consolidation loan, or did not benefit from a single payment due date with a single monthly payment as required within statute and regulations, and the lender’s contract with the consolidation borrower for a Consolidation loan.

Change:

Subsection 14.1.E has been revised to distinguish errors associated with establishing the first payment due date and tracking of due dates throughout the life of the loan. An additional violation is included for violations resulting in a gap of 46 days because of untimely conversion to repayment is added by inserting a new bullet as follows:

- The second of multiple due dates established recorded by the lender for the single Consolidation loan.
- The 46th day after the latest date on which the due date could have been established in cases where a lender established multiple due dates for a single Consolidation loan.”

The example has been revised to incorporate the 46th day after the latest date on which the first due date could have been established.

Another example has also been added to clarify the multiple due date error provided in the first bullet, as follows:

EXAMPLE:

A borrower requests a Consolidation loan to pay subsidized Stafford loans in the amount of \$10,000 and unsubsidized Stafford loans in the amount of \$18,000. The loan is disbursed on July 28, 2006, for \$28,000 and the lender establishes repayment terms for the Consolidation loan with first payment due date of September 1, 2006, and a monthly payment amount of \$190.56. The lender establishes two separate loan servicing records for the Consolidation loan, one for the subsidized portion of the loan

and one for the unsubsidized portion. On August 28, 2006, the borrower makes a payment for \$313.06. The lender records a due date of October 1, 2006, for the subsidized portion of the loan and a due date of November 1, 2006, for the unsubsidized portion of the loan. In this example the lender performs separate servicing and due diligence activities for the subsidized and unsubsidized portions of the Consolidation loan based on the October 1, 2006, and the November 1, 2006, due dates. The guarantee on the loan will be canceled effective with the second of the multiple due dates recorded by the lender for the single Consolidation loan (November 1, 2006). This is the date the servicing on the loan ceased to be synchronized.

In addition, the basis has been updated to include more references to the federal regulations as follows:

§682.102(e)(5); §682.209(a); §682.210; §682.211; §682.301(a)(3)(iii); §682, Appendix D; Emergency Student Loan Consolidation Act (ESLCA) of 1997 (P.L. 105-78).

COMMENT:

One commenter suggested in revising the 1st and 2nd example in Subsection 14.1.E by replacing “for underlying” with “to pay,” as it more accurately reflects that a Consolidation loan is requested to pay off other loans.

Response:

The Committee agrees.

Change:

The first sentence of each example in Subsection 14.1.E has been revised to state that a borrower requests a Consolidation loan to pay subsidized (or unsubsidized) Stafford loans...

COMMENT:

One commenter suggested that the paragraph before the examples in Subsection 14.1.E be amended by removing the word “single.” The commenter stated that it is their opinion that it is not rational to expect the lenders and servicers who must put multiple loan records on their systems for a single Consolidation loan to provide the borrower with a single disclosure statement. This may be a labor-intensive manual process for the lenders and servicers and the commenter believes that it should be fine to do multiple disclosures as long as they are sent together and total the amount of the Consolidation loan.

Another commenter suggested striking the first occurrence of “single” in Subsection 14.1.E. The commenter believes the purpose of this statement is to address when subsequent events change the repayment schedule. The commenter agrees that such events should change the repayment schedule on the entire loan. However, some lenders send disclosure statements on the separate servicing records that reflect the same data where appropriate and that combined reflect the loan totals. The commenter wants to ensure that this practice is not prohibited by this change.

Response:

The Consolidation loan borrower has borrowed a single loan, supported by a single note. As such, the borrower has a reasonable expectation that he or she has a single Consolidation loan with a single repayment schedule, payment amount, and due date. These expectations derive from the borrower’s understanding of the Consolidation process. Borrowers consolidate in order to simplify their repayment and to achieve other benefits purported to accompany the single Consolidation loan. Delivering multiple repayment disclosures to the borrower for a single loan is not in compliance with regulation regarding a Consolidation loan or the implicit single-loan concept of the promissory note. Such a practice is confusing and overly complicated for the borrower.

Further, the Committee believes that lenders and servicers can no longer assert that the split servicing of multiple subsidies is a good faith effort in loan servicing since the statute enacting the opportunity to service multiple interest subsidies was effective more than 10 years ago. Lenders and their servicers continue to use a complex process that fails to comply with the terms of the borrowers’ notes.

Change:

None.

COMMENT:

One commenter suggested revising the last sentence of the 2nd example in Subsection 14.1.E to provide consistency with the section title and to avoid the introduction of a new term “split servicing” that may have other connotations.

Response:

The Committee agrees.

Change:

The last sentence of the 2nd example under Subsection 14.1.E has been revised to read as follows:

“The guarantee on the loan will be canceled effective with the beginning date of the forbearance (September 1, 2006). This is the date the ~~split servicing first occurred~~ on the loan ceased to be synchronized.”

COMMENT:

One commenter suggested revising Subsection 14.5.E to ensure that the conversion to repayment violation alone is not enough to cause a loss of guarantee.

Response:

The Committee disagrees. Please see response to the 1st set of comments.

Change:

None.

Note: Based on the comments received on this proposal, the Committee has decided to redistribute the proposal for industry comment.

Comments Received From (Batch 149):

AES/PHEAA, ASA, CFI, CSLF, EAC, FAME, GHEAC, Great Lakes, HESC, KHEAA, MOHELA, NASFAA, NCHHELP, NELA, Nelnet, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments

Many of the commenters supported this proposal as written. Other commenters recommended wordsmithing changes that made no substantive changes to the policy but that added clarity to the proposed language. 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 appreciates and strongly supports the CM Policy Committee’s efforts to address this longstanding issue and provide common guidance to ensure proper servicing of Consolidation loans. The commenter states that the policy proposal helps to ensure borrowers are treated consistently and it eliminates the confusion that has existed in the past.

Response:

The Committee thanks the commenter for their support and encouraging words.

Change:

None.

COMMENT:

One commenter stated that the proposed trigger event was used to align with the suggested trigger event recommendation document submitted to the Department. Since this proposal was not part of CCCRA or Final Rules, the trigger event would not align with the Department’s published trigger event.

Response:

The Committee agrees and on February 11, 2008, this batch of proposals was reissued with the correction to the triggering event. The comment about aligning with the triggering event language that was sent to the Department was inadvertently added to this proposal.

Change:

None.

COMMENT:

One commenter suggested deleting the phrase “on the new repayment agreement” from Subsection 14.5.E. The commenter states that §682 Appendix D states that a cure is effective if a lender gets a signed repayment agreement or a full monthly payment. The current language or “or a full payment from the borrower that is equal to or greater than the payment amount on the new repayment agreement for the single Consolidation loan” is incorrectly stating that the lender must obtain both a new signed repayment agreement and a full monthly payment.

Response:

The Committee agrees.

Change:

Subsection 14.5.E has been revised as follows:

“If a lender incurs a loss of guarantee on a Consolidation loan because the lender failed to establish and maintain a single accurate repayment schedule and payment due date for a single Consolidation loan, the lender may have the guarantee on the loan reinstated. A lender may have the guarantee on the single Consolidation loan reinstated by ~~receiving~~ obtaining a new repayment agreement that includes all of the portions of the single Consolidation loan and that is signed by the borrower, or a full payment from the borrower that is equal to or greater than the payment amount ~~on the new repayment agreement~~ for the single Consolidation loan. Interest and special allowance will be reinstated as of the date of the cure.”

Common Bulletin language has also been updated.

COMMENT:

One commenter does not support this proposal as written based on the basis used. The commenter states that they do not see how the Emergency Student Loan Consolidation Act of 1997 provides guarantors with the authority to cancel the guarantee based on the policies established in this proposal. The authority given to guarantors by this proposal seem excessive and not supported in regulation or statute. We would rather see a policy that provides flexibility in resolving these accounts. For example, in Example 1 under Subsection 14.1.E, there is only a one-month difference in the borrower’s due date. In this case, the guarantor may choose to follow-up with the lender/servicer and wait for the claim on the newer portion and pay both claims at the same time. This policy would not allow for this flexibility and dictates a revocation of the guarantee. Also, the action and penalty contained in 997 is not in agreement with the verbiage used in Proposal 991. Proposal 991 indicates that a guarantor “may” cancel the guarantee, yet the language throughout Proposal 997 indicates that the guarantee will be lost unless the policy is followed.

Response:

The Committee believes that flexibility is important but not at the expense of the borrower’s rights. A borrower who obtains a Consolidation loan obtains the loan with the expectation of receiving a single loan, with a single monthly payment and single payment due date for that payment. The Consolidation note, the contractual agreement between the borrower and his or her lender is consistent with this concept and supports the borrower’s expectation. The Committee does not believe that the Department would allow a lender flexibility in establishing multiple due dates, with different installment amounts for a single Consolidation loan. This would fall outside of the statutory and regulatory intent of the Consolidation Loan Program. The Department has not published guidance that provides for this flexibility as the Department has not yet become aware of the widespread disparities in loan servicing created by the lengthy loan servicing “work around” established as a result of the 1997 legislation. The Department has however, published guidance regarding what factors determine whether or not a Consolidation loan borrower qualifies for interest subsidy to be paid on the loan during deferment periods (Emergency Student Loan Consolidation Act of 1997), as well as applicable interest rate for portions of the Consolidation loan made up of HEAL loans. The Committee believes that the lender should not file a claim with the guarantor in those situations where the lender deviated from the statutory intent of the Consolidation Loan Program and the lender has not corrected the error. The Committee believes these errors to be egregious if not more so than those described in the cure text. In the FFELP, the only vehicle for claim denial is revocation of the guarantee until the error has been cured with a new signed repayment agreement or full payment. This action requires the lender to correct the error and bring the loan into compliance with the statutory intent of a single Consolidation loan with a single monthly payment and due

date. This also provides the borrower with the opportunity to make payments on the loan in accordance with the statute and the regulations established to administer the Consolidation Loan Program. The borrower should not default on a loan that was not serviced in accordance with these standards or on which he or she was not given the opportunity to benefit from the intent of the Consolidation Loan Program.

The Committee is surprised by the approach suggested by the commenter in dealing with the one-month difference in the borrower's due date. A borrower with a Consolidation loan has only *one* payment due date. The Committee does not agree that it is in the best interest of the borrower to permit a lender to service a Consolidation loan with different due dates and installment amounts for each portion of a single Consolidation loan and to wait for the claim submission on the newer portion before paying the claim. The Committee does not believe the borrower is provided with the full benefit of the Consolidation loan when multiple due dates are established with multiple installment amounts. The borrower agreed to make payments on a single Consolidation loan and therefore, should be held accountable when they have not done so. The borrower signed the "Promise to Pay" section of the promissory note with the understanding that they are receiving a single Consolidation loan, which provides for a single monthly due date and a single consolidated installment amount. If the lender does not comply with this agreement, the lender has not provided the borrower the benefit that they understood when signing the "Promise to Pay" section of the promissory note. The Committee believes that these servicing violations more than rise to the level of the loan's guarantee and feels it is generous in the light of the lender's failure to honor its agreement with the borrower for a period exceeding 270 days to permit the lender the opportunity to cure the loan.

Change:

None.

COMMENT:

One commenter suggested that this entire proposal be withdrawn from Batch 149 before finalizing. The commenter states they disagree with this proposal because there is no regulatory basis to support the proposal. The commenter also provided examples to explain their position and rationale.

For Example 1:

A borrower has 1 Consolidation loan that consists of a subsidized portion and an unsubsidized portion. The loan disbursed on 7/28/2006 with a first payment due of 9/1/06 and a installment amount of \$190.56. The first payment comes in for \$313.06 bringing the subsidized portion's due date to 10/1/06 and the unsubsidized portion's due date to 11/1/06. Based on the example in the proposal, the loan would become uninsured on 11/1/06, but the commenter states that the loan should be uninsured on 11/16/06.

While the commenter agrees with single loan servicing in this situation, and that the payment due date should equal 10/1/06, a servicing error does not cause a loan to become uninsured. Only due diligence violations cause loans to become uninsured, therefore, the uninsured date should equal 11/16/06 which is equal to the 46th day after the correct due date of 10/1/06. Servicing errors are documented during program reviews as audit findings but do not cause loans to become uninsured unless the servicing error caused three or more due diligence violations.

For Example 2:

A borrower has 1 Consolidation loan that consists of a subsidized portion and an unsubsidized portion. The loan disbursed on 7/28/2006 with a first payment due of 9/1/06 and a installment amount of \$190.56. An add-on occurs to the unsubsidized portion (B) that was disbursed on 8/25/06. The new first payment due date for the unsubsidized portion only is 10/1/06. Based on the example in the proposal, the loan would become uninsured on 12/9/06, but the commenter states that the loan should be uninsured on 10/17/06.

The commenter states that only due diligence violations cause loans to become uninsured, therefore, the uninsured date should equal 10/17/06, which is equal to the 46th day after the due date of 9/1/06. This is the date that was originally due and is the due date that delinquencies must be calculated. The commenter disagrees with the proposed uninsured date of 12/9/06 and asks for support to justify the proposed uninsured date. The commenter believes that their justification is supported by 96-L-186, Q & A #47 & 68. The commenter would like this example to be reconsidered.

For Example 3:

A borrower has 1 Consolidation loan that consists of a subsidized portion and an unsubsidized portion. The loan disbursed on 7/28/2006 with a first payment due of 9/1/06 and a installment amount of \$190.56. A forbearance is received on 8/15/06 for the period of 9/1/06 through 1/31/07 for the unsubsidized portion only. Therefore, the subsidized portion's due date is 9/1/06 and the unsubsidized portion's due date in 3/1/07. Based on the example in the proposal, the loan would become uninsured on 9/1/06, but the commenter states that the loan should be uninsured on 4/16/07 (maybe).

The commenter states that while they agree that a Consolidation loan must be serviced as a single loan, and that the payment due dates should always be equal, they believe Example 3 is incorrect. Again, only due diligence violations cause loans to become uninsured, therefore, the uninsured date should equal 4/16/07 which is equal to the 46th day after the correct due date of 3/1/07 and only if the borrower has not made payments or has not questioned the lender as to why the installment amount is less than the original repayment schedule. In this scenario, a lender or servicer would be required to send collection letters and make phone attempts if the borrower is past due on the loan where the forbearance was not processed to that portion of the loan. However, if the lender or servicer learns on or around March 1, 2007 that they made an error, and corrects the due date to match the other loan where forbearance was applied, no harm has been done to the borrower, the loan, or any other entity involved, therefore, this proposal is again creating a penalty that is above and beyond regulation. The penalty in this scenario must be based on certain activities that are performed or not performed by lenders and servicers. If the borrower did not make a payment then no penalty should be assessed. Even if the borrower made a payment on one portion of the loan, as long as the payment due dates are the same after the forbearance period expires is the factor that determines if a penalty exists. A lender must also correct any incorrect reporting to credit bureaus. The commenter stated that if the Committee does not agree with this interpretation, they would appreciate a call to discuss before finalizing or approving the proposal.

Response:

The Committee appreciates the commenter's thorough review of the examples but respectfully disagrees with the commenter's conclusion. Guarantors are charged with ensuring that the FFELP is administered according to federal statute and regulations and the terms and conditions under which the FFELP loans are made. The Committee asserts that the reason this issue is not explicitly covered in regulation is that the Department has not considered that such servicing violations are possible. Were the Department apprised of the scope of the issue, the Committee is confident that it would have considerable consternation at the disparate loan servicing being applied to some Consolidation loans.

The Committee reiterates: Consolidation loans are made under the terms and conditions of a single promissory note. Guarantors believe that the separate-record servicing of a single Consolidation loan is erroneous in concept. The details of establishing separate due dates, installment amounts, requiring separate payments, etc. contribute to the conceptual error. To in essence ignore these errors implies agreement that the statutory and regulatory intent of the Consolidation Loan Program should be ignored. The borrower signed one note. The borrower has one loan. Guarantors assert that the borrowers' understanding when signing their promissory notes was that they would be required to repay the single Consolidation loan with a single monthly payment and amount. This premise is neither irrelevant nor inconsequential. To permit the practice to continue after it has been identified and researched, amounts to tacit agreement. The *Common Manual* guarantors do not agree that this practice is acceptable.

The Department established regulations in 1992 that were in part based on high-profile instances where similar separate loan servicing issues resulted in GSL and SLS loans that were made as multiple disbursements and the disbursements were serviced separately. The Department's guidance clearly indicated that such loans were not guaranteed, and that guarantors should not permit such instances of erroneous servicing. Since that time, the Department has maintained a pattern of guidance regarding loans that were split for purposes of loan servicing in error. The Department's guidance has consistently provided for the loss of the loans' guarantees when the loan servicing on a single loan is not conducted as a single loan. Further, §682.406(a)(1) clearly stipulates that the guarantor may make a claim payment only if the lender has exercised due diligence in making, disbursing, and servicing the loan. The Committee does not believe that they unsynchronized servicing of the pieces of a single Consolidation loan reflects sufficient diligence and accuracy in loan servicing to merit claim payment.

The Committee believes the violations associated with the errors provided in the three examples are appropriate although extraordinary given the severity of the servicing errors associated with noncompliance with the statutory and regulatory intent of the Consolidation Loan Program. We believe the Department never fathomed that a FFELP loan holder would service a single loan with multiple due dates and installment

amounts for that loan, and the Committee strongly believes that, if apprised, the Department would expect any guarantor cognizant of the error to take reasonable remedial action.

Change:

None.

COMMENT:

One commenter stated that they do not support the proposal as written. The commenter maintains that there is no regulatory basis for denying a claim for misaligning portions of a Consolidation loan unless such misalignment resulted in due diligence violations.

Response:

The cure provisions in §682, Appendix D specify cures for loans on which loan servicing violations occurred in establishing first due dates, performing required collection activities, and filing timely claims. However, it has never been the Department's stance that these are the only parameters under which the guarantor may or even is obligated to withhold the loan's guarantee payment. Guarantors have a fiduciary responsibility in the administration of the FFELP to protect the program and its borrowers and are permitted to deny insurance for other loan servicing violations such as errors in loan disbursement, etc. These provisions need not be explicit in regulation. However, in order to create a process that will operationally meet a lender's normal protocols, the Committee has construed the loan servicing violations in the simplest terms and in terms that permit a cure of the violations and a reassertion of the insurance agreement. As noted in the prior response, the Committee believes the violations associated with the errors provided in the three examples are appropriate and are in fact generous in light of the contractual violation that each such incidence implies. Again, the Committee believes the Department never fathomed that a FFELP loan holder would service a single loan with multiple due dates and installment amounts for that loan. The Committee is entirely certain that the Department would not condone the guarantor paying a claim if the guarantor has identified such servicing discrepancies, any more than the Department would condone claim payment if the loan were made for \$5,000 when the borrower was eligible for only \$2,000. In essence, the Committee strongly believes that the penalties associated with the particular violations in these are fair given the way the loans were handled without regard to the borrowers' obligation to only pay on a single due date and monthly payment each month.

Change:

None.

COMMENT:

Two additional commenters do not support the proposal as written. The commenters state that they agree that the Federal Consolidation loan is a single loan and should be serviced accordingly regardless of whether the loan contains both subsidized and unsubsidized portions. However the commenters believe that the verbiage in this proposal prescribes penalties that are not justified in statute or regulatory guidance. The commenters agree with the commenters from Batch 146 that state this proposal should be pulled. The commenters state that regulations are quite specific with servicing protocols and the consequences of not meeting these protocols. Assessment of penalties should follow the regulatory guidance in §682. The commenters disagree with the Policy Committee's assessment that the mere fact that a Consolidation loan becomes unsynchronized is the basis for loss of guarantee. The commenters assert that the requirement for synchronization is clearly not evident in regulatory guidance. In the first Example in this proposal, the commenters note that the loan is actually current. If the servicer identified the discrepancy in the due dates and then synchronized the due dates, verbiage in this proposal would mandate that the guarantee would be lost on this loan and the loan holder would suffer a loss of income at least. This assessment clearly exceeds regulatory guidance.

The commenters note that the Committee's responses enumerate several specific due diligence violations and the commenters agree with the assessment that guarantee in these instances should be lost. However, the commenters believe that these violations are in accordance with established guidance. The commenters agree that each loan should be evaluated based on specific due diligence criteria established in §682, not based on whether the individual pieces of the Consolidation loan inadvertently became un-synchronized and were subsequently corrected. The commenters also assert that establishing servicing standards that significantly exceed regulatory guidance is perilous.

Response:

The Committee believes that lenders have established servicing standards that violate the letter and the intent of the agreements the lenders have with their clients. As previously noted in prior comment responses, a

borrower who obtains a Consolidation loan obtains the loan with the expectation of receiving a single loan, with a single monthly installment and single payment due date for that payment. This is evident when the borrower signs the single promissory note agreeing to repay the single Consolidation loan in accordance with the terms of that note. The Committee asserts that the regulations are not explicit with reference to the servicing of a single loan as two or more loans because it does not contemplate those loans being FFELP loans under existing notes and program agreements. Similarly, FFELP regulations do not stipulate in detail how a lender must service a FFELP loan on which the guarantee is lost simply because if the guarantee is lost, the loan is not a FFELP loan. The very absence of federal guidance simply means that the issue has not risen to a level to be recognized by the Department, a status that is to be cheered. Were it apprised of the widespread nature of the issue and the loan servicing issues identified by various guarantors in their research on this issue, the Committee does not believe that the Department would allow a lender the flexibility in establishing multiple due dates, with different installment amounts for a single Consolidation loan. This would fall outside of the statutory and regulatory intent of the Consolidation Loan Program and the *Common Manual* guarantors very much believe that the result would be something more interesting than a temporary loss of the loan's guarantee and some of the lender's income on that loan.

The Committee believes, as previously noted, that the violations associated with the errors provided in the three examples are appropriate. The Committee believes the Department never fathomed that a FFELP lender would service a single loan with multiple due dates and installment amounts for that loan. The lender due diligence requirements in §682.411 are specific to the activity the lender must follow and completely relative to a loan with a single due date and installment amount, not portions of a loan with different due dates and amounts. In essence, the Committee strongly believes that the penalties associated with the particular violations provided in these examples are fair given the way the loan was handled without regard to the borrowers' obligation to only pay on a single due date and monthly payment each month. The fundamental nature of the Consolidation Loan Program appears to have been ignored by the lack of synchronized servicing. The Committee has reviewed private letter guidance on this issue of unsynchronized servicing and has concluded that the specified violations are reasonable and fair although unconventional in situations where a deferment or forbearance is applied to only a portion of the loan or where multiple due dates are established as a result of the application of payments to the loan.

Finally, the Committee believes that the failure to establish servicing parameters for instances where servicing errors are clearly occurring and no federal guidance exists is irresponsible. FFELP guarantors are charged with monitoring the FFELP and establishing and enforcing standards regarding the making and servicing of loans under the program (§682.401(b)(19)(i)(E)). To do less is a failure to comply with a regulatory mandate.

Change:

None.

COMMENT:

One commenter agrees that the Federal Consolidation Loan is one loan and should be serviced pursuant to this philosophy regardless of whether the subsidized and unsubsidized portions of this single loan are loaded to servicing systems as separate loan records. However, the commenter believes that the servicing violations and cures incorporated in Proposal 997 exceed the standards set forth in §682.

Regulations clearly cite diligence in setting first payment due dates, next payment due dates after deferment and forbearance, procedures for adding eligible loans to existing Consolidation loans within 180 days, claim filing, etc. Regulations also clearly state the penalties and cure activities in these cases. However, the language in this proposal goes beyond the regulatory guidance. In the first Example, the verbiage: "The guarantee on the loan will be cancelled effective with the second of the multiple due dates recorded by the lender for the single Consolidation loan (November 1, 2006). This is the date the servicing on the loan ceased to be synchronized." This loan is current and regulatory guidance is silent as to synchronization, therefore what would be the violation that justifies loss of guarantee?

The other two examples are valid statements as the loans should have been synchronized with establishment of first payment due, synchronizing repayment terms for add-on loans, and granting forbearance and deferment for the same time periods. We also agree that the separate portions of the Consolidation loans should be synchronized for claim filing purposes.

Amortizing separate portions of the Consolidation loan and combining into one installment amount on borrower notices and the billing statements is not substantively different than amortizing the single Consolidation loan. Also the disclosure process whereby disclosure is on separate pages but combined in the

same mailing is not prohibited or even addressed in regulations. As long as the terms, interest rates and first payment due dates are identical and the disclosures are distributed to the borrower in the same mailing, this form of disclosure is not prohibited and is even more useful to the borrower by providing the details of the subsidy portion of his/her Consolidation loan.

Additionally, the requirement for cure states that either a new repayment agreement is required or a "full payment equal to or greater than the installment amount on the new repayment agreement for the single Consolidation loan". This requirement exceeds the guidance in §682, Appendix D as it is stating that a lender must obtain the new repayment agreement prior to a full payment.

To summarize, there is sufficient existing regulatory guidance in §682.102(e)(5), §682.209(a), §682.210, §682.211, §682.301(a)(3)(iii), and §682, Appendix D to evaluate the eligibility for guarantee on Consolidation loans based on the servicing of that individual Consolidation loan. The addition of new synchronization criteria is not warranted. Therefore we are recommending that this proposal should be pulled.

In the event that Proposal 997 is not pulled, we request that the Effective Date/Trigger Event be modified from the current one: "Claims filed by the lender on or after July 1, 2008, unless implemented earlier by the guarantor" to a prospective date for loans first disbursed on or after, due to the verbiage regarding single disclosure of repayment terms.

Two commenters wanted to stress that they agree that the Federal Consolidation Loan is one loan and should be serviced pursuant to this philosophy regardless of whether the subsidized, unsubsidized and/or HEAL portions of this single loan are loaded to servicing systems as separate loan records. However, the servicing violations and cures incorporated in Proposal 997 exceed the standards set forth in §682. In addition, there is not a need for a new Subsection 14.1.E as any violations that occur on consolidation loans are already covered in the other subsections. The commenters agree with the Committee's responses that support the understanding that when the guidance uses the term 'loan' it is referring to an 'entire loan'. The commenters also made similar comments of Proposal 991 that the commenters already believed that the claim return reasons adequately addressed the permissible reasons for the guarantor to return the claim. In agreement with that response, the guidance in Chapter 14 already addresses violations, penalties, and cures for an entire Consolidation loan.

The commenters strongly oppose the implementation of this proposal and agree with the other commenters that request this proposal be eliminated. There is sufficient guidance in §682 to assess the servicing diligence on Consolidation loans regardless of whether they are loaded to a servicing system as one single loan or as separate loans. The proposal goes beyond policy and addresses operational procedures and system operational requirements that guarantors and lenders have developed on an individual basis to meet guarantor, federal, and NSLDS reporting requirements.

The commenters also state that the proposal should not be introduced as a federal proposal. The existing guidance in the manual addresses the federal guidance. The proposal includes several recommendations that are guarantor determinations and not supported by regulation.

The Policy Committee's response did not address the issue of servicing issues that can inadvertently cause the loans to become unsynchronized. The response regarding prepayments is precisely the problem. Servicing systems are set up to process prepayments in compliance with the regulations requiring the next payment due date to advance unless the borrower instructs otherwise. In the case of the Consolidation loans that have separate subsidized and unsubsidized portions, this process of prepayments could inadvertently advance one of the due dates. Most servicers have processes in place to identify this and re-synchronize the due dates. However the verbiage in this proposal would require that the guarantee be lost at any time the portions become unsynchronized. It unilaterally states that these loans have now lost guarantee without the lender or servicer having a chance to adjust the account. For example, if a deferment had not been applied to all loan records of the entire Consolidation loan, the lender would be required to adjust the account by applying the deferment to all loan records of the Consolidation loan since it is an entitlement to the borrower. This would not have caused a gap or untimely collection activities; rather the lender would likely have been doing additional unneeded collection activity. The proposal also does not allow for the assessment of due diligence violations or address the guidance that a collection activity stops a gap. As a rule, there is not a penalty for inadvertently collecting on the wrong due date; rather it is the subsequent missed or untimely collection activities that may have a consequence of an interest limitation or loss of guarantee. Generally in these cases, the result is ultimately a timely filing violation which then requires the cure process already outlined in Subsection 14.5.D. At a minimum, the language on page 1, 1st sentence under Subsection 14.1.E should be

revised to remove the words “will result in” and more accurately reflect the possibility that it “may result in due diligence violations or a loss of guarantee”. The bulletin language also includes similar language that would need to be modified.

The first Example states that the guarantee is lost on the loan: “This is the date the servicing on the loan ceased to be synchronized”. In this example the loan is current; therefore it appears that synchronization is a new diligence requirement?

There is sufficient existing regulatory guidance in §682.102(e)(5), §682.209(a), §682.210, §682.211, §682.301(a)(3)(iii), and §682, Appendix D to evaluate the eligibility for guarantees on Consolidation loans based on the servicing of the Consolidation loan without the addition of new servicing requirements. Therefore, Proposal 997 should be eliminated.

The commenters appreciate the addition of the evaluation of the conversion to repayment timeframes in the attempt to address the guidance in §682, Appendix D. However, the examples continue to be flawed. Several assumptions are made and the examples only partially follow the guidance in §682, Appendix D. The second example is the best attempt at assessing the conversion to repayment violation of an add-on loan situation. While we agree with the calculation of the 106th day, the example goes awry when the assumption is made that due diligence violations will be incurred and that due diligence activities were not performed on a loan level. The example would be more correct if it were to state that due diligence violations may be incurred that could result in interest penalties or a loss of guarantee as defined in Subsection 14.1. For example, §682, Appendix D clearly states that a conversion to repayment violation may possibly only result in permanent violations and not just necessarily a loss of guarantee which does not appear to have been considered. §682.411 also details what content is required in due diligence letters, defines collection activities, etc. that would not imply the same violations for activities at loan levels.

In response to the Committee’s responses to the comments the first time these proposals were distributed, the commenters offer the following counterpoints.

The basis for Proposals 991 and 997 is that the premise of the Federal Consolidation Loan Program was introduced in statute and regulations in order to provide the borrowers opportunity to consolidate into one debt with one promissory note all of their eligible federal education loans. This was the original structure of the Consolidation loans, however over time the program has evolved. Currently the Department of Education has recognized that there are situations whereby a Federal Consolidation Loan must be broken into ‘portions’. Specifically, ‘portions of Consolidation loans that represent any underlying loans that are eligible for discharge due to death, closed school, false certification, unpaid refund, disability (co-made consolidation loans), and even 9/11 Survivor discharges. If the Department has recognized the need to distinguish between underlying loan records, it seems that flexibility is warranted in evaluating the servicing of Consolidation loans.

The Committee stated that in the situation where one portion’s first payment due date is set differently from another portion, a 45 day gap has occurred. This is not always the case. For example, if the first portion’s due date is set within 30 days, and the second portion is set within 60 days, a violation has not occurred as neither have exceeded the allotted time for establishing a due date. The application of the §682, Appendix D rules to this situation are arbitrary.

The Committee also stated that all portions must be included in one repayment disclosure. One of the required items on a repayment disclosure is the interest rate. In the case where a HEAL portion is included in the Consolidation loan, a separate repayment disclosure may be required for the HEAL portion. This new provision would require that the loan lose its guarantee for complying with the repayment disclosure regulatory requirements.

The phrase “synchronized throughout the life of the loan” does not allow lenders and servicers to correct any inadvertent periods of unsynchronization. Lenders and servicers should be able to continue to use processes already in place to catch such instances and correct them through adjustments without incurring a loss of guarantee.

The Committee’s responses address the 46th day as the earliest unexcused date for a conversion to repayment violation. The commenters agree this would support the 2nd bullet on page 2 of the proposal. There was no regulatory guidance cited that supports the addition of the 1st or 3rd bullets in Subsection 14.1.E. Also, the additional wording of the 2nd bullet does not add clarity and the bullet should agree with the bullets in Subsection 14.3.C that thoroughly outlines the dates of the earliest unexcused violations.

The Committee responded that the commenters were correct that regulations do not address the violation for errors regarding deferment, forbearance, or payment application, yet the Committee believes these would result in a loss of guarantee. The commenters argue that there is no direct violation for processing errors of deferments, forbearances, and payment applications. These are the types of daily operational processes that are quality checked and corrected as needed. In general, it is the small number of errors that go unchecked and uncorrected that may ultimately result in conversion, collection effort, or timely filing violations. The commenters do not support the proposal for these changes based upon a belief not supported by a basis or examples that show proof of a loss of guarantee in all cases.

Finally, if the Committee proceeds with Proposals 991 and 997, the effective date must be prospective. Lenders, servicers, and guarantors will need sufficient time to correct their systems and processes to prevent even one day of unsynchronization. As a result of federally mandated reporting requirements for subsidy differences, individual guarantors have instructed their lenders on how to report and file claims to each of their agencies. Guarantors may need to make system changes and inform their lenders of those subsequent system reporting changes. The committee's response to a prior comment does not adequately support a retroactive implementation date. The proposal includes new guarantor policy that is beyond and in conflict with the federal regulations.

Response:

The Committee respectfully disagrees with the commenters' conclusions and we reiterate that guarantors are charged with ensuring that the FFELP is administered according to the federal statute and regulations, and the terms and conditions under which the FFELP loans are made. The Committee asserts that the reason this issue is not explicitly covered in regulation is that the Department has not considered that such servicing violations are possible. Were the Department apprised of the scope of the issue, the Committee is confident that it would have considerable consternation at the disparate loan servicing being applied to some Consolidation loans.

The Committee believes that if guarantors ignore these errors, their failure to act implies agreement that the statutory and regulatory intent of the Consolidation Loan Program should be ignored. The borrower signed one note. The borrower has one loan. Guarantors assert that the borrowers' understanding when signing their promissory notes was that they would be required to repay the single Consolidation loan with a single monthly installment amount. This premise is neither irrelevant nor inconsequential. To permit the practice to continue after it has been identified and researched, amounts to tacit agreement. The *Common Manual* guarantors do not agree that this practice is acceptable.

The Committee does not agree that correcting the error prior to filing the claim would be favorable to the borrower if the borrower has not been given the opportunity to repay their loan as agreed upon when they signed their promissory note. The borrower should be given the opportunity to make a monthly payment on a single payment due date and amount. If the borrower then becomes at least 270 days delinquent based on this single due date, the lender would be justified in filing a claim with the guarantor since the borrower has defaulted on making their required monthly payment. In this case, the claim would be paid if the lender complied with required due diligence activities associated with the single payment due date and prior violations have been cured. The Committee does not believe the Department would allow a lender to collect on multiple due dates on a single Consolidation loan, or a single Stafford loan or a single PLUS loan, and file a claim based on the borrower's delinquency on the multiple due dates or synchronize the due dates prior to claim filing without giving the borrower the opportunity to make payments on a single due date for at least 270 days prior to filing a claim.

The Committee believes the effective date should remain as claims filed by the lender on or after July 1, 2008, unless implemented earlier by the guarantor. The Committee does not agree that the effective date should be based on loans first disbursed on or after July 1, 2008. This would imply that any Consolidation loan first disbursed prior to July 1, 2008 can be serviced with multiple payment due dates and amounts and retain their insurance. As previously stated, we do not agree this is correct.

Change:

None.

COMMENT:

Due to the substantive nature of the comments received from the community on this proposal, the *Common Manual* Governing board requested the Policy Committee to convene a workgroup of representatives from the

guarantor and lender/servicer community to continue development of this proposal.

Response:

The proposal has been further developed by a community workgroup.

Change:

The proposal has been modified in accordance with recommendations made by the community workgroup. Due to the significant nature of these changes, the proposal will be redistributed to the entire community for additional comments.

CM Governing Board Representatives

Comments Received From: (Batch 153)

AES/PHEAA, ASA, CSLF, Great Lakes, HESC, KHEAA, NASFAA, NCHelp, NSLP, OGSLP, PPSV, SCSLC, SLND, SLSA, TG, USA Funds, and VSAC.

RESPONSES TO COMMENTS

Most of the commenters supported this proposal as written. Other commenters recommended wordsmithing changes or typographical corrections that made no substantive changes to the policy 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 first bullet under Subsection 14.1.E appears to be an incomplete thought or sentence and offers the following suggestion:

“If the guarantor cannot determine the correct due date or cannot confirm that the loan is in default, the claim may be returned to the lender. Refer to Section 13.2 for more information on claim returns.”

Response:

The Committee agrees with the commenter.

Change:

The sentence has been revised as the commenter suggested.

COMMENT:

One commenter was unsure how to interpret the reference to “records” of “all portions” as these terms are used in Subsection 14.1.E, page 2, column 2, bullet 2, last sentence, currently written as follows:

“This includes reviewing due diligence activity records performed on all portions of the single Consolidation loan.”

Response:

The Committee reviewed the use of these terms in the sentence in question and believes that the use of the term “record” as it relates to a “due diligence activity” may be confusing because the term “record” in other proposed language refers more generally to the record of a portion of the loan.

Change:

The Committee has revised Subsection 14.1.E, page 2, column 2, bullet 2, for clarity, to read as follows:

“This includes reviewing due diligence activity ~~records~~ performed on all portions of the single Consolidation loan.”

COMMENT:

One commenter noted that Subsection 14.1.E, bullet 2, states that if the guarantor determines a loan to otherwise be eligible for claim payment, the guarantor may return the claim file for the lender to make the necessary corrections and resubmit the claim to include all portions of the loan. Since this subsection provides for violations and cures associated with the unsynchronized servicing of a Consolidation loan, bullet 2 may have a better fit in Section 13.2 which lists reasons why a claim would be returned to the lender.

Response:

The Committee appreciates the commenter's suggestion, however Section 13.2 lists the most common reasons for a claim to be returned to the lender. The Committee believes that cases where a guarantor cannot ascertain the correct payment due date or cannot confirm that this loan is in default because a Consolidation loan has been serviced in an unsynchronize manner should be uncommon and therefore, believes that the bullet should remain in Subsection 14.1.E.

Change:

None.

COMMENT:

The same commenter as above states that they understand this policy proposal has been contentious within the FFELP community. Although they support the workgroup's effort to standardize the servicing of a Consolidation loan with multiple loan records, they believe the industry needs to ensure consistency with treatment of these loans in claim review and servicing. Their comments below pertain to their understanding of the intent of Subsection 14.1.E.

Subsection 14.1.E's title is "Violations and Cures Associated with Unsynchronized Servicing of a Consolidation Loan with Multiple Loan Records." The language provided in this subsection does not seem to provide specific violations or cures associated with the "unsynchronized" servicing as referenced in the heading description. Thus, the commenter suggests examples be added within this subsection of the *Common Manual* to provide clarity regarding the workgroup's suggested changes to this section and to provide some understanding of violations associated with unsynchronized servicing.

Subsection 14.1.E, page 2 column 2, provides the following: "If the lender fails to perform due diligence activities on a single payment due date and amount, or fails to grant deferment or forbearance for the single Consolidation loan that contains multiple loan servicing records, the lender may incur due diligence violations sufficient to cause a loss of guarantee on the loan."

Given that specific violations have not been included in this proposal relative to this paragraph, the commenter wants to confirm their understanding of the proposed language and offer an example for inclusion in this bullet. If a forbearance or deferment has been granted on only a portion of the loan, and the lender does not correct this deficiency within a timely manner of when the deferment or forbearance was granted, the commenter's understanding is the lender would have failed to grant a valid deferment or forbearance for the single Consolidation loan and therefore, the lender would have incurred a due diligence violation of a gap of 46 days or more. If this is the case, the commenter suggests that an example be added to the proposal for clarity, as follows:

EXAMPLE:

A borrower requests a Consolidation loan for underlying subsidized Stafford loans in the amount \$15,000 and unsubsidized Stafford loans in the amount of \$27,000. The loan is disbursed on July 28, 2006, for \$42,000 and the lender establishes repayment terms for the Consolidation loan with first payment due date of September 1, 2006. The lender establishes two separate loan servicing records for the Consolidation loan, one for the subsidized portion of the loan and one for the unsubsidized portion. On August 15, 2006, the borrower requests and is granted a discretionary forbearance. The lender applies the forbearance only to the unsubsidized portion of the Consolidation loan for the period September 1, 2006, through January 31, 2007. The lender continues to perform due diligence activities on the September 1, 2006, due date for the subsidized portion of the Stafford loan. At the conclusion of the forbearance the lender establishes a separate payment due date of March 1, 2007, for the unsubsidized Stafford loan. In this example the lender performs separate servicing and due diligence activities for the subsidized and unsubsidized portions of the Consolidation loan based on the September 1, 2006, and March 1, 2007, payment due dates. The guarantee on the loan will be cancelled and the date of violation would be the 46th day from the forbearance begin date.

In addition, reference to "necessary corrections" is vague and the policy should provide examples to clarify expectations. For instance, if each portion of the loan has a different due date when the claim is filed and the guarantor returned the claim to the lender to make "necessary corrections" and resubmit the claim, was it the workgroup's expectation the lender:

1. Grant a forbearance on a portion of the loan to synchronize the due dates; or
2. Adjust payments so the due date would be the same for each portion of the loan; or

3. Perform a cure for due diligence violations and submit a claim if it should again become 270 days or more delinquent.

The commenter does not clearly understand what “necessary corrections” the lender would make in order to return the claim. They suggest examples of “necessary corrections” be provided in the proposal since they are concerned that lenders will put administrative forbearances on portions of the loan to bring the portions of the loan in alignment. The commenter does not believe this is a valid alternative. The term “necessary corrections” is vague and suggested corrections should be provided.

It is important that this proposal provide clarity and consistency for treatment of loans where servicing of the portions of the loan may have become unsynchronized. In addition, this proposal should provide guidance or at least examples to help understand the intent of Subsection 14.1.E.

Response:

The Committee appreciates the commenter’s concerns and agrees that examples would provide more specific common policy of guarantor interpretation for lenders and servicers regarding what situations stemming from unsynchronized servicing of a single Consolidation loan constitute violations and what the associated penalties are for those violations. However, lenders and servicers involved in the workgroup were adamantly opposed to including examples within the Manual’s text at this time.

The Committee understands that without specific details of what constitutes violations and associated penalties, or what is deemed as appropriate “necessary corrections” prior to receiving claim payment, each guarantor claim shop may make determinations based on their interpretation of such violations, penalties, and appropriateness of necessary corrections. This proposal was distributed as a guarantor proposal, therefore any interpretation made by any guarantor is binding on the lender and servicer.

The Committee understands that many guarantors have only recently become aware of unsynchronized servicing of a Consolidation loan and the problems that may result if the lender or servicer does not detect and correct such unsynchronized servicing of the loan in a timely manner. The Committee believes that the first step in developing common policy in this area is to add language to the Manual clarifying that although the subsidized, unsubsidized, and HEAL portions of a single Consolidation loan may appear as separate loan records on the lender’s system, the lender must ensure that the Consolidation loan is administered as a single Consolidation loan. Lenders and servicers are expected to maintain adequate internal controls and procedures to ensure that all portions of the single Consolidation loan remain synchronized throughout the life of the loan, and any re-synchronization occurs in a timely manner to ensure that the loan maintains a single due date and amount.

As guarantors, lenders, and services move forward to, or continue to, implement this policy, these entities may eventually find that adding examples to Subsection 14.1.E would provide clarity for lenders and servicers and ensure common policy among guarantors in determining what violations and associated penalties are required. At such time, the Committee would welcome these entities to submit proposed language for possible inclusion in Subsection 14.1.E.

Change:

None.

sm/edited-chh

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: November 20, 2008

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	With No Changes	Nov 20

SUBJECT: Servicing Parameters for a Consolidation Loan with Multiple Loan Records

AFFECTED SECTIONS:

- 3.5.E Reporting Loan Assignments, Sales, and Transfers
- 11.1.A General Deferment Eligibility Criteria
- 11.19 Forbearance
- 12.4 Due Diligence Requirements
- 13.1.A Claim Filing Requirements
- 15.1.A Agreement to Guarantee Federal Consolidation Loans
- 15.2 Borrower Eligibility and Underlying Loan Holder Requirements
- 15.4 Disbursement
- 15.5.A Establishing the First Payment Due Date
- 15.5.B Disclosing Repayment Terms

POLICY INFORMATION: 991/Batch 153 (originally distributed in Batches 146 and 149)

EFFECTIVE DATE/TRIGGER EVENT: Consolidation loan applications received by the lender on or after November 13, 1997.

BASIS:

Emergency Student Loan Consolidation Act of 1997 (ESLCA) (P.L. 105-78); §682.209(a)(1); §682.210; §682.211; §682.301(a)(3)(iii); §682.406(a)(1); §682, Appendix D.

CURRENT POLICY:

A Federal Consolidation loan made from an application received by the lender on or after November 13, 1997, is 1) eligible for interest subsidy during authorized periods of deferment on any portion of the Consolidation loan that paid an underlying subsidized FFELP loan or an underlying subsidized Direct loan, and 2) subject to a variable interest rate on any portion of the Consolidation loan that repaid a HEAL loan. Current policy does not specify how to calculate repayment terms, perform due diligence, or file claims for a single Consolidation loan that is recorded on a lender's system as separate portions of the loan. In addition, current policy does not clarify that the first disbursement date of such a loan is used to determine the loan's terms and conditions.

REVISED POLICY:

Revised policy clarifies that although the subsidized, unsubsidized, and HEAL portions of a single Consolidation loan may appear as separate loan records on the lender's system, the lender must ensure that the Consolidation loan is administered as a single Consolidation loan. Lenders and servicers are expected to maintain adequate internal controls and procedures to ensure that all portions of the single Consolidation loan remain synchronized throughout the life of the loan, and any re-synchronization occurs in a timely manner to ensure that the loan maintains a single due date and amount. The guarantor may examine the lender's controls, procedures, and servicing history during a program review. Thus, the loan must be administered with a single payment due date and amount which must cover all separately serviced portions of the Consolidation loan. The status applicable to the Consolidation loan must be reflected consistently across all portions of the loan. Deferments and forbearances must be applied to the single Consolidation loan. That is, the same deferment or forbearance benefit must apply to each portion of the loan. If the Consolidation loan becomes delinquent, the number of days the loan is delinquent must be reflected consistently across the lender's system for each portion of the Consolidation loan. Due diligence must be performed at a loan level, and should the Consolidation loan default, all portions of the loan must default on the same date and be filed in the same claim or at least simultaneously with the guarantor.

REASON FOR CHANGE:

These changes are being incorporated into the *Common Manual* to add clarity to existing policy.

PROPOSED LANGUAGE - COMMON MANUAL:

Revise Subsection 3.5.E, page 13, column 2, paragraph 3, as follows:

**3.5.E
Reporting Loan Assignments, Sales, and Transfers**

...

The assignment, sale, or transfer of a loan should be reported on the appropriate guarantor form or by an equivalent electronic process. If the holder wants to report an assignment, sale, or transfer using its own form or process, the format must contain all data elements required by the guarantor. If one holder acquires the entire portfolio of another holder due to a merger, acquisition, bank closing, or similar situation, it may not need to complete a guarantor form or list each of the loans being sold, but may work with the guarantor to establish an efficient and effective method of ensuring that the guarantor's records are updated to reflect the most current holder information.

A consolidating lender must report the assignment, sale, or transfer transaction simultaneously for the entire Consolidation loan, even if the lender establishes more than a single loan servicing record for the subsidized, unsubsidized, and HEAL portions of the loan.

Revise Subsection 11.1.A, page 2, column 1, by inserting a new bullet after bullet 1, as follows:

**11.1.A
General Deferment Eligibility Criteria**

There are several conditions under which borrowers qualify for deferment. In granting a deferment, the lender should be aware of the following general characteristics of deferments:

...

- Endorsers are not entitled to deferment. If an endorser is repaying the loan and has temporary difficulty in continuing repayment, he or she may request a forbearance. [§682.210(a)(11)]
- A consolidating lender must grant a deferment on the entire Consolidation loan, even if the lender establishes more than a single loan servicing record for the subsidized, unsubsidized, and HEAL portions of the loan. The deferment must be applied for the same period of time to each portion of the loan.

Revise Section 11.19, page 24, column 1, by inserting a new paragraph after last paragraph as follows:

**11.19
Forbearance**

...

If two individuals are jointly liable for repayment of a PLUS loan or Consolidation loan, a lender may grant forbearance on repayment of the loan only if the ability of each individual to make scheduled payments has been impaired based on the same or differing conditions—except in cases when one comaker has applied for a total and permanent disability loan discharge (see ~~s~~Subsection 11.19.F, Forbearance of a Loan for a Comaker during the TPD Conditional Period). [§682.210(a)(3)]

A consolidating lender that establishes more than a single loan servicing record for the subsidized, unsubsidized, and HEAL portions of the Consolidation loan, must grant a forbearance on the entire loan. The forbearance must be applied for the same period of time to each portion of the loan.

Revise Section 12.4, page 4, column1, by adding a new paragraph after paragraph 1, as follows:

12.4 Due Diligence Requirements

To satisfy due diligence requirements, a lender must perform the collection activities specified in the schedules in sSubsections 12.4.A and 12.4.B. A lender may perform the required activities in the manner that is most effective—provided the minimum number of written contacts and telephone attempts are made and no gap of greater than 45 days (60 days in the case of a loan sale or transfer) in activity occurs through the 270th day of delinquency (330th day for loans with repayment obligations less frequent than monthly). A violation occurs if a lender fails to complete any of the required activities within the corresponding time frame or if the lender permits a gap of greater than 45 days (60 days in the case of a loan sale or transfer) between activities. If a violation occurs, the lender may incur interest penalties or jeopardize the guarantee on the loan. If the guarantee on a loan is lost, the lender also loses the right to collect interest benefits and special allowance payments otherwise payable by the Department from the date of the earliest unexcused violation. See cChapter 14 for more information regarding violations and the assessment of penalties. [§682.411(b)(2); §682.411(k); §682, Appendix D; DCL FP-04-08]

A consolidating lender must perform due diligence activities at the loan level, even if the lender establishes more than a single loan servicing record for the subsidized, unsubsidized, and HEAL portions of the loan. That is, the lender must perform due diligence activities required for the single payment due date and amount disclosed for the single Consolidation loan that contains multiple loan servicing records. If the lender fails to perform due diligence activities on a single payment due date and amount, or fails to grant deferment or forbearance for a single Consolidation loan that contains multiple loan servicing records, the lender may incur due diligence violations sufficient to cause a loss of guarantee on the loan. (See Subsection 14.1.E “Violations and Cures Associated with Unsynchronized Servicing of a Consolidation Loan with Multiple Loan Records.”)

Revise Subsection 13.1.A, page 1, column 1, by adding a new paragraph after paragraph 2, as follows:

13.1.A Claim Filing Requirements

If a lender submits a claim with any required documentation that is missing, incomplete, or inaccurate, the guarantor may attempt to obtain the necessary information from its own system or request the information from the lender. The lender must provide the requested information and, if applicable, refile the claim by the refile deadline (refer to Subsection 13.2.A).

For claim filing purposes, including loan discharges, all loan records related to a single Consolidation loan promissory note must be filed as one claim package or at the same time with the guarantor based on a single payment due date and amount. Although the subsidized, unsubsidized, and HEAL portions of a single Consolidation loan may appear as separate loan servicing records on the lender’s system, the lender must ensure that the Consolidation loan is administered as a single Consolidation loan. A guarantor may return a claim and impose a penalty up to and including the loss of the loan’s guarantee if it identifies that the loan has been serviced with different interest rates, except for the underlying portion of a Consolidation loan attributable to a HEAL loan, or payment due dates. The lender may correct the loan, as appropriate, and resubmit the claim. (See Subsection 14.1.E “Violations and Cures Associated with Unsynchronized Servicing of a Consolidation Loan with Multiple Loan Records.”)

▲ Lenders may contact individual guarantors for more information on claim filing requirements for Consolidation loans with multiple loan servicing records.

Revise Subsection 15.1.A, page 1, column 2, paragraph 2, as follows:

15.1.A
Agreement to Guarantee Federal Consolidation Loans

...

Although the subsidized, unsubsidized, and HEAL portions of a single Consolidation loan may appear as separate loan servicing records on the lender's system, the lender must ensure that the Consolidation loan is administered as a single Consolidation loan. Lenders and servicers are expected to maintain adequate internal controls and procedures to ensure that all portions of the single Consolidation loan remain synchronized throughout the life of the loan, and any re-synchronization occurs in a timely manner to ensure that the loan maintains a single due date and amount. The guarantor may examine the lender's controls, procedures, and servicing history during a program review. Lenders must diligently service Consolidation loans in accordance with provisions applicable to other FFELP loans. Any failure to fulfill those requirements may result in a loss of guarantee on the loan and a loss of eligibility for any interest subsidy and special allowance payments that might otherwise apply (see Sections 12.4 and 15.6).

Revise Section 15.2, page 5, column 2, paragraph 2, as follows:

Adding Loans after Consolidation

...

~~Lenders and borrowers~~ should note and inform borrowers that the interest rate and repayment terms on a Consolidation loan may be affected by adding loans. The lender must disclose new repayment terms to the borrower, if the terms of the borrower's Consolidation loan change due to the addition of loans within the 180-day add-on period. A consolidating lender must perform due diligence activities at a loan level, even if the lender establishes an additional loan servicing record for the add-on portion of the loan. That is, the lender must perform due diligence activities on a single payment due date and amount for the single Consolidation loan that contains multiple loan servicing records. (See Section 12.4 for more information on due diligence requirements.) For portions of the Consolidation loan attributable to HEAL loans, the variable interest rate is based on the average of the 91-day Treasury bill rate plus 3%, with no cap.
[HEA 428C(c)(1)(D)]

Revise Section 15.4, page 9, column 2, by adding a new paragraph after paragraph 3, as follows:

15.4
Disbursement

A Consolidation loan is considered to be disbursed on the date of the first individual or master check, payment advice, or noncash transfer that transfers funds from the consolidating lender to the holder of the loans to be consolidated. For funds disbursed by EFT, the Consolidation loan is considered disbursed on the first date that funds are transferred. If the loan funds for multiple underlying loans are disbursed on multiple days, including funds issued through the end of the 180-day add-on period, those disbursements are considered "subsequent disbursements." The loan's first disbursement date, or the application receipt date, is used to determine its terms and conditions.

The first disbursement date for the Consolidation loan, or the application receipt date, establishes the terms and conditions for every loan servicing record established under a single promissory note for the borrower. For loan guarantee purposes, the single Consolidation loan application and promissory note represents a single Consolidation loan. The lender must ensure that all servicing aspects for the multiple portions of the loan remain synchronized. Failure to establish and maintain a single repayment schedule, first and next payment due date, and to consistently apply deferment, forbearance, and loan discharge provisions may result in the loss of the entire loan's guarantee. (See Subsection 14.1.E

Revise Subsection 15.5.A, page 10, column 1, by adding a new paragraph after paragraph 1, as follows:

15.5.A
Establishing the First Payment Due Date

A lender must establish the first payment due date on a Consolidation loan that is no later than:

- 60 days after the date of the last disbursement that pays underlying loans in full. [§682.102(e)(5); §682.209(a)(1); §682.209(h)(1)]
- 60 days after the last day of a deferment or forbearance period, unless the borrower makes a prepayment during this period that advances the due date (see ~~s~~Subsections 10.11.B and 10.11.D). For more information about establishing repayment after a deferment or forbearance period, see ~~s~~Subsections 11.1.I and 11.19.J, respectively. [§682.209(a)(3)(ii)(B)]

A consolidating lender must establish a single payment due date and amount for the single Consolidation loan, even if the lender establishes an additional loan servicing record for the add-on portion of the loan. In addition, a consolidating lender must establish a single repayment schedule with one first payment due date, even if the lender establishes more than a single loan servicing record for the subsidized, unsubsidized, and HEAL portions of the loan. The lender must ensure that all servicing aspects for the multiple portions of the loan remain synchronized.

Revise Subsection 15.5.B, page 10, column 2, paragraph 2, as follows:

15.5.B
Disclosing Repayment Terms

If the terms of a borrower’s Consolidation loan change due to the addition of a loan(s) within the 180-day add-on period, a lender must disclose new repayment terms to the borrower. A lender may establish a new effective date for a revised payment amount that is no more than 60 days after the last disbursement that paid the add-on loan(s) in full. The lender must disclose to the borrower a single payment due date and amount for the single Consolidation loan that contains multiple records. [§682.102(e)(5)]

PROPOSED LANGUAGE - COMMON BULLETIN:

Servicing Parameters for a Consolidation Loan with Multiple Loan Records

The *Common Manual* has been revised to reflect that although a Consolidation loan may consist of multiple loan records, the Consolidation loan must be serviced as a single loan. Guarantors recognize that a lender may load a Consolidation loan into multiple, separate loan servicing records on its system in order to better track the interest subsidy and interest rate. Guarantors also recognize that a lender may create a new loan servicing record when a loan or loans are added through the 180-day add-on process. Lenders may also provide the guarantor with multiple loan records for the single Consolidation loan to separate the unsubsidized and subsidized portions of the loan. However, these separate records really comprise a single Consolidation loan, made under a single loan application and promissory note. Generally, this single loan will have a single interest rate (the exception is the underlying portions of the Consolidation loan attributable to a HEAL loan), repayment schedule, first and next payment due date, and one set of deferment and forbearance criteria and eligibility. A Consolidation lender must perform due diligence activities at the loan level, even if the lender establishes more than a single loan servicing record for the subsidized, unsubsidized, and HEAL portions of the loan. That is, the lender must perform due diligence activities on a single payment due date for the single Consolidation loan which is recorded on the lender’s system as multiple, separate loan servicing records. Lenders and servicers are expected to maintain adequate internal controls and procedures to ensure that all portions of the single Consolidation loan remain synchronized throughout the life of the loan, and any re-synchronization occurs in a timely manner to ensure that the loan maintains a single due date and amount.

The guarantor may examine the lender's controls, procedures, and servicing history during a program review.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

A borrower is assured that his or her Consolidation loan will be serviced as a single loan.

School:

None.

Lender/Servicer:

A lender must ensure that a Consolidation loan with multiple loan servicing records is administered as a single Consolidation loan. Lenders must ensure that all aspects for the multiple portions of the Consolidation loan remain synchronized.

Guarantor:

A guarantor may need to modify claim review procedures to ensure that a Consolidation loan with multiple loan servicing records is administered as a single Consolidation loan. A guarantor may need to modify program review parameters.

U.S. Department of Education:

The Department may need to modify program review parameters to ensure that a Consolidation loan with multiple loan servicing records is administered as a single Consolidation loan.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:

CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:

September 24, 2007

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

April 10, 2008, June 19, 2008, and November 13, 2008

PROPOSAL DISTRIBUTED TO:

CM Policy Committee

Community Workgroup comprised of representatives from American Education Services, USA Funds, SLSA, NCHELP and the Governing Board

CM Guarantor Designees

Interested Industry Groups and Others

CM Governing Board Representatives

Comments Received From (Batch 146):

AES/PHEAA, CFI, CSLF, EdFund, GHEAC, Great Lakes, HESAA, HESC, KHEAA, LOSFA, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds, and VSAC

Responses to Comments

Many of the commenters supported this proposal as written. Other commenters recommended wordsmithing changes that made no substantive changes to the policy but that added clarity to the proposed language. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:

Two commenters suggested that a prospective effective date/trigger event should be utilized for this proposal. The commenters stated that the November 13, 1997, date is the effective date of the Emergency Student Loan Consolidation Act of 1997 (P.L. 105-78) establishing that the Secretary will pay the interest on the portion of a Consolidation loan that repaid subsidized FFEL loans and Direct Subsidized loans. The policy proposals

included in Proposal 991 have significant servicing impacts including but not limited to servicing systems, diligence, claim filing and procedures. Thus a retroactive effective date for the policy changes is not appropriate and a prospective effective date is warranted.

One commenter stated that they could not support the proposal as written because there is no safe harbor or hold harmless clause for those who may be impacted by the retroactive effective date. The commenter also stated that while they concur that the underlying loans of a Consolidation loan should be administered as a single loan for servicing purposes, some FFELP participants may not have the systems or resources required to comply with, monitor, or enforce the provisions of the proposal.

Response:

The Committee understands the commenters' concerns. However, the Federal Consolidation Loan Program provides a borrower with the opportunity to consolidate into one debt with one promissory note all of the eligible federal education loans received from different lenders and/or under different education loan programs. This has been the premise since the Consolidation loan was introduced in statute and regulations. Thus, the consolidation process permits multiple debts to be combined into one monthly payment and promotes the expectation that the borrower will have a single loan with a single payment due on a single date. In fact, the Consolidation promissory note, a single note loan by construction, does not contemplate multiple loans, and is itself, crafted in the singular to reflect the singularity of the loan that derives from the note. If the lender does not administer the Consolidation loan as a single loan, the lender has not complied with federal regulations or the terms of the promissory note. Since the Consolidation loan program predates the issuance of the *Common Manual* and implementation of common policy, the effective date of the policy should be retroactive to the date the *Common Manual* was implemented. However, the Committee believes that the issue of lenders servicing portions of the single Consolidation loan as separate loans really began with the implementation of the Emergency Student Loan Consolidation Act of 1997. It appears the implementation date of this Act is when lenders modified their systems or their processing protocols to accommodate the changes to loan subsidies. However, the Committee believes that although the lenders modified their systems to comply with this Act, the intent of the Act was not to permit lenders to split the Consolidation loan into several loans, or at least, that such divisions should not be apparent to the borrower who sought a single loan and signed a single note. Rather, the lender was required to monitor portions of the Consolidation loan with respect to interest application and adjustments. The fact that lenders made system accommodations to manage this and included the separate loan records to manage the diverse servicing needs does not mitigate the simple fact that the Consolidation loan is a single loan.

Change:

None.

COMMENT:

Several commenters stated that the revised policy is inconsistent with regulatory and statutory guidance regarding HEAL loans. The commenters stated that there are several regulatory references that prohibit a Consolidation loan from being administered as a single Consolidation loan if the Consolidation loan includes a HEAL loan. HEAL loans included in a Consolidation loan have variable interest rates that are mandated to remain variable and must be changed annually. HEAL loans are not eligible for Special Allowance (SAP), interest benefits, or teacher loan forgiveness benefits that FFEL loans are eligible for. The commenters referred to the following statutory and regulatory references:

HEA 428C(d)(3)(A) - HEAL portions of Consolidation loans not eligible for SAP

HEA 428C(d)(3)(B) and §682.301(a)(3) - HEAL portions of Consolidation loans not eligible for interest subsidy benefits

§682.301(a)(3) - HEAL portions of Consolidation loans not eligible for interest benefits during periods of authorized deferments

§682.215(d)(1) - HEAL portions of Consolidation loans not eligible for Teacher Loan Forgiveness

HEA 428C(d)(2)(B) and §682.202(a)(4)(v) - The portion of the Consolidation loan that is attributable to HEAL is a variable rate that is adjusted annually

Response:

The Committee agrees that HEAL portions of the Consolidation loan must be monitored with respect to interest application and adjustments. However, the Committee does not agree that the statement of revised policy is inconsistent with regulatory and statutory guidance and we do not agree that a lender can service portions of the loan differently. The borrower consolidated into one debt all eligible federal education loans

received from different lenders and/or under different education programs with the agreement that multiple debts would be combined into one monthly payment with one general set of terms. Certainly the HEAL portion of the loan may be forbore and deferred in identical time frames and methods as the other eligible underlying portions of the loan, regardless of the interest accrual issues. This is emphasized in language contained in the Consolidation Loan Application and Promissory Note signed by the borrower. Therefore, we do not agree that the regulatory references prohibit a Consolidation loan from being administered as a single Consolidation loan. The very fact that the loan is supported by a single note supplants any premise that there are multiple loans, and the lender's servicing accommodations to manage the uniqueness of the HEAL portion are moot.

Change:

None.

COMMENT:

Several commenters suggested removing the word "simultaneously" from the last sentence of the last bullet in 11.1.A and 11.19 because many lenders/servicers must have the multiple loan records on their system for a Consolidation loan in order for the system to calculate the interest correctly. The commenters note that there could be reasons why a deferment/forbearance may not be applied exactly at the same time to the different portions of the Consolidation loan, but using the word simultaneously implies that it must be processed at the exact same time. Another commenter stated that the word simultaneously is relative to the processing procedures used by the lender or servicer, and the *Common Manual* should not govern those types of procedures. The fact that the deferment or forbearance is applied for the same period of time to the various portions/servicing records of the loan is what is important.

One commenter stated that "simultaneously" is an overly restrictive term in their view. While servicers strive to process deferments on a borrower's entire Consolidation loan at the same time to gain efficiencies and reduce borrower confusion, human errors can occur on this. Some servicers have processes in place to catch these errors that may lead to the deferments on the individual records not being processed on the same day. Whether or not the lender applies the deferment to the various portions/servicing records that comprise the single Consolidation loan simultaneously is irrelevant. The policy should not govern processing procedures by the lender. The key is that the deferment is applied for the same time period to the various portions/servicing records of the loan. Requiring that processing occur "simultaneously" may result in penalties or a loss of guarantee in cases where there is no violation or servicing gap.

Response:

The Committee understands that there are apparently system constraints with tracking the single Consolidation loan as separate portions on the lender's system. The intent of the proposed policy language is to ensure that the deferment or forbearance is applied for the same period of time to various portions/servicing records that make up the single Consolidation loan. Therefore, the lender must ensure that the deferment or forbearance is granted for the entire loan for the same period of time, regardless of any delay in processing the transaction across all portions of the single Consolidation loan.

Change:

The Committee has modified language to reflect that the same deferment or forbearance benefit must be applied for the same period of time to each portion of the loan when the lender grants the deferment or forbearance and to eliminate the implication that the deferment or forbearance transaction must be applied/processed at the same time.

The last sentence of the last bullet in 11.1.A has been changed as follows:

"That is, the same deferment benefit must be applied for the same period of time ~~simultaneously~~ to each portion of the loan when the lender grants the deferment."

The last sentence of the last bullet in 11.19 has been changed as follows:

"That is, the same forbearance benefit must be applied for the same period of time ~~simultaneously~~ to each portion of the loan when the lender grants the forbearance."

COMMENT:

Several commenters suggested removing the word "single" throughout the proposal where it refers to "single payment amount." The proposed policy change indicates that it is permissible for servicers to utilize separate

records for the subsidized, unsubsidized, and HEAL portions of a single Consolidation loan. In this event, most servicing systems will amortize payment amounts based on the separate loan segments. The commenters note that the payment amount for the Consolidation loan will be the rolled up payment amounts for the separate records. Also, according to §682.209(b)(2)(I) and (ii), the borrower may prepay the whole or any part of a loan at any time without penalty. Per this regulation, a borrower could prepay and request that the prepayments be posted only to the unsubsidized portion of the Consolidation loan. The commenters suggest that if the Consolidation loan is serviced as separate loan records, borrower prepayments could advance the due date on the unsubsidized portion of the Consolidation loan. Other commenters noted that the Consolidation loan is a single loan and should be serviced accordingly; however, the commenters assert that the verbiage in this policy proposal is unduly restrictive and punitive. If a servicer has performed reasonable and prudent business practices and the payment due dates between separate portions of the loan have become unsynchronized due to inadvertent circumstances (not missed diligence activities), i.e., borrower prepayments, the loan should not lose its guarantee.

Additionally, the first disbursement date of a Consolidation loan does not necessarily determine the loan's terms and conditions. There are numerous regulatory cites that distinguish Consolidation loan terms and conditions (eligibility for SAP, interest subsidy benefits, interest rates, etc.) based on the date that the Consolidation loan application was received, including but not limited to: §682.202(a)(4)(ii), (iii), (iv) and (v), §682.301(a)(3), and §682.302(c)(1)(iii)(A)(3) and (iii)(B)(6).

Response:

According to §682.209(b)(2)(I), the borrower may prepay the whole or any part of a loan at any time without penalty. If the prepayment amount equals or exceeds the "**monthly payment amount**" under the repayment schedule established for "**the loan**", the lender shall apply the prepayment to future installments by advancing the next "**payment due date**", unless the borrower requests otherwise. The lender must either inform the borrower in advance using a prominent statement in the borrower coupon book or billing statement that any additional full payment amounts submitted without instructions to the lender as to their handling will be applied to future scheduled payments with the borrower's "**next scheduled due date**" advanced consistent with the number of additional payments received, or provide a notification to the borrower after the payments are received informing the borrower that the payments have been so applied and the date of the borrower's "**next scheduled due date**".

The Committee reasserts that there is a single loan made under a single Consolidation loan promissory note. Since the Consolidation loan permits multiple debts to be combined into "**one monthly payment**"—and a single payment due date, regardless of how the payment is applied, the Consolidation loan can have only one payment due date. A lender may find it necessary to utilize separate records to track portions of the subsidized, unsubsidized, and HEAL portions of a single Consolidation loan as it relates to interest subsidy. However, despite this operational work-around, at no time may the lender's records reflect different payment due dates since the borrower and the lender agreed to the terms of the promissory note which provide that the borrower consolidated loans into one debt with one monthly payment. If a prepayment applies to any portion of the Consolidation loan, it applies to the entire loan, and if it advances the due date, since the loan itself has only one due date, it advances that single due date.

Change:

None.

COMMENT:

Two commenters suggested striking each instance throughout the proposal where the language states that all parts of the Consolidation loan must be at the same interest rate. The commenters state that any HEAL portion of a Consolidation loan will always be at a different interest rate because the calculation is different.

Response:

The Committee agrees that the HEAL portion of the Consolidation loan could have a different interest rate.

Change:

The Committee has modified the proposal as follows in Section 12.4:

"...If the guarantor identifies a Consolidation loan serviced as separate loan servicing records ~~consolidation records~~ and submitted for claim with different interest rates, it will return the claim for

correction of interest accruals, payment application, and loan balances, as appropriate except if the difference in interest rates is because of an underlying HEAL loan."

The Committee has modified the proposal as follows in Subsection 13.1.A:

"...The guarantor may cancel the guarantee on the entire loan if the guarantor identifies loan records that have been serviced separately based on inconsistent loan servicing parameters such as payment due dates, repayment terms, interest rates (except interest rates applicable to underlying HEAL loans), application of deferment or forbearance, or other key loan servicing activities."

COMMENT:

One commenter suggested updating Section 13.2 to include a statement that "The guarantor may request additional information on a Consolidation loan or request that the subsidized and unsubsidized portions of the loan be realigned to show a single payment due date." The commenter states that this would add clarification to the Manual that this is another reason why a claim may be returned to the lender.

Response:

Section 13.2 provides that a guarantor may return a claim if the loan incurs a violation(s) that results in a loss of guarantee on the loan. It also provides that a guarantor may return the claim if the claim package contains inadequate documentation. The Committee believes that the return reasons provided in Section 13.2 already adequately address permissible reasons for the guarantor to return the claim. If the guarantor determines that the Consolidation loan has two different payment due dates, the guarantor can return the claim because the lender incurred a violation that resulted in a loss of guarantee. If the guarantor reviews the claim and requires additional information on a Consolidation loan because the claim package does not contain adequate documentation, the guarantor may, and likely will, return the claim under its current authority.

Change:

None.

COMMENT:

Two commenters suggested removing the reference to weighted average in Section 15.4. The commenters stated that this should be deleted from the text due to the fact that the HEAL portion of the loan is not included in the weighted average.

Response:

The Committee agrees.

Change:

Section 15.4. has been revised as follows:

"...Failure to establish and maintain a single, accurate repayment schedule, first and next payment due date, accurate ~~weighted average~~ interest rate ~~based on the sum of all loans consolidated under the single note~~, and to consistently apply deferment and forbearance or loan discharge provisions may result in the loss of the entire loan's guarantee."

COMMENT:

One commenter suggested deleting the last sentence in Subsection 15.5.A and deleting the change to 15.5.B regarding repayment because information about disclosing repayment terms is in Section 12.4 of the manual. The commenter feels that it is redundant to include information about repayment in these subsections.

Several commenters suggested removing text in Subsections 13.1.A and 15.5.A, and Sections 15.2 and 15.4 that address due diligence activities. The commenters state that since this information is adequately addressed in Chapter 12 - Due Diligence, it is redundant and out of place in Chapters 13 and 15.

Response:

The Committee disagrees with the commenters. The Committee concurs that the text is somewhat redundant but believes that this text is necessary to provide further clarity to the policy for the respective subsections.

Change:

None.

COMMENT:

Several commenters suggested adding text to Subsection 15.5.A to clarify that the lender must do all they can to ensure that all servicing aspects for the multiple portions of the loan remain synchronized throughout the life of the loan.

Response:

The Committee believes the lender must ensure that portions of a single Consolidation loan remain synchronized throughout the life of the loan.

Change:

None.

COMMENT:

Two commenters recommended changing Section 15.5.B to reflect that the lender must disclose to the borrower a single accurate payment amount, payment due date, etc., for the single Consolidation loan that contains multiple records. The commenters also recommended removing the term “subsidy” as well as “perform due diligence activities on” as this will provide clarity to the proposal.

Response:

The Committee agrees.

Change:

The text in Subsection 15.5.B has been revised as follows:

“The lender must ~~perform due diligence activities on~~ disclose to the borrower a single accurate payment amount, payment due date, etc., for the single Consolidation loan that contains multiple ~~subsidy~~ records.”

COMMENT:

Two commenters stated that the terms “servicing record”, “loan servicing record”, and “consolidation record” are used inconsistently. Using consistent language would provide clarity to the proposal.

Response:

The Committee agrees.

Change:

Throughout the text, “servicing record” and “consolidation record” have been changed to “loan servicing record.”

COMMENT:

One commenter suggested adding text in Subsection 13.1.A and Section 15.4 to specify that the guarantee may be lost if there are due diligence violations sufficient to lose insurance on the loan.

Response:

The Committee agrees that information should be added regarding the loss of insurance and believes reference to Subsection 14.1.E in the companion Policy Proposal, 997, will provide that clarification.

Change:

The text in Subsection 13.1.A has been revised as follows:

“...The guarantor may cancel the guarantee on the entire loan if the guarantor identifies loan records that have been serviced separately based on inconsistent loan servicing parameters such as payment due dates, repayment terms, interest rates (except interest rates applicable to underlying HEAL loans), application of deferment or forbearance, or other key loan servicing activities. (See Subsection 14.1.E, Violations Associated with Unsynchronized Servicing of a Consolidation Loan with Multiple Loan Records.)”

The text in Section 15.4 has been revised as follows:

“...Failure to establish and maintain a single, accurate repayment schedule, first and next payment due date, accurate interest rate, and to consistently apply deferment and forbearance or loan discharge provisions may result in the loss of the entire loan’s guarantee. (See Subsection 14.1.E, Violations Associated with Unsynchronized Servicing of a Consolidation Loan with Multiple Loan Records.)”

COMMENT:

Several commenters suggested adding text to the last sentence of the first paragraph of Section 15.4 to state that the application receipt date may also be used to determine the terms and conditions of a Consolidation loan.

Response:

The Committee agrees as the application receipt date is used to determine the terms and conditions of a Consolidation loan between November 13, 1997, and October 1, 1998.

Change:

The last sentence of the first paragraph of Section 15.4 has been revised as follows:

“...The loan’s first disbursement date, or the application receipt date, is used to determine its terms and conditions.”

In addition, text in the 2nd paragraph of Section 15.4 has been revised as follows:

“...The disbursement date for the first loan, or the application receipt date, establishes the terms and conditions for every loan servicing record established under a single promissory note for the borrower. ...”

COMMENT:

Several commenters suggested a change to the lender implication statement stating that this change covers the lender/servicer requirements for servicing the Consolidation loan as a single loan more succinctly than just citing two of the servicing requirements, payment amount and payment due dates.

Response:

The Committee agrees.

Change:

The lender implication statement has been revised as follows:

“A lender must ensure that a Consolidation loan with multiple loan servicing records is administered as a single Consolidation loan. ~~Thus, the loan must be administered with a single payment amount and payment due date which must cover all separately serviced portions of the Consolidation loan. A lender may need to modify servicing procedures for Consolidation loans.~~ Lenders must ensure that all aspects for the multiple portions of the Consolidation loan remain synchronized throughout the life of the loan.”

COMMENT:

Several commenters suggested a change to the bulletin language to clarify that, generally, a Consolidation loan will have a single interest rate with the exception being if some of the underlying portions of the Consolidation loan are attributable to HEAL loans.

Response:

The Committee agrees.

Change:

The bulletin language has been revised to state that generally, a Consolidation loan will have a single interest rate with the exception being if some of the underlying portions of the Consolidation loan are attributable to a HEAL loan.

COMMENT:

One commenter does not support the proposal as written because the commenter believes that there is no regulatory basis for penalizing a lack of synchronization in servicing portions of a Consolidation loan with a loss of guarantee, unless the lack of synchronization resulted in a 46-day gap. While clarification that the separate portions of a Consolidation loan must be serviced as one loan is needed, any discussion should clearly state that a loss of guarantee could result from de-synchronization, if it results in violation (e.g., a 46-day gap).

Another commenter also stated that although this is a Federal proposal, the regulatory cite provided does not support the provisions of the proposal regarding penalties and loss of guarantee.

Response:

In review of this matter, the Committee concluded that the lack of synchronization would produce a gap of 46 days or more. According to language provided in §682.102(e)(5) and §682.209(a), the payment of principal and interest on a Consolidation loan is due from the borrower within 60 days after the loan is disbursed and also within 60 days after the last day of a deferment or forbearance period. According to §682, Appendix D, in cases when reinsurance is lost due to a failure to timely establish a first payment due date, the earliest unexcused violation would be the 46th day after the date the first payment due date should have been established. Therefore, if a lender establishes different payment due dates for portions of the single Consolidation loan, the lender has not established a payment due date in accordance with federal regulations since a payment due date was not established for the single Consolidation loan. Under current rules, reinsurance would be lost on the 106th (60 + 46) day after the date the lender should have established the repayment of the single Consolidation loan.

In situations where a deferment or forbearance is applied to only a portion of the loan, the Committee believes the lender has not complied with §682.210 or §682.211. These regulations provide that if a borrower qualifies for the deferment or the lender grants a forbearance, payments must be deferred or forborne on the loan. If a deferment or forbearance is not applied to a portion of the loan, the lender has failed to grant the deferment or forbearance, in accordance to the federal regulations, to “the” loan. The commenter is correct that regulations do not specifically address the violation for this type of error. However, the Committee believes that if a lender fails to grant a deferment or forbearance for the single Consolidation loan in accordance with federal regulations, the lender incurs due diligence violations based on its failure to service the loan based on the correct due date and should lose interest benefits and special allowance. The Committee believes this is a serious loan servicing violation since the borrower did not benefit from the temporary cessation of payments for the entire loan when a forbearance was granted or did not obtain the entitled benefit of the deferment for the single Consolidation loan.

Change:

Subsection 14.1.E, in this proposal’s companion Proposal 997, has been modified to provide information regarding the loss of guarantee to reflect the 46th day after the latest date on which the due date could have been established in cases where a lender established multiple due dates for a single Consolidation loan.

COMMENT:

One commenter, referring to Section 15.4, stated that there is no regulatory basis for assessing violations against a lender who fails to service all components of the Consolidation loan as one. Therefore, the proposal’s language does not align with regulations (specifically language that speaks to the loss of guarantee).

Response:

The Secretary guarantees lenders against losses within the Consolidation Loan Program if the lender complies with the requirements provided under the Federal Consolidation Loan Program. The Federal Consolidation Loan Program provides a borrower with the opportunity to consolidate into one debt the eligible federal education loans received from different lenders and/or under different education loan programs. Thus, consolidation permits multiple debts to be combined into one loan supported by one note with one monthly payment due date and amount. If the lender does not administer the Consolidation loan as a single loan, the lender has not complied with federal regulations. The Committee does not believe that a lender can assert that a “good faith” effort is made if the terms of the borrower’s promissory note are not fulfilled, and clearly one of those terms is the singularity of the result of the consolidation process.

The Committee has carefully reviewed this issue and has concluded that regulations provide that guarantors must assess violations against lenders if the lender does not convert the loan to repayment timely in

accordance with regulation and/or reconvert the loan to repayment after a deferment or forbearance. According to the language in §682.102(e)(5) and §682.209(a), the first payment of principal and interest on a Consolidation loan is due from the borrower within 60 days after the loan is disbursed and also within 60 days after the last day of a deferment or forbearance period. According to §682, Appendix D, in cases when reinsurance is lost due to a failure to timely establish a payment due date, the earliest unexcused violation would be the 46th day after the date the payment due date should have been established. Therefore, if a lender does not convert the loan to repayment in accordance with required regulations, the lender will lose the guarantee on the loan. If multiple due dates are established for portions of the single Consolidation loan, the lender has failed to timely convert the loan to repayment with a single payment due date.

In situations where a deferment or forbearance is applied to only a portion of the loan, the Committee believes the lender has not complied with §682.210 or §682.211. These regulations provide that if a borrower qualifies for the deferment or the lender grants a forbearance, payments must be deferred or forborne on the loan. If a deferment or forbearance is applied to a portion of the loan, the lender has failed to grant the deferment or forbearance in accordance to federal regulations. The commenter is correct that regulations do not specifically address the violation for this type of error. However, the Committee believes that if a lender fails to grant a deferment or forbearance for the single Consolidation loan in accordance to federal regulations, the lender must incur a due diligence violation and should lose interest benefits and special allowance. The Committee believes this is a serious violation since the borrower did benefit from the temporary cessation of payments for the entire loan when a forbearance was granted or did not obtain the entitled benefit of the deferment or forbearance for the single Consolidation loan.

Change:

Subsection 14.1.E, in this proposal's companion Proposal 997, has been modified to provide information regarding the loss of guarantee to reflect the 46th day after the latest date on which the due date could have been established in cases where a lender established multiple due dates for a single Consolidation loan.

Note: Based on the comments received on this proposal, the Committee has decided to redistribute the proposal for industry comment.

Comments Received From (Batch 149):

AES/PHEAA, ASA, CFI, CSLF, EAC, FAME, GHEAC, Great Lakes, HESC, KHEAA, MOHELA, NASFAA, NCHHELP, NELA, Nelnet, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments

Many of the commenters supported this proposal as written. Other commenters recommended wordsmithing changes that made no substantive changes to the policy but that added clarity to the proposed language. 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 appreciates and strongly supports the CM Policy Committee's efforts to address this longstanding issue and provide common guidance to ensure proper servicing of Consolidation loans. The commenter states that the policy proposal helps to ensure borrowers are treated consistently and it eliminates the confusion that has existed in the past.

Response:

The Committee thanks the commenter for their support and encouraging words.

Change:

None.

COMMENT:

One commenter suggested adding Section 609 to the Basis statement as this will provide a more detailed location of the Basis.

Response:

The Committee disagrees because one would either refer to Section 609 of Public Law 105-78 or would refer to the Emergency Student Loan Consolidation Act of 1997. *Common Manual* convention sends us to the Emergency Student Loan Consolidation Act of 1997.

Change:

None.

COMMENT:

Two commenters pointed out that the listing of affected sections did not include Subsection 15.5.A which had changes to it, and did include Subsection 15.5.F which did not have any changes to it.

Response:

The Committee agrees.

Change:

Subsection 15.5.A has been added to the list of affected sections, and Subsection 15.5.F has been deleted.

COMMENT:

Two commenters suggested revising the language in the Revised Policy Statement that speaks to the same status or option across all portions of the Consolidation Loan. For example, the sentence "That is, the same deferment or forbearance benefit must apply to each portion of the loan" conflicts with regulatory guidance and the guidance in *Common Manual* Subsections 11.1.A and 15.5.D in the case of a spousal Consolidation loan. Also, the commenter suggests making revisions to agree with comments to other proposed language. They suggested the following revisions:

Revised policy clarifies that although the subsidized, unsubsidized, and HEAL portions of a single Consolidation loan may appear as separate loan records on the lender's system, the lender must ensure that the Consolidation loan is administered as a single Consolidation loan. Thus, the loan must be administered with a single payment amount and payment due date which must cover all separately serviced portions of the Consolidation loan. ~~The status applicable to the Consolidation loan must be reflected consistently across all portions of the loan. Deferments and forbearances must be applied to the single Consolidation loan. That is, the same deferment or forbearance benefit must apply to each portion of the loan.~~ If the Consolidation loan becomes delinquent, the number of days the loan is delinquent must be reflected consistently across the lender's system for each portion of the Consolidation loan. Due diligence must be performed at a loan level, and should the Consolidation loan default, all portions of the loan must default on the same date and be filed in the same claim or at least simultaneously with the guarantor.

The commenter states that these changes are necessary because the proposal has not addressed inconsistencies that may legitimately occur in the case of co-made loans. Partial discharges and differences between types of deferments are situations that would conflict with the language as proposed.

Response:

The Committee does not concur with the commenters that the sentence "That is, the same deferment or forbearance benefit must apply to each portion of the loan" conflicts with regulatory guidance in the *Common Manual* Subsections 11.1.A and 15.5.D.

Subsection 11.1.A of the *Common Manual* provides that a Consolidation loan made to two spouses as comakers, may not be deferred unless each comaker requests deferment and satisfies applicable eligibility requirements for deferment. If each comaker qualifies under a separate deferment provision, the lender may defer "the loan" under one of those deferment types. In addition, if a Consolidation loan is made to spouses as comakers and if the disabled comaker is in a conditional discharge status, the lender must defer the "entire loan" based solely on the non-disabled comaker's deferment eligibility. Subsection 15.5.D of the *Common Manual* provides that if two individuals are jointly liable for repayment, both individuals must simultaneously meet the requirements for receiving the same or different deferments.

As for forbearance benefits, the *Common Manual* Section 11.19 provides that if two individuals are jointly liable for repayment of a Consolidation loan, a lender may grant forbearance on repayment of "the loan" only if the ability of each individual to make scheduled payments has been impaired based on the same or differing conditions, except in cases when one comaker has applied for a total and permanent disability loan discharge. Subsection 11.19.F provides information relative to forbearance of a loan for a comaker during the total and

permanent disability conditional period. Subsection 11.19.F also provides that a lender may grant discretionary forbearance on the repayment of the “entire loan” if the ability of the non-disabled comaker to make payments is impaired during the conditional discharge period for the disabled comaker.

The Committee believes the sentence included in this proposal that emphasizes that the same deferment or forbearance must apply to each portion of the loan is accurate. The deferment or forbearance and associated time frame for the deferment or forbearance must apply to the entire loan and not to separate portions of the loan whether the Consolidation loan was made to a single borrower or to comakers.

Change:

None.

COMMENT:

One commenter suggested rearranging the text in the new paragraph in Subsection 3.5.A for clarity. The commenter recommends corresponding changes throughout the rest of the text in the proposal.

Response:

The Committee agrees.

Change:

The new text in Subsection 3.5.A has been revised as follows:

“A consolidating lender that establishes more than a single loan servicing record for the subsidized, unsubsidized, and HEAL portions of the loan, must report the assignment, sale, or transfer transaction simultaneously for the entire Consolidation Loan, even if the lender establishes more than a single loan servicing record for the subsidized, unsubsidized, and HEAL portions of the loan.”

Similar changes were made to the text in Subsection 11.1.A, Section 11.19, Section 12.4, Subsection 13.1.A, Section 15.2, Section 15.4, Subsection 15.5.A, and the Common Bulletin Language.

COMMENT:

Three commenters suggested revising the text in Subsection 15.5.A by removing the reference to performing due diligence activities. The commenters stated that this subsection talks about establishing a first payment due date, not performing due diligence activities. Two commenters suggested additional changes to this Subsection so that the lender’s responsibilities with regard to the payment due date, amount, and schedule are clearly established here.

Response:

The Committee agrees.

Change:

The new text in Subsection 15.5.A has been revised as follows:

“A consolidating lender that establishes an additional loan servicing record for the add-on portion of the loan must establish perform due diligence activities on a single payment amount, payment due date, etc., for the single Consolidation loan, even if the lender establishes an additional loan servicing record for the add-on portion of the loan. In addition, a consolidating lender that establishes more than a single loan servicing record for the subsidized, unsubsidized, and HEAL portions of the loan, must establish a single repayment schedule with one first payment due date, even if the lender establishes more than a single loan servicing record for the subsidized, unsubsidized, and HEAL portions of the loan. The lender must ensure that all servicing aspects for the multiple portions of the loan remain synchronized throughout the life of the loan.”

COMMENT:

Five commenters suggested removing the term “single payment amount” throughout the proposal and leaving it as “single payment due date”. The commenters stated that borrowers with multiple loans, in addition to Consolidation Loans, could have all of their loan payments rolled into one monthly payment amount. This is done as a convenience for the borrower. The phrase “single payment amount” could be unduly restrictive and prohibit this practice. It is irrelevant to the borrower if their loans are listed separately on a billing statement as long as the total of the multiple loans is rolled into one monthly payment amount.

Response:

The Committee believes that the term “single payment amount” emphasizes the requirement that the lender must provide to the borrower a repayment and disclosure statement applicable to the Consolidation loan that provides a single scheduled payment amount due for a specific payment due date for the Consolidation loan. The term “single payment amount” does not prohibit a lender from rolling other FFELP loans into a single monthly payment amount with the same established due date. However, in light of the comments we believe the term “single payment amount” should be modified to better emphasize that a “single scheduled installment amount” must be disclosed to the borrower for the Consolidation loan. Thus, ensuring that a borrower is not provided with a disclosure statement or billing statement that provides several installment amounts for the same due date for the single Consolidation loan.

Change:

Throughout the proposal, the phrase “single payment amount” has been removed and replaced with “single scheduled installment amount”.

COMMENT:

Five commenters suggested listing federal regulations in Subsection 13.1.A. because the loss of guarantee should be based on published regulatory guidance. These commenters also suggested a similar change to Section 15.4. One of these commenters suggested removing the cross-reference to the other subsections of the Manual. One of the commenters stated that these changes were necessary because many guarantors require that separate claims be filed for portions of the loan with different interest rates and subsidy eligibility. Loss of guarantee should be based on published regulatory guidance.

Response:

The Committee appreciates the commenters’ thorough review of this proposal. The Committee agrees that regulatory citations would be beneficial to readers. However, the Committee disagrees with removing the cross-reference to the other subsections of the *Common Manual*. The Committee believes that the cross-reference should remain to ensure absolute understanding of the action that will be taken by the guarantor if the Consolidation loan is not administered as a single Consolidation loan.

Change:

Regulatory citations have been added after the applicable paragraphs of Subsections 13.1.A and Section 15.4.

COMMENT:

Five commenters suggested eliminating from Section 15.4, the sentence “The lender must ensure that all servicing aspects for the multiple portions of the loan remain synchronized throughout the life of the loan.” One of the commenters also suggested eliminating that same sentence from Subsection 15.5.A. The commenters state the removal is necessary because the verbiage “all servicing aspects” is too vague and by stating “throughout the life of the loan” sets a standard that is not required currently on other loans. FFELP loans that have certain missed diligence requirements are eligible for interest limitations and not necessarily loss of guarantee. One of the commenters also suggested some other minor changes to this area of the text as follows:

Section 15.4

A consolidating lender must perform due diligence activities on a single payment due date for the single Consolidation loan, even if the lender establishes an additional loan servicing record for the add-on portion of the loan. In addition, a consolidating lender must establish a single repayment schedule with a single payment due date for all portions of the loan, even if the lender establishes more than a single loan servicing record for the subsidized, unsubsidized, and HEAL portions of the loan, The disbursement date for the first loan, or the application receipt date, establishes the terms and conditions for every loan servicing record established under a single promissory note for the borrower. For loan guarantee purposes, the single Consolidation loan application and promissory note represent a single Consolidation loan. ~~The lender must ensure that all servicing aspects for the multiple portions of the loan remain synchronized throughout the life of the loan.~~ Failure to establish and maintain a single, accurate repayment schedule, first and next payment due date, and accurate interest rate, and to consistently apply deferment and forbearance or other key loan servicing activities ~~loan discharge provisions~~ may result in the loss of the entire loan’s guarantee. (See Subsection 14.1.E, Violations Associated with Unsynchronized Servicing of a Consolidation Loan with Multiple Loan Records.)

Subsection 15.5.A

A consolidating lender must establish a single payment due date for the single Consolidation loan, even if the lender establishes an additional loan servicing record for the add-on portion of the loan. In addition, a consolidating lender must establish a single repayment schedule with one first payment due date, even if the lender establishes more than a single loan servicing record for the subsidized, unsubsidized, and HEAL portions of the loan. ~~The lender must ensure that all servicing aspects for the multiple portions of the loan remain synchronized throughout the life of the loan.~~

Response:

The Committee does not agree with the commenters' suggestions. The lender must ensure that multiple portions of the loan remain synchronized through the life of the loan. Thus, the lender must ensure that all servicing aspects provide for this synchronization.

Change:

None.

COMMENT:

Two commenters suggested removing the word addendum in Section 15.4 and replacing it with a reference to the loan application. The commenters also pointed out that the plural of addendum was addenda. The commenters stated that the borrower completes a single loan application and promissory note to request the Consolidation loan. The borrower does not complete an addendum.

Response:

The Committee agrees.

Change:

The new text in Section 15.4 has been revised as follows:

“...For loan guarantee purposes, the single Consolidation loan application and promissory note ~~and addenda~~ represent a single Consolidation loan. The lender must ensure that all servicing aspects for the multiple portions of the loan remain synchronized throughout the life of the loan.”

COMMENT:

Five commenters suggested removing the last sentence of the Lender/Servicer Implication Statement that states “Lenders must ensure that all aspects for the multiple portions of the Consolidation loan remain synchronized throughout the life of the loan.” The commenters state the verbiage “throughout the life of the loan” sets a standard that is not required currently on other loans. FFELP loans that have missed certain diligence requirements are eligible for interest limitations and not necessarily loss of guarantee.

Response:

The Committee does not agree with the commenters' suggestions. The lender must ensure that multiple portions of the loan remain synchronized through the life of the loan. Thus, the lender must ensure that all servicing aspects provide for this synchronization.

Change:

None.

COMMENT:

One commenter supported the proposal with a few suggestions that are detailed in other comment/responses but had a general comment. The commenter feels that the loss of guarantee in Section 12.4 for unsynchronized servicing of a Consolidation loan with multiple loan records is overly harsh to impose such a penalty for what are truly exceptional cases. The commenter would like to point out that in reality, this situation increases rather than decreases the due diligence activity, providing more, not fewer, opportunities to resolve the delinquency.

Response:

The Committee genuinely thanks the commenter for its careful review of this policy and for its diligent development of comments. However, in its research, the Committee has identified that this issue is larger than even the Committee itself originally perceived, and that the implications to the borrowers who believed themselves to have obtained a single loan, the confusion and consternation at now having two or more

coupon books and payment amounts, and even having parts of the Consolidation loan out of sync due to the processing of a deferment on only one part of the loan, are more pervasive than it was aware of. Guarantors and lenders have reported in the course of this policy's development that portions of Consolidation loans have become separated and are now held by different lenders or a claim was filed on one portion of the loan and the borrower entered into a rehabilitation agreement, only to find that the other portion of the loan subsequently defaulted and now the borrower's rehabilitation agreement appears invalid. Such servicing discrepancies do not appear, from this perspective, to be exceptional. Rather, they appear to have been simply overlooked. The Committee believes that guarantors should establish consistent common policy to manage and enforce a general policy that benefits the borrowers in these cases. After careful review of §682, Appendix D and common policy regarding the loss of guarantee and cures, it seems unavoidable that these loans, serviced in a manner entirely inconsistent with the note signed by the borrower, should lose their guarantee.

Change:

None.

COMMENT:

One commenter suggested adding to Section 12.4, a reference to Subsection 14.1.E Violations Associated with Unsynchronized Servicing of a Consolidation Loan with Multiple Loan Records and Subsection 14.5.E Cures Associated with Unsynchronized Servicing of a Consolidation Loan with Multiple Loan Records. The commenter states that it should be clear that the guarantor is allowed to return the claim to the lender for a cure as is allowed for Consolidation loans with different interest rates.

Response:

The Committee agrees.

Change:

The cross-reference to Subsection 14.1.E and 14.5.E has been added to the end of Section 12.4.

COMMENT:

One commenter suggested adding an additional cross-reference to Subsection 14.5.E Cures Associated with Unsynchronized Servicing of a Consolidation Loan with Multiple Loan Records to Subsections 13.1.A and Section 15.4. The commenter states that it seems appropriate that the Manual refers the reader to the violations associated with this situation, that the Manual should also refer the reader to the cures associated with those violations.

Response:

The Committee agrees.

Change:

The cross-reference to Subsection 14.5.E has been added to the end of Subsection 13.1.A and Section 15.4.

COMMENT:

Two commenters suggested removing language in Subsection 11.1.A regarding applying the same deferment benefit must be applied for the same period of time to each portion of the Consolidation loan. The commenter states that this sentence conflicts with existing language in the 4th bullet of the same Subsection and language in Subsection 15.5.D that indicates that different deferment benefits may be applied to some consolidation loans, as is the case with spousal Consolidation loans.

Response:

The fourth bullet of Subsection 11.1.A provides that if each comaker qualifies under a separate deferment provision, the lender may defer the loan under one of those deferment types. The Committee understands, that in spite of how the deferment is applied, the lender must ensure the entire loan is deferred and that the entire loan exits deferment with a single next payment due date and payment amount.

Change:

The new bullet in Subsection 11.1.A has been revised as follows:

- A consolidating lender must grant a deferment on the entire loan, even if the lender establishes more than a single loan servicing record for the subsidized, unsubsidized, and HEAL portions of

the loan. That is, ~~the same~~ the same deferment benefit must be applied for the same period of time to each portion of the loan when the lender grants the deferment.

A similar change was made to Section 11.19.

COMMENT:

Two commenters suggested removing the new text in Section 11.19 as it contradicts the language in the preceding paragraph of that section. The proposed paragraph does not allow for differences that may occur due to partial discharges.

Response:

Common Manual Section 11.19 provides that if two individuals are jointly liable for repayment of a Consolidation loan, a lender may grant forbearance on repayment of “the loan” only if the ability of each individual to make scheduled payments has been impaired based on the same or differing conditions, except in cases when one comaker has applied for a total and permanent disability loan discharge. Section 11.19 provides information relative to forbearance of a loan for a comaker during the total and permanent disability conditional period. Section 11.19 also provides that a lender may grant discretionary forbearance on the repayment of the “entire loan” if the ability of the non-disabled comaker to make payments is impaired during the conditional discharge period for the disabled comaker.

Change:

None.

COMMENT:

Two commenters suggested changes to the last sentence of Section 12.4 because the correct payment due date needs to be determined to then allow for the assessment of collection activities and to evaluate for any due diligence violations that may or may not cause a loss of guarantee.

Response:

The Committee disagrees. If a claim is submitted with different payment due dates on one or more portions of the loan, the guarantor will return the claim to the lender as an uninsured loan. If the lender disagrees with this assessment, they may appeal the denial with the appropriate documentation substantiating that the loan was serviced as a single Consolidation loan.

Change:

None.

COMMENT:

Two commenters suggested removing the first two sentences of new text in Subsection 13.1.A. and Section 15.4. The commenter stated that previously the Committee responded that they agreed the language was redundant but believed it added clarity. However, the due diligence language in the claim filing requirements section is out of place which creates confusion. The proposed due diligence language would be better suited in Subsection 15.5.F that addresses delinquency and claim filing for Consolidation loans and is sufficiently addressed in Section 12.4.

Response:

The Committee agrees that there is a redundancy in text regarding due diligence in Subsection 13.1.A and in Section 15.4. However, the Committee does not agree that text needs to be added to Subsection 15.5.F. This Subsection deals with Consolidation loans in relationship to discharges and forgiveness and is accurate as written. What the Committee is trying to add to the *Common Manual* is how lenders should service portions of the single Consolidation loan in relationship to deferments, forbearance, establishing repayment, and due diligence. The servicing must be synchronized for the portions of the loan through the entire servicing of the loan. This does not mean that a portion of a Consolidation loan can not be forgiven or discharged (i.e., portion of a loan paid through claim or borrower removed from repayment obligation depending on the discharge type.) Regardless, the lender must still service the Consolidation loan as a single loan.

Change:

The first two sentences of the new text in Subsection 13.1.A and Section 15.4 regarding due diligence have been removed.

COMMENT:

Two commenters suggested removing “claim package” from the 3rd sentence of the new text in Subsection 13.1.A and adding “at the same time”. The commenter states that this change is required because many guarantors require that separate claim packages be filed for portions of the loan with different interest rates and subsidy eligibility.

Response:

The Committee agrees with adding “at the same time” but disagrees with the removal of “claim package”.

Change:

The 3rd sentence of the new text in Subsection 13.1.A has been revised as follows:

“For claim filing purposes, including loan discharges, all loan records related to a single Consolidation loan promissory note must be filed as one claim package or at the same time with the guarantor based on a single payment due date.”

In addition, a procedural carat has been added to this subsection that states to contact the guarantor for more information on filing requirements.

COMMENT:

Two commenters suggested removing the new text that was added to Subsection 15.5.B regarding disclosing a single accurate payment amount, payment due date, etc. for the single Consolidation loan. The commenter stated that the use of “etc.” in the proposed language would include interest rate. Also, since any HEAL portion of a Consolidation loan would have a different interest rate, and the interest rate is an item required to be on the repayment disclosure, the lender or servicer may not be able to provide one disclosure.

Response:

The Committee agrees.

Change:

The last sentence of Subsection 15.5.B has been revised as follows:

“The lender must disclose to the borrower a single accurate scheduled installment payment amount ~~and, payment due date, etc.~~ for the single Consolidation loan that contains multiple records.”

COMMENT:

One commenter understands the effort and agrees that a Consolidation loan should be serviced as one single loan. The commenter requests at this time that this proposal be deferred for further review and evaluation. The proposal as written does not appropriately address the issue or meet the intent of the proposed policy, as it is confusing and incomplete. The implementation of spousal Consolidation loans and separate subsidy reporting requirements are just a couple of causes of the reporting requirements placed upon guarantors and the lenders. The existing guidance has always been understood to apply to an entire loan, unless otherwise clarified, so the amount of additional clarification seems to be redundant and contradictory.

Before moving forward with this proposal, we also suggest that the Committee review Sections and Subsections 10.5, 10.7, 11.6.A and 15.5.F for possible additional revisions or alternative locations of proposed language. Sections 10.5 and 10.7 are referenced by the affected sections in Chapter 15 and may be better suited for the proposed changes or also need to be modified. Subsection 11.6.A allows a borrower to decline a school deferment on their loan. The proposed changes indicate that a borrower would not be allowed to decline an in-school deferment on a portion of their single Consolidation loan. It may be helpful to establish this clarification in this section if that’s the intent of the proposal as well as address the issue overall if it will impact the borrower’s ability to specify their deferment requests in other areas. Subsection 15.5.F is listed as an affected section, but no current proposed changes could be located. This section may be better suited to address the primary concerns and allow for less redundancy in unrelated sections.

Response:

The Committee appreciates the commenters careful review of this proposal. Subsection 15.5.F was not listed as an affected subsection in the recent proposal that was distributed for comment. However, the Committee did receive comments relative to this Subsection. Please see prior comment and response in regards to this subsection. As for Sections 10.5, 10.7, and Subsection 11.6.A, the Committee will review these sections for

future policy proposals based on the outcome of this proposal. And while the Committee concurs that there are servicing reasons that the lender and/or guarantor may need to look at the underlying loans of any Consolidation loan, nothing in those operational aspects are sufficient to negate the simple fact that it is one loan. To service the loan separately and, worse, out of sync, violates the initial premise of the loan contract with the borrower.

The Committee is very interested in resolving any discrepancies that the commenter perceives as the policy moves forward and will be glad to engage in discussions to help identify which additional text may require revision to bring it into alignment with this policy. Those changes can be moved forward as correction proposals in future batches as the work progresses.

Change:

None.

COMMENT:

One commenter suggested that the effective date should be a prospective date because the implementation of spousal Consolidation loans and separate subsidy reporting requirements are just a couple of causes of the reporting requirements placed upon guarantors and the lenders. The existing guidance has always been understood to apply to the entire loan. Some of the proposed guidance goes beyond policy and addresses operational and procedural processes. Guarantors have provided separate guidance to their lenders advising them of their individual servicing reporting requirements and methods that accommodates each of their servicing systems. Lenders, servicers, and guarantors may need to modify their servicing systems to accommodate the proposed changes.

Response:

The Committee concurs that it appears intuitive that the loan would be administered as a single loan. However, servicing realities contradict this intuitive understanding. Apparently, what began as an operational workaround has evolved to a standard process of treating the separate portions of the loan differently in so many ways that we are aware of Consolidation loan portions held by separate loan holders. To fail to act when made aware of these types of loan servicing discrepancies would imply the guarantors' tacit agreement with these servicing violations. The Committee has been made to believe that most guarantors do not endorse this type of servicing, and when that is the case, explicit common policy seems the only viable course to ensure equitable and consistent treatment of the now numerous Consolidation loan borrowers.

Change:

None.

COMMENT:

One commenter does not support the proposal as written. The commenter maintains that there is no regulatory basis for denying a claim for misaligning portions of a Consolidation loan unless such misalignment resulted in due diligence violations.

Response:

In review of this matter, the Committee concluded that the lack of synchronization would produce a gap of 46 days or more. According to language provided in §682.102(e)(5) and §682.209(a), the payment of principal and interest on a Consolidation loan is due from the borrower within 60 days after the loan is disbursed and also within 60 days after the last day of a deferment or forbearance period. According to §682, Appendix D, in cases when reinsurance is lost due to a failure to timely establish a first payment due date, the earliest unexcused violation would be the 46th day after the date the first payment due date should have been established. Therefore, if a lender establishes different payment due dates for portions of the single Consolidation loan, the lender has not established a payment due date in accordance with federal regulations since a payment due date was not established for the single Consolidation loan. Under current rules, reinsurance would be lost on the 106th (60 + 46) day after the date the lender should have established the repayment of the single Consolidation loan.

In situations where a deferment or forbearance is applied to only a portion of the loan, the Committee believes the lender has not complied with §682.210 or §682.211. These regulations provide that if a borrower qualifies for the deferment or the lender grants a forbearance, payments must be deferred or forborne on the loan. If a deferment or forbearance is not applied to a portion of the loan, the lender has failed to grant the deferment or forbearance, in accordance with the federal regulations, to "the" loan. The commenter is correct that

regulations do not specifically address the violation for this type of error. However, the Committee believes that if a lender fails to grant a deferment or forbearance for the single Consolidation loan in accordance with federal regulations, the lender incurs due diligence violations based on its failure to service the loan based on the correct single due date and should lose interest benefits and special allowance. The Committee believes this is a serious loan servicing violation since the borrower did not benefit from the temporary cessation of payments for the entire loan when a forbearance was granted or did not obtain the entitled benefit of the deferment for the single Consolidation loan.

Change:

None.

COMMENT:

One commenter does not support the proposal as written. The commenter disagrees with the proposal based on the Basis used and the retroactive nature of the effective date and triggering event. The commenter stated that as they indicated when the proposal was distributed in Batch 146, using the Emergency Student Loan Consolidation Act of 1997 as the Basis for this policy is not appropriate. This Act did not prescribe the servicing procedures that lenders/servicers must follow in the Consolidation Loan program. Rather, this legislation established the variable interest rates for Federal Consolidation loans and that the Department will pay the interest on the subsidized portion of a Federal Consolidation loan. Passage of this Act did require many lenders/servicers to modify origination and servicing systems to track the individual loans that make up a single Consolidation loan separately to both delineate easily what portion of a Consolidation loan is subsidized and what portion is not, as well as track loans that were added after the original Consolidation loan was made. However, there has been no guidance issued from the Department that dictates how a lender/servicer must service these accounts. With the lack a specific guidance, lenders/servicers have made good faith efforts to establish systems that allow for the tracking of these complex loans due to different interest rates and subsidy eligibility requirements, while at the same time establishing a single repayment schedule with one payment for the borrowers of these loans.

Also, establishing a retroactive effective date for a policy that is not directly supported with federal legislation for which it is based does not make sense. If the policy is advanced (perhaps as a guarantor policy), we suggest establishing a prospective effective date and triggering event to allow lenders/servicers time to modify systems as necessary.

Response:

The Committee understands the commenters' concerns. However, the Federal Consolidation Loan Program provides a borrower with the opportunity to consolidate into one debt with one promissory note all of the eligible federal education loans received from different lenders and/or under different education loan programs. This has been the premise since the Consolidation loan was introduced in statute and regulations. Thus, the consolidation process permits multiple debts to be combined into one monthly payment and promotes the expectation that the borrower will have a single loan with a single payment due on a single date. In fact, the Consolidation promissory note, a single loan note by construction, does not contemplate multiple loans, and is itself, crafted in the singular to reflect the singularity of the loan that derives from the note. If the lender does not administer the Consolidation loan as a single loan, the lender has not complied with federal regulations or the terms of the promissory note. Since the Consolidation loan program predates the issuance of the *Common Manual* and implementation of common policy, the effective date of the policy should be retroactive to the date the *Common Manual* was implemented. However, the Committee believes that the issue of lenders servicing portions of the single Consolidation loan as separate loans really began with the implementation of the Emergency Student Loan Consolidation Act of 1997. It appears the implementation date of this Act is when lenders modified their systems or their processing protocols to accommodate the changes to loan subsidies. However, the Committee believes that although the lenders modified their systems, the intent of the Act was not to permit lenders to split the Consolidation loan into several loans, or at least, that such divisions should not be apparent to the borrower who sought a single loan and signed a single note. Rather, the lender was required to monitor portions of the Consolidation loan with respect to interest application and adjustments. The fact that lenders made system accommodations to manage this and included the separate loan records to manage the diverse servicing needs does not mitigate the simple fact that the Consolidation loan is a single loan.

Change:

None.

Comments Received From (Batch 153):

AES/PHEAA, ASA, CSLF, Great Lakes, HESC, KHEAA, NASFAA, NCHelp, NSLP, OGSLP, PPSV, SCSLC, SLND, SLSA, TG, USA Funds, and VSAC.

Responses to Comments

Most of the commenters supported this proposal as written. Other commenters recommended wordsmithing changes or typographical corrections that made no substantive changes to the policy 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 stated that the proposal adds new policy in Section 15.2. The new policy states that a lender should inform borrowers that the interest rate and repayment terms on a Consolidation loan may be affected by adding loans. The commenter notes that this new policy should have a prospective effective date and rather than the retroactive effective date associated with the rest of the proposal.

Response:

The Committee appreciates the commenter's careful review of the proposal. The Committee has reviewed the proposed revised sentence. We believe that this additional lender requirement was unintentional and was a result of wordsmithing some preexisting text. We also note that the second sentence as currently written clearly states the lender's requirement, "The lender must disclose new repayment terms to the borrower, if the terms of the borrower's Consolidation loan change due to the addition of loans within the 180-day add-on period.

Change:

The Committee will not pursue changes to the first sentence as originally proposed.

COMMENT:

One commenter noted that the HEAL portion of a Consolidation loan may have a different interest rate than other underlying loans and therefore requests a change to Subsection 13.1.A, paragraph 2, as follows:

A guarantor may return a claim and impose a penalty up to and including the loss of the loan's guarantee if it identifies that the loan has been serviced with different interest rates, except for the underlying portion of a Consolidation loan attributable to a HEAL loan, or payment due dates.

Response:

The Committee agrees.

Change:

Additional language has been added to the sentence as suggested by the commenter.

COMMENT:

One commenter suggested revising language in Section 15.4, page 9, column 2, the first sentence of the new paragraph, as follows:

The first disbursement date for the first Consolidation loan, or the application receipt date, establishes the terms and conditions for every loan servicing record established under a single promissory note for the borrower.

Response:

The Committee agrees.

Change:

The sentence in question was revised as suggested by the commenter.

SM, ma/edited-chh

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: November 20, 2008

	DRAFT	Comments Due	
	FINAL	Consider at GB Meeting	
X	APPROVED	With No Changes	Nov 20

SUBJECT: Alternatives to Recommended Lender Lists

AFFECTED SECTIONS: 4.4.A Recommended Lender Lists

POLICY INFORMATION: 1063/Batch 153

EFFECTIVE DATE/TRIGGER EVENT: Information provided by schools regarding lenders participating with the school on or after May 9, 2008.

BASIS:

Federal Register November 1, 2007, Preamble, page 61987; DCL GEN-08-06/FP-08-06.

CURRENT POLICY:

Current policy states that if the school is able to identify only one lender willing to make loans to students at that school, the school may provide a list of lenders who have provided loans to students attending that school in the past. The school must not endorse any lender and must advise the FFELP loan applicant that he or she may choose any FFELP lender that will make loans for attendance at that school.

REVISED POLICY:

Revised policy permits a school that is unable to identify at least three unaffiliated lenders who are willing to make loans to students and/or parents for attendance at that school or that chooses not to use a recommended lender list to provide alternative lender information to students and parents. The school is permitted to provide a comprehensive list of FFELP lenders that have loaned to the school's students and/or parents in the past or may provide a list of lenders that have indicated that they will make such loans. The school's information must not endorse any lender, and must advise the students and parents that they may choose any FFELP lender that will make loans for attendance at that school. The school is not permitted to provide any additional information about the lenders.

REASON FOR CHANGE:

DCL GEN-08-06 provided additional clarifications regarding alternatives to the recommended lender list and how schools may provide important lender information to their FFELP applicants. The preamble to the November 1, 2007, *Federal Register* also provided valuable guidance for schools that either cannot or choose not to construct and publish a recommended lender list.

PROPOSED LANGUAGE - COMMON MANUAL:

Revise Subsection 4.4.A, page 18, column 2, paragraph 2, as follows:

A school that chooses not to publish a recommended lenders list, or that has not been able to identify three or more unaffiliated than one lenders to make loans to its students and parents ~~borrowers~~, may still provide alternative information to assist ~~the borrowers~~ its students and/or parents with their choice of lender. The school may provide either of the following:

- The names of lenders that have indicated a willingness to make loans to students and their parents for attendance at the school. ~~At the student's or parent's request, the school may provide~~
- A comprehensive list ~~the names~~ of lenders that have made 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 loans, as long as the lenders did not provide any prohibited inducement to the school to secure loan applications.

When providing either type of lender ~~this information to the FFELP student or parent~~

borrowers, 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 FFELP borrower may choose any FFELP lender that will make loans for attendance at that school.

PROPOSED LANGUAGE - COMMON BULLETIN:

Alternatives to Recommended Lender Lists

The *Common Manual* has been revised to permit a school that chooses not to publish a recommended lender list, or that has not been able to identify three or more unaffiliated lenders to make loans to its students and parents, to provide alternative information to assist students and parents with their choice of lender. The school may provide either of the following:

- The names of lenders who have indicated a willingness to make loans to students and parents for attendance at the school.
- A comprehensive list of lenders that have made 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 provide FFELP loans, as long as the lenders did not provide any prohibited inducement to the school to secure loan applications.

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 lender that will make loans for attendance at that school.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

A student and/or parent may receive minimal information to assist with the search for a FFELP lender.

School:

A school may provide some assistance to its students even if it has been unsuccessful in identifying a sufficient number of unaffiliated lenders willing to make loans to its students and parents or if the school chooses not to provide a recommended lender list. The school may want to amend its communications with students and parents.

Lender/Service:

A lender may receive some loan applications from specific schools based on the revised policy that permits schools to provide some minimal lender information to assist students and their parents in identifying a FFELP lender.

Guarantor:

A guarantor may be required to revise its program review procedures based on the newest guidance regarding alternatives to recommended lender lists.

U.S. Department of Education:

The Department may be required to amend its program review procedures.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:

CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:

August 13, 2008

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

November 13, 2008

PROPOSAL DISTRIBUTED TO:

CM Policy Committee
CM Guarantor Designee
Interested Industry Groups and Others
CM Governing Board members

COMMENTS RECEIVED FROM:

AES/PHEAA, ASA, CSLF, Great Lakes, HESC, KHEAA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLND, SLSA, TG, USA Funds, and VSAC.

RESPONSES TO COMMENTS

Many of the commenters supported this proposal as written. Other commenters recommended wordsmithing changes that made no substantive changes to the policy but that added clarity to the proposed language. 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 asked that the preamble to the *Federal Register*, dated November 1, 2007, be added to the basis statement. The commenter noted that preamble language also provided some clarification of the Department's intent with respect to schools that choose to not publish recommended lender lists or cannot fulfill the 3-unaffiliated lender requirement.

Response:

The Committee agrees.

Change:

The basis statement has been amended to include reference to the November 1, 2007, *Federal Register* preamble language related to §682.212(h)(1). A reference to the November *Federal Register* has also been added to the "reason for change" statement.

COMMENT:

Four commenters requested that language be added that the list of lenders that have made loans to students and parents for attendance at the school should be "a comprehensive list" of lenders, as provided in the DCL.

Response:

The Committee agrees.

Change:

The language has been amended to clarify that the list must be a comprehensive list.

COMMENT:

Three commenters suggested that the alternative that the school provide a list of lenders that have made loans to borrowers at that school be amended to include a statement that the lender list be comprised of lenders from the past 3 to 5 years, or some other alternative. The commenters believe this point is important and adds context to the requirement.

Response:

The Committee agrees. The Committee also chose to add a clarifying statement that the time frame is not dictated by federal or guarantor policy and is established at the discretion of the school.

Change:

The language has been amended as follows:

"...provide a comprehensive list of the names of lenders that have made loans in the past three to five years (or some other time frame established by the school) to students and parents at the school..."

COMMENT:

One commenter suggested language to clarify that if the school chooses to provide a comprehensive list of lenders that have provided loans in the past, it should also use as a criterion in the construction of that list whether those lenders are also committed to continuing to make loans to the school's student and parent

borrowers. The commenter noted that the DCL is clear that the continuation of that lending is a key part of the value of the information.

Response:

The Committee agrees.

Change:

The text has been amended as follows:

“...lenders that have made 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 provide FFELP loans, as long as the lenders did not provide any prohibited inducement to the school to secure loan applications...”

COMMENT:

One commenter requested that each instance of the term “borrower” be removed and that the words “student or parent” or “student and parent” be substituted. The commenter stated that until the party obtains a FFELP loan, they are not, technically, borrowers.

Response:

While the Committee agrees that the parties involved in the loan transaction are not borrowers until the loan is made, *Common Manual* convention, as well as many statutory and regulatory cites, typically refers to both loan applicants and debtors as borrowers for ease of reference. In the context of this proposal, the changes are simple to incorporate and do not appear to create consistency issues with the remainder of the Manual’s text and thus, the revised policy language reflects most of the commenter’s suggestions. However, the remainder of the subsection and other similar subsections in the Manual continue to refer to the more generic term and will likely not be amended.

Change:

The term borrower is changed to “student” or “parent” as appropriate in the amended text.

COMMENT:

One commenter believes that DCL GEN-08-06 creates two separate classes of schools: one that cannot construct a recommended lender list because it cannot find three unaffiliated lenders willing to make loans to students and parents at that school and a separate and distinct subset of schools that simply choose not to construct such a list and choose instead to provide general lender information to their students and parents. In the first instance, the commenter believes that the schools’ only alternative is to provide a list of lenders who have indicated a willingness to make loans to students at the school. In the second instance, the commenter believes that the schools’ only choice is to provide a comprehensive list of lenders that have made FFELP loans to students and parents at that school over the past 3 to 5 years. The commenter suggested that this distinction be communicated by separating the two types of schools and the acceptable alternatives for each into separate paragraphs.

Response:

The Committee understands the commenter’s interpretation of the provisions but does not believe that it is federal intent to segregate these two groups of schools into separate categories and then to limit their options for providing helpful information to their students and parents. The Committee believes that such a distinction would require, for enforcement, clear evidence of the school’s initial intent with respect to the recommended lender list in order to discern which path it should have taken, a distinction in intent that would be difficult if not impossible to audit. Thus, it seems reasonable that either alternative is open to a school that either cannot or chooses not to offer up a recommended lender list. This interpretation is supported in part by the language of the *Federal Register* (FR) preamble, where the Department merges both types of school issues into a single solution in a single sentence. Though the FR language is not as expansive as that provided in the DCL, we believe that its intent establishes that “recommended lender list” alternatives create two options for either type of school.

Change:

None.

bg/tmh

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: November 20, 2008

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	With No Changes	Nov 20

SUBJECT: NSLDS Enrollment Reporting by Schools

AFFECTED SECTIONS: 9.2.A National Student Loan Data System (NSLDS) Enrollment Reporting

POLICY INFORMATION: 1055/Batch 153 (originally distributed in Batch 151)

EFFECTIVE DATE/TRIGGER EVENT: January 2008.

BASIS:
NSLDS Newsletter #16 dated December 21, 2007; NSLDS Newsletter #17 dated June 2, 2008.

CURRENT POLICY:
Current policy states that a school that fails to return its Submittal File to the National Student Loan Data System (NSLDS) within 30 days of the date it was created will receive a series of overdue letters during the 60- to 65-day period following the Submittal File return deadline.

REVISED POLICY:
Revised policy states that a school that fails to provide updated enrollment data to the NSLDS within 30 days from the date the NSLDS created the school's Enrollment Reporting Roster File is considered late. The school is permitted to provide updated information via either an online method or the return of its Submittal File. Revised policy also adds technical information regarding the timing and format of the NSLDS Late Enrollment Reporting Notification.

Revised policy also provides further information about the date that the NSLDS "created" the school's Enrollment Reporting Roster File to assist schools in understanding and complying with NSLDS reporting requirements.

REASON FOR CHANGE:
This change is necessary to update the Manual with current Departmental guidance on notices that the NSLDS generates when a school is overdue in returning its enrollment data updates to the NSLDS.

PROPOSED LANGUAGE - COMMON MANUAL:

Revise Subsection 9.2.A of the *Common Manual*, page 3, column 2, paragraph 2, as follows:

The NSLDS transmits an electronic Roster File to the school or the school's designated servicer on the day of the month designated by the school's Enrollment Reporting Schedule. For each student listed on the enrollment Roster File, a school must confirm or update the enrollment status and return the updated roster—called the Submittal File—to the NSLDS within 30 days of the date the Roster File was created. The date the Roster File was created is located in a date and time stamp that the NSLDS enters into the Roster File's header record. To reduce response time, schools that employ third-party servicers may opt to synchronize the transmittal of the NSLDS roster with the delivery of the school file to the third-party servicer. Schools may also complete responses to the Roster File online, eliminating the need to return a Submittal File.

[§682.610(c)(1); NSLDS Enrollment Reporting Guide, February 2008, Chapter 1, Section 1.3, p. 3; Section 1.8, p. 10; Section 3.2.4, p. 71; and Appendix A, Section A.4.1, p. 113]

...

A school that fails to provide updated enrollment data to the NSLDS either by the online method or the return of its Submittal File within 30 days of from the date it was created the NSLDS created the school's Enrollment Reporting Roster File will receive a

series of overdue letters during the 60- to 65-day period following the Submittal File return deadline is considered late. The NSLDS sends a Late Enrollment Reporting Notification via electronic mail if the NSLDS does not receive the school's enrollment status updates within 37 days of the date the NSLDS created the school's Enrollment Reporting Roster File. This electronic mail notification is sent to the enrollment reporting contact and primary contact designated by the school, and to the school's chief executive officer or president. [NSLDS Enrollment Reporting Guide, February 2008, Chapter 1, Section 1.8, p. 10; NSLDS Newsletters #16 and #17]

If ~~the~~ a school uses a servicer to submit ~~the~~ Enrollment Reporting files, the school remains responsible for timely and accurate reporting. The NSLDS does not send a Late Enrollment Reporting Notification to a school's servicer. A ~~School's~~ school that does not comply with the Submittal File return requirements may lose eligibility for Title IV ~~student~~ aid or may have fines imposed.

[NSLDS Enrollment Reporting Guide, February 2008, Chapter 1, Section 1.8, p. 10]

...

**PROPOSED LANGUAGE - COMMON BULLETIN:
NSLDS Enrollment Reporting by Schools**

The *Common Manual* has been updated concerning the notice generated by the NSLDS when a school fails to provide timely its updated enrollment data.

A school that fails to provide updated enrollment data to the NSLDS either by the online method or the return of its Submittal File within 30 days from the date the NSLDS created the school's Enrollment Reporting Roster File is considered late. The NSLDS sends a Late Enrollment Reporting Notification via electronic mail if the NSLDS does not receive the school's enrollment status updates within 37 days of the date the NSLDS created the school's Enrollment Reporting Roster File. This electronic mail notification is sent to the enrollment reporting contact and primary contact designated by the school, and to the school's chief executive officer or president. If a school uses a servicer to submit Enrollment Reporting files, the NSLDS does not send a Late Enrollment Reporting Notification to the school's servicer.

Revised policy also provides further information about the date that NSLDS "created" the school's Enrollment Reporting Roster File. The date the Roster File was created is located in a date and time stamp that the NSLDS enters into the Roster File's header record.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

A borrower may experience a more timely conversion or reconversion to repayment based on the school's response to the NSLDS's prompt notice of overdue enrollment data updates.

School:

A school may be required to modify its procedures for ensuring a timely response to its Enrollment Reporting Roster File, thereby avoiding the late enrollment reporting notification the NSLDS generates, and to respond promptly in the event that it receives such a notice. A school may need to verify that NSLDS has correct contact information, including e-mail addresses, for its enrollment reporting contact, primary contact, and chief executive officer or president. A school that uses a servicer to submit its Enrollment Reporting Submittal File may need to review its procedures to ensure an effective method of communication with the servicer if the school receives a late enrollment reporting notification, and determine the servicer's response to that notice.

Lender/Servicer:

A lender may receive more timely enrollment status updates based on a school's response to the NSLDS's prompt notice of overdue enrollment data updates.

Guarantor:

A guarantor may receive more timely enrollment status updates based on a school's response to the NSLDS's prompt notice of overdue enrollment data updates. A guarantor may also be required to modify school

program review standards to document a school's response to the NSLDS's revised schedule for generating a late enrollment reporting notification.

U.S. Department of Education:

The Department may receive more timely enrollment status updates based on a school's response to the NSLDS's prompt notice of overdue enrollment data updates. The Department may be required to modify school program review standards to document a school's response to the NSLDS's revised schedule for generating a late enrollment reporting notification.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:

CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:

April 8, 2008

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

November 13, 2008

PROPOSAL DISTRIBUTED TO:

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

Note: The following comments were received as the result of this proposal's distribution in Batch 151.

Comments Received From:

AES/PHEAA, ASA, CSLF, EAC, Great Lakes, HESAA, HESC, KHEAA, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLND, SLSA, TG, USA Funds, and VSAC.

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:

Two commenters stated that NSLDS Newsletter #17 dated June 2008 announced that the Department replaced Enrollment Reporting Late Letters with e-mail notifications. An additional commenter referenced NSLDS Newsletter #16 dated December 2007 that provides additional information about the timing of the late reporting e-mail notice from the Department.

Response:

The Committee thanks the commenters for bringing this updated guidance to the Committee's attention.

Change:

The proposal has been revised per the guidance provided in NSLDS Newsletters #16 and #17. Due to the substantive nature of those changes, this proposal will be redistributed to the community for further comment in Batch 153.

Note: The following comments were received as the result of this proposal's redistribution in Batch 153.

Comments Received From:

AES/PHEAA, ASA, CSLF, Great Lakes, HESC, KHEAA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLND, SLSA, TG, USA Funds, and VSAC.

Responses to Comments

Many commenters supported this proposal as written. Other commenters recommended formatting 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 asked whether the Manual should list notifications that will be sent to schools via NSLDS when the school is late in returning its Enrollment Reporting Submittal File. The commenter refers to NSLDS Newsletter #17 as the source for these notifications.

Response:

The Committee included in this policy proposal the single known notification that is sent to a school whose Enrollment Reporting Submittal File is late. Per NSLDS Newsletter #17, that notice is sent 37 days after creation of the school's Enrollment Reporting Roster File. The policy proposal also lists the parties to whom this notice is sent.

Change:

None.

COMMENT:

One commenter advised that the citations provided for the October 2006 Enrollment Reporting Guide needed to be updated to reflect the February 2008 Enrollment Reporting Guide.

Response:

The Committee agrees.

Change:

Citations for Manual text impacted by this proposal have been updated to reflect the February 2008 Enrollment Reporting Guide.

jcs/edited-kk

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: November 20, 2008

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	With No Changes	Nov 20

SUBJECT: **Regulatory and Statutory Waivers for Students, Borrowers, and Schools Affected by a Disaster**

AFFECTED SECTIONS: **H.4.C Higher Education Hurricane Relief Act Waivers**

POLICY INFORMATION: **1064/Batch 153**

EFFECTIVE DATE/TRIGGER EVENT: For the 3-month administrative forbearance, August 5, 1999. For the Title IV grant overpayment waiver, November 9, 2005. For all other waivers, February 24, 2004.

BASIS:

Disaster Letter 99-28; DCL GEN-04-04; DCL GEN-05-17; DCL GEN-08-10; preamble to the *Federal Register* dated August 3, 1999, p. 42178.

CURRENT POLICY:

Current policy does not include regulatory and statutory waivers available to students, borrowers, schools, and lenders who are affected by a disaster.

REVISED POLICY:

Revised policy includes regulatory and statutory waivers for students, borrowers, schools, and lenders who are affected by a disaster.

REASON FOR CHANGE:

This change is necessary to align the Manual with regulatory and statutory waivers that are still in effect per DCL GEN-08-10.

PROPOSED LANGUAGE - COMMON MANUAL:

Revise Subsection H.4.C, page 115, column 2, paragraph 2, as follows:

**H.4.C
Higher Education Hurricane Relief Act Waivers**

The Higher Education Hurricane Relief Act of 2005 (P.L. 109-148) authorized the Department to waive or modify any statutory or regulatory provision applicable to the Title IV programs, or any student or institutional eligibility provision in the HEA, as the Department deems necessary in connection with a Gulf hurricane disaster.

Based on this authority, on February 23, 2006, the Department published Electronic Announcement #9 and Electronic Announcement #12, stating that ~~hurricane-impacted~~ affected schools that were in possession of Title IV funds that were awarded to students enrolled for an academic period that was disrupted by Hurricane Katrina or Hurricane Rita will, generally, not be required to return those funds for students who withdrew or who never began attendance. For the purpose of this relief, an ~~hurricane-impacted~~ affected school is a school with a main campus that ceased on-campus operations for more than thirty days as a result of Hurricane Katrina or Hurricane Rita, as determined by the Department.

See Subsection H.4.D for additional waivers pertaining to a student or borrower who is affected by a hurricane or other disaster.

Revise Appendix H.4, page 115, column 2, by adding a new Subsection H.4.D, as follows:

H.4.D

Disaster Waivers

In DCL GEN-04-04 posted on February 24, 2004, the Department issued general guidance for helping Title IV participants affected by a disaster. This guidance supplements the FSA Handbook and Disaster Letter 99-28, published August, 5, 1999, which provided separate guidance on the treatment of borrowers who have been affected by a disaster.

The Pell Grant Hurricane and Disaster Relief Act (P.L. 109-66) and the Student Grant Hurricane and Disaster Relief Act (P.L. 109-67) authorized the Department to provide a waiver of a student's Title IV grant overpayment if the student withdrew from a school because of a major disaster. On November 9, 2005, the Department issued DCL GEN-05-17, to implement the Title IV grant overpayment waiver.

On June 24, 2008, the Department issued GEN-08-10 to remind Title IV participants that the waivers first published in DCL GEN-04-04 and DCL GEN-05-17 remain in effect.

Unless stated otherwise, this regulatory relief applies to all Title IV recipients and their families who, at the time of a disaster, were residing in, employed in, or attending a school located in a federally-declared disaster area. This relief also applies to schools that are located in such areas. Federally-declared disaster designations are available on the Federal Emergency Management Agency's (FEMA) Website.

A school or lender that deviates from otherwise required actions on the basis of these waivers must document that fact and indicate what alternative procedures were followed.

Schools should consult DCL GEN-04-04 for additional information about waivers that are specific to the Federal Pell Grant, Campus-Based, and Federal Direct Loan Programs.

Need Analysis

A financial aid administrator (FAA) will not count special financial relief aid (for example, grants or low-interest loans) that a victim of a disaster received from the federal government or from a state as estimated financial assistance (EFA) or income for the purpose of calculating a student's expected family contribution (EFC).

Professional Judgment

An FAA may exercise professional judgment to make adjustments to the cost of attendance (COA) or to the values of the items used in calculating the EFC to reflect a student's special circumstances (see Subsections 6.5.D and 6.6.B). The Department encourages an FAA to use professional judgment in order to reflect more accurately the financial need of students and families who are affected by a disaster. The FAA still must make adjustments on a case-by-case basis and clearly document the student's file with the reason(s) for any adjustment.

Verification

A school is not required to complete verification during the award year for Title IV federal student aid applicants selected for verification whose records were lost or destroyed because of a disaster. A school must document when it does not perform verification for this reason.

Recordkeeping Requirements for Schools

A school that is affected by a disaster is required to attempt to reconstruct Title IV federal student aid records that are lost because of the disaster. (See Section 4.5 and the 08-09 FSA Handbook, Volume 2, Chapter 9 for more information about required records that a school must maintain.) However, a school will not be held responsible for records and documentation that, because of disaster damage, cannot be reconstructed. The school must document that the records were lost due to a disaster.

Disbursement of FFELP Loan Proceeds

A lender is not required to disburse FFELP loan proceeds to a school according to the school's original disbursement schedule if the lender has been informed that the school has delayed or will delay opening for a scheduled term, or has ceased operations for an undetermined period of time because the school was affected by a disaster. Such a school should request a revised disbursement date(s), and the lender should await a revised disbursement schedule from the affected school. A loan holder may revise information on the loan period and graduation date on a loan record related to the revised disbursement schedule as the information becomes available from the school. In this case, neither the school nor the lender should require a borrower to reapply for a loan.

Credit Balances

If a Title IV credit balance exists for any reason when a student withdraws, including as a result of the school's policy for refunding institutional charges, that credit balance must first be applied to any Title IV grant overpayment that exists as a result of the student's withdrawal. However, if a school grants a waiver of any Title IV grant overpayment that exists as a result of the student's withdrawal, the school must not apply any Title IV credit balance toward the grant overpayment. See "Grant Overpayment Waiver" below.

Satisfactory Academic Progress

If a student fails to meet a school's satisfactory academic progress standards due to a disaster, the school should suspend the satisfactory academic progress standards for that student in accordance with its policies for satisfactory academic progress appeals due to mitigating circumstances. (For more information, see the 2008-09 FSA Handbook, Volume 2, Chapter 10, pp. 2-127 and 2-130.) The school must document in the student's file that a disaster constituted the mitigating circumstances that caused the student's failure to maintain satisfactory academic progress.

Enrollment Reporting

If, as a direct result of a disaster, a school is unable to complete and return its Enrollment Reporting Submittal File to the National Student Loan Data System (NSLDS) according to the school's established schedule, the school must contact the NSLDS Customer Service Center (see Section D.6) to modify its reporting schedule. A school that uses a servicer to report enrollment information to the NSLDS should contact its servicer to determine whether the school's enrollment reporting data submission schedule should be adjusted. If a school receives a warning letter from NSLDS regarding missed reporting deadlines, it should contact NSLDS Customer Service to ensure that reporting schedule modifications have been made.

In-School Period

A Stafford loan borrower who was in an in-school period on the date the borrower's attendance at a school was interrupted due to a disaster should be continued in an in-school status until such time as the borrower withdraws or re-enrolls in the next regular enrollment period, whichever is earlier. This period of disaster-related nonattendance should not result in a borrower entering or using any of his or her grace period. This guidance does not affect the way a school should report a borrower's enrollment status on its Enrollment Reporting Submittal File (see Section 9.2).

Leaves of Absence

A school is not required to collect a written request for an approved leave of absence from a student who was directly affected by a disaster. A school's documentation of its decision to grant the leave of absence must include the reason for the leave of absence and the reason for waiving the required written request. For more information about the requirements for an approved leave of absence, see Section 9.3.

Institutional Charges and Refunds

A school is strongly encouraged to provide a full refund of tuition, fees, and other institutional charges, or to provide a credit in a comparable amount against future charges for a student who withdraws from school as a direct result of a disaster. The Department urges a school to consider providing easy and flexible re-enrollment options to such a student. However, before a school makes a refund of institutional charges, it must perform the required return of Title IV funds calculation based upon the originally assessed institutional charges (see Subsection 9.5.A). After determining the amount that the school must return to the Title IV programs, any reduction of institutional charges should take into account the funds that the school is required to return. The Department does not expect that a school would both return funds to the Title IV programs and also provide a refund of those same funds to the student.

Grant Overpayment Waiver

A withdrawn student is not required to repay a Title IV grant overpayment if the circumstances of the student's withdrawal meet all of the following conditions:

- The student was residing in, employed in, or attending a school that is located in a federally-declared disaster area.
- The student withdrew because of the impact of the disaster on the student or the school.
- The student's withdrawal occurred within the academic year during which the federal disaster designation occurred or during the next succeeding academic year, beginning with any academic year that occurs, in whole or in part, with the 2005-06 award year.

A school that waives a student's grant overpayment under these conditions is not required to notify the student or the NSLDS of the overpayment, or refer any portion of the overpayment to the Department. In addition, a school must not apply any Title IV credit balance toward the grant overpayment.

In addition to documenting the application of this waiver in the student's file, a school must also document the amount of any overpayment that has been waived.

Deferment – In-School

A loan holder must treat a loan that was in an in-school deferment status on the date disaster conditions interrupted normal operations at a school as if the loan continues in an in-school deferment until such time as the borrower withdraws or re-enrolls at the next regular enrollment period, whichever is earlier. The borrower, a member of the borrower's family, or another reliable source should notify the loan holder(s) of the borrower's status. This guidance does not affect the way a school should report a borrower's enrollment status on its Enrollment Reporting Submittal File (see Section 9.2).

Administrative Forbearance

A loan holder may grant an administrative forbearance for up to 3 months to a borrower who has been adversely affected by a disaster. See Subsection 11.21.L.

Other Regulatory Requirements

A school that is affected by a disaster should contact the appropriate School Participation Team (see Section D.1) to address case-by-case concerns about the following regulatory requirements:

- Credit balances.
- Notices and authorizations.
- Borrower request for loan cancellation.

- Time frames for delivery or return of FFELP funds.
- Institutional eligibility.
- Financial responsibility.
- Administrative capability.
- Late disbursements.
- Return of Title IV funds deadlines and time frames, including the time frame for allowing a student, or parent borrower, to respond to the offer of a post-withdrawal disbursement.

PROPOSED LANGUAGE - COMMON BULLETIN:

Regulatory and Statutory Waivers for Students, Borrowers, and Schools Affected by a Disaster

The *Common Manual* has been updated to include comprehensive information found in Disaster Letter 99-28, DCL GEN-04-04, DCL GEN-05-17, and DCL-GEN-08-10 about the Department's regulatory and statutory waivers for students, borrowers, and schools affected by a disaster.

Unless stated otherwise, this regulatory relief applies to all Title IV recipients and their families who, at the time of a disaster, were residing in, employed in, or attending a school located in a federally-declared disaster area. This relief also applies to schools that are located in such areas. Federally-declared disaster designations are available on the Federal Emergency Management Agency's (FEMA) Website.

A school or lender that deviates from otherwise required actions on the basis of these waivers must document that fact and indicate what alternative procedures were followed.

Schools should consult DCL GEN-04-04 for additional information about waivers that are specific to the Federal Pell Grant, Campus-Based, and Federal Direct Loan Programs.

Need Analysis

A financial aid administrator (FAA) will not count special financial relief aid (for example, grants or low-interest loans) that a victim of a disaster receives from the federal government or from a state as estimated financial assistance (EFA) or income for the purpose of calculating a student's expected family contribution (EFC).

Professional Judgment

An FAA may exercise professional judgment to make adjustments to the cost of attendance (COA) or to the values of the items used in calculating the EFC to reflect a student's special circumstances. The Department encourages an FAA to use professional judgment in order to reflect more accurately the financial need of students and families who are affected by a disaster. The FAA still must make adjustments on a case-by-case basis and clearly document the student's file with the reason(s) for any adjustment.

Verification

A school is not required to complete verification during the award year for those Title IV applicants selected for verification whose records were lost or destroyed because of a disaster. A school must document when it does not perform verification for this reason.

Recordkeeping Requirements for Schools

A school that is affected by a disaster is required to attempt to reconstruct Title IV federal student aid records that are lost because of the disaster. However, a school will not be held responsible for records and documentation that, because of disaster damage, cannot be reconstructed. The school must document that the records were lost due to a disaster.

Disbursement of FFELP Loan Proceeds

A lender is not required to disburse FFELP loan proceeds to a school according to the school's original disbursement schedule if the lender has been informed that the school has delayed or will delay opening for a scheduled term, or has ceased operations for an undetermined period of time because the school was affected by a disaster. Such a school should request a revised disbursement date(s), and the lender should

await a revised disbursement schedule from the affected school. A loan holder may revise information on the loan period and graduation date on a loan record related to the revised disbursement schedule as the information becomes available from the school. In this case, neither the school nor the lender should require a borrower to reapply for a loan.

Credit Balances

If a Title IV credit balance exists for any reason when a student withdraws, including as a result of the school's policy for refunding institutional charges, that credit balance must first be applied to any Title IV grant overpayment that exists as a result of the student's withdrawal. However, if a school grants a waiver of any Title IV grant overpayment that exists as a result of the student's withdrawal, the school must not apply any Title IV credit balance toward the grant overpayment. See "Grant Overpayment Waiver" below.

Satisfactory Academic Progress

If a student fails to meet a school's satisfactory academic progress standards due to a disaster, the school should suspend the satisfactory academic progress standards for that student in accordance with its policies for satisfactory academic progress appeals due to mitigating circumstances. (For more information, see the 2008-09 FSA Handbook, Volume 2, Chapter 10, pp. 2-127 and 2-130.) The school must document in the student's file that a disaster constituted mitigating circumstances that caused the student's failure to maintain satisfactory academic progress.

Enrollment Reporting

If, as a direct result of a disaster, a school is unable to complete and return its Enrollment Reporting Submittal File to the National Student Loan Data System (NSLDS) according to the school's established schedule, the school must contact the NSLDS Customer Service Center (see Section D.6) to modify its reporting schedule. A school that uses a servicer to report enrollment information to the NSLDS should contact its servicer to determine whether the school's enrollment reporting data submission schedule should be adjusted. If a school receives a warning letter from NSLDS regarding missed reporting deadlines, it should contact NSLDS Customer Service to ensure that reporting schedule modifications have been made.

In-School Period

A Stafford loan borrower who was in an in-school period on the date the borrower's attendance at a school was interrupted due to a disaster should be continued in an in-school status until such time as the borrower withdraws or re-enrolls in the next regular enrollment period, whichever is earlier. This period of disaster-related nonattendance should not result in a borrower entering or using any of his or her grace period. This guidance does not affect the way a school should report a borrower's enrollment status on its Enrollment Reporting Submittal File.

Leaves of Absence

A school is not required to collect a written request for an approved leave of absence from a student who was directly affected by a disaster. A school's documentation of its decision to grant the leave of absence must include the reason for the leave of absence and the reason for waiving the required written request. For more information about the requirements for an approved leave of absence, see Section 9.3.

Institutional Charges and Refunds

A school is strongly encouraged to provide a full refund of tuition, fees, and other institutional charges, or to provide a credit in a comparable amount against future charges for a student who withdraws from school as a direct result of a disaster. The Department urges a school to consider providing easy and flexible re-enrollment options to such a student. However, before a school makes a refund of institutional charges, it must perform the required return of Title IV funds calculation based upon the originally assessed institutional charges. After determining the amount that the school must return to the Title IV programs, any reduction of institutional charges should take into account the funds that the school is required to return. The Department does not expect that a school would both return funds to the Title IV programs and also provide a refund of those same funds to the student.

Grant Overpayment Waiver

A withdrawn student is not required to repay a Title IV grant overpayment if the circumstances of the student's withdrawal meet all of the following conditions:

- The student was residing in, employed in, or attending a school that is located in a federally-declared disaster area.

- The student withdrew because of the impact of the disaster on the student or the school.
- The student's withdrawal occurred within the academic year during which the federal disaster designation occurred or during the next succeeding academic year, beginning with any academic year that occurs, in whole or in part, with the 2005-06 award year.

A school that waives a student's grant overpayment under these conditions is not required to notify the student or the NSLDS of the overpayment, or refer any portion of the overpayment to the Department. In addition, a school must not apply any Title IV credit balance toward the grant overpayment.

In addition to documenting the application of this waiver in the student's file, a school must also document the amount of any overpayment that has been waived.

Deferment – In-School

A loan holder must treat a loan that was in an in-school deferment status on the date disaster conditions interrupted normal operations at a school as if the loan continues in an in-school deferment until such time as the borrower withdraws or re-enrolls at the next regular enrollment period, whichever is earlier. The borrower, a member of the borrower's family, or another reliable source should notify the loan holder(s) of the borrower's status. This guidance does not affect the way a school should report a borrower's enrollment status on its Enrollment Reporting Submittal File.

Administrative Forbearance

A loan holder may grant an administrative forbearance for up to 3 months to a borrower who has been adversely affected by a disaster. See Subsection 11.21.L.

Other Regulatory Requirements

A school that is affected by a disaster should contact the appropriate School Participation Team (see Section D.1) to address case-by-case concerns about the following regulatory requirements:

- Credit balances.
- Notices and authorizations.
- Borrower request for loan cancellation.
- Time frames for delivery or return of FFELP funds.
- Institutional eligibility.
- Financial responsibility.
- Administrative capability.
- Late disbursements.
- Return of Title IV funds deadlines and time frames, including the time frame for allowing a student, or parent borrower, to respond to the offer of a post-withdrawal disbursement.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

A borrower who is affected by a disaster will receive relief authorized by the Department's regulatory and statutory waivers.

School:

A school may need to review its financial aid policies and procedures to ensure that the Department's waivers are implemented, as appropriate, when a disaster occurs, or when a student or borrower notifies the school

that he or she has been affected by a disaster. A school may also need to review its policies on refunds of institutional charges for such a student. A school may also wish to review its disaster recovery policies.

Lender/Service:

A lender may need to review its customer service call center scripts and other internal procedures for responding to borrower inquiries about relief that is available to a borrower who is affected by a disaster. A lender may need to review its internal procedures for responding to school requests for changes to the loan disbursement schedule, loan period, and graduation date in cases when a school is affected by a disaster.

Guarantor:

A guarantor may need to review its customer service call center scripts for responding to inquiries from affected students and borrowers in the guarantor's service area who are affected by a disaster, and to address inquiries from affected schools. A guarantor may need to review its internal procedures for responding to changes to the loan disbursement schedule, loan period, and graduation date in cases when a school is affected by a disaster. A guarantor may be required to modify its school and lender program review parameters to incorporate authorized deviations from regulatory and statutory requirements in cases of disaster.

U.S. Department of Education:

The Department may be required to prepare for case-by-case inquiries from schools that are affected by a disaster, or schools that have affected students and borrowers. The Department may also be required to modify its school and lender program review parameters to incorporate authorized deviations from regulatory and statutory requirements in cases of disaster.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:

CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:

July 15, 2008

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

November 13, 2008

PROPOSAL DISTRIBUTED TO:

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

Comments Received From:

AES/PHEAA, ASA, CSLF, Great Lakes, HESC, KHEAA, NASFAA, NCHelp, NSLP, OGSLP, PPSV, SCSLC, SLND, SLSA, TG, USA Funds, and VSAC.

Responses to Comments

Many commenters supported this proposal as written. Other commenters recommended wordsmithing changes that were incorporated 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:

Two commenters questioned why the Committee recommended placement of natural disaster waiver guidance in Appendix H of the Manual, rather than in the applicable Manual sections or subsections.

Another commenter recommended that the proposal not be added to the Manual. This commenter indicated that in the past other Departmental guidance regarding hurricanes and disasters had not been added to the Manual. The commenter indicated that the industry requested from the Department permission to allow lenders to apply forbearance generally to borrowers who were impacted by disasters and now it appears that trend is reversed by putting specific information into the Manual. The commenter asked if the Committee will include specific guidance for each disaster that occurs from this point forward, questioned the purpose of including this proposal in the Manual, and requested an explanation.

Response:

The Committee established Section H.4 of the Manual to provide a comprehensive source of statutory and regulatory waivers published by the Department. The history appendix was chosen for waiver placement because waivers have limited applicability associated with special circumstances. The Committee chose a single location (Section H.4) for explanations of statutory and regulatory waivers, with cross-references from applicable Manual sections and subsections to that section, to prevent numerous, repetitive explanations throughout the Manual about provisions that have only limited applicability. Such repetition would add substantially to the number of lines of text in the Manual without adding substantially to its value. If each waiver was incorporated into the various sections and subsections it impacts, then the Committee would face a complex and time-consuming task of removing and subsequently moving that waiver to the history appendix at the future, projected end-date of the provision; in addition, the FFELP community would have to review, consider, and comment on those large and detailed proposals.

Further, the history appendix has become an invaluable tool for those whose duties include lender and school program reviews and audits. Placement of key waiver information in the context of the history in a single location provides a single-source tool for those members of our community charged with verifying the accuracy of our processes and systems.

The Committee notes that a lender's authority to grant forbearance to borrowers who have been impacted by natural disaster is not adversely impacted by this proposal. The Committee believes that it is salient to note this authority in Section H.4, since it is referenced with other natural disaster relief outlined in DCL GEN-04-04, and provide a cross-reference to existing Manual policy.

In response to the commenter who asked whether guidance for each specific, future disaster will be incorporated into the Manual: the Committee will review the Department's future waiver publications and determine their value to Section H.4 on a case-by-case basis. Generally speaking, the Committee would consider for inclusion in Section H.4 waivers that have broad applicability versus those that target a small population of borrowers or students.

Change:

None.

COMMENT:

One commenter requested that the Committee consider placing the subheadings in Subsection H.4.D in a more intuitive, life-of-the-loan order, rather than in alphabetical order.

Response:

The Committee agrees.

Change:

The subheadings in Subsection H.4.D have been reorganized, as follows:

- Need Analysis
- Professional Judgment
- Verification
- Recordkeeping Requirements for Schools
- Disbursement of FFELP Loan Proceeds
- Credit Balances
- Satisfactory Academic Progress
- Enrollment Reporting
- In-School Period
- Leaves of Absence
- Institutional Charges and Refunds
- Grant Overpayment Waiver

- Deferment – In-School
- Administrative Forbearance
- Other Regulatory Requirements

COMMENT:

One commenter recommended that the Common Bulletin, paragraph 2, sentence one, be modified to refer to

“Title IV recipients,” instead of “Title IV loan borrowers, students, and their families. . .”

Response:

The Committee agrees that the commenter’s suggestion is a more concise reference to individuals who may either be loan borrowers, students, or both.

Change:

The Common Bulletin, paragraph 2, sentence 1 has been modified per the commenter’s suggestion. A coordinating change has also been made to new proposed policy text in Subsection H.4.D, paragraph 4, sentence 1.

jcs/edited-aes/kk

COMMON MANUAL - CORRECTION POLICY PROPOSAL

Date: November 20, 2008

	DRAFT	Comments Due	
	FINAL	Consider at GB Meeting	
X	APPROVED	With No Changes	Nov 20

SUBJECT: Teacher Loan Forgiveness

AFFECTED SECTIONS: 13.9.B Teacher Loan Forgiveness Program

POLICY INFORMATION: 1065/Batch 153

EFFECTIVE DATE/TRIGGER EVENT: Teacher loan forgiveness determinations made after October 8, 1998.

BASIS:
§682.215; Private letter guidance received from the Department dated March 30, 2005.

CURRENT POLICY:
Current policy states that one of the eligibility criteria for teacher loan forgiveness is that the loan for which forgiveness is sought must have been made before the end of the 5th year of qualifying teaching service.

REVISED POLICY:
Revised policy adds that in the case of a borrower who has taught more than 5 years, any consecutive 5-year period of qualifying service may be counted for teacher loan forgiveness purposes.

REASON FOR CHANGE:
This change is being made to align the Manual's text with the Department's clarifying guidance.

PROPOSED LANGUAGE - COMMON MANUAL:

Revise Subsection 13.9.B, page 55, column 3, 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 had no outstanding balance on a FFELP or FDLP loan on October 1, 1998, or had no outstanding balance on a FFELP or a FDLP loan on the date he or she obtained a loan after October 1, 1998.
- The borrower must have been employed as a full-time teacher for 5 consecutive, complete academic years at a qualifying school (see definition of *qualifying school* below) or a combination of qualifying schools, as certified by the chief administrative officer(s) at the schools(s).
– Any consecutive 5-year period of qualifying service may be counted for teacher loan forgiveness purposes.

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

- If the school where the borrower is employed meets the eligibility of a *qualifying school* for any year of the borrower's employment, all subsequent years continue to qualify the borrower even if the school does not meet the criteria. However, if the borrower is initially employed by a school that does not meet the criteria and the school later qualifies, the borrower's 5 qualifying years of service begin when the school meets the eligibility criteria.

- ~~At least one of the borrower's 5 years of qualifying service must be performed after the 1997-1998 academic year.~~
- A borrower who is in default on a loan(s) for which the borrower seeks forgiveness must have made satisfactory repayment arrangements on the defaulted loan(s) to reinstate Title IV eligibility. See Subsection 5.2.D.
- The loan for which forgiveness is sought must have been made before the end of the 5th year of qualifying teaching service. At least one of the borrower's 5 years of qualifying service must be performed after the 1997-1998 academic year. [§682.215(a) and (c)(8)]

PROPOSED LANGUAGE - COMMON BULLETIN:

Teacher Loan Forgiveness

The *Common Manual* has been revised to add that in the case of a borrower who has taught more than 5 years, any consecutive 5-year period of qualifying service may be counted for teacher loan forgiveness purposes.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

None.

School:

None.

Lender/Service:

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:

March 1, 2005

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

November 13, 2008

PROPOSAL DISTRIBUTED TO:

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

Comments Received From:

AES/PHEAA, ASA, CSLF, Great Lakes, HESC, KHEAA, NASFAA, NCHelp, NSLP, OGSLP, PPSV, SCSLC, SLND, SLSA, TG, USA Funds, and VSAC.

Responses to Comments

Most of the commenters supported this proposal as written. Other commenters recommended wordsmithing changes or typographical corrections that made no substantive changes to the policy 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 suggested adding text to clarify that not only must the borrower's service qualify, but the period of time in which it occurs must also qualify, and suggests adding language to Subsection 13.9.B, page 56, column 1, bullet 1, as follows, and deleting the same language in bullet 4:

“. . .In the case of a borrower who has taught more than 5 years, any consecutive 5-year period of qualifying service, with at least one academic year after the 1997-1998 academic year, may be counted for teacher loan forgiveness purposes.”

Response:

The Committee agrees.

Change:

Subsection 13.9.B, page 55, bullet 4 has been deleted and the deleted text has been added to page 56, column 1, bullet 1, as follows:

- The loan for which forgiveness is sought must have been made before the end of the 5th year of qualifying teaching service. At least one of the borrower's 5 years of qualifying service must be performed after the 1997-1998 academic year.

COMMENT:

Two commenters noted that this is a correction proposal and thus has no implication statements and has a retroactive implication date. However, the Reason for Change statement implies that borrowers are currently being treated inconsistently. The two commenters noted that if borrowers are currently being treated inconsistently, the policy needs to be a Federal policy with a prospective effective date/trigger event and needs implication statements. If borrowers *are* being treated consistently, then the Reason for Change statement should just state that the Manual is being changed to align the Manual's text with the Department's clarifying guidance. One commenter further inquired that if borrowers are currently being treated inconsistently, should the effective date be March 2005 (the date of the private letter) or should it be a future effective date? In addition, would entities that used a different method of calculating the consecutive 5-year period of qualifying service have to go back and review denied teacher loan forgiveness applications?

Response:

The Committee agrees that the Reason for Change statement seems to imply that this change has substantive policy implications, however, it does not. We believe that this is a true correction intended to align with the Department's guidelines.

Change:

The Reason for Change statement has been modified as suggested by the commenters.

COMMENT:

One commenter stated that the regulatory citation will change when final rules are published in the *Federal Register* and that updates should be made throughout the Manual.

Response:

The Committee agrees with the commenter and will update all of the changes in regulatory citations stemming from publication of final regulations throughout the 2008 production cycle.

Change:

None.

COMMENT:

One commenter requested that the new text "In the case of a borrower who has taught more than 5 years, any consecutive 5-year period of qualifying service may be counted for teacher loan forgiveness purposes" be a separate bullet as the current existing sentence is about loan eligibility, and the new sentence is about borrower

eligibility. The commenter also provided some wordsmithing to condense the new text.

Response:

The Committee agrees.

Change:

A new sub-bullet has been added to Subsection 13.9.B, page 55, column 2, paragraph 3, bullet 2, as follows:

- The borrower must have been employed as a full-time teacher for 5 consecutive, complete academic years at a qualifying school (see definition of *qualifying school* below) or a combination of qualifying schools, as certified by the chief administrative officer(s) at the schools(s).
 - Any consecutive 5-year period of qualifying service may be counted for teacher loan forgiveness purposes.

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

ma/edited - chh

COMMON MANUAL - ORGANIZATIONAL POLICY PROPOSAL

Date: November 20, 2008

	DRAFT	Comments Due	
	FINAL	Consider at GB Meeting	
X	APPROVED	With No Changes	Nov 20

SUBJECT: Loss of Insurance on a Loan due to Identity Theft

AFFECTED SECTIONS: 13.8.E False Certification as a Result of the Crime of Identity Theft

POLICY INFORMATION: 1066/Batch 153

EFFECTIVE DATE/TRIGGER EVENT: False certification as a result of identity theft loan discharge claims processed by the lender on or after September 8, 2006.

BASIS:
None.

CURRENT POLICY:
Current policy states under subheading "Claim Payment" of Subsection 13.8.E that there are circumstances in which a loan is not insured as a result of the crime of identity theft, in which case the lender must refund interest benefits and special allowance to the Department.

REVISED POLICY:
Revised policy moves text within Subsection 13.8.E regarding the loss of insurance on a loan as a result of the crime of identity theft and the requisite refund of interest benefits and special allowance to the Department from subheading "Claim Payment," to a new subheading entitled "Loss of Insurance."

REASON FOR CHANGE:
To move the language to a place that is more intuitive to the Manual's users.

PROPOSED LANGUAGE - COMMON MANUAL:

Revise Subsection 13.8.E, page 38, column 1, by inserting a new subheading after paragraph 2, as follows:

Loss of Insurance

If a loan was made as a result of the crime of identity theft that was committed by an employee or agent of the lender, or if at the time the loan was made, an employee or agent of the lender knew of the identity theft of the individual named as the borrower or endorser on the loan, the loan is not insured and the holder must refund to the Department any amounts received as interest benefits and special allowance payments with respect to the loan.
[\$682.402(e)(1)(iii)]

Revise Subsection 13.8.E, page 39, column 2, paragraph 3, as follows:

Claim Payment

~~If a loan was made as a result of the crime of identity theft that was committed by an employee or agent of the lender, or if at the time the loan was made, an employee or agent of the lender knew of the identity theft of the individual named as the borrower or endorser on the loan, the loan is not insured and the holder must refund to the Department any amounts received as interest benefits and special allowance payments with respect to the loan.~~

The guarantor will pay an eligible claim within 30 days of approving the loan discharge application if the lender files the claim based on false certification as a result of the crime of identity theft.
~~[\$682.402(e)(1)(iii)]~~

PROPOSED LANGUAGE - COMMON BULLETIN:

Loss of Insurance on a Loan due to Identity Theft

The Manual has been reorganized for clarity by relocating the text within Subsection 13.8.E on identity theft committed by an employee or agent of the lender, the subsequent loss of insurance on the loan, and the requirement that the lender refund to the Department any amounts received as interest benefits and special allowance payments from the subheading "Claim Payment," to a new subheading, "Loss of Insurance."

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

None.

School:

None.

Lender/Service:

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:

February 5, 2008

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

November 13, 2008

PROPOSAL DISTRIBUTED TO:

CM Policy Committee

CM Guarantor Designee

Interested Industry Groups and Others

CM Governing Board Representatives

Comments Received From:

AES/PHEAA, ASA, CSLF, Great Lakes, HESC, KHEAA, NASFAA, NCHelp, NSLP, OGSLP, PPSV, SCSLC, SLND, SLSA, TG, USA Funds, and VSAC.

Responses to Comments

Most of the commenters supported this proposal as written. Other commenters recommended wordsmithing changes or typographical corrections that made no substantive changes to the policy 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 stated that there is another, closely related identity theft circumstance in which the loan will lose insurance and the lender must refund interest and special allowance. The circumstance is if the named borrower alleges identity theft, and the evidence supports that the loan was obtained by identity theft, but the perpetrator is unknown, or there has been no conviction of the perpetrator. The commenter states that this information is not found in Subsection 13.8.E though these cases are likely to be seen much more frequently

than either approved identity theft discharges, or identity theft committed by the lender's employee or agent. Adding this language would emphasize that if there is no conviction for the crime of identity theft, but the debt is clearly not legally enforceable against the named borrower, the loan loses insurance, interest and special allowance payments must be refunded to ED, and the loan is a lender liability unless the perpetrator can be identified and successfully prosecuted within the 3-year window.

Response:

The Committee appreciates the commenter's suggestion; however, it is outside the scope of this organizational proposal. Since the reasons for a FFELP loan to be deemed legally unenforceable are numerous—i.e., there are variances from state to state or court to court, etc.— the Committee declines to consider such a proposal at this time.

Change:

None.

SM/edited - chh