

Higher Education Opportunity Act

Summary of Key Provisions



HEOA – Date of Enactment Aug. 14, 2008

- The following is a summary of USA Funds[®]' Policy Department's current interpretation of the HEOA.
- Additional guidance to come later.
 - USA Funds' matrix of key provisions.
 - ED publication of a Dear Colleague letter.
 - Negotiated rulemaking.
 - Other published guidance.

HEOA – School Provisions Affecting Lenders

- School Code of Conduct

- Each school must develop a code of conduct and annually inform all staff of the requirements of that code.
- The code must specifically prohibit:
 - Revenue sharing agreements.
 - Receipt of gifts above a nominal value.
 - Pre-packaging first-time borrowers with a specific lender.
 - Opportunity pool loans.
 - Staffing assistance from lenders, with certain exceptions.
 - Contracting arrangements with lenders and guarantors.

HEOA – School Provisions Affecting Lenders

- Code of Conduct (Some Exceptions Allowed)
 - Gifts
 - ✓ Standard materials and programs that are loan-related.
 - ✓ Professional development training and materials.
 - ✓ Favorable loan terms if provided to all students.
 - ✓ Entrance and exit counseling services, if the school controls the process and the counseling does not promote the products or services of the lender.
 - ✓ Philanthropic gifts, if not given to secure loan volume.
 - ✓ State grants or scholarships that are administered by that state.

HEOA – School Provisions Affecting Lenders

- **Advisory Board Participation**
 - Allows school personnel to serve on lender and guarantor advisory boards if no compensation is given.
 - Allows reimbursement of reasonable expenses be provided to school employee.
 - Schools and lenders (and guarantors) must disclose the reimbursement of expenses on an annual basis to the Secretary.

HEOA – Lender Provisions

- Loan Rehabilitation
 - Now requires deletion of lender's default trade line for borrowers who rehabilitate a defaulted loan.
- Financial Literacy
 - Codifies a guarantor's responsibility for the development and dissemination of financial literacy materials, and expressly allows lenders and loan servicers to provide these same services.
- Borrower NSLDS Disclosure
 - Requires guarantors, lenders, and schools to disclose to borrowers that loan information will be reported to the NSLDS and that others may view that information.

HEOA – Military/Veteran’s Support Provisions

- Military/Veteran’s Support Provisions Impacting Lenders
 - The interest rate on FFELP loans for active-duty service members is reduced to 6 percent beginning with date called to service.
 - For purposes of billing for special allowance, the “applicable” interest rate is the rate determined under the Servicemembers Civil Relief Act.
 - Disability discharges – If the Department of Veterans Affairs determines a service member is unemployable due to a service-connected condition, borrower is eligible for total and permanent disability discharge.

HEOA – Lender Provisions

- Prohibited Inducements

- Adds to the prohibition of conducting unsolicited mailings those that are done by electronic means.
- Adds the payment of stock or other securities to school staff as a prohibited activity.
- Specifically allows lenders to perform exit counseling services on behalf of schools.
- Bans payment to school personnel for consulting arrangements or other contracts, and service on advisory boards.
- All other provisions provided for in current regulation still apply to the extent those were not changed by statute.

HEOA – Lender Provisions

- PLUS Loan Deferment and Grace Period
 - Deferments that can be granted without a specific request:
 - Grad PLUS – Student can defer while enrolled at least half time and for a six-month grace period that follows.
 - Parent PLUS – Parent can defer while the parent is enrolled at least half-time.
 - Deferments that specifically require parent request:
 - Parent PLUS – If parent requests, can defer for any period while the dependent student is enrolled at least half time.
 - Parent PLUS – If parent requests, can defer for six-month period following date the parent or dependent student ceases half-time attendance.
 - Interest that accrues on PLUS loans during deferment or grace period must be capitalized no more frequently than quarterly, if not paid.

HEOA – Lender Provisions

- Other Deferment Provisions
 - Permits use of NSLDS by lenders to confirm eligibility for in-school deferment, if school requests it.
 - At the time of granting a deferment on an unsubsidized Stafford loan, the lender must provide information to the borrower on the impact of capitalization of interest on the loan principal and the total amount of interest to be paid during the life of the loan.
- Income-Based Repayment
 - For borrowers with partial financial hardship.
 - Not available for parent PLUS loans or consolidation loans that repaid parent PLUS loans.
 - Effective July 1, 2009.

HEOA – Lender Provisions

- **New Disclosure Requirements**

- If lender provides general projections assuming different levels of borrowing and showing the effects of capitalization, must also include the cost of capitalizing interest vs. paying as it accrues.
- Sales and Transfers – now also must inform borrower of the effective date of the transfer, the date the current servicer will stop accepting payments, and the date on which the new servicer will begin accepting payments.
- Forbearance – must inform borrower each 180 days of the amount of interest that has accrued since last statement, the amount that will be capitalized and the date that capitalization will occur, and the option to pay the accrued interest to avoid capitalization.

HEOA – Lender Provisions

- **New Disclosure Requirements**

- Consolidation loan borrowers must be informed of:
 - Any loss of benefits on FFELP or direct loans.
 - Loss of interest-free periods on Perkins loans.
 - Types of repayment plans.
 - Option to prepay or to repay on a shorter schedule, and to change repayment plans.
 - That borrower benefit programs vary between lenders.
 - The consequences of default.
 - The fact that applying for the consolidation loan does not obligate the borrower to accept the loan.

HEOA – Lender Provisions

- New Disclosure Requirements

- Pre-Disbursement Disclosures

- For unsubsidized Stafford or Grad PLUS – Option to pay accruing interest while in school, along with interest payments and capitalization information.
 - For Parent PLUS – Option to defer when the student or parent is in school, along with interest payments and capitalization information.
 - For Stafford and PLUS – Repayment plan options, forbearance and loan forgiveness options, and additional costs that can be incurred (for example, collection fees, late fees).

HEOA – Lender Provisions

- **New Disclosure Requirements**

- Before the borrower enters repayment:
 - Same requirements as currently exist, except that the time frame for notification changes to not less than 30 days nor more than 150 days prior to the first payment due date.
 - Date PLUS loan deferment/grace period will end and estimated balance on PLUS loan at that date.
 - Special benefits lender offers and contingencies.
 - Repayment plans available to borrower and how borrower can change the repayment plan.
 - Amount of interest already paid on the loan, if any.
 - How borrower can avoid default.
 - Resources available to assist with loan repayment or provide advice (for example, FSA Ombudsman).

HEOA – Lender Provisions

- **New Disclosure Requirements**

- Required during repayment (during regular intervals):
 - Original principal balance.
 - Current principal balance.
 - Interest rate on each loan.
 - Aggregate amount repaid, including interest, fees and principal.
 - Description of any fees charged to the borrower.
 - Date by which the borrower must make the next payment and the amount to avoid additional fees.
 - Lender or servicer address and toll-free number.
 - Reminder that borrower is permitted to change repayment plans and instructions for doing so.

HEOA – Lender Provisions

- New Disclosure Requirements

- If notified by borrower of difficulty in making payments, lender must provide borrower with:
 - A description of the repayment plans available.
 - A description of forbearance options and costs.
 - How the borrower can avoid default and any associated costs.

HEOA – Lender Provisions

- New Disclosure Requirements

- At day 60 of delinquency:

- Date the loan will default if a payment is not made.
 - Minimum payment needed to avoid default.
 - Options to avoid default, with an explanation of the fees the borrower may incur, including forbearance and deferment.
 - Options for loan discharge.
 - Resources that may assist with loan repayment (for example, FSA Ombudsman, nonprofit organizations, advocates and counselors).

HEOA – School Provisions Affecting Lenders

- Preferred Lender Lists

- Follows current regulations, but adds:

- If the school has a preferred lender list for private loans, the list must contain at least two unaffiliated private loan lenders.
 - Must provide more detail on the affiliation of any lenders on the list.
 - Must provide more detail on the reasons why a lender was selected to be on the preferred lender list.
 - Exercise a duty of care and loyalty to borrowers in selecting lenders.
 - Requires school to notify prospective borrowers of the maximum federal grant and loan aid available under Title IV; this information must be published on the school's Web site and in all financial aid materials.

HEOA – School Provisions Affecting Lenders

- Private Loan Disclosures by Schools Participating in Preferred Lender Arrangements
 - A school must disclose on its Web site, and in all informational materials that describe or discuss education loans:
 - The maximum amount of Title IV grant and loan aid available to students.
 - A statement that the school is required to process a FFELP loan from any lender that the student selects.
 - Other information that the Secretary will require (to be provided not more than 18 months after enactment of the HEOA).

Preferred Lender Lists – Lender Requirements

- Other Preferred Lender List Requirements

- Any lender that is represented on a school preferred lender list is required, annually to:
 - Certify the lender's compliance with HEA requirements.
 - If the lender is required to have an independent compliance audit conducted on an annual basis, the auditor must attest to the lender's compliance with HEA requirements.

HEOA – Lender Provisions

Other Lender Provisions

- PLUS Loan Credit Review – Eliminates as an extenuating circumstance delinquencies of less than 90 days on debts other than home mortgage loans or medical bill payments, as previously provided in ECASLA.
- PLUS Repayment Start Date – Eliminates the ECASLA-allowed deferred repayment start for parent PLUS loans, reverting that date to within 60 days of disbursement, unless the borrower chooses to defer repayment.
- Re-consolidation – Permits re-consolidation of a FFELP consolidation loan for eligible military borrowers to take advantage of the no accrual of interest provisions.
- Consumer Reporting Agency Reports – Requires lenders to report a FFELP loan as an education loan and to also report the repayment status on the loan.

HEOA – Lender Provisions

Other Lender Provisions

- Total and Permanent Disability – In addition to the VA disability discharge changes, a borrower who is unable to engage in any substantial gainful activity as a result of a medically determined physical or mental impairment that can be expected to result in death, and has lasted for continuous period of not less than 60 months or is expected to last for a continuous period of 60 months, is now eligible for the TPD discharge.
- PLUS Auction Pilot Program – Codifies that PLUS loans made under the pilot program are insured by a guarantor, and the insurance amount is equal to 99 percent of the unpaid principal and interest due on the loan.

HEOA – School As Lender Provisions

- School As Lender Program Audit

- As part of the annual audit requirement, an institutional lender or lender serving as a trustee for the institution, must undergo tests:
 - To ensure the institution or lender is using all proceeds for need-based grant programs.
 - To ensure the institution or lender is not using more than a reasonable portion of the proceeds for direct administrative expenses.
 - To ensure that the proceeds are used to supplement, not supplant, federal and non-federal funds that would otherwise be used for need-based grant programs.
- These changes are effective on the date of enactment.

HEOA – Other Key Provisions

- Loan Forgiveness/Repayment Programs
 - Service in Areas of National Need – For borrowers employed full-time in one of the newly defined areas under statute. Limited to \$2,000/year, and \$10,000 maximum. Defaulted borrowers, parent PLUS borrowers and borrowers of consolidation loans that paid off parent PLUS loans are not eligible.
 - Loan Repayment for Civil Legal Assistance Attorneys – For borrowers who agree to serve as legal assistance attorneys for a period of at least three years. Limited to \$6,000/year, and \$40,000 maximum lifetime benefit. Borrowers not meeting commitments must repay prior payments received. Defaulted borrowers, parent PLUS borrowers and borrowers of consolidation loans that paid off parent PLUS loans are not eligible.

HEOA – Lender Provisions

- **New Private Loan Disclosures**

- Requires disclosures to the borrower be made at three different points:
 - At the offering point.
 - At the approval point.
 - At consummation.
- Disclosures similar to Title IV loans, terms and conditions.
- Private loan lenders under a preferred lender list, must disclose to the school certain information from the model form and the types of private loans it will make in the next award year.
- Borrower has 30 days to accept the loan after it is approved and disclosed without any changes in the terms, except changes based on adjustments to the index used for the loan.
- Borrower has the right to cancel the loan within three days of the consummation date without penalty.

HEOA – Lender Provisions

- Other Private Loan Information

- A model form that can be used at the lender's option will be developed for all required disclosures.
- Borrowers are required to complete a self-certification form, signed by the applicant in written or electronic form.
- Truth in Lending Act expands the time frame to bring a civil suit until one year after the date the first payment of principal is due.
- It is unlawful to impose any fee for early repayment on a private loan.
- Schools are subject to a similar code of conduct for private loan administration to that of the FFELP code of conduct.
- Co-branding of private education loans is prohibited.

HEAO – Resources

- E-mail questions to askpolicy@usafunds.org.
- USA Funds *Education Access Report*.
 - To subscribe visit www.usafunds.org/apps/eareport/default.aspx.
- USA Funds Web site.
 - From www.usafunds.org/lenders select “Reauthorization.”
- USA Funds University Fall Financial Aid Workshops and Webcasts.
 - Sessions begin Oct. 7.
 - Learn more and register at usafunds.elogiclearning.com.

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