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Subject: Notification to foreign schools of changes made by the Higher Education Reconciliation Act of 2005

SUMMARY: Notifies foreign schools of changes made by the Higher Education Reconciliation Act of 2005 to the U.S. Federal Family Education Loan Program and provides information on foreign school reporting requirements.

Posted on 06-21-2006

Dear Foreign School Colleague:

As you know, the participation of an institution outside the United States in the Federal Family Education Loan (FFEL) Program is governed by U. S. laws and regulations. On February 8, 2006, the law governing the FFEL Program, the Higher Education Act of 1965, as amended (the HEA), was changed by the Higher Education Reconciliation Act of 2005 (the HERA), Public Law 109-17. Most of the changes made by the HERA are effective July 1, 2006.

The U.S. Department of Education has published other Dear Colleague letters that summarize the changes made by the HERA. The purpose of this letter is to highlight those changes made by the HERA that we believe are of greatest interest to institutions located outside of the United States. In addition, this letter provides information on reporting responsibilities for foreign schools. For your convenience, we have attached copies of the recently published Dear Colleague letters with information pertinent to participation in the FFEL Program, including [FP-06-05](#), which provides updated guidance on the FFEL Program Master Promissory Notes and implementation guidance on student PLUS loans for graduate and professional students. If you have not already done so, you should review these letters in their entirety as soon as possible.

The Department will be publishing regulations to further implement the changes made by the HERA. These regulations may elaborate on the changes made by the HERA. You will be responsible for complying with these regulations by the published effective date. We will mail a copy of these final regulations to all foreign schools as soon as they are published.

Additional information on the administration of the FFEL Program can be found in the *Student Financial Aid Handbook for Foreign Schools and the Federal Student Aid (FSA) Handbook*. These references can be found on our Information for Financial Aid Professionals website at <http://ifap.ed.gov>.

Ineligibility of programs offered by telecommunications

The HERA specifies that a program offered by a foreign school that uses telecommunications as a method of

delivery is not eligible for Title IV aid. (See 20 U.S.C. § 1088(b)). As a result, beginning July 1, 2006, students enrolled in a program offered by a foreign school that uses telecommunications to provide some of the instruction to students who are separated from the instructor may not receive FFEL Program funds. Foreign schools must cancel any FFEL Program funds scheduled for disbursement on or after July 1, 2006, for students enrolled in such a program. "Telecommunications" is defined as "the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs." (See 20 U.S.C. §§ 1091(1)(4) and 1002(a)(3)).

Note that telecommunications technologies may be used by foreign schools to supplement and support instruction offered in the foreign classroom as part of an otherwise eligible program.

An institution should exclude from its next application for recertification to participate in the FFEL Program any programs that have lost eligibility as a result of this change.

Requests for direct disbursements

The HERA amended the law to provide that, for U.S. students attending an eligible foreign school, FFEL Stafford loans may be disbursed directly to the borrower by the lender only if the institution requests that the loan proceeds be disbursed directly to the borrower. Prior to the change, a direct disbursement could be made to a student enrolled in a foreign school only at the request of the student. This change is effective for loans first disbursed on or after July 1, 2006. (See 20 U.S.C. § 1078(b)(1)(N)).

If a foreign school has certified loans prior to July 1, 2006, that will be first disbursed on or after July 1, 2006, and it wishes to have those funds disbursed directly to a student, it must contact the lender as soon as possible to make the request. Without a request from the foreign school, lenders must disburse the loan funds directly to the foreign school. If a lender will be disbursing the funds to the foreign school and the school has not already designated an office to receive the funds, it must contact the lender immediately to do so.

A foreign school may make a single request to a lender to disburse all FFEL Stafford loans directly to eligible students who attend the foreign school.

As a result of the HERA, graduate or professional students are now eligible to borrow under the PLUS Loan Program (see enclosed Dear Colleague Letter [GEN-06-02](#)). However, in accordance with section 20 U.S.C. §1078-2(c) of the HEA, PLUS loans, including those to graduate and professional students, may not be disbursed directly to the borrower by a lender.

Verification of enrollment for direct disbursements

For a borrower enrolled at a foreign school, the law now specifies that a lender or guaranty agency must verify the borrower's enrollment at the foreign school before making a disbursement of FFEL Stafford loan funds directly to the borrower. (See 20 U.S.C. §1078(b)(1)(N)). A guaranty agency or lender must verify enrollment before each disbursement of a loan, including second and subsequent disbursements of a loan (see below for information on the applicability of the multiple disbursement requirements to foreign schools). This verification requirement is consistent with current guaranty agency program requirements found in the August 2003 Dear Colleague Letter [G-03-348](#).

A guaranty agency will confirm that the foreign school the student is to attend is currently certified to participate in the FFEL Program. To do this, the guaranty agency will access the Department's Postsecondary Education

Participants System (PEPS) Database. As noted in DCL [G-03-348](#), schools that have an eligibility status of "Eligible/Loan Deferment" and a certification status of "Not Certified" in the PEPS Database are eligible for FFEL loan deferment purposes only. They are not certified to participate in the FFEL programs and students attending those schools are not eligible to receive FFEL Program funds.

After confirming that a school is certified to participate, the lender or guaranty agency must contact the foreign school by telephone or e-mail to verify enrollment. For a new student, the lender or guaranty agency must verify that the student has been admitted to the foreign school before making a disbursement. For a continuing student, the lender or guaranty agency must verify that the student is still "enrolled," as defined in 34 CFR §668.2 (section 668.2 of Title 34 of the U.S. Code of Federal Regulations (CFR)), before making a disbursement.

In the August 2003 Dear Colleague Letter ([GEN-03-10](#)) that informed foreign schools that the Department was requiring guaranty agencies to verify student enrollment, the Department advised foreign schools of the steps they should take to facilitate the verification of student enrollment. Consistent with that guidance, we are again reminding foreign schools that, in accordance with Department regulations, your institution must use an adequate number of qualified staff, which at the least must consist of one capable individual to administer the FFEL Program (34 CFR §668.16(b)) and must respond to these requests for information from guaranty agencies or lenders.

Guaranty agencies, lenders, and schools are free to establish an electronic relationship to accomplish loan certification and enrollment verification. To assist these parties with the loan certification and enrollment verification responsibilities, the Department has recently modified the electronic application (EAPP) that institutions use to communicate eligibility information to the Department. New Question 70 asks the institution to identify the official authorized to certify FFEL loan applications for your institution. The application will now allow multiple names to be entered. We are asking each foreign school to promptly submit an EAPP with this new information. This information will be added to the PEPS Database where it will be accessible by guaranty agencies. You can access the EAPP through the following website: www.eligcert.ed.gov. If a guaranty agency or lender receives a loan application that lists as your loan certification official an individual other than the one you have listed in PEPS, the guaranty agency or lender will contact your institution using other contact information provided to the Department on your EAPP and resolve the discrepancy. It is expected that guaranty agencies or lenders will also contact the school official authorized to certify FFEL loans to request verification of a student's enrollment. If you prefer to have guaranty agencies or lenders contact a different official for the purpose of verifying student enrollment, we recommend that you communicate your instructions directly to the guaranty agencies or lenders in writing or by electronic means. The guaranty agency or lender is instructed, however, to verify with at least one of the persons listed in the PEPS system that officials not listed in PEPS are authorized to act on behalf of the institution in administering the FFEL Program.

These verification requirement changes are effective for loans first disbursed on or after July 1, 2006.

A lender is still required to notify a foreign school when the lender makes a disbursement of FFEL Stafford loan funds directly to a borrower (34 CFR §682.207(b)(1)(v)(E)). Upon receipt of this notification, a foreign school is expected to notify the lender if a borrower has ceased to be enrolled on at least a half-time basis or has otherwise become ineligible.

General disbursement requirements

As a result of changes to the law, as of July 1, 2006, disbursements to students attending eligible foreign schools must now be made in compliance with the FFEL disbursement requirements in 20 U.S.C. §1078-7. A summary of these disbursement requirements follows. We have identified the regulations where these requirements can be

found. This change is effective for loans with loan periods beginning on or after July 1, 2006.

Multiple disbursements required 34 CFR §682.207(c-e) and 34 CFR §682.604(c)(6-9)

An FFEL Program loan for a student attending a foreign school may no longer be disbursed in a single installment. The schedule for disbursement of the loan proceeds that the school provides to the lender under 34 CFR §682.603 (b)(3) must now provide the lender with a disbursement schedule and disbursement amounts that provide for the disbursement of the loan in at least two substantially equal installments. For loans that were previously certified with loan periods beginning on or after July 1, 2006, the foreign school must contact the lender to revise the disbursement schedule, if necessary, to comply with these multiple disbursement requirements.

For programs offered in standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, at least one disbursement is made for each term in the loan period. A program is considered to have substantially equal terms if no term in the loan period is more than two calendar weeks longer than any other term in the loan period.

- If there is more than one term in the loan period, the loan must be disbursed over all terms of the loan period. For example, if a loan period includes all three quarters of an academic year, the loan must be disbursed in three substantially equal disbursements.
- If there is only one term in the loan period, the loan must be disbursed in equal amounts at the beginning of the term and at the term's midpoint.

For programs offered in clock hours, credit hours without terms, or credit hours with non-standard terms that are not substantially equal in length, the loan must be disbursed in at least two substantially equal amounts, with the first disbursement generally disbursed at or near the beginning of the loan period.

For these programs, the second half of the loan proceeds must not be disbursed until the later of--

- the calendar midpoint between the first and last scheduled days of class of the loan period; or
- the date the student successfully completes half the clock hours in the loan period or, for credit hours, successfully completes half the credit hours. In programs where the student cannot earn the credit hours until the end of the loan period, the student is eligible on the later of (1) the date the school identifies as the point when the student has successfully completed half of the academic coursework in the program, academic year, or the remainder of the program, or loan period; or (2) the calendar midpoint between the first and last scheduled days of class of the program, academic year, or the remainder of the program or loan period.

When scheduling loan disbursements, a school may request multiple disbursements of a loan within a payment period or loan period, as long as the disbursements are in substantially equal installments. For example, for a standard term program that uses semesters, the school may request that the loan funds scheduled to be disbursed in that semester be disbursed in more than one installment. Likewise, for a non-term program for which the disbursements would be scheduled at the beginning and the mid-point of the loan period, the school may request that each disbursement be made in more than one installment.

There are a couple of exceptions to the multiple disbursements requirements. If one or more payment periods for which a loan disbursement was intended have ended before a lender makes a disbursement, the lender may disburse in a single installment the disbursement for the completed payment period(s) with the disbursement for the next payment period. Also, in accordance with the HERA, a school with a cohort default rate of less than 10 percent for each of the three most recent fiscal years for which data are available may disburse, in a single

installment, loans that are made for one semester, one trimester, or one quarter if the school offers programs in standard terms. If such a school offers non term-based or non-standard term-based programs, a loan made for a four-month period that represents the remainder of the program, but is less than the academic year, may also be disbursed in a single installment. (See 20 U.S. C. § 1078-7(a)(3) and (b)(1)).

30-day delay for first-year, first-time undergraduate borrowers 34 CFR §682.604(c)(5)

A school is prohibited from disbursing the first installment of an FFEL Program Stafford loan until a student has completed 30 calendar days of the student's program of study if the student is in the first year of an undergraduate program and is a first-time FFEL Stafford loan borrower. However, the HERA provides that a school with a cohort default rate of less than 10 percent for each of the three most recent fiscal years for which data are available is not required to delay the first disbursement for such students. (See 20 U.S.C. § 1078-7(a)(3), (b)(1)). For loans that were previously certified for such students with loan periods beginning on or after July 1, 2006, the foreign school must contact the lender to revise the disbursement schedule, if necessary, to comply with this requirement.

Students who are no longer attending at least half-time 34 CFR §682.207(b)(1)(vi)

A second or subsequent disbursement of an FFEL Program loan may not be disbursed to a student who has withdrawn or ceased to be enrolled at least half-time unless the student has graduated or successfully completed the period of enrollment for which the loan was intended. (See 20 U.S.C. § 1078-7(d)(1).)

Stafford Loan Overawards 34 CFR §682.604(h)

An overaward of FFEL Program Stafford loan funds is created when the borrower has received or will receive financial aid for the period of enrollment for which the loan was made that exceeds the amount of assistance for which the student is eligible. If a school finds out that there is going to be an overaward before the FFEL Program Stafford loan funds are disbursed, the school must eliminate the overaward. If the school has certified the loan but hasn't received the funds, the school can ask the lender to cancel the loan, or reduce the loan proceeds. As an alternative, a school can reduce or cancel aid over which it has control. If a school has already received the funds, the school has a number of options:

- If the student's aid package includes an unsubsidized Stafford loan, a PLUS loan, or a non federal loan and the aid package doesn't already apply these loans to finance the student's Expected Family Contribution (EFC), the school may choose to adjust the aid package so that all or some part of these loans replaces the EFC, thus reducing or eliminating the overaward.
- The second or subsequent disbursement can be canceled or reduced. You must inform the lender of the reduced award and request cancellation or reduction of subsequent disbursements.
- If these adjustments have been made and an overaward still exists for a Stafford loan borrower, you must withhold and promptly return to the lender any funds that have not yet been disbursed to the borrower. If the student is determined to be ineligible for the entire loan disbursement and the overaward cannot be reduced or eliminated, you must return all of the loan proceeds.
- If a student becomes ineligible for only part of an FFEL Program loan disbursement, you can return all the funds or only the amount for which the student is ineligible. A school that returns the entire disbursement must request a disbursement for the correct amount. You must provide the lender with a written statement describing why the funds were returned, and the lender must credit to the borrower's account the portion of the insurance premium (now called the Federal default fee) and origination fee attributable to the amount returned. If you return the entire amount and ask for a new disbursement, the student will pay only for the reduced Federal default fee and origination fee (if applicable) attributable to the reduced loan amount. To

return only the amount for which the student is ineligible, you must have the student endorse the loan check or, in the case of a loan disbursed by electronic funds transfer, obtain the student's authorization to release loan funds. You can then credit the student's account for the amount for which the student is eligible and promptly refund to the lender the portion of the disbursement for which the student is ineligible.

If the overaward situation occurs after Stafford loan funds have been fully disbursed (either directly or by applying them to the student's account), there is no Stafford loan overaward that needs to be addressed. Although a school isn't required to return Stafford loan funds that were disbursed to the borrower before the overaward situation occurred, the law doesn't prevent a school from returning funds that were applied to the student's account if it chooses to do so. A borrower who receives a direct payment of loan funds is not required to repay an overaward amount unless the overaward was caused by his or her misreporting or withholding information.

Example of resolution of an overaward: Hector's expected family contribution (EFC) is \$4,000. His cost of attendance is \$12,000. He is supposed to receive a subsidized Stafford loan of \$5,000 and an unsubsidized Stafford loan of \$3,000, which completely meets his need. Before he receives his first loan disbursement, Guerrero University also gives him a \$2,000 scholarship. If Hector's entire loan amount of \$8,000 had been subsidized, Guerrero would have been required to send some of the loan back because Hector would have an overaward. However, because part of the loan amount is unsubsidized, Guerrero simply considers that \$2,000 of the unsubsidized loan that it applied to Hector's financial need is now being used to meet his EFC.

Reporting responsibilities

Finally, we would like to take this opportunity to make you aware of another new feature in the EAPP and to remind you of some important reporting responsibilities that you have as a participant in the FFEL Program.

Destination Point Administrator (DPA)

The revised EAPP asks the institution to identify the institution's Destination Point Administrator (DPA) (Question 70). The DPA is the employee at your institution whom you designate to have access to FSA secure data systems such as the Central Processing System Online. This is the system that permits schools to access Student Aid Reports (SARs) online. Currently, foreign schools do not have access to the Central Processing System. However, as the Department moves closer to extending electronic connectivity to foreign schools, this information will be used for establishing points of contact. You are also reminded that updates to your officials and directors originally listed with the Department must be submitted through the EAPP within 10 days of those changes.

Student Aid Report (SAR)

In Dear Colleague Letter [GEN-03-10](#), we emphasized the importance of your institution's review and resolution of any comments on a Student Aid Report (SAR). When a student completes the Free Application for Federal Student Aid (FAFSA), the FAFSA is submitted to the Department and the information on it is matched against other federal agency data systems to ensure the accuracy of the data presented (e.g., the student's Social Security Number is matched against the Social Security Administration's data system to ensure an accurate Social Security Number.) Once the student's application is received and reviewed, the Department generates a SAR. If your institution does not currently receive this information electronically, it has two options, which are explained below.

The SAR comes in various formats; some are acceptable to determine eligibility and the others are not.

- An acceptable SAR is either an eight-page paper SAR that is sent directly to those students who do not

include an e-mail address or other pertinent data on their FAFSA, or the electronic SAR generated by the Foreign Schools Team at the request of a school. The acceptable SAR contains all relevant data needed to determine borrower eligibility (e.g., match flags under the "For Financial Aid Office Use Only," financial aid history section if the student had a previous NSLDS record).

- An unacceptable SAR is either a one-page (two-sided) paper SAR acknowledgement that a student receives, or an electronic SAR sent via an e-mail notification to the student with a link to the SAR. Neither of these formats contains any of the relevant data needed by a financial aid administrator to determine a borrower's eligibility.

To obtain an acceptable SAR, a foreign school can request the eight-page paper SAR from the student, or it can make a request via fax to the Foreign Schools Team using the following instructions:

The SAR Request must be on official school letterhead, include the requesting official's full name, official title, phone number, fax number, mailing address, and e-mail address. For each SAR being requested, the school must include the student's full name, date of birth, and Social Security Number. The school must also include the first page of the abbreviated SAR provided by the student. Since this process requires the exchange of a student's Social Security Number, certain privacy procedures must be implemented including securing this information once received. This request must be sent via fax to the attention of the Foreign Schools SAR Request Team at (202) 275-3486.

Referrals to the Department's Office of Inspector General (OIG)

We remind you that, if your school finds that a student may have engaged in a fraudulent submission of information or other criminal misconduct in applying for FFEL Program funds, you must refer this information to our Office of Inspector General (OIG). Fraudulent activities may include the use of false identities, forgery of signatures or certifications, and false claims of income, citizenship, or independent student status. For example, if you receive a notice from a lender advising you that it has disbursed a loan to a student who is not attending your institution, this may be an indicator that a student has forged a loan certification and you should refer this matter to the OIG. The OIG may be reached at 1-800-MIS-USED (1 800-647-8733) or 202-205-5770, by fax at 202-260-0230, and by e-mail at OIG.hotline@ed.gov.

Required Annual Submission of Compliance Audits and Financial Statements

A foreign school participating in the FFEL Program must at all times act with the integrity and competence to qualify as a fiduciary and is held to the highest standard of care and diligence. Therefore, we would like to again remind you of the necessity of submitting your annual compliance audit and financial statement. Every foreign school that enrolls U.S. students who receive FFEL Program funds for attendance at that institution must submit each year a compliance audit and audited financial statements. The annual submission of both a compliance audit and audited financial statements is required of all Title IV participating institutions by 20 U.S.C. § 1094(c), 34 CFR §668.23. Audits and financial statements must be submitted no later than six months after the last day of the institution's fiscal year. An institution is expected to respond to notices concerning deficiencies identified in its audits and financial statements. Failure to submit required compliance audits and financial statements or respond to notices concerning those documents may cause an institution to lose eligibility to participate in the FFEL Program.

A compliance audit for a foreign school covers an institution's administration of the FFEL Program, while audited financial statements provide the Department with information necessary to evaluate an institution's financial responsibility. An independent auditor must perform both audits. An "independent auditor" is an independent certified public accountant or a government auditor. A government auditor must meet the U.S. Government Auditing Standards qualification and independence standards, including standards related to organizational

independence.

Audits for foreign schools must be performed in accordance with the Department's audit guide. The specific requirements are in the *Foreign School Audit Guide* that the Department issued in September 2002, which is available at the following website: <http://www.ed.gov/about/offices/list/oig/nonfed/Fgn092402.doc>

If U.S. students who attended your institution **received \$500,000 or more** (in U.S. dollars) in FFEL Program funds for a fiscal year, you must

- have your required audited financial statement translated for analysis according to U.S. Generally Accepted Accounting Principles (GAAP); and
- have your compliance audit performed under the standard compliance engagement specified in the *Foreign School Audit Guide*.

If U.S. students who attended your institution **received less than \$500,000** (in U.S. dollars) in FFEL Program funds per fiscal year, you may either follow the required standards for institutions with funding levels of \$500,000 or more, or:

- have your required audited financial statement prepared according to the generally accepted accounting principles and auditing standards of your institution's home country; and
- have your compliance audit performed under the alternative compliance engagement specified in the *Foreign School Audit Guide*.

As explained in the *Foreign School Audit Guide*, both the audited financial statements (if students receive more than \$500,000) and the compliance audits must be audited in compliance with the generally accepted government auditing standards of the United States of America (U.S. Government Auditing Standards). These standards are developed by the Comptroller General of the United States and are published in The General Accounting Office (GAO) Government Auditing Standards. These standards are available at the following website: <http://www.gao.gov/govaud/ybk01.htm>

Every effort should be made to ensure that audits are conducted in accordance with U.S. Government Auditing Standards. Auditors who cannot comply with some or all of the requirements of U.S. Government Auditing Standards must identify in their reports what auditing standards were used to perform the work and identify how those standards differ from U.S. Government Auditing Standards. Auditors that identify the specific requirements from U.S. Government Auditing Standards with which they cannot comply must identify the portions of the audit related to these requirements and must indicate that they have otherwise complied with the U.S. Government Auditing Standards. The Department will review audits that do not indicate full compliance with U.S. Government Auditing Standards, and will determine whether to accept the audits. Audits that do not provide an adequate explanation of why it was not possible to meet the audit standards set out in the regulations will be rejected.

To Request Student Loan Data for Compliance Audits

An auditor requires a list of students who received FFEL loans during the period of time to be covered by the compliance audit. Foreign schools should fax a request for a list of students who received FFEL loans (FFEL list) to the Foreign Schools Team (Attention: FFEL List Request). The fax number is 202-275-3486. The request must be on school letterhead and signed by an authorized school official listed in PEPS. The request should include the school's OPE-ID number as well as the telephone number, fax number, and e-mail address of the requestor. The request should also contain the name, address, e-mail address, telephone number, and fax number of the

independent public auditor who has been engaged to perform the compliance audit. The request should identify the complete period of the school's fiscal year (i.e., month/day/year through month/day/year) and the years you plan to audit. This helps to ensure that we release sensitive data only to authorized parties. The data is sent directly to your auditor.

FSA COACH

The Department has also created FSA COACH (Computer-Based Orientation to Aid Concepts and How-to's) for Foreign Schools, which is an eight-module, 23-lesson, on-line course designed specifically for staff at foreign schools. The 2005-2006 version is now available on the Web at www.ed.gov/fsacoach/foreignschools. Whether you need to know a lot or a little about federal student financial aid, FSA COACH for Foreign Schools will work with you to develop your understanding of basic concepts and procedures in U.S. federal student aid management. It will also show you how to find and use more detailed sources of information. FSA COACH for Foreign Schools consists of about 30 hours of self-paced instruction. The course features interactive exercises, review questions, and quizzes that help learners to assess their mastery of the course material.

Thank you for your continued participation in the FFEL Program. If you have any questions regarding this letter, please contact the Department's Foreign Schools staff at fsa.foreign.schools.team@ed.gov. Thank you again for your cooperation in complying with these requirements. We look forward to working with your institution.

Sincerely,

James F. Manning
Acting Assistant Secretary for
Postsecondary Education

Theresa S. Shaw
Chief Operating Officer
Federal Student Aid

cc: Financial Aid Contact Office

Attachments/Enclosures:

[GEN-06-11: Notification to foreign schools of changes made by the Higher Education Reconciliation Act of 2005 in PDF Format, 924KB, 11 pages](#)

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