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Subject: Update on Consolidation Loan Issues

Summary: The attachments to this letter discuss some of the revised eligibility requirements for consolidation of loans in the FFEL and Direct Loan programs and reminds FFEL Program participants of their obligation to promptly complete and return Loan Verification Certificates. It also provides additional information on the implementation of restrictions on a borrower's eligibility to consolidate an existing Consolidation Loan.

Posted on 12-01-2006

Dear Colleague:

Recent legislative actions have made substantial changes to the eligibility requirements for borrowers consolidating Federal education loans into a Consolidation Loan in the Federal Family Education Loan (FFEL) Program or the William D. Ford Federal Direct Loan (Direct Loan) Program. Specifically, the Higher Education Reconciliation Act of 2005 (Pub. L. 109-171) (HERA) and the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109-234) amended the Higher Education Act of 1965, as amended (HEA). We have summarized the revised requirements for Consolidation Loans in Attachment A. This information is presented in graphic form in Attachment B.

Loan holders should remember that, under the Department's regulations, they are required to complete and return each Loan Verification Certificate (LVC) submitted by a FFEL lender or by the Direct Loan Program within ten business days of its receipt. More information in about this requirement is included in Attachment C.

Finally, attachment D to this letter provides additional information on the deadlines included in Dear Colleague Letter [FP-06-03](#) related to the implementation of the restrictions on the eligibility of a Consolidation Loan to be included in another Consolidation Loan.

We thank you for your cooperation. If you have any questions on the issues discussed in this letter, please contact Pamela Moran by email at pamela.moran@ed.gov or by phone at (202) 502-7732.

Sincerely,

James F. Manning
Acting Assistant Secretary for
Postsecondary Education

ATTACHMENT A

UPDATE ON CONSOLIDATION LOAN ISSUES DCL GEN-06-20 AND FP-06-16

ELIGIBILITY OF A LOAN TO BE CONSOLIDATED

Significant changes have been made to the eligibility of student loans for consolidation under the legislation noted in the cover letter to this attachment. We have attached, for your reference and use, a chart (Attachment B) that summarizes the eligibility of loans for consolidation that reflects these changes. The following discussion presents, in greater detail, the eligibility of loans for consolidation.

Under the provisions of the HEA, as amended by the recent legislation, the following are the conditions under which a borrower may include an eligible loan in a FFEL or Direct Loan Consolidation Loan –

Eligible Loans

- *FFEL and Direct Loan Stafford and PLUS Loans.* Subsidized and unsubsidized Stafford Loans and PLUS Loans, with or without other loans that are eligible for consolidation (e.g.; Perkins Loans or Health Professions Loans), may be consolidated into either the FFEL or Direct Loan programs.

However, a borrower may consolidate a FFEL Program loan into a Direct Consolidation Loan without including at least one Direct Loan if the borrower certifies that he or she is unable to obtain a FFEL Consolidation Loan or is unable to obtain a FFEL Consolidation Loan with income-sensitive repayment terms that are satisfactory to the borrower. The borrower's signature on the Direct Consolidation Loan Application/Promissory Note, which includes this certification, is sufficient for the purpose of meeting this requirement. A FFEL holder of a loan that a borrower wishes to consolidate into the Direct Loan Program may not question that certification.

- *Perkins Loans or Health Professions Loans.* Perkins Loans or Health Professions Loans may be consolidated into a FFEL Consolidation Loan without the inclusion of a FFEL or a Direct Loan program loan. However, under the current Direct Loan Program regulations, Perkins Loans and Health Professions Loans may be consolidated into a Direct Consolidation Loan only if at least one FFEL or Direct Loan program loan is included in the consolidation.

Status of Loans

- *In-school status.* A borrower who is in an in-school period on a loan cannot include that loan in a Consolidation Loan and a borrower may no longer request to be converted from an in-school status on a loan to repayment status to include that loan in a Consolidation Loan.
- *Grace or Repayment Status.* A borrower must be in either a grace period or in a repayment period on an eligible loan to include that loan in either a FFEL or Direct Loan Consolidation Loan. A borrower is considered to be in repayment on a loan if the borrower is making

payments as required under the repayment plan established with the lender, is in forbearance or deferment (including an in-school deferment), or is delinquent or in default on the loan.

Defaulted loans may be included by a borrower in a Consolidation Loan only if the borrower has made satisfactory repayment arrangements with the holder of the defaulted loan or if the borrower agrees to repay the Consolidation Loan under the income-sensitive repayment plan in the FFEL Program or the income contingent repayment plan in the Direct Loan Program.

- *Judgment or wage garnishment.* Loans on which a judgment has been entered against the borrower or loans that are subject to collection by wage garnishment cannot be included in a Consolidation Loan.

Consolidation of a Consolidation Loan

A borrower may not include an existing Consolidation Loan in a new Consolidation Loan except as provided below –

- *Both Programs.* A borrower may consolidate an existing FFEL or Direct Loan Consolidation Loan only if the borrower includes at least one other eligible loan in the consolidation. The other eligible loan may be another Consolidation Loan. If the existing Consolidation Loan is in default, the borrower must also either make satisfactory repayment arrangements on the defaulted loan, or must agree to repay the new Consolidation Loan under the income-sensitive (for the FFEL Program) or income contingent (for the Direct Loan Program) repayment plan.
- *Direct Loan Program Only.* A borrower may consolidate a single FFEL Consolidation Loan into a Direct Consolidation Loan for the purpose of obtaining an income contingent repayment (ICR) plan, without including any other loans, if –
 - *Delinquent.* The borrower is delinquent on repayment of the FFEL Consolidation Loan and the FFEL lender has submitted a request for default aversion assistance to the guaranty agency, in accordance with 34 C.F.R. § 682.411(i).
 - *Defaulted.* The borrower is in default on the FFEL Consolidation Loan, regardless of whether the borrower has made satisfactory repayment arrangements on the defaulted FFEL Consolidation Loan. In this situation, the borrower would qualify because the lender submitted a request for default aversion assistance during the delinquency period.
 - *Bankruptcy.* A single FFEL Consolidation Loan held by a guaranty agency as a result of a bankruptcy claim may be consolidated into a Direct Consolidation Loan. A borrower who has filed an adversary complaint in a bankruptcy proceeding seeking to have the FFEL Consolidation Loan discharged has shown that he or she does not intend to repay the debt. In a bankruptcy situation, the holder of the FFEL Consolidation Loan files a claim with the guaranty agency rather than seek default aversion assistance on the loan. A request for default aversion assistance cannot be filed in this situation. Therefore, a

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single FFEL Consolidation Loan held by a guaranty agency as a result of a bankruptcy claim may be consolidated into a Direct Consolidation Loan even though default aversion assistance was not requested.

Number of Loans

There is no minimum number of loans that may be included in a Consolidation Loan. A FFEL or Direct Loan Consolidation Loan may include just one eligible loan. However, as discussed earlier, a borrower may not consolidate a Perkins or Health Professions loan into the Direct Loan Program without including at least one FFEL or Direct Loan.

CONSOLIDATION LOAN MATRIX

October 2006

Consolidation Loan Scenarios	Consolidate into...		Condition or Limitation
	FFEL Any Lender	Direct Loan	
All Loans			
Loan in Grace or Repayment Status	Yes	Yes	May consolidate one or more loans
Repayment status includes loans in deferment and forbearance and loans that are delinquent or in default.			If loan is in default, only if borrower has made satisfactory repayment arrangements with the holder or agrees to repay the consolidation loan under an income sensitive (FFEL) or income contingent repayment (DL) plan.
Loan in an in-school status	No	No	Borrower may not request to be converted from an in-school status on a loan to repayment status.
Loan not fully disbursed	No	No	A loan is not considered to be in repayment until it is fully disbursed.
Consolidation Loans			
Consolidation loan with one or more additional loans	Yes	Yes	Additional loan may be another consolidation loan.
Single Consolidation loan only	No	Yes	Only for a FFEL Consolidation Loan that is delinquent, in default, or the borrower has filed an adversary action in a bankruptcy proceeding for discharge of the loan.
No Direct Loans or FFEL Loans			
Perkins and/or Health Professions loans only	Yes	No	Direct Loan regulations do not allow consolidation unless there is at least one FFEL or Direct Loan included.

ATTACHMENT C

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A Borrower's Change of Consolidating Lender

A loan holder that receives an LVC may contact the borrower to offer the borrower a Consolidation Loan. However, the loan holder cannot delay beyond the 10 business-day deadline its completion of the LVC while it contacts or waits to hear from the borrower. A borrower can cancel a pending Consolidation Loan application only by directly notifying the lender to which the application was submitted that the application is withdrawn. A borrower's statement to a loan holder, whether oral or written, that the borrower wishes to cancel a Consolidation Loan application currently pending with a different lender does not constitute a cancellation of the Consolidation Loan application then pending with that other lender. The holding lender may not delay completing and submitting the LVC while waiting for the borrower to withdraw a prior application.

Repeal of the Single Holder Rule

The Appropriations Act eliminated the single holder rule for Consolidation Loan applications received by the consolidating lender on or after June 15, 2006 (the date of enactment of the Appropriations Act). In general, the single holder rule provided that if all of a borrower's FFEL loans were held by one FFEL holder, the borrower was required to request a Consolidation Loan from that holder. Now, a FFEL Consolidation Loan may be made by any eligible FFEL lender without regard to who holds the loans to be consolidated.

Since the enactment of the Appropriations Act, we have allowed FFEL loan holders to request documentation from the consolidating lender that the borrower's application was received on or after June 15, 2006 before completing the LVC when the loan holder believed that it was the single holder of the borrower's FFEL loans. However, now that more than five months have passed. Such requests are now unnecessary and only delay the processing of a borrower's Consolidation Loan application. Therefore, effective on the date of this letter, a loan holder may not request such documentation or otherwise delay responding to an LVC based on the single holder rule that was in effect before June 15, 2006.

The consolidating lender is responsible for ensuring that it does not make a Consolidation Loan based upon an application received before June 15, 2006, from a borrower who would have been ineligible for the requested Consolidation Loan from that lender because of the single holder rule.

Any FFEL Consolidation Loan made in violation of the single holder rule, as in effect for Consolidation Loan applications received prior to June 15, 2006, will be subject to loss of reinsurance and other FFEL Program benefits.

Consolidation of an Existing Consolidation Loan

As discussed earlier in this letter, the HERA eliminated the ability of a borrower to consolidate a single Consolidation Loan, except for the special circumstances in which a single FFEL Consolidation Loan can be consolidated into the Direct Loan Program.

It is the responsibility of the FFEL consolidating lender (not the current holder) to ensure that it does not make a Consolidation Loan consisting of only a single FFEL or Direct Loan Consolidation Loan. Therefore, a holder of a FFEL Consolidation Loan that receives an LVC from another FFEL lender or from the Direct Loan Program must promptly complete and return the LVC even if it believes that the Consolidation Loan is not eligible for consolidation because it is the only loan the borrower wishes to consolidate. We will monitor loan activity through the National Student Loan Data System (NSLDS) to ensure that there are no FFEL Consolidation Loans that consist only of a single FFEL or Direct Loan Consolidation Loan. If we find a violation of this restriction, the new FFEL Consolidation Loan will be subject to loss of reinsurance and other FFEL Program benefits.

Notification of Loan Holder Non-Compliance

Lenders that do not receive loan certification information, or a response from the loan holder informing them why that information is not being provided should inform the appropriate Federal Student Aid regional Financial Partners Eligibility and Oversight staff, so that the Department can follow up with the loan holder.