

**Oklahoma Guaranteed Student Loan Program (OGSLP)  
Comments on Loan Provisions NPRM Published June 12, 2007  
Docket ID ED-2007-OPE-0133**

---

**1. Total and Permanent Disability (TPD) Discharge**

**Federal Register Pages:** 32413 (Preamble) and 32442 (Proposed Rule)

**Regulation Cite:** §682.402(c)(2)

**Comment:** The borrower will have to provide the completed TPD application form within 90 days to the loan holder with no relief from collection activity. The proposed regulation is removing the 60-day administrative forbearance provided to the borrower for completion of the TPD application form and submission of the completed TPD application form to the loan holder. This is a problem because it will increase the delinquency on borrower accounts while the TPD application form is being completed and penalizes the borrower.

---

**2. Total and Permanent Disability Discharge**

**Federal Register Pages:** 32413 (Preamble) and 32442 (Proposed Rule)

**Regulation Cites:** §§682.402(c)(3)(ii) and 682.402(c)(3)(iii)

**Comment:** The proposed regulations are changing the date the borrower is considered disabled from the date the borrower became unable to work and earn money as certified by the physician to the date the physician actually certifies the form.

Also, the three year conditional discharge period starts on the date the Secretary makes an initial determination that the borrower is totally disabled.

Borrowers completing the TPD application form several years after the onset of their disabling condition will no longer be granted immediate final discharge because retroactive completion of the three-year conditional period will not be accepted .Borrowers will be subject to a longer waiting period before their loans will be discharged. **This is also unfair to borrowers regardless of the three years; borrowers who became disabled should be able to use the date they became disabled and should not have to use the date a physician certified information on a form.**

---

**3. Total and Permanent Disability**

**Federal Register Pages:** 32413 (Preamble) and 32442 (Proposed Rule)

**Regulation Cite:** §682.402(c)(4)(iii)

**Comment:** The proposed regulations are changing the borrower payment refund date from after the date the borrower became unable to work and earn money to after the date

the physician certifies the TPD application form. Borrowers who have been making payments while seeking total and permanent disability discharge years after being disabled will be penalized because only payments made after the physician's certification date will be refunded.

#### 4. NSLDS Reporting Requirements

**Federal Register Pages:** 32414 (Preamble) and 32440 (Proposed Rule)

**Regulation Cite:** §682.401(b)(20)

**Comment:** We do not agree with the proposed change in guarantor reporting timeframes from 60 days to 30 days in §682.401(b)(20). Guarantors currently report information to NSLDS at least monthly. Changing the requirement for guarantors to report enrollment information to lenders from “within 60 days” to “within 30 days” would not result in any improvement in the timeliness of information. Guarantors currently reporting monthly would be out of compliance with the 30 day requirement due to 30- and 31-day months and the time necessary to deliver the extract to NSLDS and for NSLDS to load the information. The Secretary should allow guarantors sufficient time to submit and have their extracts loaded to NSLDS. A 35 day time limit is recommended instead of the 30 days proposed.

We suggest the following revisions:

§682.401(b). . .

(20) Monitoring student enrollment. The guaranty agency shall monitor the enrollment status of a FFEL program borrower or student on whose behalf a parent has borrowed that includes, at a minimum, reporting to the current holder of the loan within ~~30~~ 35 days any change in the student's enrollment status reported that triggers—

(i). . .

(ii). . .

#### 5. NSLDS Reporting Requirements

**Federal Register Pages:** 32414 (Preamble) and 32439 (Proposed Rule)

**Regulation Cite:** §682.208(i)

**Comment:** The preamble states it proposes changes “...to require institutions, lenders, and guaranty agencies to report enrollment and loan status information, or any other Title IV-loan-related data required by the Secretary, to the Secretary by a deadline established by the Secretary.” In proposed language under §682.208(i), the lender is instructed to report the information “...to the guaranty agency or the Secretary, as applicable, by the deadline date established by the Secretary.” Lenders currently report directly to guarantors, therefore the preamble language conflicts with the current required reporting process.

We suggest the following revisions - § 682.208

July 31, 2007

2

OGSLP Comments

Loan Provisions NPRM Published June 12, 2007

Docket ID ED-2007-OPE-0133

...

(i) A lender shall report enrollment and loan status information, or any Title IV loan-related data required by the Secretary, to the guaranty agency ~~or to the Secretary, as applicable...~~

## 6. NSLDS Reporting Requirements

**Federal Register Pages:** 32414 (Preamble) and 32439 (Proposed Rule)

**Regulation Cites:** §§682.208(i) and 682.214(b)(4)

**Comment:** Proposed regulations state that the new reporting requirements must be met by “a deadline date established by the Secretary.” It is unclear when this deadline date will be established by the Secretary and where it will be located in regulations.

## 7. Certification of Electronic Signatures on Master Promissory Notes (MPNs) Assigned to the Department

**Federal Register Pages:** 32415 (Preamble) and 32443-32444 (Proposed Rule)

**Regulation Cites:** §§682.409, and 682.414

**Comment:** The proposed changes require an institution or holder of a FFEL loan to retain an original electronically signed MPN for three years after the loans are satisfied. The term “satisfied” should be defined as a loan that is paid in full by the borrower, consolidation, or by other sources including discharges or forgiveness.

We recommend a revision that would cap the record retention period at a point equal to the date when a lender receives information from a subsequent holder that all loans have been satisfied or a period not to exceed comparable industry standards.

## 8. Record Retention Requirements on Master Promissory Notes (MPNs) Assigned to the Department

**Federal Register Pages:** 32416 (Preamble) and 32443 (Proposed Rule)

**Regulation Cites:** §§682.406 and 682.409

**Comment:** The proposed changes require the guarantor to provide documentation to the Secretary of the lenders’ disbursement information, which includes date and amount of each disbursement to the school for delivery to the borrower.

We recommend that the Secretary make the implementation trigger for this requirement applicable to loans based on a *guarantee* date, since the proposed *disbursement* record type is not currently required during the assignment or claims process. Further, this requirement should apply to loans on an exception basis: i.e., only for loans that are under investigation by the Secretary.

## 9. Loan Counseling for Graduate or Professional Student PLUS Loan Borrowers

**Federal Register Pages:** 32417-32418 (Preamble) and 32445 (Proposed Rule)

**Regulation Cite:** §682.604(f)

**Comment:** The way the Proposed Regulations in 682.604(f) are laid out is very confusing to read. The section starts with a general statement about entrance counseling for Stafford borrowers; progresses to a general statement about Grad PLUS borrowers; addresses specifics for Grad PLUS borrowers (depending on whether or not the student previously received Stafford) and compares the requirements for each category of student borrower to the requirements for Stafford borrower entrance counseling; requirements which are outlined later in the section; then addresses general requirements for the conduct of all entrance counseling; then outlines the specifics for Stafford entrance counseling; and finally returns to general requirements for the conduct of all entrance counseling.

We recommend reorganization of 682.604(f) so that it begins with specific requirements for initial loan counseling for Stafford borrowers; then states specific requirements for initial counseling for Graduate or Professional PLUS loan borrowers (as compared to the specific requirements for Stafford borrowers); and concludes with the general requirements for delivery of initial loan counseling.

We understand the intent to lessen the burden on schools by limiting the counseling required for a Grad PLUS borrower if he/she had already received Stafford entrance counseling; however, prescribing different entrance requirements as it is outlined here actually appears to be more burdensome because schools will have to segregate students into categories and very little effort will be saved between the categories. Therefore, we recommend a single set of requirements for entrance counseling, with the only differentiation found in the requirement that entrance counseling for Grad PLUS borrowers must include sample monthly repayment amounts that reflect Grad PLUS borrowing at that school or in that program of study.

## 10. Loan Counseling for Graduate or Professional Student PLUS Loan Borrowers

**Federal Register Pages:** 32417-32418 (Preamble) and 32444-32445 (Proposed Rule)

**Regulation Cite:** §682.603

**Comment:** If a graduate student applies for Grad PLUS, and is eligible for, but has not requested, Stafford funds, the school must notify the graduate student of their Stafford loan eligibility, explain the advantages, and give the graduate student an opportunity to apply for the Stafford loan. This could be extremely burdensome for schools unless combined with the initial Notice of Funding required in the cash management regulations (668.165).

Most schools meet the requirement for the initial Notice of Funding through the use of an award letter. The school can either use an active or a passive confirmation process: active, meaning that the student specifically has to accept each award before loans will be certified; or passive, meaning that if the student doesn't notify the school otherwise, they assume he/she accepts the award. If a school lists any and all Stafford and Grad PLUS eligibility in the initial notice and includes the comparison of loan terms, whether using an active or passive confirmation process, that approach would fulfill this notification requirement. It seems unnecessary to require a separate process.

## 11. Prohibited Inducements

**Federal Register Pages:** 32420 (Preamble) and 32438 (Proposed Rule)

**Regulation Cite:** §682.200

**Comments:** Definition of “Emergency”

The proposal to only allow for emergency staffing by guarantors or lenders in a “state” or “federally” declared disaster scenario needs to be broadened to allow for local emergency scenarios. There could be times when a campus is involved in an emergency where a state or national disaster has not been declared, but staffing has been curtailed. As part of their disaster preparedness and business continuity plans, each campus should designate an individual or group of individuals authorized to declare a “campus emergency”. In these limited instances, guarantors and lenders should be able to provide the same type of short-term staffing assistance to an aid office as would be available when a state or federal disaster is declared.

## 12. Prohibited Inducements

**Federal Register Pages:** 32422 (Preamble) and 32439 and 32445 (Proposed Rule)

**Regulation Cites:** §§682.413(h), 682.705(c) and 682.706(d)

**Comment:** Rebuttable Presumption -

The Secretary proposes to apply “rebuttable presumption” in §§682.705(c) and 682.705(d) that lender payments or activities were offered or provided to schools in order to secure applications for FFEL loans. The Secretary should have a factual basis supporting the probability that a prohibited inducement occurred and be required to make a preliminary finding of fact before commencing a proceeding.

We recommend that in both §§ 682.705(c) and 682.705(d), the Secretary replace the word “find” with “makes a factual determination supporting the probability.”

### 13. Prohibited Inducements

**Federal Register Pages:** 32424 (Preamble) and 32439 (Proposed Rule)

**Regulation Cite:** §682.209(k)

**Comment:** FTC Holder Rule

The proposal to impose the FTC Holder rule to all FFELP loans could lead to a significant number of potentially meritless challenges to student loan debt. We request that the Secretary withdraw this proposal for further study and discussion with the FFELP community.

### 14. Eligible Lender Trustees (ELTs)

**Federal Register Pages:** 32424 (Preamble) and 32444 (Proposed Rule)

**Regulation Cite:** §682.602(b)(2)

**Comment:** Remove (a)(3) as an exception to match what is in THEEA.

“A school-affiliated organization involved in a trustee arrangement to make loans must comply with the requirements of 682.601(a) except for paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(7), and (a)(9) of that section.”

So, new language should read:

"A school-affiliated organization involved in a trustee arrangement to make loans must comply with the requirements of 682.601(a) except for paragraphs (a)(1), (a)(2), ~~(a)(3)~~, (a)(4), (a)(6), (a)(7), and (a)(9) of that section."

### 15. Eligible Lender Trustees (ELTs)

**Federal Register Pages:** 32424 (Preamble) and 32444 (Proposed Rule)

**Regulation Cites:** §§682.200 and 682.602

**Comment:** The language in the preamble states, “The proposed regulations would also implement the HEA Extension Act by creating a new section (formerly reserved §682.602) that applies the same limits imposed on FFEL school lenders by the Higher Education Reconciliation Act (HERA) (Pub. L. 109-171) to school and school-affiliated ELT arrangements entered into after January 1, 2007.”

**To correctly mirror the triggering event with the new requirements,** we recommend that the language be changed for clarification purposes to read:

"The proposed regulations would also implement the HEA Extension Act by creating a new section (formerly reserved §682.602) that applies certain ~~the same~~ limits imposed on loans made by FFEL school lenders by the Higher Education Reconciliation Act (HERA) (Pub. L. 109-171) to loans first disbursed on or entered into after January 1, 2007 by schools and school-affiliated organizations involved in ELT arrangements."

## 16. Loan Discharge for False Certification as a Result of Identity Theft

**Federal Register Pages:** 32425 (Preamble) and 32439 (Proposed Rule)

**Regulation Cite:** §682.208(b)(4)

**Comment:** Proposed §682.208(b)(4): If, within 3 years of the lender's receipt of an identity theft report, the lender receives from the borrower evidence specified in §682.402(e)(3)(v), the lender may submit a claim and receive interest subsidy and special allowance payments that would have accrued on the loan.

Use of the term "borrower" in §682.208(b)(4) in the context of identity theft is confusing. Regulations in §682.402(e)(1)(i)(C) refer to the "individual named as the borrower", since an individual whose identity was stolen to obtain the loan was not a "borrower".

We recommend the following changes:

§682.208(b)

(1) . . .

(2) . . .

(3) . . .

(4) If, within 3 years of the lender's receipt of an identity theft report, the lender receives from the individual named as the borrower evidence specified in §682.402(e)(3)(v), the lender may submit a claim and receive interest subsidy and special allowance payments that would have accrued on the loan.

## 17. Loan Discharge for False Certification as a Result of Identity Theft

**Federal Register Pages:** 32425 (Preamble) and 32439 (Proposed Rule)

**Regulation Cite:** §682.208(b)(4)

**Comment:** The proposed regulation allows the lender three years from receipt of an identity theft report to submit a claim and receive interest subsidy and special allowance payments that would have accrued on a loan if the borrower provides the evidence required by §682.402(e)(3)(v). The lenders are placed at a disadvantage in receiving payments for the following reasons:

- §682.402(e)(3)(v) requires a local, State or Federal Court judgment to prove the borrower is a victim of identity theft. §682.402(e) does not provide a time limit within which a borrower must provide proof of identity theft. It could take longer than three years for a borrower to submit the proof for identity theft; in the meantime, the lender loses the interest subsidy and special allowance payment.
- If the lender determines that the loan is unenforceable according to §682.208(b)(3)(i), the borrower does not have an incentive to pursue judgment of identity theft given the costs associated with a lawsuit and that the borrower is no longer obligated to pay the loan.

We recommend that 682.402(e) be revised to adopt the definition of identity theft used by financial institution regulations under the Fair Credit Reporting Act (FCRA) as amended by the Fair and Accurate Transactions Act of 2003 (FACT Act) and provide for the discharge of a borrower's liability and the reimbursement of the loan holder on the basis of an "identity theft report" as identified in the FACT Act.

## **18. Loan Discharge for False Certification as a Result of Identity Theft**

**Federal Register Pages:** 32425 (Preamble) and 32439 (Proposed Rule)

**Regulation Cite:** §682.208(b)(4)

**Comment:** If the lender receives an identity theft report and determines that a loan is not legally enforceable against the named borrower, we recommend that the lender be required to report that loan to NSLDS as temporarily uninsured, then change the designation to permanently uninsured if 3 years pass without a court finding of a crime of identity theft.

## **19. Loan Discharge for False Certification as a Result of Identity Theft**

**Federal Register Pages:** 32425 (Preamble) and 32439 (Proposed Rule)

**Regulation Cite:** §682.208(c)

**Comment:** The lender is required under §682.208(c) to respond within 30 days to any inquiry from a borrower or endorser of a loan. If a borrower claimed not to be responsible for the loan, the lender should investigate that claim and determine the legal enforceability of the loan, whether or not the individual has made a formal report of identity theft. If the lender finds that the loan is not legally enforceable against the named borrower, the lender should cease any collection efforts for that person and refund interest and special allowance received on the loan, regardless of whether the lender received an official identity theft report. The regulations in §§682.300 and 682.302 do not address this contingency.

## **20. Loan Discharge for False Certification as a Result of Identity Theft**

**Federal Register Pages:** 32425 (Preamble) and 32439 (Proposed Rule)

**Regulation Cite:** §682.208(b)(3)(i)

**Comment:** If a borrower claims not to be responsible for the loan, and the lender's investigation did NOT yield any evidence that the loan was unenforceable, we assume the lender would continue to collect from the named borrower. If the loan then defaulted due to delinquency, we recommend that the lender be required to flag the claim and provide evidence upon which the lender relied to determine that the loan IS the legal obligation of the named borrower.



## 21. Preferred Lender Lists

**Federal Register Pages:** 32425 (Preamble) and 32440-32441 (Proposed Rule)

**Regulation Cites:** §§682.212 and 682.401

**Comment:** Requirements for constructing a preferred lender list -

The proposed requirements for schools using preferred lender lists appear to be overly prescriptive which will generate excessive administrative burden. Schools should be required only to “document the rationale” for including a lender on their list, including the benefits each lender provides students.

Requiring rigid and complicated approaches to documenting these decisions could lead schools to abandon the list approach altogether, forcing students and parents to navigate Web sites of numerous possible lenders with insufficient information and limited understanding. This type of frustrating search could negatively impact at-risk populations of first generation college-going families who need the support and guidance of professionals in the aid office. While we have always supported borrower choice in lenders, simply requiring a school to document its institutional rationale for the composition of a preferred lender list should suffice to ensure compliance at the campus level without adding new administrative burden.

## 22. Preferred Lender Lists

**Federal Register Pages:** 32425 (Preamble) and 32440-32441 (Proposed Rule)

**Regulation Cites:** §§682.212 and 682.401

**Comment:** Proposed language in 682.212 (h)(2) would require schools to include a prominent statement in any information related to its list of lenders advising prospective borrowers that they are not required to use one of the school's recommended or suggested lenders. To preserve transparency, choice and disclosure in the loan programs, this requirement should be applied to both FFELP and Direct Loan schools.

## 23. Preferred Lender Lists

**Federal Register Pages:** 32425 (Preamble) and 32440-32441 (Proposed Rule)

**Regulation Cites:** §§682.212 and 682.401

**Comment:** “Affiliated Lender” definition

With regard to construction of a preferred lender list, recent verbal guidance provided by Jeff Baker, director policy liaison and implementation for Federal Student Aid, at the National Association of Student Financial Aid Administrators (NASFAA) conference indicated that two otherwise unrelated lenders who both have forward purchase agreements to sell loans to the same secondary market are to be considered “affiliated”. *Ballentines Legal Dictionary* defines the term “affiliated” as “an organization that is controlled or directed by another organization (example: a subsidiary)”. Further, the

Senate's reauthorization bill (S. 1642, section 480) defines "affiliate" to mean a person that controls, is controlled by, or is under common control with another person.

Only organizations that are truly connected by organizational structure should be considered "affiliated".

If Mr. Baker's definition is allowed to stand, many unrelated lending institutions could unfairly suffer losses as they are removed from lists and replaced with a lender that sells to a different secondary market. In some areas of the country, a predominant secondary market may offer rich benefits to local borrowers. It would be truly unfortunate to see borrowers miss out on these types of benefit opportunities simply due to Mr. Baker's interpretation.

## **24. Preferred Lender Lists**

**Federal Register Pages:** 32425 (Preamble) and 32440-32441 (Proposed Rule)

**Regulation Cites:** §§682.212 and 682.401

**Comment:** Frequency for updating borrower benefit information -

There is no stated requirement regarding a required minimum frequency for updating borrower benefits on a preferred lender list. To ensure that consumer information is accurate, we recommend that borrower benefits included on a preferred lender list be updated on at least an annual basis. This would help ensure that borrowers make lender choices based on current and accurate information.