

**VOLUNTARY FLEXIBLE AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF EDUCATION
AND
PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY**

This Voluntary Flexible Agreement (VFA) is between the United States Department of Education (Department) and PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY (Guaranty Agency) and dated as of October 15, 2024.

WHEREAS, the Guaranty Agency is a guaranty agency participating in the Federal Family Education Loan (FFEL) Program administered and regulated by the Department under Title IV, Part B of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1071, et seq.; and

WHEREAS, the Guaranty Agency and the Department are currently parties to certain Agreements governing the Guaranty Agency's participation as a guaranty agency in the FFEL Program, including the Agreement for Federal Reinsurance of Loans pursuant to §428(c) of the Higher Education Act of 1965 (the "Existing Agreements") and which the parties wish to amend, in whole or in part, as required to effectuate this VFA; and

WHEREAS, Section 428A of the HEA provides that the Department may enter into VFAs with guaranty agencies;

WHEREAS, the Department and the Guaranty Agency want to use this VFA to allow the Guaranty Agency to continue to develop new processes, policies and procedures and undertake certain efforts in connection with FFEL loans to help borrowers access benefits available to them through consolidation and ensure stability in the FFEL Program as the number of outstanding loans declines over time by having a sustainable number of participating guaranty agencies; and

WHEREAS, the Department has agreed to provide certain waivers of statutory and regulatory requirements to permit these activities as authorized by §428A of the HEA;

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. All terms and conditions of the Existing Agreements shall remain in full force and effect except as provided in this VFA.
2. The provisions of this VFA exclude loans that are in a bankruptcy proceeding or upon which there is an active judgment or that enter into such statuses during the period this VFA is in effect. Loans in such statuses should continue to be managed under existing policies and procedures.

3. *Borrower Outreach.* The Guaranty Agency shall implement and operate a program of borrower outreach and communication to help borrowers who are delinquent avoid default or help borrowers in default better manage their loans and help them successfully exit default, as applicable. As part of this program, the Guaranty Agency must undertake the following types of activities for borrowers at the Guaranty Agency until they are identified for assignment:

- (a) conduct monthly outreach attempts by phone, or conduct monthly skip tracing efforts. Such outreach and skip tracing efforts shall continue until contact is established. The Guaranty Agency shall also conduct quarterly outreach by email/letter to provide counseling and to educate them on how to resolve their default. This includes explaining the benefits and considerations of consolidation into the Direct Loan program.

- (b) respond to incoming borrower inquiries;

- (c) provide notification to the borrower related to the transfer of their loans to the Department or a successor guaranty agency;

- (d) create appropriate direct mail, e-mail, and phone campaigns targeted to borrowers at critical times in the student loan process, which shall be mutually agreed upon between the Guaranty Agency and the Department in both scope and message;

- (e) with prior notice to the Department when appropriate, perform other activities to assist borrowers in successfully completing other student financial aid-related activities as agreed to by the parties for the benefit of borrowers; and

- (f) maintain all existing default aversion assistance work required under 20 U.S.C. 1078(l)(1) and 34 C.F.R. 682.404(a)(2)(ii) at a level at or above current efforts.

4. *Compensation.* In place of the funds otherwise paid to or from a guaranty agency (including, but not limited to, payments and refunds of the Default Aversion Fee (DAF) and DAF rebate under 34 C.F.R. 682.404(j) and 20 U.S.C. 1078(l)(2)), with the exception of the Account Maintenance Fee (AMF) as defined in §428(h) of the HEA and 34 C.F.R. §682.404(h), under the FFEL Program, the Department shall only pay or authorize the Guaranty Agency to retain the payments described below:

- (a) the Department shall pay the Guaranty Agency a Special Account Maintenance Fee (SAMF) as described below.

The SAMF shall be calculated based on the guaranty agency's outstanding net guarantees as defined in §428(h) of the HEA and 34 C.F.R. §682.404(h). It shall be paid in equal quarterly installments.

For Federal Fiscal Year 2025, the amount of the SAMF shall be equal to 0.6 percent of the guaranty agency's outstanding net guarantees as of September 30, 2024.

For Federal Fiscal Year 2026, the amount of the SAMF shall be equal to 0.5 percent of the guaranty agency's outstanding net guarantees as of September 30, 2025.

(b) the Department shall pay the Guaranty Agency a Successful Resolution Fee (SRF) as described below.

For Federal Fiscal Years 2025, the SRF shall be equal to the lesser of \$1,900 or 25 percent of the outstanding balance of loans being consolidated for each qualifying borrower, as defined below.

For Federal Fiscal Year 2026, the SRF shall be equal to the lesser of \$1,750 or 25 percent of the outstanding balance of loans being consolidated for each qualifying borrower, as defined below.

The SRF will be earned on all qualifying borrower accounts prior to the 15 days' notice of the transfer prior to assigning loans to the Department.

A qualifying borrower is a borrower with at least one loan in default at the Guaranty Agency who:

- successfully consolidates all their defaulted loans held by the Guaranty Agency into the Direct Loan program, or
- with assistance from the Guaranty Agency completes an application for and receives a closed school loan discharge or a total and permanent disability discharge.

The SRF may only be paid once per borrower for loans held by the Guaranty Agency, regardless of the number of times a borrower consolidates.

The SRF will not be paid on a borrower who has already been identified for a discharge based on closed school, total and permanent disability, death, or false certification prior to the consolidation but have not yet been fully processed for the discharge or who within 3 months of consolidating is approved for a closed school, total and permanent disability, or false certification discharge.

The SAMF shall be paid in quarterly installments as described in paragraph (9).

5. *Assignment of Defaulted Loans.* The Guaranty Agency shall assign defaulted loans to the Department under the schedule described below. When assigning loans, the Guaranty Agency shall transfer all loans in default for a given borrower. Such assignment and transfer process shall follow 34 C.F.R. §682.409(c). Assignments must be completed within 6 months of the day they are identified for assignment based on the criteria or an agreed upon timeframe with the Department and the

Guaranty Agency. Assignments and transfers shall include collateral; the collateral may be sent separate from the account transfer and should be received within 30 days after an account has been accepted or an agreed upon timeframe with the Department and the Guaranty Agency.

- *Pre-pause aged defaults:* By no later than January 1, 2025, the Guaranty Agency shall identify for assignment and begin to assign to the Department all loans in default that most recently defaulted prior to January 1, 2018.
- *Pre-pause defaults:* By no later than April 1, 2026, the Guaranty Agency shall identify for assignment and begin to assign to the Department all loans in default that most recently defaulted between January 1, 2018 and March 20, 2020.
- *Special mandatory assignment and Fresh Start borrowers:* The Guaranty Agency must work with the Department to ensure that all Special mandatory assignments loans and all Fresh Start loans for borrowers who opted in or who receive new Title IV loans up through September 30, 2024 while still having active defaulted loans held by the Guaranty Agency are successfully assigned to and accepted by DMCS no later than December 31, 2024;
- *Defaults between the end of the pause and September 30, 2024:* For loans that defaulted after August 28, 2023 and through September 30, 2024, the Guaranty Agency shall identify for assignment and begin to assign to the Department all loans in this population, that are still in default, no later than September 30, 2026.
- *Defaults after September 30, 2024:* For loans that default after September 30, 2024, the Guaranty Agency shall identify for assignment and begin to assign all loans in this population, that are still in default, no later than 24 months after the date the loan most recently entered default.

For defaults that occurred after August 28, 2023, the Guaranty Agency shall consider the periods to be calculated using the start of the calendar month following the date of loan default.

The Guaranty Agency may identify loans for assignment and assign them sooner than the timelines in this section at its discretion, except no loan may be identified for assignment until 60 days after the guarantor has paid the default claim to the lender and the guarantor has received the reinsurance payment from the Department. The Guaranty Agency shall also not assign loans while a borrower has a pending or approved application for consolidation or a discharge under the FFEL Program or has already been identified for a discharge.

For defaults that occurred after August 28, 2023, the Guaranty Agency may retain a loan for 6 months past the assignment date only in cases in which the Guaranty Agency has established successful right party contact with the borrower on or after October 1, 2024.

If a borrower has loans in multiple populations, the Guaranty Agency shall assign loans based upon the dates established for the earliest population of loans held by the Guaranty Agency of which a borrower is part.

Borrowers who wish to pursue a loan rehabilitation agreement will be counseled on options to resolve their default, including consolidation. Beginning January 1, 2026, or a later date as determined by the Department, a borrower who wishes to pursue a loan rehabilitation agreement must be assigned to the Department's default collection system to set up rehabilitation agreements within one month of the borrower's request. Such borrower cannot be transferred prior to when the Guaranty Agency has paid the default claim to the lender and the guarantor has received the reinsurance payment from the Department. This provision shall only apply while the VFA is in effect.

The Guaranty Agency shall provide the borrowers at least 15 days' notice of the transfer prior to assigning loans to the Department.

If the Department's default collection system (DMCS) is unable to accept assigned loans on the timelines described above, then the Department will set an alternative assignment schedule that provides longer timeframes for assignment than the dates described above.

6. *Performance as a successor guaranty agency.* The Department solely at its discretion may elect to have the Guaranty Agency serve as a successor guaranty agency. If the Department chooses for the Guaranty Agency to act as a successor guaranty agency, then the Guaranty Agency shall assume any remaining loan guarantees transferred to the Guaranty Agency from an exiting guaranty agency. Loans in default previously held by the exiting guaranty agency not previously identified for assignment to the Department prior to the date of exit shall be transferred to the successor guaranty agency. Loans received by the Guaranty Agency from an exiting guaranty agency shall be assigned to the Department on the schedule outlined under paragraph (5), except that the timelines may be paused upon mutual agreement to afford time to correct any deficiencies in the records received by the Guaranty Agency. The Guaranty Agency shall also be required to meet the requirements in 34 C.F.R. §682.414, including but not limited to the provisions in 34 C.F.R. §682.414(a)(6) during the time period it holds the loans.
7. *Collections activity on loans designated for assignment.* The Guaranty Agency shall not conduct any new financial collections activity on loans once they are designated for assignment by either the Guaranty Agency or the Department. The Guaranty Agency shall continue to follow procedures related to post-assignment activity, respond to incoming questions from the borrower, and may accept voluntary payments.

8. *Collections activity on loans not yet designated for assignment.* The Guaranty Agency shall engage in collections activity in accordance with 34 C.F.R. §682.410(b)(6) on loans not yet designated for assignment.

Following the Fresh Start program and only at the direction of the Department, the Guaranty Agency shall refer borrowers for the Treasury Offset Program.

To avoid operational complexity and reduce risk of erroneous collections during the term of the VFA, the Guaranty Agency will not initiate administrative wage garnishment.

During this agreement a guarantor shall not charge any collections costs to borrowers, including any costs for consolidation or loan rehabilitation.

Periodically, the Department may direct the Guaranty Agency to modify its collection procedures to conform to the Department's collections processes on defaulted loans it holds.

9. *Billing and payment schedule.* On a monthly basis, the Guaranty Agency shall calculate and invoice the Department for SRF amounts due to the Guaranty Agency. The Department will pay the amounts requested on a quarterly basis based on an acceptable invoice submission. On a quarterly basis, the Department will calculate and pay the SAMF and SRF.

10. *Waivers.* To allow the Guaranty Agency to perform the activities described in this VFA and under the authority of §428A of the HEA, the Department agrees to waive or modify the following requirements of the HEA or the Department's regulations:

(a) The Department waives the requirements of §428(c)(9) of the HEA and 34 C.F.R. §682.410(a)(10) relating to a minimum reserve fund amount.

(b) The Department waives §428(c)(6)(B) of the HEA and 34 C.F.R. §682.401(b)(18)(iv), which establishes caps on consolidation proceeds for a guaranty agency. The SRF payment will replace the costs paid to the Guaranty Agency from consolidations in 34 C.F.R. §682.401(b)(18)(i).

(c) The Department waives the requirements in 34 C.F.R. §682.404(b) related to reinsurance trigger rates.

(d) The Department waives the requirement in §488A of the HEA and 34 CFR 682.410(b)(6)(vi) to conduct administrative wage garnishment.

(e) The Department waives the requirement in 34 CFR 682.410(b)(6)(v) that a guaranty agency must attempt an annual Federal offset against all eligible

borrowers. The guaranty agency may only attempt Federal offset against a borrower with the approval of the Department.

(f) The Department waives the statutory and regulatory provisions relating to payments and refunds of the DAF and rebate under 34 C.F.R. 682.404(j) and 20 U.S.C. 1078(l)(2)), with the exception of the Account Maintenance Fee (AMF) as defined in 20 U.S.C. §1078(h) and 34 C.F.R. §682.404(h).

(g) The Department waives the provision in 34 C.F.R. 682.410(b)(2) authorizing the guaranty agency to charge collection costs.

(h) The Department waives the provisions in 20 U.S.C. §1078(c)(6) and 34 C.F.R. 682.404(g) which govern the distribution of borrower payments on defaulted loans to the guaranty agency and the Department. In place of those rules, the guaranty agency will send the full amount of all borrower payments that they receive to the Department.

11. Other than as waived or modified herein, the Department expects the Guaranty Agency to maintain information technology systems, call center operations, Federal debt management, and customer relations in compliance with applicable Federal, State, Local, and U.S. Territory laws and regulations. This includes compliance with NIST SP 800-53 Rev 5.

12. *Record retention.* In performing the duties under this VFA, the Guaranty Agency shall maintain sufficient records to be made available to the Department upon request. These records shall be for the following purposes:

(a) To demonstrate the nature and date of right party contact for any loan that defaulted after August 28, 2023 that is retained for the additional 6-month period.

(b) To support the SRF billing on a borrower level, which will be made available to the Department upon request. The records must be maintained in a system that allows ready identification of each loan's current status and eligibility for payment of the SRF. Record retention shall comply with 34 C.F.R. §682.414.

(c) The results obtained from borrower outreach campaigns, including number of borrowers assisted and rates of successful contact.

13. *VFA Length* (a) This VFA will be effective as of October 1, 2024, and will remain in effect for two years from the effective date unless terminated earlier as provided in this VFA.

(b) This VFA may be extended for additional one-year terms upon mutual agreement by both parties at least 3 months prior to the current end date of the VFA.

(c) Either party may terminate this VFA at any time by providing written notice of the termination to the other party no less than 90 calendar days before the effective date of termination.

(d) If this VFA is terminated by either party under subsection (c) of this Section, (i) the Guaranty Agency shall remain a guaranty agency in the FFEL Program under the Existing Agreements and in accordance with the HEA and the Department's regulations as of the time of termination; and (ii) the Department shall pay the Guaranty Agency the SRF on a pro-rated basis for the month in which the termination was effective. The Guaranty Agency is not entitled to any other payment pursuant to this VFA for any period after the termination date.

(e) If this VFA and all related VFAs with other agencies are terminated unilaterally by the Department under subsection (c) of this this Section, (i) the Guaranty Agency shall remain a guaranty agency in the FFEL Program under the Existing Agreements and in accordance with the HEA and the Department's regulations as of the time of termination; and (ii) the parties agree that SAMF, as defined in Paragraph 4, shall continue to be paid to the Guaranty Agency through the shorter of 9 months or the end of the Term or Extension Term then otherwise in effect notwithstanding the termination of the VFA. This period shall be inclusive of the 90-day period in paragraph (c) of this section and the terms of paragraph (d) shall not apply. Except as set forth herein, the Guaranty Agency is not entitled to any other payment pursuant to this VFA for any period after the termination date.

(f) If there is a dispute over the amount of any payment due from the Department to the Guaranty Agency, the Department will notify the Guaranty Agency of its initial determination regarding whether any payment is due and the amount of such payment. If the Guaranty Agency disagrees with the Department's determination, the Department will give the Guaranty Agency an opportunity to submit arguments and evidence, in writing, to support its argument that a payment is due and in what amount. The Department will consider the Guaranty Agency's submission and issue a final decision within 30 days of its receipt of the Guaranty Agency's submission.

14. *Termination of guaranty agreement.* If the Guaranty Agency decides to end its role as a guaranty agency during the agreement or as part of terminating the VFA agreement, it will transfer the guarantees on loans in repayment to a different participant in a VFA at the Department's discretion. The remaining balance of any Federal fund shall be remitted to the Department.
15. *Receipt of additional loan guarantees from an exiting guarantor.* If the Department elects to transfer additional loan guarantees to the Guaranty Agency during the VFA, then the Guaranty Agency will receive the remaining prorated portion of the SAMF of the exiting guaranty agency until the next SAMF recalculation.

The exiting guaranty agency must provide records for loans it guarantees, including defaulted loans, and records it is required to maintain under 34 C.F.R. §682.414 for loans that have been paid or transferred to the Department.

16. *Transition mapping.* To ensure a smooth transition among guaranty agencies in the future, the Guaranty Agency will agree to undertake any necessary work to map their system to a potential successor agency as identified by the Department. Such mapping work must be completed within 180 days of the Department's informing the Guaranty Agency of the potential successor agency unless otherwise agreed upon by the Department.
17. *Performance measures.* The overarching objective of this VFA is to operate under a funding model that ensures stability for the FFEL program as the pool of outstanding FFEL loans is retired and to test additional models of assisting and communicating with delinquent and defaulted borrowers during this period. For each of the measures below the Department and the Guaranty Agency shall agree to the following performance measures, reported and/or measured every quarter:
 - (a) The percentage of borrowers in default who successfully consolidated out of default and apply to an income-driven repayment plan.
 - (b) The number and percentage of borrowers with valid and up-to-date contact information.
 - (c) The percentage of loans required for subrogation as identified in Section 5 that are successfully assigned to the Department within six months or the agreed upon schedule as of the date that is the latest loans can be identified for subrogation based upon when the loan most recently entered default.
 - (d) Acceptable submission rate of files for subrogation.
 - (e) The percentage of electronic Loan Verification Certificates processed within 10 business days of receipt by the Guaranty Agency.
18. *Reporting.* The Guaranty Agency shall report the following information to the Department of Education.
 - (a) Guaranty agencies should continue monthly and quarterly Form 2000 reporting and monthly and annual financial reporting to Federal Student Aid. There will be additional reporting requirements for the SRF. Guaranty agencies will continue to follow Department guidance for NSLDS reporting.
 - (b) Each month, report the overall number of outbound phone attempts, right party contacts, and emails/letters sent, as well as the unduplicated number of borrowers contacted through each of these approaches.

(c) Within 7 days of the signing of this VFA agreement, any open vacancies for executive officers (as defined in 12 CFR § 1239.2).

(d) Within 7 days of the announcement that an executive officer (as defined in 12 CFR § 1239.2) has left or is planning to leave the Guaranty Agency, including the individual's name, role, and plan for replacing that individual.

(e) Within 7 days of the hiring of any new executive officer at the Guaranty Agency.

(f) Every quarter, the number of personnel or contractor staff employed at the Guaranty Agency engaged in functions necessary to carry out the terms of this VFA, including but not limited to:

- Recordkeeping
- Maintaining systems related to borrower claims, collection, and outreach
- Compliance
- Borrower outreach and support

(g) As part of the submission in paragraph (d), if there is a reduction in staffing in any given function identified compared to the prior quarter, provide any explanations for such reduction and plans for ensuring that function will be maintained.

19. (a) The terms of this VFA shall be considered to amend the Existing Agreements between the parties. If a term of this VFA conflicts with the terms of the Existing Agreements between the parties, the terms of this VFA are controlling unless prohibited by law. Upon expiration or termination of this VFA, the Existing Agreements between the Department and the Guaranty Agency shall be reinstated to the extent those agreements are consistent with the HEA and the Department's regulations.

(b) This VFA is subject to and to the extent necessary shall be deemed to be modified by any changes to the HEA, other applicable laws and the Department's regulations in accordance with the effective date of such change. If the Guaranty Agency believes that any change to the HEA or the Department's regulations would cause a material change to the parties' ability to carry out their obligations under this VFA, the Guaranty Agency may ask the Department to waive the statutory or regulatory provision. The Department may agree to waive any such provision if permitted by law.

(c) The Guaranty Agency may subcontract any of its obligations under this VFA with the approval of the Department. The Guaranty Agency must notify the Department of any activities that the Guaranty Agency proposes to outsource to another party prior to entering into an agreement and/or contract with the party. The Department will notify the Guaranty Agency within 30 days of receiving the Guaranty Agency's notice of the Department's decision to approve or deny the

request. The Guaranty Agency is responsible for ensuring compliance with the terms of this VFA and will be liable for the actions of its subcontractors to the same extent as provided under current law and regulation.

(d) Nothing set forth herein restricts the Department's remedies under federal or state law for breach of this VFA, or in any way restricts any other administrative, civil or criminal action that could be brought by the Department or the United States against the Guaranty Agency for violation of this VFA or any statute or regulation.

(e) Notices regarding this VFA shall be sent, certified mail, return receipt requested, to the Department at the following address:

Chief Operating Officer
Federal Student Aid
830 First Street, N.E., UCP-3, 42G1
Washington, D.C. 20202

With a copy to:

Division of Postsecondary Education
Office of the General Counsel
U.S. Department of Education
400 Maryland Ave., S.W., Room 6E301
Washington, D.C. 20202

And to the Guaranty Agency at the following address:

Pennsylvania Higher Education Assistance Agency
Attention: James Steele
1200 N. 7th Street
Harrisburg PA 17102
James.Steeley@pheaa.org

(f) All references to statutes and regulations within this Agreement are to the text and subject matter of the citation as they exist on the date this Agreement is executed.

IN WITNESS WHEREOF, this VFA has been executed by the [REDACTED] officials of the
Guaranty Agency and of the Department.

Guaranty Agency

10/18/2024

Date

SIGN

James Steele
Authorized Official
President and CEO

Guaranty Agency Form and Legality Approvals

10/15/2024
Date

Jean Svoboda

Senior Vice President/Chief Legal Officer & Board Secretary

*This Agreement has been approved by the Pennsylvania Attorney General's Office by
memorandum opinion dated October 8, 2024.

U.S. Department of Education

10/21/2024

Date

MARGARET GLICK

SIGN

Margaret Glick
Deputy Chief Operating Officer PPO (A)

Commonwealth of Pennsylvania
Office of Attorney General

October 8, 2024

Subject: Voluntary Flexible Agreement
United States Department of Education
Contract # 20231852

To: Jean Svoboda
Chief Counsel
Pennsylvania Higher Education Assistance Agency

From: David E. Stover
Assistant Chief Deputy Attorney General
Legal Review Section

The referenced proposed contract has been approved for form and legality pursuant to the Commonwealth Attorneys Act, 71 P.S. §§ 732.101 et seq.

No approval or opinion is offered as to the manner of execution if the document was submitted in proposed form. No approval or opinion is offered concerning any document referenced but not submitted or any events or other occurrences giving rise to the contract's creation or submission. Our review does not extend to compliance with the laws of other jurisdictions. To the extent, if any, that such other laws may be applicable to the making or performance of the contract in any respect, the agency may want to consult with counsel in that jurisdiction.

To the extent applicable to the referenced contract, no approval or opinion is offered as to the fiscal authority of the agency to commit funds not yet appropriated. The Office of the Budget is responsible for the fiscal review of contracts pursuant to the Commonwealth Procurement Code, 62 Pa. C.S. § 327.