



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

FP-09-07

Subject: Responsibilities of Lenders Serving as Eligible Lender Trustees under the Federal Family Education Loan Program

Summary: This letter reminds a lender in the Federal Family Education Loan (FFEL) Program of its responsibility to evaluate the program capabilities of the entities for which it agrees to serve as trustee lender and to monitor the activities of those entities to ensure their compliance with applicable statutory and regulatory requirements.

Dear Colleague:

An entity which meets the definition of an “eligible lender” in the FFEL Program may serve as an eligible trustee lender (ELT) for another party that is ineligible to originate loans under the FFEL program or for other FFEL lenders. Section 436(b) of the Higher Education Act and 34 CFR §682.203(b) of the Department’s regulations specify that a lender that holds FFEL loans in a trustee capacity is responsible for complying with all statutory and regulatory requirements imposed on any other holder of a loan.

Reviews by Department staff and a recent audit by the Department’s Office of Inspector General have shown that some eligible lender trustees do not have adequate policies and procedures around the initiation and monitoring of eligible lender trustee agreements, and do not exercise sufficient oversight of the entities with which they maintain agreements. This type of oversight is particularly necessary when the trustee agreement is with an entity that is ineligible to originate loans in the FFEL program, or with a school that has not historically served as a FFEL lender. In addition, reviews by Department staff have found that trustee lenders do not have procedures in place to monitor the requirements for compliance audits or for reviewing compliance audits. As a result, the Department has found a significant number of beneficial holders not completing and submitting required audits.

The eligible lender trustee is the legal holder of the loan for purposes of the FFEL Program. If the Department determines that there was a violation of the statutory or regulatory provisions governing the FFEL Program, the Department holds the eligible lender trustee responsible for any liabilities or sanctions that may result. For example, in one recent case, a party working for the entity with which a FFEL lender served as trustee violated the regulations governing prohibited inducements. In that situation, the trustee lender was responsible for resolving the violation.

When determining whether to enter into an ELT agreement, the Department expects an eligible lender trustee to have established and documented policies and procedures under which, at a minimum, the lender:

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The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

1. Evaluates the program knowledge and management capabilities of the entity and its staff to fulfill its roles and activities under the agreement in compliance with program requirements, including the capabilities of any other parties the entity plans to retain to provide marketing, loan origination, or other student loan services;
2. Evaluates the entity's financial strength and determines and documents that the entity's funding commitments are sufficient to honor its student loan commitments and cover its related administrative expenses;
3. Examines the entity's prior history and performance in the FFEL program, if applicable, to ensure its good standing in the program;
4. Examines and documents that any loan sale and forward purchase agreements of the entity comply with program requirements; and
5. Determines and documents that the entity's system of internal controls and its information systems are adequate to protect private personal data and, if applicable, generate all required report data or reports in a timely and effective manner.

Any resulting ELT agreement should specifically address the roles and responsibilities of the parties to the agreement, consistent with the program statute and regulations, and ensure that the parties comply with legal requirements. The trustee lender should document the evaluations and examinations it performed as well as the determinations it made when considering being a trustee lender.

An eligible lender trustee is also expected to monitor the activities of any entity with which it maintains an ELT agreement, and of any other party retained by that entity, to ensure compliance with the Department's regulations for the making and servicing of FFEL loans. The eligible lender trustee should also have policies and procedures outlining its monitoring activities and document its reviews of the entity based on those requirements. An eligible lender trustee is strongly encouraged to conduct periodic, on-site reviews of any entity with which it maintains an ELT agreement.

FFEL lenders that agree to serve as eligible lender trustees for entities, particularly entities that could not otherwise participate in the program, have a responsibility to ensure that the integrity of the FFEL Program is maintained under the agreement. Trustee lenders should have the necessary written policies and procedures in place when initiating and monitoring their ELT agreements to ensure compliance with all title IV requirements. Failure to comply with these requirements could result in liabilities being assessed or administrative actions being taken against the trustee.

If you have any questions about this guidance, please contact Pam Moran by phone at (202) 502-7732 or by e-mail to pamela.moran@ed.gov.

Sincerely,

A handwritten signature in black ink that reads "David A. Bergeron". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

David A. Bergeron
Acting Deputy Assistant Secretary
Policy, Planning and Innovation
Office of Postsecondary Education