

## 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.