

ATTACHMENT C

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

COMPLETION OF A LOAN VERIFICATION CERTIFICATE (LVC)

General

The Department's regulations at 34 C.F.R. §§ 682.209(j) and 685.220(f)(1)(i), require a loan holder to complete and return LVCs (or provide the consolidating lender with a reason why the holder cannot complete the LVC) within 10 business days of receipt of the LVC. If an LVC is sent to a servicer that performs billing and/or servicing functions on behalf of a loan holder for the loan(s) for which LVC information is being requested, the servicer is the holder's agent for this purpose. Thus, the LVC must be completed and returned within 10 business days from the date it is received by the loan holder or by a servicer acting on behalf of the loan holder.

A loan holder or servicer that fails to comply with the requirement to complete and return an LVC within 10 business days of its receipt could be subject to fines or other sanctions in accordance with 34 C.F.R. Part 682, Subpart G. In addition, the Department will consider the loan holder's or servicer's record of compliance with this requirement when determining eligibility for designation as an exceptional performer under Section 428I of the HEA.

Not Providing LVC Information

The regulations allow a loan holder that cannot, because of certain limited reasons, provide the completed LVC within the 10 business-day period to explain in writing to the intended consolidating lender, within the same 10 business-day period, why it cannot do so. One such reason is the occurrence of a technical problem, such as a computer malfunction, that prevents the holder or servicer from providing the information within the 10 business-day period. In this situation, in addition to providing the written explanation within the 10-day timeframe, the loan holder must provide the required information as soon as the technical problem is resolved. It must do so without awaiting an additional request from the consolidating lender.

The only other reasons a loan holder may have for not completing and returning the requested LVC (and instead providing a written explanation as to why it cannot do so) are:

- The loan holder never held the loan;
- The loan holder held the loan but has assigned it to a guaranty agency;
- The loan holder sold the loan;
- The loan the borrower wishes to consolidate is more than 270 days delinquent and a default claim has been submitted to a guaranty agency;
- The loan has not been fully disbursed or the borrower is not in repayment status;
- A judgment has been entered against the borrower on the loan that the borrower wants to consolidate; or
- The loan the borrower wishes to consolidate is subject to collection by wage garnishment.

ATTACHMENT C

Update on Consolidation Loan Issues

Page 2

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.