UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

GEN-08-08
FP-08-07

June 18, 2008

Subject: The Ensuring Continued Access to Student Loans Act of 2008

Summary: This letter provides a summary of the recently enacted Ensuring Continued Access to Student Loans Act of 2008 and the actions the Department is taking to help ensure that postsecondary students and their parents have access to federal student loans.

Dear Colleague:

For the upcoming academic year, an estimated 8.5 million borrowers will receive approximately $72 billion in federal student loans to help meet educational expenses for attendance at colleges, universities, and other postsecondary educational institutions. In response to concerns regarding the availability of student loans for the upcoming school year, Congress passed and the President signed the "Ensuring Continued Access to Student Loans Act of 2008" (Pub. L. No. 110-227) (ECASLA). The legislation provides the Department of Education with new authority to address concerns about the availability of FFEL Program loans for the upcoming academic year. The ECASLA also increases annual and aggregate loan amounts in the FFEL and Direct Loan programs and provides relief for certain PLUS Loan borrowers whose adverse credit history is related to payments on home mortgages or medical bills. Finally, the ECASLA made important changes to the Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Programs.

Based on this legislation, the Department has designed programs that support the current Federal Family Education Loan (FFEL) Program as a successful public/private partnership. Since the enactment of the Higher Education Act of 1965, non-federal lenders have provided the majority of the capital necessary to make student loans.

On May 21, 2008, Secretary Spellings provided FFEL Program lenders with information about our comprehensive plan that ensures borrowers have access to federal student loans and encourages private lenders to continue to participate in the FFEL Program for the upcoming academic year. That plan includes four key components:

1. An offer to purchase FFEL Program loans from lenders for the 2008-09 academic year and to offer lenders access to short-term liquidity;
2. A pledge to work with the student lending community on forward looking solutions to ensure FFEL Program and other student lending programs serve the best interests of students and taxpayers for years to come;
3. An enhanced lender-of-last-resort program designed to provide access to FFEL Program loans for those students who face difficulty obtaining conventional loans; and
4. A more efficient Direct Loan program with increased capacity.

Specifically, the ECASLA includes the following provisions –

Authority to Purchase FFEL Loans **HEA section 459A**

As has been widely reported, lenders, particularly those that rely on the capital markets as a source of funds, have had considerable difficulty obtaining funds in recent months. This difficulty does not reflect on the value of student loans themselves, but on the general investor disinterest in securitizations of all kinds brought on by the subprime mortgage credit crisis. As a result of this general disruption in the capital markets, many lenders do not have access to funds at a cost that permits them to originate new loans. Section 459A of the HEA, as amended by the ECASLA, provides the Department with authority to purchase or enter into forward commitments to purchase Stafford and PLUS loans. The Department will shortly publish a notice in the *Federal Register* setting the terms under which we will use this purchase authority. We describe them briefly here.

The Department will offer FFEL Program lenders two options. Both apply only to Stafford (subsidized or unsubsidized) loans and PLUS loans (parent or graduate/professional student) that are made for the 2008-2009 academic year. Such loans are those that are made for a loan period that includes, or begins on or after, July 1, 2008, the first disbursement is made on or after May 1, 2008 but no later than July 1, 2009, and the loan is fully disbursed no later than September 30, 2009. These are the only loans eligible for the two loan purchase programs described below. FFEL Program consolidation loans are not included.

First, the Department will commit to purchase an eligible loan at a price equal to the sum of (1) the loan's outstanding principal balance as of the date of the sale, (2) accrued interest due from the borrower as of the date of the sale, (3) the 1 percent origination fee paid by the lender to the Department; and (4) $75 per loan.

Second, the Department will offer to purchase a participation interest in eligible loans. The Department will hold the participation interest until no later than September 30, 2009. The FFEL Program lender may redeem the participation interest on or before that date at a price that provides the Department a yield on its participation interest equal to the commercial paper rate plus 50 basis points (CP+50). To redeem the interest, the FFEL Program lender may use funds obtained from private sources, or it may sell the loan to the Department under the first option described earlier.

The Department is continuing to refine the pricing and terms of these programs to meet the legal requirement that they result in no net cost to the federal government and will finalize them in the *Federal Register* notice discussed earlier.

Section 459A is designed to provide temporary credit relief, and does not constitute a permanent change in the government's role in the FFEL Program. The Department remains committed to maintaining a strong FFEL Program and will continue to work with the student lending community to ensure that the FFEL Program serves the best interest of students and taxpayers.

Lender-of-Last Resort Authority **HEA section 428(j)**

The Department has been working closely with guaranty agencies in the FFEL Program over the last several months to ensure that we are prepared to effectively implement the lender-of-last resort (LLR) program should some students or parents no longer have access to FFEL Program loans through a participating FFEL Program lender. Most recently, the Department issued two Dear Colleague Letters (GEN-08-03, FP-08-03 and GEN-08-05, FP-08-05) that provide guidance to guaranty agencies and responses to specific questions about implementation of the LLR program.

Effective May 7, 2008, the ECASLA made the following changes to the LLR provisions in section 428(j) of the Higher Education Act (HEA).

Expanded LLR Loan Types

The LLR loan provisions were amended to specify that all FFEL Program loan types, except Federal Consolidation Loans, must be made available under an LLR program. Under prior law and program regulations, only Federal Stafford Loans (subsidized and unsubsidized) were required to be made under a guaranty agency's LLR program. Consolidation loans may not be made under the LLR provisions.

Terms and Conditions of LLR Loans

ECASLA amended the HEA to require that all LLR loans must be made with the statutory maximum interest rate, origination fee, and default fee applicable to the particular type of FFEL Program loan.

Institution-Wide Designation for LLR Loans

The amended HEA provides that, *through June 30, 2009*, the Secretary is authorized to designate an entire institution as eligible for LLR loans for its students and for the parents of its dependent students. The Secretary is required to develop standards for making this designation that may include:

- The institution's demonstration of its efforts to secure lenders to make conventional FFEL loans to its students before requesting institution-wide LLR services;
- A threshold for the number or percentage of the institution's students who have received rejections from eligible lenders for conventional FFEL loans; and
- Any other standards the Secretary deems appropriate.

Once an institution receives an institution-wide designation for LLR loan access, its student and parent borrowers may receive LLR loans for the specified period of the institution's designation, even if a limited number of the institution's students or parents are able to secure conventional FFEL loans. All institutional LLR designations expire on June 30, 2009.

An institution wishing to be designated as eligible for its students and parents to receive LLR loans will be required to determine the percentage of its student and parent borrowers that are not able to obtain conventional FFEL loans. If this percentage equals or exceeds 80 percent, all the borrowers at the institution are eligible for LLR loans. Before making this determination, the institution is required to demonstrate that, working with the designated guaranty agency for its state, it had made at least three attempts to find participating lenders who will make conventional FFEL loans, beyond those lenders who had previously provided FFEL loans to the institution's students. Note that, even if the institution met the threshold percentage, it may not qualify if the Department determines that, not withstanding the school's determination, there are lenders willing to make conventional FFEL loans to the institution's students. In such instances, the Department will provide the institution (and the guaranty agency) with information about those lenders.

To request that the Department determine that its students are eligible for LLR loans, the institution must provide the guaranty agency with documentation supporting its determination that 80 percent or more of its students are not able to obtain conventional FFEL loans, as well as its attempt to find other FFEL lenders. The guaranty agency would then provide to the Department its opinion of the institution's eligibility for a final determination to be made by the Department.

<u>Prohibition on Inducements or Marketing of LLR loans</u>

Guaranty agencies and lenders providing LLR loans are specifically prohibited from violating the inducement provisions of the HEA in the making of LLR loans. They are also prohibited from marketing LLR loans. However, guaranty agencies are not prohibited from disseminating information about the availability of LLR loans to the institutions in the designated state(s) for which the agency is required to provide LLR services.

<u>Loan Limits</u> **HEA section 428H**

The ECASLA raised annual loan limits for Unsubsidized Stafford Loans in both the FFEL and Direct Loan programs. *These loan limit changes are effective for loans first disbursed on or after July 1, 2008, for loan periods that include July 1, 2008 or begin on or after July 1, 2008*, and include:

- Providing an additional Unsubsidized Stafford loan amount of $2,000 for a dependent undergraduate student (except for dependent students whose parents are unable to borrow a PLUS loan whose eligibility is discussed below);
- Increasing the additional Unsubsidized Stafford Loan annual loan limit for an independent undergraduate student (or a dependent, undergraduate student whose parents are unable to borrow a PLUS loan) —

    - From $4,000 to $ 6,000 for students who have not completed the first two years of undergraduate education, and
    - From $5,000 to $7,000 for students in the third undergraduate year and beyond;
- Increasing the additional Unsubsidized Stafford Loan annual loan limit for an independent, undergraduate student in preparatory coursework necessary for enrollment in an undergraduate program from $4,000 to $6,000.

Dependent, undergraduate students whose parents are unable to borrow a PLUS loan are not eligible for both the new $2,000 annual loan limit available to dependent undergraduate students and the increased $6,000 or $7,000 additional Unsubsidized Stafford Loan annual loan limit.

The annual loan limit available for a dependent student enrolled in preparatory coursework for enrollment in an undergraduate program remains unchanged at $2,625. The additional Unsubsidized Stafford Loan limit available for preparatory coursework for enrollment in a graduate or professional program or in a teacher certification program also remains unchanged at $7,000.

The overall aggregate loan limits for all categories of undergraduate borrowers has been increased, but the portion of subsidized Stafford Loans included in those limits remains unchanged.

The changes to loan limits are summarized in Attachment A to this letter.

As noted above, these new loan limits apply only to loans where the first disbursement is on or after July 1, 2008. Thus, for loan periods that crossover July 1, 2008, the increased loan limits only apply if (1) the FFEL loan certification or Direct Loan origination provides that the first disbursement will be on or after July 1, 2008, or (2) the institution certifies or originates a supplemental loan for the loan period where the first disbursement on the supplemental loan will be on or after July 1, 2008.

We are aware that schools may have already packaged students for the 2008-2009 academic year using the prior loan limits. In those instances, the school can either re-package an otherwise eligible student with the increased loan amounts or provide notification to the student that he or she may be eligible for increased amounts of unsubsidized loans.

<u>Extenuating Circumstances for PLUS Loan Eligibility</u>   HEA section 428B(a)(3)

Effective May 7, 2008, the ECASLA establishes a specific extenuating circumstance when determining PLUS loan eligibility for parent and graduate and professional student applicants who might otherwise be considered to have an adverse credit history. A lender, in making an adverse credit determination exception, may consider that an applicant has extenuating circumstances sufficient to support PLUS loan eligibility if the PLUS applicant, *during the period beginning January 1, 2007 and ending December 31, 2009,* --

- Has been or is delinquent for 180 days or less on mortgage loan payments, or on medical bill payments for the applicant or the applicant's family, and
- Has not or is not more than 89 days delinquent on the repayment of any other debt.

The lender must retain a record of its basis for determining that such extenuating circumstances exist, and may use this determination to support a borrower's eligibility for PLUS loans for the academic year. Lenders are also encouraged to re-examine the eligibility of applicants who may have been denied previously to determine whether these extenuating circumstances exist.

<u>Grace Period for Parent PLUS Loan Borrowers</u> **HEA section 428B(d)**

For PLUS loans made to parents that are first disbursed on or after July 1, 2008, the ECASLA provides the borrower the option of beginning repayment on the PLUS loan either 60 days after the loan is fully disbursed or not until six months after the dependent student on whose behalf the parent borrowed ceases to be enrolled on at least a half-time basis.

For PLUS loans that are first disbursed on or after July 1, 2008, the HEA now requires that the interest that accrues on the loan from the date of the first disbursement until 60 days after the loan is fully disbursed be capitalized for parent PLUS borrowers who do not elect to delay repayment on the loan based on the dependent's enrollment status, and for all graduate and professional student PLUS borrowers. Lenders must notify borrowers of the capitalization and provide them the opportunity to pay the capitalized amount of accrued interest.

For parent PLUS borrowers who opt to delay repayment on a PLUS loan until six months after the dependent student for whom they borrowed ceases at least half-time enrollment, the interest that accrues on the loan prior to the delayed repayment start date may be paid, at the option of the borrower, either monthly or quarterly, or may be capitalized no more frequently than quarterly.

For interest that accrues on PLUS loans during an authorized deferment period, the borrower may choose to pay the interest either monthly or quarterly, or have it capitalized no more frequently than quarterly.

<u>Changes to the ACG and National SMART Grant Programs</u> **HEA section 401A**

Effective January 1, 2009, the ECASLA made changes to the ACG and National SMART Grant programs, as follows:

For both the ACG and National SMART Grant programs–

- Eliminates the provision that limited eligibility for grants to only U.S. citizens, and now allows eligible non-citizens to receive grants.
- Allows awards to students enrolled on a less than full-time but at least half-time basis with proportionally reduced maximum awards determined the same way as in the Federal Pell Grant Program.
- Requires the awarding of grants and the making of payments to be on the same basis as the Federal Pell Grant Program.
- Provides that eligibility for awards is based on the student's grade level instead of academic year.

For the ACG Program only –

- Authorizes awards to students enrolled in one-year and two-year certificate programs if the student is attending a two-year or four-year degree granting institution.
- Amends the provision that excluded students who had been previously enrolled in a program of undergraduate education from eligibility for first-year ACGs by creating an exception for students whose previous enrollment in an undergraduate program was part of a secondary school program of study.

For the National SMART Grant Program only –

- Authorizes grants to students attending institutions that offer a single liberal arts curriculum leading to a baccalaureate degree, under which students are not permitted by the institution to declare a major in a particular subject area. To be eligible the student must take coursework certified by the institution to be at least equal to the requirements for a National SMART Grant-eligible major at another institution that offers a baccalaureate degree in that National SMART Grant-eligible major and the student must achieve a specific grade point average. Alternatively, a student could be enrolled in a liberal arts degree program, that was offered prior to February 8, 2006, and that includes a rigorous course of study in mathematics, biology, chemistry, and physics, including at least 4 years of study in mathematics and three years of study in the laboratory sciences.
- Authorizes a fifth-year grant to students enrolled in the fifth year of a National SMART Grant-eligible program that requires five years to complete.

As noted, the changes to the ACG and National SMART Grant programs are effective January 1, 2009; however, we also note that these changes to the ACG and National SMART Grant programs may possibly be revisited in the next few weeks. Therefore, we will be providing more information about the implementation of these changes in the very near future.

Contact Information

Should you have questions concerning any of the loan programs, please contact Pamela Moran by email at pamela.moran@ed.gov or by phone at (202) 502-7732. Should you have questions concerning the ACG and National SMART Grant programs, please contact Sophia McArdle by e-mail at sophia.mcardle@ed.gov or by phone at (202) 219-7078.

Thank you in advance for working with us to effectively implement these changes.

Sincerely,

Vincent Sampson
Deputy Assistant Secretary
Office of Postsecondary Education

Annual Loan Limits for Undergraduate and Graduate/Professional Students
(changes in ***bold***)

Effective for loans first disbursed on or after July 1, 2008

Dependent Students (***excluding*** students whose parents cannot borrow PLUS)	*Base Amount Sub/Unsub* (no changes)	Additional Unsubsidized Loan Amount	
		Loans first disbursed before July 1, 2008	Loans first disbursed on or after July 1, 2008
First-year undergraduate	$3,500	0	***$2,000***
Second-year undergraduate	$4,500	0	***$2,000***
Third-year and beyond undergraduate	$5,500	0	***$2,000***

Independent Students (and dependent students whose parents cannot borrow PLUS)	Base Amount Sub/Unsub) (no changes)	Additional Unsubsidized Loan Amount	
		Loans first disbursed before July 1, 2008	Loans first disbursed on or after July 1, 2008
First-year undergraduate	$3,500	$4,000	***$6,000***
Second-year undergraduate	$4,500	$4,000	***$6,000***
Third-year and beyond undergraduate	$5,500	$5,000	***$7,000***

	Base Amount Sub/Unsub (no changes)	Additional Unsubsidized Loan Amount	
		Loans first disbursed before July 1, 2008	Loans first disbursed on or after July 1, 2008
Graduate and Professional Students	$8,500	$12,000	unchanged at $12,000

Annual Loan Limits for Preparatory Coursework and Teacher Certification (changes in ***bold***)

Dependent Students (***excluding*** students whose parents cannot borrow PLUS)	*Base Amount Sub/Unsub* (no changes)	Additional Unsubsidized Loan Amount	
		Loans first disbursed before July 1, 2008	Loans first disbursed on or after July 1, 2008
Preparatory coursework (for enrollment in an undergraduate program)	$2,625	0	0
Preparatory coursework (for enrollment in a graduate or professional program)	$5,500	0	0
Teacher certification coursework	$5,500	0	0

Independent Students (and dependent students whose parents cannot borrow PLUS)	Base Amount Sub/Unsub) (no changes)	Additional Unsubsidized Loan Amount	
		Loans first disbursed before July 1, 2008	Loans first disbursed on or after July 1, 2008
Preparatory coursework (for enrollment in an undergraduate program)	$2,625	$4,000	***$6,000***
Preparatory coursework (for enrollment in a graduate or professional program)	$5,500	$7,000	unchanged at $7,000
Teacher certification coursework	$5,500	$7,000	unchanged at $7,000

Aggregate Loan Limits (changes in ***bold***)

	Subsidized/Unsubsidized Aggregate	
	Current	Effective July 1, 2008
Dependent Students (***excluding*** students whose parents cannot borrow PLUS)	$23,000	***$31,000*** (maximum $23,000 subsidized)
Independent Students (and dependent students whose parents cannot borrow PLUS)	$46,000 (maximum $23,000 subsidized)	***$57,500*** (maximum $23,000 subsidized)
Graduate and Professional Students	$138,500 (maximum $65,500 subsidized)	unchanged at $138,500 (maximum $65,500 subsidized)