



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

GEN-10-10
FP-10-02

June 15, 2010

Subject: Implementation Guidance for the Deadline for Making Loans under the Federal Family Education Loan (FFEL) Program

Summary: This letter provides schools and lenders with important information as we approach the June 30, 2010 deadline for making FFEL Program loans. It provides responses to questions we have received on the application of the June 30 deadline in various disbursement situations.

Dear Colleague:

President Obama signed the Health Care and Education Reconciliation Act of 2010 (HCERA), Public Law 111-152, on March 30, 2010. As you know, Title II of the HCERA, the SAFRA Act, made significant changes to the federal student loan programs, including ending new loans under the Federal Family Education Loan Program. Beginning July 1, 2010, all new subsidized and unsubsidized Stafford Loans, PLUS loans made to parents and graduate/professional students, and consolidation loans can only be made under the William D. Ford Federal Direct Loan (Direct Loan) Program.

In a Dear Colleague Letter (DCL GEN-10-05), which was posted to our Information for Financial Aid Professionals (IFAP) website on May 3, 2009, we stated that we would provide the financial aid community with details on the provision of the SAFRA Act that ends the making of new FFEL Program loans as of July 1, 2010.¹ The following information, in Q&A format, provides specific guidance related to how the June 30, 2010 deadline applies to the making of FFEL program loans. Although we do not anticipate that most schools will be faced with significant issues related to the June 30, 2010 deadline, we wanted to provide detailed guidance to assist those schools that may have questions on this issue.

Unless specifically noted, all references to “students” in the following Q&As also apply to parents borrowing PLUS loans on behalf of dependent students.

¹ DCL GEN-010-05, P-10-02 also described a provision of the HCERA that impacted the Federal Pell Grant Program. See DCL P-10-03 that included revised Pell Grant Payment and Disbursement Schedules that comply with the changes made by the HCERA.

Q1 What does it mean that no new FFEL loans may be made after June 30, 2010?

A1 A FFEL loan is considered to have been “made” when the lender makes the first disbursement (see Q&A#2) of the loan by transmitting funds to the school (or in the case of a consolidation loan, when the first payment is made to a holder of a loan being consolidated). Therefore, consistent with the new law, a lender may not make a first disbursement of a FFEL loan or make a first payment to a holder of a loan for consolidation purposes after June 30, 2010.

It is important to remember that the determining factor is when the first disbursement is made, not when the school certified the loan, when the loan period began, or when the first disbursement was scheduled to be made.

Q2 The response to Q&A #1 refers to the lender making the disbursement. Isn't it the school that makes the disbursement of the FFEL loan to the borrower?

A2 Under the law and regulations governing the FFEL Program, a FFEL loan disbursement is made when the lender transmits loan funds to the school. The school then “delivers” the funds to the borrower by crediting the student’s account at the school, electronically sending the funds to the student’s financial institution, or by issuing a check or similar instrument to the student. Note that this definition of “disbursement” differs from the definition of that term in the Cash Management regulations (34 CFR Part 668, Subpart K). For all of the Title IV aid programs (including the FFEL program), the Cash Management regulations use the term “disbursement” to refer to the school’s payment of Title IV funds to the student, either by crediting the funds to the student’s school account or paying the student directly. However, throughout these Qs&As the terms “disburse” and “disbursement” always refer to the transfer of FFEL loan funds from a lender to a school.

Q3 How does the response to Q&A #1 apply to the second and subsequent disbursements of a FFEL loan when the first disbursement of the loan was made prior to July 1, 2010?

A3 Under a longstanding regulatory requirement, a FFEL lender that makes a first disbursement of a FFEL loan is obligated to make all subsequent disbursement(s) of the loan if the loan and the disbursement schedule otherwise comply with program requirements governing student eligibility and loan disbursement. Thus, if a lender makes the first disbursement of a FFEL loan on or before June 30, 2010, the lender must make the second and any subsequent disbursements of that loan, even if the subsequent disbursement(s) will be made after June 30, 2010. Failure of a lender to comply with this requirement will result in the loan losing its Federal insurance and eligibility for interest and special allowance payments.

Q4 Can you provide some examples of how the requirement explained in the response to Q&A #3 would apply over the next several weeks and months?

A4 If, for example, a school certifies a FFEL loan for a summer-only loan period of May 17, 2010 through August 15, 2010, and the FFEL lender makes the first disbursement of that loan prior to July 1, 2010, the FFEL lender must make the scheduled second disbursement of the loan for delivery to the borrower by the school at the mid-point of the loan period – on or about July 16, 2010.

Similarly, if a FFEL lender makes the first disbursement of a loan prior to July 1, 2010, for a loan period that begins on June 1, 2010 and ends on December 31, 2010, it must make the second disbursement of the loan for delivery to the borrower at the mid-point of the loan period – on or about September 15, 2010.

Or, if a loan was certified by a school that uses standard terms for a period that includes the summer 2010 term and the fall and spring terms of the 2010-2011 academic year, and the FFEL lender makes the first disbursement of that loan for the summer term prior to July 1, 2010, the FFEL lender must make the two scheduled subsequent disbursements for the Fall 2010 and Spring 2011 terms.

Q5 Do the responses to Q&A #3 and Q&A# 4 mean that all FFEL loans with first disbursements that are scheduled to take place before July 1, 2010 for the summer of 2010 will be made in full?

A5 Not necessarily. We are aware that some FFEL lenders have decided that they will not make new FFEL loans if the scheduled final disbursement of the loan will take place after a certain date specified by the lender (e.g., June 30 or September 30). As a result, schools should confirm with their FFEL lenders whether those lenders have established any policies that limit the making of new FFEL loans even if the first disbursement of the loan is scheduled to take place prior to July 1, 2010.

Q6 What should a school do if a lender asks the school to change the date of a scheduled disbursement to meet the lender's deadline as discussed in Q&A #5?

A6 As stated previously, if a FFEL lender makes the first disbursement of a loan prior to July 1, 2010, it must make all scheduled subsequent disbursements of the loan as requested by the school. Under these circumstances, the school must decide whether it wants to adjust a subsequent disbursement date in response to the lender's request (provided that the change is consistent with regulatory requirements). If the first disbursement of the loan has already been made and the school chooses not to make an adjustment, or cannot do so in

accordance with the Department's regulations, the lender must make the subsequent disbursement(s) according to the original disbursement schedule provided by the school.

However, if the first disbursement of the loan has not yet been made the lender has the right to decline to make the loan.

Q7 What should a school do if it learns that a lender chosen by one or more of its students will not make a new FFEL loan because of the lender's policy, as described in Q&A #5?

A7 The school has two options. It may, if ready to do so, originate a Direct Loan for the borrower. The borrower must be notified of the change and must complete (or have completed) a Direct Loan promissory note.

Alternatively, the school could discuss the situation with the borrower and suggest that the borrower select another FFEL lender that is willing to make the loan regardless of the date the final disbursement is scheduled to occur. Schools should check with their guaranty agencies to see if the agencies can provide a listing of lenders that will make FFEL loans, regardless of the final disbursement date. Such a listing could be provided to prospective borrowers to assist them in choosing a lender. It is important to note that this option may result in the borrower having loans made within the span of a few months by three different lenders – the lender that made the borrower's most recent FFEL loan, the new FFEL lender, and the U.S. Department of Education for the borrower's subsequent Direct Loan Program loans.

Q8 If a FFEL Consolidation Loan is made prior to July 1, 2010, can the loan amount be increased on or after July 1, 2010?

A8 Yes. If the first disbursement of the Consolidation Loan (the first payoff to a holder of a loan being consolidated) is made prior to July 1, 2010, the loan amount may be increased on or after July 1, 2010. An increase could occur for a number of reasons, including a late payoff to the holder of an underlying loan or because the borrower requests to add one or more additional eligible loan(s) to the Consolidation Loan within the 180 day add-on period, as authorized by the HEA.

The following Q&As provide examples showing the impact of the new law in various scenarios.

Q9 If the first disbursement of a FFEL loan was scheduled to be made prior to July 1, 2010, but was not made, can it be made on or after June 30, 2010?

A9 No. The fact that the first disbursement was *scheduled* to be made before July 1, 2010 is irrelevant. Since the first disbursement will not actually be disbursed by the lender prior to July 1, 2010, it cannot be disbursed as a FFEL Program loan on or after that date. The loan would have to be replaced by a loan made under the Direct Loan Program.

Q10 If the first disbursement of a FFEL loan was made prior to July 1, 2010, but the full disbursed amount was returned by the school to the lender, can that first disbursement be “reissued” after June 30, 2010?

A10 No. Once the first disbursement was cancelled, it is as though the loan was never made. The loan must be replaced by a loan made under the Direct Loan Program.

Q11 What happens if the first disbursement of a FFEL loan is made prior to July 1, 2010, with the second disbursement scheduled to be made after June 30, for example on August 25, 2010, and the school returns the first disbursement (for example, because the student did not enroll for the first part of the loan period)? Can the lender disburse what would have originally been the second and any subsequent disbursements of the FFEL loan after June 30, 2010?

A11 No. In this example, the second disbursement would now be considered to be the first disbursement of the loan, and as such, cannot be made after June 30, 2010. If a cancelled first disbursement can be rescheduled and the rescheduled first disbursement takes place prior to July 1, 2010, the remaining disbursements may be made on or after July 1, 2010. Note, however, that in order for the remaining disbursements of a FFEL loan to be made on or after July 1, 2010, the first disbursement (whether original or rescheduled) must remain in effect (that is, it must not be cancelled either before or on/after July 1, 2010).

In this example, the first disbursement meets the pre-July 1, 2010 requirement, but it was cancelled after July 1, 2010. Under these circumstances, the lender must cancel the second and all subsequent disbursements of the loan.

Q12 The first disbursement of a FFEL loan is made prior to July 1, 2010. A second disbursement is scheduled to be made, for example, on August 25, 2010. The school returns the first disbursement to the lender on July 15, 2010. Will the lender be allowed to make the second and any subsequent disbursements of the FFEL loan?

A12 No. As explained in Q&A #11, the first disbursement must have been made prior to July 1, 2010 and must remain in effect. Therefore, if a cancelled first disbursement cannot be rescheduled and re-disbursed prior to July 1, 2010, the second and any subsequent scheduled disbursements must be cancelled.

Q13 The first disbursement of a FFEL loan is made prior to July 1, 2010. The second disbursement is made after June 30, 2010, consistent with the guidance from Q&A #3. The school then cancels and returns the first disbursement to the lender after the second disbursement is made. Is this loan still considered an eligible FFEL loan even though the first disbursement was returned?

A13 Consistent with the guidance in Q&A #11, this would not be an eligible FFEL loan because upon the return of the first disbursement, the second disbursement effectively became the first disbursement, and that disbursement was made on or after July 1, 2010. In this case, the lender must cancel any scheduled subsequent disbursements and the school must return to the lender any funds it received as part of the second disbursement.

Q14 Assume a FFEL loan is guaranteed for \$2000 and the first disbursement is made prior to July 1, 2010. On or after July 1, 2010, the school determines that the borrower is eligible for additional loan funds and sends a request to the FFEL lender to increase the loan amount by \$500. Can the increased amount be added to the loan?

A14 Yes, but only if the lender's system would allow the increase to be processed as an adjustment to the existing loan that was first disbursed prior to July 1, 2010. If the lender's system would require the increase to be processed as a new loan, the resulting loan would not be an eligible FFEL loan because the first disbursement of the "new" loan would not have been made prior to July 1, 2010. In this case, the additional \$500 could be provided to the borrower under the Direct Loan Program.

Q15 If a FFEL Stafford loan is first disbursed prior to July 1, 2010, and the school later requests a reallocation between subsidized and unsubsidized Stafford Loans, may a lender undertake such a reallocation?

A15 The answer to this question depends on whether both a subsidized loan and an unsubsidized loan were first disbursed before July 1, 2010, or whether only a subsidized loan or only an unsubsidized loan was first disbursed before July 1. Even if they were disbursed and are being serviced together, a subsidized loan and an unsubsidized loan are legally separate loans, not two parts of one loan. Therefore, if both a subsidized loan and an unsubsidized loan were first disbursed before July 1, 2010, and the first disbursements of each loan remain in effect (were not cancelled), a reallocation between the subsidized and unsubsidized loans may take place after July 1, 2010. However, if only a subsidized loan or only an unsubsidized loan was first disbursed before July 1, 2010, a reallocation of subsidized and unsubsidized funds (for example, replacing an unsubsidized loan with an equal amount of subsidized loan funds) may not take place after July 1, 2010, because there was no first disbursement of the other loan type prior to July 1, 2010.

The school should check with the lender to ensure that the lender will, based on the guarantor's and lender's policies, process a reallocation of subsidized and unsubsidized loan funds when it is permissible to do so.

Please direct any questions to Pamela Moran at pamela.moran@ed.gov or at (202) 502-7732.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel T. Madzellan", with a long horizontal flourish extending to the right.

Daniel T. Madzellan

Delegated the Authority to Perform
the Functions and Duties of the
Assistant Secretary for
Postsecondary Education