



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

January 18, 2017

GEN-17-01

Subject: Treatment of Federal Family Education Loan (FFEL) Program Loans When a Borrower Asserts a Defense to Repayment

Summary: This letter provides lenders and guaranty agencies participating in the FFEL Program (collectively referred to herein as “FFEL loan holders”) with additional details about two provisions of the recently finalized borrower defense regulations—34 CFR 682.211(i)(7) and 34 CFR 682.410(b)(6)(viii). This letter also outlines the process FFEL loan holders will follow to implement these regulations, whether they do so on the effective date of July 1, 2017, or if they choose to implement them early, per the Secretary’s designation.

Dear Colleague:

The Department of Education (the Department) has received a number of inquiries from borrowers and their representatives seeking clarification on the treatment of FFEL Program Loans on which borrowers may wish to assert a defense to repayment of the loan, known as a “borrower defense.” The purpose of this letter is to clarify this process for FFEL loan holders.

On November 1, 2016, the Department issued final regulations related to borrower defense (81 FR 75926). One provision of those regulations (34 CFR 682.211(i)(7)) states that “[t]he lender must grant a mandatory administrative forbearance to a borrower upon being notified by the Secretary that the borrower has made a borrower defense claim related to a loan that the borrower intends to consolidate into the Direct Loan Program for the purpose of seeking relief...” The lender will grant this forbearance in yearly increments or for a period designated by the Secretary until the loan is consolidated or until the lender is notified by the Secretary to discontinue the forbearance. Another provision of these regulations (34 CFR 682.410(b)(6)(viii)) states, “Upon notification by the Secretary that the borrower has made a borrower defense claim related to a loan that the borrower intends to consolidate into the Direct Loan Program for the purpose of seeking relief... the guaranty agency must suspend all collection activities on the affected loan for the period designated by the Secretary.”

The Secretary designated 34 CFR 682.211(i)(7) and 682.410(b)(6)(viii) for early implementation. Therefore, FFEL loan holders may implement these provisions before they become mandatory on July 1, 2017, and we encourage them to do so.

Preliminary Determination of Potential Eligibility for Borrower Defense Claims

The Department is reviewing FFEL borrower defense claims that it has already received and will provide FFEL borrowers with a preliminary determination as to whether the borrowers are eligible for borrower defense loan discharge under Direct Loan regulations. In contrast to what

400 MARYLAND AVENUE, S.W., WASHINGTON, DC 20202
www.ed.gov

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

would be required for a borrower to qualify for a borrower defense loan discharge on a FFEL Program Loan under 34 CFR 682.209(g), a borrower may qualify for a borrower defense loan discharge on a Direct Consolidation Loan that repays a FFEL Program Loan without having to establish the provision of an improper inducement, or a referral or affiliate relationship, between the lender of the underlying FFEL Program Loan and the school.

Consolidation

For borrowers who are preliminarily determined to have a valid borrower defense claim, the Department will provide the borrower with information on how to consolidate their loans into a Direct Consolidation Loan to be eligible for relief under a borrower defense. Borrowers whose claims are determined to be ineligible for relief under a borrower defense even if they were to consolidate will be notified that their claim would not be successful.

Forbearance or Suspension of Collection Activity

When a borrower submits a borrower defense claim to the Department in connection with a FFEL Program Loan, and after the Department has determined that the borrower has provided all required information, the Department will notify the FFEL loan holder in writing to place the borrower's loan(s) into administrative forbearance (if the borrower is not in default on the loan(s)) or to suspend collection activity on the borrower's loan(s) (if the borrower is in default on the loan(s)).

When a request is made by the Department that a FFEL loan holder grant forbearance or suspend collection activity on a FFEL Program Loan, lenders and guaranty agencies who have implemented section 682.211(i)(7) or 682.410(b)(6)(viii) early will be required to place the borrower's loan(s) into forbearance or to suspend collection, whichever is applicable. For a defaulted borrower, the suspension of collection activity would include suspending any Treasury offset and/or wage garnishment processes.

FFEL Program lenders may also, for a non-defaulted FFEL loan, apply an administrative forbearance to cover any period of delinquency that exists at the time the prospective period of forbearance is granted (34 CFR 682.211(f)(2)). The administrative forbearance should be applied to the borrower's account as soon as practicable after the Department makes the request.

If a borrower contacts a FFEL loan holder requesting to shorten or remove the administrative forbearance or suspension of collection activity, or to restrict it to certain loans, the FFEL loan holder must honor the borrower's request. The Department will advise borrowers to contact their FFEL loan holder with those specific requests.

Existing regulations require the lender to notify the borrower whenever an administrative forbearance is granted and about specific items, including giving the borrower the opportunity to decline the forbearance (34 CFR 682.211(e)(1) and (e)(2)(vi)). These have not changed, and nothing in this letter affects those requirements.

If a borrower inquires about forbearance related to a borrower defense claim, FFEL loan holders should direct the borrower to the borrower defense hotline (855-279-6207) for assistance with that claim or to the borrower defense webpage, available at StudentAid.gov/borrower-defense.

Other Borrower Repayment Options

If a FFEL loan holder has applied an administrative forbearance due to a borrower defense claim, the FFEL loan holder is not precluded from discussing other available options to aid the borrower in managing his or her loan payments. For example, a borrower who is eligible for administrative forbearance who might be eligible for a zero dollar payment under the Income-Based Repayment (IBR) plan could be counseled about the benefits of the IBR plan.

Similarly, nothing in this letter prevents a FFEL borrower from entering into a voluntary agreement to repay the loan through a rehabilitation agreement, loan consolidation, other satisfactory repayment arrangements, or any other voluntary payment, as provided under current regulations. A payment on a loan for which the borrower has asserted a defense to repayment claim will not prevent the borrower's claim from being granted.

We believe that these procedures will streamline the process for borrowers and FFEL loan holders. If you have any questions about this guidance, please contact the borrower defense hotline at (855) 279-6207.

Sincerely,



Gail McLarnon,
Acting Deputy Assistant Secretary
for Policy, Planning, and Innovation