

**GUIDE FOR FINANCIAL STATEMENT AUDITS AND  
COMPLIANCE ATTESTATION ENGAGEMENTS OF  
LENDER SERVICERS ADMINISTERING THE  
FEDERAL FAMILY EDUCATION LOAN PROGRAM**



***U.S. DEPARTMENT OF EDUCATION  
OFFICE OF INSPECTOR GENERAL***

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## ABBREVIATIONS AND ACRONYMS

<u>Acronym</u>	<u>Definition</u>
AICPA	American Institute of Certified Public Accountants
AT-C	AICPA Attestation Standards (Clarified)
AU-C	AICPA Auditing Standards (Clarified)
C.F.R.	Code of Federal Regulations
DMDC	Defense Manpower Data Center's
ED	U. S. Department of Education
FFEL	Federal Family Education Loan
GAAS	Generally Accepted Auditing Standards
GAGAS	Generally Accepted Government Auditing Standards
Guide	<i>Guide for Financial Statement Audits and Compliance Attestation Engagements of Lender Servicers Administering Federal Family Education Loan Program Loans</i>
HEA	Higher Education Act of 1965, as amended
LaRS	Lender's Interest and Special Allowance Request and Report
LIBOR	London Inter Bank Offered Rate
NSLDS	National Student Loan Data System
OIG	Office of Inspector General
OIG/IS	Office of Inspector General, Investigation Services
PII	Personally Identifiable Information
SCRA	Servicemembers Civil Relief Act
Uniform Guidance	Title 2 of the C.F.R, Chapter II, Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

## **CHAPTER 1 – GENERAL REQUIREMENTS**

### **A. INTRODUCTION**

#### **A.1. PURPOSE AND APPLICABILITY**

This *Guide for Financial Statement Audits and Compliance Attestation Engagements of Lender Servicers Administering Federal Family Education Loan Program Loans* (Guide) developed by the U.S. Department of Education (ED) Office of Inspector General (ED/OIG) applies to and provides requirements and guidance for financial statement audits and compliance attestation engagements of servicers that administer or service any aspect of the Federal Family Education Loan (FFEL) Program on behalf of their lender clients.

This Guide is to be used by all lender servicers, except those servicers –

- That are State, local, or nonprofit organizations subject to a single audit in accordance with Subpart F—Audit Requirements of Title 2 of the Code of Federal Regulations (C.F.R.), Chapter II, Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), provided that the single audit covers the portfolios of the lenders the servicer contracts with.<sup>1</sup>
- That are exempt from compliance audits by 34 C.F.R. § 682.416(e)(1), as described in the Background section below.

#### **A.2. BACKGROUND**

Prior to July 1, 2010, eligible banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, State agencies, and nonprofit organizations could make loans under the FFEL program (34 C.F.R. § 682.101(a)). These entities may continue to hold FFEL program loans until they are sold to another lender, repaid, or a claim is paid on the loan. These lenders frequently hire servicers to administer FFEL program functions.

The SAFRA Act, Title II of the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, provided that, after June 30, 2010, no new student loans will be made under the FFEL program. Therefore, beginning July 1, 2010, all new subsidized and unsubsidized Stafford Loans made to students, PLUS loans made to parents and to graduate/professional students, and consolidation loans made to borrowers have been made under the William D. Ford Federal Direct Loan program.

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<sup>1</sup> Non-Federal entities that expend \$750,000 or more in Federal awards in a fiscal year are audited in accordance with the audit requirements of Uniform Guidance. Such entities with total Federal expenditures below the audit requirement threshold are exempt from audit requirements of Uniform Guidance and this Guide for that year, but records must be available for review or audit by appropriate officials of ED, ED/OIG, and the Government Accountability Office and organizations may be asked to submit to ED copies of any financial statement or compliance audits that are otherwise prepared for the organization.

Generally, a servicer that contracts with a lender to administer any aspect of the lender's programs must at least annually have an audit of its financial statements (34 C.F.R. § 668.23(d)(4)) and a compliance audit of the servicer's administration of the FFEL program loan portfolio (34 C.F.R. § 682.416(e)). A servicer is required to have a compliance audit unless (1) the servicer contracts with only one lender, and (2) the audit of that lender's FFEL programs involves every aspect of the servicer's administration of those FFEL programs (34 C.F.R. § 682.416(e)(1)). If a servicer, including any lender that has contracted with more than one other lender to administer any aspect of the FFEL program, is subject to the audit requirements of Uniform Guidance and obtains a single audit which covers the portfolio of the lenders the servicer has contracted with, then that single audit satisfies the servicer compliance audit requirement. If a servicer is not subject to the audit requirements of Uniform Guidance or does not obtain a single audit which covers the portfolios of the lenders the servicer has contracted with, then the servicer is required to obtain a compliance audit in accordance with this Guide. To satisfy the compliance audit requirement, this Guide requires an examination-level attestation engagement relating to the servicer management's assertions about certain compliance aspects of the FFEL program.

ED uses these lender servicer audits and attestation engagements to determine if the servicer complied with ED requirements and to identify and address any noncompliance and internal control deficiencies. Therefore, it is important that your findings contain adequate information to provide perspective on any matters that will allow ED to identify areas of concern and take necessary corrective action.

### **A.3. EFFECTIVE DATE AND IMPLEMENTATION**

This Guide is effective for fiscal years ending on or after June 30, 2021. Early implementation is permitted. This Guide supersedes the January 2011 edition of the U. S. Department of Education's Audit Guide, *Lender Servicer Financial Statement Audit and Compliance Attestation Guide for Lender Servicers that Service Federal Family Education Loan Program Loans*.

This Guide is organized into three Chapters:

- Chapter 1 – General Requirements. Provides the purpose, background, implementation, and effective date of this Guide.
- Chapter 2 – Financial Statement Audits. Provides specific information for conducting financial statement audits of lender servicers.
- Chapter 3 – Compliance Attestation Engagements. Provides specific information and required procedures for conducting compliance attestation engagements of lender servicers.

Throughout this Guide we use the terms “we,” “you,” and “your.” “We” means ED/OIG. “You” and “your” refer to the auditor(s) who are conducting the financial statement audit and/or compliance attestation engagement. Under generally accepted government auditing standards

(GAGAS), an auditor is an individual assigned to planning, directing, performing engagement procedures or reporting on GAGAS engagements (including work on audits, attestation engagements, and reviews of financial statements) regardless of job title. Therefore, individuals who may have the title auditor, information technology auditor, analyst, practitioner, evaluator, inspector, or other similar titles are considered auditors under GAGAS and this Guide.

You are responsible for ensuring that you are using the most current version of this Guide, and/or considering all applicable amendments to it. You should periodically review the ED/OIG website for updated information regarding this Guide at: [OIG Non-Federal Audit website](#).

If you have questions about the compliance requirements discussed in this Guide or about audit resolution, contact ED's [Financial Institution Oversight Service](#). If you have questions about any other aspects of this Guide, or if you have any comments on or suggestions about improving this Guide, please send them to [aignon-federalaudit@ed.gov](mailto:aignon-federalaudit@ed.gov).

#### **A.4. ENGAGEMENT PERIOD AND SCOPE**

For the audits and compliance attestation engagements covered in this Guide, the period covered will be the lender servicer's fiscal year.

As described in Chapter 3, Section B.1, a servicer that contracts with more than one lender may submit a single compliance attestation engagement report that covers the servicer's administration of the FFEL program for each lender with which the servicer contracts.

#### **A.5. REPORT DUE DATES AND SUBMISSION**

Financial statement audit reports and compliance attestation reports conducted in accordance with this Guide are due no later than six months after the last day of the servicer's fiscal year.

Lender servicer reports are submitted to ED through the eZ-Audit system. The eZ-Audit system is a web-based paperless single point of submission for audited financial statements and compliance attestation engagements. The servicer enters summary audit and financial data from its financial statement audit and/or compliance attestation engagement reports into a web based system, attaches a copy of each report in Adobe Acrobat (.pdf) format, and submits all information to ED via the eZ-Audit system.

Instructions for eZ-Audit registration and eZ-Audit are available at the [eZ-Audit](#) website. Questions about eZ-Audit can be e-mailed to [fsaezaudit@ed.gov](mailto:fsaezaudit@ed.gov) or by calling the eZ-Audit Help Desk at (877) 263-0780.

Servicers may contract with you to perform eZ-Audit data entry and submit the financial and/or compliance attestation engagement to the eZ-Audit system. However, it is the responsibility of the servicer to ensure that the reports are submitted within the specified deadlines. Failure to meet due dates may result in administrative proceedings leading to sanctions against the servicer.

## A.6. COORDINATING FINANCIAL STATEMENT AUDITS AND COMPLIANCE ATTESTATION ENGAGEMENTS

Although not required, we recommend that the servicer engage the same auditor to conduct the required financial statement audit in conjunction with the compliance attestation engagement.

If you are engaged to conduct the audit of the servicer's financial statements and not the compliance attestation engagement, and the total amount of revenue attributable to the FFEL Program is material to the servicer's total revenue, this Guide requires you to consider the results of the compliance attestation engagement when reporting on the financial statements for the same period. You should include evidence that you considered the results of the compliance attestation engagement in the audit documentation for the financial statement audit.

## B. PROFESSIONAL STANDARDS

The regulations at 34 C.F.R. § 668.23(d)(4) and § 682.416(e) require that the financial statement audit and the compliance audit be conducted in accordance with *Government Auditing Standards* (i.e., generally accepted government auditing standards), issued by the Comptroller General of the United States. All references to *Government Auditing Standards* are to the July 2018 revision (GAO-18-568G), available from the Government Accountability Office [Yellow Book](#) website. Specifically, the following standards apply:

- The financial statement audit must be conducted in accordance with the standards applicable to financial audits contained in *Government Auditing Standards* and, as applicable, Statements on Auditing Standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) and codified in the AU-C sections of the AICPA's Professional Standards.
- The compliance attestation engagement must be conducted in accordance with the standards applicable to examination engagements contained in *Government Auditing Standards* and, as applicable, the AICPA Statements on Standards for Attestation Engagements, which are codified in the AT-C section of the AICPA's Professional Standards. AT-C section 315, *Compliance Attestation*, is particularly relevant to compliance attestation engagements.

Please note that in addition to incorporating the AICPA's auditing and attestation standards, GAGAS contains additional requirements, including requirements pertaining to continuing professional education, independence, peer review, and conducting and reporting on audits and attestation engagements. This Guide specifically discusses some of the requirements contained in GAGAS and the AICPA standards to emphasize those matters or provide guidance on how they apply to these engagements. However, you are responsible for complying with all of the applicable requirements and being familiar with the related guidance contained in the professional standards that apply to the financial audit and compliance attestation engagement. In addition, this Guide contains specific requirements and procedures that may go beyond what would otherwise be required in a GAGAS financial audit or compliance attestation engagement. You are required to comply with these requirements in addition to the professional standards described above.



All professional standard citations are current as of the issue date of this Guide. As revisions to applicable professional standards become effective, you should modify your methodology for conducting and reporting on audits and compliance attestation engagements as needed to comply with the revised standards.

### **C. REQUIRED AUDIT/ATTESTATION COVERAGE**

GAGAS and the AICPA standards define two levels of professional requirements and use specific terminology to identify these requirements. This Guide uses these levels of requirements and terminology consistent with the standards. The two levels of requirements are unconditional requirements and presumptively mandatory requirements. Auditors must comply with unconditional requirements in all cases where the requirement is relevant. Unconditional requirements are identified using the term “must.” Auditors must also comply with presumptively mandatory requirements in all cases where the requirement is relevant, except in rare circumstances where performing the required procedure would be ineffective in achieving the intent of the requirement. In those cases, the auditor should perform alternative procedures to achieve the intent of the requirement and must document the auditor’s justification for the departure from the required procedure (i.e., why performing the required procedure would not achieve the intent of the requirement, and how performing the alternative procedure(s) were sufficient to achieve that intent). Presumptively mandatory requirements are identified using the term “should.”

Unless otherwise noted, the audit/attestation procedures in Chapters 2 and 3 are presumptively mandatory requirements. The auditor is expected to perform all of the procedures that are relevant to the particular engagement except in rare circumstances where the procedure would be ineffective in achieving the intent of the requirement. In those rare cases, the auditor must (1) document the auditor’s justification for departing from the procedure, (2) perform alternative procedures to achieve the intent of the requirement, and document how the alternative procedure achieved the intent of the requirement. In addition, the procedures in this Guide may not cover all possible circumstances that you may encounter at a particular servicer. It may be necessary for you to perform additional procedures during the financial statement audit or compliance attestation engagement due to specific circumstances encountered at the servicer or changes in compliance requirements. In such circumstances, you should supplement or revise these procedures as necessary, using professional judgment, to achieve the audit/attestation objectives and provide proper coverage.

### **D. REFERENCES AND RESOURCES**

FFEL program requirements are set forth in statutes and ED regulations, with additional guidance provided in other sources identified in this Guide. While some explanatory background is included in this Guide, you should access and refer directly to the statute, regulations, and other criteria we cite when planning and conducting the financial statement audit and compliance attestation engagement. Requirements and procedures governing the FFEL program may change from award year to award year. You can consider this Guide a “safe harbor” for identification of the compliance requirements for the FFEL program if you (1) perform reasonable procedures to

ensure that the requirements subject to the compliance attestation engagement in the Guide are current and to determine whether there are any additional provisions of federal awards relevant to the compliance requirements subject to the compliance attestation engagement that should be covered by a compliance attestation engagement under 34 C.F.R. § 682.305(c), and (2) update or augment the requirements contained in the Guide, as appropriate.

The references you should be familiar with include:

- The Higher Education Act of 1965, as amended (HEA), as codified in Title 20 of the U.S. Code, section 1001, *et seq.* The current codification is available at the Office of the Law Revision Counsel website ([U.S. Code](#)). ED’s “Dear Colleague Letters” and “Dear Partner Letters”, described below, should be reviewed for announcements of statutory changes.
- FFEL program regulations in 34 C.F.R. Part 682. All regulatory citations are to the July 1, 2019 volume unless otherwise noted. If your audit or attestation period includes a different year, you will need to look at earlier or subsequent volumes to ensure you use the regulations that were in effect during the period under review. Current regulations are available at the Electronic Code of Federal Regulations website at: [Current CFR-ED](#) and regulations for multiple years are at [CFR by Year](#).
- ED’s “Dear Colleague Letters”, “Dear Partner Letters,” electronic announcements, and publications are available at ED’s [Information for Financial Aid Professionals](#) website and the [Financial Partners Portal](#).
- The AICPA has established a Governmental Audit Quality Center. The Center’s website, many parts of which are accessible to non-members, contains links to information for auditors conducting engagements under *Government Auditing Standards*, including engagements conducted under this Guide. That website is available at: [AICPA-GAQC](#).

## **E. AUDITOR QUALIFICATIONS**

### **E.1. GENERAL REQUIREMENTS**

To conduct audits in accordance with GAGAS, auditors and audit firms should meet the standards discussed in GAGAS Chapters 3 through 5 related to (1) Ethics, Independence, and Professional Judgment; (2) Competence and Continuing Professional Education, and (3) Quality Assurance and Peer Review.

### **E.2. LICENSING REQUIREMENTS**

To conduct the financial statement and compliance attestation engagements covered by this Guide, auditors should be licensed certified public accountants, persons working for licensed certified public accounting firms, or licensed accountants in states that have multiclass licensing systems that recognize licensed accountants other than certified public accountants (GAGAS 6.04 and 7.07).

You and your audit firm should also comply with applicable provisions of the public accountancy laws and rules of the jurisdiction in which you are licensed *and* the public accountancy laws and rules of the jurisdiction where the engagement is being conducted. If the servicer is located in a jurisdiction outside your home jurisdiction, this Guide requires that you document, in the audit/attestation work papers (or a central file at the firm available upon request), that you complied with the applicable jurisdiction's public accountancy licensing requirements in effect at the time the audit/attestation engagement was conducted.

Practice mobility for certified public accountants is the general ability of a licensee in good standing from a substantially equivalent state to gain practice privilege outside of their home state without getting an additional license in the state where they will be serving a client or an employer. The AICPA and National Association of State Boards of Accountancy have developed an online tool to help certified public accountants and accounting firms understand the implications of mobility and assist in determining whether mobility applies to their situation. The tool is located at [CPAMobility.org](http://CPAMobility.org)

### **E.3. INTERNAL AUDITORS**

A servicer's internal auditors are not independent of the servicer when auditing/attesting within it. Therefore, internal auditors cannot conduct financial statement audits or compliance attestation engagements prescribed by this Guide.

You may consider the work of internal auditors in conducting a financial statement audit or compliance attestation engagement. You should follow AU-C § 610, *The Auditor's Consideration of the Internal Audit Function in an Audit of Financial Statements* or AT-C § 205.39-44 *Using the Work of Internal Auditors* in an examination engagement, as applicable, depending on the type of engagement to be conducted and whether you're using the work of the internal audit function in obtaining evidence or using internal auditors to provide direct assistance.

## **F. AUDIT QUALITY AND AUDIT DOCUMENTATION**

### **F.1. AUTHORITY**

The regulations at 34 C.F.R. § 668.23(e)(1) provide that servicers must require an individual or firm conducting an audit of their program to give ED and ED/OIG access to records, audit/attestation documentation, or other documents necessary to review the audit/attestation engagement, including the right to obtain copies of those records or documents.

The Inspector General Act of 1978 requires Inspectors General to take appropriate steps to ensure that any work performed by Non-Federal auditors complies with applicable standards. Accordingly, we select audits/attestation engagements and conduct (or engage contractors to conduct on our behalf) Quality Control Reviews of work performed by Non-Federal auditors, including audits/attestation engagements conducted in accordance with this Guide. Also, ED officials monitor and resolve audit/attestation engagement findings of participating servicers.

Such monitoring and audit/attestation engagement resolution may require access to and copies of audit/attestation documentation.

All audit/attestation supporting documentation must be made available, and photo or electronic copies of audit/attestation documentation provided upon request to ED, ED/OIG, or their contractors or representatives.

## **F.2. DEFICIENT AUDIT/ATTESTATION WORK**

If quality deficiencies in the audit/attestation report or the associated documentation of work are found during a Quality Control Review, we may instruct you to take corrective action. If we determine that the report and/or documentation of work are unacceptable (i.e., contains quality deficiencies that may affect the reliability of the audit/attestation report and/or may require the auditor to conduct additional audit/attestation work to support the opinions in the report under review), we may refer the matter to the appropriate licensing bodies in the state in which you are located and/or to professional associations of which you are a member. Action may also be initiated to debar you from further participation in audits and attestation engagements of Federal programs. We may also recommend that ED reject the audit/attestation reports.

## **F.3. RETENTION OF AUDIT/ATTESTATION DOCUMENTATION**

You should retain audit/attestation documentation and reports for a minimum of five years (AU-C § 230.17 and AT-C § 105.36) after the date of issuance of the financial statement audit report and/or compliance attestation engagement report to the servicer, unless a pertinent law or regulation provides for a longer retention period, or you are notified in writing by ED or ED/OIG to extend the retention period. You should keep all records questioned by an audit or attestation engagement, investigation, or other review until the resolution of the questioned items.

## **F.4. CONFIDENTIALITY OF COMMERCIAL INFORMATION IN AUDIT/ATTESTATION DOCUMENTATION**

Confidential commercial information, as defined by the Freedom of Information Act, means trade secrets and commercial or financial information that is privileged or confidential. If your audit/attestation documentation contains confidential commercial information, you should take appropriate steps to identify that information in the audit/attestation documentation to protect its confidentiality.

If we request you submit audit/attestation documentation (electronically or photocopies) and we subsequently receive a request under the Freedom of Information Act for information that you have designated as confidential commercial information, we will make an independent determination under the Freedom of Information Act of whether that information meets the criteria for exemption from release. To the extent permitted by law, we will make a good faith effort to notify you and provide you with an opportunity to object if we disagree with your identification of the information as confidential commercial information. We will also make a good faith effort to provide the servicer an opportunity to object if the confidential commercial information concerns the servicer.

If you have not designated the information as confidential commercial information in the audit/attestation documentation, we may assume that it does not include such information and may release it in response to a Freedom of Information Act request.

## **G. PRIVACY RIGHTS OF STUDENTS AND PARENTS AND AUDITOR ACCESS TO RECORDS**

Personally Identifiable Information (PII) is defined by 34 C.F.R. § 99.3 as any information about an individual maintained by an agency or its servicer that can be used to distinguish or trace an individual's identity, such as his or her name, social security number, date and place of birth, mother's maiden name or any other personal information which can be linked to an individual and is prohibited in the compliance audit/attestation engagement report.

The Family Educational Rights and Privacy Act requires schools and servicers administering funds to protect the privacy of student and parent records. According to 34 C.F.R. § 99.31(a)(4), the servicer can make PII available to you without a student's or parent's consent if that disclosure is for the purpose of determining eligibility for the aid received, the amount of aid received, the conditions for the aid received, or enforcing the terms and conditions of the aid. Financial statement and compliance attestation engagements conducted under this Guide are required under ED regulations for such purposes. If the servicer refuses to provide PII to you necessary to conduct any part of the engagement, immediately contact the ED/OIG Non-Federal Audit Team at [oignon-federalaudit@ed.gov](mailto:oignon-federalaudit@ed.gov) for advice on how to proceed. Please note that you are also required to maintain the confidentiality of PII and may only disclose it for authorized purposes.

## **H. PROCEDURES APPLICABLE TO ALL ENGAGEMENTS**

### **H.1. REPORTING FRAUD**

In conducting the audit or attestation engagement, you should exercise due professional care when pursuing any indication of fraud, so that potential future investigations or legal proceedings are not compromised. If you detect indications of fraud related to FFEL program funds, or if you learn that management identified possible fraud related to FFEL program funds and failed to report the possible fraud, you must report this immediately to the appropriate regional office of ED/OIG's, Investigation Services (OIG/IS) in accordance with this Guide, AU-C § 240.42, and GAGAS 6.13/7.15. A listing of these offices and contact information can be found on [OIG/IS website](#).

After reporting the matter immediately, promptly prepare a separate written report concerning fraud or indications of such activities. The report must include all information required for reporting a finding as outlined in GAGAS 6.50-6.52/7.48-.50. This report must be submitted to the appropriate ED OIG/IS regional office either within 30 days after the date of discovery of the act, or within the time frame agreed to by you and the ED OIG/IS. The transmittal should request ED OIG/IS to reply by letter or email to you to acknowledge receipt of the report. It should also request that ED OIG/IS (1) advise you if you can also submit the separate written

report with your financial audit and/or compliance attestation engagement reports to ED, and (2) whether you can reflect the contents of the separate report in your financial audit and/or compliance attestation engagement reports. You should retain the ED OIG/IS acknowledgment in your audit/attestation documentation.

You should not submit the separate written report with your financial audit and/or compliance attestation engagement reports to ED, unless the ED OIG/IS has advised you in writing that you may do so. Also, you should not reflect the contents of the separate report in your financial audit and/or compliance attestation engagement reports, unless the ED OIG/IS has advised you in writing that you may do so. If excluding this information from your financial audit and/or compliance attestation engagement reports would cause a departure from auditing/attestation standards, contact the Non-Federal Audit team at [oinon-federalaudit@ed.gov](mailto:oinon-federalaudit@ed.gov) to discuss how the matter should be handled.

## **H.2. ENGAGEMENT LETTER**

An engagement letter between you and the servicer should be prepared and should include the following:

- A statement that the engagement is to be conducted in accordance with GAGAS and this Guide.
- A description of the scope of the engagement and the related reporting that will meet the requirements of this Guide.
- A statement that the auditor(s), the audit firm, its partners, assigned audit staff or contractors capable of substantially influencing the development or outcome of the engagement are not currently debarred from participating in any procurement and non-procurement transactions of any Federal executive branch agency.
- Disclose the names of any contractors, or staff of the auditor or the firm, that will be working on the engagement that are debarred from participating in any procurement and non-procurement transactions of any Federal executive branch agency.
- A statement that both parties understand that ED will use the auditor's report to help carry out its oversight responsibilities of the FFEL program.
- A statement that the servicer provides the auditor all required representations and assertions, as well as the required corrective action plan if findings are disclosed during the financial statement auditor or compliance attestation engagement.
- A statement that the servicer has informed the auditor of early implementation on any regulatory changes.

- A statement that for the preceding five years the servicer has not been limited, suspended, or terminated by ED nor had they been cited for failure to submit required audits/attestation engagements.
- A statement that the servicer understands that the auditor is required to immediately report to the ED's OIG, Investigation Services any indications of fraud related to FFEL program funds or any possible fraud identified by management that was not appropriately reported.
- A provision that the auditor should provide upon request from ED, the ED/OIG, or their representatives, access to audit/attestation documentation, including access to audit/attestation information stored in electronic format, and including the ability to retain copies of that information in paper or electronic form.
- A provision that the auditor should retain audit/attestation documentation and reports for a minimum of five years after the date of issuance of the auditor's report(s) to the entity, unless a pertinent law or regulation provides for a longer retention period, or the auditor is notified in writing by ED or us to extend the retention period.
- A provision that the auditor provides a copy of his/her firm's most recent external peer review report to the servicer procuring the auditor's services when requested, and will provide any subsequent external peer review reports during the life of the contract, when requested.

## **CHAPTER 2 – FINANCIAL STATEMENT AUDITS**

This chapter provides guidance to you and sets forth specific requirements for auditing financial statements of servicers that enter into a contract with a lender to administer any aspect of the lender's programs. Chapters 1 and 2 of this Guide set out the requirements for auditing financial statements. The AICPA Audit Guide, *Government Auditing Standards and Single Audits*, Chapters 1-4, is a resource that auditors may find useful when conducting audits of financial statements in accordance with GAGAS. As stated in Chapter 1, Section B, some financial statement audit requirements contained in GAGAS and the AICPA standards are specifically discussed in this chapter, but you are responsible for complying with all of the applicable requirements.

### **A. FINANCIAL STATEMENT REQUIREMENTS**

According to 34 C.F.R. § 668.23(d)(4), a servicer that contracts with a lender to administer any aspect of the lender's programs must submit annually an audited financial statement. The financial statement must be prepared on the accrual basis in accordance with generally accepted accounting principles and audited by an independent auditor in accordance with GAGAS and this Guide. As described in Chapter 1, Section A.1, this Guide does not apply to servicers that are State, local, or nonprofit organizations subject to single audits in accordance with the audit requirements of Uniform Guidance, provided that the single audit covers the portfolio of the lenders the servicer has contracted with.

Generally, a servicer's financial statements are audited in accordance with auditing standards generally accepted in the United States. If the servicer is an entity covered by the Sarbanes-Oxley Act of 2002, the audit is conducted and reported in accordance with standards promulgated by the Public Company Accounting and Oversight Board.

### **B. FINANCIAL STATEMENT REPORT PACKAGE CONTENTS**

The financial statement report consists of the components described in this section.

- **Title Page.** The title page is the first page of the report. It must clearly state the name of the audited servicer and the fiscal year ending date.
- **Opinion on Financial Statements.** This is your report stating that you performed the audit in accordance with GAGAS and GAAS *and* providing your opinion on the fairness of the presentation of the servicer's financial statements.
- **Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*.** In this report you should identify all identified significant deficiencies and material weaknesses in internal control over financial reporting.



An example of the Schedule of Findings and Questioned Costs is shown in Chapter 3, Section D.8-4. Refer to the current version of the AICPA Audit Guide, *Government Auditing Standards and Single Audits* for guidance on reporting under GAAS and GAGAS and example reports. You may also access illustrative reports excerpted from this AICPA Guide at the AICPA Governmental Audit Quality Center located at the following link:

[\*AICPA GAQC - Illustrative Auditor's Reports\*](#)

If the servicer is an entity covered by the Sarbanes-Oxley Act of 2002, the audit is conducted and reported in accordance with standards promulgated by the Public Company Accounting and Oversight Board.

## CHAPTER 3 – COMPLIANCE ATTESTATION ENGAGEMENT

### A. INTRODUCTION

In accordance with the FFEL program regulations at 34 C.F.R. § 682.416(e), a lender servicer must have an independent audit of its administration of the FFEL program loan portfolio unless (1) the servicer contracts with only one lender and (2) the audit of that lender's FFEL programs involves every aspect of the servicer's administration of those FFEL programs. The compliance audit must examine the servicer's compliance with the HEA and applicable regulations as well as examine the servicer's financial management of its FFEL Program activities (34 C.F.R. § 682.416(e)(2)). The compliance audit must be conducted in accordance with *Government Auditing Standards* and this Guide. As described in Chapter 1, Section A.1, this Guide does not apply to servicers that are State, local, or nonprofit organizations subject to single audits in accordance with the audit requirements of Uniform Guidance, provided that the single audit covers the portfolios of the lenders the servicer has contracted with. To satisfy the compliance audit requirement, this Guide requires an examination-level attestation engagement relating to the servicer management's assertions about certain compliance aspects related to the FFEL program.

This chapter discusses planning considerations and identifies the compliance requirements, attestation objectives, and attestation procedures for compliance requirements pertaining to the FFEL program that must be tested in the compliance attestation engagement when applicable to the audited entity.

#### A.1. MANAGEMENT'S ASSERTIONS AND REPRESENTATIONS

Management's written assertions are the basis for the auditor's testing and therefore are an integral part of the engagement. The servicer should provide its management's assertions in a letter to you. In their letter, the servicer's management should assert that it complied with applicable requirements for each of the requirements described in Chapter 3, Section C for which it provided service. If the servicer did not comply with one or more of the compliance requirements, servicer management must modify its assertions to disclose the noncompliance. If a servicer does not perform all functions addressed by a single assertion, that assertion must be modified. A modified assertion must clearly distinguish the responsibilities of the lender and the lender servicer.

You are responsible for drawing a conclusion on the servicer's compliance with the compliance requirements applicable to the contracted services or functions, regardless of whether the contracted services or functions are provided by the servicer or by a subcontractor.

Servicers must maintain or have access to sufficient information to make the assertions. In cases where a servicer has subcontracted its contractual responsibilities for FFEL program requirements covered in this Guide, the auditor should perform the required procedures at the subcontractor. To the extent that information and documentation needed to determine the

servicer's compliance with criteria for the applicable attestation objectives is not available, you should conclude that you are unable to obtain sufficient evidence on which to base an opinion on compliance with the applicable requirements. This would result in disclaiming an opinion on the servicer's compliance with the requirements.

You should also obtain required written representations from the servicer's management as part of the compliance attestation engagement. Guidance on obtaining written representations as part of the compliance attestation engagement is available at AT-C § 205 *Examination Engagements*, paragraph 50; and §315 *Compliance Attestation*, paragraph 17. If the scope of a compliance attestation engagement is restricted because the servicer refused to furnish the appropriate written assertions or representations, ED may initiate administrative proceedings leading to sanctions against the servicer.

Servicer management's written assertions and compliance representations must be submitted with the servicer's annual compliance attestation engagement report package.

## **B. PLANNING CONSIDERATIONS FOR THE COMPLIANCE ATTESTATION ENGAGEMENT**

The objective of a compliance attestation engagement is to assess a servicer's compliance with criteria established by provisions in the HEA and regulations and to obtain sufficient evidence on compliance to form an opinion. The following are common to all compliance attestation engagements conducted in accordance with this Guide.

### **B.1. CONTRACTING WITH MORE THAN ONE LENDER**

A servicer that contracts with more than one lender may submit a single compliance attestation engagement report that covers the applicable compliance requirements in Chapter 3 relating to the servicer's administration of the FFEL program for each lender with which the servicer contracts.

### **B.2. REFERENCE MATERIALS**

In addition to the references and resources specified in Chapter 1, Section D, to conduct a compliance attestation engagement, you must be familiar with the [Financial Management System Lender Reporting Application External User Guide](#).

You should also be familiar with the servicer's (and/or its clients') —

- Written procedures relating to how it administers servicing of client's responsibilities under the FFEL program
- Lender's Interest and Special Allowance Request and Report (LaRS)
- Summary and detailed loan records and supporting loan documents

- Contracts with lenders, or other records evidencing the functions for which the lender(s) have contracted with the servicer to perform, and servicer billings submitted or prepared during the fiscal year

You must be familiar with the relevant provisions in the referenced materials listed above, and in any other materials we cite in this Guide. Program requirements may change at any time, and you must ensure that you use the guidance that is in effect during the audit period. You must do this by obtaining our most current Guide update at: [OIG Non-Federal Audit website](#).

### **B.3. ATTESTATION RISK**

The attestation documentation should evidence your assessed level of risk. Attestation risk is the risk that you express an inappropriate opinion or conclusion, as applicable, when the subject matter or assertion is materially misstated. You should design and implement overall responses to address the assessed risks and should obtain sufficient appropriate evidence to reduce attestation risk to an acceptably low level (AT-C § 105.10 and AT-C § 205.19-.20).

### **B.4. CONSIDERING INTERNAL CONTROL IN THE COMPLIANCE ATTESTATION ENGAGEMENT**

Relevant guidance for the consideration of internal control in the compliance attestation engagement is provided in AT-C § 205 and AT-C § 315.

To meet the objectives of this Guide, you should document your understanding of internal control over compliance for each compliance assertion sufficient to plan the engagement and to assess control risk. In order to obtain this understanding, you should inquire of management, supervisors, and staff personnel; inspect the servicer documents; and observe the servicer's activities and operations.

The FFEL program may be administered by more than one organizational component within a servicer or by a separate entity that the servicer subcontracts with to perform its contractual responsibilities. A component or subcontractor may maintain separate or different internal control, policies, and/or procedures for ensuring compliance. In such cases, you should assess the controls in place at each component or subcontractor that administers a material portion of the program activity. This should involve obtaining an understanding of the functions performed on behalf of the lender and the servicer by the subcontractor.

A deficiency in internal control over compliance exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct noncompliance with a compliance requirement of the FFEL program on a timely basis. Consistent with GAGAS 7.42, for all compliance attestation engagements conducted in accordance with this Guide, you should report identified deficiencies in internal control over compliance that are material weaknesses and significant deficiencies in internal control over compliance, as defined below:

*Material Weakness:* A deficiency or combination of deficiencies in internal control over compliance that results in a reasonable possibility that a material noncompliance with a type of compliance requirement will occur that will not be prevented, or detected and corrected, on a timely basis.

*Significant Deficiency:* A deficiency, or combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet is important enough to merit attention by those charged with governance.

## **B.5. CONSIDERING FRAUD IN THE COMPLIANCE ATTESTATION ENGAGEMENT**

Relevant guidance for the consideration of fraud in the compliance attestation engagement is provided in AT-C § 205. During the engagement, you should consider whether your risk assessment procedures and other procedures related to your understanding of the servicer's compliance indicate risk of material noncompliance due to fraud. You should also make inquiries of appropriate parties to determine whether they have knowledge of any actual, suspected, or alleged fraud, evaluate whether there are unusual or unexpected relationships that indicate risks of material noncompliance due to fraud, and respond appropriately to fraud or suspected fraud (AT-C § 205.32-.33).

## **B.6. MATERIALITY FOR PURPOSES OF PROVIDING COMPLIANCE OPINION**

Materiality for purposes of compliance differs from materiality for financial reporting purposes. In accordance with AT-C § 205.16 and § 315.12, for compliance attestation engagements, you should consider materiality for each type of compliance requirement. Materiality should be considered in the context of qualitative factors and, when applicable, quantitative factors. Keep in mind that consideration of materiality is affected by the nature of the compliance requirements, which may or may not be quantifiable in monetary terms. You should issue a qualified or adverse opinion when reporting instances of noncompliance that individually or collectively are material in relation to each type of compliance requirement.

## **B.7. SAMPLING METHODOLOGY**

Many of the required procedures described in this Chapter provide for the use of a sample to test lender servicer's compliance. Unless the required procedure prescribes a sample size, auditors should refer to AT-C § 205.31 and the AICPA Audit Guide *Audit Sampling* in determining the appropriate sample size. Samples must be representative of the clients' FFEL Program portfolios that are serviced and should relate to an attestation objective.

In selecting a sample, consideration should be given to the systems used to provide services and the sample(s) should also include transactions that flow through all systems used by the servicer. For example, if a servicer provides a type of assistance, in applying the required procedures, you should include a sample of actions from those affecting all clients for whom this service is provided in evaluating compliance with regulations and requirements.

The attestation documentation should describe the sampling methodology that has been employed, including information that identifies the size and content of the universes from which samples are drawn, including number of transactions/events and, if applicable, total dollar values associated with the universes.

#### **B.8. SAMPLE RESULTS THAT REQUIRE PROJECTIONS**

If you determine that material noncompliance exists within one of the samples, you should report an estimated total for Title IV questioned costs where the standard error of the estimate does not exceed 12% of the estimate. The estimate for total amount of questioned costs should have sufficient precision so that the margin of error, or the amount added to or subtracted from the point estimate for a 90% confidence interval, does not exceed one-fifth of the estimate. An expanded sample may be required in order to achieve this confidence level. Additionally, you should estimate the percentage of errors. Sampling results for samples requiring projection must include information on the population, sample size, error found in the sample, projected total questioned costs, and projected error rate. For estimated costs or attribute percentages, precision should be expressed with 90% confidence intervals for the estimates.

#### **B.9. REPORTING NONCOMPLIANCE**

All noncompliance identified by you during the compliance attestation engagement, and all material noncompliance identified by the servicer and disclosed to you during the engagement, should be reported as findings in the Schedule of Findings and Questioned Costs. This applies even when corrective action was taken by the servicer after becoming aware of the noncompliance. The only exception is for matters concerning fraud or indications of fraud that cannot be reported per the provisions of Chapter 1, Section H.1.

As part of the written representations obtained from the servicer's management, you should request written representations stating that management has disclosed to you all deficiencies in internal control of which it is aware and its knowledge of any actual, suspected, or alleged noncompliance (AT-C § 205.50i). The servicer's disclosure to you should include, but is not limited to, any noncompliance self-reported to ED.

Findings affecting specific transactions should identify each lender for which transactions are affected and summarize the effect for each lender's transactions. Attestation documentation should identify specific transactions by affected lender.

#### **B.10. FOLLOW-UP ON RESOLUTION OF PRIOR FINDINGS**

In accordance with GAGAS 7.13, you should evaluate whether the servicer has taken appropriate corrective action to address findings and recommendations from previous engagements that could have a significant effect on the subject matter. When planning the engagement, you should ask management to identify previous audits, attestation engagements, program reviews, and other studies that directly relate to the servicer's compliance with the FFEL program requirements in this Guide, including whether related recommendations have been implemented. From the records of the servicer, you should review each finding contained in each report and all

correspondence between the servicer and the report issuer, including any final determinations, that relates to the resolution of the finding(s). You should determine whether each prior finding has been resolved. You should use this information in assessing risk and determining the nature, timing, and extent of current work and determining the extent to which testing that corrective actions have been implemented is applicable to the current engagement objectives.

### **C. COMPLIANCE REQUIREMENTS AND ATTESTATION PROCEDURES**

This section identifies and describes compliance requirements lenders must meet. Except for the management assertions, you should consider the term “lender” referred to in this section as applying to a servicer acting on behalf of the lender. This section also establishes the attestation procedures you should perform to determine whether these requirements have been met. Auditor judgement is necessary to determine whether the required procedures are sufficient to achieve the stated attestation objectives or whether alternative attestation procedures are needed. Therefore, you cannot consider this Guide to be a “safe harbor” for identifying the attestation procedures to apply in a particular engagement.

Lenders are required to submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary in accordance with 34 C.F.R. § 682.305(a). The LaRS is used by ED to calculate interest subsidies and special allowance payments due to lenders and excess interest owed ED. It is also used to obtain information about the lender’s FFEL program portfolio. For lenders to receive payments of interest benefits and special allowance payments, accurate, complete, and timely quarterly reports must be submitted to ED on the LaRS. The lender must submit fully completed quarterly LaRS to ED even if the lender is not owed, or does not wish to receive interest benefits or special allowance payments from ED.

The use of the LaRS data is the subject of several compliance requirements in this Guide which identify the need to test specific items in these reports. For audit efficiency, you may want to test the requirements in sections C.1.1 “Interest Benefits and Rebate Fees;” C.1.2 “Special Allowance Payments;” C.2.1 “Loan Records;” C.2.3 “Loan Sales, Purchases, and Transfers;” and C.4.3 “Curing Due Diligence and Timely Filing Violations” at the same time. You should test the data in the LaRS submitted and accepted by ED during the attestation period.

**C.1. INTEREST BENEFITS AND SPECIAL ALLOWANCE PAYMENTS**

This section covers compliance requirements the servicer may perform related to payments of interest benefits and special allowances.

**Required Management Assertion**

**[Servicer] complied with all criteria effective during the attestation period, as appropriate, for the Interest Benefits and Special Allowance Payments attestation objectives included in Chapter 3, Section C of the *Guide for Financial Statement Audits and Compliance Attestation Engagements of Lender Servicers Administering Federal Family Education Loan Program Loans*, as applicable to our clients.**

**C.1.1. Interest Benefits and Rebate Fees***Attestation Objective:*

Determine whether the interest benefits were accurately calculated and billed to ED and that the Consolidation Loan rebate fees were accurately calculated and reported on a monthly basis to ED.

*Background:*

ED pays the lender, on behalf of a borrower, a portion of the interest on eligible FFEL Program loans during certain periods. This payment is known as interest benefits. Generally, ED's obligation to pay interest benefits to a lender ceases when the eligible borrower enters repayment status and does not qualify for a deferment, or with certain other date-specific events. The information needed for ED to calculate interest benefits is reported in Part II of the LaRS.

***Payment of Interest Benefits***

In accordance with 34 C.F.R. §682.300, ED pays the lender interest benefits on eligible FFEL Program loans (subsidized Stafford and certain Federal Consolidation Loans) on behalf of a qualified borrower during certain periods described at 34 C.F.R. §682.300(b)(1), including during:

- a. All periods prior to the beginning of the repayment period;
- b. Any period when the borrower has an authorized deferment; and
- c. A period that does not exceed three consecutive years from the established repayment period start date on each loan under the income-based repayment plan and that excludes any period during which the borrower receives an economic hardship deferment, if the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's loan or on the qualifying portion of the borrower's Federal Consolidation Loans.

In accordance with 34 C.F.R. §682.301(a)(3), Federal Consolidation Loans borrowers qualify for interest benefits during authorized periods of deferment on the portion of the loan that does not



represent Health Education Assistance Loans if the loan application was received by the lender on or after:

- January 1, 1993, but prior to August 10, 1993;
- August 10, 1993, but prior to November 13, 1997, if the loan consolidates only subsidized Stafford loans; or
- November 13, 1997, but prior to July 1, 2010, for the portion of the loan that repaid subsidized FFEL loans and Direct Subsidized Loans.

The applicable interest rates for FFEL Program loans are given at 34 C.F.R. § 682.202(a). Interest benefits due the lender may be calculated by using either the average daily balance or actual accrual methods described in 34 C.F.R. §682.304(a) through (c).

### ***Servicemembers Civil Relief Act Interest Rate Cap***

Section 428(d) of the HEA (20 USC 1078(d)) provides that the requirement of the Servicemembers Civil Relief Act (SCRA) (50 USC App. 527), which limits the interest rate on a borrower's loan to six percent during the borrower's active duty military service, applies to FFEL loans. This limitation applies to borrowers who were in military service as of August 14, 2008. The SCRA interest rate limit does not apply to an endorser to a PLUS loan made to a parent or graduate/professional student unless that individual is also performing eligible military service. The regulations implementing the SCRA are found at 34 C.F.R. § 682.202(a)(8).

FFEL lenders must use the Defense Manpower Data Center's (DMDC) SCRA website at least monthly to identify borrowers who are in military service status for the purpose of determining eligibility for the six percent interest rate cap. Once a borrower's status and service dates have been confirmed using the DMDC, the loan servicer must use the DMDC-generated certification information in lieu of requiring a request from the borrower and a copy of the servicemember's military orders to support the borrower's receipt of the SCRA interest rate limitation. A borrower may provide the loan holder with alternative evidence of military service status to demonstrate eligibility if the borrower believes that the information contained in the DMDC database is inaccurate or incomplete. When the loan servicer applies the SCRA's interest rate limitation to a borrower's account, it must notify the borrower in writing within 30 days that the interest rate on the loan has been changed. (34 C.F.R. § 682.208(j))

### ***Termination of Interest Benefits***

Generally, ED's obligation to pay interest benefits to a lender ceases when the eligible borrower enters repayment status and does not qualify for a deferment. Interest benefits to the lender also terminates with certain date-specific events enumerated in 34 C.F.R. §682.300(b)(2).

### ***Consolidation Loan Interest Payment Rebate Fee***

Under §428C(f) of the HEA (20 USC 1078-3(f)) and 34 C.F.R. §682.406(a)(12)(ii-iv), consolidation loan interest payment rebate fees are required on a monthly basis from lenders that hold Federal Consolidation Loans with first disbursements after October 1, 1993. Generally, the monthly rebate fee is .0875 percent (1.05 percent annualized) of the unpaid balance of the

principal and the accrued unpaid interest on all Federal Consolidation Loans disbursed after October 1, 1993, and held by the lender on the last day of the month. However, for loans based on applications received during the period October 1, 1998 through January 31, 1999, inclusive, the monthly rebate fee is .05167 percent (0.62 percent annualized) of the unpaid balance of principal and accrued unpaid interest.

Consolidation Loan rebate fees are reported monthly using the FFEL Consolidation Loan Rebate Fee Report and Remittance Form (*OMB No. 1845-0046*).

*Criteria:* 34 C.F.R. § 682.202(a)

34 C.F.R. § 682.208(j)

34 C.F.R. § 682.300

34 C.F.R. § 682.301

34 C.F.R. § 682.304(a) through (c)

34 C.F.R. § 682.406(a)(12)(ii)

*Guidance:* [DCL GEN-16-08](#); Subject: Approval of the Servicemembers Civil Relief Act (SCRA) Interest Rate Limitation Request for the Direct Loan and FFEL Programs  
[FFEL Variable Interest Rates](#)  
[Pay.gov Funds Remittance Guide for FFEL Lenders](#)

*Required Procedures:*

Select a representative sample of loans from the universe of lender client loans:

- C.1.1.a Determine that the loans are assigned the correct interest rate in accordance with 34 C.F.R. § 682.202(a) and are reported in the correct interest rate category in the LaRS.
- C.1.1.b. Test the accuracy of the average daily balance or actual accrual method for interest benefits calculations by recalculating amounts or by using reasonableness tests.
- C.1.1.c. Determine that the servicer used the DMDC's SCRA website to identify borrowers eligible for the SCRA interest rate limit of six percent.
- C.1.1.d. For instances in the sample tested above where borrowers who were eligible for the SCRA interest rate cap:  
*Should the sample not have at least five students who were eligible for the SCRA interest rate cap, the auditor should develop a sample of at least five or the entire universe if less than five borrowers were eligible for the SCRA interest rate cap.*
  - C.1.1.d.1. Verify that the borrower received the new rate of six percent only if their previous interest rate was greater than six percent.
  - C.1.1.d.2. Verify that the borrower was notified in writing within 30 days that the interest rate was reduced to the SCRA limit of six percent.

- C.1.1.e. Determine that billings to ED for interest benefits begins and ends on the appropriate day for loans in an in-school, grace, or authorized deferment period.
- C.1.1.f. Review loan records, disbursement records, or other documentation to verify that interest is billed only for periods specified in 34 C.F.R. §682.300(b)(2) and is not billed for interest covered under 34 C.F.R. §682.300(c).
- C.1.1.g. For instances in the sample tested above that were Federal Consolidation Loans on which the lender has claimed interest benefits:
  - C.1.1.g.1. Review the history files and verify that the loans qualified for interest payments under 34 C.F.R. §682.301(a)(3).
  - C.1.1.g.2. Verify that Consolidation Loans interest payment rebate fees were calculated accurately in accordance with 34 C.F.R. §682.406(a)(12)(ii-iv) and submitted on a monthly basis.

**C.1.2. Special Allowance Payments***Attestation Objective:*

Determine whether the special allowance payments were earned and reported properly.

*Background:*

In addition to interest benefits, ED makes quarterly special allowance payments to lenders to ensure that lenders receive an equitable return on their loans. In general, the amount of the special allowance payment is the difference between the amount of interest the lender receives from the borrower or the government and the amount that is provided under requirements in the HEA. The amount of each quarterly special allowance payment will vary according to the type of FFEL Program loan, the date the loan was disbursed, the loan period, and the loan status. The HEA includes a special allowance calculation for loans that are funded by tax-exempt obligations issued before October 1, 1993, which is referred to as the “9.5 percent floor.” The information needed for ED to calculate special allowance payments is reported in Part III of the LaRS.

***Special Allowance Payments and Excess Interest***

In accordance with §438 of the HEA (20 USC 1087-1) and 34 C.F.R. § 682.302, ED pays a special allowance to the lender on the average daily outstanding balance of eligible FFEL loans. Loans eligible for special allowance payments are detailed at 34 C.F.R. §682.302(b). Limitations on the payment of a special allowance for PLUS loans were eliminated by the Higher Education Reconciliation Act (HERA), (Pub. L. No. 109-171). Therefore, lenders may receive special allowance payments on PLUS loans that were first disbursed on or after January 1, 2000 and before July 1, 2010, for periods beginning April 1, 2006 (§438(b)(2)(I) of the HEA (20 USC 1087-1(b)(2)(I)) and § 8006 of HERA).

ED will compute the special allowance payable to the lender based upon the average daily balance computed by the lender, as described in 34 C.F.R. § 682.304(a) and (d). ED computes the special allowance payment due to the lender during processing of the LaRS. The lender reports in Part III of the LaRS the average daily principal balance of those loans in each category qualifying for the payment. In addition, ED will calculate the amount of excess interest or negative special allowance owed to ED in accordance with 34 C.F.R. § 682.305(a) and (d).

For any FFEL loan that is subject to the SCRA six percent interest rate limit, for those FFEL loans first disbursed on or after July 1, 2008, the applicable interest rate used in calculating the lenders special allowance payment is the SCRA-determined rate (34 C.F.R. § 682.302(h)).

***Reduction in Special Allowance Rates for Loans Made on or After October 1, 2007***

Special allowance rates for most FFEL loans first disbursed on or after October 1, 2007 are reduced, but the reduction for eligible not-for-profit holders is less than the reduction for other holders.

Except for certain loans made from funds derived from tax-exempt sources (described below), the special allowance rate for any eligible loan, for which the first disbursement of principal was made on or after October 1, 2007, is to be calculated according to the formulas described in 34 C.F.R. §682.302(f)(1) or (2)), depending on whether the loan is held by an entity that qualifies as an “eligible not-for-profit holder.”

Per §435(p)(1) of the HEA (20 USC 1085(p)(1)) and 34 C.F.R. §682.302(f)(3)(i), an “eligible not-for-profit holder” is an eligible lender under §435(d) of the HEA (20 USC 1085(d)), other than a school lender, that is—

- a. A State, or a political subdivision, agency, authority or instrumentality of a State, including an entity eligible to issue bonds described in §144(b) of the Internal Revenue Code (Code), or in 26 C.F.R. §1.103-1,
- b. A not-for-profit entity described in §150(d)(2) of the Code that has not made the election described in §150(d)(3) of the Code to relinquish that status,
- c. A not-for-profit entity described in §501(c)(3) of the Code;
- d. A trustee acting on behalf of a governmental or non-profit entity listed above, without regard to whether that entity qualifies as an eligible lender under §435(d) in its own right).

Per §435(p)(2) of the HEA (20 USC 1085(p)(2)) and 34 C.F.R. §682.302(f)(3)(iii-ix), loans that are held by a governmental or non-profit entity that is an eligible lender may qualify for the higher special allowance rate, as may loans held by an eligible lender trustee on behalf of such an entity. Loans held by the eligible lender or eligible lender trustee qualify for the higher rate only if the governmental or non-profit entity –

- On September 27, 2007, either acted as an eligible lender under HEA §435(d) (other than as a school lender), or was the sole beneficial owner of a FFEL Program loan that was eligible for special allowance payments;
- Is neither owned nor controlled, even in part, by a for-profit entity; and
- Remains the sole beneficial owner of such loans and the income from such loans.

The grant of a security interest in a loan or its income, or the pledge of the loan or income as collateral, in order to secure a debt obligation issued by a governmental or non-profit entity, does not affect the not-for-profit eligibility status of that entity or of an eligible lender trustee to the extent acting on its behalf (34 C.F.R. §682.302(f)(3)(ix)).

An eligible lender trustee may not receive compensation in excess of reasonable and customary rates for serving as a trustee for a governmental or non-profit entity (34 C.F.R. §682.302(f)(3)(vii)).

Note that a State is permitted to designate a not-for-profit entity that was not acting as an eligible lender under Section 435(d) of the HEA on September 27, 2007, as a new “eligible not-for-profit holder.”

### ***LIBOR-Based Special Allowance Calculation***

Section 309(e) of the Consolidated Appropriations Act, 2012 (Public Law 112-74) amended section 438(b)(2)(I) of the HEA to allow FFEL Program loan holders or an entity that holds a beneficial ownership interest in a FFEL Program loan, to have the 1-month London Inter Bank Offered Rate (LIBOR) substituted for the 3-month commercial paper rate for the purposes of special allowance payment calculations on certain FFEL Program loans. If a lender or beneficial holder wished to have special allowance payments calculated on LIBOR, it must have, no later than April 1, 2012, waived any right to have special allowance payments calculated on the basis of the previously applicable rate. By doing so, the lender or beneficial holder elected to have special allowance payments thereafter calculated at the LIBOR rate for its designated FFEL loans. (See Dear Colleague Letter [FP-12-02](#)) LIBOR is expected to be phased out by the end of 2021. A replacement for LIBOR will be determined by ED prior to the end of 2021.

### ***9.5 Percent Floor***

The special allowance rate payable on loans made or purchased from funds derived from tax-exempt obligations depends on the specific source of funds used to acquire the loan, whether specified events occurred after its acquisition, the date the loan was acquired, the rate payable on the loan when it was acquired, and the characteristics of the lender that acquired the loan (§438 of the HEA (20 USC 1087-1)).

With limited exceptions for HERA small lenders (see below), the special allowance rates for loans made on or after October 1, 2007, are the same for all loans, regardless of the source of funding, and differ only with respect to the status of the holder of the loan. Loans made before October 1, 2007, that were acquired with funds from tax-exempt obligations originally issued prior to October 1, 1993 receive a special allowance at one-half the rate otherwise payable, but not less than needed to provide, including the interest on the loan, an annualized return of 9.5 percent (§438(b)(2)(B)(i), (ii), and (iv) of the HEA (20 USC 1087-1(b)(2)(B)(i), (ii), and (iv))). This separate rate is referred to as the “9.5 percent floor.”

Loans acquired with funds from tax-exempt obligations originally issued on or after October 1, 1993 receive the same special allowance rate as loans acquired with funds from sources other than tax-exempt obligations. An obligation that was issued to obtain funds to make loans, or to acquire an interest in a loan (including an interest by pledge of the loan as collateral), is considered to have been originally issued on the date it was issued. A tax-exempt obligation that refunds, or is one of a series of tax-exempt refunding obligations, is considered to have been originally issued when the initial obligation was issued (§438(b)(2)(B)(iv) of the HEA (20 USC 1087-1(b)(2)(B)(iv))).

Only loans made or purchased from an eligible funding source specified in 34 C.F.R. § 682.302(c)(3)(i) may qualify for the 9.5 percent floor.<sup>2</sup> Those sources are funds obtained from:

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<sup>2</sup> For additional information on these requirements, see the hearing officials decision in the *Matter of Navient Corporation Docket No. 16-42-SA*, decision dated March 7, 2019 (appeal pending before the Secretary), available at <https://oha.ed.gov/oha/files/2019/03/2016-42-SA.pdf>.

- The proceeds of a tax-exempt obligation originally issued prior to October 1, 1993;
- Collections or default payments by a guarantor on a loan acquired with the proceeds of such an obligation;
- Interest or special allowance payments received on a loan acquired with the proceeds of such an obligation;
- The sale of a loan acquired with the proceeds of such an obligation; or
- The investment of the proceeds of such an obligation.

However, loans made from or purchased using these eligible sources do not qualify for the 9.5 percent floor if the loans were made or purchased after February 7, 2006 or, for loans made before that date and purchased after that date, did not qualify on that date for special allowance at the 9.5 percent floor. (§438(b)(2)(B)(vi) of the HEA (20 USC 1087-1(b)(2)(B)(vi)); 34 C.F.R. §682.302(e)(4)).

These deadlines are deferred until December 31, 2010 with respect to a “HERA small lender.” Per §438(b)(2)(B)(vii) of the HEA (20 USC 1087-1(b)(2)(B)(vii)) and 34 C.F.R. §682.302(e)(5)), a HERA small lender is a loan holder that on February 8, 2006, and during the quarter for which the special allowance is paid:

- Was a unit of state or local government or a private nonprofit entity;
- Was not owned or controlled by, or under common ownership with, a for-profit entity; and
- Held directly or through any subsidiary, affiliate, or trustee, a total unpaid balance of principal equal to or less than \$100 million on loans for which special allowances were paid under §438(b)(2)(B) in the most recent quarterly payment prior to September 30, 2005.

#### Claims for Special Allowance at the 9.5 Percent Floor

Special allowance at the 9.5 percent floor may be received on claims submitted for the quarter ending December 31, 2006, and thereafter only if the lender has submitted, and ED has accepted, a report of an audit conducted under a methodology prescribed for this purpose that identifies those loans that have been acquired from the eligible sources in the previous paragraphs. The lender also has to have submitted, for each such claim, a management certification that the Special Allowance Payment is claimed at that rate only on loans determined through that process to be eligible. (See Dear Colleague Letters [FP-07-01](#) and [FP-07-06](#).)

**Loss of Eligibility for Special Allowance at the 9.5 Percent Floor**

According to §438(b)(2)(B) of the HEA (20 USC 1087-1(b)(2)(B)) and 34 C.F.R. § 682.302(e)(2) and (3), loans that are eligible for the 9.5 percent floor may lose eligibility for that rate and revert to the usual rates for any loan that is:

- a. Pledged or otherwise transferred prior to October 1, 2004 from the tax-exempt obligation used to acquire the loan, unless either of the following applies
  - i. The loan is pledged or transferred in consideration of funds listed in 34 C.F.R. § 682.302(c)(3)(i) or from a tax-exempt refunding obligation, or
  - ii. The prior tax-exempt obligation used to acquire the loan is neither retired nor defeased with yield-restricted obligations;
- b. Financed by a tax-exempt obligation that, after September 30, 2004, has matured, been refunded, or is retired or defeased;
- c. Refinanced after September 30, 2004 with funds obtained from a source other than the funds listed in 34 C.F.R. §682.302(c)(3)(i);
- d. Sold or transferred to any other holder after September 30, 2004.

***Termination of Special Allowance Payments on a Loan***

Special allowance payments on eligible loans terminate when a date-specific event occurs and the loan is no longer eligible for the payment. These date-specific events are described in detail in 34 C.F.R. §682.302(d) and include the following:

- The date a borrower's loan is repaid;
- The date a borrower's loan check is returned uncashed to the lender;
- The date the lender receives payment on a claim for loss on the loan;
- The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;
- The 60<sup>th</sup> day after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all the required documentation on or before the 60<sup>th</sup> day;
- The 120<sup>th</sup> day after disbursement if the loan check has not been cashed on or before that date or if the loan proceeds disbursed by EFT have not been released from the restricted account maintained by the school on or before that date;
- The 30<sup>th</sup> day after the date the lender received a returned claim from the guaranty agency due solely to inadequate documentation on a loan submitted by the regulatory deadline for loss on the loan (unless the lender files a claim for loss on the loan with the guarantor,



together with the required documentation prior to the 30<sup>th</sup> day); and

- The date on which the lender determines the loan is legally unenforceable based on receipt of an identity theft report under 34 C.F.R. §682.208(b)(3).

*Criteria:* 20 USC 1085(p)

20 USC 1087-1

34 C.F.R. § 682.302

34 C.F.R. § 682.304(a) and (d)

34 C.F.R. § 682.305(a) and (d)

*Guidance:* [FP-07-01](#); Subject: FFELP Loans Eligible for 9.5 Percent Minimum Special Allowance Rate

[FP-07-06](#); Subject: Audit Requirements for 9.5 Percent Minimum Special Allowance Payment Rate

[FP-07-12](#); Subject: Determination of Not-For-Profit Holder Status for SAP Billing

[FP-12-02](#); Subject: LIBOR-Based SAP Under the Consolidated Appropriations Act  
[FFEL Special Allowance Rates](#)

*Required Procedures:*

Select a representative sample of loans from the universe of lender client loans:

C.1.2.a. Determine if eligible loans in the portfolio are being reported in Part III of the LaRS by the proper year, quarter, interest rate, and special allowance category.

C.1.2.b. Using the results of any audit conducted by or for the lender under Dear Colleague Letter FP-07-06 and accepted by ED, determine that only the following loans are being reported for the 9.5 percent floor:

C.1.2.b.1. Were identified as a result of the audit as made or purchased with eligible sources of funds, or

C.1.2.b.2. If made or acquired by the lender after December 31, 2006, were made or purchased with funds obtained from repayments, sales, or interest or special allowance payments on loans that were established by such audit to be first-generation loans, as that term is used in Dear Colleague Letter FP 07-01, and

C.1.2.b.3. Unless held by a lender that qualified for deferral until December 30, 2010: were (1) made or purchased prior to February 8, 2006, and (2) were eligible for 9.5 percent floor on February 8, 2006.

C.1.2.c. Determine if special allowance requests on loan balances are being terminated when a date-specific event specified in 34 C.F.R. §682.302(d) occurs, or when a disqualifying event for termination of billing under the 9.5 percent floor occurs, as specified in 34 C.F.R. §682.302(e)(2) and (3).

- C.1.2.d. Verify the accuracy of the average daily balance calculations as defined in 34 C.F.R. §682.304(d) by recalculating amounts or by reasonableness tests.
- C.1.2.e. Determine that loans included in the average daily balances do not include loans that are not eligible for special allowance payments.
- C.1.2.f. For instances in the sample tested above that were made on or after October 1, 2007, for which the lender claimed special allowance on loans held as an eligible lender trustee for a governmental or non-profit entity, determine whether:
  - C.1.2.f.1. The claim was limited to loans to which a governmental or non-profit entity held full beneficial ownership; and
  - C.1.2.f.2. The lender was not compensated at a rate in excess of that paid other eligible lender trustees holding FFEL program loans.

**C.2. LOAN RECORDS AND ADMINISTRATION**

This section covers compliance requirements the servicer may perform related to maintaining loan records and updating loan records for changes to student status and loan sales, purchases, and transfers.

**Required Management Assertion**

**[Servicer] complied with all criteria effective during the attestation period, as appropriate, for the Loan Records and Administration attestation objectives included in Chapter 3, Section C of the *Guide for Financial Statement Audits and Compliance Attestation Engagements of Lender Servicers Administering Federal Family Education Loan Program Loans*, as applicable to our clients., including those related to Loan Records; Student Status; and Loan Sales, Purchases, and Transfers.**

**C.2.1. Loan Records***Attestation Objective:*

Determine whether current, complete, and accurate loan records were maintained.

*Background:*

In accordance with 34 C.F.R. § 682.414(a)(4), a lender is required to maintain current, complete, and accurate records of each loan that it holds. These loan records (files) form the basis for the information contained in the LaRS. The records must be maintained in a system that allows ready identification of each loan's current status. Except for the loan application and the promissory note, these records may be stored in hard copy or in microform, computer file, optical disk, CD-ROM, or other media formats provided that the means of storage meets the requirements in 34 C.F.R. § 668.24(d)(3)(i) through (iv).

The records that must be maintained are identified at 34 C.F.R. § 682.414(a)(4)(ii) and are listed below.

- A copy of the loan application, if a separate application was provided to the lender
- A copy of the signed promissory note
- The repayment schedule
- A record of each disbursement of loan proceeds
- Notices of changes in a borrower's address and status as at least a half-time student
- Evidence of the borrower's eligibility for a deferment
- The documents required for the exercise of forbearance
- Documentation of the assignment of the loan
- A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs
- A collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan; each

communication (other than regular reports by the lender showing that an account is current) between the lender and a credit bureau regarding the loan; each effort to locate a borrower whose address is unknown at any time; and each request by the lender for default aversion assistance on the loan

- Documentation of any Master Promissory Note confirmation process or processes
- Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted

**Note: *Original Loan Applications and Promissory Notes.*** If the audit sample includes loans that the lender no longer owns, such as loans that the lender sold to another party, loans that were repaid by a Consolidation Loan or loans, or assigned to a guaranty agency, the auditor may perform alternative procedures to obtain access to and review the original documents. The alternative procedures could include, but are not necessarily limited to, the review of (1) a copy or image maintained by the lender or servicer of the original document; or (2) a certified true copy, obtained from the entity that currently holds the original loan document, that may be compared to the lender's document.

*Criteria:* 34 C.F.R. § 682.414(a)(4)  
34 C.F.R. § 668.24(d)(3)

*Required Procedures:*

Select a representative sample of loans from the universe of lender client loans:

- C.2.1.a. Determine if the documentation required by 34 C.F.R. § 682.414(a)(4)(ii) was maintained.
- C.2.1.b Determine if the information recorded in the detailed loan record agrees with the information in these supporting documents and the summary records.

**C.2.2. Student Status***Attestation Objective:*

Determine whether, upon receipt of Enrollment Reports or other notification of change information, loan records were accurately and timely updated for changes to student status, including conversion to repayment status.

*Background:*

Schools are required to confirm and report to the National Student Loan Data System (NSLDS) the enrollment status of students who receive Federal student loans. This process is called Enrollment Reporting. Enrollment information is used to determine the borrower's eligibility for in-school status, deferment, interest subsidy, and grace period. Enrollment changes, such as a change from full-time to half-time status, graduation, withdrawal, or an approved leave of absence, need to be reported. The enrollment information is merged into the NSLDS database and reported to guarantors, lenders, and servicers of student loans.

Lenders must use the NSLDS data to make adjustments for interest and special allowance billings on each loan. The billing for interest benefits and special allowance payments relies on the timely and proper processing of student enrollment information, including timely conversion to repayment status. The conversion of a loan to repayment status is subject to a number of conditions as defined in 34 C.F.R. § 682.209(a). Typically, Stafford loan borrowers begin repayment six months following the date on which the borrower is no longer enrolled on at least a half-time basis at a school. PLUS and Consolidation Loans go into repayment on the day the loan is disbursed, or if disbursed in multiple installments, on the date of the last disbursement made on the loan. The first payment is due within 60 days of the date the loan is fully disbursed.

*Criteria:* 34 C.F.R. § 682.209(a)

*Required Procedures:*

Using the Enrollment Reports received during the attestation period, select a representative sample of lender client loans:

- C.2.2.a Trace loan status information from the Enrollment Reports to loan records and any lender discrepancy reports or other notifications of change information (manifests, in-school discrepancy reports, out-of-school status reports) to determine if changes to student enrollment status were made accurately.
- C.2.2.b Determine whether conversions to repayment status were made within required time limits.

**C.2.3. Loan Sales, Purchases, and Transfers***Attestation Objective:*

Determine whether loan sales, purchases, and transfers were made in accordance with ED requirements and that accurate records of such transactions were maintained.

*Background:*

Loan sales, purchases, and transfers between eligible lenders entail special portfolio management risks and, therefore, require special controls. The lender must exercise due care in ensuring that gaps in servicing do not occur, possibly affecting the reinsurance of the loan.

In accordance with 34 C.F.R. § 682.208(e)(1), if the assignment or transfer of ownership interest of a loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and assignee of the loan must, within 45 days of acquisition, notify the borrower, either jointly with the other party or separately, of the transfer of the loan.

The purchasing lender must also notify the guaranty agency of the loan transfer within 45 days (34 C.F.R. § 682.208(e)(4)) and must report to each national credit bureau certain required information within 90 days of its acquisition of the loan (34 C.F.R. § 682.208(b)(2)).

If an originating lender sells or otherwise transfers a loan to a new holder, ED will hold the originating lender liable for the payment of the origination and lender fees and will not pay interest benefits or a special allowance to the new holder or pay reinsurance to the guaranty agency until the origination fees are paid to ED (34 CFR section 682.305(a)(4)).

*Criteria:* 34 C.F.R. § 682.208(b) and (e)  
34 C.F.R. § 668.305(a)(4)

*Required Procedures:*

Select a representative sample of lender client loans reported on LaRS forms as purchased, sold, or transferred during the attestation period:

- C.2.3.a Trace the principal amount of loans sold, purchased, or transferred as reported on the LaRS to the bills of sale/purchase agreements and to lender/servicer records.
- C.2.3.b Review the loan purchase/sales agreements and ascertain the terms of the agreements as to the day of sale, transfer of funds, and responsibility for loan origination and lender fees. Determine if the sale/purchase was conducted in accordance with these terms and the date-specific event was properly noted in the lender's/servicer's records as to the start/end date of eligibility for interest benefits and special allowance.
- C.2.3.c Determine if the borrower was notified of the required information within 45 days.

- C.2.3.d For instances in the sample tested above where the loan was transferred to the lender during the audit period, determine if the guaranty agency was notified of the required information within 45 days and reported to each national credit bureau the required information within 90 days.

**C.3. PAYMENT PROCESSING**

This section covers compliance requirements the servicer pay perform related to calculating interest and principle and applying loan payments and prepayments.

**Required Management Assertion**

**[Servicer] complied with all criteria effective during the attestation period, as appropriate, for the Payment Processing attestation objectives included in Chapter 3, Section C of the *Guide for Financial Statement Audits and Compliance Attestation Engagements of Lender Servicers Administering Federal Family Education Loan Program Loans*, as applicable to our clients.**

**C.3.1. Payment Processing***Attestation Objective:*

Determine whether the loan interest and principal were appropriately calculated, loan payments and prepayments were applied in accordance with applicable requirements or borrower's instructions, and the borrower was informed as to the handling of repayments as required.

*Background:*

Lenders must calculate interest and principal amounts in accordance with 34 C.F.R. § 682.202. Interest and capitalization are among the charges that lenders may impose on borrowers. Interest must be charged in accordance with 34 C.F.R. § 682.202(a). Capitalization is the addition of unpaid interest to the principal balance of a loan and must be charged in accordance with 34 C.F.R. § 682.202(b).

When the lender receives payments on a loan, it must apply the payments in accordance with 34 C.F.R. § 682.209(b). Except in the case of payments made under an income-based repayment plan, the lender may credit the entire payment amount first to any late charges accrued or collection costs, then to any outstanding interest, and then to any outstanding principal. A borrower may prepay all or part of a loan at any time without a penalty. Unless the borrower requests otherwise, if a prepayment equals or exceeds the established monthly payment amount, the lender shall apply the prepayment to future installments by advancing the next payment due date. The lender must (1) inform the borrower in advance that any additional full payment amounts submitted without instructions as to their handling will be applied to future scheduled payments with the borrower's next scheduled payment due date advanced, or (2) provide a notification after the payment is received stating that the payment has been so applied and the due date of the borrower's next scheduled payment. Information related to the next scheduled payment due date need not be provided to a borrower making prepayments while in an in-school, grace, deferment, or forbearance period when payments are not due.

*Income-Based Repayment Plan*

The income-based repayment plan enables a borrower who has had a partial financial hardship to make a lower monthly payment, based on the borrower's income and family size, with certain exceptions. The income-based repayment plan has different rules for applying payments. In



accordance with 34 C.F.R. § 682.215(c), the lender must apply payments made under the income-based repayment plan in the order of (1) accrued interest, (2) collection costs, (3) late charges, and (4) loan principal.

*Criteria:* 34 C.F.R. § 682.202  
34 C.F.R. § 682.209(b)  
34 C.F.R. § 682.215(c)

*Required Procedures:*

Select a representative sample of lender client loans from the universe of loans that were in an Income Based Repayment plan during the attestation period:

- C.3.1.a Determine if the application of principal and interest were appropriately calculated and that the correct amount was applied to the individual borrower's loan balance.
- C.3.1.b Determine if the borrower payments were applied in accordance with payment application requirements.
- C.3.1.c For instances in the sample tested above where prepayments were received:
  - C.3.1.c.1 Determine if the prepayments were applied in accordance with payment application requirements or the borrower's documented specific request.
  - C.3.1.c.2 Determine if the borrower was appropriately informed in advance or after the payment is received as to the handling of the prepayment.

**C.4. DUE DILIGENCE, TIMELY CLAIM FILING, AND CURING VIOLATIONS**

This section covers compliance requirements the servicer may perform related to the lender's responsibilities to engage in specific collection activities on delinquent loans, meet specific claim-filing deadlines, and cure any due diligence and timely filing violations.

**Required Management Assertion**

**[Servicer] complied with all criteria effective during the attestation period, as appropriate, for the Due Diligence, Timely Claim Filing, and Curing Violations attestation objective included in Chapter 3, Section C of the *Guide for Financial Statement Audits and Compliance Attestation Engagements of Lender Servicers Administering Federal Family Education Loan Program Loans*, as applicable to our clients.**

**C.4.1. Due Diligence in Collection of Delinquent Loans***Attestation Objective:*

Determine if the due-diligence requirements for collection of delinquent loans were complied with, including the requirements for skip tracing and default aversion assistance.

*Background:*

Per 34 C.F.R. § 682.411, lenders are required to engage in specific collection activities on delinquent loans. The due diligence provisions preempt any State law, including State statutes, regulations, or rules that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of that section. Failure to comply with the Federal due-diligence regulations will result in the loss of reinsurance for the guaranty agency, the loss of a lender's right to receive an insurance payment from the guaranty agency's Federal Fund, and the lender's right to receive interest and special allowance (34 CFR part 682, Appendix D, I.B.3).

Delinquency on a loan begins on the first day after the due date of the first missed payment. The due date of the first payment is established by the lender but must follow the deadlines specified in 34 C.F.R. § 682.209(a). If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment. A payment that is within \$5.00 of the amount normally required to advance the due date may advance the due date if the lender's procedures allow for that advancement (34 C.F.R. § 682.411(b)). If a borrower cures a delinquency and then becomes delinquent again, a new due diligence period begins.

*Notices, Telephone Contacts, and Collection Letters*

The lender must engage in the following collection efforts based on the number of days delinquent:

- **1 to 15 Days Delinquent:** During this period, the lender must send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency (except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of

a dishonored check submitted as a payment on the loan.) The notice or collection letter sent during this period must include, at a minimum, a lender or servicer contact, a telephone number, and a prominent statement informing the borrower that assistance may be available if he or she is experiencing difficulty in making a scheduled repayment (34 C.F.R. § 682.411(c)).

- **16 to 180 Days Delinquent (or 16 to 240 days delinquent for a loan repayable in installments less frequently than monthly):** Unless a borrower is more than 120 days delinquent and the lender is exempted as set forth in 34 C.F.R. § 682.411(d)(4), during this period the lender must:
  - Engage in at least four diligent efforts to contact the borrower by telephone (as defined by 34 C.F.R. § 682.411(m)). At least one of the telephone contacts must occur on or before the 90th day of delinquency and another one must occur after the 90th day of delinquency.
  - Send at least four collection letters urging the borrower to make the required payments. At least two of the letters must warn the borrower that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to each nationwide consumer reporting agency, and that the agency may institute proceedings to offset the borrower's State and Federal income tax refunds and other payments made by the Federal Government to the borrower, or to garnish the borrower's wages, or assign the loan to the Federal Government for litigation against the borrower (34 C.F.R. § 682.411(d)).
- **181 to 270 Days Delinquent (or 241 to 330 days delinquent for a loan repayable in installments less frequently than monthly):** During this period, the lender must engage in efforts to urge the borrower to make the required payments on the loan. These efforts must, at a minimum, provide information to the borrower regarding options to avoid default and the consequences of defaulting on the loan (34 C.F.R. § 682.411(e)).
- **241 Days Delinquent (or 301 days delinquent for a loan repayable in installments less frequently than monthly):** On or after this day, the lender must send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to each nationwide consumer reporting agency (34 C.F.R. § 682.411(f)).

According to 34 C.F.R. § 682.411(b)(2), at no point before the 241<sup>st</sup> day of delinquency (or the 301<sup>st</sup> day for loans payable in less frequent installments than monthly) may a lender permit the occurrence of a gap in collection activities of more than 45 days (or 60 days in the case of a transfer). A gap in collection activities is defined at 34 C.F.R. § 682.411(j).

If the lender is unable to ascertain the borrower's correct telephone number despite its performance of the activities describe in 34 C.F.R. § 682.411(m)(1)(iii) to ascertain such number, the lender is excused thereafter from attempting to contact the borrower by telephone, unless it receives a communication indicating the borrower's current telephone number prior to

the 211<sup>th</sup> day of delinquency (or 271<sup>st</sup> day for loans payable in less frequent installments than monthly (34 C.F.R. § 682.411(g) and (m)(2)).

In the case of a loan made to a borrower who is incarcerated; residing outside the United States or its Territories, Mexico, or Canada; or whose telephone number is unknown, the lender may send a forceful collection letter instead of each telephone effort described above.

#### Subsequent Payment or Information Obtained

Following the lender's receipt of a payment on the loan or a correct address for the borrower, the lender's receipt from the drawee of a dishonored check received as a payment on the loan, the lender's receipt of a correct telephone number for the borrower, or the expiration of an authorized deferment or forbearance period, the lender is required to engage in only one or two diligent efforts to contact the borrower by telephone.

In accordance with 34 C.F.R. § 682.411(d)(3) and (d)(4), upon receipt of a payment or additional information described above, the lender must make:

- Two diligent efforts to contact the borrower by phone for loans less than 91 days delinquent (or 121 days for a loan repayable in installments less frequently than monthly).
- One diligent effort to contact the borrower by phone for loans 91 to 120 days delinquent (or 121 to 180 days for a loan repayable in installments less frequently than monthly).

No additional diligent efforts to contact the borrower by telephone are required for loans more than 120 days delinquent (180 days for a loan repayable in installments less frequently than monthly).

#### ***Skip-Tracing Requirements***

Skip tracing is the process by which lenders attempt to obtain corrected address or telephone information for borrowers for whom the lender does not have accurate information. Skip-tracing processes must meet regulatory time frames and minimum standards as outlined in 34 C.F.R. § 682.411(h).

Unless the final demand letter has already been sent, the lender must begin to diligently attempt to locate the borrower through the use of effective commercial skip-tracing techniques within 10 days of its receipt of information indicating that it does not know the borrower's current address. These efforts must include, but are not limited to, sending a letter to or making a diligent effort to contact each endorser, relative, reference, individual, and entity identified in the borrower's loan file, including the schools the student attended. For this purpose, a lender's contact with a school official that might reasonably be expected to know the borrower's address may be with someone other than the financial aid administrator and may be in writing or by phone calls. These efforts must be completed by the date of default with no gap of more than 45 days between attempts to contact those individuals or entities.

Upon receipt of information indicating that it does not know the borrower's current address, the lender must discontinue the notices, telephone contacts, and collection letters described in the section above.

If the lender is unable to ascertain the borrower's current address despite its performance of effective commercial skip-tracing techniques, the lender is excused thereafter from the requirements for notices, telephone contacts, and collection letters described in the section above, unless it receives a communication indicating the borrower's address prior to the 241<sup>st</sup> day of delinquency (or 301<sup>st</sup> day for loans payable in less frequent installments than monthly).

### ***Default Aversion Assistance***

Default aversion assistance is collection assistance that a guarantor provides to supplement a lender's efforts to prevent default on a borrower's loan; however, it does not replace the lender's responsibility to perform due diligence. Not earlier than the 60<sup>th</sup> day and no later than the 120<sup>th</sup> day of delinquency, a lender must request default aversion assistance from the guaranty agency that guarantees the loan (34 C.F.R. § 682.411(i)).

### ***Due Diligence for Endorsers***

Loan endorsers are required for PLUS loans for borrowers with an adverse credit history (34 C.F.R. § 682.201(b)(4) and 682.201(c)(1)(vii)). Before filing a default claim on a loan with an endorser, the lender must perform the following in accordance with 34 C.F.R. § 682.411(n):

- Make a diligent effort to contact the endorser by telephone.
- Send the endorser two letters advising the endorser of the delinquent status of the loan and urging the endorser to make the required payments on the loan. At least one letter must warn the endorser that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to each nationwide consumer reporting agency, and that the agency may institute proceedings to offset the endorser's State and Federal income tax refunds and other payments made by the Federal Government to the endorser, or to garnish the endorser's wages, or assign the loan to the Federal Government for litigation against the endorser.
- On or after the 241<sup>st</sup> day of delinquency (or the 301<sup>st</sup> day for loans payable in installments less frequent than monthly) send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to each nationwide consumer reporting agency.
- Unless the final demand letter has already been sent, upon receiving information indicating that it does not know the endorser's current address or telephone number, diligently attempt to locate the endorser through the use of effective commercial skip-tracing techniques. This effort must include an inquiry to directory assistance.

### ***Due Diligence Documentation***

A lender is required to maintain current, complete, and accurate records of each loan that it holds in accordance with 34 C.F.R. § 682.414(a)(4). Per 34 C.F.R. § 682.414(a)(4)(ii)(J), to support

that the lender met the due diligence requirements pertaining to collection of delinquent loans, the lender must maintain:

- A collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan;
- Each communication (other than regular reports by the lender showing that an account is current) between the lender and a consumer reporting agency regarding the loan;
- Each effort to locate a borrower whose address is unknown at any time; and
- Each request by the lender for default aversion assistance on the loan.

*Criteria:* 34 C.F.R. § 682.411  
34 C.F.R. § 682.414(a)(4).

*Required Procedures:*

Select a representative sample of lender client loans from the universe of loans that were delinquent during the attestation period:

- C.4.1.a For instances in the sample identified above that were delinquent from 1 to 15 days, verify that the required written notice or collection letter was sent to the borrower and that the letter contained the required information.
- C.4.1.b For instances in the sample identified above that were delinquent between 16 to 180 days (or 16 to 240 days for loans repayable in installments less frequently than monthly):
- C.4.1.b.1. Verify that the required diligent telephone efforts were made at the appropriate times.
  - C.4.1.b.2. Verify that the required collection letters were sent to the borrower and that at least two of the letters contained the appropriate warnings regarding the consequences if the loan is not paid.
- C.4.1.c For instances in the sample identified above that were delinquent between 181 and 270 days (or 241 to 331 days for loans payable in installments less frequently than monthly), verify that the required efforts to urge the borrower to make the required payments on the loan were made and that the efforts, at a minimum, provided information to the borrower regarding options to avoid default and the consequences of defaulting on the loan.
- C.4.1.d For instances in the sample identified above that were delinquent 241 days (or 301 days for loans payable in installments less than monthly), verify that the required final demand letter was sent to the borrower with the appropriate notification.

- C.4.1.e For instances in the sample identified above where the lender received information indicating that the lender did not know the borrower's current address and a final demand letter was not sent to the borrower:
- C.4.1.e.1. Verify that an attempt to contact each endorser, relative, reference, individual, and entity identified in the borrower's loan file was made within 10 days of receipt of such information and by the date of default with no gap of more than 45 days between attempts to contact those individuals or entities.
  - C.4.1.e.2. Verify that the notices, telephone contacts, and collection letters were discontinued upon receipt of such information.
- C.4.1.f For instances in the sample identified above where default aversion assistance should have been requested (as identified by a review of the agreement the guaranty agency has with the lender that establishes the time period for default aversion assistance), verify that default aversion assistance was requested within the required timeframes.
- C.4.1.g For instances in the sample identified above where the loan has an endorser:
- C.4.1.g.1. Verify that a diligent effort to contact the endorser by phone was made.
  - C.4.1.g.2. Verify that the required letters advising the endorser of the delinquent status and urging the endorser to make the required payments were sent and verify that at least one letter contained the appropriate warnings regarding the consequences if the loan is not paid.
  - C.4.1.g.3. Verify that the required final demand letter to the endorser was sent on or after the 241<sup>st</sup> day of delinquency (or the 301<sup>st</sup> day for loans payable in installments less frequently than monthly) and that the letter contained the required information.
  - C.4.1.g.4. Verify that a diligent attempt to locate the endorser through the use of effective commercial skip-tracing techniques was made, including an inquiry to directory assistance, upon receipt of information indicating that it does not know the endorser's current address or telephone number.

**C.4.2. Timely Claim Filings**

*Attestation Objective:*

Determine whether the deadlines for timely filing of claims were complied with and the guaranty agency was provided with the documentation necessary to support the claim.

*Background:*

When a lender is unable to collect on a loan, it files an insurance claim with the guaranty agency. Lenders are required to timely file claims with the guaranty agency for payment claims. The following table briefly describes each type of claim and the associated filing requirements.

TYPE OF CLAIM	TIMELY FILING REQUIREMENTS
<p><b>Default</b> If a borrower defaults on a loan, the Secretary reimburses the guaranty agency for all or part of the amount of default claims it pays to lenders. (34 C.F.R. § 682.100(b)(1))</p>	<p>A lender must file default claims within 90 days of the default. (34 C.F.R. § 682.406(a)(5))</p>
<p><b>Death:</b> If an individual borrower dies, or the student for whom a parent received a PLUS loan dies, the obligation of the borrower and any endorser to make any further payments on the loan is discharged. (34 C.F.R. § 682.402(b))</p>	<p>A lender must file death claims within 60 days of the date that the lender determines that a borrower (or the student on whose behalf a parent obtained a PLUS loan) has died. (34 C.F.R. § 682.402(g)(2)(i))</p>
<p><b>Total and Permanent Disability:</b> If a borrower becomes totally and permanently disabled, the borrower may file an application for discharge of the loan. If the Secretary approves the discharge application, the obligation of any further payments on the loan is discharged. (34 C.F.R. § 682.402(c))</p>	<p>A lender must file disability claims within 60 days of the date the lender receives notification from the Secretary that the borrower is totally and permanently disabled. (34 C.F.R. § 682.402(g)(2)(ii))</p>
<p><b>Closed School:</b> If a borrower (or the student for whom a parent received a PLUS loan) could not complete the program of study for which the loan was intended because the school closed, or the borrower/student withdrew from the school not more than 120 days prior to the date the school closed and the student did not complete the program through an approved teach-out plan or by transferring credits to another school, ED reimburses the holder of a loan received by a borrower on or after January 1, 1986 and discharges the borrower's obligation with respect to the loan. (34 C.F.R. § 682.402(d))</p>	<p>A lender must file closed school claims no later than 60 days after the borrower submits to the lender the completed closed school discharge application described in 34 C.F.R. § 682.402(d)(3) or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so. (34 C.F.R. § 682.402(g)(2)(iii))</p>



TYPE OF CLAIM	TIMELY FILING REQUIREMENTS
<p><b>False Certification:</b> If a borrower’s eligibility (or the eligibility of a student for whom a parent received a PLUS loan) to receive a loan was falsely certified by an eligible school or as a result of a crime of identity theft, the Secretary reimburses the holder of the loan and discharges the loan. (34 C.F.R. § 682.402(e))</p>	<p>A lender must file false certification claims no later than 60 days after the borrower submits to the lender the completed false certification discharge application or after the lender is notified by the Secretary or the Secretary’s designee or by the guaranty agency to do so. (34 C.F.R. § 682.402(g)(2)(iv))</p>
<p><b>Bankruptcy:</b> If a borrower files a petition for relief under the Bankruptcy Code, the Secretary reimburses the holder of the loan for unpaid principal and interest on the loan. (34 C.F.R. § 682.402(f))</p>	<p>A lender must file bankruptcy claims by the earlier of: (1) 30 days after the date on which the lender receives notice of the first meeting of creditors or other proof of filing provided by the debtor’s attorney or the bankruptcy court; or (2) 15 days after the lender is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship, or if the lender secures an extension of time within which an answer may be filed, 25 days before the expiration of that period, whichever is later. (34 C.F.R. § 682.402(g)(2)(v))</p>
<p><b>Teacher Loan Forgiveness:</b> If, after being employed full-time as a teacher for five consecutive academic years in an eligible low-income school, a borrower applies for teacher loan forgiveness through the loan holder, the Secretary may forgive a portion of the loan. (34 C.F.R. § 682.216)</p>	<p>A lender must file a request for payment on a teacher loan forgiveness amount no later than 60 days after the receipt, from the borrower, of a completed teacher loan forgiveness application. (34 C.F.R. § 682.216(f)(2)(i))</p>

***Records to Support a Claim***

The lender is required to submit documentation supporting the claim to the guaranty agency. In the case of a default claim, the lender must provide an accurate collection history and an accurate payment history showing that the lender exercised due diligence in collecting the loan through the required collection efforts, including collection efforts against each endorser (34 C.F.R. § 682.406(a)(3)). Per 34 C.F.R. § 682.402(g), the lender must provide the guaranty agency with the following documentation to support a death, disability, closed school, false certification, or bankruptcy claim:

- The original or a true and exact copy of the promissory note.
- The loan application, if a separate loan application was provided to the lender.

- In the case of a death claim, an original or certified death certificate, or other documentation supporting the discharge request that formed the basis for the determination of death.
- In the case of a disability claim, a copy of the notification in which the Secretary notifies the lender that the borrower is totally and permanently disabled.
- In the case of a closed school claim, the completed closed school discharge application described in 34 C.F.R. § 682.402(d)(3) unless the Secretary has approved a closed school discharge without an application (34 C.F.R. § 682.402(d)(8)) and any other documentation as the Secretary may require.
- In the case of a false certification claim, the completed closed school discharge application and any other documentation as the Secretary may require.
- In the case of a bankruptcy claim:
  - Evidence that a bankruptcy petition has been filed, all pertinent documents sent to or received from the bankruptcy court by the lender, and an assignment to the guaranty agency of any proof of claim filed by the lender regarding the loan; and
  - A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy and all documents supporting those facts.

Per 34 C.F.R. § 682.216(f)(2)(ii), in the case of a teacher loan forgiveness claim, the lender must provide the guaranty agency with the completed teacher loan forgiveness application described in 34 C.F.R. § 682.216(f)(2)(i) and any other required supporting documentation.

*Criteria:* 34 C.F.R. § 682.100(b)(1)  
34 C.F.R. § 682.216  
34 C.F.R. § 682.402  
34 C.F.R. § 682.406(a)(5)

*Guidance:* [Electronic Announcement dated July 23, 2014](#); subject: TPD Discharge Information - SAIG Service for Total and Permanent Disability Discharge Loan Holder Notification File Delivery Now Available for FFEL Program Guaranty Agencies  
[Electronic Announcement dated January 29, 2019](#); subject: Revisions to the Federal Student Loan Discharge Applications

*Required Procedures:*

C.4.2.a Select a representative sample of lender client loans on which a claim was filed during the attestation period and verify that the claim was filed timely and with all required documentation to support the particular type of claim.

**C.4.3. Curing Due Diligence and Timely Filing Violations***Attestation Objective:*

Determine whether the cure procedures in 34 C.F.R. Part 682, Appendix D were complied with for loans with due diligence or timely filing violations.

*Background:*

A lender can lose reinsurance coverage and interest and special allowance payment benefits due to violations of due diligence in the collection of delinquent loans or timely default claim filing requirements. To reinstate reinsurance and other Federal payments on a loan, the violation has to be cured. (34 C.F.R. §§ 682.411, 682.300(b)(2)(vii), 682.302(d)(1)(iv), 682.413(a)(1), and Appendix D).

Curing procedures can involve receiving one full payment, as defined in 34 C.F.R Part 682, Appendix D, I.A; obtaining a new repayment agreement signed by the borrower, that complies with any repayment period limitations set out in 34 C.F.R. § 682.209(a)(7) or (e)(2); or other required activities depending on the number and significance of the violation(s).

***Due-Diligence Violations***

A due diligence violation occurs when a lender does not engage in the required collection activities on delinquent loans within the time frame specified. See Chapter 3, Section C.4.1. Due Diligence in Collection of Delinquent Loans for more information. Appendix D of 34 C.F.R. Part 682 allows for the following due diligence violations to be cured: gaps in collection activities that exceed the permitted number of days and failure to timely complete a required diligent phone contact effort, send a require letter, or engage in a required skip-tracing activity. (34 C.F.R. Part 682, Appendix D, I.A, “Violation”)

According to 34 C.F.R. Part 682, Appendix D, I.C.3, the necessary cures depend on the number and type of violations that exist:

- *Violations of less than 6 days (or 21 days for a transfer):* There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency.
- *Two or fewer violations of 6 days or more (or 21 days for a transfer) and no gap of 46 days or more (or 61 days for a transfer):* Principal will be reinsured, but accrued interest, interest benefits, and special allowance payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default. However, the lender must complete all required activities before the claim filing deadline, except that a default aversion assistance request must be made before the 330<sup>th</sup> day of delinquency. If the lender fails to make this request by the 330<sup>th</sup> day, the Secretary will not pay any accrued interest, interest benefits and special allowance for the most recent 270 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90<sup>th</sup> day before default.

- *Three violations of 6 days or more (or 21 days for a transfer) and no gap of 46 days or more (or 61 days for a transfer):* The Secretary will not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated. The lender must satisfy the following requirements, or receive a full payment or a new, signed repayment agreement in order for reinsurance on the loan to be reinstated:
  - The lender must first locate the borrower after the date of the last violation and within 15 days thereafter, the lender must send to the borrower, at the address at which the borrower was location:
    - a new repayment agreement, to be signed by the borrower, that complies with the repayment period limitations in 34 C.F.R. § 682.209(a)(7), along with
    - a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.
  - If, within 15 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender must, within 5 days thereafter, diligently attempt to contact the borrower by telephone and again diligently attempt to contact the borrower by telephone within 5-10 days after the first diligent telephone effort.
  - Within 5-10 days after completing the above efforts, the lender must send a forceful collection letter indicating that the entire unpaid balance of the loan is due and payable, and that, unless the borrower immediately contacts the lender to arrange repayment, the lender will be filing a default claim with the guaranty agency.
- *More than three violations of 6 days or more (or 21 days for a transfer) or a gap of 46 days (or 61 days for a transfer) or more and at least one violation (Egregious Due Diligence Violations):* The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated. The lender must receive one full payment or obtain a new repayment agreement, signed by the borrower, that complied with the repayment period limitations set out in 34 C.F.R. § 682.209(a)(7) and (e)(2) for reinsurance on the loan to be reinstated.

### ***Timely Filing Violations***

A timely filing violation occurs when a lender fails to submit claims within the prescribed time frames. See Chapter 3, Section C.4.2. Timely Claim Filings for more information. Appendix D of 34 C.F.R. Part 682 allows for violations of timely default, death, and disability claims to be cured, as well as violations of timely bankruptcy claims when the lender can demonstrate that the bankruptcy action has concluded and the loan has not been discharged in bankruptcy or has been the subject of a reversal of the discharge (34 C.F.R. Part 682, Appendix D, Introduction, D. and I.E.2).

According to 34 C.F.R. Part 682, Appendix D, I.E.1 and I.E.2, in order for reinsurance on the loan to be reinstated in the case of a timely default, death, disability, or bankruptcy claim filing violations, the lender must satisfy the following requirements or receive one full payment or a new repayment agreement signed by the borrower:

- The lender must first locate the borrower after the date of the last violation and within 15 days thereafter, the lender must send to the borrower, at the address at which the borrower was location:
  - a new repayment agreement, to be signed by the borrower, that complies with the 10-year repayment limitations in 34 C.F.R. § 682.209(a)(7), along with
  - a collection letter indicating in strong terms the seriousness of the borrower’s delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.
- If, within 15 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender must, within 5 days thereafter, diligently attempt to contact the borrower by telephone and again diligently attempt to contact the borrower by telephone within 5-10 days after the first diligent telephone effort.
- Within 5-10 days after completing the above efforts, the lender must send a forceful collection letter indicating that the entire unpaid balance of the loan is due and payable, and that, unless the borrower immediately contacts the lender to arrange repayment, the lender will be filing a default claim with the guaranty agency.

*Criteria:* 34 C.F.R. Part 682, Appendix D  
34 C.F.R. § 682.209  
34 C.F.R. § 682.411

*Required Procedures:*

Select a representative sample of lender client loans reported on the LaRS as cured during the attestation period:

- C.4.3.a Verify that the required cure procedures were performed.
- C.4.3.b For instances in the sample identified above where a new repayment agreement was obtained, verify that the repayment agreement meets the repayment period limitations of 34 C.F.R. § 682.209(a)(7) or (e)(2).
- C.4.3.c For instances in the sample identified above where one full payment was obtained, verify that the payment complied with the terms of the most current repayment schedule and was valid in accordance with 34 C.F.R Part 682, Appendix D, I.A.

**D. COMPLIANCE ATTESTATION ENGAGEMENT REPORT CONTENTS**

The compliance attestation engagement reporting package consists of the below components. The format and content of these components are illustrated in the examples provided in Chapter 3, Section D.8. Servicers will be subject to administrative proceedings that could lead to sanctions if an acceptable report package is not submitted.

**D.1. TITLE PAGE**

The title page is the cover page of the report. It should clearly identify the name and location of the servicer, the attestation period, and the name of the audit firm, and should identify that the engagement was a compliance attestation engagement.

**D.2. LENDER SERVICER AND AUDITOR INFORMATION SHEET**

The Lender Servicer and Auditor Information Sheet provides information about the servicer and the auditor and also includes a matrix to identify the servicer's lender clients.

**D.3. REPORT ON COMPLIANCE FOR THE FEDERAL FAMILY EDUCATION LOAN PROGRAM**

This is your report on the servicer's assertion about compliance with the specified requirements. You must report findings of noncompliance, significant deficiencies, and material weaknesses. This report should be on formal letterhead representing the independent auditor(s) firm.

**D.4. SCHEDULE OF FINDINGS AND QUESTIONED COSTS**

A Schedule of Findings and Questioned Costs must be included as part of every compliance attestation engagement report package. The Schedule of Findings and Questioned Costs identifies all your findings of noncompliance, significant deficiencies, and material weaknesses. If there were no findings, the schedule should include only a statement to that effect.

You can use your judgment in determining the format of this schedule, but at a minimum each finding in the financial statement audit and the compliance attestation engagement should include the information in GAGAS sections on Presenting Findings in the Report (GAGAS 6.50-.51 or GAGAS 7.48-.49) and Obtaining and Reporting the Views of Responsible Officials (GAGAS 6.57-.60 or GAGAS .7.55-.58).

For each finding of noncompliance, GAGAS 6.17 and 7.19 explain that you should plan and perform procedures to develop the criteria, condition, cause, and effect of the finding to the extent that these elements are relevant and necessary to achieve the engagement objectives. In addition, GAGAS 6.50 and 7.48 explain that when presenting findings, you should develop the elements of the findings to the extent necessary to assist management or oversight officials of the audited entity in understanding the need for taking corrective action.

This Guide requires that you also make recommendations for corrective action to the servicer, unless corrective action is not necessary. In such cases, you should provide the reason(s) why corrective action was not necessary.

If the noncompliance causes any expenditure of Federal funds or loan guarantees to be questionable, you should identify the dollars involved as questioned costs, and include a recommendation that the servicer confer with ED officials about whether refunds or adjustments are required. Questioned cost is a cost that is questioned by the auditor because of an audit/attestation finding, including (a) a cost that resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds; (b) costs that at the time of the audit/attestation, are not supported by adequate documentation; or (c) costs that appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Findings should be placed in perspective by describing the nature and extent of the issues being reported and the extent of the work performed that resulted in the finding, in accordance with GAGAS 6.51 and 7.49. With this information, ED management can put proper perspective on the finding for resolution. The lender servicer's Schedule of Findings and Questioned Costs should present finding in sufficient detail to enable the lender auditor to determine whether the findings address the FFEL Program compliance requirements for which the lender has contracted the lender servicer to perform. For each finding, you should include the following information to place the finding in perspective:

- The number of units affected by the noncompliance and the associated monetary value, including identification of each lender for which transactions are affected and the summarized effect for each lender's transactions.
- The number of units and monetary value of the universe and sample size of the attribute(s) tested that relate to the noncompliance. If the sample was expanded to evaluate the projected error rate statistically, the report should also include information about the sampling methodology, confidence level, precision, expected rate of occurrence, and estimated disallowance to the population, including the point estimate and lower and upper limits (Chapter 3, Sections B.7 through B.9).
- Information about the sampling methodology and identifying information for the lenders that compromise the universe from which the sample was selected.
- Your definition of material noncompliance for the type of compliance requirement under which the instances of noncompliance were found, as discussed in Chapter 3, Section B.6.

In accordance with GAGAS 6.57 and 7.55, you should obtain and report the views of responsible officials concerning the findings, conclusions, and recommendations, as well as planned corrective actions. In your Schedule of Findings and Questioned Costs, you should include or describe the auditee's comments (concurrency or non-concurrency with the finding), and describe your consideration of the auditee's comments, if the auditee does not concur with the finding. The servicer must develop and submit a *separate* Corrective Action Plan (Chapter 3,

Section D.6 and D.8-6.) for each finding and recommendation in one document and this Corrective Action Plan must be included when submitting the report package.

Each finding in the schedule should be numbered so that the findings may be referenced easily during audit resolution and follow-up. The first digits of the finding number are the fiscal year being audited, and a hyphen is used to separate these digits from a number indicating the sequence of the finding. For example, the reference numbers for the third, fourth, and fifth findings for fiscal year 202X would be 202X-003, 202X-004, and 202X-005.

#### **D.5. SUMMARY SCHEDULE OF PRIOR FINDINGS**

The servicer must prepare a Summary Schedule of Prior Findings to be submitted with every compliance attestation engagement report. In the schedule, the servicer should report the status of –

- Findings reported in audits, attestation engagements, program reviews, or other studies that directly relate to the servicer’s compliance with FFEL program requirements in this Guide that were issued in the prior fiscal year or during or after the audit/attestation period but before the date of your report.
- Findings reported in the prior year’s Summary Schedule of Prior Findings as unresolved.

The servicer should also identify the actions necessary to resolve any unresolved findings.

The servicer should refer to the findings using the numbers that were assigned in the prior report. If the findings in the prior report were not numbered, identify prior findings in an appropriate manner (e.g., page number, caption, etc.). The servicer should clearly state if –

- There were no prior findings in the immediate prior compliance attestation engagement report issued in accordance with this Guide (or the preceding Guide) and other pertinent audits/attestation engagements or reviews, or
- There were no immediate prior compliance attestation engagements per this Guide (or the preceding Guide), or prior audits/attestation engagements or reviews issued during or after the audit/attestation period but before the date of your current report.

You must follow-up on prior findings as described in Chapter 3, Section B.10, and perform procedures to assess the reasonableness of the Summary Schedule of Prior Findings prepared by the servicer. If you conclude that the schedule materially misrepresents the status of any prior finding, you must report a current-year finding.

#### **D.6. CORRECTIVE ACTION PLAN**

When the compliance attestation engagement contains findings, the servicer must prepare, and submit with the report package, a corrective action plan to address each finding included in the Schedule of Findings and Questioned Costs.



The corrective action plan should be submitted on the servicer's letterhead. It should identify each finding, using the number the auditor assigned to it in the audit report, and should be signed by the servicer's official (signing official) who was responsible for its preparation. That official should also provide his or her title, telephone number, and e-mail address. The corrective action plan should include the servicer's comments on findings and recommendations and actions taken or planned, as discussed below and illustrated in D.8-6.

- **Comments on Findings and Recommendations.** The signing official should provide a statement of concurrence or non-concurrence with the findings and recommendations. If the signing official does not agree with a finding, he or she must explain why, and provide specific reasons.
- **Actions Taken or Planned.** The signing official should describe the actions the servicer has taken, or plans to take, to correct the deficiencies identified in the compliance attestation engagement report. For a planned action, the corrective action plan should include an anticipated completion date. If the signing official does not believe a corrective action is required, he or she must state so and include an explanation.

Report packages containing findings that are submitted without a corrective action plan are incomplete and will not be accepted.

#### **D.7. ADDITIONAL SUBMISSION REQUIREMENTS**

The servicer must submit the servicer management's written assertions and compliance representations (see Chapter 3, Section A.1) with its compliance attestation engagement report package.

**D.8. ILLUSTRATIVE COMPLIANCE ATTESTATION ENGAGEMENT REPORTS, SCHEDULES, AND FORMS**

This section contains examples and provides further guidance on the contents of the reports, schedules, and forms that comprise the compliance attestation engagement reporting package.

Example Number	Title
D.8-1.	Title Page – Compliance Attestation Engagement Report
D.8-2.	Lender Servicer and Auditor Information Sheet
D.8-3a.	Report on Management’s Assertions on Compliance for the Federal Family Education Loan Program Required by the <i>Guide for Financial Statement Audits and Compliance Attestation Engagements of Lender Servicers Administering Federal Family Education Loan Program Loans</i> (Unmodified Opinion on Management’s Assertions on Compliance, No Reportable Findings)
D.8-3b.	Report on Management’s Assertions on Compliance for the Federal Family Education Loan Program Required by the <i>Guide for Financial Statement Audits and Compliance Attestation Engagements of Lender Servicers Administering Federal Family Education Loan Program Loans</i> (Unmodified Opinion on Management’s Assertions on Compliance, Reportable Findings)
D.8-3c.	Report on Compliance for the Federal Family Education Loan Program Required by the <i>Guide for Financial Statement Audits and Compliance Attestation Engagements of Lender Servicers Administering Federal Family Education Loan Program Loans</i> (Qualified Opinion on Compliance, Reportable Findings)
D.8-4.	Schedule of Findings and Questioned Costs
D.8-5.	Summary Schedule of Prior Findings
D.8-6.	Corrective Action Plan

**D.8-1 Title Page – Compliance Attestation Engagement Report**

SERVICER NAME  
CITY, STATE

COMPLIANCE ATTESTATION ENGAGEMENT  
OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM

FOR THE FISCAL YEAR ENDED [MONTH DAY, YEAR]

XYZ & Co.  
Certified Public Accountants

**D.8-2 Lender Servicer and Auditor Information Sheet**

LENDER SERVICER AND AUDITOR INFORMATION SHEET

**[NAME OF SERVICER]  
[CITY, STATE]  
[PERIOD AUDITED]**

**Servicer Information:**

Lender ID Number(s): \_\_\_\_\_  
 Auditee Contact: \_\_\_\_\_  
 Auditee Email: \_\_\_\_\_  
 Auditee Phone: ( ) \_\_\_\_ - \_\_\_\_\_

**Auditor Information:**

Audit Firm: \_\_\_\_\_  
 Firm Address: \_\_\_\_\_  
 Firm City, State: \_\_\_\_\_  
 Firm License Number:<sup>3</sup> \_\_\_\_\_  
 Primary Auditor: \_\_\_\_\_  
 Primary Email: \_\_\_\_\_  
 Primary Phone: ( ) \_\_\_\_ - \_\_\_\_\_

LISTING OF LENDER CLIENTS

<b>ID Number</b>	<b>Name of Lender</b>	<b>City</b>	<b>State</b>
123456	Example Lender	Anywhere	XX

<sup>3</sup> The audit firm should provide the license number of the State where they have their principal place of business as well as the license number of the State where the servicer is located, if applicable.

**D.8-3a Report on Management’s Assertions on Compliance for the Federal Family Education Loan Program Required by the Guide for Financial Statement Audits and Compliance Attestation Engagements of Lender Servicers Administering Federal Family Education Loan Program Loans (Unmodified Opinion on Management’s Assertions on Compliance, No Reportable Findings)<sup>4</sup>**Independent Accountant’s Report

[Appropriate Addressee]

We have examined management of [Servicer’s] assertions that [Servicer] complied with the compliance requirements regarding Interest Benefits and Special Allowance Payments; Loan Records and Administration; Payment Processing; and Due Diligence, Timely Claim Filing, and Curing Violations described in Chapter 3 of the 2020 edition of the U. S. Department of Education’s *Guide for Financial Statement Audits and Compliance Attestation Engagements of Lender Servicers Administering Federal Family Education Loan Program Loans* Guide) relative to [Servicer’s] participation in the Federal Family Education Loan (FFEL) program, for the year ended [Date].<sup>5</sup> [Servicer’s] management is responsible for its assertions. Our responsibility is to express an opinion on management’s assertions about [Servicer’s] compliance with the compliance requirements referred to above, based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants; the standards applicable to attestation engagements contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the Guide. Those standards and the Guide require that we plan and perform the examination to obtain reasonable assurance about whether management’s assertion about compliance with the compliance requirements referred to above is fairly stated, in all material respects. An examination involves performing procedures to obtain evidence about whether management’s assertion is fairly stated, in all material respects. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material misstatement of management’s assertion, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

Our examination does not provide a legal determination on [Lender’s] compliance with the compliance requirements referred to above.

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<sup>4</sup> Examples D.8-3a through D.8-3c are intended to provide illustrations for various situations. Auditors, using professional judgment, may adapt these examples to other situations not specifically addressed within the illustrations.

<sup>5</sup> Only those compliance requirements which are applicable to the servicer, and therefore audited as part of the compliance attestation engagement, should be listed in this paragraph.

In our opinion, management’s assertion that [Servicer] complied with the compliance requirements referred to above for the year ended [Date],<sup>6</sup> is fairly stated, in all material respects.

The purpose of this report is to evaluate compliance with the compliance requirements referred to above relative to [Servicer’s] participation in the FFEL program, for the year ended [Date]. The report is not suitable for any other purpose.

*[Practitioner’s signature]*

*[Practitioner’s City and State]*

*[Date of practitioner’s report]*

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<sup>6</sup> The opinion should be modified, as appropriate, depending on the specific circumstances of the audit.

**D.8-3b Report on Management’s Assertion on Compliance for the Federal Family Education Loan Program Required by the Guide for Financial Statement Audits and Compliance Attestation Engagements of Lender Servicers Administering Federal Family Education Loan Program Loans (Unmodified Opinion on Management’s Assertion on Compliance, Reportable Findings)<sup>7</sup>**Independent Accountant’s Report

[Appropriate Addressee]

We have examined management of [Servicer’s] assertions that [Servicer] complied with the compliance requirements regarding Interest Benefits and Special Allowance Payments; Loan Records and Administration; Payment Processing; and Due Diligence, Timely Claim Filing, and Curing Violations described in Chapter 3 of the 2020 edition of the U. S. Department of Education’s *Guide for Financial Statement Audits and Compliance Attestation Engagements of Lender Servicers Administering Federal Family Education Loan Program Loans* (Guide) relative to [Servicer’s] participation in the Federal Family Education Loan (FFEL) program, for the year ended [Date].<sup>8</sup> [Servicer’s] management is responsible for its assertions. Our responsibility is to express an opinion on management’s assertion about [Servicer’s] compliance with the compliance requirements referred to above, based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants; the standards applicable to attestation engagements contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the Guide. Those standards and the Guide require that we plan and perform the examination to obtain reasonable assurance about whether management’s assertion about compliance with the compliance requirements referred to above is fairly stated, in all material respects. An examination involves performing procedures to obtain evidence about whether management’s assertion is fairly stated in all material respects. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material misstatement of management’s assertion, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

Our examination does not provide a legal determination on [Lender’s] compliance with the compliance requirements referred to above.

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<sup>7</sup> Examples D.8-3a through D.8-3c are intended to provide illustrations for various situations. Auditors, using professional judgment, may adapt these examples to other situations not specifically addressed within the illustrations.

<sup>8</sup> Only those compliance requirements which are applicable to the servicer, and therefore audited as part of the compliance attestation engagement, should be listed in this paragraph.

In our opinion, management’s assertion that [Servicer] complied with the compliance requirements referred to above for the year ended [Date],<sup>9</sup> is fairly stated, in all material respects.

In accordance with *Government Auditing Standards* and this Guide, we are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control and any noncompliance with provisions of laws, regulations, contracts or grant agreements and instances of fraud that are material to management’s assertion about [Servicer’s] compliance with the compliance requirements referred to above. We are also required to obtain and report the views of responsible officials concerning the findings, conclusions, and recommendations, as well as any planned corrective action. We performed our examination to express an opinion on whether management’s assertion about compliance with the compliance requirements referred to above, is fairly stated, in all material respects, and not for the purpose of expressing an opinion on the internal control over compliance; accordingly, we express no such opinion. Our examination disclosed certain findings that are required to be reported under *Government Auditing Standards* and this Guide, and those findings, along with the views of responsible officials, are described in the attached Schedule of Findings and Questioned Costs.<sup>10</sup>

The purpose of this report is to evaluate compliance with the compliance requirements referred to above relative to [Servicer’s] participation in the FFEL program, for the year ended [Date]. The report is not suitable for any other purpose.

[*Practitioner’s signature*]

[*Practitioner’s City and State*]

[*Date of practitioner’s report*]

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<sup>9</sup> The opinion should be modified, as appropriate, depending on the specific circumstances of the audit.

<sup>10</sup> See Chapter 3, Section D.4 and D.8-4.



**D.8-3c Report on Compliance for the Federal Family Education Loan Program Required by the Guide for Financial Statement Audits and Compliance Attestation Engagements of Lender Servicers Administering Federal Family Education Loan Program Loans (Qualified Opinion on Compliance, Reportable Findings)<sup>11</sup>**Independent Accountant's Report

[Appropriate Addressee]

We have examined [Servicer's] compliance with the compliance requirements regarding Interest Benefits and Special Allowance Payments; Loan Records and Administration; Payment Processing; and Due Diligence, Timely Claim Filing, and Curing Violations described in Chapter 3 of the 2020 edition of the U. S. Department of Education's *Guide for Financial Statement Audits and Compliance Attestation Engagements of Lender Servicers Administering Federal Family Education Loan Program Loans* Guide) relative to [Servicer's] participation in the Federal Family Education Loan (FFEL) program, for the year ended [Date].<sup>12</sup> [Servicer's] management is responsible for [Servicer's] compliance with the compliance requirements referred to above. Our responsibility is to express an opinion on [Servicer's] compliance with the compliance requirements referred to above, based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants; the standards applicable to attestation engagements contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the Guide. Those standards and the Guide require that we plan and perform the examination to obtain reasonable assurance about whether [Servicer] complied, in all material respects, with the compliance requirements referred to above. An examination involves performing procedures to obtain evidence about compliance. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material noncompliance, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

Our examination does not provide a legal determination on [Servicer's] compliance with the compliance requirements referred to above.

As described in the accompanying Schedule of Findings and Questioned Costs, our examination disclosed material noncompliance with [identify type of compliance requirement] applicable to [Servicer] for the year ended [Date].

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<sup>11</sup> Examples D.8-3a through D.8-3c are intended to provide illustrations for various situations. Auditors, using professional judgment, may adapt these examples to other situations not specifically addressed within the illustrations.

<sup>12</sup> Only those compliance requirements which are applicable to the servicer, and therefore audited as part of the compliance attestation engagement, should be listed in this paragraph.

In our opinion, except for the material noncompliance described in the preceding paragraph, [Servicer] complied, in all material respects, with the compliance requirements referred to above for the year ended [Date].<sup>13</sup>

In accordance with *Government Auditing Standards* and this Guide, we are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control and any noncompliance with provisions of laws, regulations, contracts or grant agreements and instances of fraud that are material to management’s assertion about [Servicer’s] compliance with the compliance requirements referred to above. We are also required to obtain and report the views of responsible officials concerning the findings, conclusions, and recommendations, as well as any planned corrective action. We performed our examination to express an opinion on whether management’s assertion about compliance with the compliance requirements referred to above, is fairly stated, in all material respects, and not for the purpose of expressing an opinion on the internal control over compliance; accordingly, we express no such opinion. Our examination disclosed certain findings that are required to be reported under *Government Auditing Standards* and this Guide, and those findings, along with the views of responsible officials, are described in the attached Schedule of Findings and Questioned Costs.<sup>14</sup>

The purpose of this report is to evaluate compliance with the compliance requirements referred to above relative to [Servicer’s] participation in the FFEL program, for the year ended [Date]. The report is not suitable for any other purpose.

[*Practitioner’s signature*]

[*Practitioner’s City and State*]

[*Date of practitioner’s report*]

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<sup>13</sup> The opinion should be modified, as appropriate, depending on the specific circumstances of the audit.

<sup>14</sup> See Chapter 3, Section D.4 and D.8-4.

**D.8-4 Schedule of Findings and Questioned Costs**

*You should refer to Chapter 3, Section D.4 regarding the content of the findings and the information necessary to place the findings in perspective, including information on the universe(s) and sample(s), the noncompliance identified, and the definition of material noncompliance for the applicable compliance requirement.*

**SCHEDULE OF FINDINGS AND QUESTIONED COSTS**

**Finding 202X-001**

Criteria:

Condition:

Cause:

Effect or Potential Effect:

Questioned Costs (if applicable):

Recommendation:

Views of Responsible Officials:

**D.8-5 Summary Schedule of Prior Findings**

*You should refer to Chapter 3, Section D.5 regarding the content of this schedule.*

**SUMMARY SCHEDULE OF PRIOR FINDINGS**

Action taken on prior findings in report, Audit Control Number # xx-xxxx-xxxxx titled [Title of report] are:

**Finding 202X-001:** Include a summary of the finding and recommendation.

Status Identify the status of the finding resolution. If not fully resolved, identify the actions necessary to resolve the finding.

**D.8-6 Corrective Action Plan**

*You should refer to Chapter 3, Section D.6 regarding the content of this schedule.*

**CORRECTIVE ACTION PLAN**

[On servicer’s letterhead]

**Finding 202X-001:** Include a summary of the finding and recommendation.

Comments on Finding and Recommendation(s): Provide a statement of concurrence or non-concurrence with an explanation and specific reason.

Actions Taken or Planned: Describe actions taken or planned with anticipated completion date.

\_\_\_\_\_  
Signature of Servicer Official  
Title and Date  
Telephone:  
Email: