UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE UNDER SECRETARY

GEN-08-05
FP-08-05

May 5, 2008

Subject: FFEL Lender-of-Last-Resort Loan Program

Summary: On March 26, 2008, the Department issued "Dear Colleague" Letter GEN-08-03, FP 08-03, requesting guaranty agencies to update lender-of-last-resort (LLR) rules and operating procedures. This letter provides further information and guidance to guaranty agencies to ensure consistent borrower access to FFEL Program loans through the efficient and effective implementation of the LLR program.

Dear Guaranty Agency Director:

As you know, the Department of Education (the Department) has been working with guarantor members of the National Council of Higher Education Loan Programs (NCHELP) in an effort to develop processes for the implementation of the FFEL LLR program. Through our collaborative efforts with the guaranty agencies, we want to utilize the strengths and abilities of each in a flexible manner to ensure that all otherwise eligible students (and parents) have access to FFEL Program loans for the upcoming academic year. We have also worked to ensure that the original intent of the LLR program is preserved, ensuring that these LLR loans are provided only as a true last resort. Finally, as we review, evaluate, and eventually approve each of the guaranty agency's updated plans, we are committed to improved consistency and the overall integrity of the program for the coming academic year and well into the future.

The FFEL LLR Program is authorized by section 428(j) of the Higher Education Act (HEA) and the 34 CFR 682.401(c) implementing regulations. Under these provisions, a guaranty agency may approve a FFEL lender to make LLR loans or the guaranty agency may make LLR loans itself. The law permits a guaranty agency to request an advance of federal funds from the Secretary if it is unable to itself fund LLR loans.

The information included in this letter provides guaranty agencies and other interested parties with important information on the implementation of an LLR plan for the FFEL Program. In addition, we have attached a set of Questions and Answers (Q&A) that provide more details about the LLR process. Many of the Q&A respond to questions specifically submitted by NCHELP, individual guaranty agencies, and others.

LLR Implementation Details

- *Status of LLR Loans* – An LLR loan, regardless of the lender or the funding source, has all of the characteristics of a conventional FFEL Program loan except as discussed below and in the attachment to this letter.

- *Identification of the Need for LLR Loans* – The starting point for determining that an LLR loan is needed is the inability of a student (or his or her parent) to obtain a conventional FFEL loan. Generally, this determination is made on a student-by-student basis. However, to ensure that LLR services are provided in a timely manner, the Department will develop criteria and implement a process for institutional eligibility to make LLR loans. To determine eligibility, an institution working with the guaranty agency will provide, at a minimum, –

  - The number and percentage of the institution's FFEL loan applicants who are expected to be unable to obtain a conventional FFEL loan;
  - The names of the FFEL lender or lenders that provided FFEL loans in the past to students attending the institution (or their parents) which, based on available information, have indicated that they will no longer provide conventional FFEL loans to these individuals. And for each such lender, an estimate of the number of students who will be impacted by the lender's decision; and
  - The names of other FFEL lenders that the institution or the guarantor contacted to request FFEL loan access for students at the institution for the 2008-2009 academic year.

- *LLR Sequence* – When a student (or group of students) is unable to obtain a conventional FFEL loan, pursuant to section 428(j) and 34 CFR 682.401(c), the state designated guaranty agency is statutorily responsible for students attending the institutions in, and those students who are residents of, their designated state(s). Therefore, the designated guaranty agency for a state may make (regardless of funding source), or arrange for an eligible lender to make, LLR loans only to students attending an institution located in that state or to a resident of that state attending an institution in another state. Additionally, while an institution may request any guaranty agency to assist in the identification of FFEL lenders who will make conventional loans to the institution's students, any institution-wide certification of the need for LLR loans must be made by the guaranty agency designated for the state where the school is located. When so notified –

  - The designated guaranty agency must attempt to identify FFEL lenders that will make conventional FFEL loans.
  - If no lenders are identified, the designated guarantor will seek FFEL lenders that will make LLR loans.
  - If no FFEL lender will make LLR loans, the designated guaranty agency itself will, to the extent practicable, make LLR loans using available unrestricted net assets, after taking into consideration other anticipated programmatic uses of the assets.
  - Finally, if the guaranty agency can demonstrate that it lacks the financial capacity to make LLR loans with its own funds, it may request federal Advances from the Secretary to make LLR loans.

- *Borrower Rights and Responsibilities* – An LLR loan made by a FFEL program lender, a guaranty agency using its own funds, or a guaranty agency using federal Advances provides the borrower the same rights, benefits, and obligations that apply to a conventional FFEL loan (e.g., discharges and cancellations, loan consolidation, etc.).

- *Lender and Loan Holder Rights, Benefits, and Obligations* – When an LLR loan is made by a traditional FFEL lender, or by a guaranty agency using funds other than federal Advances, all of the rights, obligations, benefits, and requirements that apply to conventional FFEL loans apply to the lender (including the guaranty agency acting as an LLR lender) and to any subsequent holders, except that the LLR loan carries a default insurance (and reinsurance rate) of 100 percent.

- *Guaranty Agency Obligations* – A guaranty agency that makes an LLR loan is responsible for complying with all the requirements applicable to a FFEL lender under the Higher Education Act (HEA).

- *Agency Requests for Advance Funds* – A guaranty agency seeking federal Advances to provide LLR loans to students attending schools in the agency's designated state(s) or to students who are residents of the designated state(s) attending school in another state must submit a written request to the Secretary. To provide federal Advances to a guaranty agency, the Secretary must determine that –

  - Eligible borrowers are seeking and unable to obtain loans in the designated guaranty agency's state(s);
  - The designated guaranty agency for that state has the capability to provide LLR loans in a timely manner, but the agency cannot provide such loans without Advances from the Secretary; and
  - Making Advances for LLR loans would be cost-effective.

  The Department will finalize the criteria and documentation needed to provide federal Advances to agencies and will be prepared to receive written requests for federal Advances by June 1, 2008.

- *Guaranty Agency LLR Fee* – The Department will determine the process for establishing the fee it will pay to a guaranty agency for originating and servicing LLR loans made with Advances and will communicate that structure within 10 days of the date of this letter. The process for establishing the amount of the fee that will be paid to a guaranty agency by the Secretary for making LLR loans with federal Advances will be set using a market-based methodology and will ensure broad national coverage for all potential LLR loans.

- *Advances Agreement for Federal Funds* – The Secretary will have the funds available to provide federal Advances for the purpose of making LLR loans, if needed. Specific terms and conditions governing federal Advances to a guaranty agency will be included in an Advances Agreement that will be executed between the Secretary and the guaranty agency. The Agreement will include, among other things, the following –

  - The specific processes for the transfer of Advances to the guaranty agency accounts;

- The requirement that advance funds be maintained in a restricted subsidiary account of the agency's Federal Fund;
- A provision describing the status of loans made with federal Advances, including the requirement that the agency may not sell, securitize, or pledge loans.
- The duration of the Agreement covering Advances that will be needed by the guaranty agency, and any reporting and reconciliation requirements;
- The LLR loan volume that the guaranty agency commits to provide under the Agreement;
- The state or states in which the guaranty agency will provide LLR loans;
- The types of FFEL program loans to be made by the guaranty agency under the LLR Agreement; and
- Details regarding the LLR fee that the Secretary will pay to the guaranty agency.

- *Assignment of LLR Loans Made with Federal Advances* – If needed, federal funds issued for the purpose of making LLR loans will be deposited into a special reserve account of the agency's Federal Fund. The federal government will be the beneficial owner of the loans made with these funds, and the agency must hold and treat the loan as a federal asset. The guaranty agency must assign these loans to the Department upon demand by the Secretary. Assignment of an LLR loan, in this context, is the transfer of title to the loan.

As noted, the information above is supplemented by the attached Q&A document. The Congress has passed H.R. 5715, the Ensuring Continued Access to Student Loans Act, which might impact the information in this letter and its attachment. Specifically, the bill provides temporary authority for institution-wide designation status in the LLR program. The Department will publish additional guidance to reflect this and any other changes resulting from the legislation.

In the letter of March 26, 2008, the Department indicated that the guaranty agencies had 30 days to submit updated rules and operating procedures for implementing their LLR programs. Given the on-going dialogue, we are extending that submission date to May 16, 2008.

We are, of course, committed to the continuation of our ongoing discussions with the FFEL community on issues related to the LLR Program. I wish to thank all interested parties for their efforts to ensure that eligible borrowers have access to federal student loans to pursue their educational goals.

If you have any questions on the information provided in this letter, you may contact Robert Moran of my staff at robert.moran@ed.gov.

Sincerely,

/s/

Sara Martinez Tucker
Under Secretary
U.S. Department of Education

FFEL Lender of Last Resort Loan Program
Questions & Answers (Q&A)
DCL GEN-08-05, FP-08-05
May 2008

The following Questions & Answers (Q&A) are provided as an attachment to Dear Colleague Letter GEN-08-05 and FP-08-05 and provide further information and guidance to guaranty agencies to ensure consistent borrower access to FFEL Program loans through the efficient and effective implementation of an LLR program. The Q&A are organized as follows –

- Initial Planning
- Certification of the Need for LLR
- LLR Responsibilities for Specific Guaranty Agencies
- Guaranty Agency Compliance with Other Laws Applicable to Lenders
- Guaranty Agency as LLR Lender Without federal Advances
- Guaranty Agency as LLR Lender With federal Advances
- LLR Regulatory Issues and Potential Conflicts
- Safe Harbors
- Additional items

Initial Planning

The following Q&A relate to the planning process in developing policies and procedures.

Q1 Is Sallie Mae obligated to serve under the LLR provisions in Section 439(q) of the Higher Education Act? Specifically, is Sallie Mae obligated to serve as an LLR for the FFEL program, and is Sallie Mae still obligated to advance funds to guarantors and lenders for their own LLR programs?

A1 Sallie Mae was released by the Department from any LLR obligation or responsibility under section 440 of the Act.

Q2 Is the survey of lenders referred to in the earlier Dear Colleague Letter (GEN-08-03, FP-08-03) to be completed before submission of an agency's updated LLR plan? The letter says, "Before a guaranty agency implements its LLR program, it must survey all FFEL lenders. . ." Some interpretations are that the survey must be completed before submission of revised plans, while another interpretation is that guaranty agencies just need to describe their plan to survey lenders but do not need to have the survey completed.

A2 The LLR plan submitted by a guaranty agency must include a description of the process it will use to survey lenders to determine if any will make conventional FFEL loans and/or LLR loans. That description should include an explanation of when the guaranty agency will conduct its survey and the length of time necessary to complete it. The survey must, at a minimum, be completed before the issuance of any LLR loans.

Q3 The earlier Dear Colleague Letter (DCL) directing guaranty agencies to submit updated rules and procedures states that an LLR must explain "why the lender is unwilling to make conventional FFEL loans, in general or specific cases, but is willing to make LLR FFEL loans." Has the Department considered that the responses will change frequently and will reflect financial markets and other priorities within lending institutions?

A3 The Department is aware that market conditions are not static. However, we expect the guaranty agency to collect timely information from those lenders that indicate they are unwilling to make conventional FFEL loans but will make LLR loans.

Q4 The DCL directing guaranty agencies to submit updated LLR plans states that the LLR agreement ". . . must require the lender to notify the guaranty agency of its intent to terminate the LLR agreement at least 60 days prior to the effective date of the termination, and to fully disburse any loan first disbursed prior to that effective date." Can an LLR lender stop approving new loans during that 60-day period?

A4 The Department expects that, in order to avoid disruption to borrowers and institutions during the 60-day termination period, the lender will continue to accept LLR loan certifications and will make all required disbursements on those loans.

Q5 The DCL directing guaranty agencies to submit updated rules and procedures states, "As part of its review process, the guaranty agency must examine the lender's financial and administrative capability to serve as an LLR lender." What kind of analysis does the Department envision to examine the lender's financial capability?

A5 The Department expects a guaranty agency to review and analyze whether the lender will have available capital or whether it has the ability to raise the necessary capital to make LLR loans, as well as the lender's administrative capability, resources, and expertise to make and service those loans. Factors in this analysis can include an examination of audited financial statements. Generally, a lender that has been participating in the FFEL program will have the necessary administrative capability. Nonetheless, we would be concerned if the agency selected an LLR lender that had previously been identified as having problems administering the program.

Q6 If the guarantor is using its own capital and acting as a lender of last resort, will all of the provisions for non-guarantor LLR funding apply, e.g., special allowance payments, origination fee?

A6 Yes, a guaranty agency making LLR loans with its own capital will be treated as an eligible lender with all attendant rights and responsibilities. H.R. 5715, however, will require the lender to charge the full borrower origination fee.

Certification of the Need for LLR

Q7 In the current market, a student-by-student process based upon no more than two rejections will result in many individuals discontinuing their education after a "first rejection" as they will not attempt a second try. The 1994 guidance on LLR and the 1998 LLR agreements – although never implemented – provided for a school-based process.

A7 To facilitate a guaranty agency's ability to provide LLR services in a timely manner, the Department will implement a process of institutional eligibility for LLR loans. The fundamental LLR starting point is the inability of a student to get a loan. Institutions are best positioned to know when such a circumstance has occurred, and could quickly notify the guaranty agency of credit access problems and subsequent widespread denials. The Department will finalize the criteria and procedures associated with institutional eligibility in the near future consistent with the provisions of H.R. 5715.

Q8 If guarantors are permitted to administer their LLR programs at a school level (rather than requiring each individual borrower to apply for LLR loans), what information would the guarantor need to obtain from an institution in order to obtain eligibility?

A8 The Department will be issuing criteria consistent with the provisions of H.R. 5715 that will govern the temporary authority provided for an institution-wide designation of LLR eligibility in the near future. The cover letter to this DCL includes additional information on this topic, including some examples of the information that would be required.

Q9 Under a school-based approach, would there be thresholds established, such as a specific percentage of students who were denied loans, to determine when LLR services are required?

A9 The Department will finalize the criteria and procedures associated with institutional eligibility in the near future.

Q10 Some guarantors provide origination services on behalf of lenders. Can an LLR process be established that the denial of a loan for a borrower be automatically "fed" to the LLR in the event that the borrower and school request an automatic referral?

A10 No, the student (and institution) must be told of the denial so that they have the opportunity to find another lender that will make a conventional loan to the borrower prior to seeking an LLR loan.

LLR Responsibilities for Specific Guaranty Agencies

Q11 Does a guarantor's designation for a particular state include the responsibility to make LLR loans available, as needed, for any student attending a school located in the state, as well as any borrowers who are residents of that state?

A11 Yes. The guaranty agency LLR program must provide for the agency or an eligible lender to make LLR loans to any borrower attending school in its designated state and any resident of the state attending school in another state.

Q12 Will a guaranty agency's LLR program be limited to the agency's designated state(s) or can it apply to students and schools outside of the designated state? Will a school have the ability to choose the guaranty agency it wants to provide LLR loans to its students?

A12 The Department recognizes that some schools use one or more guaranty agencies that are not the designated agency for the state where the school is located. The Department also believes that implementation of an LLR plan should cause the least disruption to normal business processes. However, section 428(j) of the HEA and 34 CFR 682.401(c)(1) state that the designated guaranty agency is statutorily responsible to the institutions in, and the residents of, the state where it is the designated agency. Therefore, the designated guaranty agency for a state may make (regardless of funding source), or arrange for an eligible lender to make, LLR loans only to students attending an institution located in that state or to a resident of that state attending an institution in another state. Additionally, while an institution may request any guaranty agency to assist in the identification of FFEL lenders who will make conventional loans to the institution's students, any institution-wide certification of the need for LLR loans must be made by the guaranty agency designated for the state where the school is located.

Q13 Please explain how the various borrower fees are handled in the LLR context.

A13 The fees applicable in the LLR context are, as follows –

Borrower Origination Fee – This is the statutory origination fees that lenders must pay the Secretary upon disbursing a FFEL loan. Under the regular FFEL process, the lender may choose to charge this fee to the student borrower (as a reduction in the loan proceeds), or the lender may pay all or part of the borrower fee itself. H.R. 5715 provides that for any LLR loan the borrower must be assessed the origination fee.

Default Fee – A lender or guaranty agency making LLR loans (regardless of funding source) is subject to the normal default fee requirement and must ensure that the default fee is deposited into the agency's Federal Fund. H.R. 5715 provides that for any LLR loan the borrower must be assessed the default fee.

Lender Fee – FFEL lenders are obligated by section 438(d)(1) of the HEA to pay the Secretary a fee of 1 percent of the proceeds of each FFEL loan the lender makes. This fee cannot be passed on to the borrower. The lender fee must be paid by a lender making LLR loans and by a guaranty agency making LLR loans using its own funds.

Q14 In circumstances where an institution has campuses in more than one state, which state designated guaranty agency is responsible for serving that institution with LLR loans?

A14 An institution may, based upon its administrative processes, request LLR loans from either the agency designated for the state where its main campus (or administrative office) is located or from the agency designated for the state where the campus is located.

Guaranty Agency Compliance with Other Laws Applicable to Lenders

Q15 In the early 1990s, the Department issued guidance to clarify that LLR loans do not create an origination relationship or referral, subject to the FTC holder rule, between schools and lenders making the LLR loan. As a result of changes made to regulations during the 2007 negotiated rulemaking process, the LLR exemption to the FTC holder rule is unclear regarding the implications of providing LLR loans to schools. Does the Department plan to provide guidance in the near future to clarify that LLR loans remain exempt from the application of the FTC holder rule.

A15 The Department's regulations, which incorporate a modified FTC holder rule, would apply to all FFEL loans – including loans made under an LLR program. The fact that a loan is made under an LLR program does not change the borrower's rights or obligations under the program.

Q16 Might a guarantor become subject to other federal laws, regulations, and requirements pertaining to financial transactions, for example, the Gramm-Leach-Bliley (GLB) Act, the Fair and Accurate Credit Transactions Act (FACTA), the Truth in Lending Act (TILA), and the Customer Identification Program (CIP) provisions of the USA PATRIOT Act?

A16 The Department has no authority to make determinations on the applicability of federal laws that it is not charged with administering. Guaranty agencies should take appropriate measures to assess applicability of these laws. We note that federal student loans have an explicit statutory exclusion from the requirements in the Truth in Lending Act and state loan disclosure laws.

Guaranty Agency as LLR Lender Without Federal Advances

Q17 Would a guaranty agency be exempted from any of the requirements imposed on eligible lenders under the FFEL Program?

A17 No, a guaranty agency that makes an LLR loan – using either its own funds or federal Advances – is responsible for complying with all the requirements that apply to a FFEL lender, including the payment of the default fee to the agency's Federal Fund.

Q18 Would a guaranty agency making LLR loans without federal Advances be permitted to voluntarily assign its LLR loans to the Department?

A18 No. Loans made with the guaranty agency's own funds are not subject to the assignment authority granted the Department in section 428(j) of the HEA.

Q19 If the guaranty agency uses an alternate origination process, are the LLR loans considered to be comparable to other lender-held FFEL loans (e.g., eligible for interest and special allowance subsidies and subject to normal FFEL lender requirements)?

A19 LLR loans made by a lender or by a guaranty agency using non-federal funds carry the same benefits as other FFEL Program loans.

Q20 If the guarantor acts as an LLR lender on its own behalf, is the agency compensated for using its own funds to make LLR loans?

A20 As noted above and in the cover DCL, a guaranty agency making an LLR loan using its own funds is treated as any other LLR lender. Thus, the agency will receive the special allowance and interest subsidy, as well as the 100% guarantee.

Guaranty Agency as LLR Lender With Federal Advances

Q21 How would the funding process work for the Department to make federal Advances to guarantors, if needed, to make LLR loans? How would the Department determine that a guarantor needs federal Advances to make LLR loans in its state – what information would be requested from the guarantor?

A21 In order to provide federal Advances to a guaranty agency for purposes of the agency making LLR loans, the Secretary must determine that –

- Eligible borrowers are seeking and unable to obtain loans in a particular state;
- The designated guaranty agency for that state has the capability to provide LLR loans in a timely manner, but the agency cannot provide such loans without Advances from the Secretary; and
- Making Advances for LLR loans would be cost-effective.

While specific criteria are being developed for these, before federal Advances are made, the guaranty agency would provide, at a minimum, the following documentation or data to the Secretary –

- The number of borrowers that are unable to obtain loans, and the steps the agency or the institution took to find lenders who would make conventional FFELP loans;
- A detailed description of the guaranty agency's administrative capability;
- A detailed rationale of why the guaranty agency does not have sufficient funds to issue LLR loans itself;
- A description of attempts to locate other non-federal funds; and
- The financial capability to provide LLR loans to the borrowers in its designated state(s).

Note that only the designated guarantor for each state may request federal Advances to make LLR loans for students attending an institution in that state unless those students are residents of state for which it is the designated guarantor. A guarantor that is not the

designated guarantor for a state may receive and use federal Advances for LLR loans for students and institutions in that state only if the Secretary determines that federal Advances should not be provided to the guarantor designated for that state, and should instead be provided to that non-designated guarantor.

Q22 In what manner would the Department expect guarantors to request federal Advances funds?

A22 A guaranty agency will make a formal written request to the Secretary seeking federal Advances to make LLR loans. The specific criteria and process that will be used to evaluate such a request will be provided in subsequent guidance.

Q23 Will the Department impose restrictions on the use of federal Advances funds?

A23 Federal Advances may only be used by the guaranty agency to make LLR loans under the terms and conditions of the Advances Agreement entered into between the Secretary and the guaranty agency. Advances will not be made to a lender, and a guaranty agency may not direct any Advances to a lender.

Q24 How quickly would the Department provide federal Advances funds upon a request from a guaranty agency?

A24 The Department plans to use a "just-in-time" process, where the agency would only request, and the Department would only advance, funds that will be disbursed to schools within days. The transfer of funds will be through the Automated Clearing House (ACH). Further requirements and mechanics of the advance process will be stipulated in the agreement between the Secretary and the agency. The specific process that will be used for a guaranty agency to receive federal Advances funds will be provided in subsequent guidance.

Q25 Would federal Advances funds be deposited in the guarantor's Federal Fund?

A25 Federal Advances must be segregated from other funds held by the agency and placed into a special restricted account within the guaranty agency's Federal Fund. The receipt and use of such funds must be fully auditable. As noted, such funds may not be used for any purpose other than making LLR loans by the agency. Funds will be drawn down from the Secretary via GAPS into a restricted account.

Q26 What Department guidance and/or statutory and regulatory changes would be needed to clarify that guarantors are permitted to withdraw LLR funds from their Federal Fund accounts to make LLR loans with federal Advances (in terms of "permissible uses of the Federal Fund" rules)?

A26 The statute provides authority for the Secretary to make Advances under such requirements for the use of funds as she determines appropriate to ensure their proper use for LLR loans. The Advances Agreements with guaranty agencies will include provisions

related to the use of the Federal Fund as a depository for federal Advances and for the making of LLR loans by the agency as a permissible use. No statutory or regulatory changes are required.

Q27 For purposes of finding lenders who will make LLR loans, guaranty agencies are asked to canvass those lenders with whom they have an agreement. Will the Department be able to respond with LLR Advances in the event that a lender that had committed to make LLR loans is not able to when the demand arises?

A27 The Department is prepared to quickly address any unexpected events in a timely and responsive manner.

Q28 The use of a unique lender identification number (LID) issued by the Department may be needed by a guarantor or lender to designate a particular loan request as being an LLR loan rather than a non-LLR loan (due to the differences in processing requirements). This raises some important questions with respect to the use of Department-issued LIDs. What are the Department's thoughts on the use of LIDs for LLR loans?

A28 For loan tracking purposes the current Lender ID (LID) process coupled with the "LLR" indicator on each individual loan record that is sent to NSLDS will suffice. Thus, current LIDs (or reactivated old LIDs) will be used by lenders when reporting LLR loans to NSLDS.

While the same concept (LID and LLR flag) will work if it is a guaranty agency that will be making the LLR loan, modification will be needed if federal Advances are used. The guaranty agency will be assigned two LIDs – one to report LLR loans it makes using its own funds and another to report LLR loans made using federal Advances.

The issuance of LIDs (or the reactivation of an expired LID) is a relatively simple process and we expect that both the requirements for the lender or guaranty agency to request a LID and the Department's response will take little time.

Note that the primary use of LIDs and NSLDS "LLR" flags is for loan tracking purposes only and will not be the method (or it will be only part of the method) by which advance requests and/or substantiation of Advances will be monitored.

Q29 Are there any considerations regarding NSLDS reporting requirements on LLR loans? We know that an "AE" code already exists to denote that a FFEL program loan has been assigned to the Department by a guaranty agency.

A29 As noted in the response to the preceding question, the LID and the NSLDS "LLR" flag will be used for tracking purposes. While operational details of how the process will work for the assignment of LLR loans have not been developed, the Department will make every effort to utilize existing processes, including current coding structures and data transmission protocols.

Note that the use of LIDs and NSLDS "LLR" flags is for loan tracking purposes only and will not be the method (or it will be only part of the method) by which advance requests and/or substantiation of Advances will be monitored.

Q30 What kinds of FFEL loans could a guaranty agency make with federal Advances?

A30 The guaranty agency that receives federal Advances will be required to use them to make Stafford Loans, both subsidized and unsubsidized, and PLUS Loans, both parent and graduate/professional.

Q31 What reporting of LLR loan activity would be required from guaranty agencies?

A31 In addition to the loan tracking process discussed above, the Department will provide detailed reporting requirements in the terms and conditions of the agreement executed between the guaranty agency and the Secretary. At a minimum, ED will require that the guaranty agency provide, for each LLR loan made with federal Advances, the name of the borrower, the institution, disbursement amounts and dates, type of loan, etc. In addition, the verification of school certification will be required.

Q32 Would guarantors be permitted to sell LLR loans made with federal Advances to other eligible FFEL lenders, with the proceeds being used to repay the federal Advances?

A32 No. Loans made with federal Advances are federal assets and under the terms and conditions of the Advances Agreement, guarantors may not sell, securitize, or pledge these loans.

Q33 What is the process for assigning LLR loans made with federal Advances to the Department upon the Secretary's request?

A33 The Secretary will make a written demand of the guaranty agency to assign loans the agency made with federal Advances. The guaranty agency must promptly notify a borrower that has received an LLR loan made with federal Advances the loan has been assigned to the Department.

Q34 Does the Department envision that the assignment process might involve loans that are in an in-school, grace, repayment, delinquent, or defaulted status? How soon would the Department call for assignment of these loans?

A34 The Secretary will use statutory discretion when requiring assignment of loans but would do so no earlier than when the loan is fully disbursed.

Q35 Would assigned loans be FFEL or Direct Loan program loans?

A35 Assigned loans are FFEL Program loans and will be held and serviced by the Department accordingly.

LLR Regulatory Issues and Potential Conflicts

Q36 Regulations scheduled to take effect July 1, 2008, may be in conflict with the goal of providing debt management counseling under the LLR provision. Will guaranty agencies have the ability to offer the debt management counseling required under regulations scheduled to take effect on July 1, 2008?

A36 A guaranty agency's LLR program must ensure that borrowers receiving LLR loans are appropriately counseled on their loan obligations. This requirement can be met if the agency is ensured that the institution has complied with its responsibilities for initial loan counseling.

Q37 If a school or guaranty agency refers a student borrower who has been previously turned down by at least one lender, to a lender willing to make conventional loans to that borrower, is that exempt from the requirements regarding preferred lender lists and prohibited inducements?

A37 Action by a school or guaranty agency to help a student find a conventional lender after the student had previously been turned down for a loan would not constitute a violation of the preferred lender list requirements. Keep in mind that comprehensive lists of all lenders who have made loans to students and parents at an institution in the past, or who agree to originate loans to students and/or parents for the upcoming academic year, are not subject to the regulations regarding preferred lender lists unless the institution designates in some way that some lenders on the list are preferred by the institution relative to others. However, the prohibitions on inducements continue to apply.

Q38 The Department has not indicated that extra efforts to direct student borrowers to conventional FFEL program lenders would constitute an abridgement of borrower choice; however, does such a requirement that the student seek additional lenders possibly willing to make conventional FFEL loans constitute a further and additional eligibility requirement imposed by a guarantor to participate in the guarantor's LLR program in contravention of the statute?

A38 A school that assists a student in finding a conventional lender after the student has previously been denied a loan, would not violate the preferred lender list requirements. A guaranty agency providing similar assistance to a borrower or to an institution by providing a lender referral does not violate the prohibited inducement provisions that might otherwise apply.

Q39 Lenders may indicate a willingness to participate in the LLR program if they can apply various criteria that might exclude certain schools. Is this permissible?

A39 The guarantor is responsible for providing LLR loans to students and parents of students who attend school or reside in the state for which it is the designated agency. The guarantor may not establish any additional eligibility criteria that these individuals must meet in order to obtain LLR loans. So long as the guarantor ensures that every individual

who meets FFELP eligibility requirements obtains a FFEL LLR loan, it may use the services of lenders that agree to make LLR loans only to particular categories of individuals. The guarantor remains responsible for ensuring that these individuals are served if its LLR lenders choose not to lend.

Safe Harbors

Q40 Guaranty agencies and lenders will participate in the LLR program with the intention of providing loan funds to students. It is vital that the agreements reached with guarantors and lenders are developed in such a manner to reduce the possible "second guessing" and adverse program reviews.

Has there been involvement with the Office of Inspector General, General Accountability Office, and other governmental agencies to provide sufficient assurances that years from now questions and findings will not arise that assess liabilities on these efforts to assist student borrowers and schools during these unprecedented times?

A40 The Inspector General operates independently by virtue of his statutory authority. The Secretary has apprised the Inspector General of the LLR process and procedures being developed and documented. It is incumbent on all who participate in the LLR process to understand and follow the policies and procedures established for the program.

Additional Items

Q41 Since 1998 technological advances have automated the student loan process, has the Department of Education approved these innovations?

A41 The Department is supportive of any efforts, electronic or otherwise, that advance the administration of the student aid programs as long as those advances maintain the integrity of the programs.

Q42 Beyond the primary context of LLR use in the FFEL Program, a new application of LLR was recently introduced in the context of the upcoming PLUS auction process. Presumably, the LLR process for PLUS auctions would operate in a different manner from the LLR process used generally. Has the Department begun to contemplate those differences, and will the Department provide guidance about how LLR would operate in that context? The Department should also keep in mind that the capital funding requirements for PLUS loans could be significant due to the size of some PLUS loans, so funding sources are also an important consideration.

A42 This question is premature given that decisions about how to conduct auctions have not been made.