

## Voluntary Flexible Agreement

### Questions and Answers Posted July 6, 2011

The following are additional Questions and Answers (Q&As) related to the Federal Register notice requesting VFA proposals from FFEL Program guaranty agencies. They include a clarification of Q&A #15 that was posted on June 27. Note that we are not responding at this time to questions submitted by agencies that relate strictly to operations under a VFA. Those operational issues will be addressed during the discussions with guaranty agencies following the submission of their VFA proposals. As noted on the June 13 conference call, questions received by July 8 will be posted by July 15. Questions received after July 8 will not be posted until after August 1. A recording of the June 13 call and the June 27 Q&A posting are available on the Financial Partners Portal at: <http://www.fp.ed.gov/VFA.html>.

Q1: Can the Department please expand on the discussion from the conference call and Q&A #15 of the June 27 posting related to whether VFA proposals may address Direct Loans?

A1: Two of the four GA Responsibility Areas – Areas 1 (Claims and Collections) and IV (Lender Oversight) are strictly FFEL related. Activities proposed in these Responsibility Areas that relate to the Direct Loan program will not be considered. It is possible, however, that guaranty agencies providing services in GA Responsibility Area II (Default Aversion) and GA Responsibility Area III (Outreach, Training, and School Oversight) may provide services that relate to or discuss all Title IV programs, such as counseling borrowers about their repayment options or providing student aid information and assistance to prospective college students. The Department is interested in receiving thoughtful proposals from guaranty agencies for testing the effectiveness of their proposed strategies in these areas. However, only those activities that are not already being performed by other entities under contract with the Department will be considered by the Department.

Some specific examples of activities in Responsibility Areas II and III that may relate to the Direct Loan program follow. This is not meant to be an exhaustive list or to indicate preference for certain activities over others.

- Help prospective college students access Title IV aid and make informed financial decisions;
- Help schools improve the effectiveness of entrance and exit loan counseling;
- Provide financial education, counseling, and debt management activities for Title IV recipients; and
- Provide activities to help borrowers of Title IV loans repay their loans and avoid default. [Posted July 6, 2011]

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Q2: Will there be a public comment period once the Secretary has identified the winning VFA proposals?

A2: Under the Higher Education Act, there is no requirement for public comment on the VFA proposals submitted by guaranty agencies. The Secretary will review each submitted proposal and decide whether to begin discussions with the agency or agencies that submitted the proposal. As stated in the Federal Register notice inviting applications, the VFA proposals submitted by agencies will be available to the public and other guaranty agencies. The VFAs entered into by the Secretary and the agencies will also be made public. Finally, we note that the VFA proposal process is not a competition and, therefore, there are no "winning proposals". [Posted July 6, 2011]

Q3: When does the Department anticipate the VFA's to begin operations? Will there be specific universal beginning and ending dates, and if so, what will be the length of the initial term?

A3: As provided in the Federal Register notice, VFA proposals must be submitted to the Department no later than August 1, 2011. The starting and ending dates for each VFA will be discussed with the agency or agencies involved. While there is some value in have a common starting date for the VFAs, operational considerations may make it impractical to do so. The Department is committed to expediting its review process and subsequent activities as much as possible. [Posted July 6, 2011]

Q4: Will the Department extend the submission deadline to give State agencies time to request any required state approvals, including if necessary, changes to state laws that may interfere with the agency's ability to participate in a VFA?

A4: We understand that some State guaranty agencies are concerned that they might not have the legal authority to enter into a VFA without getting authority from their state, including from their state legislature. We remind agencies that we are not finalizing VFAs by August 1 – just receiving proposals. We have to review the proposals submitted, enter into discussions with qualified applicants, and reach final agreements complete with clear objectives, activities, and metrics before executing a final VFA with an agency. This process will likely take at least a few months. And to be clear – the applications are not binding.

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We think agencies should be able to submit well-constructed serious proposals by August 1, regardless of their State-specific situations, and we encourage all agencies to do so. An agency that believes it will need a change in state law or authority to finalize a VFA should note that fact in its proposal. [Posted July 6, 2011]

Q5: Will the Department consider an open-ended invitation for guaranty agencies to submit a proposal for a VFA? This would allow GA's to apply at any time, as was allowed with the previous VFA option and the current Not-for-Profit loan servicer solicitation.

A5: The Department will keep the August 1, 2011 submission date as a firm deadline for this VFA process. In light of the continuing significant changes occurring in the FFEL Program, the Department believes it is important to begin the process of changing the relationship between the Department and the guaranty agencies as soon as possible and in a systematic fashion that is only possible with an established deadline. Moreover, because it is the aggregate costs of the VFAs that must be considered in determining cost neutrality, all VFAs executed as a result of this solicitation must be implemented at generally the same time. [Posted July 6, 2011]

Q6: Recently, ED conducted in depth reviews of the financial strength of each guaranty agency. Will these reviews be taken into consideration when negotiating individual VFA's?

A6: When reviewing the VFA proposals, during the negotiations, and before finalizing the VFA agreement, the Secretary will use all information available to ensure that the objectives of the VFA are achievable. [Posted July 6, 2011]

Q7: Does the Department intend to provide a five-year term and possible renewability of each VFA?

A7: We have not yet determined the length or renewability of the VFAs. That will depend upon the specifics of the proposals and the overall cost neutrality calculations. We understand that operating under a VFA could require significant changes to an agency's operations, including its systems and operational infrastructure, and its relationship with other agencies and with lenders.

We also appreciate that there could be significant transition costs that are not cost effective if the term of the VFA is limited. For these reasons, we encourage agencies to include in their proposals a suggestion for the term of the initial VFA and under what conditions the VFA could be renewed. [Posted July 6, 2011]

Q8: Will the Service Contract Act apply to GA's under the VFA?

A8: A VFA is an agreement between the Secretary and a guaranty agency with the same legal character as the current agreements which are not contracts and are not subject to the Service Contract Act. [Posted July 6, 2011]

Q9: Can a VFA guaranty agency outsource services to another agency or to a third-party vendor? If so, can these entities be changed during the term of the VFA?

A9: A VFA proposal should describe plans a guaranty agency may have for outsourcing activities the agency would be responsible for providing under the VFA. If the VFA is finalized, the terms of such arrangements (such as the agency's ability to change entities during the term of the VFA) would be addressed in the VFA. [Posted July 6, 2011]

Q10: Will the holder of the loan guarantee continue to have responsibility for NSLDS, Forms 2000, and other reporting required by the Secretary, regardless of whether certain functions are being performed by another guarantor?

A10: Reporting requirements and responsibilities will be addressed in the final VFA and will depend on a number of factors, including the holder of the legal title of the loans and the details of the final VFA. [Posted July 6, 2011]

Q11: The VFA document identifies four GA Responsibility Areas but does not address the records management responsibilities of a guaranty agency. Does the Department anticipate having an agency's records converted to a central source once an agency enters into a VFA? Would the Secretary consider a fifth GA Responsibility Area to cover records management?

A11: We expect that the agency responsible for specific activities would also be responsible for the records management related to those activities, but we will consider proposals that include an alternative approach.

For example, a team of agencies could propose that one of its members be responsible for the records management for the activities performed by all of the members of the VFA team. [Posted July 6, 2011]

Q12: Are there anticipated changes of access to NSLDS for guaranty agencies participating in GA Responsibility Area's II, III, or IV?

A12: Agencies that are involved in activities under GA Responsibility Area I (Claims and Collections) and GA Responsibility Area II (Delinquency and Default Prevention) will continue to have access to borrower information in NSLDS. We will need to review the specific proposals we receive for GA Responsibility Area III (Outreach and Financial Literacy) and GA Responsibility Area IV (Lender and Lender Servicer Oversight) to see what access may be needed. Posted July 6, 2011]