

Voluntary Flexible Agreement

Questions and Answers Posted July 15, 2011

The following are additional Questions and Answers (Q&As) related to the Federal Register notice requesting VFA proposals from FFEL Program guaranty agencies. We are not responding at this time to questions 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.

The June 13th Webinar recording, the June 27th Q&A posting, and the July 6th Q&A posting are available on the Financial Partners Portal at:
<http://www.fp.ed.gov/VFA.html>.

- Q1: The July 6th answers indicate that the Department has not yet determined the length or renewability of the VFA's. What will happen at the end of the term of a VFA if it is not renewed?
- A1: Under § 428A(d) of the HEA, if a VFA ends or is terminated by one of the parties, the Secretary's prior basic agreements with the guaranty agency under §428(b) and (c) of the HEA are reinstated. [Posted July 15, 2011]
- Q2: Under what circumstances might the Department terminate a VFA early? What will happen to the guaranty agency if the VFA is terminated? Will the current protections for guaranty agencies found in the HEA, including due process, apply to guaranty agencies with VFA's?
- A2: The conditions under which a VFA may be terminated early by the Secretary will be addressed in each VFA and will be subject to discussion and negotiation between the parties. As noted in the answer to Q1, if an agency's VFA is terminated, the prior basic agreements between the Department and the guaranty agency are reinstated. In this situation, the process protections for the guaranty agencies do not apply since the agency's participation in the FFEL Program is not being ended; the terms of participation are being changed. [Posted July 15, 2011]
- Q3: The Federal Register notice states that Departmental oversight will include monitoring to ensure the guaranty agency meets its responsibilities under FISMA. Will VFA guarantors be given a reasonable amount of time to implement a plan to become FISMA compliant (including the time required for the Department to complete its certification process)? What about guarantors that do not enter into a VFA?

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- A3: If an agency is not already FISMA compliant any VFA between the Department and the agency will have to include a plan for the agency to become FISMA compliant in a reasonable time. The VFA itself may include benchmarks and timelines for FISMA compliance. Similarly, over the next several months FSA's technology staff will work with those agencies that will not be participating under a VFA to ensure that they have a viable plan for FISMA compliance within a reasonable time. [Posted July 15, 2011]
- Q4: Will the Department be developing a new mechanism for the funding of lender claims that does not involve the guaranty agency advancing funds on behalf of the Secretary? One option would be to establish a system similar to what was used in some of the original VFAs and what is used for the Direct Loan Program where schools draw down payments from a federal account and reconcile those transactions periodically.
- A4: The Department expects that guaranty agencies that fulfill the responsibilities in GA Responsibility Area I - Claims Review and Payment and Collections under a VFA will pay claims using the current financial structure. However, there are no restrictions on the ability of a guaranty agency (or team of guaranty agencies) to suggest, as part of the VFA proposal, alternative mechanisms for the funding of lender claims and we would welcome such suggestions. [Posted July 15, 2011]
- Q5: What will be the status of non-defaulted loans held by FFEL lenders with a guarantee from an agency? If there is a transfer of the guarantee will lender consent be required? What will happen if lenders don't consent? Some believe there could be issues with respect to student loan backed securities where the deal was approved and rated based on the original guaranty arrangements.
- A5: The question of whether a guaranty agency will transfer its legal interest in the loans to another guaranty agency will be a matter of negotiation. In some cases (particularly those in which the agency is focusing solely on GA Responsibility Areas II, III and/or IV), the agency may transfer all of its outstanding defaulted loans and guarantees to another agency. In such cases, since the guaranty agency will no longer guaranty loans at all, lender consent is not required. Based on our experience with agency closures and the resultant transfer of guarantees, we do not expect any impact on student loan backed securities. [Posted July 15, 2011]

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- Q6: Will a guarantor that is providing services for loans guaranteed by another guarantor be a third party servicer, or a debt collector? Will the Department take steps to ensure that guaranty agencies are not subject to the Fair Debt Collection Practices Act when collecting portfolios other than those derived from their own originations?
- A6: If a guaranty agency collects on a defaulted loan held by another party it will be a third party servicer and/or debt collector and will be subject to the Fair Debt Collection Practices Act. [Posted July 15, 2011]
- Q7: For guaranty agencies that apply as part of a consortium, what is the Department looking for in the proposal? Is a group proposal sufficient? Should each guaranty agency member submit a separate proposal describing its responsibilities as part of the consortium? Or should the proposal consist of a group proposal with individual sections specific to each guaranty agency member of the consortium?
- A7: As discussed in the Federal Register notice, the Secretary encourages joint VFA proposals from a team of guaranty agencies. In such cases, the team should submit one proposal (including the signatures of officials from each participating agency as noted in the Federal Register notice). A team proposal should clearly identify which of the agencies in the team will be performing which activities included in each of the GA Responsibility Areas that the team wishes to be included in the VFAs for the team. As also noted in the Federal Register notice, a team VFA proposal once approved would result in separate VFAs being executed between each agency and the Secretary. [Posted July 15, 2011]
- Q8: Is the Secretary open to proposals that address the Department's concerns as expressed in the notice but where the activities do not fit neatly within the four GA Responsibility Areas articulated in the invitation, and/or which may provide for the guaranty agency to retain the totality of its portfolio under a re-configured compensation model and/or with accompanying mitigating controls?

- A8: As we have noted several times, we established the four GA Responsibility Areas as a mechanism to ensure the continued viability of as many guaranty agencies as possible and, more importantly to ensure that important services that agencies provide are maintained. Given the diminishing financial resources that will be available in the aggregate to guaranty agencies, the approach provided in the notice, assumes savings in the program as a result of the economies that will incur if there are fewer agencies performing the revenue generating activity of collecting on defaulted loans. Also, as referenced in the question, an important objective of the VFA notice is to eliminate the inherent conflict of interests that exist under the current configuration. Thus, it is unlikely that we would consider a VFA proposal submitted in response to the Federal Register notice that was not developed consistent with the information included in the notice. [Posted July 15, 2011]
- Q9: Will the Department consider, either under a VFA or under a separate contractual vehicle, having a guaranty agency assume collection responsibilities for defaulted loans held by the Department (Direct Loans and/or ECASLA purchased FFEL loans)?
- A9: As noted in Q&A 15 of the June 27th FAQ posting and Q&A 1 of the July 6th posting, while a VFA's focus has to be on the services needed in the FFEL Program it is possible that guaranty agencies could provide services in GA Responsibility Areas II (Default Aversion) and GA Responsibility Area III (Outreach, Training, and School Oversight) that relate to Direct Loans. However, neither a standard section 428 agreement nor a VFA can be used as a contract vehicle for an agency to assume collection responsibilities for Department held loans. Those responsibilities are handled through separate competitive contracts. This does not necessarily rule out the possibility that a guaranty agency could enter into such an agreement with the Department outside of its role as a FFEL Program guaranty agency. However, since the Department has in effect multi-year contracts for Direct Loan servicing and for collections (private collection agencies), it is not likely that contracts for these services could be entered into in the immediate short term. [Posted July 15, 2011]