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Achieve a Higher Standard... with HEAG!

Message from Milton

I am very gratified to report that the new format for the HEAG Newsletter is receiving rave reviews. Please continue to send us your comments. Beginning with this issue, we will include a "Financial Aid, the Law and Your School" column summarizing recent case law or highlighting issues of interest for the financial aid community. As we all move from a recession to a gradually growing economic environment, HEAG will continue to assist you with your compliance and processing needs.

~ Milton Kerstein, President

GUIDANCE ON FEDERAL VETERANS' EDUCATION BENEFITS FOR PURPOSES OF THE TITLE IV STUDENT ASSISTANCE PROGRAMS

Author: David Bergeron, Acting Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education

August 13, 2009

On July 1, 2009, President Obama signed H.R. 1777 into law as Public Law 111-39, making technical corrections to the Higher Education Act (HEA). Among other things, H.R. 1777 updated the list of programs that meet the definition of "veterans' education benefits" in section 480(c) of the HEA by including new programs and revising the statutory citations. Those programs are included in the attachment to this announcement. Note that section 480(c) includes, along with a listing of education benefit programs administered

by the Department of Veterans Affairs (VA), certain ROTC programs that are administered by the Department of Defense (DOD).

In an electronic announcement posted on IFAP on July 2, 2009 we informed you that H.R. 1777 changed the effective date for the exclusion of Federal veterans' education benefits, as defined in section 480(c) of the HEA, as estimated financial assistance (EFA) to July 1, 2009 (beginning with the 2009-2010 award year).

The following Questions and Answers (Q&A) provide additional information on the treatment of Federal veterans' education benefits for purposes of the Title IV student assistance programs.

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FFELP UPDATE

On September 18, the House passed the Student Aid and Fiscal Responsibility Act of 2009 (H.R. 3221) by a vote of 253 to 171. The bill would use savings from eliminating the Federal Family Education Loan Program (FFELP) to bolster the Pell Grant program, fund a new Federal Direct Perkins Loan program, and increase funding in other higher education and K12 programs.

The bill was introduced to the House Education Committee on July 15th. Since then, the bill has been amended twice -- once through committee markup and again during a full House debate. This article contains a comprehensive summary of the student aid provisions contained in the bill as reported by the full House -- that is, including all accepted amendments. The Senate will soon be taking up similar legislation, which must then be reconciled with the House bill by a conference committee representing both chambers. That negotiated bill must then be approved by the House and Senate before being sent to the President for signature.

FINANCIAL AID, THE LAW, AND YOUR SCHOOL

THE FIRST ARTICLE IN A SERIES

Institutions participating in Title IV student aid programs must enter into program participation agreements with the United States Department of Education (DOE). These participation agreements define the obligations the institution must meet before it can become eligible for Title IV funds. *34 C.F.R. § 668.14*. Inherent in these obligations is the idea that an institution receiving Title IV funds will act as a fiduciary in the administration of those funds. Accordingly, failure to comply with the relevant Title IV statutory and regulatory requirements can result in stiff penalties and possible revocation of an institution's eligibility.

However, as demonstrated by a recent DOE decision, *In the Matter Howard Community College*, Docket No. 08-21-SP, U.S. Dept. of Educ. (December 4, 2008), Title IV eligible institutions are not simply responsible for their own internal compliance efforts. Eligible institutions may also be held liable for third party error or negligence, which affects that institution's Title IV compliance.

In *Howard*, the central dispute concerned Title IV campus-based funds. Campus-based funds are distributed to an institution based upon the overall financial need of the entire enrolled student population. *34 C.F.R. Parts 675 and 676*. The Office of Federal Student Aid (FSA) uses a school generated report, the Fiscal Operations Report and Application to Participate (FISAP), to determine the amount of Title IV funds an institution is to receive each year. In *Howard*, the FSA alleged that, starting in 2004, Howard Community College (HCC) over-awarded campus-based funds for three consecutive award years.

During the three years in question, HCC used software developed by Datatel Corporation to create its FISAP. In 2007, HCC notified FSA that it had discovered errors in its FISAP, which were attributable to Datatel's software. Upon investigation, FSA confirmed the errors and re-

examined the FISAP of the previous two award years. This examination revealed similar errors. As a result, FSA determined that HCC had been awarded \$211,446 more than it was entitled to for those three years.

HCC testified that in 2006 it discovered discrepancies in the number of enrolled students reported on its FISAP. Accordingly, HCC worked with Datatel for almost a year to solve the problem. While working with Datatel, HCC learned that it needed to utilize a "saved list" function when operating the software to ensure the removal of all ineligible students from the FISAP. However, Datatel's instructions categorized the "saved list" function as optional up until 2007. In 2007, after working with HCC, Datatel modified its instructions stating that it "strongly" recommended institutions use the "saved list" function.

HCC argued that, although Datatel did not admit culpability, the changes to Datatel's instructions demonstrate that its original instructions were flawed and that HCC should not be held liable for Datatel's error. Additionally, HCC stated that it acted in good faith and FSA should not punish it for alerting FSA to the problems with the FISAP reporting.

In rejecting HCC's arguments, the DOE held that, while it was unfortunate that HCC relied upon Datatel's software to its detriment, neither the FSA nor any other party mandated that HCC use Datatel's software to create and analyze the FISAPs. The DOE continued stating that, when HCC decided to use Datatel's software, "it [HCC] assumed the responsibility that the product chosen would perform the tasks correctly." Accordingly, HCC was ordered to reimburse the DOE for the over-awarded funds.

What is particularly striking about the *Howard* decision is the fact that, even though the Administrative Law Judge recognized HCC acted in a "commendable" manner when it brought the violations to FSA's attention, HCC's conduct and long history of compliance had no

bearing on DOE's ultimate decision. An analysis of the *Howard* decision indicates that Title IV eligible institutions must be very careful when utilizing third party vendors in connection with the institution's compliance efforts and must monitor every step of the compliance process. As demonstrated by *Howard*, failure to do so may result in significant penalties and fines.

If you have any comments or questions, you may contact Milton L. Kerstein, Esq. via email at mkerstein@kcl-law.com or by telephone at 617-965-9698.

This article is provided with the assistance of Charles E. Gould, Esq. of KCL, for general information purposes only and with the understanding that neither the authors or publisher are engaged in rendering legal advice or opinion. If legal advice is required, the services of a competent professional person should be sought.

2009 FSA Conference December 1-4, 2009

Gaylord Opryland Hotel and Convention
Center, Nashville, Tennessee

The Federal Student Aid conference is scheduled for December 1-4 in Music City USA - Nashville, Tennessee. This year's conference will focus on the significant changes that could impact the Title IV programs over the next year. These include the anticipated increase in schools transitioning to the Direct Loan Program, FAFSA Simplification and the proposed new Perkins Loan Program, among others. A primary objective of this year's conference is to ensure all schools are trained and prepared to participate in the Direct Loan Program should they want or need to do so.

For more information, please visit <http://fsaconferences.ed.gov/program09.html>

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Q1: Is the required institutional matching contribution under the new VA “Yellow Ribbon Program”, considered Federal veterans’ education benefits, and therefore excluded from EFA? Or is only the amount of the VA Federal funds provided to the student considered to be Federal veterans’ education benefits and only that amount excluded from EFA?

A1: The Yellow Ribbon G.I. Education Enhancement Program (Yellow Ribbon Program) is a new program authorized by the Post-9/11 Veterans Educational Assistance Act of 2008 (Post-9/11 GI Bill), which added a new Chapter 33 to title 38 of the United States Code. Chapter 33 authorizes both a basic education benefit and the Yellow Ribbon Program. Under the Yellow Ribbon Program, an eligible institution may voluntarily enter into an agreement with the VA to jointly pay all or a part of the portion of the eligible veteran’s tuition and fees that exceeds the maximum amount otherwise provided under the basic Post-9/11 GI Bill benefit program. The VA matches, on a dollar-for-dollar basis, the amount contributed by the institution under the Yellow Ribbon Program.

Because the Yellow Ribbon Program provides veterans’ education benefits under chapter 33 of title 38 of the United States Code, all funds provided under this program, including funds provided by the institution as its contribution, are considered Federal veterans’ education benefits under section 480(c) of the HEA, and therefore both portions are excluded from EFA. However, only the Yellow Ribbon portion of the institutional award is excluded. For example, assume an institution’s tuition and fees for a veteran are \$10,000 but the veteran will only be receiving \$4,000 toward tuition and fees under the basic Post-9/11 GI Bill benefit program. Also assume that the VA and the institution entered into an agreement where the tuition and fee gap of \$6,000 will be covered under the Yellow Ribbon Program. Thus, both the VA and the institution would each provide an additional \$3,000 toward the veteran’s tuition and fees. Assume that the institution was using a \$5,000 institutional scholarship to meet its Yellow Ribbon contribution for this student.

Under this scenario, the full amount of the basic Post-9/11 GI Bill benefit program of \$4,000 and the \$3,000 contribution from the VA under the Yellow Ribbon Program would be excluded from EFA, as would the required \$3,000 institutional contribution from the \$5,000 scholarship. The remaining \$2,000 of the \$5,000 institutional scholarship must be considered EFA.

Q2: Does the exclusion from EFA of Federal veterans’ education benefits apply to all of the components of the assistance or to only to certain components? For example, does it apply only to amounts provided for subsistence or to only amounts provided for tuition and fees?

A2: Amended section 480(c) of the HEA includes the words “. . . benefits under the following provisions of law . . .”. Therefore, the exclusion from EFA applies to all of the benefits provided under the designated program. For example, all benefits provided under the Post-9/11 GI Bill are excluded regardless of whether the assistance was for tuition and fees, books and supplies, or as a monthly housing allowance.

Q3: Does the exclusion of Federal veterans’ education benefits from EFA apply where a veteran’s spouse or dependent is applying for Federal student aid and the spouse or dependent is receiving Federal veterans’ education benefits because of the status of the veteran?

A3: Any Federal veterans’ education benefits listed in section 480(c) of the HEA that are received by an aid applicant must be excluded from EFA even if the aid applicant is receiving those benefits as a spouse or dependent of a veteran.

Q4: Are the education benefits provided under the DOD’s Reserve Officers Training Corps (ROTC) considered Federal veterans’ education benefits and therefore not considered EFA even though they are not administered by the VA and are not provided to veterans?

A4: As noted earlier, the amended section 480(c) of the HEA includes, in addition to education benefit programs administered by the VA, two ROTC programs that are administered by

the DOD. These are the scholarship benefits provided under the Senior Reserve Officers Training Corps (ROTC) in chapter 103 of title 10 of the United States Code and the subsistence allowance benefits provided under the ROTC in chapter 3 of title 37 of the United States Code. Therefore, education benefits from these two ROTC programs must be excluded as EFA even though they are not VA programs and the recipients are not veterans.

Q5: Are “tuition assistance” programs provided by the DOD (or the individual military services) Federal veterans’ education benefits and therefore not considered EFA?

A5: The only VA or DOD benefits that are to be excluded from EFA are those listed in section 480(c) of the HEA. Any benefits provided under any other program must be included as EFA in the calculation of the student’s eligibility for Title IV student assistance. For example, the Tuition Assistance Program of the Army Continuing Assistance System and the Army National Guard Federal Tuition Assistance Program are not programs included in section 480(c) of the HEA. Therefore benefits received under those programs must be included as EFA.

Q6: Since the law now removes as EFA all Federal veterans’ education benefits, may the institution exclude from the student’s cost of attendance (COA) the amount of those benefits that cover all or a portion of a specific component of the student’s COA? For example, may an institution exclude from the tuition and fees component of a student’s COA the amount paid by the VA for the veteran’s tuition and fees since it is not included as EFA?

A6: No. The institution may not exclude from the student’s COA, either generally or under the professional judgment provisions of the HEA, the amount of Federal veterans’ education benefits that cover all or a portion of a specific component of the veteran’s COA. The statutory exclusion from the definition of EFA of Federal veterans’ education benefits was done to remove consideration of those benefits in determining the student’s financial need. If the institution also excluded from the student’s COA the amount of

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Federal veterans' education benefits that cover all or a portion of a specific component of his or her COA, the institution would be negating the purpose of the change made in the law.

Please note that this requirement for the treatment of Federal veterans' education benefits with regard to COA is not to be confused with the recent statutory change to section 472(3)(C) of the HEA. Effective July 1, 2010, that provision requires that COA not include a housing allowance for aid applicants who live in housing located on a military base or for which a military housing allowance as provided under section 403(b) of title 37 of the United States Code – Pay and Allowances of the Uniformed Services.

Q7: Since these Federal veterans' education benefits are no longer considered EFA, may they

be included as income in the calculation of a student's expected family contribution (EFC)?

A7: No. Federal veterans' education benefits, as defined in section 480(c) of the HEA, have been and continue to be excluded from the calculation of a student's EFC.

Q8: Do the words "including but not limited to" in section 480(c) of the HEA allow a school to exclude from EFA educational benefits received by a student from other programs not listed in section 480(c)?

A8: No. The statutory use of the words "including but not limited to" are intended to provide the Secretary with the flexibility needed in the event that (1) a new qualifying Federal veterans' education benefit program is created or (2) the name or statutory citation of one of the currently listed programs is changed. As stated

earlier, only benefits received under one of the programs specifically listed in section 480(c) of the HEA are to be excluded from EFA.

If you have any questions regarding this topic, please contact our Research and Customer Care Center staff. Staff is available Monday through Friday between the hours of 9:00 AM and 5:00 PM (Eastern Time) at 1-800-433-7327. After hours calls will be accepted by an automated voice response system. Callers leaving their names and phone numbers will receive a return call the next business day. Alternatively, you may FAX an inquiry to the Research and Customer Care Center at (202) 275-5532, or e-mail the Care Center at fsa.customer.support@ed.gov.

RELEASE OF POLICIES AND PROCEDURES MANUAL GUIDANCE

Author: Jana Hernandez, Service Director, Operations, Federal Student Aid

September 10, 2009

We are pleased to announce the availability of "A Guide to Creating a Policies and Procedures Manual." We have developed this guide to assist schools in creating and revising written documentation of how they comply with the various federal regulations pertaining to the administration of the Title IV programs. The guide features activities designed to help a school meet the minimum general requirements with regard to documented policies and procedures. The document also highlights additional areas for which written policies and procedures are suggested in the Federal Student Aid Handbook.

Although the regulations do not specifically require schools to consolidate their documentation in the form of a policies and procedures manual, schools that have a manual often find it easier to implement and adhere to established procedures. The use of a manual also helps schools routinely review and update their operations and may streamline school audit and program review experiences. It is a tool to assist schools in being good stewards in the administration of the Title IV programs and the delivery of funds and services to students.

Note: This document has been prepared to provide schools with basic guidance to develop policies and procedures. However, it should not be assumed that this document is all-inclusive. For a more complete explanation of specific program requirements, a school should refer to the applicable statutes, regulations, and the Federal Student Aid Handbook. It is the school's responsibility to ensure that all Title IV requirements outlined in statute and regulations are met.

The policies and procedures manual guidance is available on the Quality Assurance Web site at the following link: <http://ifap.ed.gov/qahome/qaassessments/makingofapandpmanual.html>. If you have questions about the policies and procedures manual guidance, contact Michael Cagle at michael.cagle@ed.gov or Holly Langer-Evans at holly.langer-evans@ed.gov.

LOAN SERVICING INFORMATION - TRANSITION TO ADDITIONAL SERVICER SUPPORT PLANNED FOR SEPTEMBER 2009

Author: Jana Hernandez, Service Director, Operations, Federal Student Aid

August 28, 2009

Overview of New Servicing Approach

As explained above, the loans that we currently service fall into the following two categories:

- **Direct Loans** – These loans are made by the Department under the Direct Loan Program. We service the loans originated and disbursed by schools that participate in the Direct Loan Program. Upon “booking” of a Direct Loan, the Department corresponds with the borrower about the servicing of his or her loan.
- **FFEL Purchased Loans** – These loans are made under the FFEL Program by FFEL lenders and subsequently purchased by the Department. Through methods commonly referred to as a “PUT” by FFEL loan holders and the Department, the Department becomes the owner of the loan and assumes all servicing responsibilities for the purchased loans. Upon purchase of a loan by the Department, both the prior FFEL loan holder and the Department correspond with the borrower about the purchase and servicing of his or her loan.

To date, we have serviced Direct Loans through the Direct Loan Servicing Center and FFEL Purchased Loans through the Department of Education Student Loan Servicing Center. In September 2009, we will add four new servicers to our team. These servicers will begin by servicing FFEL Purchased Loans. Later, these servicers may be assigned any Title IV financial assistance debt for servicing.

Beginning in September 2009, Direct Loans and FFEL Purchased Loans will be serviced as follows:

<i>Loan Category</i>	<i>Servicer</i>
Direct Loans	Direct Loan Servicing Center
FFEL Purchased Loans	Department of Education Student Loan Servicing Center (ACS)
FFEL Purchased Loans	FedLoan Servicing (PHEAA)
FFEL Purchased Loans	Great Lakes Educational Loan Services, Inc.
FFEL Purchased Loans	Nelnet
FFEL Purchased Loans	Sallie Mae

Servicing of FFEL Purchased Loans Beginning September 2009

We plan to begin assigning FFEL Purchased Loans to our four new servicers—FedLoan Servicing, Great Lakes Educational Loan Services, Inc., Nelnet, and Sallie Mae—in early September 2009. Each year, we will measure the performance of these servicers in the areas of customer satisfaction and default aversion. We will then use these results to determine each servicer’s allocation of ongoing loan volume.

Customer Satisfaction Ensures Superior Service

We will measure the customer satisfaction for each servicer exclusively through the administration of customer satisfaction surveys. An independent vendor will conduct quarterly surveys of borrower, school, and Federal Student Aid customers on our behalf. We value the participation of all customers in the loan servicing process and will use the input we receive through the surveys to allocate loan volume and assist in ensuring that all servicers provide superior service to our customers.

Borrower-Centric Assignment Ensures Seamless Service

Our goal in implementing this multi-servicer approach to loan servicing is to assign all of a borrower’s federally-owned loans to the same servicer. We acknowledge that this may not automatically occur for all borrowers—especially in the initial implementation stages. However, in time, the assignment of a borrower’s federally-owned loans to the same servicer will become standard operating procedure.

The borrower-centric approach to servicer assignment means that schools may need to interface with more than one servicer. We understand that some schools will need to adjust their processes to manage interfaces with multiple servicers. We appreciate the effort schools will make to assist us in ensuring that borrowers are served as wholly as possible.

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Best-In-Business Service Ensures School Support

All of our servicers are highly-qualified experienced student loan servicers and are committed to providing “best-in-business” service. Each servicer will provide the services that are needed by schools. These services include, but are not limited to, the following:

- Toll-free phone and Web site access for borrower and school customers
- Single point of contact for school customers
- Counseling support in the form of materials and Web products
- Delinquency/default prevention and management support in the form of reports, predictive call modeling, and robust skip tracing tools

Identification and Communication of Servicer Information Ensures Smooth Transition

Upon purchase of a FFEL Program Loan, both the prior FFEL loan holder and the Department correspond with an affected borrower. In our correspondence to the borrower, we will identify the servicer that will service the borrower’s loan and explain that the servicer will service the loan on our behalf. The correspondence will include both toll-free phone number and Web site information for the servicer.

We recognize that implementation of the multi-servicer approach may result in borrower and school customers inadvertently contacting the wrong servicer. Staff at all of our call centers, including the call centers for our four new servicers, will be briefed on the implementation and have the contact information for all servicers readily available. A caller in need of assistance will be provided with the correct toll-free phone number for the servicer he or she identifies.

In addition to identification in borrower correspondence, the servicer of a FFEL Purchased Loan will be identified in the National Student Loan Data System (NSLDS). Both a borrower and his or her school will be able to view the servicer code and name associated with each loan. This individual lookup can be done via the appropriate NSLDS Web site ([NSLDS Student Access Web site](#) for students or [NSLDS Professional Access Web site](#) for schools). To further assist schools, we are developing a new NSLDS report that will list and provide pertinent information for all loans that have been assigned to our servicers.

TRAINING RECORDING - RETURN OF TITLE IV FUNDS (R2T4) OVERVIEW

We are pleased to announce the availability of a recorded training session that provides an overview of the Return of Title IV Funds (R2T4) calculation. This one-hour training session is intended for individuals on the financial aid staff who are novices at performing the R2T4 calculation or others who may need to know how to perform the R2T4 calculation that results from a student’s withdrawal. The recorded training session includes the following information:

- Overview of the regulatory requirements of the R2T4 calculation
- Step-by-step walkthrough of the R2T4 worksheet in order to properly calculate the return of Federal funds
- Guidance relevant to the most current R2T4 calculation

No registration is required to view the recorded training session. The session has three parts. To view each part of the session, click on the links below.

Note: A recording key is not required to view the session.

Part 1: <https://www302.livemeeting.com/cc/fsatraining/view?id=F8DG75-24>

Part 2: <https://www302.livemeeting.com/cc/fsatraining/view?id=F8DG75-20>

Part 3: <https://www302.livemeeting.com/cc/fsatraining/view?id=F8DG75-17>

To view the PowerPoint slides and transcript of the recorded training session, click on this link: <http://www.ed.gov/FSA/training/distanceed/downloads.html>

Note: We recommend trainees download and print the PowerPoint slides before beginning the training. Thank you for your continued interest in and support of our training efforts. If you have questions about this training opportunity, please contact Sandy Santana at sandra.santana@ed.gov.

The Direct Loan Newsletter is now available. The first issue was released in October 2009 and is the first in a series of monthly updates on the Direct Loan program.

For more information, go to: <http://www.direct.ed.gov/newsletters/oct09.html>

FY 2007 OFFICIAL COHORT DEFAULT RATES RELEASED

Author: Susan Szabo, Chief Business Operations Officer, Federal Student Aid

September 8, 2009

On September 14, 2009, we plan to release the FY 2007 Official Cohort Default Rates to all eligible schools. After we release the official rates, we will post an Electronic Announcement on the [Information for Financial Aid Professionals \(IFAP\) Web site](#).

All schools, both domestic and foreign, enrolled in the Electronic Cohort Default Rate (eCDR) process will receive their FY 2007 Official Cohort Default Rate and accompanying documentation electronically via their Student Aid Internet Gateway (SAIG) mailbox. Any school not enrolled in the eCDR process may download their cohort default rate and accompanying documentation from the National Student Loan Data System (NSLDS) via the [NSLDS Professional Access Web site](#). Any school that did not have a borrower in repayment, during the current cohort default rate period or any of the past cohort default rate periods, will *not* receive a FY 2007 Official Cohort Default Rate notification package. These schools are considered to have no cohort default rate data and no cohort default rate.

Important Note: Some schools have a small number of borrowers entering repayment. At other schools, only a small portion of the student body takes out student loans. In such cases, the cohort default rate should be interpreted with caution.

If you have questions about the FY 2007 Official Cohort Default Rates, contact us by e-mailing fsa.schools.default.management@ed.gov or by calling the Portfolio Performance Division (formerly Default Prevention and Management) Hotline at 202/377-4259.

About The Higher Education Assistance Group

The Higher Education Assistance Group, Inc. is a comprehensive higher education consulting and financial aid consulting group located in Wellesley, Massachusetts. In operation since 1989 initially as a financial aid consulting firm, we have since grown and expanded to represent all areas of student services management. We continue to advance and evolve to meet the needs of our school clients. The Group provides exceptional administrative and professional management services to all student service fields, including Admissions, Financial Aid, Continuing Education, Bursar and Registrar offices at two and four year institutions, both public and proprietary. The Group's highly qualified team of consultants has spent decades in the field providing administrators with the tools, knowledge and support necessary to complete institutional objectives. We pride ourselves on assisting post secondary institutions to meet challenges such as program regulatory compliance, organizational structure, staffing needs, and technological support.