

the Higher Education Act of 1965, as amended, and its implementing regulations and rules. Key guarantor functions shall include, but not be limited to, the functions set forth in (b) below.

(b) Key guarantor functions are:

1. Financial aid awareness and related outreach activities: The Authority provides a toll-free number and web site with information on colleges, careers and financing of higher education. The Authority makes presentations about financial aid opportunities and financial literacy at middle schools, high schools and other sites, holds training workshops for high school guidance counselors and campus administrators, publishes materials on all of the above topics and provides assistance in completing financial aid forms;

2. Access to loans: The Authority furthers access to Federal loans by providing lenders with a guarantee against default, since students generally have no credit history or collateral and pose a risk to lenders absent such guarantee;

3. Application processing: The Authority validates application information on FFELP promissory notes submitted for guarantee by using information such as the Authority database of information provided by borrowers, schools, and lenders;

4. Loan status management: The Authority assists borrowers, schools, and lenders by providing information on loan accounts and borrower status;

5. Counseling borrowers about their loan obligations: The Authority provides information to borrowers directly and to borrowers through their schools on the loan process, such as loan availability, debt loads, and repayment options;

6. Default prevention: The Authority works with lenders, schools, and students to prevent defaults. The Authority provides default aversion assistance to lenders to help prevent delinquent borrowers from defaulting on their loans;

7. Payment of lender claims for insurance: When a loan goes into default, and a lender submits a claim for purchase by the Authority, the Authority reviews the claim for legitimacy, and verifies that the lender has complied with Federal and Authority requirements for preventing the default;

8. Collection on defaulted loans: If the Authority finds that lender default prevention or "due diligence" requirements are met and the Authority buys the loan from the lender, the Authority pursues a variety of efforts to collect on the debt, such as wage garnishment, offset of State and Federal income tax refunds, property tax rebates or other governmental payments, suspension of occupational and professional license and State lottery prize offset. This collection process is carried out in a manner designed to

provide the borrower with reasonable and affordable repayment options based on the borrower's income and ability to pay;

9. School and lender training and oversight: The Authority reviews, interprets, and disseminates information to schools and lenders about the requirements of the FFELP regulations and Federal subregulatory guidance (for example, Dear Colleague Letters from the United States Department of Education);

10. Maintaining and reporting of FFEL Program records: The Authority contributes to initiatives to protect the fiscal interest of the United States Department of Education and United States taxpayers by maintaining accurate records of the Authority's FFEL Program participants and reporting FFEL Program data to national databases, such as NSLDS; and

11. Other student financial aid related activities for the benefit of students, as selected by the Authority.

Amended by R.2000 d.92, effective March 6, 2000.

See: 31 N.J.R. 3900(a), 32 N.J.R. 805(a).

Rewrote (b).

Amended by R.2003 d.465, effective December 1, 2003.

See: 35 N.J.R. 2770(b), 35 N.J.R. 5415(b).

In (b), rewrote 3, deleted "(collection assistance)" following "aversion assistance" in 6 and rewrote the first sentence in 8.

Amended by R.2009 d.180, effective June 1, 2009.

See: 40 N.J.R. 6721(b), 41 N.J.R. 2261(a).

In (b)1, inserted "and financial literacy", "middle schools," "training", "and campus administrators" and "and provides assistance in completing financial aid forms", and deleted "and" following "administrators, "; and in (b)2, inserted "Federal".

#### Case Notes

Wage garnishment granted on defaulted student loans in the amount of 7% of disposable wages, rather than the 15% requested by the agency; financial hardship warranted a lesser percentage (petitioner did not appear). NJHESAA v. Viola, OAL Dkt. No. HEA 791-08, 2008 N.J. AGEN LEXIS 384, Final Decision (June 20, 2008).

#### 9A:10-1.5 Authority as lender and secondary market

(a) The Authority, which qualifies as an eligible lender under the Higher Education Act of 1965, as amended, may serve as the State-designated lender of Federally guaranteed student and parent educational loans.

(b) The Authority, which is permitted to buy and sell notes evidencing loans as well as buy and sell participations in approved notes made under N.J.S.A. 18A:71A-1 et seq., may serve as the State-designated secondary market for Federally guaranteed student and parent educational loans and any other loans made under N.J.S.A. 18A:71A-1 et seq.

Amended by R.2000 d.92, effective March 6, 2000.

See: 31 N.J.R. 3900(a), 32 N.J.R. 805(a).

In (b), changed N.J.S.A. references.

#### 9A:10-1.6 Types of FFELP loans

(a) A subsidized Federal Stafford loan is available to an eligible student attending a participating postsecondary

school. A student who demonstrates financial need is eligible to have the Federal government pay the interest on the loan to the lender until repayment of the loan begins and during any deferment periods. The student is allowed a grace period (usually six months) after leaving school or dropping below half-time attendance before repayment begins. Repayment of the loan is scheduled over a maximum 10-year period according to the payment plan chosen by the borrower, except that borrowers may qualify for an alternate repayment plan with an extended repayment period pursuant to 34 CFR 682.209.

(b) An unsubsidized Federal Stafford loan is available to an eligible student attending a participating postsecondary school. A student who does not demonstrate sufficient financial need, or who requires additional funds above the Federal subsidized loan limits, is typically eligible for an unsubsidized Stafford loan. The Federal government does not pay the interest on an unsubsidized Stafford loan. An unsubsidized Stafford loan borrower is responsible for paying to the lender all interest that accrues on the loan from the time the loan is disbursed until it is paid in full.

(c) A Federal PLUS loan is available to an eligible parent (as defined in 34 CFR 682.201(b)(2)) of a dependent undergraduate student or a graduate or professional student attending a participating postsecondary school. A PLUS loan borrower must not have adverse credit or otherwise must obtain an endorser on the loan. The parent is responsible for paying to the lender the interest that accrues on the loan from the time the loan is disbursed until it is paid in full. Repayment of the loan is scheduled over a maximum 10-year period according to the payment plan chosen by the borrower, except that borrowers may qualify for an alternate repayment plan with an extended repayment period pursuant to 34 CFR 682.209.

(d) A Federal Consolidation loan is available to a borrower who wants to combine his or her outstanding education loans into a single loan with a single monthly payment. In most cases, the borrower is responsible for paying to the lender the interest that accrues on the loan until the loan is paid in full. Consolidation loans usually have a longer repayment period and a lower monthly payment than is available on the underlying education loans.

Amended by R.2000 d.92, effective March 6, 2000.  
See: 31 N.J.R. 3900(a), 32 N.J.R. 805(a).

In (a) and (c), rewrote the last sentences.  
Amended by R.2003 d.465, effective December 1, 2003.  
See: 35 N.J.R. 2770(b), 35 N.J.R. 5415(b).

In (c), substituted "(as defined in 34 C.F.R. 682.201(b)(2))" for "or legal guardian" following "eligible parent".  
Amended by R.2009 d.180, effective June 1, 2009.  
See: 40 N.J.R. 6721(b), 41 N.J.R. 2261(a).

In (a), deleted "qualifying under section 428(b)(9) of the Higher Education Act of 1965, as amended (20 U.S.C. § 1078(b)(9))," following "borrowers", substituted "qualify for an alternate" for "select a", substituted "an extended" for "up to a 25-year maximum", and inserted "pursuant to 34 CFR 682.209"; in (b), inserted ", or who requires additional funds above the Federal subsidized loan limits, ", substituted "The Federal government does not pay the interest on an" for "An",

substituted ". An unsubsidized Stafford loan" for "borrower does not have any interest paid on his or her behalf by the Federal government; such a", and deleted the last sentence; in (c), inserted "or a graduate or professional student", deleted "qualifying under section 428(b)(9) of the Higher Education Act of 1965, as amended (20 U.S.C. § 1078(b)(9))," following "borrowers", substituted "qualify for an alternate" for "select a", substituted "an extended" for "up to a 25-year maximum", and inserted "pursuant to 34 CFR 682.209".

### 9A:10-1.7 Lender participation and lender of last resort

(a) To participate in any of the loan programs for which the Authority serves as guarantor, a lender is required to submit evidence acceptable to the Authority that it is an eligible lender under the Higher Education Act of 1965, as amended. If the Authority is satisfied that a lender meets the requirements for eligibility and participation under the Higher Education Act of 1965, as amended, the Authority may offer a participation agreement to that lender. A lender cannot participate in the Authority's programs without a participation agreement with the Authority. There are three principal types of Authority participation agreements: a participation agreement for lenders originating Stafford and PLUS loans, a participation agreement for lenders serving as secondary markets or holders of Stafford and PLUS loans, and a participation agreement for lenders originating Consolidation loans. The borrower eligibility criteria incorporated in participation agreements for lenders originating Consolidation loans is set forth in N.J.A.C. 9A:10-1.16(c).

(b) The Authority shall ensure that it or a participating lender shall serve as lender of last resort in the State of New Jersey. The lender of last resort shall make a FFELP loan to an otherwise eligible borrower who has been unable to obtain a loan from an otherwise eligible lender and who satisfies both the Federal regulatory criteria for eligibility and any further eligibility criteria provided in the lender of last resort policies and procedures cited in 34 CFR 682.401(c).

Amended by R.2000 d.92, effective March 6, 2000.  
See: 31 N.J.R. 3900(a), 32 N.J.R. 805(a).

In (a), changed N.J.A.C. reference; and in (b), inserted a reference to unsubsidized Stafford loans in the second sentence, and deleted a former third sentence.

Amended by R.2009 d.180, effective June 1, 2009.  
See: 40 N.J.R. 6721(b), 41 N.J.R. 2261(a).

In (b), substituted "FFELP" for "subsidized or unsubsidized Stafford" and "obtain" for "find a lender willing to make", and inserted "from an otherwise eligible lender".

### 9A:10-1.8 School participation

(a) To participate in any Title IV, Higher Education Act program, a school must establish its eligibility under the Higher Education Act of 1965, as amended, by following the procedures specified by the United States Department of Education. Upon being approved to participate in Title IV programs by the United States Department of Education, a school becomes eligible to apply for participation in the FFELP with the guarantor, such as the Authority. For any school, the Authority must be satisfied that the school has the ability to properly administer the FFELP according to Federal regulations and this chapter before it will approve the school

ally, as" for "As", inserted "also" following "loan may", deleted "any or all of the following: loss of Federal and State income tax refunds, property tax rebates or other governmental payments and lottery prize winnings," following "result in", and deleted "assessment of collection charges including attorney fees, loss of professional license," following "legal action, "; in (b), deleted the first sentence, deleted "also" preceding "participates", and inserted the last sentence; and in (c)3, inserted "HESAA" preceding "Appeals Committee", deleted "in care of the" preceding "Director" and "of the HESAA," following "Loans", and substituted "549" for "540" and "NJ 08625-0549" for "New Jersey 08625-0540".

#### **9A:10-1.15 Beyond default: rehabilitation and reinstatement**

The Authority encourages borrowers who have defaulted on their FFELP loan obligations to enter into repayment arrangements that qualify them for reinstatement of the ability to receive benefits, including FFELP loans, under Title IV of the Higher Education Act, and that rehabilitate their loans, thereby bringing the loans out of default. The requirements for reinstatement are set forth in 34 CFR 682.401 and more fully explained in subregulatory Federal guidance and the Common Manual. The requirements for rehabilitation are set forth in 34 CFR 682.405 and more fully explained in the Common Manual.

Amended by R.2003 d.465, effective December 1, 2003.  
See: 35 N.J.R. 2770(b), 35 N.J.R. 5415(b).  
Deleted references to Chapter 8 throughout.

#### **9A:10-1.16 Loan transfer, refinance, and consolidation**

(a) If a lender sells a loan guaranteed by the Authority to another lender, the buying lender shall notify the Authority of the change, pursuant to 34 CFR part 682. If a lender transfers the servicing on a loan from one entity to another, the lender shall report the change to the Authority, pursuant to 34 CFR part 682. If a lender is acquiring an entire portfolio of another lender due to a merger, acquisition, bank closing or similar situation, the lender must notify the Authority of the change. The requirements for loan transfer reporting are more fully explained in the Common Manual.

(b) As permitted under 34 CFR 682.209, a borrower may refinance a PLUS or SLS loan. The three options for refinancing a PLUS or SLS loan are refinancing to secure a combined payment, refinancing to secure a variable interest rate, and refinancing to discharge a previous loan. These three options are set forth under 34 CFR 682.209 and more fully explained in the Common Manual, Appendix B.

(c) The Authority participates in the Federal Consolidation Loan Program in accordance with section 428C of the Higher Education Act of 1965, as amended, and its implementing regulations. To participate in the Authority's consolidation program, an eligible lender must be approved by the Authority to enter into a Consolidation Participation Agreement with the Authority, and sign this Agreement. To qualify for the Authority's Consolidation Loan Program, a borrower must satisfy the eligibility criteria set forth in section 428C and implementing regulations, as well as satisfy Authority criteria

which include not incorporating a defaulted loan in a Consolidation loan, and evidencing a connection to New Jersey, unless otherwise permitted by the Authority. Evidencing a connection to New Jersey shall mean that either at least one underlying loan to be consolidated was guaranteed by the Authority or that the borrower is a New Jersey resident at the time of consolidation. The Consolidation Loan Program is more fully explained in the Common Manual.

Amended by R.2003 d.465, effective December 1, 2003.  
See: 35 N.J.R. 2770(b), 35 N.J.R. 5415(b).

In (a), rewrote the third sentence; deleted Chapter references throughout.

Amended by R.2009 d.180, effective June 1, 2009.  
See: 40 N.J.R. 6721(b), 41 N.J.R. 2261(a).

In (c), inserted "Federal".

#### **9A:10-1.17 School and lender training and other services**

As permitted under the Higher Education Act of 1965, as amended, the Authority may use funds in the Authority's operating fund for application processing, loan disbursement, enrollment and payment status management, default aversion activities, default collection activities, school and lender training, financial aid awareness and related outreach activities, compliance monitoring, and other student financial aid and related activities as selected by the Authority. The Authority's outreach or "client services" activities shall include, but not be limited to, training of program participants and secondary school personnel, dissemination of FFELP-related information and materials to schools, loan holders, prospective loan applicants, and their parents, and training at workshops, conferences or other forums. The Authority issues a newsletter on student financial assistance topics, and maintains an internet website.

Amended by R.2000 d.92, effective March 6, 2000.  
See: 31 N.J.R. 3900(a), 32 N.J.R. 805(a).

Rewrote the section.

Amended by R.2003 d.465, effective December 1, 2003.  
See: 35 N.J.R. 2770(b), 35 N.J.R. 5415(b).

Rewrote the third sentence.

Amended by R.2009 d.180, effective June 1, 2009.  
See: 40 N.J.R. 6721(b), 41 N.J.R. 2261(a).

Deleted "periodic" preceding "newsletter".

#### **9A:10-1.18 Authority guaranty agency enforcement requirements: program reviews**

(a) The Authority is required by FFELP regulations, 34 CFR Part 682, to conduct comprehensive biennial program reviews of certain schools and lenders participating in the FFELP. The Authority may collaborate with other guarantors in performing lender reviews pursuant to the Common Review Initiative. Program reviews are conducted to assess the administrative and financial capability of schools and lenders with applicable requirements of the FFELP. These requirements are those of the Higher Education Act of 1965, as amended, the Federal regulations (34 CFR Parts 600, 668, and 682), and Authority policies and procedures. The Authority may elect to review third-party servicers of schools

and lenders. The Authority may also elect to review other agents, such as special counsel performing litigation on defaulted FFELP loans. If the Authority elects to review third-party servicers, it shall follow the program review process for servicers outlined in the Common Manual.

(b) The Authority shall perform a biennial program review of each school in any state in which the Authority is the primary guarantor that has had a cohort default rate exceeding 20 percent for either of the two most recent years for which rates have been calculated. A school shall be exempted from review if it meets the loan volume limit on the default reduction measures outlined in 34 CFR 682.410(c). The Authority may request that the United States Department of Education approve substitutions to its list of required school reviews. In addition to the Federal criteria used in selecting schools for review, the Authority may consider other factors, such as those listed in the Common Manual. These other factors are: loan volume trends, significant increases in cumulative or cohort default rates, evidence of regulatory violations, evidence of potential fraud or abuse in its FFELP participation, evidence that the school has been placed on the Pell reimbursement system for payment, complaints from lenders, borrowers, or students, evidence that the school has failed to adequately address deficiencies identified in prior program reviews, evidence that the school has failed to implement improvements to reverse negative financial trends, and weaknesses identified during the process by which schools first obtain FFELP eligibility.

(c) The Authority shall perform a biennial program review of each participating lender whose dollar volume of FFELP loans made or held by the lender and guaranteed by the Authority in the preceding year meet one or more of the volume criteria set forth in 34 CFR 682.410(c). The Authority may collaborate with other guarantors participating in the Common Review Initiative to conduct joint program compliance reviews of lenders. The Authority may request that the United States Department of Education approve substitutions to its list of required lender reviews. In addition to the Federal criteria used in selecting lenders for review, the Authority may consider other factors, such as those listed in the Common Manual. These other factors are: loan volume trends, significant increases in cumulative or cohort default rates, evidence of regulatory violations, evidence of potential fraud or abuse in its FFELP participation, and complaints from schools, students, or borrowers. The Authority may conduct compliance reviews in other areas of lender administration as long as, at a minimum, the scope includes NSLDS reconciliation.

(d) A program review begins when the school or lender is selected for review and ends when the Authority accepts a satisfactory response to the review findings from the school or lender and all close-out procedures are completed. The program review consists of four phases: the preliminary review, the on-site review, the issuance of a program review report, and the review close-out.

(e) Preparation for the review is as follows:

1. The Authority or CRI review team shall notify the school or lender to be reviewed, provide the date(s) of the on-site review, and request administrative and financial information related to the entity's eligibility and participation in the FFELP. Prior to the on-site review, the reviewer shall develop a profile of the school or lender from data maintained by the Authority or CRI participating guaranty agencies. For lenders, this data includes loan volume, student populations and sample, and lender search report. For schools, this data includes Stafford and PLUS loan volume for the period, training attendance record, and borrower complaints, if any. The reviewer may also require the school or lender to complete a questionnaire on internal control procedures and policies related to its administration of the FFELP.

2. The administrative and financial information normally required for the on-site visit includes, but is not limited to, the following for schools: school catalog, documentation from prior program reviews, independent audit results, student financial aid audit results, audited financial statements, program participation agreement, accreditation reports or certification, State licensing documentation, default management plan, if applicable, and individual borrower files. For lenders, this information includes, but is not limited to, FFELP lending policies, documentation from prior program reviews, independent audit results, information from the United States Department of Education Lender Reporting System (LaRS), documentation of loan transfers, and individual borrower files.

(f) The Authority or CRI review team shall provide the school or lender the opportunity to present questions or supply additional information. The school or lender being reviewed shall cooperate with the review team by making staff available to reviewers at entrance and exit interviews and by supplying additional material to reviewers if requested during the on-site visit.

(g) Program review follow up and other enforcement procedures are as follows:

1. The reviewer shall issue a program review report to the school or lender being reviewed.

2. The program review ends when all required actions are completed and all liabilities are paid by the school or lender being reviewed.

3. When the program review ends, the reviewer shall notify the school or lender in writing that the program review is closed. The reviewer shall also update the Post-secondary Education Participants System (PEPS) database. The reviewer shall at the same time notify the United States Department of Education that the program review is closed.

4. If the Authority or CRI review team is unable to close a program review because the school or lender is