

Providing for an Orderly Wind-Down of the Federal Guaranteed Student Loan Program

Since 1965, state and nonprofit guaranty agencies have provided important services to students, borrowers, families, and the federal government by helping to manage the federal student loan program at the local level, and increasing access to and success in postsecondary education. Among many activities, guaranty agencies provide a range of outreach services and programs to students, families, schools, and community organizations to help students gain access to and succeed at postsecondary education; help students and families better manage their finances by designing materials and programs on budgeting, establishing good credit, paying for college, and successfully managing debt; and provide information and support to students, borrowers, and schools to promote successful loan repayment and reduce defaults. This includes ongoing borrower contact, especially for those student and parent borrowers who have fallen behind on their payments. As part of their agreements with the Secretary of Education to administer certain aspects of the federal guaranteed student loan program, called the Federal Family Education Loan Program (FFELP), the agencies also review default claims to ensure due diligence was performed by the lender and servicer; purchase these claims; work with defaulted student and parent borrowers to rehabilitate their defaulted loans and restore their credit, and to provide them with a fresh start; recover defaulted loan dollars; process discharge claims for eligible borrowers; and report actions to credit bureaus.

In 2010, Congress passed the Health Care and Education Reconciliation Act, which ended all new originations under FFELP. Federal loans to finance postsecondary education are now made under the Federal Direct Loan Program. Although there are no new originations of FFELP loans, guaranty agencies continue to carry out their public purpose missions and federal responsibilities as outlined above, including providing outreach services to all students and families, regardless of which type of federal student loan they may have taken out to finance their postsecondary education. As of September 30, 2016, according to the Department of Education, the guaranteed loan portfolio consisted of about \$201 billion in outstanding FFELP loans held by private lenders. In addition to their responsibilities on the outstanding FFELP portfolio, guaranty agencies were also responsible for servicing over \$32 billion in defaulted loans on behalf of the federal government. In FY 2016, guaranty agencies rehabilitated \$5.8 billion in defaulted loans to approximately 330,000 borrowers, and collected another \$3.7 billion for the federal government.

As the outstanding loan portfolio managed by guaranty agencies continues to decline over the next decade, the current guaranty agency funding structure will fail to provide the resources necessary to meet the needs of the federal government, students, borrowers, schools, and taxpayers. Congress recognized this challenge when it passed the Consolidated Appropriations Act of Fiscal Year 2016, which included a provision to increase from 95 percent to 100 percent reinsurance payments on default claims paid by agencies to lenders and extended the funding for guaranty agency account maintenance fees (AMF) through September 30, 2016. It further extended AMF authority through September 30, 2017 by passing the Further Continuing and Security Assistance Appropriations Act, 2017. These important changes will ensure that guaranty agencies can continue to use their operating funds to provide important college access and success programs for low-income and first-generation students and that agencies are able to maintain a more stable financial posture while discharging their final legal obligations under FFELP as it winds-down.

In December 2015, Congress directed the Department to submit a report on a plan to assist guaranty agencies, lenders, and borrowers in the wind-down of the FFELP program as the outstanding loan portfolio continues to decline. The plan was to specifically address guaranty agencies and their subsidies, the current status of the wind-down, the financial stability of guaranty agencies, and an assessment of any authority necessary for the purposes of the wind-down. In June 2016, the Department issued its report, containing a number of important recommendations that will benefit students and families, which are outlined below. In response to a letter to NCHER on the contents of the report, the Department stated, "The guaranty agencies have built an extensive education and outreach infrastructure that allows the provision of services at the state, regional, and national level regardless of loan program type. In addition, guaranty agencies provide key services in administering grant, educational savings plans, and alternative funding options. Please note that the Department fully recognizes and supports the services that the guaranty agencies are performing with

reduced funding and resources.”

NCHER Reform Proposals

The National Council of Higher Education Resources (NCHER) supports the important and successful work of guaranty agencies in helping students, families, and borrowers access and complete higher education. We urge Congress to provide for an orderly wind-down of the federal guaranteed student loan program by:

- Authorizing the payment of AMF through 2026. Guaranty agencies receive Account Maintenance Fees to pay for their general operating expenses. The fees are paid quarterly and are based on an agency's original outstanding principal balance of its non-defaulted portfolio. AMF is used to carry out the agency's mandate to conduct college access activities, provide educational programs and materials in financial literacy, maintain loan records, establish and enforce standards and provide training and technical assistance for lenders and schools, defend bankruptcy proceedings, provide schools with information on defaults and loan transfers, conduct claim reviews and issue lender payments, conduct comprehensive reviews of lenders, servicers, and schools, and monitor school enrollment and repayment status. The payment of AMF is essential for guaranty agencies to provide important services on behalf of the federal government, and Congress must extend their authorization before the end of the current fiscal year. This important recommendation to Congress was included in the Department's report on the wind-down of FFELP operations.
- Providing just-in-time reinsurance payments to facilitate cash flow into the Federal Fund. Currently, guaranty agencies do not receive reinsurance for claim repayments for three weeks or more following the time they pay a claim. This puts unnecessary stress on an agency's Federal Fund, which is the property of the federal government, and can curtail an agency's ability to provide critical services to assist struggling borrowers. Congress should mandate that the Department reimburse guaranty agencies within 72 hours of claim payment to mitigate the unnecessary cash-flow concerns. This recommendation was included in the Department's report on the wind-down of FFELP operations.
- Removing the 45 percent cap on Federal Direct Consolidation Loans. The Higher Education Act caps the percentage of recoveries that a guaranty agency can make through Direct Consolidation Loans. Recent changes to regulations governing loan rehabilitation that reduce recoveries through administrative wage garnishment, and an expected decline in FFELP loan rehabilitations, may increase the percentage of guaranty agency collections represented by Federal Direct Consolidation Loans. Congress should eliminate this provision, which was included in the report on the wind-down of FFELP operations.
- Developing a specific process for those guaranty agencies interested in relinquishing their FFELP portfolios. Currently, the Department makes all of the major decisions when guaranty agencies voluntarily leave the FFEL program, including choosing successor agencies and determining whether there will be allowable revenue-sharing agreements. In some states, the Department's approach could cause additional disruption to borrowers and result in fewer college access and outreach services available to students and families. Congress should require the Department to work in collaboration with guaranty agencies to develop and delineate a specific process for those agencies interested in relinquishing their FFELP portfolios and related guarantor functions, and the criteria and process that the Department will use when selecting successor agencies. The process should be open and transparent for all agencies and the terms and conditions should be known in advance, and the process should include ways to minimize borrower disruption and maximize borrower communication.

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